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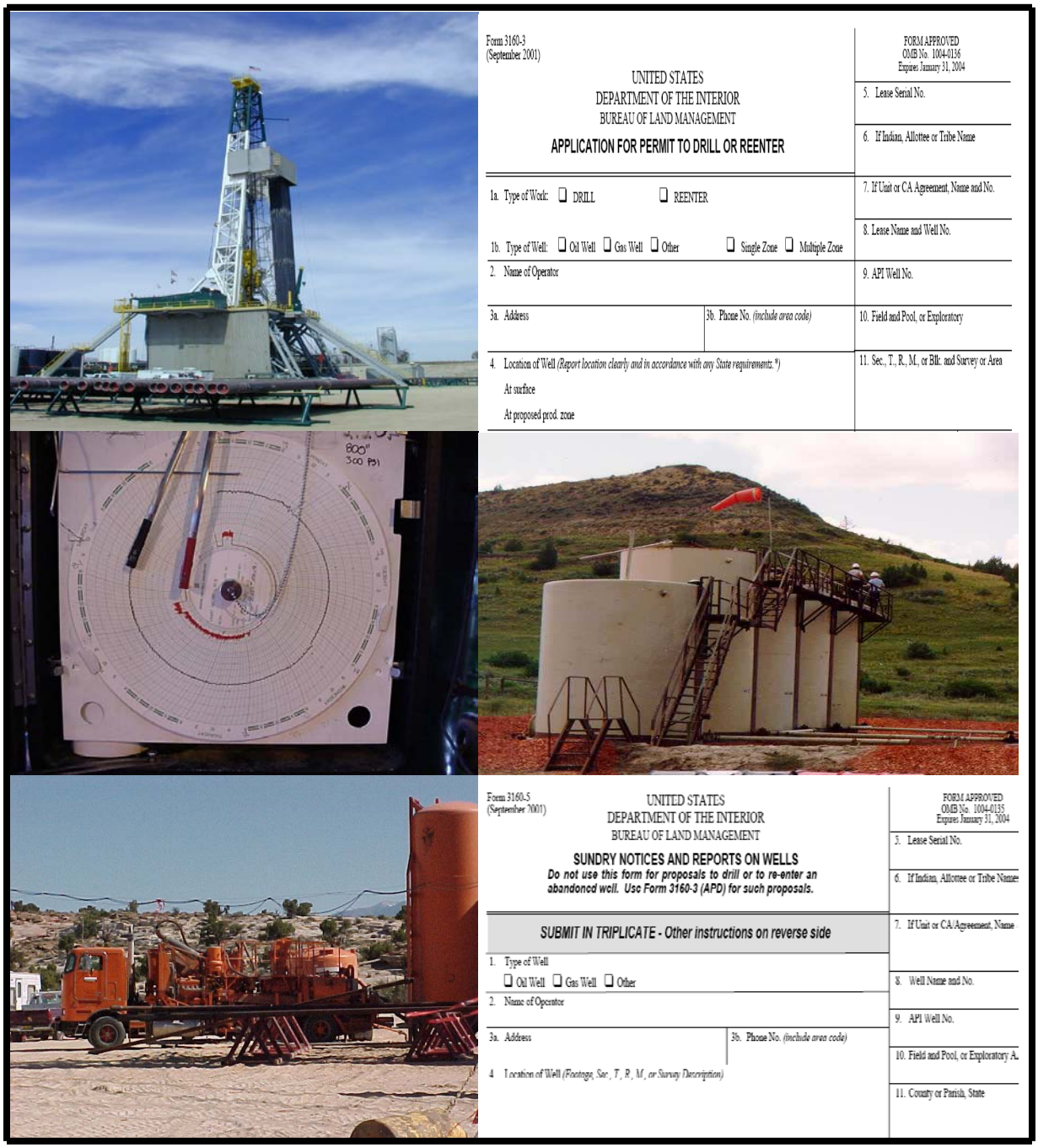
FLUID MINERALS FOR PETROLEUM ENGINEERS

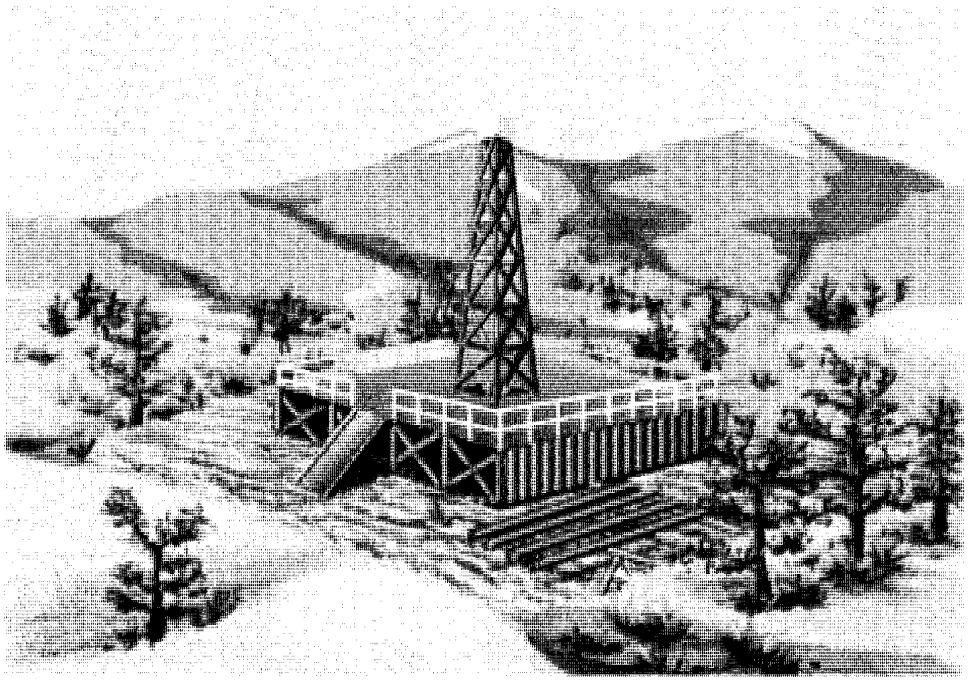


LAWS, REGULATIONS & POLICY VOLUME 1

2010

Mineral Leasing Act &
Energy Policy Act Rev.

Mineral Leasing Act of 1920 as Amended



MINERAL LANDS LEASING ACT OF FEBRUARY 25, 1920
(Mineral Leasing Act of 1920)

And Subsequent Amendments
Including the Federal Onshore Oil and Gas
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ACT OF FEBRUARY 25, 1920

An Act To promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Act known as the Appalachian Forest Act, approved March 1, 1911 (Thirty-sixth Statutes, page 961), and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this Act to citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, and in the case of coal, oil, oil shale, or gas, to municipalities: *Provided*, That the United States reserves the right to extract helium from all gas produced from lands permitted, leased, or otherwise granted under the provisions of this Act, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands, it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof: *And provided further*, That citizens of another country, the laws, customs, or regulations of which, deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this Act.

FEDERALLY OWNED MINERAL LANDS

Sec. 1: See footnotes 1-4 for amendments.

COAL.

SEC. 2. That the Secretary of the Interior is authorized to, and upon the petition of any qualified applicant shall, divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, outside of the Territory of Alaska, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in the opinion of the Secretary of the Interior, will permit the most economical mining of the coal in such tracts, but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract, and thereafter the Secretary of the Interior shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding or by such other methods as he may by general regulations adopt, to any qualified applicant: *Provided*, That the Secretary is hereby authorized, in awarding leases for coal lands heretofore improved and occupied or claimed in good faith, to consider and recognize equitable rights of such occupants or claimants: *Provided further*, That where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any

COAL

COAL LEASES: LEASING TRACTS. ACREAGE. COMPETITIVE BIDDING.

Sec. 2: See footnotes 5-12 for amendments.

unclaimed, undeveloped area, the Secretary of the Interior may issue, to applicants qualified under this Act, prospecting permits for a term of two years, for not exceeding two thousand five hundred and sixty acres; and if within said period of two years thereafter, the permittee shows to the Secretary that the land contains coal in commercial quantities, the permittee shall be entitled to a lease under this Act for all or part of the land in his permit: *And provided further*, That no lease of coal under this Act shall be approved or issued until after notice of the proposed lease, or offering for lease, has been given for thirty days in a newspaper of general circulation in the county in which the lands or deposits are situated: *And provided further*, That no company or corporation operating a common carrier railroad shall be given or hold a permit or lease under the provisions of this Act for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporations, and no such company or corporation shall receive or hold more than one permit or lease for each two hundred miles of its railroad line within the State in which said property is situated, exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam: *And provided further*, That nothing herein shall preclude such a railroad of less than two hundred miles in length from securing and holding one permit or lease hereunder.

SEC. 3. That any person, association, or corporation holding a lease of coal lands or coal deposits under this Act may, with the approval of the Secretary of the Interior, upon a finding by him that it will be for the advantage of the lessee and the United States, secure modifications of his or its original lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area embraced in such modified lease exceed in the aggregate two thousand five hundred and sixty acres.

MODIFY ORIGINAL COAL LEASE
Sec. 3: See footnotes 13-18 for amendments.

SEC. 4. That upon satisfactory showing by any lessee to the Secretary of the Interior that all of the workable deposits of coal within a tract covered by his or its lease will be exhausted, worked out, or removed within three years thereafter, the Secretary of the Interior may, within his discretion, lease to such lessee an additional tract of land or coal deposits, which, including the coal area remaining in the existing lease, shall not exceed two thousand five hundred and sixty acres, through the same procedure and under the same conditions as in case of an original lease.

ADDITIONAL LEASING
Sec. 4: See footnote 19 for amendment.

SEC. 5. That if, in the judgment of the Secretary of the Interior, the public interest will be subserved thereby, lessees holding under lease areas not exceeding the maximum permitted under this Act may consolidate their leases through the surrender of the original leases and the inclusion of such areas in a new lease of not to exceed two thousand five hundred and sixty acres of contiguous lands.

CONSOLIDATING LEASES

SEC. 6. That where coal or phosphate lands aggregating two thousand five hundred and sixty acres and subject to lease hereunder do

NONCONTIGUOUS TRACTS

not exist as contiguous areas, the Secretary of the Interior is authorized, if, in his opinion the interests of the public and of the lessee will be thereby subserved, to embrace in a single lease noncontiguous tracts which can be operated as a single mine or unit.

ROYALTIES
Sec. 7: See footnote 20 for amendment.

SEC. 7. That for the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall be fixed in advance of offering the same, and which shall not be less than 5 cents per ton of two thousand pounds, due and payable at the end of each third month succeeding that of the extraction of the coal from the mine, and an annual rental, payable at the date of such lease and annually thereafter, on the lands or coal deposits covered by such lease, at such rate as may be fixed by the Secretary of the Interior prior to offering the same, which shall not be less than 25 cents per acre for the first year thereafter, not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively, and not less than $1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods upon condition of diligent development and continued operation of the mine or mines, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods: *Provided*, That the Secretary of the Interior may, if in his judgment the public interest will be subserved thereby, in lieu of the provision herein contained requiring continuous operation of the mine or mines, provide in the lease for the payment of an annual advance royalty upon a minimum number of tons of coal, which in no case shall aggregate less than the amount of rentals herein provided for: *Provided further*, That the Secretary of the Interior may permit suspension of operation under such lease for not to exceed six months at any one time when market conditions are such that the lease can not be operated except at a loss.

OWN USE PROVISIONS
Sec. 8: See footnotes 21-22 for amendments.

SEC. 8. That in order to provide for the supply of strictly local domestic needs for fuel, the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue limited licenses or permits to individuals or associations of individuals to prospect for, mine, and take for their use but not for sale, coal from the public lands without payment of royalty for the coal mined or the land occupied, on such conditions not inconsistent with this Act as in his opinion will safeguard the public interests: *Provided*, That this privilege shall not extend to any corporations: *Provided further*, That in the case of municipal corporations the Secretary of the Interior may issue such limited license or permit, for not to exceed three hundred and twenty acres for a municipality of less than one hundred thousand population, and not to exceed one thousand two hundred and eighty acres for a municipality of not less than one hundred thousand and not more than one hundred and fifty thousand population; and not to exceed two thousand five hundred and sixty acres for a

municipality of one hundred and fifty thousand population or more, the land to be selected within the State wherein the municipal applicant may be located, upon condition that such municipal corporations will mine the coal therein under proper conditions and dispose of the same without profit to residents of such municipality for household use: *And provided further*, That the acquisition or holding of a lease under the preceding sections of this Act shall be no bar to the holding of such tract or operation of such mine under said limited license.

PHOSPHATES.

PHOSPHATES

LAND LEASING
Sec. 9: See footnotes 23-24 for amendments.

SEC. 9. That the Secretary of the Interior is hereby authorized to lease to any applicant qualified under this Act any lands belonging to the United States containing deposits of phosphates, under such restrictions and upon such terms as are herein specified, through advertisement, competitive bidding, or such other methods as the Secretary of the Interior may by general regulation adopt.

SIZE OF LEASE
Sec. 10: See footnote 25 for amendment.

SEC. 10. That each lease shall be for not to exceed two thousand five hundred and sixty acres of land to be described by the legal subdivisions of the public land surveys, if surveyed; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease, in accordance with rules and regulations prescribed by the Secretary of the Interior and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such survey; deposits made to cover expense of surveys shall be deemed appropriated for that purpose; and any excess deposits shall be repaid to the person, association, or corporation making such deposits or their legal representatives: *Provided*, That the land embraced in any one lease shall be in compact form, the length of which shall not exceed two and one half times its width.

ROYALTIES
Sec. 11: See footnote 26 for amendment.

SEC. 11. That for the privilege of mining or extracting the phosphates or phosphate rock covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall be fixed by the Secretary of the Interior in advance of offering the same, which shall be not less than 2 per centum of the gross value of the output of phosphates or phosphate rock at the mine, due and payable at the end of each third month succeeding that of the sale or other disposition of the phosphates or phosphate rock, and an annual rental payable at the date of such lease and annually thereafter on the area covered by such lease at such rate as may be fixed by the Secretary of the Interior prior to offering the lease, which shall be not less than 25 cents per acre for the first year thereafter, 50 cents per acre for the second, third, fourth, and fifth years, respectively, and $1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods upon condition of a minimum annual production, except when operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of

terms and conditions shall be made as the Secretary of the Interior shall determine unless otherwise provided by law at the time of the expiration of such periods: *Provided*, That the Secretary of the Interior may permit suspension of operation under such lease for not exceeding twelve months at any one time when market conditions are such that the lease can not be operated except at a loss. . . .

SURFACE USE
Sec. 12: See footnotes 27-28 for amendments.

SEC. 12. That any qualified applicant to whom the Secretary of the Interior may grant a lease to develop and extract phosphates, or phosphate rock, under the provisions of this Act shall have the right to use so much of the surface of unappropriated and unentered lands, not exceeding forty acres, as may be determined by the Secretary of the Interior to be necessary for the proper prospecting for or development, extraction, treatment, and removal of such mineral deposits.

OIL AND GAS.

OIL AND GAS

GRANTING LEASES
Sec. 13: See footnotes 29-30 for amendments.

SEC. 13. That the Secretary of the Interior is hereby authorized, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under this Act a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect for oil or gas upon not to exceed two thousand five hundred and sixty acres of land wherein such deposits belong to the United States and are not within any known geological structure of a producing oil or gas field upon condition that the permittee shall begin drilling operations within six months from the date of the permit, and shall, within one year from and after the date of permit, drill one or more wells for oil or gas to a depth of not less than five hundred feet each, unless valuable deposits of oil or gas shall be sooner discovered, and shall, within two years from date of the permit, drill for oil or gas to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered. The Secretary of the Interior may, if he shall find that the permittee has been unable with the exercise of diligence to test the land in the time granted by the permit, extend any such permit for such time, not exceeding two years, and upon such conditions as he shall prescribe. Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably compact form and according to the legal subdivisions of the public land surveys if the land be surveyed; and in an approximately square or rectangular tract if the land be an unsurveyed tract, the length of which shall not exceed two and one-half times its width, and if he shall cause to be erected upon the land for which a permit is sought a monument not less than four feet high, at some conspicuous place thereon, and shall post a notice in writing on or near said monument, stating that an application for permit will be made within thirty days after date of posting said notice, the name of the applicant, the date of the notice, and such a general description of the land to be covered by such permit by reference to courses and distances from such monument and such other natural objects and permanent monuments as will reasonably identify the land,

LOCATING LEASE

stating the amount thereof in acres, he shall during the period of thirty days following such marking and posting, be entitled to a preference right over others to a permit for the land so identified. The applicant shall, within ninety days after receiving a permit, mark each of the corners of the tract described in the permit upon the ground with substantial monuments, so that the boundaries can be readily traced on the ground, and shall post in a conspicuous place upon the lands a notice that such permit has been granted and a description of the lands covered thereby: *Provided*, That in the Territory of Alaska prospecting permits not more than five in number may be granted to any qualified applicant for periods not exceeding four years, actual drilling operations shall begin within two years from date of permit, and oil and gas wells shall be drilled to a depth of not less than five hundred feet, unless valuable deposits of oil or gas shall be sooner discovered, within three years from date of the permit and to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered, within four years from date of permit: *Provided further*, That in said Territory the applicant shall have a preference right over others to a permit for land identified by temporary monuments and notice posted on or near the same for six months following such marking and posting, and upon receiving a permit he shall mark the corners of the tract described in the permit upon the ground with substantial monuments within one year after receiving such permit.

RECEIVING LEASE FOR PERMITTED LAND

Sec. 14: See footnote 31 for amendment.

SEC. 14. That upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee, shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of $1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, with the right of renewal as prescribed in section 17 hereof. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production, and under such other conditions as are fixed for oil or gas leases in this Act, the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided*, That the Secretary shall have the right to reject any or all bids.

See footnote 99 for amendment.

ROYALTY

PERMITTEE FEES

SEC. 15. That until the permittee shall apply for lease to the one quarter of the permit area heretofore provided for he shall pay to the United States 20 per centum of the gross value of all oil or gas secured by him from the lands embraced within his permit and sold or otherwise disposed of or held by him for sale or other disposition.

WELL DRILLING NEAR LAND BOUNDARIES

Sec. 16: See footnote 32 for amendment.

SEC. 16. That all permits and leases of lands containing oil or gas, made or issued under the provisions of this Act, shall be subject to the condition that no wells shall be drilled within two hundred feet of any of the outer boundaries of the lands so permitted or leased, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners, and to the further condition that the permittee or lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits. Violations of the provisions of this section shall constitute grounds for the forfeiture of the permit or lease, to be enforced through appropriate proceedings in courts of competent jurisdiction.

KGS. COMPETITIVE BIDDING. ROYALTY

Sec. 17: See footnotes 33-42 for amendments.

SEC. 17. That all unappropriated deposits of oil or gas situated within the known geologic structure of a producing oil or gas field and the unentered lands containing the same, not subject to preferential lease, may be leased by the Secretary of the Interior to the highest responsible bidder by competitive bidding under general regulations to qualified applicants in areas not exceeding six hundred and forty acres and in tracts which shall not exceed in length two and one-half times their width, such leases to be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, which shall not be less than 12½ per centum in amount or value of the production, and the payment in advance of a rental of not less than $1 per acre per annum thereafter during the continuance of the lease, the rental paid for any one year to be credited against the royalties as they accrue for that year. Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods. Whenever the average daily production of any oil well shall not exceed ten barrels per day, the Secretary of the Interior is authorized to reduce the royalty on future production when in his judgment the wells can not be successfully operated upon the royalty fixed in the lease. The provisions of this paragraph shall apply to all oil and gas leases made under this Act.

PRIOR TO JULY 3, 1910

SEC. 18. That upon relinquishment to the United States, filed in the General Land Office within six months after the approval of this Act, of all right, title, and interest claimed and possessed prior to July 3, 1910, and continuously since by the claimant or his predecessor in interest under the preexisting placer mining law to any oil or gas bearing land upon which there has been drilled one or more oil or gas wells to discovery embraced in the Executive order of withdrawal issued September 27, 1909, and not within any naval petroleum reserve, and upon payment as royalty to the United States

of an amount equal to the value at the time of production of one-eighth of all the oil or gas already produced except oil or gas used for production purposes on the claim, or unavoidably lost, from such land, the claimant, or his successor, if in possession of such land, undisputed by any other claimant prior to July 1, 1919, shall be entitled to a lease thereon from the United States for a period of twenty years, at a royalty of not less than 12½ per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided*, That not more than one-half of the area, but in no case to exceed three thousand two hundred acres, within the geologic oil or gas structure of a producing oil or gas field shall be leased to any one claimant under the provision of this section when the area of such geologic oil structure exceeds six hundred and forty acres. Any claimant or his successor, subject to this limitation, shall, however, have the right to select and receive the lease as in this section provided for that portion of his claim or claims equal to, but not in excess of, said one-half of the area of such geologic oil structure, but not more than three thousand two hundred acres.

All such leases shall be made and the amount of royalty to be paid for oil and gas produced, except oil or gas used for production purposes on the claim, or unavoidably lost, after the execution of such lease shall be fixed by the Secretary of the Interior under appropriate rules and regulations: *Provided, however*, That as to all like claims situate within any naval petroleum reserve the producing wells thereon only shall be leased, together with an area of land sufficient for the operation thereof, upon the terms and payment of royalties for past and future production as herein provided for in the leasing of claims. No wells shall be drilled in the land subject to this provision within six hundred and sixty feet of any such leased well without the consent of the lessee: *Provided, however*, That the President may, in his discretion, lease the remainder or any part of any such claim upon which such wells have been drilled, and in the event of such leasing said claimant or his successor shall have a preference right to such lease: *And provided further*, That he may permit the drilling of additional wells by the claimant or his successor within the limited area of six hundred and sixty feet theretofore provided for upon such terms and conditions as he may prescribe. ROYALTY

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

Upon the delivery and acceptance of the lease, as in this section provided, all suits brought by the Government affecting such lands may be settled and adjusted in accordance herewith and all moneys impounded in such suits or under the Act entitled "An Act to amend an Act entitled 'An Act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest,' approved March 2, 1911," approved August 25, 1914 (Thirty-eighth Statutes at Large, page 708), shall be paid over

to the parties entitled thereto. In case of conflicting claimants for leases under this section, the Secretary of the Interior is authorized to grant leases to one or more of them as shall be deemed just. All leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear, subject, however, to the same limitation as to area and acreage as is provided for claimant in this section: *Provided*, That no claimant acquiring any interest in such lands since September 1, 1919, from a claimant on or since said date claiming or holding more than the maximum allowed claimant under this section shall secure a lease thereon or any interest therein, but the inhibition of this proviso shall not apply to an exchange of any interest in such lands made prior to the 1st day of January, 1920, which did not increase or reduce the area or acreage held or claimed in excess of said maximum by either party to the exchange: *Provided further*, That no lease or leases under this section shall be granted, nor shall any interest therein, inure to any person, association, or corporation for a greater aggregate area or acreage than the maximum in this section provided for.

VALIDITY OF OIL AND GAS PLACER CLAIM

SEC. 18a. That whenever the validity of any gas or petroleum placer claim under preexisting law to land embraced in the Executive order of withdrawal issued September 27, 1909, has been or may hereafter be drawn in question on behalf of the United States in any departmental or judicial proceedings, the President is hereby authorized at any time within twelve months after the approval of this Act to direct the compromise and settlement of any such controversy upon such terms and conditions as may be agreed upon, to be carried out by an exchange or division of land or division of the proceeds of operation.

BONA FIDE OCCUPANT OR CLAIMANT

SEC. 19. That any person who on October 1, 1919, was a bona fide occupant or claimant of oil or gas lands under a claim initiated while such lands were not withdrawn from oil or gas location and entry, and who had previously performed all acts under then existing laws necessary to valid locations thereof except to make discovery, and upon which discovery had not been made prior to the passage of this Act, and who has performed work or expended on or for the benefit of such locations an amount equal in the aggregate of $250 for each location if application therefor shall be made within six months from the passage of this Act shall be entitled to prospecting permits thereon upon the same terms and conditions, and limitations as to acreage, as other permits provided for in this Act, or where any such person has heretofore made such discovery, he shall be entitled to a lease thereon under such terms as the Secretary of the Interior may prescribe unless otherwise provided for in section 18 hereof: *Provided*, That where such prospecting permit is granted upon land within any known geologic structure of a producing oil or gas field, the royalty to be fixed in any lease thereafter granted thereon or any portion thereof shall be not less than 12½ per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided, however*, That the provisions of this section shall not apply to lands reserved for the use of the Navy:

Provided, however, That no claimant for a permit or lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

All permits or leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear.

PREFERENCE RIGHT

SEC. 20. In the case of lands bona fide entered as agricultural, and not withdrawn or classified as mineral at the time of entry, but not including lands claimed under any railroad grant, the entryman or patentee, or assigns, where assignment was made prior to January 1, 1918, if the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein provided, in case of discovery; and within an area not greater than a township such entryman and patentees, or assigns holding restricted patents may combine their holdings, not to exceed two thousand five hundred and sixty acres for the purpose of making joint application. Leases executed under this section and embracing only lands so entered shall provide for the payment of a royalty of not less than 12½ per centum as to such areas within the permit as may not be included within the discovery lease to which the permittee is entitled under section 14 hereof.

OIL SHALE.

OIL SHALE

OIL SHALE LEASE
Sec. 21: See footnotes 43-45 for amendments.

SEC. 21. That the Secretary of the Interior is hereby authorized to lease to any person or corporation qualified under this Act any deposits of oil shale belonging to the United States and the surface of so much of the public lands containing such deposits, or land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, under such rules and regulations, not inconsistent with this Act, as he may prescribe; that no lease hereunder shall exceed five thousand one hundred and twenty acres of land, to be described by the legal subdivisions of the public-land surveys, or if unsurveyed, to be surveyed by the United States, at the expense of the applicant, in accordance with regulations to be prescribed by the Secretary of the Interior. Leases may be for indeterminate periods, upon such conditions as may be imposed by the Secretary of the Interior, including covenants relative to methods of mining, prevention of waste, and productive development. For the privilege of mining, extracting, and disposing of the oil or other minerals covered by a lease under this section the lessee shall pay to the United States such royalties as shall be specified in the lease and an annual rental, payable at the beginning of each year, at the rate of 50 cents per acre per annum, for the lands included in the lease, the rental paid for any one year to be credited against the royalties accruing for that year; such royalties to be subject to readjustment at the end of each twenty-year period by the Secretary of the Interior: *Provided,* That for the purpose of encouraging the production of petroleum products from shales the Secretary may, in his discretion, waive the payment of any royalty and rental during the first five years of any lease: *Provided,* That any person having a valid claim to such minerals under existing laws on January 1,

1919, shall, upon the relinquishment of such claim, be entitled to a lease under the provisions of this section for such area of the land relinquished as shall not exceed the maximum area authorized by this section to be leased to an individual or corporation: *Provided, however*, That no claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section: *Provided further*, That not more than one lease shall be granted under this section to any one person, association, or corporation.

ALASKA OIL PROVISO.

SEC. 22. That any bona fide occupant or claimant of oil or gas bearing lands in the Territory of Alaska, who, or whose predecessors in interest, prior to withdrawal had complied otherwise with the requirements of the mining laws, but had made no discovery of oil or gas in wells and who prior to withdrawal had made substantial improvements for the discovery of oil or gas on or for each location or had prior to the passage of this Act expended not less than $250 in improvements on or for each location shall be entitled, upon relinquishment or surrender to the United States within one year from the date of this Act, or within six months after final denial or withdrawal of application for patent, to a prospecting permit or permits, lease or leases, under this Act covering such lands, not exceeding five permits or leases in number and not exceeding an aggregate of one thousand two hundred and eighty acres in each: *Provided*, That leases in Alaska under this Act whether as a result of prospecting permits or otherwise shall be upon such rental and royalties as shall be fixed by the Secretary of the Interior and specified in the lease, and be subject to readjustment at the end of each twenty-year period of the lease: *Provided further*, That for the purpose of encouraging the production of petroleum products in Alaska the Secretary may, in his discretion, waive the payment of any rental or royalty not exceeding the first five years of any lease.

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

SODIUM.

SEC. 23. That the Secretary of the Interior is hereby authorized and directed, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium dissolved in and soluble in water, and accumulated by concentration, in lands belonging to the United States for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall be not exceeding two thousand five hundred and sixty acres of land in reasonably compact form: *Provided further*, That the provisions of this section shall not apply to lands in San Bernardino County, California.

ALASKA OIL PROVISO

BONA FIDE OCCUPANT OR CLAIMANT
Sec. 22: See footnote 46 for amendment.

SODIUM

PROSPECTING PERMITS
Sec. 23: See footnote 47 for amendment.

QUALIFY FOR LEASE

Sec. 24: See footnote 48 for amendments.

SEC. 24. That upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in section 23 hereof has been discovered by the permittee within the area covered by his permit and that such land is chiefly valuable therefor the permittee shall be entitled to a lease for one-half of the land embraced in the prospecting permit, at a royalty of not less than one-eighth of the amount or value of the production, to be taken and described by legal subdivisions of the public-land surveys, or if the land be not surveyed by survey executed at the cost of the permittee in accordance with the rules and regulations to be prescribed by the Secretary of the Interior. The permittee shall also have the preference right to lease the remainder of the lands embraced within the limits of his permit at a royalty of not less than one-eighth of the amount or value of the production to be fixed by the Secretary of the Interior. Lands known to contain such valuable deposits as are enumerated in section 23 hereof and not covered by permits or leases, except such lands as are situated in said county of San Bernardino, shall be held subject to lease, and may be leased by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres; all leases to be conditioned upon the payment by the lessee of such royalty of not less than one-eighth of the amount or value of the production as may be fixed in the lease, and the payment in advance of a rental of 50 cents per acre for the first calendar year or fraction thereof and $1 per acre per annum thereafter during the continuance of the lease, the rental paid for any one year to be credited on the royalty for that year. Leases may be for indeterminate periods, subject to readjustment at the end of each twenty-year period, upon such conditions not inconsistent herewith as may be incorporated in each lease or prescribed in general regulation theretofore issued by the Secretary of the Interior, including covenants relative to mining methods, waste, period of preliminary development, and minimum production, and a lessee under this section may be lessee of the remaining lands in his permit.

EXCLUSIVE RIGHT OF USE

SEC. 25. That in addition to areas of such mineral land which may be included in any such prospecting permits or leases, the Secretary of the Interior, in his discretion, may grant to a permittee or lessee of lands containing sodium deposits, and subject to the payment of an annual rental of not less than 25 cents per acre, the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land, not exceeding forty acres in area, for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

GENERAL PROVISIONS

DUE DILIGENCE

NUMBER OF LEASES HELD
Sec. 27: See footnotes 49-62 for amendments.

GENERAL PROVISIONS APPLICABLE TO COAL, PHOSPHATE, SODIUM, OIL, OIL SHALE, AND GAS LEASES.

SEC. 26. That the Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this Act appropriate provisions for its cancellation by him.

SEC. 27. That no person, association, or corporation, except as herein provided, shall take or hold more than one coal, phosphate, or sodium lease during the life of such lease in any one State; no person, association, or corporation shall take or hold, at one time, more than three oil or gas leases granted hereunder in any one State, and not more than one lease within the geologic structure of the same producing oil or gas field; no corporation shall hold any interest as a stockholder of another corporation in more than such number of leases; and no person or corporation shall take or hold any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, which, together with the area embraced in any direct holding of a lease under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, for any kind of mineral leased hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee under this Act. Any interests held in violation of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property, or some part thereof, is located, except that any ownership or interest forbidden in this Act which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition: *Provided*, That nothing herein contained shall be construed to limit sections 18, 18a, 19, and 22 or to prevent any number of lessees under the provisions of this Act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this Act, or the transportation of coal: *Provided further*, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same: *And provided further*, That if any of the lands or deposits leased under the provisions of this Act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form part of, or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or

form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control, in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate court proceedings.

PIPELINE RIGHTS-OF-WAY
Sec. 28: See footnotes 63-65 for amendments.

SEC. 28. That rights of way through the public lands, including the forest reserves, of the United States are hereby granted for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of this Act, to the extent of the ground occupied by the said pipe line and twenty-five feet on each side of the same under such regulations as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers: *Provided*, That the Government shall in express terms reserve and shall provide in every lease of oil lands hereunder that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of this Act: *Provided further*, That no right of way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section. Failure to comply with the provisions of this section or the regulations prescribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in an appropriate proceeding.

EASEMENTS AND RIGHTS-OF-WAY

SEC. 29. That any permit, lease, occupation, or use permitted under this Act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes: *Provided*, That said Secretary, in his discretion, in making any lease under this Act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided further*, That if such reservation is made it shall be so determined before the offering of

such lease: *And provided further*, That the said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved.

ASSIGNED OR SUBLET LEASES
Sec. 30: See footnotes 66-70 for amendments.

SEC. 30. That no lease issued under the authority of this Act shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare: *Provided*, That none of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

FORFEITURE OR CANCELLATION OF LEASES
Sec. 31: See footnotes 71-77 for amendments.

SEC. 31. That any lease issued under the provisions of this Act may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of this Act, of the lease, or of the general regulations promulgated under this Act and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof.

FIX AND DETERMINE BOUNDARY LINES

SEC. 32. That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this Act: *Provided*, That nothing in this Act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

FORMS AND OATH

SEC. 33. That all statements, representations, or reports required by the Secretary of the Interior under this Act shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require.

RESERVATION OF MINERALS

SEC. 34. That the provisions of this Act shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits.

DISPOSITION OF RECEIPTS

Sec. 35: See footnotes 79-89 for amendments.

SEC. 35. That 10 per centum of all money received from sales, bonuses, royalties, and rentals under the provisions of this Act, excepting those from Alaska, shall be paid into the Treasury of the United States and credited to miscellaneous receipts; for past production 70 per centum, and for future production 52½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress, known as the Reclamation Act, approved June 17, 1902, and for past production 20 per centum, and for future production 37½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act from lands within the naval petroleum reserves shall be deposited in the Treasury as "Miscellaneous receipts."

ROYALTY PAID IN KIND ON DEMAND

Sec. 36: See footnote 90 for amendment.

SEC. 36. That all royalty accruing to the United States under any oil or gas lease or permit under this Act on demand of the Secretary of the Interior shall be paid in oil or gas.

Upon granting any oil or gas lease under this Act, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil and gas accruing or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee: *Provided, however*, That pending the making of a permanent contract for the sale of any royalty, oil or gas as herein provided, the Secretary of the Interior

may sell the current product at private sale, at not less than the market price: *And provided further*, That any royalty, oil, or gas may be sold at not less than the market price at private sale to any department or agency of the United States.

SEC. 37. That the deposits of coal, phosphate, sodium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits described in the joint resolution entitled "Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal mining operations on certain lands in Wyoming," approved August 1, 1912 (Thirty-seventh Statutes at Large, page 1346), shall be subject to disposition only in the form and manner provided in this Act, except as to valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

DISPOSITION OF MINERAL DEPOSITS SUBJECT TO THIS ACT
Sec. 37: See footnote 91 for amendment.

SEC. 38. That, until otherwise provided, the Secretary of the Interior shall be authorized to prescribe fees and commissions to be paid registers and receivers of United States land offices on account of business transacted under the provisions of this Act.

FEES FOR TRANSACTIONS UNDER ACT
Sec. 38: See footnote 92 for amendment.

Approved, February 25, 1920.

NOTE:

Sec. 39: Added by the Act of 2/9/33 at p. 28 this text.

Sec. 40: Added by the Act of 6/16/34 at p. 29 this text.

Sec. 41: Added by the Act of 12/22/87 at p. 136 this text.

Sec. 42: Added by the Act of 9/2/60 at p. 76 this text.

Sec. 43: Added by the Act of 12/22/87 at p. 139 this text.

Sec. 44: Added by the Act of 12/22/87 at p. 139 this text.

Sec. 39: See footnotes 93-98 for amendments.

ACT OF APRIL 30, 1926

An Act To amend section 27 of the general leasing Act approved February 25, 1920 (Forty-first Statutes at Large, page 437).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 27 of the general leasing Act approved February 25, 1920 (Forty-first Statutes at Large, page 437), is hereby amended to read as follows:

Sec. 27

ACREAGE HELD

That no person, association, or corporation, except as herein provided, shall take or hold coal, phosphate, or sodium leases or permits during the life of such leases or permits in any one State exceeding in aggregate acreage 2,560 acres for each of said minerals; no person, association, or corporation shall take or hold at one time oil or gas leases or permits exceeding in the aggregate 7,680 acres granted hereunder in any one State, and not more than 2,560 acres within the geologic structure of the same producing oil or gas field; and no person, association, or corporation shall take or hold at one time any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof, which, together with the area embraced in any direct holding of a lease or leases, permit or permits, under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof for any kind of mineral leases hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee or permittee under this Act. Any interests held in violation of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property, or some part thereof, is located, except that any ownership or interest forbidden in this Act which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition: *Provided*, That nothing herein contained shall be construed to limit sections 18, 18a, 19, and 22 or to prevent any number of lessees under the provisions of this Act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this Act, or the transportation of coal or to increase the acreage which may be acquired or held under section 17 of this Act: *Provided further*, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same. *And provided further*, That if any of the lands or deposits leased under the provisions of this Act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner

FORFEITURE OF INTEREST

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

whatsoever, so that they form a part of, or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control, in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate court proceedings.

Approved, April 30, 1926.

ACT OF FEBRUARY 7, 1927

ACT OF FEBRUARY 7, 1927

Excerpts

An Act To promote the mining of potash on the public domain.

SEC. 4. That prospecting permits or leases may be issued under the provisions of this Act for deposits of potassium in public lands, also containing deposits of coal or other minerals, on condition that such other deposits be reserved to the United States for disposal under appropriate laws: *Provided*, That if the interests of the Government and of the lessee will be subserved thereby, potassium leases may include covenants providing for the development by the lessee of chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, magnesium, aluminum, or calcium, associated with the potassium deposits leased, on terms and conditions not inconsistent with the sodium provisions of the Act of February 25, 1920 (Forty-first Statutes at Large, page 437): *Provided further*, That where valuable deposits of mineral now subject to disposition under the general mining laws are found in fissure veins on any of the lands subject to permit or lease under this Act, the valuable minerals so found shall continue subject to disposition under the said general mining laws notwithstanding the presence of potash therein.

SODIUM PROVISIONS

SEC. 5. That the general provisions of sections 1 and 26 to 38, inclusive, of the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," are made applicable to permits and leases under this Act, the first and thirty-seventh sections thereof being amended to include deposits of potassium.

SECS. 1 and 26-38 MADE APPLICABLE TO THIS ACT.

NOTE: Other sections are not included.

4/30/26 con't.
2/7/27

ACT OF DECEMBER 11, 1928

An Act To amend sections 23 and 24 of the General Leasing Act approved February 25, 1920 (Forty-first Statutes at Large, page 437).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 23 and 24 of the General Leasing Act approved February 25, 1920 (Forty-first Statutes at Large, page 437), are hereby amended to read as follows:

Sec. 23

SODIUM LEASE ACREAGE

"SEC. 23. That the Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, in lands belonging to the United States for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form.

Sec. 24

QUALIFY FOR LEASE

ROYALTY

SEC. 24. That upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in section 23 hereof have been discovered by the permittee within the area covered by his permit and that such land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit at a royalty of not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market; the lands in such lease to be taken in compact form by legal subdivisions of the public land surveys or, if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior. Lands known to contain valuable deposits of one of the substances enumerated in section 23 hereof and not covered by permits or leases shall be subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres. All leases under this section shall be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease, not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market, and the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof, 50 cents per acre for the second, third, fourth, and fifth calendar years respectively; and $1 per acre per annum thereafter during the continuance of the lease, such rental for any one year to be credited against royalties accruing for that year. Leases under this section shall be for a period of twenty years, with preferential right in the lessee to renew for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the

NOTE: Regarding all Mineral LEasing Act Sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

Secretary of the Interior unless otherwise provided by law at the expiration of such period: *Provided*, That nothing in this Act shall prohibit the mining and sale of sodium compounds under potassium leases issued pursuant to the Acts of October 2, 1917 (Fortieth Statutes at Large, page 297), and February 7, 1927 (Forty-fourth Statutes at Large, page 1057), nor the mining and sale of potassium compounds as a by-product from sodium leases taken under this section: *Provided further*, That on application by any lessee the Secretary of the Interior is authorized to modify the rental and royalty provisions stipulated in any existing sodium lease to conform to the provisions of this section."

Approved, December 11, 1928.

ACT OF JUNE 27, 1930

ACT OF JUNE 27, 1930

An Act Authorizing the repayment of rents and royalties in excess of requirements made under leases executed in accordance with the General Leasing Act of February 25, 1920.

REPAYMENT OF EXCESS PAYMENTS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the Act of Congress approved December 11, 1919 (41 Stat. L. 366), entitled "An Act to amend an Act approved March 26, 1908, entitled 'An Act to provide for the repayment of certain commissions, excess payments, and purchase moneys paid under the public land laws,'" is hereby made applicable to all payments in excess of lawful requirements made under the Act of Congress approved February 25, 1920 (41 Stat. L. 437), and under any statute relating to the sale, entry, lease, or other disposition of the public lands.

Approved, June 27, 1930.

NOTE: Repealed by Act of July 14, 1960.

REPEALED

12/11/28 con't
6/27/30

ACT OF JULY 3, 1930

An Act To amend sections 17 and 27 of the General Leasing Act of February 25, 1920 (41 Stat. 437; U. S. C., title 30, sec. 226), as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 17 and 27 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920 (41 Stat. 437; U. S. C., title 30, sec. 226), as amended, are amended to read as follows:

Sec. 17
KNOWN GEOLOGIC STRUCTURE

COMPETITIVE BIDDING

"SEC. 17. That all unappropriated deposits of oil or gas situated within the known geologic structure of a producing oil or gas field and the unentered lands containing the same, not subject to preferential lease, may be leased by the Secretary of the Interior to the highest responsible bidder by competitive bidding under general regulations to qualified applicants in areas not exceeding six hundred and forty acres and in tracts which shall not exceed in length two and one-half times their width, such leases to be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, which shall not be less than 12½ per centum in amount or value of the production, and the payment in advance of a rental of not less than $1 per acre per annum thereafter during the continuance of the lease, the rental paid for any one year to be credited against the royalties as they accrue for that year. Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods: *Provided*, That any lease heretofore or hereafter issued under this Act that has become the subject of a cooperative or unit plan of development or operation of a single oil or gas pool, which plan has the approval of the Secretary of the Interior as necessary or convenient in the public interest, shall continue in force beyond said period of 20 years until the termination of such plan: *And provided further*, That the Secretary of the Interior shall report all leases so continued to Congress at the beginning of its next regular session after the date of such continuance. Whenever the average daily production of any oil well shall not exceed ten barrels per day, the Secretary of the Interior is authorized to reduce the royalty on future production when in his judgment the wells can not be successfully operated upon the royalty fixed in the lease. The provisions of this paragraph shall apply to all oil and gas leases made under this Act.

Sec. 27

ACREAGE LIMITATIONS

"SEC. 27. That no person, association, or corporation, except as herein provided, shall take or hold coal, phosphate, or sodium leases or permits during the life of such leases or permits in any one State exceeding in aggregate acreage two thousand five hundred and sixty acres for each of said minerals; no person, association, or corporation shall take or hold at one time oil or gas leases or permits exceeding in the aggregate seven thousand six hundred and eighty acres granted hereunder in any one State, and not more than two thousand five

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

hundred and sixty acres within the geologic structure of the same producing oil or gas field; and no person, association, or corporation shall take or hold at one time any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof, which, together with the area embraced in any direct holding of a lease or leases, permit or permits, under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof for any kind of mineral leases hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee or permittee under this Act. Any interests held in violation of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property, or some part thereof, is located, except that any ownership or interest forbidden in this Act which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition: *Provided*, That nothing herein contained shall be construed to limit sections 18, 18a, 19, and 22 or to prevent any number of lessees under the provisions of this Act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this Act, or the transportation of coal or to increase the acreage which may be acquired or held under section 17 of this Act: *Provided further*, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same: *And provided further*, That for the purpose of more properly conserving the natural resources of any single oil or gas pool or field, permittees and lessees thereof and their representatives may unite with each other or jointly or separately with others in collectively adopting and operating under a cooperative or unit plan of development or operation of said pool or field, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest, and the Secretary of the Interior is thereunto authorized in his discretion, with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, and royalty requirements of such leases, and to make such regulations with reference to such leases with like consent on the part of the lessee or lessees in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of such public interest: *And provided further*, That except as herein provided, if any of the lands or deposits leased under the provisions of this Act shall be subleased, trusteed, possessed, or controlled by any device permanently, tem-

porarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of, or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control, in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate court proceedings.

SEC. 2. The amendments herein adopted to sections 17 and 27 of the General Leasing Act of February 25, 1920, as amended, shall expire at midnight on the 31st day of January, 1931.

Approved, July 3, 1930.

THESE AMENDMENTS EXPIRE JANUARY 31, 1931

ACT OF MARCH 4, 1931

An Act To amend sections 17 and 27 of the General Leasing Act of February 25, 1920 (41 Stat. 437; U. S. C., title 30, secs. 184 and 226), as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 17 and 27 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920 (41 Stat. 437; U. S. C., title 30, secs. 184 and 226), as amended, are amended and reenacted to read as follows:

"SEC. 17. That all unappropriated deposits of oil or gas situated within the known geologic structure of a producing oil or gas field and the unentered lands containing the same, not subject to preferential lease, may be leased by the Secretary of the Interior to the highest responsible bidder by competitive bidding under general regulations to qualified applicants in units reasonably compact of not exceeding six hundred and forty acres, such leases to be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, which shall not be less than 12½ per centum in amount or value of the production, and the payment in advance of a rental of not less than $1 per acre per annum thereafter during the continuance of the lease, the rental paid for any one year to be credited against the royalties as they accrue for that year.

Sec. 17
KNOWN GEOLOGIC STRUCTURES

COMPETITIVE BIDDING

"Leases shall be for a period of twenty years with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the department having jurisdiction thereof, unless otherwise provided by law at the time of the expiration of such periods: *Provided*, That any lease heretofore or hereafter issued under this Act that has become the subject of a cooperative or unit plan of development or operation of a single oil or gas pool, or area, or other plan for the conservation of the oil and gas of a single pool or area, which plan has the approval of the Secretary of the department or departments having jurisdiction over the Government lands included in said plan as necessary or convenient in the public interest, shall continue in force beyond said period of twenty years until the termination of such plan: *And provided further*, That said Secretary or Secretaries shall report all leases so continued to Congress at the beginning of its next regular session after the date of such continuance.

LEASE TERMS

"Any cooperative or unit plan of development or operation, which includes land owned by the United States, shall contain a provision whereby authority, limited as therein provided, is vested in the Secretary of the department or departments having jurisdiction over such land to alter or modify from time to time in his discretion the quantity and rate of production under said plan. The Secretary of the Interior is authorized whenever he shall deem such action necessary or in the public interest, with the consent of lessee, by order to suspend or modify the drilling or producing require-

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ments of any oil and gas lease heretofore or hereafter issued, and no lease shall be deemed to expire by reason of the suspension of production pursuant to any such order. Whenever the average daily production of any oil well shall not exceed ten barrels per day the Secretary of the Interior is authorized to reduce the royalty on future production when in his judgment the well can not be successfully operated upon the royalty fixed in the lease. The provisions of this section shall apply to all oil and gas leases made under this Act.

"SEC. 27. That no person, association, or corporation, except as herein provided, shall take or hold coal, phosphate, or sodium leases or permits during the life of such leases or permits in any one State exceeding in aggregate acreage two thousand five hundred and sixty acres for each of said minerals; no person, association, or corporation shall take or hold at one time oil or gas leases or permits exceeding in the aggregate seven thousand six hundred and eighty acres granted hereunder in any one State, and not more than two thousand five hundred and sixty acres within the geologic structure of the same producing oil or gas field; and no person, association, or corporation shall take or hold at one time any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof, which, together with the area embraced in any direct holding of a lease or leases, permit or permits, under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof for any kind of mineral leases hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee or permittee under this Act. Any interests held in violation of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property, or some part thereof, is located, except that any ownership or interest forbidden in this Act which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition: *Provided*, That nothing herein contained shall be construed to limit sections 18, 18a, 19, and 22 or to prevent any number of lessees under the provisions of this Act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this Act, or the transportation of coal or to increase the acreage which may be acquired or held under section 17 of this Act: *Provided further*, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same: *And provided further*, That for the purpose of more

Sec. 27

ACREAGE

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

properly conserving the natural resources of any single oil or gas pool or field, permittees and lessees thereof and their representatives may unite with each other or jointly or separately with others in collectively adopting and operating under a cooperative or unit plan of development or operation of said pool or field, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest, and the Secretary of the Interior is thereunto authorized in his discretion, with the consent of the holders of leases or permits involved, to establish, alter, change, or revoke drilling, producing, and royalty requirements of such leases or permits, and to make such regulations with reference to such leases and permits with like consent on the part of the lessee or lessees and permittees in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of such public interest: *And provided further*, That when any permit has been determined to be wholly or in part within the limits of a producing oil or gas field which permit has been included, with the approval of the Secretary of the Interior, in a unit operating agreement or other plan under this Act the Secretary of the Interior may issue a lease for the area of the permit so included in said plan without further proof of discovery: *Provided further*, That the Secretary of the Interior is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling or development contracts made by one or more permittees or lessees in oil or gas leases or permits, with one or more persons, associations, or corporations, whenever in his discretion and regardless of acreage limitations, provided for in this Act, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best subserved thereby: *And provided further*, That except as herein provided, if any of the lands or deposits leased under the provisions of this Act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise, to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate court proceedings: *And provided further*, That nothing in this Act shall be construed as affecting existing leases within the borders of the Naval Petroleum Reserves or agreements concerning operations thereunder or in relation to the same, but the Secretary of the Navy is hereby authorized, with the consent of the President, to enter into agreements such as those provided for herein, which agreements shall not, unless expressed therein, operate to extend the term of any lease affected thereby."

Approved, March 4, 1931.

ACT OF FEBRUARY 9, 1933

To further amend the Act approved February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act approved February 25, 1920 (41 Stat. L. 437), entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," be, and the same is hereby, further amended by adding thereto the following section:

"SEC. 39. In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production of coal, oil, and/or gas under any lease granted under the terms of this Act, any payment of acreage rental prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto: *Provided*, That nothing in this Act shall be construed as affecting existing leases within the borders of the naval petroleum reserves and naval oil-shale reserves."

Approved, February 9, 1933.

Sec. 39: ADDED

SUSPENSIONS

NOTE: Regarding all Mineral LEasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF JUNE 16, 1934

To amend the Mineral Lands Leasing Act of 1920 with reference to oil- or gas-prospecting permits and leases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended, is amended by adding the following new section:

"SEC. 40. (a) All prospecting permits and leases for oil or gas made or issued under the provisions of this Act shall be subject to the condition that in case the permittee or lessee strikes water while drilling instead of oil or gas, the Secretary of the Interior may, when such water is of such quality and quantity as to be valuable and usable at a reasonable cost for agricultural, domestic, or other purposes, purchase the casing in the well at the reasonable value thereof to be fixed under rules and regulations to be prescribed by the Secretary: *Provided*, That the land on which such well is situated shall be reserved as a water hole under section 10 of the Act of December 29, 1916.

"(b) In cases where water wells producing such water have heretofore been or may hereafter be drilled upon lands embraced in any prospecting permit or lease heretofore issued under the Act of February 25, 1920, as amended, the Secretary may in like manner purchase the casing in such wells.

"(c) The Secretary may make such purchase and may lease or operate such wells for the purpose of producing water and of using the same on the public lands or of disposing of such water for beneficial use on other lands, and where such wells have heretofore been plugged or abandoned or where such wells have been drilled prior to the issuance of any permit or lease by persons not in privity with the permittee or lessee, the Secretary may develop the same for the purposes of this section: *Provided*, That owners or occupants of lands adjacent to those upon which such water wells may be developed shall have a preference right to make beneficial use of such water.

"(d) The Secretary may use so much of any funds available for the plugging of wells, as he may find necessary to start the program provided for by this section, and thereafter he may use the proceeds from the sale or other disposition of such water as a revolving fund for the continuation of such program, and such proceeds are hereby appropriated for such purpose.

"(e) Nothing in this section shall be construed to restrict operations under any oil or gas lease or permit under any other provision of this Act."

Approved, June 16, 1934.

Sec. 40: ADDED

WATER WELLS

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF AUGUST 21, 1935

To amend an Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920 (41 Stat. 437; U. S. C., title 30, secs. 185, 221, 223, 226), as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 13, 14, 17, and 28 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920 (41 Stat. 437; U. S. C., title 30, secs. 185, 221, 223, 226), as amended, are amended to read as follows:

Sec. 13

TWO YEARS
ACREAGE

"SEC. 13. That the Secretary of the Interior is hereby authorized, and directed, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under this Act a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect for oil or gas upon not to exceed two thousand five hundred and sixty acres of land wherein such deposits belong to the United States and are not within any known geological structure of a producing oil or gas field upon condition that the permittee shall begin drilling operations within six months from the date of the permit, and shall, within one year from and after the date of permit, drill one or more wells for oil or gas to a depth of not less than five hundred feet each, unless valuable deposits of oil or gas shall be sooner discovered, and shall, within two years from date of the permit, drill for oil or gas to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered: *Provided*, That said application was filed ninety days prior to the effective date of this amendatory Act. It being the intention of Congress that there shall be no discrimination as between applicants for prospecting permits, the Secretary of the Interior is directed, in every case where one or more permits have been issued, to issue permits to all other applicants for prospecting permits on the same structure, even though one or more of the permittees has developed the said structure into a producing oil or gas field, if said application for permit was filed prior to the development of such structure into a producing oil or gas field, and said applicant has otherwise complied with the law: *Provided further*, That when such permit is issued upon any structure after discovery, the royalty to be paid upon the preferential lease provided for in section 14 hereof shall be 10 per centum in amount or value of the production and the annual payment of a rental as provided in said section 14. No prospecting permit shall be granted upon any application filed after ninety days prior to the effective date of this amendatory Act. The Secretary of the Interior may, if he shall find that the permittee has been unable with the exercise of diligence to test the land in the time granted by the permit, extend any such permit for such time, not exceeding two years, and upon such conditions as he shall prescribe: *Provided*, That all permits outstanding on the effective date of this amendatory Act, which on said date shall not be subject to cancelation for violation of the law or operating regulations and which have theretofore been extended by the Secretary of the Interior, shall be,

ROYALTY

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

and the same are hereby, extended until December 31, 1937, subject to the applicable conditions of such prior extensions: *Provided further*, That the Secretary of the Interior is hereby authorized, to extend for an additional period of not to exceed one year any permit on which diligence has been exercised or on which drilling or prospecting has been suspended at the direction of the Secretary during the extension period hereby granted, but no extension of any permit beyond December 31, 1938, shall be granted under authority of this Act, or any other Act. Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably compact form and according to the legal subdivisions of the public-land surveys if the land be surveyed; and in an approximately square or rectangular tract if the land be an unsurveyed tract, the length of which shall not exceed two and one-half times its width, and if he shall cause to be erected upon the land for which a permit is sought a monument not less than four feet high, at some conspicuous place thereon, and shall post a notice in writing on or near said monument, stating that an application for permit will be made within thirty days after date of posting said notice, the name of the applicant, the date of the notice, and such a general description of the land to be covered by such permit by reference to courses and distances from such monument and such other natural objects and permanent monuments as will reasonably identify the land, stating the amount thereof in acres, he shall during the period of thirty days following such marking and posting, be entitled to a preference right over others to a permit for the land so identified. The applicant shall, within ninety days after receiving a permit, mark each of the corners of the tract described in the permit upon the ground with substantial monuments, so that the boundaries can be readily traced on the ground, and shall post in a conspicuous place upon the lands a notice that such permit has been granted and a description of the lands covered thereby: *Provided further*, That in the Territory of Alaska prospecting permits not more than five in number may be granted to any qualified applicant for periods not exceeding four years, actual drilling operations shall begin within two years from date of permit, and oil and gas wells shall be drilled to a depth of not less than five hundred feet, unless valuable deposits of oil or gas shall be sooner discovered, within three years from date of the permit and to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered, within four years from date of permit: *Provided further*, That in said Territory the applicant shall have a preference right over others to a permit for land identified by temporary monuments and notice posted on or near the same for six months following such marking and posting, and upon receiving a permit he shall mark the corners of the tract described in the permit upon the ground with substantial monuments within one year after receiving such permit: *Provided further*, That any person holding a permit to prospect for oil or gas which shall not be

LOCATION

MONUMENTS

PREFERENCE RIGHT

subject to cancelation for violation of the law or operating regulations or which shall have been extended under the authority of this or any other Act, in force on or after the effective date of this amendatory Act, or for which timely and acceptable application for extension shall have been filed prior to said date, shall have the right prior to the termination of such permit to exchange the same for a lease to the area described in the permit without proof of discovery, at a royalty of not less than 12½ per centum or value of the production, to be determined by the Secretary of the Interior by general rule and under such other conditions as are fixed in section 17 of this Act: *Provided further*, That no such lease shall be subject to the acreage limitations of section 27 of this Act, as amended, until one year after the discovery of valuable deposits of oil or gas thereon: *Provided further*, That any application for any prospecting permit filed after ninety days prior to the effective date of this amendatory Act shall be considered as an application for lease under section 17 hereof: *And provided further*, That upon leases so granted in lieu of existing permits or granted to applicants for permits, no rentals shall be payable for the first two lease years, unless valuable deposits of oil or gas are sooner discovered within the boundaries of such lease.

"SEC. 14. That upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee, shall be in reasonably compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and be taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of $1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, and shall continue in force otherwise as prescribed in section 17 hereof for leases issued prior to the effective date of this amendatory Act. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production nor more than the royalty rate prescribed by regulation in force on January 1, 1935, for secondary leases issued under this section, and under such other conditions as are fixed for oil or gas leases issued under section 17 of this Act the royalty to be determined by competitive bidding or fixed by such other method as

Sec. 14

VALUABLE DEPOSITS

LEASE ACREAGE

20 YEAR LEASE TERMS

PREFERENCE RIGHT

ROYALTY

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

the Secretary may by regulations prescribe: *Provided further*, That the Secretary shall have the right to reject any or all bids.

Sec. 17

"SEC. 17. All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits, except as herein otherwise provided, may be leased by the Secretary of the Interior after the effective date of this amendatory Act, to the highest responsible qualified bidder by competitive bidding under general regulations. Such lands shall be leased in units of not exceeding six hundred and forty acres, which shall be as nearly compact in form as possible. Such leases shall be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, which shall be not less than 12½ per centum in amount or value of the production and the payment in advance of a rental to be fixed in the lease of not less than 25 cents per acre per annum, which rental except as otherwise herein provided shall not be waived, suspended, or reduced unless and until a valuable deposit of oil or gas shall have been discovered within the lands leased: *Provided*, That the rental paid for any one year shall be credited against the royalties as they accrue for that year: *Provided further*, That in the event the Secretary of the Interior shall direct or shall assent to the suspension of operations or of production of oil or gas under any such lease, any payment of acreage rental as herein provided shall likewise be suspended during such period of suspension of operations or production: *And provided further*, That in the case of leases valuable only for the production of gas the Secretary of the Interior upon showing by the lessee that the lease cannot be successfully operated upon such rental or upon the royalty provided in the lease, may waive, suspend, or reduce such rental or reduce such royalty.

COMPETITIVE BIDDING

"The Secretary of the Interior, for the purpose of more properly conserving the oil or gas resources of any area, field, or pool, may require that leases hereafter issued under any section of this Act be conditioned upon an agreement by the lessee to operate, under such reasonable cooperative or unit plan for the development and operation of any such area, field, or pool as said Secretary may determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States: *Provided*, That all leases operated under such plan approved or prescribed by said Secretary shall be excepted in determining holdings or control under the provisions of any section of this Act.

UNIT PLAN

"Leases hereafter issued under this section shall be for a period of five years and so long thereafter as oil or gas is produced in paying quantities when the lands to be leased are not within any known geological structure of a producing oil or gas field, and for a period of ten years and so long thereafter as oil or gas is produced in paying quantities when the lands to be leased are within any known geological structure of a producing oil or gas field: *Provided*, That no such lease shall be deemed to expire by reasons of suspension of prospecting, drilling, or production pursuant to any order or consent of the said Secretary: *Provided further*, That the person first making application for the lease of any lands not within any known geologic structure of a producing oil or gas field who is qualified to hold a lease under this Act, including applicants for permits whose

LANDS NOT WITHIN KGS

KGS

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

applications were filed after ninety days prior to the effective date of this amendatory Act shall be entitled to a preference right over others to a lease of such lands without competitive bidding at a royalty, in the case of oil, of 12½ per centum in amount or value of the production when the said production does not exceed fifty barrels per well per day for the calendar month and of not less than 12½ per centum in amount or value of the production when the said production exceeds fifty barrels per well per day for the calendar month, and, in the case of gas, at a royalty of 12½ per centum in amount or value of the production when the said production does not exceed five million cubic feet per well per day for the calendar month and, when the said production exceeds five million cubic feet per well per day for the calendar month, at a royalty of not less than 12½ per centum in amount or value of the production.

"Leases issued prior to the effective date of this amendatory Act shall continue in force and effect in accordance with the terms of such leases and the laws under which issued: *Provided*, That any such lease that has become the subject of a cooperative or unit plan of development or operation, or other plan for the conservation of the oil and gas of a single area, field, or pool, which plan has the approval of the Secretary of the Department or Departments having jurisdiction over the Government lands included in said plan as necessary or convenient in the public interest, shall continue in force beyond said period of twenty years until the termination of such plan: *And provided further*, That said Secretary or Secretaries shall report all leases so continued to Congress at the beginning of its next regular session after the date of such continuance.

UNIT PLAN

"Any cooperative or unit plan of development and operation, which includes lands owned by the United States, shall contain a provision whereby authority, limited as therein provided, is vested in the Secretary of the department or departments having jurisdiction over such land to alter or modify from time to time in his discretion the rate of prospecting and development and the quantity and rate of production under said plan. The Secretary of the Interior is authorized whenever he shall deem such action necessary or in the public interest, with the consent of lessee, by order to suspend or modify the drilling or producing requirements of any oil and gas lease not subject to such a cooperative or unit plan, and no lease shall be deemed to expire by reason of the suspension of production pursuant to any such order.

DRAINAGE

"Whenever it appears to the Secretary of the Interior that wells drilled upon lands not owned by the United States are draining oil or gas from lands or deposits owned in whole or in part by the United States, the Secretary of the Interior is hereby authorized and empowered to negotiate agreements whereby the United States or the United States and its permittees, lessees, or grantees shall be compensated for such drainage, such agreements to be made with the consent of the permittees and lessees affected thereby.

ROYALTY REDUCTION

"Whenever the average daily production of the oil wells on an entire leasehold or on any tract or portion thereof segregated for royalty purposes shall not exceed ten barrels per well per day, or where the cost of production of oil or gas is such as to render further

production economically impracticable the Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of oil and in the interest of conservation of natural resources, is authorized to reduce the royalty on future production when in his judgment the wells cannot be successfully operated upon the royalty fixed in the lease. The provision of this paragraph shall apply to all oil and gas leases issued under this Act, including those within an approved cooperative or unit plan of development and operation.

"Any lease issued after the effective date of this amendatory Act under the provisions of this section, except those earned as a preference right as provided in section 14 hereof, shall be subject to cancelation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. Such notice in advance of cancelation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States Land Office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such leased land, then in the post office nearest such land. Leases covering lands known to contain valuable deposits of oil or gas shall be canceled only in the manner provided in section 31 of this Act.

Sec. 28

RIGHTS-OF-WAY

"SEC. 28. That rights-of-way through the public lands, including the forest reserves of the United States, may be granted by the Secretary of the Interior for pipe-line purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of this Act, to the extent of the ground occupied by the said pipe line and twenty-five feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers and shall accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipe line in such proportionate amounts as the Secretary of the Interior may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine to be reasonable: *Provided*, That the Government shall in express terms reserve and shall provide in every lease of oil lands hereunder that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of this Act: *Provided further*, That no right-of-way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and con-

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ditions of this section. Failure to comply with the provisions of this section or the regulations and conditions prescribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in an appropriate proceeding."

Sec. 2

ROYALTY

SEC. 2. (a) That the Secretary of the Interior is authorized to issue new leases to lessees holding oil or gas leases under any of the provisions of this Act at the time this amendatory Act becomes effective, such new leases to be in lieu of the leases then held by such lessees and to be at a royalty rate of not less than 12½ per centum in amount or value of the production and upon such other terms and conditions as the Secretary of the Interior shall by general rule prescribe: *Provided*, That no limitation of acreage not provided for under the law or regulations under which any such old lease was issued shall be applicable to any such new lease.

(b) Nothing contained in this amendatory Act shall be construed to affect the validity of oil and gas prospecting permits or leases previously issued under the authority of the said Act of February 25, 1920, as amended, and in existence at the time this amendatory Act becomes effective, or impair any rights or privileges which have accrued under such permits or leases.

Sec. 3

NAVAL PETROLEUM RESERVES

NAVAL OIL-SHALE RESERVES

SEC. 3. That nothing in this amendatory Act shall be construed as affecting any lands within the borders of the naval petroleum reserves and naval oil-shale reserves or agreements concerning operations thereunder or in relation to the same, but the Secretary of the Navy is hereby authorized, with the consent of the President, to enter into agreements such as those provided for under the Act of March 4, 1931 (46 Stat. 1523), which agreement shall not, unless expressed therein, operate to extend the terms of any lease affected thereby.

Approved, August 21, 1935.

NOTE: Section 2 was REPEALED by the Act of 8/8/46.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF JULY 8, 1940

ACT OF JULY 8, 1940

Relating to rentals in certain oil and gas leases issued under authority of the Act of February 25, 1920, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior, in the case of lands not within any known geologic structure of a productive oil or gas field, shall waive the rentals stipulated in oil and gas leases issued pursuant to section 17 of the Act of February 25, 1920, as amended by the Act of August 21, 1935 (49 Stat. 674), for the second and third lease years, unless a valuable deposit of oil or gas be sooner discovered.

Approved, July 8, 1940.

Sec. 17

LANDS NOT WITHIN KGS

NOTE: REPEALED by Act of 8/8/46.

ACT OF JULY 29, 1942

ACT OF JULY 29, 1942

To grant a preference right to certain oil and gas lessees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon the expiration of the five-year term of any noncompetitive oil and gas lease issued pursuant to the provisions of the Act of August 21, 1935 (49 Stat. 674), amending the Act of February 25, 1920, and maintained in accordance with the applicable statutory requirements and regulations, the record title holder shall be entitled to a preference right over others to a new lease for the same land pursuant to the provisions of section 17 of the Act of February 25, 1920, as amended, and under such rules and regulations as are then in force, if he shall file an application therefor within ninety days prior to the date of the expiration of the lease. The preference right herein granted shall not apply to lands which on the date of the expiration of a lease are within the known geologic structure of a producing oil or gas field.

NONCOMPETITIVE LEASES

Sec. 17

SEC. 2. The Secretary of the Interior is authorized to make a compromise settlement of any claim for accrued rental under a lease issued pursuant to the provisions of section 13 of such Act of February 25, 1920, as amended, in any case in which he determines that it would be financially beneficial to the United States to make such a compromise settlement or in any case in which he determines that collection of the full amount of such accrued rental from the lessee is inadvisable because of the lessee's financial resources being limited.

Approved, July 29, 1942.

Sec. 13

RENTALS: SETTLEMENTS

NOTE: Section 1 was REPEALED by Act of 8/8/46.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF DECEMBER 24, 1942

To encourage the discovery of oil and gas on the public domain during the continuance of the present war.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, during the period of the national emergency proclaimed by the President May 27, 1941 (Proclamation Numbered 2487), upon a determination by the Secretary of the Interior that a new oil or gas field or deposit has been discovered by virtue of a well or wells drilled within the boundaries of any lease issued pursuant to the provisions of the Act, approved February 25, 1920, as amended (U. S. C., title 30, secs. 181–263), the royalty obligation of the lessee who drills such well or wells to the United States as to such new deposit shall be limited for a period of ten years following the date of such discovery to a flat rate of 12½ per centum in amount or value of all oil or gas produced from the lease.

Approved, December 24, 1942.

ROYALTY

ACT OF NOVEMBER 28, 1943

ACT OF NOVEMBER 28, 1943

To authorise the Secretary of the Interior to settle certain claims.

SURRENDER OF LEASE

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized to accept the surrender of any lease issued pursuant to any of the provisions of the Act of February 25, 1920 (41 Stat. 437; 30 U. S. C., sec. 181 and the following), or any amendment thereof, where the surrender is filed in the General Land Office subsequent to the accrual but prior to the payment of the yearly rental due under the lease, upon payment of the accrued rental on a pro rata monthly basis for the portion of the lease year prior to the filing of the surrender. The authority granted to the Secretary of the Interior by this Act shall extend only to cases in which he finds that the failure of the lessee to file a timely surrender of the lease prior to the accrual of the rental was not due to a lack of reasonable diligence, but it shall not extend to claims or cases which have been referred to the Department of Justice for purposes of suit.

Approved November 28, 1943.

ACT OF JULY 13, 1946

ACT OF JULY 13, 1946

To encourage and protect oil refineries not having their own source of supply for crude oil by extending preference to such refineries in disposing of royalty oil under the Mineral Lands Leasing Act.

Sec. 36

OIL REFINERY PREFERENCES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 36 of the Act of February 25, 1920 (41 Stat. 451, U. S. C., 1940 edition, title 30, sec. 192), is amended, in order to assist small business enterprise by encouraging the operation of oil refineries not having an adequate supply of crude oil, by adding before the first proviso in the second paragraph thereof the following: "*Provided*, That inasmuch as the public interest will be served by the sale of royalty oil to refineries not having their own source of supply for crude oil, the Secretary of the Interior, when he determines that sufficient supplies of crude oil are not available in the open market to such refineries, is authorized and directed to grant preference to such refineries in the sale of oil under the provisions of this section, for processing or use in such refineries and not for resale in kind, and in so doing may sell to such refineries at private sale at not less than the market price any royalty oil accruing or reserved to the United States under leases issued pursuant to this Act, as amended: *Provided further*, That in selling such royalty oil the Secretary of the Interior may at his discretion prorate such oil among such refineries in the area in which the oil is produced:".

Approved July 13, 1946.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF AUGUST 8, 1946

To amend the Mineral Leasing Act of February 25, 1920, as amended, in order to promote the development of oil and gas on the public domain, and for other purposes.

Sec. 1

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of February 25, 1920 (41 Stat. 437; 30 U. S. C., sec. 181 and the following), as amended be amended to read as follows:

"That deposits of coal, phosphate, sodium, potassium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Act known as the Appalachian Forest Act, approved March 1, 1911 (36 Stat. 961), and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this Act to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this Act.

HELIUM

"The United States reserves the ownership of and the right to extract helium from all gas produced from lands leased or otherwise granted under the provisions of this Act, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof."

Sec. 16

SEC. 2. Section 16 of the Act is amended to read as follows:

PREVENTION OF WASTE

"SEC. 16. That all leases of lands containing oil or gas, made or issued under the provisions of this Act, shall be subject to the condition that the lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits. Violations of the provisions of this section shall constitute grounds for the forfeiture of the lease, to be enforced as provided in this Act."

Sec. 17

SEC. 3. Section 17 of the Act is amended to read as follows:

KGS

"SEC. 17. All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits may be leased by the Secretary of the Interior. When the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations, in units of not exceeding six

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease which shall be not less than 12½ per centum in amount or value of the production removed or sold from the lease. When the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12½ per centum in amount or value of the production removed or sold from the lease. Leases issued under this section shall be for a primary term of five years and shall continue so long thereafter as oil or gas is produced in paying quantities.

LANDS NOT WITHIN KGS

"Any lease issued under this Act upon which there is production during or after the primary term shall not terminate when such production ceases if diligent drilling operations are in progress on the land under lease during such period of nonproduction.

"Upon the expiration of the primary term of any noncompetitive lease maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereof shall be entitled to a single extension of the lease, unless then otherwise provided by law, for such lands covered by it as are not on the expiration date of the lease within the known geological structure of a producing oil or gas field or withdrawn from leasing under this section. A withdrawal, however, shall not affect the right to an extension if actual drilling operations on such lands were commenced prior thereto and were being diligently prosecuted on such expiration date. No withdrawal shall be effective within the meaning of this section until ninety days after notice thereof shall be mailed, registered mail, to each lessee to be affected by such withdrawal. Such extension shall be for a period of five years and so long thereafter as oil or gas is produced in paying quantities and shall be subject to such rules and regulations as are in force at the expiration of the initial five-year term of the lease. No extension shall be granted unless an application therefor is filed by the record titleholder within a period of ninety days prior to such expiration date. Any noncompetitive lease which is not subject to such extension in whole or in part because the lands covered thereby are within the known geologic structure of a producing oil or gas field at the date of expiration of the primary term of the lease, and upon which drilling operations are being diligently prosecuted on such expiration date, shall continue in effect for a period of two years and so long thereafter as oil or gas is produced in paying quantities.

NONCOMPETITIVE LEASE

"All leases issued under this section shall be conditioned upon the payment by the lessee in advance of a rental of not less than 25 cents per acre per annum. A minimum royalty of $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased: *Provided*, That in the case of lands not within any known geological structure of a producing oil or gas field, the rentals for the second and third lease years shall be waived unless a valuable deposit of oil or gas be sooner discovered.

"Whenever it appears to the Secretary of the Interior that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, he is hereby authorized and empowered to negotiate agreements whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of the lessees affected thereby and the primary term of any lease for which compensatory royalty is being paid shall be extended by adding thereto a period equal to the period during which such compensatory royalty is paid."

SEC. 4. The Act is hereby amended by adding a new section to read as follows:

"SEC. 17. (a) The Secretary of the Interior shall, upon timely application therefor, issue a new lease in exchange for any lease issued for a term of twenty years, or any renewal thereof, or any lease heretofore issued in exchange for a twenty-year lease, such new lease to be for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and at a royalty rate of not less than 12½ per centum in amount or value of the production removed or sold from such leases, except that the royalty rate shall be 12½ per centum in amount or value of the production removed or sold from said leases, as to (1) such leases, or such part of the lands subject thereto, and the deposits underlying the same, as are not believed to be within the productive limits of any producing oil or gas deposit, as such productive limits are found by the Secretary to exist on the effective date of this Act, and (2) any production on a lease from an oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease, and which is determined by the Secretary to be a new deposit; and (3) any production on or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered after May 27, 1941, on land committed to such agreement, and which is determined by the Secretary to be a new deposit, where such lease, or a lease for which it is exchanged, was included in such agreement at the time of discovery, or was included in a duly executed and filed application for the approval of such agreement at the time of discovery."

Sec. 17(a)
NEW LEASE

ROYALTY

SEC. 5. The Act is hereby amended by adding a new section to read as follows:

"SEC. 17. (b) For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of said oil or gas pool, field, or like area, is then subject to any cooperative or unit plan of development or operation), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary is thereunto authorized, in his discretion, with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of such

Sec. 17(b)

UNIT PLAN

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

leases and to make such regulations with reference to such leases, with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest. The Secretary may provide that oil and gas leases hereafter issued under this Act shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

"Any plan authorized by the preceding paragraph, which includes lands owned by the United States, may, in the discretion of the Secretary, contain a provision whereby authority is vested in the Secretary of the Interior, or any such person, committee, or State or Federal officer or agency as may be designated in the plan, to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan. All leases operated under any such plan approved or prescribed by the Secretary shall be excepted in determining holdings or control under the provisions of any section of this Act.

POOLING

"When separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

"Any lease issued for a term of twenty years, or any renewal thereof, or any portion of such lease that has become the subject of a cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the Secretary of the Interior, shall continue in force until the termination of such plan. Any other lease issued under any section of this Act which is committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan, provided oil or gas is discovered under the plan prior to the expiration date of the primary term of such lease. The minimum royalty or discovery rental under any lease that has become subject to any cooperative or unit plan of development or operation, or other plan that contains a general provision for allocation of oil or gas, shall be payable only with respect to the lands subject to such lease to which oil or gas shall be allocated under such plan. Any lease which shall be eliminated from any such approved or prescribed plan, or from any communitization or drilling agreement authorized by this section, and any lease which shall be in effect at the termination of any such approved or prescribed plan, or at the termination of any such communitization or drilling agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

"The Secretary of the Interior is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, associations, or corporations, whenever, in his discretion and regardless of acreage limitations provided for in this Act, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best subserved thereby.

WASTE AVOIDANCE

"The Secretary of the Interior, to avoid waste or to promote conservation of natural resources, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under this Act. Such authorization may provide for the payment of a storage fee or rental on such stored oil or gas, or, in lieu of such fee or rental, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities."

SUBSURFACE STORAGE OF OIL AND GAS

SEC. 6. Section 27 of the Act is amended to read as follows:

"SEC. 27. No person, association, or corporation, except as herein provided, shall take or hold coal, phosphate, or sodium leases or permits during the life of such leases in any one State, exceeding in the aggregate acreage two thousand five hundred and sixty acres for each of said minerals; and no person, association, or corporation, except as herein provided, shall take or hold at one time oil or gas leases exceeding in the aggregate fifteen thousand three hundred and sixty acres granted hereunder in any one State. No person, association, or corporation shall take or hold at one time any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof, which, together with the area embraced in any direct holding of a lease or leases, permit or permits, under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof for any kind of minerals hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee or permittee under this Act. For the purpose of this Act, no contract for development and operation of any lands leased hereunder, whether or not coupled with an interest in such lease, nor any lease or leases owned in common by two or more persons, shall be deemed to create a separate association under this section between or among such contracting parties, or the persons owning such lease or leases in common, but the proportionate interest of each such person shall be charged against the total acreage permitted to be held by such person under this Act: *Provided*, That the total acreage so held in common by two or more persons shall not exceed, in the aggregate, an amount equivalent to the maximum number of acres of the respective kind of minerals allowed to any

Sec. 27

ACREAGE

MAXIMUM ACREAGE

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

OPTIONS

one lessee or permittee under this Act. The interest of an optionee under a nonrenewable option to purchase or otherwise acquire one or more oil or gas leases (whether then or thereafter issued), or any interest therein, when taken for the purpose of geological or geophysical exploration, shall not, prior to the exercise of such option, be a taking or holding or control under the acreage limitation provisions of any section of this Act. No such option shall be entered into after June 1, 1946, for a period of more than two years, without the prior approval of the Secretary of the Interior, and no person, association, or corporation shall hold at one time such options of more than one hundred thousand acres in any one State: *Provided, however*, That nothing in this section shall be construed to invalidate options taken prior to June 1, 1946, and on which such geological or geophysical exploration has been actually made, and which are exercised within two years after the passage of this Act. Each holder of any such option shall file with the Secretary within ninety days after the 30th day of June and the 31st day of December in each year a statement under oath showing as of said dates (1) name of optionor and serial number of lease or application for lease, (2) date and expiration date of each option, (3) number of acres covered by each option, and (4) aggregate number of options held in each State and total acreage subject to said options in each State. If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of this Act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General. Such a proceeding shall be instituted in the United States district court for the district in which the leased property or some part thereof is located or in which the lease owner may be found, except that any ownership or interest forbidden in this Act which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition. Nothing herein contained shall be construed to limit sections 18, 18a, 19, and 22 or to prevent any number of lessees under the provisions of this Act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this Act, or the transportation of coal or to increase the acreage which may be acquired or held under section 17 of this Act: *Provided*, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same. Except as in this Act provided, if any of the lands or deposits leased under the provisions of this Act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in anywise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, or form the subject of any contract or conspiracy in restraint

of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise, to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate court proceedings."

SEC. 7. The Act is hereby amended by adding a new section to read as follows:

Sec. 30(a)

OIL AND GAS LEASES ASSIGNED OR SUBLEASED

"SEC. 30. (a) Notwithstanding anything to the contrary in section 30 hereof, any oil or gas lease issued under the authority of this Act may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this Act, and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof, together with any required bond and proof of the qualification under this Act of the assignee or sublessee to take or hold such lease or interest therein. Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed. The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however*, That the Secretary may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease, or of a part of a legal subdivision. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and as above provided, release and discharge the assignor from all obligations thereafter accruing with respect to the assigned lands; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of production, and the segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities."

SEC. 8. The Act is hereby amended by adding a new section to read as follows:

Sec. 30(b)

RELINQUISHMENTS

"SEC. 30. (b) Notwithstanding any provision to the contrary in section 30 hereof, a lessee may at any time make and file in the appropriate land office a written relinquishment of all rights under any oil or gas lease issued under the authority of this Act or of any legal subdivision of the area included within any such lease. Such

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

relinquishment shall be effective as of the date of its filing, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condition for suspension or abandonment in accordance with the applicable lease terms and regulations; thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment."

Sec. 31

LEASE FORFEITURE AND CANCELLATION

SEC. 9. Section 31 of the Act is amended to read as follows:

"SEC. 31. Except as otherwise herein provided, any lease issued under the provisions of this Act may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of this Act, of the lease, or of the general regulations promulgated under this Act and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof.

"Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States land office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such district, then in the post office nearest such land."

SEC. 10. Section 39 which was added to the Act by the Act of February 9, 1933 (47 Stat. 798; 30 U. S. C., sec. 209), is amended to read as follows:

Sec. 39

RENTAL OR ROYALTY REDUCTION OR SUSPENSION

"SEC. 39. The Secretary of the Interior for the purpose of encouraging the greatest ultimate recovery of coal, oil, or gas and in the interest of conservation of natural resources is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein. In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this Act, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

thereto. The provisions of this section shall apply to all oil and gas leases issued under this Act, including those within an approved or prescribed plan for unit or cooperative development and operation."

Sec. 5

SECS. 26-38 ARE APPLICABLE

POTASSIUM

SEC. 11. Section 5 of the Act approved February 7, 1927 (44 Stat. 1057; 30 U. S. C., sec. 285), is amended to read as follows:

"SEC. 5. That the general provisions of sections 26 to 38, inclusive, of the Act of February 25, 1920, entitled 'An Act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain', as amended, are made applicable to permits and leases under this Act, the thirty-seventh section thereof being amended to include deposits of potassium."

SEC. 12. From and after the effective date of this Act, the royalty obligation to the United States under all leases requiring payment of royalty in excess of 12½ per centum, except leases issued or to be issued upon competitive bidding, is reduced to 12½ per centum in amount or value of production removed or sold from said leases as to (1) such leases, or such part of the lands subject thereto, and the deposits underlying the same, as are not believed to be within the productive limits of any oil or gas deposit, as such productive limits are found by the Secretary to exist on the effective date of this Act, and (2) any production on a lease from an oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease, and which is determined by the Secretary to be a new deposit; and (3) any production on or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered after May 27, 1941, on land committed to such agreement, and which is determined by the Secretary to be a new deposit, where such lease was included in such agreement at the time of discovery, or was included in a duly executed and filed application for the approval of such agreement at the time of discovery.

SEC. 13. Nothing in this Act shall be construed as affecting existing leases within the borders of the naval petroleum reserves, or agreements concerning operations thereunder or in relation thereto, but the Secretary of the Navy is hereby authorized, with the consent of the President, to enter into agreements such as those provided for in section 17 (b) of the Act of February 25, 1920, as amended by this Act, which agreements shall not, unless expressed therein, operate to extend the term of any lease affected thereby.

REPEAL

SEC. 14. The Act of July 8, 1940 (54 Stat. 742; 30 U. S. C., sec. 226a); section 1 of the Act of July 29, 1942 (56 Stat. 726; 30 U. S. C., sec. 226b), as amended; and section 2 of the Act of August 21, 1935 (49 Stat. 679; 30 U. S. C., sec. 223a), are hereby repealed.

SEC. 15. No repeal or amendment made by this Act shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at the time of its acquisition; but any person holding a lease on the effective date of this Act may, by filing a statement to that effect, elect to have his lease governed by the applicable provisions of this Act instead of by the law in effect prior thereto.

Approved August 8, 1946.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF MAY 27, 1947

To amend section 35 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C., sec. 191), as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920 (41 Stat. 437; 30 U. S. C., sec. 191), as amended, is amended and reenacted to read as follows:

"Sec. 35. All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this Act shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State or the Territory of Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State, Territory, or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State or Territory may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252, 34 U. S. C., sec. 524). All moneys received under the provisions of this Act not otherwise disposed of by this section shall be credited to miscellaneous receipts. Nothing herein contained shall be construed to affect the disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska as provided for in the Act of March 4, 1915 (38 Stat. 1214, 1215; 48 U. S. C., sec. 353), as amended."

Approved May 27, 1947.

Sec. 35

PUBLIC LAND MONEYS
PAYMENT TO STATES

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF AUGUST 7, 1947

ACT OF AUGUST 7, 1947

To promote the mining of coal, phosphate, sodium, potassium, oil, oil shale, gas, and sulfur on lands acquired by the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mineral Leasing Act for Acquired Lands".

SEC. 2. As used in this Act "United States" includes Alaska. "Acquired lands" or "lands acquired by the United States" include all lands heretofore or hereafter acquired by the United States to which the "mineral leasing laws" have not been extended, including such lands acquired under the provisions of the Act of March 1, 1911 (36 Stat. 961, 16 U. S. C., sec. 552). "Secretary" means the Secretary of the Interior. "Mineral leasing laws" shall mean the Act of October 20, 1914 (38 Stat. 741, 48 U. S. C., sec. 432); the Act of February 25, 1920 (41 Stat. 437, 30 U. S. C., sec. 181); the Act of April 17, 1926 (44 Stat. 301, 30 U. S. C., sec. 271); the Act of February 7, 1927 (44 Stat. 1057, 30 U. S. C., sec. 281), and all Acts heretofore or hereafter enacted which are amendatory of or supplementary to any of the foregoing Acts. "Lease" includes "prospecting permit" unless the context otherwise requires.

ACQUIRED LANDS LEASING

SEC. 3. Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944 (50 U. S. C., sec. 1611 and the following), all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. The provisions of the Act of April 17, 1926 (44 Stat. 301), as heretofore or hereafter amended, shall apply to deposits of sulfur covered by this Act wherever situated. No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered: *Provided*, That nothing in this Act is intended, or shall be construed, to apply to or in any manner affect any mineral rights, exploration permits, leases or conveyances nor minerals that are or may be in any tidelands; or submerged lands; or in lands underlying the three mile zone or belt involved in the case of the United States of America against the State of California now pending on application for rehearing in the Supreme Court of the United States; or in lands underlying such three mile zone or belt, or the continental shelf, adjacent or littoral to any part of the land within the jurisdiction of the United States of America.

SEC. 4. Nothing herein contained shall be deemed or construed to (a) amend, modify, or change any existing law authorizing or requiring the sale of acquired lands, or (b) empower any commission, bureau, or agency of the Government to make a reservation of the minerals in the sale of any acquired land: *Provided*, That any such sale or conveyance of lands shall be made by the agency having jurisdiction thereof, subject to any lease theretofore made, covering the mineral deposits underlying such lands: *Provided further*, That nothing in this Act is intended, or shall be construed to affect in any manner any provision of the Act of June 30, 1938 (52 Stat. 1252), amending the Act of June 4, 1920 (41 Stat. 813).

MINERAL DEPOSIT OWNERSHIP

SEC. 5. Where the United States does not own all of the mineral deposits under any lands sought to be leased and which are affected by this Act, the Secretary is authorized to lease the interest of the United States in any such mineral deposits when, in the judgment of the Secretary, the public interest will be best served thereby; subject, however, to the provisions of section 3 hereof. Where the United States does not own any interest or owns less than a full interest in the minerals that may be produced from any lands sought to be leased, and which are or will be affected by this Act and where, under the provisions of its acquisition, the United States is to acquire all or any part of such mineral deposits in the future, the Secretary may lease any interest of the United States then owned or to be acquired in the future in the same manner as provided in the preceding sentence.

RECEIPTS FROM LEASES

SEC. 6. All receipts derived from leases issued under the authority of this Act shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this Act shall not affect the distribution of receipts pursuant to legislation applicable to such lands: *Provided, however*, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress.

LEGAL DESCRIPTION OF ACQUIRED LANDS

SEC. 7. Upon request by the Secretary, the heads of all executive departments, independent establishments, or instrumentalities having jurisdiction over any of the lands referred to in section 2 of this Act shall furnish to the Secretary the legal description of all of such lands, and all pertinent abstracts, title papers, and other documents in the possession of such agencies concerning the status of the title of the United States to the mineral deposits that may be found in such lands.

BLM RECORDATION

Abstracts, title papers, and other documents furnished to the Secretary under this section shall be recorded promptly in the Bureau of Land Management in such form as the Secretary shall deem adequate for their preservation and use in the administration of this Act, whereupon the originals shall be returned promptly to the agency from which they were received. Duly authenticated copies of any such abstracts, title papers, or other documents may, however, be furnished to the Secretary, in lieu of the originals, in the discretion of the agency concerned.

SEC. 8. Nothing contained in this Act shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

Sec. 9. Nothing in this Act shall affect any rights acquired by any lessee of lands subject to this Act under the law as it existed prior to the effective date of this Act, and such rights shall be governed by the law in effect at the time of their acquisition; but any person qualified to hold a lease who, on the date of this Act, had pending an application for an oil and gas lease for any lands subject to this Act which on the date the application was filed was not situated within the known geologic structure of a producing oil or gas field, shall have a preference right over others to a lease of such lands without competitive bidding. Any person holding a lease on lands subject hereto, which lease was issued prior to the effective date of this Act, shall be entitled to exchange such lease for a new lease issued under the provisions of this Act, at any time prior to the expiration of such existing lease.

RIGHTS PRIOR TO ACT

Sec. 10. The Secretary of the Interior is authorized to prescribe such rules and regulations as are necessary and appropriate to carry out the purposes of this Act, which rules and regulations shall be the same as those prescribed under the mineral leasing laws to the extent that they are applicable.

Approved August 7, 1947.

ACT OF JUNE 1, 1948

ACT OF JUNE 1, 1948

To amend the Mineral Leasing Act of February 25, 1920, to permit the exercise of certain options on or before August 8, 1950.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second proviso of section 27 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (U. S. C., 1946 edition, title 30, sec. 184), is hereby amended by striking out "within two years after the passage of this Act" and inserting in lieu thereof "on or before August 8, 1950".

Sec. 27

ON OR BEFORE AUG. 8, 1950

Approved June 1, 1948.

NOTE: Regarding all MIneral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF JUNE 3, 1948

To amend the Mineral Leasing Act of February 25, 1920, and the Potassium Act of February 7, 1927, in order to promote the development of certain minerals on the public domain; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (41 Stat. 438, 30 U. S. C., secs. 201 and 202), is amended to read as follows:

"SEC. 2. (a) The Secretary of the Interior is authorized to divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, outside of the Territory of Alaska, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in his opinion, will permit the most economical mining of the coal in such tracts, but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract, and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding or by such other methods as he may by general regulations adopt, to any qualified applicant. He is hereby authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants. No competitive lease of coal shall be approved or issued until after the notice of the proposed offering for lease has been given in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.

Sec. 2(a)

COAL LEASING TRACTS

ACREAGE

"(b) Where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any unclaimed, undeveloped area, the Secretary of the Interior may issue, to applicants qualified under this Act, prospecting permits for a term of two years, for not exceeding two thousand five hundred and sixty acres; and if within said period of two years thereafter the permittee shows to the Secretary that the land contains coal in commercial quantities, the permittee shall be entitled to a lease under this Act for all or part of the land in his permit.

PROSPECTING PERMITS

"Any coal prospecting permit issued under this section may be extended by the Secretary for a period of two years, if he shall find that the permittee has been unable, with the exercise of reasonable diligence, to determine the existence or workability of coal deposits in the area covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons in the opinion of the Secretary warranting such extension.

"(c) No company or corporation operating a common-carrier railroad shall be given or hold a permit or lease under the provisions of this Act for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporations; and no such

RAILROADS

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

company or corporation shall receive or hold under permit or lease more than ten thousand two hundred and forty acres in the aggregate nor more than one permit or lease for each two hundred miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

"Nothing in this section shall preclude such a railroad of less than two hundred miles in length from securing one permit or lease thereunder but no railroad shall hold a permit or lease for lands in any State in which it does not operate main or branch lines."

SEC. 2. Section 9 of the Act (41 Stat. 440, 30 U. S. C., sec. 211) is amended to read as follows:

Sec. 9

PHOSPHATE

"SEC. 9. The Secretary of the Interior is authorized to lease to any applicant qualified under this Act, through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, any phosphate deposits of the United States, and lands containing such deposits, including associated and related minerals, when in his judgment the public interest will be best served thereby. The lands shall be leased under such terms and conditions as are herein specified, in units reasonably compact in form of not to exceed two thousand five hundred and sixty acres."

SEC. 3. Section 10 of the Act (41 Stat. 440, 30 U. S. C., sec. 212) is amended to read as follows:

Sec. 10

LEASE DESCRIPTIONS

ROYALTY

"SEC. 10. Each lease shall describe the leased lands by the legal subdivisions of the public-land surveys. All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the Secretary of the Interior in advance of offering the same, at not less than 5 per centum of the gross value of the output of phosphates or phosphate rock and associated or related minerals. Royalties shall be due and payable as specified in the lease either monthly or quarterly on the last day of the month next following the month or quarter in which the minerals are sold or removed from the leased land. Each lease shall provide for the payment of a rental payable at the date of the lease and annually thereafter which shall be not less than 25 cents per acre for the first year, 50 cents per acre for the second and third years, respectively, and $1 per acre for each year thereafter, during the continuance of the lease. The rental paid for any year shall be credited against the royalties for that year. Leases shall be for a term of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such reasonable readjustment of the terms and conditions thereof may be made therein as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods. Leases shall be conditioned upon a minimum annual production or the payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior may

LEASE TERM

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

permit suspension of operations under any such leases when marketing conditions are such that the leases cannot be operated except at a loss."

SEC. 4. Section 11 of the Act (41 Stat. 440, 30 U. S. C., sec. 213) is hereby amended to read as follows:

"SEC. 11. Any lease to develop and extract phosphates, phosphate rock, and associated or related minerals under the provisions of sections 9 to 12, inclusive, of this Act shall provide that the lessee may use so much of any deposit of silica or limestone or other rock situated on any public lands embraced in the lease as may be utilized in the processing or refining of the phosphates, phosphate rock, and associated or related minerals mined from the leased lands or from other lands upon payments of such royalty as may be determined by the Secretary of the Interior, which royalty may be stated in the lease or, as to the leases already issued, may be provided for in an attachment to the lease to be duly executed by the lessor and the lessee."

Sec. 11

PHOSPHATE

ROYALTY

SEC. 5. Section 12 of the Act (41 Stat. 441, 30 U. S. C., sec. 214) is amended to read as follows:

"SEC. 12. The holder of any lease issued under the provisions of sections 9 to 12, inclusive, of this Act shall have the right to use so much of the surface of unappropriated and unentered public lands not a part of his lease, not exceeding eighty acres in area, as may be determined by the Secretary to be necessary or convenient for the extraction, treatment, and removal of the mineral deposits, but this provision shall not be applicable to national forest lands."

Sec. 12

SURFACE USE

SEC. 6. The first sentence of section 27 of such Act, as amended (41 Stat. 448, 30 U. S. C., sec. 184), is amended to read as follows:

"No person, association, or corporation, except as herein provided, shall take or hold coal or sodium leases or permits during the life of such lease in any one State, exceeding in the aggregate acreage five thousand one hundred and twenty acres for each of said minerals: *Provided*, That the Secretary of the Interior may, in his discretion where it is necessary in order to secure the economic mining of sodium compounds leasable under this Act, permit a person, association, or corporation to take or hold sodium leases or permits for up to fifteen thousand three hundred and sixty acres in any one State. No person, association, or corporation, except as herein provided, shall take or hold at one time oil or gas leases exceeding in the aggregate fifteen thousand three hundred and sixty acres granted hereunder in any one State; and no person, association, or corporation shall take or hold at one time phosphate leases or permits exceeding in the aggregate five thousand one hundred and twenty acres in any one State, and exceeding in the aggregate ten thousand two hundred and forty acres in the United States."

Sec. 27

COAL OR SODIUM ACREAGE

SODIUM LEASE

SEC. 7. The first sentence of section 39 of such Act of February 25, 1920, as amended (47 Stat. 798, 30 U. S. C., sec. 209), is amended to read as follows:

"The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, oil shale, phosphate, sodium, potassium and sulfur, and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or

Sec. 39

REDUCTION OF ROYALTY

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein."

SEC. 8. The Act entitled "An Act to grant extensions of time under coal permits", approved March 9, 1928, as amended (45 Stat. 251, 30 U. S. C., sec. 201a), is hereby repealed.

SEC. 9. The second sentence of section 3 of the Act entitled "An Act to promote the mining of potash on the public domain", approved February 7, 1927, as amended (44 Stat. 1057, 30 U. S. C., sec. 283), is amended to read as follows: "Any lease issued under this Act shall be for a term of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such reasonable adjustment of the terms and conditions thereof may be made therein as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods. Leases shall be conditioned upon a minimum annual production or the payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior may permit suspension of operations under any such leases when marketing conditions are such that the leases cannot be operated except at a loss. The Secretary upon application by the lessee prior to the expiration of any existing lease in good standing shall amend such lease to provide for the same tenure and to contain the same conditions, including adjustment at the end of each twenty-year period succeeding the date of said lease, as provided for in this Act."

Approved June 3, 1948.

Sec. 3

20 YEAR LEASE

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF AUGUST 3, 1950

ACT OF AUGUST 3, 1950

To provide that payments to States under the Oil Land Leasing Act of 1920 shall be made biannually.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U. S. C., sec. 191), is hereby amended by striking out "after the expiration of each fiscal year" and inserting in lieu thereof "as soon as practicable after December 31 and June 30 of each year".

Approved August 3, 1950.

Sec. 35

DATES

ACT OF AUGUST 12, 1953

ACT OF AUGUST 12, 1953

To amend the mineral leasing laws with respect to their application in the case of pipelines passing through the public domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 28 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U. S. C., sec. 185), is amended by inserting after "*Provided*," the following: "That the common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality: *Provided further*,".

Approved August 12, 1953.

Sec. 28

COMMON CARRIER PROVISIONS

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF JULY 29, 1954

To amend the Mineral Leasing Act of February 25, 1920, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of February 25, 1920, as amended (30 U. S. C. 226), is further amended as follows:

(1) Strike out the second paragraph of section 17 and insert the following language in lieu thereof:

Sec. 17

LEASE TERMINATION

"Any lease issued under this Act which is subject to termination by reason of cessation of production shall not terminate if within sixty days after production ceases, reworking or drilling operations are commenced on the land under lease and are thereafter conducted with reasonable diligence during such period of nonproduction. No lease issued under the provisions of this Act shall expire because operations or production is suspended under any order, or with the consent, of the Secretary of the Interior. No lease issued under the provisions of this Act covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee is allowed a reasonable time, but not less than sixty days after notice by registered mail, within which to place such well on a producing status: *Provided*, That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of this Act."

REASONABLE DILIGENCE

(2) Strike out the third paragraph of section 17 and insert in lieu thereof:

Sec. 17

NONCOMPETITIVE LEASE EXTENSION

"Upon the expiration of the initial five-year term of any noncompetitive lease maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereof shall be entitled to a single extension of the lease, unless then otherwise provided by law, for such lands covered by it as are not on the expiration date of the lease withdrawn from leasing under this section. A withdrawal, however, shall not affect the right to an extension if actual drilling operations on such lands were commenced prior to such withdrawal becoming effective and were being diligently prosecuted on such expiration date. No withdrawal shall be effective within the meaning of this section until ninety days after notice thereof shall be sent by registered mail, to each lessee to be affected by such withdrawal. A noncompetitive lease, as to lands not within the known geologic structure of a producing oil or gas field, shall be extended for a period of five years and so long thereafter as oil or gas is produced in paying quantities. A noncompetitive lease, as to lands within the known geologic structure of a producing oil or gas field, shall be extended for a period of two years and so long thereafter as oil or gas is produced in paying quantities. Any noncompetitive lease extended under this paragraph shall be subject to the rules and regulations in force at the expiration of the initial five-year term of the lease. No extension shall be granted, however, unless within a period

WITHDRAWAL

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

of ninety days prior to such expiration date an application therefor is filed by the record titleholder or an assignee whose assignment has been filed for approval, or an operator whose operating agreement has been filed for approval."

(3) Strike out the fifth paragraph of section 17 and insert the following language in lieu thereof:

Sec. 17

DRAINAGE

"Whenever it appears to the Secretary of the Interior that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, he is hereby authorized and empowered to negotiate agreements whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of the lessees affected thereby, and the primary term including any extensions thereof of any lease for which compensatory royalty is being paid shall be extended for the period during which such compensatory royalty is paid and for a period of one year from discontinuance of such payment and so long thereafter as oil or gas is produced in paying quantities: *Provided*, That the Secretary of the Interior shall report to Congress at the beginning of each regular session, all such agreements entered into during the previous year which involve unleased Government lands."

(4) Strike out the second sentence of the fourth paragraph of section 17 (b) and insert in lieu thereof the following language: "Any other lease issued under any section of this Act which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas, shall continue in force and effect as to the land committed, so long as the lease remains subject to the plan: *Provided*, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease. Any lease hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: *Provided, however*, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities."

Sec. 17(b)

PLANS

PAYING QUANTITIES

LEASE ON NONUNITIZED LANDS

(5) Strike out the words "and regardless of acreage limitations provided for in this Act" in the fifth paragraph of section 17 (b) and insert the following sentence at the end of that paragraph: "All leases operated under such approved operating, drilling, or development contracts, and interests thereunder, shall be excepted in determining holdings or control under the provisions of any section of this Act."

Sec. 17(b)

APPROVED CONTRACTS

(6) Strike out the last sentence of section 30 (a) and insert the following in lieu thereof: "Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this Act. The segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities."

Sec. 30(a)

SEGREGATED LEASE

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

(7) Insert the following sentence immediately after the second paragraph of section 31: "Notwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law: *Provided, However,* That when the time for payment falls upon any day in which the proper office for payment is not open, payment may be received the next official working day and shall be considered as timely made."

Approved July 29, 1954.

Sec. 31

FAILURE TO PAY RENTAL

PAYMENT DUE DATE

ACT OF AUGUST 2, 1954

ACT OF AUGUST 2, 1954

To amend section 27 of the Mineral Leasing Act of February 25, 1920, as amended, in order to promote the development of oil and gas on the public domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 27 of the Act of February 25, 1920, as amended (30 U. S. C. 184), is further amended as follows:

Sec. 27

(1) Strike out all of the language preceding the semicolon of the second sentence of section 27, and insert the following in lieu thereof: "No person, association, or corporation, except as herein provided, shall take or hold at one time oil or gas leases exceeding in the aggregate forty-six thousand and eighty acres granted hereunder in any one State, except that in the Territory of Alaska no person, association, or corporation, except as herein provided, shall take or hold at one time oil or gas leases exceeding in the aggregate one hundred thousand acres granted hereunder;".

ACREAGE

ALASKA ACREAGE

(2) Strike out sentences 5 and 6 of section 27 and insert the following in lieu thereof: "The interest of an optionee under a nonrenewable option to purchase or otherwise acquire one or more oil or gas leases (whether then or thereafter issued), or any interest therein, shall not, prior to the exercise of such option, be a taking or holding or control under the acreage limitations provisions of any section of this Act. No such option shall be entered into for a period of more than three years, without the prior approval of the Secretary of the Interior, and no person, association, or corporation shall hold at one time such options of more than two hundred thousand acres in any one State.".

Sec. 27

NONRENEWABLE OPTIONS

Approved August 2, 1954.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF JULY 10, 1957

Excerpts

Sec. 35

ALASKA

SEC. 2. Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U. S. C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska".

Approved July 10, 1957.

NOTE: Other sections not included.

ACT OF JULY 3, 1958

Excerpts

OIL AND GAS LEASING NONTIDAL NAVIGABLE WATERS IN ALASKA

To provide for the leasing of oil and gas deposits in lands beneath nontidal navigable waters in the Territory of Alaska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. That, when used in this Act—

(a) the term "lands beneath nontidal navigable waters in the Territory of Alaska" means (1) all lands within the boundaries of the Territory of Alaska which are covered by nontidal waters that are navigable under the laws of the United States, up to the ordinary high-water mark as heretofore or hereafter modified by accretion, erosion, and reliction. For the purposes of this definition and this Act, streams shall be "nontidal" at all points upstream from a line connecting the headlands at the mouth or mouths of such streams.

(b) The term "Mineral Leasing Act" means the Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181, et seq.), and all Acts heretofore or hereafter enacted which are amendatory thereof or supplementary thereto;

(c) The term "Secretary" means the Secretary of the Interior.

SEC. 2. All deposits of oil and gas owned or hereafter acquired by the United States in lands beneath nontidal navigable waters in the Territory of Alaska, together with the lands containing those deposits, may be leased and otherwise administered, treated and dealt with by the Secretary under and pursuant to the provisions of the Mineral Leasing Act which are applicable to oil and gas deposits generally and the lands containing such deposits owned by the United States in the Territory of Alaska and all such provisions of the Mineral Leasing Act shall be applicable to deposits of oil and gas owned or hereafter acquired by the United States in lands beneath nontidal navigable waters in the Territory of Alaska, except as otherwise provided in this Act.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

SEC. 6. If any oil and gas lease issued for public land pursuant to the Mineral Leasing Act (or any application or offer for such a lease of such land, which is pending on the date of this Act and subsequently becomes effective), embraces within the boundaries described in the lease (or application or offer) any lands beneath nontidal navigable waters in the Territory of Alaska not within any known geological structure of a producing oil or gas field on the date the application or offer for any such lease was filed with the Bureau of Land Management, the lessee (or applicant or offeror) shall, upon application filed while such lease (or application or offer) is still in effect but not more than one year after the date of approval of this Act and under regulations to be prescribed by the Secretary, have a preference right to have included within such lease (or application or offer) such lands beneath nontidal navigable waters in the Territory of Alaska. For the purposes of this section an area shall be considered to be within the boundaries described in the lease (or application or offer) even though it is excluded from such description by general terms which exclude all described lands that are or may be situated beneath navigable waters.

SEC. 10. Section 22 of the Act of February 25, 1920 (41 Stat. 446), is amended to read as follows:

Sec. 22

"SEC. 22. That any bona fide occupant or claimant of oil or gas bearing lands in the Territory of Alaska, who, or whose predecessors in interest, prior to withdrawal had complied otherwise with the requirements of the mining laws, but had made no discovery of oil or gas in wells and who prior to withdrawal had made substantial improvements for the discovery of oil or gas on or for each location or had prior to the passage of this Act expended not less than $250 in improvements on or for each location shall be entitled, upon relinquishment or surrender to the United States within one year from the date of this Act, or within six months after final denial or withdrawal of application for patent, to a lease or leases, under this Act covering such lands, not exceeding five leases in number and not exceeding an aggregate of one thousand two hundred and eighty acres in each: *Provided*, That the annual lease rentals for lands in the Territory of Alaska not within any known geological structure of a producing oil or gas field and the royalty payments from production of oil or gas sold or removed from such lands shall be identical with those prescribed for such leases covering similar lands in the States of the United States, except that leases which may issue pursuant to applications or offers to lease such lands, which applications or offers were filed prior to and were pending on May 3, 1958, shall require the payment of 25 cents per acre as lease rental for the first year of such leases; but the aforesaid exception shall not apply in any way to royalties to be required under leases which may issue pursuant to offers or applications filed prior to May 3, 1958.

BONA FIDE OCCUPANT OR CLAIMANT. OIL AND GAS. ALASKA.

RENTAL

ROYALTY

"The Secretary of the Interior shall neither prescribe nor approve any cooperative or unit plan of development or operation nor any operating, drilling, or development contract establishing different royalty or rental rates for Alaska lands than for similar lands within the States of the United States.

UNIT PLAN

"No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section."

FRAUD

Approved July 8, 1958.

NOTE: Other sections not included.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF AUGUST 21, 1958

To amend section 27 of the Mineral Leasing Act of February 25, 1920, as amended, in order to promote the development of coal on the public domain.

COAL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 27 of the Act of February 25, 1920, as amended (41 Stat. 448, 30 U. S. C. 184), is further amended by deleting from the first sentence thereof the words "coal or" and "for each of said minerals", and by inserting at the beginning of said section the following:

Sec. 27

"No person, association, or corporation, except as herein provided, shall take or hold coal leases or permits during the life of such lease in any one State exceeding an aggregate of ten thousand two hundred and forty acres: *Provided*, That a person, association or corporation may apply for coal leases or permits for acreage in addition to said ten thousand two hundred and forty acres, which application or applications shall be in multiples of forty acres, not exceeding a total of five thousand one hundred twenty additional acres in such State, and shall contain a statement that the granting of a lease for such additional lands is necessary for the person, association, or corporation to carry on business economically and is in the public interest. On the filing of said application, the coal deposits in such lands covered thereby shall be temporarily set aside and withdrawn from all forms of disposal under this Act. The Secretary of the Interior shall, after posting notice of the pending application in the local land office, conduct public hearings on said application or applications for additional acreage. After such public hearings, to such extent as he finds to be in the public interest and necessary for the applicant in order to carry on business economically, the Secretary of the Interior may, under such regulations as he may prescribe, permit such person, association, or corporation to take or hold coal leases or permits for an additional aggregate acreage of not more than five thousand one hundred and twenty acres in such State. The Secretary may, in his own discretion or whenever sufficient public interest is manifested, reevaluate the lessee's or permittee's need for all or any part of the additional acreage. The Secretary may cancel the lease or leases and permit or permits covering all or any part of the additional acreage, if he finds that such cancellation is in the public interest or that the coal deposits in the additional acreage are no longer necessary for the lessee or permittee to carry on business economically or if the lessee or permittee has divested himself of all or any part of the original ten thousand two hundred and forty acres or no longer has facilities which in the Secretary's opinion enable him to exploit the deposits under lease or permit. No assignment, transfer, or sale of any part of the additional acreage may be made without the approval of the Secretary."

ACREAGE

PUBLIC HEARINGS

ADDITIONAL ACREAGE NEEDS EVALUATION

CANCELLATION OF LEASES OR PERMITS

Approved August 21, 1958.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF SEPTEMBER 9, 1959

Excerpt

To repeal the Act of October 20, 1914 (38 Stat. 741), as amended (48 U.S.C., secs. 432–432), and for other purposes.

ACT OF SEPTEMBER 9, 1959

SEC. 2. The first sentence of section 2 of the Act of February 25, 1920 (41 Stat. 437, 438), as amended (30 U.S.C., sec. 201), is further amended by the deletion of the words "outside of the Territory of Alaska,".

Sec. 2

ALASKA

Approved September 9, 1959.

NOTE: Section 1 not included.

ACT OF SEPTEMBER 21, 1959

To amend the Mineral Leasing Act of February 25, 1920.

ACT OF SEPTEMBER 21, 1959

CANCELLATION OR FORFEITURE

***Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 27 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437, 448), as amended (30 U.S.C., sec. 184), is further amended by the insertion, immediately after the sixteenth sentence, of the following: "The right of cancellation or forfeiture for violation of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser in any lease, option for a lease, or interest in a lease acquired in conformity with the acreage limitations of this Act from any other person, association or corporation whose holdings, or the holdings of a predecessor in title, including the original lessee of the United States, may have been canceled or forfeited, or may be subject to cancellation or forfeiture for any such violation. Any person, association or corporation who is a party to any proceedings with respect to a violation of any provision of this Act shall have the right to be dismissed as such a party upon showing that the person, association or corporation acquired the interest involving him as such a bona fide purchaser without violating any provisions of this Act. If during any such proceedings with respect to a violation of any provisions of this Act a party to those proceedings files with the Secretary of the Interior a waiver of his rights under the lease to drill or to assign his interests thereunder or if such rights are suspended by order of the Secretary pending a decision in such proceedings, he shall, if he is found in such proceedings not in violation of such provisions, have the right to have his interest extended for a period of time equal to the period between the filing of the waiver or the order of suspension by the Secretary and the final decision, without the payment of rental."**

Sec. 27

CANCELLATION OR FIRFEITURE

BONA FIDE PURCHASER

RIGHT TO EXTEND INTEREST

SEC. 2. The rights granted by the second and third sentences of the amendment contained within section 1 of this Act shall apply with respect to any proceeding now pending or initiated after the date of enactment of this Act.

Sec. 1 APPLIES TO PENDING PROCEEDINGS

Approved September 21, 1959.

NOTE: Regarding all MIneral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF MARCH 18, 1960

ACT OF MARCH 18, 1960

PHOSPHATE

To authorize the issuance of prospecting permits for phosphate in lands belonging to the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 9 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437, 440), as amended (30 U.S.C. 211), is further amended by the insertion of an (a) at the beginning of the section and by the addition of the two following subsections:

Sec. 9

"(b) Where prospecting or exploratory work is necessary to determine the existence or workability of phosphate deposits in any unclaimed, undeveloped area, the Secretary of the Interior is authorized to issue, to any applicant qualified under this Act, a prospecting permit which shall give the exclusive right to prospect for phosphate deposits, including associated minerals, for a period of two years, for not more than two thousand five hundred and sixty acres; and if prior to the expiration of the permit the permittee shows to the Secretary that valuable deposits of phosphate have been discovered within the area covered by his permit, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit.

PHOSPHATE

PROSPECTING PERMIT

"(c) Any phosphate permit issued under this section may be extended by the Secretary for such an additional period, not in excess of four years, as he deems advisable, if he finds that the permittee has been unable, with reasonable diligence, to determine the existence or workability of phosphate deposits in the area covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such an extension in the opinion of the Secretary."

EXTENSION OF PERMIT

(b) Section 12 of the Mineral Leasing Act (41 Stat. 437, 441), as amended (30 U.S.C., sec. 214), is further amended by the insertion of the words "or permit" immediately after the word "lease" wherever it appears.

Sec. 12

INCLUDES PERMITS

(c) The ninth sentence of section 27 of the Mineral Leasing Act (41 Stat. 437, 448), as amended (30 U.S.C., sec. 184), is further amended by the insertion of the words "or permits" immediately after the words "phosphate leases".

Sec. 27

INCLUDED PERMITS

Approved March 18, 1960.

ACT OF JUNE 11, 1960

ACT OF JUNE 11, 1960

Number (21) Only

(21) The third sentence in the third paragraph of section 17 of the Mineral Lands Leasing Act of February 25, 1920, as amended by the Act of July 29, 1954 (68 Stat. 584; 30 U.S.C. 226), is amended by inserting "or by certified mail," immediately following "registered mail,".

Sec. 17

CERTIFIED MAIL

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF JULY 14, 1960

UNREQUIRED PAYMENTS

SEC. 204. (a) In any case where it shall appear to the satisfaction of the Secretary of the Interior that any person has made a payment under any statute relating to the sale, entry, lease, use, or other disposition of the public lands which is not required, or is in excess of the amount required, by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

MONEYS FORFEITED

SEC. 303. Any moneys collected under this Act in connection with lands administered under the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a, and the following), shall be expended for the benefit of such land only. If any portion of a deposit or amount forfeited under this Act is found by the Secretary to be in excess of the cost of doing the work authorized under this Act, the amount in excess shall be transferred to miscellaneous receipts.

Approved July 14, 1960.

ACT OF SEPTEMBER 2, 1960

MINERAL LEASING ACT
REVISION OF 1960
ACT OF SEPTEMBER 2, 1960

To amend the Mineral Leasing Act of February 25, 1920.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mineral Leasing Act Revision of 1960".

Sec. 17, 17(a), 17(b)

SEC. 2. Section 17, 17(a), and 17(b) of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U.S.C. 226, 226d, and 226e) are further amended to read as follows:

"SEC. 17. (a) All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits may be leased by the Secretary.

KGS

COMPETITIVE BIDDING

"(b) If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall be not less than 12½ per centum in amount or value of the production removed or sold from the lease.

NOT WITHIN KGS

FIRST QUALIFIED APPLICANT

"(c) If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12½ per centum in amount or value of the production removed or sold from the lease.

RENTALS

"(d) All leases issued under this section shall be conditioned upon payment by the lessee of a rental of not less than 50 cents per acre for each year of the lease. Each year's lease rental shall be paid in advance. A minimum royalty of $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.

COMPETITIVE LEASES:
5 YEARS
NONCOMPETITIVE LEASES:
10 YEARS

"(e) Competitive leases issued under this section shall be for a primary term of five years and noncompetitive leases for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

TERMINATION

"(f) No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so

60 DAYS

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

long as oil or gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than sixty days after notice by registered or certified mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this Act.

PAYING QUANTITIES

60 DAYS

"(g) Whenever it appears to the Secretary that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, he may negotiate agreements whereby the United States, or the United States and its lessees, shall be compensated for such drainage. Such agreements shall be made with the consent of the lessees, if any, affected thereby. If such agreement is entered into, the primary term of any lease for which compensatory royalty is being paid, or any extension of such primary term, shall be extended for the period during which such compensatory royalty is paid and for a period of one year from discontinuance of such payment and so long thereafter as oil or gas is produced in paying quantities. The Secretary shall report to Congress at the beginning of each regular session all such agreements entered into during the previous year which involve unleased Government lands.

DRAINAGE

"(h) If, during the primary term or any extended term of any lease issued under this section, a verified statement is filed by any mining claimant pursuant to subsection (c) of section 7 of the Multiple Mineral Development Act of August 13, 1954 (68 Stat. 708), as amended (30 U.S.C. 527), whether such filing occur prior to enactment of the Mineral Leasing Act Revision of 1960 or thereafter, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted as to any lands covered by the lease, the running of time under such lease shall be suspended as to the lands involved from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

CONFLICTING UNPATENTED MINING CLAIMS

SUSPENSION OF LEASE

"(i) The Secretary of the Interior shall, upon timely application therefor, issue a new lease in exchange for any lease issued for a term of twenty years, or any renewal thereof, or any lease issued prior to August 8, 1946, in exchange for a twenty-year lease, such new lease to be for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and at a royalty rate of not less than 12½ per centum in amount or value of the production removed or sold from such leases, except that the royalty rate shall be 12½ per centum in amount or value of the production removed or sold from said leases as to (1) such leases, or such parts of the lands subject thereto and the deposits underlying the same, as are not believed to be within the productive limits of any producing oil or gas deposit, as such productive limits are found by the Secretary to have existed on

ISSUANCE OF NEW LEASES

TERMS OF LEASES

ROYALTY

August 8, 1946; and (2) any production on a lease from an oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease, and which is determined by the Secretary to be a new deposit; and (3) any production on or allocated to a lease pursuant to an approved cooperative or unit plan of development or operation from an oil or gas deposit which was discovered after May 27, 1941, on land committed to such plan, and which is determined by the Secretary to be a new deposit, where such lease, or a lease for which it is exchanged, was included in such plan at the time of discovery or was included in a duly executed and filed application for the approval of such plan at the time of discovery.

NEW DEPOSIT

UNIT PLAN

"(j) For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of said oil or gas pool, field, or like area, is then subject to any cooperative or unit plan of development or operation), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary is thereunto authorized, in his discretion, with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of such leases and to make such regulations with reference to such leases, with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest. The Secretary may provide that oil and gas leases hereafter issued under this Act shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

"Any plan authorized by the preceding paragraph which includes lands owned by the United States may, in the discretion of the Secretary, contain a provision whereby authority is vested in the Secretary of the Interior, or any such person, committee, or State or Federal officer or agency as may be designated in the plan, to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan. All leases operated under any such plan approved or prescribed by the Secretary shall be excepted in determining holdings or control under the provisions of any section of this Act.

PLANS EXCEPTED IN DETERMINATION OF HOLDINGS OR CONTROL

"When separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the

POOLING

COMMUNITIZATION

Interior to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

LEASE CONTINUATION UNDER UNIT PLAN

"Any lease issued for a term of twenty years, or any renewal thereof, or any portion of such lease that has become the subject of a cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the Secretary of the Interior, shall continue in force until the termination of such plan. Any other lease issued under any section of this Act which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: *Provided*, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease.

PAYING QUANTITIES

Any lease heretofore or hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: *Provided, however*, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities.

NONUNITIZED LAND LEASES

The minimum royalty or discovery rental under any lease that has become subject to any cooperative or unit plan of development or operation, or other plan that contains a general provision for allocation of oil or gas, shall be payable only with respect to the lands subject to such lease to which oil or gas shall be allocated under such plan. Any lease which shall be eliminated from any such approved or prescribed plan, or from any communitization or drilling agreement authorized by this section, and any lease which shall be in effect at the termination of any such approved or prescribed plan, or at the termination of any such communitization or drilling agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

"The Secretary of the Interior is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, associations, or corporations whenever, in his discretion, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best subserved thereby. All leases operated under such approved operating, drilling, or development contracts, and interests thereunder, shall be excepted in determining holdings or control under the provisions of this Act.

SEC'Y. APPROVE CONTRACTS

"The Secretary of the Interior, to avoid waste or to promote conservation of natural resources, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under this Act. Such authorization may provide for the payment of a storage fee or rental on such stored oil or gas or, in lieu of such fee or rental, for a royalty other than that

SUBSURFACE STORAGE OF OIL OR GAS

prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities."

Sec. 27

SEC. 3. Section 27 of said Act, as amended (30 U.S.C. 184), is further amended to read as follows:

"SEC. 27. (a)(1) No person, association, or corporation, except as otherwise provided in this subsection, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this Act or otherwise, coal leases or permits on an aggregate of more than ten thousand two hundred and forty acres in any one State.

ACREAGE

"(2) A person, association, or corporation may apply for coal leases or permits for acreage in addition to that which is permissible under paragraph (1) of this subsection, but the additional acreage shall not exceed five thousand one hundred and twenty acres in any one State. Each application shall be for forty acres or a multiple thereof and shall contain a statement that the granting of a lease or permit for the additional lands is necessary to enable the applicant to carry on business economically and that it is believed to be in the public interest. On the filing of such an application, the coal deposits in the lands covered by it shall be temporarily set aside and withdrawn from all forms of disposal under this Act. The Secretary shall, after posting notice of the pending application in the local land office, conduct public hearings on it. After such hearings the Secretary may, under such regulations as he may prescribe and to such extent as he finds to be in the public interest and necessary to enable the applicant to carry on business economically, permit the applicant to take and hold coal leases or permits for additional acreage as hereinbefore provided. The Secretary may, in his own discretion or whenever sufficient public interest is manifested, reevaluate a lessee's or permittee's need for all or any part of the additional acreage and may cancel any lease or permit covering all or any part of such acreage if he finds that cancellation is in the public interest or that the coal deposits in said acreage are no longer necessary for the lessee or permittee to carry on business economically or that the lessee or permittee has divested himself of all or any part of his first ten thousand two hundred and forty acres or no longer has facilities which, in the Secretary's opinion, enable him to exploit the deposits under lease or permit. No assignment, transfer, or sale of any part of the additional acreage may be made without the approval of the Secretary.

COAL LEASES ACREAGE

RE-EVALUATE NEED FOR ADDITIONAL ACREAGE

CANCELLATIONS

"(b)(1) No person, association, or corporation, except as otherwise provided in this subsection, shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this Act or otherwise, sodium leases or permits on an aggregate of more than five thousand one hundred and twenty acres in any one State.

ACREAGE

"(2) The Secretary may, in his discretion, where the same is necessary in order to secure the economic mining of sodium compounds leasable under this Act, permit a person, association, or corporation to take or hold sodium leases or permits on up to fifteen thousand three hundred and sixty acres in any one State.

SODIUM LEASE ACREAGE

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

PHOSPHATE ACREAGE

"(c) No person, association, or corporation shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this Act or otherwise, phosphate leases or permits on an aggregate of more than ten thousand two hundred and forty acres in the United States.

ACREAGE

"(d)(1) No person, association, or corporation, except as otherwise provided in this Act, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this Act or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this Act exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska. In the case of the State of Alaska, the limit shall be three hundred thousand acres in the northern leasing district and three hundred thousand acres in the southern leasing district, and the boundary between said two districts shall be the left limit of the Tanana River from the border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth.

ALASKA ACREAGE

ACREAGE

"(2) No person, association, or corporation shall take, hold, own, or control at one time options to acquire interests in oil or gas leases under the provisions of this Act which involve, in the aggregate, more than two hundred thousand acres of land in any one State other than Alaska or, in the case of Alaska, more than two hundred thousand acres in each of its two leasing districts, as hereinbefore described. No option to acquire any interest in such an oil or gas lease shall be enforcible if entered into for a period of more than three years (which three years shall be inclusive of any renewal period if a right to renew is reserved by any party to the option) without the prior approval of the Secretary. In any case in which an option to acquire the optionor's entire interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. In any case in which an option to acquire a part of the optionor's interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be fully charged to the optionor and a share thereof shall also be charged to the optionee as his interest may appear, but after the option is exercised said acreage shall be charged to the parties pro rata as their interests may appear. In any case in which an assignment is made of a part of a lessee's interest in the whole or part of the acreage under a lease or an application for a lease, the acreage shall be charged to the parties pro rata as their interests may appear. No option or renewal thereof shall be enforcible until notice thereof has been filed with the Secretary or an officer or employee of the Department of the Interior designated by him to receive the same. Each such notice shall include, in addition to any other matters prescribed by the Secretary, the names and addresses of the parties thereto, the serial number of the lease or application for a lease to which the option is applicable, and a statement of the number of acres covered thereby and of the

OPTIONS

ASSIGNMENT OF INTEREST

interests and obligations of the parties thereto and shall be subscribed by all parties to the option or their duly authorized agents. An option which has not been exercised shall remain charged as hereinbefore provided until notice of its relinquishment or surrender has been filed, by either party, with the Secretary or any officer or employee of the Department of the Interior designated by him to receive the same. In addition, each holder of any such option shall file with the Secretary or an officer or employee of the Department of the Interior as aforesaid within ninety days after the 30th day of June and the 31st day of December in each year a statement showing, in addition to any other matters prescribed by the Secretary, his name, the name and address of each grantor of an option held by him, the serial number of every lease or application for a lease to which such an option is applicable, the number of acres covered by each such option, the total acreage in each State to which such options are applicable, and his interest and obligation under each such option. The failure of the holder of an option so to file shall render the option unenforcible by him. The unenforcibility of any option under the provisions of this paragraph shall not diminish the number of acres deemed to be held under option by any person, association, or corporation in computing the amount chargeable under the first sentence of this paragraph and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law. The Secretary may prescribe forms on which the notice and statements required by this paragraph shall be made.

OPTION NOT EXERCISED

FILING

"(e) (1) No person, association, or corporation shall take, hold, own or control at one time any interest as a member of an association or as a stockholder in a corporation holding a lease, option, or permit under the provisions of this Act which, together with the area embraced in any direct holding, ownership or control by him of such a lease, option, or permit or any other interest which he may have as a member of other associations or as a stockholder in other corporations holding, owning or controlling such leases, options, or permits for any kind of minerals, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this Act, except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other instruments of ownership or control of such association or corporation, and except that within three years after the enactment of the Mineral Leasing Act Revision of 1960 no valid option in existence prior to the enactment of said Act held by a corporation or association at the time of enactment of said Act shall be chargeable to any stockholder of such corporation or to a member of such association so long as said option shall be so held by such corporation or association under the provisions of this Act.

INTERESTS IN LEASES

"(2) No contract for development and operation of any lands leased under this Act, whether or not coupled with an interest in such lease, and no lease held, owned, or controlled in common by two or more persons, associations, or corporations shall be deemed to create a separate association under the preceding paragraph of this subsection between or among the contracting parties or those who hold, own or control the lease in common, but the proportionate interest of each such party shall be charged against the total acreage permitted to be held, owned or controlled by such party under this Act. The total acreage so held, owned, or controlled in common by two or more parties shall not exceed, in the aggregate, an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this Act.

INTEREST IN LEASES

"(f) Nothing contained in subsection (e) of this section shall be construed (i) to limit sections 18, 19, and 22 of this Act or (ii), subject to the approval of the Secretary, to prevent any number of lessees under this Act from combining their several interests so far as may be necessary for the purpose of constructing and carrying on the business of a refinery or of establishing and constructing, as a common carrier, a pipeline or railroad to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees under this Act or in the transportation of coal or (iii) to increase the acreage which may be taken, held, owned, or controlled under section 27 of this Act.

COMBINING LEASE INTERESTS

"(g) Any ownership or interest otherwise forbidden in this Act which may be acquired by descent, will, judgment, or decree may be held for two years after its acquisition and no longer.

OWNERSHIP OR INTERESTS FORBIDDEN

"(h)(1) If any interest in any lease is owned, or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of this Act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General. Such a proceeding shall be instituted in the United States district court for the district in which the leased property or some part thereof is located or in which the defendant may be found.

CANCELLATION OR FORFEITURE FOR VIOLATION

"(2) The right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, interest in a lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation. If, in any such proceeding, an underlying lease, interest, option, or permit is canceled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, the underlying lease, interest, option, or permit shall be sold

BONA FIDE PURCHASER

by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations subject to all outstanding valid interests therein and valid options pertaining thereto. Likewise if, in any such proceeding, less than the whole interest in a lease, interest, option, or permit is canceled or forfeited to the Government, the partial interests so canceled or forfeited shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations. If competitive bidding fails to produce a satisfactory offer the Secretary may, in either of these cases, sell the interest in question by such other method as he deems appropriate on terms not less favorable to the Government than those of the best competitive bid received.

SELL TO HIGHEST RESPONSIBLE QUALIFIED BIDDER

SELL BY APPROPRIATE METHOD

"(3) The commencement and conclusion of every proceeding under this subsection shall be promptly noted on the appropriate public records of the Bureau of Land Management.

"(i) Effective September 21, 1959, any person, association, or corporation who is a party to any proceeding with respect to a violation of any provision of this Act, whether initiated prior to said date or thereafter, shall have the right to be dismissed promptly as such a party upon showing that he holds and acquired as a bona fide purchaser the interest involving him as such a party without violating any provisions of this Act. No hearing upon any such showing shall be required unless the Secretary presents prima facie evidence indicating a possible violation of the Mineral Leasing Act on the part of the alleged bona fide purchaser.

HEARING
PRIMA FACIE EVIDENCE

"(j) If during any such proceeding, a party thereto files with the Secretary a waiver of his rights under his lease (including particularly, where applicable, rights to drill and to assign) or if such rights are suspended by the Secretary pending a decision in the proceeding, whether initiated prior to enactment of this Act or thereafter, payment of rentals and running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or suspension of the rights until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

PAYMENT SUSPENSION

"(k) Except as otherwise provided in this Act, if any lands or deposits subject to the provisions of this Act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in any wise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, optionee, or permittee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, native asphalt, solid and semisolid bitumen, bituminous rock, gas, or sodium entered into by the lessee, optionee, or permittee or any agreement or understanding, written, verbal, or otherwise, to which such lessee, optionee, or permittee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this Act, the lease, option, or permit shall be forfeited by appropriate court proceedings."

UNLAWFUL TRUST

NONCOMPETITIVE LEASE EXTENSION

SEC. 4. (a) Upon the expiration of the initial five-year term of any noncompetitive oil or gas lease which was issued prior to enactment of this Act and which has been maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereof shall be entitled to a single extension of the lease, unless then otherwise provided by law, for such lands covered by it as are not, on the expiration date of the lease, withdrawn from leasing. A withdrawal, however, shall not affect the right to an extension if actual drilling operations on such lands were commenced prior to the effective date of the withdrawal and were being diligently prosecuted on the expiration date of the lease. No withdrawal shall be effective within the meaning of this section until ninety days after notice thereof has been sent by registered or certified mail to each lessee to be affected by such withdrawal.

WITHDRAWAL

LANDS NOT WITHIN KGS NONCOMPETITIVE LEASE EXTENSION

(b) As to lands not within the known geologic structure of a producing oil or gas field, a noncompetitive oil or gas lease to which this section is applicable shall be extended for a period of five years and so long thereafter as oil or gas is produced in paying quantities. As to lands within the known geologic structure of a producing oil or gas field, a noncompetitive lease to which this section is applicable shall be extended for a period of two years and so long thereafter as oil or gas is produced in paying quantities.

SUBJECT TO RULES AND REGS.

(c) Any noncompetitive oil or gas lease extended under this section shall be subject to the rules and regulations in force at the expiration of the initial five-year term of the lease. No extension shall be granted, however, unless within a period of ninety days prior to the expiration date of the lease an application therefor is filed by the record titleholder or an assignee whose assignment has been filed for approval or an operator whose operating agreement has been filed for approval.

UNIT PLAN

(d) Any lease issued prior to the enactment of the Mineral Leasing Act Revision of 1960 which has been maintained in accordance with applicable statutory requirements and regulations and which pertains to land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

SEC. 5. The Act of February 25, 1920, as amended (30 U.S.C. 181 and the following), is amended by adding a section 42 thereto to read as follows:

Sec. 42 ADDED ACTION CONTESTING SEC'Y. DECISIONS

"SEC. 42. No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within ninety days after the final decision of the Secretary relating to such matter. No such action contesting such a decision of the Secretary rendered prior to enactment of the Mineral Leasing Act Revision of 1960 shall be maintained unless the same be commenced or taken within ninety days after such enactment."

Sec. 30(a)

SEC. 6. The last sentence of section 30(a) of the Act of February 25, 1920, as amended (30 U.S.C. 187a), is amended to read as follows:

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

"Upon the segregation by an assignment of a lease issued after the effective date of the Mineral Leasing Act Revision of 1960 and held beyond its primary term by production, actual or suspended, or the payment of compensatory royalty, the segregated lease of an undeveloped, assigned, or retained part shall continue for two years, and so long thereafter as oil or gas is produced in paying quantities."

SEGREGATION BY ASSIGNMENT OF LEASE

The provisions of this section 6 shall not be applicable to any lease issued prior to the effective date of this Act.

Sec. 7. (a) Section 1 of the Act of February 25, 1920, as amended (30 U.S.C. 181), section 21 of said Act (30 U.S.C. 241), and section 34 of said Act (30 U.S.C. 182) are amended by the insertion of the words "native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)" immediately after the words "oil shale," in the first sentence of each section. Section 21 of said Act (30 U.S.C. 241) is further amended by striking out the period at the end of the last sentence and adding these words "except that with respect to leases for native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried) no person, association, or corporation shall acquire or hold more than seven thousand six hundred eighty acres in any one State without respect to the number of leases."

Sec. 1

COAL-RELATED PRODUCTS

ACREAGE

(b) Section 21 of said Act is further amended by inserting the designation (a) immediately after the term "section 21" and by adding two new subsections to read as follows:

Sec. 21

"(b) If an offer for a lease under the provisions of this section for deposits other than oil shale is based upon a mineral location, the validity of which might be questioned because the claim was based on a placer location rather than on a lode location, or vice versa, the offeror shall have a preference right to a lease if the offer is filed not more than one year after the enactment of the Mineral Leasing Act Revision of 1960.

LEASE OFFER OTHER THAN OIL SHALE

"(c) With respect to native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried) a lease under the multiple use principle may issue notwithstanding the existence of an outstanding lease issued under any other provision of this Act."

Sec. 8. No amendment made by this Act shall affect any valid right in existence on the effective date of the Mineral Leasing Act Revision of 1960.

Approved September 2, 1960.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF OCTOBER 15, 1962

To amend the Mineral Leasing Act of February 25, 1920.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 31 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 450), as amended (30 U.S.C. 188), is further amended by designating the first paragraph thereof as subsection "(a)", the second paragraph as subsection "(b)", and adding two new subsections to read as follows:

Sec. 31

"(c) Where any lease has been terminated automatically by operation of law under this section for failure to pay rental timely and it is shown to the satisfaction of the Secretary of the Interior that the failure to pay timely the lease rental was justifiable or not due to a lack of reasonable diligence, he in his judgment may reinstate the lease subject to the following conditions:

FAILURE TO PAY TIMELY

REINSTATEMENT

"(1) A petition for reinstatement, together with the required rental, for any lease (a) terminated prior to the effective date of this Act must be filed with the Secretary of the Interior within one hundred and eighty days after the effective date of this Act;

"(2) No valid lease has been issued affecting any of the lands in the terminated lease prior to the filing of the petition for reinstatement.

"(d) Where, in the judgment of the Secretary of the Interior, drilling operations were being diligently conducted on the last day of the primary term of the lease, and, except for nonpayment of rental, the lessee would have been entitled to extension of his lease, pursuant to section 4(d) of the Act of September 2, 1960 (74 Stat. 790), the Secretary of the Interior may reinstate such lease notwithstanding the failure of the lessee to have made payment of the next year's rental, provided the conditions of subparagraphs (1) and (2) of section (c) are satisfied."

EXTENSION EXCEPT FOR RENTAL NONPAYMENT

Sec. 2. Nothing in this Act shall be construed as limiting the authority of the Secretary of the Interior to issue, during the periods in which petitions for reinstatement may be filed, oil and gas leases for any of the lands affected.

Approved October 15, 1962.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF AUGUST 31, 1964

To amend section 27 of the Mineral Leasing Act of February 25, 1920, as amended, in order to promote the development of coal on the public domain and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) (1) of section 27 of the Act of February 25, 1920, as amended (30 U.S.C. 184), is further amended to read as follows:

"(a) (1) No person, association, or corporation shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this Act or otherwise, coal leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State."

SEC. 2. (a) Subsection (a) of section 2 of the Act of February 25, 1920, as amended (30 U.S.C. 201(a)), is further amended by the deletion from the first sentence of the words "but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract.".

(b) Subsection (b) of section 2 of the Act of February 25, 1920, as amended (30 U.S.C. 201(b)), is further amended by changing the words "two thousand five hundred and sixty acres" in the first sentence thereof to "five thousand one hundred and twenty acres".

(c) For the purpose of more properly conserving the natural resources of any coalfield or prospective coal area, or any part or zone thereof, lessees and permittees and their representatives may enter into a contract with each other or others for collective prospecting, development, or operation of such field or prospective coal area, or any part or zone thereof, whenever determined and certified by the Secretary of the Interior to be in the public interest. A contract approved hereunder shall not provide for an apportionment of production or royalties among the separate tracts comprising the contract area, but may provide for the commingling of production with appropriate allocation to the tracts from which produced. Notwithstanding any provision of this section to the contrary, the Secretary may, with the consent of the lessees or permittees involved, establish, alter, change, or revoke mining, producing, rental, minimum royalty, and royalty requirements of such leases or permits, and issue regulations that are applicable to such leases or permits or contracts. The Secretary is authorized to enter into a contract with a single lessee or permittee embracing his leases or permits. The Secretary may authorize the consolidation of separate Federal permits or leases into a lesser number of permits or leases, or into a single permit or lease.

(d) Coal leases and permits operated under a contract approved or executed by the Secretary pursuant to subsection (c) of this section may be excepted from limitations on maximum holdings or control imposed by this Act if the Secretary finds that such exception is required to permit economic development of the coal resources and is otherwise consistent with the public interest.

Approved August 31, 1964.

ACT OF AUGUST 31, 1964

COAL

Sec. 27

ACREAGE

Sec. 2(a)
ACREAGE

Sec. 2(b)
ACREAGE

COLLECTIVE PROSPECTING DEVELOPMENT OR OPERATION

CONTRACT

COMMINGLING OF PRODUCTION

EXCEPTIONS FROM LIMITATIONS

ACT OF SEPTEMBER 6, 1966

Schedule of Laws Repealed

Date	Chapter	Section	Statutes at Large	
			Volume	Page
1920 Feb. 25	85	38	41	451

ACT OF SEPTEMBER 6, 1966

Sec. 38 REPEALED

NOTE: Regarding all MIneral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

8/31/64
9/6/66

OIL AND GAS

To authorize the Secretary of the Interior to prevent terminations of oil and gas leases in cases where there is a nominal deficiency in the rental payment, and to authorize him to reinstate under some conditions oil and gas leases terminated by operation of law for failure to pay rental timely.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 31(b) of the Mineral Leasing Act of 1920 (41 Stat. 450), as amended (30 U.S.C. 188(b)), is amended by changing the period at the end thereof to a colon and adding the following: "*Provided*, That if the rental payment due under a lease is paid on or before the anniversary date but either (1) the amount of the payment has been or is hereafter deficient and the deficiency is nominal, as determined by the Secretary by regulation, or (2) the payment was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or made in accordance with a bill or decision which has been rendered by him and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a new lease had been issued prior to the date of this Act or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary."

Sec. 31(b)

LEASE RENTAL PAYMENTS

SEC. 2. Section 31(c) of the Mineral Leasing Act of 1920 (41 Stat. 450), as amended (30 U.S.C. 188(c)), is amended to read as follows:

Sec. 31(c)

"(c) Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if—

AUTOMATIC TERMINATION

PAYMENT WITHIN 20 DAYS OF ANNIVERSARY DATE

"(1) a petition for reinstatement, together with the required rental, including back rental accruing from the date of termination of the lease, is filed with the Secretary; and

"(2) no valid lease has been issued affecting any of the lands covered by the terminated lease prior to the filing of said petition. The Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him. In any case where a reinstatement of a terminated lease is granted under this subsection and the Secretary finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable: *Provided*, That (A) such extension shall not exceed a period equivalent to the time beginning when the lessee knew or should have known of the termination and ending on the date the Secretary grants such petition; (B) such extension shall not exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination; and (C) when the reinstatement occurs after the expiration of the term or extension thereof the lease may be extended from the date the Secretary grants the petition."

REINSTATEMENT

Approved May 12, 1970.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

GEOTHERMAL STEAM ACT OF 1970

December 24, 1970

ACT OF DECEMBER 24, 1970

To authorize the Secretary of the Interior to make disposition of geothermal steam and associated geothermal resources, and for other purposes.

GEOTHERMAL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Geothermal Steam Act of 1970".

SEC. 2. As used in this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "geothermal lease" means a lease issued under authority of this Act;

(c) "geothermal steam and associated geothermal resources" means (i) all products of geothermal processes, embracing indigenous steam, hot water and hot brines; (ii) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or other associated energy found in geothermal formations; and (iv) any byproduct derived from them;

(d) "byproduct" means any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or in association with geothermal steam and which have a value of less than 75 per centum of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves;

(e) "known geothermal resources area" means an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

ISSUANCE OF GEOTHERMAL LEASES

SEC. 3. Subject to the provisions of section 15 of this Act, the Secretary of the Interior may issue leases for the development and utilization of geothermal steam and associated geothermal resources (1) in lands administered by him, including public, withdrawn, and acquired lands, (2) in any national forest or other lands administered by the Department of Agriculture through the Forest Service, including public, withdrawn, and acquired lands, and (3) in lands which have been conveyed by the United States subject to a reservation to the United States of the geothermal steam and associated geothermal resources therein.

KNOWN GEOTHERMAL RESOURCES AREA
COMPETITIVE BIDS
HIGHEST RESPONSIBLE QUALIFIED BIDDER

SEC. 4. If lands to be leased under this Act are within any known geothermal resources area, they shall be leased to the highest responsible qualified bidder by competitive bidding under regulations formulated by the Secretary. If the lands to be leased are not within any known geothermal resources area, the qualified person first making application for the lease shall be entitled to a lease of such lands without competitive bidding. Notwithstanding the foregoing, at any time

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

within one hundred and eighty days following the effective date of this Act:

LEASE CONVERSION TO GEOTHERMAL

(a) with respect to all lands which were on September 7, 1965, subject to valid leases or permits issued under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or under the Mineral Leasing Act of Acquired Lands, as amended (30 U.S.C. 351, 359), or to existing mining claims located on or prior to September 7, 1965, the lessees or permittees or claimants or their successors in interest who are qualified to hold geothermal leases shall have the right to convert such leases or permits or claims to geothermal leases covering the same lands;

(b) where there are conflicting claims, leases, or permits therefor embracing the same land, the person who first was issued a lease or permit, or who first recorded the mining claim shall be entitled to first consideration;

(c) with respect to all lands which were on September 7, 1965, the subject of applications for leases or permits under the above Acts, the applicants may convert their applications to applications for geothermal leases having priorities dating from the time of filing of such applications under such Acts;

(d) no person shall be permitted to convert mineral leases, permits, applications therefor, or mining claims for more than 10,240 acres; and

(e) the conversion of leases, permits, and mining claims and applications for leases and permits shall be accomplished in accordance with regulations prescribed by the Secretary. No right to conversion to a geothermal lease shall accrue to any person under this section unless such person shows to the reasonable satisfaction of the Secretary that substantial expenditures for the exploration, development, or production of geothermal steam have been made by the applicant who is seeking conversion, on the lands for which a lease is sought or on adjoining, adjacent, or nearby Federal or non-Federal lands.

(f) with respect to lands within any known geothermal resources area and which are subject to a right to conversion to a geothermal lease, such lands shall be leased by competitive bidding: *Provided*, That, the competitive geothermal lease shall be issued to the person owning the right to conversion to a geothermal lease if he makes payment of an amount equal to the highest bona fide bid for the competitive geothermal lease, plus the rental for the first year, within thirty days after he receives written notice from the Secretary of the amount of the highest bid.

SEC. 5. Geothermal leases shall provide for—

(a) a royalty of not less than 10 per centum or more than 15 per centum of the amount or value of steam, or any other form of heat or energy derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee;

(b) a royalty of not more than 5 per centum of the value of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the

lessee, except that as to any byproduct which is a mineral named in section 1 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181), the rate of royalty for such mineral shall be the same as that provided in that Act and the maximum rate of royalty for such mineral shall not exceed the maximum royalty applicable under that Act;

Sec. 1

ROYALTY

(c) payment in advance of an annual rental of not less than $1 per acre or fraction thereof for each year of the lease. If there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law: *Provided, however,* That whenever the Secretary discovers that the rental payment due under a lease is paid timely but the amount of the payment is deficient because of an error or other reason and the deficiency is nominal, as determined by the Secretary pursuant to regulations prescribed by him, he shall notify the lessee of the deficiency and such lease shall not automatically terminate unless the lessee fails to pay the deficiency within the period prescribed in the notice: *Provided further,* That, where any lease has been terminated automatically by operation of law under this section for failure to pay rental timely and it is shown to the satisfaction of the Secretary of the Interior that the failure to pay timely the lease rental was justifiable or not due to a lack of reasonable diligence, he in his judgment may reinstate the lease if—

TIMELY PAID BUT DEFICIENT

(1) a petition for reinstatement, together with the required rental, is filed with the Secretary of the Interior; and

(2) no valid lease has been issued affecting any of the lands in the terminated lease prior to the filing of the petition for reinstatement; and

(d) a minimum royalty of $2 per acre or fraction thereof in lieu of rental payable at the expiration of each lease year for each producing lease, commencing with the lease year beginning on or after the commencement of production in commercial quantities. For the purpose of determining royalties hereunder the value of any geothermal steam and byproduct used by the lessee and not sold and reasonably susceptible of sale shall be determined by the Secretary, who shall take into consideration the cost of exploration and production and the economic value of the resource in terms of its ultimate utilization.

MINIMUM ROYALTY

SEC. 6. (a) Geothermal leases shall be for a primary term of ten years. If geothermal steam is produced or utilized in commercial quantities within this term, such lease shall continue for so long thereafter as geothermal steam is produced or utilized in commercial quantities, but such continuation shall not exceed an additional forty years.

10 YEAR PRIMARY LEASE COMMERCIAL QUANTITIES

(b) If, at the end of such forty years, steam is produced or utilized in commercial quantities and the lands are not needed for other purposes, the lessee shall have a preferential right to a renewal of such lease for a second forty-year term in accordance with such terms and conditions as the Secretary deems appropriate.

(c) Any lease for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling

UNIT PLAN

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for five years and so long thereafter, but not more than thirty-five years, as geothermal steam is produced or utilized in commercial quantities. If, at the end of such extended term, steam is being produced or utilized in commercial quantities and the lands are not needed for other purposes, the lessee shall have a preferential right to a renewal of such lease for a second term in accordance with such terms and conditions as the Secretary deems appropriate.

COMMERCIAL QUANTITY

(d) For purposes of subsection (a) of this section, production or utilization of geothermal steam in commercial quantities shall be deemed to include the completion of one or more wells producing or capable of producing geothermal steam in commercial quantities and a bona fide sale of such geothermal steam for delivery to or utilization by a facility or facilities not yet installed but scheduled for installation not later than fifteen years from the date of commencement of the primary term of the lease.

EXTENSIONS

(e) Leases which have extended by reasons of production, or which have produced geothermal steam, and have been determined by the Secretary to be incapable of further commercial production and utilization of geothermal steam may be further extended for a period of not more than five years from the date of such determination but only for so long as one or more valuable byproducts are produced in commercial quantities. If such byproducts are leasable under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181, et seq.), or under the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-358), and the leasehold is primarily valuable for the production thereof, the lessee shall be entitled to convert his geothermal lease to a mineral lease under, and subject to all the terms and conditions of, such appropriate Act upon application at any time before expiration of the lease extension by reason of byproduct production. The lessee shall be entitled to locate under the mining laws all minerals which are not leasable and which would constitute a byproduct if commercial production or utiliznation of geothermal steam continued. The lessee in order to acquire the rights herein granted him shall complete the location of mineral claims within ninety days after the termination of the lease for geothermal steam. Any such converted lease or the surface of any mining claim located for geothermal byproducts mineral affecting lands withdrawn or acquired in aid of a function of a Federal department or agency, including the Department of the Interior, shall be subject to such additional terms and conditions as may be prescribed by such department or agency with respect to the additional operations or effects resulting from such conversion upon adequate utilization of the lands for the purpose for which they are administered.

CONVERSION TO MINERAL LEASE

LOCATABLE MINERALS

(f) Minerals locatable under the mining laws of the United States in lands subject to a geothermal lease issued under the provisions of this Act which are not associated with the geothermal steam and associated geothermal resources of such lands as defined in section 2(c) herein shall be locatable under said mining laws in accordance with the principles of the Multiple Mineral Development Act (68 Stat. 708; found in 30 U.S.C. 521 et seq.).

ACREAGE

SEC. 7. A geothermal lease shall embrace a reasonably compact area of not more than two thousand five hundred and sixty acres, except where a departure therefrom is occasioned by an irregular subdivision or subdivisions. No person, association, or corporation, except as otherwise provided in this Act, shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this Act or otherwise, any direct or indirect interest in Federal geothermal leases in any one State exceeding twenty thousand four hundred and eighty acres, including leases acquired under the provisions of section 4 of this Act.

INCREASED ACREAGE

At any time after fifteen years from the effective date of this Act the Secretary, after public hearings, may increase this maximum holding in any one State by regulation, not to exceed fifty-one thousand two hundred acres.

ADJUSTMENT OF LEASE TERMS OR CONDITIONS

SEC. 8. (a) The Secretary may readjust the terms and conditions, except as otherwise provided herein, of any geothermal lease issued under this Act at not less than ten-year intervals beginning ten years after the date the geothermal steam is produced, as determined by the Secretary. Each geothermal lease issued under this Act shall provide for such readjustment. The Secretary shall give notice of any proposed readjustment of terms and conditions, and, unless the lessee files with the Secretary objection to the proposed terms or relinquishes the lease within thirty days after receipt of such notice, the lessee shall conclusively be deemed to have agreed with such terms and conditions. If the lessee files objections, and no agreement can be reached between the Secretary and the lessee within a period of not less than sixty days, the lease may be terminated by either party.

ADJUSTMENT OF RENTALS OR ROYALTIES

(b) The Secretary may readjust the rentals and royalties of any geothermal lease issued under this Act at not less than twenty-year intervals beginning thirty-five years after the date geothermal steam is produced, as determined by the Secretary. In the event of any such readjustment neither the rental nor royalty may be increased by more than 50 per centum over the rental or royalty paid during the preceding period, and in no event shall the royalty payable exceed 22½ per centum. Each geothermal lease issue under this Act shall provide for such readjustment. The Secretary shall give notice of any proposed readjustment of rentals and royalties, and, unless the lessee files with the Secretary objection to the proposed rentals and royalties or relinquishes the lease within thirty days after receipt of such notice, the lessee shall conclusively be deemed to have agreed with such terms and conditions. If the lessee files objections, and no agreement can be reached between the Secretary and the lessee within a period of not less than sixty days, the lease may be terminated by either party.

SURFACE USE

(c) Any readjustment of the terms and conditions as to use, protection, or restoration of the surface of any lease of lands withdrawn or acquired in aid of a function of a Federal department or agency other than the Department of the Interior may be made only upon notice to, and with the approval of, such department or agency.

BYPRODUCTS INCLUDING WATER

SEC. 9. If the production, use, or conversion of geothermal steam is susceptible of producing a valuable byproduct or byproducts, including commercially demineralized water for beneficial uses in accordance

with applicable State water laws, the Secretary shall require substantial beneficial production or use thereof unless, in individual circumstances he modifies or waives this requirement in the interest of conservation of natural resources or for other reasons satisfactory to him. However, the production or use of such byproducts shall be subject to the rights of the holders of preexisting leases, claims, or permits covering the same land or the same minerals, if any.

RELINQUISHMENT OF RIGHTS

SEC. 10. The holder of any geothermal lease at any time may make and file in the appropriate land office a written relinquishment of all rights under such lease or of any legal subdivision of the area covered by such lease. Such relinquishment shall be effective as of the date of its filing. Thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his surety or bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment, or from the continued obligation, in accordance with the applicable lease terms and regulations, (1) to make payment of all accrued rentals and royalties, (2) to place all wells on the relinquished lands in condition for suspension or abandonment, and (3) to protect or restore substantially the surface and surface resources.

SUSPENSION OF LEASES

SEC. 11. The Secretary, upon application by the lessee, may authorize the lessee to suspend operations and production on a producing lease and he may, on his own motion, in the interest of conservation suspend operations on any lease but in either case he may extend the lease term for the period of any suspension, and he may waive, suspend, or reduce the rental or royalty required in such lease.

TERMINATION OF LEASES

SEC. 12. Leases may be terminated by the Secretary for any violation of the regulations or lease terms after thirty days notice provided that such violation is not corrected within the notice period, or in the event the violation is such that it cannot be corrected within the notice period then provided that lessee has not commenced in good faith within said notice period to correct such violation and thereafter to proceed diligently to correct such violation. Lessee shall be entitled to a hearing on the matter of such claimed violation or proposed termination of lease if request for a hearing is made to the Secretary within the thirty-day period after notice. The period for correction of violation or commencement to correct such violation of regulations or of lease terms, as aforesaid, shall be extended to thirty days after the Secretary's decision after such hearing if the Secretary shall find that a violation exists.

ROYALTY REDUCTION

SEC. 13. The Secretary may waive, suspend, or reduce the rental or royalty for any lease or portion thereof in the interests of conservation and to encourage the greatest ultimate recovery of geothermal resources, if he determines that this is necessary to promote development or that the lease cannot be successfully operated under the lease terms.

SURFACE USE

SEC. 14. Subject to the other provisions of this Act, a lessee shall be entitled to use so much of the surface of the land covered by his geothermal lease as may be found by the Secretary to be necessary for the production, utilization, and conservation of geothermal resources.

WITHDRAWN OR ACQUIRED LANDS

SEC. 15. (a) Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of the Interior may be issued only under such terms and conditions as the Secretary may prescribe to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired.

(b) Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of Agriculture may be issued only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired. Geothermal leases for lands to which section 24 of the Federal Power Act, as amended (16 U.S.C. 818), is applicable, may be issued only with the consent of, and subject to, such terms and conditions as the Federal Power Commission may prescribe to insure adequate utilization of such lands for power and related purposes.

LANDS UNAVAILABLE FOR GEOTHERMAL LEASING

(c) Geothermal leases under this Act shall not be issued for lands administered in accordance with (1) the Act of August 25, 1916 (39 Stat. 535), as amended or supplemented, (2) for lands within a national recreation area, (3) for lands in a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction, (4) for tribally or individually owned Indian trust or restricted lands, within or without the boundaries of Indian reservations.

OWNERS OF LEASES

SEC. 16. Leases under this Act may be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States or of any State or the District of Columbia, or governmental units, including, without limitation, municipalities.

MULTIPLE USE

SEC. 17. Administration of this Act shall be under the principles of multiple use of lands and resources, and geothermal leases shall, insofar as feasible, allow for coexistence of other leases of the same lands for deposits of minerals under the laws applicable to them, for the location and production of claims under the mining laws, and for other uses of the areas covered by them. Operations under such other leases or for such other uses, however, shall not unreasonably interfere with or endanger operations under any lease issued pursuant to this Act, nor shall operations under leases so issued unreasonably interfere with or endanger operations under any lease, license, claim, or permit issued pursuant to the provisions of any other Act.

UNIT PLAN

SEC. 18. For the purpose of properly conserving the natural resources of any geothermal pool, field, or like area, or any part thereof, lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever this is determined and certified by the Secretary to be necessary or advisable in the public interest. The Secretary may in his discretion and with the consent of the holders of leases involved, establish, alter, change, revoke, and make such regulations with reference to such leases in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure reasonable protection of the

public interest. He may include in geothermal leases a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States. Any such plan may, in the discretion of the Secretary, provide for vesting in the Secretary or any other person, committee, or Federal or State agency designated therein, authority to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan. All leases operated under any such plan approved or prescribed by the Secretary shall be excepted in determining holdings or control for the purposes of section 7 of this Act.

POOLING

When separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

CONTRACTS

The Secretary is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more lessees of geothermal leases, with one or more persons, associations, or corporations whenever, in his discretion, the conservation of natural products or the public convenience or necessity may require or the interests of the United States may be best served thereby. All leases operated under such approved operating, drilling, or development contracts, and interests thereunder, shall be excepted in determining holdings or control under section 7 of this Act.

FAIR AND ADEQUATE CHARGES

SEC. 19. Upon request of the Secretary, other Federal departments and agencies shall furnish him with any relevant data then in their possession or knowledge concerning or having bearing upon fair and adequate charges to be made for geothermal steam produced or to be produced for conversion to electric power or other purposes. Data given to any department or agency as confidential under law shall not be furnished in any fashion which identifies or tends to identify the business entity whose activities are the subject of such data or the person or persons who furnished such information.

DISPERSAL OF MONEYS RECEIVED

SEC. 20. All moneys received under this Act from public lands under the jurisdiction of the Secretary shall be disposed of in the same manner as moneys received from the sale of public lands. Moneys received under this Act from other lands shall be disposed of in the same manner as other receipts from such lands.

KNOWN GEOTHERMAL RESOURCES AREAS LIST

SEC. 21. (a) Within one hundred and twenty days after the effective date of this Act, the Secretary shall cause to be published in the Federal Register a determination of all lands which were included within any known geothermal resources area on the effective date of the Act. He shall likewise publish in the Federal Register from time to time his determination of other known geothermal resources areas

specifying in each case the date the lands were included in such area; and

MINERALS RESERVATION

(b) Geothermal resources in lands the surface of which has passed from Federal ownership but in which the minerals have been reserved to the United States shall not be developed or produced except under geothermal leases made pursuant to this Act. If the Secretary of the Interior finds that such development is imminent, or that production from a well heretofore drilled on such lands is imminent, he shall so report to the Attorney General, and the Attorney General is authorized and directed to institute an appropriate proceeding in the United States district court of the district in which such lands are located, to quiet the title of the United States in such resources, and if the court determines that the reservation of minerals to the United States in the lands involved included the geothermal resources, to enjoin their production otherwise than under the terms of this Act: *Provided*, That upon an authoritative judicial determination that Federal mineral reservation does not include geothermal steam and associated geothermal resources the duties of the Secretary of the Interior to report and of the Attorney General to institute proceedings, as hereinbefore set forth, shall cease.

SEC. 22. Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to its exemption from State water laws.

SEC. 23. (a) All leases under this Act shall be subject to the condition that the lessee will, in conducting his exploration, development, and producing operations, use all reasonable precautions to prevent waste of geothermal steam and associated geothermal resources developed in the lands leased.

(b) Rights to develop and utilize geothermal steam and associated geothermal resources underlying lands owned by the United States may be acquired solely in accordance with the provisions of this Act.

SEC. 24. The Secretary shall prescribe such rules and regulations as he may deem appropriate to carry out the provisions of this Act. Such regulations may include, without limitation, provisions for (a) the prevention of waste, (b) development and conservation of geothermal and other natural resources, (c) the protection of the public interest, (d) assignment, segregation, extension of terms, relinquishment of leases, development contracts, unitization, pooling, and drilling agreements, (e) compensatory royalty agreements, suspension of operations or production, and suspension or reduction of rentals or royalties, (f) the filing of surety bonds to assure compliance with the terms of the lease and to protect surface use and resources, (g) use of the surface by a lessee of the lands embraced in his lease, (h) the maintenance by the lessee of an active development program, and (i) protection of water quality and other environmental qualities.

DISPERSAL OF MINERALS LANDS

SEC. 25. As to any land subject to geothermal leasing under section 3 of this Act, all laws which either (a) provide for the disposal of land by patent or other form of conveyance or by grant or by operation of law subject to a reservation of any mineral or (b) prevent or restrict the disposal of such land because of the mineral character of the land, shall hereafter be deemed to embrace geothermal steam and associated geothermal resources as a substance which either must be reserved or

must prevent or restrict the disposal of such land, as the case may be. This section shall not be construed to affect grants, patents, or other forms of conveyances made prior to the date of enactment of this Act.

SEC. 26. The first two clauses in section 11 of the Act of August 13, 1954 (68 Stat. 708, 716), are amended to read as follows:

"As used in this Act, 'mineral leasing laws' shall mean the Act of February 25, 1920 (41 Stat. 437); the Act of April 17, 1926 (44 Stat. 301); the Act of February 7, 1927 (44 Stat. 1057); Geothermal Steam Act of 1970, and all Acts heretofore or hereafter enacted which are amendatory of or supplementary to any of the foregoing Acts; 'Leasing Act minerals' shall mean all minerals which, upon the effective date of this Act, are provided in the mineral leasing laws to be disposed of thereunder and all geothermal steam and associated geothermal resources which, upon the effective date of the Geothermal Steam Act of 1970, are provided in that Act to be disposed of thereunder;".

INCLUDES GEOTHERMAL RESOURCES IN THE ACT OF 2/25/20

SEC. 27. The United States reserves the ownership of and the right to extract under such rules and regulations as the Secretary may prescribe oil, hydrocarbon gas, and helium from all geothermal steam and associated geothermal resources produced from lands leased under this Act in accordance with presently applicable laws: *Provided*, That whenever the right to extract oil, hydrocarbon gas, and helium from geothermal steam and associated geothermal resources produced from such lands is exercised pursuant to this section, it shall be exercised so as to cause no substantial interference with the production of geothermal steam and associated geothermal resources from such lands.

UNITED STATES RESERVATION

Approved December 24, 1970.

TRANS-ALASKA PIPELINE AUTHORIZATION ACT

November 16, 1973

TRANS-ALASKA PIPELINE AUTHORIZATION ACT

ACT OF NOVEMBER 16, 1973

To amend section 28 of the Mineral Leasing Act of 1920, and to authorize a trans-Alaska oil pipeline, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 101. Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), is further amended to read as follows:

Sec. 28

"Grant of Authority

GRANT OF AUTHORITY

"SEC. 28. (a) Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 1 of this Act, as amended, in accordance with the provisions of this section.

"Definitions

DEFINITIONS

"(b)(1) For the purposes of this section 'Federal lands' means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

"(2) 'Secretary' means the Secretary of the Interior.

"(3) 'Agency head' means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

"Inter-Agency Coordination

INTER-AGENCY COORDINATION

"(c)(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

"(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expedit-

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ing review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

"Width Limitations

WIDTH LIMITATIONS

"(d) The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites, and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

"Temporary Permits

TEMPORARY PERMITS

"(e) A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

"Regulatory Authority

REGULATORY AUTHORITY

"(f) Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination.

"Pipeline Safety

PIPELINE SAFETY

"(g) The Secretary or agency head shall impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.

"Environmental Protection

ENVIRONMENTAL PROTECTION

"(h)(1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102(2)(C) or any other provision of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852).

RIGHT-OF-WAY OR PERMIT

SUBMISSION OF PLAN

"(2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

DISCLOSURE

"Disclosure

"(i) If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

TECHNICAL AND FINANCIAL CAPABILITY

"Technical and Financial Capability

"(j) The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for which the right-of-way or permit is requested in accordance with the requirements of this section.

"Public Hearings

PUBLIC HEARINGS

"(k) The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.

"Reimbursement of Costs

REIMBURSEMENT OF COSTS

"(l) The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

"Bonding

BONDING

"(m) Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation of the Secretary or agency head.

"Duration of Grant

DURATION OF GRANT

"(n) Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

"Suspension or Termination of Right-of-Way

SUSPENSION OR TERMINATION OF RIGHT-OF-WAY

"(o)(1) Abandonment of a right-of-way or noncompliance with any provision of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceeding pursuant to title 5, United States Code, section 554, the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

"(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

"(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided*, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

"Joint Use of Rights-of-Way

JOINT USE OF RIGHTS-OF-WAY

"(p) In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

"Statutes

STATUTES

"(q) No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

"Common Carriers

COMMON CARRIERS

"(r)(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

"(2)(A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

"(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.

"(3)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

"(B) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

"(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this Act that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this Act.

"(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Interstate Commerce Commission or Federal Power Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

"(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

"Right-of-Way Corridors

RIGHT-OF-WAY CORRIDORS

"(s) In order to minimize adverse environmental impacts and to prevent the proliferation of separate rights-of-way across Federal lands, the Secretary shall, in consultation with other Federal and State agencies, review the need for a national system of transportation and utility corridors across Federal lands and submit a report of his findings and recommendations to the Congress and the President by July 1, 1975.

"Existing Rights-of-Way

EXISTING RIGHTS-OF-WAY

"(t) The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to

the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1970 (Public Law 90-190; 42 U.S.C. 4321).

"Limitations on Export

LIMITATIONS ON EXPORT

"(u) Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28 of the Mineral Leasing Act of 1920, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1969 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1969: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

"State Standards

STATE STANDARDS

"(v) The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

"Reports

REPORTS

"(w)(1) The Secretary and other appropriate agency heads shall report to the House and Senate Committees on Interior and Insular Affairs annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

"(2) The Secretary or agency head shall notify the House and Senate Committees on Interior and Insular Affairs promptly upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty days (not counting days on which the

House of Representatives or the Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

"(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

"(4) The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Interstate Commerce Commission any potential dangers of or actual explosions, or potential or actual spillage on Federal lands and shall include in such report a statement of corrective action taken to prevent such explosion or spillage.

"Liability

LIABILITY

"(x)(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this Act shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

"(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

"(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

"(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

"(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

"(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

"(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

"Antitrust Laws

ANTITRUST LAWS

"(y) The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws."

NOTE: Subsequent Titles are not included.

ACT OF APRIL 21, 1976

excerpt only

ACT OF APRIL 21, 1976

SEC. 6. The following provisions of law are amended by deleting "December" and "June", wherever they appear, and inserting "March" and "September", respectively, in lieu thereof—

(2) section 35 of the Act of February 25, 1920, as amended (30 U.S.C. 191); and

Sec. 35

MONTH CHANGES

FEDERAL COAL LEASING

AMENDMENTS ACT OF 1975**

August 4, 1976

**Title changed to: FEDERAL COAL LEASING AMENDMENTS ACT OF 1976 by Act of 10/30/78 at p. 113 this text.

ACT OF AUGUST 4, 1976

To amend the Mineral Leasing Act of 1920, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Federal Coal Leasing Amendments Act of 1975".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of the Mineral Lands Leasing Act, the reference shall be considered to be made to a section or other provision of the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (41 Stat. 437).

SEC. 2. The first sentence of section 2(a) of the Mineral Lands Leasing Act (30 U.S.C. 201(a)) is amended to read as follows:

Sec. 2(a)

"(1) The Secretary of the Interior is authorized to divide any lands subject to this Act which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease.".

COAL LEASING TRACTS

COMPETITIVE BIDDING

PUBLIC BODIES

FAIR MARKET VALUE

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

4/21/76
8/4/76

SEC. 3. The last sentence of section 2(a) of the Mineral Lands Leasing Act (30 U.S.C. 201(a)) is amended to read as follows:

"(2)(A) The Secretary shall not issue a lease or leases under the terms of this Act to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided for in section 7(b) of this Act, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to the date of enactment of the Federal Coal Leasing Amendments Act of 1975 shall not be counted.

"(B) Any lease proposal which permits surface coal mining within the boundaries of a National Forest which the Secretary proposes to issue under this Act shall be submitted to the Governor of each State within which the coal deposits subject to such lease are located. No such lease may be issued under this Act before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the date the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary a statement of reasons why such lease should not be issued and the Secretary shall, on the basis of such statement, reconsider the issuance of such lease.

"(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

"(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity shall consult with appropriate State agencies and local governments and the general public and shall provide an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

Sec. 2(a)

LEASE ISSUING RESTRICTIONS

10 YEARS NON-PRODUCTION

PRIOR DATES NOT COUNTED

NATIONAL FOREST

GOVERNOR OBJECTIONS

LAND-USE PLAN

PUBLIC HEARINGS

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

"(iii) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

FEDERAL AGENCY JURISDICTIONS

"(B) Each land-use plan prepared by the Secretary (or in the case of lands within the National Forest System, the Secretary of Agriculture pursuant to subparagraph (A)(i)) shall include an assessment of the amount of coal deposits in such land, identifying the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations.

DESCRIPTION OF LAND-USE PLAN

"(C) Prior to issuance of any coal lease, the Secretary shall consider effects which mining of the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural and other economic activities, and on public services. Prior to issuance of a lease, the Secretary shall evaluate and compare the effects of recovering coal by deep mining, by surface mining, and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract. This evaluation and comparison by the Secretary shall be in writing but shall not prohibit the issuance of a lease; however, no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract. Public hearings in the area shall be held by the Secretary prior to the lease sale.

CONSIDERATION OF IMPACTED AREA

"(D) No lease sale shall be held until after the notice of the proposed offering for lease has been given once a week for three consecutive weeks in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.

NOTICE OF PROPOSED OFFERING FOR LEASE

"(E) Each coal lease shall contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) and the Clean Air Act (42 U.S.C. 1857 and following).".

COMPLIANCE REQUIREMENTS

SEC. 4. Subject to valid existing rights, section 2(b) of the Mineral Lands Leasing Act (30 U.S.C. 201(b)) is amended to read as follows:

Sec. 2(b)

"(b)(1) The Secretary may, under such regulations as he may prescribe, issue to any person an exploration license. No person may conduct coal exploration for commercial purposes for any coal on lands subject to this Act without such an exploration license. Each exploration license shall be for a term of not more than two years and shall be subject to a reasonable fee. An exploration license shall confer no right to a lease under this Act. The issuance of exploration licenses shall not preclude the Secretary from issuing coal leases at such times and locations and to such persons as he deems appropriate. No exploration license will be issued for any land on which a coal lease has been issued. A separate exploration license will be required for exploration in each State. An application for an exploration license shall identify general areas and probable methods of exploration. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and shall be subject to all applicable Federal, State, and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license.

EXPLORATION LICENSE

TERM

NOT FOR LEASED LANDS

"(2) A licensee may not cause substantial disturbance to the natural land surface. He may not remove any coal for sale but may remove a reasonable amount of coal from the lands subject to this Act included under his license for analysis and study. A licensee must comply with all applicable rules and regulations of the Federal agency having jurisdiction over the surface of the lands subject to this Act. Explora-

LICENSE RESTRICTIONS

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

tion licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

"(3) The licensee shall furnish to the Secretary copies of all data (including, but not limited to, geological, geophysical, and core drilling analyses) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

CONFIDENTIAL DATA SUBMISSION

"(4) Any person who willfully conducts coal exploration for commercial purposes on lands subject to this Act without an exploration license issued hereunder shall be subject to a fine of not more than $1,000 for each day of violation. All data collected by said person on any Federal lands as a result of such violation shall be made immediately available to the Secretary, who shall make the data available to the public as soon as it is practicable. No penalty under this subsection shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation.".

VIOLATIONS

SEC. 5. (a) Subject to valid existing rights, subsections 2(c) and 2(d) of the Act of August 31, 1964 (78 Stat. 710; 30 U.S.C. 201-1) are hereby repealed.

Sec. 2(c) REPEALED
Sec. 2(d) REPEALED

(b) Section 2 of the Mineral Lands Leasing Act is amended by the addition of the following new subsection at the end thereof:

"(d)(1) The Secretary, upon determining that maximum economic recovery of the coal deposit or deposits is served thereby, may approve the consolidation of coal leases into a logical mining unit. Such consolidation may only take place after a public hearing, if requested by any person whose interest is or may be adversely affected. A logical mining unit is an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resources. A logical mining unit may consist of one or more Federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources, but all the lands in a logical mining unit must be under the effective control of a single operator, be able to be developed and operated as a single operation and be contiguous.

CONSOLIDATION INTO LOGICAL MINING UNITS (LMU)

DESCRIPTION OF LMU

"(2) After the Secretary has approved the establishment of a logical mining unit, any mining plan approved for that unit must require such diligent development, operation, and production that the reserves of the entire unit will be mined within a period established by the Secretary which shall not be more than forty years.

40 YEARS MINING PERIOD

"(3) In approving a logical mining unit, the Secretary may provide, among other things, that (i) diligent development, continuous operation, and production on any Federal lease or non-Federal land in the logical mining unit shall be construed as occurring on all Federal leases in that logical mining unit, and (ii) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties.

ROYALTY

"(4) The Secretary may amend the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit.

AMENDING LEASE

"(5) Leases issued before the date of enactment of this Act may be included with the consent of all lessees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

PRIOR LEASES

"(6) By regulation the Secretary may require a lessee under this Act to form a logical mining unit, and may provide for determination of participating acreage within a unit.

REQUIRING LMU

"(7) No logical mining unit shall be approved by the Secretary if the total acreage (both Federal and non-Federal) of the unit would exceed twenty-five thousand acres.

"(8) Nothing in this section shall be construed to waive the acreage limitations for coal leases contained in section 27(a) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)).".

ACREAGE

Sec. 27(a) not waived

SEC. 6. Section 7 of the Mineral Lands Leasing Act (30 U.S.C. 207) is amended to read as follows:

Sec. 7

"SEC. 7. (a) A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease. Any lease which is not producing in commercial quantities at the end of ten years shall be terminated. The Secretary shall by regulation prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations. The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended.

LEASE TERM

RENTALS
ROYALTY

"(b) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties. Such advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept advance royalties in lieu of the requirement of continued operation. Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) relating to commencement of production at the end of ten years.

DILIGENT DEVELOPMENT

CONTINUED OPERATION

ROYALTY REDUCTIONS

"(c) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, and not later than three years after a lease is issued, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval.".

SIGNIFICANT ENVIRONMENTAL DISTURBANCE

SEC. 7. The Mineral Lands Leasing Act is amended by inserting after section 8 the following new section 8A:

Sec. 8A

"SEC. 8A. (a) The Secretary is authorized and directed to conduct a comprehensive exploratory program designed to obtain sufficient data and information to evaluate the extent, location, and potential for developing the known recoverable coal resources within the coal lands

COMPREHENSIVE EXPLORATION PROGRAM

NOTE: Regarding all MIneral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

subject to this Act. This program shall be designed to obtain the resource information necessary for determining whether commercial quantities of coal are present and the geographical extent of the coal fields and for estimating the amount of such coal which is recoverable by deep mining oporations and the amount of such coal which is recoverable by surface mining operations in order to provide a basis for—

"(1) developing a comprehensive land use plan pursuant to section 2;

"(2) improving the information regarding the value of public resources and revenues which should be expected from leasing;

"(3) increasing competition among producers of coal, or products derived from the conversion of coal, by providing data and information to all potential bidders equally and equitably;

"(4) providing the public with information on the nature of the coal deposits and the associated stratum and the value of the public resources being offered for sale; and

"(5) providing the basis for the assessment of the amount of coal deposits in those lands subject to this Act under subparagraph (B) of section 2(a)(3).

EXPLORATORY ACITVITIES

"(b) The Secretary, through the United States Geological Survey, is authorized to conduct seismic, geophysical, geochemical, or stratigraphic drilling, or to contract for or purchase the results of such exploratory activities from commercial or other sources which may be needed to implement the provisions of this section.

GEOPHYSICAL SURVEY

"(c) Nothing in this section shall limit any person from conducting exploratory geophysical surveys including seismic, geophysical, chemical surveys to the extent permitted by section 2(b). The information obtained from the exploratory drilling carried out by a person not under contract with the United States Government for such drilling prior to award of a lease shall be provided the confidentiality pursuant to subsection (d).

PUBLIC RECORDS

"(d) The Secretary shall make available to the public by appropriate means all data, information, maps, interpretations, and surveys which are obtained directly by the Department of the Interior or under a service contract pursuant to subsection (b). The Secretary shall maintain a confidentiality of all proprietary data or information purchased from commercial sources while not under contract with the United States Government until after the areas involved have been leased.

CONFIDENTIALITY

"(e) All Federal departments or agencies are authorized and directed to provide the Secretary with any information or data that may be deemed necessary to assist the Secretary in implementing the exploratory program pursuant to this section. Proprietary information or data provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary is authorized and directed to utilize the existing capabilities and resources of other Federal departments and agencies by appropriate agreement.

PUBLIC MAPS AND REPORTS

"(f) The Secretary is directed to prepare, publish, and keep current a series of detailed geological, and geophysical maps of, and reports concerning, all coal lands to be offered for leasing under this Act, based on data and information compiled pursuant to this section. Such maps and reports shall be prepared and revised at reasonable intervals beginning eighteen months after the date of enactment of this Act. Such maps and reports shall be made available on a continuing basis to any person on request.

"(g) Within six months after the date of enactment of this Act, the Secretary shall develop and transmit to Congress an implementation plan for the coal lands exploration program authorized by this section, including procedures for making the data and information available to the public pursuant to subsection (d), and maps and reports pursuant to subsection (f). The implementation plan shall include a projected schedule of exploratory activities and identification of the regions and areas which will be explored under the coal lands exploration program during the first five years following the enactment of this section. In addition, the implementation plan shall include estimates of the appropriations and staffing required to implement the coal lands exploration program.

IMPLEMENTATION PLAN

"(h) The stratigraphic drilling authorized in subsection (b) shall be carried out in such a manner as to obtain information pertaining to all recoverable reserves. For the purpose of complying with subsection (a), the Secretary shall require all those authorized to conduct stratigraphic drilling pursuant to subsection (b) to supply a statement of the results of test boring of core sampling including logs of the drill holes; the thickness of the coal seams found; an analysis of the chemical properties of such coal; and an analysis of the strata layers lying above all the seams of coal. All drilling activities shall be conducted using the best current technology and practices.".

SEC. 8. The Mineral Lands Leasing Act is further amended by adding after section 8A the following new section 8B:

Sec. 8B
REPORT

"SEC. 8B. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the leasing and production of coal lands subject to this Act during such fiscal year; a summary of management, supervision, and enforcement activities; and recommendations to the Congress for improvements in management, environmental safeguards, and amount of production in leasing and mining operations on coal lands subject to this Act. Each submission shall also contain a report by the Attorney General of the United States on competition in the coal and energy industries, including an analysis of whether the antitrust provisions of this Act and the antitrust laws are effective in preserving or promoting competition in the coal or energy industry.".

Sec. 35

SEC. 9. (a) Section 35 of the Mineral Lands Leasing Act, as amended (30 U.S.C. 191) is further amended by deleting "52½ per centum thereof shall be paid into, reserved" and inserting in lieu thereof: "40 per centum thereof shall be paid into, reserved", and is further amended by striking the period at the end of the proviso and inserting in lieu thereof the following language: ": *Provided further*, That an additional 12½ per centum of all moneys received from sales, bonuses, royalties, and rentals of public lands under the provisions of this Act and the Geothermal Steam Act of 1970 shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said additional 12½ per centum of all moneys paid to any State on or after January 1, 1976, shall be used by such State and its subdivisions as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services: *Provided further*, That such funds now held or to be received, by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as 'C-A'; 'C-B'; 'U-A' and 'U-B' shall be used by such States and subdivisions as the legislature of each State may direct

DISPERSAL OF MONEY

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services.".

(b) In the first sentence of section 35 of the Mineral Lands Leasing Act, before the words "shall be paid into the Treasury of the United States" insert "and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof,"; before the words "from lands within the naval petroleum reserves" insert "and the Geothermal Steam Act of 1970"; and, in the second sentence, before the words "not otherwise disposed of" insert "and the Geothermal Steam Act of 1970".

Sec. 35

ADDING GEOTHERMAL

SEC. 10. The Director of the Office of Technology Assessment is authorized and directed to conduct a complete study of coal leases entered into by the United States under section 2 of the Act of February 25, 1920 (commonly known as the Mineral Lands Leasing Act). Such study shall include an analysis of all mining activities, present and potential value of said coal leases, receipts of the Federal Government from said leases, and recommendations as to the feasibility of the use of deep mining technology in said leased area. The Director shall submit the results of his study to the Congress within one year after the date of enactment of this Act.

STUDY

SEC. 11. (a) Section 27(a)(1) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)(1)), is amended to read as follows:

Sec. 27(a)(1)

"(1) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this Act or otherwise, coal leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State and in no case greater than an aggregate of one hundred thousand acres in the United States: *Provided*, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of one hundred thousand acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: *Provided, further*, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.".

ACREAGE

(b) Subject to valid existing rights, section 27(a)(2) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)(2)) is hereby repealed.

Sec. 27(a)(2) REPEALED

SEC. 12. (a) Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) is amended by striking out "(b) set apart for military or naval purposes, or (c)" and insert in lieu thereof "or (b)".

Sec. 3

LEASING MILITARY OR NAVAL LANDS

(b) Such section 3 is further amended by inserting the following after the first sentence thereof: "Coal or lignite under acquired lands set apart for military or naval purposes may be leased by the Secretary, with the concurrence of the Secretary of Defense, to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.".

SEC. 13. (a) Subject to valid existing rights, section 4 of the Mineral Lands Leasing Act (30 U.S.C. 204) is hereby repealed.

Sec. 4 REPEALED

(b) Subject to valid existing rights, section 3 of the Mineral Lands Leasing Act (30 U.S.C. 203) is amended to read as follows:

Sec. 3

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

"SEC. 3. Any person, association, or corporation holding a lease of coal lands or coal deposits under the provisions of this Act may with the approval of the Secretary of the Interior, upon a finding by him that it would be in the interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres, or add acreage larger than that in the original lease. The Secretary shall prescribe terms and conditions which shall be consistent with this Act and applicable to all of the acreage in such modified lease.".

Sec. 3

MODIFYING COAL LEASES

SEC. 14. Section 39 of the Mineral Lands Leasing Act (30 U.S.C. 209) is amended by adding the following sentence at the end thereof: "Nothing in this section shall be construed as granting to the Secretary the authority to waive, suspend, or reduce advance royalties.".

Sec. 39

ROYALTY

SEC. 15. Section 27 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 184) is amended by adding at the end thereof the following new subsection:

Sec. 27

"(l)(1) At each stage in the formulation and promulgation of rules and regulations concerning coal leasing pursuant to this Act, and at each stage in the issuance, renewal, and readjustment of coal leases under this Act, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

"(2) No coal lease may be issued, renewed, or readjusted under this Act until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with the Administrative Procedures Act and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this Act, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this Act, the antitrust laws, and the public interest.

NOTIFYING ATTORNEY GENERAL REGARDING LEASES

"(3) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

NO IMMUNITY

"(4) As used in this subsection, the term 'antitrust law' means—

ANTITRUST LAW

"(A) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

"(B) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

"(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

"(D) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

"(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).".

SEC. 16. Nothing in this Act, or the Mineral Lands Leasing Act and the Mineral Leasing Act for Acquired Lands which are amended by this Act, shall be construed as authorizing coal mining on any area of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National System of Trails, and the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act.

MINING RESTRICTIONS

ACT OF SEPTEMBER 28, 1976

Title III

TITLE III—STATES OIL SHALE FUNDS

SEC. 301. Section 35 of the Act of February 25, 1920 (41 Stat. 450), as amended (30 U.S.C. 191), is further amended by striking the period at the end of the proviso and inserting in lieu thereof the language as follows: ": *And provided further*, That all moneys paid to any State from sales, bonuses, royalties, and rentals of oil shale in public lands may be used by such State and its subdivisions for planning, construction, and maintenance of public facilities, and provision of public services, as the legislature of the State may direct, giving priority to those subdivisions of the State socially or economically impacted by the development of the resource.".

Approved September 28, 1976.

NOTE: Other Titles not included.

ACT OF SEPTEMBER 28, 1976

Sec. 35

STATE USE OF MONEY
OIL SHALE

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

MINERAL REVENUES

SEC. 317. (a) Section 35 of the Act of February 25, 1920 (41 Stat. 437, 450; 30 U.S.C. 181, 191), as amended, is further amended to read as follows: "All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts', as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts.".

Sec. 35

DISPERSAL OF MONEY

(b) Funds now held pursuant to said section 35 by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C-A; C-B; U-A and U-B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services.

COLORADO AND UTAH OIL SHALE TEST LEASES

(c)(1) The Secretary is authorized to make loans to States and their political subdivisions in order to relieve social or economic impacts occasioned by the development of minerals leased in such States pursuant to the Act of February 25, 1920, as amended. Such loans shall be confined to the uses specified for the 50 per centum of mineral revenues to be received by such States and subdivisions pursuant to section 35 of such Act. All loans shall bear interest at a

RELIEVING SOCIAL OR ECONOMIC IMPACT

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

rate not to exceed 3 per centum and shall be for such amounts and durations as the Secretary shall determine. The Secretary shall limit the amounts of such loans to all States except Alaska to the anticipated mineral revenues to be received by the recipients of said loans and to Alaska to 55 per centum of anticipated mineral revenues to be received by it pursuant to said section 35 for any prospective 10-year period. Such loans shall be repaid by the loan recipients from mineral revenues to be derived from said section 35 by such recipients, as the Secretary determines.

(2) The Secretary, after consultation with Governors of the affected States, shall allocate such loans among the States and their subdivisions in a fair and equitable manner, giving priority to those States and subdivisions suffering the most severe impacts.

(3) Loans under this subsection shall be subject to such terms and conditions as the Secretary determines necessary to assure that the purpose of this subsection will be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section.

NOTE: Other Titles are not included.

ACT OF OCTOBER 30, 1978

ACT OF OCTOBER 30, 1978

To further amend the Mineral Leasing Act of 1920 (30 U.S.C. 201(a)), to authorize the Secretary of the Interior to exchange Federal coal leases and to encourage recovery of certain coal deposits, and for other purposes.

COAL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding any provision of law to the contrary and notwithstanding the provisions of section 2(a)(1) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(1)), the Secretary of the Interior is authorized to issue leases for coal on other Federal lands in the State of Utah to the lease applicant named in preference right lease applications serial numbers U1362, U1363, U1375, U5233, U5234, U5235, U5236, and U5237 upon surrender and relinquishment by the applicant of such preference right lease applications and all right to lease the lands covered by such applications, such surrender and relinquishment to be made in exchange for the lease or leases to be issued by the Secretary.

UTAH PREFERENCE RIGHT LEASE APPLICANTS

(b) Notwithstanding any provision of law to the contrary and notwithstanding the provisions of section 2(a)(1) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(1)), the Secretary of the Interior is authorized to issue leases for coal on other Federal lands in the State of Wyoming to the owner or owners of Federal coal leases serial numbers W0313666, W0111833, W073289, W0312311, and W0313668, B025369, W0256663, W5035, W0322794 covering lands in the State of Wyoming upon the surrender and relinquishment of such leases or portions thereof.

WYOMING SPECIFIC PROVIDIONS

(c) The leases to be issued by the Secretary pursuant to the authority granted by subsections (a) and (b) of this Act and the leases or portions thereof or rights to leases to be exchanged therefor shall be of equal value. If such leases or portions thereof or rights to leases are not of equal value, the Secretary is authorized to receive, or pay out of funds available for that purpose, cash in an amount up to

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25 per centum of the value of the coal lease or leases to be issued by the Secretary in order to equalize the value of the lease or lease rights to be exchanged.

(d) Any exchange lease issued by the Secretary under the authority of this Act shall contain the same terms and conditions as those leases surrendered, or in case of a surrendered lease right, the same terms and conditions as those to which the lease applicant would be entitled.

(e) This subsection does not require or obligate the Secretary to take any action or to make any commitment to a lessee or lease applicant with respect to issuance, administration, or development of any lease.

Sec. 2(a)(1)

FAIR MARKET VALUE

Sec. 2. Section 2(a)(1) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(1)), is further amended by striking the period at the end of the first sentence and inserting in lieu thereof the following: ": *Provided*, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary and incidental to the exercise of a right-of-way permit issued pursuant to title V of the Federal Land Policy and Management Act of 1976.".

RIGHT-OF-WAY PERMITS

Sec. 3

Sec. 3. Section 3 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 203), is further amended by adding after the word "contiguous", the words "or cornering", and by deleting the period at the end of the second sentence thereof and adding the following clause: "except that nothing in this section shall require the Secretary to apply the production or mining plan requirements of section 2(d)(2) and 7(c) of this Act (30 U.S.C. 201(d)(2) and 207(c)). The minimum royalty provisions of section 7(a) of this Act (30 U.S.C. 207(a)) shall not apply to any lands covered by this modified lease prior to a modification until the term of the original lease or extension thereof which became effective prior to the effective date of this Act has expired.".

ROYALTY

Sec. 37

Sec. 4. Section 37 of the Mineral Leasing Act of 1920 (30 U.S.C. 193) is further amended by the addition of the words "except as provided in sections 206 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 2757-8), and" after "only in the form and manner provided in this Act," and before the word "except".

FLPMA REFERENCE

Sec. 30

Sec. 5. Section 30 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 187) is further amended by striking the word "boy" and inserting in lieu thereof "child" and by striking the phrase "or the employment of any girl or woman, without regard to age,".

LAKE DE SMET

Sec. 6. (a) The Secretary of the Interior is authorized and directed within nine months of the date of enactment of this Act to evaluate and review the scenic, recreational, fish and wildlife, cultural, historic, and other public values of the reservoir in Johnson County, Wyoming, known as Lake DeSmet and the adjoining and adjacent coal properties. The Secretary's review and evaluation shall be for the purpose of determining whether the Lake DeSmet property shall be acquired for public use and enjoyment by exchange for Federal coal lands.

(b) If the Secretary determines that the Lake DeSmet property shall be acquired, he is authorized, with the agreement of the owners of the property, to acquire the Lake DeSmet property by exchanging Federal coal lands, interests in Federal coal lands, or Federal coal leases.

(c) The exchange authorized by this section shall be for equal value. To the extent, if any, the value of the lands or interests exchanged are not equal the difference may be adjusted by the payment of money so long as the payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. In determining the value of the Lake DeSmet property, the Secretary is authorized and directed to include the fair market value of the property, considering the acquisition cost of the lands, the value of the coal deposits, water rights and water resource developments, and capital and other appropriate improvements. The exchange of

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

such properties shall be carried out expeditiously in accordance with the provisions of this section and other Federal land exchange authority to the extent such authority is applicable and consistent with this section.

(d) The Secretary is authorized to transfer any property acquired pursuant to this section (1) to the appropriate agency in the Department of the Interior for management and administration, or (2) to the State of Wyoming for recreational purposes and fish and wildlife management. Any conveyance to the State of Wyoming shall contain a reservation of all minerals to the United States and shall provide that, if the State ceases to use the property conveyed for fish propagation and wildlife management, title to such property shall revert to the United States.

SEC. 7. Effective October 1, 1979, there are authorized to be appropriated to the Secretary such sums as are necessary to carry out the purposes of this Act.

SEC. 8. The title of the Federal Coal Leasing Amendments Act of 1975 (Public Law 94-377) is hereby changed to the Federal Coal Leasing Amendments Act of 1976.

CHANGE TITLE OF FEDERAL COAL LEASING AMENDMENTS ACT OF 1975 TO "1976"

Approved October 30, 1978.

ACT OF NOVEMBER 16, 1981

To facilitate and encourage the production of oil from tar sand and other hydrocarbon deposits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (1) section 1 (30 U.S.C. 181), sections 21 (a) and (c) (30 U.S.C. 241 (a) and (c)), and section 34 (30 U.S.C. 182) of the Mineral Lands Leasing Act of 1920, as amended, are amended by deleting "native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)" and by inserting in lieu thereof "gilsonite (including all vein-type solid hydrocarbons),", except that in the first sentence of section 21(a) the word "and" should be inserted before "gilsonite" and the comma after the parenthesis should be eliminated in section 21.

Sec. 21(a) and (c)

GILSONITE

(2) Section 27(k) of such Act (30 U.S.C. 184(k)) is amended by deleting "native asphalt, solid and semisolid bitumen, bituminous rock," and by inserting in lieu thereof "gilsonite (including all vein-type solid hydrocarbons),".

Sec. 27(k)

(3) Section 39 of such Act (30 U.S.C. 209) is amended by inserting "gilsonite (including all vein-type solid hydrocarbons)," after "oil shale".

Sec. 39

(4) Section 1 of such Act (30 U.S.C. 181) is further amended by adding after the first paragraph the following new paragraphs:

Sec. 1

DEFINITIONS

"The term 'oil' shall embrace all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

"The term 'combined hydrocarbon lease' shall refer to a lease issued in a special tar sand area pursuant to section 17 after the date of enactment of the Combined Hydrocarbon Leasing Act of 1981.

"The term 'special tar sand area' means (1) an area designated by the Secretary of the Interior's orders of November 20, 1980 (45 FR 76800-76801) and January 21, 1981 (46 FR 6077-6078) as containing substantial deposits of tar sand.".

(5) Section 27(d)(1) of such Act (30 U.S.C. 184(d)(1)) is amended by inserting before the period at the end of the first sentence the following: "*Provided, however,* That acreage held in special tar sand areas shall not be chargeable against such State limitations.".

Sec. 27(d)(1)

STATE ACREAGE LIMITATIONS

(6)(a) Section 17(b) of such Act (30 U.S.C. 226(b)) is amended by inserting "(1)" after "(b)" and adding a new subsection to read as follows:

Sec. 17(b)

"(2) If the lands to be leased are within a special tar sand area, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary. Royalty shall be 12½ per centum in amount or value of production removed or sold from the lease,

COMPETITIVE BIDDING
ACREAGE
ROYALTY

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

subject to section 17(k)(1)(c). The Secretary may lease such additional lands in special tar sand areas as may be required in support of any operations necessary for the recovery of tar sands.".

(b) Section 17(c) of such Act (30 U.S.C. 226(c)) is amended by deleting "within any known geological structure of a producing oil or gas field," and inserting in lieu thereof "subject to leasing under subsection (b),".

Sec. 17(c)
KGS DELETED

(c) Section 17(e) of such Act (30 U.S.C. 226(e)) is amended by inserting before the period at the end of the first sentence the following: ": *Provided, however,* That competitive leases issued in special tar sand areas shall also be for a primary term of ten years.".

Sec. 17(e)
LEASE TERM

(7) Section 39 of such Act (30 U.S.C. 209) is amended by adding after the period following the first sentence: "*Provided, however,* That in order to promote development and the maximum production of tar sand, at the request of the lessee, the Secretary shall review, prior to commencement of commercial operations, the royalty rates established in each combined hydrocarbon lease issued in special tar sand areas. For purposes of this section, the term 'tar sand' means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either: (1) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise, or (2) contains a hydrocarbonaceous material and is produced by mining or quarrying.".

Sec. 39

ROYALTY

(8) Section 17 of such Act (30 U.S.C. 226) is amended by adding at the end thereof the following new subsection:

Sec. 17

"(k)(1)(A) The owner of (1) an oil and gas lease issued prior to the date of enactment of the Combined Hydrocarbon Leasing Act of 1981 or (2) a valid claim to any hydrocarbon resources leasable under this section based on a mineral location made prior to January 21, 1926, and located within a special tar sand area shall be entitled to convert such lease or claim to a combined hydrocarbon lease for a primary term of ten years upon the filing of an application within two years from the date of enactment of that Act containing an acceptable plan of operations which assures reasonable protection of the environment and diligent development of those resources requiring enhanced recovery methods of development or mining. For purposes of conversion, no claim shall be deemed invalid solely because it was located as a placer location rather than a lode location or vice versa, notwithstanding any previous adjudication on that issue.

CONVERSION OF LEASES

"(B) The Secretary shall issue final regulations to implement this section within six months of the effective date of this Act. If any oil and gas lease eligible for conversion under this section would otherwise expire after the date of this Act and before six months following the issuance of implementing regulations, the lessee may preserve his conversion right under such lease for a period ending six months after the issuance of implementing regulations by filing with the Secretary, before the expiration of the lease, a notice of intent to file an application for conversion. Upon submission of a complete plan of operations in substantial compliance with the regulations promulgated by the Secretary for the filing of such plans, the Secretary shall suspend the running of the term of any oil and gas lease proposed for conversion until the plan is finally approved or disapproved. The Secretary shall act upon a proposed plan of operations within fifteen months of its submittal.

LEASE SUSPENSION

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE fotnotes listed under the section number to locate subsequent amendments to each section.

"(C) When an existing oil and gas lease is converted to a combined hydrocarbon lease, the royalty shall be that provided for in the original oil and gas lease and for a converted mining claim, 12½ per centum in amount or value of production removed or sold from the lease.

ROYALTY

"(2) Except as provided in this section, nothing in the Combined Hydrocarbon Leasing Act of 1981 shall be construed to diminish or increase the rights of any lessee under any oil and gas lease issued prior to the enactment of such Act.".

LESSEE RIGHTS

(9)(a) Section 2 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351) is amended by adding at the end thereof: "The term 'oil' shall embrace all nongaseous hydrocarbon substances other than those leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).".

Sec. 2

DEFINE "OIL"

(b) Section 3 of such Act (30 U.S.C. 352) is amended by inserting "gilsonite (including all vein-type solid hydrocarbons)," after "oil shale".

Sec. 3

GILSONITE

(10) Nothing in this Act shall affect the taxable status of production from tar sand under the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96-223), reduce the depletion allowance for production from tar sand, or otherwise affect the existing tax status applicable to such production.

(11) No provision of this Act shall apply to national parks, national monuments, or other lands where mineral leasing is prohibited by law. The Secretary of the Interior shall apply the provisions of this Act to the Glen Canyon National Recreation Area, and to any other units of the national park system where mineral leasing is permitted, in accordance with any applicable minerals management plan if the Secretary finds that there will be no resulting significant adverse impacts on the administration of such area, or on other contiguous units of the national park system.

Approved November 16, 1981.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

Excerpts from Title III

ACT OF DECEMBER 30, 1982

Sec. 21

COLORADO OIL SHALE
FEDERAL PROTOTYPE TRACT C-a

SEC. 318. Section 21 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920 (41 Stat. 437, as amended; 30 U.S.C. 241), is further amended by adding the following new subsections:

"(c)(1) The Secretary may within the State of Colorado lease to the holder of the Federal oil shale lease known as Federal Prototype Tract C-a additional lands necessary for the disposal of oil shale wastes and the materials removed from mined lands, and for the building of plants, reduction works, and other facilities connected with oil shale operations (which lease shall be referred to hereinafter as an 'offsite lease'). The Secretary may only issue one offsite lease not to exceed six thousand four hundred acres. An offsite lease may not serve more than one Federal oil shale lease and may not be transferred except in conjunction with the transfer of the Federal oil shale lease that it serves.

"(2) The Secretary may issue one offsite lease of not more than three hundred and twenty acres to any person, association or corporation which has the right to develop oil shale on non-Federal lands. An offsite lease serving non-Federal oil shale land may not serve more than one oil shale operation and may not be transferred except in conjunction with the transfer of the non-Federal oil shale land that it serves. Not more than two offsite leases may be issued under this paragraph.

"(3) An offsite lease shall include no rights to any mineral deposits.

"(4) The Secretary may issue offsite leases after consideration of the need for such lands, impacts on the environment and other resource values, and upon a determination that the public interest will be served thereby.

"(5) An offsite lease for lands the surface of which is under the jurisdiction of a Federal agency other than the Department of the Interior shall be issued only with the consent of that other Federal agency and shall be subject to such terms and conditions as it may prescribe.

"(6) An offsite lease shall be for such periods of time and shall include such lands, subject to the acreage limitations contained in this subsection, as the Secretary determines to be necessary to achieve the purposes for which the lease is issued, and shall contain such provisions as he determines are needed for protection of environmental and other resource values.

"(7) An offsite lease shall provide for the payment of an annual rental which shall reflect the fair market value of the rights granted and which shall be subject to such revisions as the Secretary, in his discretion, determines may be needed from time to time to continue to reflect the fair market value.

"(8) An offsite lease may, at the option of the lessee, include provisions for payments in any year which payments shall be credited against any portion of the annual rental for a subsequent year to the extent that such payment is payable by the Secretary of the Treasury under section 35 of this Act to the State within the

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

boundaries of which the leased lands are located. Such funds shall be paid by the Secretary of the Treasury to the appropriate State in accordance with section 35, and such funds shall be distributed by the State only to those counties, municipalities, or jurisdictional subdivisions impacted by oil shale development and/or where the lease is sited."; and

"(9) An offsite lease shall remain subject to leasing under the other provisions of this Act where such leasing would not be incompatible with the offsite lease.

"(d) In recognition of the unique character of oil shale development:

"(1) In determining whether to offer or issue an offsite lease under subsection (c), the Secretary shall consult with the Governor and appropriate State, local, and tribal officials of the State where the lands to be leased are located, and of any additional State likely to be affected significantly by the social, economic, or environmental effects of development under such lease, in order to coordinate Federal and State planning processes, minimize duplication of permits, avoid delays, and anticipate and mitigate likely impacts of development.

"(2) The Secretary may issue an offsite lease under subsection (d) after consideration of (A) the need for leasing, (B) impacts on the environment and other resource values, (C) socioeconomic factors, and (D) information from consultations with the Governors of the affected States.

"(3) Before determining whether to offer an offsite lease under subsection (c), the Secretary shall seek the recommendation of the Governor of the State in which the lands to be leased are located as to whether or not to lease such lands, what alternative actions are available, and what special conditions could be added to the proposed lease to mitigate impacts. The Secretary shall accept the recommendations of the Governor if he determines that they provide for a reasonable balance between the national interest and the State's interests. The Secretary shall communicate to the Governor, in writing, and publish in the Federal Register the reasons for his determination to accept or reject such Governor's recommendations.".

Approved December 30, 1982.

NOTE: Other titles not included.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982

January 12, 1983

Titles I and IV

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982

ACT OF JANUARY 12, 1983

To ensure that all oil and gas originated on the public lands and on the Outer Continental Shelf are properly accounted for under the direction of the Secretary of the Interior, and for other purposes.

OUTER CONTINENTAL SHELF AND OIL AND GAS ON PUBLIC LANDS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Oil and Gas Royalty Management Act of 1982".

TITLE I—FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT

FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT

DUTIES OF THE SECRETARY

DUTIES OF THE SECRETARY

SEC. 101. (a) The Secretary shall establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner.

(b) The Secretary shall—

(1) establish procedures to ensure that authorized and properly identified representatives of the Secretary will inspect at least once annually each lease site producing or expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations; and

(2) establish and maintain adequate programs providing for the training of all such authorized representatives in methods and techniques of inspection and accounting that will be used in the implementation of this Act.

(c)(1) The Secretary shall audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas and take appropriate actions to make additional collections or refunds as warranted. The Secretary shall conduct audits and reconciliations of lease accounts in conformity with the business practices and record-keeping systems which were required of the lessee by the Secretary for the period covered by the audit. The Secretary shall give priority to auditing those lease accounts identified by a State or Indian tribe as having significant potential for underpayment. The Secretary may also audit accounts and records of selected lessees and operators.

(2) The Secretary may enter into contracts or other appropriate arrangements with independent certified public accountants to undertake audits of accounts and records of any lessee or operator relating to the lease of oil or gas. Selection of such independent certified public accountants shall be by competitive bidding in accordance with the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252), except that the Secretary may not enter into a contract or other arrangement with any independent certified public accountant to audit any lessee or operator where such lessee or operator is a primary audit client of such certified public accountant.

(3) All books, accounts, financial records, reports, files, and other papers of the Secretary, or used by the Secretary, which are reasonably necessary to facilitate the audits required under this section shall be made available to any person or governmental entity conducting audits under this Act.

DUTIES OF LESSEES, OPERATORS, AND MOTOR VEHICLE TRANSPORTERS

DUTIES OF ...

SEC. 102. (a) A lessee—

LESSEE

(1) who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary; and

(2) shall notify the Secretary, in the time and manner as may be specified by the Secretary, of any assignment the lessee may have made of the obligation to make any royalty or other payment under a lease or under the mineral leasing laws.

(b) An operator shall—

OPERATOR

(1) develop and comply with a site security plan designed to protect the oil or gas produced or stored on an onshore lease site from theft, which plan shall conform with such minimum standards as the Secretary may prescribe by rule, taking into account the variety of circumstances at lease sites;

(2) develop and comply with such minimum site security measures as the Secretary deems appropriate to protect oil or gas produced or stored on a lease site or on the Outer Continental Shelf from theft; and

(3) not later than the 5th business day after any well begins production anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off of production for more than 90 days, notify the Secretary, in the manner prescribed by the Secretary, of the date on which such production has begun or resumed.

(c)(1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry, on his person, in his vehicle, or in his immediate control, documentation showing, at a minimum, the amount, origin, and intended first destination of the oil.

TRANSPORTER

(2) Any person engaged in transporting any oil or gas by pipeline from any lease site, or allocated to any lease site, on Federal or Indian lands shall maintain documentation showing, at a minimum, amount, origin, and intended first destination of such oil or gas.

PIPELINE TRANSPORTER

REQUIRED RECORDKEEPING

REQUIRED RECORDKEEPING

SEC. 103. (a) A lessee, operator, or other person directly involved in developing, producing, transporting, purchasing, or selling oil or gas subject to this Act through the point of first sale or the point of royalty computation, whichever is later, shall establish and maintain any records, make any reports, and provide any information that the Secretary may, by rule, reasonably require for the purposes of implementing this Act or determining compliance with rules or orders under this Act. Upon the request of any officer or employee duly designated by the Secretary or any State or Indian tribe conducting an audit or investigation pursuant to this Act, the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee, State, or Indian tribe.

(b) Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records.

PROMPT DISBURSEMENT OF ROYALTIES

PROMPT DISBURSEMENT OF ROYALTIES

Sec. 35

PAYMENT TO STATES

SEC. 104. (a) Section 35 of the Mineral Lands Leasing Act of 1920 (approved February 25, 1920; 41 Stat. 437; 30 U.S.C. 191) is amended by deleting "as soon as practicable after March 31 and September 30 of each year" and by adding at the end thereof "Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.".

(b) Deposits of any royalty funds derived from the production of oil or gas from, or allocated to, Indian lands shall be made by the Secretary to the appropriate Indian account at the earliest practicable date after such funds are received by the Secretary but in no case later than the last business day of the month in which such funds are received.

(c) The provisions of this section shall apply with respect to payments received by the Secretary after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

EXPLANATION OF PAYMENTS

SEC. 105. (a) When any payment (including amounts due from receipt of any royalty, bonus, interest charge, fine, or rental) is made by the United States to a State with respect to any oil or gas lease on Federal lands or is deposited in the appropriate Indian account on behalf of an Indian tribe or Indian allottee with respect to any oil and gas lease on Indian lands, there shall be provided, together with such payment, a description of the type of payment being made, the period covered by such payment, the source of such payment, production amounts, the royalty rate, unit value and such other information as may be agreed upon by the Secretary and the recipient State, Indian tribe, or Indian allottee.

(b) This section shall take effect with respect to payments made after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date.

LIABILITIES AND BONDING

SEC. 106. A person (including any agent or employee of the United States and any independent contractor) authorized to collect, receive, account for, or otherwise handle any moneys payable to, or received by, the Department of the Interior which are derived from the sale, lease, or other disposal of any oil or gas shall be—

(1) liable to the United States for any losses caused by any intentional or reckless action or inaction of such individual with respect to such moneys; and

(2) in the case of an independent contractor, required as the Secretary deems necessary to maintain a bond commensurate with the amount of money for which such individual could be liable to the United States.

HEARINGS AND INVESTIGATIONS

SEC. 107. (a) In carrying out his duties under this Act the Secretary may conduct any investigation or other inquiry necessary and appropriate and may conduct, after notice, any hearing or audit, necessary and appropriate to carrying out his duties under this Act.

In connection with any such hearings, inquiry, investigation, or audit, the Secretary is also authorized where reasonably necessary—

(1) to require by special or general order, any person to submit in writing such affidavits and answers to questions as the Secretary may reasonably prescribe, which submission shall be made within such reasonable period and under oath or otherwise, as may be necessary;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all books, papers, production and financial records, documents, matter, and materials, as the Secretary may request;

(4) to order testimony to be taken by deposition before any person who is designated by the Secretary and who has the power to administer oaths, and to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; and

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(b) In case of refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary. Any failure to obey such order of the court may be punished by such court as contempt thereof and subject to a penalty of up to $10,000 a day.

INSPECTIONS

INSPECTIONS

SEC. 108. (a)(1) On any lease site on Federal or Indian lands, any authorized and properly identified representative of the Secretary may stop and inspect any motor vehicle that he has probable cause to believe is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site, for the purpose of determining whether the driver of such vehicle has documentation related to such oil as required by law.

(2) Any authorized and properly identified representative of the Secretary, accompanied by any appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he has probable cause to believe the vehicle is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site. Such inspection shall be for the purpose of determining whether the driver of such vehicle has the documentation required by law.

(b) Authorized and properly identified representatives of the Secretary may without advance notice, enter upon, travel across and inspect lease sites on Federal or Indian lands and may obtain from the operator immediate access to secured facilities on such lease sites, for the purpose of making any inspection or investigation for determining whether there is compliance with the requirements of the mineral leasing laws and this Act. The Secretary shall develop guidelines setting forth the coverage and the frequency of such inspections.

(c) For the purpose of making any inspection or investigation under this Act, the Secretary shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.

SEC. 109. (a) Any person who—

(1) after due notice of violation or after such violation has been reported under subparagraph (A), fails or refuses to comply with any requirements of this Act or any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder; or

(2) fails to permit inspection authorized in section 108 or fails to notify the Secretary of any assignment under section 102(a)(2)

shall be liable for a penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. A penalty under this subsection may not be applied to any person who is otherwise liable for a violation of paragraph (1) if:

(A) the violation was discovered and reported to the Secretary or his authorized representative by the liable person and corrected within 20 days after such report or such longer time as the Secretary may agree to; or

(B) after the due notice of violation required in paragraph (1) has been given to such person by the Secretary or his authorized representative, such person has corrected the violation within 20 days of such notification or such longer time as the Secretary may agree to.

(b) If corrective action is not taken within 40 days or a longer period as the Secretary may agree to, after due notice or the report referred to in subsection (a)(1), such person shall be liable for a civil penalty of not more than $5,000 per violation for each day such violation continues, dating from the date of such notice or report.

(c) Any person who—

(1) knowingly or willfully fails to make any royalty payment by the date as specified by statute, regulation, order or terms of the lease;

(2) fails or refuses to permit lawful entry, inspection, or audit; or

(3) knowingly or willfully fails or refuses to comply with subsection 102(b)(3),

shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.

(d) Any person who—

(1) knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;

(2) knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any lease site without having valid legal authority to do so; or

(3) purchases, accepts, sells, transports, or conveys to another, any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted,

shall be liable for a penalty of up to $25,000 per violation for each day such violation continues.

(e) No penalty under this section shall be assessed until the person charged with a violation has been given the opportunity for a hearing on the record.

(f) The amount of any penalty under this section, as finally determined may be deducted from any sums owing by the United States to the person charged.

(g) On a case-by-case basis the Secretary may compromise or reduce civil penalties under this section.

(h) Notice under this subsection (a) shall be by personal service by an authorized representative of the Secretary or by registered mail. Any person may, in the manner prescribed by the Secretary, designate a representative to receive any notice under this subsection.

(i) In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations.

(j) Any person who has requested a hearing in accordance with subsection (e) within the time the Secretary has prescribed for such a hearing and who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States district court for the judicial district in which the violation allegedly took place. Review by the district court shall be only on the administrative record and not de novo. Such an action shall be barred unless filed within 90 days after the Secretary's final order.

(k) If any person fails to pay an assessment of a civil penalty under this Act—

(1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with subsection (j), or

(2) after a court in an action brought under subsection (j) has entered a final judgment in favor of the Secretary,

the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period referred to in subsection (j). Judgment by the court shall include an order to pay.

(l) No person shall be liable for a civil penalty under subsection (a) or (b) for failure to pay any rental for any lease automatically terminated pursuant to section 31 of the Mineral Leasing Act of 1920.

CRIMINAL PENALTIES

CRIMINAL PENALTIES

SEC. 110. Any person who commits an act for which a civil penalty is provided in section 109(d) shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 2 years, or both.

ROYALTY INTEREST, PENALTIES AND PAYMENTS

ROYALTY INTEREST, PENALTIES AND PAYMENTS

SEC. 111. (a) In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of the Internal Revenue Code of 1954. In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount due.

Sec. 35

INTEREST ON LATE ROYALTY PAYMENT

(b) Any payment made by the Secretary to a State under section 35 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 191) and any other payment made by the Secretary to a State from any oil or gas royalty received by the Secretary which is not paid on the date required under section 35 shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954.

(c) All interest charges collected under this Act or under other applicable laws because of nonpayment, late payment or underpayment of royalties due and owing an Indian tribe or an Indian allottee shall be deposited to the same account as the royalty with respect to which such interest is paid.

(d) Any deposit of royalty funds made by the Secretary to an Indian account which is not made by the date required under subsection 104(b) shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954.

(e) Notwithstanding any other provision of law, no State will be assessed for any interest or penalties found to be due against the Secretary for failure to comply with the Emergency Petroleum Allocation Act of 1973 or regulation of the Secretary of Energy thereunder concerning crude oil certification or pricing with respect to crude oil taken by the Secretary in kind as royalty. Any State share of an overcharge, resulting from such failure to comply, shall be assessed against moneys found to be due and owing to such State as a result of audits of royalty accounts for transactions which took place prior to the date of the enactment of this Act except that if after the completion of such audits, sufficient moneys have not been found due and owing to any State, the State shall be assessed the balance of that State's share of the overcharge.

(f) Interest shall be charged under this section only for the number of days a payment is late.

(g) The first sentence of section 35 of the Act of February 25, 1920 is amended by inserting "including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982" between "royalties" and "and".

Sec. 35

ADD FOGRMA

INJUNCTION AND SPECIFIC ENFORCEMENT AUTHORITY

INJUNCTION AND SPECIFIC ENFORCEMENT AUTHORITY

SEC. 112. (a) In addition to any other remedy under this Act or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States, which shall have jurisdiction over such actions—

(1) to restrain any violation of this Act; or

(2) to compel the taking of any action required by or under this Act or any mineral leasing law of the United States.

(b) A civil action described in subsection (a) may be brought only in the United States district court for the judicial district wherein the act, omission, or transaction constituting a violation under this Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

REWARDS

REWARDS

SEC. 113. Where amounts representing royalty or other payments owed to the United States with respect to any oil and gas lease on Federal lands or the Outer Continental Shelf are recovered pursuant to any action taken by the Secretary under this Act as a result of information provided to the Secretary by any person, the Secretary is authorized to pay to such person an amount equal to not more than 10 percent of such recovered amounts. The preceding sentence shall not apply to information provided by an officer or employee of the United States, an officer or employee of a State or Indian tribe acting pursuant to a cooperative agreement or delegation under this Act, or any person acting pursuant to a contract authorized by this Act.

NONCOMPETITIVE OIL AND GAS LEASE ROYALTY RATES

NONCOMPETITIVE OIL AND GAS LEASE ROYALTY RATES

SEC. 114. The Secretary is directed to conduct a thorough study of the effects of a change in the royalty rate under section 17(c) of the Mineral Leasing Act of 1920 on: (a) the exploration, development, or production of oil or gas; and (b) the overall revenues generated by such change. Such study shall be completed and submitted to Congress within six months after the date of enactment of this Act.

TITLE IV—REINSTATEMENT OF LEASES AND CONVERSION OF UNPATENTED OIL PLACER CLAIMS

AMENDMENT OF MINERAL LANDS LEASING ACT OF 1920

AMENDMENT OF MINERAL LANDS LEASING ACT OF 1920

Sec. 31

LEASE TERMINATION

SEC. 401. Section 31 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188) is amended by redesignating subsection (d) as subsection (j) and by inserting after subsection (c) the following new subsections:

"(d)(1) Where any oil and gas lease issued pursuant to section 17(b) or section 17(c) of this Act or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease (A) occurs after the expiration of the primary term or any extension thereof, or (B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

"(2) No lease shall be reinstated under paragraph (1) of this subsection unless—

"(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

"(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

"(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

"(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of—

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

"(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

"(ii) fifteen months after termination of the lease.

LEASE REINSTATEMENT

"(e) Any reinstatement under subsection (d) of this section shall be made only if these conditions are met:

"(1) no valid lease, whether still in existence or not, shall have been issued affecting any of the lands covered by the terminated lease prior to the filing of such petition: *Provided, however,* That after receipt of a petition for reinstatement, the Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him;

BACK RENTALS

"(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 17(b) of this Act of a requirement for future rentals at a rate of not less than $10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 17(c) of this Act of a requirement that future rentals shall be at a rate not less than $5 per acre per year, all as determined by the Secretary;

BACK RENTALS

"(3)(A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 17(b) of this Act of a requirement for future royalties at a rate of not less than 16⅔ percent computed on a sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royalty schedule then in force and used for royalty determination for competitive leases issued pursuant to such section as determined by the Secretary: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

ROYALTY RATE

"(B) payment of back royalties and inclusion in a reinstated lease issued pursuant to the provisions of section 17(c) of this Act of a requirement for future royalties at a rate not less than 16⅔ percent: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the cancellation or termination of the original lease; and

"(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the reinstatement.

A copy of said notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the Secretary deemed significant in making this determination to reinstate, shall be furnished to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate at least thirty days in advance of the reinstatement. The lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed $500. In addition the lessee shall reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement.

ABANDONED CLAIM

"(f) Where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease, consistent with the provisions of section 17(e) of this Act, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

"(1) a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim, being filed with the Secretary—

"(A) with respect to any claim deemed conclusively abandoned on or before the date of enactment of the Federal Oil and Gas Royalty Management Act of 1982, on or before the one hundred and twentieth day after such date of enactment, or

"(B) with respect to any claim deemed conclusively abandoned after such date of enactment, on or before the one hundred and twentieth day after final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim;

"(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition: *Provided, however,* That after the filing of a petition for issuance of a lease under this subsection, the Secretary shall not issue any new lease affecting any of the lands covered by such abandoned oil placer mining claim for a reasonable period, as determined in accordance with regulations issued by him;

"(3) a requirement in the lease for payment of rental, including back rentals accruing from the statutory date of abandonment of the oil placer mining claim, of not less than $5 per acre per year;

"(4) a requirement in the lease for payment of royalty on production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the statutory date the claim was deemed conclusively abandoned, of not less than 12½ percent; and

"(5) compliance with the notice and reimbursement of costs provisions of paragraph (4) of subsection (e) but addressed to the petition covering the conversion of an abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease.

"(g)(1) Except as otherwise provided in this section, a reinstated lease shall be treated as a competitive or a noncompetitive oil and gas lease in the same manner as the original lease issued pursuant to section 17(b) or 17(c) of this Act.

"(2) Except as otherwise provided in this section, the issuance of a lease in lieu of an abandoned patented oil placer mining claim shall be treated as a noncompetitive oil and gas lease issued pursuant to section 17(c) of this Act.

"(h) The minimum royalty provisions of section 17(j) and the provisions of section 39 of this Act shall be applicable to leases issued pursuant to subsections (d) and (f) of this section.

"(i)(1) In acting on a petition to issue a noncompetitive oil and gas lease, under subsection (f) of this section or in response to a request filed after issuance of such a lease, or both, the Secretary is authorized to reduce the royalty on such lease if in his judgment it is equitable to do so or the circumstances warrant such relief due to uneconomic or other circumstances which could cause undue hardship or premature termination of production.

"(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes if, in his judgment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease after the rent had become due and had not been paid; or if in the judgment of the Secretary it is equitable to do so for any reason.".

Approved January 12, 1983.

REINSTATED LEASE

Subtitle B—Federal Onshore Oil and Gas Leasing Reform Act of 1987

FEDERAL ONSHORE OIL AND GAS LEASING REFORM ACT OF 1987

ACT OF DECEMBER 22, 1987

SEC. 5101. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This subtitle may be cited as the "Federal Onshore Oil and Gas Leasing Reform Act of 1987".

(b) REFERENCES.—Any reference in this subtitle to the "Act of February 25, 1920", is a reference to the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (30 U.S.C. 181 and following).

SEC. 5102. OIL AND GAS LEASING SYSTEM.

(a) COMPETITIVE BIDDING.—Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1)), is amended to read as follows:

Sec. 17(b)(1)

COMPETITIVE BIDDING

"(b)(1)(A) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 2,560 acres, except in Alaska, where units shall be not more than 5,760 acres. Such units shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty at a rate of not less than 12.5 percent in amount or value of the production removed or sold from the lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the national minimum acceptable bid, without evaluation of the value of the lands proposed for lease.

ACREAGE

ORAL BIDDING

ROYALTY

Leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the national minimum acceptable bid shall be rejected. Lands for which no bids are received or for which the highest bid is less than the national minimum acceptable bid shall be offered promptly within 30 days for leasing under subsection (c) of this section and shall remain available for leasing for a period of 2 years after the competitive lease sale.

LEASE ISSUANCE

"(B) The national minimum acceptable bid shall be $2 per acre for a period of 2 years from the date of enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987. Thereafter, the Secretary may establish by regulation a higher national minimum acceptable bid for all leases based upon a finding that such action is necessary: (i) to enhance financial returns to the United States; and (ii) to promote more efficient management of oil and gas resources on Federal lands. Ninety days before the Secretary makes any change in the national minimum acceptable bid, the Secretary shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on

NATIONAL MINIMUM ACCEPTABLE BID

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

Energy and Natural Resources of the United States Senate. The proposal or promulgation of any regulation to establish a national minimum acceptable bid shall not be considered a major Federal action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.".

(b) NONCOMPETITIVE LEASING.—Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended to read as follows:

Sec. 17(c)

"(c)(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding, upon payment of a non-refundable application fee of at least $75. A lease under this subsection shall be conditioned upon the payment of a royalty at a rate of 12.5 percent in amount or value of the production removed or sold from the lease. Leases shall be issued within 60 days of the date on which the Secretary identifies the first responsible qualified applicant.

NON-COMPETITIVE BIDDING

ROYALTY

"(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the national minimum acceptable bid and (ii) for which, at the end of the period referred to in subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

NO BIDS RECEIVED

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is cancelled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(c) RENTALS.—Section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended to read as follows:

Sec. 17(d)

"(d) All leases issued under this section, as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, shall be conditioned upon payment by the lessee of a rental of not less than $1.50 per acre per year for the first through fifth years of the lease and not less than $2 per acre per year for each year thereafter. A minimum royalty in lieu of rental of not less than the rental which otherwise would be required for that lease year shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.".

RENTAL

ROYALTY

(d) NOTICE AND RECLAMATION.—(1) Section 17 of the Act of February 25, 1920 (30 U.S.C. 226), is amended by redesignating subsections (f) through (k) as subsections (i) through (n) and by adding the following new subsections (f) through (h):

REDESIGNATE Sec. 17(f) through (k) as (i) through (n)

"(f) At least 45 days before offering lands for lease under this section, and at least 30 days before approving applications for permits to drill under the provisions of a lease or substantially modifying the terms of any lease issued under this section, the Secretary shall provide notice of the proposed action. Such notice shall be posted in

NOTICE OF LEASE MODIFICATION

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

the appropriate local office of the leasing and land management agencies. Such notice shall include the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps shall show the location of all tracts to be leased, and of all leases already issued in the general area. The requirements of this subsection are in addition to any public notice required by other law.

"(g) The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this Act, and shall determine reclamation and other actions as required in the interest of conservation of surface resources. No permit to drill on an oil and gas lease issued under this Act may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area. The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and 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. The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this section to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary of the Interior or Secretary of Agriculture, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established under this section for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any such entity the concerned Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned an oil or gas lease may be issued to such entity under this Act.

"(h) The Secretary of the Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture.".

Sec. 17(g) added

SURFACE DISTURBANCE

(2) Section 31(h) of the Act of February 25, 1920 (30 U.S.C. 188(h)), is amended by striking out "section 17(j)" and substituting "section 17(m)".

Sec. 31(h) changed

SEC. 5103. ASSIGNMENTS.

Sections 30(a) and 30(b) of the Act of February 25, 1920 (30 U.S.C. 187a, 187b), are redesignated as sections 30A and 30B, respectively, and the third sentence of section 30A, as so redesignated, is amended to read as follows: "The Secretary shall disapprove the assign-

Sec. 30(a) and (b)

DISAPPROVAL OF ASSIGNMENT OR SUBLEASE

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: Provided, however, That the Secretary may, in his discretion, disapprove an assignment of any of the following, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas:

"(1) A separate zone or deposit under any lease.

"(2) A part of a legal subdivision.

"(3) Less than 640 acres outside Alaska or of less than 2,560 acres within Alaska.

Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within 60 days of the date of receipt by the Secretary of a request for such approval.".

SEC. 5104. LEASE CANCELLATION.

Sec. 31(b)

CANCELLATION

The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)) is amended to read as follows: "Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after 30 days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(m) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 5105. ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT.

Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsections (c) and (e) are deleted in their entirety.

(2) The second sentence of subsection 1008(d) is deleted.

SEC. 5106. PENDING APPLICATIONS, OFFERS, AND BIDS.

(a) Notwithstanding any other provision of this subtitle and except as provided in subsection (b) of this section, all noncompetitive oil and gas lease applications and offers and competitive oil and gas bids pending on the date of enactment of this subtitle shall be processed, and leases shall be issued under the provisions of the Act of February 25, 1920, as in effect before its amendment by this subtitle, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

PENDING LEASES

(b) No noncompetitive lease applications or offers pending on the date of enactment of this subtitle for lands within the Shawnee National Forest, Illinois; the Ouachita National Forest, Arkansas; Fort Chaffee, Arkansas; or Eglin Air Force Base, Florida; shall be processed until these lands are posted for competitive bidding in accordance with section 5102 of this subtitle. If any such tract does not receive a bid equal to or greater than the national minimum acceptable bid from a responsible qualified bidder then the noncompetitive applications or offers pending for such a tract shall be reinstat-

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ed and noncompetitive leases issued under the Act of February 25, 1920, as in effect before its amendment by this subtitle, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

(c) Except as provided in subsections (a) and (b) of this section, all oil and gas leasing pursuant to the Act of February 25, 1920, after the date of enactment of this subtitle shall be conducted in accordance with the provisions of this subtitle.

SEC. 5107. REGULATIONS; TEST SALE.

(a) REGULATIONS.—The Secretary shall issue final regulations to implement this subtitle within 180 days after the enactment of this subtitle. The regulations shall be effective when published in the Federal Register.

(b) TREATMENT UNDER OTHER LAW.—The proposal or promulgation of such regulations shall not be considered a major Federal action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.

(c) TEST SALE.—The Secretary may hold one or more lease sales conducted in accordance with the amendments made by this subtitle before promulgation of regulations referred to in subsection (a). Sale procedures for such sale shall be established in the notice of sale.

SEC. 5108. ENFORCEMENT.

The Act of February 25, 1920, is amended by inserting after section 40 the following new section:

"SEC. 41. ENFORCEMENT.

Sec. 41 added

"(a) VIOLATIONS.—It shall be unlawful for any person:

VIOLATIONS

"(1) to organize or participate in any scheme, arrangement, plan, or agreement to circumvent or defeat the provisions of this Act or its implementing regulations, or

"(2) to seek to obtain or to obtain any money or property by means of false statements of material facts or by failing to state material facts concerning:

"(A) the value of any lease or portion thereof issued or to be issued under this Act;

"(B) the availability of any land for leasing under this Act;

"(C) the ability of any person to obtain leases under this Act; or

"(D) the provisions of this Act and its implementing regulations.

"(b) PENALTY.—Any person who knowingly violates the provisions of subsection (a) of this section shall be punished by a fine of not more than $500,000, imprisonment for not more than five years, or both.

PENALTY

"(c) CIVIL ACTIONS.—Whenever it shall appear that any person is engaged, or is about to engage, in any act which constitutes or will constitute a violation of subsection (a) of this section, the Attorney General may institute a civil action in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or any combination of the foregoing.

CIVIL ACTIONS

"(d) CORPORATIONS.—(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who knowingly authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

CORPORATIONS

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation or other entity.

"(e) REMEDIES, FINES, AND IMPRISONMENT.—The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

REMEDIES, FINES, AND IMPRISONMENT

"(f) STATE CIVIL ACTIONS.—(1) A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by a State shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

STATE CIVIL ACTIONS

"(2) A State shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within 30 days of filing of the action. The Attorney General of the United States shall notify a State of any civil action arising from activity conducted within that State filed by the Attorney General under this subsection within 30 days of filing of the action.

"(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in the manner determined by the court rendering judgment in such action.

"(4) If a State has commenced a civil action against a person conducting activity within the State in violation of this section, the Attorney General may join in such action but may not institute a separate action arising from the same activity under this section. If the Attorney General has commenced a civil action against a person conducting activity within a State in violation of this section, that State may join in such action but may not institute a separate action arising from the same activity under this section.

"(5) Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 5108. PAYMENTS TO STATES.

Sec. 35

PAYMENTS TO STATES

Section 35 of the Act of February 25, 1920 (30 U.S.C. 191) is amended by adding the following at the end thereof: "In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.".

SEC. 5110. REPORT.

REPORTS

The Secretary shall submit annually for 5 years after enactment of this subtitle to the Congress a report containing appropriate information to facilitate congressional monitoring of this subtitle. Such report shall include, but not be limited to—

(1) the number of acres leased, and the number of leases issued, competitively and noncompetitively;

(2) the amount of revenue received from bonus bids, filing fees, rentals, and royalties;

(3) the amount of production from competitive and noncompetitive leases; and

(4) such other data and information as will facilitate—

(A) an assessment of the onshore oil and gas leasing system, and

(B) a comparison of the system as revised by this subtitle with the system in operation prior to the enactment of this subtitle.

SEC. 5111. LAND USE STUDY.

The National Academy of Sciences and the Comptroller General of the United States shall conduct a study of the manner in which oil and gas resources are considered in the land use plans developed by the Secretary of the Interior in accordance with provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743) and the Secretary of Agriculture in accordance with the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476), as amended by the National Forest Management Act of 1976

(90 Stat. 2949), and recommend any improvements that may be necessary to ensure that—

(1) potential oil and gas resources are adequately addressed in planning documents;

(2) the social, economic, and environmental consequences of exploration and development of oil and gas resources are determined; and

(3) any stipulations to be applied to oil and gas leases are clearly identified.

SEC. 5112. LANDS NOT SUBJECT TO OIL AND GAS LEASING.

The Act of February 25, 1920, is amended by adding the following at the end thereof:

"SEC. 43. LANDS NOT SUBJECT TO OIL AND GAS LEASING. Sec. 43 added

"(a) PROHIBITION.—The Secretary shall not issue any oil and gas lease under this Act on any of the following Federal lands:

"(1) Lands recommended for wilderness allocation by the surface managing agency.

"(2) Lands within Bureau of Land Management wilderness study areas.

"(3) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area.

"(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.

"(b) EXPLORATION.—In the case of any area of National Forest or public lands subject to this section, nothing in this section shall affect any authority of the Secretary of the Interior (or for National Forest Lands reserved from the public domain, the Secretary of Agriculture) to issue permits for exploration for oil and gas by means not requiring construction of roads or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment.".

SEC. 5113. SHORT TITLE.

The Act of February 25, 1920, is amended by inserting after section 43 the following new section: Sec. 44 added

"SEC. 44. SHORT TITLE.

"This Act may be cited as the 'Mineral Leasing Act'.".

ACT OF NOVEMBER 15, 1990

To authorize the Secretary of the Interior to reinstate oil and gas lease LA 033164.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection 31(g) of the Mineral Leasing Act, as amended (30 U.S.C. 188(g)), is amended by adding the following:

Sec. 31

"(3) Notwithstanding any other provision of law, any lease issued pursuant to section 14 of this Act shall be eligible for reinstatement under the terms and conditions set forth in subsections (c), (d), and (e) of this section, applicable to leases issued under subsection 17(c) of this Act (30 U.S.C. 226(c)) except, that, upon reinstatement, such lease shall continue for twenty years and so long thereafter as oil or gas is produced in paying quantities.

REINSTATEMENT OF SECTION 14 RENEWAL LEASES

"(4) Notwithstanding any other provision of law, any lease issued pursuant to section 14 of the Act shall, upon renewal on or after enactment of this paragraph, continue for twenty years and so long thereafter as oil or gas is produced in paying quantities.".

NEW LEASE TERM 20 YEARS

Sec. 2. (a) Notwithstanding any other provision of law, United States oil and gas leases CALA 033164, CAS 019746C, and CAS 021009B shall be eligible for reinstatement under the terms and conditions set forth in subsections 31(c), (d), and (e) of the Mineral Leasing Act, as amended (30 U.S.C. 188 (c), (d), and (e)) applicable to leases issued under section 17(c) of the Mineral Leasing Act (30 U.S.C. 226(c)) except, that, upon reinstatement, such lease shall continue for twenty years and so long thereafter as oil or gas is produced in paying quantities.

(b) Within thirty days after the enactment of this Act, the Secretary of the Interior shall give written notice by registered mail to the last lessees of record for the leases listed in subsection (a) of this section that said lessees may petition for reinstatement in accordance with the procedures and conditions in subsections 31 (c), (d), and (e) of the Mineral Leasing Act, as amended (30 U.S.C. 188 (c), (d), and (e)). The lessee shall have sixty days from the date of the Secretary's notice to file such petition. If the Secretary determines that the leases listed in subsection (a) of this section qualify for reinstatement pursuant to subsection 31(d) (30 U.S.C. 118(d)), in all respects except for compliance with the deadlines imposed by that provision, the Secretary shall reinstate such leases.

RIGHT TO PETITION FOR REINSTATEMENT

Approved November 15, 1990.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments in each section.

PORTION OF THE ENERGY POLICY ACT OF 1992

One Hundred Second Congress of the United States of America
AT THE SECOND SESSION
Begun and held at the City of Washington on Friday, the third day of January, one thousand nine hundred and ninety-two

Act of January 3, 1992

An Act To provide for improved energy efficiency.

TITLE XXV-COAL, OIL, AND GAS (in part)

SEC. 2505. FEDERAL LIGNITE COAL ROYALTIES.

Sec. 7

Coal Royalty Reduction

Fort Union Region

(a) COAL IN FORT UNION REGION.-Notwithstanding any other provision of law, or any regulation or guideline issued thereunder, the Secretary of the Interior may determine, with respect to lignite coal in the Fort Union region, a lesser royalty than the royalty specified under section 7 of the Mineral Leasing Act (30 U.S.C. 207). Any lesser royalty granted under this section, or under section 39 of the Mineral Leasing Act (30 U.S.C. 209) after March 29, 1990, for lignite coal in the Fort Union region shall continue for a term of at least 10 years from the effective date of such reduction.

Review effect of royalty reduction

(b) REVIEW AND EXTENSION.-Within 10 years after the date of enactment of this Act, the Secretary of the Interior shall review the effect of any royalty reduction pursuant to subsection (a) on the production of coal. If the Secretary determines that such royalty reduction has had no significant adverse impact on coal production, upon a request by a lignite coal operator in the Fort Union region, the Secretary may grant an additional royalty reduction for a period of 10 years, provided that the total term of the reduced royalty granted pursuant to subsection (a) and this subsection for a tract or lease does not exceed a period of 20 years.

SEC. 2506. ACQUIRED FEDERAL LAND MINERAL RECEIPTS MANAGEMENT.

Sec. 6

Mineral Receipts on Acquired Lands

(a) MINERAL RECEIPTS UNDER ACQUIRED LANDS ACT.-Section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355) is amended by inserting "(a)" before the first sentence and by adding the following new subsection at the end thereof:

"(b) Notwithstanding any other provision of law, any payment to a State under this section shall be made by the Secretary of the Interior and shall be made not later than the last business day of the month following the month in which such moneys or associated reports are received by the Secretary of the Interior, whichever is later. The Secretary shall pay

interest to a State on any amount not paid to the State within that time at the rate prescribed under section 111 of the Federal Oil and Gas Royalty Management Act of 1982 from the date payment was required to be made under this subsection until the date payment is made.".

(b) AUTHORITY TO MANAGE CERTAIN MINERAL LEASES.-The Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 and following) is amended by adding the following new section at the end thereof:

Sec. 11

Managing Certain Mineral Leases – Acquired Lands

"SEC. 11. AUTHORITY TO MANAGE CERTAIN MINERAL LEASES.

"Each department, agency and instrumentality of the United States which administers lands acquired by the United States with one or more existing mineral lease shall transfer to the Secretary of the Interior the authority to administer such lease and to collect all receipts due and payable to the United States under the lease. In the case of lands acquired on or before the date of the enactment of this section, the authority to administer the leases and collect receipts shall be transferred to the Secretary of the Interior as expeditiously as practicable after the date of enactment of this section. In the case of lands acquired after the date of enactment of this section, such authority shall be vested with the Secretary at the time of acquisition. The provisions of section 6 of this Act shall apply to all receipts derived from such leases where such receipts are due and payable to the United States under the lease in the same manner as such provisions apply to receipts derived from leases issued under the authority of this Act. For purposes of this section, the term 'existing mineral lease' means any lease in existence at the time land is acquired by the United States. Nothing in this section shall be construed to affect the existing surface management authority of any Federal agency.".

(c) CLARIFICATION.-Section 7 of the Act of August 18, 1941, ch. 377 (33 U.S.C. 701c-3) is amended by adding the following sentence at the end thereof: "For the purposes of this section, the term 'money' includes, but is not limited to, such bonuses, royalties and rentals (and any interest or other charge paid to the United States by reason of the late payment of any royalty, rent, bonus or other amount due to the United States) paid to the United States from a mineral lease issued under the authority of the Mineral Leasing Act for Acquired Lands or paid to the United States from a mineral lease in existence at the time of the acquisition of the land by the United States.".

SEC. 2507. RESERVED OIL AND GAS.

(a) IN GENERAL.-Section 17(b) of the Mineral Leasing Act (30 U.S.C. 226(b)) is amended as follows-

(1) In paragraph (1)(A), strike out "under paragraph (2)" and insert in lieu thereof "under paragraphs (2) and (3)".

(2) Adding at the end thereof the following new paragraph:

Sec. 17(b)

Vested interest on Department of Agriculture lands after January 1, 1990

"(3)(A) If the United States held a vested future interest in a mineral estate that, immediately prior to becoming a vested present interest, was subject to a lease under which oil or gas was being produced, or had a well capable of producing, in paying quantities at an annual average production volume per well per day of either not more than 15 barrels per day of oil or condensate, or not more than 60,000 cubic feet of gas, the holder of the lease may elect to continue the lease as a noncompetitive lease under subsection (c)(1).

"(B) An election under this paragraph is effective-

"(i) in the case of an interest which vested after January 1, 1990, and on or before the date of enactment of this paragraph, if the election is made before the date that is 1 year after the date of enactment of this paragraph;

"(ii) in the case of an interest which vests within 1 year after the date of enactment of this paragraph, if the election is made before the date that is 2 years after the date of enactment of this paragraph; and

"(iii) in any case other than those described in clause (i) or (ii), if the election is made prior to the interest becoming a vested present interest.

"(C) Notwithstanding the consent requirement referenced in section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352), the Secretary shall issue a noncompetitive lease under subsection (c)(1) to a holder who makes an election under subparagraph (A) and who is qualified to hold a lease under this Act. Such lease shall be subject to all terms and conditions under this Act that are applicable to leases issued under subsection
(c)(1).

"(D) A lease issued pursuant to this paragraph shall continue so long as oil or gas continues to be produced in paying quantities.

"(E) This paragraph shall apply only to those lands under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following).".

(b) EFFECTIVE DATE.-The amendments made by subsection (a) apply with respect to those mineral estates in which the interest of the United States becomes a vested present interest after January 1, 1990.

SEC. 2508. CERTAIN OUTSTANDING OIL AND GAS.

(a) IN GENERAL.-Section 17 of the Mineral Leasing Act (30 U.S.C. 226) is amended by adding the following new subsection after subsection (n):

Sec. 17

"(o) CERTAIN OUTSTANDING OIL AND GAS.-(1) Prior to the commencement of surface-disturbing activities relating to the development of oil and gas deposits on lands described under paragraph (5), the Secretary of Agriculture shall require, pursuant to regulations promulgated by the Secretary, that such activities be subject to terms and conditions as provided under paragraph (2).

Advance notice regarding surface-disturbing activities on Department of Agriculture lands.

"(2) The terms and conditions referred to in paragraph (1) shall require that reasonable advance notice be furnished to the Secretary of Agriculture at least 60 days prior to the commencement of surface disturbing activities.

"(3) Advance notice under paragraph (2) shall include each of the following items of information:

"(A) A designated field representative.

"(B) A map showing the location and dimensions of all improvements, including but not limited to, well sites and road and pipeline accesses.

"(C) A plan of operations, of an interim character if necessary, setting forth a schedule for construction and drilling.

"(D) A plan of erosion and sedimentation control.

"(E) Proof of ownership of mineral title.

Nothing in this subsection shall be construed to affect any authority of the State in which the lands concerned are located to impose any requirements with respect to such oil and gas operations.

"(4) The person proposing to develop oil and gas deposits on lands described under paragraph (5) shall either-

"(A) permit the Secretary to market merchantable timber owned by the United States on lands subject to such activities; or

"(B) arrange to purchase merchantable timber on lands subject to such surface disturbing activities from the Secretary of Agriculture, or otherwise arrange for the disposition of such merchantable timber, upon such terms and upon such advance notice of the items referred to in subparagraphs (A) through (E) of paragraph (3) as the Secretary may accept.

"(5)(A) The lands referred to in this subsection are those lands referenced in subparagraph (B) which are under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following), but does not have an interest in oil and gas deposits that may be present under such lands. This subsection does not apply to any such lands where, under the provisions of its acquisition of an interest in the lands, the United States is to acquire any oil and gas deposits that may be present under such lands in the future but such interest has not yet vested with the United States.

"(B) This subsection shall only apply in the Allegheny National Forest.".

(b) REGULATIONS.-Within 90 days after the enactment of this Act the Secretary of Agriculture shall promulgate regulations to implement the amendment made by subsection (a).

SEC. 2509. FEDERAL ONSHORE OIL AND GAS LEASING.

Sec. 17(e)

Primary lease term of competitive leases amended from 5 to 10 years.

The first sentence of section 17(e) of the Mineral Leasing Act (30 U.S.C. 226(e)) is amended by striking the phrase starting with "Competitive leases" and ending with "ten years: Provided, however," and inserting in lieu thereof the following: "Competitive and noncompetitive leases issued under this section shall be for a primary term of 10 years: Provided, however,".

SEC. 2510. OIL PLACER CLAIMS.

Notwithstanding any other provision of law, in furtherance of the purposes of the Act of February 11, 1897, commonly referred to as the Oil Placer Act, and section 37 of the Mineral Leasing Act, the Secretary of the Interior is authorized and directed to, within 90 days after the enactment of this Act, (1) convey by quit-claim deed to the owner or owners, or (2) separately and as an alternative, disclaim and relinquish by a document in any form suitable for recordation in the county within which the lands are situated, all right, title and interest or claim of interest of the United States to those lands in the counties of Hot Springs, Park and Washakie in the State of Wyoming, held pursuant to the Act of February 11, 1897, and which are currently producing covered substances under a cooperative or unit plan of development.

Sec. 37

Conveyance of Oil Placer claims in the counties of Hot Springs, Park, and Washakie in the State of Wyoming.

FOOTNOTES FOR THE MINERAL LEASING ACT OF 1920 and SUBSEQUENT AMENDMENTS

FOOTNOTES FOR SECTION 1: MINERAL LEASING ACT OF 1920:
1. Sec. 1 is made applicable to the Act of 2/7/27, at p. 19 this text.
2. Sec. 1 is amended by the Act of 8/8/46, at p. 40 this text.
3. Sec. 1 is amended by the Act of 9/2/60, at p. 77 this text.
4. Sec. 1 is further amended by the Act of 11/16/81, at p. 114 this text.

FOOTNOTES FOR SECTION 2: MINERAL LEASING ACT OF 1920
5. Sec. 2 is amended by the Act of 6/3/48, at p. 53-54 this text.
6. Sec. 2(a)-(b) are amended by the Act of 8/31/64, at p. 79 this text.
7. Sec. 2 (a) is amended by the Act of 8/4/76, at p. 100-102 this text.
8. Sec. 2(b) is amended by the Act of 8/4/76, at p. 102-103 this text.
9. Sec. 2(c)-(d) are REPEALED by Act of 8/4/76, at p. 103 this text.
10. Sec. 2 is amended by adding new subsection, 2(d)(1)-(8), by the Act of 8/4/76, at p. 103-104 this text.
11. Sec. 2(a)(1) is further amended by 10/30/78, at p. 112 this text.
12. Sec. 2 is amended by addition by the Act of 11/16/81, at p. 116 this text.

FOOTNOTES FOR SECTION 3: MINERAL LEASING ACT OF 1920
13. Sec. 3 is further amended by the Act of 10/30/78, at p. 112 this text.
14. Sec. 3 is amended by the Act of 6/3/48, at p. 56 this text.
15. Sec. 3 is further amended by the Act of 4/21/76, at p. 107-108 this text.
16. Sec. 3 is amended by the Act of 4/21/76, at p. 107-8, this text. NOTE: There are three references to Sec. 3 on page 107.
17. Sec. 3 is amended by the Act of 10/30/78 at p. 112 this text.
18. Sec. 3 is amended by the Act of 11/16/81, at p. 116 this text.

FOOTNOTES FOR SECTION 4: MINERAL LEASING ACT OF 1920
19. Sec. 4 is REPEALED by 4/21/76, at p. 107 this text.

FOOTNOTES FOR SECTION 7: MINERAL LEASING ACT OF 1920
20. Sec. 7 is amended by the Act of 4/21/76, at p. 104 this text.

FOOTNOTES FOR SECTION 8: MINERAL LEASING ACT OF 1920
21. Sec. 8A is inserted after sec. 8 by the Act of 4/21/76, at p. 104-106 this text.
22. Sec. 8B is inserted after sec. 8A by the Act of 4/21/76, at p. 106 this text.

FOOTNOTES FOR SECTION 9: MINERAL LEASING ACT OF 1920
23. Sec. 9 is amended by the Act of 6/3/48, at p. 54 this text.
24. Sec. 9 is amended and new subsections are added by the Act of 3/18/60, at p. 65 this text.

FOOTNOTES FOR SECTION 10: MINERAL LEASING ACT OF 1920
25. Sec. 10 is amended by the Act of 6/3/48, at p. 54-55 this text.

FOOTNOTES FOR SECTION 11: MINERAL LEASING ACT OF 1920
26. Sec. 11 is amended by the Act of 6/3/48, at p. 55 this text.

FOOTNOTES FOR SECTION 12: MINERAL LEASING ACT OF 1920
27. Sec. 12 is amended by the Act of 6/3/48, at p. 55 this text.
28. Sec. 12 is amended by the Act of 3/18/60, at p. 65 this text.

FOOTNOTES FOR SECTION 13: MINERAL LEASING ACT OF 1920
29. Sec. 13 is amended by the Act of 8/21/35, at p. 30-32 this text.
30. Sec. 13 is made applicable to the Act of 7/29/42, at p. 37 this text.

FOOTNOTES FOR SECTION 14: MINERAL LEASING ACT OF 1920
31. Sec. 14 is amended by the Act of 8/21/35, at p. 32-33 this text.

FOOTNOTES FOR SECTION 16: MINERAL LEASING ACT OF 1920
32. Sec. 16 is amended by the Act of 8/8/46, at p. 40 this text.

FOOTNOTES FOR SECTION 17: MINERAL LEASING ACT OF 1920
33. Sec. 17 is amended by the Act of 7/3/30, at p. 22 this text.
NOTE: This amendment EXPIRES 1/31/31. See p. 24 this text.
34. Sec. 17 is amended and reenacted by the Act of 3/4/31, at p. 25-26 this text. 33. Sec. 17 is amended by the Act of 8/21/35, at p. 33-35 this text.
35. Sec. 17 as amended in the Act of 8/21/35 (pages 33-35 this text)is applicable to the Act of 7/8/40, at p. 37 this text. 35. Sec. 17 provisions are applied to the Act of 7/29/42, at p. 37 this text.
36. Sec. 17 is amended and new sections, 17(a) and (b) are added, by the Act of 8/8/46, at p. 40-44 this text.
37. Sec. 17 is amended by the Act of 7/29/54, at p. 58-59 this text. NOTE: There are five references to Sec. 17 at these pages.
38. Sec. 17 is amended by the Act of 6/11/60, at p. 65 this text.
39. Sec. 17, 17(a), and 17(b) are amended by the Act of 9/2/60, at p. 67-71 this text.
40. Sec. 17(b), (c), and (e) are amended by the Act of 11/16/81, at p. 114-115 this text.
41. Sec. 17 is amended by adding sec. 17(k) by the Act of 11/16/81, at p. 115-116 this text.
42. Sec. 17(b)(1), (c), and (d) are amended by the Act of 12/21/87, at p. 132-134 this text.

FOOTNOTES FOR SECTION 21: MINERAL LEASING ACT OF 1920
43. Sec. 21 is amended and secs. 21(a) and (b) are added by the Act of 9/2/60, at p. 77 this text. NOTE: There are two references to Sec. 21 on this page.
44. Sec. 21(a) and (c) are amended by the Act of 11/16/81, at p. 114 this text.
45. Sec. 21 is amended by the Act of 12/30/82, at p. 117-118 this text.

FOOTNOTES FOR SECTION 22: MINERAL LEASING ACT OF 1920
46. Sec. 22 is amended by the Act of 7/3/58, at p. 62 this text.

FOOTNOTES FOR SECTION 23: MINERAL LEASING ACT OF 1920
47. Sec. 23 is amended by the Act of 12/11/28, at p. 20 this text.

FOOTNOTES FOR SECTION 24: MINERAL LEASING ACT OF 1920
48. Sec. 24 is amended by the Act of 12/11/28, at p. 20-21 this text.

FOOTNOTES FOR SECTION 27: MINERAL LEASING ACT OF 1920
49. Sec. 27 is amended by the Act of 4/30/26, at p. 18-19 this text.
50. Sec. 27 is amended by the Act of 7/3/30, at p. 22-24 this text. NOTE: This amendment EXPIRES 1/31/31. See p. 24 this text.
51. Sec. 27 is amended by the Act of 8/8/46, at p. 44-46 this text.
52. Sec. 27 is amended by the Act of 6/3/48, at p. 55 this text.
53. Sec. 27 is amended by the Act of 8/2/54, at p. 60 this text.
54. Sec. 27 is amended by the Act of 8/21/58, at p. 63 this text.
55. Sec. 27 is amended by the Act of 3/18/60, at p. 65 this text.
56. Sec. 27 is amended by the Act of 9/2/60, at p. 71-75 this text.
57. Sec. 27 is amended by the Act of 8/31/64, at p. 79 this text.
58. Sec. 27(a)(1) is amended by the Act of 4/21/76, at p. 107 this text.
59. Sec. 27(a)(2) was REPEALED by the Act of 4/21/76, at p. 107 this text.
60. Sec. 27 is amended by the Act of 4/21/76, at p. 108 this text.
61. Sec. 27(k) is amended by the Act of 11/16/81, see p. 114 this text.
62. Sec. 27(d)(1) is amended by the Act of 11/16/81, see p. 114 this text.

FOOTNOTES FOR SECTION 28: MINERAL LEASING ACT OF 1920
63. Sec. 28 is amended by the Act of 8/21/35, at p. 35-36 this text.
64. Sec. 28 is amended by the Act of 8/12/53, at p. 57 this text.
65. Sec. 28 is amended by the Act of 11/16/73, at p. 91-99 this text.

FOOTNOTES FOR SECTION 30: MINERAL LEASING ACT OF 1920
66. Sec. 30(a) and (b) were added by the Act of 8/8/46, at p. 46-47 this text.
67. Sec. 30(a) is amended by the Act of 7/29/54, at p. 59 this index.
68. Sec. 30(a) is amended by the Act of 9/2/60, at p. 76-77 this text.
69. Sec. 30 is amended by Act of 10/30/78, at p. 112 this index.
70. Sec. 30(a) and (b) are amended by the Act of 12/21/87, at p. 134-135 this text.

FOOTNOTES FOR SECTION 31: MINERAL LEASING ACT OF 1920
71. Sec. 31 is amended by the Act of 8/8/46, at p. 47 this text.
72. Sec. 31 is amended by the Act of 7/29/54, at p. 60 this text.
73. Sec. 31 is amended by the Act of 10/15/62, at p. 78 this text.
74. Sec. 31(c) and (d) are added by 10/15/62, at p. 78 this text.
75. Sec. 31(b) and (c) are amended by Act of 5/12/70, at p. 80 this text.
76. Sec. 31 is amended by Act of 1/12/83, at p. 128 this text.
77. Sec. 31(b) is amended by the Act of 12/21/87, at p. 135 this text.

FOOTNOTES FOR SECTION 34: MINERAL LEASING ACT OF 1920
78. Sec. 34 is amended by the Act of 9/2/60, at p. 77 this text.

FOOTNOTES FOR SECTION 35: MINERAL LEASING ACT OF 1920
79. Sec. 35 is amended and reenacted by the Act of 5/27/47, at p. 49 this text.
80. Sec. 35 is amended by the Act of 8/3/50, at p. 57 this text.
81. Sec. 35 is amended by the Act of 7/10/57, at p. 61 this text.
82. Sec. 35 is amended by the Act of 4/21/76, at p. 100 this text.
83. Sec. 35 is amended by the Act of 4/21/76, at p. 106 this text.
84. Sec. 35 is amended by the Act of 8/4/76, at p. 107 this text.
85. Sec. 35 is amended by Title III, 9/28/76, at p. 109 this text.
86. Sec. 35 is amended by the Act of 10/21/76, at p. 110 this text.
87. Sec. 35 is amended by the Act of 1/12/83, at p. 121 this text.
88. Sec. 35 is amended by the Act of 1/12/83, at p. 126 this text.
NOTE: There are two references to Sec. 35 on this page.
89. Sec. 35 is amended by the Act of 12/22/87, at p. 138 this text.

FOOTNOTES FOR SECTION 36: MINERAL LEASING ACT OF 1920
90. Sec. 36 is amended by the Act of 7/13/46, at p. 39 this text.

FOOTNOTES FOR SECTION 37: MINERAL LEASING ACT OF 1920
91. Sec. 37 is amended by the Act of 10/30/78, at p. 112 this text.

FOOTNOTES FOR SECTION 38: MINERAL LEASING ACT OF 1920
92. Sec. 38 was REPEALED by the Act of 9/6/66, at p. 79 this text.

FOOTNOTES FOR SECTION 39: MINERAL LEASING ACT OF 1920
93. Sec. 39 was added by the Act of 2/9/33, at p. 28 this text.
94. Sec. 39 was added by the Act of 2/9/33, at p. 28 this text.
95. Sec. 39 is amended by the Act of 8/8/46, at p. 47-48 this text.
96. Sec. 39 is amended by the Act of 6/3/48, at p. 55-56 this text.
97. Sec. 39 is amended by the Act of 4/21/76, at p. 108 this text.
98. Sec. 39 is amended by the Act of 11/16/81, at p. 114 this text.

FOOTNOTES FOR SECTION 14 (cont'd): MINERAL LEASING ACT OF 1920
99. Sec. 14 is amended by the Act of 11/15/90, at p. 140 this text.

FOOTNOTES FOR SECTION 31 (cont'd): MINERAL LEASING ACT OF 1920
100. Sec. 31 is amended by the Act of 11/15/90, at p. 140 this text.

FOOTNOTES FOR SECTIONS 6, 7, 11, 17, AND 37: MINERAL LEASING ACT OF 1920
101. These sections amended by the Act of January 3, 1992 - The Energy Policy Act of 1992, at p. 141 this text.

SECTION 40:
Added by Act of 6/16/34, at p. 29 this text.

SECTION 41;
Added by Act of 12/21/87, at p. 136 this text.

SECTION 42:
Added by Act of 9/2/60, at p. 76 this text.

SECTION 43:
Added by Act of 12/21/87, at p. 139 this text.

SECTION 44:
Added by Act of 12/21/87, at p. 139 this text.

SEC. 343. <<NOTE: 42 USC 15903.>> MARGINAL PROPERTY PRODUCTION INCENTIVES.

(a) Definition of Marginal Property.--Until such time as the Secretary issues regulations under subsection (e) that prescribe a different definition, in this section, the term ``marginal property'' means an onshore unit, communitization agreement, or lease not within a unit or communitization agreement, that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90,000,000 British thermal units of gas per well per day calculated based on the average over the 3 most recent production months, including only wells that produce on more than half of the days during those 3 production months.

(b) Conditions for Reduction of Royalty Rate.--Until such time as the Secretary issues regulations under subsection (e) that prescribe different standards or requirements, the Secretary shall reduce the royalty rate on--

(1) oil production from marginal properties as prescribed in subsection (c) if the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, is, on average, less than $15 per barrel (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days; and

(2) gas production from marginal properties as prescribed in subsection (c) if the spot price of natural gas delivered at Henry Hub, Louisiana, is, on average, less than $2.00 per million British thermal units (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days.

(c) Reduced Royalty Rate.--

(1) In general.--When a marginal property meets the conditions specified in subsection (b), the royalty rate shall be the lesser of--

(A) 5 percent; or

(B) the applicable rate under any other statutory or regulatory royalty relief provision that applies to the affected production.

(2) Period of effectiveness.--The reduced royalty rate under this subsection shall be effective beginning on the first day of the production month following the date on which the applicable condition specified in subsection (b) is met.

(d) Termination of Reduced Royalty Rate.--A royalty rate prescribed in subsection (c)(1) shall terminate--

(1) with respect to oil production from a marginal property, on the first day of the production month following the date on which--

(A) the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, on average, exceeds $15 per barrel (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city

average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days; or

(B) the property no longer qualifies as a marginal property; and

(2) with respect to gas production from a marginal property, on the first day of the production month following the date on which--

(A) the spot price of natural gas delivered at Henry Hub, Louisiana, on average, exceeds $2.00 per million British thermal units (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days; or

(B) the property no longer qualifies as a marginal property.

(e) Regulations Prescribing Different Relief.--

(1) Discretionary regulations.--The Secretary may by regulation prescribe different parameters, standards, and requirements for, and a different degree or extent of, royalty relief for marginal properties in lieu of those prescribed in subsections (a) through (d).

(2) Mandatory regulations.--Unless a <<NOTE: Deadline.>> determination is made under paragraph (3), not later than 18 months after the date of enactment of this Act, the Secretary shall by regulation--

(A) prescribe standards and requirements for, and the extent of royalty relief for, marginal properties for oil and gas leases on the outer Continental Shelf; and

(B) define what constitutes a marginal property on the outer Continental Shelf for purposes of this section.

(3) Report.--To the extent the Secretary determines that it is not practicable to issue the regulations referred to in paragraph (2), the Secretary shall provide a report to Congress explaining such determination by not later than 18 months after the date of enactment of this Act.

(4) Considerations.--In issuing regulations under this subsection, the Secretary may consider--

(A) oil and gas prices and market trends;

(B) production costs;

(C) abandonment costs;

(D) Federal and State tax provisions and the effects of those provisions on production economics;

(E) other royalty relief programs;

(F) regional differences in average wellhead prices;

(G) national energy security issues; and

(H) other relevant matters, as determined by the Secretary.

(f) Savings Provision.--Nothing in this section prevents a lessee from receiving royalty relief or a royalty reduction pursuant to any other law (including a regulation) that provides more relief than the amounts provided by this section.

SEC. 349. <<NOTE: 42 USC 15907.>> ORPHANED, ABANDONED, OR IDLED WELLS ON FEDERAL LAND.

(a) In General.--The <<NOTE: Deadline.>> Secretary, in cooperation with the Secretary of Agriculture, shall establish a program not later than 1 year after the date of enactment of this Act to remediate, reclaim, and close orphaned, abandoned, or idled oil and gas wells located on land administered by the land management agencies within the Department of the Interior and the Department of Agriculture.

(b) Activities.--The program under subsection (a) shall--

(1) include a means of ranking orphaned, abandoned, or idled wells sites for priority in remediation, reclamation, and closure, based on public health and safety, potential environmental harm, and other land use priorities;

(2) provide for identification and recovery of the costs of remediation, reclamation, and closure from persons or other entities currently providing a bond or other financial assurance required under State or Federal law for an oil or gas well that is orphaned, abandoned, or idled; and

(3) provide for recovery from the persons or entities identified under paragraph (2), or their sureties or guarantors, of the costs of remediation, reclamation, and closure of such wells.

(c) Cooperation and Consultations.--In carrying out the program under subsection (a), the Secretary shall--

(1) work cooperatively with the Secretary of Agriculture and the States within which Federal land is located; and

(2) consult with the Secretary of Energy and the Interstate Oil and Gas Compact Commission.

(d) Plan.--Not <<NOTE: Deadline.>> later than 1 year after the date of enactment of this Act, the Secretary, in cooperation with the Secretary of Agriculture, shall submit to Congress a plan for carrying out the program under subsection (a).

(e) Idled Well.--For the purposes of this section, a well is idled if--

(1) the well has been nonoperational for at least 7 years; and

(2) there is no anticipated beneficial use for the well.

(f) Federal Reimbursement for Orphaned Well Reclamation Pilot Program.--

(1) Reimbursement for remediating, reclaiming, and closing wells on land subject to a new lease.--The Secretary shall carry out a pilot program under which, in issuing a new oil and gas lease on federally owned land on which 1 or more orphaned wells are located, the Secretary--

(A) may require, other than as a condition of the lease, that the lessee remediate, reclaim, and close in accordance with standards established by the Secretary, all orphaned wells on the land leased; and

(B) shall develop a program to reimburse a lessee, through a royalty credit against the Federal share of royalties owed or other means, for the reasonable actual costs of remediating, reclaiming, and closing the orphaned wells pursuant to that requirement.

(2) Reimbursement for reclaiming orphaned wells on other land.--In carrying out this subsection, the Secretary--

(A) may authorize any lessee under an oil and gas lease on federally owned land to reclaim in accordance with the Secretary's standards--

(i) an orphaned well on unleased federally owned land; or

(ii) an orphaned well located on an existing lease on federally owned land for the reclamation of which the lessee is not legally responsible; and

(B) shall develop a program to provide reimbursement of 100 percent of the reasonable actual costs of remediating, reclaiming, and closing the orphaned well, through credits against the Federal share of royalties or other means.

(3) Regulations.--The Secretary may issue such regulations as are appropriate to carry out this subsection.

(g) Technical Assistance Program for Non-Federal Land.--

(1) In general.--The Secretary of Energy shall establish a program to provide technical and financial assistance to oil and gas producing States to facilitate State efforts over a 10-year period to ensure a practical and economical remedy for environmental problems caused by orphaned or abandoned oil and gas exploration or production well sites on State or private land.

(2) Assistance.--The Secretary of Energy shall work with the States, through the Interstate Oil and Gas Compact Commission, to assist the States in quantifying and mitigating environmental risks of onshore orphaned or abandoned oil or gas wells on State and private land.

(3) Activities.--The program under paragraph (1) shall include--

(A) mechanisms to facilitate identification, if feasible, of the persons currently providing a bond or other form of financial assurance required under State or Federal law for an oil or gas well that is orphaned or abandoned;

(B) criteria for ranking orphaned or abandoned well sites based on factors such as public health and safety, potential environmental harm, and other land use priorities;

(C) information and training programs on best practices for remediation of different types of sites; and

(D) funding of State mitigation efforts on a cost-shared basis.

(h) Authorization of Appropriations.--

(1) In general.--There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 2006 through 2010.

(2) Use.--Of the amounts authorized under paragraph (1), $5,000,000 are authorized for each fiscal year for activities under subsection (f).

SEC. 365. <<NOTE: 42 USC 15924.>> PILOT PROJECT TO IMPROVE FEDERAL PERMIT COORDINATION.

(a) Establishment.--The Secretary of the Interior (referred to in this section as the ``Secretary'') shall establish a Federal Permit Streamlining Pilot Project (referred to in this section as the ``Pilot Project'').

(b) Memorandum of Understanding.--

(1) In general.--Not <<NOTE: Deadline.>> later than 90 days after the date of enactment of this Act, the Secretary shall enter into a memorandum of understanding for purposes of this section with--

(A) the Secretary of Agriculture;

(B) the Administrator of the Environmental Protection Agency; and

(C) the Chief of Engineers.

(2) State participation.--The Secretary may request that the Governors of Wyoming, Montana, Colorado, Utah, and New Mexico be signatories to the memorandum of understanding.

(c) Designation of Qualified Staff.--

(1) In general.--Not <<NOTE: Deadline.>> later than 30 days after the date of the signing of the memorandum of understanding under subsection (b), all Federal signatory parties shall, if appropriate, assign to each of the field offices identified in subsection (d) an employee who has expertise in the regulatory issues relating to the office in which the employee is employed, including, as applicable, particular expertise in--

(A) the consultations and the preparation of biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(B) permits under section 404 of Federal Water Pollution Control Act (33 U.S.C. 1344);

(C) regulatory matters under the Clean Air Act (42 U.S.C. 7401 et seq.);

(D) planning under the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.); and

(E) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Duties.--Each employee assigned under paragraph (1) shall--

(A) <<NOTE: Deadline.>> not later than 90 days after the date of assignment, report to the Bureau of Land Management Field Managers in the office to which the employee is assigned;

(B) be responsible for all issues relating to the jurisdiction of the home office or agency of the employee; and

(C) participate as part of the team of personnel working on proposed energy projects, planning, and environmental analyses.

(d) Field Offices.--The following Bureau of Land Management Field Offices shall serve as the Pilot Project offices:

(1) Rawlins, Wyoming.

(2) Buffalo, Wyoming.

(3) Miles City, Montana.
(4) Farmington, New Mexico.
(5) Carlsbad, New Mexico.
(6) Grand Junction/Glenwood Springs, Colorado.
(7) Vernal, Utah.

(e) Reports.--Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report that--
(1) outlines the results of the Pilot Project to date; and
(2) makes a recommendation to the President regarding whether the Pilot Project should be implemented throughout the United States.

(f) Additional Personnel.--The Secretary shall assign to each field office identified in subsection (d) any additional personnel that are necessary to ensure the effective implementation of--
(1) the Pilot Project; and
(2) other programs administered by the field offices, including inspection and enforcement relating to energy development on Federal land, in accordance with the multiple use mandate of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(g) Permit Processing Improvement Fund.--Section 35 of the Mineral Leasing Act (30 U.S.C. 191) is amended by adding at the end the following:
``(c)(1) Notwithstanding the first sentence of subsection (a), any rentals received from leases in any State (other than the State of Alaska) on or after the date of enactment of this subsection shall be deposited in the Treasury, to be allocated in accordance with paragraph (2).
``(2) Of the amounts deposited in the Treasury under paragraph (1)--
``(A) 50 percent shall be paid by the Secretary of the Treasury to the State within the boundaries of which the leased land is located or the deposits were derived; and
``(B) 50 percent shall be deposited in a special fund in the Treasury, to be known as the `BLM Permit Processing Improvement Fund' (referred to in this subsection as the `Fund').

``(3) For each of fiscal years 2006 through 2015, the Fund shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, for the coordination and processing of oil and gas use authorizations on onshore Federal land under the jurisdiction of the Pilot Project offices identified in section 365(d) of the Energy Policy Act of 2005.''.
(h) Transfer of Funds.--For the purposes of coordination and processing of oil and gas use authorizations on Federal land under the administration of the Pilot Project offices identified in subsection (d), the Secretary may authorize the expenditure or transfer of such funds as are necessary to--
(1) the United States Fish and Wildlife Service;
(2) the Bureau of Indian Affairs;
(3) the Forest Service;
(4) the Environmental Protection Agency;
(5) the Corps of Engineers; and
(6) the States of Wyoming, Montana, Colorado, Utah, and New Mexico.

(i) Fees.--During the period in which the Pilot Project is authorized, the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations.

(j) Savings Provision.--Nothing in this section affects--

(1) the operation of any Federal or State law; or

(2) any delegation of authority made by the head of a Federal agency whose employees are participating in the Pilot Project.

SEC. 366. DEADLINE FOR CONSIDERATION OF APPLICATIONS FOR PERMITS.

Section 17 of the Mineral Leasing Act (30 U.S.C. 226) is amended by adding at the end the following:

``(p) Deadlines for Consideration of Applications for Permits.--

``(1) In general.--Not <<NOTE: Notification.>> later than 10 days after the date on which the Secretary receives an application for any permit to drill, the Secretary shall--

``(A) notify the applicant that the application is complete; or

``(B) notify the applicant that information is missing and specify any information that is required to be submitted for the application to be complete.

``(2) Issuance or deferral.--Not later than 30 days after the applicant for a permit has submitted a complete application, the Secretary shall--

``(A) issue the permit, if the requirements under the National Environmental Policy Act of 1969 and other applicable law have been completed within such timeframe; or

``(B) <<NOTE: Notice.>> defer the decision on the permit and provide to the applicant a notice--

``(i) that specifies any steps that the applicant could take for the permit to be issued; and

``(ii) a list of actions that need to be taken by the agency to complete compliance with applicable law together with timelines and deadlines for completing such actions.

``(3) Requirements for deferred applications.--

``(A) In general.--If the Secretary provides notice under paragraph (2)(B), the applicant shall have a period of 2 years from the date of receipt of the notice in which to complete all requirements specified by the Secretary, including providing information needed for compliance with the National Environmental Policy Act of 1969.

``(B) Issuance of decision on permit.--If the applicant completes the requirements within the period specified in subparagraph (A), the Secretary shall issue a decision on the permit not later than 10 days after the date of completion of the requirements described in subparagraph (A), unless compliance with the National Environmental Policy Act of 1969 and other applicable law has not been completed within such timeframe.

``(C) Denial of permit.--If the applicant does not complete the requirements within the period specified in subparagraph (A) or if the applicant does not comply with applicable law, the Secretary shall deny the permit.''.

ONSHORE ORDER #1

Federal Register

Wednesday,
March 7, 2007

Part II

Department of Agriculture

Forest Service
36 CFR Part 228

Department of the Interior

Bureau of Land Management
43 CFR Part 3160

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

RIN 0596–AC20

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[W0–610–411H12–24 1A]

RIN 1004–AD59

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.

FOR FURTHER INFORMATION CONTACT: James Burd at (202) 452–5017 or Ian Senio at (202) 452–5049 at the BLM or Barry Burkhardt at (801) 625–5157 at the Forest Service. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

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

I. Introduction
A. Authority
B. Purpose
C. Scope
II. Definitions
III. Application for Permit To Drill (APD)
A. Where to File
B. Early Notification
C. Notice of Staking Option
D. Components of a Complete APD Package
E. APD Posting and Processing
F. Approval of APDs
G. Valid Period of Approved APD
H. Master Development Plans
IV. General Operating Requirements
V. Rights-of-Way and Special Use Authorizations
VI. Operating on Lands With Private/State Surface and Federal or Indian Oil and Gas
VII. Leases for Indian Oil and Gas
A. Approval of Operations
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VIII. Subsequent Operations and Sundry Notices
A. Surface Disturbing Operations
B. Emergency Repairs
IX. Well Conversions
A. Conversion to an Injection Well
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X. Variances
XI. Waivers, Exceptions, or Modifications
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A. Plugging
B. Reclamation
XIII. Appeal Procedures
Attachment I—Sample Format for Notice of Staking

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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BILLING CODES 3410–11–P; 4310–84–P

ONSHORE ORDER #2

BUREAU OF LAND MANAGEMENT
43 FR PART 3160 **(updated as of 01/19/00)**

Federal Register / Vol. 53, No. 223
Friday, November 18, 1988
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Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations

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- A. Authority.
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Onshore Oil and Gas Order No. 2
Drilling Operations on Federal and Indian Oil and Gas Leases

I. Introduction

A. Authority

This order is established pursuant to the authority granted to the Secretary of the Interior

pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specially authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian (except Osage tribe) oil and gas leases that have been, or may hereafter be issued.

Specific authority for the provisions contained in this Order is found at: §3162.3-1 *Drilling Applications and Plans*; §3162.3-4 *Well Abandonment*; §3162.4-1 *Well Records and Reports*; §3162.4-3 *Samples, Tests, and Surveys*; §3162.5-1 *Environmental Obligations;* §3162.5-2 *Control of Wells;* §3162.5-2(a) *Drilling Wells*; §3162.5-3 *Safety Precautions*; and Subpart 3163 *Noncompliance and Assessment.*

B. Purpose

This Order details the Bureau's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian lands (except Osage Tribe) and for abandonment immediately following drilling. The purpose also is to identify the enforcement actions that will result when violations of the minimum standards are found, and when those violations are not abated in a timely manner.

C. Scope

This Order is applicable to all onshore Federal and Indian (except Osage Tribe) oil and gas leases.

D. General

1. If an operator chooses to use higher rated equipment than that authorized in the *Application for Permit to Drill* (APD), testing procedures shall apply to the approved working pressures, not the upgraded higher working pressures.

2. Some situations may exist either on a well-by-well or field-wide basis whereby it is commonly accepted practice to vary a particular minimum standard(s) established in this Order. This situation may be resolved by requesting a variance (See section IV of this Order), by the inclusion of a stipulation to the APD, or by the issuance of Notice to Lessees and Operators (NTL) by the appropriate BLM office.

3. When a violation is discovered and if it does not cause or threaten immediate substantial and adverse impact on public health and safety, the environment, production accountability or royalty, it will be classified as minor. The violation may be reissued as a major violation if not corrected during the abatement period and continued drilling has changed the adverse impact of the violation so that it meets the specific definition of a major violation.

4. This Onshore Order is not intended to circumvent the reporting requirements or compliance aspects that may be stated elsewhere in Existing NTL's, Onshore Orders, etc. A lessee's compliance with the requirements of the regulations in this Part shall not relieve the lessee of the obligation to comply with other applicable laws and regulations in accordance with 43 CFR 3162.5-1(c). Lessee's should give special attention to the automatic assessment provisions in 43 CFR 3163.1(b).

5. This Order is based upon the assumption that operations have been approved in accordance with 43 CFR Part 3160 and Onshore Oil and Gas Order No.1. Failure to obtain approval prior to commencement of drilling or related operations shall subject the operator to immediate assessment under 43 CFR 3163.1(b)(2).

II. **Definitions.**

A. Abnormal Pressure Zone means a zone that has either pressure above or below the normal gradient for an area and/or depth.

B. Bleed Line means the vent line that bypasses the chokes in the choke manifold system; also referred to as Panic Line.

C. Blooie Line means a discharge line used in conjunction with a rotating head.

D. Drilling Spool means a connection component with both ends either flanged or hubbed with an internal diameter at least equal to the bore of the casing, and with smaller side outlets for connecting auxiliary lines.

E. Exploratory Well means any well drilled beyond the known producing limits of a pool.

F. Filled-up Line means the line used to fill the hole when the drill pipe is being removed from the well. It is usually connected to a 2-inch collar that is welded into a drilling nipple.

G. Flare Line means a line used to carry gas from the rig to be burned at a safer location. The gas comes from the degasser, gas buster, separator, or when drill stem testing, directly from the drill pipe.

H. Functionally Operated means activating equipment without subjecting it to well-bore pressure.

I. Isolating means using cement to protect, separate, or segregate usable water and mineral resources.

J. Lease means any contact, profit-share agreement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas (See 43 CFR 3160.0-5).

K. Lessee means a person holding record title in a lease issued by the United States (See 43 CFR 3160.0-5).

L. Make-up Water means water that is used in mixing slurry for cement jobs and plugging operations, and is compatible with cement constituents being used.

M. Manual Locking Device means any manually activated device, such as a hand wheels, etc., that is used for the purpose of locking the preventer in the closed position.

N. Mud for Plugging Purposes means a slurry of bentonite of similar flocculent/viscosifier, water, and additive needed to achieve the desired weight and consistency to stabilize the hole.

O. Mudding Up means adding materials and chemicals to water to control the viscosity,

weight, and filtrate loss of the circulating system.

P. Operating Rights Owner (or Owner) means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

Q. Operational means capable of functioning as designed and installed without undue force or further modification.

R. Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer his/her responsibility for the operations conducted in the leased lands or a portion thereof.

S. Precharge Pressure means the nitrogen pressure remaining in the accumulator after all the hydraulic fluid has been expelled from beneath the movable barrier.

T. Prompt Correction means immediate correction of violations, with drilling suspended if required in the discretion of the authorized officer.

U. Prospectively Valuable Deposit of Minerals means any deposit of minerals that the authorized officer determines to have characteristics of quantity and quality that warrant its protection.

V. Tagging the Plug means running in the hole with a string of tubing or drill pipe and placing sufficient weight on the plug to insure its integrity. Other methods of tagging the plug may be approved by the authorized officer.

W. Targeted Tee or Turn means a fitting used in pressure piping in which a bull plug or blind flange of the same pressure rating as the rest of the approved system is installed at the end of a tee or cross, opposite the fluid entry arm, to change the direction of flow and to reduce erosion.

X. 2M, 3M, 5M, 10M, and 15M mean the pressure ratings used for equipment with a working pressure rating of the equivalent thousand pounds per square inch (psi) (2M=2,000 psi, 3M=3,000 psi, etc.)

Y. Usable Water means generally those waters containing up to 10,000 ppm of total dissolved solids.

Z. Weep Hole means a small hole that allows pressure to bleed off through the metal plate, used in covering well bores after abandonment operations.

[57 FR 3025, Jan. 27, 1992]

III. **Requirements**

A. Well Control Requirements

1. Blowout preventer (BOP) and related equipment (BOPE) shall be installed, used, maintained, and tested in a manner necessary to assure well control and shall be in place and operational prior to drilling the surface casing shoe unless otherwise approved by the APD. Commencement of drilling without the approved BOPE installed, unless otherwise approved, shall subject the operator to immediate assessment under 43 CFR 3163.1(b)(1). The BOP and related control equipment shall be suitable for operations in those areas which are subject to sub-freezing conditions. The BOPE shall be based on known or anticipated sub-surface pressures, geologic conditions, accepted engineering practice, and surface environment. Item number 7 of the eight point plan in the APD specifically addresses expected pressures. The working pressure of all

BOPE shall exceed the anticipated surface pressure to which it may be subjected, assuming a partially evacuated hole with a pressure gradient of 0.22 psi/ft.

2. The gravity of the violations for many of the well control minimum standards listed below are shown as minor. However, very short abatement periods in this Order are often specified in recognition that by continuing to drill, the violation which was originally determined to be of a minor nature may cause or threaten immediate, substantial and adverse impact on public health and safety, the environment, production accountability, or royalty income, which would require its reclassification as a major violation.

a. *Minimum standards and enforcement provisions for well control equipment.*

i. A well control device shall be installed at the surface that is capable of complete closure of the well bore. This device shall be closed whenever the well is unattended.

Violation:	Major.
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	Prompt correction required.

ii. 2M system:

- Annular preventer, or double ram, or two rams with one being blind and one being a pipe ram *
- kill line (2 inch minimum)
- 1 kill line valve (2 inch minimum)
- 1 choke line valve
- 2 chokes (refer to diagram in Attachment 1)
- Upper kelly cock valve with handle available
- Safety valve and subs to fit all drill strings in use
- Pressure gauge on choke manifold
- 2 inch minimum choke line
- Fill-up line above the uppermost preventer.

Violation:	Minor (all items unless marked by asterisk).
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	24 hours.

*Violation:	Major.
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	Prompt correction required.

iii. 3M system:

- Annular preventers*
- Double ram with blind rams and pipe rams*
- Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter)*
- Kill line (2 inch minimum)
- A minimum of 2 choke line valves (3 inch minimum)*
- 3 inch diameter choke line

- 2 kill line valves, one of which shall be a check valve (2 inch minimum)*
- 2 chokes (refer to diagram in Attachment 1)
- Pressure gauge on choke manifold
- Upper kelly cock valve with handle available
- Safety valve and subs to fit all drill string connections in use
- All BOPE connections subjected to well pressure shall be flanged, welded, or clamped*
- Fill-up line above the uppermost preventer.

Violation:	Minor (all items unless marked by asterisk).
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	24 hours.

*Violation:	Major.
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	Prompt correction required.

iv. 5M system:

- Annular preventer*
- Pipe ram, blind ram, and, if conditions warrant, as specified by the authorized officer, another pipe ram shall also be required*
- A second pipe ram preventer shall be used with a tapered drill string
- Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter)*
- 3 inch diameter choke line
- 2 choke line valves (3 inch minimum)*
- Kill line (2 inch minimum)
- 2 chokes with 1 remotely controlled from rig floor (refer to diagram in Attachment 1)
- 2 kill line valves and a check valve (2 inch minimum)*
- Upper kelly cock valve with handle available
- When the expected pressures approach working pressure of the system, 1 remote kill line tested to stack pressure (which shall run to the outer edge of the substructure and be unobstructed)
- Lower kelly cock valve with handle available
- Safety valve(s) and subs to fit all drill string connections in use
- Inside BOP or float sub available
- Pressure gauge on choke manifold
- All BOPE connections subjected to well pressure shall be flanged, welded, or clamped*
- Fill-up line above the uppermost preventer.

Violation:	Minor (all items unless marked by asterisk).
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	24 hours

*Violation:	Major.
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	Prompt correction required.

v. 10M & 15M system:
- Annular preventer*
- 2 pipe rams*
- Blind rams*
- Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter)*
- 3 inch choke line*
- 2 kill line valves (2 inch minimum) and check valve*
- Remote kill line (2 inch minimum) shall run to the outer edge of the substructure and be unobstructed
- Manual and hydraulic choke line valve (3 inch minimum)*
- 3 chokes, 1 being remotely controlled (refer to diagram in Attachment 1)
- Pressure gauge on choke manifold
- Upper kelly cock valve with handle available
- Lower kelly cock valve with handle available
- Safety valves and subs to fit all drill string connections in use
- Inside BOP or float sub available
- Wear ring in casing head
- All BOPE connections subjected to well pressure shall be flanged, welded, or clamped*
- Fill-up line installed above the uppermost preventer.

Violation:	Minor (all items unless marked by asterisk).
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	24 hours.

*Violation:	Major.
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	Prompt correction required.

vi. If repair or replacement of the BOPE is required after testing, this work shall be performed prior to drilling out the casing shoe.

Violation:	Major.
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	Prompt correction required.

vii. When the BOPE cannot function to secure the hole, the hole shall be secured using cement, retrievable packer or a bridge plug packer, bridgeplug, or other acceptable approved method to assure safe well conditions.

Violation:	Major.
Corrective Action:	Install the equipment as specified.

Normal Abatement Period: Prompt correction required.
[54 FR 39528, Sept. 27, 1989]

b. *Minimum standards and enforcement provisions for choke manifold equipment.*

i. All choke lines shall be straight lines unless turns use tee blocks or are targeted with running tees, and shall be anchored to prevent whip and reduce vibration.

Violation: Minor.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: 24 hours.

ii. Choke manifold equipment configuration shall be functionally equivalent to the appropriate example diagram shown in Attachment 1 of this Order. The configuration of the chokes may vary.

Violation: Minor.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: Prompt correction required.

iii. All valves (except chokes) in the kill line, choke manifold, and choke line shall be a type that does not restrict the flow (full opening) and that allows a straight through flow (same enforcement as item ii).

iv. Pressure gauges in the well control system shall be a type designed for drilling fluid service (same enforcement as above).
[57 FR 3025, Jan. 27, 1992]

c. *Minimum standards and enforcement provisions for pressure accumulator system.*

i. 2M system – accumulator shall have sufficient capacity to close all BOP's and retain 200 psi above precharge. Nitrogen bottles that meet manufacturer's specifications may be used as the backup to the required independent power source..

Violation: Minor.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: 24 hours.

ii. 3M system – accumulator shall have sufficient capacity to open the hydraulically-controlled choke line valve(if so equipped), close all rams plus the annual preventer, and retain a minimum of 200 psi above precharge on the closing manifold without the use of the closing unit pumps. This is a minimum requirement. The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level shall be maintained at the manufacturer's recommendations. The 3M system shall have 2 independent power sources to close the preventers. Nitrogen bottles (3 minimum) may be 1 of the independent power sources and, if so, shall maintain a charge equal to the manufacturer's specifications.

Violation: Minor
Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

iii. 5M and higher system – accumulator shall have sufficient capacity to open the hydraulically-controlled gate valve (if so equipped) and close all rams plus the annular preventer (for 3 ram systems add a 50 percent safety factor to compensate for any fluid loss in the control system or preventers) and retain a minimum pressure of 200 psi above precharge on the closing manifold without use of the closing unit pumps. The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level of the reservoir shall be maintained at the manufacturer's recommendations. Two independent sources of power shall be available for powering the closing unit pumps. Sufficient nitrogen bottles are suitable as a backup power source only, and shall be recharged when the pressure falls below manufacturer's specifications.

Violation: Minor.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: 24 hours.
[57 FR 3025, Jan. 27, 1992]

d. *Minimum standards and enforcement provisions for accumulator precharge pressure test.* This test shall be conducted prior to connecting the closing unit to the BOP stack and at least once every 6 months. The accumulator pressure shall be corrected if the measured precharge pressure is found to be above or below the maximum or minimum limit specified below (only nitrogen gas may be used to precharge):

Accumulator working pressure rating	Minimum acceptable operating pressure	Desired precharge pressure	Maximum acceptable precharge pressure	Minimum acceptable precharge pressure
1,500 psi	1,500 psi	750 psi	800 psi	700 psi
2,000 psi	2,000 psi	1,000 psi	1,100 psi	900 psi
3,000 psi	3,000 psi	1,000 psi	1,100 psi	900 psi

Violation: Minor.
Correction Action: Perform test.
Normal Abatement Period: 24 hours.

e. *Minimum standards and enforcement provisions for power availability.* Power for the closing unit pumps shall be available to the unit at all times so that the pumps shall automatically start when the closing valve manifold pressure has decreased to the pre-set level.

Violation: Major.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: Prompt correction required.

f. *Minimum standards and enforcement provisions for accumulator pump capacity.* Each BOP closing unit shall be equipped with sufficient number and sizes of pumps so that, with the accumulator system isolated from service, the pumps shall be capable of opening the hydraulically-operated gate valve (if so equipped), plus closing the annular preventer on the

smallest size drill pipe to be used within 2 minutes, and obtain a minimum of 200 psi above specified accumulator precharge pressure.

Violation:	Minor.
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	24 hours.

g. *Minimum standards and enforcement provisions for locking devices.* A manual locking device (i.e., hand wheels) or automatic locking devices shall be installed on all systems of 2M or greater. A valve shall be installed in the closing line as close as possible to the annular preventer to act as a locking device. This valve shall be maintained in the open position and shall be closed only when the power source for the accumulator system is inoperative.

Violation:	Minor.
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	24 hours.

h. *Minimum standards and enforcement provisions for remote controls.* Remote controls shall be readily accessible to the driller. Remote controls for all 3M or greater systems shall be capable of closing all preventers. Remote controls for 5M or greater systems shall be capable of both opening and closing all preventers. Master controls shall be at the accumulator and shall be capable of opening and closing all preventers and the choke line valve (if so equipped). No remote control for a 2M system is required.

Violation:	Minor.
Correction Action:	Install the equipment as specified.
Normal Abatement Period:	24 hours.

i. *Minimum standards and enforcement provisions for well control equipment testing.*

i. Perform all tests described below using clear water or an appropriate clear liquid for subfreezing temperatures with a viscosity similar to water.

ii. Ram type preventers and associated equipment shall be tested to approved (see item I.D.1. of this order) stack working pressure if isolated by test plug or to 70 percent of internal yield pressure of casing if BOP stack is not isolated from casing. Pressure shall be maintained for at least 10 minutes or until requirements of test are met, whichever is longer. If a test plug is utilized, no bleed-off of pressure is acceptable. For a test not utilizing a test plug, if a decline in pressure of more than 10 percent in 30 minutes occurs, the test shall be considered to have failed. Valve on casing head below test plug shall be open during test of BOP stack.

iii. Annular type preventers shall be tested to 50 percent of rated working pressure. Pressure shall be maintained at least 10 minutes or until provisions of test are met, whichever is longer.

iv. As a minimum, the above test shall be performed:
A. when initially installed:
B. whenever any seal subject to test pressure is broken:
C. following related repairs: and

D. at 30-day intervals.

v. Valves shall be tested from working pressure side during BOPE tests with all down stream valves open.

vi. When testing the kill line valve(s), the check valve shall be held open or the ball removed.

vii. Annular preventers shall be functionally operated at least weekly.

viii. Pipe and blind rams shall be activated each trip, however, this function need not be performed more than once a day.

ix. A BOPE pit level drill shall be conducted weekly for each drilling crew.

x. Pressure tests shall apply to all related well control equipment.

xi. All of the above described tests and/or drills shall be recorded in the drilling log.

Violation: Minor.
Corrective action: Perform the necessary test or provide documentation.
Normal Abatement Period: 24 hours or next trip, as most appropriate.
[54 FR 39528, Sept. 27, 1989]

B Casing and Cementing Requirements

The proposed casing and cementing programs shall be conducted as approved to protect and/or isolate all usable water zones, potentially productive zones, lost circulation zones, abnormally pressured zones, and any prospectively valuable deposits of minerals. Any isolating medium other than cement shall receive approval prior to use. The casing setting depth shall be calculated to position the casing seat opposite a competent formation which will contain the maximum pressure to which it will be exposed during normal drilling operations. Determination of casing setting depth shall be based on all relevant factors, including: presence/absence of hydrocarbons; fracture gradients; usable water zones; formation pressures; lost circulation zones; other minerals; or other unusual characteristics. All indications of usable water shall be reported.

– Minimum design factors for tensions, collapse, and burst that are incorporated into the casing design by an operator/lessee shall be submitted to the authorized operator for his review and approval along with the APD for all exploratory wells or as otherwise specified by the authorized officer.

– Casing design shall assume formation pressure gradients of 0.44 to 0.50 psi per foot for exploratory wells (lacking better data).

– Casing design shall assume fracture gradients from 0.70 to 1.00 psi per foot for exploratory wells (lacking better data).

– Casing collars shall have a minimum clearance of 0.422 inches on all sides in the hole/casing annulus, with recognition that variances can be granted for justified exceptions.

– All waiting on cement times shall be adequate to achieve a minimum of 500 psi compressive strength at the casing shoe prior to drilling out.

1. Minimum Standards and Enforcement Provisions for Casing and Cementing.

a. All casing, except the conductor casing, shall be new or reconditioned and tested casing.

All casing shall meet or exceed API standards for new casing. The use of reconditioned and tested used casing shall be subject to approval by the authorized officer; approval will be contingent upon the wall thickness of any such casing being verified to be at least 87 ½ percent of the nominal wall thickness of new casing.

Violation:	Major.
Corrective Action:	Perform remedial action as specified by the authorized officer.
Normal Abatement Period:	Prompt correction required.

[57 FR 3025, Jan. 27, 1992]

b. For liners, a minimum of 100 feet of overlap between a string of casing and the next larger casing is required. The interval of overlap shall be sealed and tested. The liner shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and next larger string has been achieved. The test pressure shall be the maximum anticipated pressure to which the seal will be exposed. No test shall be required for liners that do not incorporate or need a seal mechanism.

Violation:	Minor.
Corrective Action:	Perform remedial action as specified by the authorized officer.
Normal Abatement Period:	Upon determination of corrective action.

c. The surface casing shall be cemented back to surface either during the primary cement job or by remedial cementing.

Violation:	Major.
Corrective Action:	Perform remedial cementing.
Normal Abatement Period:	Prompt correction required.

d. All of the above described tests shall be recorded in the drilling log.

Violation:	Minor.
Corrective Action:	Perform the necessary test or provide documentation.
Normal Abatement Period:	24 hours.

e. All indications of usable water shall be reported to the authorized officer prior to running the next string of casing or before plugging orders are requested, whichever occurs first.

Violation:	Major.
Corrective Action:	Report information as required.
Normal Abatement Period:	Prompt correction required.

f. Surface casing shall have centralizers on the bottom 3 joints of the casing (a minimum of 1 centralizer per joint, starting with the shoe joint).

Violations:	Major.
Corrective Action:	Logging/testing may be required to determine the quality of the job. Recementing may then be specified.
Normal Abatement Period:	Prompt correction upon determination of corrective action.

[57 FR 3025, Jan. 27, 1992]

g. Top plugs shall be used to reduce contamination of cement by displacement fluid. A bottom plug or other acceptable technique, such as a preflush fluid, inner string cement method, etc., shall be utilized to help isolate the cement from contamination by the mud fluid being displaced ahead of the cement slurry.

Violation:	Major.
Correction Action:	Logging may be required to determine the quality of the cement job. Recementing or further recementing may then be specified.
Normal Abatement Period:	Based upon determination of corrective action.

h. All casing strings below the conductor shall be pressure tested to 0.22 psi per foot of casing string length or 1500 psi, whichever is greater, but not to exceed 70 percent of the minimum internal yield. If pressure declines more than 10 percent in 30 minutes, corrective action shall be taken.

Violation:	Minor.
Corrective Action:	Perform the test and/or remedial action as specified by the authorized officer.
Normal Abatement Period:	24 hours.

i. On all exploratory wells, and on that portion of any well approved for a 5M BOPE system or greater, a pressure integrity test of each casing shoe shall be performed. Formation at the shoe shall be tested to a minimum of the mud weight equivalent anticipated to control the formation pressure to the next casing depth or at total depth of the well. This test shall be performed before drilling more than 20 feet of new hole.

Violation:	Minor.
Corrective Action:	Perform the specified test.
Normal Abatement Period:	24 hours.

C. Mud Program Requirements

The characteristics, use, and testing of drilling mud and the implementation of related drilling procedures shall be designed to prevent the loss of well control Sufficient quantities of mud materials shall be maintained or readily accessible for the purpose of assuring well control.

Minimum Standards and Enforcement Provisions for Mud Program and Equipment

1. Record slow pump speed on daily drilling report after mudding up.

Violation:	Minor.
Corrective Action:	Record required information.
Normal Abatement Period:	24 hours.

2. Visual mud monitoring equipment shall be in place to detect volume changes indicating loss or gain of circulating fluid volume.

Violation:	Minor.

Corrective Action: Install necessary equipment.
Normal Abatement Period: 24 hours.

3. When abnormal pressures are anticipated, electronic/mechanical mud monitoring equipment shall be required, which shall include as a minimum; pit volume totalizer (PVT); stroke counter; and flow sensor.

Violation: Minor.
Corrective Action: Install necessary instrumentation.
Normal Abatement Period: 24 hours.

4. A mud test shall be performed every 24 hours after mudding up to determine, as applicable: density, viscosity, gel strength, filtration, and pH.

Violation: Minor.
Correction Action: Perform necessary tests.
Normal Abatement Period: 24 hours.

5. A trip tank shall be used on 10M and 15M systems and on upgraded 5M systems as determined by the authorized officer.

Violation: Minor.
Corrective Action: Install necessary equipment.
Normal Abatement Period: 24 hours.

6. a. Gas detecting equipment shall be installed in the mud return system for exploratory wells or wells where abnormal pressure is anticipated, and hydrocarbon gas shall be monitored for pore pressure changes.

b. Hydrogen sulfide safety and monitoring equipment requirements may be found in Onshore Oil and Gas Order No. 6 – Hydrogen Sulfide Operations.

Violation: Minor.
Corrective Action: Install necessary equipment.
Normal Abatement Period: 24 hours.

7. All flare systems shall be designed to gather and burn all gas. The flare line(s) discharge shall be located not less than 100 feet from the well head, having straight lines unless turns are targeted with running tees, and shall be positioned downwind of the prevailing wind direction and shall be anchored. The flare system shall have an effective method for ignition. Where noncombustible gas is likely or expected to be vented, the system shall be provided supplemental fuel for ignition and to maintain a continuous flare.

Violation: Major.
Corrective Action: Install equipment as specified.
Normal Abatement Period: 24 Hours.

8. A mud-gas separator (gas buster) shall be installed and operable for all systems of 10M or greater and for any system where abnormal pressure is anticipated beginning at a point at

least 500 feet above any anticipated hydrocarbon zone of interest.

Violation:	Minor.
Corrective Action:	Install required equipment.
Normal Abatement Period:	Prompt correction required.

[54 FR 39528, Sept. 27, 1989, further amended at 57 FR 3026, Jan.27, 1992]

D. Drill Stem Testing Requirements

Initial opening of drill stem test tools shall be restricted to daylight hours unless specific approval to start during other hours is obtained from the authorized officer. However, DSTs may be allowed to continue at night if the test was initiated during daylight hours and the rate of flow is stabilized and if adequate lighting is available (i.e., lighting which is adequate for visibility and vapor-proof for safe operations). Packers can be released, but tripping shall not begin before daylight, unless prior approval is obtained from the authorized officer. Closed chamber DSTs may be accomplished day or night.

Minimum Standards for Drill Stem Testing.

1. A DST that flows to the surface with evidence of hydrocarbons shall be either reversed out of the testing string under controlled surface conditions or displaced into the formation prior to pulling the test tool. This would involve providing some means for reserve circulation.

Violation:	Major.
Corrective Action:	Contingent on circumstances and as specified by the authorized officer.
Normal Abatement Period:	Prompt correction required.

2. Separation equipment required for the anticipated recovery shall be properly installed before a test starts.

Violation:	Major.
Corrective Action:	Install required equipment.
Normal Abatement Period:	Prompt correction required.

3. All engines within 100 feet of the wellbore that are required to "run" during the test shall have spark arresters or water cooled exhausts.

Violation:	Major.
Corrective Action:	Contingent on circumstances and as specified by the authorized officer.
Normal Abatement Period:	Prompt correction required.

E. Special Drilling Operations

1. In addition to the equipment already specified elsewhere in this onshore order, the following equipment shall be in place and operational during air/gas drilling:

- Properly lubricated and maintained rotating head*

- Spark arresters on engines or water cooled exhaust*
- Blooie line discharge 100 feet from well bore and securely anchored
- Straight run on blooie line unless otherwise approved
- Deduster equipment*
- All cuttings and circulating medium shall be directed into a reserve or blooie pit*
- Float valve above bit*
- Automatic igniter or continuous pilot light on the blooie line*
- Compressors located in the opposite direction from the blooie line a minimum of 100 feet from the well bore
- Mud circulating equipment, water, and mud materials (does not have to be premixed) sufficient to maintain the capacity of the hole and circulating tanks or pits

Violation:	Minor (unless marked by an asterisk).
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	24 hours.

*Violation:	Major.
Corrective Action:	Install the equipment as specified.
Normal Abatement Period:	Prompt correction required.

2. Hydrogen sulphide operation is specifically addressed under Onshore Oil and Gas Order No. 6.

F. Surface Use

Onshore Oil and Gas Order No. 1 specifically addresses surface use. That Order provides for safe operations, adequate protection of surface resources and uses, and other environmental components. The operator/lessee is responsible for, and liable for, all building, construction, and operating activities and subcontracting activities conducted in association with the APD. Requirements and special stipulations for surface use are contained in or attached to the approved APD.

Minimum Standards and Enforcement Provisions for Surface Use

The requirements and stipulations of approval shall be strictly adhered to by the operator/lessee and any contractors.

Violation: If a violation is identified by the authorized officer he shall determine whether it is major or minor, considering the definitions in 43 CFR 3160.0-5, and shall specify the appropriate corrective action and abatement period.

G. Drilling Abandonment Requirements

The following standards apply to the abandonment of newly drilled dry or non-productive wells in accordance with 43 CFR 3162.3-4 and section V of Onshore Oil and Gas Order No. 1. Approval shall be obtained prior to the commencement of abandonment. All formations bearing

usable-quality water, oil, gas, or geothermal resources, and/or a prospectively valuable deposit of minerals shall be protected. Approval may be given orally by the authorized officer before abandonment operations are initiated. This oral request and approval shall be followed by a written notice of intent to abandon filed not later than the fifth business day following oral approval. Failure to obtain approval prior to commencement of abandonment operations shall result in immediate assessment of under 43 CFR 3163.1(b)(3). The hole shall be in static condition at the time any plugs are placed (this does not pertain to plugging lost circulation zones). Within 30 days of completion of abandonment, a subsequent report of abandonment shall be filed. Plugging design for an abandonment hole shall include the following:

1. Open Hole.
   i. A cement plug shall be placed to extend at least 50 feet below the bottom (except as limited by total depth (TD) or plugged back total depth (PBTD)), to 50 feet above the top of:
      a. Any zone encountered during which contains fluid or gas with a potential to migrate;
      b. Any prospectively valuable deposit of minerals.

   ii. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of the hole, plus an additional 10 percent of slurry for each 1,000 feet of depth.

   iii. No plug, except the surface plug, shall be less than 25 sacks without receiving specific approval from the authorized officer.

   iv. Extremely thick sections of single formation may be secured by placing 100-foot plugs across the top and bottom of the formation, and in accordance with item ii hereof.

   v. In the absence of productive zones or prospectively valuable deposits of minerals which otherwise require placement of cement plugs, long sections of open hole shall be plugged at least every 3,000 feet. Such plugs shall be placed across in-gauge sections of the hole, unless otherwise approved by the authorized officer.

2. Cased Hole. A cement plug shall be placed opposite all open perforation and extend to a minimum of 50 feet below (except as limited by TD or PBTD) to 50 feet above the perforated interval. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth. In lieu of the cement plug, a bridge plug is acceptable, provided:
   i. The bridge plug is set within 50 feet to 100 feet above the open perforations;
   ii. The perforations are isolated from any open hole below; and
   iii. The bridge plug is capped with 50 feet of cement. If a bailer is used to cap this plug, 35 feet of cement shall be sufficient.

3. Casing Removed from Hole. If any casing is cut and recovered, a cement plug shall be placed to extend at least 50 feet above and below the stub. The exposed hole resulting from the

casing removal shall be secured as required in items 1i and 1ii hereof.

4. An additional cement plug placed to extend a minimum of 50 feet above and below the shoe of the surface casing for intermediate string, as appropriate).

5. Annular Space. No annular space that extends to the surface shall be left open to the drilled hole below. If this condition exists, a minimum of the top 50 feet of annulus shall be plugged with cement.

6. Isolating Medium. Any cement plug which is the only isolating medium for a usable water interval or a zone containing a prospectively valuable deposit of minerals shall be tested by tagging with the drill string. Any plugs placed where the fluid level will not remain static also shall be tested by either tagging the plug with the working pipe string, or pressuring to a minimum pump (surface) pressure of 1,000 psi, with no more than a 10 percent drop during a 15-minute period (cased hole only). If the integrity of any other plug is questionable, or if the authorized officer has specific concerns for which he/she orders a plug to be tested, it shall be tested in the same manner.

7. Silica Sand or Silica Flour. Silica sand or silica flour shall be added to cement exposed to bottom hole static temperatures above 230 °F to prevent heat degradation of the cement.

8. Surface Plug. A cement plug of at least 50 feet shall be placed across all annuluses. The top of this plug shall be placed as near the eventual casing cutoff point as possible.

9. Mud. Each of the intervals between plugs shall be filled with mud of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling such interval. In the absense of other information at the time plugging is approved, a minimum mud weight of 9 pounds per gallon shall be specified.

10. Surface Cap. All casing shall be cut-off at the base of the cellar or 3 feet below final restored ground level (whichever is deeper). The well bore shall then be covered with a metal plate at least 1/4 inch thick and welded in place, or a 4-inch pipe, 10-feet in length, 4 feet above ground and embedded in cement as specified by the authorized officer. The well location and identity shall be permanently inscribed. A weep hole shall be left if a metal plate is welded in place.

11. The cellar shall be filled with suitable material as specified by the authorized officer and the surface restored in accordance with the instructions of the authorized officer.

Minimum Standard

All plugging orders shall be strictly adhered to.

Violation: Major.

Corrective Action:	Contingent upon circumstances.
Normal Abatement Period:	Prompt correction required.

[54 FR 39528, Sept. 27, 1989]

IV. Variances From Minimum Standard

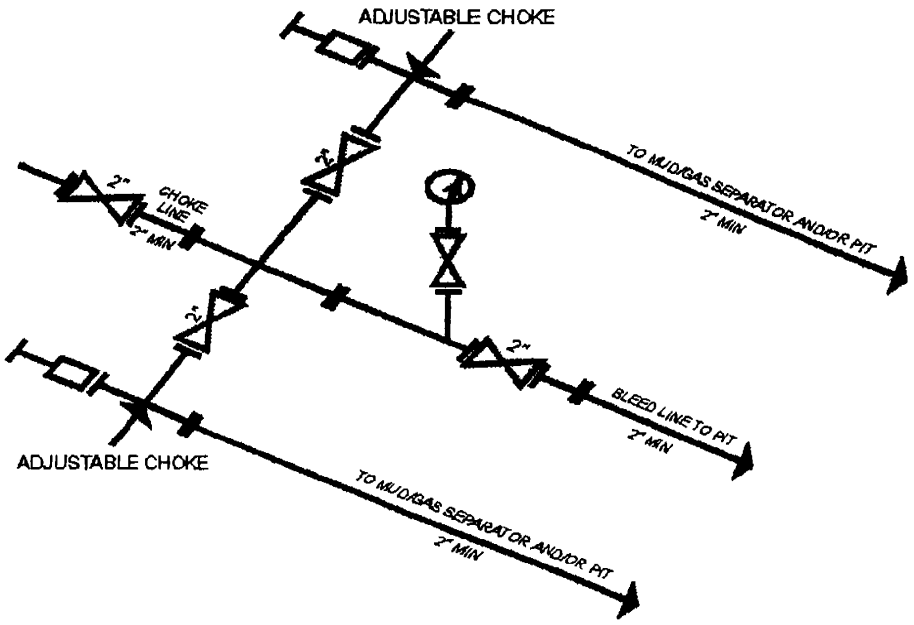
An operator may request the authorized officer to approve a variance from any of the minimum standards prescribed in section III hereof. All such request shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, if appropriate, may approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s).

Emergency or other situations of an immediate nature that could not be reasonably foreseen at the time of APD approval may receive oral approval. However, such requests shall be followed up by a written notice filed not later than the fifth business day following oral approval.

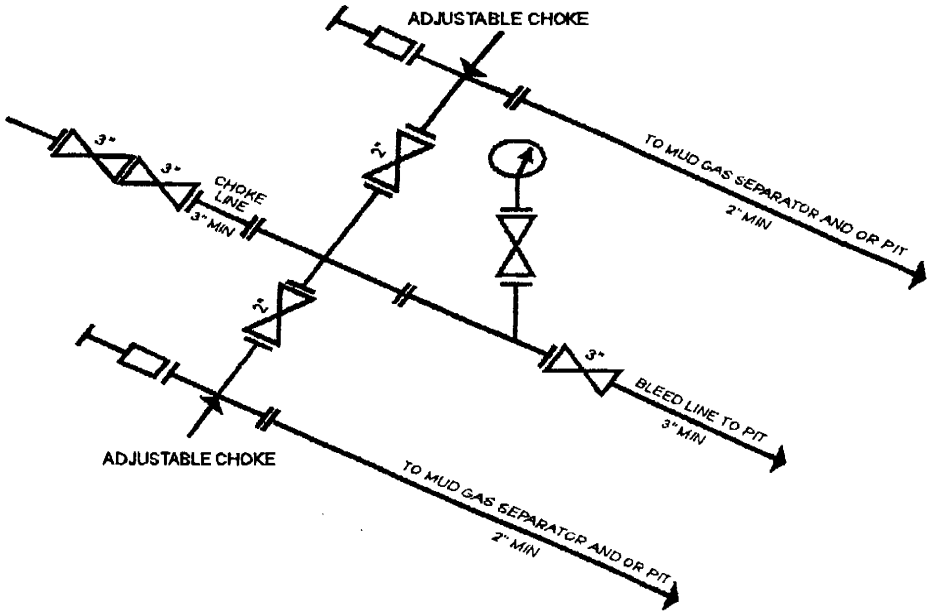
ATTACHMENTS

I. Diagrams of Choke Manifold Equipment
II. Sections From 43 CFR Subparts 3163 and 3165 (Not included With Federal Register Publication)

Attachment I. Diagrams of Choke Manifold Equipment

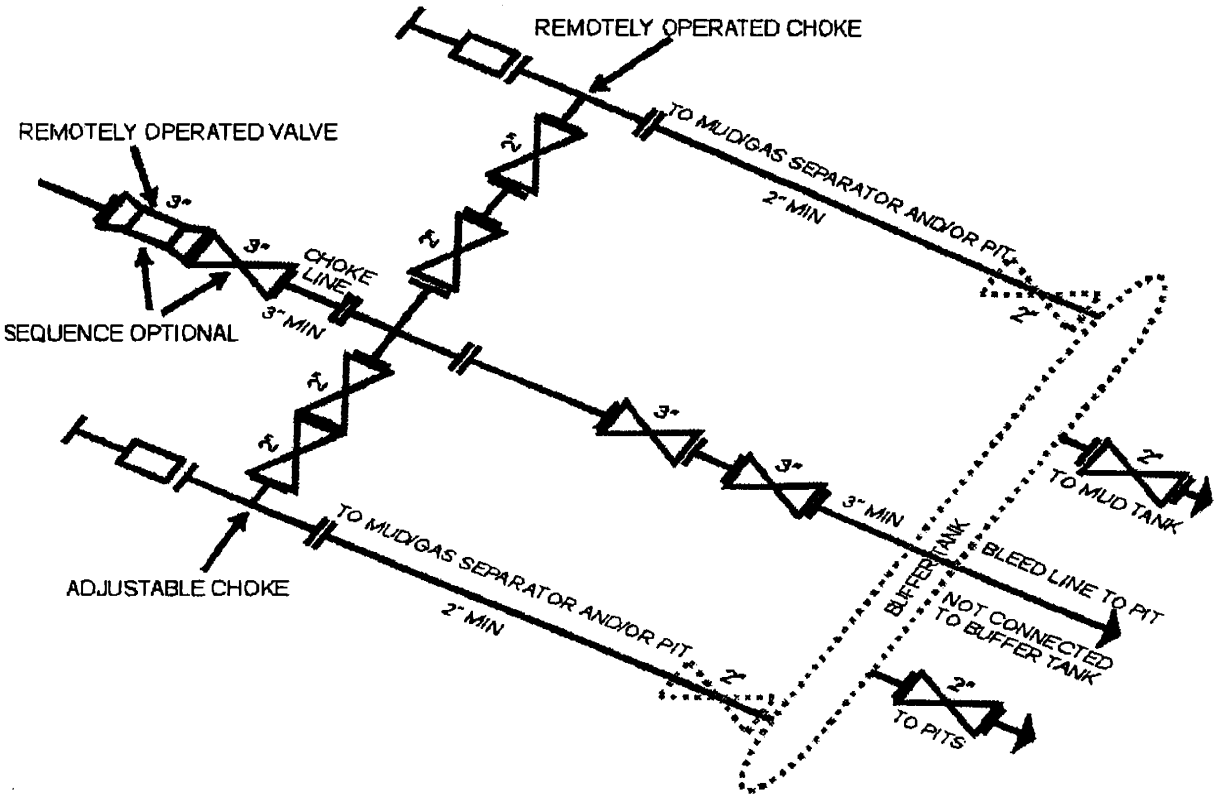


2M CHOKE MANIFOLD EQUIPMENT - CONFIGURATION OF CHOKES MAY VARY



3M CHOKE MANIFOLD EQUIPMENT - CONFIGURATION OF CHOKES MAY VARY

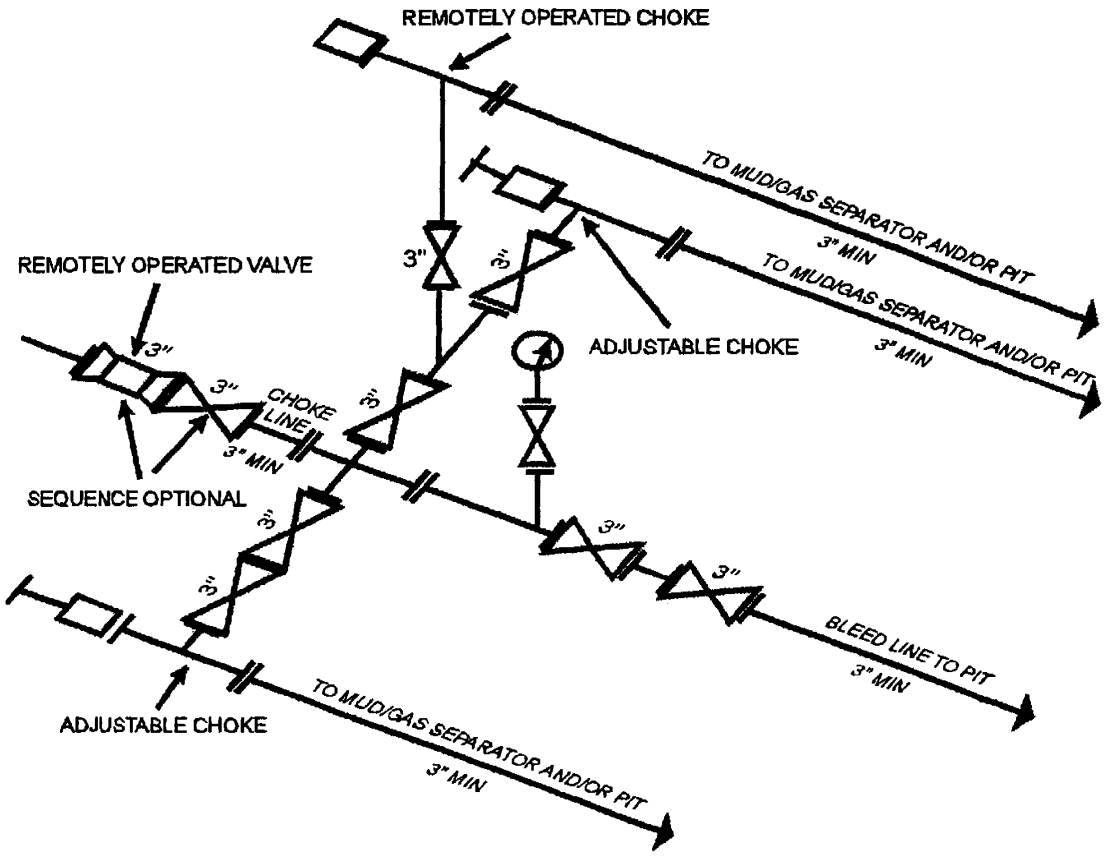
[54 FR 39528, Sept. 27, 1989]



5M CHOKE MANIFOLD EQUIPMENT - CONFIGURATION OF CHOKES MAY VARY

Although not required for any of the choke manifold systems, buffer tanks are sometimes installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together. When buffer tanks are employed, valves shall be installed upstream to isolate a failure or malfunction without interrupting flow control. Though not shown on 2M, 3M, 10M, OR 15M drawings, it would also be applicable to those situations.

[54 FR 39528, Sept. 27, 1989]



10M AND 15M CHOKE MANIFOLD EQUIPMENT - CONFIGURATION OF CHOKES MAY VARY
[53 FR 49661, Dec. 9, 1988 and 54 FR 39528, Sept. 27, 1989]

Attachment I - 3

BUREAU OF LAND MANAGEMENT
43 CFR PART 3160
Federal Register / Vol. 54, No. 36, Friday, February 24, 1989 / Rules and Regulations
Effective date: March 27, 1989.

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 3, Site Security

Site Security

I. Introduction.
- A. Authority.
- B. Purpose.
- C. Scope.

II. Definition.

III. Requirements.
- A. Storage and Sales Facilities - Seals.
- B. Lease Automatic Custody Transfer (LACT) System - Seals.
- C. Removal of Crude Oil from Storage Facilities by Means Other than through a LACT Unit.
- D. By - Pass Around Meters.
- E. Theft or Mishandling of Oil.
- F. Self Inspection.
- G. Recordkeeping.
- H. Site Security Plan.
- I. Site Facility Diagram.

IV. Variances from Minimum Standards.

Attachments.
I. Diagrams.

Onshore Oil and Gas Order No. 3, Site Security

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Orders shall be binding on the operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter

be, issued.

Specific authority for the provisions contained in this order is found at:

§3162.4-1, Well records and reports;
§3162.7-1, Disposition of Production;
§3162.7-5, Site Security on Federal and Indian (except Osage) Oil and Gas Leases; and subpart 3163, Noncompliance and Assessments.

B. Purpose

The purpose of this Order is to implement and supplement the regulations in 43 CFR 3162.7-1 and 3162.7-5. This Order establishes the minimum standards for site security by providing a system for production accountability and covers the use of seals, by-passes around meters, self inspection, transporters' documentation, reporting of incidents of unauthorized removal or mishandling of oil and condensate, facility diagrams, recordkeeping, and site security plans.

The Order identifies certain specific acts of noncompliance, rates them as to severity, establishes abatement periods for corrective action for such acts of noncompliance, and provides for variances. This Order serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed. Additionally, this Order serves as notice to any party aggrieved by an enforcement action taken pursuant to this Order, of that party's rights, pursuant to 43 CFR 3165.3, to administrative review, hearing on the record, and judicial review.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

II. Definitions

The following definitions apply for the purposes of this Order.

A. Access means the ability to enter into any tankage or piping system through a valve, valves or combination of valves and/or tankage which would permit the removal of oil; or to enter any component in a measuring system affecting the quality and/or quantity of the liquid being measured, without documentation as provided by this Order.

B. Appropriate Valves means those valves in a particular piping system that could provide unauthorized or undocumented access to stored or produced oil, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation.

C. Authorized Officer means any employee of the Bureau of Land Management authorized to perform the duties in Groups 3000 and 3100 of this title [43 CFR 3000.0-5(e)].

D. Authorized Representative means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation. or contract (See 43 CFR 3160.0-5).

E. Business Day means any day Monday through Friday excluding Federal holidays.

F. By-pass means any piping arrangement connected upstream and downstream of a meter which allows oil or gas to continue on the sales line without passing through the meter. Equipment which permits the changing of the orifice plate without bleeding the pressure off the gas meter run shall not be considered a by-pass.

G. Condensate means those natural gas liquids recovered in lease separators, dehydrators, or other production equipment and remaining in a liquid state at atmospheric pressure and temperature, consisting primarily of pentanes and heavier hydrocarbons.

H. Effectively Sealed means the placement of a seal in such a manner that the position of the sealed valve may not be altered, or a component in a measuring system affecting quality or quantity be accessed, without the seal being destroyed.

I. Facility means a site used to handle production and store oil and/or condensate produced from or allocated to Federal and Indian lands.

J. Gas is defined at 43 CFR 3000.0-5(a) to mean any fluid. either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions.

K. Lease means any contract, profitshare arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas (See 43 CFR 3160.0-5)

L. Lessee means a person or entity holding record title in a lease issued by the United States (43 CFR 3100.0-5 and 3160.0-5).

M. Major Violation means noncompliance which causes or threaten immediate, substantial, and adverse impacts on public health and safety, the environment. production accountability, or royalty income.

N. Minor Violation means noncompliance which does not rise to the level of a "major violation."

O. Mishandling means unmeasured or unaccounted-for removal of production from a facility other than through theft.

P. Oil means all nongaseous hydrocarbon substances, other than those substances leasable as coal. oil shale or "gilsonite" (including all veintype solid hydrocarbons). However, condensate is excluded for the purposes of III.1.e.iv., of this Order. (See 43 CFR 3000.0-5.)

P.1. Bad Oil means crude oil that is not marketable to normal purchasers but that can be treated economically to be marketable by use of heat chemicals. or other methods or combination of methods with existing or modified lease facilities or portable equipment.

P.2. Clean Oil/Pipeline Oil means crude oil or condensate that is of such quality that it is acceptable to normal purchasers.

P.3. Slop Oil means crude oil that is of such quality that is not acceptable to normal purchasers and which requires special treatment other than that which can economically be provided with existing or modified facilities or portable equipment and is usually sold to oil reclaimers.

P.4. Waste Oil means lease crude oil that has been determined by the authorized officer to be of such quality that it cannot be treated economically and put in a marketable

condition with existing or modified lease facilities or portable equipment and cannot be sold to reclaimers and also has been determined by the authorized officer to have no economic value.

Q. Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof (See 43 CFR 3160.0-5).

R. Piping means all tubular goods made of any material (e.g., metallic, plastic, fiberglass, and/or rubber).

S. Production Phase means that period of time or mode of operating during which crude oil is delivered directly to or through production vessels to the storage facilities and includes all operations at the facility other than those defined by the sales phase.

T. Sales Phase means that period of time or mode of operation during which crude oil is removed from the storage facilities for sale, transportation. or other purposes.

U. Seal means a device uniquely numbered which completely secures either a valve or those components of a measuring system that affect the quality and/or quantity of the liquid being measured.

III. Requirements

A. Storage and Sales Facilities – Seals

1. Minimum Standards.

a. The primary purpose for use of seals is to provide a means of documenting the removal of production for royalty purposes. Additionally, seals provide a means of detecting unauthorized entry to, and removal of, production. The seal requirements are based on American Petroleum Institute (API) recommended practice No. 12 R1, 3rd Edition, dated May 31, 1986, entitled "API Recommended Practice for Setting, Connecting, Maintenance, and Operation of Lease Tanks".

b. All lines entering or leaving all oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise provided under the provisions of this Order. During the production phase, all valves that provide access to production shall be effectively sealed in the closed position. During the sales phase, and prior to taking the top gauge, all valves that would allow unmeasured production to enter or leave the sales tank shall be effectively sealed in the closed position. Any equipment needed for effective sealing, excluding the seals, shall be located at the site. If the sealing equipment is in the possession of the operator's representative or at a centralized field location, it shall be considered to be at the site. (See Attachment I). Each ineffectively sealed valve or appropriate valve not sealed shall be considered a separate violation.

c. Additionally, valves or combinations of valves and tankage that provide access to the production prior to measurement for sales or lease use purposes are considered appropriate valves and are subject to the seal requirements of this Order (See Attachment I).

d. Valves on any tank which contains oil or is connected to the production equipment are considered appropriate valves and are subject to the seal requirements contained in this

Order. except those valves on tanks which contain oil that has been determined by the authorized officer to be waste oil or valves on tanks used for the primary treatment of lease production (See Attachment I).

e. Exclusions to seal requirements contained in this Order shall be limited to the following:

i. Valves on production vessels and tanks used as production vessels (e.g., gunbarrel, wash tanks, etc.);

ii. Valves on water tanks, provided the possibility of access does not exist through a common circulating, drain, or equalizer system to production in the sales and storage tanks;

iii. Sample cock valves utilizing piping of 1 inch of less in diameter;

iv. When a single tank is used for collecting small volumes of condensate produced from a gas well, the requirement Is waived for requiring the fill line valve to be sealed during shipment, but all other seal requirements of this Order shall apply;

v. Gas line valves of 1 inch or less used as tank bottom "roll" lines need not be sealed; provided there is no access to the contents of the storage tank and said lines cannot be used as equalizer lines;

vi. Tank heating systems which use a of fluid other than the contents of the storage tank, i.e., steam, water, glycol;

vii. Valves, connected directly to the pump body, used on pump bleed off lines of 1 inch or less in diameter; and

viii. Tank vent line valves.

f. For systems where production may only be removed through the lease automatic custody transfer (LACT) system, no sales or equalizer lines need to be sealed. However, any valves which allow access for the removal of oil prior to its measurement through the LACT shall be effectively sealed (See Attachment I).

g. For oil measured and sold by tank gauging, all appropriate valves shall be sealed during the production phase, and all valves that provide access to production shall be effectively sealed in a closed position. During the sales phase, and prior to taking the top gauge, all valves that would allow unmeasured production to enter or leave the sales tank shall be effectively sealed in the closed position. Circulating lines having valves which may allow access for the removal from storage and sales facilities to any other source except through the treating equipment back to storage facilities shall be effectively sealed as near the storage facility as possible (See Attachment I).

2. Enforcement Provisions.

a. The following appropriate valves shall be effectively sealed during the production and sales phases or combination of production and sales phases:

- Sales valves*
- Circulating valves
- Drain valves
- Fill valve
- Equalizer valve

Violation:	Minor (unless marked by an asterisk or otherwise meeting the criteria of a major violation)
Corrective Action:	Seal as required.
Normal Abatement Period.	2 business days.

*Violation: Major	
Corrective Action:	Seal as required.
Normal Abatement period.	24 hours.

b. Devices used in conjunction with seals for effective sealing, excluding the seals, shall be located at the site. If the sealing equipment is in the possession of the operator's representative or at a centralized administrative location, it shall be considered to be at the site. The absence of each required sealing device shall be considered a separate violation. The classification of degree of violation, corrective action, and normal abatement period shall be the same as contained in a., above.

B. Lease Automatic Custody Transfer (LACT) Systems – Seals

This portion of the Order is predicated on the minimum requirements for the components to be used in a LACT system contained in Onshore Oil and Gas Order No. 4, LACT Components and General Operating Requirements; API Manual of Petroleum Measurement Standards, Chapter 6.1, 1st Edition, 1981, or the latest revised standard; and API Spec 11N, 2nd Edition, March 1979, entitled "Lease Automatic Custody Transfer (LACT) Equipment."

1. Minimum Standards.

Each LACT unit shall employ meters that have non-resettable totalizers and there shall be no by-pass around the LACT unit. The seal requirements apply to the components used for volume or quality determination of the oil being shipped. Each missing or ineffective seal shall be considered a separate violation. During normal operations the following components shall be effectively sealed:

- sample probe
- sampler volume control
- All valves on lines entering or leaving the sample container excluding the safety pop-off valve (if so equipped). Each valve shall be sealed in the open or closed position, as appropriate.
- Meter assembly, including the counter head, meter head and, if so equipped, automatic temperature compensator (ATC) automatic temperature and gravity selection service(ATG)
- Temperature recorder (if so equipped)
- Back pressure valve downstream of the meter
- Any drain valves in the system
- Manual sampling valves (if so equipped).

Violation:	Major.
Corrective Action:	Seal as required.
Normal Abatement Period:	24 hours.

– Absence of non-resettable totalizer.

Violation:	Major.
Corrective Action:	Install a meter head that utilizes a non-resettable totalizer.
Normal Abatement Period:	Install prior to sales or removal of production through the meter.

C. *Removal of Crude Oil From Storage Facilities by Means Other Than Through a LACT Unit*

The determination of the volume and quality of crude oil removed and sold from a storage facility shall be made by the operator in accordance with the accepted procedures for the measurement of oil (See Onshore Oil and Gas Order No. 4, Part III.C., Oil Measurement by Tank Gauging).

[54 FR 39529, Sept. 27, 1989]

1. Minimum Standards.

a. The operator shall require the transporter/purchaser to record on a run ticket prior to sales or removal of any crude oil from the lease, as a minimum, the following:

- Name of the seller
- Federal or Indian lease number(s), or as appropriate. the communitization agreement number or the unit agreement name and number and participating area identification'
- The location of the tank by quarter section. section, township and range (public land surveys) or by the legal land description
- A unique number, the date, and the tank number and capacity
- Opening gauge and temperature*
- Name of gauger and operator representative. if present at time of sale
- Number of the seal removed*.

Violation:	Minor (all items unless marked by asterisk).
Corrective Action:	Complete missing information.
Normal Abatement Period:	Upon request or within 3 business days of notice.

*Violation:	Major.
Corrective Action:	Submit completed run ticket
Normal Abatement Period.	Upon request or 3 business days.

b. The operator shall require that the run ticket be completed upon the completion of the sales or removal of oil from the lease to show the following:

- Closing gauge (second gauge) and temperatures*
- Observed gravity* and sediment and water (S&W) content*
- Number of the seal installed
- Signature of the gauger
- Signature of the operator representative (within 2 business days after the sales or removal).

Violation:	Minor (all items unless marked by asterisk).
Corrective Action:	Complete missing information.
Normal Abatement Period:	Upon request or within 3 business days of notice.

*Violation:	Major.
Corrective Action:	Submit completed run ticket
Normal Abatement Period:	Upon request or 3 business days.

c. When a single truck load constitutes a completed sale, the driver shall have in his/her possession documentation containing the information required in a. and b., above, during the period of shipment. When multiple truckloads are involved in a sale and the purchase is predicated on the difference between the opening and closing gauges (implying that the purchaser has purchased the entire tank), only the driver of the last truck is required to have the documentation containing the information required in a. and b., above, and all of the other drivers shall have in their possession appropriate documentation in the form of a trip log or manifest. All valves on lines entering or leaving the sales tank(s) shall be effectively sealed. except the sales and vent line valves, between truck loads, but the sales valve shall be sealed at the time the sale is completed. In the event documentation of a sale arrangement prevents having all the information required, the operator may apply for a variance in accordance with Part V. "Variances from minimum standards" . Once the seals have been broken, the purchaser shall be responsible for the entire contents of the tank until resealed.

Violation:	Major.
Corrective Action:	Discontinue trucking operation until documentation is provided.
Normal Abatement Period:	Prior to leaving the facility.

[54 FR 39529, Sept. 27, 1989]

D. *By-Pass Around Meters*

1. Minimum Standard.

There shall be no by-pass around gas meters or LACT unit meters.

Violation:	Major.
Corrective Action:	Remove by-pass.
Normal Abatement Action:	Immediate correction required.

E. *Theft or Mishandling of Oil*

1. Minimum Standard.

a. The operator shall, not later than the next business day after discovery of an incident of apparent theft or mishandling of crude oil and/or condensate, report such incident to the authorized officer. All oral reports shall be followed up with a written report within 10 business days. The incident report shall supply the following:

- Company name and name of individual reporting the incident(s)

- Lease number, communitization agreement number, or unit agreement name and number and participating area, as appropriate
- Location of facility where the incident occurred by quarter, quarter section, section, township, and range or legal land description
- The estimated volume of oil or condensate removed
- The way access was obtained to the production or how the mishandling occurred
- The individual who discovered the incident
- Date and time of the discovery of the incident
- Whether the incident was or was not reported to local law enforcement agencies and company security.

Violation:	Minor (failure to file a complete report).
Corrective Action:	Submit complete report of incident.
Normal Abatement Period:	Oral report upon request and complete written report within 10 business days after notice of failure to file a complete report.

*Violation:	Major (failure to report incident).
Corrective Action:	Submit report of incident.
Normal Abatement Period:	Oral report upon request and written report within 10 business days after notice of failure to report incident.

F. Self Inspection

I. Minimum Standard.

Operators/Lessees shall establish an inspection program for all leases for the purpose of periodically measuring production volumes and assuring that there is compliance with the minimum site security requirements. The program shall include a record of such inspections showing the findings of the inspection and a record of the volume measurements.

Violation:	Minor.
Corrective Action:	Institute an inspection program that includes a record of such inspections and establishes a measurement schedule.
Normal Abatement Period:	20 business days after notice.

[54 FR 39529, Sept. 27, 1989]

G. Recordkeeping

1. Minimum Standard.

The operator shall establish and maintain for a minimum of 6 years a recordkeeping system which shall be readily available to the authorized officer or authorized representative upon request and which includes all of the following as a minimum:

- Documentation of the number of each seal and the valve on which the seal is used, the date of installation or removal of the seal(s) for each storage tank. including the reason for the removal or installation of each such seal

- Documentation of each seal used on the LACT unit showing the component sealed and the date the seal was installed and removed including the reasons(s) for such removal

Violation: Major
Corrective Action: Commence and maintain documentation.
Normal Abatement Period: 1 business day after notice.

H. Site Security Plan

1. Minimum Standard.

The operator shall establish a site security plan for all facilities. The plan need not be submitted to the authorized officer, but the authorized officer shall be notified of the location where the plan is maintained and the normal working hours of said location. The plan shall be available to the authorized officer upon request. The plan shall include, but is not limited to the following:

- A self inspection program that monitors production volumes and ensures compliance with all seal requirements at each storage and sale facility and each LACT unit, if applicable (See Section III F hereof)
- A system to ensure the maintenance of accurate seal records and the completion of accurate run tickets (See Section III A, B, and C hereof)
- A system to ensure the reporting of incidents of apparent theft or mishandling of oil (See Section III E hereof)
- A system to ensure that there are no by-pass of meters (See Section III D hereof)
- A list of the leases, communitization agreements, unit agreements, and specific facilities that are subject to each plan
- Documentation that the authorized officer has been notified of the completion of a plan and site facility diagram(s) and the leases. communication agreements. unit agreements, and specific facilities that are subject to each plan and diagram(s)
- Documentation that the authorized officer was notified within 60 days of completion of construction of a new facility or of commencement of first production or of inclusion of the production from a committed nonFederal well into a federally supervised unit or communitization agreement. whichever occurs first, whether that facility is covered by a specific existing plan or a new plan has been prepared.

Violation: Minor.
Corrective Action: Comply with requirements.
Normal Abatement Period: 20 business days after notice.
[54 FR 39529, Sept. 27, 1989]

I. Site Facility Diagram

1. Minimum Standard.

A facility diagram is required for all facilities, including those facilities not located on Federal or Indian lands but which are subject to Federal supervision through commitment to

a federally approved unit agreement or communitization agreement. This requirement is not applicable to dry gas production facilities where no liquids are produced or stored. No format is prescribed for facility diagrams. However, the facility diagram should be prepared on 8½ x 11 paper, if possible, and should be legible and comprehensible to an individual with an ordinary working knowledge of oil field operations (See Attachment I). The facility diagram shall:

- Accurately reflect the relative position of the production equipment, piping, and metering systems in relationship to each other, but need not be to scale
- Commencing with the header, identify the vessels, piping, and metering systems located on the site and shall include the appropriate valves and any other equipment used in the handling, conditioning, and disposal of oil. gas, and water produced, including any water disposal pits or emergency pits. In those instances where pits are co-located, such pits may be shown in parentheses on the facility diagram
- Indicate which valve(s) shall be sealed and in what position during the production and sales phases and during the conduct of other production activities, i.e., circulating tanks, drawing off water, which may be shown by an attachment, if necessary
- Require as an addition. when describing co-located facilities operated by 2 different operators, a skeleton diagram of the co-located facility, showing only equipment. For co-located common storage facilities operated by 1 operator, one facility diagram shall be sufficient
- Be filed within 60 days of completion of construction of a new facility or when existing facilities are modified or when a non-Federal facility is included in a Federally supervised unit agreement or communitization agreement
- Clearly identify the lease to which it applies and the location of the facility covered by quarter section, section, township, and range or by a legal land description, with co-located facilities being identified by each lease and its facilities
- Clearly identify the site security plan covering the facility.

Violation:	Minor.
Corrective Action:	Prepare and/or furnish a complete and accurate facility diagram.
Normal Abatement Period:	10 business days after notice.

[54 39529, Sept. 27, 1989]

IV. Federal Seals

Federal seals are placed on any appropriate valve, sealing device, or LACT component not in compliance with the minimum standards contained in Part III, Requirements, sections A and B, whenever the operator is not present at the site to abate the noncompliance upon its discovery by the authorized officer, or refuses or is unable to abate the noncompliance. The position of the valve or component is not changed. The placement of a Federal seal on any valve, sealing device, or component does not constitute compliance with the minimum standards. The operator is required to take the action specified in the Notice of Incident of Noncompliance or written order of the authorized officer within the time allowed for abatement in order to meet the compliance requirement. The Notice of Incident of Noncompliance or written order includes a notice of the

placement of the Federal seal. A card is attached to each Federal seal installed. identifying the Federal seal as such and advising that removal or violation of the seal without approval by the authorized officer shall result in an immediate assessment of $250. The name and telephone number of the authorized officer are shown on the card.

V. Variances from Minimum Standards

An operator may request the authorized officer to approve a variance from any of the minimum standards prescribed in section III hereof. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variances requested and the proposed alternative methods by which the related minimum standards are to be satisfied. The authorized officer, after considering all relevant factors, if appropriate, may approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s).

ATTACHMENTS

I. DIAGRAMS

Site Facility Diagrams and Sealing of Valve

Introduction – 1 & 2
Equipment and Valve Symbols – 3
Line Symbols and Valve Identification – 4

Diagrams	Identification	Sales Mode	
I-A.....	Lease Number NM – 1234	Tank Gauge	5 & 6
I-B.....	Lease Number NM – 1234	LACT	7 & 8
I-C.....	Able Shallow Unit	Tank Gauge	9 & 10
I-D.....	Able Shallow Unit.....	LACT	11 & 12
I-E.....	Lease Numbers W – 2345 & W – 6789	Tank Gauge	13 - 15
I-F.....	Lease Number C – 1357	LACT and Tank Gauge	16 & 17
I-G.....	Lease Number M – 2468	LACT	18 & 19
I-H.....	Able Sand Unit	Tank Gauge and Gauge Transfer	20 & 21
I-I.....	Able Sand Unit	LACT & LACT Transfer	22 & 23

Site Facility Diagrams and Sealing of Valves

Introduction

Attachment I is provided not as a requirement but solely as an example, both to aid operators in determining what valves are considered to be "appropriate valves" subject to the seal requirements, and to aid in the preparation of facility diagrams. In making the determination of what is an "appropriate valve," the entire facility must be considered as a whole, including the size of the facility, the type of equipment, and the on-going activities at the facility. It is impossible to cover every type of situation that exists or could exist in conducting production activities. The following diagrams are intended to be representative of the sealing requirements in this Order.

Equipment and Valve Symbols

Item

Header – HD

Free water knock – FWKO

Line heater – LH; Steam generation facility – SGF

Separator – S

Heater Treater – HT

Gun barrel or wash tank – GB

Storage tank – ST

Tank: Water – W/T; Slop oil – SO/T; Surge – ST/T

Tanks: Fuel oil – FO/T; power oil – PO/T

Pit: munber of pits – (1)

Valve

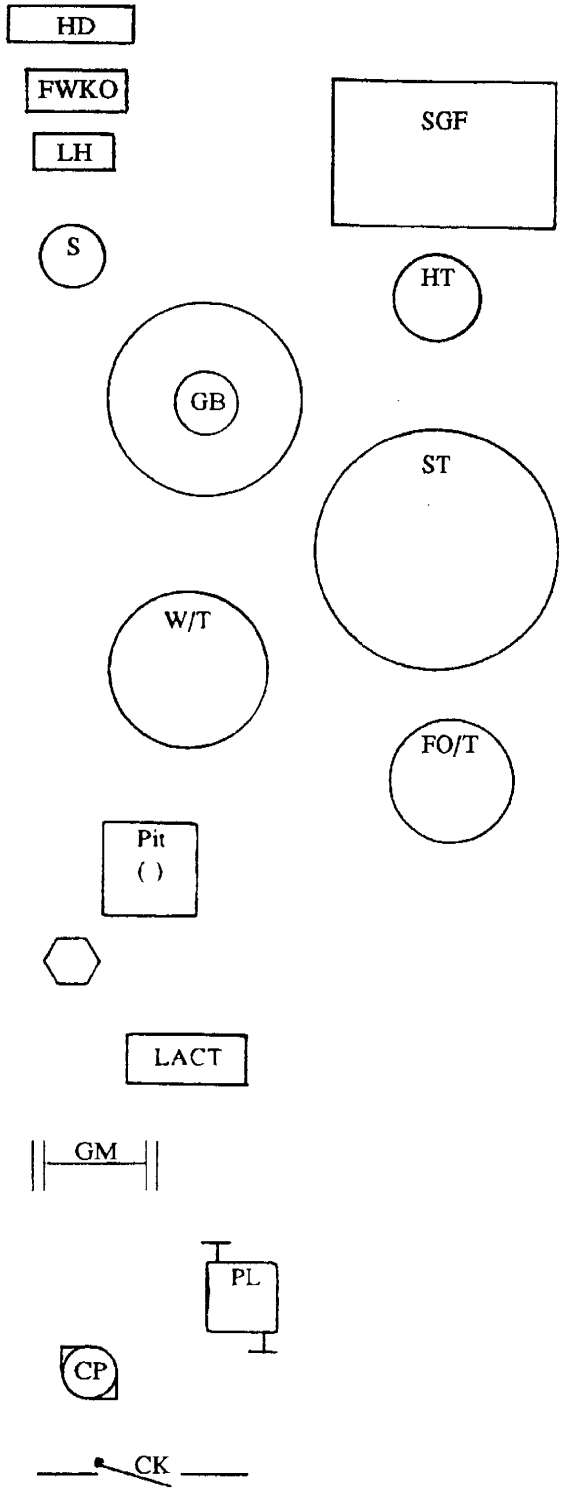
Automated custody transfer unit – LACT

Gas meter run – GM

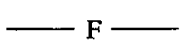
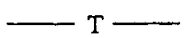
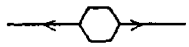
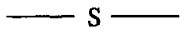
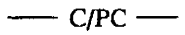
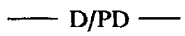
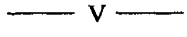
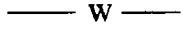
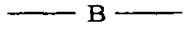
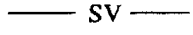
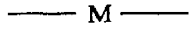
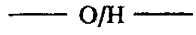
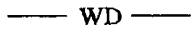
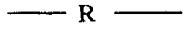
Connection: Pipeline – PL; Truck loading – TL

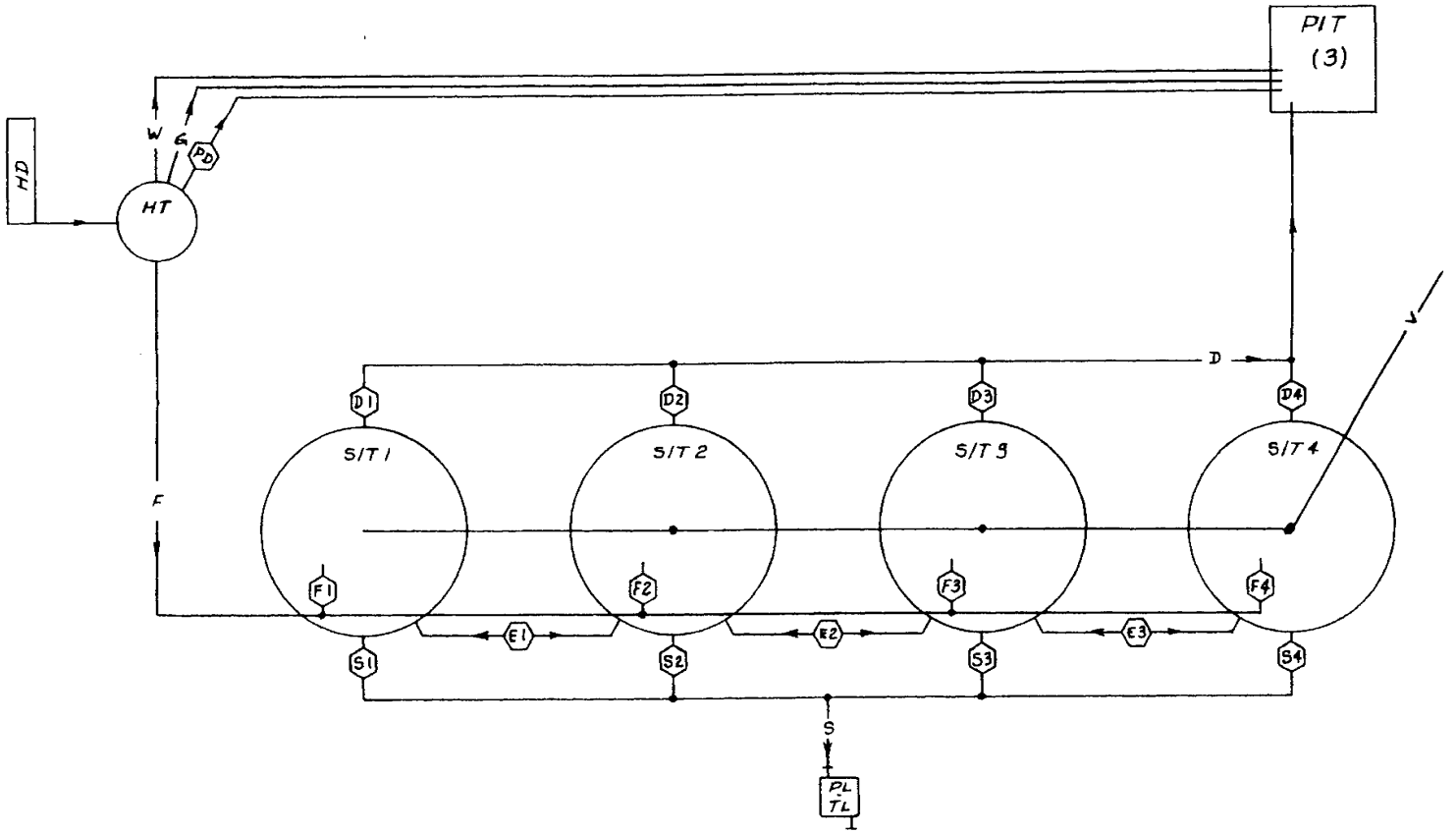
Pump: Circulating – CP; Transfer – TP

Check valve – CK



Line Symbols and Valve Identification

Item	Line Symbol	Valve ID
Direction of flow		
Fill line		F
Test line		T
Equalizer/overflow line		E
Sales line		S
Circulating lines: tank – C; pit – PC		C
Drain line: tank – D; production vessel – PD		D, PD
Tank vent line		V
Gas line		G
Water line		W
Bad oil line (LACT)		B
Safety valve vent line		SV
Miscellaneous access line: royalty oil; lease use		M
Heating lines: contents – O; other media – H		O,H
Fuel line – U; power oil line – PO		U,P
Water disposal line		WD
Lines: not connected		
connected		
Portable well tester outlets		PT
Gas roll line		



Able Oil Company
Lease: Federal - NM1234
Location: NE/4 NW/4 Sec. 4, T. 28 N., R. 13 W.

This lease is subject to the site security plan for NORTHWEST NEW MEXICO OPERATIONS. The plan is located at:

Able Oil Company
212 Federal Blvd.
Farmington, NM

Diagram I-A

Attachment 1-5

Attachment 1-6

Attachment to the Site Facility Diagram – Lease NM 1234

General sealing of valves, sales by tank gauging.

Production phase. All drain valves, D1 thru D4, and all sales valves, S1 thru S4, sealed closed.

Sales phase. The tank from which sales are being made will be isolated by sealing closed the drain valve, fill valve. and the equalizer valve(s) during sales.

Draining phase. The tank being drained will be isolated by sealing closed the sales valve. fill valve, equalizer valve(s), and the drain valves on the other tanks.

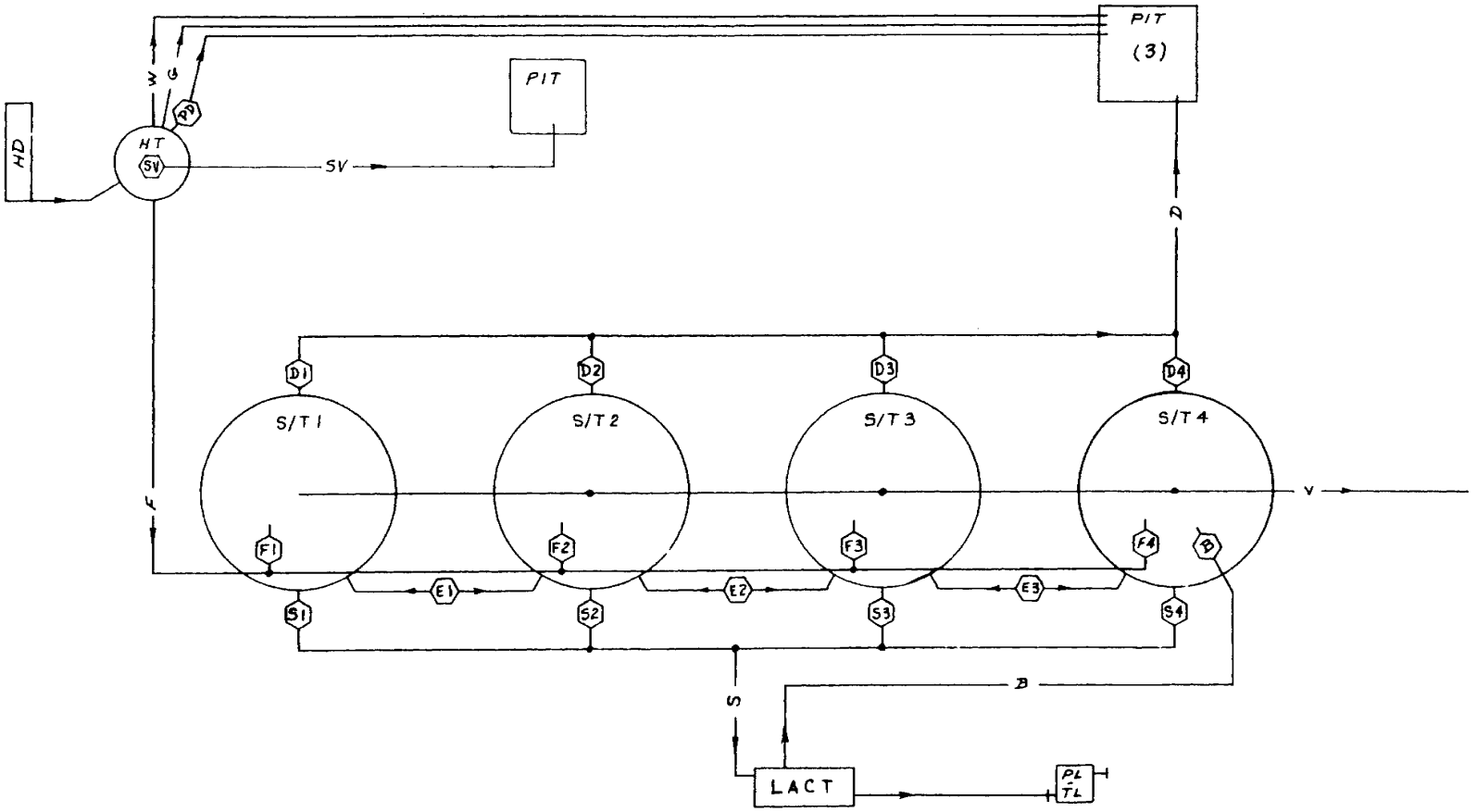
Example:

On going activity. Production going into tank S/T1, tank bottoms are being drained from tank S/T3, and sales are being made from tank S/T4.

Sealing of valves.

Tank S/T1 – Valves S1 and D1 sealed closed.
Tank S/T2 – Valves S/2 and D2 sealed closed.
Tank S/T3 – Valves S3, E2, and F3 sealed closed.
Tank S/T4 – Valves E3, F4, and D4 sealed closed.

Note: S/2 should be amended to read S2.



Able Oil Company
Lease: Federal - NM 1234
Location: NE/4 NW/4 Sec. 4,
T. 28 N., R. 13 W.

This lease is subject to the site security plan for NORTHWEST NEW MEXICO OPERATIONS. The plan is located at:

Able Oil Company
212 Federal Blvd.
Farmington, NM

Diagram I-B

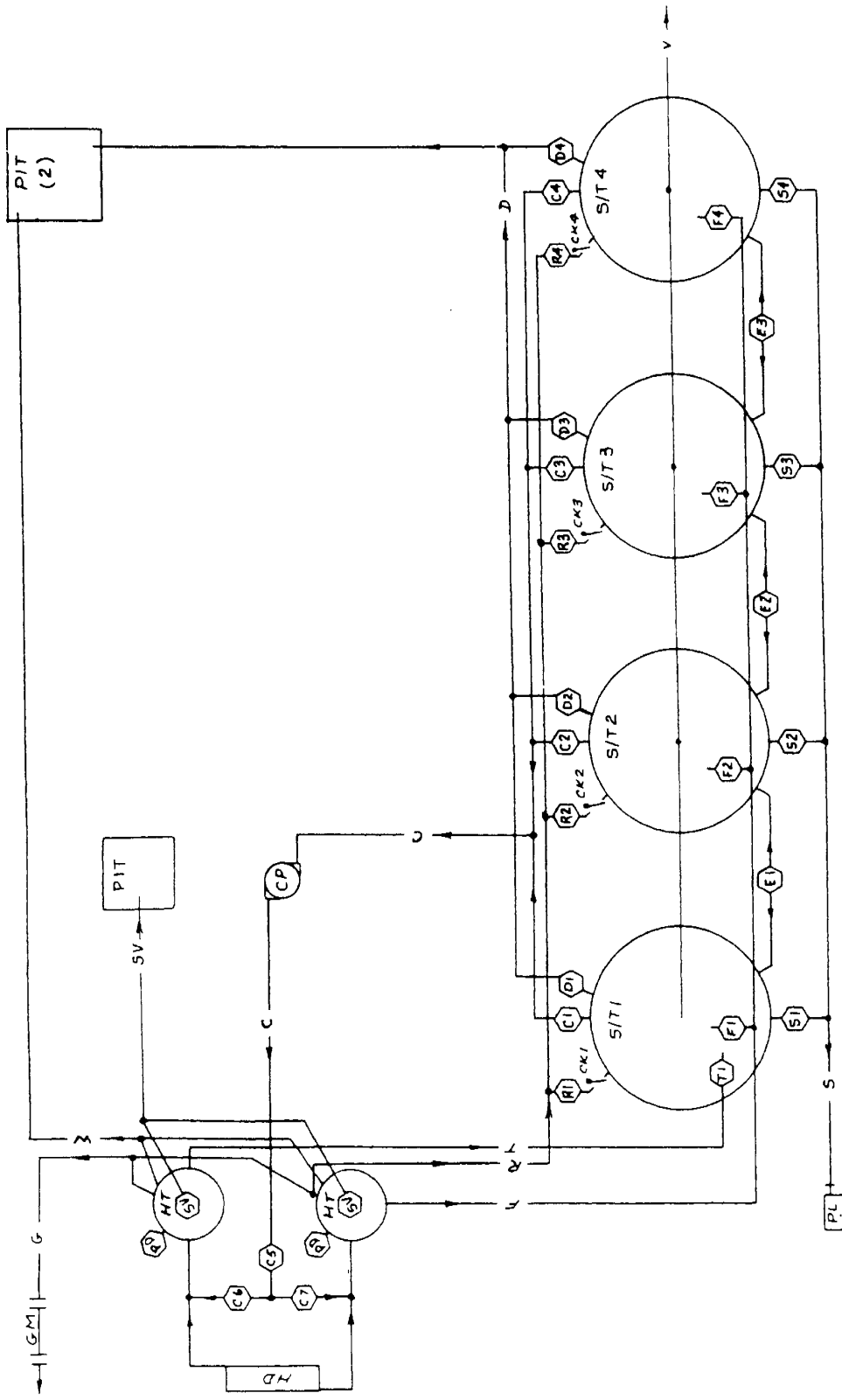
Attachment 1-7

Attachment to the Site Facility Diagram-Lease NM 1234

General sealing of valves, sales by LACT.

Production phase. All drain valves D1 thru D4 sealed closed.
Sales phase. All drain valves D1 thru D4 sealed closed.
Draining activity. The tank being drained will be isolated by sealing closed the sales, fill and equalize line valves, and the drain valves on the other three tanks.

Examples:
On going activity. Production is going tank S/T1, tank bottoms are being drained from tank S/T3, and sales are being made from tank S/T4.
Sealing of valves.
Tank S/T1 – Valve D1 sealed closed.
Tank S/T2 – Valve D2 sealed closed.
Tank S/T3 – Valves E2, E3, S3, and F3 sealed closed.
Tank S/T4 – Valve D4 sealed close.



This unit is subject to the site security plan for Northwest New Mexico Operations. The plan is located at: Able Oil Company 212 Federal Blvd. Farmington, NM

Able Oil Company
Lease: Able Shallow Unit
Location: NW/4 SE/4 Sec. 25, T. 28 N., R. 13 W.

Diagram I-C

Attachment to the Site Facility Diagram – Able Shallow Unit

General sealing of valves, sales by tank gauging.

Production phase. All drain valves, D1 thru D4, and all sales valves, S1 thru S4, sealed closed.

Sales phase. The tank from which sales are being made will be isolated by sealing closed the drain valve, circulating valve, fill valve(s), and equalizer valve(s) during sales.

Draining activity. The tank drained will be isolated by sealing closed the sales valve, fill valve(s), circulating valve, equalizer valve(s) and the drain valves on the other three tanks.

Circulating activity. All drain and sales valves sealed closed.

Tank bottom roll-over activity. No seals required on the R1 thru R4 valves since check valves were used appropriately.

Example.

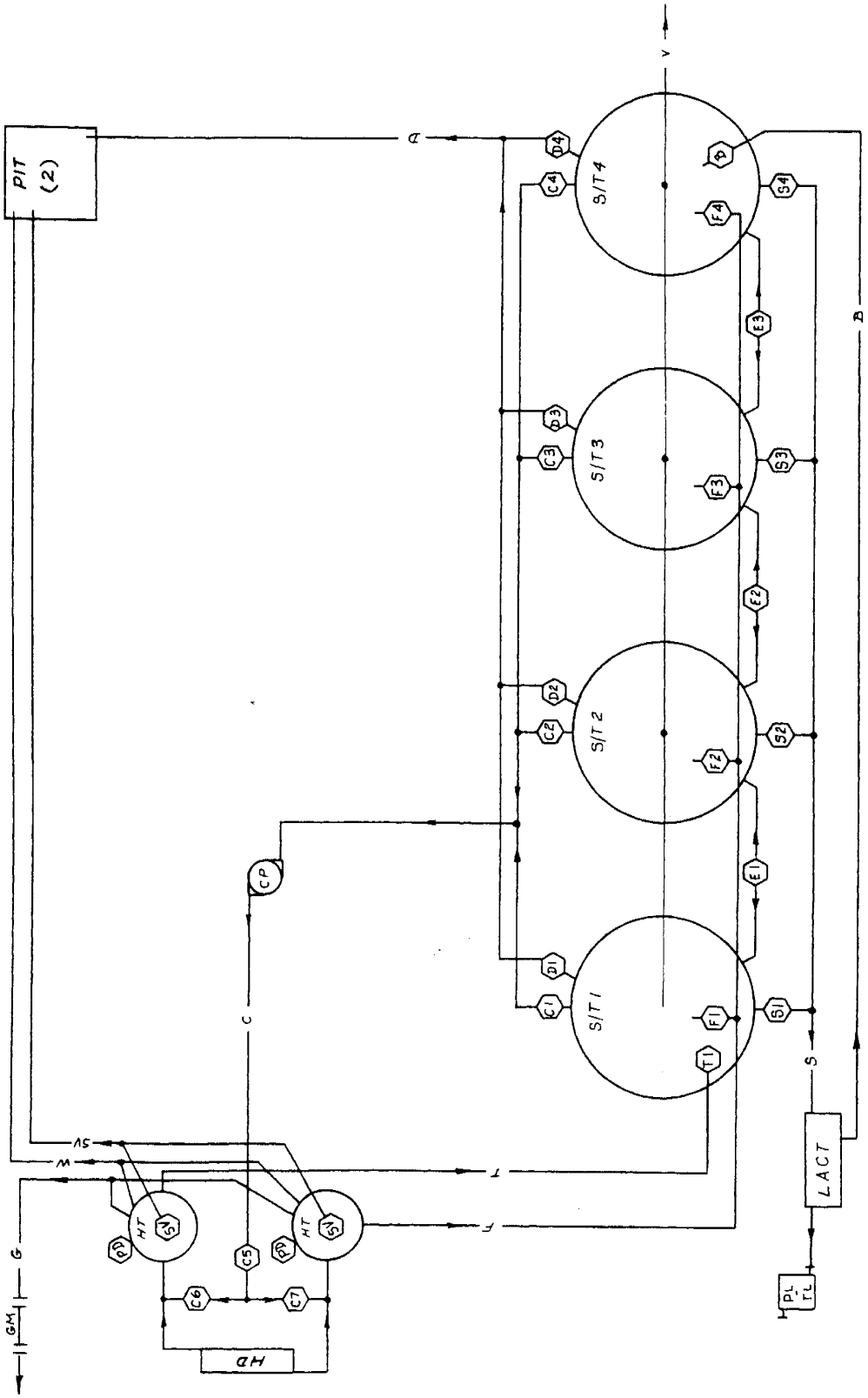
On going activities. One well on routine test and all other production is going into tank S/T2. Tank S/T3 bottoms are being circulated to the production heater-treater and sales are being made from tank S/T4.

Sealing of valves.

Tank S/T1 – ***Valve*** D1 and S1 sealed closed.
Tank S/T2 – ***Valve*** D2 and S2 sealed closed.
Tank S/T3 – Valves D3 and S3 sealed closed.
Tank S/T4 – ***Valve*** E3, F4, D4, and C4 sealed closed.

No seals required on valves R1 thru R4.

Note: ***Valve*** should be amended to read Valves.



This Unit is subject to the site security plan for NORTHWEST NEW MEXICO OPERATIONS.
The plan is located at: Able Oil Company
212 Federal Blvd.
Farmington, NM

Able Oil Company
Lease: Able Shallow Unit
Location: NW/4 SE/4 Sec. 25,
T. 28 N., R. 13 W.

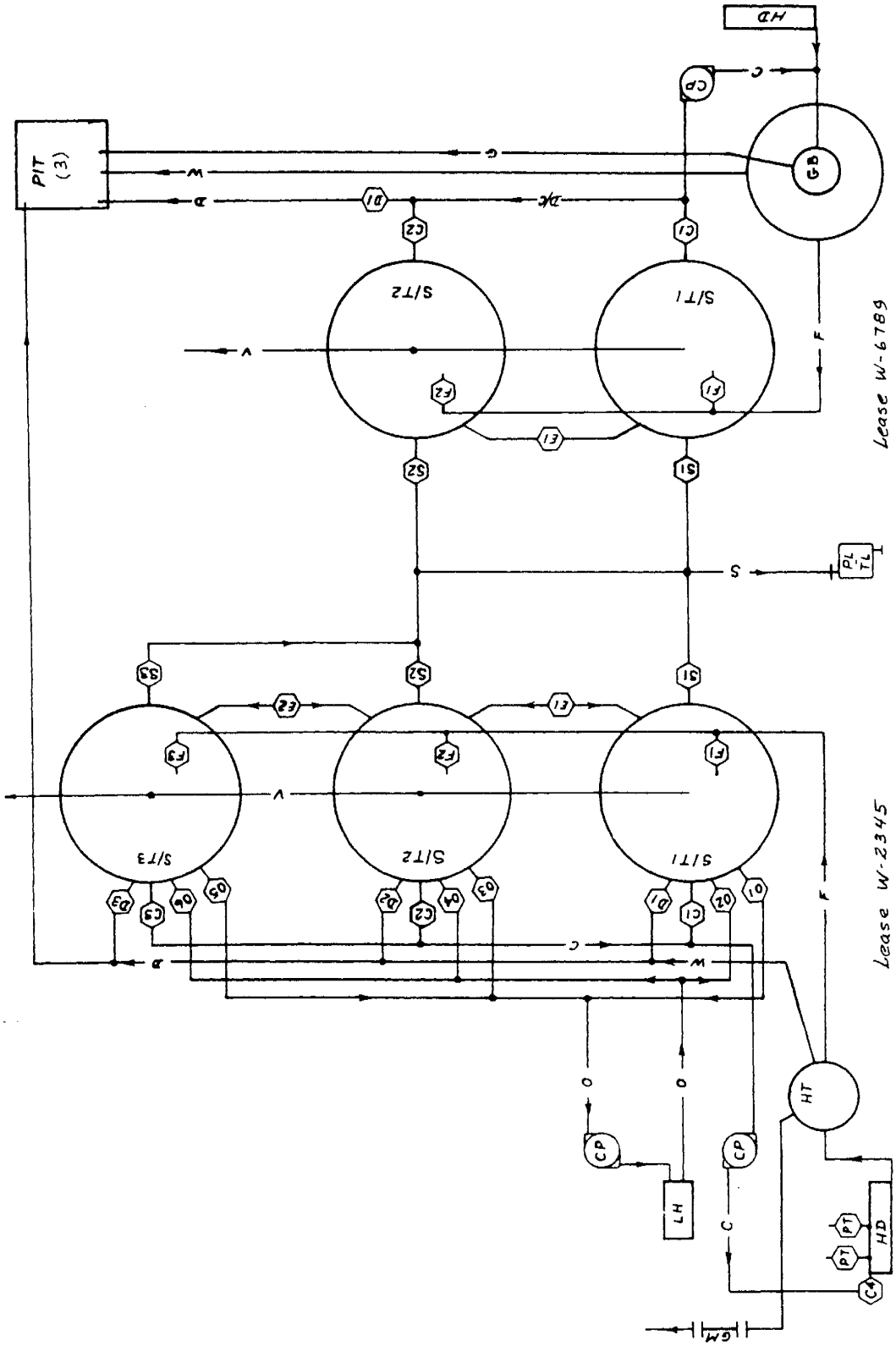
Diagram I-D

Attachment to the Site Facility Diagram – Able Shallow Unit

General sealing of valve, sales by LACT.

Production phase. All drain valves D1 thru D4 sealed closed.
Sales phase. All drain valves D1 thru D4 sealed closed.
Draining activity. The tank being drained will be isolated by sealing closed the sales valve, fill valve(s) circulating valve, equalizer valve(s), and the drain valves on the other three tanks.
Circulating activity. All drain valves sealed closed.

Example:
On going activities. One well on routine test and all other production is going into tank S/T2. Tank S/T3 is being circulated to the production treater and sale are being made from tank S/T4.
Sealing of valves.
Tank S/T1 – Valve D1 sealed closed.
Tank S/T2 – Valve D2 sealed closed.
Tank S/T3 – Valve D3 sealed closed.
Tank S/T4 – Valve D4 sealed closed.



Both leases are subject to the site security plan for Southwest Wyoming Operations.
The plan is located at: Able Oil Company
25 Front Street
La Barge, WY

Able Oil Company - Common storage facility.
Location: NW/4 SW/4 Sec. 20, T. 27N, R. 113W.

Diagram I-E

Attachment 1-14

Common Storage Facility

Attachment to the Site Facility Diagram – Lease W 2345

General sealing of valves, sales by tank gauging.

Production Phase. All valves D1 thru D3 and S1 thru S3 sealed closed.

Sales phase. The tank from which sales are being made will be isolated by sealing closed all lines entering or leaving the tank, i.e., fill valve, equalizer valve(s), circulating valve, drain valve. and the inlet and outlet valves on the heating lines.

Drain activity. The tank being drained will be isolated by sealing closed its fill ***valves***, sales valve, circulating valve, equalizer valve(s). and the inlet and outlet valves on the heating lines. The drain valves on the other two tanks will be sealed closed.

Circulating activity. Valves D1 thru D3 and S1 thru S3 sealed closed. Both PT valves sealed closed, as well as any other valves on the header which would provide access to the production being circulated.

Example:

*On going activity (1).*Sales are being made from tank S/T1, production is going into tank S/T3, and bottoms are being drained from tank S/T2.

Sealing of valves.

Tank S/T1 – Valves F1, 01, 02. C1, E1. and D1 sealed closed. ,
Tank S/T2 – Valves F2, 03, 04, C2 E2, and S2 sealed closed.
Tank S/T3 – Valves S3 and D3 sea closed.

On going activity (2). Sales have been completed at tank S/T1 and draining activities have been completed at tank S/T2. Valves S1 and D2 have been sealed closed. Production is diverted to tank S/T1, tank S/T2 is in a sales mode. and tank S/T3 Is being circulated.

Sealing of valves.

Tank S/T1 – Valves D1 and S1 sealed closed.
Tank S/T2 – Valves F2, 03, 04, C2, D2, El, and E2 sealed closed.
Tank S/T3 – Valves D3 and S3 sealed closed. Both PT valves sealed closed.

Attachment 1-15

Attachment to the Site Facility Diagram – Lease W 6789

General sealing of valves, sales by tank gauging.

Production phase. Valves S1, S2, C1 and C2 sealed closed.

Sales phase. The tank from which sales are being made will be isolated by sealing closed the fill, equalizer, circulating/drain valve.

Draining activity. The tank being drained will be isolated by sealing closed its fill valve, equalizer valve, and sales valve. Additionally, the circulating/drain valve on the other tank will be sealed closed.

Circulating activity. Valves S1, S2. D1. and the C valve on the other tank sealed closed.

Example:

On going activity (1). Production is going into tank S/T1 and tank S/T2 is being circulated to the gunbarrel.

Sealing of valves.

Tank S/T1 – Valves S1 and C1 sealed closed.
Tank S/T2 – Valves S2. and D1 must be sealed closed.

On going activity (2). Production is going into tank S/T2 and sales are on going from tank S/T1.

Sealing of valves.

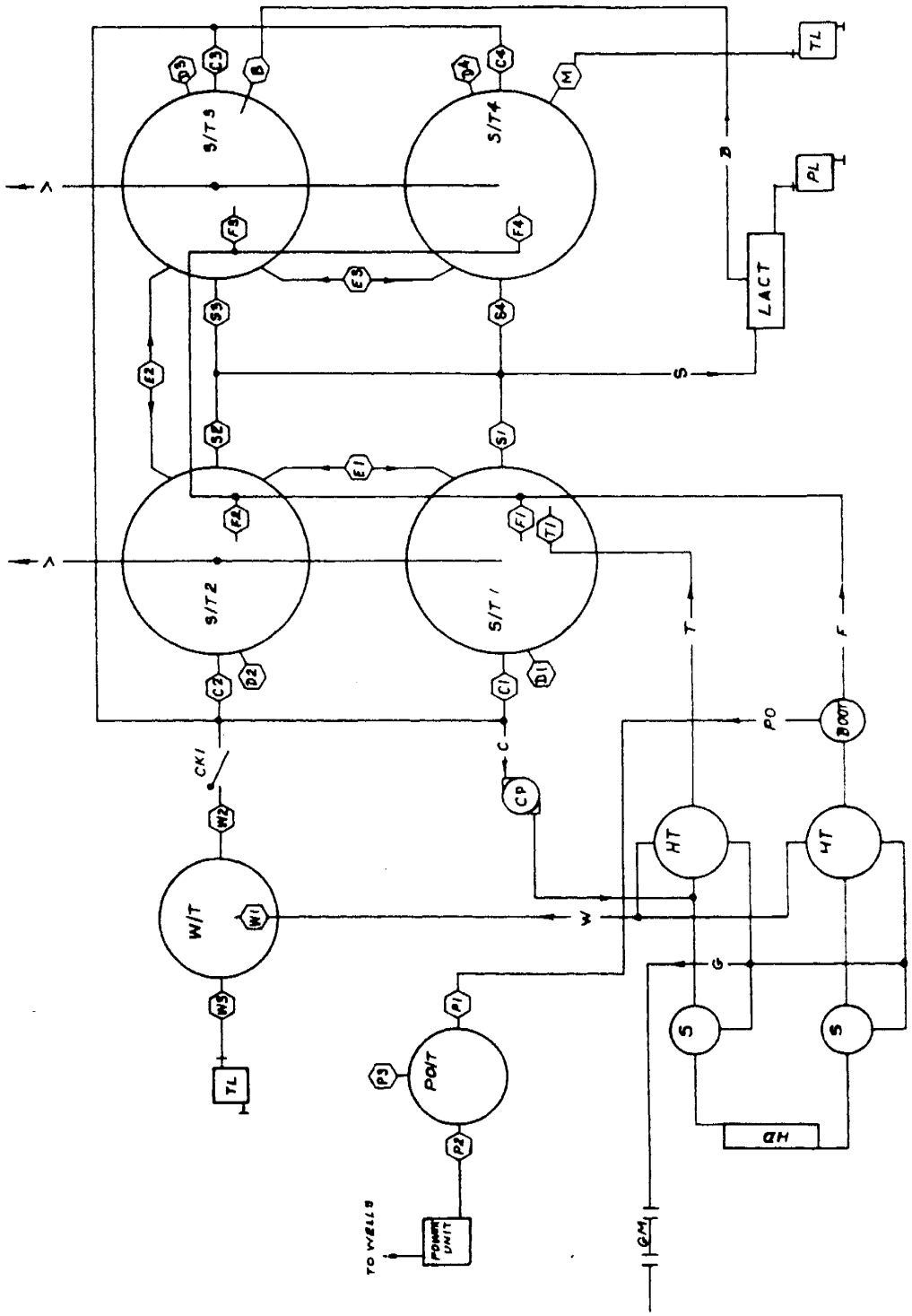
Tank S/T1 – Valves F1, E1, and C1 sealed closed.
Tanks S/T2 – Valves S2 and C2 sealed closed

On going activity (3). Production is going into tank S/T1 and bottoms are being drained from tank S/T2.

Sealing of valves.

Tank S/T1 – Valves S1 and C1 sealed closed.
Tank S/T2 - Valves S2, E1, and F2 sealed closed.

Note: ***valves*** should be amended to read valve (1-14).



This plan is subject to the site security plan for the Coal Oil field. The plan is located at: Able Oil Company
100 First Street
Durango, CO

Able Oil Company
Lease: Federal C-1357
Location: Center NE/4 Sec. 17, T. 32 N., R. 13 W.

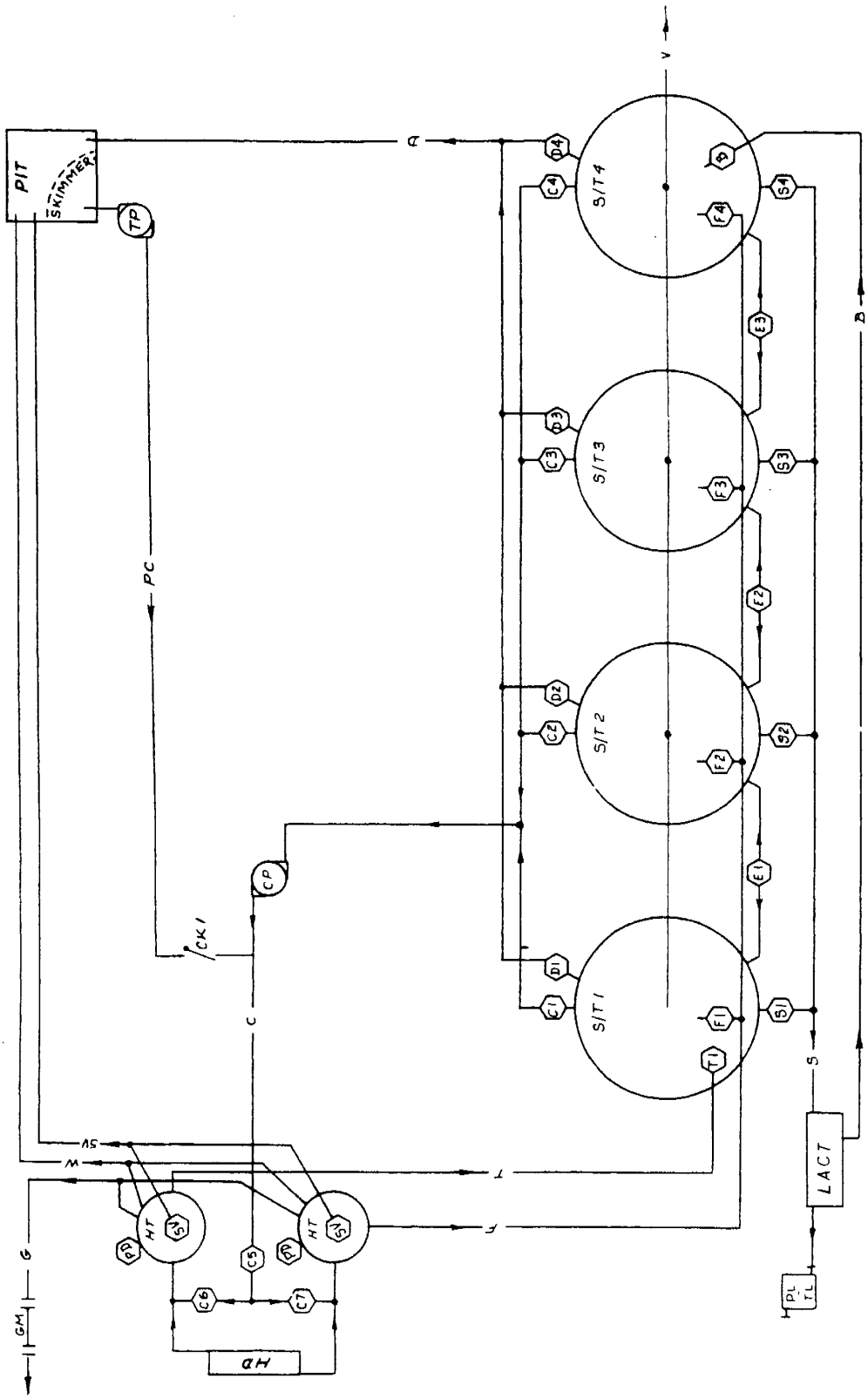
Diagram I-F

Attachment to the Site Facility Diagram – Lease C 1357

General sealing of valves, sales by LACT and tank gauging.

Production phase. Valves D1 thru D4 and M sealed closed.
Sales phase (LACT). Valves D1 thru D4 and M sealed closed.
Withdrawal thru Valve M. Valves S4, F4, E3, D4 and C4 sealed closed.
Circulating activity. Valves D1 thru D4 and M sealed closed.
For all of the above activities valve P3 on tank PO/T will be sealed closed.

Example:
Ongoing activity (1). Production is going into tank S/T3, oil is being removed from tank S/T4 thru valve M. sales are being made from tank S/T1, tank S/T2 is being circulated. and bottoms are being drawn off from tank PO/T.
Sealing of valves.
Tank S/T1 – Valve D1 sealed closed.
Tank S/T2 – Valve D2 sealed closed.
Tank S/T3 – Valve D3 sealed closed.
Tank S/T4 – Valves S4, F4, D4, C4, and E3 sealed closed.
Tank PO/T – Valve P1 sealed closed.
On going activity (2). Production is going into tank S/T2, tank S/T3 is being circulated, and sales are being made from tank S/T4. Hydraulic lift operations has been resumed.
Sealing of valves.
Tank S/T1 – Valve D1 sealed closed.
Tank S/T2 – Valve D2 sealed closed.
Tank S/T3 – Valve D3 sealed closed.
Tank S/T4 – Valves D4 and M sealed closed.
Tank PO/T - Valve P3 sealed closed.



This lease is subject to the site security plan for the Oil Field. The plan is located at: Able Oil Company
713 Center Street
Cut bank, MT

Able Oil Company
Lease: Federal M-2468
Location: SE/4 SE/4 Sec. 7,
T. 35N., R. 5W.

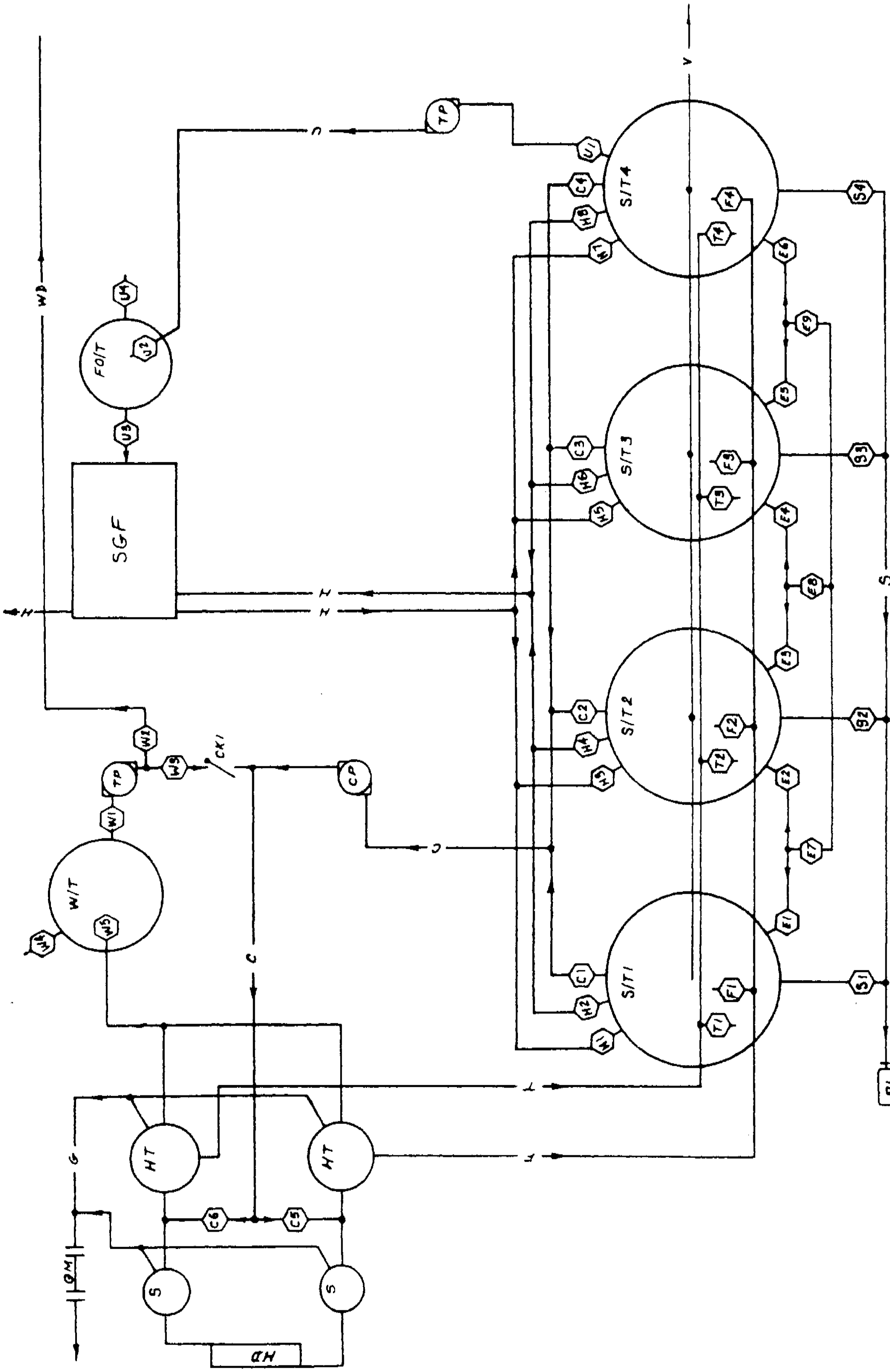
Diagram I-G

Attachment to the Site Facility Diagram – Lease M 2468

General sealing of valves, sales by LACT.

Production phase. Valves D1 thru D4 sealed closed.
Sales phase. Valves D1 thru D4 sealed closed.
Draining Activity. The tank being drained will be isolated by sealing closed the sales valve, fill valve(s), circulating valve, equalizer valve(s), and the drain valves on the other three tanks.
Circulating activity. All drain valves sealed closed.

Example:
On going activity. Production is going into tank S/T1, tank S/T2 is being drained, sales are being made from tank S/T3, and tank S/T4 is being circulated to the test treater. Pit skimming activity being conducted.
Sealing of valves.
Tank S/T1 – Valve D1 sealed closed.
Tank S/T2 – Valves E1, E2, S2, F2, and C2 sealed closed.
Tank S/T3 – Valve D3 sealed closed
Tank S/T4 – Valve D4 sealed closed.



This unit is subject to the site security plan for the Able Sand Unit. The plan is located at: Able Oil Company
1700 12th Ave.
Bakersfield, CA

Able Oil Company
Lease: Able Sand Unit
Location: NW/4 NE/4 Sec. 12,
T. 16 S., R. 20 E.

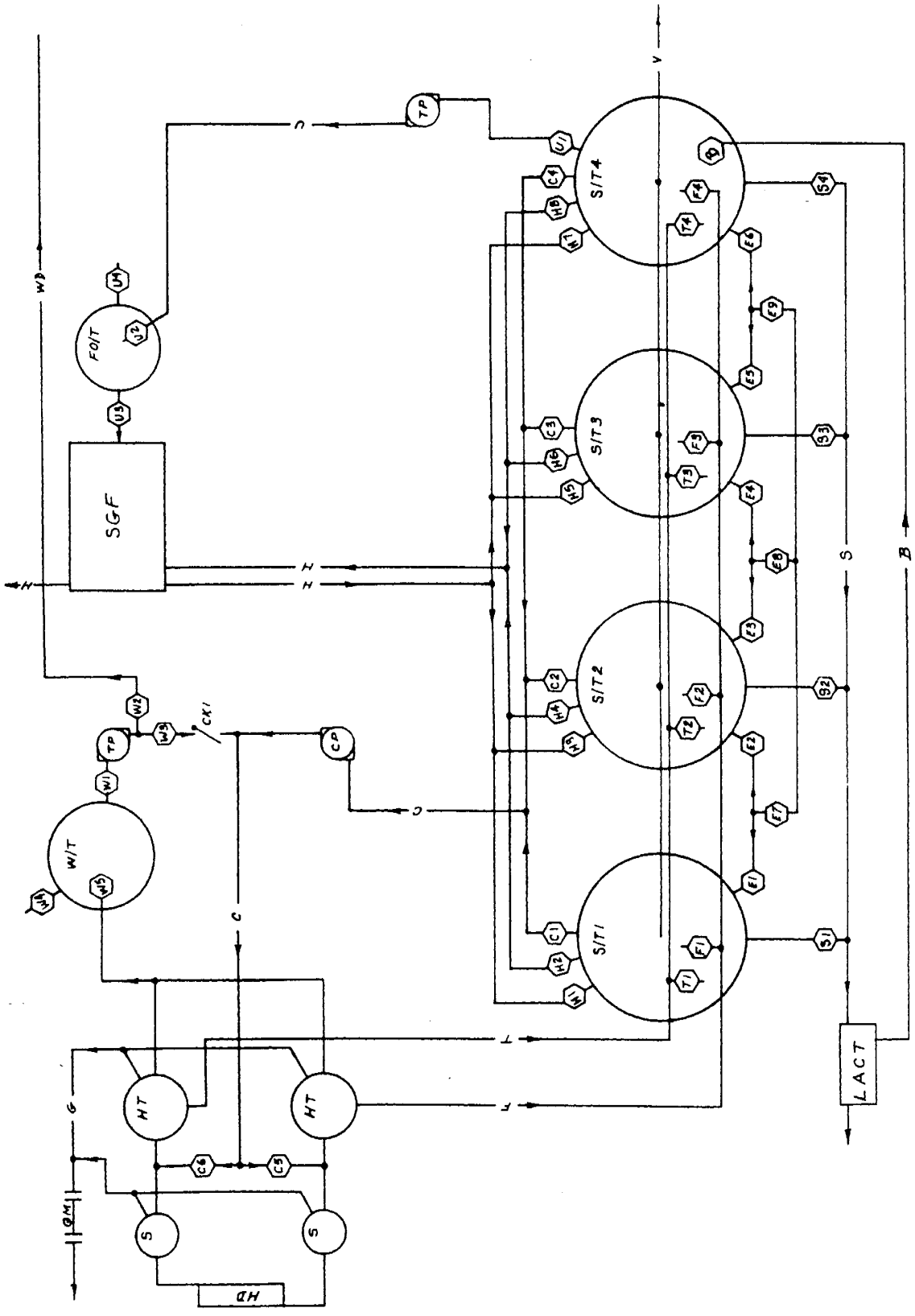
Diagram I-H

Attachment to the Site Facility Diagram – Able Sand Unit

General sealing of valves, sales by tank gauging.

Production phase. Valves S1 thru S4 and U1 and U4 sealed closed.
Sales phase. The tank from which sales would be made would be completely isolated by sealing the fill, test equalizer(s), and circulating valves, and if appropriate, valve U1. All other sales valves sealed closed.
Circulating activity. Valves S1 thru S4 and U1 and U4 sealed closed.
Fuel oil delivery. Valves U4, C4, T4, F4, E6 and S1 thru S4 sealed closed.

Example:
On going activity. Production is going into tank S/T1, a well is being tested into tank S/T2, sales are being made from tank S/T3, and fuel oil is being delivered from tank S/T4.
Sealing of valves.
Tank S/T1 – Valve S1 sealed closed.
Tank S/T2 – Valve S2 sealed closed.
Tank S/T3 – Valves E4, E5, T3, F3 and C3 sealed closed.
Tank S/T4 – Valves E6, S4, T4, F4, and C4 sealed closed.
Tank FO/T – Valve U4 sealed closed.



This unit is subject to the site security plan for the Able Sand Unit. The plan is located at: Able Oil Company
1700 12th Ave.
Bakersfield, CA.

Able Oil Company
Lease: Able Sand Unit
Location: NW/4 NE/4 Sec. 12
T. 16S., R. 20E.

Diagram I-I

Attachment to the Site Facility Diagram – Able Sand Unit

General sealing of valves, sales and transfer by LACT.

Production phase. Valve U4 sealed closed.
Sales phase. Valve U4 sealed closed.
Circulating activity. Valve U4 sealed closed.
Fuel delivery to FO/T. Valve U4 sealed closed.
Circulate tank WIT. Valve U4 sealed closed.

Since the fuel oil contained in tank FO/T is used on the lease and such use is royalty free, the tank must be sealed to prevent removal of crude oil for the use other than it was intended.

No other valves require sealing for any phase or activity.

Bureau of Land Management (01/18/00)
Final Rule
Federal Register / Vol. 54, No. 36, Friday, February 24, 1989, Rules and Regulation

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases
Onshore Oil and Gas Order No. 4, Measurement of Oil

I. Introduction
- A. Authority
- B. Purpose
- C. Scope

II. Definitions

III. Requirements
- A. Required Recordkeeping
- B. General
- C. Oil Measurement by Tank Gauging
- D. Oil Measurement by Positive Displacement Metering System
- E. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer
- F. Determination of Oil Volumes by Methods Other than Measurement

IV. Variances from Minimum Standards

Attachment
I. Sections from 43 CFR Subparts 3163 and 3165.

ONSHORE OIL AND GAS ORDER NO. 4
Federal and Indian Oil and Gas Leases – Measurement of Oil

Effective date: August 23, 1989

I. Introduction

A. Authority

This Order is established pursuant the authority granted to the Secretary of the Interior under various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operations regulations, contained in Title 43 CFR Part 3160. Section 3164.1 specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement ***or*** supplement the operating regulations, and provides that all shall such Order shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at §3162.7-1, Disposition of Production; §3162.7-2, *Measurement of Oil*; and Subpart 3163, Noncompliance and Assessment.

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the measurement of oil, and to provide standard operating practices for lease oil storage and handling facilities, by the methods authorized in 43 CFR 3162.7-2, i.e., measurement by tank gauging, positive displacement metering system, or other methods acceptable to the authorized officer. Proper oil measurement ensures that the Federal Government and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected. This Order also serves also serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided that the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed.

C. Scope.

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to all wells and facilities on State or privately owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

II. Definitions

A. Authorized officer means any employee of the Bureau of Land Management authorized to perform the duties described in Groups 3000 and 3100. (See 43 CFR 3000.0-5.)
B. Barrel (bbl) means 42 standard United States gallons of 231 cubic inches each.
C. Business day means any day Monday through Friday excluding Federal holidays.
D. Cpl. means the correction factor for the effect of pressure on liquid.
E. Cps. means the correction factor for the effect of pressure on steel.
F. Ctl. means the correction factor for the effect of temperature on liquid.
G. Cts. The correction factor for the effect of temperature on steel.
H. INC means incident of noncompliance, which serves as a Notice of Violation under 43 CFR Subpart 3163.
I. Lessee means a person or entity holding record title in a lease issued by the United States. (See 43 CFR 3160.0-5).
J. Major violation means noncompliance which causes or threatens immediate, substantial, and adverse impact on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0-5).
K. Minor violation means noncompliance which does not rise to the level of a "major violation." (see 43 CFR 3160.0-5).
L. Operating rights owner means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title. (see 43 CFR 3160.0-5).
M. Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or portions thereof. (see 43 CFR 3160.0-5).
N. Oil, for the purposes of this Order, means all liquid hydrocarbons produced from or for the benefit of jurisdictional leases, including condensate and oil from tar sands that is measured as liquid.

N.1. Clean Oil/Pipeline Oil means crude oil or condensate that is of such as a quality that it is acceptable to normal purchasers.
N.2. Slop oil means crude oil that is such quality that it is not acceptable to normal purchasers and which requires special treatment other than that which can economically be provided at the existing or modified facilities or portable equipment and is usually sold to oil reclaimers.
N.3. Waste oil means lease crude oil that has been determined by the authorized officer to be of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment and cannot be sold to reclaimer and also has been determined by the authorized officer to have no economic value and for which royalty is not due.

III. Requirements.

A. Required Recordkeeping.

The operator shall keep all test data, meter reports, charts/recordings, or other similar records for 6 years from the date they were generated, or if involved in an audit or investigation, the records shall be maintained until the record holder is released by the Secretary from the obligation to maintain them. The authorized officer may request these records any time within this period. Records submitted shall include all additional information used to compute volumes so that computations may be verified.

B. General (See 43 CFR 3162.7-2)

1. The regulations at 43 CFR 3162.7-2 authorize oil measurement methods for production from leases, units, and communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1. The authorized oil measurement methods are tank gauging, positive displacement metering systems, and other methods acceptable to the authorized officer. The requirements and minimum standards for each of these methods are set forth below.

2. These requirements and minimum standards are based on the standards and practices recommended by the American Petroleum Institute (API). The API standards and recommended practices are considered by both the Department of the Interior and the oil and gas industry to be appropriate for proper oil measurement. The requirements and minimum standards set out herein are those necessary to promote conservation of natural resources and to ensure that oil production, except for waste oil, is properly measured for sales and allocation purposes, in order that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases. When an infraction of the minimum standards in this Order is discovered it will be considered noncompliance and an incident of noncompliance (INC) will be issued. Operators who discover noncompliance with these minimum standards and take immediate corrective action will not be issued an INC. If the authorized officer or his representative is present when an operator discovers a malfunction or does not use correct procedures as specified in this Order, an INC will be issued unless immediate corrective action is taken.

A major violation, as defined in this Order, will generally require an immediate shut-in of the metering device. However, where the non-recoupable loss is not significant or where damage to the resource is likely to occur if a shut-in is required, an abatement period of 24 hours may be given.

The intent of these minimum standards is to ensure that when equipment malfunctions that could result in inaccurate measurement occur, that proper corrective actions are taken, the authorized officer is notified, and an amended production report is submitted.

Equipment failure that is discovered by the operator and promptly corrected will not be considered a violation. However, the incidents of noncompliance that may result from equipment failure are considered violations, and a partial list is as follows:

Failure to install equipment properly.

Failure to repair or correct equipment malfunction properly or in a timely manner.

Failure to submit report of alternate method of measurement for sales.

Failure to submit amended production reports in a timely manner.

Failure to adhere to the minimum standard procedures specified in this Order.

The use of improper equipment, when discovered, will be considered a violation, and an INC will be issued.

The use of improper procedures will be considered a violation and, when witnessed by the authorized officer or his representative, immediate corrective action will be required. In the event that proper procedures are then used as required by this Order, and prior to completing the operation, calibration, or proving, the violation will be considered as properly corrected. In this case, although the violation will be documented in the agency files, no formal INC will be issued.

All future sales and allocation facilities and sales or allocation facilities in existence on the effective date of this Order, unless covered by a valid variance, shall meet the minimum standards prescribed in this Order.

Meter installations constructed in accordance with the API standards in effect at that time shall not automatically be required to retrofit to meet revised API standards. The Bureau will review any revised API standards and, when deemed necessary, will amend the Order accordingly through the rulemaking process.

Any variances from these requirements and minimum standards shall be in accordance with Section IV. of this Order.

3. A violation of a minimum standard established by this Order shall be abated within the time period specified.

Where abatement is required "prior to sales or removal," this means that necessary actions shall be taken so that no oil may be removed beyond the measurement point until properly measured.

If any such violation is not abated within required period, action shall be initiated in accordance with 43 CFR Subpart 3163.

C. Oil Measurement by Tank Gauging

Oil measurement by tank gauging shall accurately compute the volume of oil withdrawn from a properly calibrated sales tank by measuring the height of the oil level in the tank before delivery (opening gauge) and then measuring the height of the oil level in the tank after delivery (closing gauge). The opening and closing gauges are then used with the tank calibration charts (tank tables) to compute accurately the volume of oil withdrawn. Gauging may be accomplished by measuring the height of the oil level from the tank bottom or a fixed datum plate upward to the surface of the oil in the tank (innage gauging) or by measuring from a fixed reference point at the top of the tank downward to the surface of the oil in the tank (outage gauging). Samples shall be

taken from the oil before gauging to determine API gravity and sediment and water content. Prior to gauging, the temperature of the oil shall be determined from measurements made in the tank. The measured oil volume shall then be corrected for sediment and water content, and to the standard sales temperature of 60 °F.

The following requirements and minimum standards shall be accomplished in accordance with API Standard 2545 (ANSI/ASTM D-1085), "Method of Gauging Petroleum and Products," 1965, reaffirmed in 1987, and (ANSI/ASTM D-1250), Tables 5A and 6A.

[54 FR 39527, Sept. 27, 1989]

1. *Sales Tank Equipment.* Each oil storage tank to be used for oil sales by tank gauging shall be properly equipped for such gauging, using the "API Recommended Practice for Setting Connecting, Maintenance, and Operation of Lease Tanks, API RP 12 R1," 1986. Tanks shall also be connected, maintained, and operated so as to comply with the Site Security Regulations, 43 CFR 3162.7-5, and Onshore Oil and Gas Order No. 3, and sales tanks shall meet the following requirements:

a. Each sales tank shall be equipped with a pressure-vacuum thief hatch and/or vent-line valve.

Violation: Major.
Corrective Action: Install proper thief hatch and/or vent line valve or drain.
Abatement Period: 30 days.

b. Each sales tank shall be set and maintained level and free of distortion in accordance with the above-referenced API recommended practice.

Violation: Major.
Corrective Action: Level tanks.
Abatement Period: Prior to sales or removal.

c. Pursuant to API Standard 2545 (ANSI/ASTM D-1085), "Method of Gauging Petroleum and Petroleum Products," October 1965 (reaffirmed August 1987), each tank shall be equipped with a gauging reference point, with a the height of the reference point stamped on a fixed bench-mark plate or stenciled on the tank near the gauging hatch.

Violation: Minor.
Corrective Action: Affix a gauging reference point in gauging hatch and stamp on bench-mark plate or stencil on tank near gauging hatch.
Abatement Period: 30 days.

2. *Sales Tank Calibrations.* Each oil storage tank to be used for oil sales by tank gauging shall be accurately calibrated for such gauging, using the API Standard 2550 (ANSI/ASTM D-1220), "Method for Measurement and Calibration of Upright Cylindrical Tanks," 1965, reaffirmed August 1987, and API RP 2556, "Correcting Gauge Tables for Incrustation," August 1968. The following minimum standards shall be satisfied:

a. Sales tank capacities shall be determined by actual tank measurements by the method know as "tank calibration" and in accordance with the above-referenced API Standards.

Violation: Minor.
Corrective Action: Make capacity determination and develop appropriate capacity table.
Abatement Period: 60 days.

b. A sales tank shall be recalibrated if it is relocated or repaired or the capacity is changed through denting, damage, or installation or removal of interior components, or otherwise.

Violation: Minor.
Corrective Action: Recalibrate tank and develop new (revised) capacity table.
Abatement Period: 60 days.

c. Calibration charts (tank tables) shall be submitted to the authorized officer on request.

Violation: Minor.
Corrective Action: Submit tables to authorized officer.
Abatement Period: 30 days.

3. *Oil Sampling.* Sampling of oil to be sold from sales tank is required and shall be conducted in such fashion as to yield a representative sample of the oil for purposes of determining the physical properties of the oil, following the "API Manual of Petroleum Measurement Standards, Chapter 8.1 - Manual Sampling" (ASTM D-4057), October 1981 (Reaffirmed August 1987), or Chapter 8.2 - Automatic Sampling of Petroleum and Petroleum Products, April 1983 (Reaffirmed August 1987), and shall meet the following minimum standard. All samples shall be taken from the contents of the sales tank prior to gauging, after allowing the tank contents to settle for at least 30 minutes following isolation of the tank, in accordance with the procedures specified in the above-referenced API Standard.

Violation: Major.
Corrective Action: Repeat sampling procedure.
Abatement Period: Prior to sales or removal.

4. *Sales Tank Gauging.* Gauging of oil sales tanks is required and shall be accomplished in such fashion as to measure the contents of the tank accurately, following API Standard 2545 (ANSI/ASTM D-1085), "Method of Gauging Petroleum and Petroleum Products" 1965 (Reaffirmed August 1987), and shall meet the following minimum standards.

a. Gauging shall be accomplished using gauging tapes made of steel or corrosion-resistant material with graduation clearly legible, not kinked or spliced, and traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or an independent testing facility. Working tapes, when checked

against a tape certified to NBS standards, will be allowed as NBS traceable.

Violation: Major.
Corrective Action: Replace tape.
Abatement Period: Prior to sales or removal.

b. Acceptable gauging requires 2 identical gauges to the nearest ¼-inch for tanks with a capacity of less than 1,000 barrels, and 2 identical gauges the nearest ⅛-inch for tanks with a capacity of 1,000 barrels or more.

Violation: Major.
Corrective Action: Repeat gauging until 2 identical readings are obtained.
Abatement Period: Prior to sales or removal.

c. The proper bob for innage gauging or outage gauging shall be used in accordance with the above-reference API standard.

Violation: Major.
Corrective Active: Repeat gauging using proper bob.
Abatement Period: Prior to sales or removal.

5. *Oil Gravity.* Tests for oil gravity are required, following the "API Manual of Petroleum Measurement Standards Chapter 9 - Density Determination" (ASTM D-1298-80) 1981, and (ASTM D-287-82) "Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products" (Hydrometer Method), and shall be performed on a representative sales tank oil sample obtained following "API Manual of Petroleum Measurement Standards, Chapter 8.1, "Manual Sampling of Petroleum and Petroleum Products" (ASTM D-4057) October 1981 (Reaffirmed 1987). Gravity tests shall meet the following minimum standards.

a. All gravity determinations shall be completed before oil sales are made.

Violation: Major.
Corrective Action: Obtain sample from sales tank and determine oil gravity.
Abatement Period: Prior to sales or removal.

b. Accuracy of all instruments used to determine oil gravity for oil sales purposes shall be traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or independent testing facility.

Violation: Major.
Corrective Action: Replace instruments.
Abatement Period: Prior to sales or removal.

c. The instrument used to obtain the oil gravity shall be clean, with no loose shot weights or detached gravity scale.

Violation: Major.
Corrective Action: Clean and/or replace hydrometer.

Abatement Period: Prior to sales or removal.

d. The instrument used to obtain the oil gravity shall be calibrated for a gravity range that includes the observed gravity of the oil sample being tested.

Violation: Major.
Corrective Action: Repeat gravity tests using hydrometer with proper scale.
Abatement Period: Prior to sales or removal.

e. Temperatures shall be measured and recorded to the nearest 1.0 °F.

Violation: Major.
Corrective Action: Repeat test, measuring and recording temperature to nearest 1.0 °F.
Abatement Period: Prior to sales or removal.

f. Liquid density (gravity) will be measured and recorded to the nearest 0.1° API gravity, making any necessary meniscus correction. The observed gravity shall be corrected to 60 °F. using Table 5A, "Table 5A - Generalized Crude Oils" and JP-4, Correction of Observed Gravity to API Gravity at 60 °F.

Violation: Major.
Corrective Action: Repeat test, measuring and recording gravity to nearest 0.1° API gravity after making necessary correction for fluid meniscus.
Abatement Period: Prior to sales or removal.

6. *Tank Temperature.* Determination of the temperature of oil contained in a sales tank is required following the "API Standard 2543, Method of Measuring the Temperature of Petroleum and Petroleum Products" (ANSI/ASTM D - 1086) October 1965 (Reaffirmed August 1987), and shall meet the following minimum standards:

a. Accuracy of all thermometers used for oil sales purposes shall be traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or independent testing facility. Working thermometers shall be checked against a thermometer certified accurate to NBS standards and their use shall be permitted.

Violation: Major.
Corrective Action: Replace thermometer.
Abatement Period: Prior to sales or removal.

b. Thermometers shall be kept clean and free of mercury separation. The temperature measurements shall be take by immersing the thermometer to the approximate vertical center of the fluid column, not less than 12 inches from the shell of the tank, for a minimum of 5 minutes and then read and recorded to the nearest 1 °F.

Violation: Major.
Corrective Action: Replace thermometer or repeat measurement as prescribed.

Abatement Period: Prior to sales or removal.

7. *Sediment and Water (S&W).* Determinations of the sediment and water content of oil contained in sales tanks is required following the "API Manual of Petroleum Measurement Standards, Chapter 10 - Sediment and Water and Section 4 - Determination of Sediment and Water in Crude Oils by the Centrifuge Method (Field Procedure), Second Edition, May 1988 (ASTM 96-88), and shall meet the following minimum standards:

a. A thoroughly mixed oil sample-solvent combination, prepared in accordance with the procedure described in the above-referenced API Manual, shall be heated to at least 140 °F. prior to centrifuging.

Violation: Major.
Corrective Action: Repeat procedures using the defined standards.
Abatement Period: Prior to sales or removal.

b. The heated sample shall be whirled in the centrifuge for not less than 5 minutes, and at the conclusion of centrifuging, the temperature shall be a minimum of 115 °F. without water- saturated diluent, and 125 °F. with water-saturated diluent.

Violation: Major.
Corrective Action: Repeat test as prescribed.
Abatement Period: Prior to sales or removal.

c. The combined volume of water and sediment at the bottom of the 100 ml. centrifuge tube shall be read:
(1) To the nearest 0.05 ml. in the range from 0.1 to 1 ml.
(2) To the nearest 0.1 ml. if above the 1 ml. graduation.
(3) Estimated to the nearest 0.025 ml. if the volume is less than 0.1 ml.

The water and sediment volume in the centrifuge tube thus determined shall be multiplied by the appropriate factor for the centrifuge tube size and oil sample-solvent ratio, as specified in the above-referenced API Manual, and the product recorded as the percentage of water and sediment.

Violation: Major.
Corrective Action: Repeat test as specified or repeat procedures using specified factors.
Abatement Period: Prior to sales or removal.

D. Oil Measurement by Positive Displacement Metering System

Oil measurement by a positive displacement metering system, for purposes of oil sales, shall be accomplished by a Lease Automatic Custody Transfer (LACT) unit designed to provide for the unattended transfer of liquid hydrocarbons from a production facility to the transporting carrier

while providing proper and accurate means for the determination of net standard volume and quality, while also providing for fail-safe and tamper proof operations in accordance with the regulations at 43 CFR 3162.7-5 and Onshore Oil and Gas Order No. 3.

[54 FR 39527, Sept.27, 1989]

A positive displacement meter is one which registers the volume passing through said meter by a system which constantly and mechanically isolates the flowing liquid into segments of known volume.

LACT unit design shall follow API Spec. 11N "API Specifications for Lease Automatic Custody Transfer (LACT) Equipment," 1979, and API Manual of Petroleum Measurement Standards, Chapter 6 -Metering Assemblies, Section 1, LACT Systems, February 1981 (Reaffirmed August 1987). LACT units shall be constructed and operated so as to satisfy the following requirements and minimum standards:

1. *LACT Unit Components and General Operating Requirements.*
   a. Each LACT unit shall include all of the following listed components as a minimum:
      (1) Charging pump and motor.
      (2) Sampler, composite sample container and mixing system.
      (3) Stainer.
      (4) Positive displacement meter.
      (5) Meter proving connections.
      (6) Meter backpressure valve and check valve.
      (7) Air eliminator.
      (8) Diverter valve or shut-off valve.
      (9) Sediment and Water Monitor.
      (10) Automatic Temperature/Gravity Compensator.

Violation: Major: a.1.,2.,4., 5., 6., and 10.
Corrective Action: Install component.
Abatement Period: Prior to sales or removal.

Violation: Minor: a.3., 7., 8., and 9.
Corrective Action: Install component.
Abatement Period: 30 days.

   b. All components of LACT unit shall be accessible for reasonable inspection by the authorized officer.

Violation: Minor.
Corrective Action: Provide authorized officer with means of access to LACT.
Abatement Period: 30 days.

   c. The authorized officer shall be notified of any LACT unit failure, such as electrical, meter, or other failure that results in use of an alternate method of measurement.

Violation: Minor.

Corrective Action: Notify authorized officer of alternate method used.
Abatement Period. By 5th business day following use of alternate method.

d. Any and all tests conducted on oil samples extracted from LACT samplers for determination of oil gravity and S & W content shall meet the same requirements and minimum standards specified in this Order with respect to oil measurement by tank gauging for all measurements taken of temperature, gravity, and S&W content (Section III.C.5., 6., and 7.)

Violation: Major.
Corrective Action: Report tests for gravity, temperature, and/or S & W content per Section III.C.5., 6., and 7. minimum standards.
Abatement Period: Prior to sales or removal.

2. *Operating Requirements for LACT Unit Components.* All required LACT unit components shall be operated to satisfy the following minimum standards:

a. *Charging pump and motor.* The LACT unit shall include an electrically driven pump rated for a discharge pressure and rate that are compatible with the rating for the meter used and sized to assure turbulent flow in the LACT main stream piping.

Violation: Major.
Corrective Action: Install properly designed pump and motor.
Abatement Period: Prior to sales or removal.

b. *Sampler.* The sampler probe shall extend into the center one-third of the flow piping in a vertical run, at least 3 pipe diameters downstream of any pipe fitting. The probe shall always be in a horizontal position.

Violation: Major.
Corrective Action: Install component properly.
Abatement Period: Prior to sales or removal.

c. *Composite Sample Container.* The composite sample container shall be capable of holding sample under pressure and shall be equipped with a vapor proof top closure and operated to prevent the unnecessary escape of vapor, and the container shall be emptied upon completion of sample withdrawal.

Violation: Major.
Corrective Action: Install component properly, and empty after each sample withdrawal.
Abatement Period: Prior to sales or removal.

d. *Mixing System.* The mixing system shall completely blend the sample into a homogeneous mixture before and during the withdrawal of a portion of sample for testing.

Violation: Major.

Corrective Action: Repair mixing system.
Abatement Period: Prior to sales or removal.

e. *Strainer.* The strainer shall be constructed so that it may be depressurized, opened, and cleaned, be located upstream of the meter, and be made of corrosion resistant material of a mesh size no larger than ¼-inch.

Violation: Minor.
Corrective Action: Replace with properly designed strainer, and install properly.
Abatement Period: 30 days.

f. *Positive Displacement Meter.* The meter shall register volumes of oil passing through said meter determined by a system which constantly and mechanically isolates the flowing oil into segments of known volume, and be equipped with a non-resettable totalizer.

Violation: Major.
Corrective Action: Replace or repair meter or the non-resettable totalizer.
Abatement Period: Prior to sales or removal.

g. *Meter Proving Connections.* All meter proving connections shall be installed downstream from the LACT meter, with the line valve(s) between the inlet and outlet of the prover loop having a double block and bleed design feature to provide for leak testing during proving operations.

Violation: Major.
Corrective Action: Relocate prover loops downstream from LACT meter, and install block and bleed valve as specified.
Abatement Period: Prior to proving LACT.

h. Back Pressure and Check Valves. The back pressure valve and check valve shall be installed downstream from the LACT meter.

Violation: Major.
Corrective Action: Install back pressure valve and check valve downstream from LACT meter.
Abatement Period: Prior to sales or removal.

i. *Air Eliminator.* The air eliminator shall be installed and prevent air/gas from entering the meter.

Violation: Minor.
Corrective Action: Install air eliminator.
Abatement Period: 30 days.

j. *Diverter Valve/Shut-off Valve.* The diverter valve/shut-off valve shall be activated by

the Sediment and Water Monitor so that the valve moves to divert flow to the clean oil discharge only when it receives a positive signal, or provide a shut-off valve configured to shut off oil delivery upon failure to receive a positive signal from the Sediment and Water Monitor.

Violation: Minor.
Corrective Action: Install diverter valve/shut-off valve.
Abatement Period: 30 days.

k. *Sediment and Water (S and W) Monitor.* The Sediment and Water Monitor shall be an internally plastic coated capacitance probe, no smaller in diameter than the skid piping, and shall be mounted in a vertical pipe located upstream from the diverter valve/shut-off valve and the meter.

Violation: Minor.
Corrective Action: Install S and W Monitor.
Abatement Period: 30 days.

l. *Automatic Temperature/Gravity Compensator.* The automatic temperature/gravity compensator shall be sized according to the fluid characteristics being measured.

Violation: Major.
Corrective Action: Install automatic temperature/gravity compensator.
Abatement Period: Prior to sales or removal.

3. *Sales Meter Proving Requirements.* LACT positive displacement meters shall be proved periodically. Meter provings shall follow "API Manual of Petroleum Measurement Standards, Chapter 4 - Proving Systems," 1978, and shall meet the following minimum standards.

a. The types of meter provers to be used, and the calibration requirements are as follows:
(1) The acceptable types of meter provers are pipe provers, tank provers, master meters, or other API recognized meter provers.

Violation: Minor.
Corrective Action: Prove again with acceptable meter prover.
Abatement Period: 30 days.

(2) The prover shall have available at the site for review by the authorized officer, evidence that the prover has been calibrated, with the certified calibration date identified by some unique number, i.e., serial number assigned to and inscribed on the prover. The calibration evidence for a pipe or tank prover shall show the certified volume as determined by the water draw method.

If a master meter is used, the most recent calibration report for said master meter shall be available. Said calibration report shall show that the master meter has been calibrated in accordance with API requirements, has an operating factor within the range from 0.9900 to 1.0100, and that 5 consecutive runs have been

matched within a tolerance of 0.0002.

Violation: Minor.
Corrective Action: Provide calibration certification.
Abatement Period: Prior to proving.

b. Minimum Proving Frequency. For all sales and allocation meters, the accuracy of the measuring equipment at the point of delivery or allocation shall be tested following initial meter installation or following repair, and if proven adequate, at least quarterly thereafter unless a longer period is approved in writing by the authorized officer.

Violation: Minor.
Corrective Action: Notify authorized officer of scheduled proving and prove meter.
Abatement Period: 10 business days.

(1) In the event that the total throughput exceeds 100,000 bbls per month, then proving shall be accomplished monthly.

Violation: Minor.
Corrective Action: Notify authorized officer of scheduled proving.
Abatement Period: By the 10th business day after discovery of the violation.

c. In Establishing the Operating Meter Factor:

(1) At least 6 runs shall be made. Of these 6 runs, 5 consecutive runs shall match within a tolerance of 0.0005 (0.05 percent) between the highest and the lowest reading.

Violation: Major.
Corrective Action: Notify authorized officer and reprove meter.
Abatement Period: 10 business days.

(2) The arithmetic average of these 5 consecutive runs shall be used for computation of the meter factor.

Violation: Minor.
Corrective Action: Compute meter factor using arithmetic average of the 5 consecutive runs.
Abatement Period: Prior to completion of proving.

(3) Meter factor computations shall also include the correction for the effect of pressure on steel (Cps) for provers; and the correction for the effect of temperature on steel (Cts) for provers; and the correction for the effect of temperature on liquid (Ctl), and the correction for the effect of pressure on liquid (Cpl). The Cps and Cts correction factors shall be determined using the "API Manual of Petroleum Measurement Standards, Chapter 12, Section 2," 1981, or latest revised standard, and the Ctl correction factor shall be obtained from the "API Standard 2540, Chapter 11.1, Volume I (ASTM D-1250-80), Table 6A,"

1980, or latest revised standard, and the Cpl correction factor still be obtained from the "API Manual of Petroleum Measurement Standards, Chapter 11.2.1."

Violation: Minor.
Corrective Action: Include proper correction factors.
Abatement Period: Prior to completion of meter proving.

(4) The initial meter factor for a new or repaired meter shall be within the range from 0.9950 to 1.0050, unless the deviation can be justified to the satisfaction of the authorized officer.

Violation: Minor.
Corrective Action: Replace/repair/reprove meter or justify deviation from the brackets 0.9950 to 1.0050 to the authorized officer.
Abatement Period: Prior to completion of proving.

4. *Excessive Meter Factor Deviation.* Excessive meter factor deviation may be evidence of meter malfunction, and corrective action shall be taken upon discovery of meter malfunction. However, if the operator determines that the meter did not, in fact, malfunction, the lessee/operator shall submit, for approval by the authorized officer, a report as to the findings and reasons for the excessive meter factor deviation and the determination of no meter malfunction. In the event a malfunction occurred, the meter shall be immediately removed from service, checked for damage or wear, adjusted and/or repaired, and reproven prior to return to service. The arithmetic average of the malfunction factor and the previous factor shall be applied to the production measured through the meter between the date of the previous factor and the date of the malfunction factor. Malfunction meter factors shall be clearly indicated on the proving report, which shall also contain all appropriate remarks regarding subsequent repairs and/or adjustments.

The minimum standards for evidence meter malfunction, and corrective action required, are as follows:

Meter Factor Deviation.

(1) Deviation in a meter factor not exceed ±0.0025 since the last proving of the meter unless explained by changing conditions, i.e., temperature or gravity or flow-rate.

Violation: Minor.
Corrective Action: Repair or replace meter, or submit report to authorized officer for approval of the findings and reasons for the determination that there is no meter malfunction.
Abatement Period: Prior to of completion of meter proving.

(2) A meter factor shall not exceed 1 percent above or below unity, i.e., outside of the range from 0.9900 to 1.0100.

Violation: Minor.
Corrective Action: Same as (1) above.

Abatement Period: Prior to completion of meter proving.

5. *Meter Reporting Require Requirements.* All meter provings, meter failures, and volume adjustments following meter malfunction shall be reported to the authorized officer, as follows:

Meter Proving Reports. The meter proving report shall be filed on one of the forms set out in "API Manual of Petroleum Measurement Standards, Chapter 12-Calculation of Petroleum Quantities, Section 2-Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meter," 1981 (Reaffirmed August 1987). Any similar format is acceptable provided all required data are included and proper calculation sequence is maintained.

Each meter proving report shall be identified by lease number, communitization agreement number, or unit participating area name, and the location of the facility.

Each meter proving report shall be filed with the authorized officer no later than 10 business days following the meter proving.

[54 FR 39527, Sept. 27, 1989]

Violation: Minor.
Corrective Action: Submit proper proving report to authorized officer.
Abatement Period: File the report with authorized officer no later than 10th business day following the proving.

E. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer.

Any method of oil measurement, other than tank gauging or positive displacement metering system, requires prior approval, based on applicable API Standards, by the authorized officer. Other measurement methods include, but are not limited to: Turbine metering systems, Measurement by calibrated tank truck, Measurement by weight, and Net oil computer.

The requirements and minimum standards for oil measurement on the lease, unit, unit participating area, or communitized area by an alternate method, or at a location off the lease, unit, unit participating area, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. *Measurement on the Lease, Unit, Unit Participating Area, Communitized Area.*

An application for approval of an alternate oil measurement method shall be submitted to the authorized officer and written approval obtained before any such alternate oil measurement method is operated. Any operator requesting approval of any alternate oil sales measurement system shall submit performance data, actual field test results, or any other supporting data or evidence acceptable to the authorized officer, that will demonstrate that the proposed alternate oil sales measurement system will meet or exceed the objectives of the applicable minimum standard or does not adversely affect royalty income or production accountability.

[54 FR 39527, Sept. 27, 1989]

Violation: Major.
Corrective Action: Shut in operations. Submit application for approval of desired method of oil measurement.

Abatement Period: Prior to sales or removal.

2. *Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area.*

a. An application for off-lease measurement shall be submitted to the authorized officer and written approval obtained before any such off-lease oil measurement facilities are installed or operated. The application for written approval of off-lease measurement shall justify location of the measurement facilities at the off-lease location desired before approval will be granted, but no additional approval as to the oil measurement method is required, provided measurement is to be accomplished by tank gauging or positive displacement metering system, pursuant to the requirements and minimum standards of this Order.

Violation: Minor.
Corrective Action: Submit application for written approval of off-lease measurement.
Abatement Period: 20 days.

b. If oil measurement is to be accomplished at a location off the lease, unit, unit participating area, or communitized area by any alternate measurement method (any method other than tank gauging or positive displacement metering system), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the of the alternate measurement method, pursuant to Section III.E.1.

Violation: Major.
Corrective Action: Submit application for approval of off-lease measurement and approval of desired method of measurement.
Abatement Period: Prior to sales or removal.

F. Determination of Oil Volumes by Methods Other Than Measurement.

Pursuant to 43 CFR 3162.7-2, when production cannot be measured due to spillage or leakage, the amount of production shall be determined in accordance with the methods approved or prescribed by the authorized officer. This category of production includes, but is not limited to, oil which is classified as slop oil or waste oil.

The minimum standards for determining the volume of oil that cannot be measured are as follows:

1. No oil located in an open pit or sump, in a stock tank, in a production vessel or elsewhere, may be classified or disposed of as waste oil unless it can be shown, to the satisfaction of the authorized officer, that it is not economically feasible to put the oil into marketable condition.

Violation: Major.
Corrective Action: Put oil into marketable condition.
Abatement Period: 10 working days.

2. No slop oil may be sold or otherwise disposed of without prior approval from the authorized officer. Following the sale or disposal, the authorized officer shall be notified as to the volume sold or disposed of, and the method used to compute the volume.

Violation: Major.
Corrective Action: Submit complete report of sale or disposal.
Abatement Period: 24 hours.

IV. Variances From Minimum Standards.

An Operator any request that the authorized officer approve a variance from any of the minimum standards prescribed in Section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) on making a determination that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability. In addition, approval may be given orally by the authorized officer before the operator initiates actions that require a variance from minimum standards. The oral request, if granted, shall be followed by a written request not later than the fifth business day following oral approval, and written approval will then be appropriate.

The authorized officer also may, on his/her motion, issue NTLs that establish modified standards or variances for specific geographic areas of operations.

After notice to the operator, the authorized officer also may require compliance with standards that exceed those contained in this Order whenever such additional requirements are necessary to achieve protection of royalty income or production accountability. The rationale for any such additional requirements shall be documented in writing to the operator.

[54 FR 39527, sept. 27, 1989]

Attachment

I. Sections from 43 CFR Subparts 3163 and 3165 (not included with Federal Register publication).

ONSHORE ORDER #5

Bureau of Land Management (Updated 01/19/00)
Final Rule
Federal Register / Vol. 54, No. 36, Friday, February 24, 1989, Rules and Regulation

Onshore Oil and Gas Operations, Federal and Indian Leases;
Onshore Oil and Gas Order No. 5, Measurement of Gas

I. Introduction.
- A. Authority.
- B. Purpose.
- C. Scope.

II. Definitions.

III. Requirements.
- A. Required Recordkeeping.
- B. General.
- C. Gas Measurement by Orifice Meter
- D. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer.

IV. Variances from Minimum Standards.

Attachment.
I. Sections from 43 CFR Subparts 3163 and 3165.

Onshore Oil and Gas Order No. 5;
Measurement of Gas on Federal and Indian Oil and Gas Leases

Effective date: March 27, 1989; this order is applicable March 27, 1989 for new facilities, August 23, 1989 for existing facilities measuring 200 MCF or more per day of gas, and February 26, 1990 for existing facilities producing less than 200 MCF per day of gas.

[54 FR 39528, Sept. 27, 1989]

I. Introduction.

A. Authority.

This Order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the Director to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter, be issued.

Specific authority for the provisions contained in this Order is found at: section 3162.7-1, Disposition of production; section 3162.7-3, Measurement of gas; and subpart 3163, Noncompliance and assessment.

[54 FR 39528, Sept. 27, 1989]

B. Purpose.

One purpose of this Order is to establish the requirements and minimum standards for the measurement of gas by the methods authorized in 43 CFR 3162.7-3, i.e., measurement by orifice meter or other methods acceptable to the authorized officer. Proper gas measurement ensures that the Federal Government, the general public, State governments which share in the proceeds, and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected. The assessments and penalties that will be imposed as a result of noncompliance and/or failure to correct the noncompliance within the specified abatement period.

This Order also serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided that the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed.

C. Scope.

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order also is applicable to all wells and facilities on State or privately owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

II. Definitions.

A. Authorized Officer means any employee of the Bureau of Land Management authorized to perform the duties described in 43 CFR Groups 3000 and 3100 (see 43 CFR 3000.0-5).

B. Business day means any day Monday through Friday, excluding Federal holidays.

C. Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and that maintains a gaseous or rarefied state at standard temperature and pressure conditions (see 43 CFR 3000.0-5(a)).

D. INC means incident of noncompliance, which serves as a Notice of Violation under 43 CFR Subpart 3163.

E. Lessee means a person or entity holding record title in a lease issued by the United States (see 43 CFR 3160.0-5).

F. Major violation means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0-5).

G. Minor violation means noncompliance that does not rise to the level of a major violation (see 43 CFR 3160.0-5).

H. Operating rights owner means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

I. Operator means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or portion thereof.

J. Production unit means, for purposes of reporting production, a measurement unit of 1,000 standard cubic feet (Mcf).

K. Standard cubic foot" means the volume of gas contained in one cubic foot at a base pressure of 14.73 pounds per square inch absolute (psia), at a base temperature of 60 °F or 519.67° Rankine (see 43 CFR 3162.7-3).

III. Requirements.

A. Required Recordkeeping. The operator shall keep all test data, meter reports, charts/recordings, or other similar records for 6 years from the date they were generated, or if involved in an audit or investigation, the records shall be maintained until the record holder is released by the Secretary from the obligation to maintain them. The authorized officer may request these records any time within this period. Records submitted shall include all the additional information used to compute the volumes so that computations may be verified.

B. General.

All gas production shall be measured in accordance with an authorized method of measurement. As set out in 43 CFR 3162.7-3, gas measurement authorized for gas produced from leases, units, unit participating areas, and communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1, may be by orifice meter or other methods acceptable to the authorized officer. The requirements and minimum standards for gas measurement are set out below.

The requirements of this Order are based on the standards and specifications published by the American Gas Association (AGA), and officially designated as ANSI/API 2530 and AGA Committee Report No. 3, Second Edition, 1985, hereafter referred to AGA Committee Report No. 3. The AGA published standards and specifications are considered to be appropriate for proper gas measurement by both the Department of the Interior and the Oil and Gas Industry. The requirements set minimum standards necessary to promote conservation of natural resources and to ensure proper measurement of gas production for sales and allocation purposes, so that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases.

All future sales and allocation facilities and sales or allocation facilities in existence on the effective date of this Order, unless covered by a valid variance, shall meet the minimum standards

prescribed in this Order; provided, however, that all gas produced from or allocated to Federal and Indian (except Osage) oil and gas leases wherein the gas is measured through sales or allocation meters handling an average of 100 MCF per day or less on a monthly basis are exempt from the minimum standards in Sections III.C.1., C.2., and C.4., of this Order. The authorized officer may, where appropriate and necessary for proper measurement, work with the operators in designating consolidated gas sales and/or allocation meter stations.

Meter installations constructed in accordance with the AGA Report No. 3 standards in effect at that time shall not automatically be required to retrofit if the standards are revised. The Bureau will review any revised standards and, when necessary, will amend the Order through the rulemaking process.

The intent of these minimum standards is to ensure that when equipment malfunctions that could result in inaccurate measurement occur, proper corrective actions are taken, the authorized officer is notified, and an amended production report is submitted.

Failure to comply with these minimum standards will be considered as noncompliance and an incident of noncompliance (INC) will be issued. Operators who discover noncompliance with these minimum standards and take immediate corrective action will not be issued an INC. If the authorized officer or his representative is present when an operator discovers a malfunction or uses incorrect procedures as specified in this Order, an INC will be issued unless immediate corrective action is taken. Failure of equipment will not be considered a violation. However, the incidents of noncompliance that may result from equipment failure are considered violations and a partial list of such incidents follows:

Failure to install equipment properly.

Failure to repair or correct equipment malfunction properly or in a timely manner.

Failure to submit report of alternate method of sales.

Failure to submit amended production reports in a timely manner.

Failure to adhere to the minimum standard procedures specified in this Order.

The use of improper equipment, when discovered, will be considered as a violation and a formal INC will be issued.

The use of improper procedures will be considered a violation and when witnessed by the authorized officer or his representative, immediate corrective action will be required. In the event that proper procedures are then used as required by this Order, and prior to completing the operation, calibration, or proving, the violation will be considered as properly corrected. In this case, although the violation will be documented in the Bureau's files, no INC will be issued.

A major violation, as defined in this Order, will generally require an immediate shut-in of the metering device. However, where the non-recoupable loss is not significant or where damage to the resource is likely to occur if a shut-in is required, an abatement period of 24 hours may be

given.

Where abatement is required "prior to sales or removal," action is required to be taken so that no gas can be removed beyond the measurement point until properly measured.

[54 FR 39528, Sept. 27, 1989]

C. Gas Measurement by Orifice Meter

The following are minimum standards for the measurement of natural gas using orifice meters:

1. The orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "flange taps," shall be between 0.15 and 0.70.

Violation: Major.

Corrective Action: Install an orifice of such size that subsequent measurements will be within the appropriate beta ratio range. If changing the orifice causes the differential pressure to be recorded in the lower one-third of the chart, then either the meter tube or the differential element shall be changed, sizing the straight pipe sections in a manner that will provide subsequent measurement within the appropriate beta ratio range.

Abatement Period: Prior to sales.

2. The orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "pipe taps," shall be between 0.20 and 0.67.

Violation: Major.

Corrective Action: Same as A.1. above.

Abatement Period: Prior to sales.

3. To obtain flow conditions as near optimum as possible and minimize the effects of turbulence in gas flow, the minimum length of straight pipe preceding and following an orifice and the use of straightening vanes, shall conform to those specifications detailed in Figures 4 through 9 of AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Install proper length of pipe where appropriate or install straightening vanes in accordance with appropriate AGA Report No. 3 specifications.

Abatement Period: Prior to sales.

4. The orifice shall be sized to make the pen that records the differential pressure operate in the outer 2/3 of the chart range for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size orifice to meter tube so that the differential pen will deflect and record in the outer 2/3 of the chart range and so that the measurement will be within the prescribed beta ratio range.

Abatement Period: 20 days.

5. The static element shall be sized to make the pen that records the static pressure operate in the outer ⅔ of the chart range for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size static element so as to cause static pen to record in the outer ⅔ of the chart range.

Abatement Period: 20 days.

6. There shall be no pipe connections between the orifice and the nearest pipe fitting other than the pressure taps and/or thermometer wells as specified in AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Replace entire length of pipe ahead of orifice meter with pipe of appropriate length and inside smoothness in accordance with AGA Committee Report No. 3.

Abatement Period: Prior to sales.

7. Continuous temperature recorders to measure the flowing gas temperature are required on all sales and allocation meters measuring 200 MCF per day or more on a monthly basis. All other sales or allocation meters shall have a continuous temperature recorder or an indicating thermometer to measure flowing gas temperature. Sales or allocation meters measuring between 200 and 500 MCF per day on a monthly basis may be considered for a variance by the authorized officer on a case-by-case basis.

Violation: Major.

Corrective Action: Install temperature measuring device as required.

Abatement Period: Prior to sales.

8. The internal diameter of the meter tube and the orifice fittings shall be the same or, if not, within tolerance limits set by AGA.

Violation: Major.

Corrective Action: Install properly sized meter tube.

Abatement Period: Prior to sales.

9. Meter tubes using flange taps or pipe taps shall have the pressure tap holes located as specified in AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Install pressure tap as specified.

Abatement Period: Prior to sales.

10. Orifice plates shall be removed from the flange or plate holder, and inspected for visual conformance with AGA standards and specifications, at least semi-annually, during testing of the accuracy of measuring equipment.

Violation: Minor.

Corrective Action: Remove and inspect orifice plate for visual conformance with AGA standards and specifications.

Abatement Period: No later than next meter calibration.

11. Any plate or orifice that is determined not in conformance with AGA standards shall be replaced with one that is in conformance.

Violation: Major.
Corrective Action: Replace orifice plate.
Abatement Period: Prior to sales.

12. All connections and fittings of the secondary element (including meter pots and meter manifolds) shall be leak tested prior to conducting tests of the meter's accuracy.

Violation: Minor.
Corrective Action: Stop meter calibration and conduct leak test. When leaks are detected the meter setting shall be determined and recorded "as found", the meter calibrated, and readings recorded "as left".
Abatement Period: Prior to completion of calibration.

13. The appropriate "zero" positions of the static and differential meter pens shall be checked during each test of meter accuracy, and adjustments made if necessary.

Violation: Minor.
Corrective Action: Stop meter calibration and record "as found" readings; calibrate meter and record readings "as left".
Abatement Period: Prior to completion of calibration.

14. The meter's differential pen arc, the ability of the differential pen to duplicate the test chart's time arc over the full range of the test chart, shall be checked during each testing of the meter's accuracy and adjustments made if necessary.

Violation: Minor.
Corrective Action: Stop meter calibration and record "as found" readings; adjust differential pen arc, and record "as left" readings.
Abatement Period: Prior to completion of calibration.

15. Differential and static pen accuracy shall be tested for linearity at zero and 100 percent and at 1 point within the normal range of the differential and static recordings to assure accuracy.

Violation: Minor.
Corrective Action: Adjust pens to assure accuracy.
Abatement Period: Prior to completion of calibration.

16. During testing of the meter accuracy, the static pen time lag shall be adjusted to ensure independent movement of the static pen in relation to the differential pen.

Violation: Minor.
Corrective Action: Make appropriate adjustments.

Abatement Period: Prior to completion of calibration.

17. For all sales and allocation meters, the accuracy of the measuring equipment at the point of delivery or allocation shall be tested following initial meter installation or following repair and, if proven adequate, at least quarter thereafter unless a longer period is approved by the authorized officer. All extensions of intervals between tests of meters shall be approved in writing by the authorized officer.

Violation: Minor.
Corrective Action: Test meter for accuracy.
Abatement Period: a. 24 hours for initial installation or following repairs.
b. 30 days for failure to calibrate meter quarterly.

18. At least a 24-hour notice shall be given to the authorized officer prior to conducting the tests and calibrations required by this order.

Violation: Minor.
Corrective Action: Notify authorized officer of scheduled meter and calibrations at least 24 hours prior to next tests and calibrations.
Abatement Period: Prior to next calibration.

19. If the inaccuracy of the measuring equipment results in a volume calculation more than 2 percent in error, the volume measured since the last calibration be ***corected*** in addition to adjusting the meter to zero error. Also, the operator shall submit a corrected report adjusting the volumes of gas measured , and showing or discussing all the calculations made in correcting the volumes. The volume shall be corrected back to the time the inaccuracy occurred, if known. If this time is unknown, volumes shall be corrected for the last half of the period elapsed since the date of last calibration.

Violation: Minor.
Corrective Action: a. adjust meter to zero error.
b. Submit corrected report
Abatement Period: a. Prior to completion of calibration.
b. 60 days.

20. If, for any reason, the measuring equipment is out of service or malfunctioning so that the quantity of gas delivered is not known, the volume delivered during this period shall be estimated using one of the following methods, in the listed order of priority:

a. Record data on check metering equipment if used in lieu of main meter recordings. If check meters are not installed or are found to be recording inaccurately; then,
b. Base corrections on the percentage error found during the instrument test. If that is not feasible; then,
c. Estimate the quantity of gas run, based on deliveries made under similar conditions when the metering equipment was registering accurately.

Violation: Minor.

Corrective Action: Estimate volumes delivered during those periods cited using one or more of the approved methods identified in the order of priority and, when necessary, submit an amended report showing corrected volumes.
Abatement Period: 60 days.

21. Volumes of gas delivered shall be determined according to the flow equations specified in AGA Committee Report No.3

Violation: Minor.
Corrective Action: Recalculate all gas volumes not determined in accordance with flow equations specified in §6.3 of the AGA Committee Report No. 3.
Abatement Period: 60 days.

22. Unless otherwise established, the point of sales delivery and appropriate measurement shall be on the leasehold (or within the boundaries of the communitized area(CA) or unit participating area). Sales off the leasehold (or outside the CA or unit participating area) may be approved by the authorized officer.

Violation: Minor.
Corrective Action: Submit application to the authorized officer for approval of off lease (CA or unit participating area) measurement.
Abatement Period: 30 days.

23. The Btu content shall be determiend at least annually, unless otherwise required by the authorized officer, by means of (1) a recording calorimeter, (2) calculations based on a complete compositional analysis of the gas and the heating value of each constituent, in accordance with AGA Committee Report No. 3, or (3) any other method acceptable to the authorized officer. The authorized officer shall be apprised of the method used for each determination and be furnished with all needed analytical data or other documentation upon request. The Btu content most recently determined and used for royalty purposes shall be reported.

Violation: Minor.
Corrective Action: Determine Btu values and submit an amended report.
Abatement Period: 30 days.

24. All meter calibration report forms shall include the following information, if applicable, and shall be submitted to the authorized officer, upon request.

a. Name of producer or seller.
b. Name of purchaser.
c. Federal or Indian lease number, communitization agreement number, or unit name or number and participating area identification.
d. Station or meter number.
e. Meter data (make, differential, static and temperature range, recording period).
f. Type of connections (flange or pipe, upstream or downstream static connections).
g. Orifice data (plate size and ID of meter tube).

h. Base of data used on each chart or record (temperature, specific gravity, atmospheric pressure).
i. Time and date of test.
j. Instrument error(s) found and certification of corrections, and "found" and " left" data for all instruments;
k. Signature and affiliation of tester and witness.
l. Remarks.

Violation: Minor.
Corrective Action: Submit amended meter calibration report(s) to authorized officer, including all required information.
Abatement Period: 15 days

25. For purposes of measurement and meter calibration, atmospheric pressure is that value defined in the buy/sell contract (normally assumed to be a constant value). In the absence of such a definition in the buy/sell contract, the atmospheric pressure shall be established through an actual measurement or assumed to be a constant value based on the elevation at the metering station.

Violation: Minor.
Corrective Action: Recalibrate gas meter and submit amended report indicating corrected volumes using the adjusted absolute zero or properly calculated pressure extensions.
Abatement Period: 30 days.

26. The method and frequency of determining specific gravity are normally defined in the buy/sell contract. Except when a continuous recording gravitometer is used, specific gravity may be determined at the time of an instrument check using a spot or cumulative gas sample, and is usually effective the first of the following month. The continuous recorder may be of a gravity balance or kinematic type. Also, specific gravity may be determined from a laboratory analysis of a spot or cumulative gas sample.

Violation: Minor.
Corrective Action: Determine specific gravity of gas by approved method and submit an amended report with a corrected volume.
Abatement Period: 30 days.

D. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer.

Using any method of gas measurement other than by orifice meter at a location on the lease, unit, unit participating area, or communitized area requires the prior approval from the authorized officer pursuant to 43 CFR 3162.7-3. Other measurement methods include, but are not limited to:

Turbine metering systems
Positive displacement meter
Pitot tube
Orifice well tester
Critical flow prover
Gas-oil ratio

The requirements and minimum standards for gas measurement on the lease, unit, unit participating area, or communitized area by an alternate method of measurement, or at a location off the lease, unit, unit participating area, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. Measurement of the Lease, Unit, Unit Participating Area, or Communitized Area

a. A written application for approval of an alternate gas measurement method shall be submitted to the authorized officer and written approval obtained before any such alternate gas measurement method is installed or operated. Any operator requesting approval of any alternate gas sales measurement system shall submit performance data, actual field test results, or any other supporting data or evidence acceptable to the authorized officer, that will demonstrate that the proposed alternate gas sales measurement system will meet or exceed the objectives of the applicable minimum standards or does not adversely affect royalty income or production accountability.

Violation: Major.
Corrective Action: Submit application and obtain approval.
Abatement Period: Prior to sales.
[54 FR 39528, Sept. 27, 1989]

2. Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area.

a. A written application for off-lease measurement shall be submitted to the authorized officer and written approval obtained before any such off-lease gas measurement facilities are installed or operated. The application for approval of ***off-lease*** **measurement** facilities at the desired off-lease location before approval will be granted, but no additional approval as to the gas sales measurement method is required, provided measurement is to be accomplished by an orifice meter pursuant to the requirements and minimum standards of this Order.

Violation: Minor.
Corrective Action: Submit application and obtain approval.
Abatement Period: 20 days.

b. If gas measurement is to be accomplished at a location off the lease, unit, unit participating area, or communitized area by any alternate measurement method (any method other than measurement by an orifice meter), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate measurement method pursuant to Sec. III.D.1. of this Order.

Violation: Major.
Corrective Action: Submit application and obtain approval.
Abatement Period: Prior to sales.

V. Variances from Minimum Standards.

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in Section III. hereof. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances warranting approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) if it is determined that the proposed alternative(s) meets or exceeds the objectives of the applicable minimum standard(s), or will not adversely affect royalty income or production accountability.

In addition, approval may be given orally by the authorized officer before the operator initiates actions which require a variance from minimum standards. The oral request, if granted, shall be followed by a written request not later than the fifth business day following oral approval, and written approval will then be appropriate.

The authorized officer may also issue NTL's that establish modified standards and requirements for specific geographic areas of operations.

After notice to the operator the authorized officer may also require compliance with standards that exceed those contained in this Order whenever such additional requirements are necessary to achieve protection of the royalty income or production accountability. The rationale for any such additional requirements shall be documented in writing to the operator.

[54 FR 39528, Sept. 27, 1996]

ONSHORE ORDER #6

BUREAU OF LAND MANAGEMENT
43 CFR PART 3160 (01/19/00)

Federal Register / Vol. 55, No. 226
Friday, November 23, 1990
Effective date: January 22, 1991

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations

I. Introduction.
A. Authority.
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A. Application, Approvals, and Reports.
B. Public Protection.
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I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior through various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. More specifically, this Order implements and supplements the provisions of § 3162.1 – General Requirements; §3162.5-1(a)(c)(d) – Environmental Obligations; §3162.5-2(a) – Control of Wells; and §3162.5-3 – Safety Precautions.

43 CFR 3164.1 specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders, when necessary, to implement or supplement the operating regulations and provides that all such Orders shall be binding on the operator(s) of all Federal and Indian (except Osage Tribe) oil and gas leases which have been, or may hereafter be, issued. The authorized officer has the authority pursuant to 43 CFR 3161.2 to implement the provisions of this Order, require additional information, and approve any plans, applications, or variances required or allowed by the Order.

The authorized officer may, pursuant to 43 CFR 3164.1 and 3164.2, after notice and comment, issue onshore oil and gas orders when necessary to implement and supplement the regulations contained in 43 CFR 3160, and issue notices to lessees and operators (NTL's) when necessary to implement onshore oil and gas orders and the regulations. Pursuant to Section IV of this Order, the authorized officer may approve a variance from the requirements prescribed herein to accommodate special conditions on a State or area wide basis.

[57 FR 2039 and 2136, Jan. 17, 1992]

B. Purpose

The purpose of this Order is to protect public health and safety and those personnel essential to maintaining control of the well. This Order identifies the Bureau of Land Management's uniform national requirements and minimum standards of performance expected from operators when conducting operations involving oil or gas that is known or could reasonably be expected to contain hydrogen sulfide (H_2S) or which results in the emission of sulfur dioxide (SO_2) as a result of flaring H_2S. This Order also identifies the gravity of violations, probable corrective action(s), and normal abatement periods.

C. Scope

This Order is applicable to all onshore Federal and Indian (except Osage Tribe) oil and gas leases when drilling, completing, testing, reworking, producing, injecting, gathering, storing, or treating operations are being conducted in zones which are known or could reasonably be expected to contain H_2S or which, when flared, could produce SO_2, in such concentrations that upon release could constitute a hazard to human life. The requirements and minimum standards of this Order do not apply when operating in zones where H_2S is presently known not to be present or cannot reasonably be expected to be present in concentrations of 100 parts per million (ppm) or more in the gas stream.

The requirements and minimum standards in this Order do not relieve an operator from compliance with any applicable Federal, State, or local requirement(s) regarding H_2S or SO_2 which are more stringent.

[57 FR 2039, Jan. 17, 1992]

II. Definitions

A. "Authorized officer" means any employee of the Bureau of Land Management authorized to perform the duties described in 43 CFR Groups 3000 and 3100 (3000.0-5).

B. *Christmas tree* means an assembly of valves and fittings used to control production and provide access to the producing tubing string. The assembly includes all equipment above the tubinghead top flange.

C. *Dispersion technique* means a mathematical representation of the physical and chemical transportation, dilution, and transformation of H_2S gas emitted into the atmosphere.

D. *Escape rate* means that the maximum volume (Q) used as the escape rate in determining the radius of exposure shall be that specified below, as applicable:

1. For a production facility, the escape rate shall be calculated using the maximum daily rate of gas produced through that facility or the best estimate thereof;
2. For gas wells, the escape rate shall be calculated by using the current daily absolute

open-flow rate against atmospheric pressure;

3. For oil wells, the escape rate shall be calculated by multiplying the producing gas/oil ratio by the maximum daily production rate or best estimate thereof;
4. For a well being drilled in a developed area, the escape rate may be determined by using the offset wells completed in the interval(s) in question.

E. *Essential personnel* means those on-site personnel directly associated with the operation being conducted and necessary to maintain control of the well.

F. *Exploratory well* means any well drilled beyond the known producing limits of a pool.

G. *Gas well* means a well for which the energy equivalent of the gas produced, including the entrained liquid hydrocarbons, exceeds the energy equivalent of the oil produced.

H. *H_2S Drilling Operations Plan* means a written plan which provides for safety of essential personnel and for maintaining control of the well with regard to H_2S and SO_2.

I. *Lessee* means a person or entity holding record title in a lease issued by the United States (3160.0-5).

J. *Major violation* means compliance which causes or threatens immediate. substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (3160.0-5).

K. *Minor violation* means noncompliance which does not rise to the level of a major violation (3160.0-5).

L. *Oil well* means a well for which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced, including the entrained liquid hydrocarbons.

M. *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee may also be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title (3160.0-5).

N. *Operator* means any person or entity including but not limited to the lessee or operating rights owner who has stated in writing to the authorized office, that he/she is responsible under the terms of the lease for the operations conducted on the leased lands or a portion thereof (3160.0-5).

0. *Potentially hazardous volume* means a volume of gas of such H_2S concentration and flow rate that it may result in radius of exposure-calculated ambient concentrations of 100 ppm H_2S at any occupied residence, school, church, park, school bus stop, place of business or other area where the public could reasonably be expected to frequent, or 500 ppm H_2S at any Federal, State, County or municipal road or highway.

P. *Production facilities* means any wellhead, flowline, piping, treating, or separating equipment, water disposal pits, processing plant or combination thereof prior to the approved measurement point for any lease, communitization agreement, or unit participating area.

Q. *Prompt correction* means immediate correction of violations, with operation suspended if required at the discretion of the authorized officer.

R. *Public Protection Plan* means a written plan which provides for the safety of the potentially affected public with regard to H_2S and SO_2.

S. *Radius of exposure* means the calculation resulting from using the following Pasquill-Gifford derived equation, or by such other method(s) as may be approved by the authorized

officer:

1. For determining the 100 ppm radius of exposure where the H_2S concentration in the gas stream is less than 10 percent:

   $X= [1.589)(H_2S \text{ concentration})(Q)]^{(0.6258)}$ or

2. For determining the 500 ppm radius of exposure where the H_2S concentration in the gas stream is less than 10 percent:

   $X= [(0.4546)(H_2S \text{ concentration})(Q)]^{(0.6258)}$

   Where:
   X= radius of exposure in feet:
   H_2S Concentration = decimal equivalent of the mole or volume fractions of H_2S in the gaseous mixture;
   Q= maximum volume of gas determined to be available for escape in cubic feet per day (at standard condition of 14.73 psia and 60°F).

3. For determining the 100 ppm or the 500 ppm radius of exposure in gas streams containing H_2S concentrations of 10 percent or greater, a dispersion technique that takes into account representative wind speed, direction, atmospheric stability, complex terrain, and other dispersion features shall be utilized. Such techniques may include, but shall not be limited to one of a series of computer models outlined in the Environmental Protection Agency's "Guidelines on Air Quality Models(EPA-450/2-78-027R)."

4. Where multiple H_2S sources (i.e., wells, treatment equipment, flowlines, etc.) are present, the operator may elect to utilize a radius of exposure which covers a larger area than would be calculated using radius of exposure formula for each component part of the drilling/completion/workover/ production system.

5. For a well being drilled in an area where insufficient data exits, to calculate a radius of exposure, but where H_2S could reasonably be expected to be present in concentrations in excess of 100 ppm in the gas stream, a 100 ppm radius of exposure equal to 3,000 feet shall be assumed.

T. *Zones known to contain H_2S* means geological formations in a field where prior drilling, logging, coring, testing, or producing operations have confirmed that H_2S-bearing zones will be encountered that contain 100 ppm or more of H_2S in the gas stream.

U. *Zones known not to contain H_2S* means geological formations in field where prior drilling, logging, coring, testing, or producing operations have confirmed the absence of H_2S-bearing zones that contain 100 ppm or more of H_2S in the gas stream.

V. *Zones which can reasonably be expected to contain H_2S* means geological formations in

the area which have not had prior drilling, but prior drilling to the same formations in similar field(s) within the same geologic basin indicates there is a potential for 100 ppm or more of H_2S in the gas stream.

W. *Zones which cannot reasonably be expected to contain H_2S* means geological formations in the area which have not had prior drilling, but prior drilling to the same formations in similar field(s) within the same geologic basin indicates there is not a potential for 100 ppm or more of H_2S in the gas stream.

[57 F 2039 and 2136, Jan. 17, 1992]

III. Requirements

The requirements of this Order are the minimum acceptable standards with regard to H_2S operations. This Order also classifies violations as typically major or minor for purposes of the assessment and penalty provisions of 43 CFR part 3163, specifies the corrective action which will probably be required, and establishes the normal abatement period following detection of a major or minor violation in which the violator may take such corrective action without incurring an assessment. However, the authorized officer may, after consideration of all appropriate factors, require reasonable and necessary standards, corrective actions and abatement periods that may in some cases, vary from those specified in this Order that he/she determines to be necessary to protect public health and safety, the environment, or to maintain control of a well to prevent waste of Federal mineral resources. To the extent such standards, actions or abatement periods differ from those set forth in this Order, they may be subject to review pursuant to 43 CFR 3165.3.

[57 F 2039, Jan. 17, 1992]

A. Applications, Approvals, and Reports

1. Drilling

For proposed drilling operations where formations will be penetrated which have zones known to contain or which could reasonably be expected to contain concentrations of H_2S of 100 ppm or more in the gas stream, the H_2S Drilling Operation Plan and if the applicability criteria in section III.B.1 are met, a Public Protection Plan as outlined in section III.B.2.b, shall be submitted as part of the Application for Permit to Drill (APD) (refer to Oil and Gas Order No. 1). In cases where multiple filings are being made with a single drilling plan, a single H_2S Drilling Operations Plan and, if applicable, a single Public Protection Plan may be submitted for the lease, communitization agreement, unit or field in accordance with Order No. 1. Failure to submit either the H_2S Drilling Operations Plan or the Public Protection Plan when required by this Order shall result in an incomplete APD pursuant to 43 CFR 3162.3-1.

The H_2S Drilling Operations Plan shall fully describe the manner in which the requirements and minimum standards in section III.C, shall be met and implemented. As required by this Order (section III.C.), the following must be submitted in the H_2S Drilling Operations Plan:

a. Statement that all personnel shall receive proper H_2S training in accordance, with section

III.C.3.a.

b. A legible well site diagram of accurate scale (may be included as part of the Well Site Layout as required by Onshore Order NO. 1) showing the following:
   i. Drill rig orientation
   ii. Prevailing wind direction
   iii. Terrain of surrounding area
   iv. Location of all briefing areas (designate primary briefing area)
   v. Location of access road(s) (including secondary egress)
   vi. Location of flare line(s) and pit(s)
   vii. Location of caution and/or danger signs
   viii. Location of wind direction indicators

c. As required by this Order, a complete description of the following H_2S safety equipment/systems:
   i. Well control equipment.
      - Flare line(s) and means of ignition
      - Remote controlled choke
      - Flare gun/flares
      - Mud-gas separator and rotating head (if exploratory well)
   ii. Protective equipment for essential personnel.
      - Location, type, storage and maintenance of all working and escape breathing apparatus
      - Means of communication when using protective breathing apparatus
   iii. H_2S detection and monitoring equipment.
      - H_2S sensors and associated audible/visual alarm(s)
      - Portable H_2S and SO_2 monitor(s)
   iv. Visual warning systems.
      - Wind direction indicators
      - Caution/danger sign(s) and flag(s)
   v. Mud program.
      - Mud system and additives
      - Mud degassing system
   vi. Metallurgy.
      - Metallurgical properties of all tubular goods and well control equipment which could be exposed to H_2S (section III.C.4.c.)
   vii. Means of communication from wellsite.

d. Plans for well testing.
[57 F 2039, Jan. 17, 1992]

2. Production

a. For each existing production facility having an H_2S concentration of 100 ppm or more in

the gas stream, the operator shall calculate and submit the calculations to the authorized officer within 180 days of the effective date of this Order, the 100 and, if applicable, the 500 ppm radii of exposure for all facilities to determine if the applicability criteria section III.B.1. of this order are met. Radii of exposure calculations shall not be required for oil or water flowlines. Further, if any of the applicability criteria (section III.B.1.) are met, the operator shall submit a complete Public Protection Plan which meets the requirements of section III.B.2.b. to the authorized officer within 1 year of the effective date of this Order. For production facilities constructed after the effective date of this Order and meeting the above minimum concentration (100 ppm in gas stream), the operator shall report the radii of exposure calculations, and if the applicability criteria (section III.B.1) are met, submit a complete Public Protection Plan (section III.B.2.b.) to the authorized officer within 60 days after completion of production facilities.

Violation: Minor for failure to submit required information.
Corrective Action: Submit required information (radii of exposure and/or complete Public Protection Plan).
Normal Abatement Period: 20 to 40 days.

b. The operator shall initially test the H_2S concentration of the gas stream for each well or production facility and shall make the results available to the authorized officer, upon request.

Violation: Minor.
Corrective Action: Test gas from well or production facility.
Normal Abatement Period: 20 to 40 days.

c. If operational or production alterations result in a 5% or more increase in the H_2S concentration (i.e., well recompletion, increased GOR's) or the radius of exposure as calculated under sections III.A.2.a., notification of such changes shall be submitted to the authorized officer within 60 days after identification of the change.

Violation: Minor.
Corrective Action: Submit information to authorized officer.
Normal Abatement Period: 20 to 40 days.
[57 F 2039, Jan. 17, 1992]

3. Plans and Reports

a. H_2S Drilling Operations Plan(s) or Public Protection Plan(s) shall be reviewed by the operator on an annual basis and a copy of any necessary revisions shall be submitted to the authorized officer upon request.

Violation: Minor.
Corrective Action: Submit information to authorized officer.
Normal Abatement Period: 20 to 40 days.

b. Any release of a potentially hazardous volume of H_2S shall be reported to the authorized officer as soon as practicable, but no later than 24 hours following identification of the release.

Violation: Minor.

Corrective Action: Report undesirable event to the authorized officer.
Normal Abatement Period: 24 hours.

B. Public Protection

1. Applicability Criteria

For both drilling/completion/ workover and production operations, the H_2S radius of exposure shall be determined on all wells and production facilities subject to this Order. A Public Protection Plan (Section III.B.2) shall be required when any of the following conditions apply:

a. The 100 ppm radius of exposure is greater than 50 feet and includes any occupied residence, school, church, park, school bus stop, place of business, or other areas where the public could reasonably be expected to frequent;
b. The 500 ppm radius of exposure is greater than 50 feet and includes any part of a Federal, State, County, or municipal road or highway owned and principally maintained for public use; or
c. The 100 ppm radius of exposure is equal to or greater than 3,000 feet where facilities or roads are principally maintained for public use. Additional specific requirements for drilling/completion/workover or producing operations are described in sections III.C. and III.D. of this Order, respectively.

[57 F 2039, Jan. 17, 1992]

2. Public Protection Plan

a. Plan Submission/Implementation/Availability —

i. A Public Protection Plan providing details of actions to alert and protect the public in the event of a release of a potentially hazardous volume of H_2S shall be submitted to the authorized officer as required by Section III.A.1. for drilling or by section III.A.2.a. for producing operations when the applicability criteria established in section III.B.1. of this Order are met. One plan may be submitted for each well, lease, communitization agreement, unit, or field, at the operator's discretion. The Public Protection Plan shall be maintained and updated, in accordance with section III.A.3.a.

ii. The Public Protection Plan shall be activated immediately upon detection of release of a potentially hazardous volume of H_2S.

Violation: Major.
Corrective Action: Immediate implementation of the public protection plan.
Normal Abatement Period: Prompt correction required.

iii. A copy of the Public Protection Plan shall be available at the drilling/completion site for such wells and at the facility, field office, or with the pumper, as appropriate, for producing wells, facilities, and during workover operations.

Violation: Minor.

Corrective Action: Make copy of Plan available.
Normal Abatement Period: 24 hours (drilling/completion/workover), 5 to 7 days (production).

b. Plan Content.

i. The details of the Public Protection Plan may vary according to the site specific characteristics (concentration, volume, terrain, etc.) expected to be encountered and the number and proximity of the population potentially at risk. In the areas of high population density or in other special cases, the authorized officer my require more stringent plans to be developed. These may include public education seminars, mass alert systems, and use of sirens, telephone, radio, and television depending on the number of people at risk and their location with respect to the well site.

ii. The Public Protection Plan shall include:

(a) The responsibilities and duties of key personnel, and instructions for alerting the public and requesting assistance;

(b) A list of names and telephone numbers of residents, those responsible for safety of public roadways, and individuals responsible for the safety of occupants of buildings within the 100 ppm radius of exposure (e.g. school principals, building managers, etc.) as defined by the applicability criteria in section III.B.1. The operator shall ensure that those who are at the greatest risk are notified first. The Plan shall define when and how people are to be notified in case an H_2S emergency;

(c) A telephone call list (including telephone numbers) for requesting assistance from law enforcement, fire department, and medical personnel and Federal and State regulatory agencies, as required. Necessary information to be communicated and the emergency responses that may be required shall be listed. This information shall be based on previous contacts with these organizations;

(d) A legible 100 ppm (or 3,000 feet, if conditions unknown) radius plat of all private and public dwellings, schools, roads, recreational areas, and other areas where the public might reasonably be expected to frequent;

(e) Advance briefings, by visit, meeting or letter to the people identified in section III.B.2.b.ii(b), including:
- Hazards of H_2S and SO_2;
- Necessity for an emergency action plan;
- Possible sources of H_2S and $S0_2$;
- Instructions for reporting a leak to the operator;
- The manner in which the public shall be notified of an emergency; and
- Steps to be taken in case of an emergency, including evacuation of any people;

(f) Guidelines for the ignition of the H_2S–bearing gas. The Plan shall designate the title or position of the person(s) who has the authority to ignite the escaping gas and define when, how, and by whom the gas is the be ignited;

(g) Additional measures necessary following the release of H_2S and SO_2 until the release is contained are as follows:

– Monitoring of H_2S and SO_2 levels and wind direction in the affected area;
– Maintenance of site security and access control;
– Other necessary measures as required by the authorized officer; and

(h) For production facilities, a description of the detection system(s) utilized to determine the concentration of H_2S released.

C. Drilling/Completion/Workover Requirements

1. General

a. A copy of the H_2S Drilling Operations Plan shall be available during operations at the well site beginning when the operation is subject to the terms of this Order (i.e., 3 days or 500 feet of known or probable H_2S zone).

Violation: Minor.
Corrective Action: Make copy of Plan available.
Normal Abatement Period: 24 hours.

b. Initial H_2S training shall be completed and all H_2S related safety equipment shall be installed, tested, and operational when drilling reaches a depth of 500 feet above, or 3 days prior to penetrating (whichever comes first) the first zone containing or reasonably expected to contain H_2S. A specific H_2S operations plan for completion and workover operations will not be required for approval. For completion and workover operations, all required equipment and warning systems shall be operational and training completed prior to commencing operations.

Violation: Major.
Corrective Action: Implement H_2S operational requirements, such as completion of training and/or installation, repair, or replacement of equipment, as necessary.
Normal Abatement period: Prompt correction required.

c. If H_2S was not anticipated at the time the APD was approved, but is encountered in excess of 100 ppm in the gas stream, the following measures shall be taken:

i. the operator shall immediately ensure control of the well, suspend drilling ahead operations (unless detrimental to well control), and obtain materials and safety equipment to bring the operations into compliance with of applicable provisions of this Order.

Violation: Major.
Corrective Action: Implement H_2S operational requirements, as applicable.
Normal Abatement Period: Prompt correction required.

ii. The operator shall notify the authorized officer of the event and the mitigating steps that have or are being taken as soon as possible, but no later than the next business day. If said notification is subsequent to actual resumption of drilling operations, the operator shall notify the authorized officer of the date that drilling was resumed no later than the next business day.

Violation: Minor.
Corrective Action: Notify authorized officer.
Normal Abatement Period: 24 hours.

iii. It is the operator's responsibility to ensure that the applicable requirements of this Order have been met prior to the resumption of drilling ahead operations. Drilling ahead operations will not be suspended pending receipt of a written H_2S Drilling Operations Plan(s) and, if necessary, Public Protection Plan(s) provided that complete copies of the applicable Plan(s) are filed with the authorized officer for approval within 5 business days following resumption of drilling ahead operations.

Violation: Minor.
Corrective Action: Submit plans to authorization officer.
Normal Abatement Period: 5 days.
[57 F 2039, Jan. 17, 1992]

2. Locations.

a. Where practical, 2 roads shall be established, 1 at each end of the location, or as dictated by prevailing winds and terrain. If an alternate road is not practical, a clearly marked footpath shall be provided to a safe area. The purpose of such an alternate escape route is only to provide a means of egress to a safe area.

Violation: Minor.
Corrective Action: Designate or establish an alternate escape route.
Normal Abatement Period: 24 hours.

b. The alternate escape route shall be kept passable at all times.
Violation: Minor.
Corrective Action: Make alternate escape route passable.
Normal Abatement Period: 24 hours.

c. For workovers, a secondary means of egress shall be designated.
Violation: Minor.
Corrective Action: Designate secondary means of egress.
Normal Abatement Period: 24 hours.

3. Personnel Protection

a. Training Program. The operator shall ensure that all personnel who will be working at the wellsite will be properly trained in H_2S drilling and contingency procedures in accordance with the general training requirements outlined in the American Petroleum Institute's (API) Recommended Practice (RP) 49 (April 15, 1987 or subsequent editions) for Safe Drilling of Wells Containing Hydrogen Sulfide, Section 2. The operator also shall ensure that the training will be accomplished prior to a well coming under the terms of this Order (i.e., 3 days or 500 feet of known or probable H_2S zone). In addition to the requirements of API RP-49, a minimum of an

initial training session and weekly H_2S and well control drills for all personnel in each working crew shall be conducted. The initial training session for each well shall include a review of the site specific Drilling Operations Plan and, if applicable, the Public Protection Plan.

Violation: Major.
Corrective Action: Train all personnel and conduct drills.
Normal Abatement Period: Prompt correction required.

i. All training sessions and drills shall be recorded on the driller's log or its equivalent.

Violation: Minor.
Corrective Action: Record on driller's log or equivalent.
Normal Abatement Period: 24 hours.

ii. For drilling/completion/workover wells, at least 2 briefing areas shall be designated for assembly of personnel during emergency conditions, located a minimum of 150 feet from the well bore and 1 of the briefing areas shall be upwind of the well at all times. The briefing area located most normally upwind shall be designated as the "Primary Briefing Area."

Violation: Major.
Corrective Action: Designate briefing areas.
Normal Abatement Period: 24 hours.

iii. One person (by job title) shall be designated and identified to all on-site personnel as the person primarily responsible for the overall operation of the on-site safety and training programs.

Violation: Minor.
Corrective Action: Designate safety responsibilities.
Normal Abatement Period: 24 hours.
[57 F 2039, Jan. 17, 1992]

b. Protective Equipment:

i. The operator shall ensure that proper respiratory protection equipment program is implemented, in accordance with the current American National Standards institute (ANSI) Standard Z.88.2-1980 *"Practices for Respiratory Protection."* Proper protective breathing apparatus shall be readily accessible to all essential personnel on a drilling/completion/workover site. Escape and pressure-demand type working equipment shall be provided for essential personnel in the H_2S environment to maintain or regain control of the well. For pressure-demand type working equipment those essential personnel shall be able to obtain a continuous seal to the face with the equipment. The operator shall ensure that service companies have the proper respiratory protection equipment when called to the location. Lightweight, escape-type, self-contained breathing apparatus with a minimum of 5-minute rated supply shall be readily accessible at a location for the derrickman and at any other location(s) where escape from an H_2S contaminated atmosphere would be difficult.

Violation: Major.
Correction Action: Acquire, repair, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

ii. Storage and maintenance of protective breathing apparatus shall be planned to ensure that at least 1 working apparatus per person is readily available for all essential personnel.

Violation: Major.
Corrective Action: Acquire or rearrange equipment, as necessary.
Normal Abatement Period: Prompt correction required.

iii. The following additional safety equipment shall be available for use:
   (a) Effective means of communication when using protective breathing apparatus;
   (b) Flare gun and flares to ignite the well;
   (c) Telephone, radio, mobile phone, or any other device that provides communication from a safe area at the rig location, where practical.

Violation: Major.
Corrective Action: Acquire, repair, or replace equipment.
Normal Abatement Period: 24 hours.
[57 F 2136, Jan. 17, 1992]

c. H_2S Detection and Monitoring Equipment.

i. Each drilling/completion site shall have an H_2S detection and monitoring system that automatically activates visible and audible alarms when the ambient air concentration of H_2S reaches the threshold limits of 10 and 15 ppm in air, respectively. The sensors shall have a rapid response time and be capable of sensing a minimum of 10 ppm of H_2S in ambient air, with at least 3 sensing points located at the shale shaker, rig floor, and bell nipple for a drilling site and the cellar, rig floor, and circulating tanks or shale shaker for a completion site. The detection system shall be installed, calibrated, tested, and maintained in accordance with the manufacturer's recommendations.

Violation: Major.
Corrective Action: Install, repair, calibrate, or replace equipment, as necessary.
Normal Abatement Period: Prompt correction required.

ii. All tests of the H_2S monitoring system shall be recorded on the driller's log or its equivalent.

Violation: Minor.
Corrective Action: Record on driller's log or equivalent.
Normal Abatement Period: 24 hours.

iii. For workover operations, 1 operational sensing point shall be located as close to the wellbore as practical. Additional sensing points may be necessary for large and/or long-term operations.

Violation: Major.
Corrective Action: Install, repair. calibrate, or replace equipment, as necessary.
Normal Abatement Period: Prompt correction required.
[57 F 2039, Jan. 17, 1992]

d. Visible Warning System.

i. Equipment to indicate wind direction at times shall be installed at prominent locations and shall be visible at all times during drilling operations. At least 2 such wind direction indicators (i.e., windsocks, windvanes, pennants with tailstreamers, etc.) shall be located at separate elevations (i.e., near ground level, rig floor, and/or treetop height). At least 1 wind direction indicator shall be clearly visible from all principal working areas at all times so that wind direction can be easily determined. For completion/workover operations, 1 wind direction indicator shall suffice, provided it is visible from all principal working areas on the location. In addition, a wind direction indicator at each of the 2 briefing areas shall be provided if the wind direction indicator(s) previously required in this paragraph are not visible from the briefing areas.

Violation: Minor.
Corrective Action: Install, repair, move, or replace wind direction indicator(s), as necessary.
Normal Abatement Period: 24 hours.

ii. At any time when the terms of this Order are in effect, operational danger or caution sign(s) shall be displayed along all controlled accesses to the site.

Violation: Minor.
Corrective Action: Erect appropriate signs.
Normal Abatement Period: 24 hours.

iii. Each sign shall be painted a high visibility red, black and white, or yellow with black lettering.

Violation: Minor.
Corrective Action: Replace or alter sign, as necessary.
Normal Abatement Period: 5 to 20 days.

iv. The sign(s) shall be legible and large enough to be read by all persons entering the well site and be placed a minimum of 200 feet but no more than 500 feet from the well site and at a location which allows vehicles to turn around at a safe distance prior to reaching the site.

Violation: Major.
Corrective Action: Replace, alter, or move sign, as necessary.
Normal Abatement Period: 24 hours.

v. The sign(s) shall read:

DANGER – POISON GAS – HYDROGEN SULFIDE

and in smaller lettering:

Do Not Approach If Red Flag is Flying or equivalent language if approved by the authorized officer.

Where appropriate, bilingual or multilingual danger sign(s) shall be used.

Violation: Minor.
Corrective Action: Replace or alter sign, as necessary.
Normal Abatement Period: 5 to 20 days.

vi. All sign(s) and, when appropriate, flag(s) shall be visible to all personnel approaching the location under normal lighting and weather conditions.

Violation: Major.
Corrective Action: Erect or move sign(s) and/or flag(s), as necessary.
Normal Abatement Period: 24 hours.

vii. When H_2S is detected in excess of 10 ppm at any detection point, red flag(s) shall be displayed.

Violation: Major.
Corrective Action: Display red flag.
Normal Abatement Period: Prompt correction required.
[57 F 2039, Jan. 17, 1992]

e. *Warning System Response.* When H_2S is detected in excess of 10 ppm at any detection point, all non-essential personnel shall be moved to a safe area and essential personnel (i.e., those necessary to maintain control of the well) shall wear pressure-demand type protective breathing apparatus. Once accomplished, operations may proceed.

Violation: Major.
Corrective Action: Move non-essential personnel to safe area and mask-up essential personnel.
Normal Abatement Period: Prompt correction required.
[57 F 2039, Jan.17, 1992]

4. Operating Procedures and Equipment

a. *General/Operations.* Drilling/completion/workover operations in H_2S areas shall be subject to the following requirements:

i. If zones containing in excess of 100 ppm of H_2S gas are encountered while drilling with air, gas, mist, other nonmud circulating mediums or aerated mud, the well shall be killed with a water- or oil-based mud and mud shall be used thereafter as the circulating medium for continued drilling.

Violation: Major.
Corrective Action: Convert to appropriate fluid medium.
Normal Abatement Period: Prompt correction required.

ii. A flare system shall be designed and installed to safely gather and burn H_2S-bearing gas.

Violation: Major.
Corrective Action: Install flare system.
Normal Abatement Period: Prompt correction required.

iii. Flare lines shall be located as far from the operating site as feasible and in a manner to compensate for wind changes. The flare line(s) mouth(s) shall be located not less than 150 feet from the wellbore unless other-wise approved by the authorized officer. Flare lines shall be straight unless targeted with running tees.

Violation: Minor.
Corrective Action: Adjust flare line(s) as necessary.
Normal Abatement Period: 24 hours.

iv. The flare system shall be equipped with a suitable and safe means of ignition.

Violation: Major.
Corrective Action: Install, repair, or replace equipment, as necessary.
Normal Abatement Period: 24 hours.

v. Where noncombustible gas is to be flared, the system shall be provided supplemental fuel to maintain ignition.

Violation: Major.
Corrective Action: Acquire supplemental fuel.
Normal Abatement Period: 24 hours.

vi. At any wellsite where SO_2, may be released as a result of flaring of H_2S during drilling, completion, or workover operations, the operator shall make SO_2, portable detection equipment available for checking the SO_2 level in the flare impact area.

Violation: Minor.
Corrective Action: Acquire, repair, or replace equipment as necessary.
Normal Abatement Period: 24 hours to 3 days.

vii. If the flare impact area reaches a sustained ambient threshold level of 2 ppm or greater of SO_2 in air and includes any occupied residence, school, church. park, or place of business, or other area where the public could reasonably be expected to frequent, the Public Protection Plan shall be implemented.

Violation: Major.
Corrective Action: Contain SO_2 release and/or implement Public Protection Plan.
Normal Abatement Period: Prompt correction required.

viii. A remote controlled choke shall be installed for all H_2S drilling and, where feasible, for completion operations. A remote controlled valve may be used in lieu of this requirement for completion operations.

Violation: Major.
Corrective Action: Install, repair, or replace equipment, as necessary.
Normal Abatement Period: Prompt correction required.

ix. Mud-gas separators and rotating heads shall be installed and operable for all exploratory wells.

Violation: Major.
Corrective Action: Install, repair, or replace equipment, as necessary.
Normal Abatement Period: Prompt correction required.

[57 F 2039, Jan. 17, 1992]

b. Mud Program.

i. A pH of 10 or above in a fresh water-base mud system shall be maintained to control corrosion, H_2S gas returns to surface, and minimize sulfide stress cracking and embrittlement unless other formation conditions or mud types justify to the authorized officer a lesser pH level is necessary.

Violation: Major.
Corrective Action: Adjust pH.
Normal Abatement Period: Prompt correction required.

ii. Drilling mud containing H_2S gas shall be degassed in accordance with API's RP-49, §5.14, at an optimum location for the rig configuration. These gases shall be piped into the flare system.

Violation: Major.
Corrective Action: Install, repair, or replace equipment. as necessary.
Normal Abatement Period: 24 hours.

iii. Sufficient quantities of mud additives shall be maintained on location to scavenge and/or neutralize H_2S where formation pressures are unknown.

Violation: Major.
Corrective Action: Obtain proper mud additives.
Normal Abatement Period: 24 hours.

[57 F 2039, Jan. 17, 1992]

c. *Metallurgical Equipment.* All equipment that has the potential to be exposed to H_2S shall be suitable for H_2S service. Equipment which shall meet these metallurgical standards include the drill string, casing, wellhead, blowout preventer assembly, casing head and spool, rotating head, kill lines, choke, choke manifold and lines, valves, mud-gas separators, drill-stem test tools, test units, tubing, flanges, and other related equipment.

To minimize stress corrosion cracking and/or H_2S embrittlement, the equipment shall be constructed of material whose metallurgical properties are chosen with consideration for both an H_2S working environment and the anticipated stress. The metallurgical properties of the materials used shall conform to the current National Association of Corrosion Engineers (NACE) Standard MR 0175-90, *Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment.* These metallurgical properties include the grade of steel, the processing method (rolled, normalized, tempered, and/or quenched), and the resulting strength properties. The working environment considerations include the H_2S concentrations the well fluid pH, and the wellbore pressures and temperatures. Elastomers, packing, and similar inner parts exposed to H_2S shall be resistant at the maximum anticipated temperature of exposure. The manufacturer's verification of design for use in an H_2S environment shall be sufficient verification of suitable service in accordance with this Order.

Violation: Major.
Corrective Action: Install, repair, or replace appropriate equipment, as necessary.
Normal Abatement Period: Prompt correction required.

[57 F 2039, Jan. 17, 1992]

d. Well Testing in an H_2S Environment. Testing shall be performed with a minimum

number of personnel in the immediate vicinity which are necessary to safely and adequately operate the test equipment. Except with prior approval by the authorized officer, the drill-stem testing of H_2S zones shall be conducted only during daylight hours and formation fluids shall not be flowed to the surface (closed chamber only).

Violation:	Major
Corrective Action:	Terminate the well test.
Normal Abatement Period:	Prompt correction required.

D. Production Requirements

1. General

a. All existing production facilities which do not currently meet the requirements and minimum standards set forth in this section shall be brought into conformance within 1 year after the effective date of this Order. All existing equipment that is in a safe working condition as of the effective date of this Order is specifically exempt from the metallurgical requirements prescribed in section III D.3.g.

Violation:	Minor.
Corrective Action:	Bring facility into compliance.
Normal Abatement Period:	60 days.

b. Production facilities constructed after the effective date of this Order shall be designed, constructed, and operated to meet the requirements and minimum standards set forth in this section. Any variations from the standards or established time frames shall be approved by the authorized officer in accordance with the provisions of section IV, of this Order. Except for storage tanks, a determination of the radius of exposure for all production facilities shall be made in the manner prescribed in section II.S. of this Order.

Violation:	Minor.
Corrective Action:	Bring facility into compliance.
Normal Abatement Period:	60 days.

c. At any production facility or storage tank(s) where the sustained ambient H_2S concentration is in excess of 10 ppm at 50 feet from the production facility or storage tank(s) as measured at ground level under calm (1 mph) conditions, the operator shall collect or reduce vapors from the system and they shall be sold, beneficially used, reinjected, or flared provided terrain and conditions permit.

Violation:	Major, if the authorized officer determines that a health or safety problem to the public is imminent, otherwise minor.
Corrective Action:	Bring facility into compliance.
Normal Abatement Period:	3 days for major, 30 days for minor.

[57 F 2039, Jan. 17, 1992)

2. Storage Tanks.

Storage tanks containing produced fluids and utilized as part of a production operation and operated at or near atmospheric pressure, where the vapor accumulation has an H_2S concentration in excess of 500 ppm in the tank, shall be subject to the following:

a. No determination of a radius of exposure need be made for storage tanks.

b. All stairs/ladders leading to the top of storage tanks shall be chained and/or marked to restrict entry. For any storage, tank(s) which require fencing (Section III.D.2.f.), a danger sign posted at the gate(s) shall suffice in lieu of this requirement.

Violation: Minor.
Corrective Action: Chain or mark stair(s)/ladder(s) or post sign, as necessary.
Normal Abatement Period: 5 to 20 days.

c. A danger sign shall be posted on or within 50 feet of the storage tank(s) to alert the public of the potential H_2S danger. For any storage tank(s) which require fencing (section III.D.2.f.), a danger sign posted at the locked gate(s) shall suffice in lieu of this requirement.

Violation: Minor.
Corrective Action: Post or move sign(s), as necessary.
Normal Abatement Period: 5 to 20 days.

d. The sign(s) shall be painted in high visibility red. black, and white. The sign(s) shall read:

DANGER – POISON GAS – HYDROGEN SULFIDE

or equivalent language if approved by the authorized officer. Where appropriate, bilingual or multilingual warning signs shall be used.

Violation: Minor.
Corrective Action: Post, move, replace, or alter sign(s). as necessary.
Normal Abatement Period: 20 to 40 days.

e. At least 1 permanent wind direction indicator shall be installed so that wind direction can be easily determined at or approaching the storage tank(s).

Violation: Minor.
Corrective Action: Install, repair, or replace wind direction indicator, as necessary.
Normal Abatement Period: 20 to 40 days.

f. A minimum 5-foot chain-link, strand barbed wire, or comparable type fence and gate(s) that restrict(s) public access shall be required when storage tanks are located within 1/4 mile of or contained inside a city or incorporated limits of a town or within 1/4 mile of an occupied residence, school, church, park, playground, school bus stop, place of business, or where the public could reasonably be expected to frequent.

Violation: Minor.

Corrective Action: Install, repair, or replace fence and/or gate(s), as necessary.
Normal Abatement Period. 20 to 40 days.
[57 F 2136, Jan. 17, 1992]

g. Gate(s), as required by section III.D.2.f. shall be locked when unattended by the operator.

Violation: Minor.
Corrective Action: Lock gate.
Normal Abatement Period: 24 hours.
[57 FR 2136, Jan. 17, 1992]

3. Production Facilities

Production facilities containing 100 ppm or more of H_2S in the gas stream shall be subject to the following:

a. Danger signs as specified in section III.D.2.d. of this Order shall be posted on or within 50 feet of each production facility to alert the public of the potential H_2S danger. In the event the storage tanks and production facilities are located at the same site. 1 such danger sign shall suffice. Further, for any facilities which require fencing (section III.D.2.f.). 1 such danger sign at the gate(s) shall suffice in lieu of this requirement.

Violation: Minor.
Corrective Action: Post, move, or alter sign(s), as necessary.
Normal Abatement Period: 5 to 20 days.

b. Danger signs, as specified in section III.D.2.d. of this Order, shall be required for well flowlines and lease gathering lines that carry H_2S gas. Placement shall be where said lines cross public or lease roads. The signs shall be legible and shall contain sufficient additional information to permit a determination of the owner of the line.

Violation: Minor.
Corrective Action: Post, move, or alter sign(s), as necessary.
Normal Abatement Period: 5 to 20 days.

c. Fencing and gate(s), as specified in section III.D.2.f., shall be required when production facilities are located within 1/4 mile of or contained inside a city or incorporated limits of a town or within 1/4 mile of an occupied residence, school, church, park, playground, school bus stop, place of business, or any other area where the public could reasonably be expected to frequent. Flowlines are exempted from this additional fencing requirement.

Violation: Minor.
Corrective Action: Install, repair, or replace fence, and/or gate(s), as necessary.
Normal Abatement Period: 20 to 40 days.
[57 F 2039, Jan. 17, 1992]

d. Gate(s), as required by section III.D.3.c. shall be locked when unattended by the operator.

Violation: Minor.
Corrective Action: Lock gate.
Normal Abatement Period: 24 hours.

e. Wind direction indicator(s) as specified in section III.D.2.e. of this Order shall be required. In the event the storage tanks and production facilities are located at the same site, 1 such indicator shall suffice. Flowlines are exempt from this requirement.

Violation: Minor.
Corrective Action: Install, repair, or replace wind direction indicator(s), as necessary.
Normal Abatement Period: 20 to 40 days.

f. All wells, unless produced by artificial lift, shall possess a secondary means of immediate well control through the use of appropriate christmas tree and/or downhole completion equipment. Such equipment shall allow downhole accessibility (reentry) under pressure for permanent well control operations. If the applicability criteria stated in Section III.B.1. of this Order are met, a minimum of 2 master valves shall be installed.

Violation: Minor.
Corrective Action: Install, repair, or replace wind direction indicator(s), as necessary.
Normal Abatement Period: 20 to 40 days.

g. All equipment shall be chosen with consideration for both the H_2S working environment and anticipated stresses. NACE Standard MR 0175-90 shall be used for metallic equipment selection and, if applicable, adequate protection by chemical inhibition or other such method that controls or limits the corrosive effects of H_2S shall be used.

Violation: Minor.
Corrective Action: Install, repair, or replace equipment, as necessary.
Normal Abatement Period: 20 to 40 days.
[57 F 2039, Jan. 17, 1992]

h. Where the 100 ppm radius of exposure for H_2S includes any occupied residence, place of business, school, or other inhabited structure or any area where the public may reasonably be expected to frequent, the operator shall install automatic safety valves or shutdowns at the wellhead, or other appropriate shut-in controls for wells equipped with artificial lift.

Violation: Minor.
Corrective Action: Install. repair, or replace equipment as necessary.
Normal Abatement Period: 20 to 40 days.

i. The automatic safety valves or shutdowns, as required by section III.D.3.h. shall be set to activate upon a release of a potentially hazardous volume of H_2S.

Violation: Major.
Corrective Action: Repair, replace or adjust equipment, as necessary.
Normal Abatement Period: Prompt correction required.

j. If the sustained ambient concentration of H_2S or SO_2 from a production facility which is venting or flaring reaches a concentration of H_2S (10 ppm) or SO_2 (2 ppm), respectively, at any of the following locations, the operator shall modify the production facility as approved by the authorized officer. The locations include any occupied residence, school, church, park. playground, school bus stop, place of business, or other areas where the public could reasonably be expected to frequent.

Violation: Major.
Corrective Action: Repair facility to bring into compliance.
Normal Abatement Period: Prompt correction required.

4. Public Protection.

When conditions as defined in section III.B.1. of this Order exist, a Public Protection Plan for producing operations shall be submitted to the authorized officer in accordance with section III.B.2.a. of this Order which includes the provisions of section III.B.2.b.

Violation: Minor.
Corrective Action: Submit Public Protection Plan.
Normal Abatement Period: 20 to 40 days.

IV. Variances from Requirements

An operator may request the authorized officer to approve a variance from any of the requirements prescribed in section III hereof. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related requirement(s) of minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, may approve the requested variance(s) if it is determined that the proposed alterative(s) meets or exceeds the objectives of the applicable requirement(s) or minimum standard(s).

ONSHORE ORDER #7

BUREAU OF LAND MANAGEMENT
43 CFR PART 3160

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Wednesday, September 8, 1993
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Onshore Oil and Gas Operations; Federal and Indian Oil & Gas Leases; Onshore Oil and Gas Order No. 7: Disposal of Produced Water

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I. Figures.

Onshore Oil and Gas Order No. 7

Disposal of Produced Water

I. Introduction

A. *Authority.* This Order is established pursuant to the authority granted to the Secretary of the Interior by various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. Said authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. Section 3164.1 thereof specifically authorizes the Director to issues Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Order shall be binding on the operators of Federal and restricted Indian oil

and gas leases which have been, or may hereafter, be issued.

As directed by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, for National Forest lands the Secretary of Agriculture shall regulate all surface-disturbing activities and shall determine reclamation and other actions required in the interest of conservation of surface resource. Specific authority for the provisions contained in this Order is found at section 3162.3, Conduct of Operations; section 3162.5, Environment and Safety; and Subpart 3163, Noncompliance and Assessments.

B. *Purpose.* This Order supersedes Notice to Lessees and Operators of Federal and Indian Oil and Gas Leases (NTL–2B), Disposal of Produced Water. The purpose of this Order is to specify informational and procedural requirements for submittal of an application for the disposal of produced water, and the design, construction and maintenance requirements for pits as well as the minimum standards necessary to satisfy the requirements and procedures for seeking a variance from the minimum standards. Also set forth in this Order are specific acts of noncompliance, corrective actions required and the abatement period allowed for correction.

C. *Scope.* This Order is applicable to disposal of produced water from completed wells on Federal and Indian (except Osage) oil and gas leases. It does not apply to approval of disposal facilities on lands other than Federal and Indian lands. Separate approval under this Order is not required if the method of disposal has been covered under an enhanced recovery project approved by the authorized officer.

[58 FR 58506, Nov. 2, 1993]

II. Definitions

The following definitions are used in conjunction with the issuance of this Order.

A. *Authorized officer* means any employee of the Bureau of Land Management authorized to perform duties described in 43 CFR Groups 3000 and 3100.

B. *Federal lands* means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resource or nonmineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

C. *Free-board* means the vertical distance from the top of the fluid surface to the lowest point on the top of the dike surrounding the pit.

D. *Injection well* means a well used for the disposal of produced water or for enhanced recovery operations.

E. *Lease* means any contract, profit share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorized exploration for, extraction of, or removal of oil or gas (see 43 CFR 3160.0-5).

F. *Lessee* means a person or entity holding record title in a lease issued by the United States (see 43 CFR 3160.0-5).

G. *Lined pit* means an excavated and/or bermed area that is required to be lined with natural or manmade material that will prevent seepage. Such pit shall also include a leak detection system.

H. *Unlined* pit means an excavated and/or bermed area that is not required to be lined, or any pit that is lined but does not contain a leak detection system.

I. *Major violation* means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0-5).

J. *Minor* violation means noncompliance that does not rise to the level of a "major violation" (see 43 CFR 3160.0-5).

K. *National Pollutant Discharge Elimination System (NPDES)* means a program administered by the Environmental Agency or primary State that requires permits for the discharge of pollutants from any point source into navigable water of the United States.

L. *Operator* means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof (see 43 CFR 3610.0-5).

M. *Produced water* means water produced in conjunction with oil and gas production.

N. *Toxic constituents* means substances in produced water that when found in toxic concentration specified by Federal or State regulations have harmful effects in plant or animal life. These substance include but are not limited to arsenic (As), barium (Ba), cadmium (Cd), hexavalent chromium (hCr), total chromium (tCr), lead (Pb), mercury (Hg), zinc (Zn). selenium (Se), benzene, toluene, ethylbenzene, and xylenes, as defined in 40 CFR 261.

O. *Underground Injection Control (UIC)* program means a program by administered by the EPA, primary State, or Indian Tribe under the Safe Drinking Water Act to ensure that subsurface injection does not endanger underground sources of drinking water.

[58 FR 58506, Nov. 2, 1993]

III. Requirements

A. *General Requirements*

Operators of onshore Federal and Indian oil and gas leases shall comply with the requirements and standards this Order for the protection of surface and subsurface resources. Except as provided under section III.D.3 of this Order, the operator may not dispose of produced water unless and until approval is obtained from the authorized officer. All produced water from Federal/Indian leases must be disposed of by (1) injection into the subsurface; (2) discharging into pits; or (3) other acceptable methods approved by the authorized officer, including surface discharge under NPDES permit. Injection is generally the preferred method of disposal. Operators are encouraged to contact the appropriate authorized officer before filing an application for disposal of produced water so that the operator may be apprised of any existing agreements outlining cooperative procedures between the Bureau of Land Management and either the State/Indian Tribe or the Environmental Protection Agency concerning Underground Injection Control permits for injection wells, and of any potentially significant adverse effects on surface and/or subsurface resources. The approval of the Environmental Protection Agency or a State/Tribe shall not be considered as granting approval to dispose of produced water from leased

Federal or Indian lands until and unless BLM approval is obtained. Applications filed pursuant to NTL-2B and still pending approval shall be supplemented or resubmitted if they do not meet the requirements and standards of this Order. The disposal methods shall be approved in writing by the authorized officer regardless of the physical location of the disposal facility. Existing NTL-2B approvals will remain valid. However, upon written justification, the authorized officer may impose additional conditions or revoke any previously approved disposal permit, if the authorized officer, for example, finds that an existing facility is creating environmental problems, or that an unlined pit should be lined, because the quality of the produced water has changed so that it no longer meets the standards for unlined pits.

Unless prohibited by the authorized officer, produced water from newly completed wells may be temporarily disposed of into pits for a period of up to 90 days, if the use of the pit was approved as a part of an application for permit to drill. Any extension of time beyond this period requires documented approval by the authorized officer.

Upon receipt of a completed application the authorized officer shall take one of the following actions within 30 days: (!) Approve the application as submitted or with appropriate modification or conditions; (2) return the application and advise the applicant in writing of the reasons for disapproval; or (3) advise the applicant in writing of the reasons for delay and the excepted final action date.

If the approval for a disposal facility, e.g., commercial pit or Class II injection well, is revoked or suspended by the permitting agencies such as the Environmental Protection Agency or the primacy State, the BLM water disposal approval is immediately terminated and the operator is required to propose an alternative disposal method.

B. *Application and Approval Authority*

1. *On-lease Disposal.* For water produced from a Federal/Indian lease and disposed of on the same Federal/Indian lease, or on other committed Federal/Indian leases if in a unit or communitized area, the approval of the disposal method is usually granted in conjunction with the approval for the disposal facilities. An example would be approval of a proposal to drill an injection well to be used for the disposal of produced water from a well or wells on the same lease.
   a. *Disposal of water in injection wells.* When approval is requested for onlease disposal of produced water into an injection well, the operator shall submit a Sundry Notice, Form 3160-5. Information submitted in support of obtaining the Underground Injection Control permit shall be accepted by the authorized officer in approving disposal method, provided the information submitted in support of such a permit satisfies all applicable Bureau of Land Management statutory responsibilities (including but not limited to drilling safety, down hole integrity, and protection of mineral and surface resources) and requirements. If the authorized officer has on file a copy of the approval for the receiving facilities, he/she may determine that a reference to that document is sufficient.
   b. *Disposal of water in pits.* When approval is requested for disposal of produced water in a lined or unlined pit, the operator shall submit a Sundry Notice, Form

3160-5. The operator shall comply with all the applicable Bureau of Land Management requirements and standards for pits established in this Order. On National Forest lands, where the proposed pit location creates new surface disturbance, the authorized officer shall not approve the proposal without the prior approval of the Forest Service.

[58 FR 58506, Nov. 2, 1993]

2. *Off-lease Disposal*

a. *On leased or unleased Federal/Indian lands.* The purpose of the off-lease disposal approval process is to ensure that the removal of the produced water from a Federal or Indian oil and gas lease is proper and that the water is disposed of in an authorized facility. Therefore, the operator shall submit a Sundry Notice, Form 3160-5, for removal of the water together with a copy of the authorization for the disposal facility. If the authorized officer has a copy of the approval for the receiving facilities on file, he/she may determine that a reference to that document is sufficient. Where an associated right-of-way authorization is required, the information for the right-of-way authorization may be incorporated in the Sundry Notice. and the Bureau of Land Management will process both authorizations simultaneously for Bureau lands.

i. *Disposal of water in injection wells.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and that is to be injected into a well located on another lease or unleased Federal lands, the operator shall submit to the authorized officer a Sundry Notice, Form 3160-5. along with a copy of the Underground Injection Control permit issued to the operator of the injection well, unless the well is authorized by rule under 40 CFR part 144.

ii. *Disposal of water in pits.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and is to be disposed of into a lined or unlined pit located on another lease or unleased Federal lands, the operator shall submit to the authorized officer a Sundry Notice, Form 3160-5.

iii. *Right-of-way procedures.* The operator of the injection well or pit is required to have an authorization from the Bureau of Land Management for disposing of the water into the pit or well, under Title V of FLPMA and 43 CFR Part 2800, or a similar authorization from the responsible surface management agency. In transporting the produced water from the lease to the pit or injection well, e.g., building a road or laying a pipeline, a right-of-way authorization under Title V of FLPMA and 43 CFR Part 2800 from the Bureau of Land Management or a similar permit from the responsible surface management agency also shall be obtained by the operator of the pit or any injection well or other responsible party.

b. *Disposal of water on State and privately- owned lands.*

i. *Disposal of water in injection wells.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and that is to be injected into a well located on State or privately-owned lands, the operator shall submit to the authorized officer, in addition to a Sundry Notice, Form 3160-5, a copy of the Underground Injection Control permit issued for the injection well by Environmental Protection Agency or the State where the State the achieved primacy. Submittal of the Underground Injection Control permit will be accepted by the authorized officer and approval will be granted for the removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety.

ii. *Disposal of water in pits.* When approval is requested for removing water that is produced from wells on leased Federal and/or Indian lands and is to be disposed of into a pit located on State or privately-owned lands, the operator shall submit to the authorized officer, in addition to a Sundry Notice, Form 3160-5, a copy of the permit issued for the pit by the State or any other regulatory agency, if required, for disposal in such pit. Submittal of the permit will be accepted by the authorized officer and approval will be granted for removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety. If such a permit is not issued by the State or other regulatory agency, the requested removal of the produced water from leased Federal or Indian lands will be denied.

iii. *Right-of-way procedures.* If the water produced from wells on leased Federal and/ or Indian lands, and to be disposed of at a location on State or privately-owned lands, will be transported over off-lease Federal or Indian lands, the operator of the disposal facility or other responsible party shall have an authorization from the Bureau of Land Management under Title V of FLPMA and 43 CFR part 2800, or a similar authorization from the responsible surface management agency.

C. *Informational requirements for injection wells.*

For an injection well proposed on Federal or Indian leases, the operator shall obtain an Underground Injection Control(UIC) permit pursuant to 40 CFR parts 144 and 146 from the Environmental Protection Agency or the State/Tribe where the State/Tribe has achieved primacy. The operator shall also comply with the pertinent procedural and informational requirements for Application for Permit to Drill or Sundry Notice as set forth In Onshore Oil and Gas Order No. 1. The injection well shall be designed and drilled or conditioned in accordance with the requirements and standards described in Order No. 2 and pertinent NTLs, as well as the Underground Injection Control permit.

D. *Informational requirements for pits.*

Operators who request approval for disposal of produced water into a lined or unlined pit shall file an application on a Sundry Notice, Form 3160-5, and identify the operator's field representative by name, address and telephone number, and the source of the produced water. Sources of produced water shall be identified by facility, lease number, well number and name, and legal description of well location. All samples for water analysis shall be taken at the current discharge point. A reclamation plan detailing the procedures expected to be followed for closure of the pit and the contouring and revegetating of the site shall be submitted prior to pit abandonment. If requested by the authorized officer, a contingency plan to deal with specific anticipated emergency situations shall be submitted as provided for in 43 CFR 3162.5-1(d).
[58 FR 58506, Nov. 2,1993]

1. *Lined pits.* The authorized officer shall not consider for approval an application for disposal into lined pits on Federal/Indian leases unless the operator also provides the following information:
   a. A map and drawings of the site on a suitable scale that show the pit dimension, cross section, side slopes, leak detection system, and location relative to other site facilities.
   b. The daily quantity of water to be disposed of (maximum daily quantity shall be cited if major fluctuations are anticipated) and a water analysis (unless waived by the authorized officer as unnecessary) that includes the concentrations of chlorides, sulfates, pH, Total Dissolved Solids (TDS), and toxic constituents that the authorized officer reasonably believes to be present.
   c. Criteria used to determine the pit size, which includes a minimum of 2 feet of free-board.
   d. The average monthly evaporation and average monthly precipitation for the area.
   e. The method and schedule for periodic disposal of precipitated solids and a copy of the appropriate disposal permit, if any.
   f. The type, thickness, and life span of material to be used for lining the pit and the method of installation. The manufacturer's guidebook and information for the product shall be included, if available.

[58 FR 58506, Nov. 2, 1993]

2. *Unlined pits.*

Application for disposal into unlined pits may be considered for approval by the authorized officer where the application of the operator shows that such disposal meets one or more of the following criteria:

   i. The water to be disposed of has an annual average TDS concentration equal to or less than that of the existing water to be protected, provided that the level of any toxic constituents in the produced water does not exceed established State or Federal standards for protection of surface and/or ground water.
   ii. All, or a substantial part, of the produced water is being used for beneficial

purposes and meets minimum water quality standards for such uses. For example, usage of produced water for purposes such as irrigation and livestock or wildlife watering shall be considered as beneficial.

iii. (A) The water to be disposed of will not degrade the quality of surface or subsurface waters in the area;
(B) The surface and subsurface waters contain TDS above 10,000 ppm, or toxic constituents in high concentrations; or
(C) The surface and subsurface waters are of such poor quality or small quantity as to eliminate any practical use thereof.

iv. That the volume of water to be disposed of per disposal facility does not exceed an average of 5 barrels per day on a monthly basis.

b. Operators applying for disposal into an unlined pit shall also submit the following information, as appropriate:
(i) Applications for disposal into unlined pits that meet the criteria in a., above, shall include:
(A) A map and drawings of the site on a suitable scale that show the pit dimension, cross section, side slopes, size, and location relative to other site facilities.
(B) The daily quantity of water to be disposed of and a water analysis that includes Total Dissolved Solids (in ppm), pH, oil and grease content, the concentrations of chlorides and sulfates, and other parameters or constituents toxic to animal or plant life as reasonably prescribed by the authorized officer. The applicant should also indicate any effort or interaction of produced water with any water resources present at or near the surface and other known mineral deposits. For applications submitted under criterion a.iv., above, the water quality analysis is not needed unless requested by the authorized officer.
(C) The average monthly evaporation and the average monthly precipitation for the area. For applications submitted under criterion a.iv., average annual data will be acceptable.
(D) The estimated percolation rate on soil characteristics under and adjacent to the pit. In some cases the authorized officer may require percolation tests using accepted test procedures.
(E) Estimated depth and areal extent of the shallowest known aquifer with TDS less than 10,000 ppm, and the depth and extent of any known mineral deposits in the area.

ii. Where beneficial use (criterion a.ii., above) is the basis for the application, the justification submitted shall also contain written the confirmation from the user(s).

iii. If the application is made on the basis that surface and subsurface waters will not be adversely affected by disposal in an unlined pit (criterion a.iii., above), the justification shall also include the following additional information:

(A) Map of the site showing the location of surface waters, water wells, and water disposal facilities within 1 mile of the proposed disposal facility.
(B) Average concentration of TDS (in ppm) of all surface and subsurface waters within the 1-mile radius that might be affected by the proposed disposal.
(C) Reasonable geologic and hydrologic evidence that shows the proposed disposal method will not adversely affect existing water quality or major uses of such waters, and identifies the presence of any impermeable barrier(s), as necessary.
(D) A copy of any State order or other authorization granted as a result of a public hearing that is pertinent to the authorized officer's consideration of the application.

3. *Emergency pits.*

Application for a permanent pit (lined or unlined) to be used for anticipated emergency purposes shall be submitted by the operator on a Sundry Notice, Form 3160-5, for approval by the authorized officer, unless it has been approved in conjunction with a previously approved operational activity. Design criteria for an emergency pit will be established by the authorized officer on a case by case basis. Any emergency use of pits shall be reported in accordance with NTL-3A or subsequent replacement Order procedures, and the pit shall be emptied and the liquids disposed of in accordance with applicable State and/or Federal regulations within 48 hours following its use, unless such time is extended by the authorized officer.

E. *Design requirements for pits*

1. Pits shall be designed to meet the following requirements and minimum standards. For unlined pits approved under criterion D.2.a.iv, requirements d. and e., below, do not apply.
   a. As much as practical, the pit shall be located on level ground and away from established drainage patterns, including intermittent/ephemeral drainage ways, and unstable ground or depressions in the area.
   b. The pit shall have adequate storage capacity for safe containment of all produced water, even in those periods when evaporation rates are at a minimum. The design shall provide for a minimum of 2 feet of free-board.
   c. The pit shall be fenced or enclosed to prevent access by livestock, wildlife, and unauthorized personnel. If necessary, the pit shall be equipped to deter entry by birds. Fences shall not be constructed on the levees. Figure 1 shows an example of an acceptable fence design.
   d. The pit levees are to be constructed so that the inside grade of the levee is no steeper than 1 (vertical):2 (horizonal), and the outside grade no steeper than 1:3.
   e. The top of levees shall be level and least 18 inches wide.
   f. The pit location shall be reclaimed pursuant to the requirements and standards of

the surface management agency. On a spilt estate (private surface, Federal mineral) a surface owner's release statement or form is acceptable.

2. Lined pits shall be designed to meet following requirements and minimum standards in addition to those specified above:
   a. The material used in lining pits shall be impervious. It shall be resistant to weather, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances likely to be contained in the produced water.
   b. If rigid materials are used, leak-proof expansion joints shall be provided, or the material shall be of sufficient thickness and length to withstand expansion without cracking, contraction, and settling movements in the underlying earth. Semi-rigid liners such as compacted bentonite or clay may be used provided that, considering the thickness of the lining material chosen and its degree of permeability, the liner is impervious for the excepted period of use. Figure 2 shows examples of acceptable standards for concrete, asphalt, and bentonite/clay liners.
   c. If flexible membrane materials are used, they shall have adequate resistance to tears or punctures. Figures 3 gives an example of acceptable standards for installation of the flexible membrane.
   d. Lined pits shall have an underlying gravel-filled sump and lateral system or other suitable devices for the detection of leaks. Examples of the acceptable design of the leak detection system are shown in Figure 4 and Figure 5.
3. Failure to design the pit to meet the above requirements and minimum standards will result in disapproval of the proposal or a requirement that it be modified unless a request for variance is approved by the authorized officer.

F. *Construction and maintain requirements for pits*

Inspections will be conducted according to the following requirements and minimum standards during the construction and operation of the pit. Failure to meet the requirements and standards may result in issuance of an Incident of Noncompliance (INC) for the violation. The gravity of the violation, corrective actions, and the normal abatement period allowed are specified for each of the requirements/standards.

1. Any disposal method that has not been approved shall be considered an incident of noncompliance and may result in the issuance of a shut-in order, assessments, or penalties pursuant to 43 CFR part 3163 until an acceptable disposal method is provided and approved by the authorized officer.

Violation:	Minor:	If it causes no significant environmental damages or effects.
	Major:	If it causes or threatens immediate, substantial and adverse impact on public health and safety, the environment, production accountability, or royalty income.
Corrective action:	Minor:	Submit acceptable application.
	Major:	Shut-in, take corrective action to repair or replace damages according to instructions of authorized officer.

Abatement periods: Minor. 1 to 20 days or as directed by authorized officer.
Major: Within 10 days.

[58 FR 58506, Nov.2, 1993]

2. The operator shall notify the authorized officer to inspect the leak detection system at least 2 business days prior to the installation of the pit liner.

Violation: Minor.
Corrective action: Require verification of its installation.
Abatement period: Prior to use of pit.

3. At least 2 business days prior to its use, the operator shall notify the authorized officer of completion the pit construction, so that the authorized officer may verify that the pit has been constructed in accordance with the approved plan.

For failure to notify:
Violation: Minor.
Corrective action: Not applicable.

For failure to construct in accordance with the approved plan
Violation: Minor, unless Major by definition.
Corrective action: The authorized officer may shut-in operations and require corrections to comply with the plan or require amendment of the plan.
Abatement period: 1 to 20 days depending on the severity of the violation and the degree of difficulty to correct, if the pit is in use.

4. Lined pit shall be maintained and operated to prevent unauthorized subsurface discharge of water.

Violation: Usually Minor, unless Major as result of discharge.
Corrective action: Repair/replace liner and possibly shut in operations.
Abatement period: 1 to 20 days depending on the onsite situation.

5. The pit shall be maintained as designed to prevent entrance of surfaces water by providing adequate surface drainage away from the pit.

Violation: Minor.
Corrective action: Provide surface drainage.
Abatement period: Within 20 days.

6. The pit shall be maintained and operated to prevent unauthorized surface discharge of water.

Violation: Usually Minor, unless discharge results in Major.
Corrective action: Clean up if spill occurs, and reduce the water level to maintain the 2 feet of free-board; shut-in operations, if required by authorized officer.

Abatement period: 1 to 20 days depending upon the onsite situation.

7. The outside walls of the pit levee shall be maintained as designed to minimize erosion.

Violation: Minor.
Corrective action: Necessary repair.
Abatement period: Within 20 days.

8. The pit shall be kept reasonably free from surface accumulation of liquid hydrocarbons that would retard evaporation.

Violation: Minor.
Corrective action: Clean-up, and may require skimmer pits, settling tanks, or other suitable equipment.
Abatement period: Within 20 days.

9. The operator shall inspect the leak detection system at least once a month or more often if required by the authorized Officer in appropriate circumstances. The record of inspection shall describe the result of the inspection by date and shall be kept and made available to the authorized officer upon request.

Violation: Minor.
Corrective action: Commence the required routine inspection and recordkeeping.
Abatement period: Within 30 days.
[58 FR 58506, Nov. 2, 1993]

10. Prior to pit abandonment and reclamation, the operator shall submit a Sundry Notice for approval by the authorized officer, if not previously approved.

Violation: Minor.
Corrective action: Cease operations and file an application.
Abatement period: Within 10 days.

11. When change in the quantity and/or quality of the water disposed into an unlined pit causes the pit no longer to meet the unlined pit criteria listed under section D.2.a., the operator shall submit a Sundry Notice amending the pit design for approval by the authorized officer.

Violation: Minor unless the resulting damage is Major.
Corrective action: Submit the required amendment; shut-in operations if determined by the authorized officer to be Major.
Abatement period: As specified by the authorized officer.

G. *Other disposal methods*

1. Surface discharge under NPDES permit. The person applying to use this disposal method shall furnish a copy of the NPDES permit issued by the EPA or the

primacy State, a current water quality analysis and a Sundry Notice, Form 3160-5, describing site facilities (e.g., retention ponds, skimmer pits and equipment, tanks, and any additional surface disturbance). Operations from the point of origin to the point of discharge under the jurisdiction of the BLM. Operations from the point of discharge downstream are under the jurisdiction of EPA or the primacy State.

2. Use of existing commercial pits designed for containment of produced water or tanks in lieu of pits.

3. New technology or any other proposal meeting the objective of this Order that the authorized officer deems acceptable and that meets the requirements of State and Federal laws and regulations.

H. *Reporting requirements for disposal facilities*

All unauthorized discharge or spills from disposal facilities on Federal/Indian leases shall be reported to the authorized officer in accordance with the provisions of NTL-3A or subsequent replacement Order.

Violation: Minor unless resulting damage is major.
Corrective action: Submit the required report.
Abatement period: As specified by the authorized officer.

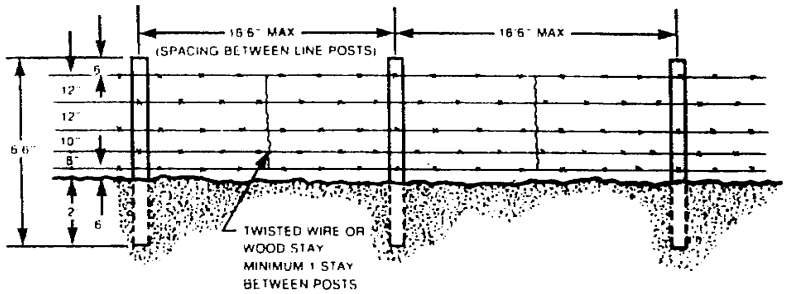
IV. Variances from Requirements or Standards Minimum Standards

An operator may request that the authorized officer approve a variance from any of the requirements or minimum standards prescribed in Section III. of this Order. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which the requirements or related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, will approve the requested variance(s) if it is determine that the proposed alterative(s) meet or exceed the objectives of the applicable minimum standard(s); or if the authorized officer determines that the exemption of the requirement is justified. Variances granted BLM under this section shall be limited to proposals and requirements under BLM statutory and/or regulatory authority only, and shall not be construed as granting variance to regulations under EPA, State, or Tribal authority.

[58 FR 58506, Nov. 2, 1993]

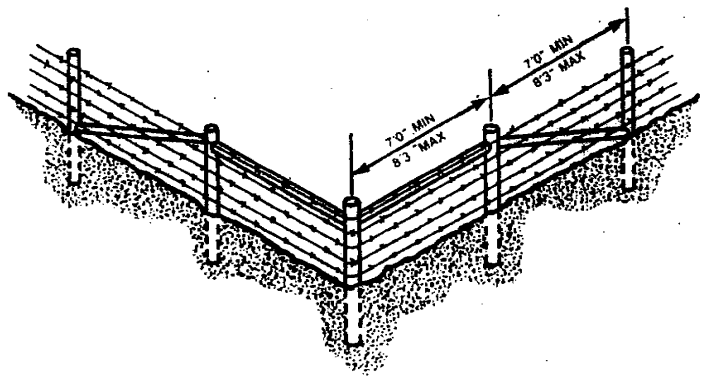
Attachments

FENCE CONSTRUCTION

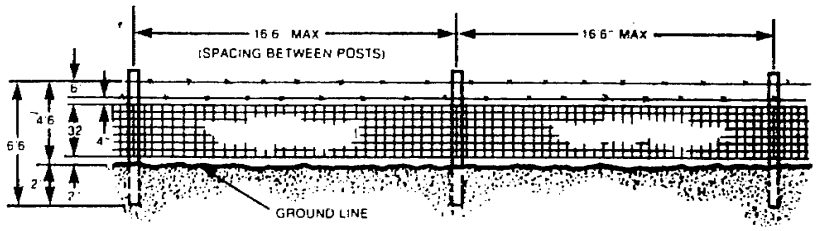


TYPICAL 5-WIRE BARB WIRE FENCE
using wood, pipe or steel "T" type posts

CORNER CONSTRUCTION
(applicable to barbed or net type wire)



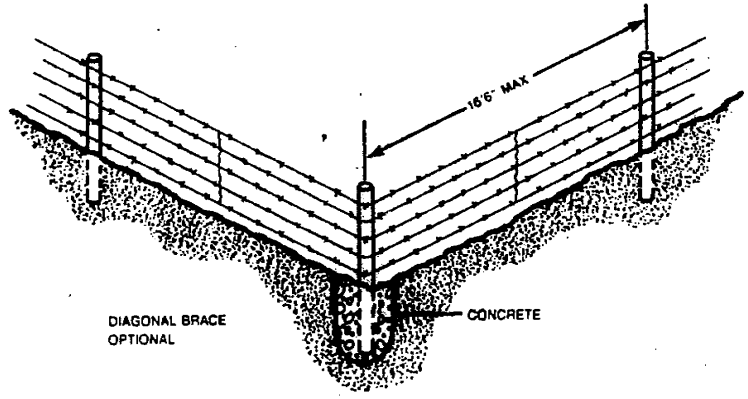
TYPICAL CORNER CONSTRUCTION
for buried corner posts



TYPICAL WOVEN WIRE FENCE WITH TWO
BARB WIRES
STAYS OPTIONAL

STANDARD FIELD FENCE
8 LATERAL WIRES VERTICAL STAY
WIRES SPACED AT 6" TOP AND BOTTOM
WIRES #10 GAUGE INTERMEDIATE
AND STAY WIRES #12½ GAUGE

TYPICAL "STOCK TIGHT" FENCE
using wood, pipe or steel "T" type posts



TYPICAL CORNER CONSTRUCTION
for corner post set in concrete

FIGURE 1. EXAMPLES FOR DESIGN AND CONSTRUCTION OF FENCE AND CORNER POSTS.

Attachment 1 - 1

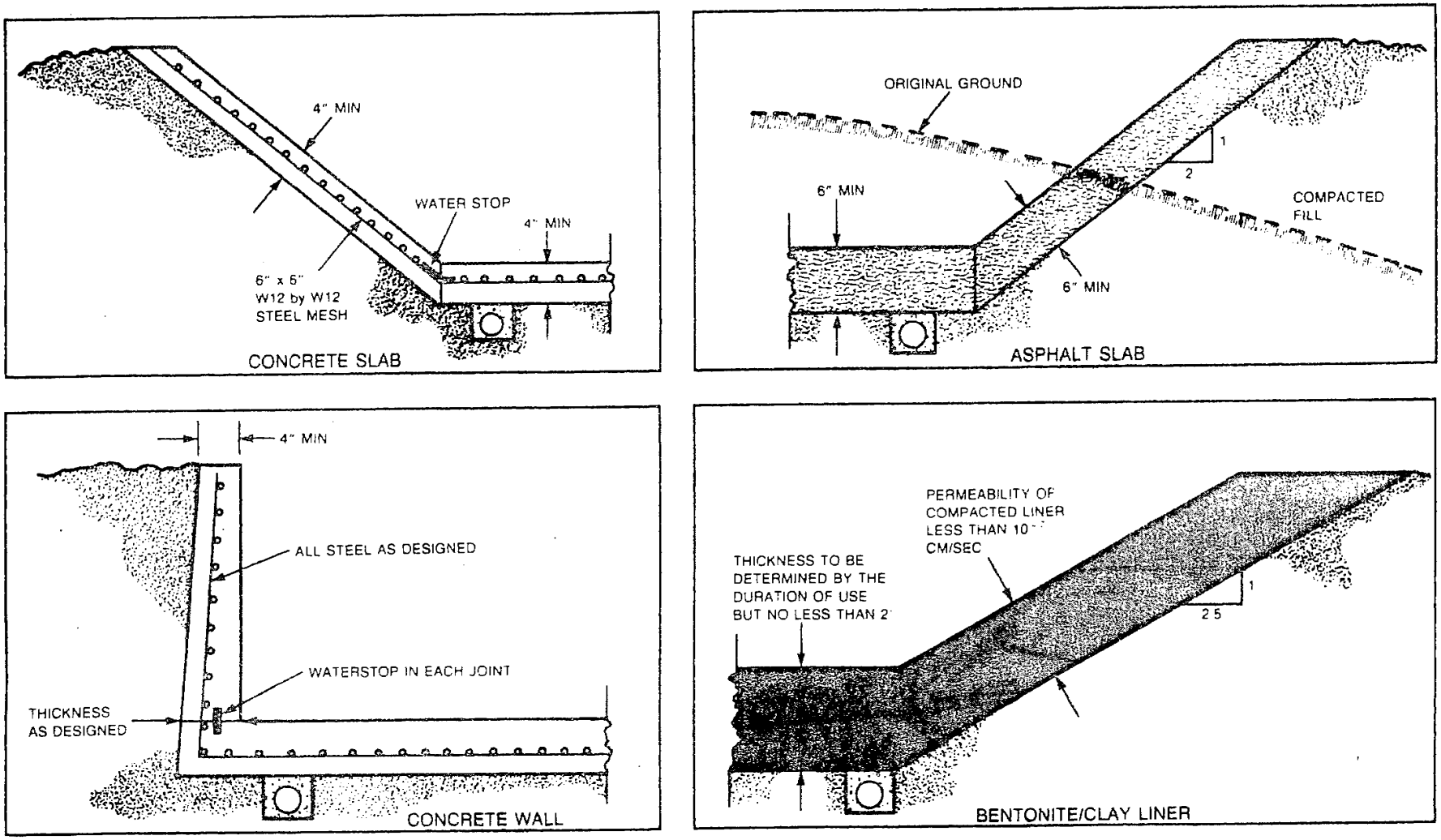


FIGURE 2. EXAMPLE OF ACCEPTABLE DESIGN FOR CONCRETE, ASPHALT AND BENTONITE/CLAY LINERS

Attachment 1 - 2

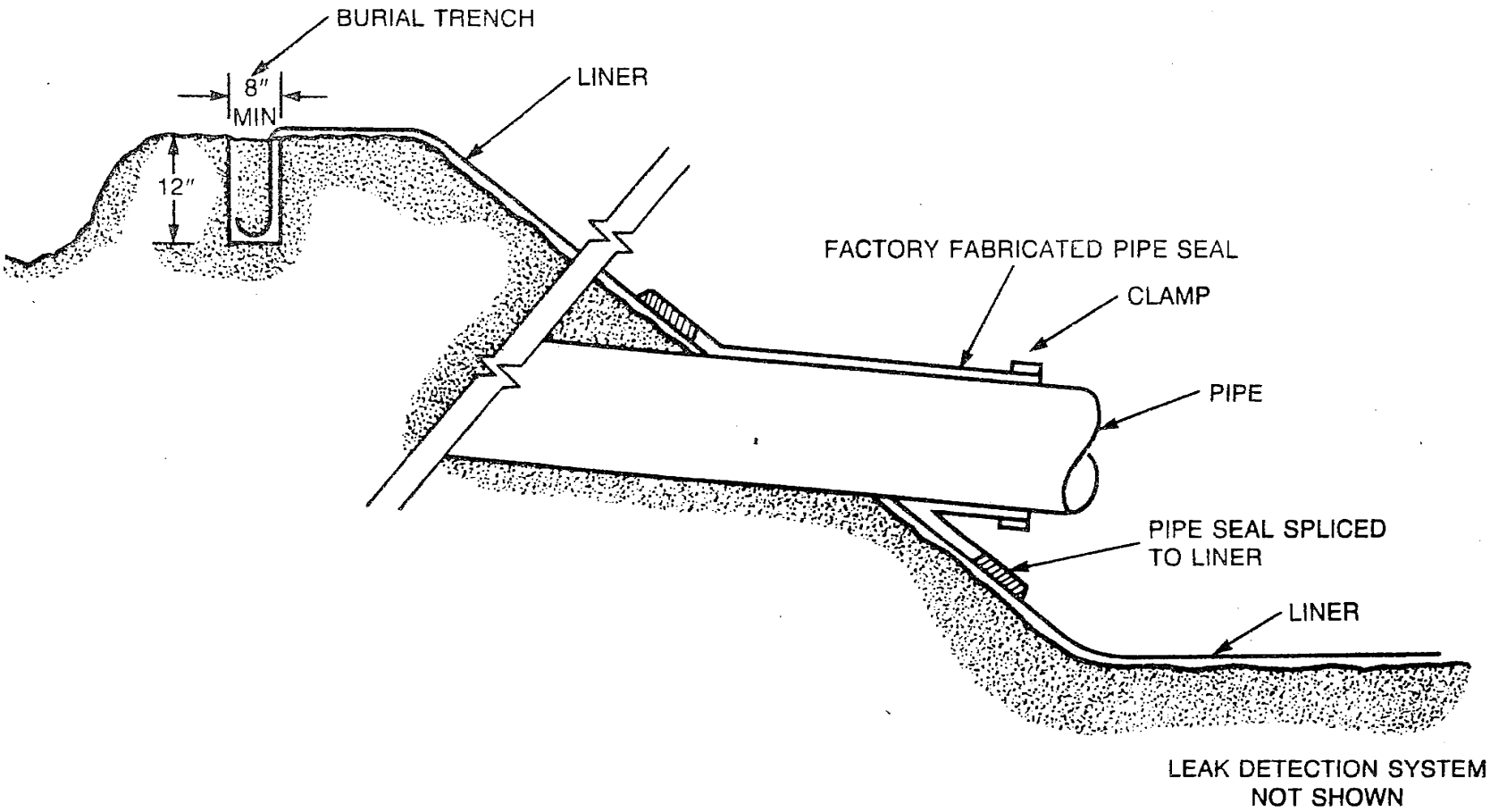


FIGURE 3. EXAMPLE OF ACCEPTABLE DESIGN FOR INSTALLATION OF A FLEXIBLE LINER.

Attachment 1 - 3

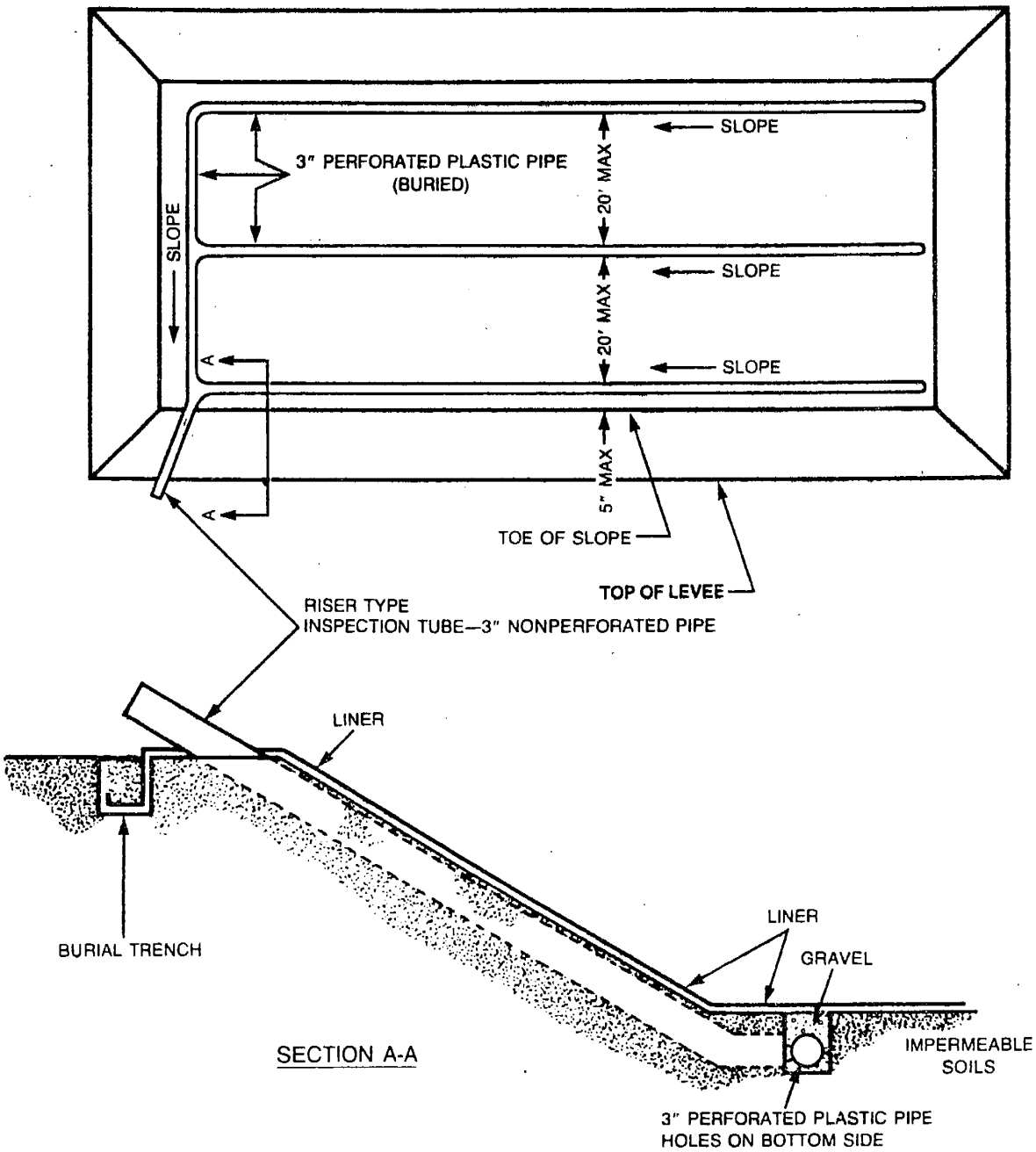


FIGURE 4. EXAMPLE OF A LEAK DETECTION SYSTEM FOR A LINED PIT CONSTRUCTED IN RELATIVELY IMPERMEABLE SOILS.

Attachment 1 - 4

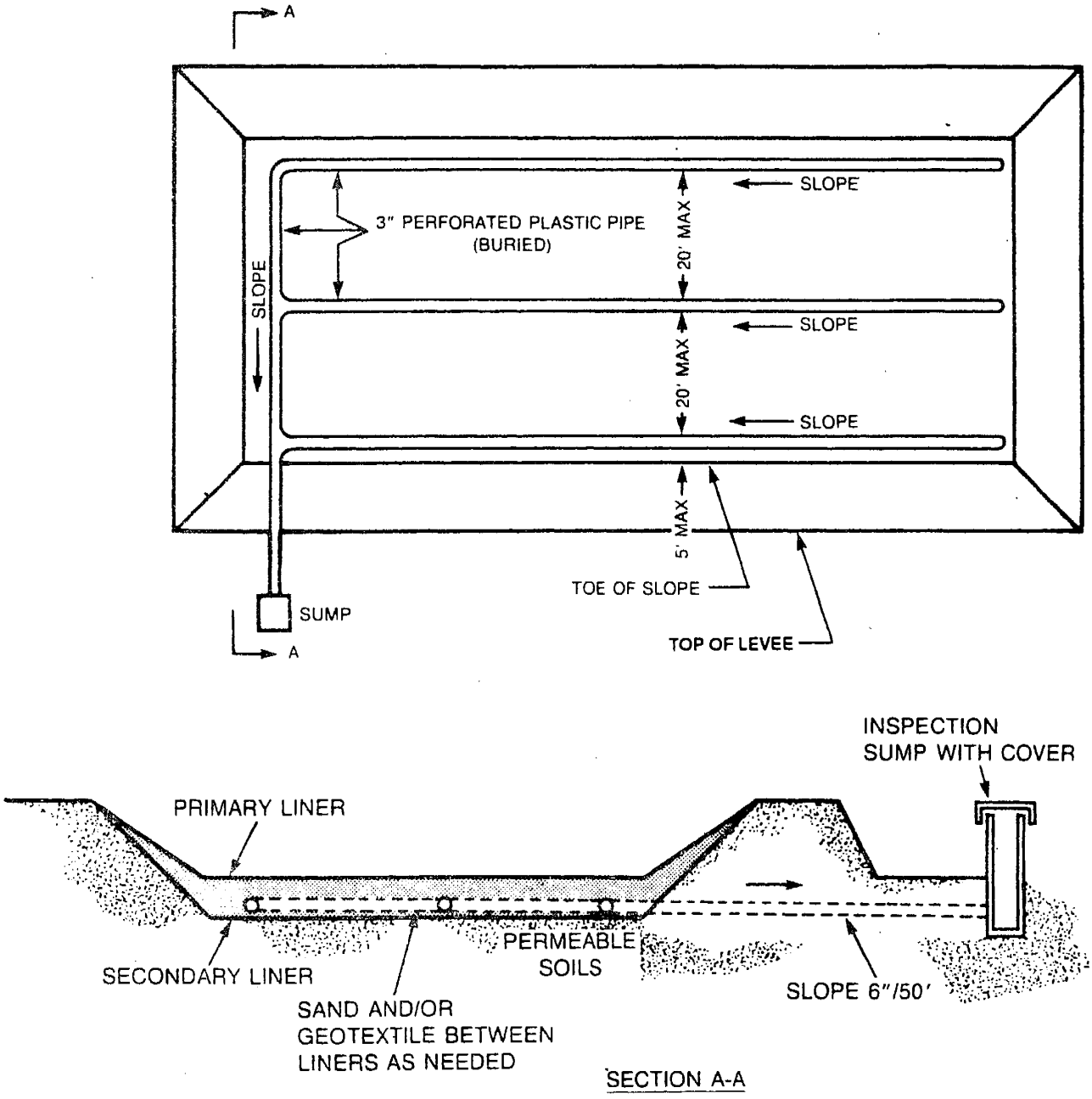


FIGURE 5. EXAMPLE OF A LEAK DETECTION SYSTEM FOR A LINED PIT CONSTRUCTED IN PERMEABLE SOILS.

Attachment 1 - 5

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

ORDER NO. 3175

Subject: Departmental Responsibilities for Indian Trust Resources

Sec. 1 Purpose. This Order clarifies the responsibility of the component bureaus and offices of the Department of the Interior to ensure that the trust resources of federally recognized Indian tribes and their members that may be affected by the activities of those bureaus and offices are identified, conserved and protected. It is the intent of this Order that each bureau and office will operate within a government to government relationship with federally recognized Indian tribes and that the Bureau of Indian Affairs provide timely and accurate information upon the request of their Interior Department counterparts.

This Order is for internal management guidance only, and shall not be construed to grant or vest any right to any party in respect to any Federal action not otherwise granted or vested by existing law or regulations.

Sec. 2 Authority. This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

Sec. 3 Responsibility. The heads of bureaus and offices are responsible for being aware of the impact of their plans, projects, programs or activities on Indian trust resources. Bureaus and offices when engaged in the planning of any proposed project or action will ensure that any anticipated effects on Indian trust resources are explicitly addressed in the planning, decision and operational documents; i.e., Environmental Assessments, Environmental Impact Statements, Management Plans, etc., that are prepared for the project. These documents should clearly state the rationale for the recommended decision and explain how the decision will be consistent with the Department's trust responsibilities. Bureaus and offices are required to consult with the recognized tribal government with jurisdiction over the trust property that the proposal may affect, the appropriate office of the Bureau of Indian Affairs, and the Office of the Solicitor (for legal assistance) if their evaluation reveals any impacts on Indian trust resources. All consultations with tribal governments are to be open and candid so that all interested parties may evaluate for themselves the potential impact of the proposal on trust resources.

The heads of the Department's bureaus and offices will prepare and publish procedures and directives prior to the expiration of this Order to ensure that their respective units are fully aware of this Order and that they are in compliance with the intent of the Order. Prior to final issuance, the Office of American Indian Trust will review and comment on these procedures before their approval by the Assistant Secretary - Indian Affairs.

Sec. 4 Effective Date. This Order is effective immediately. Its provisions will remain in effect until October 1, 1994, or until it is amended, superseded, or revoked, whichever occurs first.

Secretary of the Interior

Date: NOV 8 1993

Public Law 97-382
97th Congress

An Act

Dec. 22, 1982
[S. 1894]

To permit Indian tribes to enter into certain agreements for the disposition of tribal mineral resources, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Mineral Development Act of 1982".

Indian Mineral Development Act of 1982.
25 USC 2101 note.

SEC. 2. For the purposes of this Act, the term—

Definitions.
25 USC 2101.

(1) "Indian" means any individual Indian or Alaska Native who owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States;

(2) "Indian tribe" means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; and

(3) "Secretary" means the Secretary of the Interior.

25 USC 2102.

SEC. 3. (a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a "Minerals Agreement") providing for the exploration for, or extraction, processing, or other development of, oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources (hereinafter referred to as "mineral resources") in which such Indian tribe owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such mineral resources.

(b) Any Indian owning a beneficial or restricted interest in mineral resources may include such resources in a tribal Minerals Agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

Minerals Agreement approval or disapproval.
25 USC 2103.

Enforcement.

SEC. 4. (a) The Secretary shall approve or disapprove any Minerals Agreement submitted to him for approval within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other requirement of Federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to section 1361 of title 28, United States Code.

(b) In approving or disapproving a Minerals Agreement, the Secretary shall determine if it is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise

between the parties to the agreement: *Provided*, That the Secretary shall not be required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a Minerals Agreement apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) Not later than thirty days prior to formal approval or disapproval of any Minerals Agreement, the Secretary shall provide written findings forming the basis of his intent to approve or disapprove such agreement to the affected Indian tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Minerals Agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe.

Delegation of authority

(d) The authority to disapprove agreements under this section may only be delegated to the Assistant Secretary of the Interior for Indian Affairs. The decision of the Secretary or, where authority is delegated, of the Assistant Secretary of the Interior for Indian Affairs, to disapprove a Minerals Agreement shall be deemed a final agency action. The district courts of the United States shall have jurisdiction to review the Secretary's disapproval action and shall determine the matter de novo. The burden is on the Secretary to sustain his action.

Liability

(e) Where the Secretary has approved a Minerals Agreement in compliance with the provisions of this Act and any other applicable provision of law, the United States shall not be liable for losses sustained by a tribe or individual Indian under such agreement: *Provided*, That the Secretary shall continue to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any Minerals Agreement by any other party to such agreement: *Provided further*, That nothing in this Act shall absolve the United States from any responsibility to Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or agreement between the United States and any Indian tribe.

Review
25 USC 2104.

SEC. 5. (a) the Secretary shall review, within ninety days of enactment of this Act, any existing Minerals Agreement, which does not purport to be a lease, entered into by any Indian tribe and approved by the Secretary after January 1, 1975, but prior to enactment of this Act, to determine if such agreement complies with the purposes of this Act. Such review shall be limited to the terms of the agreement and shall not address questions of the parties' compliance therewith. The Secretary shall notify the affected tribe and other parties to the agreement of any modifications necessary to bring an agreement into compliance with the purposes of this Act. The tribe and other parties to such agreement shall within ninety days after notice make such modifications. If such modifications are not made within ninety days, the provisions of this Act may not be used as a defense in any proceeding challenging the validity of the agreement.

(b) The review required by subsection (a) of this section may be performed prior to the promulgation of regulations required under section 8 of this Act and shall not be considered a Federal action

within the meaning of that term in section 102(2)(C) of the National Environmental Protection Act of 1969 (42 U.S.C. 4332(2)(C)).

Limitation
25 USC 2105

SEC. 6. Nothing in this Act shall affect, nor shall any Minerals Agreement approved pursuant to this Act be subject to or limited by, the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a et seq.), as amended, or any other law authorizing the development or disposition of the mineral resources of an Indian or Indian tribe.

25 USC 2106.

SEC. 7. In carrying out the obligations of the United States, the Secretary shall ensure that upon the request of an Indian tribe or individual Indian and to the extent of his available resources, such tribe or individual Indian shall have available advice, assistance, and information during the negotiation of a Minerals Agreement. The Secretary may fulfill this responsibility either directly through the use of Federal officials and resources or indirectly by providing financial assistance to the Indian tribe or individual Indian to secure independent assistance.

Rules and regulations.
25 USC 2107.

SEC. 8. Within one hundred and eighty days of the date of enactment of this Act, the Secretary of the Interior shall promulgate rules and regulations to facilitate implementation of this Act. The Secretary shall, to the extent practicable, consult with national and regional Indian organizations and tribes with expertise in mineral development both in the initial formulation of rules and regulations and any future revision or amendment of such rules and regulations. Where there is pending before the Secretary for his approval a Minerals Agreement of the type authorized by section 3 of this Act which was submitted prior to the enactment of this Act, the Secretary shall evaluate and approve or disapprove such agreement based upon section 4 of this Act, but shall not withhold or delay such approval or disapproval on the grounds that the rules and regulations implementing this Act have not been promulgated.

25 USC 2108.

SEC. 9. Nothing in this Act shall impair any right of an Indian tribe organized under section 16 or 17 of the Act of June 18, 1934 (48 Stat. 987), as amended, to develop their mineral resources as may be provided in any constitution or charter adopted by such tribe pursuant to that Act.

25 USC 476, 477.

Approved December 22, 1982.

LEGISLATIVE HISTORY—S. 1894:

HOUSE REPORT: No. 97-746 (Comm. on Interior and Insular Affairs).
SENATE REPORT: No. 97-472 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 128 (1982):
June 30, considered and passed Senate.
Aug. 17, considered and passed House, amended.
Dec 8, Senate concurred in House amendment with an amendment.
Dec 10, House concurred in Senate amendments.

FOGRMA OF 1982

Public Law 97-451 (As of 01/18/00)
97th Congress
PUBLIC LAW 97-451 - JAN. 12,1983 96 STAT. 2447

An Act

To ensure that all oil and gas originated on the public lands and on the Outer Continental Shelf are properly accounted for under the direction of the Secretary of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Federal Oil and Gas Royalty Management Act of 1982".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I - FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT

Sec. 101. Duties of the Secretary.
Sec. 102. Duties of lessees, operators, and motor vehicle transporters.
Sec. 103. Required recordkeeping.
Sec. 104. Prompt disbursement of royalties.
Sec. 105. Explanation of payments.
Sec. 106. Liabilities and bonding.
Sec. 107. Hearings and investigations.
Sec. 108. Inspections.
Sec. 109. Civil penalties.
Sec. 110. Criminal penalties.
Sec. 111. **Royalty terms and conditions, interest, and penalties.**
Sec. 111A. Adjustments and refunds.
Sec. 112. Injunction and specific enforcement authority.
Sec. 113. Rewards.
Sec. 114. Noncompetitive oil and gas lease royalty rates.
Sec. 115. Secretarial and delegated States' actions and limitation periods.
Sec. 116. Assessments.

Sec. 117. Alternatives for marginal properties.

TITLE II - STATES AND INDIAN TRIBES

Sec. 201. Application of title.
Sec. 202. Cooperative agreements. **(No longer applicable to Federal lands but is as to Indian lands)**
Sec. 203. Information.
Sec. 204. State suits under Federal law.
Sec. 205. **Delegation of royalty collection and related activities.**
Sec. 206. Shared civil penalties.

TITLE III - GENERAL PROVISIONS

Sec. 301. Secretarial authority.
Sec. 302. Reports.
Sec. 303. Study of other minerals.
Sec. 304. Relation to other laws.
Sec. 305. Effective date.
Sec. 306. Funding.
Sec. 307. Statute of limitations. **(No longer applicable to Federal lands but is as to Indian lands)**
Sec. 308. Expanded royalty obligations.
Sec. 309. Severability.

TITLE IV - REINSTATEMENT OF LEASES AND CONVERSION UNPATENTED OIL PLACER CLAIMS

Sec. 401. Amendment of Mineral Lands Leasing Act of 1920.

FINDINGS AND PURPOSES

Sec. 2.(a) Congress finds that-

(1) the Secretary of the Interior should enforce effectively and uniformly existing regulations under the mineral leasing laws providing for the inspection of production activities on lease sites on Federal and Indian lands;
(2) the system of accounting with respect to royalties and other payments due and owing on oil and gas produced from such lease sites is archaic and inadequate;
(3) it is essential that the Secretary initiate procedures to improve methods of accounting for such royalties and payments and to provide for routine inspection of activities related to the production of oil and gas on such lease sites; and
(4) the Secretary should aggressively carry out his trust responsibility in the administration of Indian oil and gas.

(b) It is the purpose of this Act-

(1) to clarify, reaffirm, expand, and define the responsibilities and obligations of

lessees, operators, and other persons involved in transportation or sale of oil and gas from the Federal and Indian lands and the Outer Continental Shelf,

(2) to clarify, reaffirm, expand and define the authorities and responsibilities of the Secretary of the Interior to implement and maintain a royalty management system for oil and gas leases on Federal lands, Indian lands, and the Outer Continental Shelf;

(3) to require the development of enforcement practices that ensure the prompt and proper collection and disbursement of oil and gas revenues owed to the United States and Indian lessors and those inuring to the benefit of States;

(4) to fulfill the trust responsibility of the United States for the administration of Indian oil and gas resources; and

(5) to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system.

DEFINITIONS

Sec. 3. For the purposes of this Act, the term-

(1) "Federal land" means all land and interests in land owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate;

(2) "Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation;

(3) "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 Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian tribe or an Indian allottee in the conveyance of a surface or nonmineral estate, except that such term does not include any lands subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539);

(4) "Indian tribe" means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of Annette Island Reserve, for which any land or interest in land is held by the United States in trust or which is subject to Federal restriction against alienation;

(5) "lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas;

(6) "lease site" means any lands or submerged lands, including the surface of a severed mineral estate, on which exploration for, or extraction or removal of, oil or gas is authorized pursuant to a lease;

(7) **"lessee" means any person to whom the United States issues an oil and gas lease or any person to whom operating rights in a lease have been assigned;**

(8) "mineral leasing law" means any Federal law administered by the Secretary authorizing the disposition under lease of oil or gas;

(9) "oil or gas" means any oil or gas originating from, or allocated to, the Outer Continental

Shelf, Federal, or Indian lands;

(10) "Outer Continental Shelf' has the same meaning as provided in the Outer Continental Shelf Lands Act (Public Law 95-372);

(11) "operator" means any person, including a lessee, who has control of, or who manages operations on, an oil and gas lease site on Federal or Indian lands or on the Outer Continental Shelf;

(12) "Person" means any individual firm, corporation, association, partnership, consortium, or joint venture;

(13) "production" means those activities which take place for the removal of oil or gas, including such removal, field operations, transfer of oil or gas off the lease site, operation monitoring, maintenance, and workover drilling;

(14) "royalty" means any payment based on the value or volume of production which is due to the United States or an Indian tribe or an Indian allottee on production of oil or gas from the Outer Continental Shelf, Federal, or Indian lands, or any minimum royalty owed to the United States or an Indian tribe or an Indian allottee under any provision of a lease;

(15) "Secretary" means the Secretary of the Interior or his designee;

(16) "State" means the several States of the Union, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands;

(17) "adjustment" means an amendment to a previously filed report on an obligation, and any additional payment or credit, if any, applicable thereto, to rectify an underpayment or overpayment on an obligation;

(18) "administrative proceeding" means any Department of the Interior agency process in which a demand, decision or order issued by the Secretary or a delegated State is subject to appeal or has been appealed;

(19) "assessment" means any fee or charge levied by the Secretary or a delegated State other than-

(A) the principal amount of any royalty, minimum royalty, rental bonus, net profit sharing or proceed of sale;

(B) any interest; or

(C) any civil or criminal penalty;

(20) "commence" means -

(A) with respect to a judicial proceeding, the service of a compliant, petition, cross claim, or other pleading seeking affirmative relief or seeking credit or recoupment: Provided, That if the Secretary commences a judicial proceeding against a designee, the Secretary shall give notice of that commencement to the lessee who designated the designee, but the Secretary is not required to give notice to the other lessees who may be liable pursuant to section 102(a) of this Act, for the obligation that is the subject of the judicial proceeding; or

(B) with respect to a demand, the receipt by the Secretary or a delegated State or a lessee or its designee (with written notice to the lessee who designated the

designee) of the demand;

(21) "credit" means the application of an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;

(22) "delegated State" means a State which, pursuant to an agreement or agreements under section 205 of this Act, performs authorities, duties, responsibilities, or activities of the Secretary;

(23) "demand" means-

(A) an order to pay issued by the Secretary or the applicable State to a lessee or its designee (with written notice to the lessee who designated the designee) that has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing; or

(B) a separate written request by the lessee or its designee which asserts an obligation due the lessee or its designee that provides a reasonable basis to conclude that the obligation in the amount of the demand is due and owing, but does not mean any royalty or production report , or any information contained therein, required by the Secretary or a delegated State;

(24) "designee" means a person designated by a lessee pursuant to section 102(a) of this Act, with such written designation effective on the date such designation is received by the Secretary and remaining in effect until the Secretary receives notice in writing that the designation is modified or terminated;

(25) "obligation" means-

(A) any duty of the Secretary or, if applicable, a delegated State-

(i) to take oil and gas royalty in kind; or

(ii) to pay, refund, offset, or credit monies including (but not limited to)-

(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale; or

(II) any interest; and

(B) any duty of a lessee or its designee (subject to the *provisions* of section 102(a) of this Act)-

(i) to deliver oil and gas in kind; or

(ii) to pay, offset or credit monies including (but not limited to)-

(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(II) any interest;

(III) any penalty; or

(IV) any assessment,

which arises from or relates to any lease administered by the Secretary for, or any mineral leasing law related to, the exploration, production and development of oil and gas on Federal lands or the Continental Shelf;

(26) "order to pay" means a written order issued by the Secretary or the applicable delegated State to a lessee or its designee (with notice to the lessee who designated the designee) which-

(A) asserts a specific, definite, and quantified obligation claimed to be due, and

(B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason or reasons such obligation is claimed to be due, but such term does not include any other communication or action by or on the behalf of the Secretary or delegated State;

(27) "overpayment" means any payment by the lessee or its designee in excess of an amount legally required to be paid on an obligation and includes the portion of any estimated payment for a production month that is in excess of the royalties due for the that month;

(28) "payment" means satisfaction, in whole or in part, of an obligation;

(29) "penalty" means a statutory authorized fine levied or imposed for a violation of this Act, any mineral leasing law, or a term or provision of a lease administered by the Secretary;

(30) "refund" means the return of an overpayment;

(31 "State concerned" means, with respect to a lease, a State which receives a portion of royalties or other payments under the mineral leasing laws from such lease;

(32) "underpayment" means any payment or nonpayment by a lessee or its designee that is less than the amount legally required to be paid on an obligation; and

(33) "United States" means the United States Government or any department, agency, or instrumentality thereof, the several States, the District of Columbia, and the territories of the United States.

TITLE I - FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT DUTIES OF THE SECRETARY

Sec. 101. (a) The Secretary shall establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner.

(b) The Secretary shall-

(1) establish procedures to ensure that authorized and properly identified representatives of the Secretary will inspect at least once annually each lease site producing or expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations; and

(2) establish and maintain adequate programs providing for the training of all such authorized representatives in methods and techniques of inspection and accounting that will be used in the implementation of this Act.

(c) (1) The Secretary shall audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas and take appropriate actions to make additional collections or refunds as warranted. The Secretary shall conduct audits and reconciliations of lease accounts in conformity with the business practices and

recordkeeping systems which were required of the lessee by the Secretary for the period covered by the audit. The Secretary shall give priority to auditing those lease accounts identified by a State or Indian tribe as having significant potential for underpayment. The Secretary may also audit accounts and records of selected lessees and operators.

(2) The Secretary may enter into contracts or other appropriate arrangements with independent certified public accountants to undertake audits of accounts and records of any lessee or operator relating to the lease of oil or gas. Selection of such independent certified public accountants shall be by competitive bidding in accordance with the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252), except that the Secretary may not enter into a contract or other arrangement with any independent certified public accountant to audit any lessee or operator where such lessee or operator is a primary audit client of such certified public accountant.

(3) All books, accounts, financial records, reports, files, and other papers of the Secretary, or used by the Secretary, which are reasonably necessary to facilitate the audits required under this section shall be made available to any person or governmental entity conducting audits under this Act.

DUTIES OF LESSEES, OPERATORS, AND MOTOR VEHICLE TRANSPORTERS

Sec. 102. **(a) In order to increase receipts and achieve effective collections of royalty and other payments, a lessee who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary or the applicable delegated State. A lessee may designate a person to make all or part of the payments due under a lease on the lessee's behalf and shall notify the Secretary or the applicable delegated State in writing of such designation, in which event said designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lessee. Notwithstanding any other provision of this Act to the contrary, a designee shall not be liable for any payment obligation under the lease. The person owning operating rights in a lease shall be primarily liable for its pro rata share of payment obligations under the lease. If the person owning the legal record title in a lease is other than the operating rights owner, the person owning the legal record title shall be secondarily liable for its pro rata share of such payment obligations under the lease.**

(b) An operator shall-

(1) develop and comply with a site security plan designed to protect the oil or gas produced or stored on an onshore lease site from theft, which plan shall conform with such minimum standards as the Secretary may prescribe by rule, taking into account the variety of circumstances at lease sites;

(2) develop and comply with such minimum site security measures as the Secretary deems appropriate to protect oil or gas produced or stored on a lease site or on the

Outer Continental Shelf from theft; and

(3) not later than the 5th business day after any well begins production anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off of production for more than 90 days, notify the Secretary, in the manner prescribed by the Secretary, of the date on which such production has begun or resumed.

(c) (1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry, on his person, in his vehicle, or in his immediate control, documentation showing, at a minimum, the amount, origin, and intended first destination of the oil.

(2) engaged in transporting any oil or gas by pipeline from any lease site, or allocated to any lease site, on Federal or Indian lands shall maintain documentation showing, at a minimum, amount, origin, and intended first destination of such oil or gas.

REQUIRED RECORDKEEPING

Sec. 103. (a) A lessee, operator, or other person directly involved in developing, producing, transporting, purchasing, or selling oil or gas subject to this Act through the point of first sale or the point of royalty computation, whichever is later, shall establish and maintain any records, make any reports, and provide any information that the Secretary may, by rule, reasonably require for the purposes of implementing this Act or determining compliance with rules or orders under this Act. Upon the request of any officer or employee duly designated by the Secretary or any State or Indian tribe conducting an audit or investigation pursuant to this Act, the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee, State, or Indian tribe.

(b) Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records.

PROMPT DISBURSEMENT OF ROYALTIES

Sec. 104. (a) Section 35 of the Mineral Lands Losing Act of 1920 (approved February 25, 1920; 41 Stat. 437; 30 U.S.C. 191) is amended by deleting "as soon as practicable after March 31 and September 30 of each year" and by adding at the end thereof "Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such

warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.".

(b) Deposits of any royalty funds derived from the production of oil or gas from, or allocated to, Indian lands shall be made by the Secretary to the appropriate Indian account at the earliest practicable date after such funds are received by the Secretary but in no case later than the last business day of the month in which such funds are received.

(c) The provisions of this section shall apply with respect to payments received by the Secretary after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date.

EXPLANATION OF PAYMENTS

Sec. 105. (a) When any payment (including amounts due from receipt of any royalty, bonus, interest charge, fine, or rental) is made by the United States to a State with respect to any oil or gas lease on Federal lands or is deposited in the appropriate Indian account on behalf of an Indian tribe or Indian allottee with respect to any oil and gas lease on Indian lands, there shall be provided, together with such payment, a description of the type of payment being made, the period covered by such payment, the source of such payment, production amounts, the royalty rate, unit value and such other information as may be agreed upon by the Secretary and the recipient State, Indian tribe, or Indian allottee.

(b) This section shall take effect with respect to payments made after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date.

LIABILITIES AND BONDING

Sec. 106. A person (including any agent or employee of the United States and any independent contractor) authorized to collect, receive, account for, or otherwise handle any moneys payable to, or received by, the Department of the Interior which are derived from the sale, lease, or other disposal of any oil or gas shall be -

(1) liable to the United States for any losses caused by any intentional or reckless action or inaction of such individual with respect to such moneys; and

(2) in the case of an independent contractor, required as the Secretary deems necessary to maintain a bond commensurate with the amount of money for which such individual could be liable to the United States.

HEARINGS AND INVESTIGATIONS

Sec. 107. (a) In carrying out his duties under this Act the Secretary may conduct any

investigation or other inquiry necessary and appropriate and may conduct, after notice, any hearing or audit, necessary and appropriate to carrying out his duties under this Act. In connection with any such hearings, inquiry, investigation, or audit, the Secretary is also authorized where reasonably necessary

(1) to require by special or general order, any person to submit in writing such affidavits and answers to questions as the Secretary may reasonably prescribe, which submission shall be made within such reasonable period and under oath or otherwise, as may be necessary;
(2) to administer oaths;
(3) to require by subpena the attendance and testimony of witnesses and the production of all books, papers, production and financial records, documents, matter, and materials, as the Secretary may request;
(4) to order testimony to be taken by deposition before any person who is designated by the Secretary and who has the power to administer oaths, and to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; and
(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(b) In case of refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary. Any failure to obey such order of the court may be punished by such court as contempt thereof and subject to a penalty of up to $10,000 a day.

INSPECTIONS

Sec. 108. (a)(1) On any lease site on Federal or Indian lands, any authorized and properly identified representative of the Secretary may stop and inspect any motor vehicle that he has probable cause to believe is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site, for the purpose of determining whether the driver of such vehicle has documentation related to such oil as required by law.

(2) Any authorized and properly identified representative of the Secretary, accompanied by any appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he has probable cause to believe the vehicle is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site. Such inspection shall be for the purpose of determining whether the driver of such vehicle has the documentation required by law.

(b) Authorized and properly identified representatives of the Secretary may without advance notice, enter upon, travel across and inspect lease sites on Federal or Indian lands and may obtain from the operator immediate access to secured facilities on such lease sites, for the purpose of making any inspection or investigation for determining whether there is compliance with the requirements of the mineral leasing laws and this Act. The Secretary shall develop guidelines setting forth the coverage and the frequency of such inspections.

(c) For the purpose of making any inspection or investigation under this Act, the Secretary shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.

CIVIL PENALTIES

Sec. 109. (a) Any person who-

(1) after due notice of violation or after such violation has been reported under subparagraph (A), fails or refuses to comply with any requirements of this Act or any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder; or

(2) fails to permit inspection authorized in section 108 or fails to notify the Secretary of any assignment under section 102(a)(2) shall be liable for a penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. A penalty under this subsection may not be applied to any person who is otherwise liable for a violation of paragraph (1) if:

(A) the violation was discovered and reported to the Secretary or his authorized representative by the liable person and corrected within 20 days after such report or such longer time as the Secretary may agree to; or

(B) after the due notice of violation required in paragraph (1) has been given to such person by the Secretary or his authorized representative, such person has corrected the violation within 20 days of such notification or such longer time as the Secretary may agree to.

(b) If corrective action is not taken within 40 days or a longer period as the Secretary may agree to, after due notice or the report referred to in subsection (a)(1), such person shall be liable for a civil penalty of not more than $5,000 per violation for each day such violation continues, dating from the date of such notice or report.

(c) Any person who-

(1) knowingly or willfully fails to make any royalty payment by the date as specified by statute, regulation, order or terms of the lease;

(2) fails or refuses to permit lawful entry, inspection, or audit; or

(3) knowingly or willfully fails or refuses to comply with subsection 102(b)(3), shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.

(d) Any person who-

(1) knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;

(2) knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any lease site without having valid legal authority to do so; or

(3) purchases, accepts, sells, transports, or conveys to another, any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted, shall be liable for a penalty of up to $25,000 per violation for each day such violation continues.

(e) No penalty under this section shall be assessed until the person charged with a violation has been given the opportunity for a hearing on the record.

(f) The amount of any penalty under this section, as finally determined may be deducted from any sums owing by the United States to the person charged.

(g) On a case-by-case basis the Secretary may compromise or reduce civil penalties under this section.

(h) Notice under this subsection (a) shall be by personal service by an authorized representative of the Secretary or by registered mail. Any person may, in the manner prescribed by the Secretary, designate a representative to receive any notice under this subsection.

(i) In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations.

(j) Any person who has requested a hearing in accordance with subsection (e) within the time the Secretary has prescribed for such a hearing and who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States district court for the judicial district in which the violation allegedly took place. Review by the district court shall be only on the administrative record and not de novo. Such an action shall be barred unless filed within 90 days after the Secretary's final order.

(k) If any person fails to pay an assessment of a civil penalty under this Act-

(1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with subsection (j), or

(2) after a court in an action brought under subsection (j) has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period referred to in subsection (j). Judgment by the court shall include an order to pay.

(l) No person shall be liable for a civil penalty under subsection (a) or (b) for failure to pay

any rental for any lease automatically terminated pursuant to section 31 of the Mineral Leasing Act of 1920.

CRIMINAL PENALTIES

Sec. 110. Any person who commits an act for which a civil penalty is provided in section 109(d) shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 2 years, or both.

ROYALTY TERMS AND CONDITIONS, INTEREST, AND PENALTIES

Sec. 111. (a) In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that . such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of the Internal Revenue Code of 1954. In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount due.

(b) Any payment made by the Secretary to a State under section 35 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 191) and any other payment made by the Secretary to a State from any oil or gas royalty received by the Secretary which is not paid on the date required under section 35 shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954.

(c) All interest charges collected under this Act or under other applicable laws because of nonpayment, late payment or underpayment of royalties due and owing an Indian tribe or an Indian allottee shall be deposited to the same account as the royalty with respect to which such interest is paid.

(d) Any deposit of royalty funds made by the Secretary to an Indian account which is not made by the date required under subsection 104(b) shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954.

(e) Notwithstanding any other provision of law, no State will be assessed for any interest or penalties found to be due against the Secretary for failure to comply with the Emergency Petroleum Allocation Act of 1973 or regulation of the Secretary of Energy thereunder concerning crude oil certification or pricing with respect to crude oil taken by the Secretary in kind as royalty. Any State share of an overcharge, resulting from such failure to comply, shall be assessed against moneys found to be due and owing to such State as a result of audits of royalty accounts for transactions which took place prior to the date of the enactment of this Act except that if after the completion of such audits, sufficient moneys have not been found due and owing to any State, the State shall be assessed the balance of that State's share of the overcharge.

(f) Interest shall be charged under this section only for the number of days a payment is late.

(g) The first sentence of section 35 of the Act of February 25, 1920 is amended by inserting "including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982" between "royalties" and "and".

(h) Interest shall be allowed and paid or credited on any overpayment, with such interest to accrue from the date such overpayment was made, at the rate obtained by applying the provisions of subparagraphs (A) and (B) of section 6621(a)(1) of the Internal Revenue Code of 1986, but determined without regard to the sentence following subparagraph (B) of section 6621(a)(1). Interest which has accrued on any overpayment may be applied to reduce an underpayment. This subsection applies to overpayments made later than six months after the date of enactment of this subsection or September 1, 1996, whichever is later. Such interest shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act, and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such interest payment attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any other recipient designated by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

(i) Upon a determination by the Secretary that an excessive overpayment (based upon all obligations of a lessee or its designee for a given reporting month) was made for the sole purpose of receiving interest, interest shall *not* be paid on the excessive amount of such overpayment. For purposes of this Act, an `excessive overpayment' shall be the amount that any overpayment a lessee or its designee pays for a given reporting month (excluding payments for demands for obligations determined to be due as a result of judicial or administrative proceedings or agreed to be paid pursuant to settlement agreements) for the aggregate of all of its Federal leases exceeds 10 percent of the total royalties paid that month for those leases.

(j) A lessee or its designee may make a payment for the approximate amount of royalties (hereinafter in this subsection `estimated payment') that would otherwise be due for such lease by the *date* royalties are due for that lease. When an estimated payment is made, actual royalties are payable at the end of the month following the month in which the estimated payment is made. If the estimated payment was less than the amount of actual royalties due, interest is *owed* on the underpaid amount. If the estimated payment exceeds the actual royalties due, interest is *owed* on the overpayment. If the lessee or its designee makes a payment for such actual royalties, the lessee or its designee may apply the estimated payment to future royalties. Any estimated payment may be adjusted, recouped,

or reinstated at any time by the lessee or its designee.

(k) (1) Except as otherwise provided by this subsection-

(A) a lessee or its designee of a lease in a unit or communitization agreement which contains only Federal leases with the same royalty rate and funds distribution shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee;

(B) a lessee or its designee of a lease in any other unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the volume of oil and gas produced from such agreement and allocated to the lease in accordance with the terms of the agreement; and

(C) a lessee or its designee of a lease that is not contained in a unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee.

(2) This subsection applies only to requirements for reporting and paying royalties. Nothing in this subsection is intended to alter a lessee's liability for royalties on oil or gas production based on the share of production allocated to the lease in accordance with the terms of the lease, a unit or communitization agreement, or any other agreement.

(3) For any unit or communitization agreement if all lessees contractually agree to an alternative method of royalty reporting and payment, the lessees may submit such alternative method to the Secretary or the delegated State for approval and make payments in accordance with such approved alternative method so long as such alternative method does not reduce the amount of the royalty obligation.

(4) The Secretary or the delegated State shall grant an exception from the reporting and payment requirements for marginal properties by allowing for any calendar year or portion thereof royalties to be paid each month based on the volume of production sold. Interest shall not accrue on the difference for the entire calendar year or portion thereof between the amount of oil and gas actually sold and the share of production allocated to the lease until the beginning of the month following such calendar year or portion thereof. Any additional royalties *due* or overpaid royalties and associated interest shall be paid, refunded, or credited within six months after the end of each calendar year in which royalties are paid based on volumes of production sold. For the purpose of this subsection, the term `marginal property' means a lease that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof, determined by dividing the average daily production of crude oil and natural gas from producing wells on such lease by the number

of such wells, unless the Secretary, together with the State concerned, determines that a different production is more appropriate.

(5) Not later than two years after the date of the enactment of this subsection, the Secretary shall issue any appropriate demand for all outstanding royalty payment disputes regarding who is required to report and pay royalties on production from units and communitization agreements outstanding on the date of the enactment of this subsection, and collect royalty amounts owed on such production.

(l) The Secretary shall issue all determinations of allocations of production for units and communitization agreements within 120 days of a request for determination. If the Secretary fails to issue a determination within such 120-day period, the Secretary shall waive interest due on obligations subject to the determination until the end of the month following the month in which the determination is made.

Sec. 111A. ADJUSTMENTS AND REFUNDS.

(a) ADJUSTMENTS TO ROYALTIES PAID TO THE SECRETARY OR A DELEGATED STATE.-

(1) If, during the adjustment period, a lessee or its designee determines that an adjustment or refund request is necessary to correct an underpayment or overpayment of an obligation, the lessee or its designee shall make such adjustment or request a refund within a reasonable period of time and only during the adjustment period. The filing of a royalty report which reflects the underpayment or overpayment of an obligation shall constitute prior written notice to the Secretary or the applicable delegated State of an adjustment.

(2) (A) For any adjustment, the lessee or its designee shall calculate and report the interest due attributable to such adjustment at the same time the lessee or its designee adjusts the principle amount of the subject obligation, except as provided by subparagraph (B).

(B) In the case of a lessee or its designee who determines that subparagraph (A) would impose a hardship, the Secretary or such delegated State shall calculate the interest due and notify the lessee or its designee within a reasonable time of the amount of interest due, unless such lessee or its designee elects to calculate and report interest in accordance with subparagraph (A).

(3) An adjustment or a request for a refund for an obligation may be made after the adjustment period only upon written notice to and approval by the Secretary or the applicable delegated State, as appropriate, during an audit of the period which includes the production month for which the adjustment is being made. If an overpayment is identified during an audit, then the Secretary or the applicable delegated State, as appropriate, shall allow a credit or refund in the amount of the overpayment.

(4) For purposes of this section, the adjustment period for any obligation shall be the six-year period following the date on which an obligation became due. The

adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 115.

(b) REFUNDS.-

(1) IN GENERAL.-A request for refund is sufficient if it-

(A) is made in writing to the Secretary and, for purposes of section 115, is specifically identified as a demand;

(B) identifies the person entitled to such refund;

(C) provides the Secretary information that reasonably enables the Secretary to identify the overpayment for which such refund is sought; and

(D) provides the reasons why the payment was an overpayment.

(2) PAYMENT BY SECRETARY OF THE TREASURY.-The Secretary shall certify the amount of the refund to be paid under paragraph (1) to the Secretary of the Treasury who shall make such refund. Such refund shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such refund attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any recipient prescribed by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

(3) PAYMENT PERIOD.-A refund under this subsection shall be paid or denied (with an explanation of the reasons for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject to later audit by the Secretary or the applicable delegated State and subject to the provisions of this Act.

(4) PROHIBITION AGAINST REDUCTION OF REFUNDS OR CREDITS.-In no event shall the Secretary or any delegated State directly or indirectly claim or offset any amount or amounts against, or reduce any refund or credit (or interest accrued thereon) by the amount of any obligation the enforcement of which is barred by section 115 of this Act.

INJUNCTION AND SPECIFIC ENFORCEMENT AUTHORITY

Sec. 112. (a)In addition to any other remedy under this Act or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States, which shall have jurisdiction over such actions-

(1) to restrain any violation of this Act; or

(2) to compel the taking of any action required by or under this Act or any mineral leasing law of the United States.

(b) A civil action described in subsection (a) may be brought only in the United States district court for the judicial district wherein the act, omission, or transaction constituting a violation under this Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

REWARDS

Sec. 113. Where amounts representing royalty or other payments owed to the United States with respect to any oil and gas lease on Federal lands or the Outer Continental Shelf are recovered pursuant to any action taken by the Secretary under this Act as a result of information provided to the Secretary by any person, the Secretary is authorized to pay to such person an amount equal to not more than 10 percent of such recovered amounts. The preceding sentence shall not apply to information provided by an officer or employee of the United States, an officer or employee of a State or Indian tribe acting pursuant to a cooperative agreement or delegation under this Act, or any person acting pursuant to a contract authorized by this Act.

NONCOMPETITIVE OIL AND GAS LEASE ROYALTY RATES

Sec. 114. The Secretary is directed to conduct a thorough study of the effects of a change in the royalty rate under section 17(c) of the Mineral Leasing Act of 1920 on:

(a) the exploration, development, or production of oil or gas; and

(b) the overall revenues generated by such change. Such study shall be completed and submitted to Congress within six months after the date of enactment of this Act.

Sec. 115. SECRETARIAL AND DELEGATED STATES' ACTIONS AND LIMITATION PERIODS.

(a) IN GENERAL.-The respective duties, responsibilities, and activities with respect to a lease shall be performed by the Secretary, delegated State, and lessees or their designees in a timely manner.

(b) LIMITATION PERIOD.-

(1) IN GENERAL.-A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within seven years from the date on which the obligation becomes due and if not so commenced shall be barred. If commencement of a judicial proceeding or demand for an obligation is barred by this section, the Secretary, or a delegated State, or a lessee or its designee

(A) shall not take any other action or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with regard to that obligation; and

(B) shall not pursue any other equitable or legal remedy, whether under statute or common law, with respect to an action on or an enforcement of said obligation.

(2) RULE OF CONSTRUCTION.-A judicial proceeding that is timely commenced under paragraph (1) against a designee shall be considered timely commenced as to any lessee who is liable pursuant to section 102(a) of this Act for the obligation that is the subject of the judicial proceeding or demand.

(3) APPLICATION OF CERTAIN LIMITATIONS.-The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28, United States Code, and section 42 of the Mineral Leasing Act (30 U.S.C. 226-2) shall not apply to any obligation to which this Act applies. Section 3716 of title 31, United States Code, may be applied to an obligation the enforcement which is not barred by this Act, but may not be applied to any obligation the enforcement of which is barred by this Act.

(c) OBLIGATION BECOMES DUE.-

(1) IN GENERAL.-For purposes of this Act, an obligation be comes due when the right to enforce the obligation is fixed.

(2) ROYALTY OBLIGATION.-The right to enforce any royalty obligation for any given production month for a lease is fixed for purposes of this Act on the last day of the calendar month following the month in which oil or gas is produced.

(d) TOLLING OF LIMITATION PERIOD.-The running of the limitation period under subsection(b) shall not be suspended, tolled, extended, or enlarged for any obligation for any reason by any action, including the action by the Secretary or a designated State, other than the following:

(1) TOLLING AGREEMENT.-A written agreement executed by the Secretary or a delegated State and a lessee or its designee (with notice to the lessee who designated the designee) shall toll the limitation period for the amount of time during which the agreement is in effect.

(2) SUBPOENA.-

(A) The issuance of a subpoena to a lessee or its designee (with notice to the lessee who designated the designee, which notice shall not constitute a subpoena to the lessee) in accordance with the provisions of paragraph (B)(i) shall toll the limitation period with respect to the obligation which is the subject of a subpoena only for the period beginning on the date the lessee or its designee receives the subpoena and ending on the date on which

(i) the lessee or its designee has produced such subpoenaed records for the subject obligation,

(ii) the Secretary or a delegated State receives written notice that the subpoenaed records for the subject obligation are not in existence or are not in the lessee's or its designee's possession or control, or

(iii) a court has determined in a final decision that such records are not required to be produced , whichever occurs first.

(B) (i) A subpoena for the purposes of this section which requires a lessee or its designee to produce records necessary to determine the proper reporting and payment of an obligation due the Secretary may only be issued by an Assistant Secretary of the Interior or an Acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations), or the Director or Acting Director of the respective bureau or agency, and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such subpoena, but may not delegate such authority to any other person.

(ii) A subpoena described in clause (i) may only be against a lessee or its designee during the limitation period provided in this section and only after the Secretary or a delegated State has in writing requested the records from the lessee or its designee related to the obligation which is the subject of the subpoena and has determined that-

(I) the lessee or its designee has failed to respond within a reasonable period of time to the Secretary's or the applicable delegated State's written request for such records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this Act; or

(II) the lessee or its designee has in writing denied the Secretary's or the applicable delegated State's written request to produce such records in the lessee's or its designee's possession or control necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this Act; or

(III) the lessee or its designee has unreasonably delayed in producing records necessary for an audit, or investigation or other inquiry made in accordance with the Secretary's or the applicable delegated State's responsibilities under this Act after the Secretary's or delegated State's written request.

(C) In seeking records, the Secretary or the applicable delegated State shall afford the lessee or its designee a reasonable period of time after a written request by the Secretary or a delegated State in which to provide such records prior to issuance of a subpoena.

(3) MISREPRESENTATION OR CONCEALMENT.- The intentional misrepresentation or

concealment of a material fact for the purpose of evading the payment of an obligation in which case the limitation period shall be tolled for the period of such misrepresentation or such concealment.

(4) ORDER TO PERFORM RESTRUCTURED ACCOUNTING.-

(A)(i) The issuance of a notice under subparagraph (D) that the lessee or its designee has not substantially complied with the requirement to perform a restructured accounting shall toll the limitation period with respect to the obligation which is the subject of the notice only for the period beginning on the date the lessee or its designee receives the notice and ending 120 days after the date on which (I) the Secretary or the applicable delegated State receives written notice that the accounting or other requirement has been performed, or (II) a court has determined in a final decision that the lessee is not required to perform the accounting, whichever occurs first.

(ii) If the lessee or its designee initiates an administrative appeal or judicial proceeding to contest an order to perform a restructured accounting issued under subparagraph(B)(i), the limitation period in subsection (b) shall be tolled from the date the lessee or its designee received the order until a final, nonappealable decision is issued in any such proceeding.

(B)(i) The Secretary or the applicable delegated State may issue an order to perform a restructured accounting to a lessee or its designee when the Secretary or such delegated State determines during an audit of a lessee or its designee that the lessee or its designee should recalculate royalty due on an obligation based upon the Secretary's or the delegated State's finding that the lessee or its designee has made identified underpayments or overpayments which are demonstrated by the Secretary or the delegated State to be based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months with the same type of error which constitutes a pattern of violations and which are likely to result in either significant underpayments or overpayments.

(ii) The power of the Secretary to issue an order to perform a restructured accounting may not be delegated below the most senior career professional position having responsibility for the royalty management program, which position is currently designated as the `Associate Director for Royalty Management', and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205 of this Act, the State, acting through the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such order to perform, which may not be delegated to any other person. An order to perform a restructured accounting shall-

(I) be issued within a reasonable period of time from when the audit identifies the systemic, reporting errors;
(II) specify the reasons and factual bases for such order;
(III) be specifically identified as an `order to perform a restructured accounting';
(IV) provide the lessee or its designee a reasonable period of time (but not less than 60 days) within which to perform the restructured accounting; and
(V) provide the lessee or its designee 60 days within which to file an administrative appeal of the order to perform a restructured accounting.

(C) An order to perform a restructured accounting shall not mean or be construed to include any other action by or on behalf of the Secretary or a delegated State.

(D) If a lessee or its designee fails to substantially comply with the requirement to perform a restructured accounting pursuant to this subsection, a notice shall be issued to the lessee or its designee that the lessee or its designee has not substantially complied with the requirements to perform a restructured accounting. A lessee or its designee shall be given a reasonable time within which to perform the restructured accounting. Such notice may be issued under this section only by an Assistant Secretary of the Interior or an acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such notice, which may not be delegated to any other person.

(e) TERMINATION OF LIMITATIONS PERIOD.-An action or an enforcement of an obligation by the Secretary or delegated State or a lessee or its designee shall be barred under this section prior to the running of the seven-year period provided in subsection (b) in the event-

(1) the Secretary or a delegated State has notified the lessee or its designee in writing that a time period is closed to further audit; or
(2) the Secretary or a delegated State and a lessee or its designee have so agreed in writing.

For purposes of this subsection, notice to, or an agreement by, the designee shall be binding on any lessee who is liable pursuant to section 102(a) for obligations that are the subject of the notice or agreement.

(f) RECORDS REQUIRED FOR DETERMINING COLLECTIONS.- Records required pursuant to

section 103 of this Act by the Secretary or any delegated State for the purpose of determining obligations due and compliance with any applicable mineral leasing law, lease provision, regulation or order with respect to oil and gas leases from Federal lands or the Outer Continental Shelf shall be maintained for the same period of time during which a judicial proceeding or demand may be commenced under subsection (b). If a judicial proceeding or demand is timely commenced, the record holder shall maintain such records until the final nonappealable decision in such judicial proceeding is made, or with respect to that demand is rendered, unless the Secretary or the applicable delegated State authorizes in writing an earlier release of the requirement to maintain such records. Notwithstanding anything herein to the contrary, under no circumstance shall a record holder be required to maintain or produce any record relating to an obligation for any time period which is barred by the applicable limitation in this section. In connection with any hearing, administrative proceeding, inquiry, investigation, or audit by the Secretary or a delegated State under this Act, the Secretary or the delegated State shall minimize the submission of multiple or redundant information and make a good faith effort to locate records previously submitted by a lessee or a designee to the Secretary or the delegated State, prior to requiring the lessee or the designee to provide such records.

(g) TIMELY COLLECTIONS.-In order to most effectively utilize resources available to the Secretary to maximize the collection of oil and gas receipts from lease obligations to the Treasury within the seven-year period of limitations, and consequently to maximize the State share of such receipts, the Secretary should not perform or require accounting, reporting, or audit activities if the Secretary and the State concerned determine that the cost of conducting or requiring the activity exceeds the expected amount to be collected by the activity, based on the most current 12 months of activity. This subsection shall not provide a defense to a demand or an order to perform a restructured accounting. To the maximum extent possible, the Secretary and delegated States shall reduce costs to the United States Treasury and the States by discontinuing requirements for unnecessary or duplicative data and other information, such as separate allowances and payor information, relating to obligations due. If the Secretary and the State concerned determine that collection will result sooner, the Secretary or the applicable delegated State may waive or forego interest in whole or in part.

(h) APPEALS AND FINAL AGENCY ACTION.-

(1) 33-MONTH PERIOD.-Demands or orders issued by the Secretary or a delegated State are subject to administrative appeal in accordance with the regulations of the Secretary. No State shall impose any conditions which would hinder a lessee's or its designee's immediate appeal of an order to the Secretary or the Secretary's designee. The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings pending on the date of enactment of this section, within 33 months from the date such proceeding was commenced or 33 months from the date of such enactment, whichever is later. The 33-month period may be extended by any period of

time agreed upon in writing by the Secretary and the appellant.

(2) Effect of failure to issue decision.-If no such decision has been issued by the Secretary within the 33-month period referred to in paragraph (1)-

(A) the Secretary shall be deemed to have issued and granted a decision in favor of the appellant as to any nonmonetary obligation and any monetary obligation the principal amount of which is less than $10,000; and

(B) the Secretary shall be deemed to have issued a final decision in favor of the Secretary, which decision shall be deemed to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is $10,000 or more, and the appellant shall have a right to judicial review of such deemed final decision in accordance with title 5 of the United States Code.

(i) COLLECTIONS OF DISPUTED AMOUNTS DUE.-To expedite collections relating to disputed obligations due within the seven-year period beginning on the date the obligation became due, the parties shall hold not less than one settlement consultation and the Secretary and the State concerned may take such action as is appropriate to compromise and settle a disputed obligation, including waiving or reducing interest and allowing offsetting of obligations among leases.

(j) ENFORCEMENT OF A CLAIM FOR JUDICIAL REVIEW.-In the event a demand subject to this section is properly and timely commenced, the obligation which is the subject of the demand may be enforced beyond the seven-year limitations period without being barred by this statute of limitations. In the event a demand subject to this section is properly and timely commenced, a judicial proceeding challenging the final agency action with respect to such demand shall be deemed timely so long as such judicial proceeding is commenced within 180 days from receipt of notice by the lessee or its designee of the final agency action.

(k) IMPLEMENTATION OF FINAL DECISION.- In the event a judicial proceeding or demand subject to this section is timely commenced and thereafter the limitation period in this section lapses during the pendency of such proceeding, any party to such proceeding shall not be barred from taking such action as is required or necessary to implement a final unappealable judicial or administrative decision, including any action required or necessary to implement such decision by the recovery or recoupment of an underpayment or overpayment by means of refund or credit.

(l) Stay of Payment Obligation Pending Review.-Any person ordered by the Secretary or a delegated State to pay any obligation (other than an assessment) shall be

entitled to a stay of such payment without bond or other surety instrument pending an administrative or judicial proceeding if the person periodically demonstrates to the satisfaction of the Secretary that such person is financially solvent or otherwise able to pay the obligation. In the event the person is not able to *so* demonstrate, the Secretary may require a bond or other surety instrument satisfactory to cover the obligation. Any person ordered by the Secretary or a delegated State to pay an assessment shall be entitled to a stay without bond or other surety instrument.

Sec. 116. ASSESSMENTS.

Beginning eighteen months after the date of enactment of this section, to encourage proper royalty payment the Secretary or the delegated State shall impose assessments on a person who chronically submits erroneous reports under this Act. Assessments under this Act may only be issued as provided for in this section.

Sec. 117. ALTERNATIVES FOR MARGINAL PROPERTIES.

(a) DETERMINATION OF BEST INTERESTS OF STATE CONCERNED AND THE UNITED STATES.-The Secretary and the State concerned, acting in the best interests of the United States and the State concerned to promote production, reduce administrative costs, and increase net receipts to the United States and the States, shall jointly determine, on a case by case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof, shall be subject to a prepayment under subsection (b) or regulatory relief under subsection (c). If the State concerned does not consent, such prepayments or regulatory relief shall not be made available under this section for such marginal production: *Provided*, That if royalty payments from a lease or leases, or well or wells are not shared with any State, such determination shall be made solely by the Secretary.

(b) PREPAYMENT OF ROYALTY.-

(1) IN GENERAL.-Notwithstanding the provisions of any lease to the contrary, for any lease or leases or well or wells identified by the Secretary and the State concerned pursuant to subsection (a), the Secretary is authorized to accept a prepayment for royalties in lieu of monthly royalty payments under the lease for the remainder of the lease term if the affected lessee so agrees. Any prepayment agreed to by the Secretary, State concerned and lessee which is less than an average $500 per month in total royalties shall be effectuated under this section not earlier than two years after the date of enactment of this section and, any prepayment which is greater than an average $500 per month in total royalties shall be effectuated under this section not earlier than three years after the date of enactment of this section. The Secretary and the State concerned may condition their acceptance of the prepayment authorized under this section on the lessee's agreeing to such terms and conditions as the Secretary and the State concerned deem appropriate and consistent with the purposes of this Act. Such terms may-

(A) provide for prepayment that does not result in a loss of revenue to the

United States in present value terms;

(B) include provisions for receiving additional prepayments or royalties for developments in the lease or leases or well or wells that deviate significantly from the assumptions and facts on which the valuation is determined; and

(C) require the lessee or *its* designee to provide such periodic production reports as may be necessary to allow the Secretary and the State concerned to monitor production for the purposes of subparagraph (B).

(2) STATE SHARE.-A prepayment under this section shall be shared by the Secretary with any State or other recipient to the same extent as any royalty payment for such lease.

(3) SATISFACTION OF OBLIGATION.-Except as may be provided in the terms and conditions established by the Secretary under subsection (b), a lessee or its designee who makes a prepayment under this section shall have satisfied in full the lessee's obligation to pay royalty on the production stream sold from the lease or leases or well or wells.

(c) ALTERNATIVE ACCOUNTING AND AUDITING REQUIREMENTS.-Within one year after the date of the enactment of this section, the Secretary or the delegated State shall provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop properties subject to subsection (a): *Provided*, That such relief will only be available to lessees in a State that concurs, which concurrence is not required if royalty payments from the lease or leases or well or wells are not shared with any State. Prior to granting such relief, the Secretary and, if appropriate, the State concerned shall agree that the type of marginal wells and relief provided under this paragraph is in the best interest of the United States and, if appropriate, the State concerned.

TITLE II - STATES AND INDIAN TRIBES

APPLICATION OF TITLE

Sec. 201. This title shall apply only with respect to oil and gas leases on Federal lands or Indian lands. Nothing in this title shall be construed to apply to any lease on the Outer Continental Shelf.

COOPERATIVE AGREEMENTS

Sec. 202. (a) The Secretary is authorized to enter into a cooperative agreement or agreements with any State or Indian tribe to share oil or gas royalty management information, to carry out inspection, auditing, investigation or enforcement (not including the collection of royalties, civil or criminal penalties or other payments) activities under this Act in cooperation with the Secretary, and to carry out any other activity described in section 108 of this Act. The Secretary shall not enter into any such cooperative agreement with a State with respect to any such activities on Indian lands, except

with the permission of the Indian tribe involved.

(b) Except as provided in section 203, and pursuant to a cooperative agreement-

(1) each State shall, upon request, have access to all royalty accounting information in the possession of the Secretary respecting the production, removal, or sale of oil or gas from leases on Federal lands within the State; and

(2) each Indian tribe shall, upon request, have access to all royalty accounting information in the possession of the Secretary respecting the production, removal, or sale of oil or gas from leases on Indian lands under the jurisdiction of such tribe.

Information shall be made available under paragraphs (1) and (2) soon as practicable after it comes into the possession of the Secretary. Effective October 1, 1983, such information shall be made available under paragraphs (1) and (2) not later than 30 days after such information comes into the possession of the Secretary.

(c) Any cooperative agreement entered into pursuant to this section shall be in accordance with the provisions of the Federal Grant and Cooperative Agreement Act of 1977, and shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this Act, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to carry out the agreed upon activities

INFORMATION

SEC. 203. (a) Trade secrets, proprietary and other confidential information shall be made available by the Secretary, pursuant to a cooperative agreement, to a State or Indian tribe upon request only if-

(1) such State or Indian tribe consents in writing to restrict the dissemination of the information to those who are directly involved in an audit or investigation under this Act and who have a need to know;

(2) such State or tribe accepts liability for wrongful disclosure;

(3) in the case of a State, such State demonstrates that such information is essential to the conduct of an audit or investigation or to litigation under section 204; and

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

(b) The United States shall not be liable for the wrongful disclosure by any individual, State, or Indian tribe of any information provided to such individual, State, or Indian tribe pursuant to any cooperative agreement or a delegation, authorized by this Act.

(c) Whenever any individual, State, or Indian tribe has obtained possession of information pursuant to a cooperative agreement authorized by this section, or any individual or State has obtained possession of information pursuant to a delegation under section 205, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any department or agency thereof and the State or Indian tribe shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information, or other confidential information under this Act may be required to disclose such information under State law.

STATE SUITS UNDER FEDERAL LAW

Sec. 204. (a)(1) A State may commence a civil action under this section against any person to recover any royalty, interest, or civil penalty which the State believes is due, based upon credible evidence, with respect to any oil and gas lease on Federal lands located within the State.

(2)(A) No action may be commenced under paragraph (1) prior to 90 days after the State has given notice in writing to the Secretary of the payment required. Such 90-day limitation may be waived by the Secretary on a case-by-case basis.

(B) If, within the 90-day period specified in subparagraph (A), the Secretary issues a demand for the payment concerned, no action may be commenced under paragraph (1) with respect to such payment during a 45-day period after issuance of such demand. If, during such 45-day period, the Secretary receives payment in full, no action may be commenced under paragraph (1).

(C) If the Secretary refers the case to the Attorney General of the United States within the 45-day period referred to in subparagraph (B) or within 10 business days after the expiration of such 45-day period, no action may be commenced under paragraph (1) if the Attorney General, within 45 days after the date of such referral, commences, and thereafter diligently prosecutes, a civil action in a court of the United States with respect to the payment concerned.

(3) The State shall notify the Secretary and the Attorney General of the United States of any suit filed by the State under this section.

(4) A court in issuing any final order in any action brought under paragraph (1) may award costs of litigation including reasonable attorney and expert witness fees, to any party in such action if the court determines such an award is appropriate.

(b) An action brought under subsection (a) of this section may be brought only in a United States district court for the judicial district in which the lease site or the leasing activity

complained of is located. Such district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to require compliance or order payment in any such action.

(c) (l) Notwithstanding any other provision of law, any civil penalty recovered by a State under subsection (a) shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate.

(2) Any rent, royalty, or interest recovered by a State under subsection (a) shall be deposited in the Treasury of the United States in the same manner, and subject to the same requirements, as are applicable in the case of any rent, royalty, or interest collected by an officer or employee of the United States, except that such amounts shall be deposited in the Treasury not later than 10 days after receipt by the State.

DELEGATION TO STATES

Sec. 205. DELEGATION OF ROYALTY COLLECTION AND RELATED ACTIVITIES

(a) Upon written request of any State, the Secretary is authorized to delegate , in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this Act to:

(1) conduct inspections, audits, and investigations;
(2) receive and process production and financial reports;
(3) correct erroneous report data;
(4) perform automated verification; and
(5) issue demands, subpoenas, and orders to perform restructured accounting, for royalty management enforcement purposes, to any State with respect to all Federal land within the State.

(b) After notice and opportunity for a hearing, the Secretary is authorized to delegate such authorities and responsibilities granted under this section as the State has requested, if the Secretary finds that-

(1) it is likely that the State will provide adequate resources to achieve the purposes of this Act;
(2) the State has demonstrated that it will effectively and faithfully administer the rules and regulation of the Secretary under this Act in accordance with the requirements of subsections (c) and (d) of this section;
(3) such delegation will not create an unreasonable burden on any lessee;
(4) the State agrees to adopt standardized reporting procedures prescribed by the Secretary for royalty and production accounting purposes, unless the State and all affected parties (including the Secretary) otherwise agree;
(5) the State agrees to follow and adhere to regulations and guidelines issued by the Secretary pursuant to the mineral leasing laws regarding valuation of production; and

(6) where necessary for a State to have authority to carry out and enforce a delegated activity, the State agrees to enact such laws and promulgate such regulations as are consistent with relevant Federal laws and regulations with respect to the Federal lands within the State.

(c) After notice and opportunity for hearing, the Secretary shall issue a ruling as to the consistency of a State's proposal with the provisions of this section and regulations under subsection (d) within 90 days after submission of such proposal. In any unfavorable ruling, the Secretary shall set forth the reasons therefor and state whether the Secretary will agree to delegate to the State if the State meets the conditions set forth in such ruling.

(d) After consultation with State authorities, the Secretary by rule shall promulgate, within 12 months after the date of enactment of this section, standards and regulations pertaining to the authorities and responsibilities to be delegated under subsection (a), including standards and regulations pertaining to-

(1) audits to be performed;
(2) records and accounts to be maintained;
(3) reporting procedures to be required by the States under this section;
(4) receipt and processing of production and financial reports;
(5) correction of erroneous report data;
(6) performance of automated verification;
(7) issuance of standards and guidelines in order to avoid duplication of effort;
(8) transmission of report data to the Secretary; and
(9) issuance of demands, subpoenas, and orders to perform restructured accounting, for royalty accounting purposes.

Such standards and regulations shall be designed provide reasonable assurance that a uniform and effective royalty management system will prevail among the States. The records and accounts under section (2) shall be sufficient to allow the Secretary to monitor the performance of any State under this section.

(e) If, after notice and opportunity for a hearing, the Secretary finds that any State to which any authority and responsibility of the Secretary has been delegated under this section is in violation of any requirement of this section or any rule thereunder, or that an affirmative finding by the Secretary under subsection (b) can no longer be made, the Secretary may revoke such delegation. If, after providing written notice to a delegated State and a reasonable opportunity to take corrective action requested by the Secretary, the Secretary determines that the State has failed to issue a demand or order to a Federal lessee within the State, that such failure may result in an underpayment of an obligation due the United States by such lessee, and that such underpayment may be uncollected without Secretarial intervention, the Secretary may issue such demand or order in accordance with the provisions of this Act prior to or absent the withdrawal of the delegated authority.

(f) subject to appropriations, the Secretary shall compensate any State for those costs

which may be necessary to carry out the delegated activities under this Section. Payment shall be made no less than every quarter during the fiscal year. Compensation to a State may not exceed the Secretary's reasonable anticipated expenditures for performance of such delegated activities by the Secretary. Such costs shall be allocated for the purpose of section 35(b) of the Act entitled "An act to promote the mining coal, phosphate, oil, oil shale, gas and sodium on the public domain", approved February 25, 1920 (commonly known as the Mineral Leasing Act) (30 U.S.C. 191 (b)) to the administration and enforcement of laws providing for the leasing of any onshore lands or interests in lands owned by the United States. Any further allocation of costs under section 35(b) made by the Secretary for oil and gas activities, other than those costs to compensate States for delegated activities under this Act, shall be only those costs associated with onshore oil and gas activities and may not include any duplication of costs allocated pursuant to the previous sentence. Nothing in this section affects the Secretary's authority to make allocations under section 35(b) for non-oil and gas mineral activities. All moneys received from sales, bonuses, rentals, royalties, assessments and interest, including money claimed to be due and owing pursuant to a delegation under this section, shall be payable and paid to the Treasury of the United States.

(g) Any action of the Secretary to approve or disapprove a proposal submitted by a State under this section shall be subject to judicial review in the United States district court which includes the capital of the State submitting the proposal.

(h) Any State operating pursuant to a delegation existing on the date of enactment of this Act may continue to operate under the terms and conditions of the delegation, except to the extent that a revision of the existing agreement is adopted pursuant to this section.

SHARED CIVIL PENALTIES

SEC. 206. An amount equal to 50 per centum of any civil penalty collected by the Federal Government under this Act resulting from activities conducted by a State or Indian tribe pursuant to a cooperative agreement under section 202 or a State under a delegation under section 205, shall be payable to such State or tribe. Such amount shall be deducted from any compensation due such State or Indian tribe under section 202 or such State under section 205.

TITLE III - GENERAL PROVISIONS

SECRETARIAL AUTHORITY

SEC. 301. (a) The Secretary shall prescribe such rules and regulations as he deems reasonably necessary to carry out this Act.

(b) Rules and regulations issued to implement this Act shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding section 553(a)(2) of that title.

(c) In addition to entering into cooperative agreements or delegation of authority authorized under this Act, the Secretary may contract with such non-Federal Government inspectors, auditors, and other persons as he deems necessary to aid in carrying out his functions under this Act and its implementation. With respect to his auditing and enforcement functions under this Act, the Secretary shall coordinate such functions so as to avoid to the maximum extent practicable, subjecting lessees, operators, or other persons to audits or investigations of the same subject matter by more than one auditing or investigating entity at the same time.

REPORTS

SEC. 302. (a) The Secretary shall submit to the Congress an annual report on the implementation of this Act. The information to be included in the report and the format of the report shall be developed by the Secretary after consulting with the Committees on Interior and Insular Affairs of the House of Representatives and on Energy and Natural Resources of the Senate. The Secretary shall also report on the progress of the Department in reconciling account balances.

(b) Commencing with fiscal year 1984, the Inspector General of the Department of the Interior shall conduct a biennial audit of the Federal royalty management system. The Inspector General shall submit the results of such audit to the Secretary and to the Congress.

STUDY OF OTHER MINERALS

Sec. 303. (a) The Secretary shall study the question of the adequacy of royalty management for coal, uranium and other energy and nonenergy minerals on Federal and Indian lands. The study shall include proposed legislation if the Secretary determines that such legislation is necessary to ensure prompt and proper collection of revenues owed to the United States, the States and Indian tribes or Indian allottees from the sale, lease or other disposal of such minerals.

(b) The study required by subsection (a) of this section shall be submitted to Congress not later than one year from the date of the enactment of this Act.

RELATION TO OTHER LAWS

SEC. 304. (a) The penalties and authorities provided in this Act are supplemental to, and not in derogation of, any penalties or authorities contained in any other provision of law.

(b) Nothing in this Act shall be construed to reduce the responsibilities of the Secretary to ensure prompt and proper collection of revenues from coal, uranium and other energy and nonenergy minerals on Federal and Indian lands, or to restrain the Secretary from entering into cooperative agreements or other appropriate arrangements with States and Indian tribes to share royalty management responsibilities and activities for such minerals under existing authorities.

(c) Except as expressly provided in subsection 302(b), nothing in this Act shall be

construed to enlarge, diminish, or otherwise affect the authority or responsibility of the Inspector General of the Department of the Interior or of the Comptroller General of the United States:

(d) No provision of this Act impairs or affects lands and interests in land entrusted to the Tennessee Valley Authority.

EFFECTIVE DATE

SEC. 305. The provisions of this Act shall apply to oil and gas leases issued before, on, or after the date of the enactment of this Act, except that in the case of a lease issued before such date, no provision of this Act or any rule or regulation prescribed tinder this Act shall alter the express and specific provisions of such a lease.

FUNDING

Sec. 306. Effective October 1, 1983, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including such sums as may be necessary for the cooperative agreements, contracts, and delegations authorized by this Act: *Provided,* That nothing in this Act shall be construed to affect or impair any authority to enter into contracts or make payments under any other provision of law.

STATUTE OF LIMITATIONS

Sec. 307. Except in the case of fraud, any action to recover penalties under this Act shall be barred unless the action is commenced within 6 years after the date of the act or omission which is the basis for the action.

EXPANDED ROYALTY OBLIGATIONS

SEC. 308. Any lessee is liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under this Act or any mineral leasing law.

SEVERABILITY

SEC. 309. If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

TITLE IV - REINSTATEMENT OF LEASES AND CONVERSION OF UNPATENTED OIL PLACER CLAIMS

AMENDMENT OF MINERAL LANDS LEASING ACT OF 1920

SEC. 401. Section 31 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188) is amended by redesignating subsection (d) as subsection (j) and by inserting after subsection (c) the following new subsections:

"(d)(l) Where any oil and gas lease issued pursuant to section 17(b) or section 17(c) of this Act or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease

(A) occurs after the expiration of the primary term or any extension thereof, or

(B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

"(2) No lease shall be reinstated under paragraph (1) of this subsection unless-

"(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

"(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of-

"(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual

notice, or

"(ii) fifteen months after termination of the lease.

"(e) Any reinstatement under subsection (d) of this section shall be made on if these conditions are met:

"(1) no valid lease, whether still in existence or not, shall have been issued affecting any of the lands covered by the terminated lease prior to the filing of such petition: *Provided, however,* That after receipt of a petition for reinstatement, the Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him;

"(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 17(b) of this Act of a requirement for future rentals at a rate of not less than $10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 17(c) of this Act of a requirement that future rentals shall be at a rate not less than $5 per acre per year, all as determined by the Secretary;

"(3) (A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 17(b) of this Act of a requirement for future royalties at a rate of not less than 16⅔% percent computed on a sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royalty schedule then in force and used for royalty determination for competitive leases issued pursuant to such section as determined by the Secretary: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

"(B) payment of back royalties and inclusion in a reinstate,, lease issued pursuant to the provisions of section 17(c) of this Act of a requirement for future royalties at a rate not less than 16⅔% percent: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the cancellation or termination of the original lease; and

"(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the reinstatement.

A copy of said notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the Secretary deemed significant in making this determination to reinstate, shall be furnished to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate at least thirty days in advance of the reinstatement. The lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed

$500. In addition the lessee shall reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement.

"(f) Where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease, consistent with the provisions of section 17(e) of this Act, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

"(1) a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim , being filed with the Secretary-

"(A) with respect to any claim deemed conclusively abandoned on or before the date of enactment of the Federal Oil and Gas Royalty Management Act of 1982, on or before the one hundred and twentieth day after such date of enactment, or

(B) with respect to any claim deemed conclusively abandoned after such date of enactment, on or before the one hundred and twentieth day after final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim;

"(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition: *Provided, however,* That after the filing of a petition for issuance of a lease under this subsection, the Secretary shall not issue any new lease affecting any of the lands covered by such abandoned oil placer mining claim for a reasonable period, as determined in accordance with regulations issued by him;

"(3) a requirement in the lease for payment of rental, including back rentals accruing from the statutory date of abandonment of the oil placer mining claim, of not less than $5 per acre per year;

"(4) a requirement in the lease for payment of royalty on production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the statutory date the claim was deemed conclusively abandoned, of not less than 12½ percent; and

"(5) compliance with the notice and reimbursement of costs provisions of paragraph (4) of subsection (e) but addressed to the petition covering the conversion of an abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease.

"(g) (1) Except as otherwise provided in this section, a reinstated lease shall be treated as a competitive or a noncompetitive oil and gas lease in the same manner as the original lease issued pursuant to section 17(b) or 17(c) of this Act.

"(2) Except as otherwise provided in this section, the issuance of a lease in lieu of an abandoned patented oil placer mining claim shall be treated as a noncompetitive oil and gas lease issued pursuant to section 17(c) of this Act.

"(h) The minimum royalty provisions of section 17(j) and the provisions of section 39 of this Act shall be applicable to leases issued pursuant to subsections (d) and (f) of this section.

"(i) (l) In acting on a petition to issue a noncompetitive, oil and gas lease, under subsection (f) of this section or in response to a request filed after issuance of such a lease, or both, the Secretary is authorized to reduce the royalty on such lease if in his judgment it is equitable to do so or the circumstances warrant such relief due to uneconomic or other circumstances which could cause undue hardship or premature termination of production.

"(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes if, in his judgment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease after the rent had become due and had not been paid; or if in the judgment of the Secretary it is equitable to do so for any reason.".

Approved January 12, 1983.

LEGISLATIVE HISTORY — H.R. 5121 (S. 2305):

HOUSE REPORT No. 97-859 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 97-512 accompanying S. 2305 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD, Vol. 128 (1982):
Sept. 29, considered and passed House.
Dec. 6, considered and passed Senate, amended, in lieu of H.R. 5121.
Dec. 13, House concurred in Senate amendments with an amendment.
Dec. 16, Senate concurred in House amendment with an amendment.
Dec. 18, House concurred in Senate amendment with an amendment.

Dec. 21, Senate disagreed to House amendment; House receded from its amendment and concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 19, No. 2 (1983):

Jan. 12, Presidential statement.

FEDERAL OIL AND GAS ROYALTY SIMPLIFICATION AND FAIRNESS ACT OF 1996 (PL 104-185)

The amendments to FOGRMA by the above Act are in **bold** type. There were to be seven corrections to the Act and they are **bold**, ***italicized***, and underlined (***date***) and are contained within the **bold** type that sets forth the changes to FOGRMA by this Act. Although these changes have not passed through Congress as an amendment, the changes have been incorporated into FOGRMA. Additionally, the following 5 sections of the Act clarify its application.

SEC. 8. APPLICABILITY.

(a) FOGRMA.-With respect to Federal lands, sections 202 and 307 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732 and 1755), are no longer applicable. The applicability of those sections to Indian leases is not affected.

(b) OCSLA.-Effective on the date of the enactment of this Act, section 10 of the Outer Continental Shelf Lands Act (43 U.S.C. 1339) is repealed.

SEC. 9. INDIAN LANDS.

The amendments made by this Act shall not apply with respect to Indian lands, and the provisions of the Federal Oil and Gas Royalty Management Act of 1982 as in effect on the day before the date of enactment of this Act shall continue to apply after such date with respect to Indian lands.

SEC. 10. PRIVATE LANDS.

This Act shall not apply to any privately owned minerals.

SEC. 11. EFFECTIVE DATE.

Except as provided by section 115(h), section 111(h), section 111(k)(5), and section 117 of the Federal Oil and Gas Royalty Management Act of 1982 (as added by this Act), this Act, and the amendments made by this Act, shall apply with respect to the production of oil and gas after the first day of the month following the date of the enactment of this Act.

SEC. 12. SAVINGS CLAUSE.

Nothing in this Act shall be construed to give a State a property right or interest in any Federal lease or land.

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Authority: 30 U.S.C. 189 and 359; 43 U.S.C. 1732(b), 1733, and 1740; and 40 Opinion of the Attorney General 41.

Source: 48 FR 33662, July 22, 1983, unless otherwise noted.

Subpart 3100 -- Onshore Oil and Gas Leasing: General

§ 3100.0-3 Authority.

(a) *Public domain.* (1) Oil and gas in public domain lands and lands returned to the public domain under section 2370 of this title are subject to lease under the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), by acts, including, but not limited to, section 1009 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148).

(2) *Exceptions.* (i) Units of the National Park System, including lands withdrawn by section 206 of the Alaska National Interest Lands Conservation Act, except as provided in paragraph (g)(4) of this section;

(ii) Indian reservations;

(iii) Incorporated cities, towns and villages;

(iv) Naval petroleum and oil shale reserves and the National Petroleum Reserve -- Alaska.

(v) Lands north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve -- Alaska;

(vi) Arctic National Wildlife Refuge in Alaska.

(vii) Lands recommended for wilderness allocation by the surface managing agency:

(viii) Lands within Bureau of Land Management wilderness study areas;

(ix) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(x) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xi) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(b) *Acquired lands.* (1) Oil and gas in acquired lands are subject to lease under the Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351-359).

(2) *Exceptions.* (i) Units of the National Park System, except as provided in paragraph (g)(4) of this section;

(ii) Incorporated cities, towns and villages;

(iii) Naval petroleum and oil shale reserves and the National Petroleum Reserve -- Alaska;

(iv) Tidelands or submerged coastal lands within the continental shelf adjacent or littoral to lands within the jurisdiction of the United States;

(v) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals essential to the defense of the country, except oil, gas and other minerals subject to leasing under the Act;

(vi) Lands reported as excess under the Federal Property and Administrative Services Act of 1949;

(vii) Lands acquired by the United States by foreclosure or otherwise for resale.

(viii) Lands recommended for wilderness allocation by the surface managing agency;

(ix) Lands within Bureau of Land Management wilderness study areas;

(x) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(xi) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(c) National Petroleum Reserve -- Alaska is subject to lease under the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

(d) Where oil or gas is being drained from lands otherwise unavailable for leasing, there is implied authority in the agency having jurisdiction of those lands to grant authority to the Bureau of Land Management to lease such lands (see 43 U.S.C. 1457; also Attorney General's Opinion of April 2, 1941 (Vol. 40 Op. Atty. Gen. 41)).

(e) Where lands previously withdrawn or reserved from the public domain are no longer needed by the agency for which the lands were withdrawn or reserved and such lands are retained by the General Services Administration, or where acquired lands are declared as excess to or surplus by the General Services Administration, authority to lease such lands may be transferred to the Department in accordance with the Federal Property and Administrative Services Act of 1949 and the Mineral Leasing Act for Acquired Lands, as amended.

(f) The Act of May 21, 1930 (30 U.S.C. 301-306), authorizes the leasing of oil and gas deposits under certain rights-of-way to the owner of the right-of-way or any assignee.

(g)(1)The Act of May 9, 1942 (56 Stat. 273), as amended by the Act of October 25, 1949 (63 Stat. 886), authorizes leasing on certain lands in Nevada.

(2) The Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026), authorizes leasing on certain lands patented to the State of California.

(3) The Act of June 30, 1950 (16 U.S.C. 508(b)) authorizes leasing on certain National Forest Service Lands in Minnesota.

(4) *Units of the National Park System.* The Secretary is authorized to permit mineral leasing in the following units of the National Park System if he/she finds that such disposition would not have significant adverse effects on the administration of the area and if lease operations can be conducted in a manner that will preserve the scenic, scientific and historic features contributing to public enjoyment of the area, pursuant to the following authorities:

(i) *Lake Mead National Recreation Area* -- The Act of October 8, 1964 (16 U.S.C. 460n *et seq.*).

(ii) *Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area* -- The Act of November 8, 1965 (79 Stat. 1295; 16 U.S.C. 460q *et seq.*).

(iii) *Ross Lake and Lake Chelan National Recreation Areas* -- The Act of October 2, 1968 (82 Stat. 926; 16 U.S.C. 90 *et seq.*).

(iv) *Glen Canyon National Recreation Area* -- The Act of October 27, 1972 (86 Stat. 1311; 16 U.S.C. 460dd *et seq.*).

(5) *Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the Act of November 8, 1965 (Pub. L. 89-336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of leasable minerals from lands (or interest in lands) within the recreation area under the jurisdiction of the Secretary of Agriculture in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 *et seq.*), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351-359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

[48 FR 33662, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984; 53 FR 17351, 17352, May 16, 1988; 53 FR 22835, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3100.0-5 Definitions.

As used in this part, the term:

(a) *Operator* means any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(b) *Unit operator* means the person authorized under the agreement approved by the Department of the Interior to conduct operations within the unit.

(c) *Record title* means a lessee's interest in a lease which includes the obligation to pay rent, and the rights to assign and relinquish the lease. Overriding royalty and operating rights are severable from record title interests.

(d) *Operating right* (working interest) means the interest created out of a lease authorizing the holder of that right to enter upon the leased lands to conduct drilling and related operations, including production of oil or gas from such lands in accordance with the terms of the lease.

(e) *Transfer* means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: Assignment which means a transfer of all or a portion of the lessee's record title interest in a lease; and sublease which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

(f) *National Wildlife Refuge System Lands* means lands and water, or interests therein, administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife management areas or waterfowl production areas.

(g) *Actual drilling operations* includes not only the physical drilling of a well, but the testing, completing or equipping of such well for production.

(h)(1) *Primary term* of lease subject to section 4(d) of the Act prior to the revision of 1960 (30 U.S.C. 226-1(d)) means all periods of the life of the lease prior to its extension by reason of production of oil and gas in paying quantities; and

(2) *Primary term* of all other leases means the initial term of the lease. For competitive leases, except those within the National Petroleum Reserve -- Alaska, this means 5 years and for noncompetitive leases this means 10 years.

(i) *Lessee* means a person or entity holding record title in a lease issued by the United States.

(j) *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

(k) *Bid* means an amount of remittance offered as partial compensation for a lease equal to or in excess of the national minimum acceptable bonus bid set by statute or by the Secretary, submitted by a person or entity for a lease parcel in a competitive lease sale.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17352, May 16, 1988; 53 FR 22836, June 17, 1988]

§ 3100.0-9 Information collection.

(a)(1) The collections of information contained in § 3103.4-1(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and are among the collections assigned clearance number 1004-0145. The information will be used to determine whether an oil and gas operator or owner may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with 30 U.S.C. 181, *et seq.*, and 30 U.S.C. 351-359.

(2) Public reporting burden for the information collections assigned clearance number 1004-0145 is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0145, Washington, DC 20503.

(b)(1) The collections of information contained in § 3103.4-1(c) and (d) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010-0090. The information will be used to determine whether an oil and gas lessee may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with 30 U.S.C. 181, *et seq.*, and 30 U.S.C. 351-359.

(2) Public reporting burden for this information is estimated to average 1/2 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service (Mail Stop 2300), 381 Elden Street, Herndon, VA 22070-4817, and the Office of Management and Budget, Paperwork Reduction Project, 1010-0090, Washington, DC 20503.

[57 FR 35973, Aug. 11, 1992]

§ 3100.1 Helium.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the Act have been reserved to the United States.

§ 3100.2 Drainage.

§ 3100.2-1 Compensation for drainage.

Upon a determination by the authorized officer that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer may execute agreements with the owners of adjacent lands whereby the United States and its lessees shall be compensated for such drainage. Such agreements shall be made with the consent of any lessee affected by an agreement. Such lands may also be offered for lease in accordance with part 3120 of this title.

§ 3100.2-2 Drilling and production or payment of compensatory royalty.

Where lands in any leases are being drained of their oil or gas content by wells either on a Federal lease issued at a lower rate of royalty or on non-Federal lands, the lessee shall both drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling necessary wells, the lessee may, with the consent of the authorized officer, pay compensatory royalty in the amount determined in accordance with § 3162.2(a) of this title.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17352, May 16, 1988]

§ 3100.3 Options.

§ 3100.3-1 Enforceability.

(a) No option to acquire any interest in a lease shall be enforceable if entered into for a period of more than 3 years (including any renewal period that may be provided for in the option) without the approval of the Secretary.

(b) No option or renewal thereof shall be enforceable until a signed copy or notice of option has been filed in the proper BLM office. Each such signed copy or notice shall include:

(1) The names and addresses of the parties thereto;

(2) The serial number of the lease to which the option is applicable;

(3) A statement of the number of acres covered by the option and of the interests and obligations of the parties to the option, including the date and expiration date of the option; and

(4) The interest to be conveyed and retained in exercise of the option. Such notice shall be signed by all parties to the option or their duly authorized agents. The signed copy or notice of option required by this paragraph shall contain or be accompanied by a signed statement by the holder of the option that he/she is the sole party in interest in the option; if not, he/she shall set forth the names and provide a description of the interest therein of the other interested parties, and provide a description of the agreement between them, if oral, and a copy of such agreement, if written.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17352, May 16, 1988. Redesignated at 53 FR 22836, June 17, 1988]

§ 3100.3-2 Effect of option on acreage.

The acreage to which the option is applicable shall be charged both to the grantor of the option and the option holder. The acreage covered by an unexercised option remains charged during its term until notice of its relinquishment or surrender

has been filed in the proper BLM office.

[48 FR 33662, July 22, 1983. Redesignated at 53 FR 22836, June 17, 1988]

§ 3100.3-3 Option statements.

Each option holder shall file in the proper BLM office within 90 days after June 30 and December 31 of each year a statement showing as of the prior June 30 and December 31, respectively:

(a) Any changes to the statements submitted under § 3100.3-1(b) of this title, and

(b) The number of acres covered by each option and the total acreage of all options held in each State.

[53 FR 17352, May 16, 1988. Redesignated and amended at 53 FR 22836, June 17, 1988]

§ 3100.4 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this part 3100 and parts 3110 through 3190 of this chapter are subject to part 2 of this title, except as provided in paragraph (c) of this section. Part 2 of this title includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in Department of the Interior records. Certain mineral information not protected from public disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (FOIA) (5 U.S.C. 552) request.

(b) When you submit data and information under this part 3100 and parts 3110 through 3190 of this chapter that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. BLM will keep all such data and information confidential to the extent allowed by § 2.13(c) of this title.

(c) Under the Indian Mineral Development Act of 1982 (IMDA) (25 U.S.C. 2101 *et seq.*), the Department of the Interior will hold as privileged proprietary information of the affected Indian or Indian tribe --

(1) All findings forming the basis of the Secretary's intent to approve or disapprove any Minerals Agreement under IMDA; and

(2) All projections, studies, data, or other information concerning a Minerals Agreement under IMDA, regardless of the date received, related to --

(i) The terms, conditions, or financial return to the Indian parties;

(ii) The extent, nature, value, or disposition of the Indian mineral resources; or

(iii) The production, products, or proceeds thereof.

(d) For information concerning Indian minerals not covered by paragraph (c) of this section --

(1) BLM will withhold such records as may be withheld under an exemption to FOIA when it receives a request for information related to tribal or Indian minerals held in trust or subject to restrictions on alienation;

(2) BLM will notify the Indian mineral owner(s) identified in the records of the Bureau of Indian Affairs (BIA), and BIA, and give them a reasonable period of time to state objections to disclosure, using the standards and procedures of § 2.15(d) of this title, before making a decision about the applicability of FOIA exemption 4 to:

(i) Information obtained from a person outside the United States Government; when

(ii) Following consultation with a submitter under § 2.15(d) of this title, BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA; but

(iii) BLM has reason to believe that disclosure of the information may result in commercial or financial injury to the Indian mineral owner(s), but is uncertain that such is the case.

[63 FR 52952, Oct. 1, 1998]

Subpart 3101 -- Issuance of Leases

§ 3101.1 Lease terms and conditions.

§ 3101.1-1 Lease form.

A lease shall be issued only on the standard form approved by the Director.

[53 FR 17352, May 16, 1988]

§ 3101.1-2 Surface use rights.

A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.

[53 FR 17352, May 16, 1988]

§ 3101.1-3 Stipulations and information notices.

The authorized officer may require stipulations as conditions of lease issuance. Stipulations shall become part of the lease and shall supersede inconsistent provisions of the standard lease form. Any party submitting a bid under subpart 3120 of this title, or an offer under § 3110.1(b) of this title during the period when use of the parcel number is required pursuant to § 3110.5-1 of this title, shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale available from the proper BLM office. A party filing a noncompetitive offer in accordance with § 3110.1(a) of this title shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, unless the offer is withdrawn in accordance with § 3110.6 of this title. An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.

[53 FR 17352, May 16, 1988, as amended at 53 FR 22836, June 17, 1988]

§ 3101.1-4 Modification or waiver of lease terms and stipulations.

A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines 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 if proposed operations would not cause unacceptable impacts. If the authorized officer has determined, prior to lease issuance, that a stipulation involves an issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is required before modification or waiver. If subsequent to lease issuance the authorized officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for at least a 30-day period.

[53 FR 22836, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3101.2 Acreage limitations.

§ 3101.2-1 Public domain lands.

(a) No person or entity shall take, hold, own or control more than 246,080 acres of Federal oil and gas leases in any one State at any one time. No more than 200,000 acres of such acres may be held under option.

(b) In Alaska, the acreage that can be taken, held, owned or controlled is limited to 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the 2 leasing districts. The boundary between the 2 leasing districts in Alaska begins at the northeast corner of the Tetlin National Wildlife Refuge as established on December 2, 1980 (16 U.S.C. 3101), at a point on the boundary between the United States and Canada, then northwesterly along the northern boundary of the refuge to the left limit of the Tanana River (63°9'38" north latitude, 142°20'52" west longitude), then westerly along the left limit to the confluence of the Tanana and Yukon Rivers, and then along the left limit of the Yukon River from said confluence to its principal southern mouth.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17352, May 16, 1988]

§ 3101.2-2 Acquired lands.

An acreage limitation separate from, but equal to the acreage limitation for public domain lands described in § 3101.2-1 of this title, applies to acquired lands. Where the United States owns only a fractional interest in the mineral resources of the lands involved in a lease, only that part owned by the United States shall be charged as acreage holdings. The acreage embraced in a future interest lease shall not be charged as acreage holdings until the lease for the future interest becomes effective.

§ 3101.2-3 Excepted acreage.

Leases committed to any unit or cooperative plan approved or prescribed by the Secretary and leases subject to an operating, drilling or development contract approved by the Secretary, other than communitization agreements, shall not be included in computing accountable acreage. Acreage subject to offers to lease, overriding royalties and payments out of production shall not be included in computing accountable acreage.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17352, May 16, 1988]

§ 3101.2-4 Excess acreage.

(a) Where, as the result of the termination or contraction of a unit or cooperative plan, the elimination of a lease from an operating, drilling or development contract a party holds or controls excess accountable acreage, said party shall have 90 days from that date to reduce the holdings to the prescribed limitation and to file proof of the reduction in the proper BLM office. Where as a result of a merger or the purchase of the controlling interest in a corporation, acreage in excess of the amount permitted is acquired, the party holding the excess acreage shall have 180 days from the date of the merger or

purchase to divest the excess acreage. If additional time is required to complete the divestiture of the excess acreage, a petition requesting additional time, along with a full justification for the additional time, may be filed with the authorized officer prior to the termination of the 180-day period provided herein.

(b) If any person or entity is found to hold accountable acreage in violation of the provisions of these regulations, lease(s) or interests therein shall be subject to cancellation or forfeiture in their entirety, until sufficient acreage has been eliminated to comply with the acreage limitation. Excess acreage or interest shall be cancelled in the inverse order of acquisition.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17353, May 16, 1988]

§ 3101.2-5 Computation.

The accountable acreage of a party owning an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. The accountable acreage of a party who is the beneficial owner of more than 10 percent of the stock of a corporation which holds Federal oil and gas leases shall be the party's proportionate part of the corporation's accountable acreage. Parties to a contract for development of leased lands and co-parties, except those operating, drilling or development contracts subject to § 3101.2-3 of this title, shall be charged with their proportionate interests in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the laws for any one party shall be permitted.

[48 FR 33662, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984; 53 FR 17353, May 16, 1988]

§ 3101.2-6 Showing required.

At any time the authorized officer may require any lessee or operator to file with the Bureau of Land Management a statement showing as of specified date the serial number and the date of each lease in which he/she has any interest, in the particular State, setting forth the acreage covered thereby.

§ 3101.3 Leases within unit areas.

§ 3101.3-1 Joinder evidence required.

Before issuance of a lease for lands within an approved unit, the lease offeror shall file evidence with the proper BLM office of having joined in the unit agreement and unit operating agreement or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable to the authorized officer the operator shall be permitted to operate independently but shall be required to conform to the terms and provisions of the unit agreement with respect to such operations.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17353, May 16, 1988]

§ 3101.3-2 Separate leases to issue.

A lease offer for lands partly within and partly outside the boundary of a unit shall result in separate leases, one for the lands within the unit, and one for the lands outside the unit.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17353, May 16, 1988]

§ 3101.4 Lands covered by application to close lands to mineral leasing.

Offers filed on lands within a pending application to close lands to mineral leasing shall be suspended until the segregative effect of the application is final.

§ 3101.5 National Wildlife Refuge System lands.

§ 3101.5-1 Wildlife refuge lands.

(a) Wildlife refuge lands are those lands embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(b) No offers for oil and gas leases covering wildlife refuge lands shall be accepted and no leases covering such lands shall be issued except as provided in § 3100.2 of this title. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau on a form approved by the Director.

§ 3101.5-2 Coordination lands.

(a) Coordination lands are those lands withdrawn or acquired by the United States and made available to the States by cooperative agreements entered into between the Fish and Wildlife Service and the game commissions of the various States, in accordance with the Act of March 10, 1934 (48 Stat. 401), as amended by the Act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the Fish and Wildlife Service as the custodial agency of the United States.

(b) Representatives of the Bureau and the Fish and Wildlife Service shall, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those coordination lands which shall not be subject to oil and gas leasing. Coordination lands not closed to oil and gas leasing shall be subject to leasing on the imposition of such stipulations as are agreed upon by the State Game Commission, the Fish and Wildlife Service and the Bureau.

§ 3101.5-3 Alaska wildlife areas.

No lands within a refuge in Alaska open to leasing shall be available until the Fish and Wildlife Service has first completed compatability determinations.

§ 3101.5-4 Stipulations.

Leases shall be issued subject to stipulations prescribed by the Fish and Wildlife Service as to the time, place, nature and condition of such operations in order to minimize impacts to fish and wildlife populations and habitat and other refuge resources on the areas leased. The specific conduct of lease activities on any refuge lands shall be subject to site-specific stipulations prescribed by the Fish and Wildlife Service.

§ 3101.6 Recreation and public purposes lands.

Under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), all lands within Recreation and Public Purposes leases and patents are subject to lease under the provisions of this part, subject to such conditions as the Secretary deems appropriate.

§ 3101.7 Federal lands administered by an agency outside of the Department of the Interior.

§ 3101.7-1 General requirements.

(a) Acquired lands shall be leased only with the consent of the surface managing agency, which upon receipt of a description of the lands from the authorized officer, shall report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

(b) Public domain lands shall be leased only after the Bureau has consulted with the surface managing agency and has provided it with a description of the lands, and the surface managing agency has reported its recommendation to lease with stipulations, if any, or not to lease to the authorized officer. If consent or lack of objection of the surface managing agency is required by statute to lease public domain lands, the procedure in paragraph (a) of this section shall apply.

(c) National Forest System lands whether acquired or reserved from the public domain shall not be leased over the objection of the Forest Service. The provisions of paragraph (a) of this section shall apply to such National Forest System lands.

[53 FR 22836, June 17, 1988]

§ 3101.7-2 Action by the Bureau of Land Management.

(a) Where the surface managing agency has consented to leasing with required stipulations, and the Secretary decides to issue a lease, the authorized officer shall incorporate the stipulations into any lease which it may issue. The authorized officer may add additional stipulations.

(b) The authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency objects or withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

(c) The authorized officer shall review all recommendations and shall accept all reasonable recommendations of the surface managing agency.

[48 FR 33662, July 22, 1983. Redesignated and amended at 53 FR 22836, June 17, 1988]

§ 3101.7-3 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under part 4 of this title.

(b) Where, as provided by statute, the surface managing agency has required that certain stipulations be included in a lease or has consented, or objected or refused to consent to leasing, any appeal by an affected lease offeror shall be pursuant to the administrative remedies provided by the particular surface managing agency.

[53 FR 22837, June 17, 1988]

§ 3101.8 State's or charitable organization's ownership of surface overlying Federally-owned minerals.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of lands to any State or political subdivision, agency, or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, with reservation of the oil and gas rights to the United States, such party shall be given an opportunity to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations and also to file any objections it may have to the issuance of a lease. Where a party controlling the surface opposes the issuance of a lease or wishes to place such restrictive stipulations upon the lease that it could not be operated upon or become part of a drilling unit and hence is without mineral value, the facts submitted in support of the opposition or request for restrictive stipulations shall be given consideration and each case decided on its merits. The opposition to lease or necessity for restrictive stipulations expressed by the party controlling the surface affords no legal basis or authority to refuse to issue

the lease or to issue the lease with the requested restrictive stipulations for the reserved minerals in the lands; in such case, the final determination whether to issue and with what stipulations, or not to issue the lease depends upon whether or not the interests of the United States would best be served by the issuance of the lease.

[48 FR 33662, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984; 53 FR 22837, June 17, 1988]

Subpart 3102 -- Qualifications of Lessees

§ 3102.1 Who may hold leases.

Leases or interests therein may be acquired and held only by citizens of the United States; associations (including partnerships and trusts) of such citizens; corporations organized under the laws of the United States or of any State or Territory thereof; and municipalities.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17353, May 16, 1988]

§ 3102.2 Aliens.

Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control in a present or potential lessee that is incorporated under the laws of the United States or of any State or territory thereof, and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. If it is determined that a country has denied similar or like privileges to citizens or corporations of the United States, it would be placed on a list available from any Bureau of Land Management State office.

[53 FR 17353, May 16, 1988]

§ 3102.3 Minors.

Leases shall not be acquired or held by one considered a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors in their behalf. Such legal guardians or trustees shall be citizens of the United States or otherwise meet the provisions of § 3102.1 of this title.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17353, May 16, 1988]

§ 3102.4 Signature.

(a) The original of an offer or bid shall be signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee.

(b) Three copies of a transfer of record title or of operating rights (sublease), as required by section 30a of the act, shall be originally signed and dated by the transferor or anyone authorized to sign on behalf of the transferor. However, a transferee, or anyone authorized to sign on his or her behalf, shall be required to sign and date only 1 original request for approval of a transfer.

(c) Documents signed by any party other than the present or potential lessee shall be rendered in a manner to reveal the name of the present or potential lessee, the name of the signatory and their relationship. A signatory who is a member of the organization that constitutes the present or potential lessee (e.g., officer of a corporation, partner of a partnership, etc.) may be requested by the authorized officer to clarify his/her relationship, when the relationship is not shown on the documents filed.

(d) Submission of a qualification number does not meet the requirements of paragraph (c) of this section.

[53 FR 17353, May 16, 1988]

§ 3102.5 Compliance, certification of compliance and evidence.

§ 3102.5-1 Compliance.

In order to actually or potentially own, hold, or control an interest in a lease or prospective lease, all parties, including corporations, and all members of associations, including partnerships of all types, shall, without exception, be qualified and in compliance with the act. Compliance means that the lessee, potential lessee, and all such parties (as defined in § 3000.0-5(k)) are:

(a) Citizens of the United States (see § 3102.1) or alien stockholders in a corporation organized under State or Federal law (see § 3102.2);

(b) In compliance with the Federal acreage limitations (see § 3101.2);

(c) Not minors (see § 3102.3);

(d) Except for an assignment or transfer under subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the Act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions of § 3108.3 of this title. The term entity is defined at § 3400.0-5(rr) of this title.

(e) Not in violation of the provisions of section 41 of the Act; and

(f) In compliance with section 17(g) of the Act, in which case the signature on an offer, lease, assignment, transfer, constitutes evidence of compliance that the signatory and any subsidiary, affiliate, or person, association, or corporation controlled by or under common control with the signatory, as defined in § 3400.0-5(rr) of this title, has not failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person or entity has an interest. Noncompliance with section 17(g) of the Act begins on the effective date of the imposition of a civil penalty by the authorized officer under § 3163.2 of this title, or when the bond is attached by the authorized officer for reclamation purposes, whichever comes first. A lease issued, or an assignment or transfer approved, to any such person or entity in violation of this paragraph (f) shall be subject to the cancellation provisions of § 3108.3 of this title, notwithstanding any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings. Noncompliance shall end upon a determination by the authorized officer that all required reclamation has been completed and that the United States has been fully reimbursed for any costs incurred due to the required reclamation.

(g) In compliance with § 3106.1(b) of this title and section 30A of the Act. The authorized officer may accept the signature on a request for approval of an assignment of less than 640 acres outside of Alaska (2,560 acres within Alaska) as acceptable certification that the assignment would further the development of oil and gas, or the authorized officer may apply the provisions of § 3102.5-3 of this title.

[53 FR 22837, June 17, 1988]

§ 3102.5-2 Certification of compliance.

Any party(s) seeking to obtain an interest in a lease shall certify it is in compliance with the act as set forth in § 3102.5-1 of this title. A party(s) that is a corporation or publicly traded association, including a publicly traded partnership, shall certify that constituent members of the corporation, association or partnership holding or controlling more than 10 percent of the instruments of ownership of the corporation, association or partnership are in compliance with the act. Execution and submission of an offer, competitive bid form, or request for approval of a transfer of record title or of operating rights (sublease), constitutes certification of compliance.

[53 FR 17353, May 16, 1988; 53 FR 22837, June 17, 1988]

§ 3102.5-3 Evidence of compliance.

The authorized officer may request at any time further evidence of compliance and qualification from any party holding or seeking to hold an interest in a lease. Failure to comply with the request of the authorized officer shall result in adjudication of the action based on the incomplete submission.

[53 FR 17353, May 16, 1988]

Subpart 3103 -- Fees, Rentals and Royalty

§ 3103.1 Payments.

§ 3103.1-1 Form of remittance.

All remittances shall be by personal check, cashier's check, certified check, or money order, and shall be made payable to the Department of the Interior -- Bureau of Land Management or the Department of the Interior -- Minerals Management Service, as appropriate. Payments made to the Bureau may be made by other arrangements such as by electronic funds transfer or credit card when specifically authorized by the Bureau. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

[53 FR 22837, June 17, 1988]

§ 3103.1-2 Where submitted.

(a)(1) All filing fees for lease applications or offers or for requests for approval of a transfer and all first-year rentals and bonuses for leases issued under Group 3100 of this title shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals, except for leases specified in paragraph (b) of this section, shall be paid to the Service at the following address: Minerals Management Service, Royalty Management Program/BRASS, Box 5640 T.A., Denver, CO 80217.

(b) All rentals and royalties on producing leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all payments under subsurface storage agreements and easements for directional drilling shall be paid to the Service.

[48 FR 33662, July 22, 1983, as amended at 49 FR 11637, Mar. 27, 1984; 49 FR 39330, Oct. 5, 1984; 53 FR 17353, May 16, 1988]

§ 3103.2 Rentals.

§ 3103.2-1 Rental requirements.

(a) Each competitive bid or competitive nomination submitted in response to a List of Lands Available for Competitive Nominations or Notice of Competitive Lease Sale, and each noncompetitive lease offer shall be accompanied by full payment of the first year's rental based on the total acreage, if known, and, if not known, shall be based on 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent or $200, whichever is less, shall be accepted by the authorized officer provided all other requirements are met. Rental submitted shall be determined based on the total amount remitted less all required fees. The additional rental shall be paid within 30 days from notice of the deficiency under penalty of cancellation of the lease.

(b) If the acreage is incorrectly indicated in a List of Lands Available for Competitive Nominations or a Notice of Competitive Lease Sale, payment of the rental based on the error is curable within 15 calendar days of receipt of notice from the authorized officer of the error.

(c) Rental shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable for the full acreage in such lands.

[48 FR 33662, July 22, 1983, as amended at 49 FR 26920, June 29, 1984, 53 FR 22837, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3103.2-2 Annual rental payments.

Rentals shall be paid on or before the lease anniversary date. A full year's rental shall be submitted even when less than a full year remains in the lease term, except as provided in § 3103.4-4(d) of this title. Failure to make timely payment shall cause a lease to terminate automatically by operation of law. If the designated Service office is not open on the anniversary date, payment received on the next day the designated Service office is open to the public shall be deemed to be timely made. Payments made to an improper BLM or Service office shall be returned and shall not be forwarded to the designated Service office. Rental shall be payable at the following rates:

(a) The annual rental for all leases issued subsequent to December 22, 1987, shall be $1.50 per acre or fraction thereof for the first 5 years of the lease term and $2 per acre or fraction for any subsequent year, except as provided in paragraph (b) of this section;

(b) The annual rental for all leases issued on or before December 22, 1987, or issued pursuant to an application or offer to lease filed prior to that date shall be as stated in the lease or in regulations in effect on December 22, 1987, except:

(1) Leases issued under former subpart 3112 of this title on or after February 19, 1982, shall be subject after February 1, 1989, to annual rental in the sixth and subsequent lease years of $2 per acre or fraction thereof;

(2) The rental rate of any lease determined after December 22, 1987, to be in a known geological structure outside of Alaska or in a favorable petroleum geological province within Alaska shall not be increased because of such determination;

(3) Exchange and renewal leases shall be subject to rental of $2 per acre or fraction thereof upon exchange or renewal;

(c) Rental shall not be due on acreage for which royalty or minimum royalty is being paid, except on nonproducing leases when compensatory royalty has been assessed in which case annual rental as established in the lease shall be due in addition to compensatory royalty;

(d) On terminated leases that were originally issued noncompetitively and are reinstated under § 3108.2-3 of this title, and on noncompetitive leases that were originally issued under § 3108.2-4 of this title, the annual rental shall be $5 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease or convert an abandoned, unpatented oil placer mining claim;

(e) On terminated leases that were originally issued competitively, the annual rental shall be $10 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease under § 3108.2-3 of this title; and

(f) Each succeeding time a specific lease is reinstated under § 3108.2-3 of this title, the annual rental on that lease shall increase by an additional $5 per acre or fraction thereof for leases that were originally issued noncompetitively and by an additional $10 per acre or fraction thereof for leases that were originally issued competitively.

[53 FR 17353, May 16, 1988 and 53 FR 22837, June 17, 1988, as amended at 61 FR 4750, Feb. 8, 1996]

§ 3103.3 Royalties.

§ 3103.3-1 Royalty on production.

(a) Royalty on production shall be payable only on the mineral interest owned by the United States. Royalty shall be paid in amount or value of the production removed or sold as follows:

(1) 12 1/2 percent on all leases, including exchange and renewal leases and leases issued in lieu of unpatented oil placer mining claims under § 3108.2-4 of this title, issued after December 22, 1987, except:

(i) Leases issued after December 22, 1987, resulting from offers to lease or bids filed on or before December 22, 1987, which are subject to the rates in effect on December 22, 1987; and

(ii) Leases issued on or before December 22, 1987, which are subject to the rates contained in the lease or in regulations at the time of issuance;

(2) 16 2/3 percent on noncompetitive leases reinstated under § 3108.2-3 of this title plus an additional 2 percentage-point increase added for each succeeding reinstatement;

(3) Not less than 4 percentage points above the rate used for royalty determination contained in the lease that is reinstated or in force at the time of issuance of the lease that is reinstated for competitive leases, plus an additional 2 percentage-point increase added for each succeeding reinstatement.

(b) Leases that qualify under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12 1/2 percent royalty rate.

(c) The average production per well per day for oil and gas shall be determined pursuant to 43 CFR 3162.7-4.

(d) Payment of a royalty on the helium component of gas shall not convey the right to extract the helium. Applications for the right to extract helium shall be made under part 16 of this title.

[53 FR 22838, June 17, 1988]

§ 3103.3-2 Minimum royalties.

(a) A minimum royalty shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that on unitized leases the minimum royalty shall be payable only on the participating acreage, at the following rates:

(1) On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of $1 per acre or fraction thereof in lieu of rental, except as provided in paragraph (a)(2) of this section; and

(2) On leases issued from offers filed after December 22, 1987, and on competitive leases issued from successful bids placed at oral auctions conducted after December 22, 1987, a minimum royalty in lieu of rental of not less than the amount of rental which otherwise would be required for that lease year.

(b) Minimum royalties shall not be prorated for any lands in which the United States owns a fractional interest but shall be payable on the full acreage of the lease.

(c) Minimum royalties and rentals on non-participating acreage shall be payable to the Service.

(d) The minimum royalty provisions of this section shall be applicable to leases reinstated under § 3108.2-3 of this title and leases issued under § 3108.2-4 of this title.

[48 FR 33662, July 22, 1983, as amended at 49 FR 11637, Mar. 27, 1984; 49 FR 30448, July 30, 1984; 53 FR 22838, June 17, 1988]

§ 3103.4 Production incentives.

§ 3103.4-1 Royalty reductions.

(a) In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that it is necessary to promote development or that the leases cannot be successfully operated under the terms provided therein, may waive, suspend or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or any portion thereof.

(b)(1) An application for the benefits under paragraph (a) of this section on other than stripper oil well leases or heavy oil properties must be filed by the operator/payor in the proper BLM office. (Royalty reductions specifically for stripper oil well leases or heavy oil properties are discussed in § 3103.4-2 and § 3103.4-3 respectively.) The application must contain the serial number of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

(2) Each application shall show the number, location and status of each well drilled, a tabulated statement for each month covering a period of not less than 6 months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty, the number of wells counted as producing each month and the average production per well per day.

(3) Every application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any production and all facts tending to show whether the wells can be successfully operated upon the fixed royalty or rental. Where the application is for a reduction in royalty, full information shall be furnished as to whether overriding royalties, payments out of production, or similar interests are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant shall also file agreements of the holders to a reduction of all other royalties or similar payments from the leasehold to an aggregate not in excess of one-half the royalties due the United States.

(c) Petition may be made for reduction of royalty under § 3108.2-3(f) for leases reinstated under § 3108.2-3 of this title and under § 3108.2-4(i) for noncompetitive leases issued under § 3108.2-4 of this title. Petitions to waive, suspend or reduce rental or minimum royalty for leases reinstated under § 3108.2-3 of this title or for leases issued under § 3108.2-4 of this title may be made under this section.

[48 FR 33662, July 22, 1983; 48 FR 39225, Aug. 30, 1983, as amended at 49 FR 30448, July 30, 1984; 53 FR 17354, May 16, 1988; 57 FR 35973, Aug. 11, 1992; 61 FR 4750, Feb. 8, 1996]

§ 3103.4-2 Stripper well royalty reductions.

(a)(1) A stripper well property is any Federal lease or portion thereof segregated for royalty purposes, a communitization agreement, or a participating area of a unit agreement, operated by the same operator, that produces an average of less than 15 barrels of oil per eligible well per well-day for the qualifying period.

(2) An eligible well is an oil well that produces or an injection well that injects and is integral to production for any period of time during the qualifying or subsequent 12-month period.

(3) An oil completion is a completion from which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including the entrained liquid hydrocarbons) or any completion producing oil and less than 60 MCF of gas per day.

(4) An injection well is a well that injects a fluid for secondary or enhanced oil recovery, including reservoir pressure maintenance operations.

(b) Stripper oil well property royalty rate reduction shall be administered according to the following requirements and procedures.

(1) An application for the benefits under paragraph (a) of this section for stripper oil well properties is not required.

(2) Total oil production (regardless of disposition) for the subject period from the eligible wells on the property is totaled and then divided by the total number of well days or portions of days, both producing and injection days, as reported on Form MMS-3160 or MMS-4054 for the eligible wells to determine the property average daily production rate. For those properties in communitization agreements and participating areas of unit agreements that have allocated (not actual) production, the production rate for all eligible well(s) in that specific communitization agreement or participating area is determined and shall be assigned to that allocated property in that communitization agreement or participating area.

(3) Procedures to be used by operator:

(i) Qualifying determination.

(A) Calculate an average daily production rate for the property in order to verify that the property qualifies as a stripper property.

(B) The initial qualifying period for producing properties is the period August 1, 1990, through July 31, 1991. For the properties that were shut-in for 12 consecutive months or longer, the qualifying period is the 12-month production period immediately prior to the shut-in. If the property does not qualify during the initial qualifying period, it may later qualify due to production decline. In those cases, the 12- month qualifying period will be the first consecutive 12-month period beginning after August 31, 1990, during which the property qualifies.

(ii) Qualifying royalty rate calculation. If the property qualifies, use the production rate rounded down to the next whole number (e.g., 6.7 becomes 6) for the qualifying period, and apply the following formula to determine the maximum royalty rate for oil production from the Federal leases for the life of the program.

Royalty Rate (%) = 0.5 + (0.8 × the average daily production rate)

The formula-calculated royalty rate shall apply to all oil production (except condensate) from the property for the first 12 months. The rate shall be effective the first day of the production month after the Minerals Management Service (MMS) receives notification. If the production rate is 15 barrels or greater, the royalty rate will be the rate in the lease terms.

(iii) Outyears royalty rate calculations.

(A) At the end of each 12-month period, the property average daily production rate shall be determined for that period. A royalty rate shall then be calculated using the formula in paragraph (b)(3)(ii) of this section.

(B) The new calculated royalty rate shall be compared to the qualifying period royalty rate. The lower of the two rates shall be used for the current period provided that the operator notifies the MMS of the new royalty rate. The new royalty rate shall not become effective until the first day of the month after the MMS receives notification. Notification shall be received on Form MMS-4377 and mailed to Minerals Management Service, P.O. Box 17110, Denver, CO 80217. If the operator does not notify the MMS of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the property shall revert back to the royalty rate established as the qualifying period royalty rate, effective at the beginning of the current 12-month period.

(C) The royalty rate shall never exceed the calculated qualifying royalty rate for the life of this program.

(iv) Prohibition. For the qualifying period and any subsequent 12-month period, the production rate shall be the result of routine operational and economic factors for that period and for that property and not the result of production manipulation for the purpose of obtaining a lower royalty rate. A production rate that is determined to have resulted from production manipulation will not receive the benefit of a royalty rate reduction.

(v) Certification. The applicable royalty rate shall be used by the operator/payor when submitting the required royalty reports/payments to MSS. By submitting royalty reports/payments using the royalty rate reduction benefits of this program, the operator certifies that the production rate for the qualifying and subsequent 12-month period was not subject to manipulation for the purpose of obtaining the benefit of a royalty rate reduction, and the royalty rate was calculated in accordance with the instructions and procedures in these regulations.

(vi) Agency action. If a royalty rate is improperly calculated, the MMS will calculate the correct rate and inform the operator/payors. Any additional royalties due are payable immediately upon notification. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102. The BLM may terminate a royalty rate reduction if it is determined that the production rate was manipulated by the operator for the purpose of receiving a royalty rate reduction. Terminations of royalty rate reductions will be effective on the effective date of the royalty rate reduction resulting from the manipulated production rate (i.e., the termination will be retroactive to the effective date of the improper reduction). The operator/payor shall pay the difference in royalty resulting from the retroactive application of the unmanipulated rate. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102.

(4) The royalty rate reduction provision for stripper well properties shall be effective as of October 1, 1992. If the oil price, adjusted for inflation by BLM and MMS, using the implicit price deflator for gross national product with 1991 as the base year, remains on average above $28 per barrel, based on West Texas Intermediate crude average posted price for a period of 6 consecutive months, the benefits of the royalty rate reduction under this section may be terminated upon 6 months' notice, published in the FEDERAL REGISTER.

(5) The Secretary will evaluate the effectiveness of the stripper well royalty reduction program and may at any time after September 10, 1997, terminate any or all royalty reductions granted under this section upon 6 months notice.

(6) The stripper well property royalty rate reduction benefits shall apply to all oil produced from the property.

(7) The royalty for gas production (including liquids produced in association with gas) for oil completions shall be calculated separately using the lease royalty rate.

(8) If the lease royalty rate is lower than the benefits provided in this stripper oil property royalty rate reduction program, the lease rate prevails.

(9) The minimum royalty provisions of § 3103.3-2 apply.

(10) Examples.

View or Download PDF File for Example 1

Explanation, Example 1

1. Property production rate per well for qualifying period (August 1, 1990-July 31, 1991) is 10 barrels of oil per day (BOPD).

2. Using the formula, the royalty rate for the first year is calculated to be 8.5 percent. This rate is also the maximum royalty rate for the life of the program.

$8.5\%=0.5+(0.8\times 10)$

3. Production rate for the first year is 8 BOPD.

4. Using the formula, the royalty rate is calculated at 6.9 percent. Since 6.9 percent is less than the first year rate of 8.5 percent, 6.9 percent is the applicable royalty rate for the second year.

6.9%=0.5+(0.8×8)

5. Production rate for the second year is 12 BOPD.

6. Using the formula, the royalty rate is calculated at 10.1 percent. Since the 8.5 percent first year royalty rate is less than 10.1 percent, the applicable royalty rate for third year is 8.5 percent.

10.1%=0.5+(0.8×12)

7. Production rate for the third year is 23 BOPD.

8. Since the production rate of 23 BOPD is greater than the 15 BOPD threshold for the program, the calculated royalty rate would be the property royalty rate. However, since the 8.5 percent first year royalty rate is less than the property rate, the royalty rate for the fourth year is 8.5 percent.

9. Production rate for the fourth year is 15 BOPD.

10. Since the production is at the 15 BOPD threshold, the royalty rate would be the property royalty rate. However, since the 8.5 percent first year royalty rate is less than the lease rate, the royalty rate for the fifth year is 8.5 percent.

View or Download PDF File for Example 2

Explanation, Example 2

1. Property production rate of 23 BOPD per well (for the August 1, 1990-July 31, 1991, qualifying period prior to the effective date of the program) is greater than the 15 BOPD which qualifies a property for a royalty rate reduction. Therefore, the property is not entitled to a royalty rate reduction for the first year of the program.

2. Property royalty rate for the first year is the rate as stated in the lease.

3. Production rate for the first year is 8 BOPD.

4. Using the formula, the royalty rate is calculated to be 6.9 percent for the second year. This rate is also the maximum royalty rate for the life of the program.

6.9%=0.5+(0.8×8)

5. Production rate for the second year is 12 BOPD.

6. Using the formula, the royalty rate is calculated at 10.1 percent. Since the 6.9 percent second year royalty rate is less than 10.1 percent, the applicable royalty rate for third year is 6.9 percent.

10.1%=0.5+(0.8×12)

7. Production rate third year is 7 BOPD.

8. Using the formula, the royalty rate is calculated at 6.1 percent. Since the 6.1 percent third year royalty rate is less than the qualifying (maximum) rate of 6.9 percent, the royalty rate for the fourth year is 6.1 percent.

$6.1\%=0.5+(0.8\times7)$

9. Production rate for the fourth year is 15 BOPD.

10. Since the production is at the 15 BOPD threshold, the royalty rate would be the lease royalty rate. However, since the 6.9 percent second year royalty rate is less than the lease rate, the royalty rate for the fifth year is 6.9 percent.

Appendix

View or Download PDF File for Appendix

[48 FR 33662, July 22, 1983; 48 FR 39225, Aug. 30, 1983, as amended at 49 FR 30448, July 30, 1984; 53 FR 17354, May 16, 1988; 57 FR 35973, Aug. 11, 1992. Redesignated at 61 FR 4750, Feb. 8, 1996]

§ 3103.4-3 Heavy oil royalty reductions.

(a)(1) A heavy oil well property is any Federal lease or portion thereof segregated for royalty purposes, a communitization area, or a unit participating area, operated by the same operator, that produces crude oil with a weighted average gravity of less than 20 degrees as measured on the American Petroleum Institute (API) scale.

(2) An oil completion is a completion from which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including the entrained liquefiable hydrocarbons) or any completion producing oil and less than 60 MCF of gas per day.

(b) Heavy oil well property royalty rate reductions will be administered according to the following requirements and procedures:

(1) The Bureau of Land Management requires no specific application form for the benefits under paragraph (a) of this section for heavy oil well properties. However, the operator/payor must notify, in writing, the proper BLM office that it is seeking a heavy oil royalty rate reduction. The letter must contain the serial number of the affected leases (or, as appropriate, the communitization agreement number or the unit agreement name); the names of the operators for each lease; the calculated new royalty rate as determined under paragraph (b)(2) of this section; and copies of the Purchaser's Statements (sales receipts) to document the weighted average API gravity for a property.

(2) The operator must determine the weighted average API gravity for a property by averaging (adjusted to rate of production) the API gravities reported on the operator's Purchaser's Statement for the last 3 calendar months preceding the operator's written notice of intent to seek a royalty rate reduction, during each of which at least one sale was held. This is shown in the following 3 illustrations:

(i) If a property has oil sales every month prior to requesting the royalty rate reduction in October of 1996, the operator must submit Purchaser's Statements for July, August, and September of 1996;

(ii) If a property has sales only every 6 months, during the months of March and September, prior to requesting the rate reduction in October of 1996, the operator must submit Purchaser's Statements for the months of September 1995, and March and September 1996; and

(iii) If a property has multiple sales each month, the operator must submit Purchaser's Statements for every sale for the 3 entire calendar months immediately preceding the request for a rate reduction.

(3) The following equation must be used by the operator/payor for calculating the weighted average API gravity for a heavy oil well property:

$$\frac{(V1 \times G1) + (V2 \times G2) + (Vn \times Gn)}{V1 + V2 + V3} = \text{Weighted Average API Gravity for a Property}$$

Where:
V1=Average Production (bbls) of Well #1 over the last 3 calendar months of sales
V2=Average Production (bbls) of Well #2 over the last 3 calendar months of sales
Vn=Average Production (bbls) of each additional well (V3, V4, etc.) over the last 3 calendar months of sales
G1=Average Gravity (degrees) of oil produced from Well #1 over the last 3 calendar months of sales
G2=Average Gravity (degrees) of oil produced from Well #2 over the last 3 calendar months of sales
Gn=Average Gravity (degrees) of each additional well (G3, G4, etc.) over the last 3 calendar months of sales

Example: Lease "A" has 3 wells producing at the following average rates over 3 sales months with the following associated average gravities: Well #1, 4,000 bbls, 13° API; Well #2, 6000 bbls, 21° API; Well #3, 2,000 bbls, 14° API. Using the equation above -

$$\frac{(4{,}000 \times 13) + (6{,}000 \times 21) + (2{,}000 \times 14)}{4{,}000 + 6{,}000 + 2{,}000} = 17.2 \text{ Weighted Average API Gravity for a Property}$$

(4) For those properties subject to a communitization agreement or a unit participating area, the weighted average API oil gravity for the lands dedicated to that specific communitization agreement or unit participating area must be determined in the manner prescribed in paragraph (b)(3) of this section and assigned to all property subject to Federal royalties in the communitization agreement or unit participating area.

(5) The operator/payor must use the following procedures in order to obtain a royalty rate reduction under this section:

(i) Qualifying royalty rate determination.

(A) The operator/payor must calculate the weighted average API gravity for the property proposed for the royalty rate reduction in order to verify that the property qualifies as a heavy oil well property.

(B) Properties that have removed or sold oil less than 3 times in their productive life may still qualify for this royalty rate reduction. However, no additional royalty reductions will be granted until the property has a sales history of at least 3 production months (see paragraph (b)(2) of this section).

(ii) Calculating the qualifying royalty rate. If the Federal leases or portions thereof (e.g., communitization or unit agreements) qualify as heavy oil property, the operator/payor must use the weighted average API gravity rounded down to the next whole degree (e.g., 11.7 degrees API becomes 11 degrees), and determine the appropriate royalty rate from the following table:

Royalty Rate Reduction for Heavy Oil	
Weighted average API gravity (degrees)	Royalty Rate (percent)
6.....	0.5
7.....	1.4
8.....	2.2
9.....	3.1
10.....	3.9

11.....	4.8
12.....	5.6
13.....	6.5
14.....	7.4
15.....	8.2
16.....	9.1
17.....	9.9
18.....	10.8
19.....	11.5
20.....	12.5

(iii) New royalty rate effective date. The new royalty rate will be effective on the first day of production 2 months after BLM receives notification by the operator/payor. The rate will apply to all oil production from the property for the next 12 months (plus the 2 calendar month grace period during which the next 12 months' royalty rate is determined in the next year). If the API oil gravity is 20 degrees or greater, the royalty rate will be the rate in the lease terms.

Example: BLM receives notification from an operator on June 8, 1996. There is a two month period before new royalty rate is effective -- July and August. New royalty rate is effective September 1, 1996.

(iv) Royalty rate determinations in subsequent years.

(A) At the end of each 12-month period, beginning on the first day of the calendar month the royalty rate reduction went into effect, the operator/payor must determine the weighted average API oil gravity for the property for that period. The operator/payor must then determine the royalty rate for the following year using the table in paragraph (b)(5)(ii) of this section.

(B) The operator/payor must notify BLM of its determinations under this paragraph and paragraph (b)(5)(iv)(A) of this section. The new royalty rate (effective for the next 12 month period) will become effective the first day of the third month after the prior 12 month period comes to a close, and will remain effective for 12 calendar months (plus the 2 calendar month grace period during which the next 12 months' royalty rate is determined in the next year). Notification must include copies of the Purchaser's Statements (sales receipts) and be mailed to the proper BLM office. If the operator does not notify the BLM of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the heavy oil well property will return to the rate in the lease terms.

Example: On September 30, 1997, at the end of a 12-month royalty reduction period, the operator/payor determines what the weighted average API oil gravity for the property for that period has been. The operator/payor then determines the new royalty rate for the next 12 month using the table in paragraph (b)(5)(ii) of this section. Given that there is a 2-month delay period for the operator/payor to calculate the new royalty rate, the new royalty rate would be effective December 1, 1997 through November 30, 1998 (plus the 2 calendar month grace period during which the next 12 months' royalty rate is determined -- December 1, 1998 through January 31, 1999).

(v) Prohibition. Any heavy oil property reporting an API average oil gravity determined by BLM to have resulted from any manipulation of normal production or adulteration of oil sold from the property will not receive the benefit of a royalty rate reduction under this paragraph (b).

(vi) Certification. The operator/payor must use the applicable royalty rate when submitting the required royalty reports/payments to the Minerals Management Service (MMS). In submitting royalty reports/payments using a royalty rate reduction authorized by this paragraph (b), the operator/payor must certify that the API oil gravity for the initial and subsequent 12-month periods was not subject to manipulation or adulteration and the royalty rate was determined in accordance with the requirements and procedures of this paragraph (b).

(vii) Agency action. If an operator/payor incorrectly calculates the royalty rate, the BLM will determine the correct rate and notify the operator/payor in writing. Any additional royalties due are payable to MMS immediately upon receipt of this notice. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102. The BLM will terminate a royalty rate reduction for a property if BLM determines that the API oil gravity was manipulated or adulterated by the operator/payor. Terminations of royalty rate reductions for individual properties will be effective on the effective date of the royalty rate reduction resulting from a manipulated or adulterated API oil gravity so that the termination will be retroactive to the effective date of the improper reduction. The operator/payor must pay the difference in royalty resulting from the retroactive application of the non-manipulated rate. The late payment or underpayment charges will assessed in accordance with 30 CFR 218.102.

(6) The BLM may suspend or terminate all royalty reductions granted under this paragraph (b) and terminate the availability of further heavy oil royalty relief under this section --

(i) Upon 6 month's notice in the FEDERAL REGISTER when BLM determines that the average oil price has remained above $24 per barrel over a period of 6 consecutive months (based on the WTI Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year), or

(ii) After September 10, 1999, if the Secretary determines the royalty rate reductions authorized by this paragraph (b) have not been effective in reducing the loss of otherwise recoverable reserves. This will be determined by evaluating the expected versus the actual abandonment rate, the number of enhanced recovery projects, and the amount of operator reinvestment in heavy oil production that can be attributed to this rule.

(7) The heavy oil well property royalty rate reduction applies to all Federal oil produced from a heavy oil property.

(8) If the lease royalty rate is lower than the benefits provided in this heavy oil well property royalty rate reduction program, the lease rate prevails.

(9) If the property qualifies for a stripper well property royalty rate reduction, as well as a heavy oil well property reduction, the lower of the two rates applies.

(10) The operator/payor must separately calculate the royalty for gas production (including condensate produced in association with gas) from oil completions using the lease royalty rate.

(11) The minimum royalty provisions of § 3103.3-2 will continue to apply.

[61 FR 4750, Feb. 8, 1996]

§ 3103.4-4 Suspension of operations and/or production.

(a) A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources. A suspension of operations only or a suspension of production only may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of force majeure, that is, by matters beyond the reasonable control of the lessee. Applications for any suspension shall be filed in the proper BLM office. Complete information showing the necessity of such relief shall be furnished.

(b) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(c) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer, in accordance with the provisions of § 3165.1 of this title.

(d) Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and

production directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension of all operations and production becomes effective, or if the suspension of all operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day of the lease month in which the suspension of all operations and production is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease. Rental and minimum royalty payments shall not be suspended during any period of suspension of operations only or suspension of production only.

(e) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (d) of this section.

(f) The relief authorized under this section also may be obtained for any Federal lease included within an approved unit or cooperative plan of development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

[53 FR 17354, May 16, 1988. Redesignated at 61 FR 4750, Feb. 8, 1996]

Subpart 3104 -- Bonds

§ 3104.1 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or a personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and 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(s) in accordance with, but not limited to, the standards and requirements set forth in §§ 3162.3 and 3162.5 of this title and orders issued by the authorized officer.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific

term, identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease.

Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

[53 FR 22838, June 17, 1988]

§ 3104.2 Lease bond.

A lease bond may be posted by a lessee, owner of operating rights (sublessee), or operator in an amount of not less than $10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different formations or portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond.

[53 FR 22839, June 17, 1988]

§ 3104.3 Statewide and nationwide bonds.

(a) In lieu of lease bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $25,000 covering all leases and operations in any one State.

(b) In lieu of lease bonds or statewide bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $150,000 covering all leases and operations nationwide.

[53 FR 22839, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3104.4 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3104.1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3186.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be

provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

[53 FR 22839, June 17, 1988]

§ 3104.5 Increased amount of bonds.

(a) When an operator desiring approval of an Application for Permit to Drill has caused the Bureau to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the Application for Permit to Drill, due to failure to plug a well or reclaim lands completely in a timely manner, the authorized officer shall require, prior to approval of the Application for Permit to Drill, a bond in an amount equal to the costs as estimated by the authorized officer of plugging the well and reclaiming the disturbed area involved in the proposed operation, or in the minimum amount as prescribed in this subpart, whichever is greater.

(b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the Service that there are uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer. The increase in bond amount may be to any level specified by the authorized officer, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

[53 FR 22839, June 17, 1988]

§ 3104.6 Where filed and number of copies.

All bonds shall be filed in the proper BLM office on a current form approved by the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. A bond filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of such bond. For purposes of §§ 3104.2 and 3104.3(a) of this title, bonds or bond riders shall be filed in the Bureau State office having jurisdiction of the lease or operations covered by the bond or rider. Nationwide bonds may be filed in any Bureau State office (See § 1821.2-1).

[53 FR 17354, May 16, 1988]

§ 3104.7 Default.

(a) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond or personal bonds and the surety's liability thereunder shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by the authorized officer. In lieu thereof, the principal may file separate or substitute bonds for each lease covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger amount as determined by the authorized officer. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from the authorized officer. Failure to comply with these requirements may subject all leases covered by such bond(s) to cancellation under the provisions of § 3108.3 of this title.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17354, May 16, 1988]

§ 3104.8 Termination of period of liability.

The authorized officer shall not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the lease have been met.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17355, May 16, 1988; 53 FR 31867, Aug. 22, 1988]

Subpart 3105 -- Cooperative Conservation Provisions

§ 3105.1 Cooperative or unit agreement.

The suggested contents of such an agreement and the procedures for obtaining approval are contained in 43 CFR part 3180.

§ 3105.2 Communitization or drilling agreements.

§ 3105.2-1 Where filed.

(a) Requests to communitize separate tracts shall be filed, in triplicate, with the proper BLM office.

(b) Where a duly executed agreement is submitted for final Departmental approval, a minimum of 3 signed counterparts shall be submitted. If State lands are involved, 1 additional counterpart shall be submitted.

§ 3105.2-2 Purpose.

When a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve communitization or drilling agreements for such lands with other lands, whether or not owned by the United States, upon a determination that it is in the public interest. Operations or production under such an agreement shall be deemed to be operations or production as to each lease committed thereto.

§ 3105.2-3 Requirements.

(a) The communitization or drilling agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States. The agreement shall be signed by or on behalf of all necessary parties and shall be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such lease(s).

(b) The agreement shall be effective as to the Federal lease(s) involved only if approved by the authorized officer. Approved communitization agreements are considered effective from the date of the agreement or from the date of the onset of production from the communitized formation, whichever is earlier, except when the spacing unit is subject to a State pooling order after the date of first sale, then the effective date of the agreement may be the effective date of the order.

(c) The public interest requirement for an approved communitization agreement shall be satisfied only if the well dedicated thereto has been completed for production in the communitized formation at the time the agreement is approved or, if not, that the operator thereafter commences and/or diligently continues drilling operations to a depth sufficient to test the communitized formation or establish to the satisfaction of the authorized officer that further drilling of the well would be unwarranted or impracticable. If an application is received for voluntary termination of a communitization agreement during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no Federal

lease shall be eligible for extension under § 3107.4 of this title.

[53 FR 17355, May 16, 1988]

§ 3105.3 Operating, drilling or development contracts.

§ 3105.3-1 Where filed.

A contract submitted for approval under this section shall be filed with the proper BLM office, together with enough copies to permit retention of 5 copies by the Department after approval.

§ 3105.3-2 Purpose.

Approval of operating, drilling or development contracts ordinarily shall be granted only to permit operators or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a scale large enough to justify the discovery, development, production or transportation of oil or gas and to finance the same.

§ 3105.3-3 Requirements.

The contract shall be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan for development and operation of the field. All the contracts held by the same contractor in the area or field shall be submitted for approval at the same time and full disclosure of the projects made.

§ 3105.4 Combination for joint operations or for transportation of oil.

§ 3105.4-1 Where filed.

An application under this section together with sufficient copies to permit retention of 5 copies by the Department after approval shall be filed with the proper BLM office.

[48 FR 33662, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984]

§ 3105.4-2 Purpose.

Upon obtaining approval of the authorized officer, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery or of establishing and constructing as a common carrier a pipeline or lines or railroads to be operated and used by them jointly in the transportation of oil or gas from their wells or from the wells of other lessees.

§ 3105.4-3 Requirements.

The application shall show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of law.

§ 3105.4-4 Rights-of-way.

Rights-of-way for pipelines may be granted as provided in part 2880 of this title.

§ 3105.5 Subsurface storage of oil and gas.

§ 3105.5-1 Where filed.

(a) Applications for subsurface storage shall be filed in the proper BLM office.

(b) Enough copies of the final agreement signed by all the parties in interest shall be submitted to permit the retention of 5 copies by the Department after approval.

§ 3105.5-2 Purpose.

In order to avoid waste and to promote conservation of natural resources, the Secretary, upon application by the interested parties, may authorize the subsurface storage of oil and gas, whether or not produced from lands owned by the United States. Such authorization shall provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced.

§ 3105.5-3 Requirements.

The agreement shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental or royalty offered to be paid for such storage and all essential information showing the necessity for such project.

§ 3105.5-4 Extension of lease term.

Any lease used for the storage of oil or gas shall be extended for the period of storage under an approved agreement. The obligation to pay annual lease rent continues during the extended period.

§ 3105.6 Consolidation of leases.

Consolidation of leases may be approved by the authorized officer if it is determined that there is sufficient justification and it is in the public interest. Each application for consolidation of leases shall be considered on its own merits. Leases to different lessees for different terms, rental and royalty rates, and those containing provisions required by law that cannot be reconciled, shall not be consolidated. The effective date of a consolidated lease shall be that of the oldest lease involved in the consolidation.

[53 FR 17355, May 16, 1988]

Subpart 3106 -- Transfers by Assignment, Sublease or Otherwise

Source: 53 FR 17355, May 16, 1988, unless otherwise noted.

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit, or of part of a legal subdivision, shall be disapproved.

(b) An assignment of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska shall be disapproved unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas to the satisfaction of the authorized officer. Execution and submission of a request for approval of such an assignment shall certify that the assignment would further the development of oil and gas, subject to the provisions of § 3102.5-3 of this title. The rights of the transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer. A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer. A request for approval of a transfer of a lease or interest in a lease shall be filed within 90 days from the date of its execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require

verification that the transfer is still in force and effect. A transfer of production payments or overriding royalty or other similar payments, arrangements, or interests shall be filed in the proper BLM office but shall not require approval.

(c) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

[53 FR 22839, June 17, 1988]

§ 3106.2 Qualifications of transferees.

Transferees shall comply with the provisions of subpart 3102 of this title and post any bond that may be required.

§ 3106.3 Filing fees.

Each transfer of record title or of operating rights (sublease) or each transfer of royalty interest, payment out of production or similar interest for each lease, when filed, shall be accompanied by a nonrefundable filing fee of $25. A transfer not accompanied by the required filing fee shall not be accepted and shall be returned.

§ 3106.4 Forms.

§ 3106.4-1 Transfers of record title and of operating rights (subleases).

Each transfer of record title or of an operating right (sublease) shall be filed with the proper BLM office on a current form approved by the Director or exact reproductions of the front and back of such form. A transfer filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of the transfer. A separate form for each transfer, in triplicate, originally executed shall be filed for each lease out of which a transfer is made. Only 1 originally executed copy of a transferee's request for approval for each transfer shall be required, including in those instances where several transfers to a transferee have been submitted at the same time (See also § 3106.4-3). Copies of documents other than the current form approved by the Director shall not be submitted. However, reference(s) to other documents containing information affecting the terms of the transfer may be made on the submitted form.

§ 3106.4-2 Transfers of other interests, including royalty interests and production payments.

(a) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease in conjunction with a transfer of record title or of operating rights (sublease) shall be described for each lease on the current form when filed.

(b) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease independently of a transfer of record title or of operating rights (sublease), if not filed on the current form, shall be described and shall include the transferee's executed statement as to his/her qualifications under subpart 3102 of this title. A single executed copy of each such transfer of other interests for each lease shall be filed with the proper BLM office.

§ 3106.4-3 Mass transfers.

(a) A mass transfer may be utilized in lieu of the provisions of §§ 3106.4-1 and 3106.4-2 of this title when a transferor transfers interests of any type in a large number of Federal leases to the same transferee.

(b) Three originally executed copies of the mass transfer shall be filed with each proper BLM office administering any lease affected by the mass transfer. The transfer shall be on a current form approved by the Director or an exact reproduction of both sides thereof, with an exhibit attached to each copy listing the following for each lease:

(1) The serial number;

(2) The type and percent of interest being conveyed; and

(3) A description of the lands affected by the transfer in accordance with § 3106.5 of this title.

(c) One reproduced copy of the form required by paragraph (b) of this section shall be filed with the proper BLM office for each lease involved in the mass transfer. A copy of the exhibit for each lease may be limited to line items pertaining to individual leases as long as that line item includes the information required by paragraph (b) of this section.

(d) A nonrefundable filing fee of $25 for each such interest transferred for each lease, in accordance with the provisions of § 3106.3 of this title, shall accompany a mass transfer.

§ 3106.5 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease or in the manner required by § 3110.5 of this title, except no land description is required when 100 percent of the entire area encompassed within a lease is conveyed.

[48 FR 33662, July 22, 1983, as amended at 55 FR 12350, Apr. 3, 1990]

§ 3106.6 Bonds.

§ 3106.6-1 Lease bond.

Where a lease bond is maintained by the lessee or operating rights owner (sublessee) in connection with a particular lease, the transferee of record title interest or operating rights in such lease shall furnish, if bond coverage continues to be required, either a proper bond or consent of the surety under the existing bond to become co-principal on such bond if the transferor's bond does not expressly contain such consent. Where bond coverage is provided by an operator, the new operator shall furnish an appropriate replacement bond or provide evidence of consent of the surety under the existing bond to become co-principal on such bond.

§ 3106.6-2 Statewide/nationwide bond.

If the transferee is maintaining a statewide or nationwide bond, a lease bond shall not be required, but the amount of the bond may be increased to an amount determined by the authorized officer in accordance with the provisions of § 3104.5 of this title.

§ 3106.7 Approval of transfer.

§ 3106.7-1 Failure to qualify.

No transfer of record title or of operating rights (sublease) shall be approved if the transferee or any other parties in interest are not qualified to hold the transferred interest(s), or if the bond, should one be required, is insufficient. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

§ 3106.7-2 If I transfer my lease, what is my continuing obligation?

(a) You are responsible for performing all obligations under the lease until the date BLM approves an assignment of your record title interest or transfer of your operating rights.

(b) After BLM approves the assignment or transfer, you will continue to be responsible for lease obligations that accrued before the approval date, whether or not they were identified at the time of the assignment or transfer. This includes paying

compensatory royalties for drainage. It also includes responsibility for plugging wells and abandoning facilities you drilled, installed, or used before the effective date of the assignment or transfer.

[66 FR 1892, Jan. 10, 2001]

§ 3106.7-3 Lease account status.

A transfer of record title or of operating rights (sublease) in a producing lease shall not be approved unless the lease account is in good standing.

§ 3106.7-4 Effective date of transfer.

The signature of the authorized officer on the official form shall constitute approval of the transfer of record title or of operating rights (sublease) which shall take effect as of the first day of the lease month following the date of filing in the proper BLM office of all documents and statements required by this subpart and an appropriate bond, if one is required.

§ 3106.7-5 Effect of transfer.

A transfer of record title to 100 percent of a portion of the lease segregates the transferred portion and the retained portion into separate leases. Each resulting lease retains the anniversary date and the terms and conditions of the original lease. A transfer of an undivided record title interest or a transfer of operating rights (sublease) shall not segregate the transferred and retained portions into separate leases.

§ 3106.7-6 If I acquire a lease by an assignment or transfer, what obligations do I agree to assume?

(a) If you acquire record title interest in a Federal lease, you agree to comply with the terms of the original lease during your lease tenure. You assume the responsibility to plug and abandon all wells which are no longer capable of producing, reclaim the lease site, and remedy all environmental problems in existence and that a purchaser exercising reasonable diligence should have known at the time. You must also maintain an adequate bond to ensure performance of these responsibilities.

(b) If you acquire operating rights in a Federal lease, you agree to comply with the terms of the original lease as it applies to the area or horizons in which you acquired rights. You must plug and abandon all unplugged wells, reclaim the lease site, and remedy all environmental problems in existence and that a purchaser exercising reasonable diligence should have known at the time you receive the transfer. You must also maintain an adequate bond to ensure performance of these responsibilities.

[66 FR 1892, Jan. 10, 2001]

§ 3106.8 Other types of transfers.

§ 3106.8-1 Heirs and devisees.

(a) If an offeror, applicant, lessee or transferee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a statement that all parties are qualified to hold a lease in accordance with subpart 3102 of this title. No filing fee is required. A bond rider or replacement bond may be required for any bond(s) previously furnished by the decedent.

(b) Any ownership or interest otherwise forbidden by the regulations in this group which may be acquired by descent, will, judgement or decree may be held for a period not to exceed 2 years after its acquisition. Any such forbidden ownership or interest held for a period of more than 2 years after acquisition shall be subject to cancellation.

§ 3106.8-2 Change of name.

A change of name of a lessee shall be reported to the proper BLM office. No filing fee is required. The notice of name change shall be submitted in writing and be accompanied by a list of the serial numbers of the leases affected by the name change. If a bond(s) has been furnished, change of name may be made by surety consent or a rider to the original bond or by a replacement bond.

§ 3106.8-3 Corporate merger.

Where a corporate merger affects leases situated in a State where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease interest is required. A notification of the merger shall be furnished with a list, by serial number, of all lease interests affected. No filing fee is required. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the authorized officer as a prerequisite to recognition of the merger.

Subpart 3107 -- Continuation, Extension or Renewal

§ 3107.1 Extension by drilling.

Any lease on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at the end of the primary term or any lease which is part of an approved communitization agreement or cooperative or unit plan of development or operation upon which such drilling takes place, shall be extended for 2 years subject to the rental being timely paid as required by § 3103.2 of this title, and subject to the provisions of § 3105.2-3 and § 3186.1 of this title, if applicable. Actual drilling operations shall be conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts. In drilling a new well on a lease or for the benefit of a lease under the terms of an approved agreement or plan, it shall be taken to a depth sufficient to penetrate at least 1 formation recognized in the area as potentially productive of oil or gas, or where an existing well is reentered, it shall be taken to a depth sufficient to penetrate at least 1 new and deeper formation recognized in the area as potentially productive of oil or gas. The authorized officer may determine that further drilling is unwarranted or impracticable.

[48 FR 33662, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984; 53 FR 17357, May 16, 1988; 53 FR 22839, June 17, 1988]

§ 3107.2 Production.

§ 3107.2-1 Continuation by production.

A lease shall be extended so long as oil or gas is being produced in paying quantities.

§ 3107.2-2 Cessation of production.

A lease which is in its extended term because of production in paying quantities shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction. The 60-day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3107.2-3 Leases capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the

lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to do so. Such production shall be continued unless and until suspension of production is granted by the authorized officer.

[48 FR 33662, July 22, 1983, as amended at 53 FR 22840, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3107.3 Extension for terms of cooperative or unit plan.

§ 3107.3-1 Leases committed to plan.

Any lease or portion of a lease, except as described in § 3107.3-3 of this title, committed to a cooperative or unit plan that contains a general provision for allocation of oil or gas shall continue in effect so long as the lease or portion thereof remains subject to the plan; Provided, That there is production of oil or gas in paying quantities under the plan prior to the expiration date of such lease.

§ 3107.3-2 Segregation of leases committed in part.

Any lease committed after July 29, 1954, to any cooperative or unit plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan, the other lands not committed to the plan. The segregated lease covering the nonunitized portion of the lands shall continue in force and effect for the term of the lease or for 2 years from the date of segregation, whichever is longer. However, for any lease segregated from a unit, if the public interest requirement for the unit is not satisfied, such segregation shall be declared invalid by the authorized officer. Further, the segregation shall be conditioned to state that no operations shall be approved on the segregated portion of the lease past the expiration date of the original lease until the public interest requirement of the unit has been satisfied.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988]

§ 3107.3-3 20-year lease or any renewal thereof.

Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

§ 3107.4 Extension by elimination.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the Act and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease or for 2 years after its elimination from the plan or agreement or after the termination of the plan or agreement, whichever is longer, and for so long thereafter as oil or gas is produced in paying quantities. No lease shall be extended if the public interest requirement for an approved cooperative or unit plan or a communitization agreement has not been satisifed as determined by the authorized officer.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988]

§ 3107.5 Extension of leases segregated by assignment.

§ 3107.5-1 Extension after discovery on other segregated portions.

Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for 2 years after the date of first discovery of oil or gas in paying quantities upon any other segregated

portion of the original lease, whichever is the longer period.

§ 3107.5-2 Undeveloped parts of leases in their extended term.

Undeveloped parts of leases retained or assigned out of leases which are in their extended term shall continue in effect for 2 years after the effective date of assignment, provided the parent lease was issued prior to September 2, 1960.

§ 3107.5-3 Undeveloped parts of producing leases.

Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for 2 years after the effective date of assignment and for so long thereafter as oil or gas is produced in paying quantities.

§ 3107.6 Extension of reinstated leases.

Where a reinstatement of a terminated lease is granted under § 3108.2 of this title and the authorized officer finds that the reinstatement will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may extend the term of such lease for a period sufficient to give the lessee such an opportunity. Any extension shall be subject to the following conditions:

(a) No extension shall exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination.

(b) When the reinstatement occurs after the expiration of the term or extension thereof, the lease may be extended from the date the authorized officer grants the petition, but in no event for more than 2 years from the date the reinstatement is authorized and so long thereafter as oil or gas is produced in paying quantities.

[48 FR 33662, July 22, 1983, as amended at 49 FR 30448, July 30, 1984; 53 FR 17357, May 16, 1988]

§ 3107.7 Exchange leases: 20-year term.

Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease shall be issued for a primary term of 5 years. An application to exchange a lease for a new lease shall be filed, in triplicate, by the lessee at the proper BLM office, shall show full compliance by the applicant with the terms of the lease and applicable regulations, and shall be accompanied by a nonrefundable application fee of $75. Execution of the exchange lease by the applicant is certification of compliance with § 3102.5 of this title.

[48 FR 33662, July 22, 1983, as amended at 53 FR 22840, June 17, 1988]

§ 3107.8 Renewal leases.

§ 3107.8-1 Requirements.

(a) Twenty year leases and renewals thereof may be renewed for successive terms of 10 years. Any application for renewal of a lease shall be made by the lessee, and may be joined in or consented to by the operator. The application shall show whether all monies due the United States have been paid and whether operations under the lease have been conducted in compliance with the applicable regulations.

(b) The applicant or his/her operator shall furnish, in triplicate, with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration.

[48 FR 33662, July 22, 1988, as amended at 53 FR 22840, June 17, 1988]

§ 3107.8-2 Application.

An application to renew shall be filed, in triplicate, in the proper BLM office at least 90 days, but not more than 6 months, prior to the expiration of its term and shall be accompanied by a nonrefundable filing fee of $75.

§ 3107.8-3 Approval.

(a) Copies of the renewal lease, in triplicate, dated the first day of the month following the month in which the original lease terminated, shall be forwarded to the lessee for execution. Upon receipt of the executed lease forms, which constitutes certification of compliance with § 3102.5 of this title, and any required bond, the authorized officer shall execute the lease and deliver 1 copy to the lessee.

(b) If overriding royalties and payments out of production or similar interests in excess of 5 percent of gross production constitute a burden to lease operations that will retard, or impair, or cause premature abandonment, the lease application shall be suspended until overriding royalties and payments out of production or similar interests are reduced to not more then 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon, a final decision will be rendered by the Department, outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production and an opportunity shall be afforded within a fixed period of time to submit proof that such adjustment has been effected. Upon failure to submit such proof within the time so fixed, the application for renewal shall be denied.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3107.9 Other types.

§ 3107.9-1 Payment of compensatory royalty.

The payment of compensatory royalty shall extend the term of any lease for the period during which such compensatory royalty is paid and for a period of 1 year from the discontinuance of such payments.

§ 3107.9-2 Subsurface storage of oil and gas.

See § 3105.5-4 of this title.

Subpart 3108 -- Relinquishment, Termination, Cancellation

§ 3108.1 As a lessee, may I relinquish my lease?

You may relinquish your lease or any legal subdivision of your lease at any time. You must file a written relinquishment with the BLM State Office with jurisdiction over your lease. All lessees holding record title interests in the lease must sign the relinquishment. A relinquishment takes effect on the date you file it with BLM. However, you and the party that issued the bond will continue to be obligated to:

(a) Make payments of all accrued rentals and royalties, including payments of compensatory royalty due for all drainage that occurred before the relinquishments;

(b) Place all wells to be relinquished in condition for suspension or abandonment as BLM requires; and

(c) Complete reclamation of the leased sites after stopping or abandoning oil and gas operations on the lease, under a plan approved by the appropriate surface management agency.

[66 FR 1892, Jan. 10, 2001]

§ 3108.2 Termination by operation of law and reinstatement.

§ 3108.2-1 Automatic termination.

(a) Except as provided in paragraph (b) of this section, any lease on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the designated Service office on or before the anniversary date of such lease. However, if the designated Service office is closed on the anniversary date, a rental payment received on the next day the Service office is open to the public shall be considered as timely made.

(b) If the rental payment due under a lease is paid on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal as defined in this section, or the amount of payment made was determined in accordance with the rental or acreage figure stated in a bill rendered by the designated Service office, or decision rendered by the authorized officer, and such figure is found to be in error resulting in a deficiency, such lease shall not have automatically terminated unless the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section. A deficiency shall be considered nominal if it is not more than $100 or more than 5 percent of the total payment due, whichever is less. The designated Service office shall send a Notice of Deficiency to the lessee. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the designated Service office. If the payment required by the Notice is not paid within the time allowed, the lease shall have terminated by operation of law as of its anniversary date.

[48 FR 33662, July 22, 1983, as amended at 49 FR 11637, Mar. 27, 1984; 49 FR 30448, July 30, 1984; 53 FR 17357, May 16, 1988]

§ 3108.2-2 Reinstatement at existing rental and royalty rates: Class I reinstatements.

(a) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(1) Such rental was paid or tendered within 20 days after the anniversary date; and

(2) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of the rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee (reasonable diligence shall include a rental payment which is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public); and

(3) A petition for reinstatement, together with a nonrefundable filing fee of $25 and the required rental, including any back rental which has accrued from the date of the termination of the lease, is filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental. If a terminated lease becomes productive prior to the time the lease is reinstated, all required royalty that has accrued shall be paid to the Service.

(b) The burden of showing that the failure to pay on or before the anniversary date was justified or not due to lack of reasonable diligence shall be on the lessee.

(c) Under no circumstances shall a terminated lease be reinstated if:

(1) A valid oil and gas lease has been issued prior to the filing of a petition for reinstatement affecting any of the lands covered by that terminated lease; or

(2) The oil and gas interests of the United States in the lands have been disposed of or otherwise have become unavailable for leasing.

(d) The authorized officer shall not issue a lease for lands which have been covered by a lease which terminated automatically until 90 days after the date of termination.

[49 FR 30448, July 30, 1984, as amended at 53 FR 17357, May 16, 1988]

§ 3108.2-3 Reinstatement at higher rental and royalty rates: Class II reinstatements.

(a) The authorized officer may, if the requirements of this section are met, reinstate an oil and gas lease which was terminated by operation of law for failure to pay rental timely when the rental was not paid or tendered within 20 days of the termination date and it is shown to the satisfaction of the authorized officer that such failure was justified or not due to a lack of reasonable diligence, or no matter when the rental was paid, it is shown to the satisfaction of the authorized officer that such failure was inadvertent.

(b)(1) For leases that terminate on or after January 12, 1983, consideration may be given to reinstatement if the required back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement, are filed on or before the earlier of:

(i) Sixty days after the receipt of the Notice of Termination sent to the lessee of record; or

(ii) Fifteen months after termination of the lease.

(2) After determining that the requirements for filing of the petition for reinstatement have been timely met, the authorized officer may reinstate the lease if:

(i) No valid lease has been issued prior to the filing of the petition for reinstatement affecting any of the lands covered by the terminated lease, whether such lease is still in effect or not;

(ii) The oil and gas interests of the United States in the lands have not been disposed of or have not otherwise become unavailable for leasing;

(iii) Payment of all back rentals and royalties at the rates established for the reinstated lease, including the release to the United States of funds being held in escrow, as appropriate;

(iv) An agreement has been signed by the lessee and attached to and made a part of the lease specifying future rentals at the applicable rates specified for reinstated leases in § 3103.2-2 of this title and future royalties at the rates set in § 3103.3-1 of this title for all production removed or sold from such lease or shared by such lease from production allocated to the lease by virtue of its participation in a unit or communitization agreement or other form of approved joint development agreement or plan;

(v) A notice of the proposed reinstatement of the terminated lease and the terms and conditions of reinstatement has been published in the FEDERAL REGISTER at least 30 days prior to the date of reinstatement for which the lessee shall reimburse the Bureau for the full costs incurred in the publishing of said notice; and

(vi) The lessee has paid the Bureau a nonrefundable administrative fee of $500.

(c) The authorized officer shall not, after the receipt of a petition for reinstatement, issue a new lease affecting any of the

lands covered by the terminated lease until all action on the petition is final.

(d) The authorized officer shall furnish to the Chairpersons of the Committee on Interior and Insular Affairs of the House of Representatives and of the Committee on Energy and Natural Resources of the Senate, at least 30 days prior to the date of reinstatement, a copy of the notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the authorized officer considers significant in making the determination to reinstate.

(e) If the authorized officer reinstates the lease, the reinstatement shall be as of the date of termination, for the unexpired portion of the original lease or any extension thereof remaining on the date of termination, and so long thereafter as oil or gas is produced in paying quantities. Where a lease is reinstated under this section and the authorized officer finds that the reinstatement of such lease either (1) occurs after the expiration of the primary term or any extension thereof, or (2) will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may extend the term of the reinstated lease for such period as determined reasonable, but in no event for more than 2 years from the date of the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

(f) The authorized officer may, either in acting on a petition for reinstatement or in response to a request filed after reinstatement, or both, reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes, if he/she determines there are either economic or other circumstances which could cause undue economic hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the lands covered by the lease after the rental had become due and had not been paid; or if the authorized officer determines it is equitable to do so for any other reason.

[49 FR 30449, July 30, 1984]

§ 3108.2-4 Conversion of unpatented oil placer mining claims: Class III reinstatements.

(a) For any unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, and has been or is deemed after January 12, 1983, conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 314 of the Federal Land Policy and Management Act (43 U.S.C. 1744), and it is shown to the satisfaction of the authorized officer that such failure was inadvertent, justifiable or not due to lack of reasonable diligence on the part of the owner, the authorized officer may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease consistent with the provisions of section 17(e) of the Act (30 U.S.C. 226(e)). The effective date of any lease issued under this section shall be from the statutory date that the claim was deemed conclusively abandoned.

(b) The authorized officer may issue a noncompetitive oil and gas lease if a petition has been filed in the proper BLM office for the issuance of a noncompetitive oil and gas lease accompanied by the required rental and royalty, including back rental and royalty accruing, at the rates specified in §§ 3103.2-2 and 3103.3-1 of this title, for any claim deemed conclusively abandoned after January 12, 1983. The petition shall have been filed on or before the 120th day after the final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim.

(c) The authorized officer shall not issue a noncompetitive oil and gas lease under this section if a valid oil and gas lease has been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of the petition for issuance of a noncompetitive oil and gas lease.

(d) After the filing of a petition for issuance of a noncompetitive oil and gas lease covering an abandoned oil placer claim, the authorized officer shall not issue any new lease affecting any lands covered by such petition until all action on the petition is final.

(e) Any noncompetitive lease issued under this section shall include:

(1) Terms and conditions for the payment of rental in accordance with § 3103.2-2(j) of this title. Payment of back rentals accruing from the date of abandonment of the oil placer mining claim, at the rental set by the authorized officer, shall be made prior to the lease issuance.

(2) Royalty rates set in accordance with § 3103.3-1 of this title. Royalty shall be paid at the rate established by the authorized officer on all production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the date the claim was deemed conclusively abandoned prior to the lease issuance.

(f) Noncompetitive oil and gas leases issued under this section shall be subject to all regulations in part 3100 of this title except for those terms and conditions mandated by Title IV of the Federal Oil and Gas Royalty Management Act.

(g) A notice of the proposed conversion of the oil placer mining claim into a noncompetitive oil and gas lease, including the terms and conditions of conversion, shall be published in the FEDERAL REGISTER at least 30 days prior to the issuance of a noncompetitive oil and gas lease. The mining claim owner shall reimburse the Bureau for the full costs incurred in the publishing of said notice.

(h) The mining claim owner shall pay the Bureau a nonrefundable administrative fee of $500 prior to the issuance of the noncompetitive lease.

(i) The authorized officer may, either in acting on a petition to issue a noncompetitive oil and gas lease or in response to a request filed after issuance, or both, reduce the royalty in such lease, if he/she determines there are either economic or other circumstances which could cause undue economic hardship or premature termination of production.

[49 FR 30449, July 30, 1984, as amended at 53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3108.3 Cancellation.

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only after notice to the lessee in accordance with section 31(b) of the Act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply.

(b) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, and if the leasehold contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by judicial proceedings in the manner provided by section 31(a) of the Act.

(c) If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of the act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, only by judicial proceedings in the manner provided by section 27(h)(1) of the Act.

(d) Leases shall be subject to cancellation if improperly issued.

[48 FR 33662, July 22, 1983, as amended at 53 FR 22840, June 17, 1988; 53 FR 31868, Aug. 22, 1988]

§ 3108.4 Bona fide purchasers.

A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to

cancellation. All purchasers shall be charged with constructive notice as to all pertinent regulations and all Bureau records pertaining to the lease and the lands covered by the lease. Prompt action shall be taken to dismiss as a party to any proceedings with respect to a violation by a predecessor of any provisions of the act, any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented that the purchaser is not a bona fide purchaser.

[48 FR 33662, July 22, 1983; 48 FR 39225, Aug. 30, 1983, as amended at 53 FR 17357, May 16, 1988]

§ 3108.5 Waiver or suspension of lease rights.

If, during any proceeding with respect to a violation of any provisions of the regulations in Groups 3000 and 3100 of this title or the act, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments of rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

[53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

Subpart 3109 -- Leasing Under Special Acts

§ 3109.1 Rights-of-way.

§ 3109.1-1 Generally.

The Act of May 21, 1930 (30 U.S.C. 301-306), authorizes either the leasing of oil and gas deposits under railroad and other rights-of-way to the owner of the right-of-way or the entering of a compensatory royalty agreement with adjoining landowners. This authority shall be exercised only with respect to railroad rights-of-way and easements issued pursuant either to the Act of March 3, 1875 (43 U.S.C. 934 *et seq.*), or pursuant to earlier railroad right-of-way statutes, and with respect to rights-of-way and easements issued pursuant to the Act of March 3, 1891 (43 U.S.C. 946 *et seq.*). The oil and gas underlying any other right-of-way or easement is included within any oil and gas lease issued pursuant to the Act which covers the lands within the right-of-way, subject to the limitations on use of the surface, if any, set out in the statute under which, or permit by which, the right-of-way or easement was issued, and such oil and gas shall not be leased under the Act of May 21, 1930.

§ 3109.1-2 Application.

No approved form is required for an application to lease lands in a right-of-way. Applications shall be filed in the proper BLM office. Such applications shall be filed by the owner of the right-of-way or by his/her transferee and be accompanied by a nonrefundable filing fee of $75, and if filed by a transferee, by a duly executed transfer of the right to lease. The application shall detail the facts as to the ownership of the right-of-way, and of the transfer if the application is filed by a transferee; the development of oil or gas in adjacent or nearby lands, the location and depth of the wells, the production and the probability of drainage of the deposits in the right-of-way. A description by metes and bounds of the right-of-way is not required but each legal subdivision through which a portion of the right- of-way desired to be leased extends shall be described.

[53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3109.1-3 Notice.

After the Bureau of Land Management has determined that a lease of a right-of-way or any portion thereof is consistent with the public interest, either upon consideration of an application for lease or on its own motion, the authorized officer shall serve notice on the owner or lessee of the oil and gas rights of the adjoining lands. The adjoining land owner or lessee

shall be allowed a reasonable time, as provided in the notice, within which to submit a bid for the amount or percent of compensatory royalty, the owner or lessee shall pay for the extraction of the oil and gas underlying the right-of-way through wells on such adjoining lands. The owner of the right-of-way shall be given the same time period to submit a bid for the lease.

§ 3109.1-4 Award of lease or compensatory royalty agreement.

Award of lease to the owner of the right-of-way, or a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands shall be made to the bidder whose offer is determined by the authorized officer to be to the best advantage of the United States, considering the amount of royalty to be received and the better development under the respective means of production and operation.

§ 3109.1-5 Compensatory royalty agreement or lease.

(a) The lease or compensatory royalty agreement shall be on a form approved by the Director.

(b) The royalty to be charged shall be fixed by the Bureau of Land Mangement in accordance with the provisions of § 3103.3 of this title, but shall not be less than 12 1/2 percent.

(c) The term of the lease shall be for a period of not more than 20 years.

§ 3109.2 Units of the National Park System.

(a) Oil and gas leasing in units of the National Park System shall be governed by 43 CFR Group 3100 and all operations conducted on a lease or permit in such units shall be governed by 43 CFR parts 3160 and 3180.

(b) Any lease or permit respecting minerals in units of the National Park System shall be issued or renewed only with the consent of the Regional Director, National Park Service. Such consent shall only be granted upon a determination by the Regional Director that the activity permitted under the lease or permit will not have significant adverse effect upon the resources or administration of the unit pursuant to the authorizing legislation of the unit. Any lease or permit issued shall be subject to such conditions as may be prescribed by the Regional Director to protect the surface and significant resources of the unit, to preserve their use for public recreation, and to the condition that site specific approval of any activity on the lease will only be given upon concurrence by the Regional Director. All lease applications received for reclamation withdrawn lands shall also be submitted to the Bureau of Reclamation for review.

(c) The units subject to the regulations in this part are those units of land and water which are shown on the following maps on file and available for public inspection in the office of the Director of the National Park Service and in the Superintendent's Office of each unit. The boundaries of these units may be revised by the Secretary as authorized in the Acts.

(1) Lake Mead National Recreation Area -- The map identified as "boundary map, 8360-80013B, revised February 1986.

(2) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area -- The map identified as "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," numbered BOR-WST 1004, dated July 1963.

(3) Ross Lake and Lake Chelan National Recreation Areas -- The map identified as "Proposed Management Units, North Cascades, Washington," numbered NP-CAS-7002, dated October 1967.

(4) Glen Canyon National Recreation Area -- the map identified as "boundary map, Glen Canyon National Recreation Area," numbered GLC-91,006, dated August 1972.

(d) The following excepted units shall not be open to mineral leasing:

(1) Lake Mead National Recreation Area.

(i) All waters of Lakes Mead and Mohave and all lands within 300 feet of those lakes measured horizontally from the shoreline at maximum surface elevation;

(ii) All lands within the unit of supervision of the Bureau of Reclamation around Hoover and Davis Dams and all lands outside of resource utilization zones as designated by the Superintendent on the map (602-2291B, dated October 1987) of Lake Mead National Recreation Area which is available for inspection in the Office of the Superintendent.

(2) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area.

(i) All waters of Whiskeytown Lake and all lands within 1 mile of that lake measured from the shoreline at maximum surface elevation;

(ii) All lands classified as high density recreation, general outdoor recreation, outstanding natural and historic, as shown on the map numbered 611-20,004B, dated April 1979, entitled "Land Classification, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area." This map is available for public inspection in the Office of the Superintendent;

(iii) All lands within section 34 of Township 33 north, Range 7 west, Mt. Diablo Meridian.

(3) Ross Lake and Lake Chelan National Recreation Areas.

(i) All of Lake Chelan National Recreation Area;

(ii) All lands within 1/2 mile of Gorge, Diablo and Ross Lakes measured from the shoreline at maximum surface elevation;

(iii) All lands proposed for or designated as wilderness;

(iv) All lands within 1/2 mile of State Highway 20;

(v) Pyramid Lake Research Natural Area and all lands within 1/2 mile of its boundaries.

(4) Glen Canyon National Recreation Area. Those units closed to mineral disposition within the natural zone, development zone, cultural zone and portions of the recreation and resource utilization zone as shown on the map numbered 80,022A, dated March 1980, entitled "Mineral Management Plan -- Glen Canyon National Recreation Area." This map is available for public inspection in the Office of the Superintendent and the office of the State Directors, Bureau of Land Management, Arizona and Utah.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17358, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3109.2-1 Authority to lease. [Reserved]

§ 3109.2-2 Area subject to lease. [Reserved]

§ 3109.3 Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

Section 6 of the Act of November 8, 1965 (Pub. L. 89-336), authorizes the Secretary to permit the removal of oil and gas from lands within the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area in accordance with the act or the Mineral Leasing Act for Acquired Lands. Subject to the determination by the Secretary of Agriculture that removal will not have significant adverse effects on the purposes of the Central Valley project or the administration of the recreation area.

[48 FR 33662, July 22, 1983. Redesignated at 53 FR 22840, June 17, 1988]

PART 3110 -- NONCOMPETITIVE LEASES

Subpart 3110 -- Noncompetitive Leases

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Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

Source: 53 FR 22840, June 17, 1988, unless otherwise noted.

Subpart 3110 -- Noncompetitive Leases

§ 3110.1 Lands available for noncompetitive offer and lease.

(a) Offer. (1) Effective June 12, 1988, through January 2, 1989, noncompetitive lease offers may be filed only for lands available under § 3110.1(b) of this title. Noncompetitive lease offers filed after December 22, 1987, and prior to June 12, 1988, for lands available for filing under § 3110.1(a) of this title shall receive priority. Such offers shall be exposed to competitive bidding under subpart 3120 of this title and if no bid is received, a noncompetitive lease shall be issued all else being regular. After January 2, 1989, noncompetitive lease offers may be filed on unleased lands, except for:

(i) Those lands which are in the one-year period commencing upon the expiration, termination, relinquishment, or cancellation of the leases containing the lands; and

(ii) Those lands included in a Notice of Competitive Lease Sale or a List of Lands Available for Competitive Nominations. Neither exception is applicable to lands available under § 3110.1(b) of this title.

(2) Noncompetitive lease offers may be made pursuant to an opening order or other notice and shall be subject to all

provisions and procedures stated in such order or notice.

(3) No noncompetitive lease may issue for any lands unless and until they have satisfied the requirements of § 3110.1(b) of this title.

(b) Lease. Only lands that have been offered competitively under subpart 3120 of this title, and for which no bid has been received, shall be available for noncompetitive lease. Such lands shall become available for a period of 2 years beginning on the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in § 3120.3-1 of this title, or the first business day following the posting of the Notice of Competitive Lease Sale, and ending on that same day 2 years later. A lease may be issued from an offer properly filed any time within the 2-year noncompetitive leasing period.

[53 FR 22840, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3110.2 Priority.

(a) Offers filed for lands available for noncompetitive offer or lease, as specified in §§ 3110.1(a)(1) and 3110.1(b) of this title, shall receive priority as of the date and time of filing as specified in § 1821.2-3(a) of this title, except that all noncompetitive offers shall be considered simultaneously filed if received in the proper BLM office any time during the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in § 3120.3-1 of this title, on the first business day following the posting of the Notice of Competitive Lease Sale. An offer shall not be available for public inspection the day it is filed.

(b) If more than ~~1 application~~ was filed for the same parcel in accordance with the regulations contained in former subpart 3112 of this title, and if no lease has been issued by the authorized officer prior to the effective date of these regulations, only a single priority application shall be selected from the filings. If the selected application fails to mature into a lease, the lands shall be available for offer under § 3110.1(a) of this title.

§ 3110.3 Lease terms.

§ 3110.3-1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 years.

[53 FR 22840, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3110.3-2 Dating of leases.

All noncompetitive leases shall be considered issued when signed by the authorized officer. Noncompetitive leases, except future interest leases issued under § 3110.9 of this title, shall be effective as of the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Future interest leases issued under § 3110.9 of this title shall be effective as of the date the mineral interests vest in the United States.

§ 3110.3-3 Lease offer size.

(a) Lease offers for public domain minerals shall not be made for less than 640 acres or 1 full section, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within a section and there are no contiguous lands available for lease. Such public domain lease offers in Alaska shall not be made for less than 2,560 acres or 4 full contiguous sections, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within the subject section and there are no contiguous lands available for lease. Where an offer exceeds the minimum 640-acre provision of this paragraph, the offer may include

less than all available lands in any given section. Cornering lands are not considered contiguous lands. This paragraph shall not apply to offers made under § 3108.2-4 of this title or where the offer is filed on an entire parcel as it was offered by the Bureau in a competitive sale during that period specified under § 3110.5-1 of this title.

(b) An offer to lease public domain or acquired lands may not include more than 10,240 acres. The lands in an offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer to lease acquired lands may exceed the 6 mile square limit if:

(1) The lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) The tract desired is described by the acquisition or tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area, and such acquisition or tract number is provided in accordance with § 3110.5-2(d) of this title in lieu of any other description.

(c) If an offer exceeds the 10,240 acre maximum by not more than 160 acres, the offeror shall be granted 30 days from notice of the excess to withdraw the excess acreage from the offer, failing which the offer shall be rejected and priority lost.

§ 3110.4 Requirements for offer.

(a) An offer to lease shall be made on a current form approved by the Director, or on unofficial copies of that form in current use. For noncompetitive leases processed under § 3108.2-4 of this title, the current lease form shall be used. Copies shall be exact ~~reproductions on~~ 1 page of ~~both~~ sides of ~~the~~ official approved ~~form~~, without additions, omissions, or other changes, or advertising. The original copy of each offer shall be typewritten or printed plainly in ink, signed in ink and dated by the offeror or the offeror's duly authorized agent, and shall be accompanied by the first year's rental and a nonrefundable filing fee of $75. The original and 2 copies of each offer to lease, with each copy showing that the original has been signed, shall be filed in the proper BLM office. A noncompetitive offer to lease a future interest applied for under "§ 3110.9" of this title shall be accompanied by a nonrefundable filing fee of $75. Where remittances for offers are returned for insufficient funds, the offer shall not obtain priority of filing until the date the remittance is properly made.

(b) Where a correction to an offer is made, whether at the option of the offeror or at the request of the authorized officer, it shall gain priority as of the date the filing is correct and complete. The priority that existed before the date the corrected offer is filed, may be defeated by an intervening offer to the extent of any conflict in such offers, except as provided under §§ 3103.2-1(a) and 3110.3-3(c) of this title.

(c) An offer shall be limited to either public domain minerals or acquired lands minerals, subject to the provisions for corrections under paragraph (b) of this section.

(d) Compliance with subpart 3102 shall be required.

(e) All offers for leases should name the United States agency from which consent to the issuance of a lease shall be obtained, or the agency that may have title records covering the ownership for the mineral interest involved, and identify the project, if any, of which the lands covered by the offer are a part.

[53 FR 22840, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3110.5 Description of lands in offer.

§ 3110.5-1 Parcel number description.

From the first day following the end of a competitive process until the end of that same month, the only acceptable description for a noncompetitive lease offer for the lands covered by that competitive process shall be the parcel number

on the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, whichever is appropriate. Each such offer shall contain only a single parcel. Thereafter, the description of the lands shall be made in accordance with the remainder of this section.

§ 3110.5-2 Public domain.

(a) If the lands have been surveyed under the public land rectangular survey system, each offer shall describe the lands by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands have not been surveyed under the public land rectangular system, each offer shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an official corner of the public land surveys.

(c) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands in the same manner as provided in paragraph (a) of this section for officially surveyed lands.

(d)(1) Where offers are pending for unsurveyed lands that are subsequently surveyed or protracted before the lease issuance, the description in the lease shall be conformed to the subdivisions of the approved protracted survey or the public land survey, whichever is appropriate.

(2) The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

(e) The requirements of this section shall apply to applications for conversion of abandoned unpatented oil placer mining claims made under § 3108.2-4 of this title, except that deficiencies shall be curable.

§ 3110.5-3 Acquired lands.

(a) If the lands applied for lie within and conform to the rectangular system of public land surveys and constitute either all or a portion of the tract acquired by the United States, such lands shall be described by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands applied for do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner, or a copy of the deed or other conveyance document by which the United States acquired title to the lands may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description on the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(c) If the lands applied for lie outside an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described as in the deed or other conveyance document by which the United States acquired title to the lands, or a copy of that document may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by courses and distances between successive angle points tying by courses and distances into the description in the deed or other conveyance document. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer

form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description in the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(d) Where the acquiring agency has assigned an acquisition or tract number covering the lands applied for, without loss of priority to the offeror, the authorized officer may require that number in addition to any description otherwise required by this section. If the authorized officer determines that the acquisition or tract number, together with identification of the State and county, constitutes an adequate description, the authorized officer may allow the description in this manner in lieu of other descriptions required by this section.

(e) Where the lands applied for do not conform to the rectangular system of public land surveys, without loss of priority to the offeror, the authorized officer may require 3 copies of a map upon which the location of the desired lands are clearly marked with respect to the administrative unit or project of which they are a part.

§ 3110.5-4 Accreted lands.

Where an offer includes any accreted lands, the accreted lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the tract to which the accretions appertain.

§ 3110.5-5 Conflicting descriptions.

If there is any variation in the land description among the required copies of the official forms, the copy showing the date and time of receipt in the proper BLM office shall control.

[53 FR 22840, June 17, 1988; 53 FR 31868, Aug. 22, 1988]

§ 3110.6 Withdrawal of offer.

An offer for noncompetitive lease under this subpart may be withdrawn in whole or in part by the offeror. However, a withdrawal of an offer made in accordance with § 3110.1(b) of this title may be made only if the withdrawal is received by the proper BLM office after 60 days from the date of filing of such offer. No withdrawal may be made once the lease, an amendment of the lease, or a separate lease, whichever covers the lands so described in the withdrawal, has been signed on behalf of the United States. If a public domain offer is partially withdrawn, the lands retained in the offer shall comply with § 3110.3-3(a) of this title.

§ 3110.7 Action on offer.

(a) No lease shall be issued before final action has been taken on any prior offer to lease the lands or any extension of, or petition for reinstatement of, an existing or former lease on the lands. If a lease is issued before final action, it shall be canceled, if the prior offeror is qualified to receive a lease or the petitioner is entitled to reinstatement of a former lease.

(b) The authorized officer shall not issue a lease for lands covered by a lease which terminated automatically, until 90 days after the date of termination.

(c) The United States shall indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease, by signature of the authorized officer on the current lease form. A signed copy of the lease shall be delivered to the offeror.

(d) Except as otherwise specifically provided in the regulations of this group, an offer that is not filed in accordance with the regulations in this part shall be rejected.

(e) Filing an offer on a lease form not currently in use, unless such lease form has been declared obsolete by the Director

prior to the filing shall be allowed, on the condition that the offeror is bound by the terms and conditions of the lease form currently in use.

§ 3110.8 Amendment to lease.

After the competitive process has concluded in accordance with subpart 3120 of this title, if any of the lands described in a lease offer for lands available during the 2-year period are open to oil and gas filing when the offer is filed but are omitted from the lease for any reason the original lease shall be amended to include the omitted lands unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the offer with respect to such lands or the offeror elects to receive a separate lease in lieu of an amendment. Such election shall be made by submission of a signed statement of the offeror requesting a separate lease, and a new offer on the required form executed pursuant to this part describing the remaining lands in the original offer. The new offer shall have the same priority as the old offer. No new application fee is required with the new offer. The rental payment held in connection with the original offer shall be applied to the new offer. The rental and the term of the lease for the lands added by an amendment shall be the same as if the lands had been included in the original lease when it was issued. If a separate lease is issued, it shall be dated in accordance with § 3110.3-2 of this title.

§ 3110.9 Future interest offers.

§ 3110.9-1 Availability.

A noncompetitive future interest lease shall not be issued until the lands covered by the offer have been made available for competitive lease under subpart 3120 of this title. An offer made for lands that are leased competitively shall be rejected.

§ 3110.9-2 Form of offer.

An offer to lease a future interest shall be filed in accordance with this subpart, and may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought.

§ 3110.9-3 Fractional present and future interest.

Where the United States owns both a present fractional interest and a future fractional interest in the minerals in the same tract, the lease, when issued, shall cover both the present and future interests in the lands. The effective date and primary term of the present interest lease is unaffected by the vesting of a future fractional interest. The lease for the future fractional interest, when such interest vests in the United States, shall have the same primary term and anniversary date as the present fractional interest lease.

§ 3110.9-4 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any noncompetitive lease issued under this subpart, as provided in subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

PART 3120 -- COMPETITIVE LEASES

Subpart 3120 -- Competitive Leases

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Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Source: 53 FR 22843, June 17, 1988, unless otherwise noted.

Subpart 3120 -- Competitive Leases

§ 3120.1 General.

§ 3120.1-1 Lands available for competitive leasing.

All lands available for leasing shall be offered for competitive bidding under this subpart, including but not limited to:

(a) Lands in oil and gas leases that have terminated, expired, been cancelled or relinquished.

(b) Lands for which authority to lease has been delegated from the General Services Administration.

(c) If, in proceeding to cancel a lease, interest in a lease, option to acquire a lease or an interest therein, acquired in violation of any of the provisions of the act, an underlying lease, interest or option in the lease is cancelled or forfeited to the United States and there are valid interests therein that are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease, interest, or option shall be sold to the highest responsible qualified bidder by competitive bidding under this subpart, subject to all outstanding valid interests therein and valid options pertaining thereto. If less than the whole interest in the lease, interest, or option is cancelled or forfeited, such partial interest shall likewise be sold by competitive bidding. If no satisfactory bid is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold in accordance with section 27 of the Act by such other methods as the authorized officer deems appropriate, but on terms no less favorable to the United States than those of the best competitive bid received. Interest in outstanding leases(s) so sold shall be subject to the terms and conditions of the existing lease(s).

(d) Lands which are otherwise unavailable for leasing but which are subject to drainage (protective leasing).

(e) Lands included in any expression of interest or noncompetitive offer, except offers properly filed within the 2-year period provided under § 3110.1(b) of this title, submitted to the authorized officer.

(f) Lands selected by the authorized officer.

§ 3120.1-2 Requirements.

(a) Each proper BLM Sate office shall hold sales at least quarterly if lands are available for competitive leasing.

(b) Lease sales shall be conducted by a competitive oral bidding process.

(c) The national minimum acceptable bid shall be $2 per acre or fraction thereof payable on the gross acreage, and shall not be prorated for any lands in which the United States owns a fractional interest.

§ 3120.1-3 Protests and appeals.

No action pursuant to the regulations in this subpart shall be suspended under § 4.21(a) of this title due to an appeal from a decision by the authorized officer to hold a lease sale. The authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale.

Only the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good and just cause after reviewing the reason(s) for an appeal.

§ 3120.2 Lease terms.

§ 3120.2-1 Duration of lease.

Competitive leases shall be issued for a primary term of 10 years.

[58 FR 40754, July 30, 1993]

§ 3120.2-2 Dating of leases.

All competitive leases shall be considered issued when signed by the authorized officer. Competitive leases, except future interest leases issued under § 3120.7 of this title, shall be effective as of the first day of the month following the date the leases are signed on behalf of the United States. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Leases for future interest shall be effective as of the date the mineral interests vest in the United States.

§ 3120.2-3 Lease size.

Lands shall be offered in leasing units of not more than 2,560 acres outside Alaska, or 5,760 acres within Alaska, which shall be as nearly compact in form as possible.

§ 3120.3 Nomination process.

The Director may elect to implement the provisions contained in §§ 3120.3-1 through 3120.3-7 of this title after review of any comments received during a period of not less than 30 days following publication in the FEDERAL REGISTER of notice that implementation of those sections is being considered.

§ 3120.3-1 General.

The Director may elect to accept nominations requiring submission of the national minimum acceptable bid, as set forth in this section, as part of the competitive process required by the act, or elect to accept informal expressions of interest. A List of Lands Available for Competitive Nominations may be posted in accordance with § 3120.4 of this title, and nominations in response to this list shall be made in accordance with instructions contained therein and on a form approved by the Director. Those parcels receiving nominations shall be included in a Notice of Competitive Lease Sale, unless the parcel is withdrawn by the Bureau.

§ 3120.3-2 Filing of a nomination for competitive leasing.

Nominations filed in response to a List of Lands Available for Competitive Nominations and on a form approved by the Director shall:

(a) Include the nominator's name and personal or business address. The name of only one citizen, association or partnership, corporation or municipality shall appear as the nominator. All communications relating to leasing shall be sent to that name and address, which shall constitute the nominator's name and address of record:

(b) Be completed, signed in ink and filed in accordance with the instructions printed on the form and the regulations in this subpart. Execution of the nomination form shall constitute a legally binding offer to lease by the nominator, including all terms and conditions;

(c) Be filed within the filing period and in the BLM office specified in the List of Lands Available for Competitive Nominations. A nomination shall be unacceptable and shall be returned with all moneys refunded if it has not been completed and timely filed in accordance with the instructions on the form or with the other requirements in this subpart; and

(d) Be accompanied by a remittance sufficient to cover the national minimum acceptable bid, the first year's rental per acre or fraction thereof, and the administrative fee as set forth in § 3120.5-2(b) of this title for each parcel nominated on the form.

[53 FR 22843, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3120.3-3 Minimum bid and rental remittance.

Nominations filed in response to a List of Lands Available for Competitive Nominations shall be accompanied by a single remittance. Failure to submit either a separate remittance with each form or an amount sufficient to cover all the parcels nominated on each form shall cause the entire filing to be deemed unacceptable with all moneys refunded.

§ 3120.3-4 Withdrawal of a nomination.

A nomination shall not be withdrawn, except by the Bureau for cause, in which case all moneys shall be refunded.

§ 3120.3-5 Parcels receiving nominations.

Parcels which receive nominations shall be included in a Notice of Competitive Lease Sale. The Notice shall indicate which parcels received multiple nominations in response to a List of Lands Available for Competitive Nominations, or parcels which have been withdrawn by the Bureau.

§ 3120.3-6 Parcels not receiving nominations.

Lands included in the List of Lands Available for Competitive Nominations which are not included in the Notice of Competitive Lease Sale because they were not nominated, unless they were withdrawn by the Bureau, shall be available for a 2-year period, for noncompetitive leasing as specified in the List.

§ 3120.3-7 Refund.

The minimum bid, first year's rental and administrative fee shall be refunded to all nominators who are unsuccessful at the oral auction.

§ 3120.4 Notice of competitive lease sale.

§ 3120.4-1 General.

(a) The lands available for competitive lease sale under this subpart shall be described in a Notice of Competitive Lease Sale.

(b) The time, date, and place of the competitive lease sale shall be stated in the Notice.

(c) The notice shall include an identification of, and a copy of, stipulations applicable to each parcel.

§ 3120.4-2 Posting of notice.

At least 45 days prior to conducting a competitive auction, lands to be offered for competitive lease sale, as included in a List of Lands Available for Competitive Nominations or in a Notice of Competitive Lease Sale, shall be posted in the proper BLM office having jurisdiction over the lands as specified in § 1821.2-1(d) of this title, and shall be made available for posting to surface managing agencies having jurisdiction over any of the included lands.

§ 3120.5 Competitive sale.

§ 3120.5-1 Oral auction.

(a) Parcels shall be offered by oral bidding. The existence of a nomination accompanied by the national minimum acceptable bid shall be announced at the auction for the parcel.

(b) A winning bid shall be the highest oral bid by a qualified bidder, equal to or exceeding the national minimum acceptable bid. The decision of the auctioneer shall be final.

(c) Two or more nominations on the same parcel when the bids are equal to the national minimum acceptable bid, with no higher oral bid being made, shall be returned with all moneys refunded. If the Bureau reoffers the parcel, it shall be reoffered only competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received at an oral auction.

§ 3120.5-2 Payments required.

(a) Payments shall be made in accordance with § 3103.1-1 of this title.

(b) Each winning bidder shall submit, by the close of official business hours, or such other time as may be specified by the authorized officer, on the day of the sale for the parcel:

(1) The minimum bonus bid of $2 per acre or fraction thereof;

(2) The total amount of the first year's rental; and

(3) An administrative fee of $75 per parcel.

(c) The winning bidder shall submit the balance of the bonus bid to the proper BLM office within 10 working days after the last day of the oral auction.

§ 3120.5-3 Award of lease.

(a) A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and administrative fee. Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with subpart 3102 of this title, shall constitute a binding lease offer, including all terms and conditions applicable thereto, and shall be required when payment is made in accordance with § 3120.5-2(b) of this title. Failure to comply with § 3120.5-2(c) of this title shall result in rejection of the bid and forfeiture of the monies submitted under § 3120.5-2(b) of this title.

(b) A lease shall be awarded to the highest responsible qualified bidder. A copy of the lease shall be provided to the lessee after signature by the authorized officer.

(c) If a bid is rejected, the lands shall be reoffered competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received in an oral auction.

(d) Issuance of the lease shall be consistent with § 3110.7 (a) and (b) of this title.

§ 3120.6 Parcels not bid on at auction.

Lands offered at the oral auction that receive no bids shall be available for filing for noncompetitive lease for a 2-year period beginning the first business day following the auction at a time specified in the Notice of Competitive Lease Sale.

§ 3120.7 Future interest.

§ 3120.7-1 Nomination to make lands available for competitive lease.

A nomination for a future interest lease shall be filed in accordance with this subpart.

§ 3120.7-2 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if, he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the

proper BLM office an assignment or transfer, in accordance with subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any competitive lease issued under this subpart, as provided in subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

§ 3120.7-3 Compensatory royalty agreements.

The terms and conditions of compensatory royalty agreements involving acquired lands in which the United States owns a future or fractional interest shall be established on an individual case basis. Such agreements shall be required when leasing is not possible in situations where the interest of the United States in the oil and gas deposit includes both a present and a future fractional interest in the same tract containing a producing well.

[53 FR 22843, June 17, 1988]

BUREAU OF LAND MANAGEMENT, INTERIOR **(Updated 09/25/02)**
43CFR Ch.II, October 01, 2001

PART 3160 — ONSHORE OIL AND GAS OPERATIONS

Subpart 3160 — Onshore Oil and Gas Operations: General

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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.
Source: 47 FR 47765, Oct. 27, 1982, unless otherwise noted. Redesignated at 48 FR 36583-36586, Aug. 12, 1983, and 67 FR 17894, April 11, 2002.

Subpart 3160 — Onshore Oil and Gas Operations: General

3160.0 – 1 Purpose.

The regulations in this part govern operations associated with the exploration, development and production of oil and gas deposits from –

(a) Leases issued or approved by the United States;
(b) Restricted Indian land leases; and
(c) Those under the jurisdiction of the Secretary of the Interior by law or administrative arrangement, including the National Petroleum Reserve – Alaska (NPR - A). However, provisions relating to the suspension and royalty reduction contained in subpart 3165 of this part do not apply to NPR - A.

[48 FR 36583, Aug. 12, 1983; 67 FR 17894, April 11, 2002]

3160.0 – 2 Policy.

The regulations in this part are administered under the direction of the Director of the Bureau of Land Management; except that as to lands within naval petroleum reserves, they shall be administered under such official as the Secretary of Energy shall designate.

[48 FR 36584, Aug. 12, 1983]

3160.0 – 3 Authority.

The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.), the Act of May 21, 1930 (30 U.S.C. 301 - 306), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351 - 359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a - 396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a - 398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. §441 (43 U.S.C. 1457), the Attorney General's Opinion of April 2, 1941 (40 Op Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National

Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (94 Stat. 2964), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701), the Indian Mineral Development Act of 1982 (25 U.S.C. 2102), and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983) under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the responsibility for leasing of restricted Indian lands, to the Bureau of Land Management.

[48 FR 36583, Aug. 12, 1983]

§3160.0 – 4 Objectives.

The objective of these regulations is to promote the orderly and efficient exploration, development and production of oil and gas.

[48 FR 36583, Aug. 12, 1983]

§3160.0 – 5 Definitions.

As used in this part, the term:

Authorized representative means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation or contract.

Avoidably lost means the venting or flaring of produced gas without the prior authorization, approval, ratification or acceptance of the authorized officer and the loss of produced oil or gas when the authorized officer determines that such loss occurred as a result of:

(1) Negligence on the part of the operator; or

(2) The failure of the operator to take all reasonable measures to prevent and/or control the loss; or

(3) The failure of the operator to comply fully with the applicable lease terms and regulations, applicable orders and notices, or the written orders of the authorized officer; or

(4) Any combination of the foregoing.

Drainage means the migration of hydrocarbons, inert gases (other than helium), or associated resources caused by production from other wells.

Federal lands means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

Fresh water means water containing not more than 1,000 ppm of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant or acquatic life, unless otherwise specified in applicable notices or orders.

Knowingly or willfully means a violation that constitutes the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or

duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of the law, regulations, orders, or terms of the lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistakes or mere inadvertency. Conduct that is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

Lease means any contract, profit-share arrangement, joint venture or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of or removal of oil or gas.

Lease site means any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized under a lease.

Lessee means any person holding record title or owning operating rights in a lease issued or approved by the United States.

Lessor means the party to a lease who holds legal or beneficial title to the mineral estate in the leased lands.

Major violation means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

Maximum ultimate economic recovery means the recovery of oil and gas from leased lands which a prudent operator could be expected to make from that field or reservoir given existing knowledge of reservoir and other pertinent facts and utilizing common industry practices for primary, secondary or tertiary recovery operations.

Minor violation means noncompliance that does not rise to the level of a major violation.

New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act means the date on which a well commences production, or resumes production after having been off production for more than 90 days, and is to be construed as follows:

(1) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs; and

(2) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production.

Notice to lessees and operators (NTL) means a written notice issued by the authorized officer. NTL's implement the regulations in this part and operating orders, and serve as instructions on specific item(s) of importance within a State, District, or Area.

Onshore oil and gas order means a formal numbered order issued by the Director that

implements and supplements the regulations in this part.

Operating rights owner means a person who owns operating rights in a lease. A record title holder may also be an operating rights owner in a lease if it did not transfer all of its operating rights.

Operator means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

Paying well means a well that is capable of producing oil or gas of sufficient value to exceed direct operating costs and the costs of lease rentals or minimum royalty.

Person means any individual, firm, corporation, association, partnership, consortium or joint venture.

Production in paying quantities means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties.

Protective well means a well drilled or modified to prevent or offset drainage of oil and gas resources from its Federal or Indian lease.

Record title holder means the person(s) to whom BLM or an Indian lessor issued a lease or approved the assignment of record title in a lease.

Superintendent means the superintendent of an Indian Agency, or other officer authorized to act in matters of record and law with respect to oil and gas leases on restricted Indian lands.

Surface use plan of operations means a plan for surface use, disturbance, and reclamation.

Waste of oil or gas means any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production and which results in:

(1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or

(2) avoidable surface loss of oil or gas.

[53 FR 17362, May 16, 1988,As amended at 53 FR 22846, June 17, 1988; 66 FR 1892, Jan. 10, 2001]

§3160.0 – 7 Cross references.

25 CFR parts 221, 212, 213, and 227

30 CFR Group 200

40 CFR Chapter V

43 CFR parts 2, 4, and 1820 and Groups 3000, 3100 and 3500

[48 FR 36584, Aug. 12, 1983]

§3160.0 - 9 Information collection.

(a) The information collection requirements contained in §§3162.3, 3162.3–1, 3162.3–2,

3162.3–3, 3162.3–4, 3162.4–1, 3162.4–2, 3162.5–1, 3162.5–2, 3162.5–3, 3162.6, 3162.7–1, 3162.7–2, 3162.7–3, 3162.7–5, 3164.3, 3165.1, and 3165.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance Number 1004 – 0134. The information may be collected from some operators either to provide data so that proposed operations may be approved or to enable the monitoring of compliance with granted approvals. The information will be used to grant approval to begin or alter operations or to allow operations to continue. The obligation to respond is required to obtain benefits under the lease.

(b) Public reporting burden for this information is estimated to average 0.4962 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004 – 0134, Washington, DC 20503.

(c) (1) The information collection requirements contained in part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned the following Clearance Numbers:

OPERATING FORMS

Form No.	Name and filing date	OMB No.
3160-3	Application for Permit to Drill, Deepen, or Plug Back – File 30 days prior to planned action	1004-0136
3160-4	With Completion of Recompletion Report and Log – Due 30 days after well completion	1004-0137
3160-5	Sundry Notice and Reports on Wells – Subsequent report due 30 days after operations completed	1004-0135

The information will be used to manage Federal and Indian oil and gas leases. It will be used to allow evaluation of the technical, safety, and environmental factors involved with drilling and producing oil and gas on Federal and Indian oil and gas leases. Response is mandatory only if the operator elects to initiate drilling, completion, or subsequent operations on an oil and gas well, in accordance with 30 U.S.C. 181 *et seq.*

(2) Public reporting burden for this information is estimated to average 25 minutes per response for clearance number 1004 - 0135, 30 minutes per response for clearance number 1004 – 0136, and 1 hour per response for clearance number 1004 - 0137, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget,

Paperwork Reduction Project, 1004 – 0135, 1004 – 0136, or 1004 – 0137, as appropriate, Washington, DC 20503.

(d) There are many leases and agreements currently in effect, and which will remain in effect, involving both Federal and Indian oil and gas leases which specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements also often specifically refer to various officers such as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager, and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR part 221 or specific sections thereof, which has been redesignated as 43 CFR part 3160. Those references shall now be read in the context of Secretarial Order 3087 and now mean either the Bureau of Land Management or Minerals Management Service, as appropriate.

[57 FR 3024, Jan. 27, 1992]

Subpart 3161 — Jurisdiction and Responsibility

§3161.1 Jurisdiction.

(a) All operations conducted on a Federal or Indian oil and gas lease by the operator are subject to the regulations in this part.

(b) Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

[52 FR 5391, Feb. 20, 1987, as amended at 53 FR 17362, May 16, 1988]

3161.2 Responsibility of the authorized officer.

The authorized officer is authorized and directed to approve unitization, communitization, gas storage and other contractual agreements for Federal lands; to assess compensatory royalty; to approve suspensions of operations or production, or both; to issue NTL's: to approve and monitor other operator proposals for drilling, development or production of oil and gas; to perform administrative reviews; to impose monetary assessments or penalties; to provide technical information and advice relative to oil and gas development and operations on Federal and Indian lands; to enter into cooperative agreements with States, Federal agencies and Indian tribes relative to oil and gas development and operations; to approve, inspect and regulate the operations that are subject to the regulations in this part; to require compliance with lease terms, with the regulations in this title and all other applicable regulations promulgated under the cited laws; and to require that all operations be conducted in a manner which protects other natural resources and the environmental quality, protects life and property and results in the maximum ultimate recovery of oil and gas with minimum waste and with minimum adverse effect on the

ultimate recovery of other mineral resources. The authorized officer may issue written or oral orders to govern specific lease operations. Any such oral orders shall be confirmed in writing by the authorized officer within 10 working days from issuance thereof. Before approving operations on leasehold, the authorized officer shall determine that the lease is in effect, that acceptable bond coverage has been provided and that the proposed plan of operations is sound both from a technical and environmental standpoint.

[48 FR 36584, Aug. 12, 1983, as amended at 52 FR 5391, Feb. 20, 1987; 53 FR 17362, May 16, 1988]

§3161.3 Inspections.

(a) The authorized officer shall establish procedures to ensure that each Federal and Indian lease site which is producing or is expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives shall be inspected at least once annually. Similarly, each lease site on non-Federal or non-Indian lands subject to a formal agreement such as a unit or communitization agreement which has been approved by the Department of the Interior and in which the United States or the Indian lessors share in production shall be inspected annually whenever any of the foregoing criteria are applicable.

(b) In accomplishing the inspections, the authorized officer may utilize Bureau personnel, may enter into cooperative agreements with States or Indian Tribes, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

[49 FR 37363, Sept. 21, 1984, as amended at 52 FR 5391, Feb. 20, 1987]

Subpart 3162 — Requirements for Operating Rights Owners and Operators

§3162.1 General requirements.

(a) The operating rights owner or operator, as appropriate, shall comply with applicable laws and regulations; with the lease terms, Onshore Oil and Gas Orders, NTL's; and with other orders and instructions of the authorized officer. These include, but are not limited to, conducting all operations in a manner which ensures the proper handling, measurement, disposition, and site security of leasehold production; which protects other natural resources and environmental quality; which protects life and property; and which results in maximum ultimate economic recovery of oil and gas with minimum waste and with minimum adverse effect on ultimate recovery of other mineral resources.

(b) The operator shall permit properly identified authorized representatives to enter upon, travel across and inspect lease sites and records normally kept on the lease pertinent thereto without advance notice. Inspections normally will be conducted during those hours when

responsible persons are expected to be present at the operation being inspected. Such permission shall include access to secured facilities on such lease sites for the purpose of making any inspection or investigation for determining whether there is compliance with the mineral leasing laws, the regulations in this part, and any applicable orders, notices or directives.

(c) For the purpose of making any inspection or investigation, the Secretary or his authorized representative shall have the same right to enter upon or travel across any lease site as the operator has acquired by purchase, condemnation or otherwise.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983; 49 FR 37364, Sept. 21, 1984; 53 FR 17363, May 16, 1988]

§3162.2 Drilling, producing, and drainage obligations.

(a) The operating rights owner shall drill diligently and produce continuously from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage. The authorized officer may assess compensatory royalty under which the operating rights owner shall pay a sum determined by the authorized officer as adequate to compensate the lessor for operating rights owner's failure to drill and produce wells required to protect the lessor from loss through drainage by wells on adjacent lands. Any such assessment will be made after a review of available information relating to development of the leased lands. Such assessment is subject to termination or modification based upon the authorized officer's continuing review of such information.

[47 FR 47765, Oct. 27, 1982, Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988; 66 FR 1892, Jan. 10, @001; 66 FR 18569, Apr. 10, 2001]

EFFECTIVE DATE NOTE: At 66 FR 1892, Jan. 10, 2001, §3162.2 was amended by removing paragraph (a), effective Feb. 9, 2001. At 66 FR 9527, Feb 8, 2001, the effective date date of the amendment was to April 10, 2001. At 66 FR 18569, April 10, 2001, the removal of paragraph (a) was delayed to August 8, 2001. At 66FR 41149, Aug. 7, 2001, the removal of paragraph (a) of §3162.2 was further delayed to Nov. 6, 2001.

§3162.2-1 Drilling and producing obligations.

(a) The operator, at its election, may drill and produce other wells in conformity with any system of well spacing or production allotments affecting the field or area in which the leased lands are situated, and which is authorized and sanctioned by applicable law or by the authorized officer.

(b) After notice in writing, the operating rights owner shall promptly drill and produce such other wells as the authorized officer may reasonably require in order that the lease may be properly and timely developed and produced in accordance with good economic operating practices.

[66 FR 1892, Jan. 10, 2001. Redesignated at 66 FR 1892, Jan. 10, 2001; 66 FR 24073, May 11, 2001.]

§3162.2-2 What steps may BLM take to avoid uncompensated drainage of Federal or Indian mineral resources?

If we determine that a well is draining Federal or Indian mineral resources, we may take any of the following actions:

(a) If the mineral resources being drained are in Federal or Indian leases, we may require the lessee to drill and produce all wells that are necessary to protect the lease from drainage, unless the conditions of this part are met. BLM will consider applicable Federal, State, or Tribal rules, regulations, and spacing orders when determining which action to take. Alternatively, we may accept other equivalent protective measures;

(b) If the mineral resources being drained are either unleased (including those which may not be subject to leasing) or in Federal or Indian leases, we may execute agreements with the owners of interests in the producing well under which the United States or the Indian lessor may be compensated for the drainage (with the consent of the Federal or (in consultation with the Indian mineral owner and BIA) Indian lessees, if any);

(c) We may offer for lease any qualifying unleased mineral resources under part 3120 of this chapter or enter into a communitization agreement; or

(d) We may approve a unit or communitization agreement that provides for payment of a royalty on production attributable to unleased mineral resources as provided in Sec. 3181.5.

[66 FR 1893, Jan. 10, 2001]

§3162.2-3 When am I responsible for protecting my Federal or Indian lease from drainage?

You must protect your Federal or Indian lease from drainage if your lease is being drained of mineral resources by a well:

(a) Producing for the benefit of another mineral owner;

(b) Producing for the benefit of the same mineral owner but with a lower royalty rate; or

(c) Located in a unit or communitization agreement, which due to its Federal or Indian mineral owner's allocation or participation factor, generates less revenue for the United States or the Indian mineral owner for the mineral resources produced from your lease.

[66 FR 1893, Jan. 10, 2001]

§3162.2-4 What protective action may BLM require the lessee to take to protect the leases from drainage?

We may require you to:

(a) Drill or modify and produce all wells that are necessary to protect the leased mineral resources from drainage;

(b) Enter into a unitization or communitization agreement with the lease containing the draining well; or

(c) Pay compensatory royalties for drainage that has occurred or is occurring.

[66 FR 1893, Jan. 10, 2001]

§3162.2-5 Must I take protective action when a protective well would be uneconomic?

You are not required to take any of the actions listed in §3162.2-4 if you can prove to BLM that when you first knew or had constructive notice of drainage you could not produce a sufficient quantity of oil or gas from a protective well on your lease for a reasonable profit above the cost of drilling, completing, and operating the protective well.

[66 FR 1893, Jan. 10, 2001]

§3162.2-6 When will I have constructive notice that drainage may be occurring?

(a) You have constructive notice that drainage may be occurring when well completion or first production reports for the draining well are filed with either BLM, State oil and gas commissions, or regulatory agencies and are publicly available.

(b) If you operate or own any interest in the draining well or lease, you have constructive notice that drainage may be occurring when you complete drill stem, production, pressure analysis, or flow tests of the well.

[66 FR 1893, Jan. 10, 2001]

§3162.2-7 Who is liable for drainage if more than one person holds undivided interests in the record title or operating rights for the same lease?

(a) If more than one person holds record title interests in a portion of a lease that is subject to drainage, each person is jointly and severally liable for taking any action we may require under this part to protect the lease from drainage, including paying compensatory royalty accruing during the period and for the area in which it holds its record title interest.

(b) Operating rights owners are jointly and severally liable with each other and with all record title holders for drainage affecting the area and horizons in which they hold operating rights during the period they hold operating rights.

[66 FR 1893, Jan. 10, 2001]

Effective Date Note: At 66 FR 1893, Jan. 10, 2001, §3162.2-7 was added, effective Feb. 9, 2001. At 66 FR 9527, Feb. 8, 2001, the effective date was delayed to Apr. 10, 2001. At 66 FR 18569, Apr. 10, 2001, the amendment was delayed to Aug. 8, 2001. At 66 FR 41149, Aug. 7, 2001, the amendment was further delayed to Nov. 6, 2001.

§3162.2-8 Does my responsibility for drainage protection end when I assign or transfer my lease interest?

If you assign your record title interest in a lease or transfer your operating rights, you are not liable for drainage that occurs after the date we approve the assignment or transfer. However, you remain responsible for the payment of compensatory royalties for any drainage that occurred when you held the lease interest.

[66 FR 1893, Jan. 10, 2001]

§3162.2-9 What is my duty to inquire about the potential for drainage and inform BLM of my findings?

(a) When you first acquire a lease interest, and at all times while you hold the lease interest, you must monitor the drilling of wells in the same or adjacent spacing units and gather sufficient information to determine whether drainage is occurring. This information can be in various forms, including but not limited to, well completion reports, sundry notices, or available production information. As a prudent lessee, it is your responsibility to analyze and evaluate this information and make the necessary calculations to determine:

(1) The amount of drainage from production of the draining well;

(2) The amount of mineral resources which will be drained from your Federal or Indian lease during the life of the draining well; and

(3) Whether a protective well would be economic to drill.

(b) You must notify BLM within 60 days from the date of actual or constructive notice of:

(1) Which of the actions in §3162.2-4 you will take; or

(2) The reasons a protective well would be uneconomic.

(c) If you do not have sufficient information to comply with §3162.2-9(b)(1), indicate when you will provide the information.

(d) You must provide BLM with the analysis under paragraph (a) of this section within 60 days after we request it.

[66 FR 1893, Jan. 10, 2001]

§3162.2-10 Will BLM notify me when it determines that drainage is occurring?

We will send you a demand letter by certified mail, return receipt requested, or personally serve you with notice, if we believe that drainage is occurring. However, your responsibility to take protective action arises when you first knew or had constructive notice of the drainage, even when that date precedes the BLM demand letter.

66 FR 1894, Jan. 10, 2001

§3162.2-11 How soon after I know of the likelihood of drainage must I take protective action?

(a) You must take protective action within a reasonable time after the earlier of:

(1) The date you knew or had constructive notice that the potentially draining well had begun to produce oil or gas; or

(2) The date we issued a demand letter for protective action.

(b) Since the time required to drill and produce a protective well varies according to the location and conditions of the oil and gas reservoir, BLM will determine this on a case-by-case basis. When we determine whether you took protective action within a reasonable time, we will consider several factors including, but not limited to:

(1) Time required to evaluate the characteristics and performance of the draining well;

(2) Rig availability;

(3) Well depth;

(4) Required environmental analysis;

(5) Special lease stipulations which provide limited time frames in which to drill; and

(6) Weather conditions.

(c) If BLM determines that you did not take protection action timely, you will owe compensatory royalty for the period of the delay under §3162.2-12.

[66 FR 1894, Jan. 10, 2001]

§3162.2-12 If I hold an interest in a lease, for what period will the Department assess compensatory royalty against me?

The Department will assess compensatory royalty beginning on the first day of the month following the earliest reasonable time we determine you should have taken protective action. You must continue to pay compensatory royalty until:

(a) You drill sufficient economic protective wells and remain in continuous production;

(b) We approve a unitization or communitization agreement that includes the mineral resources being drained;

(c) The draining well stops producing; or

(d) You relinquish your interest in the Federal or Indian lease.

[66 FR 1894, Jan. 10, 2001]

§3162.2-13 If I acquire an interest in a lease that is being drained, will the Department assess me for compensatory royalty?

If you acquire an interest in a Federal or Indian lease through an assignment of record title or transfer of operating rights under this part, you are liable for all drainage obligations accruing on and after the date we approve the assignment or transfer.

[66 FR 1894, Jan. 10, 2001]

§3162.2-14 May I appeal BLM's decision to require drainage protective measures?

You may appeal any BLM decision requiring you take drainage protective measures. You may request BLM State Director review under 43 CFR 3165.3 and/or appeal to the Interior Board of Land Appeals under 43 CFR part 4 and subpart 1840.

[66 FR 1894, Jan. 10, 2001]

§3162.2-15 Who has the burden of proof if I appeal BLM's drainage determination?

BLM has the burden of establishing a prima facie case that drainage is occurring and that you knew of such drainage. Then the burden of proof shifts to you to refute the existence of drainage or to prove there was not sufficient information to put you on notice of the need for drainage protection. You also have the burden of proving that drilling and producing from a protective well would not be economically feasible.

[66 FR 1894, Jan. 10, 2001]

§3162.3 Conduct of operations.

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of sufficient bond coverage in accordance with §3106.6 and subpart 3104 of this title.

(b) A contractor on a leasehold shall be considered the agent of the operator for such operations with full responsibility for acting on behalf of the operator for purposes of complying with applicable laws, regulations, the lease terms, NTL's, Onshore Oil and Gas Orders, and other orders and instructions of the authorized officer.

[53 FR 17363, May 16, 1988; 53 FR 31959, Aug. 22, 1988]

§3162.3 – 1 Drilling applications and plans.

(a) Each well shall be drilled in conformity with an acceptable well-spacing program at a surveyed well location approved or prescribed by the authorized officer after appropriate environmental and technical reviews (see §3162.5 - 1 of this title). An acceptable well-spacing program may be either (1) one which conforms with a spacing order or field rule issued by a State Commission or Board and accepted by the authorized officer, or (2) one which is located on a lease committed to a communitized or unitized tract at a location approved by the authorized officer, or (3) any other program established by the authorized officer.

(b) Any well drilled on restricted Indian land shall be subject to the location restrictions specified in the lease and/or Title 25 of the CFR.

(c) The operator shall submit to the authorized officer for approval an Application for Permit to Drill for each well. No drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the authorized officer's approval of the permit.

(d) The Application for Permit to Drill process shall be initiated at least 30 days before

commencement of operations is desired. Prior to approval, the application shall be administratively and technically complete. A complete application consists of Form 3160 - 3 and the following attachments:

(1) A drilling plan, which may already be on file, containing information required by paragraph (e) of this section and appropriate orders and notices.

(2) A surface use plan of operations containing information required by paragraph (f) of this section and appropriate orders and notices.

(3) Evidence of bond coverage as required by the Department of the Interior regulations, and

(4) Such other information as may be required by applicable orders and notices.

(e) Each drilling plan shall contain the information specified in applicable notices or orders, including a description of the drilling program, the surface and projected completion zone location, pertinent geologic data, expected hazards, and proposed mitigation measures to address such hazards. A drilling plan may be submitted for a single well or for several wells proposed to be drilled to the same zone within a field or area of geological and environmental similarity. A drilling plan may be modified from time to time as circumstances may warrant, with the approval of the authorized officer.

(f) The surface use plan of operations shall contain information specified in applicable orders or notices, including the road and drillpad location, details of pad construction, methods for containment and disposal of waste material, plans for reclamation of the surface, and other pertinent data as the authorized officer may require. A surface use plan of operations may be submitted for a single well or for several wells proposed to be drilled in an area of environmental similarity.

(g) For Federal lands, upon receipt of the Application for Permit to Drill or Notice of Staking, the authorized officer shall post the following information for public inspection at least 30 days before action to approve the Application for Permit to Drill: the company/operator name; the well name/number; the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased and of all leases already issued in the general area; and any substantial modifications to the lease terms. Where the inclusion of maps in such posting is not practicable, maps of the affected lands shall be made available to the public for review. This information also shall be provided promptly by the authorized officer to the appropriate office of the Federal surface management agency, for lands the surface of which is not under Bureau jurisdiction, requesting such agency to post the proposed action for public inspection for at least 30 days. The posting shall be in the office of the authorized officer and in the appropriate surface managing agency if other than the Bureau. The posting of an Application for Permit to Drill is for information purposes only and is not an appealable decision.

(h) Upon initiation of the Application for Permit to Drill process, the authorized officer shall consult with the appropriate Federal surface management agency and with other interested parties as appropriate and shall take one of the following actions as soon as practical, but in no event later than 5 working days after the conclusion of the 30-day notice period for Federal lands, or within 30 days from receipt of the application for Indian lands:

(1) Approve the application as submitted or with appropriate modifications or conditions;

(2) Return the application and advise the applicant of the reasons for disapproval; or
(3) Advise the applicant, either in writing or orally with subsequent written confirmation, of the reasons why final action will be delayed along with the date such final action can be expected.

The surface use plan of operations for National Forest System lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the Application for Permit to Drill by the authorized officer. Appeals from the denial of approval of such surface use plan of operations shall be submitted to the Secretary of Agriculture.

(i) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, further amended at 52 FR 5391, Feb. 20, 1987; 53 FR 17363, May 16, 1988; 53 FR 22846, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§3162.3 – 2 Subsequent well operations.

(a) A proposal for further well operations shall be submitted by the operator on Form 3160 - 5 for approval by the authorized officer prior to commencing operations to redrill, deepen, perform casing repairs, plug-back, alter casing, perform nonroutine fracturing jobs, recomplete in a different interval, perform water shut off, commingling production between intervals and/or conversion to injection. If there is additional surface distubance, the proposal shall include a surface use plan of operations. A subsequent report on these operations also will be filed on Form 3160 - 5. The authorized officer may prescribe that each proposal contain all or a portion of the information set forth in §3162.3 - 1 of this title.

(b) Unless additional surface disturbance is involved and if the operations conform to the standard of prudent operating practice, prior approval is not required for routine fracturing or acidizing jobs, or recompletion in the same interval; however, a subsequent report on these operations must be filed on Form 3160 - 5.

(c) No prior approval or a subsequent report is required for well cleanout work, routine well maintenance, or bottom hole pressure surveys.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, further amended at 52 FR 5391, Feb. 20, 1987; 53 FR 17363, May 16, 1988; 53 FR 22847, June 17, 1988]

§3162.3 – 3 Other lease operations.

Prior to commencing any operation on the leasehold which will result in additional surface disturbance, other than those authorized under §3162.3 - 1 or §3162.3 - 2 of this title, the operator shall submit a proposal on Form 3160 - 5 to the authorized officer for approval. The proposal shall include a surface use plan of operations.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, and amended

at 52 FR 5391, Feb. 20, 1987; 53 FR 17363, May 16, 1988; 53 FR 22847, June 17, 1988]

§3162.3 – 4 Well abandonment.

(a) The operator shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a producing well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities, unless the authorized officer shall approve the use of the well as a service well for injection to recover additional oil or gas or for subsurface disposal of produced water. In the case of a newly drilled or recompleted well, the approval to abandon may be written or oral with written confirmation.

(b) Completion of a well as plugged and abandoned may also include conditioning the well as water supply source for lease operations or for use by the surface owner or appropriate Government Agency, when authorized by the authorized officer. All costs over and above the normal plugging and abandonment expense will be paid by the party accepting the water well.

(c) No well may be temporarily abandoned for more than 30 days without the prior approval of the authorized officer. The authorized officer may authorize a delay in the permanent abandonment of a well for a period of 12 months. When justified by the operator, the authorized officer may authorize additional delays, no one of which may exceed an additional 12 months. Upon the removal of drilling or producing equipment from the site of a well which is to be permanently abandoned, the surface of the lands disturbed in connection with the conduct of operations shall be reclaimed in accordance with a plan first approved or prescribed by the authorized officer.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988; 53 FR 22847, June 17, 1988]

§3162.4 Records and reports.

§3162.4 – 1 Well records and reports.

(a) The operator shall keep accurate and complete records with respect to all lease operations including, but not limited to, production facilities and equipment, drilling, producing, redrilling, deepening, repairing, plugging back, and abandonment operations, and other matters pertaining to operations. With respect to production facilities and equipment, the record shall include schematic diagrams as required by applicable orders and notices.

(b) Standard forms for providing basic data are listed in Note 1 at the beginning of this title. As noted on Form 3160 - 4, two copies of all electric and other logs run on the well must be submitted to the authorized officer. Upon request, the operator shall transmit to the authorized officer copies of such other records maintained in compliance with paragraph (a) of this section.

(c) Not later than the 5th business day after any well begins production on which royalty is due anywhere on a lease site or allocated to a lease site, or resumes production in the case of a

well which has been off production for more than 90 days, the operator shall notify the authorized officer by letter or sundry notice, Form 3160 - 5, or orally to be followed by a letter or sundry notice, of the date on which such production has begun or resumed.

(d) All records and reports required by this section shall be maintained for 6 years from the date they were generated. In addition, if the Secretary, or his/her designee notifies the recordholder that the Department of the Interior has initiated or is participating in an audit or investigation involving such records, the records shall be maintained until the Secretary, or his/her designee, releases the recordholder from the obligation to maintain such records.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983; 49 FR 37364, Sept. 21, 1984; 52 FR 5391, Feb. 20, 1987; 53 FR 17363, May 16, 1988]

§3162.4 – 2 Samples, tests, and surveys.

(a) During the drilling and completion of a well, the operator shall, when required by the authorized officer, conduct tests, run logs, and make other surveys reasonably necessary to determine the presence, quantity, and quality of oil, gas, other minerals, or the presence or quality of water; to determine the amount and/or direction of deviation of any well from the verticial; and to determine the relevant characteristics of the oil and gas reservoirs penetrated.

(b) After the well has been completed, the operator shall conduct periodic well tests which will demonstrate the quantity and quality of oil and gas and water. The method and frequency of such well tests will be specified in appropriate notices and orders. When needed, the operator shall conduct reasonable tests which will demonstrate the mechanical integrity of the downhole equipment.

(c) Results of samples, tests, and surveys approved or prescribed under this section shall be provided to the authorized officer without cost to the lessor.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988]

§3162.4 – 3 Monthly report of operations (Form 3160–6).

The operator shall report production data to BLM in accordance with the requirements of this section until required to begin reporting to MMS pursuant to 30 CFR 216.50. When reporting production data to BLM in accordance with the requirements of this section, the operator shall either use Form BLM 3160–6 or Form MMS–3160. A separate report of operations for each lease shall be made on Form 3160–6 for each calendar month, beginning with the month in which drilling operations are initiated, and shall be filed with the authorized officer on or before the 10th day of the second month following the operation month, unless an extension of time for the filing of such report is granted by the authorized officer. The report on this form shall disclose accurately all operations conducted on each well during each month, the status of operations on the last day of the month, and a general summary of the status of operations on the leased lands, and the report shall be submitted each month until the lease is terminated or until

omission of the report is authorized by the authorized officer. It is particularly necessary that the report shall show for each calendar month:

(a) The lease be identified by inserting the name of the United States land office and the serial number, or in the case of Indian land, the lease number and lessor's name, in the space provided in the upper right corner;

(b) Each well be listed separately by number, its location be given by 40-acre subdivision (1/4 1/4 sec. or lot), section number, township, range, and meridian;

(c) The number of days each well produced, whether oil or gas, and the number of days each input well was in operation be stated;

(d) The quantity of oil, gas and water produced, the total amount of gasoline, and other lease products recovered, and other required information. When oil and gas, or oil, gas and gasoline, or other hydrocarbons are concurrently produced from the same lease, separate reports on this form should be submitted for oil and for gas and gasoline, unless otherwise authorized or directed by the authorized officer.

(e) The depth of each active or suspended well, and the name, character, and depth of each formation drilled during the month, the date each such depth was reached, the date and reason for every shut-down, the names and depths of important formation changes and contents of formations, the amount and size of any casing run since last report, the dates and results of any tests such as production, water shut-off, or gasoline content, and any other noteworthy information on operations not specifically provided for in the form.

(f) The footnote shall be completely filled out as required by the authorized officer. If no runs or sales were made during the calendar month, the report shall so state.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983; 52 FR 5391, Feb. 20, 1987; 53 FR 16413, May 9, 1988]

§3162.5 Environment and safety.

§3162.5 – 1 Environmental obligations.

(a) The operator shall conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality. In that respect, the operator shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan. Before approving any Application for Permit to Drill submitted pursuant to §3162.3 - 1 of this title, or other plan requiring environmental review, the authorized officer shall prepare an environmental record of review or an environmental assessment, as appropriate. These environmental documents will be used in determining whether or not an environmental impact statement is required and in determining any appropriate terms and conditions of approval of the submitted plan.

(b) The operator shall exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements. All produced water must be disposed of by injection into the subsurface, by approved pits, or by

other methods which have been approved by the authorized officer. Upon the conclusion of operations, the operator shall reclaim the disturbed surface in a manner approved or reasonably prescribed by the authorized officer.

(c) All spills or leakages of oil, gas, produced water, toxic liquids, or waste materials, blowouts, fires, personal injuries, and fatalities shall be reported by the operator in accordance with these regulations and as prescribed in applicable order or notices. The operator shall exercise due diligence in taking necessary measures, subject to approval by the authorized officer, to control and remove pollutants and to extinguish fires. An operator's compliance with the requirements of the regulations in this part shall not relieve the operator of the obligation to comply with other applicable laws and regulations.

(d) When reasonably required by the authorized officer, a contingency plan shall be submitted describing procedures to be implemented to protect life, property, and the environment.

(e) The operator's liability for damages to third parties shall be governed by applicable law.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988; 53 FR 22847, June 17, 1988]

§3162.5 – 2 Control of wells.

(a) Drilling wells. The operator shall take all necessary precautions to keep each well under control at all times, and shall utilize and maintain materials and equipment necessary to insure the safety of operating conditions and procedures.

(b) Vertical drilling. The operator shall conduct drilling operations in a manner so that the completed well does not deviate significantly from the vertical without the prior written approval of the authorized officer. Significant deviation means a projected deviation of the well bore from the vertical of 10° or more, or a projected bottom hole location which could be less than 200 feet from the spacing unit or lease boundary. Any well which deviates more than 10° from the vertical or could result in a bottom hole location less than 200 feet from the spacing unit or lease boundary without prior written approval must be promptly reported to the authorized officer. In these cases, a directional survey is required.

(c) High pressure or loss of circulation. The operator shall take immediate steps and utilize necessary resources to maintain or restore control of any well in which the pressure equilibrium has become unbalanced.

(d) Protection of fresh water and other minerals. The operator shall isolate freshwater-bearing and other usable water containing 5,000 ppm or less of dissolved solids and other mineral-bearing formations and protect them from contamination. Tests and surveys of the effectiveness of such measures shall be conducted by the operator using procedures and practices approved or prescribed by the authorized officer.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988]

§3162.5 – 3 Safety precautions.

The operator shall perform operations and maintain equipment in a safe and workmanlike manner. The operator shall take all precautions necessary to provide adequate protection for the health and safety of life and the protection of property. Compliance with health and safety requirements prescribed by the authorized officer shall not relieve the operator of the responsibility for compliance with other pertinent health and safety requirements under applicable laws or regulations.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988]

§3162.6 Well and facility identification.

(a) Every well within a Federal or Indian lease or supervised agreement shall have a well indentification sign. All signs shall be maintained in a legible condition.

(b) For wells located on Federal and Indian lands, the operator shall properly identify, by a sign in a conspicuous place, each well, other than those permanently abandoned. The well sign shall include the well number, the name of the operator, the lease serial number, the surveyed location (the quarter-quarter section, section, township and range or other authorized survey designation acceptable to the authorized officer; such as metes and bounds). When approved by the authorized officer, individual well signs may display only a unique well name and number. When specifically requested by the authorized officer, the sign shall include the unit or communitization name or number. The authorized officer may also require the sign to include the name of the Indian allottee lessor(s) preceding the lease serial number. In all cases, individual well signs in place on the effective date of this rulemaking which do not have the unit or communitization agreement number or do not have quarter-quarter identification will satisfy these requirements until such time as the sign is replaced. All new signs shall have identification as above, including quarter-quarter section.

(c) All facilities at which Federal or Indian oil is stored shall be clearly identified with a sign that contains the name of the operator, the lease serial number or communitization or unit agreement identification number, as appropriate, and in public land states, the quarter-quarter section, township, and range. On Indian leases, the sign also shall include the name of the appropriate Tribe and whether the lease is tribal or allotted. For situations of 1 tank battery servicing 1 well in the same location, the requirements of this paragraph and paragraph (b) of this section may be met by 1 sign as long as it includes the information required by both paragraphs. In addition, each storage tank shall be clearly identified by a unique number. All identification shall be maintained in legible condition and shall be clearly apparent to any person at or approaching the sales or transportation point. With regard to the quarter-quarter designation and the unique tank number, any such designation established by state law or regulation shall satisfy this requirement.

(d) All abandoned wells shall be marked with a permanent monument containing the information in paragraph (b) of this section. The requirement for a permanent monument may be waived in writing by the authorized officer.

[52 FR 5391, Feb. 20, 1987, as amended at 53 FR 17363, May 16, 1988]

§3162.7 Measurement, disposition, and protection of production.

§3162.7 – 1 Disposition of production.

(a) The operator shall put into marketable condition, if economically feasible, all oil, other hydrocarbons, gas, and sulphur produced from the leased land.

(b) Where oil accumulates in a pit, such oil must either be (1) recirculated through the regular treating system and returned to the stock tanks for sale, or (2) pumped into a stock tank without treatment and measured for sale in the same manner as from any sales tank in accordance with applicable orders and notices. In the absence of prior approval from the authorized officer, no oil should go to a pit except in an emergency. Each such occurrence must be reported to the authorized officer and the oil promptly recovered in accordance with applicable orders and notices.

(c) (1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry on his/her person, in his/her vehicle, or in his/her immediate control, documentation showing at a minimum; the amount, origin, and intended first purchaser of the oil.

(2) Any person engaged in transporting any oil or gas by pipeline from any lease site, or allocated to any lease site, shall maintain documentation showing, at a minimum, the amount, origin, and intended first purchaser of such oil or gas.

(3) On any lease site, any authorized representative who is properly identified may stop and inspect any motor vehicle that he/she has probable cause to believe is carrying oil from any such lease site, or allocated to such lease site, to determine whether the driver possesses proper documentation for the load of oil.

(4) Any authorized representative who is properly identified and who is accompanied by an appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he/she has probable cause to believe the vehicle is carrying oil from a lease site, or allocated to a lease site, to determine whether the driver possesses proper documentation for the load of oil.

(d) The operator shall conduct operations in such a manner as to prevent avoidable loss of oil and gas. A operator shall be liable for royalty payments on oil or gas lost or wasted from a lease site, or allocated to a lease site, when such loss or waste is due to negligence on the part of the operator of such lease, or due to the failure of the operator to comply with any regulation, order or citation issued pursuant to this part.

(e) When requested by the authorized officer, the operator shall furnish storage for royalty oil, on the leasehold or at a mutually agreed upon delivery point off the leased land without cost to the lessor, for 30 days following the end of the calendar month in which the royalty accrued.

(f) Any records generated under this section shall be maintained for 6 years from the date they were generated or, if notified by the Secretary, or his designee, that such records are involved in an audit or investigation, the records shall be maintained until the recordholder is

released by the Secretary from the obligation to maintain them.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983; 49 FR 37364, Sept. 21, 1984; 53 FR 17363, May 16, 1988]

§3162.7 – 2 Measurement of oil.

All oil production shall be measured on the lease by tank gauging, positive displacement metering system, or other methods acceptable to the authorized officer, pursuant to methods and procedures prescribed in applicable orders and notices. Where production cannot be measured due to spillage or leakage, the amount of production shall be determined in accordance with the methods and procedures approved or prescribed by the authorized officer. Off-lease storage or measurement, or commingling with production from other sources prior to measurement, may be approved by the authorized officer.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983; 49 FR 37364, Sept. 21, 1984; 52 FR 5392, Feb. 20, 1987]

§3162.7 – 3 Measurement of gas.

All gas production shall be measured by orifice meters or other methods acceptable to the authorized officer on the lease pursuant to methods and procedures prescribed in applicable orders and notices. The measurement of the volume of all gas produced shall be adjusted by computation to the standard pressure and temperature of 14.73 psia and 60° F unless otherwise prescribed by the authorized officer, regardless of the pressure and temperature at which the gas is actually measured. Gas lost without measurement by meter shall be estimated in accordance with methods prescribed in applicable orders and notices. Off-lease measurement or commingling with production from other sources prior to measurement may be approved by the authorized officer.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983; 49 FR 37364, Sept. 21, 1984; 52 FR 5392, Feb. 20, 1987]

§3162.7 – 4 Royalty rates on oil; sliding and step-scale leases (public land only).

Sliding- and step-scale royalties are based on the average daily production per well. The authorized officer shall specify which wells on a leasehold are commercially productive, including in that category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells that yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is computed on the basis of a 28-, 29-, 30-, or 31-day month (as the case may be), the number of wells on the leasehold counted as producing, and the gross production from the leasehold. The authorized officer will determine which commercially

productive wells shall be considered each month as producing wells for the purpose of computing royalty in accordance with the following rules, and in the authorized officer's discretion may count as producing any commercially productive well shut in for conservation purposes.

(a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the authorized officer as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month in arriving at the number of producing well days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner with approval of the authorized officer.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on the basis of actual producing well days.

(g) For previously producing leaseholds on which no wells were productive during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the authorized officer as need arises.

(i) (1) In the following summary of operations on a typical leasehold for the month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the months are indicated.

Well No. and record	Count (marked x)
1. Produced full time for 30 days	x
2. Produced for 26 days; down 4 days for repairs.	x
3. Produced for 28 days; down June 5, 12 hours, rods; June 14, 6 hours, engine down; June 26, 24 hours, pulling rods and tubing.	x
4. Produced for 12 days; down June 13 to 30	
5. Produced for 8 hours every day (head well).	x
6. Idle producer (not operated)	
7. New well, completed June 17; produced for 14 days.	x
8. New well, completed June 22; produced for 9 days.	

(2) In this example, there are eight wells on the leasehold, but wells No. 4, 6, and 8 are not counted in computing royalties. Wells No. 1, 2, 3, 5, and 7 are counted as producing for 30 days. The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5 (the number of wells counted as producing), and dividing the quotient thus obtained by the number of days in the month.

[53 FR 1226, Jan. 15, 1988, as amended at 53 FR 17364, May 16, 1988]

§3162.7 – 5 Site security on Federal and Indian (except Osage) oil and gas leases.

(a) *Definitions.*

Appropriate valves. Those valves in a particular piping system, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation.

Effectively sealed. The placement of a seal in such a manner that the position of the sealed valve may not be altered without the seal being destroyed.

Production phase. That period of time or mode of operation during which crude oil is delivered directly to or through production vessels to the storage facilities and includes all operations at the facility other than those defined by the sales phase.

Sales phase. That period of time or mode of operation during which crude oil is removed from the storage facilities for sales, transportation or other purposes.

Seal. A device, uniquely numbered, which completely secures a valve.

(b) *Minimum Standards.* Each operator of a Federal or Indian lease shall comply with the following minimum standards to assist in providing accountability of oil or gas production:

(1) All lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise modified by other subparagraphs of this paragraph, and any equipment needed for effective sealing, excluding the seals, shall be located at the site. For a minimum of 6

years the operator shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which position during both the production and sales phases of operation.

(2) Each Lease Automatic Custody Transfer (LACT) system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the LACT. All components of the LACT that are used for volume or quality determinations of the oil shall be effectively sealed. For systems where production may only be removed through the LACT, no sales or equalizer valves need be sealed. However, any valves which may allow access for removal of oil before measurement through the LACT shall be effectively sealed.

(3) There shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a by-pass.

(4) For oil measured and sold by hand gauging, all appropriate valves shall be sealed during the production or sales phase, as applicable.

(5) Circulating lines having valves which may allow access to remove oil from storage and sales facilities to any other source except through the treating equipment back to storage shall be effectively sealed as near the storage tank as possible.

(6) The operator, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The operator shall retain records of such inspections and measurements for 6 years from generation. Such records and measurements shall be available to any authorized officer or authorized representative upon request.

(7) Any person removing oil from a facility by motor vehicle shall possess the identification documentation required by appicable NTL's or onshore Orders while the oil is removed and transported.

(8) Theft or mishandling of oil from a Federal or Indian lease shall be reported to the authorized officer as soon as discovered, but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Operators also are expected to report such thefts promptly to local law enforcement agencies and internal company security.

(9) Any operator may request the authorized officer to approve a variance from any of the minimum standards prescribed by this section. The variance request shall be submitted in writing to the authorized officer who may consider such factors as regional oil field facility characteristics and fenced, guarded sites. The authorized officer may approve a variance if the proposed alternative will ensure measures equal to or in excess of the minimum standards provided in paragraph (b) of this section wil be put in place to detect or prevent internal and external theft, and will result in proper production accountability.

(c) *Site security plans.*

(1) Site security plans, which include the operator's plan for complying with the minimum standards enumerated in paragraph (b) of this section for ensuring accountability of oil/condensate production are required for all facilities and such facilities shall be maintained in compliance with the plan. For new facilities, notice shall be given that it is subject to a specific existing plan, or a notice of a new plan shall be submitted, no later than 60 days after completion of construction or first production or following the inclusion of a well on committed non-Federal lands into a federally supervised unit or communitization agreement, whichever occurs first, and on that date the facilities shall be in compliance with the plan. At the operator's option, a single plan may include all of the operator's leases, unit and communitized areas, within a single BLM district, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(2) The operator shall retain the plan but shall notify the authorized officer of its completion and which leases, unit and communitized areas are involved. Such notification is due at the time the plan is completed as required by paragraph (c)(1) of this section. Such notification shall include the location and normal business hours of the office where the plan will be maintained. Upon request, all plans shall be made available to the authorized officer.

(3) The plan shall include the frequency and method of the operator's inspection and production volume recordation. The authorized officer may, upon examination, require adjustment of the method or frequency of inspection.

(d) Site facility diagrams.

(1) Facility diagrams are required for all facilities which are used in storing oil/condensate produced from, or allocated to, Federal or Indian lands. Facility diagrams shall be filed within 60 days after new measurement facilities are installed or existing facilities are modified or following the inclusion of the facility into a federally supervised unit or communitization agreement.

(2) No format is prescribed for facility diagrams. They are to be prepared on 8½" x 11" paper, if possible, and be legible and comprehensible to a person with ordinary working knowledge of oil field operations and equipment. The diagram need not be drawn to scale.

(3) A site facility diagram shall accurately reflect the actual conditions at the site and shall, commencing with the header if applicable, clearly identify the vessels, piping, metering system, and pits, if any, which apply to the handling and disposal of oil, gas and water. The diagram shall indicate which valves shall be sealed and in what position during the production or sales phase. The diagram shall clearly identify the lease on which the facility is located and the site security plan to which it is subject, along with the location of the plan.

[47 FR 47765, Oct. 27, 1982. Redesignated at 48 FR 36583 - 36586, Aug. 12, 1983, and amended at 52 FR 5392, Feb. 20, 1987. Redesignated at 53 FR 1218, Jan. 15, 1988; 53 FR 24688, June 30, 1988]

Subpart 3163 — Noncompliance, Assessments, and Penalties

§3163.1 Remedies for acts of noncompliance.

(a) Whenever an operating rights owner or operator fails or refuses to comply with the regulations in this part, the terms of any lease or permit, or the requirements of any notice or order, the authorized officer shall notify the operating rights owner or operator, as appropriate, in writing of the violation or default. Such notice shall also set forth a reasonable abatement period:

(1) If the violation or default is not corrected within the time allowed, the authorized officer may subject the operating rights owner or operator, as appropriate, to an assessment of not more than $500 per day for each day nonabatement continues where the violation or default is deemed a major violation;

(2) Where noncompliance involves a minor violation, the authorized officer may subject the operating rights owner or operator, as appropriate, to an assessment of $250 for failure to abate the violation or correct the default within the time allowed;

(3) When necessary for compliance, or where operations have been commenced without approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income, the authorized officer may shut down operations. Immediate shut-in action may be taken where operations are initiated and conducted without prior approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. Shut-in actions for other situations may be taken only after due notice, in writing, has been given;

(4) When necessary for compliance, the authorized officer may enter upon a lease and perform, or have performed, at the sole risk and expense of the operator, operations that the operator fails to perform when directed in writing by the authorized officer. Appropriate charges shall include the actual cost of performance, plus an additional 25 percent of such amount to compensate the United States for administrative costs. The operator shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be entered;

(5) Continued noncompliance may subject the lease to cancellation and forfeiture under the bond. The operator shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be recommended for cancellation;

(6) Where actual loss or damage has occurred as a result of the operator's noncompliance, the actual amount of such loss or damage shall be charged to the operator.

(b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, $500 per day for each day that the violation

existed, including days the violation existed prior to discovery, not to exceed $5,000;

(2) 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;

(3) For failure to obtain approval of a plan for well abandonment prior to commencement of such operations, $500.

(c) Assessments under paragraph (a)(1) of this section shall not exceed $1,000 per day, per operating rights owner or operator, per lease. Assessments under paragraph (a)(2) of this section shall not exceed a total of $500 per operating rights owner or operator, per lease, per inspection.

(d) Continued noncompliance shall subject the operating rights owner or operator, as appropriate, to penalties described in §3163.2 of this title.

(e) On a case-by-case basis, the State Director may compromise or reduce assessments under this section. In compromising or reducing the amount of the assessment, the State Director shall state in the record the reasons for such determination.

[52 FR 5393, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987, as amended at 53 FR 17364, May 16, 1988; 53 FR 22847, June 17, 1988]

§3163.2 Civil penalties.

(a) Whenever an operating rights owner or operator, as appropriate, fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation thereunder, or the terms of any lease or permit issued thereunder, the authorized officer shall notify the operating rights owner or operator, as appropriate, in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice was previously issued under §3163.1 of this title. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the operating rights owner or operator, as appropriate, shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of §3163.1(a)(1) of this title shall be deducted from penalties under this section.

(b) If the violation specified in paragraph (a) of this section is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the operating rights owner or operator, as appropriate, shall be liable for a civil penalty of up to $5,000 per violation for each day the violation continues, not to exceed a maximum of 60 days, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of §3163.1(a)(1) of this title shall be deducted from penalties under this section.

(c) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(d) Whenever a transporter fails to permit inspection for proper documentation by any authorized representative, as provided in §3162.7–1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

(e) Any person shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by §3162.1(b) of this title; or

(2) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, Form 3160–5 or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal or Indian lease site without having valid legal authority to do so; or

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site.

(g) Determinations of Penalty Amounts for this section are as follows:

(1) For major violations, all initial proposed penalties shall be at the maximum rate provided in paragraphs (a), (b), and (d) through (f) of this section, i.e., in paragraph (a) of this section, the initial proposed penalty for a major violation shall be at the rate of $500 per day through the 40th day of a noncompliance beginning after service of notice, and in paragraph (b) of this section, $5,000 per day for each day the violation remains uncorrected after the date of notice or report of the violation. Such penalties shall not exceed a rate of $1,000 per day, per operating rights owner or operator, per lease under paragraph (a) of this section or $10,000 per day, per operating rights owner or operator, per lease under paragraph (b) of this section. For paragraphs (d) through (f) of this section, the rate shall be $500, $10,000, and $25,000, respectively.

(2) For minor violations, no penalty under paragraph (a) of this section shall be assessed unless:

(i) The operating rights owner or operator, as appropriate, has been notified of the violation in writing and did not correct the violation within the time allowed; and

(ii) The operating rights owner or operator, as appropriate, has been assessed $250 under §3163.1 of this title and a second notice has been issued giving an

abatement period of not less than 20 days; and

(iii) The noncompliance was not abated within the time allowed by the second notice. The initial proposed penalty for a minor violation under paragraph (a) of this section shall be at the rate of $50 per day beginning with the date of the second notice. Under paragraph (b) of this section, the penalty shall be at a daily rate of $500. Such penalties shall not exceed a rate of $100 per day, per operating rights owner or operator, per lease under paragraph (a) of this section, of $1,000 per day, per operating rights owner or operator, per lease under paragraph (b) of this section.

(h) On a case–by–case basis, the Secretary may compromise or reduce civil penalties under this section. In compromising or reducing the amount of a civil penalty, the Secretary shall state on the record the reasons for such determination.

(i) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of law, except as provided in paragraphs (a) and (b) of this section.

(j) If the violation continues beyond the 60-day maximum specified in paragraph (b) of this section or beyond the 20 day maximum specified in paragraphs (e) and (f) of this section, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(k) If the violation continues beyond the 20-day maximum specified in paragraph (d) of this section, the authorized officer shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that authorized officer or to remove any crude oil or liquid hydrocarbons allocation to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and related penalty paid.

[52 FR 5393, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987, as amended at 53 FR 17364, May 16, 1988]

§3163.3 Criminal penalties.

Any person who commits an act for which a civil penalty is provided in §3163.4–1(b)(6) of this title shall, upon conviction, be punished by a fine of not more than $50,000 or by imprisonment for not more than 2 years or both.

[49 FR 37367, Sept. 21, 1984. Redesignated at 52 FR 5394, Feb 20, 1987]

§3163.4 Failure to pay.

If any person fails to pay an assessment or a civil penalty under §3163.1 or §3163.2 of this title after the order making the assessment or penalty becomes a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration

of the 90-day period provided by §3165.4(e) of this title. The Federal Oil and Gas Royalty Management Act requires that any judgment by the court shall include an order to pay.

[52 FR 5394, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987]

§3163.5 Assessments and civil penalties.

(a) Assessments made under §3163.1 of this title are due upon issuance and shall be paid within 30 days of receipt of certified mail written notice or personal service, as directed by the authorized officer in the notice. Failure to pay assessed damages timely will be subject to late payment charges as prescribed under Title 30 CFR Group 202.

(b) Civil penalties under §3163.2 of this title shall be paid within 30 days of completion of any final order of the Secretary or the final order of the Court.

(c) Payments made pursuant to this section shall not relieve the responsible party of compliance with the regulations in this part or from liability for waste or any other damage. A waiver of any particular assessment shall not be construed as precluding an assessment pursuant to §3163.1 of this title for any other act of noncompliance occurring at the same time or at any other time. The amount of any civil penalty under §3163.2 of this title, as finally determined, may be deducted from any sums owing by the United States to the person charged.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983; 49 FR 37368, Sept. 21, 1984; 52 FR 5394, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987; 53 FR 17364, May 16, 1988]

§3163.6 Injunction and specific performance.

(a) In addition to any other remedy under this part or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States to:

(1) Restrain any violation of the Federal Oil and Gas Royalty and Management Act or any mineral leasing law of the United States; or

(2) Compel the taking of any action required by or under the Act or any mineral leasing law of the United States.

(b) A civil action described in paragraph (a) may be brought only in the United States district court of the judicial district wherein the act, omission or transaction constituting a violation under the Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

[49 FR 37368, Sept. 21, 1984]

Subpart 3164 -- Special Provisions

§3164.1 Onshore Oil and Gas Orders.

(a) The Director is authorized to issue Onshore Oil and Gas Orders when necessary to

implement and supplement the regulations in this part. All orders will be published in the Federal Register both for public comment and in final form.

(b) These Orders are binding on operating rights owners and operators, as appropriate, of Federal and restricted Indian oil and gas leases which have been, or may hereafter be, issued. The Onshore Oil and Gas Orders listed below are currently in effect:

Order No.	Subject	Effective Date	Federal Register reference	Super-cedes
1.	Approval of operations	Nov. 21, 1983	48 FR 48916 and 48 FR 56226	NTL-6
2.	Drilling	Dec. 19, 1988	53 FR 46790	None.
3.	Site security.	Mar. 27, 1989	54 FR 8056	NTL-7
4.	Measurement of oil.	Aug. 23, 1989	54 FR 8086	None.
5.	Measurement of gas.	Mar. 27, 1989, new facilities greater than 200 MCF production; Aug. 23, 1989, existing facility greater than 200 MCF production; Feb. 26, 1990, existing facility less than 200 MCF production.	54 FR 8100	None.
6.	Hydrogen sulfide operations	Jan. 22, 1991	55 FR 48958	None.
7.	Disposal of produced water.	October 8, 1993	58 FR 47354	NTL-2B

Note: Numbers to be assigned sequentially by the Washington Office as proposed Orders are prepared for publication.

[47 FR 47765, Oct. 27, 1982. Redesignated at 48 FR 36583 - 36586, Aug. 12, 1983, and amended at 48 FR 48921, Oct. 21, 1983; 48 FR 56226, Dec. 20, 1983; 53 FR 17364, May 16, 1988; 54 FR 8060, Feb. 24, 1989; 54 FR 8092, Feb. 24, 1989; 54 FR 8106, Feb. 24, 1989; 54 FR 39527, 39529, Sept. 27, 1989; 56 FR 48967, Nov. 23, 1991; 57 FR 3025, Jan. 27, 1992; 58 FR 47361, Sept. 8, 1993; 58 FR 58505, Nov. 2, 1993]

§3164.2 NTL's and other implementing procedures.

(a) The authorized officer is authorized to issue NTL's when necessary to implement the onshore oil and gas orders and the regulations in this part. All NTL's will be issued after notice and opportunity for comment.

(b) All NTL's issued prior to the promulgation of these regulations shall remain in effect until modified, superseded by an Onshore Oil and Gas Order, or otherwise terminated.

(c) A manual and other written instructions will be used to provide policy and procedures for internal guidance of the Bureau of Land Management.

§3164.3 Surface rights.

(a) Operators shall have the right of surface use only to the extent specifically granted by the lease. With respect to restricted Indian lands, additional surface rights may be exercised when granted by a written agreement with the Indian surface owner and approved by the Superintendent of the Indian agency having jurisdiction.

(b) Except for the National Forest System lands, the authorized officer is responsible for approving and supervising the surface use of all drilling, development, and production activities on the leasehold. This includes storage tanks and processing facilities, sales facilities, all pipelines upstream from such facilities, and other facilities to aid production such as water disposal pits and lines, and gas or water injection lines.

(c) On National Forest System lands, the Forest Service shall regulate all surface disturbing activities in accordance with Forest Service regulations, including providing to the authorized officer appropriate approvals of such activities.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, further amended at 53 FR 17364, May 16, 1988; 53 FR 22847, June 17, 1988]

§3164.4 Damages on restricted Indian lands.

Assessments for damages to lands, crops, buildings, and to other improvements on restricted Indian lands shall be made by the Superintendent and be payable in the manner prescribed by said official.

Subpart 3165 — Relief, Conflicts, and Appeals

§3165.1 Relief from operating and producing requirements.

(a) Applications for relief from either the operating or the producing requirements of a lease, or both, shall be filed with the authorized officer, and shall include a full statement of the circumstances that render such relief necessary.

(b) The authorized officer shall act on applications submitted for a suspension of operations or production, or both, filed pursuant to §3103.4–4 of this title. The application for suspension shall be filed with the authorized officer prior to the expiration date of the lease; shall be executed by all operating rights owners or, in the case of a Federal unit approved under part 3180 of this title, by the unit operator on behalf of the committed tracts or by all operating rights owners of such tracts; and shall include a full statement of the circumstances that makes such relief necessary.

(c) If approved, a suspension of operations and production will be effective on the first of the month in which the completed application was filed or the date specified by the authorized officer. Suspensions will terminate when they are no longer justified in the interest of conservation, when such action is in the interest of the lessor, or as otherwise stated by the authorized officer in the approval letter.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, further amended at 53 FR 17364, May 16, 1988, further amended at 61 FR 4752, Feb. 8, 1996]

§3165.1 – 1 Relief from royalty and rental requirements.

Applications for any modification authorized by law of the royalty or rental requirements of a lease for lands of the United States shall be filed in the office of the authorized officer having jurisdiction of the lands. (For other regulations relating to royalty and rental relief, and suspension of operations and production, see part 3103 of this title.)

[48 FR 36586, Aug. 12, 1983, as amended at 53 FR 17365, May 16, 1988]

§3165.2 Conflicts between regulations.

In the event of any conflict between the regulations in this part and the regulations in title 25 CFR concerning oil and gas operations on Federal and Indian leaseholds, the regulations in this part shall govern with respect to the obligations in the conduct of oil and gas operations, acts of noncompliance, and the jurisdiction and authority of the authorized officer.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583 - 36586, Aug. 12, 1983, further amended at 53 FR 17365, May 16, 1988]

§3165.3 Notice, State Director review and hearing on the record.

(a) Notice. Whenever an operating rights owner or operator, as appropriate, fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the appropriate party and the lessee(s) to remedy any defaults or violations. Written orders or a notice of violation, assessment, or proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 7 business days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice of violation, assessment, or proposed penalty on his/her behalf. In the case of a major violation, the authorized officer shall make a good faith effort to contact such designated representative by telephone to be followed by a written notice. Receipt of notice shall be deemed to occur at the time of such verbal communication, and the time of notice and the name of the receiving party shall be confirmed in the file. If the good faith effort to contact the designated representative is unsuccessful, notice of the major violation may be given to any person conducting or supervising operations subject to the regulations in this part. In the case of a minor violation, written notice shall be provided as described above. A copy of all orders, notices, or instructions served on any contractor or field employee or designated representative shall also be mailed to the operator. Any notice involving a civil penalty shall be mailed to the operating rights owner.

(b) State Director review. Any adversely affected party that contests a notice of violation or

assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received and shall be filed with the appropriate State Director. Upon request and showing of good cause, an extension for submitting supporting data may be granted by the State Director. Such review shall include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals as provided in §3165.4 of this part.

(c) Review of proposed penalties. Any adversely affected party wishing to contest a notice of proposed penalty shall request an administrative review before the State Director under the procedures set out in paragraph (b) of this section. However, no civil penalty shall be assessed under this part until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Therefore, any party adversely affected by the State Director's decision on the proposed penalty, may request a hearing on the record before an Administrative Law Judge or, in lieu of a hearing, may appeal that decision directly to the Interior Board of Land Appeals as provided in §3165.4(b)(2) of this part. If such party elects to request a hearing on the record, such request shall be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the State Director's decision on the notice of proposed penalty. Where a hearing on the record is requested, the State Director shall refer the complete case file to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge in accordance with part 4 of this title. A decision shall be issued following completion of the hearing and shall be served on the parties. Any party, including the United States, adversely affected by the decision of the Administrative Law Judge may appeal to the Interior Board of Land Appeals as provided in §3163.4 of this title.

(d) Action on request for State Director review. Action on request for administrative review. The State Director shall issue a final decision within 10 business days of the receipt of a complete request for administrative review or, where oral presentation has been made, within 10 business days therefrom. Such decision shall represent the final Bureau decision from which further review may be obtained as provided in paragraph (c) of this section for proposed penalties, and in §3165.4 of this title for all decisions.

(e) Effect of request for State Director review or for hearing on the record.

(1) Any request for review by the State Director under this section shall not result in a suspension of the requirement for compliance with the notice of violation or proposed penalty, or stop the daily accumulation of assessments or penalties, unless the State Director to whom the request is made so determines.

(2) Any request for a hearing on the record before an administrative law judge under this section shall not result in a suspension of the requirement for compliance with the decision, unless the administrative law judge so determines. Any request for hearing on the record shall stop the accumulation of additional daily penalties until such time as a final decision is rendered, except that within 10 days of receipt of a request for a

hearing on the record, the State Director may, after review of such request, recommend that the Director reinstate the accumulation of daily civil penalties until the violation is abated. Within 45 days of the filing of the request for a hearing on the record, the Director may reinstate the accumulation of civil penalties if he/she determines that the public interest requires a reinstatement of the accumulation and that the violation is causing or threating immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not reinstate the daily accumulation within 45 days of the filing of the request for a hearing on the record, the suspension shall continue.

[52 FR 5394, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987, as amended at 53 FR 17365, May 16, 1988]

§3165.4 Appeals.

(a) Appeal of decision of State Director. Any party adversely affected by the decision of the State Director after State Director review, under §3165.3(b) of this title, of a notice of violation or assessment or of an instruction, order, or decision may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations set out in part 4 of this title.

(b) Appeal from decision on a proposed penalty after a hearing on the record.

(1) Any party adversely affected by the decision of an Administrative Law Judge on a proposed penalty after a hearing on the record under §3165.3(c) of this title may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations in part 4 of this title.

(2) In lieu of a hearing on the record under §3165.3(c) of this title, any party adversely affected by the decision of the State Director on a proposed penalty may waive the opportunity for such a hearing on the record by appealing directly to the Interior Board of Land Appeals under part 4 of this title. However, if the right to a hearing on the record is waived, further appeal to the District Court under section 109(j) of the Federal Oil and Gas Royalty Management Act is precluded.

(c) Effect of an appeal on an approval/decision by a State Director or Administrative Law Judge. All decisions and approvals of a State Director or Administrator Law Judge under this part shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision or approval of a State Director or Administrative Law Judge under this part. A petition for a stay of a decision or approval of a State Director or Administrative Law Judge shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Nothing in this paragraph shall diminish the discretionary authority of a State Director or Administrative Law Judge to stay the effectiveness of a decision subject to appeal pursuant to paragraph (a) or (b) of this section upon a request by an adversely affected party or on the State Director's or Administrative Law Judge's own initiative. If a State Director or Administrative Law Judge denies such a request, the requester can petition for a stay of the denial decision by filing a petition with the Interior Board of Land Appeals that addresses the standards described above in this paragraph.

(d) Effect of appeal on compliance requirements. Except as provided in paragraph (d) of this section, any appeal filed pursuant to paragraphs (a) and (b) of this section shall not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken unless the Interior Board of Land Appeals determines that suspension of the requirements of the order or decision will not be detrimental to the interests of the lessor or upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

(e) Effect of appeal on assessments and penalties.

(1) Except as provided in paragraph (d)(3) of this section, an appeal filed pursuant to paragraph (a) of this section shall suspend the accumulation of additional daily assessments. However, the pendency of an appeal shall not bar the authorized officer from assessing civil penalties under §3163.2 of this title in the event the operator has failed to abate the violation which resulted in the assessment. The Board of Land Appeals may issue appropriate orders to coordinate the pending appeal and the pending civil penalty proceeding.

(2) Except as provided in paragraph (d)(3) of this section, an appeal filed pursuant to paragraph (b) of this section shall suspend the accumulation of additional daily civil penalties.

(3) When an appeal is filed under paragraph (a) or (b) of this section, the State Director may, within 10 days of receipt of the notice of appeal, recommend that the Director reinstate the accumulation of assessments and daily civil penalties until such time as a final decision is rendered or until the violation is abated. The Director may, if he/she determines that the public interest requires it, reinstate such accumulation(s) upon a finding that the violation is causing or threatening immediate substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not act on the recommendation to reinstate the accumulation(s) within 45 days of the filing of the notice of appeal, the suspension shall continue.

(4) When an appeal is filed under paragraph (a) of this section from a decision to require drainage protection, BLM's drainage determination will remain in effect diring the appeal, notwithstanding the provisions of 43 CFR 4.21. Compensatory royalty and interest determined under 30 CFR Part 218 will continue to accrue throughout the appeal.

(f) Judicial review. Any person who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of civil penalty determinations only where a

person has requested a hearing on the record, a waiver of such hearing precludes further review by the district court. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after issuance of final decision as provided in §4.21 of this title.

[52 FR 5395, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987, as amended at 53 FR 17365, May 16, 1988; 57 FR 9013, Mar. 13, 1992; 66 FR 1894, Jan. 10, 2001]

PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS

NOTE: Many existing unit agreements currently in effect specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager in the body of the agreements, as well as references to 30 CFR part 221 or specific sections thereof. Those references shall now be read in the context of Secretarial Order 3087 and now mean either the Bureau of Land Management or Minerals Management Service, as appropriate.

Subpart 3180—Onshore Oil and Gas Unit Agreements: General

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Subpart 3181—Application for Unit Agreement

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Subpart 3184—(Reserved)

Subpart 3185—Appeals

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Subpart 3186—Model Forms

3186.1 Model onshore unit agreement for unproven areas.
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3186.2 Model collective bond.
3186.3 Model for designation of successor unit operator by working interest owners.
3186.4 Model for change in unit operator by assignment.

AUTHORITY: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181, 189, 226(e), 226(m)).

SOURCE: 48 FR 26766, June 10, 1983, unless otherwise noted. Redesignated at 48 FR 36587, Aug. 12, 1983.

EDITORIAL NOTES:

NOTE 1: See Redesignation Table No. 2 appearing in the Finding Aids section of this volume.

NOTE 2: Nomenclature changes to this part appear at 48 FR 36587–36588, Aug. 12, 1983.

Subpart 3180—Onshore Oil and Gas Unit Agreements: General

§3180.0–1 Purpose.

The regulations in this part prescribe the procedures to be followed and the requirements to be met by the owners of any right, title or interest in Federal oil and gas leases (see §3160.0–5 of this title) and their representatives who wish to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit plan for the development of any oil or gas pool, field or like area, or any part thereof. All unit agreements on Federal leases are subject to the regulations contained in part 3160 of this title, Onshore Oil and Gas Operations. All unit operations on non-Federal lands included within Federal unit plans are subject to the reporting requirements of part 3160 of this title.

[48 FR 36587, Aug. 12, 1983]

§3180.0–2 Policy.

Subject to the supervisory authority of the Secretary of the Interior, the administration of the regulations in this part shall be under the jurisdiction of the authorized officer. In the exercise of his/her discretion, the authorized officer shall be subject to the direction and supervisory authority of the Director, Bureau of Land Management, who may exercise the jurisdiction of the authorized officer.

[48 FR 36587, Aug. 12, 1983]

§3180.0–3 Authority.

The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181, 189, 226(e) and 226(j)), and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983), under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the responsibility for leasing of restricted Indian lands, to the Bureau of Land Management.

[48 FR 36587, Aug. 12, 1983]

§3180.0–5 Definitions.

The following terms, as used in this part or in any unit agreement approved under the regulations in this part, shall have the meanings here indicated unless otherwise defined in such unit agreement:

Federal lease. A lease issued under the Act of February 25, 1920, as amended (30 U.S.C. 181, *et seq.*); the Act of May 21, 1930 (30 U.S.C. 351–359); the Act of August 7, 1947 (30 U.S.C. 351, *et seq.*); or the Act of November 16, 1981 (Pub. L. 97–98, 95 Stat. 1070).

Participating area. That part of a unit area which is considered reasonably proven to be productive of unitized substances in paying quantities or which is necessary for unit operations and to which production is allocated in the manner prescribed in the unit agreement.

Unit area. The area described in an agreement as constituting the land logically subject to exploration and/or development under such agreement.

Unitized land. Those lands and formations within a unit area which are committed to an approved agreement or plan.

Unitized substances. Deposits of oil and gas contained in the unitized land which are recoverable in paying quantities by operation under and pursuant to an agreement.

Working interest. An interest held in unitized substances or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in the agreement, the owner of such interest is vested with the right to explore for, develop, and produce such substances. The rights delegated to the unit operator by the unit agreement are not regarded as a working interest.

[48 FR 26766, June 10, 1983. Redesignated and amended at 48 FR 36587, Aug. 12, 1983; 51 FR 34603, Sept. 30, 1986]

Subpart 3181—Application for Unit Agreement

§3181.1 Preliminary consideration of unit agreement.

The model unit agreement set forth in §3186.1 of this title, is acceptable for use in unproven areas. Unique situations requiring special provisions should be clearly identified, since these and other special conditions may necessitate a modification of the model unit agreement set forth in §3186.1 of this title. Any proposed special provisions or other modifications of the model agreement should be submitted for preliminary consideration so that any necessary revision may be prescribed prior to execution by the interested parties. Where Federal lands constitute less than 10 percent of the total unit area, a non-Federal unit agreement may be used. Upon submission of such an agreement, the authorized offi-

cer will take appropriate action to commit the Federal lands.

§ 3181.2 Designation of unit area; depth of test well.

application for designation of an as logically subject to development under a unit agreement and for determination of the depth of a test well may be filed by a proponent of such an agreement at the proper BLM office. Such application shall be accompanied by a map or diagram on a scale of not less than 2 inches to 1 mile, outlining the area sought to be designated under this section. The Federal, State, Indian and privately owned land should be indicated by distinctive symbols or colors. Federal and Indian oil and gas leases and lease applications should be identified by lease serial numbers. Geologic information, including the results of any geophysical surveys, and any other available information showing that unitization is necessary and advisable in the public interest should be furnished. If requested, geologic, geophysical and other related information so furnished will be treated as confidential in accordance with the provisions of § 3162.8 of this title. These data will be considered by the authorized officer and the applicant will be informed of the decision reached. The designation of an area, pursuant to an application filed under this section, shall not create an exclusive right to submit an agreement uch area, nor preclude the inclu- of such area or any party thereof in another unit area.

§ 3181.3 Parties to unit agreement.

The owners of any right, title, or interest in the oil and gas deposits to be unitized are regarded as proper parties to a proposed agreement. All such parties must be invited to join the agreement. If any party fails or refuses to join the agreement, the proponent of the agreement, at the time it is filed for approval, must submit evidence of reasonable effort made to obtain joinder of such party and, when requested, the reasons for such nonjoinders. The address of each signatory party to the agreement should be inserted below the signature. Each signature should be attested by at least one witness if not notarized. The signing parties may execute any number of counterparts of the agreement with the same force and effect as if all parties signed the same document, or may execute a ratification or consent in a separate instrument with like force and effect.

§ 3181.4 Inclusion of non-Federal lands.

(a) Where State-owned land is to be ized with Federal lands, approval agreement by appropriate State als must be obtained prior to its submission to the proper BLM office for final approval. When authorized by the laws of the State in which the unitized land is situated, appropriate provision may be made in the agreement, recognizing such laws to the extent that they are applicable to non-Federal unitized land.

(b) When Indian lands are included, modification of the unit agreement will be required where appropriate. Approval of an agreement containing Indian lands by the Bureau of Indian Affairs must be obtained prior to final approval by the authorized officer.

(a)

§ 3181.5 Compensatory royalty payment for unleased Federal land.

The unit agreement submitted by the unit proponent for approval by the authorized officer shall provide for payment to the Federal Government of a 12½ percent royalty on production that would be attributable to unleased Federal lands in a PA of the unit if said lands were leased and committed to the unit agreement. The value of production subject to compensatory royalty payment shall be determined pursuant to 30 CFR part 206, except that no additional royalty shall be due from any lessee benefiting from a share in the production attributable to the unleased Federal lands.

Subpart 3182—Qualifications of Unit Operator

§ 3182.1 Qualifications of unit operator.

A unit operator must qualify as to citizenship in the same manner as those holding interests in Federal oil and gas leases under the regulations at subpart 3102 of this title. The unit operator may be an owner of a working interest in the unit area or such other party as may be selected by the owners of working interests. The unit operator shall execute an acceptance of the duties and obligations imposed by the agreement. No designation of or change in a unit operator will become effective until approved by the authorized officer, and no such approval will be granted unless the successor unit operator is deemed qualified to fulfill the duties and obligations prescribed in the agreement.

Subpart 3183—Filing and Approval of Documents

§ 3183.1 Where to file papers.

All papers, instruments, documents, and proposals submitted under this part shall be filed in the proper BLM office.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, and amended at 51 FR 34603, Sept. 30, 1986]

§ 3183.2 Designation of area.

An application for designation of a proposed unit area and determination of the required depth of test well(s) shall be filed in duplicate. A like number of counterparts should be filed of any geologic data and any other information submitted in support of such application.

§ 3183.3 Executed agreements.

Where a duly executed agreement is submitted for final approval, a minimum of four signed counterparts should be filed. The number of counterparts to be filed for supplementing, modifying, or amending an existing agreement, including change of unit operator, designation of new unit operator, establishment or revision of a participating area, and termination shall be prescribed by the authorized officer.

(a)

§ 3183.4 Approval of executed agreement.

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the agreement (see § 3186.1 of this part for an example), and the unit agreement shall not be deemed effective until the authorized officer has executed the Certification-Determination document. No such agreement shall be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

(b) The public interest requirement of an approved unit agreement for unproven areas shall be satisfied only if the unit operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said agreement. If an application is received for voluntary termination of a unit agreement for an unproven area during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer and lease segregations and extensions under § 3107.3-2 of this title shall be invalid, and no Federal lease shall be eligible for extensions under § 3107.4 of this title.

(c) Any modification of an approved agreement shall require the prior approval of the authorized officer.

[53 FR 17365, May 16, 1988]

§ 3183.5 Participating area.

Two counterparts of a substantiating geologic report, including structure-contour map, cross sections, and pertinent data, shall accompany each application for approval of a participating area or revision thereof under an approved agreement.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, and further redesignated at 53 FR 17365, May 16, 1988]

§ 3183.6 Plan of development.

Three counterparts of all plans of development and operation shall be submitted for approval under an approved agreement.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, and further redesignated at 53 FR 17365, May 16, 1988]

§ 3183.7 Return of approved documents.

One approved counterpart of each instrument or document submitted for approval will be returned to the unit operator by the authorized officer or his representative, together with such additional counterparts as may have been furnished for that purpose.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, and amended at 51 FR 34603, Sept. 30, 1986. Further redesignated at 53 FR 17365, May 16, 1988]

Subpart 3184—(Reserved)

Subpart 3185—Appeals

§ 3185.1 Appeals.

Any party adversely affected by an instruction, order, or decision issued under the regulations in this part may request an administrative review before the State Director under § 3165.3 of this title. Any party adversely affected by a decision of the State Director after State Director review may appeal that decision as provided in part 4 of this title.

Subpart 3186—Model Forms

§ 3186.1 Model onshore unit agreement for unproven areas.

Introductory Section

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4 UNIT OPERATOR.
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30 SURRENDER.[1]
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Concluding Section IN WITNESS WHEREOF.
General Guidelines.
Certification—Determination.

[1] Optional sections (in addition the penultimate paragraph of Section 9 is to be included only when more than one obligation well is required and paragraph (h) of section 18 is to be used only when applicable).

UNIT AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF THE

Unit area _____
County of _____
State of _____
No. _____

This agreement, entered into as of the ——— day of ———, 19— by and between the parties subscribing, ratifying, or consenting hereto, and herein referred to as the "parties hereto,"

WITNESSETH:

WHEREAS, the parties hereto are the owners of working, royalty, or other oil and gas interests in the unit area subject to this agreement; and

WHEREAS, the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Sec. 181 *et seq.*, authorizes Federal lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit plan of development or operations of any oil and gas pool, field, or like area, or any part thereof for the purpose of more properly conserving the natural resources thereof whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest; and

WHEREAS, the parties hereto hold sufficient interests in the ———— Unit Area covering the land hereinafter described to give reasonably effective control of operations therein; and

WHEREAS, it is the purpose of the parties hereto to conserve natural resources, prevent waste, and secure other benefits obtainable through development and operation of the area subject to this agreement under the terms, conditions, and limitations herein set forth;

NOW, THEREFORE, in consideration of the premises and the promises herein contained, the parties hereto commit to this agreement their respective interests in the below-defined unit area, and agree severally among themselves as follows:

1. ENABLING ACT AND REGULATIONS. The Mineral Leasing Act of February 25, 1920, as amended, supra, and all valid pertinent regulations including operating and unit plan regulations, heretofore issued thereunder or valid, pertinent, and reasonable regulations hereafter issued thereunder are accepted and made a part of this agreement as to Federal lands, provided such regulations are not inconsistent with the terms of this agreement; and as to non-Federal lands, the oil and gas operating regulations in effect as of the effective date hereof governing drilling and producing operations, not inconsistent with the terms hereof or the laws of the State in which the non-Federal land is located, are hereby accepted and made a part of this agreement.

2. UNIT AREA. The area specified on the map attached hereto marked Exhibit A is hereby designated and recognized as constituting the unit area, containing —— acres, more or less.

Exhibit A shows, in addition to the boundary of the unit area, the boundaries and identity of tracts and leases in said area to the extent known to the Unit Operator. Exhibit B attached hereto is a schedule showing to the extent known to the Unit Operator, the acreage, percentage, and kind of ownership of oil and gas interests in all lands in the unit area. However, nothing herein or in Exhibits A or B shall be construed as a representation by any party hereto as to the ownership of any interest other than such interest or interests as are shown in the Exhibits as owned by such party. Exhibits A and B shall be revised by the Unit Operator whenever changes in the unit area or in the ownership interests in the individual tracts render such revision necessary, or when requested by the Authorized Officer, hereinafter referred to as AO and not less than four copies of the revised Exhibits shall be filed with the proper BLM office.

The above-described unit area shall when practicable be expanded to include therein any additional lands or shall be contracted to exclude lands whenever such expansion or contraction is deemed to be necessary or advisable to conform with the purposes of this agreement. Such expansion or contraction shall be effected in the following manner:

(a) Unit Operator, on its own motion (after preliminary concurrence by the AO), or on demand of the AO, shall prepare a notice of proposed expansion or contraction describing the contemplated changes in the boundaries of the unit area, the reasons therefor, any plans for additional drilling, and the proposed effective date of the expansion or contraction, preferably the first day of a month subsequent to the date of notice.

(b) Said notice shall be delivered to the proper BLM office, and copies thereof mailed to the last known address of each working interest owner, lessee and lessor whose interests are affected, advising that 30 days will be allowed for submission to the Unit Operator of any objections.

(c) Upon expiration of the 30-day period provided in the preceding item (b) hereof, Unit Operator shall file with the AO evidence of mailing of the notice of expansion or contraction and a copy of any objections thereto which have been filed with Unit Operator, together with an application in triplicate, for approval of such expansion or contraction and with appropriate joinders.

(d) After due consideration of all pertinent information, the expansion or contraction shall, upon approval by the AO, become effective as of the date prescribed in the notice thereof or such other appropriate date.

(e) All legal subdivisions of lands (i.e., 40 acres by Government survey or its nearest lot or tract equivalent; in instances of irregular surveys, unusually large lots or tracts shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof), no parts of which are in or entitled to be in a participating area on or before the fifth anniversary of the effective date of the first initial participating area established under this unit agreement, shall be eliminated automatically from this agreement, effective as of said fifth anniversary, and such lands shall no longer be a part of the unit area and shall no longer be subject to this agreement, unless diligent drilling operations are in progress on unitized lands not entitled to participation on said fifth anniversary, in which event all such lands shall remain subject hereto for so long as such drilling oper-

ations are continued diligently, with not more than 90-days time elapsing between the completion of one such well and the commencement of the next such well. All legal subdivisions of lands not entitled to be in a participating area within 10 years after the effective date of the first initial participating area approved under this agreement shall be automatically eliminated from this agreement as of said tenth anniversary. The Unit Operator shall, within 90 days after the effective date of any elimination hereunder, describe the area so eliminated to the satisfaction of the AO and promptly notify all parties in interest. All lands reasonably proved productive of unitized substances in paying quantities by diligent drilling operations after the aforesaid 5-year period shall become participating in the same manner as during said first 5-year period. However, when such diligent drilling operations cease, all nonparticipating lands not then entitled to be in a participating area shall be automatically eliminated effective as the 91st day thereafter.

Any expansion of the unit area pursuant to this section which embraces lands theretofore eliminated pursuant to this subsection 2(e) shall not be considered automatic commitment or recommitment of such lands. If conditions warrant extension of the 10-year period specified in this subsection, a single extension of not to exceed 2 years may be accomplished by consent of the owners of 90 percent of the working interest in the current nonparticipating unitized lands and the owners of 60 percent of the basic royalty interests (exclusive of the basic royalty interests of the United States) in nonparticipating unitized lands with approval of the AO, provided such extension application is submitted not later than 60 days prior to the expiration of said 10-year period.

UNITIZED LAND AND UNITIZED SUBSTANCES. All land now or hereafter committed to this agreement shall constitute land referred to herein as "unitized land" or "land subject to this agreement." All oil and gas in any and all formations of the unitized land are unitized under the terms of this agreement and herein are called "unitized substances."

4. UNIT OPERATOR. ———— is hereby designated as Unit Operator and by signature hereto as Unit Operator agrees and consents to accept the duties and obligations of Unit Operator for the discovery, development, and production of unitized substances as herein provided. Whenever reference is made herein to the Unit Operator, such reference means the Unit Operator acting in that capacity and not as an owner of interest in unitized substances, and the term "working interest owner" when used herein shall include or refer to Unit Operator as the owner of a working interest only when such an interest is owned by it.

5. RESIGNATION OR REMOVAL OF UNIT OPERATOR. Unit Operator shall have the right to resign at any time prior to the establishment of a participating area or areas hereunder, but such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator and terminate Unit Operator's rights as such for a period of 6 months after notice of intention to resign has been served by Unit Operator on all working interest owners and the AO and until all wells then drilled hereunder are placed in a satisfactory condition for suspension or abandonment, whichever is required by the AO, unless a new Unit Operator shall have been selected and approved and shall have taken over and assumed the duties and obligations of Unit Operator prior to the expiration of said period.

Unit Operator shall have the right to resign in like manner and subject to like limitations as above provided at any time after a participating area established hereunder is in existence, but in all instances of resignation or removal, until a successor Unit Operator is selected and approved as hereinafter provided, the working interest owners shall be jointly responsible for performance of the duties of Unit Operator, and shall not later than 30 days before such resignation or removal becomes effective appoint a common agent to represent them in any action to be taken hereunder.

The resignation of Unit Operator shall not release Unit Operator from any liability for any default by it hereunder occurring prior to the effective date of its resignation.

The Unit Operator may, upon default or failure in the performance of its duties or obligations hereunder, be subject to removal by the same percentage vote of the owners of working interests as herein provided for the selection of a new Unit Operator. Such removal shall be effective upon notice thereof to the AO.

The resignation or removal of Unit Operator under this agreement shall not terminate its right, title, or interest as the owner of working interest or other interest in unitized substances, but upon the resignation or removal of Unit Operator becoming effective, such Unit Operator shall deliver possession of all wells, equipment, materials, and appurtenances used in conducting the unit operations to the new duly qualified successor Unit Operator or to the common agent, if no such new Unit Operator is selected to be used for the purpose of conducting unit operations hereunder. Nothing herein shall be construed as authorizing removal of any material, equipment, or appurtenances needed for the preservation of any wells.

6. SUCCESSOR UNIT OPERATOR. Whenever the Unit Operator shall tender his or its resignation as Unit Operator or shall be removed as hereinabove provided, or a change of Unit Operator is negotiated by the working interest owners, the owners of the working interests according to their respective acreage interests in all unitized land shall, pursuant to the Approval of the Parties requirements of the unit operating agreement, select a successor Unit Operator. Such selection shall not become effective until:

(a) a Unit Operator so selected shall accept in writing the duties and responsibilities of Unit Operator, and

(b) the selection shall have been approved by the AO.

If no successor Unit Operator is selected and qualified as herein provided, the AO at his election may declare this unit agreement terminated.

7. ACCOUNTING PROVISIONS AND UNIT OPERATING AGREEMENT. If the Unit Operator is not the sole owner of working interests, costs and expenses incurred by Unit Operator in conducting unit operations hereunder shall be paid and apportioned among and borne by the owners of working interests, all in accordance with the agreement or agreements entered into by and between the Unit Operator and the owners of working interests, whether one or more, separately or collectively. Any agreement or agreements entered into between the working interest owners and the Unit Operator as provided in this section, whether one or more, are herein referred to as the "unit operating agreement." Such unit operating agreement shall also provide the manner in which the working interest owners shall be entitled to receive their respective proportionate and allocated share of the benefits accruing hereto in conformity with their underlying operating agreements, leases, or other independent contracts, and such other rights and obligations as between Unit Operator and the working interest owners as may be agreed upon by Unit Operator and the working interest owners; however, no such unit operating agreement shall be deemed either to modify any of the terms and conditions of this unit agreement or to relieve the Unit Operator of any right or obligation established under this unit agreement, and in case of any inconsistency or conflict between this agreement and the unit operating agreement, this agreement shall govern. Two copies of any unit operating agreement executed pursuant to this section shall be filed in the proper BLM office prior to approval of this unit agreement.

8. RIGHTS AND OBLIGATIONS OF UNIT OPERATOR. Except as otherwise specifically provided herein, the exclusive right, privilege, and duty of exercising any and all rights of the parties hereto which are necessary or convenient for prospecting for, producing, storing, allocating, and distributing the unitized substances are hereby delegated to and shall be exercised by the Unit Operator as herein provided. Acceptable evidence of title to said rights shall be deposited with Unit Operator and, together with this agreement, shall constitute and define the rights, privileges, and obligations of Unit Operator. Nothing herein, however, shall be construed to transfer title to any land or to any lease or operating agreement, it being understood that under this agreement the Unit Operator, in its capacity as Unit Operator, shall exercise the rights of possession and use vested in the parties hereto only for the purposes herein specified.

9. DRILLING TO DISCOVERY. Within 6 months after the effective date hereof, the Unit Operator shall commence to drill an adequate test well at a location approved by the AO, unless on such effective date a well is being drilled in conformity with the terms hereof, and thereafter continue such drilling diligently until the ——— formation has been tested or until at a lesser depth unitized substances shall be discovered which can be produced in paying quantities (to wit: quantities sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit) or the Unit Operator shall at any time establish to the satisfaction of the AO that further drilling of said well would be unwarranted or impracticable, provided, however, that Unit Operator shall not in any event be required to drill said well to a depth in excess of —— feet. Until the discovery of unitized substances capable of being produced in paying quantities, the Unit Operator shall continue drilling one well at a time, allowing not more than 6 months between the completion of one well and the commencement of drilling operations for the next well, until a well capable of producing unitized substances in paying quantities is completed to the satisfaction of the AO or until it is reasonably proved that the unitized land is incapable of producing unitized substances in paying quantities in the formations drilled hereunder. Nothing in this section shall be deemed to limit the right of the Unit Operator to resign as provided in Section 5, hereof, or as requiring Unit Operator to commence or continue any drilling during the period pending such resignation becoming effective in order to comply with the requirements of this section.

The AO may modify any of the drilling requirements of this section by granting reasonable extensions of time when, in his opinion, such action is warranted.

[29a]. Multiple well requirements. Notwithstanding anything in this unit agreement to the contrary, except Section 25, UNAVOIDABLE DELAY, —— wells shall be drilled with not more than 6-months time elapsing between the completion of the first well and commencement of drilling operations for the second well and with not more than 6-months time elapsing between completion of the second well and the commencement of

drilling operations for the third well, . . . regardless of whether a discovery has been made in any well drilled under this provision. Both the initial well and the second well must be drilled in compliance with the above specified formation or depth requirements in order to meet the dictates of this section; and the second well must be located a minimum of —— miles from the initial well in order to be accepted by the AO as the second unit test well, within the meaning of this section. The third test well shall be diligently drilled, at a location approved by the AO, to test the ——— formation or to a depth of —— feet, whichever is the lesser, and must be located a minimum of —— miles from both the initial and the second test wells. Nevertheless, in the event of the discovery of unitized substances in paying quantities by any well, this unit agreement shall not terminate for failure to complete the ——— well program, but the unit area shall be contracted automatically, effective the first day of the month following the default, to eliminate by subdivisions (as defined in Section 2(e) hereof) all lands not then entitled to be in a participating area.[2]

Until the establishment of a participating area, the failure to commence a well subsequent to the drilling of the initial obligation well, or in the case of multiple well requirements, if specified, subsequent to the drilling of those multiple wells, as provided for in this (these) section(s), within the time allowed including any extension of time granted by the AO, shall cause this agreement to terminate automatically. Upon failure to continue drilling diligently any well other than the obligation well(s) commenced hereunder, the AO may, after 15 days notice to the Unit Operator, declare this unit agreement terminated. Failure to commence drilling the initial obligation well, or the first of multiple obligation wells, on time and to drill it diligently shall result in the unit agreement approval being declared invalid *ab initio* by the AO. In the case of multiple well requirements, failure to commence drilling the required multiple wells beyond the first well, and to drill them diligently, may result in the unit agreement approval being declared invalid *ab initio* by the AO;

[2]Provisions to be included only when a multiple well obligation is required.

10. PLAN OF FURTHER DEVELOPMENT AND OPERATION. Within 6 months after completion of a well capable of producing unitized substances in paying quantities, the Unit Operator shall submit for the approval of the AO an acceptable plan of development and operation for the unitized land which, when approved by the authorized officier, shall constitute the further drilling and development obligations of the Unit Operator under this agreement for the period specified therein. Thereafter, from time to time before the expiration of any existing plan, the Unit Operator shall submit for the approval of the AO a plan for an additional specified period for the development and operation of the unitized land. Subsequent plans should normally be filed on a calender year basis not later than March 1 each year. Any proposed modification or addition to the existing plan should be filed as a supplement to the plan.

Any plan submitted pursuant to this section shall provide for the timely exploration of the unitized area, and for the diligent drilling necessary for determination of the area or areas capable of producing unitized substances in paying quantities in each and every productive formation. This plan shall be as complete and adequate as the AO may determine to be necessary for timely development and proper conservation of the oil and gas resources in the unitized area and shall:

(a) Specify the number and locations of any wells to be drilled and the proposed order and time for such drilling; and

(b) Provide a summary of operations and production for the previous year.

Plans shall be modified or supplemented when necessary to meet changed conditions or to protect the interests of all parties to this agreement. Reasonable diligence shall be exercised in complying with the obligations of the approved plan of development and operation. The AO is authorized to grant a reasonable extension of the 6-month period herein prescribed for submission of an initial plan of development and operation where such action is justified because of unusual conditions or circumstances.

After completion of a well capable of producing unitized substances in paying quantities, no further wells, except such as may be necessary to afford protection against operations not under this agreement and such as may be specifically approved by the AO, shall be drilled except in accordance with an approved plan of development and operation.

11. PARTICIPATION AFTER DISCOVERY. Upon completion of a well capable of producing unitized substances in paying quantities, or as soon thereafter as required by the AO, the Unit Operator shall submit for approval by the AO, a schedule, based on subdivisions of the public-land survey or aliquot parts thereof, of all land then regarded as reasonably proved to be productive of unitized substances in paying quantities. These lands shall constitute a participating area on approval of the AO, effective as of the date of completion of such well or the effective date of this unit agreement, whichever is later. The acreages of both Federal and non-Federal lands shall be based upon appropriate computations from the courses and distances shown on the last approved public-land survey as of the effective date of each initial participating area. The schedule shall also set forth the percentage of unitized substances to be allocated, as provided in Section 12, to each committed tract in the participating area so established, and shall govern the allocation of production commencing with the effective date of the participating area. A different participating area shall be established for each separate pool or deposit of unitized substances or for any group thereof which is produced as a single pool or zone, and any two or more participating areas so established may be combined into one, on approval of the AO. When production from two or more participating areas is subsequently found to be from a common pool or deposit, the participating areas shall be combined into one, effective as of such appropriate date as may be approved or prescribed by the AO. The participating area or areas so established shall be revised from time to time, subject to the approval of the AO, to include additional lands then regarded as reasonably proved to be productive of unitized substances in paying quantities or which are necessary for unit operations, or to exclude lands then regarded as reasonably proved not to be productive of unitized substances in paying quantities, and the schedule of allocation percentages shall be revised accordingly. The effective date of any revision shall be the first of the month in which the knowledge or information is obtained on which such revision is predicated; provided, however, that a more appropriate effective date may be used if justified by Unit Operator and approved by the AO. No land shall be excluded from a participating area on account of depletion of its unitized substances, except that any participating area established under the provisions of this unit agreement shall terminate automatically whenever all completions in the formation on which the participating area is based are abandoned.

It is the intent of this section that a participating area shall represent the area known or reasonably proved to be productive of unitized substances in paying quantities or which are necessary for unit operations; but, regardless of any revision of the participating area, nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of the participating area.

In the absence of agreement at any time between the Unit Operator and the AO as to the proper definition or redefinition of a participating area, or until a participating area has, or areas have, been established, the portion of all payments affected thereby shall, except royalty due the United States, be impounded in a manner mutually acceptable to the owners of committed working interests. Royalties due the United States shall be determined by the AO and the amount thereof shall be deposited, as directed by the AO, until a participating area is finally approved and then adjusted in accordance with a determination of the sum due as Federal royalty on the basis of such approved participating area.

Whenever it is determined, subject to the approval of the AO, that a well drilled under this agreement is not capable of production of unitized substances in paying quantities and inclusion in a participating area of the land on which it is situated is unwarranted, production from such well shall, for the purposes of settlement among all parties other than working interest owners, be allocated to the land on which the well is located, unless such land is already within the participating area established for the pool or deposit from which such production is obtained. Settlement for working interest benefits from such a nonpaying unit well shall be made as provided in the unit operating agreement.

(a) 12. Allocation of Production. All unitized substances produced from a participating area established under this agreement, except any part thereof used in conformity with good operating practices within the unitized area for drilling, operating, and other production or development purposes, or for repressuring or recycling in accordance with a plan of development and operations that has been approved by the AO, or unavoidably lost, shall be deemed to be produced equally on an acreage basis from the several tracts or unitized land and unleased Federal land, if any, included in the participating area established for such production. Each such tract shall have allocated to it such percentage of said production as the number of acres of such tract included in said participating area bears to the total acres of unitized land and unleased Federal land, if any, included in said participating area. There shall be allocated to each working interest owner of a tract of unitized land in said participating area, in addition, such percentage of the production attributable to the unleased Federal land within the participating area as the number of acres of such unitized tract included in said participating area bears to the total acres of unitized land in said participating area, for the payment of the compensatory royalty specified in section 17 of this agreement. Allocation of production hereunder for purposes other than for settlement of the royalty, overriding royalty, or payment out of production obligations of the respective working interest owners, including compensatory royalty obligations under section 17, shall be prescribed as set forth in the unit operating agreement or as

otherwise mutually agreed by the affected parties. It is hereby agreed that production of unitized substances from a participating area shall be allocated as provided herein, regardless or whether any wells are drilled any particular part or tract of the icipating area. If any gas produced from e participating area is used for repressuring or recycling purposes in another participating area, the first gas withdrawn from the latter participating area for sale during the life of this agreement shall be considered to be the gas so transferred, until an amount equal to that transferred shall be so produced for sale and such gas shall be allocated to the participating area from which initially produced as such area was defined at the time that such transferred gas was finally produced and sold.

13. DEVELOPMENT OR OPERATION OF NONPARTICIPATING LAND OR FORMATIONS. Any operator may with the approval of the AO, at such party's sole risk, costs, and expense, drill a well on the unitized land to test any formation provided the well is outside any participating area established for that formation, unless within 90 days of receipt of notice from said party of his intention to drill the well, the Unit Operator elects and commences to drill the well in a like manner as other wells are drilled by the Unit Operator under this agreement.

If any well drilled under this section by a non-unit operator results in production of unitized substances in paying quantities such that the land upon which it is situated may properly be included in a participating area, such participating area shall be established or enlarged as provided in this agreement and the well shall thereafter be oper- by the Unit Operator in accordance the terms of this agreement and the operating agreement.

If any well drilled under this section by a non-unit operator that obtains production in quantities insufficient to justify the inclusion of the land upon which such well is situated in a participating area, such well may be operated and produced by the party drilling the same, subject to the conservation requirements of this agreement. The royalties in amount or value of production from any such well shall be paid as specified in the underlying lease and agreements affected.

14. ROYALTY SETTLEMENT. The United States and any State and any royalty owner who is entitled to take in kind a share of the substances now unitized hereunder shall be hereafter be entitled to the right to take in kind its share of the unitized substances, and Unit Operator, or the non-unit operator in the case of the operation of a well by a non-unit operator as herein provided for in special cases, shall make deliveries of such royalty share taken in kind in conformity with the applicable contracts, laws, and regulations. Settlement for royalty interest not taken in kind shall be made by an operator responsible therefor under existing contracts, laws and regulations, or by the Unit Operator on or before the last day of each month for unitized substances produced during the preceding calendar month; provided, however, that nothing in this section shall operate to relieve the responsible parties of any land from their respective lease obligations for the payment of any royalties due under their leases.

as obtained from lands not subject to greement is introduced into any parcing area hereunder, for use in repressuring, stimulation of production, or increasing ultimate recovery, in conformity with a plan of development and operation approved by the AO, a like amount of gas, after settlement as herein provided for any gas transferred from any other participating area and with appropriate deduction for loss from any cause, may be withdrawn from the formation into which the gas is introduced, royalty free as to dry gas, but not as to any products which may be extracted therefrom; provided that such withdrawal shall be at such time as may be provided in the approved plan of developn.ent and operation or as may otherwise be consented to by the AO as conforming to good petroleum engineering practice; and provided further, that such right of withdrawal shall terminate on the termination of this unit agreement.

Royalty due the United States shall be computed as provided in 30 CFR Group 200 and paid in value or delivered in kind as to all unitized substances on the basis of the amounts thereof allocated to unitized Federal land as provided in Section 12 at the rates specified in the respective Federal leases, or at such other rate or rates as may be authorized by law or regulation and approved by the AO; provided, that for leases on which the royalty rate depends on the daily average production per well, said average production shall be determined in accordance with the operating regulations as though each participating area were a single consolidated lease.

15. RENTAL SETTLEMENT. Rental or minimum royalties due on leases committed hereto shall be paid by the appropriate parties under existing contracts, laws, and regulations, provided that nothing herein contained shall operate to relieve the responsible parties of the land from their respective obligations for the payment of any rental or minimum royalty due under their leases. Rental or minimum royalty for lands of the United States subject to this agreement shall be paid at the rate specified in the respective leases from the United States unless such rental or minimum royalty is waived, suspended, or reduced by law or by approval of the Secretary or his duly authorized representative.

With respect to any lease on non-Federal land containing provisions which would terminate such lease unless drilling operations are commenced upon the land covered thereby within the time therein specified or rentals are paid for the privilege of deferring such drilling operations, the rentals required thereby shall, notwithstanding any other provision of this agreement, be deemed to accure and become payable during the term thereof as extended by this agreement and until the required drilling operations are commenced upon the land covered thereby, or until some portion of such land is included within a participating area.

16. CONSERVATION. Operations hereunder and production of unitized substances shall be conducted to provide for the most economical and efficient recovery of said substances without waste, as defined by or pursuant to State or Federal law or regulation.

17. DRAINAGE.

(a) The Unit Operator shall take such measures as the AO deems appropriate and adequate to prevent drainage of unitized substances from unitized land by wells on land not subject to this agreement, which shall include the drilling of protective wells and which may include the payment of a fair and reasonable compensatory royalty, as determined by the AO.

(b) Whenever a participating area designated under section 9 of this agreement contains unleased Federal lands, the value of 12½ percent of the production that would be allocated to such Federal lands under section 12 of this agreement, if such lands were leased, committed, and entitled to participation, shall be payable as compensatory royalties to the Federal Government. Parties to this agreement holding working interests in leases within the applicable participating area shall be responsible for such compensatory royalty payment on the volume of production reallocated from the unleased Federal lands to their unitized tracts under section 12. The value of such production subject to the payment of said royalties shall be determined pursuant to 30 CFR part 206. Payment of compensatory royalties on the production reallocated from unleased Federal land to committed Federal tracts within the participating area shall fulfill the Federal royalty obligation for such production, and said production shall be subject to no further Federal royalty assessment under section 14 of this agreement. Payment of compensatory royalties as provided herein shall accrue from the date the committed tracts in the participating area that includes unleased Federal lands receive a production allocation, and shall be due and payable monthly by the last day of the calendar month next following the calendar month of actual production. If leased Federal lands receiving a production allocation from the participating area become unleased, compensatory royalties shall accrue from the date the Federal lands become unleased. Payment due under this provision shall end when the unleased Federal tract is leased or when production of unitized substances ceases within the participating area and the participating area is terminated, whichever occurs first.

18. LEASES AND CONTRACTS CONFORMED AND EXTENDED. The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development or operation for oil or gas on lands committed to this agreement are hereby expressly modified and amended to the extent necessary to make the same conform to the provisions hereof, but otherwise to remain in full force and effect; and the parties hereto hereby consent that the Secretary shall and by his approval hereof, or by the approval hereof by his duly authorized representative, does hereby establish, alter, change, or revoke the drilling, producing, rental, minimum royalty, and royalty requirements of Federal leases committed hereto and the regulations in respect thereto to conform said requirements to the provisions of this agreement, and, without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following:

(a) The development and operation of lands subject to this agreement under the terms hereof shall be deemed full performance of all obligations for development and operation with respect to each and every separately owned tract subject to this agreement, regardless of whether there is any development of any particular tract of this unit area.

(b) Drilling and producing operations performed hereunder upon any tract of unitized lands will be accepted and deemed to be performed upon and for the benefit of each and every tract of unitized land, and no lease shall be deemed to expire by reason of failure to drill or produce wells situated on the land therein embraced.

(c) Suspension of drilling or producing operations on all unitized lands pursuant to direction or consent of the AO shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every tract of unitized land. A suspension of drilling or producing operations limited to specified lands shall be applicable only to such lands.

(d) Each lease, sublease, or contract relating to the exploration, drilling, development, or operation for oil or gas of lands other than those of the United States committed to this agreement which, by its terms might expire prior to the termination of this agreement, is hereby extended beyond any such term so provided therein so that it shall be continued in full force and effect for and during the term of this agreement.

(e) Any Federal lease committed hereto shall continue in force beyond the term so provided therein or by law as to the land committed so long as such lease remains subject hereto, provided that production of unitized substances in paying quantities is established under this unit agreement prior to the expiration date of the term of such lease, or in the event actual drilling operations are commenced on unitized land, in accordance with provisions of this agreement, prior to the end of the primary term of such lease and are being diligently prosecuted at that time, such lease shall be extended for 2 years, and so long thereafter as oil or gas is produced in paying quantities in accordance with the provisions of the Mineral Leasing Act, as amended.

(f) Each sublease or contract relating to the operation and development of unitized substances from lands of the United States committed to this agreement, which by its terms would expire prior to the time at which the underlying lease, as extended by the immediately preceding paragraph, will expire is hereby extended beyond any such term so provided therein so that it shall be continued in full force and effect for and during the term of the underlying lease as such term is herein extended.

(g) The segregation of any Federal lease committed to this agreement is governed by the following provision in the fourth paragraph of sec. 17(m) of the Mineral Leasing Act, as amended by the Act of September 2, 1960 (74 Stat. 781-784) (30 U.S.C. 226(m)):

"Any [Federal] lease heretofore or hereafter committed to any such [unit] plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: *Provided, however,* That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities."

If the public interest requirement is not satisfied, the segregation of a lease and/or extension of a lease pursuant to 43 CFR 3107.3-2 and 43 CFR 3107.4, respectively, shall not be effective.

[3](h) Any lease, other than a Federal lease, having only a portion of its lands committed hereto shall be segregated as to the portion committed and the portion not committed, and the provisions of such lease shall apply separately to such segregated portions commencing as of the effective date hereof. In the event any such lease provides for a lumpsum rental payment, such payment shall be prorated between the portions so segregated in proportion to the acreage of the respective tracts.

[3]Optional paragraph to be used only when applicable.

19. CONVENANTS RUN WITH LAND. The covenants herein shall be construed to be covenants running with the land with respect to the interests of the parties hereto and their successors in interest until this agreement terminates, and any grant, transfer or conveyance of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest. No assignment or transfer of any working interest, royalty, or other interest subject hereto shall be binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

20. EFFECTIVE DATE AND TERM. This agreement shall become effective upon approval by the AO and shall automatically terminate 5 years from said effective date unless:

(a) Upon application by the Unit Operator such date of expiration is extended by the AO, or

(b) It is reasonably determined prior to the expiration of the fixed term or any extension thereof that the unitized land is incapable of production of unitized substances in paying quantities in the formations tested hereunder, and after notice of intention to terminate this agreement on such ground is given by the Unit Operator to all parties in interest at their last known addresses, this agreement is terminated with the approval of the AO, or

(c) A valuable discovery of unitized substances in paying quantities has been made or accepted on unitized land during said initial term or any extension thereof, in which event this agreement shall remain in effect for such term and so long thereafter as unitized substances can be produced in quantities sufficient to pay for the cost of producing same from wells on unitized land within any participating area established hereunder. Should production cease and diligent drilling or reworking operations to restore production or new production are not in progress within 60 days and production is not restored or should new production not be obtained in paying quantities on committed lands within this unit area, this agreement will automatically terminate effective the last day of the month in which the last unitized production occurred, or

(d) It is voluntarily terminated as provided in this agreement. Except as noted herein, this agreement may be terminated at any time prior to the discovery of unitized substances which can be produced in paying quantities by not less than 75 per centum, on an acreage basis, of the working interest owners signatory hereto, with the approval of the AO. The Unit Operator shall give notice of any such approval to all parties hereto. If the public interest requirement is not satisfied, the approval of this unit by the AO shall be invalid.

21. RATE OF PROSPECTING, DEVELOPMENT, AND PRODUCTION. The AO is hereby vested with authority to alter or modify from time to time, in his discretion, the quantity and rate of production under this agreement when such quantity and rate are not fixed pursuant to Federal or State law, or do not conform to any Statewide voluntary conservation or allocation program which is established, recognized, and generally adhered to by the majority of operators in such State. The above authority is hereby limited to alteration or modifications which are in the public interest. The public interest to be served and the purpose thereof, must be stated in the order of alteration or modification. Without regard to the foregoing, the AO is also hereby vested with authority to alter or modify from time to time, in his discretion, the rate of prospecting and development and the quantity and rate of production under this agreement when such alteration or modification is in the interest of attaining the conservation objectives stated in this agreement and is not in violation of any applicable Federal or State law.

Powers in the section vested in the AO shall only be exercised after notice to Unit Operator and opportunity for hearing to be held not less than 15 days from notice.

22. APPEARANCES. The Unit Operator shall, after notice to other parties affected, have the right to appear for and on behalf of any and all interests affected hereby before the Department of the Interior and to appeal from orders issued under the regulations of said Department, or to apply for relief from any of said regulations, or in any proceedings relative to operations before the Department, or any other legally constituted authority; provided, however, that any other interested party shall also have the right at its own expense to be heard in any such proceeding.

23. NOTICES. All notices, demands, or statements required hereunder to be given or rendered to the parties hereto shall be in writing and shall be personally delivered to the party or parties, or sent by postpaid registered or certified mail, to the last-known address of the party or parties.

24. NO WAIVER OF CERTAIN RIGHTS. Nothing contained in this agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense as to the validity or invalidity of any law of the State where the unitized lands are located, or of the United States, or regulations issued thereunder in any way affecting such party, or as a waiver by any such party of any right beyond his or its authority to waive.

25. UNAVOIDABLE DELAY. All obligations under this agreement requiring the Unit Operator to commence or continue drilling, or to operate on, or produce unitized substances from any of the lands covered by this agreement, shall be suspended while the Unit Operator, despite the exercise of due care and diligence, is prevented from complying with such obligations, in whole or in part, by strikes, acts of God, Federal, State or municipal law or agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials or equipment in the open market, or other matters beyond the reasonable control of the Unit Operator, whether similar to matters herein enumerated or not.

26. NONDISCRIMINATION. In connection with the performance of work under this agreement, the Unit Operator agrees to comply with all the provisions of section 202 (1) to (7) inclusive, of Executive Order 11246 (30 FR 12319), as amended, which are hereby incorporated by reference in this agreement.

27. LOSS OF TITLE. In the event title to any tract of unitized land shall fail and the true owner cannot be induced to join in this unit agreement, such tract shall be automatically regarded as not committed hereto and there shall be such readjustment of future costs and benefits as may be required on account of the loss of such title. In the event of a dispute as to title to any royalty, working interest, or other interests subject thereto, payment or delivery on account thereof may be withheld without liability for interest until the dispute is finally settled; provided, that, as to Federal lands or leases, no payments of funds due the United States shall be withheld, but such funds shall be deposited as directed by the AO, to be held as unearned money pending final settlement of the title dispute, and then applied as earned or returned in accordance with such final settlement.

Unit Operator as such is relieved from any responsibility for any defect or failure of any title hereunder.

28. NONJOINDER AND SUBSEQUENT JOINDER. If the owner of any substantial interest in a tract within the unit area fails or refuses to subscribe or consent to this agree

ment, the owner of the working interest in that tract may withdraw the tract from this agreement by written notice delivered to the proper BLM office and the Unit Operator prior to the approval of this agreement by AO. Any oil or gas interests in lands in the unit area not committed hereto or to final approval may thereafter be committed hereto by the owner or owners thereof subscribing or consenting to this agreement, and, if the interest is a working interest, by the owner of such interest also subscribing to the unit operating agreement. After operations are commenced hereunder, the right of subsequent joinder, as provided in this section, by a working interest owner is subject to such requirements or approval(s), if any, pertaining to such joinder, as may be provided for in the unit operating agreement. After final approval hereof, joinder by a nonworking interest owner must be consented to in writing by the working interest owner committed hereto and responsible for the payment of any benefits that may accrue hereunder in behalf of such nonworking interest. A nonworking interest may not be committed to this unit agreement unless the corresponding working interest is committed hereto. Joinder to the unit agreement by a working interest owner, at any time, must be accompanied by appropriate joinder to the unit operating agreement, in order for the interest to be regarded as committed to this agreement. Except as may otherwise herein be provided, subsequent joinders to this agreement shall be effective as of the date of the filing with the AO of duly executed counterparts of all or any papers necessary to establish effective commitment of any interest and/or tract to this agreement.

29. COUNTERPARTS. This agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties, or may be ratified or consented to by separate instrument in writing specifically referring hereto and shall be binding upon all those parties who have executed such a counterpart, ratification, or consent hereto with the same force and effect as if all such parties had signed the same document, and regardless of whether or not it is executed by all other parties owning or claiming an interest in the lands within the above-described unit area.

*30. SURRENDER. Nothing in this agreement shall prohibit the exercise by any working interest owner of the right to surrender vested in such party by any lease, sublease, or operating agreement as to all or any part of the lands covered thereby, provided that each party who will or might acquire such working interest by such surrender or by forfeiture as hereafter set forth, is bound by the terms of this agreement.

If as a result of any such surrender, the working interest rights as to such lands become vested in any party other than the fee owner of the unitized substances, said party may forfeit such rights and further benefits from operations hereunder as to said land to the party next in the chain of title who shall be and become the owner of such working interest.

If as the result of any such surrender or forfeiture working interest rights become vested in the fee owner of the unitized substances, such owner may:

(a) Accept those working interest rights subject to this agreement and the unit operating agreement; or

(b) Lease the portion of such land as is included in a participating area established hereunder subject to this agreement and the unit operating agreement; or

(c) Provide for the independent operation of any part of such land that is not then included within a participating area established hereunder.

If the fee owner of the unitized substances does not accept the working interest rights subject to this agreement and the unit operating agreement or lease such lands as above provided within 6 months after the surrendered or forfeited, working interest rights become vested in the fee owner; the benefits and obligations of operations accruing to such lands under this agreement and the unit operating agreement shall be shared by the remaining owners of unitized working interests in accordance with their respective working interest ownerships, and such owners of working interests shall compensate the fee owner of unitized substances in such lands by paying sums equal to the rentals, minimum royalties, and royalties applicable to such lands under the lease in effect when the lands were unitized.

An appropriate accounting and settlement shall be made for all benefits accruing to or payments and expenditures made or incurred on behalf of such surrendered or forfeited working interests subsequent to the date of surrender or forfeiture, and payment of any moneys found to be owing by such an accounting shall be made as between the parties within 30 days.

The exercise of any right vested in a working interest owner to reassign such working interest to the party from whom obtained shall be subject to the same conditions as set forth in this section in regard to the exercise of a right to surrender.

*31. TAXES. The working interest owners shall render and pay for their account and the account of the royalty owners all valid taxes on or measured by the unitized substances in and under or that may be produced, gathered and sold from the land covered by this agreement after its effective date, or upon the proceeds derived therefrom. The working interest owners on each tract shall and may charge the proper proportion of said taxes to royalty owners having interests in said tract, and may currently retain and deduct a sufficient amount of the unitized substances or derivative products, or net proceeds thereof, from the allocated share of each royalty owner to secure reimbursement for the taxes so paid. No such taxes shall be charged to the United States or the State of —— or to any lessor who has a contract with his lessee which requires the lessee to pay such taxes.

*32. NO PARTNERSHIP. It is expressly agreed that the relation of the parties hereto is that of independent contractors and nothing contained in this agreement, expressed or implied, nor any operations conducted hereunder, shall create or be deemed to have created a partnership or association between the parties hereto or any of them.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed and have set opposite their respective names the date of execution.

Unit Operator

Working Interest Owners

Other Interest Owners

*Optional sections and subsection. (Agreements submitted for final approval should not identify section or provision as "optional.")

General Guidelines

1. Executed agreement to be legally complete.

2. Agreement submitted for approval must contain Exhibit A and B in accordance with models shown in §§3186.1–1 and 3186.1–2 of this title.

3. Consents should be identified (in pencil) by tract numbers as listed in Exhibit B and assembled in that order as far as practical. Unit agreements submitted for approval shall include a list of the overriding royalty interest owners who have executed ratifications of the unit agreement. Subsequent joinders by overriding royalty interest owners shall be submitted in the same manner, except each must include or be accompanied by a statement that the corresponding working interest owner has consented in writing to such joinder. Original ratifications of overriding royalty owners will be kept on file by the Unit Operator or his designated agent.

4. All leases held by option should be noted on Exhibit B with an explanation as to the type of option, i.e., whether for operating rights only, for full leasehold record title, or for certain interests to be earned by performance. In all instances, optionee committing such interests is expected to exercise option promptly.

5. All owners of oil and gas interests must be invited to join the unit agreement, and statement to that effect must accompany executed agreement, together with summary of results of such invitations. A written reason for all interest owners who have not joined shall be furnished by the unit operator.

6. In the event fish and wildlife lands are included, add the following as a separate section:

"Wildlife Stipulation. Nothing in this unit agreement shall modify the special Federal lease stipulations applicable to lands under the jurisdiction of the United States Fish and Wildlife Service."

7. In the event National Forest System lands are included within the unit area, add the following as a separate section:

"Forest Land Stipulation. Notwithstanding any other terms and conditions contained in this agreement, all of the stipulations and conditions of the individual leases between the United States and its lessees or their successors or assigns embracing lands within the unit area included for the protection of lands or functions under the jurisdiction of the Secretary of Agriculture shall remain in full force and effect the same as though this agreement had not been entered into, and no modification thereof is authorized except with the prior consent in writing of the Regional Forester, United States Forest Service, ——,

."

8. In the event National Forest System lands within the Jackson Hole Area of Wyoming are included within the unit area, additional "special" stipulations may be required to be included in the unit agreement by the U.S. Forest Service, including the Jackson Hole Special Stipulation.

9. In the event reclamation lands are included, add the following as a new separate section:

"Reclamation Lands. Nothing in this agreement shall modify the special, Federal lease stipulations applicable to lands under the jurisdiction of the Bureau of Reclamation."

10. In the event a powersite is embraced in the proposed unit area, the following section should be added:

"Powersite. Nothing in this agreement shall modify the special, Federal lease stipulations applicable to lands under the jurisdiction of the Federal Energy Regulatory Commission."

11. In the event special surface stipulations have been attached to any of the Federal oil and gas leases to be included, add the following as a separate section:

"Special surface stipulations. Nothing in this agreement shall modify the special Federal lease stipulations attached to the individual Federal oil leases."

12. In the event State lands are included in the proposed unit area, add the appropriate State Lands Section as separate section. (See §3181.4(a) of this title).

13. In the event restricted Indian lands are involved, consult the AO regarding appropriate requirements under §3181.4(b) of this title.

CERTIFICATION—DETERMINATION

Pursuant to the authority vested in the Secretary of the Interior, under the Act approved February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. sec. 181, *et seq.*, and delegated to (the appropriate Name and Title of the authorized officer, BLM) under the authority of 43 CFR part 3180, I do hereby:

A. Approve the attached agreement for the development and operation of the ——, Unit Area, State of ——. This approval shall be invalid *ab initio* if the public interest requirement under §3183.4(b) of this title is not met.

B. Certify and determine that the unit plan of development and operation contemplated in the attached agreement is necessary and advisable in the public interest for the purpose of more properly conserving the natural resources.

C. Certify and determine that the drilling, producing, rental, minimum royalty, and royalty requirements of all Federal leases committed to said agreement are hereby established altered, changed, or revoked to conform with the terms and conditions of this agreement.

Dated ——.

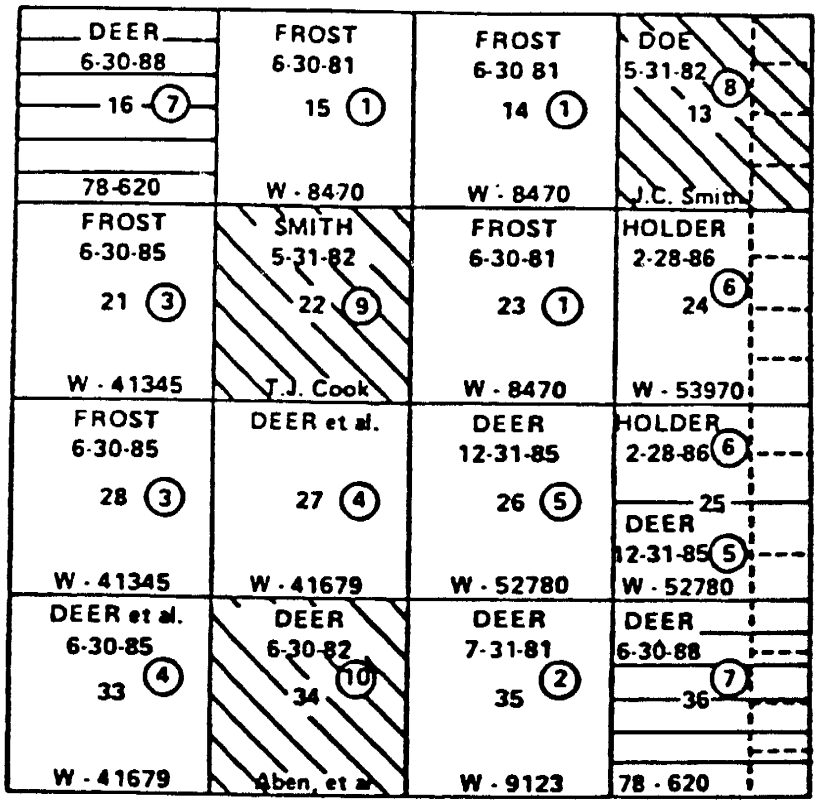
(Name and Title of authorized officer of the Bureau of Land Management)

[48 FR 26766, June 10, 1983. Redesignated and amended at 48 FR 36587, 36588, Aug. 12, 1983; 53 FR 17365, May 16, 1988; 53 FR 31867, 31969, Aug. 22, 1988]

§3186.1–1 Model Exhibit "A"

Company Name
Exhibit A
Swan Unit Area
Campbell County, Wyoming

R. 59 W.



(1) Means tract number as listed on Exhibit B

Public Land

State Land

Patented Land

Scale - Generally 2" = 1 mile.

Include acreage for all irregular sections and lots.

§ 3186.1-2 Model Exhibit B—SWAN UNIT AREA, CAMPBELL COUNTY, WYOMING

Tract No.	Description of land	No. of acres	Serial No. and expiration date of lease	Basic royalty and ownership percentage	Lessee of record	Overriding royalty and percentage	Working interest and percentage
	All in the area of T54N–R59W, 6th P.M.						
	Federal Land						
1	Sec. 14: All	1,920.00	W–847 , 6–30–81	U.S.: All	T.J. Cook 100%	T.J. Cook 2%	Frost Oil Co. 100%.
	Sec. 15: All						
	Sec. 23: All						
2	Sec. 35: All	640.00	W–9123, 7–31–81	U.S.: All	O.M. Odom 100%	O.M. Odom 1%	Deer Oil Co. 100%.
3	Sec. 21: All	1,280.00	W–41345, 6–30–85	U.S.: All	Max Pen 50%	Max Pen 1%	Frost Oil Co. 100%.
	Sec. 28: All				Sam Small 50%	Sam Small 1%	
4	Sec. 27: All	1,280.00	W–41679, 6–30–85	U.S.: All	Al Preen 100%	Al Preen 2%	Deer Oil Co. 50%.
							Doe Oil Co.,30%
							Able Drilling Co. 20%.
	Sec. 33: All						Deer Oil Co. 50%.
							Doe Oil Co., 30%
							Able Drilling Co. 20%.
5	Sec. 26: All	961.50	W–62780,12–31–85	U.S.: All	Deer Oil Co. 100%	J.G. Goodin 2%	Deer Oil Co. 100%.
	Sec. 25: Lots 3,4, SW¼, W½SE¼						
6	Sec. 24: Lots 1,2,3,4,W½, W½E½ (All)	965.80	W–53970, 2–28–86	U.S.: All	T.H. Holder 100%		T.H. Holder 100%.
	Sec. 25: Lots 1,2,NW¼, W½NE/4						
	6 Federal tracts totalling 7,047.30 acres or 68.76018% of unit area						
	State Land						
7	Sec. 16: All	1,280.60	78620, 6–30–88	State: All	Deer Oil Co. 100%	T.T. Timo 2%	Deer Oil Co. 100%.
	Sec. 36: Lots 1, 2, 3, 4, W½, W½E½ (All)						
	1 State tract totalling 1,280.60 acres or 12.49476% of unit area.						
	Patented Land						
8	Sec. 13: Lots 1, 2, 3, 4, W½, W½E½ (All)	641.20	5–31–82	J.C. Smith: 100%	Doe Oil Co. 100%		Doe Oil Co. 100%.
9	Sec. 22: All	640.00	5–31–82	T.J. Cook: 100%	W.W. Smith 100%	Sam Spade 1%	W.W. Smith 100%.
10	Sec. 34: All	640.00	6–30–82	A.A. Aben: 75%, L.P. Carr: 25%.	Deer Oil Co. 100%		Deer Oil Co. 100%.
	3 Patented tracts totalling 1,921.20 acres or 18.74506% of unit area						
Total: 10 tracts 10,249.10 acres in entire unit area.							

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, and amended at 51 FR 34604, Sept. 30, 1986]

§ 3186.2 Model collective bond.

COLLECTIVE CORPORATE SURETY BOND

Know all men by these presents. That we, ——— (Name of unit operator), signing as Principal, for and on behalf of the record owners of unitized substances now or hereafter covered by the unit agreement for the ——— (Name of unit), approved ——— (Date) ——— (Name and address of Surety), as Surety are jointly and severally held and firmly bound unto the United States of America in the sum of ——— (Amount of bond) Dollars, lawful money of the United States, for the use and benefit of and to be paid to the United States and any entryman or patentee of any portion of the unitized land here-to-fore entered or patented with the reservation of the oil or gas deposits to the United States, for which payment, well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators, successors, and assigns by these presents.

The condition of the foregoing obligation is such, that, whereas the Secretary of the Interior on ——— (Date) approved under the provisions of the Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. secs. 181 *et seq.*, as amended by the Act of August 8, 1946, 60 Stat. 950, a unit agreement for the development and operation of the ——— (Name of unit and State); and

Whereas said Principal and record owners of unitized substances, pursuant to said unit agreement, have entered into certain covenants and agreements as set forth therein, under which operations are to be conducted; and

Whereas said Principal as Unit Operator has assumed the duties and obligations of the respective owners of unitized substances as defined in said unit agreement; and

Whereas said Principal and Surety agree to remain bound in the full amount of the bond for failure to comply with the terms of the unit agreement, and the payment of rentals, minimum royalties, and royalties due under the Federal leases committed to said unit agreement; and

Whereas the Surety hereby waives any right of notice of and agrees that this bond may remain in force and effect notwithstanding;

(a) Any additions to or change in the ownership of the unitized substances herein described;

(b) Any suspension of the drilling or producing requirements or waiver, suspension, or reduction of rental or minimum royalty payments or reduction of royalties pursuant to applicable laws or regulations thereunder; and

Whereas said Principal and Surety agree to the payment of compensatory royalty under the regulations of the Interior Department in lieu of drilling necessary offset wells in the event of drainage; and

Whereas nothing herein contained shall preclude the United States (from requiring an additional bond at any time when deemed necessary);

Now, therefore, if the said Principal shall faithfully comply with all of the provisions of the above-indentified unit agreement and with the terms of the leases committed thereto, then the above obligation is to be of no effect; otherwise to remain in full force and virtue.

Signed, sealed, and delivered this ——— day of ———, in the presence of:

Witnesses:

_____

(Principal)

_____

_____

_____

(Surety)

§ 3186.3 Model for designation of successor unit operator by working interest owners.

Designation of successor Unit Operator ——— Unit Area, County of ———, State of ———. No. ———.

This indenture, dated as of the — day of ——, 19—, by and between ——, hereinafter designated as "First Party," and the owners of unitized working interests, hereinafter designated as "Second Parties."

Witnesseth: Whereas under the provisions of the Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. secs. 181, *et seq.*, as amended by the Act of August 8, 1946, 60 Stat. 950, the Secretary of the Interior, [1] the ——— day of ———, 19—, approved a unit agreement ——— Unit Area, wherein ——— is designated as Unit Operator, and

[1] Where the designation of a successor Unit Operator is required for any reason other than resignation, such reason shall be substituted for the one stated.

Whereas said ——— has resigned as such Operator and the designation of a successor Unit Operator is now required pursuant to the terms thereof; and

Whereas the First Party has been and hereby is designated by Second Parties as Unit Operator; and said First Party desires to assume all the rights, duties, and obligations of Unit Operator under the said unit agreement:

Now, therefore, in consideration of the premises hereinbefore set forth and the promises hereinafter stated, the First Party hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of the ——— unit agreement, and the Second Parties covenant and agree that, effective upon approval of this indenture by the (Name and Title of authorized officer, BLM) First Party shall be granted the exclusive right and privilege of exercising any and all rights and privileges as Unit Operator, pursuant to the terms and conditions of said unit agreement; said Unit agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

(Witnesses)

(Witnesses)

(First Party)

(Second Party)

I hereby approve the foregoing indenture designating ——— as Unit Operator under the unit agreement for the ——— Unit Area, this — day of ———, 19—.

Authorized officer of the Bureau of Land Management.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, as amended at 51 FR 34604, Sept. 30, 1986]

§3186.4 Model for change in unit operator by assignment.

Change in Unit Operator ——— Unit Area, County of ———, State of ———, No. —. This indenture, dated as of the — day of ———, 19—, by and between ——— hereinafter designated as "First Party," and ——— hereinafter designated as "Second Party."

Witnesseth: Whereas under the provisions of the Act of February 25, 1920, 41 Stat. 437 30 U.S.C. secs. 181, *et seq.*, as amended by the Act of August 8, 1946, 60 Stat. 950, the Department of the Interior, on the — day of ———, 19—, approved a unit agreement for the ——— Unit Area, wherein the First Party is designated as Unit Operator; and

Whereas the First Party desires to transfer, assign, release, and quitclaim, and the Second Party desires to assume all the rights, duties and obligations of Unit Operator under the unit agreement; and

Whereas for sufficient and valuable consideration, the receipt whereof is hereby acknowledged, the First Party has transferred, conveyed, and assigned all his/its rights under certain operating agreements involving lands within the area set forth in said unit agreement unto the Second Party;

Now, therefore, in consideration of the premises hereinbefore set forth, the First Party does hereby transfer, assign, release, and quitclaim unto Second Party all of First Party's rights, duties, and obligations as Unit Operator under said unit agreement; and

Second Party hereby accepts this assignment and hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of said unit agreement to the full extent set forth in this assignment, effective upon approval of this indenture by the (Name and Title of authorized officer, BLM); said unit agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

(Witnesses)

(Witnesses)

(First Party)

(Second Party)

I hereby approve the foregoing indenture designating ——— as Unit Operator under the unit agreement for the ——— Unit Area, this — day of ———, 19—.

Authorized officer of the Bureau of Land Management

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
CONSERVATION DIVISION

Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases
(NTL-3A)

Reporting of Undesirable Events

This Notice, which supersedes NTL-3 dated January 1, 1975, is issued pursuant to the authority prescribed in Title 30 CFR 221.5, 221.7, and 221.36. Operators of onshore Federal and Indian oil and gas leases shall report all spills, discharges, or other undesirable events in accordance with the requirements of this Notice. All such events which occur on State or private land leases within federally supervised unit or communitized areas must likewise be reported in accordance with the requirements of this Notice. However, compliance with this Notice does not relieve an operator from the obligation of complying with the applicable rules and regulations of any State or any other Federal Agencies regarding notification and reporting of undesirable events.

As used in this Notice, the term District Engineer means that officer of the United States Geological Survey (GS) having supervisory jurisdiction for the geographic area in which the undesirable event occurs.

I. Major Undesirable Events Requiring Immediate Notification

Major undesirable events are defined as those incidents listed below in subsections A through F. These incidents, when occurring on a lease supervised by the GS, must be reported to the appropriate District Engineer as soon as practical but within a maximum of 24 hours:

A. Oil, saltwater, and toxic liquid spills, or any combination thereof, which result in the discharge (spilling) of 100 or more barrels of liquid; however, discharges of such magnitude, if entirely contained within the facility firewall, may be reported only in writing pursuant to Section III. of this Notice;

B. Equipment failures or other accidents which result in the venting of 500 or more MCF of gas;

C. Any fire which consumes the volumes as specified in I.A. and I.B. above;

D. Any spill, venting, or fire, regardless of the volume involved, which occurs in a sensitive area, e.g., areas such as parks, recreation sites, wildlife refuges, lakes, reservoirs, streams, and urban or suburban areas;

E. Each accident which involves a fatal injury; and

F. Every blowout (loss of control of any well) that occurs.

II. Written Reports

A written report shall be submitted in duplicate to the District Engineer no later than 15 days following all major undesirable events identified in Section I. When required by the District Engineer, interim reports will be submitted until final containment and cleanup operations have been accomplished. The final written report for each such event shall, as appropriate, provide.

A. The date and time of occurrence, and the date and time reported to USGS;

B. The location where the incident occurred, including surface ownership and lease number:

C. The specific nature and cause of the incident;

D. A description of the resultant damage;

E. The action taken and the length of time required for control of the incident, for containing the discharged fluids, and for subsequent cleanup;

F. The estimated volumes discharged and the volumes lost;

G. The cause of death when fatal injuries are involved;

H. Actions that have been or will be taken to prevent a recurrence of the incident;

I. Other Federal or State agencies notified of the incident; and

J. Other pertinent comments or additional information as requested by the District Engineer.

III. Other-Than-Major Undesirable Events

Other-than-major undesirable events, as identified below in subsections A through D, do not have to be reported orally within 24 hours; however, a written report, as required for major undesirable events in Section II of this Notice, must be provided for the following incidents:

A. Oil, saltwater, and toxic liquid spills, or any combination thereof, which result in the discharge (spilling) of at least 10 but less than 100 barrels of liquid in nonsensitive areas, and all discharges of 100 or more barrels when the spill is entirely contained by the facility firewall;

B. Equipment failures or other accidents which result in the venting of at least 50 but less than 500 MCF of gas in nonsensitive areas;

C. Any fire which consumes volumes in the ranges specified in III.A. and III.B. above; and

D. Each accident involving a major or life threatening injury.

Spills or discharges in nonsensitive areas involving less than 10 barrels of liquid or 50 MCF of gas do not require an oral or written report; however, the volumes discharged or vented as a result of all such minor incidents must be reported in accordance with Section V hereof.

IV. Contingency Plans

Upon request of the District Engineer, a copy of any Spill Prevention Control and Countermeasure Plan (SPCC Plan), required by the Environmental Protection Agency (EPA) pursuant to Title 40 CFR 112, or other acceptable contingency plan must be submitted. All plans shall provide the names, addresses, and telephone numbers (both business and private) of at least two technically competent company or contract personnel authorized to order equipment or supplies and to expend funds necessary to control emergencies.

V. Monthly Report of Operations/Monthly Report of Sales and Royalty

All volumes of oil spilled, gas vented, and all hydrocarbons consumed by fire or otherwise lost must be reported monthly on the Monthly Report of Operations (Form 9-329). The volume and value of such losses must also be reported in the Monthly Report of Sales and Royalty (Form 9-361).

VI. Liquidated Damages

Failure to provide the necessary notification, reports, or contingency plan (when required) as provided for by this Notice, may result in other measures being taken to secure compliance, such as those provided by Title 30 CFR 221.53 and 221.54.

March 1, 1979 — /s/ C.J. Curtis

Date — C. J. Curtis
Oil and Gas Supervisor
Northern Rocky Mountain Area

Approved:

/s/ Don E. Cash

Don E. Cash
Chief, Conservation Division

Department of the Interior
GEOLOGICAL SURVEY
CONSERVATION DIVISION MANUAL

Transmittal Sheet

Release No. 74 September 3, 1981

EXPLANATION OF MATERIAL TRANSMITTED:

This release updates the names and phone numbers of those to contact for reporting Class I Events, as documented in CDM 642.3, Reporting of Undesirable Events. Monthly reporting of all undesirable events will be replaced by quarterly reports effective October 1, 1981. The first quarterly report will cover the months of October, November, and December, 1981.

Acting Chief, Conservation Division

Filing Instructions:

Remove:			Insert:		
Part	Chapter	Pages	Part	Chapter	Pages
642	3	1-9 Exhibits 1-6	642	3	1-9 Exhibits 1-6

.1 Purpose and Objective.

This chapter defines the criteria and procedure for reporting and responding to incidents involving spills, accidents, blowouts, fires, and other undesirable events. These instructions apply to events occurring on onshore Federal and Indian oil and gas leases, or on fee and State lands within federally supervised unitized or communitized areas.

The objectives of this program are: to document the cause and number of undesirable events; to reduce the number of occurrences; and to ensure that those events which do occur are promptly contained, and necessary clean-up accomplished.

.2 Authority.

30 CFR (7 FR 4132, June 2, 1942).

NOTE: Supervisor is now the Deputy Conservation Manager (DCM).

(a) 221.5 Supervision of operations.

"The supervisor shall inspect and supervise operations under the regulations in this part; prevent waste, damage to formations or deposits containing oil, gas, or water or to coal measures or other deposits, and injury to life or property; and shall issue instructions necessary, in his judgment, to accomplish these purposes."

(b) 221.7 Reports and notices.

"The supervisor shall prescribe the manner and form in which records of all operations, reports, and notices shall be made by lessees and operators."

(c) 221.32 Pollution and surface damage.

"The lessee shall not pollute streams or damage the surface or pollute the underground water of the leased or other land* * *"

(d) 221.36 Accidents and fires.

"The lessee shall take all reasonable precautions to prevent accidents and fires, shall notify the supervisor within 24 hours of all accidents or fires on the leased land, and shall submit a full report thereon within 15 days."

.3 Guidelines and Policy.

A. General.

Exhibit 1 is a revised Notice to Lessees (NTL-3A), which provides information and instructions to lessees on reporting undesirable events. It includes a background and summary of comments received on NTL-3 which led to the revised NTL-3A.

Undesirable events are classified as Major (Class I), Medium (Class II), or Minor (Class III) events, according to criteria contained in this chapter. Each of these classes of events has different reporting and inspection requirements. All volumes of oil and gas lost are to be reported on Form 9-329, regardless of the class of event.

B. Major (Class I) Undesirable Events.

Class 1 events are defined as:

(1) Oil, saltwater, and toxic liquid spills, or any combination thereof, which result in the discharge of 100 barrels or more of liquid; however, discharges of this size which are contained within a facility firewall are classified as Medium (Class II) events;

(2) Equipment failures or other accidents which result in the venting of 500 Mcf or more of gas;

(3) Any fire which consumes the above volumes of liquid and/or gas;

(4) Any spill, venting, or fire, regardless of the volume, which occurs in an environmentally sensitive area, e.g., parks, recreation sites, wildlife refuges, lakes or reservoirs, streams, and urban or suburban areas;

(5) Any accident which involves a fatal injury;

(6) Any blowout that occurs.

Operators are to report all major undesirable events to the District Supervisor as soon as practical, but within 24 hours. District Supervisors will immediately telephone a report of such event to the Branch of Fluid Minerals Management, to the Deputy

(2) Equipment failures or other accidents which result in the venting of less than 50 Mcf of gas in nonsensitive areas;

(3) Any fire which consumes the above volumes of liquid and/or gas;

Operators are to report on Form 9-329 all volumes of oil and gas lost, but are not required to make further reports of Class III events.

E. Field Investigations.

All accidents involving Major (Class I) undesirable events will be investigated by the District office. Investigations of all blowouts, fatal accidents, and events which have the prospect for environmental damage and/or public controversy, shall be initiated without delay. During the investigation, primary emphasis will be placed on containment and necessary clean-up; however, emphasis shall also be placed on determining the cause of the event. Under the National Oil and Hazardous Substances Pollution Contingency Plan, the District Supervisor may be required to act as On-Scene Coordinator until relieved by other Federal personnel having legal authority to act as On-Scene Coordinator.

Medium (Class II) undesirable events may not require immediate on-scene investigation, but responsible personnel are expected to exercise good judgment. Minor (Class III) undesirable events normally will not require an on-scene investigation.

F. Contingency Plans.

In environmentally sensitive areas, the District Supervisor should require operators or lessees to file an emergency action contingency plan for every plant, production, or storage facility that could, if inoperative, damaged, or malfunctioning, pose a threat to the public welfare, cause severe pollution and surface damage, or discharge oil in harmful quantities. Such facilities include, but are not limited to, those located close to parks, recreation sites, wildlife refuges, lakes, reservoirs, streams, and urban or suburban areas.

This does not mean that contingency plans will be required for each facility, pipeline, well, etc. It does mean that the District Supervisor will have to make an assessment of all facilities in

Conservation Manager, and to the appropriate Federal surface management agency. The DCM will telephone the report to the Regional Conservation Manager (RCM) unless otherwise instructed by the RCM.

Operators are required to provide interim reports when necessary and to furnish a detailed report, in writing, within 15 days from the containment or control of the incident. A final report from the District Supervisor to the Branch of Fluid Minerals Management and a copy sent to the DCM is required within 30 days after control or containment of the incident. Each event occurring during the reporting period will be listed on the Quarterly Report of Undesirable Events, and the site of each major event will be inspected.

C. Medium (Class II) Undesirable Events.

Class II events are defined as:

(1) Oil, saltwater, and toxic liquid spills, or any combination thereof, which result in the discharge of at least 10 barrels but less than 100 barrels of liquid in nonsensitive areas, and those discharges of 100 barrels or more which are contained within a facility firewall;

(2) Equipment failures or other accidents which result in the venting of at least 50 Mcf but less than 500 Mcf of gas in nonsensitive areas;

(3) Any fire which consumes the above volumes of liquid and/or gas;

(4) Any accident involving a major or life-threatening injury.

Operators will furnish a written report of Class II events to the District Supervisor within 15 days from the containment of control of the incident. Each event will be listed on the Quarterly Report.

D. Minor (Class III) Undesirable Events.

Minor undesirable events involve volumes less than those defined for Class II events; in other words, Class III events are defined as:

(1) Oil, saltwater, and toxic liquid spills, or any combination thereof, which result in the discharge of less than 10 barrels of liquid in nonsensitive areas;

environmentally sensitive areas to determine whether potential spills, leaks, or discharges of pollutants from such facilities under the jurisdiction of the Conservation Division will have a major adverse impact upon the environment; i.e., will such venting, spill, or discharge occur in or endanger critical water areas, or will it pose a threat to human health or welfare? A sample facility evaluation report is shown in Exhibit 2.

Contingency plans for a facility, lease, or unit shall provide for containing and controlling potential emergencies, such as fires, spills, tank ruptures, flowline breaks, wellhead failures, etc. The names, addresses, and telephone numbers (both business and private) of at least two technically competent company personnel, authorized to order equipment and supplies necessary to control emergencies, shall be provided in such plans.

For facilities not requiring individual contingency plans, the lessee/operator may be required to file a generalized field or area contingency plan providing the same names, addresses, and telephone numbers. A copy of the Spill Prevention Control and Countermeasure Plan (SPCC Plan) required by the Environmental Protection Agency (or a summary) will satisfy this requirement. EPA's guidelines for the preparation of SPCC plans are contained in 40 CFR 112.7 (excerpts included in Exhibit 3).

All contingency plans (other than SPCC plans) will be reviewed for adequacy by the District Supervisor at the time a detailed lease inspection is performed. Lessees will be instructed to make any necessary changes or additions to the plans. Contingency plans for new facilities will be reviewed for adequacy at the time the operation is approved.

G. Reporting Requirements.

It is extremely important that Class I events be systematically reported, so appropriate Division, Bureau, and Department officials can be timely apprised of those incidents which are likely to provoke inquiries. All undesirable event reports will include specific information as to the cause of the event; if the cause cannot be identified, it should be reported as "unknown".

The operator will submit each report in duplicate and include the information shown in Exhibit 4. This format will also be used by Division personnel. In addition, each report prepared by the District Supervisor will also include: (1) district identification, (2) date reported to Reston, (3) date of onsite inspection, and (4) event

classification (i.e., Class I or II). All Class I and II undesirable events will be summarized by each District in the Quarterly Report, using the format shown in Exhibit 5.

The District Supervisor will provide follow-up reports to the Branch of Fluid Minerals Management on all Class I events within 30 days. As a minimum, the report will consist of: (1) a detailed analysis of the particular event; (2) a district or area overview of similar events and their relationships; (3) recommendations for action by the Conservation Division to prevent future occurrences; and (4) estimates of total oil and gas lost. The District Supervisor's endorsement of the operator's report can be used in lieu of a separate report.

Reports of undesirable events are used by the Division for the following purposes: (1) to determine the frequency with which certain operating problems occur and to identify local trends and trouble areas that may require the attention of field personnel; (2) to help develop preventive measures; and (3) to provide information, as requested, to Royalty Management so royalty or other compensation can be collected on the volume of oil and gas lost.

A computerized Onshore Record of Events (CORE) file has been developed to catalog and facilitate the analysis of data on undesirable events; statistical print-outs are available for interpretation.

H. Enforcement.

Failure to file adequate contingency plans, when required, or to conform with the written orders of the District Supervisor can result in assessment of liquidated damages, as provided by 30 CFR 221.54.

Some spills or discharges may also violate EPA or State requirements. In such cases, the District Supervisor should remind the operator to notify EPA and the appropriate State agency. Although not required, the District Supervisor should notify these agencies if he believes the action will implement the requirements of this chapter.

I. Miscellaneous.

The guidelines in this chapter are applicable only to leasehold operations, including production flowlines, and are not intended to cover common carrier pipelines or other similar transportation operations crossing Federal or Indian lands, or operations approved by the surface management agency under special use permits. However, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan, the first Federal official on the scene of any discharge covered by this plan will act as the On-Scene Coordinator, until relieved. On request, Division personnel will provide assistance and expertise to the On-Scene Coordinator.

For federally supervised units (i.e., those which have been designated and approved by the Survey), and for communitized areas, all undesirable events must be reported as required by this chapter, whether occurring on Federal, Indian, fee, or State lands.

.4 Responsibility and Procedures.

A. Major (Class I) Events.

(1) Office receiving the initial report will promptly telephone Class I events to the following offices:

(a) Branch of Fluid Minerals Management

During working hours: 8-928-7535 (FTS) or
703-860-7535 (Commercial)

During non-work hours: Mr. Deryl Johnston
8-202-467-9536 or
703-467-9536

Mr. Jerry Richard
8-202-437-6070 or
703-437-6070

Mr. Gerry Daniels
8-202-323-0976 or
703-323-0976

Mr. Wright Sheldon
8-202-476-8539 or
703-476-8539

(b) District or Regional office, as appropriate.

(c) The appropriate Federal surface management agency, if not apprised by the lessee.

(2) District Office. When a Class I event is still in progress at the time of the initial report, follow-up reports with new information will be telephoned each day to the appropriate DCM and to the Branch of Fluid Minerals Management. Reports will continue until the situation is under control, and the reporting office is advised that further reports are not required. A final report on all Class I events will be furnished to the Branch of Fluid Minerals Management within 30 days after control or containment of the incident. The District office will also report Class I events in the Quarterly Report of Undesirable Events.

(3) Deputy Conservation Manager. Unless otherwise instructed by the Regional Conservation Manager, the DCM will notify the appropriate RCM of Class I events. The DCM will include Class I events in the Quarterly Report.

(4) Division Level. Promptly advise appropriate Division personnel orally of the significant Class I events. Prepare the necessary report(s) informing the appropriate Division, Bureau, and Department officials of each Class I event occurring in a sensitive area and its resolution.

(5) The initial reporting office will provide a follow-up report within 30 days after the control or containment of each Class I event. This can be accomplished by the District Supervisor's endorsement of the operator's report.

B. Medium (Class II) Events.

All District and Regional offices will include Class II events in the Quarterly Report of Undesirable Events.

C. Minor (Class III) Events.

No report required.

D. A flowchart summarizing these requirements is contained in Exhibit 6.

.5 Background and Reference.

A. 25 CFR Parts 171 and 172 - for Indian oil and gas leases require that operations on Indian leases be conducted in accordance with the Oil and Gas Operating Regulations contained in 30 CFR 221.

B. 40 CFR 112 - contains Environmental Protection Agency regulations for oil pollution from non-transportation-related onshore facilities (38 FR 34164, December 11, 1973).

C. 40 CFR 1510 - contains Environmental Protection Agency regulations covering the objectives, responsibilities, and guidelines of the National Oil and Hazardous Substances Pollution Contingency Plan.

D. API Bulletin D16 (March 1974) - contains suggested procedures for development of spill prevention control and countermeasure plans.

E. Memorandum from Chief, Conservation Division, to Regional Conservation Managers, dated April 30, 1975 - covers classifications and reporting of undesirable events.

F. Division policy was previously directed in the following:

(1) March 5, 1971, memorandum from Northern Rocky Mountain Area Supervisor.

(2) September 2, 1971, memorandum from Mid-Continent Area Supervisor.

(3) March 31, 1972, memorandum from Southern Rocky Mountain Area Supervisor.

(4) March 18, 1974, memorandum from Chief, Conservation Division.

(5) September 18, 1974, memorandum from Chief, Conservation Division.

(6) October 3, 1974, memorandum from Chief, Conservation Division.

G. NTL-3, transmitted to Supervisors on November 29, 1974, and dated January 1, 1975, is superseded by NTL-3A contained in this chapter.

NTL-3A, REPORTING OF UNDESIRABLE EVENTS

NOTICE OF LESSEES AND OPERATORS OF FEDERAL AND INDIAN ONSHORE OIL AND GAS LEASES (NTL 3A)

REPORTING OF UNDESIRABLE EVENTS

This Notice, which supersedes NTL-3 dated January 1, 1975, is issued pursuant to the authority prescribed in Title 30 CFR 221.5, 221.7, and 221.36. Operators of onshore Federal and Indian oil and gas leases shall report all spills, discharges, or other undesirable events in accordance with the requirements of this Notice. All such events which occur on State or private land leases within federally supervised unit or communitized areas must likewise be reported in accordance with the requirements of this Notice. However, compliance with this Notice does not relieve an operator from the obligation of complying with the applicable rules and regulations of any State or any other Federal Agencies regarding notification and reporting of undesirable events. As used in this Notice, the term District Engineer means that officer of the United States Geological Survey (GS) having supervisory jurisdiction for the geographic area in which the undesirable event occurs.

I. *Major Undesirable Events Requiring Immediate Notification*

Major undesirable events are defined as those incidents listed below in subsections A through F. These incidents, when occurring on a lease supervised by the GS, must be reported to the appropriate District Engineer *as soon as practical* but within a maximum of 24 hours:

A. Oil, saltwater, and toxic liquid spills, or any combination thereof, which result in the discharge (spilling) of 100 or more barrels of liquid; however, discharges of such magnitude, if entirely contained within the facility firewall, may be reported only in writing pursuant to Section III, of this Notice;

B. Equipment failures or other accidents which result in the venting of 500 or more MCF of gas;

C. Any fire which consumers the volumes as specified in I.A. an I.B. above;

D. Any spill, venting, or fire, regardless of the volume involved, which occurs in a sensitive area, e.g., areas such as parks, recreation sites, wildlife refuges, lakes, reservoirs, streams, and urban or suburban areas;

E. Each accident which involves a fatal injury; and

F. Every blowout (loss of control of any well) that occurs.

II. *Written Reports*

A written report shall be submitted in duplicate to the District Engineer no later than 15 days following all major undesirable events identified in Section I. When required by the District Engineer, interim reports will be submitted until final containment and cleanup operations have been accomplished. The final written report for each such event shall, as appropriate, provide:

A. The date and time of occurrence, and the date and time reported to USGS;

B. The location where the incident occurred, including surface ownership and lease number;

C. The specific nature and cause of the incident;

D. A description of the resultant damage;

E. The action taken and the length of time required for control of the incident, for containing the discharged fluids, and for subsequent cleanup;

F. The estimated volumes discharged and the volumes lost;

G. The cause of death when fatal injuries are involved;

H. Actions that have been or will be taken to prevent a recurrence of the incident;

I. Other Federal or State agencies notified of the incident; and

J. Other pertinent comments or additional information as requested by the District Engineer.

III. *Other-Than-Major Undesirable Events*

Other-than-major undesirable events, as identified below in subsections A through D, do not have to be reported orally within 24 hours; however, a written report, as required for major undesirable events in Section II of this Notice, must be provided for the following incidents:

A. Oil, saltwater, and toxic liquid spills, or any combination thereof, which result in the discharge (spilling) of at least 10 but less than 100 barrels, of liquid in nonsensitive areas, and all discharges of 100 or more barrels when the spill is entirely contained by the facility firewall;

B. Equipment failures or other accidents which result in the venting of at least 50 but less than 500 MCF of gas in nonsensitive areas;

C. Any fire which consumes volumes in the ranges specified in III.A. and III.B. above; and

D. Each accident involving a major or life-threatening injury.

Spills or discharges in nonsensitive areas involving less than 10 barrels of liquid or 50 MCF of gas do not require an oral or written report; however, the volumes discharged or vented as a result of all such minor incidents must be reported in accordance with Section V hereof.

IV. *Contingency Plans*

Upon request of the District Engineer, a copy of any Spill Prevention Control and Countermeasure Plan (SPCC Plan), required by the Environmental Protection Agency (EPA) pursuant to Title 40 CFR Part 112, or other acceptable contingency plan must be submitted. All plans shall provide the names, addresses, and telephone numbers (both business and private) of at least two technically competent company or contract personnel authorized to order equipment or supplies and to expend funds necessary to control emergencies.

V. *Monthly Report of Operations/ Monthly Report of Sales and Royalty*

All volumes of oil spilled, gas vented, and all hydrocarbons consumed by fire or otherwise lost must be reported monthly on the Monthly Report of Operations (Form 9-329). The volume and value of such losses must also be reported in the Monthly Report of Sales and Royalty (Form 9-361).

VI. *Liquidated Damages*

Failure to provide the necessary notification, reports, or contingency plan (when required) as provided for by this Notice, may result in other measures being taken to secure compliance, such as those provided by Title 30 CFR 221.53 and 221.54.

DON E. KASH,
Chief, Conservation Division.

[FR Doc. 79-874 Filed 1-9-79; 8:45 am]

§ 112.7 Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

The SPCC Plan shall be a carefully thought-out plan, prepared in accordance with good engineering practices, and which has the full approval of management at a level with authority to commit the necessary resources. If the plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, these items should be discussed in separate paragraphs, and the details of installation and operational start-up should be explained separately. The complete SPCC Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the appropriate guidelines listed:

(a) A facility which has experienced one or more spill events within twelve months prior to the effective date of this part should include a written description of each such spill, corrective action taken and plans for preventing recurrence.

(b) Where experience indicates a reasonable potential for equipment failure (such as tank overflow, rupture, or leakage), the plan should include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each major type of failure.

(c) Appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course should be provided. One of the following prevention systems or its equivalent should be used as a minimum:

(1) Onshore facilities:

(i) Dikes, berms or retaining walls sufficiently impervious to contain spilled oil;

(ii) Curbing;

(iii) Culverting, gutters or other drainage systems;

(iv) Weirs, booms or other barriers;

(v) Spill diversion ponds;

(vi) Retention ponds;

(vii) Sorbent materials.

(2) Offshore facilities:

(i) Curbing, drip pans;

(ii) Sumps and collection systems.

(d) When it is determined that the installation of structures or equipment listed in § 112.7(c) to prevent discharged oil from reaching the navigable waters is not practicable from any onshore or offshore facility, the owner or operator should clearly demonstrate such impracticability and provide the following:

(1) A strong oil spill contingency plan following the provision of 40 CFR part 109.

(2) A written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged.

(e. In addition to the minimal prevention standards listed under § 112.7(c), sections of the Plan should include a complete discussion of conformance with the following applicable guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines):

(5) *Oil production facilities (onshore)*—(i) *Definition.* An onshore production facility may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(ii) *Oil production facility (onshore) drainage.* (A) At tank batteries and central treating stations where an accidental discharge of oil would have a reasonable possibility of reaching navigable waters, the dikes or equivalent required under § 112.7(c)(1) should have drains closed and sealed at all times except when rainwater is being drained. Prior to drainage, the diked area should be inspected as provided in paragraphs (e)(2)(iii) (B), (C), and (D) of this section. Accumulated oil on the rainwater should be picked up and returned to storage or disposed of in accordance with approved methods.

(B) Field drainage ditches, road ditches, and oil traps, sumps or skimmers, if such exist, should be inspected at regularly scheduled intervals for accumulation of oil that may have escaped from small leaks. Any such accumulations should be removed.

(iii) *Oil production facility (onshore) bulk storage tanks.* (A) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(B) All tank battery and central treating plant installations should be provided with a secondary means of containment for the entire contents of the largest single tank if feasible, or alternate systems such as those outlined in § 112.7(c)(1). Drainage from undiked areas should be safely confined in a catchment basin or holding pond.

(C) All tanks containing oil should be visually examined by a competent person for condition and need for maintenance on a scheduled periodic basis. Such examination should include the foundation and supports of tanks that are above the surface of the ground.

(D) New and old tank battery installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to prevent spills. Consideration should be given to one or more of the following:

(*1*) Adequate tank capacity to assure that a tank will not overfill should a pumper/gauger be delayed in making his regular rounds.

(*2*) Overflow equalizing lines between tanks so that a full tank can overflow to an adjacent tank.

(*3*) Adequate vacuum protection to prevent tank collapse during a pipeline run.

(*4*) High level sensors to generate and transmit an alarm signal to the computer where facilities are a part of a computer production control system.

(iv) *Facility transfer operations, oil production facility (onshore).* (A) All above ground valves and pipelines should be examined periodically on a scheduled basis for general condition of items such as flange joints, valve glands and bodies, drip pans, pipeline supports, pumping well polish rod stuffing boxes, bleeder and gauge valves.

(B) Salt water (oil field brine) disposal facilities should be examined often, particularly following a sudden change in atmospheric temperature to detect possible system upsets that could cause an oil discharge.

(C) Production facilities should a program of flowline maintenance prevent spills from this source. The program should include periodic examinations, corrosion protection, flowline replacement, and adequate records, as appropriate, for the individual facility.

(6) *Oil drilling and workover facilities (onshore).* (i) Mobile drilling or workover equipment should be positioned or located so as to prevent spilled oil from reaching navigable waters.

(ii) Depending on the location, catchment basins or diversion structures may be necessary to intercept and contain spills of fuel, crude oil, or oily drilling fluids.

(iii) Before drilling below any casing string or during workover operations, a blowout prevention (BOP) assembly and well control system should be installed that is capable of controlling any well head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

SAMPLE REPORTING FORMAT
(Submit in duplicate)

Subject: Report of Undesirable Event

Date of Occurrence: ____-____-____ Time of Occurrence: _____a.m., p.m.

Date Reported to USGS ____-____-____ Time Reported to USGS: ____ a.m., p.m.

Location: State _____; County _____

_____¼ _____¼ Section _____ T. ____ ___., R. ____ ___., _____ Meridian

Operator: _____

Surface Ownership: FEDERAL, INDIAN, FEE, STATE

Lease Number: _____; Unit Name or C.A. Number _____

Type of Event: BLOWOUT, FIRE, FATALITY, INJURY, PROPERTY DAMAGE, OIL SPILL, SALTWATER SPILL, TOXIC FLUID SPILL, OIL AND SALTWATER SPILL, OIL AND TOXIC FLUID SPILL, SALTWATER AND TOXIC FLUID SPILL, GAS VENTING, or OTHER (Specify) _____

Cause of Event: _____

Volumes of Pollutants I. Discharged or Consumed: _____

II. Recovered: _____

Time Required to Control Event (in hours): _____

Action Taken to Control the Event, Description of Resultant Damage, Clean-up Procedures, and Dates: _____

Cause and Extent of Personnel Injury: _____

Other Federal, State, and Local Governmental Agencies Notified: _____

Action Taken to Prevent Recurrence: _____

General Remarks: _____

Signature _____ Date _____

Title _____

FOR USGS USE ONLY

District _____ Date Reported to Reston _____ Event Classification _____ Date of Onsite Inspection _____ Remarks _____

09/03/81 (Release No. 74)
Supersedes Release No. 58

Quarterly Report of Undesirable Events

PRELIMINARY

SUMMARY OF OIL, SALT WATER, AND TOXIC FLUID SPILLS, FIRES, ACCIDENTS, AND BLOWOUTS*

By District Quarterly

Reporting Period _____

I. Spills or Discharges

Date of Occurrence	Date Reported to USGS	District	Location of Incident: ¼¼ Sec. T., R., M.	County/ State	Cause of Discharge & Type of Facility	Volume: Bbls or Mcf Lost	Volume: Bbls or Mcf Recovered	Operator	Surface Ownership & Lease No.(if applicable)	Corrective Action Taken; Date	Date(s) of On-site Inspection(s)	Remarks

II. Blowouts, Accidents, or Fires

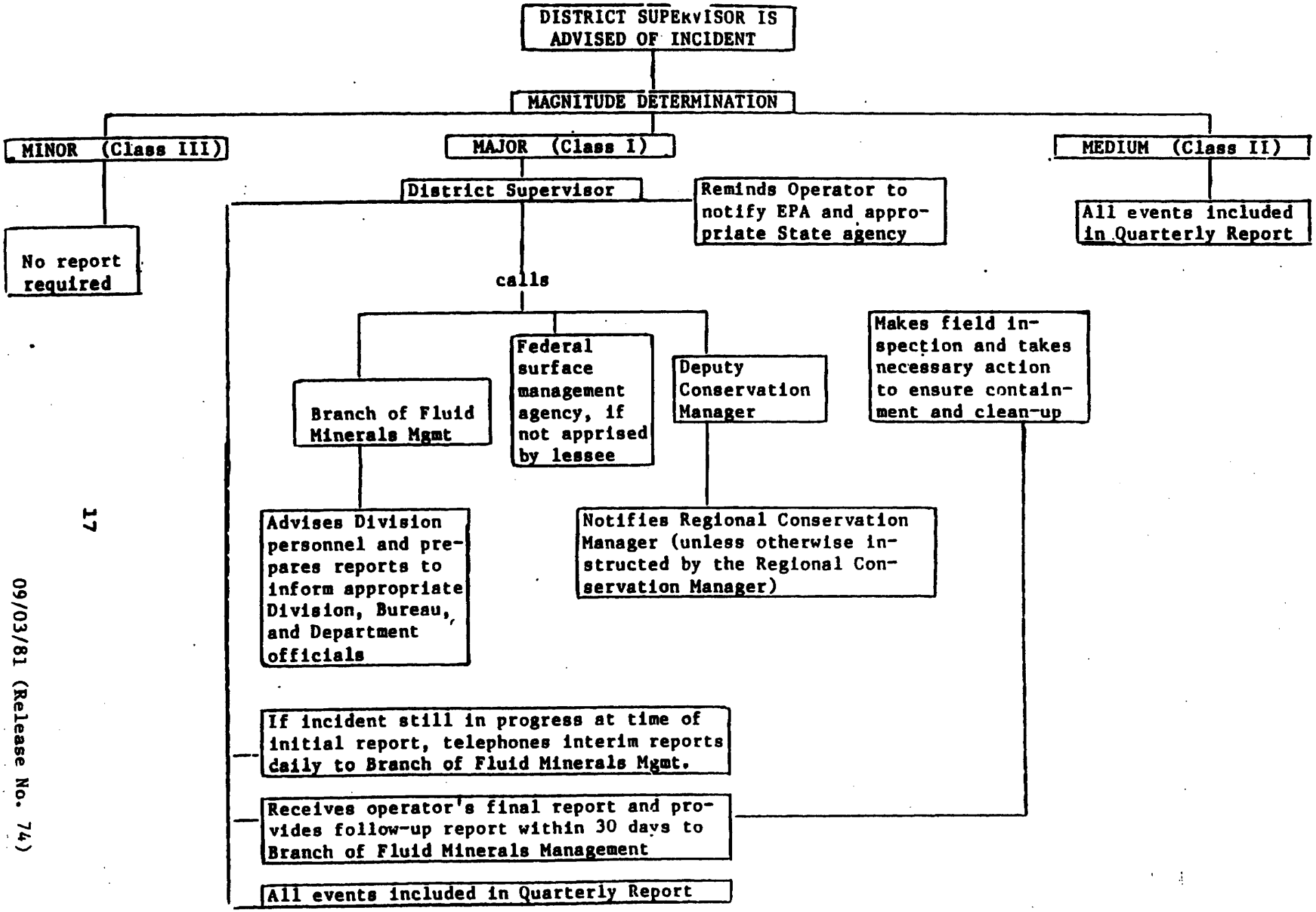
Date of Occurrence; Type of Incident	Date Reported to USGS	District	Location of Incident: ¼¼ Sec. T., R., M.	County/ State	Cause of Incident & Type of Facility	Effect of Incident	Volume: Bbls or Mcf Lost	Volume: Bbls or Mcf Recovered	Operator	Surface Ownership & Lease No. (if applicable)	Corrective Action Taken; Date	Dates(s) On-site Inspection(s)	Remarks

Examples of information to be included in Remarks:

Agencies Notified	Environmental Damage
Unit Name	Other Pertinent Information
CA Number	Other Contributing Factors
Lease Number	*Initial month carried on Quarterly Report

*Includes all Class I and II Events

Exhibit 5
642.3.3G


DISTRICT SUPERVISOR IS ADVISED OF INCIDENT
MAGNITUDE DETERMINATION
MINOR (Class III)
MAJOR (Class I)
MEDIUM (Class II)
No report required
District Supervisor
Reminds Operator to notify EPA and appropriate State agency
All events included in Quarterly Report
calls
Branch of Fluid Minerals Mgmt
Federal surface management agency, if not apprised by lessee
Deputy Conservation Manager
Makes field inspection and takes necessary action to ensure containment and clean-up
Advises Division personnel and prepares reports to inform appropriate Division, Bureau, and Department officials
Notifies Regional Conservation Manager (unless otherwise instructed by the Regional Conservation Manager)
If incident still in progress at time of initial report, telephones interim reports daily to Branch of Fluid Minerals Mgmt.
Receives operator's final report and provides follow-up report within 30 days to Branch of Fluid Minerals Management
All events included in Quarterly Report

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
CONSERVATION DIVISION

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

Royalty or Compensation for Oil and Gas Lost

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

I. GENERAL

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

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

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

II. DEFINITIONS

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

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

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

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

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

III. AUTHORIZED VENTING AND FLARING OF GAS

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

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

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

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

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

IV. OTHER VENTING OR FLARING

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

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

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

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

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

V. REPORTING AND MEASUREMENT RESPONSIBILITIES

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

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

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

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

   a. Last measured throughput of the production facility.

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

   c. Daily lease production rates.

   d. Historic production data.

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

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

Department of the Interior
GEOLOGICAL SURVEY
CONSERVATION DIVISION MANUAL

Transmittal Sheet — Onshore Oil and Gas Program Series

Release No. 68 — June 23, 1980

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

George F. Gravon

Chief, Conservation Division

FILING INSTRUCTIONS:

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

Replaces:

None

.1 Purpose and Objective.

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

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

.2 Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.3 Guidelines and Policy.

A. General.

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

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

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

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

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

B. Definitions.

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

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

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

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

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

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

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

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

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

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

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

D. Gas-well Gas.

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

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

E. Oil-well Gas.

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

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

F. Applications for Flaring or Venting.

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

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

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

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

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

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

G. Other Measures.

Other items to be considered include:

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

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

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

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

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

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

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

H. Non-Federal Lands.

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

I. Enforcement Provisions.

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

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

J. Effective Date.

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

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

K. Payment for Gas Lost.

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

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

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

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

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

.4 Responsibility and Procedures.

A. District Supervisor/Engineer.

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

B. Area Supervisor.

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

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

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

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

IV. Other Venting or Flaring

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

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

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

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

V. Reporting and Measurement Responsibilities

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

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

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

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

a. Last measured throughput of the production facility.

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

c. Daily lease production rates.

d. Historic production data.

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

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

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

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

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

Don E. Kash,

Chief, Conservation Division, Geological Survey.

[FR Doc. 79-39039 12-28-79; 8:45 am]

BILLING CODE 4310-31-M

VI. Value Determinations for Royalty or Compensation Purposes

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

VII. Compliance

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

Addendum to NTL-4A

Refund Applications

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

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

1. The lease prefix code and lease number.

2. The month and year.

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

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

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

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

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

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

Guidelines for Evaluating Applications for Flaring

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

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

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

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

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

(5) Criteria for requiring gas conservation:

(a) New field:

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

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

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

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

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

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

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

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

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

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

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

Oil Operation Only

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

[1]Payout in 3.4 years.

Gas Operation Only

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

[2]Payout in 4.0 years.

Combined Operations

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

[3]Payout in 3.6 years.

12%

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

Year	Factor for Year	Equal Payments	5% Per Yr. Decline	10% Per Yr. Decline	15% Per Yr. Decline	20% Per Yr. Decline	30% Per Yr. Decline	40% Per Yr. Decline	50% Per Yr. Decline
1	.94491	.94491	.94491	.94491	.94491	.94491	.94491	.94491	.94491
2	.84367	.89429	.89559	.89696	.89840	.89992	.90322	.90695	.91116
3	.75328	.84729	.85056	.85401	.85764	.86145	.86967	.87872	.88861
4	.67257	.80361	.80943	.81555	.82197	.82869	.84298	.85826	.87421
5	.60051	.76299	.77162	.78110	.79080	.80089	.82199	.84377	.86538
6	.53617	.72518	.73740	.75023	.76359	.77738	.80566	.83373	.86015
7	.47872	.68998	.70588	.72257	.73987	.75756	.79308	.82692	.85715
8	.42743	.65716	.67700	.69779	.71922	.74093	.78350	.82237	.85546
9	.38163	.62654	.65050	.67557	.70126	.72700	.77625	.81938	.85454
10	.34074	.59796	.62617	.65565	.68567	.71538	.77083	.81744	.85403
11	.30424	.57126	.60382	.63780	.67214	.70573	.76679	.81619	.85377
12	.27164	.54629	.58327	.62178	.66042	.69772	.76382	.81540	.85362
13	.24254	.52293	.56435	.60742	.65028	.69110	.76163	.81490	.85355
14	.21655	.50104	.54693	.59454	.64151	.68564	.76003	.81459	.85351
15	.19335	.48053	.53086	.58298	.63394	.68115	.75888	.81439	.85349
16	.17263	.46129	.51604	.57261	.62741	.67747	.75804	.81427	.85348
17	.15414	.44322	.50235	.56330	.62178	.67446	.75743	.81420	.85347
18	.13762	.42624	.48970	.55495	.61694	.67199	.75700	.81415	.85347
19	.12288	.41027	.47800	.54745	.61277	.66999	.75669	.81412	.85347
20	.10971	.39525	.46717	.54072	.60919	.66835	.75647	.81410	.85347
21	.09796	.38109	.45714	.53468	.60612	.66703	.75631	.81409	.85347
22	.08746	.36774	.44783	.52925	.60348	.66595	.75620	.81409	.85347
23	.07809	.35515	.43920	.52437	.60122	.66508	.75612	.81408	.85347
24	.06972	.34326	.43118	.52000	.59929	.66437	.75606	.81408	.85347
25	.06225	.33202	.42372	.51606	.59763	.66380	.75602	.81408	.85347
26	.05558	.32138	.41679	.51253	.59621	.66334	.75600	.81408	.85347
27	.04963	.31132	.41034	.50935	.59500	.66297	.75598	.81408	.85347
28	.04431	.30178	.40432	.50650	.59396	.66267	.75596	.81408	.85347
29	.03956	.29274	.39872	.50393	.59307	.66242	.75595	.81408	.85347
30	.03532	.28416	.39349	.50163	.59231	.66223	.75595	.81408	.85347
31	.03154	.27601	.38861	.49956	.59167	.66207	.75594	.81408	.85347
32	.02816	.26827	.38406	.49770	.59112	.66195	.75594	.81408	.85347
33	.02514	.26090	.37980	.49602	.59065	.66185	.75593	.81408	.85347
34	.02245	.25389	.37581	.49452	.59025	.66177	.75593	.81408	.85347
35	.02004	.24720	.37208	.49316	.58990	.66170	.75593	.81408	.85347
36	.01790	.24083	.36859	.49195	.58961	.66165	.75593	.81408	.85347
37	.01598	.23476	.36532	.49085	.58936	.66161	.75593	.81408	.85347
38	.01427	.22895	.36225	.48987	.58915	.66157	.75593	.81408	.85347
39	.01274	.22341	.35937	.48898	.58897	.66155	.75593	.81408	.85347
40	.01137	.21811	.35667	.48819	.58882	.66152	.75593	.81408	.85347
41	.01015	.21304	.35414	.48747	.58869	.66151	.75593	.81408	.85347
42	.00907	.20818	.35175	.48682	.58858	.66149	.75593	.81408	.85347
43	.00810	.20353	.34951	.48625	.58848	.66148	.75593	.81408	.85347
44	.00723	.19907	.34741	.48572	.58840	.66147	.75593	.81408	.85347
45	.00645	.19479	.34543	.48526	.58833	.66147	.75593	.81408	.85347
46	.00576	.19068	.34356	.48483	.58828	.66146	.75593	.81408	.85347
47	.00514	.18673	.34180	.48445	.58823	.66146	.75593	.81408	.85347
48	.00459	.18294	.34015	.48411	.58818	.66145	.75593	.81408	.85347
49	.00410	.17929	.33859	.48381	.58815	.66145	.75593	.81408	.85347
50	.00366	.17577	.33712	.48353	.58812	.66145	.75593	.81408	.85347

Exhibit 3
644.5.3K

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

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

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

January 3, 1992

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

To: All State Directors

From: Assistant Director

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

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

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

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

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

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

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

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

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

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

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

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

I. Wells completed prior to January 1, 1980.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The resultant assessment shall be based on the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The resultant assessment shall be based on the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hillary A. Oden
Assistant Director,
Energy and Mineral Resources

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

United States Department of the Interior
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

IN REPLY REFER TO:

MOBIL EXPLORATION & PRODUCING U.S., INC.

IBLA 90-208 Decided April 5, 1991

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

Reversed in part, affirmed in part, and remanded.

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

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

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

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

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

OPINION BY ADMINISTRATIVE JUDGE ARNESS

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

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

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

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

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

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

(Decision at 3).

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

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

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

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

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

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

Id. at 8.

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

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

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

Franklin D. Arness
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge

ATTACHMENT 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MMS-91-0267-IND, Texaco, USA

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

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

Department of the Interior
GEOLOGICAL SURVEY
CONSERVATION DIVISION MANUAL

Transmittal Sheet

Release No. 7 — May 10, 1974

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

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

Russell G. Wayland
Chief, Conservation Division

FILING INSTRUCTIONS:

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

.1 Purpose and Objective.

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

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

.2 Authority.

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

(1) 221.33 Gaging and storing oil.

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

(2) 221.47 Value basis for computing royalty.

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

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

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

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

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

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

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

.3 Guidelines.

A. General

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

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

B. Definitions

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

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

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

C. Measurement

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

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

D. Royalty Determination

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

E. Extent of Approvals

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

F. Applications to Combine Production

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

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

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

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

(4) Estimated amounts and types of production involved.

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

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

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

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

G. Mixing Different Gravity Hydrocarbons

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

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

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

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

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

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

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

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

I. Off-Lease Storage and/or Measurement

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

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

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

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

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

(4) Estimated amounts and types of production involved.

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

J. Temporary Approvals - Unit Operations

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

K. Addition of Wells or Leases to Existing Facilities

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

L. Limitations

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

.4 Responsibility and Procedures.

A. District Engineer

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

B. Area Supervisor

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

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

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

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

.5 Background and Reference.

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

ENFORCEMENT

Form 1221-2
June 1969)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
OREGON STATE OFFICE
MANUAL TRANSMITTAL SHEET

Release

Date

Subject

H-3160-5 - INSPECTION AND ENFORCEMENT DOCUMENTATION AND STRATEGY DEVELOPMENT HANDBOOK (Internal)

1. **Explanation of Material Transmitted**
   This release transmits the Inspection and Enforcement documentation and yearly inspection Strategy development for the fluids program. This new Handbook Section provides direction for the documentation of inspections conducted on oil and gas operations and directions on how to develop the yearly inspection strategy for fluid minerals for the Bureau of Land Management (BLM) Oil and Gas Inspection and Enforcement (I&E) program 3160.

2. **Reports Required**
   None

3. **Material Superseded**
   Instruction Memorandum No. 2007-118 Oil and Gas Program Enforcement Policy and Procedures, and
   Instruction Memorandum No. 2008-196 FY 2009 Oil and Gas Inspection and Enforcement Strategy Matrices Instructions and Strategy attachments 1 and 2.

4. **Filing Instructions**
   File as directed below.

Remove:	Insert:
None	H-3160-5
	(Total: 134 sheets)

Signed Mike Nedd

Assistant Director,
Minerals and Realty Management

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I. INTRODUCTION

The H-3160-5, *Inspection and Enforcement Documentation and Strategy Development Handbook* (Handbook), provides policy guidance for managers and the inspection staff and provides the inspection staff and managers with detailed overview and procedures on the preparation and completion of the annual Oil and Gas Inspection and Enforcement (I&E) Strategy, Inspection Documentation Requirements, Inspection Enforcement/Compliance Action Requirements, and guidance for reporting Major Undesirable events. Also included is a summary of the oil and gas I&E program.

The Bureau of Land Management (BLM) is committed to increased inspection coverage and frequency of Federal and Indian oil and gas operations. Further, the BLM is committed to a balanced oil and gas I&E program that will fulfill our Indian Trust responsibilities and serve to protect, on an equal basis, not only the Federal and Indian mineral interests but also the surface and subsurface environment and the public health and safety. The BLM will accomplish this through consistent implementation of the National Oil and Gas I&E Strategy (Strategy).

The Strategy is the vehicle to communicate consistent nationwide oil and gas inspection accomplishment goals to the field offices (FOs). Just as important, the Strategy is a tool for managers and staff to determine how many and what type of oil and gas inspections can be accomplished with available workmonths and resources, prioritize operational sites to be inspected, identify what funding and workmonths are needed for budget purposes to accomplish the nationwide goals, and monitor oil and gas inspection accomplishment results and progress.

The BLM must ensure that oil and gas operations on Federal and Indian lands are prudently conducted in a manner that ensures production accountability, protection of the surface and subsurface environment, and protection of general public safety. Second, the BLM must ensure that the public's oil and gas resources are properly developed in a manner that maximizes recovery while minimizing waste. Finally, the BLM must ensure oil and gas production from Federal and Indian lands is properly handled, measured accurately, and reported correctly. This responsibility includes the prioritization of oil and gas inspections to be conducted, tracking of accomplishments, and documentation of results.

The Strategy places a great deal of emphasis on achieving the number of oil and gas inspections required. However, most important is the quality of the inspection. The inspection plan matrix gives FOs the ability to determine workmonths necessary to conduct quality oil and gas inspections. Therefore, the numbers of inspections are used as a measure of workload accomplishments; however, these statistics should not deter the FOs from conducting and documenting oil and gas inspections properly to achieve quality inspections.

Oil and gas operations are inspected periodically to ensure that equipment, practices, and procedures are in accordance with the applicable laws, regulations, Onshore Orders, Notice-

to-Lessees (NTLs), and approval documents. Assigned BLM personnel shall inspect, take enforcement action if necessary, document, and report on oil and gas operations on Federal and Indian leases. All required inspections are to be carried out in accordance with the priority and the frequency established in the annual oil and gas I&E Strategy. The Strategy, as it applies to all inspections, is based upon national criteria, but how it will be accomplished is developed within each FO to address specific local situations.

The forms and procedures discussed as appendices and illustrations throughout this Handbook are mandatory in form and content. The procedures are designed to facilitate consistency and uniformity in oil and gas inspection office matrix submissions, documentation, and enforcement as well as Strategy accomplishments.

A. PROGRAM GOALS/INSPECTION WORKLOADS PRIORITY ORDER

The Oil and Gas I&E Strategy Program goals are to conduct inspections on all high priority drilling, plugging, and abandonment operations, all Federal and Indian production cases rated High to the Federal Oil and Gas Royalty Management Act (FOGRMA) Criteria, High Priority environmental inspections, and High Priority production inspections on new producing oil and gas wells (see II. OIL AND GAS INSPECTION AND ENFORCEMENT STRATEGY GOALS for details).

1. Cases that have had a change of operator (see II. OIL AND GAS INSPECTION AND ENFORCEMENT STRATEGY GOALS for details).

2. Inspections during any well production testing occurring during or after High Priority drilling operations but before the well is placed on a producing well status (see II. OIL AND GAS INSPECTION AND ENFORCEMENT STRATEGY GOALS for details) in accordance with laws mandated by FOGRMA and policy set by the Director.

B. STAGED IMPLEMENTATION

The BLM may increase oil and gas inspection coverage through staged implementation, providing for incremental increases in staffing and inspection accomplishment as specified by the Director. Increases in inspection accomplishments will be required only if program funding increases and through automated tools increasing inspection efficency. Each inspection office, through time tracking of field activities, collects adequate information to accurately determine how many inspections can be accomplished annually with a given workforce.

C. GOAL FORECASTING

Managers shall plan to meet or exceed oil and gas inspection accomplishment goals each year. The ultimate goal may be revised if the Director determines that a satisfactory level of confidence of operator compliance can be attained with a lower level of inspection accomplishment. Until this occurs, the goals established each year are minimum goals. However, newly hired inspection staff will, generally, not be prepared to accomplish a full inspection workload for a year or more due to the need for formal certification training and on-the-job training (OJT). Therefore, when planning for staffing increases, managers may anticipate a delay in attaining substantially increased inspection accomplishment with new staff.

D. BUDGET

The Authorized Officer (AO) must use the Inspection Plan Matrix Summary as a management tool. The matrix bridges the gap between the budget and accounts for all workmonths required to implement the program. Also, the matrix provides the AO with the ability to determine

- Work that can be accomplished with available inspection workmonths,
- Additional funding, workmonths, or positions required to obtain national inspection goals, and
- Workmonths necessary to perform oversight responsibilities by supervisors or managers. The matrix also accounts for necessary production accountability technicians, environmental specialists, and other support personnel. It also considers activities such as training, overtime requirements, etc.

1. Planning Target Allocation (PTA)

   The PTA is based on the BLM funding and performance levels that are included in the President's Budget Justifications for the following year. The Planning Target will be allocated as soon as policy decisions concerning the President's Budget Justifications are available. The AO shall use the current year I&E Strategy Matrix provided from Automated Fluid Minerals Support System (AFMSS) to help calculate projected accomplishments. The projected accomplishments should be based on the planned funding allocations for I&E for each field office. The AO should also identify any additional funding required to meet the minimum national goals for inspections.

2. Annual Work Plan (AWP) Adjustments

   When final AWP Program funding is determined, the PTA is adjusted in accordance with the actual funding level. Final inspection targets are then adjusted.

3. Positions and Workmonths

   In order to identify positions and workmonths dedicated to oil and gas I&E, close coordination between the specialist completing the I&E Strategy Matrices and the person preparing the budget submission is necessary.

E. WORK HOUR FLEXIBILITY

The effective oversight of oil and gas operations often requires onsite presence at irregular hours of the day or night and at many times with extremely short notice. These are very real and important differences between this and other BLM programs. As such, work hour flexibility and/or appropriate compensation, including overtime or compensatory leave as appropriate, must be effectively managed. Efficient use of work-hour tools can significantly increase inspection accomplishment while minimizing full-time equivalent (FTE) requirements. The AO shall ensure that this flexibility and/or compensation is provided and planned for in the budget process.

F. PERSONNEL

Managers shall ensure that a sufficient number of qualified and certified oil and gas inspection personnel are onboard to accomplish the current Fiscal Year (FY) inspection goals. Managers should, where possible, plan for staff increases one year ahead of time in order to advertise, hire, and train personnel in time to be able to effectively contribute to increased accomplishments the following year.

G. RECRUITING AND STAFFING

To maintain an experienced, well-trained, highly efficient inspection force, each office shall pursue an active recruiting program to promote a public awareness of opportunities available within the BLM for professionally trained field personnel. This will allow for minimum lost time in filling any vacancies that occur and to hire additional qualified inspectors as soon as funding becomes available.

H. MANAGEMENT TRAINING

To properly implement the oil and gas I&E Program, managers and supervisors involved with I&E shall attend, when available, the National Training Center (NTC) course “I&E for Managers.” Training specifically targets District and Field Managers, Deputy State

Directors for Mineral Resources, Fluid Mineral Branch Chiefs, Field and State Office Program Coordinators, any other personnel who have oil and gas I&E responsibilities, and tribal oil and gas managers where a cooperative agreement exists between the Tribe and the BLM.

I. PERSONNEL TRAINING

All newly hired inspection personnel, without previous BLM oil and gas I&E experience, require orientation and instruction (formal and informal) in Federal and Indian laws, regulations, Onshore Orders, procedures, and records use. Accordingly, all these individuals shall receive job orientation in the office and OJT training in the field under the supervision of a senior Petroleum Engineering Technician (PET) as soon as possible after coming onboard. In addition, newly hired PETs shall complete the required courses in accordance with the National Certification program for oil and gas I&E personnel. Progress shall be monitored by the supervisor using the Criteria Record Review as required by the H-3160-6, *National Certification Handbook for Oil and Gas Inspection and Enforcement Personnel*, dated October 5, 2005.

Personnel training and skill acquisition is an ongoing process, and all inspection personnel, regardless of experience level, shall attend the required refresher courses for certified inspectors every 5 years.

Formal training sponsored by the NTC, attendance of BLM national conferences/ workshops, and local/state/national industry oil and gas conferences/workshops amounting to 24 hours (3 workdays) within each 2-year period may be substituted for the required refresher course.

I&E personnel shall attend formal AFMSS training to acquire the skills and knowledge needed to accurately and consistently enter data into the system.

J. CERTIFICATION

Completion of the self-study books and NTC Course 3100-01, “Oil and Gas Compliance Certification School for New Petroleum Engineering Technicians,” with ongoing OJT will prepare the PET for final certification. Certification shall be in accordance with the BLM H-3160-6, *National Certification Handbook for Oil and Gas Inspection and Enforcement Personnel*. Certification provides evidence that the new PET will be able to successfully conduct entry-level inspections and provides signature authority as the Secretary's authorized and properly identified representative for issuance of Notices of Incidents of Noncompliance (INC). The INCs cannot be issued by personnel who are not certified. Some personnel may be partially certified, limiting their signature authority to specific types of INCs (surface, environmental, administrative). In all but exceptional instances, continued, structured, and supervised OJT as well as advanced training from

accredited sources are necessary before a PET can conduct more technical inspection tasks.

K. SHARING OF INSPECTION RESOURCES

In order to more efficiently utilize oil and gas I&E resources, managers should initiate, when feasible, cooperative arrangements between FOs and across state boundaries to share I&E personnel and resources in the accomplishment of oil and gas I&E goals. Unless otherwise stated or negotiated between offices, the office recruiting help will bear the expenses incurred by sharing inspection resources.

L. COORDINATION

In order to most efficiently utilize and maximize BLM field presence, each resource program will ensure that all field personnel make and report observations in support of other programs with activities in those field areas. An integral part of the oil and gas I&E program includes close coordination with law enforcement specialists in accordance with BLM policy. Coordination shall also take place with applicable tribes and/or the Bureau of Indian Affairs (BIA) regarding the prioritization of inspection cases and information exchanges, with the Forest Service (FS) regarding oil and gas operations on National Forest System lands, with the Department of Defense (DOD) regarding inspections on military lands, and with the Corps of Engineers. To assist in meeting oil and gas I&E goals, the AO should pursue Memorandums of Understanding (MOUs) and/or Cooperative Agreements with State and Tribal entities in accordance with BLM policy.

M. PROGRAM OVERSIGHT

Effective oversight is among the most critical items of a successful oil and gas I&E Program. It is imperative that managers are knowledgeable of the Program and are directly involved in its oversight. Equally important is the necessity for supervisors to monitor the quality of inspection work in both the office and field. Supervisors shall ensure quality checks of all PET work in the field and office at least annually. Another important aspect of program oversight is the review of information entered into AFMSS. The information from field inspections must be reviewed for correction after entry into the system. Reports generated from AFMSS shall also be reviewed by supervisors and managers to ensure consistency and accuracy of data entry. Field inspections conducted by a supervisor for program oversight purposes must be recorded in AFMSS. The Washington and state offices are responsible for conducting I&E related program reviews as specified by BLM policy.

N. ENVIRONMENT

In order to accomplish the BLM's goals of protection of the surface and subsurface environments, all field inspections shall routinely include identification of environmental concerns. An environmental inspection (activity) conducted by a PET along with a drilling, production, or abandonment inspection (type) shall include identification of environmental concerns such as spills and trash problems, improperly used and fenced pits, and inadequate tank battery dikes. It is not necessary to have separate environmental inspections by a PET and a Surface Resource Specialist (SRS)/Natural Resource Specialist (NRS)/Environmental Scientist (EnvS) on low environmental priority cases, but inspections can occur in some cases. However, existing or potential environmental problems noted by the PET should be brought to the attention of the specialist responsible for resolution. An environmental inspection type is required for all cases rated as High for environment.

An environmental inspection (type) is usually conducted by an SRS/NRS/EnvS to ensure compliance with the surface use plan, subsequent approvals, conditions of approval (COAs), lease stipulations, or monitor operations that could or may have resulted in impacts and were the reason for rating the case High for environment. The High priority environmental inspections will normally be done by the SRS/NRS/EnvS, but the AO may use other specialists.

II. OIL AND GAS INSPECTION AND ENFORCEMENT STRATEGY GOALS

A. PRODUCTION INSPECTIONS

All producing Indian and Federal cases rated High to the FOGRMA criteria must be inspected annually. In addition, it is the goal of the BLM to inspect 33 percent of all other Indian and Federal production cases annually as well. Refer to Oil and Gas Inspection and Enforcement (I&E) Strategy Matrices Instructions and Strategy Goal Instructional Memorandum issued each FY for guidance and specific details in establishing inspection priorities and current program goals.

When a case is selected for a Production Inspection (PI), the PET conducting the inspection will determine who purchases/transports production from the oil and gas production case being inspected. In some instances, there may be multiple purchasers/transporters or it may be the same entity as the operator/producer. In both instances, with either multiple purchasers/transporters or same operator/purchaser entities, a minimum of 25 percent of all wells and facilities where sales occur will be witnessed/inspected, including those on Fee and State leases when agreements are involved. Inspection activities that must be performed include those that ensure that production is being handled properly, measured accurately, reported correctly, and the environment and public are being protected. At a minimum, this requires that all methods of measurement used within the case are witnessed/inspected, including all Fee and State wells and facilities attached to the case. On large cases (greater than 10 wells and 10 facilities) when multiple purchasers are involved, the PET will witness sales on a minimum of three different sales per individual purchaser to ensure a good cross-section of the purchaser/transporter processes for sales. Observations of site security, inspections for environmental and public health and safety concerns, and a review of production records will be conducted. The selection of inspection activities can be as comprehensive as deemed necessary by the PET and can be accomplished with a mix of both field visits and in-office reviews.

If violations or problems are detected during the course of the inspection, steps must be taken to determine the extent of the problem and what corrective actions may be necessary. Additional inspection activities may be needed to determine if problems or violations exist at other facilities and/or wells within the case, including Fee and State leases associated with the case. Analysis may indicate that problems or violations are systemic for that particular operator and may require additional inspections of other cases managed by that operator(s).

The PET conducting the inspection must be satisfied that he/she has performed an adequate sampling of the applicable production activities (measurement, environment, site security, etc.) and ensure that any previously identified violations or problems have been resolved.

The following steps further define the minimum requirements for a PI:

1. If Production is Occurring on the Case:

   Measurement, environmental, site security inspection activities, and a partial records review must be performed. The measurement activity(s) must include comparison of the corresponding production record(s) related to the measurement activity. For example, if conducting a Tank Gauging (TG) activity, the PET would independently gauge the tank(s) for comparisons with the Oil and Gas Operations Report (OGOR) inventories or run tickets. In some instances, a single-run ticket will allow FOs to verify reported sales on the OGOR on low-producing cases.

   a. The FOs must inspect an adequate sample size of wells and facilities within a case (includes Fee and State wells and facilities in cases that involve agreements), along with an inspection of each type (oil and gas) of measurement (tank gauge, Lease Automatic Custody Transfer [LACT] meter, orifice meter, etc.). The PET may either witness or independently perform measurement activities to fulfill this requirement.

      The sample size is to be determined by the individual conducting the inspection. Factors to consider in determining the sample size are dependent on the number of wells, facilities, measurement equipment, methods, and types. The PET must be satisfied that he/she has performed an adequate number of inspection activities to ensure that the production is being properly handled and accurately measured.

      For example, if a case has 10 gas orifice meters, 5 oil sales tank facilities, and 2 LACT meters, the PET must witness or perform an inspection activity on each measurement type and method (gas measurement, oil tank sales, and meter proving), but may not have to witness all 10 gas orifice meter calibrations, 5 oil sales, etc., if problems are not detected during the initial representative sampling and additional activities are not warranted. This is a minimum requirement, and PETs are encouraged to conduct more measurement inspection activities if they feel it is necessary to ensure that oil and gas measurements are accurate. This practice is not unlike the policy previously established in various Instruction Memorandums (IM) that recommended on large cases the representative sampling size be 25 percent of the wells and facilities. Once again, the PET has the latitude and discretion to determine the representative sampling size for each case as long as the production inspection examines each measurement type and activity occurring within the case. The FOs may continue to use the 25 percent representative sampling size, taking care to ensure that the representative sampling of wells and facilities is documented accurately so that a different set of wells and facilities may be inspected in the future. This will also ensure that all wells and facilities within the case (includes Fee and State wells and facilities when case is an agreement) are inspected within a period of 3 years, not to exceed 4 years maximum.

The sample must include inspection activities associated with environmental (SP), public health and safety (HS), site security (SS), and records review (RR) or a production records review (PR). Any RR and PR inspection activities may be performed by either the PET or a Production Accountability Technician (PAT).

The FOs are encouraged to conduct detailed production record reviews, coded as PR activity. Significant amounts of volume discrepancies have been found when conducting the PR inspection activity. Due to the effectiveness of the PR, FOs are encouraged to continue using this inspection activity.

Also, at the discretion of the FO, a complete production records review (coded as PI/PR) may be conducted on Low FOGRMA priority cases (overall priority ranking of Y or Z) without a field visit. High FOGRMA cases must have a field inspection conducted on an annual basis. These PI/PR reviews include verification of "used on lease" and "flared/vented" volumes to ensure the appropriate approval is on file and records review of the oil and natural gas volumes associated with these reported disposition categories.

If a case is subject to a variable royalty rate, the PET must verify if the production subjects the lease to a higher royalty rate. If the production level indicates a higher royalty rate, a sample check of the status of the wells must be made to verify if they are countable wells. If the sample determines that the operator is reporting incorrectly, the sample will need to be enlarged to include additional wells.

2. If Production is Not Occurring on the Case:

Only the RR and the appropriate field inspection activities must be performed (such as site security, coded as PI/SS; well status checks, coded as PI/WS; environmental, coded PI/SP; and, if applicable, public health and safety, coded as PI/HS).

B. RECORDS VERIFICATIONS INSPECTIONS

For cases that are rated High for production and have been inspected for the past 3 years with no measurement problems or volume discrepancies detected, a Records Verification (RV/RR or RV/PR) may be conducted to fulfill FOGRMA requirements at a minimum. However, at a minimum a field inspection must be performed on these high production leases at least once every 3 years, even if no measurement problems or volume discrepancies are detected. In addition, it is the goal of the BLM to inspect 33 percent of all other Indian and Federal production cases annually as well.

C. DRILLING, PLUGGING, WELL PRODUCTION TESTING, CHANGE OF OPERATOR, NEW PRODUCING WELL, and WORKOVER INSPECTIONS

Conduct drilling inspections on all High priority drilling wells. The priority will be determined at the time of Application for Permit to Drill (APD) approval, and inspections will be conducted in accordance with that priority. It is critical that this priority setting is based upon real concerns rather than classifying all drilling as High priority. At a minimum, the activity causing the drilling well to be classified High priority must be witnessed.

Conduct plugging and abandonment inspection on all wells determined to be High priority at the time of approval of the Notice of Intent to Abandon (NIA). This High priority determination must identify which part of the plugging plan is critical, e.g., placing a cement plug across a water zone. Witnessing the other parts of the plan such as placement of stabilizing plugs or surface plugs may not be considered High priority.

High priority drilling and abandonment inspections shall take precedence over production inspections if scheduling conflicts arise. Drilling and plugging inspections are externally driven, while production inspections are controlled internally and can be more easily rescheduled. Ensuring that drilling and plugging operations are in compliance from the outset will minimize potential problems in the long term, particularly with regard to contamination of subsurface resources including fresh water aquifers and surface-related environmental concerns. These operations often occur outside normal work hours. The FOs must ensure that resources are available to conduct these inspections.

Conduct interim inspections of all well production testing operations rated High priority that occur during or after drilling operations but prior to a well being placed in producing well status. Disposition of produced fluids during production test operations is the purpose for these inspections.

Conduct inspections on wells/cases that are considered High priority for production and there is a change of operator during the FY. These inspections do not include mergers or name changes but are to do be done on cases where the operator is new to the area or has not operated on Federal or Indian lands in the past.

All new producing wells that come on production during the FY that are associated with High FOGRMA cases are considered High priority for an initial production inspection. In the situation of multiple new wells on a case, the instructions in part A “PRODUCTION INSPECTIONS” on large cases are to be followed.

Conduct inspections of all work-over operations rated High priority. Review and identify any critical operations to be inspected upon approval of the work plan. Inspect those operations deemed to be high priority at the time of approval.

D. ENVIRONMENTAL INSPECTIONS

Conduct all High priority surface inspections on drilling wells and plugged well site locations and environmental inspections annually on all cases rated High priority due to environmental concerns. A well that has completed drilling operations and is in a producing-well status must undergo a High-priority Environmental Interim Inspection for reclamation concerns. Classification of environmental ratings for the estimated drilling and plugging activities, as well as review of the rating for active cases, will be performed each year at the time of matrix preparation to ensure that there is an accurate accounting of environmental inspection workload requirements. High priority environmental inspections are determined if the well/facility meets at least one of the following:

1. The operations on a well/facility are located in or adjacent to an area of special environmental sensitivity[1] such as the following:
    - Designated wilderness areas
    - National Park Service and National Landscape Conservation System units, wilderness study areas
    - Areas of critical environmental concern
    - Sensitive watersheds
    - VRM Class I and II viewshed
    - Riparian areas
    - Floodplains
    - Wetlands
    - Threatened and endangered species habitat
    - Historic landmarks

2. The operations occur in other areas that, if conducted in noncompliance with lease stipulations or Conditions of Approval (COAs) included in the operating plan, could have a significant adverse impact on the environment.

3. The well/facility shows a history of surface and environmental noncompliance.

4. Six months has elapsed after well completion or well abandonment to ensure earthwork for reclamation has been properly completed.

5. The operator has submitted a final abandonment notice (FAN) of an abandoned well.

    a. Final abandonment will be approved only after the surface reclamation standards, required in the Surface Use Plan of Operations or Subsequent Report of Plug and Abandon, have been met to the satisfaction of the BLM or other Surface Managing Agency, if appropriate.

[1] The prioritization may include, but is not limited to these examples.

b. The BLM will take into consideration the views of the split-estate surface owner when approving FANs. This consideration will be limited to what was required in the approved Surface Use Plan of Operations or Subsequent Report to Plug and Abandon.

6. The BLM must document the protection of the surface after drilling operations through Interim Reclamation Inspections. After drilling operations have been completed, a majority of the pad location is normally reclaimed (recontoured, recovered with topsoil, reseeded, etc.). It is important to document BLM inspection of the reclaimed area to ensure the environment is protected and the area is being properly revegetated and stabilized.

   AFMSS includes an inspection activity code Interim Reclamation (IR), to indicate that the interim reclamation area is being inspected and the area is in compliance with reclamation requirements outlined in the:

   - Approved Application for Permit to Drill (APD) Surface Use Plan of Operations,
   - Applicable APD Conditions of Approval,
   - Inspection items in the Production and Interim Reclamation inspection form, and
   - Chapter 6 of The Gold Book: Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development.

   The IR Activity should be conducted by an Environmental Specialist. The initial inspection must occur within 6 months after the well is completed. Interim reclamation inspections will then continue as necessary to ensure that interim reclamation is complete. For example, if dirt work and reseeding has taken place, but vegetation is not yet re-established, another inspection would be necessary to ensure the vegetation is established. Once the interim reclamation has been completed and is successful, the well would then be rated as either High or Low based on the criteria for environmental ranking

Criteria 1 and 2 listed above are very broad in nature and could be misinterpreted to indicate all wells/facilities should be rated High. This is not the intent. Discretion should be used to determine the potential of noncompliance and impact along with the specific site conditions, production handling scenarios, and the past compliance history of ongoing activities occurring on the lease before assigning the priority. For example, if mitigation has been successful for threatened and endangered (T&E) species or wetland conditions and the need to inspect the well on a high priority basis does not exist, then the well should not be ranked as High priority.

The FS has the authority and responsibility under regulations based on the Federal Onshore Oil and Gas Leasing Reform Act of 1987 to ensure environmental inspections of FS surface. The FS will conduct environmental inspections (surface environmental concerns) on FS lands. Therefore, offices may rate these wells/facilities as Low priority

under the environmental priority rating for inspection purposes. Refer to the BLM/FS Interagency Agreement or local BLM/FS MOUs for more specific guidance on roles and responsibilities.

The BIA must concur with BLM recommendations to release well sites from further reclamation responsibilities. Once the BLM has notified the BIA and recommended approval of the FAN, the environmental priority may be rated Low.

When offices establish new FY ratings, the FOs should not assume that since the well/facility was rated High under Environment the previous year, the same will hold true for the current year. Site conditions, operator compliance, or lease activities may have changed and, therefore, may warrant a different priority.

As with the technical inspections, the environmental, drilling, and plugging inspections on those wells rated High priority for surface concerns shall take precedence over environmental production inspections (PI-SP).

E. OTHER INSPECTION REQUIREMENTS

Conduct an inspection on all cases rated as High priority for public health and safety, legal, or other standards. The inspection should be conducted to specifically address the reasons the case was rated High for these criteria.

Although not required under strategy goals, FOs should continue to conduct Records Verification (RV) and Undesirable Event (NU) inspection types as time or circumstances warrant. All major spills, fires, accidents, and fatalities must be inspected and reported per Notice to Lessee (NTL) 3A.

F. DOCUMENTATION

All inspections must be documented in accordance with the requirements contained in this Handbook.

III. CREATING INSPECTION AND ENFORCEMENT STRATEGY MATRICES FOR NEW FISCAL YEAR IN AFMSS

When sharing resources are planned the benefitting office will reflect the outside help on their matrix in the "I&E Inspection WMs" and in the "Planned Inspections" sections. The helping office will reflect an equivalent decrease in those sections on their matrix. The helping office will track the "Onboard Personnel" that is being shared on their matrix and not duplicated on the benefitting office.

A. CLOSE OPEN INSPECTIONS, REVIEW AND UPDATE PRIORITY RECORD INSPECTION STATUS CODES

The AFMSS Inspection Summary for Office (IEP .13) report must be run with the Include Open Inspection Only selected for entire current FY (Example: Start Date: 10/01/07, End Date: 9/30/08). Any open inspections must be closed; if more work is needed to complete the inspection, note in the remarks that the case will be opened in the next FY for completion.

The AFMSS I&E Strategy Matrix - Inspection Items (IEP.51) report must be generated and reviewed as the first step in the process of creating a new FY Strategy Matrix. Run the Inspection Items (IEP.51) report for the current FY year and update the Inspection Status Code in the priority record, if necessary, to reflect the need for inspections in the upcoming year (see Item III. A. 6 below for correct status codes). This must be done prior to creating new priority records for the new FY. Do not delete old priority records from the system if they were once valid. These will be left as an historical record in the database.

To review current priority records:

1. Click on Monitoring on the Main Menu for AFMSS.

2. Click on I&E Strategy, launching the I&E Strategy Matrix (IEP.54) screen.

3. Click on the button next to the version box and highlight the most current "official" strategy version; click on QUERY.

4. This will retrieve the Strategy Matrix. Once it is displayed, click on Reports button.

5. Select Inspections Items (IEP.51). Several sort options are available. Make note of the sort option used to run this report. If you sort by Case, Operator, Overall Priority, County, State, or FO, the Inspection Priority Finder screen will allow you to sort the records in the same order.

6. Print the entire Inspections Items report. This report will have to be manually checked to ensure that all the cases requiring inspection are listed. All inspection priority records reflect the correct/current operator, and the Inspection Priority Status code is set to:

   H= if it is an active case and an inspection for that case/operator combination is necessary; or

   A= if the case/operator wells have all been plugged and we are awaiting surface restoration (environmental inspection still necessary); or

   I= if the case no longer needs an inspection priority record for the upcoming FY and is in the system as an historical reference only. This includes all terminated agreements and/or cases that contain only plug and abandon (P+A) wells or case/operator combinations that are no longer valid (operator changes).

   The Inspections Item report contains columns that count the number of wells and facilities connected to a priority record. Pay special attention to those case/operator combinations that show zeros for both columns. This may indicate that there has been a change of operator or some other reason that the record should be marked as Inactive or deleted. All valid case/operator combinations should contain information in each one of the columns on the report (with the exception of the Last Insp Dates), and should have at least one well connected to it. If there is no information for a case/operator combination, the record must be updated to Inactive or deleted so it will not result in an erroneous count of inspection items.

   Inspection priority records can be established at the time the first well for a case/operator starts drilling. If an operator change occurs on the case, a new priority record must be created for the new operator for the case. The old operator priority record must be updated to “I” in the Inspection Status Code field. Do not use the old operator’s compliance rating in the priority record for new operator on the case. New operators of a case start with a clean compliance record.

   If you find priority records for cases with only wells in Notice of Staking (NOS), Application for Permit to Drill (APD), Unapproved Notice of Staking (UNOS), Unapproved Application for Permit to Drill (UAPD), Approved Application for Permit to Drill (AAPD), or Reclaimed Location (RLOC) status, you must ask the Local User Support person in your office to delete these.

7. Once the Inspection Items report has been reviewed, update the necessary priority records.

   To Update the Inspection Status Code in the Priority Records:

   a. Click on Monitoring from the Main Menu.

b. Click on Inspections.

c. When the Inspection List screen (GLB.92) displays, make sure selection default is "by Priority."

d. Click on the Priorities button to launch the Inspection Priority List (IEP.69) screen.

e. To update your priority records, make sure that the Year field shows current FY and the "Exclude Inactive Priorities" option is checked. Click on the Query button. The screen will display all of the cases with current inspection priorities for FY 2009, for example. Click on the Sort button and add the fields to sort in the order you used on the inspection items (IEP.51) report. The display on the screen and the order of the report should now match. NOTE: Depending on the number of cases in your database, it could take a long time to display the results. On larger databases, it is suggested that you fill in one or more of the query fields to limit results. For example, if you sorted the inspection items report (IEP.51) by operator, query the Inspection Priority list (IEP.69) screen for a particular operator and work through the report until all cases for each operator have been reviewed.

f. On the Inspection Priority List (IEP.69) screen, select up to 200 records at one time. Highlight a group of records and click on the "Edit Insp Priority" button**.** The Inspection Priority (IEP.46) screen will be launched. Update those records that need the Inspection Status Code changed. Use the Next and Previous buttons to move among the records that need updating.

g. REMEMBER TO SAVE each priority record before going on to the next.

h. Exit to the Main Menu when finished updating the records.

B. RUN THE PRIORITY ROLLOVER

The Inspection Priority Rollover (IEP.68) is a function that allows AFMSS to create an upcoming FY Inspection Priority Record for use in building the annual Inspection Plan Matrix. The rollover function is to be performed once per year just prior to creating the matrix for the upcoming FY. The rollover process will create a new priority record for all active case/operator combinations that have a current year priority record if the Inspection Priority Status Code is not equal to "I" for inactive.

During the rollover process, the following prioritization categories will be recalculated based on BLM production volume and noncompliance threshold criteria:

- Operator compliance history
- Average monthly production
- Environmental rating
- Overall priority ratings

If threshold criteria are met, the category will be rated High priority and the overall rating will be adjusted accordingly. It is imperative that each office review and update its Inspection Priority Status codes for the current priority year prior to running the Priority Rollover function for the upcoming priority year to ensure that an accurate rollover occurs.

It is also critical that each office review each priority record to ensure that the rollover function has correctly calculated the average monthly production for oil and gas. Previous problems with the OGOR data have occurred in AFMSS, so each office must verify that the calculations are correct to determine the correct overall priority. If needed, the average production volumes and overall priority may be manually adjusted on the new FY records after the rollover is performed but must be done before the matrix is created.

NOTE: You must make any revisions or updates in the current year priority record before running the priority rollover. Do not run the rollover, update the new year priority records, and then run the rollover a second time. It will overwrite any updates you have made in the new records. Update the current year priority records, and then run the rollover. Any further updates must be made manually to the new year priority records after the rollover has been performed.

It is REQUIRED that each office conduct a "Dry Run" of the Inspection Priority Rollover Report before performing the actual rollover. This function can only be performed by individuals who have security clearance for this screen. From the AFMSS Main Menu, click on the User Support selection at the top of the screen:

Select Priority Rollover IEP.68 from the cascading menu to access the launcher screen.

1. An option to conduct a "Dry Run" of the rollover function is available by clicking in the box to mark it with an X. Conducting a dry run allows you to perform the rollover option without actually committing changes to the database. The output default is set to "Print Rollover Detail Report and Log File." It is REQUIRED to use this default. Review this printout to see if records require editing before performing the actual rollover. With the Dry Run option selected, click on the "Run Priority Rollover" button.

2. The launcher screen (IEP.68) also displays a "rollover from FY" and a "rollover to FY" area. When the rollover is performed for the first time, make sure the default

shows rollover from FY (current FY) to FY (next FY) for the FY to the next FY priority records to be created.

3. If the display shows the new/current FY to the new/current FY, change the first box to previous FY (example: FY 2008 to FY 2009). Click "Yes" when the system asks if you want to overwrite the current new FY records. (This should only occur if the rollover function is being performed after October 1. Normally at the beginning of the new FY, the system automatically creates a new priority record for all producing cases. It simply copies the record from the previous FY. The system does this for several reasons. One important reason is that it allows inspection personnel to document production inspection activities on active cases during the new FY, even though the rollover procedure has not been performed.)

4. The Detailed Report and Log File will print a listing of the rules AFMSS uses in running the priority rollover, the summary information, and a report listing each priority record for "current" FY versus "next" FY. This report includes a description of the number of environmental and FOGRMA violations the system counted for use in calculating the ratings for the "next" FY priority records. For the "Dry Run" option, this report will indicate that this is a "Dry Run Only - Database Not Updated."

   The report can be very long if you have a large database since the report will show four lines of data for each inspection priority record rolled over to the new FY. Keep this in mind prior to printing a hard copy of the report. The "Dry Run" may be performed as many times as you like. This process does not make changes to the data base.

   AFTER reviewing the Dry Run, and when you are confident that all records are correct, you are ready to perform the actual Inspection Priority Rollover. Follow the instructions listed above; however, to perform the actual rollover, make sure the toggle button next to the Dry Run option is not checked, then click on the Run Priority Rollover button to create the "next" FY inspection priority records. Another report will be generated that shows the priorities as they were actually created.

   Review the report again to ensure that the rollover was performed correctly for all inspection items. If needed, update any of the new year priority records that did not carry over correctly before creating a new version of the matrix.

C. CREATE A NEW VERSION OF THE MATRICES FOR THE UPCOMING FY

1. After the actual Priority Rollover function has been performed and you have reviewed all records for accuracy (and made any necessary adjustments), you are ready to create a Strategy Matrix for the new FY. From AFMSS Main Menu, click Monitoring.

2. Click on I&E Strategy from the cascading menu.

3. The I&E Strategy Matrix - Inspection Items (IEP.54) screen will be displayed.

4. If the record appears with the current year's data populated, you will have to exit from AFMSS and come back in. The matrix screen should be blank when creating a new matrix. Enter the new FY in the Fiscal Year box located on the first row of IEP.54.

5. Click into the box to the right of the word Version. Enter the name of the new matrix that you are creating (for example, FY 2007 Vernal Field Office). Next, there is a box next to the Version. Click on the arrow button to select either "Working" or "Official." This allows you to designate the type of matrix you are creating. Create a "Working" copy so you can edit the Matrix until you are sure it is accurate.

6. Count the Producing Inspection Items:

   a. From the Main Menu, click on Monitoring and I&E Strategy.

   b. Click on the Recount FOGRMA Items button located on the far right side of the first row of buttons. A message will appear informing you that this procedure could take a long time and asks if you want to continue. Click the Yes button.

      The system will count the number of producing and non-producing inspection items by Overall Priority that will be used in calculating the number of required production inspections. This does not include inspection items with a case status of Abandoned (A).

      The Inspection Items fields will populate once the count is completed. Review the total number of inspection items once the fields have auto-populated. NOTE: The number of items displayed will not equal the amount of cases listed on the IEP.51 report since the recount does not include those cases with an abandoned status.

7. Enter the Estimated Number of Inspections:

   When sharing resources are planned the benefitting office will reflect the number of increased inspections planned from the increase in capability. The helping office will reflect a decreased inspections planned due to the decrease in capability.

   a. Enter the number of estimated Federal and Indian High and Low priority Drilling Inspections to be conducted during the FY. Click on the box to activate it prior to entering information or tabbing from field to field.

   b. Enter the number of estimated Federal and Indian High and Low priority Plugging Inspections in the appropriate boxes.

c. Enter the number of estimated Federal and Indian High and Low priority Workover Inspections in the appropriate boxes.

d. Enter the number of Federal and Indian High and Low priority Environmental Drilling Inspections. (This number should total the same as the number of Drilling Inspections that are estimated for the year.)

e. Enter the number of Federal and Indian High and Low priority Environmental Producing Inspections. Environmental Producing Inspections should be planned on a well basis. High priority must include all wells requiring an Interim Reclamation (IR) inspection along with all other wells classified as environmental high.

f. Enter the number of Federal and Indian High and Low priority Environmental Abandonment/Reclamation Inspections to be conducted during the FY.

g. SAVE THE RECORD. Make sure the message box in the lower left corner of the screen states that the table was updated.

8. Enter the Positions and Workmonths Information for your office:

a. Click on the Positions/Workmonths button. This will display IEP.55.

b. Enter position and workmonth information based on your FO personnel that work in the program. To ensure proper accounting of the workmonths needed for the program, a base of 12 workmonths must be used for each FTE. Utilizing AFMSS data, enter the number of workmonths that are expected to be devoted to completing inspections in the “I&E Inspection Workmonths” column. The remaining workmonths are accounted for in the “Misc. Workmonths” column. (NOTE: Two of the 12 workmonths for each FTE are automatically placed in the miscellaneous column to account for annual and sick leave, 0999 account.) Account for the overtime workmonths in the “Overtime Workmonths” column. When querying AFMSS, be sure to deduct the overtime workmonths when determining your inspection workmonths. Time worked outside the I&E program, such as range or fire, will not be accounted for in the inspection plan matrix. Oversight time shall be accounted for under Management Support, and specific details regarding oversight workmonths planned may be further documented under the Special Considerations section of the matrices.

When sharing resources are planned, the benefitting office will reflect the increased workmonths but not an increase in onboard personnel. The helping office will reflect an equivalent decrease in workmonths and continue to show all onboard personnel.

c. SAVE THE RECORD. Look for the table update message in the message box.

d. Press the Exit button to return to IEP.54.

9. Ensure Percentage of Other Production Inspections Required is Correct:

a. Click on the Calculations button. This displays the Truly Strange Required Inspection Calculator (IEP.56) window. This window displays information entered on IEP.54 and allows the user to change the percentage of Other producing inspection items to be accomplished. The defaults for "Federal and Indian IIDs" will be set to 33.33 percent. SAVE THE RECORD.

b. Press Exit to return to IEP.54.

10. Enter the number of Planned Inspections:

a. Click on the Inspection Types button. This displays page 2 of the matrix (IEP.58). The window contains a listing of all inspection types, average hours to conduct each inspection type, the number of required and planned inspections, and workmonths necessary to conduct the inspections. The average inspection hours and the required number of inspections by inspection type auto-populate this screen when it is displayed.

b. If your office needs to adjust the average inspection hours, click on the Insp Hrs button. This brings up a window with an entry box for each inspection type. Click the Save button. Once you make the necessary changes and save, click the Exit button and the system will update the average inspection hours displayed on IEP.58. It will take a few moments to complete this procedure. The system is also calculating new workmonth figures. (NOTE: You may want to run the Inspection Summary for Office (IEP.13) report using the previous FY dates to validate the average inspection hours. To generate this report, select Reports from the main menu, click on I&E Reports, then select IEP.13. Enter the start and end date range that will give you an entire year's worth of inspection data (for example, 10/01/2005, 09/30/2006 for FY 2006 information). Make sure to select Inspection Details in Total for All Closed Inspections for the report. Click on print and the report will generate. The last page of the report summarizes the average hours and number of inspections by type.)

c. Once IEP.58 displays the new average inspection hours, SAVE THE RECORD before continuing on to input the number of planned inspections.

d. Enter the number of Federal and Indian Planned inspections for the FY in the appropriate columns. The number of planned inspections must be based on available workmonths indicated in the IEP.55 Positions/Workmonths window. To enter information, you may tab from field to field, or use the mouse to click on the desired area you want to enter information. If you do not use the Tab key, the system will not generate workmonth information until the record is saved. If you

want to see the workmonths displayed after entering the number of inspections, be sure to use the Tab key at that point.

e. SAVE THE RECORD.

11. Review the Required versus Planned Inspections:

a. Click the Required/Planned button to review required versus planned inspections. Once again, verify the number of available workmonths against what you have planned to ensure that you have not planned more inspections than you have workmonths to accomplish. To see available workmonths, click on the Positions/Workmonths button and look at the total inspection workmonths available. Press Exit to return to the Required/Planned window.

b. To amend planned inspections from the Required/Planned (IEP.57) window, click the Exit button. This closes IEP.57 and displays the previously opened window (IEP.58). Make the necessary changes and SAVE the record. Click on Exit to return to IEP.54.

12. Add Remarks or Special Considerations to the Matrices:

To add Remarks or Special Considerations, click the Remarks button. Enter information as applicable. Do not forget to document the position and workmonth availability descriptions, if necessary, any additional idle/orphan-well workload adjustments made to the strategy, and the number or production records reviews that your office plans on conducting in the upcoming FY. SAVE the record. Click the Exit button.

Note: You may revise the “Working” version of your matrix until you are confident that the matrix is complete. Change the box from “Working” to “Official” to indicate that this is the matrix to be used for this FY.

13. Print the Matrices:

Print the Matrix Summary Report by clicking the Reports button. Select IEP.50 Inspection Matrix Summary. This brings up a preview of the report.

Exit the open windows by clicking the Exit button on each window and return to AFMSS Main Menu.

IV. INSPECTION DOCUMENTATION REQUIREMENTS AND DEFINITIONS

A. REASONS FOR DOCUMENTATION

Documentation gathered during an inspection must be, without exception, incorporated into the official hard copy BLM files. This information is often used in management control reviews, alternative management control reviews, technical procedural reviews, Office of Inspector General and Government Accountability Office reviews, as well as congressional committee inquiries, State Director Reviews, and court cases. The official BLM files are reviewed by these groups to verify if the operators, the BLM, and inspection personnel are meeting the requirements established by law, regulations, and orders. It is critical to the inspection personnel, the BLM, and other involved parties that clear, concise, and accurate inspection documentation be developed and maintained in the official records. Without clear and accurate documentation of existing conditions and activities, enforcement actions cannot be taken or decisions upheld if appealed by the operator. Hard copy inspection documentation is considered the official BLM record. Automated inspection documentation is a supplement to the hard copy files but is also required. Enforcement action and program decisions will be based upon information contained in the official hard copy files.

Precise and clear inspection documentation allows anyone reviewing the file to verify the type of inspection conducted, the specific operational activities conducted or witnessed, when the activities were conducted, what actions were taken by the inspection personnel to ensure operations were conducted as required, and what types of problems and results were observed. Inspection documentation must be concise and not contain materials that are not pertinent to verify inspection activities and results. A brief summary of the inspection activities and results must be included in the hard copy files and AFMSS. Handwritten notes created by inspection personnel must be included in the hard copy files and summarized in AFMSS. These may include, but are not limited to, violations or problems detected that may reoccur, resolution of problems, volume discrepancies, installation of new equipment such as a LACT, gas meter, or tank(s), Blowout Preventer Equipment (BOPE) failures, and placement of plugs.

B. REQUIRED INSPECTION FORMS

The following inspection forms are mandatory for completion, as applicable to the inspection type, and must be maintained in the historic inspection file:
3160-10 *Inspection Record - Drilling* (October 2003**,** or AFMSS form)
3160-11 *Inspection Record - Production* (December 7, 2002, or AFMSS form)
3160-13 *Inspection Record - Abandonment* (October 2003, or AFMSS form)
3160-27 *Inspection Record – Environmental* (January 31, 2006, or AFMSS form - Well Surface or Facility Surface)
3160-15 *Measurement Record - Gas* (December 2003)
3160-16 *Measurement Record - Oil By Tank Gauging or Alt. Method* (December 2003)

3160-17 *Measurement Record - Oil by LACT Meter* (December 2003)
Drilling/Construction Inspection - Environmental (August 2007)
Production & Interim Reclamation Inspection/Monitoring - Environmental (August 2007)
Final Reclamation Inspection/Monitoring - Environmental (August 2007)

Forms 3160-10, -11, and -13 are required to be completed. Forms 3160-15, -16, and -17 are to be used as applicable**,** when conducting independent inspection measurement activities or when witnessing product sales, calibrations, or a meter proving. These forms ensure that all areas of the operations are inspected for compliance in our efforts to verify production accountability. Forms must be filled out completely. If a specific item does not apply to the inspection, enter "N/A" in the inspected column. If an N/A column exists, place a check in that column.

The AFMSS form (Form 3160-27, *Well Surface or Facility Surface*) for environmental inspections must be used by the Environmental Specialist when these inspections are conducted.

The documentation of all inspections must be clear, concise, and legible and provide an accurate description of what was inspected, including the findings. The following lists specific items to be documented when performing an inspection:

1. The type of inspection performed.
2. Activities that were performed or witnessed (e.g., tank gauging, meter calibrations, etc.).
3. Who witnessed the activity (including the person representing the company (Tool Pusher, service company representative, etc.)).
4. Specific times and dates when critical activities were witnessed.
5. Problems encountered during the inspection process and how they were resolved.
6. Deviations from the approved plan and reasons for the changes.
7. Telephone or personal conversations or verbal requests critical to the operation or inspection where agreements or decisions were made.
8. The results of the inspection or operation witnessed.
9. Any violations or problems (potential future violations) identified and Written Orders, Shut Down Notices, Verbal Warnings, or Incidents of Noncompliance (INCs) issued.
10. Other information pertinent to the inspection.
11. Worksheets or checklists developed by offices or other sources used to document inspection results.
12. Personal notes; independent calculations performed to verify drilling and abandonment cement, spacer, and displacement volumes; and oil or gas volumes documented in the official hard copy file. The purpose of these calculations is to verify to the inspection personnel, as well as anyone reviewing the file, that independent confirmation of volumes was performed.

13. Job logs, service company reports, or any other information available either from the operator or its contractors requested, if applicable, to documenting operations witnessed. These documents should be requested from the operator, not the service company.
14. Photographs taken to document violations containing a brief, accurate description of what was photographed, including the location, as well as the date and time of the photo.
15. Telephone conversations relating to an inspection documented in one of several different ways. It must contain a description of what was discussed, who was contacted (name, position, and company name), and the time and date of the contact.
16. A summary of the results of the inspection, any problems encountered and resolved, and all other pertinent information including notes that may aid future inspections included in both the hard copy file and the AFMSS database. Document only facts, not unverified assumptions or personal opinions.

Example of a typical PI Inspection Summary:

"PI inspection activities were conducted <time and date(s)>. Identified seal violations during a <inspection activity>. INC #(s), were issued <if corrected, state date>. <Indicate the gravity of any violations – major or minor>. No environmental or health and safety issues identified (if issues found, summarize the issue and action taken). Witnessed meter calibrations and oil sales, production measurement and handling operations, no problems founds (if problems were found, summarize the issue and actions taken). Records review of production information from <timeframe> indicates accurate reporting of production and no reporting discrepancies. Average OGOR production of xxx MCF/BO agrees with field calculated/source document volume of xxx MCF/BO." (If discrepancies were discovered and a PR activity was conducted**,** state the timeframe and results of activity**,** along with volumes gained, lost**,** and/or recovered).

Examples of notes to help future inspection personnel could include:

"Another inspection will be conducted on seal violations in a few months since this appears to be a reoccurring problem with the operator"; or add helpful hints such as "operator mentioned plans of adding additional tanks and separation equipment to facility, will re-inspect, and verify a new facility diagram when completed"; or "the combination to the locked gate across private land is xx-xx-xx."

C. RETENTION OF INSPECTION DATA – RECORD MAINTENANCE REGULATIONS

The BLM Records Schedule contains specific requirements for maintaining records. Premature destruction of these records carries a fine of $2,000 and/or 2 years in prison. However, the schedule does not specifically address forms or information that is obtained or generated during an inspection. The intent is to maintain a sufficient amount of data to

support the inspection. The following procedures must be adhered to for the maintenance of records:

1. All inspection forms used to document inspections (Forms 3160-10, -11, -13, -15, -16, and -17, including the *Environmental Inspection* form (Form 3160-27); *Notice of Incidents of Noncompliance* form (Form 3160-9); *Notice of Written Order* form (Form 3160-18) or letter; and *Notice to Shut Down Operation* form (Form 3160-12) must be maintained in conformance with the BLM's Disposition Authority (refer to BLM Manual, Section 1220) Schedule 4, Item 27.

2. Inspection data gathered or documented on Indian cases must be retained and disposed of in accordance with the BLM's Disposition Authority identified in item 1 above, as well as any new policy developed by the BLM as a result of ongoing litigation. Always check with the Records Management Specialist on the proper disposition of Indian-related documents.

3. All inspection data gathered or documented on Federal cases must also be retained and disposed of in accordance with the BLM's Disposition Authority identified in item 1 above, as well as any new policy developed by the BLM. Always check with the Records Management Specialist on the proper disposition of inspection records.

D. PRODUCTION INSPECTION (PI)

Only **ONE** PI inspection type is recorded per case/operator per FY. Hard copy documentation of the PI inspection must include the Form 3160-11 and additional measurement forms as applicable and other supplemental documentation as outlined in B above. If several trips were made to conduct the PI, the inspection personnel will adjust the entries for 'Inspection Activities', 'Open' and 'Close' Dates, 'Office', 'Travel', and 'Inspection' Times, and Number of 'Trips' accordingly. Subsequent PI(s) may be conducted if requested by MMS, BIA, or a Tribe. If a subsequent PI is requested during the same FY the existing PI entries for 'Inspector' Inspection Activities', 'Close' Dates, 'Office', 'Travel', and 'Inspection' Times, and Number of 'Trips' must be adjusted accordingly

Extreme care must be exercised when coding 'Office', 'Travel', and 'Inspection' times so that the cumulative time recorded for any day worked DOES NOT exceed what was actually worked. Example: 4 cases involving 10 wells inspected on 4/1/2008, inspector coded 8 hours on Time and Attendance. DO NOT code more than 8 hours into AFMSS for 4/1/2008.

1. Documenting Production Inspection Activities in AFMSS

Non-measurement activities are documented once per PI and associated to all wells/facilities for the Inspection 'Activity'. Edit the 'Open' and 'Close' Dates, the associated wells/facilities, and 'Office', 'Travel', and 'Inspections' Times

appropriately. Do not create a separate Inspection 'Activity' code for every well or facility that receives a non-measurement activity on different trips under a PI. (Activity codes: HS, RR, RD, PR, SP, SS, WS. See Appendix 1 "Inspection Type and Activity Codes" for code definitions.) See below for guidance on entering activities for 'Multiple Inspection Personnel.'

Measurement activities are documented once per PI unless a volume discrepancy is discovered. Document one Inspection 'Activity' code for measurement activities and indicate the number conducted in the corresponding 'Count' field in AFMSS. For example, enter one TG Inspection 'Activity' code instead of entering 10 separate tank gauge activity lines. Then select the 'Wells/Facilities' tab and select the applicable wells/facilities associated with the activity. The 'Count' field will auto-populate with the number of wells/facilities. At least one well/facility must be selected for each Activity Code. Measurement activities conducted by different inspection personnel on large cases or jointly would be accounted for separately. (See further guidance below for entering activities with multiple inspection personnel. Activity Codes: TG, MC, MP, LV, CV, TV, TR, T. See Appendix 1 "Inspection Type and Activity Codes" for code definitions.)

Volume discrepancies may be discovered during the PI. If a measurement activity results in a volume discrepancy determination, the activity must be documented separately and associated to the applicable facility or well as selected in the 'Well/Facility' tab. Record specific remarks to each volume discrepancy discovered.

Existing Activity Lines must be updated to reflect the total count of measurement activities whenever inspection personnel conduct additional measurement activities on a case/operator throughout the year on a PI. Do not enter separate activity lines to account for different trips. For example, if inspection personnel conducted 5-meter calibrations (MC) for a PI, and later in the FY they conduct an additional 5-meter calibration inspection activities, the MC Inspection 'Activity' code is entered once and the 'Count' field, Activity 'Close' Date, 'Office', 'Travel', and 'Inspections' Times, and Number of 'Trips' are updated accordingly.

Multiple inspection personnel who conduct separate activities on the same case/operator to complete the PI should record their Inspection Activities on separate activity lines in AFMSS. If a supervisor or State I&E Coordinator conducts an oversight inspection while accompanying inspection personnel, the supervisor codes the inspection as an Oversight (OV) Inspection Type with the appropriate Inspection Activity code(s).

Production Records Review (PI/PR) may be included in the PI. If a complete production records review is conducted by inspection personnel, enter the Inspection Activity code of PR only once per PI (PI/PR). Enter the 'Inspector' Name, appropriate 'Open' and 'Close' Dates, and total 'Office' hours for this activity. The

PI/PR activity may be opened before the first field visit and closed when all paperwork review is complete.

If the Production Accountability Technician (PAT) conducts a production records review in conjunction with the PET performing fieldwork, enter the PI/PR with the PAT name in the 'Inspector' field. The PAT may initiate the PI and enter the PR activity before the PET begins the fieldwork. The PAT will initiate the PI and enter the 'Open' Date the PR activity is started by the PAT. The PET must take care to enter field activities in the same PI that has been started by the PAT. It is critical that duplicate PIs are not created for the same case/operator during the FY. For those case/operators where only a PR activity is planned, without conducting any field inspection activities, the PET or PAT may Open and Close the PI as appropriate. These inspections must be in accordance with the strategy requirements for Low FOGRMA criterion.

Records Reviews (PI/RR) that are conducted as part of an ongoing Production Inspection must be coded as PI/RR with the appropriate name listed in the 'Inspector' field. Enter one RR Inspection Activity per case/operator. If the RR Inspection Activity results in a full Production Records Review (PR), change the RR Inspection Activity in AFMSS to a PR and continue editing the 'Office' Time spent conducting the activity.

E. DRILLING, ABANDONMENT, AND WORKOVER INSPECTIONS

Drilling, Abandonment, and Workover Inspections must be recorded by well to ensure an accurate inspection count. For example, if a Drilling Inspection is conducted on 50 wells for the same case/operator, 50 Drilling Inspections (DW) will be entered into AFMSS, and 50 Drilling Inspection forms (Form 3160-10) will be completed and filed. The same applies to the Abandonment and Workover Inspections.

Documenting Drilling (DW), Abandonment (PD), and Workover (WK) Inspection Activities, Inspection Activities for Drilling, Abandonment, and Workover Inspections must be entered once instead of creating numerous entries of the same Inspection Activity (unless conducted by different inspection personnel). For example, if over the course of several months three Health and Safety Inspection Activities are conducted on the same drilling well, instead of creating three separate HS Activity codes edit the first 'Activity' code created and adjust the 'Office', 'Travel', and 'Inspection' Times, 'Open' and 'Close' Dates and Number of 'Trips' accordingly. The 'Open' Date for the activity would be the first date that the activity was conducted and the 'Close' Date would be the last date that an HS inspection activity was conducted. The total time spent on that Inspection Activity would be reflected in the appropriate 'Office', 'Travel', and 'Inspection' Time fields.

If more than one inspector conducts an Inspection Activity on the well, the activities conducted would be recorded on separate activity lines under one Inspection Type.

F. ENVIRONMENTAL INSPECTIONS (ES)

Environmental Inspections occur throughout the life cycle of a well or facility. All surface inspections of wells must be documented by well. For Surface Inspection Activities conducted on producing oil and gas operations (SP-surface production), the inspections may be recorded on a well or facility basis. If eight Surface Production Inspections are conducted on eight wells on the same case/operator during the FY, eight Surface Production Inspection Types are recorded (each associated to the well being inspected). If eight Surface Production Inspections are conducted on eight facilities on the same case/operator during the FY, eight Surface Production Inspection Types are recorded (each associated to the facility being inspected).

NOTE: When documenting Environmental Surface Inspections in AFMSS, if the ES Inspection is by well, then 'Well Surface' must be used. If the ES Inspection is conducted on a facility, then 'Facility Surface' must be used. Do not combine wells and facilities on the same ES Inspection.

G. SURFACE DRILLING (ES/SD) AND CONSTRUCTION (ES/SC) ACTIVITIES

These inspections are documented on a well basis. If nine Surface Drilling Inspections are conducted on nine wells on the same case/operator during the FY, nine surface Drilling Inspection Types are recorded (each associated to the well being inspected). This also applies to the ES/SC (Surface Construction - prior to spud) inspections.

H. SURFACE ABANDONMENT (ES/SA) ACTIVITIES

These inspections are documented on a well basis. If six Surface Abandonment/Reclamation Inspections are conducted on six wells on the same case/operator case during the FY, six Surface Abandonment/Reclamation Inspection Types are also recorded (each associated to the well being inspected).

I. SURFACE INTERIM RECLAMATION (ES/IR) ACTIVITIES

Beginning in FY 2006, the BLM required documentation for the protection of the surface after drilling operations. After drilling operations have been completed, a portion of the pad location is normally reclaimed (reseeded, recontoured, etc.). It is important to document inspections of the reclaimed area to ensure the environment is protected and the area is being properly revegetated. These inspections are documented on a well basis. Interim reclamation inspections should then continue as necessary to ensure that interim reclamation is complete. For example, if dirt work and reseeding has taken place, but

vegetation is not yet re-established, another inspection would be necessary to ensure the vegetation is established. Once the Environmental Specialist is satisfied that the interim reclamation has been completed and is successful, the well would then be rated as either high or low based on the criteria for environmental ranking. The Environmental Specialist should determine acreage reclaimed and document that in the remarks of the initial inspection on the hard copy inspection sheet as well as in AFMSS. If five Interim Reclamation Inspections are conducted on five wells on the same case/operator during the FY, five Interim Reclamation Inspection Types are recorded (each associated to the well being inspected).

Example of coding these inspections:

The Inspection Type of ES is used with an Inspection Activity code of SP (Surface Production) for the general surface review. The IR Inspection Activity code will also be recorded to indicate the Interim Reclamation portion of the location was inspected as well (ES/SP, IR).

J. RECORDS VERIFICATION INSPECTIONS (RV)

An RV Inspection Type consists of an inspection of one specific type of production record (for example, run ticket, meter calibration report, well test report, meter proving report, etc.) that is not part of an Inspection Activity conducted during the course of a production inspection.

An RV Inspection Type is recorded once for each type of record reviewed on a case/operator each FY. If a production records review (PR) Inspection Activity (a review of all operator production records) is conducted, do not record it under the RV inspection. Record one RV Inspection Type with the appropriate Inspection Activity conducted. See the Valid Inspection Type/Activity Code Cross Reference Table, Appendix 1 “Inspection Type and Activity Codes.”

The RV Inspection Type is only used when one type of production or measurement-related document is reviewed to ensure that the document is filled out properly and the calculations are correct. This document is not reviewed during the course of a field-witnessed measurement activity.

A review of the Minerals Management Service (MMS) Form 4054, the *Oil and Gas Operations Report* (OGOR) not associated with a PI may be recorded as a Records Verification/Records Review (RV/RR) Inspection.

K. MULTIPLE WELL COMPLETIONS

Inspection information on wells with multiple completions (for example, D1, D2, or T1, T2, T3, etc.) that are committed to different case/operator combinations, will be recorded in AFMSS for each case/operator. See Appendix 2 "MMS Appendix G" for details.

L. INSPECTION OPEN AND CLOSE DATES

The 'Open' Date of an inspection must be the date that initial work was started on the inspection. This can be when paperwork is initiated as part of the records review, or it can be the first trip to the field to conduct an Inspection Activity. The 'Close' Date for the inspection must be the last 'Close' Date of all of the Inspection Activities recorded. By clicking the 'Close' button on the AFMSS inspection screen(s), the 'Close' Date will populate with the last Inspection Activity 'Close' Date of all of the Inspection Activities recorded. The 'Open' and 'Close' Dates may be edited as needed, due to additional Inspection Activities or Enforcement Action follow-up.

Inspections are <u>not</u> to remain open while Enforcement Actions are pending. Enforcement Action dates (follow-up, extensions, etc.) are to be entered in the individual Incident of Noncompliance (INC) (IEP.43) screen. The amount of time spent conducting follow-up(s) inspections must be added to the 'Office', 'Travel', and/or 'Inspection' Time(s) for the original Inspection Activity where the violation occurred.

If a volume discrepancy is discovered during the inspection, the 'Close' Date for the Inspection and/or Inspection Activity should be the date the discrepancy is resolved with the operator, <u>OR</u> the date the MMS has been notified that amended reports from the operator are necessary. Once the MMS has been notified, the discrepancy is considered resolved by the BLM.

M. WELLS AND/OR FACILITIES INSPECTED

When recording inspection information in AFMSS, the well(s) and/or facility(s) inspected must be selected. For each Inspection Activity performed, select the appropriate wells and/or facilities on the 'Wells and Facilities' tab of the Inspection screen(s).

N. OFFICE, TRAVEL, AND INSPECTION TIME

It is critical that the amount of time is takes to complete an inspection is accurately recorded. This information is used to plan the workload requirements and determine the number of personnel needed to complete quality inspections. Inspection time must be tracked by each Inspection Activity. The inspection times are to be recorded to the

nearest one-tenth (1/10) of an hour. For example, if an Inspection Activity took 5 minutes of office time to complete, the time will be recorded as 0.1 hours for the activity.

Extreme care must be exercised when coding Office, Travel, and Inspection times so that the cumulative time recorded for any day worked DOES NOT exceed what was actually worked. Example: 4 cases involving 10 wells inspected on 4/1/2008, inspector coded 8 hours on Time and Attendance. DO NOT code more than 8 hours into AFMSS for 4/1/2008.

V. AFMSS DATA ENTRY REQUIREMENTS BY INSPECTION SCREENS

The following are the requirements for correctly entering oil and gas inspection information into AFMSS. The information is categorized by inspection related-topics and provides detailed data entry requirements by data field. See *NIAFMSS V3 User Guide Feb 1 2007* and *NIAFMSS Handheld User Guide* for details.

A. ESTABLISHING INSPECTION PRIORITY RECORDS

A priority record can be created as soon as an inspection is required (usually during pad construction or drilling operations). Although drilling, abandonment, and environmental inspections can be entered without establishing an inspection priority record, all case/operators must have a current fiscal year priority record before the system will allow entry of production inspection information. Priority records are associated to a specific case and operator. The case/operator combination constitutes an inspection item.

1. Inspection Priority (IEP.46) Screen Data Entry Requirements:

Case No: Required entry when adding a new inspection priority record; system edit.

Type: System-generated display field. This field will populate with the 'Case Type' for the case number.

Operator: Required entry when adding a new inspection priority record; system edit.

Year: System-generated display field. May be edited if necessary.

Rank: Optional entry field. Each office may determine a priority order that inspections are conducted if desired, or leave the field blank.

Frequency: Select the appropriate frequency for the inspection item:

A = Annually
B = Every Other Year
C = Every Three Years

The codes for all priority ratings for **Prod**, **Env**, **H&S**, **Legal**, **Other**, and **Oper** are **H**=High and **L**=Low. The default settings for these ratings are all **L**=Low and must be reviewed and edited as necessary for the case/operator. The exception is the rating for **Oper** which defaults to blank. This rating must be edited for this case/operator combination.

Overall Priority: Required entry. The overall priority codes are as follows:

W = **FOGRMA** High and **Other** High
X = **FOGRMA** High and **Other** Low
Y = **FOGRMA** Low and **Other** High
Z = **FOGRMA** Low and **Other** Low

Note: **FOGRMA** represents the production and/or operator compliance priorities. **Other** represents environmental, health and safety, legal, and other priorities. A case/operator is rated FOGRMA High if the average monthly oil or gas production is significant as determined by annual Washington Office Instruction Memorandum. Operator compliance is rated as High if the operator had a noncompliance history of two major violations or a total of six FOGRMA-related violations within the preceding 24-month period.

Status: Required entry. The inspection priority status code for the priority record reflects the need for an inspection. 'Inspection Priority Status' codes are:

H = active case/operator and an inspection is necessary. (For case/operator combinations that are inspected on a 3-year rotation, it is necessary to record the status as **H** for each FY, even if the case/operator will not be inspected in a particular FY.
A = case/operator wells have all been plugged and awaiting surface restoration (environmental inspection still necessary).
I = case/operator no longer needs an inspection but is maintained for historical purposes. It is only necessary to record an inactive case/operator record for one FY. (This includes all terminated agreements regardless of well status and/or cases that contain only P+A wells.)

Monthly Average Oil and Gas: Required entry. System-generated at the beginning of each FY. For new case/operator, enter the average oil and gas production amounts using information contained in the Oil & Gas Operations Report (OGOR) Production Averages Report if available. At the beginning of each FY, a priority rollover function is performed to establish priority records for the coming year. The system automatically calculates and populates these fields based on information contained in OGORs.

Remarks: Optional for Low priority, Required for High priority ratings. Enter remarks related to the 'Other' priority, or remarks pertinent to the case. If a case is rated High priority for environmental concerns, or for other rating categories, identify the reason for the High priority rating in the remarks field.

Hazard: Required entry. The default is set to "N" for no existing hazard on the location. If Hydrogen Sulfide (H_2S) is present, the hazard code must be set to "Y" to notify the inspection personnel of the potential for hazardous conditions on location.

B. CASE STATUS VERSUS INSPECTION STATUS CODES

'Case Status' codes and 'Inspection Priority Status' codes are often confused due to the similarities in code designation. However, their use is for different purposes as described below:

1. Case Status Codes:

   This code is used in the Case (Lease/Agreement) information in AFMSS to identify the current status of the overall Case. Valid codes are as follows:

   A = Abandoned (all Federal/Indian wells in the Case have been plugged and awaiting restoration)
   E = Extended Term
   H = Held by Production - Actual
   I = Inactive (1. All wells plugged and sites restored; historical record only; or, 2. The Case is terminated, expired, relinquished, canceled, etc.)
   L = Held by Production - Allocated
   P = Primary Term
   R = Renewal
   T = Indian Lease Recommended for Termination

2. Inspection Priority Status Codes

   'Inspection Priority Status' codes are associated to a case AND operator combination. The 'Inspection Priority Status' code is a critical field in AFMSS used in the development of the Inspection Strategy Plan Matrices. The 'Inspection Priority Status' code indicates to inspection personnel the case/operator combinations that need inspections during an FY, or if the case/operator is no longer active and an inspection is no longer necessary. If these codes are not set correctly, all workload estimates and resource needs projected for an upcoming FY may be inaccurate.

3. Distinction between Case and Inspection Priority Status Codes

   There is no direct correlation between the 'Inspection Priority Status' code and the 'Case Status' code. It may appear that a correlation exists because many times the codes will be the same for producing, abandoned, or inactive cases.

   Cases entered into AFMSS include lease and agreement records. A 'Case Status' code is entered for each lease record, even if the lease is in an agreement. The 'Case Status' code for the agreement takes precedence over the individual lease status code.

The ‘Case Status’ code indicates the actual case status. ‘Case Status’ codes are entered once for a case regardless of the number of operators. The ‘Case Status’ code does not affect the need for inspections of that Case.

See *IAFMSS/NIAFMSS V3 User Guide Feb 1 2007* and *NIAFMSS Handheld User Guide* for detailed instructions.

VI. OIL AND GAS PROGRAM ENFORCEMENT PROCEDURES

To ensure uniform implementation of the Oil and Gas Program enforcement procedures, the following provides the policy to be implemented by FOs having oil and gas program responsibilities.

In the past, several terms have been used to define a verbal warning issued to an operator. A verbal warning has often been referred to as a verbal Incident of Noncompliance (INC), an oral warning, or an oral INC. The use of these terms all refer to the same type of enforcement action. It is non-written communication to an operator for a minor, inadvertent and non-reoccurring violation that will be corrected immediately prior to the inspector leaving the location. To ensure consistency, verbal warning is the term to be used for enforcement actions of this type. A verbal warning is not to be confused with an oral order per 43 CFR 3161.2.

A. PROACTIVE MEASURES TO ACHIEVE COMPLIANCE

On occasion, operators are not aware of the regulatory requirements on Federal and Indian lands. By taking a proactive approach to compliance, the BLM inspectors may assist the operator to more clearly understand what is required. These efforts will also foster better working relationships with industry.

There are several proactive steps that may be taken to help prevent and alleviate some noncompliance issues. As a first step, FOs must review operator noncompliance ratings each year to identify issues or trends of noncompliance. This provides an opportunity to communicate with the operator and possibly avoid repeated violations. It is critical to have open lines of communication with operators to discuss the problems that are occurring and explain the regulatory requirements. Other proactive measures to consider include:

- Attending company safety meetings to explain regulatory requirements.
- Conducting one-on-one meetings in the field to discuss specific violations that are occurring.
- Reminding the operator prior to violation abatement dates that compliance must be obtained by the due date or assessments may occur.
- Holding operator meetings and discussing common violations occurring in the area.
- Contacting the operator to schedule a meeting to address the situation if systemic violations or problems are identified during the early stages of an inspection. This should be done before the enforcement actions issued become overwhelming to both the operator and the BLM.

Although these proactive measures may not help obtain compliance in all cases, the measures may facilitate better working relationships with companies that are trying to operate in accordance with the regulations.

B. IDENTIFICATION AND DOCUMENTATION OF VIOLATIONS AND PROBLEMS

1. Identifying a Violation

Recognizing a violation is the critical first step in ensuring compliance; although, it is not always as straightforward as it may seem. Operators must be in violation of a specific requirement outlined in the Federal regulations (usually 43 CFR 3160s), Onshore Oil and Gas Orders (Onshore Orders), Notices to Lessees (NTLs), lease terms, approved permits, Conditions of Approval (COAs), and/or Orders of the Authorized Officer (AO) before a *Notice of Incident of Noncompliance (INC)*, Form 3160-9, or an INC in letter format can be issued.

2. Identifying a Problem

Recognition of a problem as opposed to a violation can be difficult. A problem is defined as a concern or issue identified during an inspection that is not covered by a specific regulatory requirement. In these instances, the issuance of an INC is not appropriate. Examples of these types of instances include such items as environmental protection, public health and safety issues (other than those specific requirements addressed in Onshore Order No. 6), or workmanlike conduct. Although these areas are discussed in the regulations, specific standards are not provided for operations. The AO must notify the operator in writing using either the *Notice of Written Order* (Form 3160-18) or letter format.

Written Orders of the AO are used to specify or clarify requirements that may or may not be covered or addressed in detail by regulations, Onshore Orders, NTLs, lease terms, approved permits, COAs, or to supplement an existing approval and must be in writing. The Written Order must 1) specify any requirement(s) or corrective action(s) necessary to address the problem(s), 2) provide a reasonable timeframe to comply, and 3) include appeal rights. If at the end of the timeframe the requirement is not met, enforcement actions pursuant to §3163.1 must be taken. A table and flow charts, summarizing enforcement steps, are included in Appendix 3 “Summary of Enforcement Actions” for easy reference.

3. Documentation of the Violation or Problem

Sufficient documentation is the mainstay of successful enforcement. Clear evidence of a violation/problem supports the issuance of an INC/Written Order and will be vital evidence if the action is submitted to the State Director for review and appealed to the Interior Board of Land Appeals (IBLA) or to U. S. Federal Court.

There are three principal ways to document a violation or problem:

a. Written documentation

Written documentation provides a record of the facts of what, when, where, why, and the conditions pertaining to the violation/problem. This documentation must be maintained in an official hard copy file and forms the legal historical record for the inspection program. This hard copy file contains detailed information regarding the violation/problem and authority requirement(s). Meetings and telephone calls (date, time, name of the individual, and discussion points) related to the violation/problem must also be documented. Documentation of verbal communications is critical to an official hard copy file and supports enforcement actions if appealed.

All actions, including INCs, Written Orders, and Verbal Warnings must also be recorded in AFMSS (See *NIAFMSS V3 User Guide Feb 1 2007* and *NIAFMSS Handheld User Guide)*. Recording and maintaining this data in AFMSS is critical in providing FOs with the capability to determine program direction and the ability to focus on the most critical noncompliance areas. It provides statistical information as to the overall effectiveness of the program on a State and National level. AFMSS also provides a Violation Status Report containing enforcement action information and abatement dates that assists in the prompt follow-up on actions to ensure compliance.

b. Physical evidence

Physical evidence may range from collecting water samples to gathering reports. If samples are to be analyzed by a laboratory, consult with the laboratory on how to collect and preserve the sample. Proper collection of the sample is critical to the analysis. Reports include but are not limited to logs, driller's tour sheet data, mud reports, run tickets, pit samples, calibration reports, and cement job reports.

c. Photographs:

Photographs must be taken of the violation/problem and included with the documentation. When violations cannot be depicted in photographs, written report(s) will be essential to document actions taken. Photographs are effective tools when describing violations such as missing seals, well signs, facility diagram deficiencies, oil spills, and safety hazards. They are also effective in documenting problems where an Order of the AO will be issued.

Inspection personnel must be careful to ensure photographs clearly show the specific violation or problem. In some cases, it may be necessary to take a series of photographs to properly indicate scale or relationship of the noncompliance to the site or equipment associated with the concern. For example, when

photographing a defective seal, the photograph must be close enough to clearly show the exact nature of the defective seal. Additional photographs may be needed in order to identify which valve and uniquely numbered tank had the defective seal.

All photographs must be identified, at a minimum, with the date, time, lease (case) number, operator, location, and a brief description of the violation or problem. Photographs must be attached to the official hard copy file of the Written Order or INC and filed appropriately.

4. Gravity of a Violation

All violations must be classified either major or minor. A major violation is defined in §3160.0-5 as a noncompliance that causes or threatens immediate, substantial, and adverse impacts to public health and safety, the environment, production accountability, or royalty income. If the violation does not meet these criteria, it must be classified as a minor violation.

The Onshore Orders provide information to operators about the typical classification for noncompliance with a specific requirement. However, each violation must be weighed against the criteria for a major violation before that classification can be assigned. For example, Onshore Order No. 3, Site Security, states that an unsealed or inappropriately sealed sales valve is a major violation. If the fluid level in the tank is at the same level as the valve near the bottom of the tank, the violation does not meet the criteria of a major violation and must be issued as a minor violation. The Onshore Order classification designation is a guideline, and inspection personnel must use judgment in determining if the violation meets the definition of a major violation.

A minor violation may change to a major violation when conditions meet the definition of a major violation. In these situations, a new INC must be issued as a major violation and a new abatement period. The INC for the minor violation is closed by showing a correction date that corresponds to the date the major violation is open.

For example, a minor violation is identified when an emergency pit is being used inappropriately but the conditions do not warrant a major violation. If, during the abatement period or if noncompliance continues and the emergency pit is in danger of breaching into a live waterway, it would then be classified as a major violation.

5. Immediate Assessments for Noncompliance - §3163.1(b)

Certain instances of noncompliance are so serious that they warrant the issuance of immediate assessments. The following violations will result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

a. Failure to install a blowout preventer or other equivalent well control equipment as required by the approved drilling plan, $500/day for each day the violation existed, including days prior to discovery, not to exceed $5,000.

b. Drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, $500/day for each day the violation existed, including days prior to discovery, not to exceed $5,000. Violations for causing surface disturbance on Fee (Private) or State surface (split estate) do not incur this assessment.

c. Failure to obtain approval of a plan for well abandonment prior to commencement of such operations, $500 (one-time payment, 43 CFR 3163.1(b)(3)).

d. Removal of a Federal seal without approval of the AO, $250 (one-time payment per Federal seal removed, Onshore Order No. 3, Section IV).

C. NOTICE OF VIOLATION - §§3163.1, 3163.2, AND 3165.3(a)

CAUTION: Do not reference these instructions when citing a violation, assessment, or penalty. Always reference the appropriate approval document, Onshore Order, NTL, COA, or regulation.

When a violation is discovered, §§3165.3(a) and 3163.1(a) require the AO to notify the appropriate party in writing and provide a reasonable abatement period to correct the violation. The *Notice of Incidents of Noncompliance*, Form 3160-9, or letter format must be used and signed by the appropriate AO. The notice must be delivered by hand or by certified mail, return receipt requested, and include the appeal language. Refer to section VII *Instructions for Use of Letter Format for INCs and Orders* for detailed information regarding the letter format.

Note: Through the certification process (BLM Handbook H-3160-6, *National Certification Handbook for Inspection and Enforcement Personnel*), certified inspectors are authorized to sign the INC form. If the State or an FO delegation of authority allows, a certified inspector may sign the INC letter. Anyone other than a certified inspector must successfully complete the official (BLM NTC) compliance training specifically designed and presented for this purpose and must be deemed authorized to sign an INC or Written Order form.

1. When certified mail is used

   When certified mail is used, delivery is deemed to occur when the notice is received or 7 business days after the date it is mailed, whichever is earlier.

2. When the notice is delivered by hand

When the notice is delivered by hand, the BLM copy of the notice must be signed by the recipient. If the recipient refuses to sign the notice, record the time, date, and the name of the person who accepted the notice. The abatement period begins when the notice is delivered.

3. For major violations

For major violations §3165.3(a) requires "that a good faith effort must be made to contact such designated representative by telephone and must be followed by a written notice. Receipt of the notice is deemed to occur at the time of such verbal communication, and the time of notice and the name of the receiving party must be confirmed in the official hard copy file. If the good faith effort to contact the designated representative is unsuccessful, notice of the major violation may be given to any person conducting or supervising operations subject to the regulations in this part." The time of notice and the name of the receiving party must be documented in the remarks section of the notice.

To ensure that a "good faith effort" is made to contact an operator representative, verbal communication must take place. Leaving a telephone message may be acceptable if several attempts have been made. Attempts to contact the operator must be documented in the official hard copy file, including the date, time, and telephone number that were used.

Abatement periods typically will be very short, days or even hours in some cases, due to the serious nature of a major violation. Even with shorter abatement periods for major violations, the time to correct the violation must be considered reasonable so that the operator can correct the violation.

4. Minor violations

Minor violations per §3165.3(a) require written notice. This written notice can be served by personal service, by an authorized officer or certified mail. If the notice is served by personal service, the time of notice and the name of the receiving party must be documented in the remarks section of the BLM copy of the notice.

5. Verbal Warnings

Verbal Warnings may be used when the operator's efforts demonstrate good faith, the violation is minor, obviously inadvertent, and non-reoccurring. If the FO determines that a pattern of noncompliance or repeated violations are occurring, Verbal Warnings cannot be used. Furthermore, if the operator fails or refuses to comply with a Verbal Warning, the written notification procedures must be used prior to further enforcement action such as assessments or penalties. **All Verbal Warnings must be documented in AFMSS.**

D. NOTICE OF WRITTEN ORDER OF THE AUTHORIZED OFFICER, §3161.2

CAUTION: Do not reference these instructions when citing an order. Always reference the appropriate approval document, that is, Onshore Order, NTL, COA, or regulation.

When a problem is discovered, §3165.3(a) requires the AO to notify the appropriate party in writing and provide a reasonable abatement period to correct the problem. The *Notice of Written Order*, (Form 3160-18) or letter format must be used and signed by the appropriate AO. The notice must be delivered by hand or by certified mail, return receipt requested, and include the appeal language.

Note: Through the certification process (BLM Handbook H-3160-6, *National Certification Handbook for Inspection and Enforcement Personnel*), certified inspectors are authorized to sign the INC form. If the State or an FO delegation of authority allows, a certified inspector may sign the INC letter. Anyone other than a certified inspector must successfully complete the official (BLM NTC) compliance training specifically designed and presented for this purpose and must be deemed authorized to sign an INC or Written Order form.

1. When certified mail is used

   When certified mail is used, delivery is deemed to occur when the notice is received or 7 business days after the date it is mailed, whichever is earlier.

2. When the notice is delivered by hand

   When the notice is delivered by hand, the BLM copy of the notice must be signed by the recipient. If the recipient refuses to sign the notice, record the time, date, and the name of the person who accepted the notice. The abatement period for a hand-delivered notice begins when it is delivered.

3. All Written Orders must be documented in AFMSS

   When the letter format is used, the notice must be recorded in AFMSS for tracking purposes. The order may include multiple wells and/or facilities, but the requirements for each Case/Operator must be documented separately in AFMSS. The notice must include the case number (lease or agreement), well and/or facility identification, the nature of the problem, abatement period, and the "Failure to Comply" and "Appeal" language. Refer to section VII **Instructions for Use of Letter Format for INCs and Orders** for information regarding the letter format.

4. The regulations at §3161.2 discuss the use of Oral Orders

   Keep in mind that Oral Orders of the AO must be confirmed in writing within 10

business days. It should be noted that Oral Orders are not the same as Verbal Warnings.

Orders of the AO are not INCs and therefore do not affect an operator's compliance rating. An operator's compliance rating is determined by the number of FOGRMA related violations issued during a fiscal year. The rating is used during the development of the I&E Strategy Matrix for inspection prioritization purposes.

E. FOLLOW-UP INSPECTION

A follow-up inspection is required to ensure compliance within the abatement period. However, a follow-up field trip may not be necessary for minor violations per item 2 below:

1. Major violations

   Major violations must have a follow-up inspection immediately after the abatement period. If the operation is critical, for example if the public health and safety is at risk, inspections to check the status and condition may be necessary prior to the end of the abatement period.

2. In the case of a minor violation

   In the case of a minor violation when the operator/representative has signed and returned the INC form verifying the violation has been corrected (Self-Certification), a follow-up field trip may not be required except on a random basis. *The follow-up date is the date Self-Certification has been reviewed and the determination has been made that a field trip to ensure compliance is not necessary.*

   If the operator or responsible party fails to self-certify the minor violation's correction, a follow-up inspection is required. *Minor violations that have the potential to escalate to a major classification: if not abated promptly, the minor violations require a follow-up inspection even though correction has been self-certified.*

3. Follow-up inspections of Orders of the AO

   Follow-up inspections of Orders of the AO must be conducted in a timely manner to ensure the operator has corrected the problem(s). If the operator has failed to correct the problem(s) within the abatement period, an INC must be issued for failure to comply with an order of the AO (§3163.1(a)). Follow-up inspections for compliance are critical for the success of future enforcement actions. The AFMSS provides a Violation Status Report containing enforcement action information and abatement dates that assists in the prompt follow-up of actions to ensure compliance.

F. CORRECTED VIOLATIONS AND PROBLEMS

1. After the violation/problem is corrected

   After the violation/problem is corrected, and the correction is verified, the INC/Written Order is placed in the official hard copy file for compliance history.

2. Update the INC/Written Order record in AFMSS

   Update the INC/Written Order record in AFMSS by entering the follow-up and corrected dates and a brief summary of the follow-up in the remarks. If extension dates were granted, those also must be entered into AFMSS with an explanation for the extension(s).

G. RESCINDING INCS OR WRITTEN ORDERS

In rare instances, it may be necessary to rescind an INC. If technical or procedural errors such as typographical mistakes, incorrect legal description, incorrect regulatory citation, and so on, are identified on the original INC, the INC may be rescinded by the issuing Authorized Officer/Certified Inspector. The corrected INC must inform the operator that the original INC is being rescinded and provide the original INC number for reference, state what is being corrected, and include a revised abatement date. Written justification for rescinding the INC must be sent to the State Office I&E Program Lead/Coordinator, along with the corrected INC. For a major INC, the operator must also be immediately notified by telephone. The rescinded INC record must be deleted from AFMSS so it will not be counted toward the operator compliance history.

Any INCs issued by the Authorized Officer/Certified Inspector in accordance with applicable regulations or policy and which do not contain any discrepancies (i.e., incorrect operator, case, well, etc.) cannot be rescinded without review by the Deputy State Director.

H. ENFORCEMENT TOOLS FOR CONTINUED NONCOMPLIANCE

If the operator fails or refuses to comply with notices (INCs/Written Orders) described above, other means to gain compliance will be necessary. The list below provides the tools available to address noncompliance issues. All FOs should be aware that they may have more than one choice of enforcement tools that can be used, or in some cases multiple tools could be used. Each FO should take the time to identify the best tool(s) to gain compliance most effectively and should not assume only one approach/tool can be used for enforcement.

- Monetary assessment, §3163.1(a)(1) and (2)
- Immediate assessments, §3163.1(b)(1), (2), and (3)

- Civil penalties, §3163.2
- Shut down of operations, §3163.1(a)(3)
- Enter lease and perform, or have performed work at the sole risk and expense of operator, §3163.1(a)(4)
- Forfeiture under the bond, §3163.1(a)(5)
- Lease cancellation, §3163.1(a)(5) and 43 CFR 3163.2(j)

1. Monetary Assessments - §3163.1(a)

   a. Major Violations

      If a major violation is not corrected within the allowed time, the AO will impose an assessment of not more than $500/day for each day non-abatement continues (§3163.1(a)(1)). If more than one violation exists the assessment shall not exceed $1,000/day/operator/lease (§3163.1(c)).

      Issue a second INC informing the operator that it is being assessed $500/day for each day the violation continues, and provide another abatement period to correct the violation. The abatement period for the second INC should be based on criteria for what is a reasonable period to correct a major violation, typically a short timeframe. Before civil penalties can be proposed, the violation must remain uncorrected for at least 20 days from the date of first notice. Due to the nature of major violations, the 20-day civil penalty standard should not normally be used as an abatement period for the second notice.

      As identified in section VI.C.3 above, the second INC of a major violation also requires that a good faith effort must be made to verbally inform the operator of the violations and then are followed up in writing.

      The second INC must inform the operator that civil penalties may be initiated if the violation is not corrected in a timely manner. A copy of this notice must be sent to the lessee and/or operating rights owners if different from the operator.

      In those cases when an operator has failed to comply with the second INC on a major violation, inspection personnel are strongly encouraged to consider shutting down the operation, using the *Notice to Shut Down Operation* (Form 3160-12). Caution must be used when considering the shutdown of operations to ensure (1) shutdown is appropriate given the operational conditions, and (2) shutdown would not cause undue harm to the operations or the environmental resources.

      Note: Shutdown of operations on tribal or allotted leases must be coordinated with the appropriate tribe or agency.

      To ensure necessary compliance, the AO may also enter upon a lease and perform or have performed, at the sole risk and expense of the operator, operations that the

operator fails to perform when directed in writing (§3163.1(a)(4)). Charges shall include actual cost of work plus 25 percent to cover administrative costs.

b. Minor Violations

If a minor violation is not corrected within the time allowed, the AO may subject the operator to an assessment of $250 (§3163.1(a)(2)). If more than one violation exists the assessment shall not exceed $500/operator/lease/inspection (§3163.1(c)). In cases when the self-certification is not received from the operator, a field inspection will be necessary to verify the status of the violation.

Issue a second INC informing the operator it is being assessed $250 for failure to correct the violation. Provide another abatement period of not less than 20 days per 43 CFR 3163.2(g)(2)(ii). Even though the abatement period for the second notice cannot be less than 20 days, some violations may require longer periods to comply in order to meet the criteria for reasonableness.

When operators are unresponsive, or if violations could escalate to a major classification, shutdown of operations may be considered, using the *Notice to Shut Down Operation* (Form 3160-12). Caution must be used when considering the shutdown of operations to ensure (1) shutdown is appropriate given the operational conditions, and (2) shutdown would not cause undue harm to operations or the environmental resources.

To ensure necessary compliance, the AO may also enter upon a lease and perform or have performed, at the sole risk and expense of the operator, operations that the operator fails to perform when directed in writing (§3163.1(a)(4)). Charges must include actual cost of work plus 25 percent to cover administrative costs.

The second INC must also inform the operator that civil penalties may be issued if the violation is not corrected in a timely manner. A copy of the notice must be sent to the lessee(s) and/or operating rights owner(s) if different from the operator.

On a case-by-case basis, the State Director (SD) may compromise or reduce the assessment amount (§3163.1(e)). However, the SD must state on the record the reasons for such determination.

2. Civil Penalties, §3163.2

Note: Prior to initiating civil penalties, coordinate with the state office program lead and other subject matter experts for assistance.

Whenever an operator fails or refuses to remedy a violation, the following results:

a. If the violation is not corrected within 20 days of the first INC, or such longer time as the AO may agree to in writing, the operator shall be liable for a civil penalty of up to $500/violation for each day such violation continues from the date of the first INC. Refer to Item VI.H.3, below, to determine actual penalty calculation amounts.

b. A good faith effort to contact the operator must be made by telephone to notify the operator of potential civil penalties. The date, time, and the name of the receiving party must be confirmed in the official hard copy file.

c. Notification of proposed civil penalties will be issued in a letter format requiring the signature of the AO. Do not use an INC when issuing a civil penalty. The notification must include the appeal language and be delivered by hand or by certified mail, return receipt requested. Copies of the written notice must also be sent to all lessees and the operating rights owners.

   For the purpose of State Director Review (SDR), appeal, and hearing on the record, this letter will be the operator's only opportunity to file for review/appeal of the proposed civil penalties, §3165.3(c), 3165.4(b).

d. If the violation is not corrected within 40 days of the first INC, the operator shall be liable for a civil penalty of up to $5,000/violation for each day the violation continues, not to exceed 60 days from the date of the first INC.

e. During the civil penalty phase, continued follow-up inspections, as well as attempts to contact the operator and notify it of the ongoing status of compliance and accumulating civil penalties must be conducted and documented in detail.

   At a minimum, 5 days prior to the end of the 40-day penalty phase, a courtesy letter will be sent to the operator informing the operator of the pending increased penalty amount and urging immediate compliance. Five days prior to the end of the 60-day penalty phase, a second courtesy letter will be sent to the operator notifying the operator of pending lease cancellation proceedings and, again, urging immediate compliance. Notification must be delivered by hand or by certified mail, return receipt requested. Copies of the written notice must also be sent to all lessees and the operating rights owners. A good faith effort must be made to contact the operator by telephone at both penalty phases and must be documented in the official hard copy file.

   Note: Courtesy letters are not formal notices of decision. They are informational and must be filed in the hard copy file, but not be entered into AFMSS.

See Item 3 below for determination of penalty amounts for immediate, major, and minor violations. Any amount imposed or paid as assessment under §3163.1(a)(1) will be deducted from these penalties.

f. In accordance with 3163.2(c), "In the event the Authorized Officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculations."

For example, the notice of violation was deemed received on January 1, with an abatement date of January 20. Prior to January 20, the operator requested an extension to January 30, and it was granted by the AO. The calculation for proposed civil penalty would then begin on January 10.

3. Calculations of Civil Penalties

The amounts for civil penalties under §3163.2 shall be determined as follows:

Note: Calculation of civil penalties is based on calendar days.

a. For major violations, all initial proposed penalties shall be at the maximum rate provided.

(1) If the violation is not corrected within 20 days of the first notice, or such longer period as agreed to by the AO, the penalty shall be a $500/violation/day from the date of first notice. If more than one violation exists, the penalty shall not to exceed the rate of $1,000/day/operator/lease through the 40th day.

(2) If the violation is not corrected within 40 days of the first notice, or such longer period as agreed to by the AO, the penalty shall be $5,000/violation/day from the date of first notice. If more than one violation exists, the penalty shall not exceed a maximum of $10,000/day/operator/lease, not to exceed a maximum of 60 days from such notice or report.

(3) If the violation continues beyond the 60-day maximum, lease cancellation proceedings shall be initiated under Title 43.

b. For minor violations, no penalty under §3163.2(a) shall be assessed unless:

(1) The operator was notified of the violation in writing and did not correct it within the allotted time; or

(2) The operator was assessed $250 under §3163.1 and a second INC was issued giving an abatement period of not less than 20 days (§3163.2(g)(2)(ii)).

For minor viololations, the following will result:

(3) If the violation is not corrected within 20 days, or such longer period as agreed to by the AO, the initial proposed penalty shall be at the rate of $50/day from the date of second notice; if more than one violation exists, the penalty shall not exceed $100/day/operator/lease.

(4) If the violation is not corrected within 40 days, or such longer period as agreed to by the AO, the initial proposed penalty shall be at the rate of $500/day from the date of second notice; if more than one violation exists the penalty shall not exceed $1000/day/operator/lease.

(5) If the violation continues beyond the 60-day maximum, lease cancellation proceedings shall be initiated under Title 43.

(6) If a minor violation is changed to a major violation after the operator is notified of civil penalties, the FO must immediately notify the operator verbally and follow up in writing that the violation classification has changed and a new abatement date has been established. This notification must inform the operator the penalty amounts will increase to the major violation rate if the operator fails to comply within the new abatement period. The major penalty rate will commence on the date the operator fails to comply with the new abatement period.

If this occurs, contact the state office program lead for guidance.

(7) The major violation penalty rate will begin on the date the operator receives notification of the major classification. Civil penalties incurred during the minor violation cease as soon as the major classification and penalty amounts begin.

(8) Billing, or demand for payment, for Civil Penalties – see section VI.N for detailed information.

4. Other Civil Penalties

a. Whenever a transporter fails to permit inspection for proper documentation, the transporter shall be liable for a civil penalty of up to $500/day, not to exceed a maximum of 20 days. If the violation continues beyond the 20-day maximum timeframe, the AO shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from, or allocated to, any Federal or Indian lease site under authority of the AO.

b. Any person shall be liable for a civil penalty of up to $10,000/violation for each day, not to exceed 20 days, if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by §3162.1(b); or

(2) Knowingly or willfully fails to notify the AO by letter or Sundry Notice, not later than the fifth business day, of any well that begins production or resumes production after being off production for greater than 90 days. See §3160.0-5 for definition of new or resumed production.

c. Any person shall be liable for a civil penalty of up to $25,000 per violation for each day, not to exceed 20 days, if he/she:

(1) Knowingly or willfully prepares, maintains, or submits false reports or other data;

(2) Knowingly or willfully takes or removes, transports, uses, or diverts any oil or gas, from any Federal or Indian lease without legal authority; or

(3) Purchases, accepts, sells, transports, or conveys to another, any oil or gas, knowing or having reason to believe that the oil or gas was stolen from the Federal or Indian lease.

NOTE: The Secretary delegated authority for administering operations on oil and gas leases to the Director, Bureau of Land Management, in 235 DM 1.1K. The authority with respect to the determination and levying of civil penalties under §3163.2 was re-delegated to State Directors. See Manual Part 1203, Release 1-1586, Appendix 1, page 67. Further, the Solicitor's Office has stated that the legislative history refers specifically to reductions and adjustments by the State Directors in the course of administrative review. Therefore, on a case-by-case basis, the State Director may compromise or reduce civil penalties and shall state on the record the reasons for such determination.

Civil penalties shall be supplemental to and do not detract from or decrease other penalties or assessments for noncompliance in any other provision of law, except as provided in §3163.2(a) and (b).

5. Shutdown of operations, §3163.1(a)(3)

Note: Caution must be used when considering the shutdown of operations to ensure 1) shutdown is appropriate given the operational conditions, and 2) shutdown would not cause undue harm to the operations or the environmental resources. Shutdown of

operations on tribal or allotted leases must be coordinated with the appropriate tribe or agency.

a. Immediate shutdown action may be taken when operations are initiated and conducted without prior approval, or when continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

b. Shutdown actions for other situations, such as continued noncompliance, may be taken only after due notice has been given in writing. Caution must be taken when considering this option. In some cases, shutting down an operation could cause irreversible damage to a reservoir if the well(s) was shut in. Internal communication with the petroleum engineer, geologist, and management (for Indian leases, only upon concurrence of the appropriate Bureau of Indian Affairs [BIA] office) is the key to determine if a shutdown action should be taken.

If the inspector has not been delegated authority to issue a shutdown of operations, the inspector must notify the AO and explain the problem and the lack of authority to enforce. The AO must then determine if a written or oral shutdown of operations will be issued in accordance with §3163.1(a)(3). If an oral shutdown of operations is issued it must be confirmed in writing.

Shutdown of operations can be used in conjunction with other enforcement actions to have the greatest effect in gaining compliance. For instance, if an operator has failed to comply with a major violation, issue a second notice with a $500 per day assessment and inform the operator that if the violation is not corrected, shutdown proceedings will be initiated. This puts the operator on notice as required by §3163.1(a)(3), that if the operator fails or refuses to correct the violation, operations will be shut down. If the shutdown action is taken due to continued noncompliance, the $500 per day assessment continues until the violation is corrected.

6. Enter lease and perform, or have performed work at the sole risk and expense of operator, §3163.1(a)(4)

To ensure necessary compliance, the AO may enter a lease and perform, or have performed, at the sole risk and expense of the operator, operations that the operator fails to perform when directed in writing by the AO. Appropriate charges shall include the actual cost of performance, plus an additional 25 percent of such amount to compensate the United States for administrative costs. The operator shall be provided with a reasonable period of time either to take corrective action or provide written justification to the BLM why the lease should not be entered.

The AO must approve the decision for the BLM to perform the work or contract for the work to be completed. This would only be required in emergency situations.

7. Forfeiture under the Bond, §3163.1(a)(5) and Lease cancellation, §3163.1(a)(5) and 43 CFR 3163.2(j)

   Continued noncompliance may subject the lease to cancellation and forfeiture under the bond. The operator will be provided with a reasonable period of time either to take corrective action or to provide written justification why the lease should not be recommended for cancellation.

   If the violation continues beyond the 60-day maximum civil penalty process, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

   Both of the actions require close coordination with management and the leasing staff. Leases capable of production require a court action to terminate the lease (§3108.3).

I. STATE DIRECTOR REVIEW AND APPEALS

1. State Director Review §3165.3(b)

   Any adversely affected party who contests a notice of violation or assessment or an instruction, order, or decision of the AO may request an administrative review by the SD. Such request, including all supporting documentation, must be filed with the appropriate SD within 20 business days of the date such notice of violation, assessment, instruction, or order was considered received. Upon request and showing good cause, an extension for submitting supporting data may be granted by the SD.

   Any request for review by the SD will not result in a suspension of the requirement for compliance with the INC or proposed penalty, or stop the daily accumulation of assessments or penalties, unless the SD so determines.

2. Effect of a Hearing on the Record-§3165.3(e)(2), or Appeal to IBLA-§3165.4(d) on Compliance Requirements

   a. **43 CFR 3165.3(e)(2):** Any request for a hearing on the record before an Administrative Law Judge shall not result in a suspension of the requirement for compliance.

   b. **43 CFR 3165.4(d):** Any appeal filed pursuant to this section shall not result in a suspension of the requirement for compliance, unless a stay has been granted by IBLA.

3. Review of Proposed Penalties-§3165.3(c)

   a. No civil penalty shall be assessed until the party charged with the violation has

been given the opportunity for a hearing on the record in accordance with section 109(e) of FOGRMA. Therefore, any party adversely affected by the SD's decision on the proposed penalty may request a hearing on the record before an Administrative Law Judge or, in lieu of a hearing, may appeal directly to the IBLA as provided in §3165.4(b)(2). A request for a hearing on the record is to be filed with the SD within 30 days of receipt of the SD's decision on the notice of proposed penalty.

b. If the party adversely affected by the SD's decision waives the right for a hearing before an Administrative Law Judge and goes directly to IBLA, any further appeal to the U.S. District Court under section 109(j) of FOGRMA is precluded.

c. A request for a hearing on the record before an Administrative Law Judge, or an appeal to IBLA, will suspend the accumulation of additional daily penalties until final decision is rendered, according to §3165.3(e)(2) and 3165.4(e). The SD may, after review of a request for hearing, and within 10 days of receipt of such request, recommend the Director of BLM reinstate the accumulation of daily civil penalties until the violation is abated. The Director has 45 days from filing of the request to reinstate the accumulation of civil penalties. If not reinstated within 45 days, the suspension of penalties will continue.

4. Appeals - §3165.4

Any party who is adversely affected by the decision of a SD or an Administrative Law Judge may appeal that decision to the IBLA as provided in §3165.4.

J. INSTRUCTIONS FOR COMPLETING *NOTICE OF INCIDENTS OF NONCOMPLIANCE,* FORM 3160-9 (JANUARY 1989).

1. A separate form must be prepared for each violation.

2. Distribution of copies: Hard copy form: The hard copy form may be used in those instances where it is necessary to issue an immediate INC in the field; however, all INC information must also be entered into AFMSS. The original and a copy of the INC (Form 3160-9) are given to the operator. Instruct the operator to sign and return the original (original BLM signature) copy to the FO. A copy must be maintained in the FO. The information from the INC must be entered into AFMSS (and any other office tracking systems as appropriate). When the operator returns the original copy of the INC, ensure it has been signed and filed in the official hard copy files. The lessee(s) and operating rights owner(s) must be notified if civil penalties are initiated.

AFMSS-generated form: Complete the data entry screens as appropriate in AFMSS. Generate three copies of the INC form. Two copies are given to the operator. Instruct the operator to sign and return the original (original BLM signature) copy of the INC form and keep one for its records. Maintain a copy in the FO. When the

operator returns the original copy of the INC, ensure it has been signed and filed in the official hard copy files. See Appendices 3 and 4 for detailed instructions.

3. The following letters correspond to the fields on the Form 3160-9 found in Appendix 4. The asterisk (*) indicates corresponding AFMSS data elements for data entry (see L below).

   a. *Method of Delivery: If certified mail is used, so indicate. Enter the Certified Mail Receipt number for tracking.

      If hand delivered, so indicate. Enter the name of the person the form was hand delivered to. Ensure that a "received by" signature is obtained or record time and date delivered if the operator refused to sign.

   b. *Number: A unique number must be assigned to each notice. A suggested format would be inspector initials, fiscal year, and sequential numbers, such as JD-07-001.

   c. Page ___ of ___: Number each page of the form (Pg 1 of 3, Pg 2 of 3, Pg 3 of 3, and so on).

   d. *Identification: Enter the appropriate identification for the case, such as lease number, CA number, or unit name with PA designation.

   e. *Bureau of Land Management Office: Enter the name, address, and telephone number of the FO that has jurisdiction over the case.

   f. *Operator: Enter the operator's name.

      Address: Enter the operator's mailing address. Ensure that the appropriate mailing address is used. Some notices are sent to the office of record, while others may go to a local office for the operator.

      Attention: Enter the name of the company, agent, or representative responsible for correcting the violation, if known.

   g. *Site Name: If appropriate, enter the lease name. This may also be used to enter the Facility Identification (Facility Name). This should describe a location in terms that the operator is familiar.

   h. *Well or Facility Identification: Enter the name or number identifying the well or facility where the violation has been detected.

   i. *¼ ¼ Sec.: Enter quarter-quarter and section location of well or facility.

j. *Township: Enter the township for the location.

k. *Range: Enter the range for the location.

l. *Meridian: Enter the meridian for the location.

m. *Inspector: Enter the name of the inspector who discovered the violation.

n. *Date: Enter the date the violation is discovered.

o. *Time: Use the 24-hour clock system to enter time of day the violation is discovered.

p. *Violation: Cite the specific regulation, NTL, Oil and Gas Onshore Order, lease term, approved permits, COA, or agreement that is in violation. The authority reference shall be as specific to the nature of the violation as possible. In most cases, only one authority reference shall be used per INC.

q. *Gravity of Violation: Enter major or minor. Refer to 43 CFR 3160.0-5 for definition of major and minor violations.

r. *Corrective Action To Be Completed By: Enter date corrective action is to be completed or abatement timeframe, starting upon receipt of notice or 7 business days after notice is mailed.

s. *Date Corrected: Enter the date the violation was corrected. The operator should enter the date the violation was corrected before returning the form to the inspection office. If the date is not entered by the operator, the date the operator signed the return copy must be entered.

t. *Assessment for Noncompliance: Enter amount of monetary assessment as provided for in 43 CFR 3163.1, Remedies for acts of noncompliance.

NOTE: If an assessment is not applicable to the notice being issued, do not enter an amount in this field.

u. *Assessment Reference: If applicable, insert appropriate 43 CFR reference.

NOTE: Check the 43 CFR 3160 regulations for correct reference.

- Immediate assessments are issued under 43 CFR 3163.1(b).
- For failure to abate Major violation: 43 CFR 3163.1(a)(1).

- For failure to abate Minor violation: 43 CFR 3163.1(a)(2).

v. *Remarks: Clearly, and in detail, describe the nature of the violation, for example, "The seal is ineffective on the sales valve on Tank No. 154." The remarks must be consistent with the authority reference. Include only those remarks that are pertinent to the operator. Do not include remarks related to internal tracking.

w. Company Representative Title, Signature and Date: To be completed by the operator's representative authorized to certify completion of corrective action.

x. Company Comments: Optional, for use by the operator in commenting on violation and/or corrective action.

y. Signature of BLM Authorized Officer, Date, and Time: Inspectors delegated authority to issue notices of noncompliance or the AO must sign and enter the date and time of the signature to validate the notice of violation.

z. For Office Use Only:
*Number:

*Assessment:

*Penalty:

*Termination: This field is not used.

*Type of Inspection: Enter the appropriate Inspection Type code for the type of inspection being conducted when the violation was discovered.

K. INSTRUCTIONS FOR COMPLETING, *NOTICE TO SHUT DOWN OPERATION* FORM 3160-12 (JANUARY 1989).

1. When an immediate shutdown of operation is required under 43 CFR 3163.1(a)(3), the *Notice to Shut Down Operation*, Form 3160-12, must be used.

2. Distribution of copies: Hard copy form: The hard copy form may be used in those instances where it is necessary to issue an immediate *Notice to Shut Down Operation* in the field; however, all *Notice to Shut Down Operation* information must also be entered into AFMSS. The original and a copy of the *Notice to Shut Down Operation* (Form 3160-12) are given to the operator. Instruct the operator to sign and return the original (original BLM signature) copy to the FO. A copy must be maintained in the FO. The information from the *Notice to Shut Down Operation* must be entered into AFMSS (and any other office tracking systems as appropriate). When the operator

returns the original copy of the *Notice to Shut Down Operation*, ensure it has been signed and filed in the official hard copy files. The lessee(s) and operating rights owner(s) must be notified if civil penalties are initiated.

AFMSS-generated form: Complete the data entry screens as appropriate in AFMSS. Generate three copies of the *Notice to Shut Down Operation* form. Two copies are given to the operator. Instruct the operator to sign and return the original (original BLM signature) copy of the *Notice to Shut Down Operation* form and keep one for its records. Maintain a copy in the FO. When the operator returns the original copy of the *Notice to Shut Down Operation*, ensure it has been signed and filed in the official hard copy files. See *NIAFMSS V3 User Guide Feb 1 2007* and *NIAFMSS Handheld User Guide* for detailed instructions.

In those instances when there is a violation, a *Notice of Incidents of Noncompliance*, Form 3160-9, must also be issued to accompany the *Notice to Shut Down Operation*. While rare, there may be cases when a "Problem" is identified, an INC cannot be issued. In these situations a Written Order of the AO must accompany the *Notice to Shut Down*.

3. The following letters correspond to the fields on the Form 3160-12 (see appendix 4). The asterisk (*) indicates corresponding AFMSS data elements for data entry (see L below).

a. *Method of Delivery:

(1) If certified mail is used, so indicate. Enter the Certified Mail Receipt number for tracking.

(2) If hand delivered, so indicate. Enter the name of the person the form was hand delivered to. Ensure that a "received by" signature is obtained or record time and date delivered if the operator refused to sign.

b. *Number: A unique number must be assigned to each notice. A suggested format would be inspector initials, fiscal year, and sequential numbers, such as JD-07-001.

c. Page ___ of___: Number each page of the form used (Pg 1 of 3, Pg 2 of 3, Pg 3 of 3, and so on.).

d. *Identification: Enter the appropriate identification for the case, such as lease number, CA number, or unit name with PA designation.

e. *Bureau of Land Management Office: Enter the name, address, and telephone number of the FO that has jurisdiction over the case.

f. *Operator: Enter the operator's name.

Address: Enter the operator's mailing address. Ensure that the appropriate mailing address is used. Some notices are sent to the office of record, while others may go to a local office for the operator.

Attention: Enter the name of the company, agent, or representative responsible for correcting the violation requiring the shutdown notice.

g. *Site Name: If appropriate, enter the lease name. This may also be used to enter the Facility Identification (Facility Name). This should describe a location in terms that the operator is familiar with.

h. *Well or Facility Identification: Enter the name or number identifying the well or facility where the shutdown has been ordered.

i. *¼ ¼ Sec.: Enter quarter-quarter and section for the location.

j. *Township: Enter the township for the location.

k. *Range: Enter the range for the location.

l. *Meridian: Enter the meridian for the location.

m. *Inspector: Enter name of inspector who identified the violation requiring the shutdown notice.

n. *Date: Enter date the shutdown order is effective.

o. *Time: Enter the time of day the shutdown is ordered, using the 24-hour clock system.

p. *Corrective Action To Be Completed By: Enter date or date and hour corrective action is to be completed or abatement timeframe, starting upon receipt of notice.

q. *Report Corrective Action By: Enter the number of days, or date by which the operator must report corrective action taken to the inspection office.

r. *Date Corrected: Enter the date corrective action was completed.

s. *Remarks: The Remarks section must be used to explain why the notice to shut down is being issued. The explanation must describe in detail what operation is to be shut down. Reference *Notice of Incidents of Noncompliance* Form, 3160-9, and what needs to be corrected before operation can resume. Include only those remarks pertinent to the operation. Do not include remarks used for internal tracking.

t. Company Representative Title, Signature and Date: To be completed by the operator to certify completion of the corrective action.

u. Company Comments: This space is provided for a company representative to comment on the violation or the corrective action.

v. Signature of BLM Authorized Office, Date, and Time: The AO must sign and enter the date and time of signature.

L. AFMSS DATA ENTRY INSTRUCTIONS FOR ENFORCEMENT ACTIONS

All violation information must be entered into AFMSS. The AFMSS can generate the *Notice of Incidents of Noncompliance,* Form 3160-9, *Notice to Shut Down Operation,* Form 3160-12, and the *Notice of Written Order*, Form 3160-18. The following information describes the data entry fields required to generate a Written Order, INC or Shut Down Notice form or to document a Verbal Warning for tracking purposes. The term "INC" used throughout these instructions refers to all enforcement action types unless otherwise specified.

All Verbal Warnings must be documented in AFMSS. Indicate in the remarks that a written follow-up to a Verbal Warning was issued. Include the date, time, and name of person who received the Verbal Warning. Complete all of the applicable fields.

AFMSS Data Entry Screen: INC, Shut-Down Order, Written Order, or Verbal Warning Input (IEP.43):

This screen includes a series of TABs. Upon initial entry to this screen, the "Issued By" tab is activated. The following discusses each TAB separately.

ISSUED BY TAB

Contact Person: AFMSS allows for various "types" of addresses, such as LOC-local, GEN-general, INC-Incident of Non-Compliance, etc. Select the appropriate operator address and contact person.

BLM Office: This selection will default to the BLM Office issuing the notice. This may only be changed if the return notice should be addressed to a satellite office, rather than the main FO address.

SME Contact Person: Optional. Select the appropriate Surface Management Entity contact person for the notice.

WELLS AND FACILITIES TAB

The wells and/or facilities associated with the Case/Operator that was selected for this notice are displayed on this screen. The first column indicates the wells/facilities that have been selected/associated with the notice. To select (associate) a well or facility record, place the cursor in the "Sel" column in front of the appropriate record and double click to insert an "X" into the column. That record will then be associated with the notice. Multiple selections may be made; however, remember that for INCs, each violation must be addressed separately. Only Verbal Warnings and Written Orders can be associated with multiple records.

INC INFO TAB

INC Number: Required Field. A unique number must be assigned to each INC, Written Order, Notice to Shut Down of Operations, or Verbal Warning. For consistency unique numbers will conform as follows:

1. Fiscal Year (08 for 2008)
2. Inspectors Initials capitalized (first name and last name)
3. Sequential numbers beginning with 0001 for each FY
4. Last, a capital letter for the type of action (I=INC, S=Shut Down of Operations, V=Verbal Warnings, W=Written Order, A=Assessment, C=Civil Penalty)

NOTE: In issuing another INC for an uncorrected violation or when the severity changes from Minor to Major, close the first INC record by entering a correction date that corresponds to the issuance date of the second INC. When issuing a second INC with an assessment for an uncorrected violation, enter the same INC number as the first violation notice with an "A" designation on the end. If the violation goes to civil penalties, change the unique INC number to a "C." This will allow you to more easily track and recall all of the actual enforcement actions taken for a particular violation.

◉ Certified Mail
○ Hand Delivered: Select the appropriate option. The default option is Certified Mail.

CM RRR# /Delivered to: This corresponds to the selection above. Enter the Certified Mail receipt number, or the name of the person to whom the INC was delivered.

Inspector: Select the appropriate inspector name from the pull down picklist.

Type: Select the appropriate type of INC - operative or administrative.

INC Action Type: Select the appropriate option. Choices are: INC, Written Order, Verbal Warning, or Shut-Down Order.

INC Id Date: Enter the date the violation was identified.

INC Id Tm: Enter the time the violation was identified. (AFMSS format: 0800 for 8 a.m., 1300 for 1 p.m., etc.).

INC Eff. Date: Enter the date as 7 business days after the INC will be mailed, or the date the operator receives the notice if the notice was hand delivered.

Shut Dn Date: If appropriate, enter the date operations were shut down.

Authority Reference: Enter the appropriate CFR, Onshore Order reference, approved permit reference or COA item number. Be as specific to the nature of the violation as possible.

Act Type: Select the type of inspection or activity code that indicates the inspection that was being conducted when the violation or problem was found.

Description: This automatically populates with the description you have selected for the INC Type below.

INC Type: Select the appropriate description for the type of violation that has been identified. For example, if a well sign is missing, select the description "Location is not properly identified." To correctly identify those instances where the BLM requested that the operator submit paperwork (for example, Sundry Notices, Well Completion Reports, production record requests, and so on) use Item 51 from the listing. See Appendix 5 for information on recommended INC Type/Category designations.

Category: The category will default to the appropriate code based on the INC type selected above. Review the code to ensure it is appropriate for the type of violation.
F - FOGRMA (production related)
N - NON-FOGRMA (for example, well signs, etc.)
E - Environmental

See Appendix 5 for information on recommended INC Type/Category designations.

Gravity: Select the appropriate code:

Major (Noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income).

Minor (Noncompliance that does not rise to the level of a "major" violation).

Abatement: Enter the date the corrective action is to be completed. This date must be entered before printing and mailing the INC to inform the operator of the date the action is to be completed.

Trm Lse: If termination of the lease is considered appropriate, select the option that indicates the AO's action.

Y – Yes
N – No
BLANK – not applicable (default)

INC TEXT TAB

The entry field on this screen is where you must enter the text that will print on the forms. The text must contain language to tell the operator what the violation is and what must be done to correct the violation. For example, "No well sign on location. Install well sign with all of the required information per 43 CFR...."

NOTE: Do not enter any remarks that are not pertinent to the operator and are for internal tracking or internal information. This text will print on the form. A method for entering internal remarks is discussed below.

ASSESSMENT/PENALTY TAB

Amount Assessed: Enter the assessment amount to be paid by the operator in whole dollars, that is, $250, not $250.00.

Amount of Penalty: Enter the amount of the civil penalty in whole dollars. Do not enter administrative fees or interest that result from an assessment.

Assessment Schedule: Select the appropriate schedule for the assessment.

S – Single payment
P – Per day payment
BLANK – not applicable

Assmt Reference: Select the appropriate 43 CFR 3163 reference that applies to this assessment.

b – 43 CFR 3163.1(b)
a1 – 43 CFR 3163.1(a)(1)
a2 – 43 CFR 3163.a (a)(2)

RESOLUTION TAB

Date Corrected: When you have been notified that the violation or problem has been corrected, or a field visit has verified correction, enter the correction date.

NOTE: In issuing another INC for an uncorrected violation or when the severity changes from Minor to Major, close the first INC record by entering a correction date that corresponds to the issuance date of the second INC. When issuing a second INC with an

assessment for an uncorrected violation, enter the same INC number as the first violation notice with an "A" designation on the end. If the violation goes to civil penalties, change the unique INC number to a "C." This will allow you to more easily track and recall all of the actual enforcement actions taken for a particular violation.

Exten Date: The AO may extend the abatement date for the violation, up to three extensions. As any extensions are granted, enter the extension date(s) for the violation, if appropriate.

Follow-Up Date: Enter the date when follow-up occurred to ensure that the violation has been corrected. If a field visit was made, enter the date a follow-up inspection was conducted. If no field visit was made enter the date paperwork was reviewed in the office.

Trips: Optional. If a follow-up must be accomplished by field visit(s), enter the number of follow-up trips conducted to ensure that the violation was corrected. If an office review was used as a follow-up, leave this field blank.

SDR Filed: If a State Director Review (SDR) is requested by the operator, enter the date that the operator filed a request.

SDR No.: Enter the number assigned to the SDR.

Appeal Date: If the operator files an appeal to the IBLA, enter the date the appeal is filed.

IBLA No.: Enter the number assigned by IBLA.

Follow-Up Remarks: Enter remarks that pertain only to the follow-up for this notice. Follow-up remarks are required if a follow-up date is entered.

REMARKS BUTTON

Text that was entered under the INC Text Tab will print on the *Notice of Incidents of Noncompliance*, Form 3160-9, the *Notice to Shut Down Operations*, Form 3160-12, and the *Notice of Written Order*, Form 3160-18 as appropriate with the selection of the "INC Action Type" discussed earlier. Those remarks will be displayed on the Remarks screen with the appropriate category code. Also, any follow-up remarks entered under the Resolution Tab will also be displayed on the Remarks screen with the appropriate category. The entry of other remarks for internal purposes is optional and should only be entered **after** the form has been printed. Any remarks in the "General" category will print on the form.

If internal remarks are desired, use the Remarks button to enter the INC Remarks (IEP.43r) screen. CLICK THE "ADD NEW" BUTTON PRIOR TO ENTERING

REMARKS. Select the appropriate "Category" code – General or Follow-up. The "Remark Date" will fill with today's date. It may be changed if necessary.

Enter remarks into the large text field. Indicate that these are internal or subsequent remarks and they are not to be printed on the form. SAVE the remarks.

In the display above these fields, there are eight columns which show all remarks associated with this notice.

Identifier: Displays the Unique INC Number assigned to each record.

Date: Displays the date the remarks were entered/saved.

Author: Displays the name of the person who entered the remarks.

Subject: Displays INC, even though the remarks can be associated with a Written Order, etc.

Category: Will display either General or Follow-up.

API/Fac ID: Displays the API Number for the well or Facility ID for the facility associated with this notice. If multiple wells/facilities were selected, it will display "Various."

Well/Fac Name: Displays the Well Name or Facility Name associated with the notice. If multiple wells/facilities were selected, it will display "Various."

Number: Displays the well number for the API Number associated with the notice. If multiple wells were selected, it will display "Various."

To view remarks listed in this display, click on the desired row and the corresponding remarks will be displayed in the text field below.

Association of Remarks to Records within AFMSS

When remarks are entered, there are three options available for the association of the remarks to various documents within AFMSS.

* This INC only – all remarks entered for a specific notice will only be associated for this particular record. THIS IS THE DEFAULT SELECTION AND IS RECOMMENDED FOR THE MAJORITY OF NOTICES. The remarks for this notice will only be displayed in the Remarks screen for the notice.

All INCs for Case and Operator – This option can be used if you wish to associate the remarks for the notice to all other notices for the Case/Operator.

All INCs for Same Wells/Facilities – This option can be used if you wish to associate the remarks for the notice to all general remarks for wells/facilities selected for the current notice.

Remark Display

Three additional options are available on the Remarks screen. These options affect the display of remarks associated with the Case/Operator for the current notice.

To view the remarks associated to inspections or undesirable events, associated wells and facility records, and/or associated Sundry Notices for the Case/Operator the INC is associated with, click in the box to turn these options on. Click on the "Query" button and all remarks will be displayed. You may select one or more of these selections.

M. INC CATEGORY CODES

The following list of violation types contains the recommended category default. Users are encouraged to refer to this listing to ensure consistent application of the Category designation for compliance rating purposes.

Users will be able to edit the INC category field as necessary to meet site-specific conditions.

AFMSS automatically sets the INC Category Code to the appropriate classification listed below. However, it will be necessary to verify the code when documenting compliance actions. The INC Category Codes are:

F = FOGRMA-related
N= Non-FOGRMA
E = Environmental

N. PROCEDURES FOR COLLECTION OF ASSESSMENTS AND PENALTIES FOR NONCOMPLIANCE ON FEDERAL AND INDIAN OIL AND GAS LEASES

1. Overview/General Requirements
   If a *Bill for Collection*, Form 1371-22, is sent to the operator and the operator fails to pay the amount owed, the FO will send a demand letter to the operator. If the operator fails to make payment within the time allotted, the lease can be shut down (for Indian leases, only upon concurrence of the appropriate BIA office, tribe and allottee as appropriate), and a second demand letter will be sent. If the operator fails to make payment within the timeframe allotted in the second letter, the BLM will attach the bond for the amount owed without further notice.

If lease shutdown or bond attachment is not available or advisable (for example, the lease is already shut down, there are other higher priority demands on the bond, or the Indian lessor does not support such action, etc.), the BLM may be able to collect the outstanding debt through administrative offset or litigation against the operator. The BLM also may pursue lease cancellation as a result of continued noncompliance.

The following procedures provide detailed guidance on collecting outstanding assessments/civil penalties. This guidance modifies existing guidance found in the debt collection portion of the BLM *Collections Reference Guide*. The modification applies only to outstanding debts from noncompliance on Federal and Indian oil and gas leases. Detailed guidance for attachment of a bond is found in the Fluid Minerals Bond Processing User Guide, formally referred to as the 3104-1 *Bond Manual and Handbook*.

2. Steps for Issuing a Billing Notice for Assessments or Civil Penalties

a. When an INC or an order of the AO has been issued and an assessment and/or civil penalties have resulted, a Bill for Collection, Form 1371-22, is to be sent to the operator. A bill for an assessment can be sent with the INC notice; however, by regulation civil penalties cannot be assessed/billed until the party charged with the violation has either elected not to appeal the notice or has exhausted all appeal rights.

In order to determine whether bills originated from assessments or civil penalties on Federal or Indian leases, the preprinted alpha prefix “A” in the bill number is to be changed to an “I” for Indian Leases.

The bill must include:

- Lease Number;
- INC Number;
- Due Date (30 days from receipt);
- A statement that failure to pay will result in additional enforcement actions, including civil penalties, lease shutin and/or attachment of the bond; and
- A statement that failure to pay and subsequent attachment of the bond may also put the lease in jeopardy of cancellation (43 CFR 3104.7, 3108.3, and 3163.1(a)(5) for Federal leases and 25 CFR 211.27, 212.23, 213.40 or 225.36 for Indian leases).

b. The FO shall mail the bill to the operator by certified mail, return receipt requested, with a courtesy copy sent to the lessee(s) and the party holding the surety bond. If the lease is an Indian lease, the appropriate BIA office shall also receive a copy.

c. After the bill is sent, the operator has 30 days from receipt of the bill to make payment. If, after 30 days, the operator fails to pay the assessment/civil penalty, a demand letter must be sent (refer to items VI.N.3 and 4 for demand letter instructions). Under normal circumstances the BLM will shut in the lease before the BLM takes steps to attach the bond, initiate litigation, or begin lease cancellation. Prior to shut in, however, the AO may take into consideration such things as operator history, number and amount of outstanding assessments/civil penalties, BIA concurrence if applicable, lease production, and existing bond coverage in deciding the appropriate action to take.

Examples of when shutdown action should not be initiated include cases where the lease is already shut down for other infractions or is in a temporarily abandoned status, the BIA does not support the shutdown of an Indian lease, shutdown would result in damage to the well or loss of resources, or the lease is in bankruptcy and the trustee does not allow shutdown. If the lease situation does not meet these examples, then the FO should proceed with shutdown procedures.

Since continued operator noncompliance will result in additional enforcement actions ranging from lease shutdown to lease cancellation, it is important that the lessee of record is made aware of pending enforcement activities. As such, the lessee(s) shall receive copies of the bill and all subsequent correspondence to the operator.

3. First Demand Letter

a. The first demand letter is to be sent to the operator by certified mail, return receipt requested, with a copy sent to the lessee and the party holding the bond. The letter shall include information that the payment is due 15 days from receipt and a statement that failure to pay the assessment/civil penalty, plus handling charges and accrued interest, will result in lease shutdown. The demand letter must also provide information on appeal rights under 43 CFR 3165.3(b).

In the case where lease operations are already shutdown due to nonabatement, the FO is to start with the second demand letter.

b. If an Indian lease is involved, the BLM must consult with the BIA prior to sending out the letter to determine if lease shutdown is an acceptable option to the tribe or allottee. If it is acceptable, the operator is to be reminded that the lease may be terminated if production ceases as provided for in the lease terms.

c. For Federal leases, a copy of the first demand letter must be sent to the appropriate fluid mineral adjudication personnel in the state office to place in the lease case file and to the surety company or party holding the personal bond at the time the bond demand is made. If Indian leases are involved, the appropriate BIA office must receive a copy.

d. The operator has 15 days from receipt of the first demand letter to make the payment. If the operator has not made payment after 15 days, the BLM may shutdown lease operations using BLM Form 3160-12, *Notice to Shut Down Operations*. The operator then has 30 days from receipt of the *Notice to Shut Down Operations* to make payment. If payment is not received, the BLM will send a second demand letter. Failure to comply with the second demand letter will also result in assessments or civil penalties.

4. Second Demand Letter

a. If lease operations have been shutdown and the operator has not responded within the specified timeframe (30 days), a second demand letter shall be sent to the operator by certified mail, return receipt requested, with a copy sent to the lessee and the party holding the bond. The second demand letter shall state that the operator has 15 days from the date of receipt to make the payment and that it is the final notice before the BLM/BIA takes action to attach the bond under which operations are being conducted.

The letter shall include a statement that failure to pay will result in:

(1) A request for payment by the surety or collection from other collateral posted as bond (after elapse of 15 days from date of receipt), and

(2) If the amount owed is not fully covered by the bond, any amount outstanding after the attachment of the bond shall be reported as income to the Internal Revenue Service on Form 1099-G, *Certain Government Payments*.

b. For Federal leases, a copy of the second demand letter must be sent to the appropriate fluid mineral adjudication personnel in the state office to be placed in the lease case file. Adjudication is required to send a copy of the letter to the surety company or party holding the personal bond at the time the bond demand is made. When the adjudication staff makes the decision to attach the bond, copies must be directed to the lessee, operator, surety company, and principal or the party holding a personal bond. If Indian leases are involved, the appropriate BIA office takes the necessary action to attach the bond.

5. Attachment of Bond

If the operator fails to pay the assessment and accrued interest within 15 days after receipt of the second demand letter, the following steps are to be taken:

a. For Federal leases, the BLM FO requesting bond attachment must send a memorandum to the appropriate state office fluid minerals adjudication personnel to initiate attachment of the bond for the outstanding amount. The bond to be

attached is the bond under which the operations are conducted whether it is the operator's or lessee's bond. The standard procedures found in the BLM *Interim Guidance Handbook,* H-3104-1, Bonds, are to be followed. Notification to other agencies, such as the Minerals Management Service (MMS), that the BLM will be attaching the bond must be made. For Indian leases, the BLM FO shall send a letter to the appropriate BIA office with a request that the bond be attached.

b. After the bond has been attached, the principal/obligor has 6 months, or less at the discretion of the AO, to restore the bond to the face amount, post a new bond, or to establish alternate bonding coverage for the operator (see 43 CFR 3104/7(b)). The AO may require an increase in the amount of bond whenever it is determined that the operator poses a risk, as provided in 43 CFR 3104.5(b) or in 25 CFR 211.6(c), 212.10, 213.15(c) or 225.30(e). If the bond is not re-established as required, lease operations shall remain shutdown and the lease may be subject to cancellation under the provisions of 43 CFR 3108.3 for Federal leases, and 25 CFR 211.27, 212.23, 213.40 or 227.28 for Indian leases.

6. Surety Fails to Pay

In accordance with the *Interim Guidance Handbook,* H-3104-1, Bonds, failure of a surety company to submit payment will result in a BLM recommendation to the Department of the Treasury for removal of the surety from the list of certified, acceptable sureties. See section 10 below for referring the case to the Department of Justice for litigation.

7. Bankrupt Entities

Bankruptcy proceedings do not stop the BLM's regulatory responsibilities. If violations are discovered and they are not abated timely, assessments and civil penalties shall be imposed. Close coordination with the regional or field solicitor's office is required for liabilities involving bankrupt parties. The bankruptcy court must be notified by the state office minerals adjudication personnel through the regional or field solicitor's office that the bond is being attached. If a bankrupt operator has incurred assessments and/or civil penalties and has failed to pay, the bond covering the operations is to be attached with an information copy provided to the regional or field solicitor's office.

8. Credit Bureau Reporting

If there is still a portion of the debt outstanding after the bond is attached or if for some reason the bond is not attached, the FO must send written notification to the National Operations Center (NOC), Division of Business Services, requesting that the details of the debt be reported to the appropriate credit bureaus.

9. Administrative Offset

The use of an administrative offset procedure allows agencies to collect debts from monies that otherwise would be refunded to the debtor for overpayment to other Federal agencies such as the MMS or the Internal Revenue Service. Although this procedure is not widely used at this time, opportunities for administrative offset should be pursued where available. Contact the NOC, Division of Business Services, concerning administrative offset.

10. Litigation

In instances where there is no appeal pending, the statute of limitations has not been exceeded, and the amount due and the right to collect the debt are clear, the Department of Justice (DOJ) has established a system of direct referral making it unnecessary to send a request to the regional or field solicitor's office to initiate litigation. Using this process, debts over $600 can be referred to the DOJ's National Center Intake Facility (NCIF) for litigation. The DOJ will consider litigation for amounts under $600 if it is important to the enforcement of some agency program (see Page 2 of 7, Claims Collection Litigation Report (CCLR) Instructions). Although debts can now be referred directly to the DOJ, the regional or field solicitor's office is to be advised that such action is being taken.

a. The DOJ *Litigation Referral Process Handbook* should be reviewed carefully. When referring a debt to the DOJ, it is important that the 7-page CCLR, exhibit 3 in the handbook, be filled out as completely as possible. Instructions for completing it are on the back of the form. Items 1, 3, and 4 of the form are particularly important to facilitate timely distribution of the claim and to ensure that all correspondence from the NCIF and U.S. Attorney is sent to the appropriate BLM office.

(1) Item 1 is the agency claim number: enter the document identification number from the *Bill for Collection* (Form 1371-22).

(2) Item 2 is an address block: enter the address of the U.S. Attorney's Office.

(3) Item 3 is a return address block: enter the address of the BLM office initiating the claim.

b. The CCLR package must also contain certain other information (see page 5 of the CCLR), including a credit report. The NOC, Division of Business Services is to be contacted to obtain credit bureau information. Fees for credit reporting must be added to the amount due. In order for credit bureaus to provide the most accurate and up-to-date information possible, the BLM must be able to supply them with a company (or individual's) name and current address. If the taxpayer identification number (TIN) or social security number (SSN) is available, it also is

to be provided. Although the BLM does not require lessees or operators to provide a TIN/SSN, this number may be available from the Debt Collection Section of the MMS, Accounts Receivable Division.

Additional sources of financial information include State Corporation Commissions and special credit bureau reports such as business profiles. Questions relating to the administrative aspects of the direct referral process or forms that are to be submitted can be directed to the NCIF at 301-585-2391.

c. At the point that the debt is referred to the DOJ, all other agency collection actions for that debt must cease. When the NCIF receives a referral, NCIF screens the referral prior to legal action. Once the referral has been screened and accepted, the NCIF sends an acknowledgment of receipt to the client agency. The package is then forwarded to either the U.S. Attorney or private counsel, on contract to the DOJ, for action. Any payments that are collected as a result of such action are deposited to a DOJ lockbox at a bank in Atlanta, Georgia. The bank processes the payments, wires the funds directly to the appropriate departmental account, and provides any necessary follow-up information to the NCIF. The NCIF is able to provide its client agencies with reports on the debts referred, the litigating office handling the debt, and information on the disposition of closed debts.

d. If there is some question as to whether litigation should be pursued through the solicitor's office or by direct referral to the DOJ, or if there is some uncertainty regarding the legal existence or legal merits of the debt, the solicitor's office or local U.S. Attorney's Office is to be consulted.

11. Uncollectible Assessments/Civil Penalties

a. When bankruptcy is not involved, or there is no bond, and all available steps have been taken, the matter is to be turned over to the regional or field solicitor's office for final determination that the debt is uncollectible.

b. If the solicitor's office makes a determination that the debt is uncollectible and recommends that the debt be written off, the case is to be turned over to the NOC, Division of Business Services, for official write-off. A *Cover Sheet for Write-Off* (Form 1370-45) must be submitted by the SD to the NOC to write off a debt. In the comments section (item number 19) a notation is to be made that the data is to be sent to the credit bureau and the amount being written off will be reported as income to the Internal Revenue Service.

c. The Division of Business Services will notify the Internal Revenue Service via Form 1099-G, *Certain Government Payments*, that the amount of uncollected debt is to be considered income for tax purposes.

12. Lease Cancellation

a. For a Federal lease, if the decision is made to initiate lease cancellation, the regulations at 43 CFR 3108.3 provide that a lease may be canceled by the Secretary only if the leasehold does not contain a well capable of producing in paying quantities, or the lease is not committed to a unit or communitization agreement that contains a well capable of production of communitized substances in paying quantities. If the lease does contain such a well or is committed to an agreement with such a well, the lease may be canceled only by judicial proceedings in Federal court. The state office fluid minerals adjudication personnel handle lease cancellation proceedings (see Handbook 3108.1).

b. For an Indian lease, the BLM shall make a recommendation to the BIA that the lease be canceled under the appropriate sections of Title 25 CFR.

13. Appeals Process

The filing of a request for an SDR will not result in the suspension of the requirement for compliance or stop the accumulation of assessments or civil penalties unless the State Director so determines.

In some instances, the timing of a SDR decision may occur on or shortly after the deadline for payment if the operator waits until the last minute to file an appeal. The FO actions from this point will be contingent upon the decision rendered by the SD. Questions from FOs may arise on whether or not to continue pursuing payment until the decision is rendered. Such questions should be directed to the state office for resolution. In most cases, FOs shall continue pursuit of payment of the assessments/civil penalties in a timely manner despite the filing of an appeal.

VII. INSTRUCTIONS FOR USE OF LETTER FORMAT FOR INCIDENT OF NONCOMPLIANCE (INC) and ORDER OF THE AUTHORIZED OFFICER (Order)

In section VI **Oil and Gas Program Enforcement Procedures,** parts C and D provide for the basic requirements of formal notification for violations or problems. The policy requires notification to be issued using either the AFMSS forms (INC or Order) or a letter format.

The use of the letter format for issuing INCs, Written Orders, or a combination of INCs and Orders presents unique challenges to those issuing the letter, the operators, and if a State Office Review is requested. In order for the letter format to be effective in gaining compliance and supportable upon review or appeal, certain standards must be followed.

The following information outlines 1) mandatory elements that must be included in the letter format and 2) recommended practices when using a letter. An example letter format can be found in Appendix 4 Forms.

A. MANDATORY ELEMENTS

All letters used to notify an operator of any problem or violation must contain the following information:

1. When using mailing services, the letter must be sent via certified mail using the return receipt request. The letter must include the certified mail number and indicate return receipt requested.

2. Operator's[2] or appropriate party's company name and address.

3. Whenever possible the salutation (e.g., Attention: John Smith) should be addressed to a specific person or the appropriate designated representative.

4. Announce the purpose of the letter in bold, capitalized, underlined, and centered text:

   a. **NOTICE OF INCIDENT OF NONCOMPLIANCE (INC),**
   b. **NOTICE OF AN ORDER OF THE AUTHORIZED OFFICER**, or
   c. both **NOTICE OF INCIDENT OF NONCOMPLIANCE (INC) and ORDER OF THE AUTHORIZED OFFICER.**

   Note: Use of the letter format without the emphasized text has been a source of dispute, argument, and problems sometimes ending in review or appeal. The objective of the emphasized text is to ensure there is no confusion on the part of those receiving

[2] Operator is defined by 43 CFR 3160.0-5, as "... any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof."

the letter as to the purpose and importance of the notice. The use of the emphasized text avoids possible miscommunication and misunderstandings on the part of the operator and supports the letter format if appealed.

5. Legal Identification Information:

   a. Lease or agreement number, well or facility name and/or number, legal location information (township, range, ¼-¼, county, state, etc.).

   b. Letters that identify multiple problems and/or violations must include the legal identification information for every separate lease, agreement, well, or facility for each problem and/or violation identified.

   c. For approved off-lease operations/facilities with problems or violations, the letter must include both the legal identification information for 1) the off-lease facility and 2) appropriate well(s), facility(s), lease(s), and/or agreement(s) that are connected to or affected by the off-lease facility problems and/or violations.

6. Date and time of the inspection in which a particular problem or violation was found. Again, when multiple problems and/or violations are listed in the letter that involve differing dates or times, each problem and/or violation or group thereof must indicate the appropriate date and/or time when discovered.

7. Each individual INC or Order identified in the letter contains the following information:

   a. A unique number;
   b. A clear and concise description of the problem or violation;
   c. Most appropriate regulatory citation or authority (CFR, Onshore Order, Notice to Lessees (NTL), Conditions of Approval (COA), etc.) for the problem or violation. Do not cite the BLM policy or guidance;
   d. The corrective action for each individual Order or INC. Do not stipulate how to correct the problem or violation, unless existing regulatory authority (lease stipulations, COAs, NTLs, Onshore Orders, etc.) provides specifications for correction;
   e. The abatement date or time for correction of each specific Order or INC;
   f. Company representative's signature and date lines for each Order or INC (this is to be used by the operator to certify when the violation or problem was corrected);
   g. Each INC listed must be assigned the appropriate gravity determination; and
   h. Each INC, when required and applicable, must assign the proper assessment amounts.

8. Each Letter must include both complete **"WARNING"** and **"REVIEW AND APPEAL RIGHTS"** paragraphs from the INC/Order form.

9. Date and signature of the appropriate AO.

Note: Check your local delegation of authority identified in the 1203 BLM manual under BLM form No. 1221-2.

In addition, 43 CFR 3165.3(a) *Notice*, requires BLM to notify "…an operating rights owner or operator, as appropriate, [on any failure] to comply with any provision of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the appropriate party and the lessee(s) to remedy any defaults or violation." This citation (3165.3(a)) also allows, under certain circumstances, notice to be given to any "…person conducting or supervising operations subject to the regulations in this part…" for major violations, and "…any contractor or field employee or designated representative…" for minor violations. When notice is provided in this manner, a copy must also be mailed to the operator.

B. ENTRY INTO AFMSS

Each uniquely numbered INC and/or Order must be individually entered into AFMSS as directed in section VI.

C. ADDITIONAL RECOMMENDED PRACTICES

Use of the letter format to issue corrective actions for problems or violations, as discussed earlier, has caused confusion and frustration for both the operator and the BLM. These situations have occurred mainly due to how a letter was constructed and/or assumptions about how the instructions will be interpreted. Many of these problems and issues arise when multiple INCs, Orders, or a combination of both are addressed in the letter; or information, like those items required above, is not included in the letter. In an effort to prevent potential problems when using the letter format for enforcement and compliance actions, the following recommendations are provided:

1. When addressing multiple problems and violations for one object on a location, itemize the individual problems and/or violations separately, as required in item A.7 above. They could be listed under one heading, preferably, rather than combining them into one Order of the Authorized Officer or INC. For example, on an older facility with very few COAs you might find:

   Disposal Pit**:**

   Order of the Authorized Officer:
   1. Clean trash from pit
   2. Clean up oil-stained dirt within pit enclosure
   3. Install flagging per Gold Book standards for wildlife protection

Incident of Noncompliance:

1. Repair fence to standards required in item 9 in the APD COAs
2. Remove all fluids from the pit per Order No.7 emergency pit approval

2. When issuing both Orders and INCs in the same letter, use separate headings, as shown above, to clarify to the operator which items are violations (requiring INCs) and which items are Orders of the Authorized Officer.

3. Use only the most applicable and specific regulatory authority that applies to the violation or problem. Normally, this would mean only one citation would be used. If multiple citations are used, the problem or violation must be reviewed to ensure there is not more than one violation or problem involved in the action.

4. Unless specifically required by some type of requirement (COA, NTL, Onshore Orders, etc.), the description of the corrective action must not instruct operators in a specific manner on how the issue must be fixed. The method an operator uses to accomplish the correction is up to the operator, as long as the problem or violation is corrected. If the BLM were to require a specific method of correction not specified by an existing requirement, and the method failed, the BLM could be held liable for damages.

5. Policy and guidance document(s) should never be cited as a requirement with which an operator must comply or a method for correction. Policy and guidance are strictly BLM internal instructions on how its responsibilities should be conducted and have no legal bearing on the oil and gas operator.

6. Be as clear and concise as possible in directions to the operator. Do not assume that an operator necessarily will know or understand what you are attempting to describe. Consider having non-oil-and-gas personnel review your letter to see if they understand what is being conveyed.

Note: In most instances the use of the letter format is limited to INCs or Orders that involve an entire AFMSS case for example: An Order to submit production records.

H-3160-5 - INSPECTION AND ENFORCEMENT DOCUMENTATION AND STRATEGY DEVELOPMENT HANDBOOK (Internal)

GLOSSARY

ACRONYMS

Acronym	Full Name
AAPD	Approved Application for Permit to Drill
AFMSS	Automated Fluid Minerals Support System
AO	Authorized Officer
APD	Application for Permit to Drill
AWP	Annual Work Plan
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOPE	Blowout Preventer Equipment
CCLR	Claims Collection Litigation Report
CFR	Code of Federal Regulations
COAs	Conditions of Approval
DOD	Department of Defense
DOJ	Department of Justice
EnvS	Environmental Scientist
FOGRMA	Federal Oil and Gas Royalty Management Act
FOs	Field Offices
FS	Forest Service
FTE	Full-Time Equivalent
FY	Fiscal Year
I&E	Inspection and Enforcement
IAFMSS	Indian Automated Fluid Minerals Support System
IBLA	Interior Board of Land Appeals
IMs	Instruction Memorandums
INC	Notice of Incident of Noncompliance
IRS	Internal Revenue Service
LACT	Lease Automatic Custody Transfer
MMS	Minerals Management Service
MOUs	Memorandums of Understanding
NCIF	National Center Intake Facility
NIA	Notice of Intent to Abandon
NIAFMSS	Non-Indian Automated Fluid Minerals Support System
NOC	National Operations Center
NOS	Notice of Staking
NRS	Natural Resource Specialist

NTC	National Training Center
NTLs	Notices to Lessees
OGOR	Oil and Gas Operations Report
OJT	On-the-Job Training
OOGO	Onshore Oil and Gas Order
PAT	Production Accountability Technician
PET	Petroleum Engineering Technician
PTA	Planning Target Allocation
RLOC	Reclaimed Location
SD	State Director
SDR	State Director Review
SO	State Office
SRS	Surface Resource Specialist
SSN	Social Security Number
TIN	Taxpayer Identification Number
UAPD	Unapproved Application for Permit to Drill
UNOS	Unapproved Notice of Staking

APPENDIX 1 INSPECTION TYPE AND ACTIVITY CODES

A. Inspection Type Codes and Definitions

1. **Production Inspection Type Codes**

   PI - Production Inspection: An inspection that, at a minimum**,** includes measurement, environmental, site security, and health and safety inspection activities as well as a records review of monthly production data.

   RV - Records Verification Review: An office-only review of production records.

   OV - Oversight Inspection: An inspection performed independently to verify results of previous inspections by local or remote inspection personnel. This may be an office review of inspection documentation or field inspection.

   TH - Alleged Theft Inspection: An inspection that is triggered by a report of alleged theft of production.

2. **Well Specific Inspection Type Codes**

   DW - Drilling Well: An inspection related to drilling operations prior to well completion up through cementing of the production casing/liner.

   ES - Environmental Inspection: An inspection of the surface environment of a well or facility location. Environmental Inspections are documented for all post-approval activities such as pad construction, drilling, production, or abandonment operations. Pre-approval onsite inspections are recorded under the *Surface Review (GLB.80)* screen in AFMSS and not under this Inspection Type.

   NU - Undesirable Event Inspection: An inspection conducted as a result of a reported undesirable event in accordance with *Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases* (NTL-3A).

   PD - Plugging Operations Inspection: An inspection of plugging operations of dry holes or depleted producers.

   WK - Workover Inspection: An inspection of operations conducted on a wellbore subsequent to cementing production casing/liner and prior to plugging operations.

B. Inspection Activity Codes and Definitions

BO - Blowout Prevention Equipment (BOPE) Inspection: (Well specific) A drilling, workover, or plugging activity to witness BOPE tests. Coded as DW/BO, PD/BO, WK/BO or OV/BO.

C - Cementing Well Inspection: A drilling or workover activity consisting of witnessing cementing activities. Coded as DW/C, WK/C, or OV/C.

CS - Casing Test Inspection: A drilling or workover activity consisting of witnessing a casing test in any type of well. This includes pressure tests (mechanical integrity tests), mud weight equivalency tests, or any tests for temporarily abandoned or injection/disposal well approvals. Coded as DW/CS, WK/CS, or OV/CS.

CV - Gas Chart/EFM Verification: Field observations used to calculate reasonableness of reported volumes on the OGOR and to verify that the recorder or electronic flow meter (EFM) is functioning properly and recording correctly; or an office review of gas meter charts or EFM configuration and/or integration reports not associated with a PR or RR activity that includes calculating the volume from the charts or integration statements and comparing the volume to the OGOR. Coded as PI/CV, RV/CV, OV/CV, or TH/CV.

DI - Detail Drilling/Workover: A detailed activity of all ongoing drilling well operations, and completion of all applicable sections of the Drilling Inspection Record (Form 3160-10), including the General and Surface Use portions of the form. Coded as DW/DI, WK/DI, or OV/DI.

DS - Drill Stem Test: An activity related to witnessing DST operations. Coded as DW/DS or OV/DS.

FA - Fires/Accident: An activity of an Undesirable Event of a fire or a reportable accident involving personnel per NTL-3A. Coded as NU/FA or OV/FA.

HS - Health and Safety Inspection: An activity required for health and safety concerns (e.g., H_2S or hazardous materials). Coded as DW/HS, ES/HS, PI/HS, PD/HS, WK/HS, or OV/HS.

IR - Surface/Environmental - Interim Reclamation: An activity for the surface/environment of the reclaimed area of a pad location. Initial inspection should take place within 6 months after the well is completed for production (per Onshore Order No. 1). Coded as ES/IR.

LV - LACT Run Ticket Verification: An activity to witness a LACT meter calibration which includes S&W grind out, gravity determination, meter readings,

and/or preparation of run tickets associated with that sale. Coded as PI/LV, TH/LV, or OV/LV.

MC - Meter Calibration: An activity to witness a meter calibration, including the evaluation of the calibration report for completeness and meter accuracy; or an office review of meter calibration report(s) that includes calculating percent of meter error (see attachment 5 for determining volume discrepancy or calculating meter error). Coded as PI/MC, RV/MC, TH/MC, or OV/MC.

MP - Meter Proving: An activity to witness a meter proving, including the evaluation of the proving report for completeness and meter accuracy; or an office review of meter proving report(s). Coded as PI/MP, RV/MP, OV/MP, or TH/MP.

NI - Nondetailed Drilling/Workover Inspection: At a minimum, an activity for and completion of the first two sections of the drilling/workover inspection record, Form 3160-10. Includes inspection of any drilling/workover operations that have not progressed to the point where the applicable section can be completed entirely. Coded as DW/NI, WK/NI, or OV/NI.

PD - Plugging of a Depleted Producer/Service Well: An activity to witness the plugging operations of a depleted producer or service well. Coded as PD/PD or OV/PD.

PN - Plugging of a Dry Hole: An activity to witness the plugging operations of a nonproductive well. Coded as PD/PN or OV/PN.

PR - Production Records Review: An office review of all production records associated with a case (including but not limited to OGORs, run tickets, gas charts, integration statements, calibration/proving reports, volumes calculations, flaring/venting approvals, etc.) **for a given reporting period**. If a volume discrepancy is detected during a PR, the specific record should be identified in the remarks section. Coded as PI/PR, TH/PR, or OV/PR.

PT - Production Test: An activity conducted on a well basis. This activity is to verify test production and ensure proper reporting of these volumes to MMS. This activity is required during or after drilling operations, but prior to the completion of the well. Coded as DW/PT.

RD - Variable Royalty Rate Determination: An activity to verify well status and determine well count; or an office-determination of well count and royalty rate based on OGOR information. Coded as PI/RD, RV/RD, TH/RD, or OV/RD.

RR - OGOR Review: An office or field review of the OGORs as part of a PI or RV. If a complete records review is conducted under a PI, as defined under the PR activity, this code is not used. Coded as PI/RR, RV/RR, TH/RR, or OV/RR.

SA - Surface/Environmental - Abandonment: An activity of the surface/environment of abandoned well site reclamation in progress or completed. Coded as ES/SA, PD/SA, or OV/SA.

SC - Surface/Environmental - Construction: A post-approval environmental activity of a well location prior to well spud. This includes well pad construction activities. Coded as ES/SC or OV/SC.

SD - Surface/Environmental - Drilling: An activity of the surface/environment of a well being drilled. Coded as DW/SD, ES/SD, or OV/SD.

SP - Surface/Environmental - Producing: An activity of the surface/environment of a producing, shut-in, temporarily abandoned, or service well and/or facility. Coded as PI/SP, ES/SP, or OV/SP.

SS - Site Security: An activity of seals, valves, meter bypasses, and site facility diagram for a production facility(s); or an office review of the site facility diagram for completeness. Coded as PI/SS, RV/SS, TH/SS, or OV/SS.

SV - Spill/Venting: An activity of an Undesirable Event involving spills or venting of gas as a result of equipment failure or other accidents. Includes blowout inspection or loss of control of a well per NTL-3A. Coded as NU/SV or OV/SV.

T - Well Test Inspection: An activity related to witnessing or reviewing records of a well test. Coded as DW/T, PI/T, RV/T, or OV/T.

TG - Tank Gauge: An activity to witness or independently perform a tank gauge for sales, including run ticket verification; or conducting an independent tank gauge to establish a production rate to determine reasonableness as compared to the OGORs. Coded as PI/TG, TH/TG, or OV/TG.

TR - Transporter and/or Manifest Inspection: An activity to review the transporter's manifest. Coded as PI/TR, TH/TR or OV/TR.

TV- Run Ticket Verification: An office review of run tickets that includes calculating the volume and comparing to the OGOR. Coded as PI/TV, RV/TV, TH/TV, or OV/TV.

WS - Well Status Check: An activity to verify the actual status of a well compared to the reported status. This activity is used when the primary purpose of the inspection is to

check a well status, which may be part of the idle/orphan well initiative. Do not record as a separate inspection activity if a status check is conducted in conjunction with other inspection activity types. Coded as PI/WS, ES/WS, TH/WS, or OV/WS.

C. Valid Inspection Type / Activity Code Cross Reference Table

Valid Inspection Type and Activity Codes		
Production Inspection	**Inspection Type Code**	**Inspection Activity Code**
Tank Gauge	PI	TG
Meter Proving	PI	MP
Meter Calibration	PI	MC
Site Security	PI	SS
Environmental	PI	SP
Gas Chart Verification	PI	CV
Run Ticket Verification	PI	TV
Production Records Review	PI	PR
LACT Run Ticket Verification	PI	LV
Health and Safety	PI	HS
Transporter and/or Manifest	PI	TR
Well Test	PI	T
Variable Royalty Rate Det.	PI	RD
OGOR Review	PI	RR
Well Status Check	PI	WS

Valid Inspection Type and Activity Codes

Drilling Inspections	**Inspection Type Code**	**Inspection Activity Code**
Detailed Drilling Inspection	DW	DI
Non-detailed Drilling Inspect.	DW	NI
BOPE Test	DW	BO
Cementing	DW	C
Casing Test	DW	CS
Drill Stem Test	DW	DS
Environmental	DW	SD
Production Test	DW	PT
Health and Safety	DW	HS

Plugging Inspections	**Inspection Type Code**	**Inspection Activity Code**
Environmental	PD	SA
Plugging - Dry Hole	PD	PN
Plugging - Depleted Producer	PD	PD
BOPE Test	PD	BO
Health and Safety	PD	HS

Valid Inspection Type and Activity Codes		
Workover Inspections	**Inspection Type Code**	**Inspection Activity Code**
Detailed Inspection	WK	DI
Non-detailed Inspection	WK	NI
BOPE Test	WK	BO
Cementing	WK	C
Casing Test	WK	CS
Environmental	WK	SP
Health and Safety	WK	HS
Environmental/Surface Inspection	**Inspection Type Code**	**Inspection Activity Code**
Drilling	ES	SD
Producing	ES	SP
Abandonment	ES	SA
Health and Safety	ES	HS
Surface Construction	ES	SC
Interim Reclamation	ES	IR
Well Status Check	ES	WS

Valid Inspection Type and Activity Codes		
Records Verification Inspection	**Inspection Type Code**	**Inspection Activity Code**
Run Ticket Verification	RV	TV
Gas Chart Verification	RV	CV
Meter Proving	RV	MP
Meter Calibration	RV	MC
Site Security	RV	SS
Variable Royalty Rate Det.	RV	RD
OGOR Review	RV	RR
Well Test	RV	T
Production Records Review	RV	PR
Undesirable Event Inspection	**Inspection Type Code**	**Inspection Activity Code**
Spill/Venting	NU	SV
Fire/Accident	NU	FA
Oversight Inspection	**Inspection Type Code**	**Inspection Activity Code**
**	OV	All Activity Codes may be used

Valid Inspection Type and Activity Codes		
Alleged Theft Inspection	**Inspection Type Code**	**Inspection Activity Code**
Tank Gauging	TH	TG
Meter Proving	TH	MP
Meter Calibration	TH	MC
Site Security	TH	SS
Environmental	TH	SP
Production Records Review	TH	PR
Run Ticket Verification	TH	TV
Gas Chart Verification	TH	CV
LACT Run Ticket Verification	TH	LV
Transporter and/or Manifest	TH	TR
Variable Royalty Rate Det.	TH	RD
Records Review	TH	RR
Well Status Check	TH	WS

APPENDIX 2 MMS APENDIX G PRODUCING INTERVAL CODES

Appendix G
Producing Interval Codes

The producing interval code, sometimes referred to as the completion code, is a three-character standard format code (**X99** where **X** = a letter and **9** = a number) assigned by BLM and OMM, when a Well Summary Report, Form MMS-125 is accepted. The numeric portion is uniquely and permanently related to a specific completion zone or producing configuration within a wellbore.

- The 3-character producing interval code is a separate identifier and is not part of the 12-digit API number. However, it does complete the well number for reporting purposes.

- The letter of the code is assigned based upon the number of tubing strings in the wellbore that are capable of production. For example, a producing interval code of **S01** indicates a single tubing string; **D01** indicates a dual completion.

NOTE

*In the case of a tubingless or other completion where production from one reservoir flows through a tubing string and that from another reservoir through the annulus, the letter of the producing interval code is **D**. In this case, this does not signify the presence of two tubing strings but indicates there are two separate production streams with the annulus acting as a tubing string.*

- The two numbers of the code relate to a specific reservoir or producing configuration and are assigned sequentially beginning with the number **01** for the first reservoir or formation completed within a wellbore, followed by consecutively increasing numbers assigned to

successive completed reservoirs or formations. For example, a producing interval code of **S01** indicates the first reservoir completed in the well; **S02** indicates the second reservoir or formation completed. If, however, additional perforations are added to an **S01** completion in the same reservoir or formation, the producing interval code remains **S01** because the completion is still producing from the same reservoir or commingled situation.

The components of the producing interval code are as follows:

- The first character indicates the number of tubing strings; for example:

Borehole	**X**
Single	**S**
Dual	**D**
Triple	**T**
Quadruple	**Q**
Quintuple	**V**
Allocated	**A** (onshore only)
Commingled	**C** (onshore only)

- The second and third characters indicate the reservoir or formation completed; for example, **01** through **99**.

A producing interval code of **X01** must be used when reporting only the wellbore, such as in the following cases:

- Reporting an active or inactive drilling well.
- Reporting a wellbore in which all completions have been abandoned but the wellbore itself has not been abandoned; that is, temporary abandonment.
- Reporting a wellbore that has been permanently abandoned.

Largely due to new technology, offshore special completions and producing situations exist that require exceptional naming and numbering guidelines. In part, these cases are addressed by reserving and using blocks of

producing interval codes for well completion identification purposes. These reserved producing interval code ranges are identified as follows:

Producing interval code	Reserved for
01–19	All "routine" producing completions not included in any of the following groups.
21–39	All completions involving the combined production of unit and nonunit hydrocarbons in a single tubing string.
41–59	All completions that "cross lease lines."
61–79	All "capacity" completions. A capacity completion is defined as a completion with two or more tubing strings producing or capable of producing from the same reservoir.
81–99	Unassigned.

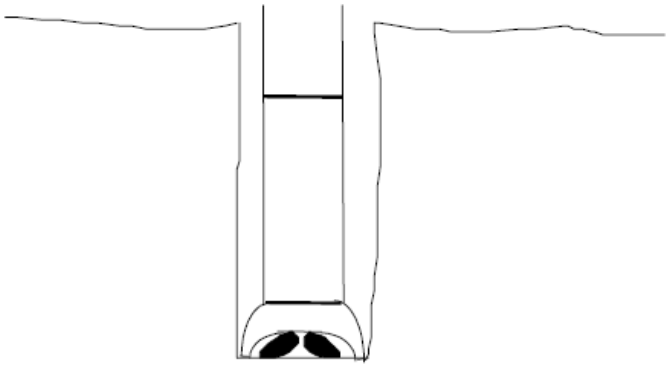
The producing interval code is required on the OGOR-A to complete the API well number and is confirmed to the designated operator through the WELL Confirmation Report. The following examples illustrate the correct producing interval codes for various completions.

G.1 Onshore Examples

EXAMPLE

Example G-1. Onshore—Basic drilling well

Completion code X01



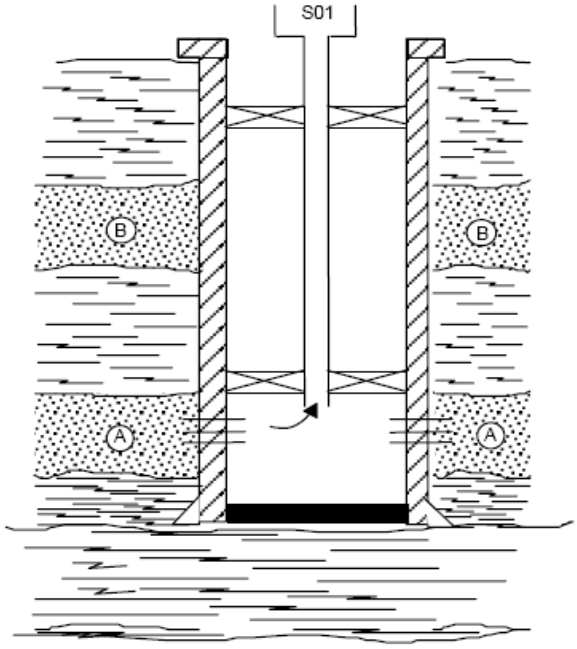
NOTE

Completion codes must be assigned by the appropriate BLM office.

EXAMPLE

Example G-2. Onshore—Basic single completion

Completion code S01



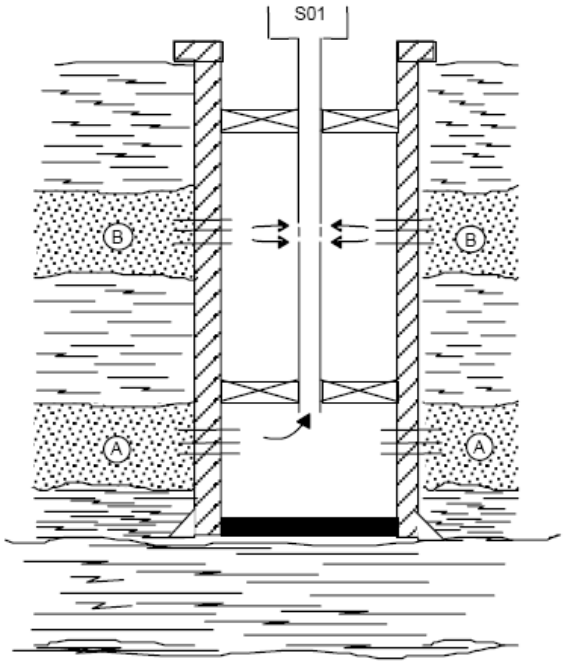
EXAMPLE

Example G-3. Onshore—Basic commingled completion

Time 1

Assume:

- One tubing string
- One completion in zones A and B
- Approval to commingle downhole



NOTE

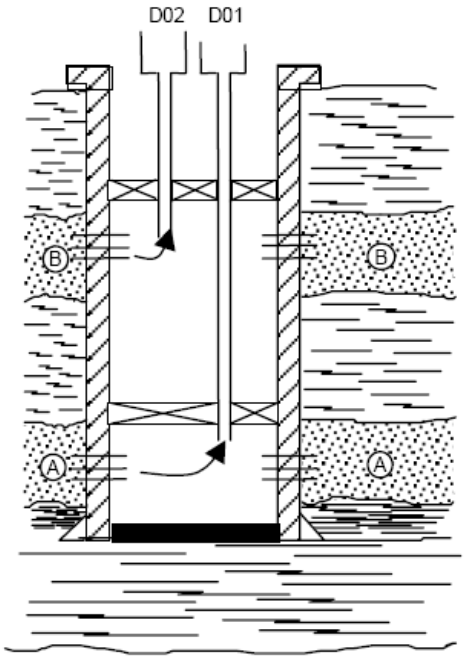
A single tubing string that has commingled production from two sets of perforations and production allocated to two PAs (allocation might be accomplished by closing off one of the sets of perforations by a mechanical device, such as a sliding sleeve, and measuring the production) is recorded in a unique way. The completion codes in this instance are S01 and S02.

EXAMPLE

Example G-4. Onshore—Basic dual completion

Zone A
Completion code D01

Zone B
Completion code D02

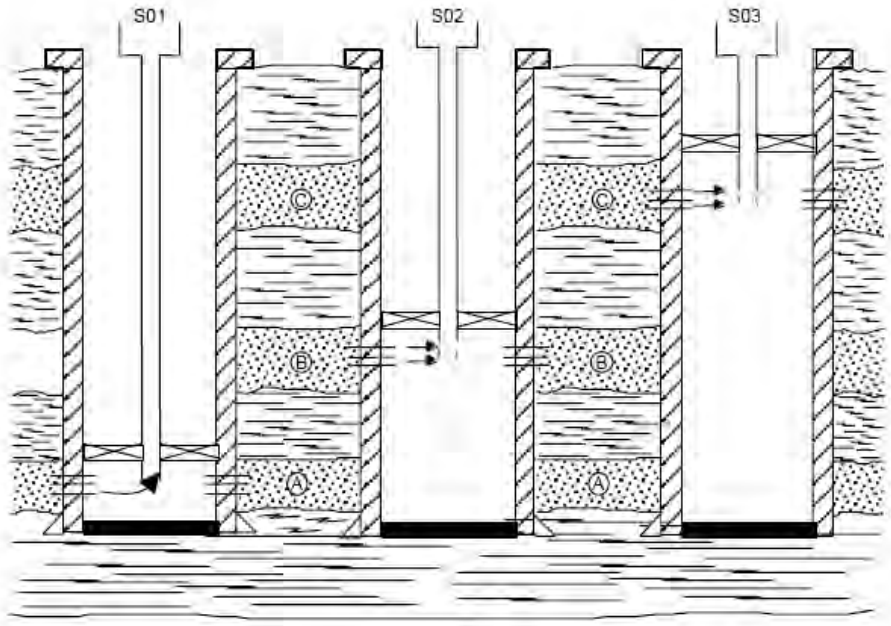


G. Producing Interval Codes

EXAMPLE

Example G-5. Onshore—Recompleting a well

Time 1	Time 2	Time 3
Assume: • One tubing string • One completion in zone A	Assume: • First completion in zone A squeezed off • Well recompleted in zone B	Assume: • Second completion in zone B squeezed off • Well recompleted in zone C
Result: Zone A Completion code S01	Result: Zone B Completion code S02	Result: Zone C Completion code S03



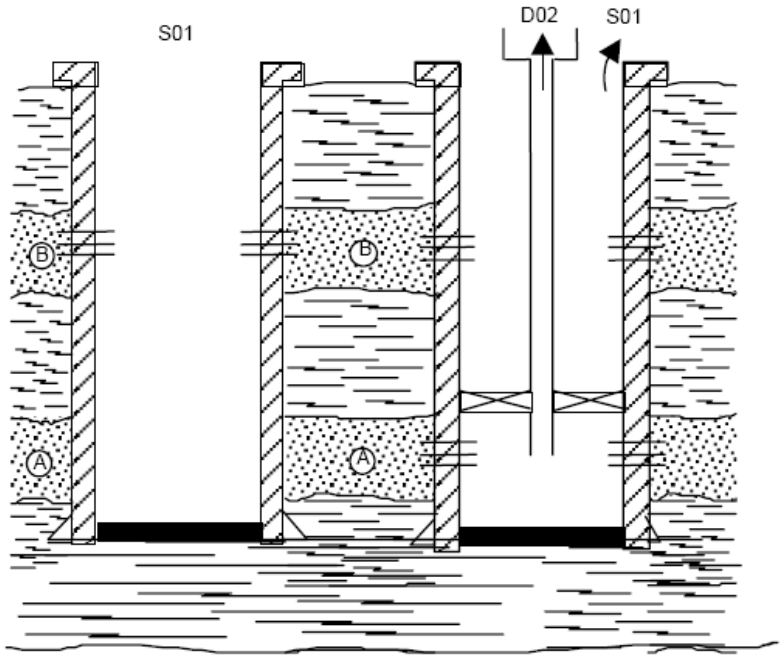
NOTE

If the S01 completion in zone A is squeezed, recompleted in zone B and squeezed, then at a later date recompleted in the same zone A and tubing string, the completion code would be S01. The S01 will be reported as ABD on the OGOR the month the S02 begins reporting, and the S02 will be reported as ABD the month the S03 begins reporting.

EXAMPLE

Example G-6. Onshore—Tubingless completion

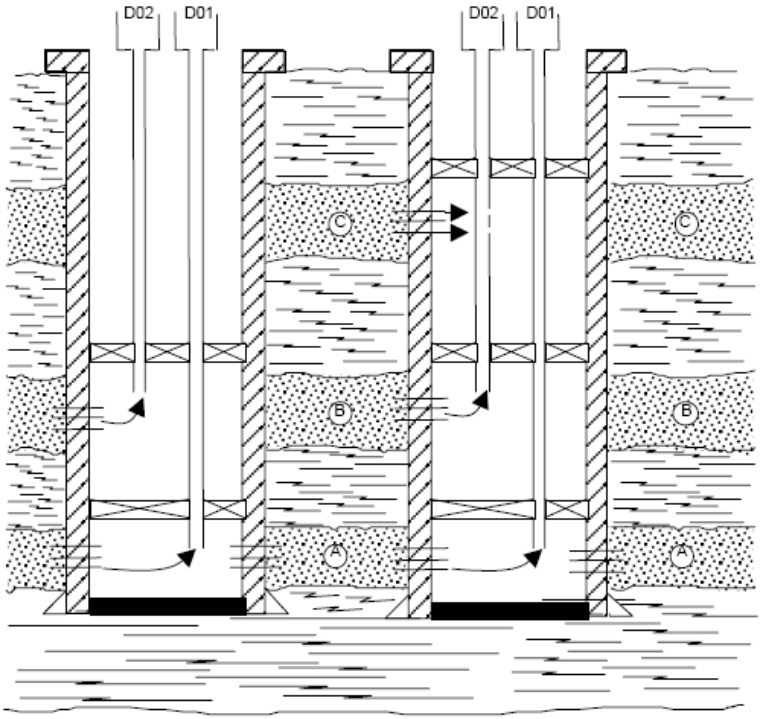
Time 1	Time 2
Assume: • One completion • Casing is used as the production string	Assume: • Well completed • One tubing string • Two completions • One interval is producing using the annulus
Result: Completion code S01	Result: Zone A Completion code D02 Zone B Completion code S01



EXAMPLE

Example G-7. Onshore—Downhole commingling

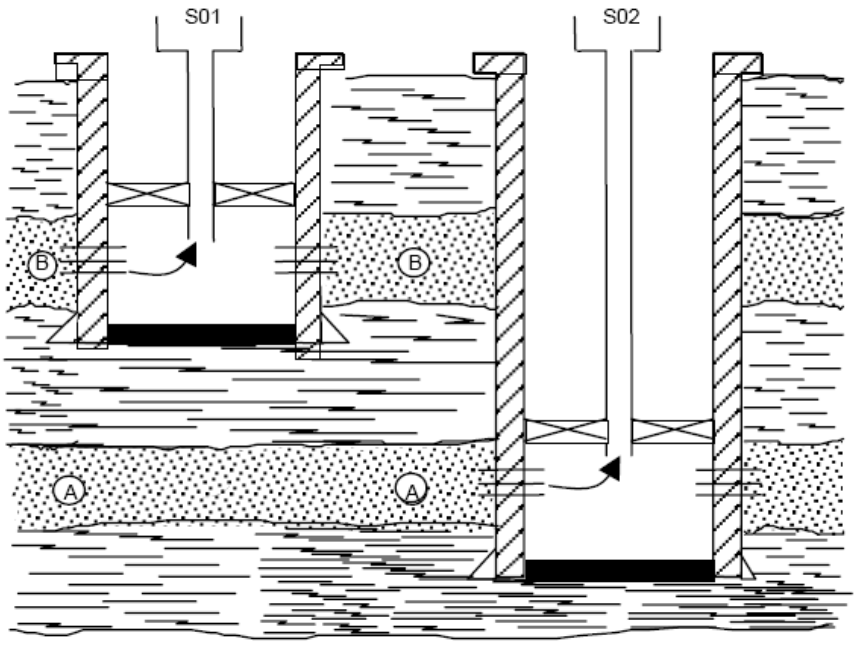
Time 1	Time 2
Assume: • Two tubing strings • Two completions	Assume: • Two tubing strings • Three completions • Production from upper tubing string is commingled downhole
Result: Zone A Completion code D01 Zone B Completion code D02	Result: Zone A Completion code D01 Zone B and C Completion code D02



EXAMPLE

Example G-8. Onshore—Well deepened

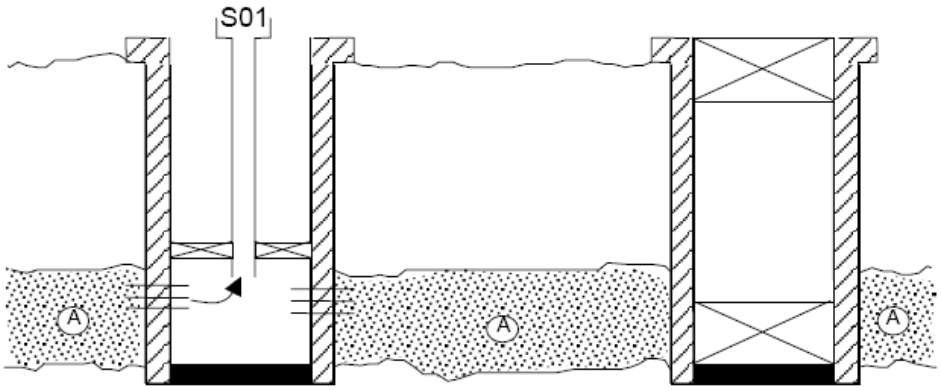
Time 1	Time 2
Assume: • One tubing string • One completion	Assume: • One tubing string • Formation B completion is squeezed off • Well is deepened and completed in formation A
Result: Zone B Completion code S01	Result: Zone A Completion code S02



EXAMPLE

Example G-9. Onshore—Abandonment

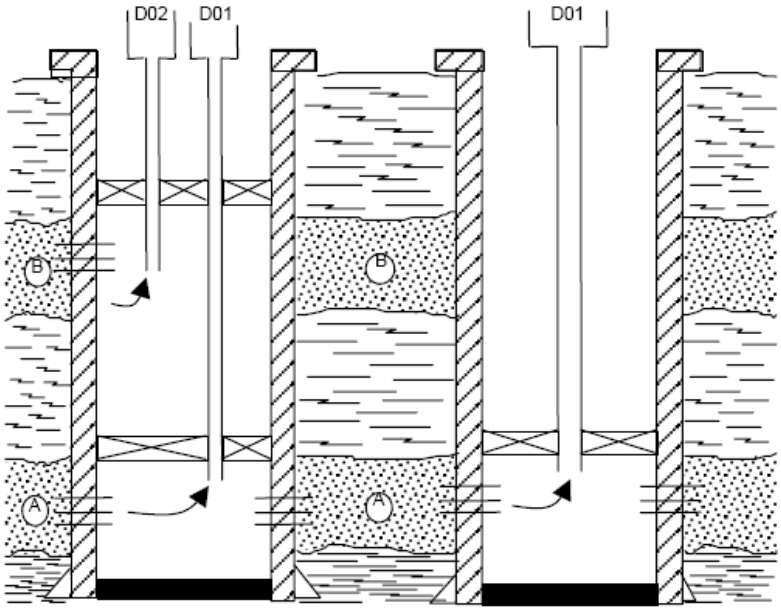
Time 1	Time 2
Assume:	Assume:
• One tubing string	• Completion is squeezed
• One completion	• Well is abandoned
Result:	Result:
Completion code S01	Zone A
Well status POW	Completion code S01
	Well status ABD



EXAMPLE

Example G-10. Onshore—Abandonment of one completion in a dually completed well

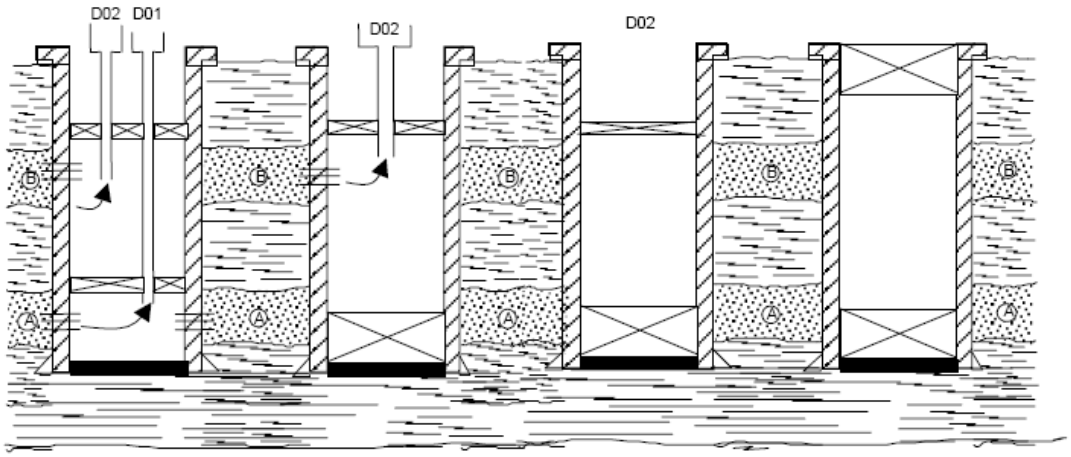
Time 1	Time 2
Assume:	Assume:
• Two tubing strings	• Zone B is abandoned
• Two completions	• One tubing string remains
Result:	Result:
Zone A	Zone A
Completion code D01	Completion code D01
Well status POW	Well status POW
Zone B	Zone B
Completion code D02	Completion code D02
Well status POW	Well status ABD



EXAMPLE

Example G-11. Onshore—Abandonment of both completions within a dually completed well

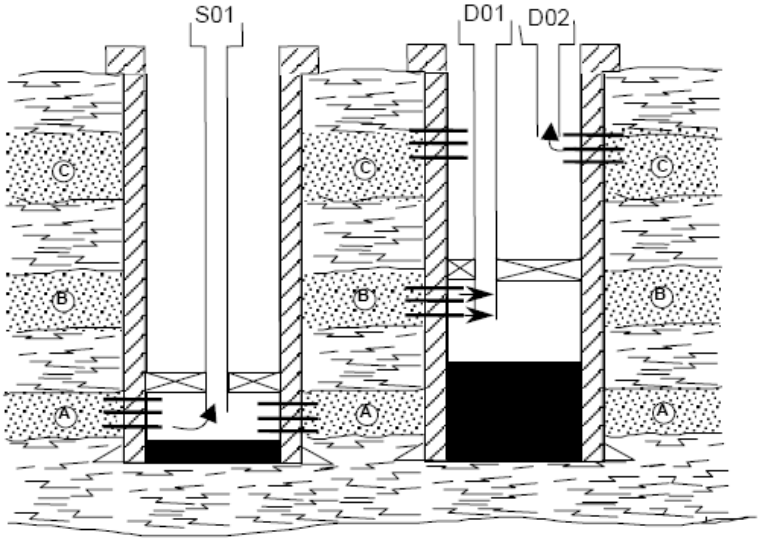
Time 1	Time 2	Time 3	Time 4
Assume: • Two tubing strings • Two completions	Assume: • The D01 completion is abandoned • The D02 completion remains producing	Assume: • Zone B is temporarily abandoned during the report month	Assume: • Zone B is abandoned the next report period
Result: Zone A Completion code D01 Well status POW Zone B Completion code D02 Well status POW	Result: Zone A Completion code D01 Well status ABD Zone B Completion code D02 Well status POW	Result: Zone B Completion code D02 Well status TA	Result: Zone B Completion code D02 Well status ABD



EXAMPLE

Example G-12. Onshore—Recompleting a well and adding a tubing string

Time 1	Time 2
Assume: • One tubing string • One completion in zone A	Assume: • First completion in zone A squeezed off • Well recompleted in zone B and zone C with a tubing string added
Result: Zone A Completion code S01	Result: Zone B Completion code D01 Zone C Completion code D02



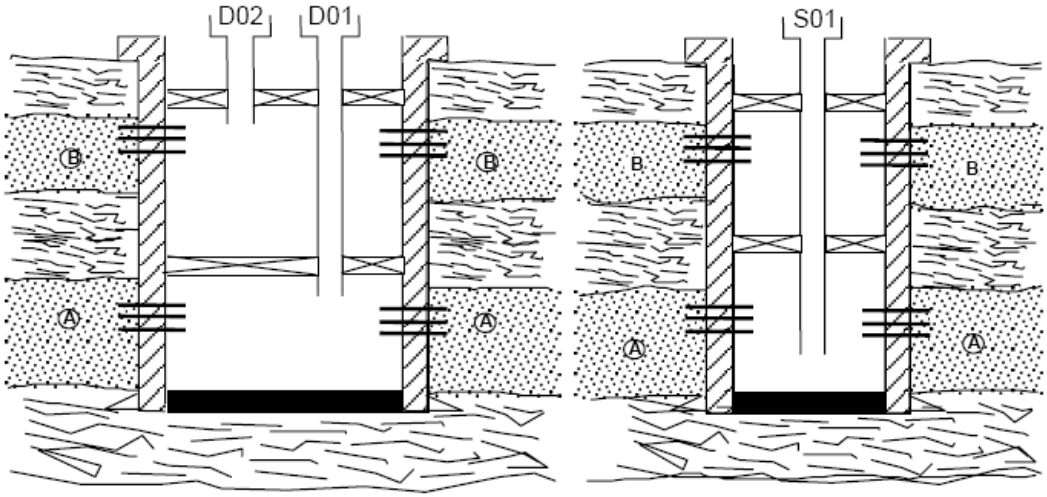
NOTE

The S01 will change to the D01 on the OGOR the month the D02 begins reporting.

EXAMPLE

Example G-13. Onshore—Dual completion commingled downhole and one tubing string removed

Time 1	Time 2
Assume: • Two tubing strings • Two completions in zone A and B	Assume: • Commingling (approved) D01 and D02 and remove one tubing string
Result: Zone A Completion code D01 Zone B Completion code D02	Result: Completion code S01



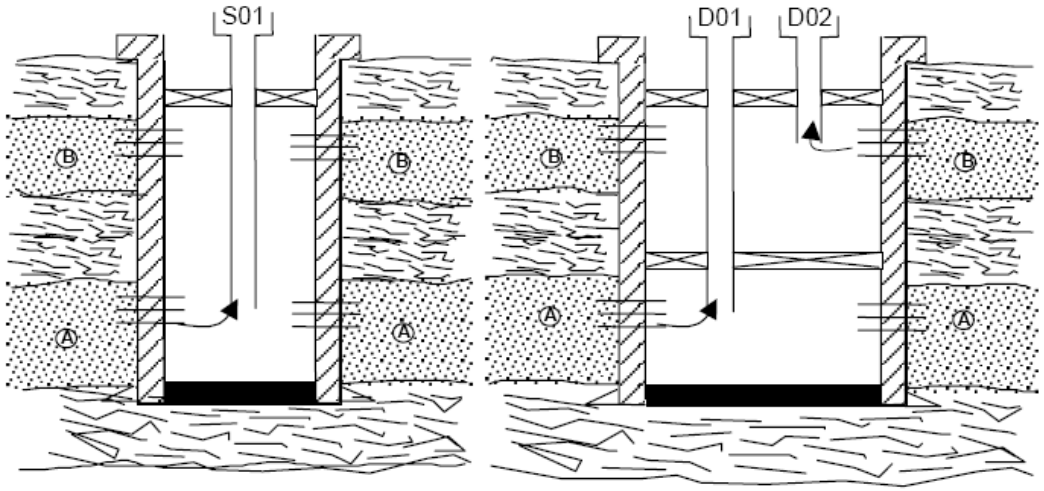
NOTE

The D01 will change to the S01 on the OGOR, and the D02 will be reported as ABD the month the S01 begins reporting the commingled production on the OGOR.

EXAMPLE

Example G-14. Onshore—Recompleting a commingled well and adding a tubing string

Time 1	Time 2
Assume: • One tubing string • One completion in zones A and B • Approval to commingle downhole	Assume: • Two tubing strings • Two completions in zone A and B
Result: Completion code S01	Result: Zone A Completion code D01 Zone B Completion code D02



NOTE

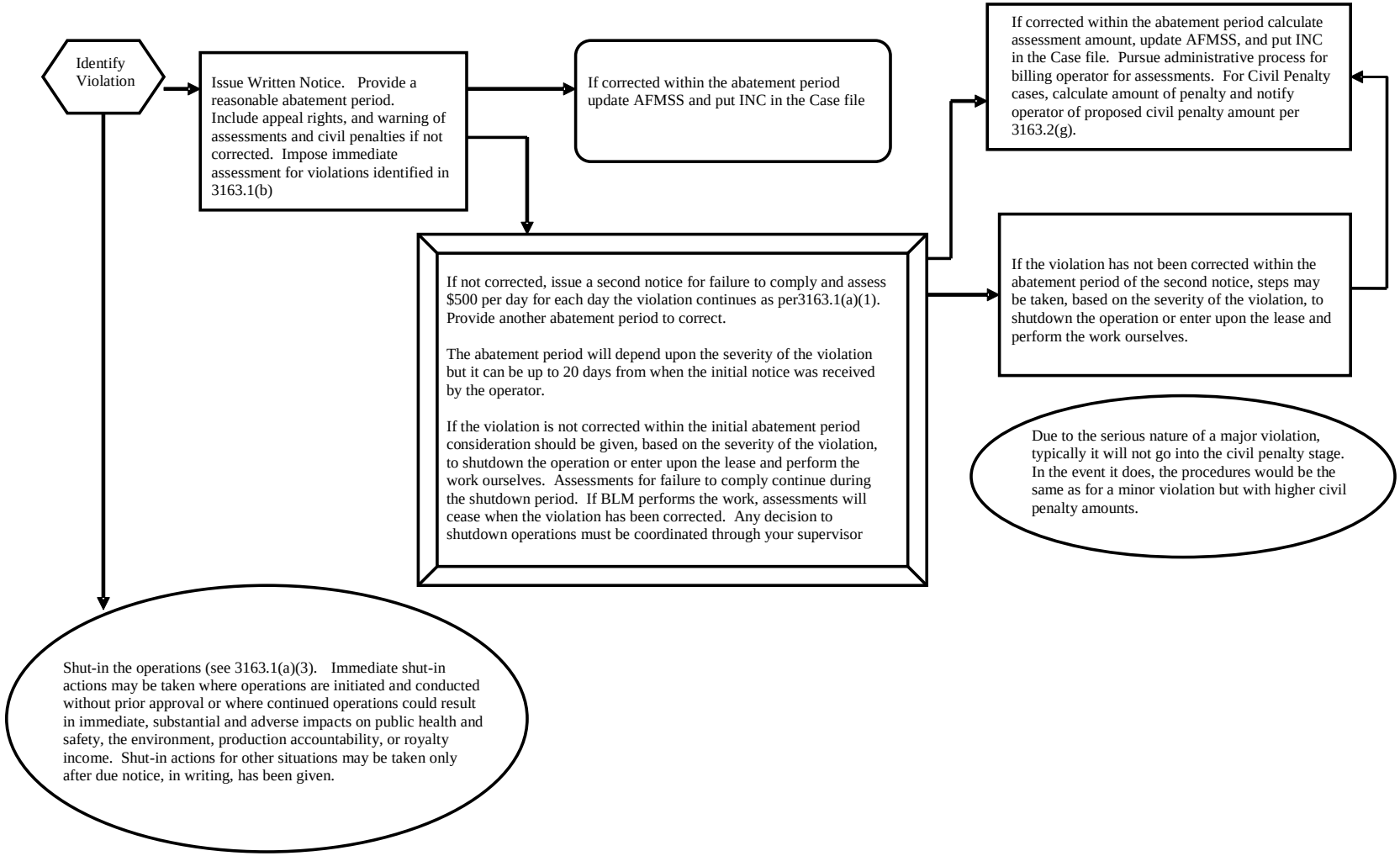
The S01 will change to the D01 on the OGOR the month the D02 begins reporting.

APPENDIX 3 SUMMARY OF ENFORCEMENT ACTIONS

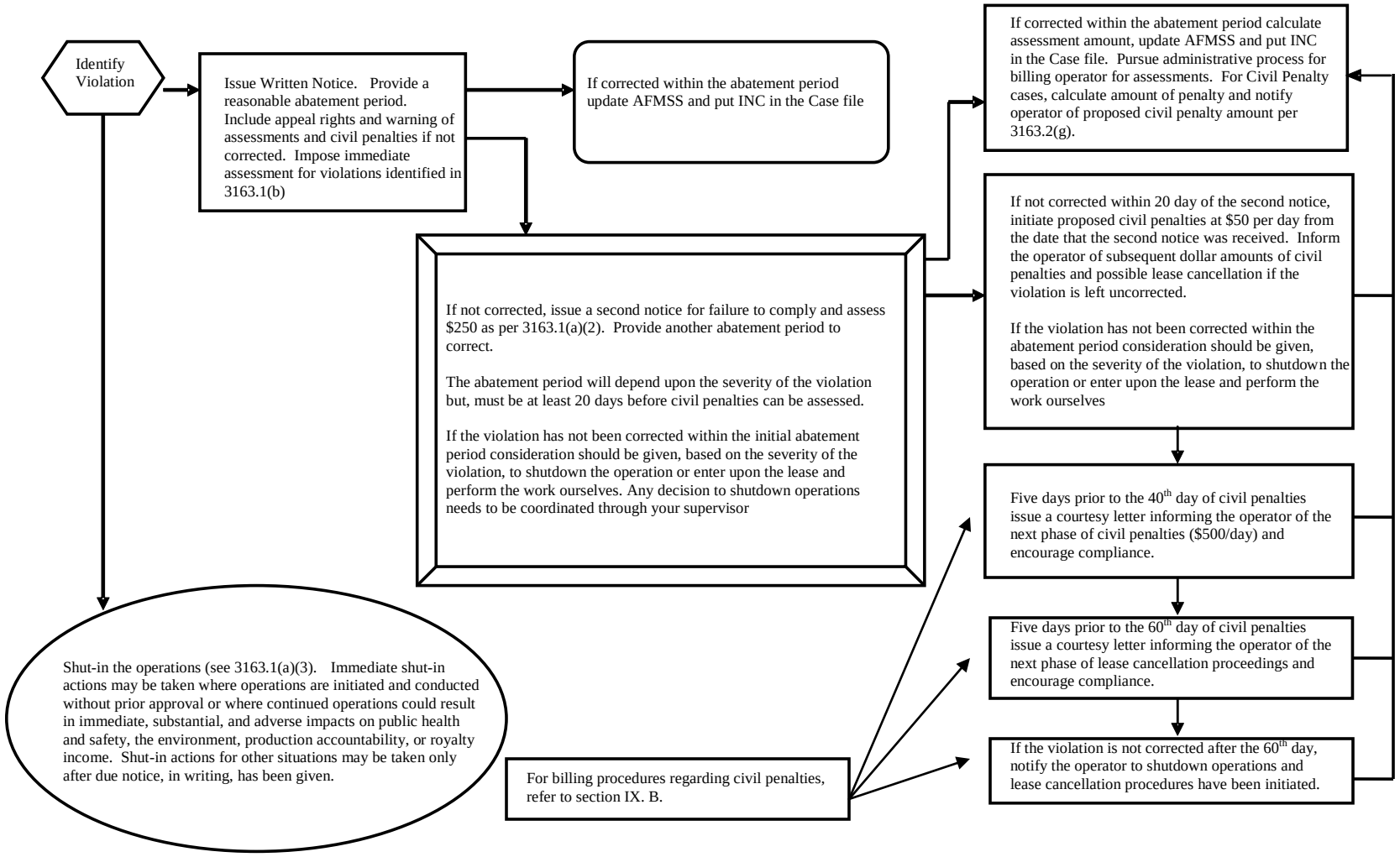
Enforcement Process Short Version		
Order of the Authorized Officer	**Minor Violation**	**Major Violation**
Used for problems that are not violations. Can initially notify the operator orally followed up in writing within 10 days.	In violation of a specific regulatory requirement that does not raise to the level of a major violation.	In violation of a specific regulatory requirement that causes immediate, substantial, and adverse impact on environment, public health and safety, production accountability or royalty income.
1. Issue the Order - provide an abatement date. Followup.	1. Issue the INC with a reasonable abatement date. Followup.	1. Issue the INC with a reasonable abatement date. Followup.
2. If not corrected - issue an INC.	2. If not corrected with in initial abatement date, issue a second notice with $250 assessment. Provide an abatement date of not less than 20 days. Followup. Consider whether operations should be shutdown or if we need to perform the work.	2. If not corrected within initial abatement date, issue a second notice with $500 per day assessment and provide a new abatement date. Followup. Consider whether operations should be shutdown or if we need to perform the work.
3. Follow the INC process	3. If not corrected within 20 days of the second notice, initiate proposed civil penalties at $50 per day from the date that the second notice was received. Inform the operator of subsequent dollar amounts of civil penalties and possible lease cancellation if the violation is left uncorrected. Consider whether operations should be shutdown or if we need to perform the work.	3. If the second INC is not corrected and due to the serious nature of the violation, steps may be taken to shutdown operations (if appropriate) or perform the work ourselves.

	4. Five days prior to the 40th day of civil penalties issue a letter informing the operator of the next phase of civil penalties ($500/day) and encourage compliance. Consider whether operations should be shutdown or if we need to perform the work.	
	5. Five days prior to the 60th day of civil penalties, issue a letter to inform the operator of the next phase. Initiate lease cancellation procedures and encourage compliance.	

Major Violation Flowchart



Minor Violation Flowchart



H-3160-5 - INSPECTION AND ENFORCEMENT DOCUMENTATION AND STRATEGY DEVELOPMENT HANDBOOK (Internal)

APPENDIX 4 FORMS SAMPLE LETTER FORMAT

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Field Office
Street
City, State, ZIP
website address

In Reply To:
3160
Case Number

Certified Mail No: [ ]
Return Receipt Requested

[Company Address]

NOTICE OF ORDER(S) OF THE BLM AUTHORIZED OFFICER

Use the appropriate title. Orders, INCs, or both.

or

NOTICE OF INCIDENTS OF NONCOMPLIANCE (INC)

Use specific company representative, if known.

Dear [ ]:

Insert lease, unit, or case number(s). Also list well name and number (or facility) and legal description, inspection date, and inspector name(s).

An inspection was performed on Federal lease WYW[ ], [Well name and #, ¼ ¼ section, county, State], on 00/00/0000, by [Inspector Name]. It was found that operations were not being conducted in a manner designed to protect the mineral resources, other natural resources, and environmental quality (43 CFR 3162.5).

ORDER(s) OF THE AUTHORIZED OFFICER

Cite pertinent regulation for the order and after…"states" … Insert the pertinent requirement (e.g., 43 CFR 3162.5-1(a), which states "The operator shall conduct all operations in a manner which protects the minerals resources, other natural resources and environmental quality"). If you have multiple environmental problems, some may be pertinent to other regulations. In this case, cite a different regulation for each environmental problem.

The following environmental compliance problems, pursuant to 43 CFR [ ] which states, "…" were identified during the latest inspection of the subject location. Specifically:

Each problem must have a unique number.

- **Environmental Problem No. [ ]:** [Specifically describe the problem (e.g., A substantial head-cut has started in the ditch on the west side of the road coming onto the well location.]

Corrective Action: [Identify what needs to be done to address the problem. Use performance objectives rather than specifically describing exact work. (e.g., take appropriate remedial measures to stabilize head-cut and restore perennial vegetation. Eliminate the source of the problem by diverting and/or slowing water flow from the access road.]

H-3160-5 - INSPECTION AND ENFORCEMENT DOCUMENTATION AND STRATEGY DEVELOPMENT HANDBOOK (Internal)

In accordance with 43 CFR 3163.1(a), you must comply with the corrective action(s) for the identified environmental problems no later than [ ]. If you fail to comply within the time frames specified, you will be subject to further enforcement action as may be deemed necessary.

Insert a specific date by which the problems must be corrected.

(If additional environmental problems were identified, list each problem separately, using the same format as shown above. Insert the well/facility identification, and legal location if different.)

- En**vironmental Problem No.:** Same format as above

Insert legal location information if different from

Corrective Action: Same as format as above

In accordance with 43 CFR 3163.1(a), you must comply with the corrective action(s) for the identified environmental problems no later than [ ]. If you fail to comply within the time frames specified, you will be subject to further enforcement action as may be deemed necessary.

Insert a specific date by which the problems must be corrected.

==========

INCIDENTS OF NONCOMPLIANCE

The following violations were identified during an inspection of the subject location. Specifically:

- **INC No.:** [ ]: [Specifically describe the violation and cite the authority.]

Corrective Action: [Identify what needs to be done to correct the violation.]

In accordance with 43 CFR 3163.1(a), you must comply with the corrective action(s) for the identified violation no later than **[ ]**. If you fail to comply within the time frames specified, you may be subject to an assessment or additional enforcement actions as deemed necessary to gain compliance.

Insert a specific date by which the INC must be corrected.

(If additional violations were identified, list each violation separately, using the same format as shown above. Insert the well/facility identification, and legal location if different.)

- **INC No.:** Same format as above

Insert legal location information if different from

Corrective Action: Same format as above

In accordance with 43 CFR 3163.1(a), you must comply with the corrective action(s) for the identified violation no later than **[ ]**. If you fail to comply within the time frames specified, you may be subject to an assessment or additional enforcement actions as deemed necessary to gain compliance.

Insert a specific date by which the INC must be corrected.

WARNING

Orders of the Authorized Officer or Incidents of Noncompliance and reporting time frames begin upon receipt of the Notice or 7 business days after the date it is mailed, whichever is earlier. Each problem or violation must be corrected within the prescribed time from receipt of this Notice and reported to the Bureau of Land Management office at the address shown above.

For Incidents of Noncompliance, please note that you already may have been assessed for noncompliance (see amount under "Assessed for Noncompliance"). If you do not comply as noted above under "Corrective Action to be Completed By," you may incur additional assessment under (43 CFR 3163.1) and may also incur Civil Penalties (43 CFR 3163.2). All self-certified corrections must be postmarked no later than the next business day after the prescribed time for correction.

Section 109(d)(1) of the Federal Oil and Gas Royalty Management Act of 1982, as implemented by the applicable provisions of the operating regulations at Title 43 CFR 3163.2(f)(1), provides that any person who "knowingly or willfully" prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information required by this part shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

REVIEW AND APPEAL RIGHTS

Insert address for the State Office.

A person contesting a order of the authorized office or violation must request a State Director Review of the Order or Incident of Noncompliance. This request must be filed within 20 working days of receipt of the Incident of Noncompliance with the appropriate State Director at [ ] (see 43 CFR 3165.3). The State Director review decision may be appealed to the Interior Board of Lands Appeals, 801 North Quincy Street, MS 300-QC, Arlington, Virginia 22203 (see 43CFR 3165.4). Contact the abovelisted Bureau of Land Management office for further information.

If you have any questions, please contact [ ].

Sincerely,

Field Manager

Attachment: Corrective Action(s) Completed Form

H-3160-5 - INSPECTION AND ENFORCEMENT DOCUMENTATION AND STRATEGY DEVELOPMENT HANDBOOK (Internal)

Form 3160-9
(December 1989)

Number (2)

(3) Page ____ of ____

☐ Certified Mail - Return Receipt Requested (1)

☐ Hand Delivered Received by

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOTICE OF INCIDENTS OF NONCOMPLIANCE

(4)

Identification
IID
Lease
CA
Unit
PA

Bureau of Land Management Office (5)	Operator (6)
Address	Address
Telephone	Attention
Inspector (13)	Attn Addr

Site Name (7)	Well or Facility (8)	1/4 1/4 Section (9)	Township (10)	Range (11)	Meridian (12)	County	State
Site Name	Well or Facility	1/4 1/4 Section	Township	Range	Meridian	County	State

THE FOLLOWING VIOLATION WAS FOUND BY BUREAU OF LAND MANAGEMENT INSPECTORS ON THE DATE AND AT THE SITE LISTED ABOVE

Date	Time (24 - hour clock)	Violation	Gravity of Violation
(14)	(15)	(16)	(17)
Corrective Action To Be Completed By	**Date Corrected**	**Assessment for Noncompliance**	**Assessment Reference**
(18)	(19)	(20)	43 CFR 3163.1(a) (21)

Remarks

(22)

When violation is corrected, sign this notice and return to above address.

Company Representative Title (23) Signature Date

Company Comments (24)

WARNING

Incidents of Noncompliance correction and reporting timeframes begin upon receipt of this Notice or 7 business days after the date it is mailed, whichever is earlier. Each violation must be corrected within the prescribed time from receipt of this Notice and reported to the Bureau of Land Management office at the address shown above. Please note that you already may have been assessed for noncompliance (see amount under "Assessment for Noncompliance"). If you do not comply as noted above under "Corrective Action To Be Completed By" you may incur an additional assessment under (43 CFR 3163.1) and may also incur Civil Penalties (43 CFR 3163.2). All self-certified corrections must be postmarked no later than the next business day after the prescribed time for correction.

Section 109(d)(1) of the Federal Oil and Gas Royalty Management Act of 1982, as implemented by the applicable provisions of the operating regulations at Title 43 CFR 3163.2(f)(1), provides that any person who "knowingly or willfully" prepares, maintains, or submits, false, inaccurate, or misleading reports, notices, affidavits, record, data, or other written information required by this part shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

REVIEW AND APPEAL RIGHTS

A person contesting a violation shall request a State Director review of the Incidents of Noncompliance. This request must be filed within 20 working days of receipt of the Incidents of Noncompliance with the appropriate State Director (see 43 CFR 3165.3). The State Director review decision may be appealed to the Interior Board of Lands Appeals, 801 North Quincy Street, Suite 300, Arlington VA 22203 (see 43 CFR 3165.4). Contact the above listed Bureau of Land Management office for further information.

Signature of Bureau of Land Management Authorized Officer (25)	Date	Time

FOR OFFICE USE ONLY

Number (26)	Date	Assessment	Penalty	Termination
Type of Inspection				

Form 3160-12
(December 1989)

Number 2
Page 3 of

☒ Certified Mail - Return Receipt Requested (1)
☐ Hand Delivered Received by

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOTICE TO SHUT DOWN OPERATION

Identification	
IID	
Lease	
CA	
Unit	
PA	

(4)

Bureau of Land Management Office (5)	Operator (6)
Address	Address
Telephone	Attention
Inspector (13)	Attn Addr

Site Name (7)	Well or Facility (8)	1/4 1/4 (9)	Towns (10)	Range (11)	Meridi (12)	County	State
Site Name	Well or Facility	1/4 1/4 Section	Township	Range	Meridian	County	State
Site Name	Well or Facility	1/4 1/4 Section	Township	Range	Meridian	County	State

YOU ARE ORDERED TO IMMEDIATELY SHUT IN THE ABOVE OPERATION ACCORDING TO 43 CFR 3163.1(a)(3)

Date	Time (24 - hour clock)	Corrective Action To Be Completed By	Report Corrective Action By	Date Corrected
(14)	(15)	(16)	(17)	(18)

Remarks

(19)

When violation is corrected, sign this notice and return to above address.

Company Representative Title (20) Signature Date

Company Comments (21)

WARNING

Operations are not to be resumed until permitted by the authorized officer. Failure to comply with this notice within the time allowed may incur an assessment under (43 CFR 3163.1) and may also incur Civil Penalties under 43 CFR 3163.2

Section 109(d)(1) of the Federal Oil and Gas Royalty Management Act of 1982, as implemented by the applicable provisions of the operating regulations at Title 43 CFR 3163.2(f)(1), provides that any person who "knowingly or willfully" prepares, maintains, or submits, false, inaccurate, or misleading reports, notices, affidavits, record, data, or other written information required by this part shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

REVIEW AND APPEAL RIGHTS

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Signature of Bureau of Land Management Authorized Officer (22)	Date	Time

H-3160-5 - INSPECTION AND ENFORCEMENT DOCUMENTATION AND STRATEGY DEVELOPMENT HANDBOOK (Internal)

3160-10
(October 2003)

UNITED STATES
DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT

INSPECTION RECORD – DRILLING

Case Number	State	Field Office	Field Area	☐ Detailed ☐ Non-Detailed
Well No./API No.	Location (¼¼ S-T-R)		Spud Date	Status
Operator/Representative			Rig/Contractor//Representative	

Inspection Type	Activity Code	Inspector	Open Date	Closed Date	Office Time	Travel Time	Inspection Time	Trips

	Inspected	NA	Violation
GENERAL			
1. Is approved drilling permit and plan on location?			
2. Is drill site properly identified?			
3. Are operations being conducted in a workmanlike manner? *(Detailed list in handbook)*			
4. Did Operator report all spills?			
5. Are drill-stem tests conducted as required?			
6. Is hole deviation within approved tolerances?			
SURFACE USE			
7. Is surface use in accordance with approved plan?			
a. Well site lay-out;			
b. Pits, sumps, and other ancillary facilities;			
c. Containment and disposal of solid, liquid, and gaseous wastes;			
d. Failure to implement dust control;			
e. Failure to obtain prior approval for additional surface disturbance.			
BLOWOUT PREVENTER AND ASSOCIATED EQUIPMENT			
8. Is BOP pressure rating and arrangement at least that approved? Rating _____			
9. Are choke lines and manifold, kill lines, and fill lines properly installed and operarable?			
10. Are Master controls installed and functional?			
a. Remote control installed and functional?			
b. Hand wheels or autolock? *(Circle appropriate item)*			
c. Valve installed in closing line of annular preventer?			
11. Is pressure accumulator system adequate to activate BOP? Psi rating _____ Fluid Volume _____			
a. Nitrogen precharge pressure? Date last checked _____			
b. Will reservoir hold two times the usable fluid volume?			
c. Is power available and turned on to the accumulator pumps?			
12. Are ram-type preventers tested to stack working pressure if isolated by test plug or 70 percent of internal yield pressure or casing if BOP Stack is not isolated from casing? _____ psi test pressure			
13. Are annular-type preventers tested to 50 percent of working pressure? _____ psi Date Recorded			
14. Are BOPE tests run and recorded in drillers log? _____ psi			
a. When initially installed?			
b. Whenever a seal subject to test pressure is broken?			
c. Following related repairs?			
d. 30-day intervals?			
15. Are BOP drills conducted weekly and recorded in drillers log? Time: _____			
16. Is annular preventer activated weekly and recorded in driller's log?			

BLOWOUT PREVENTER AND ASSOCIATED EQUIPMENT (CONTINUED)	Date Recorded	Inspected	NA	Violation
17. Are pipe rams activated each trip and recorded in driller's log?				
18. Are blind rams activated each trip?				
19. Is the slow pump speed recorded each tour?				
20. Are drill string safety valves and/or inside BOP valves readily available?				
21. □ Is upper kelly cock installed? □ Is lower kelly cock installed? □ Are appropriate kelly cock wrenches available?				
a. BOPE shall be installed, used, maintained and tested in a manner necessary to assure well control and shall be in place prior to drilling the surface casing shoe.				
CASING AND CEMENTING				
22. Was casing and cement in accordance with approved APD (size weight grade depth □ New? □ Used?)				
23. When setting surface casing, did cement circulate to surface? If not, was remedial action taken?				
a. Centralizers as required?				
24. When setting casing was cement job conducted as approved? *(Circle applicable type)* Surface Intermediate Production Liner				
25. Were all casing strings pressure tested prior to drill out? _____ psi.				
a. Was remedial action taken if test indicated need? Action: _____				
b. Were all pressure tests recorded in drillers log? Date recorded _____				
26. Were all waiting on cement (WOC) times adequate to achieve a minimum of 500 psi compressive strength at the shoe?				
27. Are casing shoe pressure integrity tests (mud weight equivalency test) performed and recorded in log book? Date recorded _____ Mud weight _____ Depth _____ Pressure _____				
28. All indications of usable water reported to the authorized officer?				
29. Are wiper plugs used as required?				
MUD PROGRAM				
30. Is mud system in accordance with approved APD?				
31. Are appropriate quantities of mud on hand?				
32. Is mud monitoring equipment in accordance with approved APD?				
a. Electronic/mechanical mud monitoring equipment alarms set and turned on?				
33. Is gas detection equipment installed and operational as per APD?				
34. Are acceptable well control practices being followed while tripping?				
35. Are tourly mud tests (weight & viscosity) recorded in the drillers log?				
36. Is flare system installed?				
SPECIAL OPERATIONS-AIR/GAS DRILLING				
37. Is rotating head in operating condition?				
38. Is the blooie line installed and the pilot light and igniter installed and operating as per APD?				
39. Is deduster equipment installed?				
40. Is mud circulation equipment available for rapid use *(including mud, reserve pits, and steel tanks)*?				
41. Are engines equipped with spark arresters or water cooled exhaust?				
HYDROGEN SULFIDE OPERATIONS (500' above or 3 days prior to expecting H2S)				
42. Are the H_2S Drilling Operations Plan and Public Protection Plan, if required, available at the well site?				
43. Are the locations of safe briefing areas as approved, are they designated, and is safe access provided to them?				
44. Is a secondary means of egress available and passable?				

HYDROGEN SULFIDE OPERATIONS (CONTINUED)	**Inspected**	**NA**	**Violation**
45. Is required safety equipment for essential personnel available and operable?			
a. Portable H_2S and SO_2 detectors?			
b. Self-contained breathing apparatus?			
c. Explosion proof ventilation fans?			
d. Other equipment as approved in drilling operations plan?			
46. Are initial and weekly training and H_2S/well control drills held and recorded on the driller's log?			
47. Is permanent H_2S detection and monitoring equipment installed, tested, and operable?			
48. Is the wind direction equipment installed and visible?			
49. Are the caution/danger signs legible, visible, and posted a safe distance from the location?			
50. Are the warning flags, flare gun and flares available?			
51. Is the equipment H_2S trimmed as required?			
52. Is the remote kill line installed and tested?			
53. Is the flare system designed to safely gather and burn H_2S?			
a. Is the flare system equipped with a safe and suitable means of ignition?			
b. Is the flareline mouth at least 150' from wellbore?			
c. If noncombustible gas is to be flared, is supplemental fuel available?			
54. Are the mud-gas separator, degassers, and rotating head installed and operational (exploratory wells only)?			
55. Is the remote controlled choke installed, tested, and operable?			
56. Is the pH of freshwater mud 10.0 or above unless otherwise approved?			
a. Are sufficient quantities of mud additives to scavenge H_2S available at the well site (exploratory wells only)?			
OTHER			
57. Other special requirements per approved APD and lease terms.			
58. Description of operations witnessed.			

HIGH PRIORITY INSPECTION REMARKS

Form 3160-13
(October 2003)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INSPECTION RECORD – ABANDONMENT

Case Number	State	Field Office	Field Area

Well Name:	Well Number:	Hazard?

API No.	Location 1/4, 1/4, S-T-R (Lat/Long)	Spud Date	Status

Operator/Representative	Rig/Contractor/Representative

Well Type: (Circle One)
Dry Hole Depleted Producer Service Well Water Well Other (explain)

INSP. TYPE	ACT. CODE	INSPECTOR	OPEN DATE	CLOSED DATE	OFFICE TIME	TRAVEL TIME	INSPECT. TIME	TRIPS

PLUGGING OPERATIONS	WITNESSED		
	YES	NO	N/A
1. Plugs spotted across perforations or perforations isolated as approved if casing set?			
2. Plugs spotted at casing stubs?			
3. Open hole plugs spotted as approved?			
4. Retainers, bridge plugs, or packers set as approved?			
5. Cement quantities as approved?			
6. Method of verifying and testing plugs as approved?			
7. Pipe withdrawal rate satisfactory after spotting plugs?			
8. All annular spaces isolated to surface?			
9. Surface Cap Witnessed? (Circle one) Above Ground Below Ground			
10. INC issued?			

Remarks:

Cement and mechanical plug placement data (*attach service company report, if available*):

BALANCE PLUG PROGRAM

Wellbore Information

	Size	Weight	cft/lft	lft/cft	bbl/ft	ft/bbl
Open Hole						
Casing						
Tubing/D.P. (Workstring)						
Annular Volume (pipe in hole)						
Annular Volume (pipe in pipe)						

Helpful Hints: Number of sacks cement (x) yield of cement = cubic feet of cement
Cubic Feet (cf) x .1781 = BBls.
Sacks of cement (x) H2O required (gal/sk) ÷ 42 gals = BBls.

Mix H2O required

Plug # 1: Approved depth: _____ to _____ Actual Depth: _____ to _____

Sacks cement _____ Tagged Top of Cement at _____

Yield cement _____ Pressured tested cement plug to _____ psi ?

Plug # 2: Approved depth: _____ to _____ Actual Depth: _____ to _____

Sacks cement _____ Tagged Top of Cement at _____

Yield cement _____ Pressured tested cement plug to _____ psi ?

Plug # 3: Approved depth: _____ to _____ Actual Depth: _____ to _____

Sacks cement _____ Tagged Top of Cement at _____

Yield cement _____ Pressured tested cement plug to _____ psi ?

Plug # 4: Approved depth: _____ to _____ Actual Depth: _____ to _____

Sacks cement _____ Tagged Top of Cement at _____

Yield cement _____ Pressured tested cement plug to _____ psi ?

Plug # 5: Approved depth: _____ to _____ Actual Depth: _____ to _____

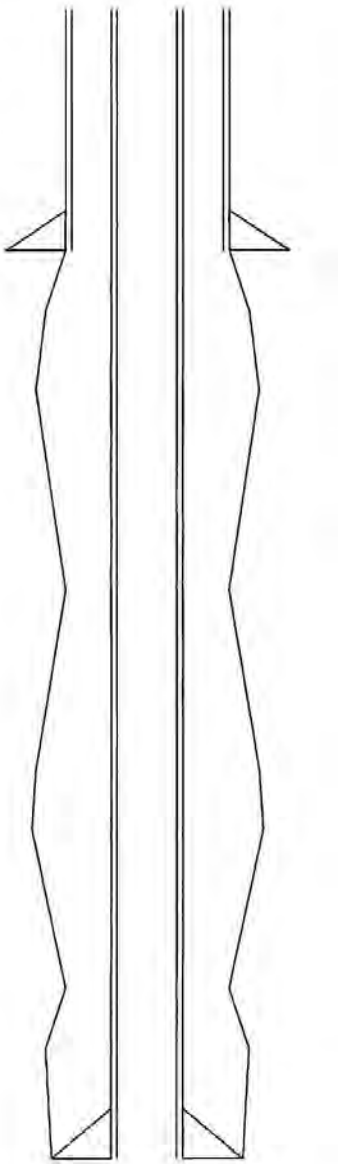
Sacks cement _____ Tagged Top of Cement at _____

Yield cement _____ Pressured tested cement plug to _____ psi ?

Surface Plug : Length of Plug ? From _____ ft. to surface

Sacks cement _____

Yield cement _____



Form 3160-11
December 7, 2002

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INSPECTION RECORD-PRODUCTION

Case/Unit PA/CA Contract No.	Unit Name	Operator	
PR Year	Inspection Type	Open Date	Close Date

Insp No.	Inspector	ACT. Code	Open Date	Close Date	Wells Inspected	Facility ID Inspected	Office Time	Travel Time	Inspect Time	Trips	Referrals	Oil/Gas Gain/Loss Recovered

Purchaser Oil_____ Purchaser Gas_____ __ Oil __Gas (check as appropriate)

GENERAL	Inspected	Violation	N/A
1. Identification Satisfactory (per 43 CFR 3162.6)			
A. Tanks			
B. Facilities			
C. Wells			
2. Well Equipment Satisfactory			
3. Environmental Protection Satisfactory (per 43 CFR 3162.3-1,3162.5-1, 3162.7-5, OO No. 7 and NTL3-A			
A. Water Disposal			
1.Pit			
2.Subsurface			
B. Surface Use			
C. Undesirable Event			
Liquid Hydrocarbons Production (per Order No. 4)			
4. Liquid Handling Equipment Satisfactory			
A. Bypass Around Measurement Point			
5. Measurement Satisfactory (attach Run Ticket, Proving Report, 3160-16, 3160-17 and Volume Calculations)			
A. Tank Gauging: Bottom Gauge Temp			
1. Performed (attach volume calculations)			
2 Witnessed			
B. LACT Proving Witnessed: Previous Factor New Factor (attach proving report)			
Natural Gas Production (per order No. 5)			
6. Gas Handling Equipment Satisfactory			
A. Bypass Around Measurement Point			
7. Type of Production: (check one) __ Gas Well __ Casing Head			
8. Measurement Satisfactory (attach appropriate forms 3160-15 or independent calculations)			
A. Orifice Pipe ID Beta Ratio			

Site Security (per 43 CFR3162.7-5, Order No. 3)

	Inspected	Violation	N/A
9. No Bypass			
10. Facility Diagram (Onsite Verification)			
A. Diagram Accurate			
B. Facilities Adequately Sealed: ___ Sales Phase ___ Production Phase			
11. LACT			
A. Components Complete			
B. Sealed to Minimum Standards			

12. Seal Records Facility LACT					
A. Maintained by Operator					
B. Current					
Safety (per 43 CFR 3162.5-3 Order No. 6)					
13. H2S					
A. Hazard					
1. PPM Ambient STV Gas Stream					
B. Operating Requirements Met					
C. Public Protection Plan Required Available					
14. General Safety- Are all operations performed in a safe and workmen like manner?.					
Records Review	**Review Dates**				
15. Production Measurement Records (per Order No. 4&5)	**From / /**	**To / /**			
A. Internal Records(attach any independent calculations)					
1. MMS OGOR Forms					
2. LACT Meter Proving Report					
3. Gas Meter Calibration Report					
B. External Records(attach any independent calculations)					
1. Run Tickets/LACT print outs					
2. Pipeline Run Statements					
3. Pumpers Log					
4. Seal Records					
5. Purchasers Gas volume Sales Report					
6. Chart Integration Reports					
7. Methods Used to Estimate Volumes of Gas Flared/Vented					
8. Method Used to Estimate Volumes of Gas or Oil Lost/ on Lease					
Other					
16. Royalty Rate Determination (per 43 CFR 3162.7-4) Effective Royalty Rate					
17. Transporter Manifest Review (per 43 CFR 3162.7-1)					

Remarks:

Form 3160-16
(December, 2003)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MEASUREMENT RECORD - OIL

By Tank Gauge or Alternative Method
(Onshore Order No. 4)

Date: _____ Case No.: _____
Field/Unit: _____ Field Office: _____
PA/CA: _____ Operator: _____
County/State: _____ Purchaser: _____
Facility ID.: _____ Location: ¼¼ _____ S _____ T _____ R _____
Inspector: _____ Tank No.: _____

TANK GAUGE

		Yes	No	N/A
1.	Does tank have a pressure-vacuum thief hatch and/or vent-line valve?III.C.1.a.			
2.	Is tank set level?III.C.1.b.			
3.	Does tank have a gauging reference point height stamped on a fixed bench mark plate or stenciled on tank near the Gauging hatch? III.C.1.c.			
4.	Are strapping tables available for each tank? III. C.2. c.			
5.	Is the tank free of dents or damage? III.C.2.b.			
6.	Were oil samples taken prior to gauging tank?III.C.3.			
7.	Was gauge tape of proper type and quality used? III.C.4.a.			
8.	Were two identical gauges obtained? III.C.4.b.			
9.	Were tests for gravity taken acceptable? III.C.5.a. & f.			
10.	Was hydrometer of proper type and quality? III.C.5.b, c, d.			
11.	Were tests for tank temperature acceptable? III.C.5.e.			
12	Was thermometer of proper type and quality? III.C.6.a. & b.			
13.	Were tests for BS&W content acceptable? III.C.7.			
14.	Is tank/facility in conformance with applicable Site Security Regulations? (Self Inspection, Records, Site Sec. Plan, Fac. Diag) OO #3, III.F, G, H, and I.			
15.	Copy of run ticket attached? OO #3, III.C.1.a.			

16. Gravity: Data _____ @ _____ °F Corrected API Gravity _____
17. Sediment & Water Content: Tube # 1 _____ % Tube # 2 _____ % _____ %BS&W
18. Opening Tank Temperature: Data _____ °F Closing Tank Temperature Data _____ °F
19. Opening Gauge: Data _____ Closing Gauge: Data _____
20. Do fill lines enter: Top of Tank _____ Bottom of Tank _____
21. Method of Shipment By: Pipeline _____ Truck _____
22. Load Line Seal Numbers: Off _____
(OO #3, III.A.1.b.) On _____
Fill Line Seal Numbers: On _____
Equalizer Line Seal Numbers: On _____
Drain/Circulating Line Seal Numbers: On _____

Alternate Method

23. Date of Alternative Measurement Method Approval: _____
24. Method Type: Turbine Metering _____ Calibrated Tank Truck _____
Net Oil Computer _____ Measurement by Weight _____
Other (describe) _____
25. Does this method accurately meet or exceed the minimum API Standard for:
Gross Volume Measurement _____ API Oil Gravity _____
Sediment & Water _____ Temperature _____
Net Volume Calculations _____

REMARKS

_____
_____

MEASUREMENT RECORD - OIL By Truck Mounted Coriolis Meter

DATE: _____ LEASE NO.: _____

FIELD/UNIT: _____ FIELD OFFICE: _____

PA/CA: _____ OPERATOR: _____

COUNTY/STATE: _____ PURCHASER: _____

BATTERY NO.: _____ TANK NO.: _____ LOCATION: _____

WELL NO.: _____ TECHNICIAN: _____

TRUCK MOUNTED CORIOLIS METER

Truck Number: _____ Meter Mfr.: _____ Size: _____

Meter Serial No.: _____ Normal Meter Proving Frequency: _____

Date of Last Proving: _____ Meter Factor: _____

	YES	NO	N/A
Are all Meter Proving Reports filed with the Authorized Officer within 10 working days following the meter proving?			
Does the Meter contain the following Units?			
Divert Valve			
Automatic Sampler			
Temperature well and probe for verifying meter temperature readings during meter proving			
Automatic Air Eliminator (vented into the tank) with provisions to prevent liquid from passing			
Block Valves upstream and downstream of meter (for zeroing meter prior to meter proving and/or when meter is repaired)			
Back Pressure Control Valve on divert line to check the integrity of the divert valve.			
Prover Loop			
Heat tracing (only if meter is used to haul high pour point crude oil)			
Is the Coriolis Meter protected from pressure surges as well as excessive pressures caused by thermal expansion of the fluid when the system is not in operating? tem			
Is there a By-Pass around the Meter?			
Was the test for B.S.&W done in accordance with Onshore Order #4,III,C,7 ?			
Does oil tank have a pressure-vacuum thief hatch and vent-line valve?			
Is oil tank/facility in conformance with applicable Site Security Regulations?			
Copy of run ticket attached?			

Seal Numbers and Oil Measurement data:

Meter Module seal number: Meter Flange seal numbers: inlet: outlet:

Divert Valve seal number: _____ Load Line seal numbers: off: _____ on: _____

Gravity: _____ @ _____ °F BS&W: _____ % Avg. Temp.: _____ °F Gross Meter Vol.: _____ bbls.

REMARKS

_____

_____

_____

Form 3160-15
(October 2003)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MEASUREMENT RECORD – GAS

IID _____ Date _____

Well/Facility ID _____

Location: ¼ ¼ _____ S_____ T_____ R _____ County & State _____

Operator _____ Purchaser/Processor _____

Inspector _____ Office _____

GENERAL METER INFORMATION (Orifice, or differential meter)

Method of Measurement: _____

Meter Station No.: _____ Specific gravity: _____

Atmospheric Pressure _____ or Elevation _____

PRIMARY METER INFORMATION

Meter Manufacturer: _____ Meter Serial No.: _____

ID of meter run: _____ Device size: _____ Beta ratio: _____

Does the meter have a temperature recorder? Yes _____ No _____

Length of pipe upstream: _____, downstream _____ of device

Required pipe upstream: _____, downstream _____ of device

Figure from AGA No. 3 used to determine pipe length: 4 ___ 5 ___ 6 ___ 7 ___ 8 ___

Does the meter have straightening vanes? Yes ___ No ___

Type of taps: Flange ___ Pipe ___ Static pressure tap: Upstream ___ Downstream ___

Type of plate holder: Flange ___ Simplex ___ Junior ___ Senior ___

SECONDARY ELEMENT INFORMATION

DRY FLOW

Type of Chart: _____

Is DP pen recording in the outer 2/3 of chart?_____

Is SP pen recording in the outer 2/3 of chart? _____

EFM

Self Contained ___ Component ___

Manufacturer _____

Model _____

S/N _____

URL DP _____ URL SP _____

Static range: _____ Differential range: _____ Temp range: _____

Recorder Readings:

DP _____ SP _____ psig/psia T _____ Flowrate _____ scf/hr | mcf/day

RECORDER CALIBRATION INFORMATION

19. Calibration frequency: _____ Witnessed? Yes ___ No ___Reports attached: Calibration report ___ EFC Event log ___
20. Was a leak test performed? Yes ___ No ___
21. Was the differential pen arc checked? Yes ___ No ___
22. Was the differential linearity check at 0, 100% and 1 point within the normal range of the differential recording? Yes ___ No ___
23. Was the static linearity check at 0, 100% and 1 point within the normal range of the static recording? Yes ___ No ___
24. Was the static time lag check? Yes ___ No ___ N/A ___
25. Was meter calibration performed as per the requirements of 00 No. 5? Yes ___ No ___
26. Does the calibration report contain all of the information required by 00 No. 5? Yes ___ No ___
27. Date of the last meter calibration: _____

Remarks: _____

_____

_____

NOTE: This form is not necessary if all of the gas produced is either used on site or flared/vented.

Sketch of the meter facility and associated piping. (Optional)

3160-27
(January 31, 2006)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

SURFACE INSPECTION FORM

Well Name:			Well #:		API #:		Well Status:
Footage:	Aliquot:	Lot/Tract:	Section:	Twnship/Lat:	Rng/Long:	County:	State:
Case:	Facility ID:		Associated Rights of Way:				
Lease:	H2S Date:		H2S Gas Stream:		H2S Vapors:	H2S Radius:	
Hazard:							
SME:	Operator Name:						
Please be sure to complete for inspection							
Inspector:			Company/SME Rep:			Phone #:	
Date:	Type:		Activity:	Office:	Travel:	Insp:	
General Remarks:							

Follow-up Requirements: (circle any that apply) NONE VERBAL LETTER INC NOTIFY PET
Follow-up Remarks:

CORRECT PROBLEM BY: NEXT INSPECTION:

Drilling/Construction Inspection - Environmental

	Case #: **Lease #:** **Operator:**	**Well Name:** **Well #:** **API #:**
Twn: **Rng:** **Sec**: **Qtr:** **N/S Foot**: **E/W Foot:**	**County:** **State:** **X/Y Coordinates:**	**Facility ID:** **Facility Name:** **H2S: Yes ( ) No ( )**
Surface Owner:		**Inspection Activity:** ES/ SC : SD

Office Time:	**Travel Time:**	**Inspection Time:**	**Trips:**
Inspection Open Date:	**Inspection Close Date:**		**Inspector:**

Inspection Items	**Met**	**Not Met**	**N/A**	**Order/ INC**	**Photo # Direc.**
Location/Access Road/Utilities Constructed as per the Permit & Lease Stipulations?					
Unauthorized Disturbance?					
Drilling Pits (Reserve, Completion, and/or Ancillary):					
1. Pits Constructed in the Cut?					
2. Two Feet Minimum Pit Freeboard?					
3. Pits Free of Visible Leaks or Failures?					
4. Pits Free of any Accumulation of Oil, Trash and/or Debris?					
5. Pits or Location Fenced?					
Well Location & Access Road Conditions:					
1. Adequate Topsoil Properly Segregated and Stockpiled from Well Location and Road Construction Areas?					
2. Roads Well Maintained?					
3. Dust Abatement Necessary?					
4. Run-off and Run-on Diverted if Necessary?					
5. Erosion and Runoff Controlled?					
6. Natural Watercourses Free of Debris and Erosion?					
7. Pits, Cellars, Rat Holes and Other Bore Holes Back-filled?					
Utilities:					
1. Topsoil Properly Segregated and Stockpiled?					
2. Erosion Controlled?					
Facilities: Planned to be Clustered to Maximize Interim Reclamation?					

Comments, Inspection/Monitoring Results, and Additional Actions Necessary:

Initial disturbed Acres (including pad, roads, and pipelines):

Follow-up Requirements: (circle any that apply) NONE VERBAL LETTER INC NOTIFY PET

08-01-07	**Correct problem by:**	**Next Inspection date:**	**Date AFMSS updated:**

Production & Interim Reclamation Inspection/Monitoring – Environmental

	Case #: **Lease #:** **Operator:**	**Well Name:** **Well #:** **API #:**
Twn: **Rng:** **Sec**: **Qtr:** **N/S Foot**: **E/W Foot:**	**County:** **State:** **Latitude:** **Longitude:**	**Facility ID:** **Facility Name:** **H2S: Yes ( ) No ( )**
Surface Owner: **Present Yes ( ) No ( )**		**Inspection Activity:** ES/IR:SP:HS:WS
Office Time:	**Travel Time:**	**Inspection Time:** **Trips:**
Inspection Open Date:	**Inspection Close Date:**	**Inspector:**

Inspection Item	**Met**	**Not Met**	**N/A**	**Order/ INC**	**Photo # Direc.**
Constructed as Per the Permit Requirements and Utilizing BMPs as Appropriate?					
Unauthorized Disturbance?					
Interim Reclamation:					
1. Facilities Clustered?					
2. Recontoured?					
3. Topsoil Redistributed on Majority of the Disturbed Areas?					
4. Seeded? Method:					
5. Reveg. Close to the Wellhead?					
6. Reveg. Close to Road Surface?					
7. Revegetation Success?					
8. Erosion and Runoff Controlled?					
9. Mulch? Type:					
10. Free of Noxious & Invasive Weeds?					
Interim Reclamation Approved? (yes) (no) Work Needed? Note Below					
Roads:					
1. Proper Drainage?					
2. Culverts?					
3. Surface Material?					
4. Gates?					
5. Catttleguards?					
6. Maintenance?					
Corridors:					
1. Erosion Controlled?					
2. Final Reclamation? Approved? (yes) (no)					
3. Power Lines Exclude Raptors?					
Color/Screening: Painted to Blend with Vegetated Background?					
Pits, Ponds, Tanks, & Other Facilities? Number and Types:					

Pits:					
1. Adequate Freeboard?					
2. Lined? Good Condition?					
3. Leak Detection?					
4. Free of Oil & Trash?					
5. Excludes Wildlife?					
Tank Berm:					
1. Well maintained?					
2. Adequate Capacity?					
Exhaust stacks: Constructed to Prevent Bird/Bat Mortality?					
HAZMAT:					
1. Spills or leaks?					
2. Storage Issues?					
3. Drip Pans Exclude Wildlife?					
Housekeeping: Free of trash and Unnecessary Equipment?					

Comments, Inspection/Monitoring Results, and Additional Actions Necessary:

Initial Disturbed Acres:	**Interim Reclaimed Acres:**	**Final Reclaimed Acres:**
Follow-up Requirements: (circle any that apply) NONE VERBAL LETTER INC NOTIFY PET		
08-01-07 **Correct problem by:**	**Next Inspection date:**	**Date AFMSS updated:**

H-3160-5 - INSPECTION AND ENFORCEMENT DOCUMENTATION AND STRATEGY DEVELOPMENT HANDBOOK (Internal)

Final Reclamation Inspection/Monitoring - Environmental

	Case #: **Lease #:** **Operator:**	**Well Name:** **Well #:** **API #:**
Twn: **Rng:** **Sec**: **Qtr:** **N/S Foot**: **E/W Foot:**	**County:** **State:** **Latitude:** **Longitude:**	**Facility ID:** **Facility Name:** **H2S: Yes ( ) No ( )**
Surface Owner:	**Present at Onsite Yes ( ) No ( )**	**Inspection Activity:** ES/ SA
Office Time:	**Travel Time:**	**Inspection Time:** **Trips:**
Inspection Open Date:	**Inspection Close Date:**	**Inspector:**

Inspection Items	**Met**	**Not Met**	**N/A**	**Order/ INC**	**Photo # Direc.**
All Reclamation Work According to the Reclamation Plan?					
All Facilities Removed for Final Reclamation? (Including surface and shallow pipes, risers, markers, signs, fences, trash, etc.)					
Rock Surfacing Material Removed?					
Treatment of Oil or Salt Contaminated Soil Needed? Yes ( ) No ( )					
Treatment of Oil or Salt Contaminated Soil Occurring or Occurred? (circle one)					
Compacted Areas Ripped/Disked?					
Recontoured Back to Original Contour? Pad? Road? Pipeline?					
Topsoil Replaced? Pad? Road? Pipeline?					
Seeding: Broadcast? Drill? (circle one)					
Erosion Control?					
Reclamation Fence?					
Dry-hole Marker: Surface Monumented? [ ] Legal Description? [ ] Weep Hole [ ] Subsurface Monumented? [ ] Unknown? [ ]					
Noxious or Invasive Weeds Present? Treatment Needed? [ ] Species?					
Revegetation Success? Density? Species?					
Site Stability?					

Final Reclamation Approved? (Yes) (No)

Comments, Measurements, Inspection/Monitoring Results, & Additional Actions?

Initial Disturbed Acres:		**Final Reclaimed Acres:**	
Follow-up Requirements: (circle any that apply) NONE VERBAL LETTER INC NOTIFY PET			
08-01-07	**Correct problem by:**	**Next Inspection date:**	**Date AFMSS updated:**

H-3160-5 - INSPECTION AND ENFORCEMENT DOCUMENTATION AND STRATEGY DEVELOPMENT HANDBOOK (Internal)

APPENDIX 5 INC TYPE AND CATEGORY

	Production Violations	AFMSS Category Default
1.	Site is not properly identified	N
2.	Well equipment is not satisfactory	N
3.	Environmental protection is not satisfactory	E
4.	Temporary or emergency pits are not approved	E
5.	Pits are not satisfactory	E
6.	Surface use is not in accordance with approved plan	E
7.	Monthly Report of Operations is not complete and current	(No Longer Valid)
10.	Off-lease measurement is not approved (Oil)	**F
12.	Other method of measuring oil and condensate is not approved	**F
13.	Method of measuring oil and condensate is not satisfactory	F
14.	Valves are not sealed in accordance with minimum standards	F
15.	Site Facility diagram is not satisfactory	N
17.	Off-lease storage of oil and condensate is not approved	**F
18.	Liquid handling equipment is not satisfactory	**F
20.	Commingling is not approved	F
23.	Flaring or venting or other is not approved	F
24.	Off-lease measurement is not approved (Gas)	**F
27.	Method of measurement (other than orifice meter) of natural gas not approved	**F
28.	Method of measuring natural gas is not satisfactory	F
29.	Natural gas handling/treating equipment is not satisfactory	**F
31.	Collection of liquids is not satisfactory	F
33.	Water disposal method is not approved	N
35.	Disposal of water is approved but not satisfactory	N
37.	Tank batteries are not properly equipped	**F
38.	Warning signs are not properly installed	N
39.	If required, the contingency plan is not available	N
40.	Personnel are not properly protected	N
41.	Sales and management of oil, condensate and gas are not documented according to standards	F
42.	Operator has not established a site security plan in accordance with standards	F
43.	Operator does not maintain a seal record	F
44.	Operator does not have a self-inspection program	N
50.	Failed to comply with a notice, written order, or instruction of the AO	**F
51.	Operator is required to submit requested paperwork	N
50.	Failed to comply with a notice, written order, or instruction of the AO	**F
52.	Prepared, maintained, or submitted false, inaccurate or misleading reports etc.	F
53.	Failure to obtain approval for specific operations	F
81.	MRO confirms the reasonableness of Production vs. Sales	(No Longer Valid)
82.	MRO confirms the reasonableness of Tank capacity vs. inventory	(No Longer Valid)
83.	MRO confirms the reasonableness of Well status vs. actual status	(No Longer Valid)

H-3160-5 - INSPECTION AND ENFORCEMENT DOCUMENTATION AND STRATEGY DEVELOPMENT HANDBOOK (Internal)

**General Rule -- Those categories with two asterisks may be FOGRMA- or non-FOGRMA-related based upon site-specific conditions. AFMSS will default to the category indicated, and the user must review to ensure the category is correct for the actual violation. The user will have the capability of editing the field if it is actually a non-FOGRMA-related violation or order. Those items classified as FOGRMA in the listing are related to the proper production handling and measurement of product as well as items 50 and 52, which are specifically addressed in the Act itself.

Drilling Violations:		Category
1D.	Approved drilling permit and plan are not on location	N
2D.	Drill site is not properly identified	N
3D.	Operations are not conducted in a workmanlike manner	N
4D.	Operator failed to report spills	E
5D.	Drill-stem test was not conducted according to minimum standards	N
6D.	Hole deviation is not within approved tolerance	N
7D.	Surface use is not in accordance with approved plan	E
8D.	Well control and assoc. equip. is not installed, used, etc to maintain well control	N
23D.	Casing or cementing operations were not conducted according to approved plan	N
28D.	Mud system is not according to approved plan	N
33D.	Air and gas drilling op's are not according to approved plan or minimum stand	N
37D.	Hydrogen sulfide op's do not meet minimum standards or approved plan	N
50D.	Failed to comply with a notice, written order, or instruction of the AO	N
51D.	Operator is required to submit requested paperwork	N
52D.	Prepared, maintained, or submitted false, inaccurate, or misleading reports, etc.	N

Plugging Violations:		Category
1P.	Plugging/Abd. operations are not conducted according to approved plan	N
2P.	Rehabilitation does not meet approved plan	E
50P.	Failed to comply with a notice, written order, or instruction of the AO	N
51P.	Operator is required to submit requested paperwork	N
52P.	Prepared, maintained, or submitted false, inaccurate, or misleading reports	N

Energy & Non-Energy Mineral Policy

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
http://www.blm.gov

September 5, 2008

In Reply Refer To:
3000 (WO300)P

EMS TRANSMISSION 09/12/2008
Information Bulletin No. 2008-107

To: All Field Offices and Executive Leadership Team

From: Assistant Director, Minerals and Realty Management

Subject: Bureau of Land Management (BLM) Energy and Mineral Policy

This Information Bulletin transmits the BLM Energy and Mineral Policy signed by the Director on August 26, 2008. This revised policy is based on input from the Bureau's Executive Leadership Team. The revised policy now includes Renewable Energy and a principle on split estate.

This updated policy (attached) will be incorporated with BLM Manual Section 3000. Please share this policy with employees and distribute at workshops and conferences, as appropriate.

In 1984, the BLM issued its first mineral policy. In 1993, Executive Order 12861 required Federal agencies to reduce their internal management regulations and directives by at least 50 percent. In 1995, as part of this effort, the 1984 Mineral Policy was eliminated. In 2006, the policy was updated and re-issued via Instruction Memorandum 2006-197.

If you have any questions, please contact me or Bob Anderson at 202-208-4201.

Signed by:

Michael D. Nedd
Assistant Director
Minerals and Realty Management

Authenticated by:

Robert M. Williams
Division of IRM Governance,WO-560

1 Attachment
1 - BLM Energy and Mineral Policy (2 pp)

BUREAU OF LAND MANAGEMENT—ENERGY AND MINERAL POLICY

This statement sets forth the Bureau of Land Management (BLM) policy for the management of energy and mineral resources on public lands, a component of the agency's multiple use mandate. The BLM seeks to implement its multiple use mission to balance various uses to achieve healthy and productive landscapes, including the development of energy and minerals in an environmentally sound manner.

This Energy and Mineral Policy reflects the provisions of six important acts of Congress relating to conventional, alternative, and renewable energy, and mineral resources, as follows:

The Domestic Minerals Program Extension Act of 1953 states that each department and agency of the Federal Government charged with responsibilities concerning the discovery, development, production, and acquisition of strategic or critical minerals and metals shall undertake to decrease further, and to eliminate wherever possible, the dependency of the United States on foreign sources of supply of such material.

The Mining and Minerals Policy Act of 1970 declares that it is the continuing policy of the Federal Government to foster and encourage private enterprise in the development of a stable domestic minerals industry and the orderly and economic development of domestic mineral resources. This act includes all minerals, including sand and gravel, geothermal, coal, and oil and gas.

The Federal Land Policy and Management Act of 1976 reiterates that the 1970 Mining and Minerals Policy Act shall be implemented and directs that public lands be managed in a manner that recognizes the Nation's need for domestic sources of minerals and other resources. It also mandates that "scarcity of values" be considered in land use planning.

The National Materials and Minerals Policy, Research and Development Act of 1980 requires the Secretary of the Interior to improve the quality of minerals data in Federal land use decision-making.

The Energy Policy Act of 2005 encourages energy efficiency and conservation, promotes alternative and renewable energy sources, reduces dependence on foreign sources of energy, increases domestic production, modernizes the electrical grid, and encourages the expansion of nuclear energy.

The Energy Independence and Security Act of 2007 to move the United States toward greater energy independence, to increase the production of clean renewable fuels, and support modernization of the nation's electricity transmission and distribution system.

The BLM recognizes that public lands are an important source of the Nation's energy and mineral resources, including renewable energy resources such as geothermal, wind, solar, and biomass. The public lands are also important for the siting of infrastructure facilities to support the development of energy and minerals resources. The BLM makes public lands available for orderly and efficient development of these resources under the principles of Multiple Use Management, and the concept of Sustainable Development as was defined at the World Summit on Sustainable Development in 2002, in Johannesburg, South Africa, where 192 countries, including the United States, endorsed its resolution on minerals.

The following principles will guide the BLM in managing energy and mineral resources on public lands:

1. The BLM land use planning and multiple-use management decisions will recognize that energy and mineral development can occur concurrently or sequentially with other resource uses, providing that appropriate stipulations or conditions of approval are incorporated into authorizations to prevent unnecessary or undue degradation, reduce environmental impacts, and prevent a jeopardy opinion.

2. Land use plans will incorporate and consider energy and geological assessments as well as energy and mineral potential on public lands through existing energy, geology and mineral resource data, and to the

extent feasible, through new mineral assessments to determine mineral potential. Partnerships with the National Renewable Energy Laboratory, Federal and State agencies, such as the U.S. Geological Survey and State Geologists, to obtain existing and new data will be considered.

3. Withdrawals and other closures of the public land must be justified in accordance with the Department of the Interior Land Withdrawal Manual 603 DM 1 and the BLM regulations at 43 CFR 2310. Petitions to the Secretary of the Interior for revocation of land withdrawals in favor of energy and mineral development will be evaluated through the land use planning process.

4. The BLM will work cooperatively with surface owners and mineral operators in recognizing their rights on split-estate lands. In the absence of a Surface Owner Agreement and in managing development of the Federal mineral estate on a nonfederal surface, the BLM will take into consideration surface owner mitigation requests from pre-development to final reclamation.

5. The BLM endorses Sustainable Development that encourages Social, Environmental, and Economic considerations before decisions are made on energy and mineral operations. The BLM actively encourages private industry development of public land energy and mineral resources, and promotes practices and technology that least impact natural and human resources.

6. The BLM will adjudicate and process energy and mineral applications, permits, operating plans, leases, rights-of-ways, and other land use authorizations for public lands in a timely and efficient manner and in a manner to prevent unnecessary or undue degradation. The BLM will require financial assurances, including long-term trusts, to provide for reclamation of the land and for other purposes authorized by law. Prior to mine closure, reclamation considerations should include partnerships to utilize the existing mine infrastructure for future economic opportunities such as landfills, wind farms, biomass facilities, and other industrial uses.

7. Energy and mineral-related permit applications will be reviewed consistent with the requirements of NEPA and other environmental laws. The BLM will work closely with Federal, State and Tribal governments to reduce duplication of effort while processing energy and mineral-related permit applications.

8. The BLM will monitor locatable, salable and leasable mineral operations and energy operations to ensure proper resource recovery and evaluation, production verification, diligence, and enforcement of terms and conditions. The United States will receive market value for its energy and mineral resources unless otherwise provided by statute, and royalty rates will be monitored and evaluated to protect the public interest.

9. The BLM will continue to develop e-Government solutions that will provide for electronic submission and tracking of applications and the use of GIS technology to support development of energy and mineral resources. The BLM will continue to provide public access to current mineral records, including spatial display of all types of authorizations and mineral resource and ownership data. Data systems, such as LR 2000, will be kept current and best management practices sought to reduce backlogs and to identify errors.

10. The BLM will strive to maintain a professional workforce in adjudication, energy, geology, and engineering to support energy and mineral development.

11. To the extent provided by law, regulation, secretarial order, and written agreement with the Bureau of Indian Affairs, the BLM will apply the above principles to the management of mineral resources and operations on Indian Trust lands in order to comply with its Trust Responsibilities.

James Caswell
Director

Date: 8/26/08

Keywords

VIII. Suspension of Operations and/or Production

A. General

Under 43 CFR 3103.4-2, a suspension of all operations and production on a lease may be granted only when the authorized officer consents to the suspension in the interest of conservation of natural resources. The authorized officer is responsible for promptly notifying the SO Lease Adjudication for appropriate lease case file processing. Circumstances that normally warrant lease suspensions are addressed in Manual Section 3160-10, Suspension of Operations and/or Production.

SUSPENSION OF OPERATIONS AND/OR PRODUCTION

The Department of the Interior Solicitor's Opinion M-36953, dated May 31, 1985 (92 I.D. 293), clarifies the policy and procedure for the suspension of oil and gas leases, and provides the following interpretation of the lease suspension provisions contained in Sections 39 and 17(i) (Section 17(f) prior to the amendments of the Reform Act) of the Mineral Leasing Act, as amended (30 U.S.C. 209 and 226(i), respectively).

SOLICITOR'S OPINION ON LEASE SUSPENSIONS

A suspension of operations and production under Section 39 of the MLA must suspend both operations and production to the extent that the lessee is denied all beneficial use of the lease. Such a suspension stops the running of the lease term and suspends the payment of rental, royalty, or minimum royalty.

SUSPENSION OF OPERATIONS AND PRODUCTION - SECTION 39

A suspension of operations and production under Section 39 is allowed for leases soon to expire that are in areas where the adjacent Federal tracts needed to conduct logical exploration and development are not yet available for lease due to delays in completing the land use planning and associated comprehensive environmental analysis. This BLM policy allows such a lease suspension when the efficient exploration and development of the lease or leases cannot occur due to their proximity, or commingling, with the Federal lands needed to complete lease blocks on a geologic play. The lessee requesting a lease suspension must submit a proposal for the designation of a logical area subject to exploration and development that includes all acreage (leased or otherwise) needed to properly drill and explore the target play. The lessee has the burden of proving that, in order to obtain the greatest ultimate recovery of the oil or gas, it is not logical to proceed with exploration activities on the existing leases without the neighboring unleased Federal tracts. The proposal must contain supporting geologic information, including the results of any geophysical surveys, and other pertinent information.

SUSPENSION OF OPERATIONS AND PRODUCTION FOR LEASES AFFECTED BY LEASING DELAYS

Keywords

A suspension of operations or a suspension of production under Section 17(i) of the MLA may be approved or directed by the authorized officer where the lessee, despite the exercise of due care and diligence, is prevented from producing or operating by reason of force majeure, i.e., by matters beyond the reasonable control of the lessee. This includes events such as acts of God and an unforeseeable administrative delay that would not qualify the lease for a Section 39 suspension of operations and production in the "interest of conservation." A suspension of operations or a suspension of production also stops the running of the lease term. However, an important distinction between a Section 39 suspension and a Section 17(i) suspension is that a Section 17(i) suspension of operations or suspension of production does not suspend the payment of rental, royalty, or minimum royalty.

SUSPENSION OF OPERATIONS OR SUSPENSION OF PRODUCTION - SECTION 17(i)

The Reform Act requires that an Application for Permit to Drill (APD) cannot be approved until after a 30-day posting period. The policy in Manual Section 3160-10 provides that lease suspensions shall be given only in the interest of conservation of natural resources or in a force majeure situation, and when the lessee has diligently pursued lease development and has timely filed an application for suspension. Therefore, a lease is not eligible for a suspension of operations and/or production until the end of the 30-day posting period of the APD as required by the Reform Act.

SUSPENSION OF LEASE NOT ALLOWED UNTIL END OF 30-DAY APD POSTING PERIOD UNDER REFORM ACT

The authorized officer may deny a request for a suspension of operations and production where an APD was filed less than 30 days prior to the lease expiration date, but the APD was processed expeditiously and approved prior to the lease expiration date, and thus, there is no basis to conclude that a suspension was necessary in the interest of conservation (NevDak Oil and Exploration, Inc., 104 IBLA 133 (1988)).

If a suspension of operations and/or production is granted for a lease in a unit and the unit is subsequently declared invalid, the suspension of the lease is valid only for the period prior to the unit being declared invalid even if the application for suspension is executed only by the unit operator and not by the lessee. When the unit is declared invalid, the lessee must be notified that the suspension will be ended as of the date the unit is declared invalid, unless the lessee provides justification for continuation of the suspension. The lessee is to be given a reasonable period of time to submit such a justification.

LEASE SUSPENSION WHEN UNIT DECLARED INVALID

Keywords

When an oil and gas lease located within a wilderness study area (WSA) was issued after enactment of the Federal Land Policy and Management Act of 1976 (but prior to the statutory prohibition for leasing such WSA lands), and is subject to the wilderness protection stipulation that prohibits impairment of wilderness suitability, when the lessee is denied approval of an APD for failure to meet the nonimpairment standard, the denial is not a restriction tantamount to a suspension of operations and production under 30 U.S.C. 209 (Beartooth Oil and Gas Co., 94 IBLA 115 (1986)).

SUSPENSION PROVISION NOT APPLICABLE WHEN APD NOT APPROVED DUE TO WILDERNESS IMPAIRMENT RESTRICTION

The existence of litigation involving whether a lease was issued in violation of the National Environmental Policy Act (NEPA) and Section 7 of the Threatened and Endangered Species Act does not amount to the denial of beneficial use of the lease, absent an injunction against activity under the lease. In such a case, the authorized officer properly may deny a request for a lease suspension (Paul C.Kohlman, 111 IBLA 107 (1989)). However, a suspension of operations and production may be granted by the authorized officer for the time needed to comply with NEPA (Stephen G.Moore, 111 IBLA 326 (1989)).

When an appeal is filed on a decision denying a request for a suspension of operations and production, only the effect of the BLM's decision is suspended under 43 CFR 4.21(a), but the lease is not suspended. Although the regulation 43 CFR 4.21(a) provides that the timely filing of a notice of appeal will suspend the effect of the decision under appeal (if a stay is timely requested and granted), this provision does not require the agency to take positive action for the benefit of an appellant. Thus, the pendency of such an appeal does not preclude the BLM from issuing a notice that the lease will expire if the lessee fails to place a well in producing status within 60 days, because the notice will be mooted if the appeal is successful (Prima Exploration, Inc., 96 IBLA 80 (1987)).

APPEAL MADE ON DENIAL OF REQUEST FOR LEASE SUSPENSION DOES NOT PREVENT LEASE EXPIRATION

A suspension of operations and/or production may be granted by the authorized officer after the lease expiration date, however, the application for such a suspension must be filed prior to the lease expiration date. Failure to timely file the request for lease suspension results in there being no lease in existence that may be suspended (Mobil Producing Texas and New Mexico, Inc., 99 IBLA 5 (1987).

B. Suspension of Operations and Production (Section 39) - Suspension of Lease Term and Rental

Responsible Official	Step	Action	Keywords
SO Fluid Minerals or Field Office Operations	1.	Provide the SO Lease Adjudication a copy of the letter sent to the lessee that a suspension of all operations and production has been granted (see Illustration 14).	NOTIFICATION OF SUSPENSION GRANTED
Adjudication	2.	Prepare a decision to officially inform all record titleholder(s) that the lease term is suspended on the BLM records and no rental will be due until the lease suspension has been lifted (see Illustration 15). NOTE: This official decision to the lessee is required even though the Field Office fluid mineral operations staff may already have sent a letter of notification granting the suspension.	NOTIFY LESSEE OF SUSPENSION
ALMRS Entry	3.	Update ALMRS Entry using the current data standards. 3a. Enter Action Date (MANDATORY ACTION CODE): Effective date of suspension of operations and production with no payment required; DE 1775 Action Code 315/DE 2910 Action Code 676; Action Remarks: Reason for suspension. 3b. Remove DE 1775/2910 Action Code 763. When a lease goes into suspension, the lease expiration date is to be removed.	AUTOMATED NOTATION
Adjudication	4.	Prepare accounting advice to notify the MMS-DMD of the lease suspension and clearly indicate that no rental is due during the period of the suspension (see Illustration 16). Transmit the accounting advice to the MMS-DMD within 5 working days of completing the action.	MMS NOTIFIED OF LEASE SUSPENSION

C. Suspension of Operations and Production (Section 39) - Lifting of Lease Suspension and Adjustment of Lease Term and Rental

Responsible Official	Step	Action	Keywords
SO Fluid Minerals or Field Office Operations	1.	Notify the SO Lease Adjudication that the suspension of operations and production on the lease has been ended or lifted (see Illustration 17).	NOTIFICATION OF LIFTING OF SUSPENSION
Adjudication	2.	Prepare a decision officially notifying all lessees of record that the lease suspension has been lifted (see Illustration 18). Indicate the revised lease expiration date and, as appropriate, reconciliation of the rental amount due, prorating as necessary (see Illustration 19) to take the rental due up to the next regular lease anniversary date, since the lease anniversary date never changes (see C.W. Trainer, 69 I.D. 81 (1962)).	LESSEE NOTIFICATION OF LIFTING OF SUSPENSION OF OPERATIONS AND PRODUCTION
	3.	For the lease year in which the suspension was granted, credit the rental paid to the balance of the months that remain in that same lease year, after the suspension is lifted, since the rental has already been paid for that full lease year period.	SUSPENSION LIFTED - CREDIT RENTAL FOR REMAINDER OF LEASE YEAR
	4.	For those leases requiring an escalating rental beginning with the 6th lease year, when a lease is suspended any time during its first 5 years, this 5-year time period does not include those calendar months that elapsed during the period of the lease suspension, i.e., the rental rate remains at $1.50 per acre for the first full 60 months of the lease term, even though this may occur over more than 5 years of actual elapsed calendar time.	RENTAL CREDIT DURING FIRST 5 YEARS FOR LEASES WITH ESCALATING RENTAL TERMS

Responsible Official	Step	Action	Keywords
	5.	Rental amounts for the suspended portion of any lease year are **NOT** to be refunded, but are to be retained by the MMS to be applied for the months that remain in that lease year during which the suspension was granted.	RENTAL CREDIT NOT TO BE REFUNDED
		EXAMPLE: Lease issued 3-1-89, for a 10-year primary term, to expire 2-28-99. Rental was timely paid for the 5th lease year of 3-1-93 to 2-28-94. A suspension of operations and production was granted effective 6-1-93. The suspension was lifted effective 10-1-94. The revised expiration date of the lease is now 6-30-2000, i.e., the expiration date of the lease is extended an additional 16 months to make up for the time the lease was in suspension. The rental paid for the 1993-94 (5th lease year) covers the remaining period of 10-1-94 to 6-30-95 at the $1.50 per acre rental rate, and the escalating rental for the 8-month period of 7-1-85 through 2-28-96 (to bring the regular rental due date back to the lease anniversary date) is prorated at the $2 per acre rental rate.	

Responsible Official	Step	Action	Keywords
		EXAMPLE: Lease issued 7-1-90, for a 5-year primary term, to expire 6-30-95. Rental was timely paid for the 4th lease year of 7-1-93 to 6-30-94. A suspension of operations and production was granted effective 4-1-94. The suspension was ended effective 9-1-94. The revised expiration date of the lease is 11-30-95, i.e., the expiration date of the lease is extended an additional 5 months to make up that portion of the primary term while the lease was in suspension. The rental paid for the 1993-94 lease year covers the remaining 3-month period of the 4th lease year from 9-1-94 to 11-30-94. The prorated rental for the 7 months from 12-1-94 through 6-30-95 (to bring the regular rental due date back to the lease anniversary date) is to be requested from the lessee. A full year's rental is due on or before 7-1-95 even though the lease expiration date is 5 months later on 11-30-95.	
	6.	In the decision notifying the lessee of the lifting of the suspension, if it is appropriate, also request the next full year's rental to be remitted to the MMS within 30 days. Such a request will depend on the timing of the lifting of the suspension in relation to the lease anniversary date. Also, send a copy of the decision to the MMS-DMD. On the accounting advice sent to the MMS-DMD notifying it of the lifting of the suspension, enter a statement in the Remarks Section that the annual rental of $_____ for the next lease year was requested by a decision dated (Date) to be paid to the MMS.	SUSPENSION LIFTED - REQUEST NEXT FULL YEAR'S ANNUAL RENTAL ACCOUNTING ADVICE - NOTIFY MMS-DMD OF LIFTING OF SUSPENSION AND ANNUAL RENTAL PAYMENT REQUEST

Responsible Official	Step	Action	Keywords
	7.	Provide the lessee notice of the changed status of the lease, giving 30 days to remit the rental obligation that has accrued, following the principles in Husky Oil Company of Delaware, Depco, Inc., 5 IBLA 7 (1972), That is, the automatic termination provisions of 30 U.S.C. 188 does not apply in this case. Further, the automatic termination of a lease does not apply where, due to other contingencies, additional rental may become due on a date other than the lease anniversary date (see Solicitor's Opinion, M-36458, 64 I.D. 333 (1957)).	
	8.	If, in the above case, the suspension had been lifted sufficiently in advance of the July 1 lease anniversary date, i.e., if suspension was lifted on 1-1-95, the accounting advice to the MMS-DMD is to request the MMS to issue the billing notice for the next annual rental due for the full lease year. This procedure is to be used when sufficient time exists, i.e., at least 120 days, between the MMS receipt of the accounting advice and the next lease anniversary date to ensure adequate time for the MMS lease status to be updated for issuance of the rental billing notice on the normal schedule for the lease.	SUSPENSION LIFTED - REQUEST MMS TO ISSUE RENTAL BILLING NOTICE
		NOTE: The MMS normally issues rental courtesy notices 75 days prior to the lease anniversary date. To expedite processing by the MMS, the party making rental payments needs to be advised to indicate the lease serial number on the rental remittance.	

Responsible Official	Step	Action	Keywords
	9.	If the suspended lease is eliminated or contracted from a unit, or receives an extension due to drilling over the expiration date, the rental may have to be prorated for those months remaining prior to the next regular anniversary date that are during the remainder of the 2-year extension period.	SUSPENSION LIFTED - LEASE ALSO SUBJECT TO 2-YEAR LEASE EXTENSION
		EXAMPLE: Lease issued 1-1-83, for 10 years, to expire 12-31-92. The lease is in a unit agreement. The lease was granted a suspension of operations and production effective 12-1-92, that was lifted on 6-1-94. The unit also was terminated on 6-1-94. The revised lease expiration date is now 6-30-94, i.e., 1 month after lifting of the suspension. But, due to the unit termination, the lease is granted a 2-year extension to 6-1-96. Rental paid for the 1992 lease year covers the remaining month in the 10th lease year, through 6-30-94. Rent for the period from 7-1-94 to 12-31-94 is to be requested in the decision notifying the lessee of the lifting of the suspension. The next rental period is to be billed by the MMS that begins 1-1-95 through 12-31-95.	
		NOTE: If the lease remains in a rental status for the remainder of its extended term, a full year's rental for the 1-1-96 to 6-1-96 period would be due and payable to the MMS, even though this last year is less than a full year.	

Responsible Official	Step	Action	Keywords
	10.	If a lease is suspended shortly before its expiration date and, after the suspension was lifted, no drilling occurred over the expiration date, if the 6th or 11th year rental has been paid (either before the suspension had been granted or after the suspension had been lifted), such rental is to be authorized for refund. However, if drilling was occurring over the lease expiration date, the 6th or 11th year's rental payment is retained and fully applied.	SUSPENSION LIFTED - REFUND 6TH/11TH YEAR RENTAL IF LEASE NOT EXTENDED DUE TO DRILLING
	11.	Prepare accounting advice to notify the MMS-DMD of the lifting of the suspension and provide appropriate billing notice instructions (see Illustration 20). Transmit accounting advice to the MMS-DMD within 5 working days of completing the action.	NOTIFY MMS-DMD OF LIFTING OF SUSPENSION
ALMRS Entry	12.	Update ALMRS Entry using current data standards.	AUTOMATED NOTATION
	12a.	Enter Action Date (MANDATORY ACTION CODE): Date suspension of operations and production lifted (using first day of the month in which the suspension was lifted); DE 1775 Action Code 316/DE 2910 Action Code 678.	
	12b.	Enter Action Date (MANDATORY ACTION CODE): Revised date of lease expiration; DE 1775/2910 Action Code 763.	

D. Suspension of Operations Only (Section 17(i)) - Action on Leases

Responsible Official	Step	Action	Keywords
SO Fluid Minerals or Field Office Operations	1.	Notify the SO Lease Adjudication of the approval of a suspension of operations based on a formal application made under Section 17(i) of the MLA. If the lease is producing, send a copy of the letter to the MMS (see Illustration 21).	NOTIFICATION OF SUSPENSION OF OPERATIONS UNDER SECTION 17(i) OF MLA
ALMRS Entry	2.	Enter Action Date (MANDATORY ACTION CODE): Effective date of suspension of operations only, with payment required; DE 1775 Action Code 314/DE 2910 Action Code 677; Action Remarks: Reason for suspension; General Remarks: Indicate suspension of operations only.	AUTOMATED NOTATION
Adjudication	3.	File a copy of the notification of lease suspension approval in the case file.	
	4.	Prepare a decision notifying all lessees of record that the suspension of lease operations has been granted.	
	5.	For leases in their extended term by production, the suspension stops the running of the lease term and adds the period of suspension to the term of the lease. No adjustment of the lease term is necessary. The lease simply does not expire or terminate during the period of the suspension of operations. However, any royalty or minimum royalty must continue to be paid.	SUSPENSION OF OPERATIONS - LEASES EXTENDED BY PRODUCTION
	6.	For leases not extended by production, the suspension stops the running of the lease term, and the lease term is adjusted upon the lifting of the suspension. Any payment of rental or minimum royalty must continue to be made.	SUSPENSION OF OPERATIONS - LEASES NOT EXTENDED BY PRODUCTION

Responsible Official	Step	Action	Keywords
	7.	No accounting advice is necessary if the lease is producing. However, if the lease is not producing, prepare an accounting advice to the MMS-DMD to place the lease in suspended status (see Illustration 22). Transmit the accounting advice to the MMS-DMD within 5 working days of completing the action.	SUSPENSION OF OPERATIONS - NOTIFY MMS-DMD

E. Suspension of Operations - Adjustment of Lease Term When Suspension Lifted

Responsible Official	Step	Action	Keywords
SO Fluid Minerals or Field Office Operations	1.	Notify the SO Lease Adjudication when the suspension of operations is lifted. If the lease is producing, also send a copy of the approval notification to the MMS-DMD (see Illustration 23).	NOTIFICATION OF LIFTING OF SUSPENSION OF OPERATIONS
ALMRS Entry	2.	Enter Action Date (MANDATORY ACTION CODE): Date suspension of operations was lifted (using first day of the month in which the suspension was lifted); DE 1775 Action Code 316/DE 2910 Action Code 678.	AUTOMATED NOTATION
Adjudication	3.	File a copy of the notification of lifting of the suspension in the case file.	
	4.	Prepare a notice to all lessees of record to provide the official notification that the lease suspension has been lifted.	
	5.	If the lease is in its extended term by production, no further action is necessary. If the lease is not in its extended term by production, include a paragraph in the notice to the lessee indicating the adjusted lease term (see Illustration 24).	SUSPENSION OF OPERATIONS LIFTED - NOTIFY LESSEE
	6.	If the lease is not producing, prepare an accounting advice to the MMS-DMD indicating the new expiration date (see Illustration 25). Transmit the accounting advice to the MMS-DMD within 5 working days of completing the action.	SUSPENSION OF OPERATIONS LIFTED - NOTIFY MMS-DMD

Responsible Official	Step	Action	Keywords
	7.	If a lease with the rental escalation to a higher rate after the 5th year is in a rental (terminable) status, and a suspension of only operations is granted during the first 5 years of the primary term, the remainder of the 5-year lease period continues at the lower rental rate when the suspension is lifted. In such cases, the lower rental payment is required to continue during the period of the suspension of operations, and shall continue through the revised date that will end the 5th year of the lease term.	LEASE IN RENTAL STATUS WHEN SUSPENSION GRANTED - REMAINDER OF FIRST 5-YEAR LEASE PERIOD CONTINUES AT LOWER RENTAL RATE WHEN SUSPENSION LIFTED

F. Suspension of Production Only (Section 17(i)) - Action on Leases

Responsible Official	Step	Action	Keywords
SO Fluid Minerals or Field Office Operations	1.	Notify the SO Lease Adjudication of the approval of a suspension of production based on formal application made under Section 17(i) of the MLA. Also send a copy of the approval notification to the MMS-DMD (see Illustration 26).	NOTIFICATION OF SUSPENSION OF PRODUCTION UNDER SECTION 17(i) OF MLA
ALMRS Entry	2.	Enter Action Date (MANDATORY ACTION CODE): Effective date of suspension of production only, with payment required; DE 1775 Action Code 314/DE 2910 Action Code 677; Action Remarks: Reason for suspension; General Remarks: Indicate suspension of production only.	AUTOMATED NOTATION
Adjudication	3.	File a copy of the notification of lease suspension approval in the case file.	
	4.	Prepare a decision notifying all lessees of record that the suspension of production on the lease has been granted. NOTE: No accounting advice is needed since the lease is in producing (nonterminable) status.	
	5.	If the lease is in its extended term by production, the suspension stops the running of the lease term. No adjustment of the lease term is necessary. The lease simply does not expire or terminate during the period of the suspension of production. However, any royalty or minimum royalty must continue to be paid.	SUSPENSION OF PRODUCTION - LEASES EXTENDED BY PRODUCTION
	6.	If the lease is not in its extended term due to production, the suspension stops the running of the lease term and the lease term is adjusted upon the lifting of the suspension. Any payment of rental or minimum royalty must continue to be made during the suspension period.	SUSPENSION OF PRODUCTION - LEASES NOT IN EXTENDED TERM DUE TO PRODUCTION

G. Suspension of Production - Adjustment of Lease Term When Suspension Lifted

Responsible Official	Step	Action	Keywords
SO Fluid Minerals or Field Office Operations	1.	Notify the SO Lease Adjudication when the suspension of production is lifted. Send a copy of the notification to the MMS-DMD (see Illustration 27).	NOTIFICATION OF LIFTING OF SUSPENSION OF PRODUCTION
ALMRS Entry	2.	Enter Action Date (MANDATORY ACTION CODE): Date suspension of production was lifted (using the first day of the month in which the suspension was lifted); DE 1775 Action Code 316/DE 2910 Action Code 678.	AUTOMATED NOTATION
Adjudication	3.	File a copy of the notification of lifting of the suspension in the case file.	
	4.	If the lease is in its extended term by production, no further action is necessary.	
	5.	If the lease is not in its extended term by production, prepare a notice to all lessees of record adjusting the lease term (see Illustration 28). Provide a copy of this notification to the MMS-DMD.	SUSPENSION OF PRODUCTION LIFTED - NOTIFY LESSEE

H-3103-1 - FEES, RENTALS, AND ROYALTY

Format for Letter of Notification of Suspension of

Operations and Production

IN REPLY REFER TO

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

3103 (Office Code)
Serial No.

(Date)

Lessee
Address

Dear _____:

Your letter of July 18, 1994, in behalf of ABC Oil Company, requests that a suspension of operations and production be granted for Federal leases (Serial numbers) committed to the Ruby unit agreement should environmental considerations prevent the timely commencement of the initial unit well.

The Ruby unit agreement was approved and became effective on August 1, 1994, and the application for a permit to drill the initial unit well was filed on May 12, 1995. The U.S. Forest Service subsequently advised that it would not be able to complete its environmental study and approve the well location before June 1, 1996. Until the U.S. Forest Service has completed its tasks in this regard, the BLM cannot approve the application for a permit to drill the initial unit well.

Therefore, pursuant to the provisions of 43 CFR 3103.4-2, approval of your application for suspension of operations and production on leases (Serial numbers) is granted. The suspension is effective June 1, 1995, the first day of the month in which the complete application was filed, and shall remain in effect for an indefinite term. The suspension will be lifted upon approval or denial of the application to drill, or when the authorized officer deems the suspension is no longer in the interest of conservation.

Sincerely,

Authorized Officer
Field Office Operations

Distribution:
State Office Lease Adjudication
MMS-DMD, M.S. 3110
SMA (if other than BLM)

H-3103-1 - FEES, RENTALS, AND ROYALTY

Format for Decision Notifying Lessee of Suspension of

Operations and Production and Suspension of Lease Term and Rental

IN REPLY REFER TO

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

3103 (Office Code)
Serial No.

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

DECISION

Lessee/Address :
:
: Oil and Gas
:
:

Lease Term and Rental Suspended

A suspension of operations and production in accordance with 43 CFR 3103.4-2 has been granted effective (Date), for oil and gas lease (Serial number).

Under the suspension of all operations and production, the lease term and rental payment for this lease also is suspended effective (Date). The rental submitted for the lease year during which the suspension was granted will be retained in its entirety, with the balance applied to the remaining months in the lease year after the suspension has been lifted. The expiration date of the lease will be adjusted at the time the suspension is lifted.

Authorized Officer

Distribution:
MMS-DMD, M.S. 3110
Field Office Fluid Mineral Operations
SMA (if other than BLM)

H-3103-1 - FEES, RENTALS, AND ROYALTY

Format for Decision Notifying Lessee of Suspension of

Operations and Production and Suspension of Lease Term and Rental

IN REPLY REFER TO

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

3103 (Office Code)
Serial No.

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

DECISION

Lessee/Address :
:
: Oil and Gas
:
:

Lease Terms and Rentals Suspended

A suspension of operations and production in accordance with 43 CFR 3103.4-2 has been granted effective (Date), for each of the oil and gas leases listed below, which are committed to the (Name) Unit.

(Serial numbers)

Under the suspension of all operations and production, the lease term and rental payments for each of the leases also are suspended effective (Date). The rentals submitted for each of the leases will be retained, with the balance applied to the remaining months in the lease year for each of the involved leases after the suspension has been lifted. The expiration dates of each of the leases will be adjusted at the time the suspension is lifted.

Authorized Officer

Distribution:
MMS-DMD, M.S. 3110
Field Office Fluid Mineral Operations
SMA (if other than BLM)

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

January 27, 1999

In Reply Refer To:
3100.2/3160 (310) P

EMS TRANSMISSION 01/29/99
Instruction Memorandum No. 99-051
Expires: 9/30/00

To: All State Directors

From: Director

Subject: Bureauwide Interim Guidance on Oil and Gas Drainage Protection

DISTRIBUTION: State and Field Office Fluid Minerals staff, Denver Service Center, National Training Center.

ISSUE: This Instruction Memorandum (IM) is issued as a replacement to WO IM 96-180 to provide interim guidance for performing the oil and gas drainage protection function.

OBJECTIVE: The Washington Office (WO) is responsible for providing uniform and consistent guidelines that are used in ensuring that lessees protect Federal and Indian leases from drainage of oil and gas resources by wells producing on adjacent or nearby lands.

BACKGROUND AND POLICY: In an effort to reduce internal Bureau of Land Management (BLM) regulations by fifty percent, IM 96-180 was issued to replace the 3160-2 Drainage Protection Manual. This IM expired on September 30, 1998. Although the BLM is allowed to retain useful handbook supplements that are required for guidance, the 3160-2 Drainage Protection Handbook is still in draft form and is not officially a part of the directives system. Since the existing Drainage Protection Manual is the only BLM document that provides uniform documentation of how to establish drainage cases, conduct drainage case reviews, and provide correspondence to lessees regarding their drainage protection responsibilities, the BLM has to issue internal guidelines until the Drainage Protection Handbook is revised and finalized.

IMPLEMENTATION AND SCHEDULE: Effective immediately, all field offices with drainage protection responsibilities are to use the Guidelines attached to this IM as interim guidance for performing their drainage protection responsibilities. A bureauwide team will be formed to ensure that information contained in the former Manual that is useful in

implementing the drainage protection function is incorporated into the Handbook. Once this Drainage Protection Handbook is revised and approved, the BLM will issue further instructions on the relevance of the Guidelines attached to this IM. It is expected that the Handbook will be completed and approved during Fiscal Year 1999.

COORDINATION: All Headquarters, State, and Field Office managerial, technical, and support oil and gas drainage protection staff should require that these Guidelines are being used as of the effective date so that the BLM may continue to fulfil its obligation to its customers and to ensure that Federal and Indian oil and gas resources are being protected from drainage.

BUDGET IMPLICATIONS: Since this IM does not change any existing procedures or add any new record keeping or data collection requirements, it should have only a minimal impact on the oil and gas drainage protection budget.

CONTACT: Any questions concerning this IM should be directed to Donnie Shaw, Fluid Minerals Group (WO-310) at (202) 452-0382.

Signed by:
Brenda Aird
Deputy Director
Minerals, Realty and Resource Protection

Authenticated by:
Robert M. Williams
Directives, Records
& Internet Group,WO540

1 Attachment
1 - Drainage Protection Guidelines (32 pp)

H-3160-2 - DRAINAGE PROTECTION GUIDELINES

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H-3160-2 - DRAINAGE PROTECTION GUIDELINES

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Handbook
H-3l60-2 - Drainage Standards and Procedures

H-3160-2 - DRAINAGE PROTECTION GUIDELINES

.01 Purpose. This Manual Section provides guidelines, standards, and procedures for protecting leased and unleased public domain, acquired, Indian tribal, and allotted mineral interests from the loss of oil and gas or geothermal resources by drainage and the resulting loss of royalty revenues.

.02 Objectives. The objectives of this program are to prevent substantial loss of oil and gas or geothermal resources from jurisdictional lands due to drainage, and, when such loss is not prevented, to ensure that the Federal or Indian lessors are not subjected to significant revenue losses through such drainage. Professional judgment is a key element in accomplishing these objectives. Accomplishment of these objectives may take the form of requiring the lessee of the drained lease, unit, unit participating area, or communitized area to drill a protective well, pay compensatory royalty, enter into an agreement (e.g., communitization, participating area, unitization), relinquish affected acreage, modify existing agreements, or a combination of the above actions. For unleased lands, the objectives may be accomplished by leasing and requiring the lessee to take protective measures or by negotiation of compensatory royalty agreements.

.03 Authority.

A. Mineral Leasing Act of 1920, as amended (landmark amendments are Sec. 3 of the Act of August 8, 1946, 60 Stat. 951; and the Act of September 2, 1960).

B. Act of May 21, 1930 (30 U.S.C. 301-306), (sometimes referred to as the Rights-of-Way Leasing Act of 1930).

C. Acquired Lands Leasing Act of 1947.

D. Indian Mineral Development Act of 1982.

E. Federal Oil and Gas Royalty Management Act of 1982.

F. Geothermal Steam Act of 1970.

G. 43 CFR 3100-3262. The following sections from 43 CFR 3100-3262 are relevant to drainage.

1. 3100.2-1, Compensation for drainage.

2. 3100.2-2, Drilling and production or payment of compensatory royalty.

3. 3105.2, Communitization or drilling agreements.

4. 3107.9-1, Payment of compensatory royalty.

5. 3109.1, Rights-of-way.

6. 3120.8-3, Compensatory royalty agreements.

7. 3162.2, Drilling and producing obligations.

8. 3186.l, Model onshore unit agreement for unproven area, Section 17, Drainage.

9. 3261.7, Values and payment for losses.

10. 3262.3, Drilling and producing obligations.

H. 43 CFR Part 4, Subpart E, Appeals Procedures.

I. 25 CFR 211-213 and 227, all of which address leasing and operations for Indian lands.

J. Federal and Indian lease terms.

.04 Responsibility.

A. The Director and Deputy Director have responsibility for the overall management of Bureau programs, including management of drainage protection within the oil and gas programs.

B. The Assistant Director and Deputy Assistant Director for Minerals, Realty, and Resource Protection are responsible for ensuring that Federal and Indian lands are adequately protected from drainage.

C. The State Director is delegated responsibility for:

1. Identifying potential drainage situations (PDS).

2. Protecting leased Federal and Indian lands identified as PDS's by requiring protective measures.

3. Protecting unleased Federal lands through leasing with subsequent protective measures, or through compensatory royalty agreements (CRA) or other agreements.

4. Notifying the Bureau of Indian Affairs (BIA) when unleased Indian lands are identified as subject to potential drainage and recommending protective measures.

5. Issuing the demand letter to the affected lessee(s), formally notifying them of their responsibility to protect the lease from drainage, and requesting a plan for doing so.

6. Determining whether drainage is occurring or has occurred and determining the drainage factor that is applicable to each case.

7. Determining if there was ever a time when the lessee could have drilled an economic protective well.

8. When compensatory royalty is to be assessed, establishing the date from which compensatory royalty is to begin and the date or conditions upon which the assessment is to end.

9. Notifying the lessee, as appropriate, of the Bureau's assessment of compensatory royalty and of its rights of review and appeal.

10. Providing the Minerals Management Service (MMS) with appropriate data to set up compensatory royalty accounts, when applicable.

11. Providing guidance and assistance to District, Field Office, and Area Managers if delegated any of the above responsibilities.

12. Ensuring quality control of the drainage program.

D. The District or Field Office Manager may carry out any or all of the above responsibilities delegated by the State Director.

E. The Area or Field Office Manager may carry out any or all of the above responsibilities delegated by the District or Field Office Manager.

F. MMS. In accordance with the existing BLM/MMS Memorandum of Understanding of February 13, 1987, the MMS is responsible for setting up and subsequently maintaining compensatory royalty accounts. These responsibilities include determining dollar amounts, collecting any compensatory royalty due, and requesting input from the BLM if problems arise. The MMS is also responsible for providing information to the BLM to verify that compensatory royalty has been assessed and providing a quarterly report on compensatory royalty assessments and agreements.

G. BIA. The BIA is responsible for leasing Indian lands, managing lease information, and for executing agreements when applicable for tracts where there is potential drainage.

.05 References.

A. Memorandum of Understanding Between the Bureau of Land Management and Minerals Management Service Regarding Working Relationships Affecting Mineral Lease Activities, February 13, 1987, as amended.

B. BLM Handbook H-31O9-l - Leasing Under Special Acts.

C. Washington Office Solicitor's Opinion BLM.ER.0648, February 28, 1988.

D. Washington Office Solicitor's Opinion BLM.ER.0667, September 28, 1988.

E. Nola Grace Ptasynski, 63 IBLA 240, decided April 19, 1982.

F. Bruce Anderson, 80 IBLA 286, decided May 4, 1984.

G. Gulf Oil Exploration & Producing Co., 94 IBLA 364, decided December 4, 1984.

H. R. K. Teichgraeber, 96 IBLA 294, decided March 25, 1987.

I. CSX Oil and Gas Corp., 104 IBLA 188, decided September 9, 1988.

J. Atlantic Richfield Co., 105 IBLA 218, decided November 2, 1988.

K. Chevron U.S.A. Inc., 107 IBLA 126, decided February 6, 1989.

.06 Policy. Protecting the United States Government and Indian lessors from loss of royalty as a result of drainage is a prime responsibility of the Bureau of Land Management. Under the terms of both Federal and Indian leases, the lessee has the obligation to protect the leased land from drainage by drilling and producing any well(s) that is necessary to protect the lease from drainage, or in lieu thereof and with the consent of the authorized officer, by paying compensatory royalty. Prioritization of drainage case work, on the basis of a production screen or other criteria, is required.

H-3160-2 - DRAINAGE PROTECTION GUIDELINES

A. Categories of Potential Drainage Situations. Definitions of potential drainage situation (PDS) and drainage case are given in the Glossary of Terms. Handbook H-3160-2, at I., provides some examples of potential drainage situations encountered in the field; however, the examples are not all-inclusive. A potential drainage situation exists for Federal or Indian lands (see Glossary) under the following four categories:

1. Ownership. A PDS exists for Federal lands where there is production of oil or gas or geothermal resources from a well on adjacent lands not owned by the United States. A PDS exists for Indian lands where there is production of oil or gas or geothermal resources from a well on adjacent lands not owned by the Indian tribe or allottee involved.

2. Royalty Rate. A PDS exists for Federal lands where there is production of oil or gas or geothermal resources from a well on an adjoining Federal lease bearing a lower royalty rate. A PDS exists for Indian lands where there is production of oil or gas or geothermal resources from a well on an adjoining tribal/allotted lease (same tribe or allottee) bearing a lower royalty rate.

3. Lease Account. A PDS exists for Federal lands where there is production of oil or gas or geothermal resources from a well on an adjoining Federal lease when the revenues from that lease are distributed to different accounts. Specifically, this applies to wells on public domain lands draining acquired lands or wells on acquired lands draining public domain lands. See Handbook H-3160-2 for distribution of monies received.

4. Participation. A potential drainage situation exists for Federal lands where there is production of oil or gas or geothermal resources from a well from which the Federal Government receives royalties, but at a smaller participation or allocation rate than the Federal lands offended. Specifically, this applies to split mineral interests (e.g., 50 percent Federal, 50 percent State), and lower Federal participation encountered in adjacent units and CA's.

B. Prudent Operator Rule. The Interior Board of Land Appeals (IBLA) in Nola Grace Ptasynski, 63 IBLA 240 (decided April 19, 1982), 89 ID at 212, defined the prudent operator rule (POR) as follows: "Under the usual statement of the standard for prudent operation there is no obligation upon the lessee to drill offset wells unless there is a sufficient quantity of oil or gas to pay a reasonable profit to the lessee over and above the cost of drilling and operating the well." This economic test is applied to all drainage cases.

C. Compensatory Royalty. Drainage protection is an express covenant of the lease agreement. Application of the statute of limitations provides that the authorized officer must initiate action to collect compensatory royalty (CR) within 6 years after the BLM determines that compensation for drainage is due (see Washington Solicitor's opinion BLM.ER.O648, February 28, 1988). In initiating the action, the authorized officer must demonstrate that a lessee had actual or **constructive notice** of facts sufficient to alert a reasonably prudent operator that drainage is or was occurring. As explained in the Assistant Solicitor's memorandum BLM.ER.0667, September 28, 1988), **constructive notice** is achieved when the fact of the draining well's production, or its capability to produce, becomes publicly available and that any other information that is publicly available is sufficient to show that drainage may occur. The data are considered publicly available when it is on record in State Oil and Gas Commissions, available upon request in BLM offices, or published by commercial reporting services such as Petroleum Information Corporation, Dwight's EnergyData, Inc., etc. Such information would place a prudent operator, exercising reasonable diligence, on constructive notice that the lease could have been or is being drained. Assessment of compensatory royalty shall commence upon passage of a **reasonable time** following the date of actual or constructive notice of drainage as discussed above. The authorized officer shall determine the duration of the "reasonable time" period. Criteria to be considered by the authorized officer in making this determination may include rig availability, time needed to acquire an approved drilling permit, average drilling time, and other aspects specific to the area. No compensatory royalty shall be assessed for the "reasonable time" period. If compensatory royalty is assessed, it shall be due from the day next following expiration of
the "reasonable time" period allowed by the authorized officer. No compensatory royalty shall be assessed if the economic test, under the POR, demonstrates that a protective well cannot and could not have been economically drilled on the Federal or Indian lease being evaluated for drainage. Compensatory royalties, when assessed, will continue until the date that one of the following conditions is met:

1. A protective well is drilled and determined by the authorized officer to have fulfilled the lessee's obligations.

2. The draining well ceases production and is permanently plugged and abandoned.

3. The drained portion of the lease is relinquished. The relinquished portion must include all of the leased area within the drained spacing unit. When spacing orders do not exist, the relinquished portion must be aliquot parts totaling at least 40 acres in the case of oil or 160 acres in the case of gas or geothermal drainage, unless the entire lease is smaller.

4. The drained lease is adequately protected by an agreement.

.07 File and Records Maintenance. Documentation requirements are found at .11B4.

.08 Drainage Identification Data Standards. Most potential drainage situations are identified through examination of field maps or plats. Because drainage identification is a dynamic process, it is imperative to maintain a set of "official" maps in each office having drainage responsibilities. These maps are updated continuously as to wells (well status and completion horizon), boundaries of leases, units, unit participation areas, and communitized areas. A base map or information generated by the Geographic Information System (GIS) for the pertinent portion of the jurisdictional area must be established prior to conducting well reviews. The base map must reflect the mineral status for the jurisdictional area and differentiate between public domain, acquired lands, and Indian tribal or allotted lands, and must reflect whether these lands are leased or unleased.

.09 Base Map Standards. Base maps shall conform to the following standards:

A. A scale of 1:24,000 (unless compelling reasons exist for using another scale).

B. Required data.

1. Public land or legal survey.

2. Well locations (use industry standard symbols and identification).

3. Unit and participating area boundaries.

4. Communitization agreement boundaries.

5. Federal/Indian mineral estate.

6. A legend that includes well symbols and boundary symbols (unit, CA, PA).

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.1 Guidelines and Procedures. The following guidelines and procedures are outlined in the Drainage Procedures Flowchart in the Handbook.

.11 Well and Administrative Review. All wells will be evaluated to determine the possibility of drainage by reviewing the contiguous spacing units by reservoir.

A. Well Review. The well review may result in a PDS as follows.

1. Identify all well completions and recompletions. Note that surface location and bottom-hole location can differ.

2. Identify and separate all wells, by completions, into two categories: (l) completions that do not create PDS's (document and record method of determination); and (2) completions that do create PDS's (these completions will require a detailed administrative review). All wells on or adjacent to jurisdictional land may create PDS's. Wells on fee land not adjacent to jurisdictional land do not create PDS's.

3. Identify Federal and Indian wells shut-in but capable of production that offset potentially draining wells. Selective shut-in of such wells, while the offset wells are still producing, may create drainage situations.

4. A production or similar type of screen, based on professional judgment and experience in the area, must be used at this point to retire potential drainage situations that are not likely to cause drainage. Screening processes used to retire cases must be well documented and a record must be kept of all cases retired. No potential drainage situation is to be counted as a case unless it passes this screen.

B. Administrative Review. When potential drainage situations are identified during the well review, further administrative review should be made to determine if there is an administrative resolution by which the Federal or Indian lessors are already, or can be, protected. See example checklist under IV. in the Handbook for a list of the data which must be reviewed and included, either by copy or reference, in the case file.

1. Identify jurisdictional lands where uncompensated loss of revenue could occur from different ownership, royalty rates (royalty rates can differ on portions of a lease or can differ by horizon), lease revenue accounts and participation or allocation differential. This would require a review of the spacing unit in which the potentially draining well is located, plus all adjoining spacing units.

2. Identify the existence of or need for any agreement that would protect jurisdictional lands from drainage, for example, unit agreement, unit participating area, communitization agreement, compensatory royalty agreement, and other agreements.

3. Identify, on a spacing unit and reservoir basis any actual or proposed drilling, producing, or abandoned jurisdictional wells that may satisfy the requirements of protective wells. Such wells would include:
a well that is producing from the same reservoir(s), a well that formerly produced from that reservoir and is now depleted, or a well that sufficiently but unsuccessfully tested the reservoir.

4. Prepare a drainage work file/case file folder for each PDS. Work files may be kept separate from the official case file so that extraneous material, such as well logs and other raw data, is not made part of the legal record in case of appeal. The official case file must contain a complete record of all decisions, including the Geologic, Engineering, and Economic Reports and all pertinent correspondence.

a. For each PDS, establish a unique drainage case number(s). The method will be the prerogative of the Field Office. The Handbook, under I., gives examples of PDS and drainage cases.

b. Enter case into drainage tracking system. The method will be the prerogative of the Field Office. However, automated tracking systems are recommended. At a minimum, the tracking system should correlate draining well, drained lease number, drained area, reservoir, and drainage case number. Data should be kept so that both Field and Washington Office statistical reporting obligations are met. The Handbook, at VIII., provides a detailed explanation of reporting obligations.

C. Case Prioritization. Assign a priority classification to each case. The prioritization method should ensure that royalty is not permanently lost, due to, for example, unleased lands, statute of limitations, etc., and that the review of the drainage workload is done efficiently. The method used to prioritize cases is the prerogative of each office and must be documented.

D. Initial Notification Letter. At the conclusion of the administrative review, an initial contact letter is sent to the lessee(s), as appropriate, informing it of the potential drainage situation and the drainage protection obligations, and requesting protective action or technical data. See the Handbook, Illustration 29, for an example of an initial contact letter.

.12 Expired Leases. If the former lessee of an expired lease allowed the lease to be drained during its active lease term, the former lessee is liable for payment of compensatory royalty during the time that the former lessee held the lease while it was being drained. Therefore, drainage cases can be initiated to collect compensatory royalty on expired leases. Drainage cases should not be initiated to collect compensatory royalty on leases whose active terms have been expired for 6 years or more prior to the discovery of the potential drainage situation (see Washington Solicitor's Opinion BLM-ER-O648, February 28, 1988). The commencement date for any compensatory royalty shall be the date established through the constructive notice procedures described at .06C. However, prior to the assessment of compensatory royalties a prudent operator economic test must be conducted to determine if an economic well could have been drilled during the time that drainage was occurring. The termination date of such compensatory royalty will be the date of lease expiration or the date of last production of the draining well, whichever occurs first.

.13 Technical Review. A technical review is conducted where an administrative review establishes a case. The technical review consists of a combination of geologic and reservoir engineering reviews. The geologic review provides appropriate maps and reservoir parameters for comprehensive geologic reports. The reservoir engineering review examines the reservoir and establishes the reservoir energy mechanism, the original resources in place, the estimated ultimate recovery, and the probable areal extent of drainage. Both the geologic and engineering reviews must make clear recommendations to continue or retire the case.

A. Geologic Review. The geologic review (GR) is conducted after the administrative review and prior to, or in conjunction with, the reservoir engineering review to determine whether it is geologically possible for drainage to occur. The GR will further identify or eliminate cases based on geology and provide reservoir parameters to the engineer. Supporting geologic documentation may include evidence for faults, permeability/porosity barriers, gas/oil-water contacts, and other structural/stratigraphic limitations. For geothermal drainage, it may also include temperature gradient, gravity anomaly, and seismic activity maps. Other supporting documentation such as well logs, isopach and structure contour maps, field reports, etc., must, when appropriate, be included or referenced by the geologist in the work file to substantiate the conclusions of the review. A report that documents the geologic review is required. A case can be retired at this point if the geologist concludes that drainage is not geologically possible. An example of a summary format that contains the minimum standards to be documented in all geologic reviews is provided in Illustration 19 of the Handbook.

B. Reservoir Engineering Review. A reservoir engineering review (RER) follows the GR, except in cases where the GR precludes drainage. The RER determines the estimated ultimate recoverable reserves and drainage area of the potentially draining well. It is necessary to determine if the area drained by the potentially draining well intersects a property boundary. If the drainage configuration of the potentially draining well crosses a property boundary, compensable drainage may be indicated. A determination is made to continue the case if drainage is likely, or to close the case if no significant drainage is probable. Supporting documentation and calculations must be included or referenced in the work file to substantiate the conclusions of this review. Two examples of summary formats containing the minimum standards to be documented in all reservoir engineering reviews are found in Illustration 20 of the Handbook.

.14 Unleased Federal and Indian Lands. Unleased Federal and Indian lands identified as potential drainage situations must be leased and protected as soon as possible. The procedures for resolving these situations are identified below:

A. Unleased Federal Lands. If the administrative and technical reviews indicate unleased Federal lands are subject to potential drainage, then the BLM adjudication office must be notified by memorandum from the authorized officer in order to initiate leasing of the subject lands. Certain Federal lands (for example, National Park lands, Wildlife Refuges, Wild and Scenic Rivers lands, Wilderness Areas) may not be subject to leasing or surface occupancy, unless a drainage situation exists. If leasing is not possible and it is determined that drainage is occurring, attempts shall be made to work with the surface managing agency and the operator of the draining well to resolve the situation.

1. Drainage Stipulation. When the subject lands are offered for lease, a special drainage stipulation shall be made part of the notice of sale and of the lease. See Handbook H-3160-2, Illustration 28, for an example of a drainage stipulation.

2. Compensatory Royalty Agreement. If attempts to lease unleased acreage are unsuccessful, the negotiations for a compensatory royalty agreement (CRA) or other agreement with the operator of the draining well shall be pursued jointly with the adjudication staff. See BLM Adjudication Handbook H-3l09-l, Leasing Under Special Acts. A CRA file should be maintained. If negotiation of a CRA is unsuccessful, the unleased acreage, when available, shall be offered on subsequent lease sales. See Handbook H-3160-2, Appendix 2, for an example of an agreement that may be executed to resolve drainage situations for unleased Federal lands.

B. Unleased Indian Lands. If the administrative review indicates unleased Indian tribal or allotted lands may be subject to drainage, then the BIA must be notified by memorandum in order to initiate leasing or negotiate an agreement that would afford protection for the lease. An example of such a memorandum is provided as Illustration 26 in the Handbook.

.15 Demand Letter. When the technical review indicates that drainage may exist for the subject lands, a demand letter is issued to all responsible lessees. The demand letter is sent Certified Mail, Return Receipt Requested, with a response due within 60 days from the date indicated on the return receipt. Copies of the letter may be sent to other affected parties at the discretion of the responsible office. The demand letter informs the affected lessees of their responsibility to protect the lease from drainage, and requires them to submit a plan for protecting the Federal or Indian lease from drainage. The lessees may alternatively submit geologic, reservoir engineering, or economic data sufficient to show that no drainage has occurred or is occurring, or that an economic protective well began. The demand letter defines the affected lessee's options, which include the drilling of a protective well(s), payment of compensatory royalty, partial or total lease relinquishment, establishment of protective agreements, or any combination of the above that will resolve the drainage situation by protecting the Federal or Indian lessors from loss of revenue. Once the BLM has determined that available geologic and reservoir data indicate that drainage may be occurring, the burden of proof is on the responsible lessee to dispute the assertion or drainage. An example of a demand letter is provided as Illustration 30 in the Handbook.

.16 Drainage Case Resolution. After the demand letter is issued, no further evaluation will be required until the lessee is given a reasonable amount of time to respond to the demand letter. If no response from the lessee is received within the designated time, a follow-up letter may be sent specifying consequences of failure to file the requested information. Failure to comply with an order of an authorized officer could result in a noncompliance assessment. The authorized officer may grant an extension of time in which to file documentation if a justifiable request is made by a lessee.

A. Lessee Takes Protective Action. If the lessee agrees drainage is occurring and will take steps to protect the lease, evaluate the proposal to protect the lease. The authorized officer is the final authority as to the adequacy of the proposed protection based on the Bureau's independent evaluation. Determine separately the adequacy of the protective measures for each case that may be resolved. Determine whether compensatory royalty assessment is due pursuant to .06C of this Manual Section for drainage that may have occurred prior to the drainage protection. If compensatory royalty is due, complete the Final Technical Analysis to determine the drainage factor. In the case Indian lessors who refuse to accept BLM's finds: (1) Specify to the BIA the reasons for the drainage recommendation; (2) notify the allottee/Indian tribe through BIA that failure to accept our recommendation could result in the uncompensated loss of Indian minerals; (3) recommend to the allotted Indian/Indian tribe that they discuss the case with the appropriate BLM office and seek independent counsel.

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B. Lessee Disputes Drainage or Economics. If the lessee disagrees that drainage is occurring or that an economic protective well could have been drilled, conduct an independent technical analysis and evaluate any new data submitted by the lessee. If the Bureau's findings conclude that no drainage is occurring or has occurred, the drainage case is closed and an appropriate decision letter is issued (see Section VII. of the Handbook). However, if the Bureau's findings indicate drainage is occurring and a favorable economic well determination is made, the lessee will be advised by decision letter of the assessment of compensatory royalty. If the Bureau's findings indicate that drainage is occurring but that an economic protective well could not have been drilled since the obligation to protect from drainage began, the lessee is notified that no compensatory royalty is due for any drainage that has already occurred but that future economic conditions may require drainage protection. A sample decision letter pertaining to this situation is shown in Illustration 32 of the Handbook. The case is monitored for such economic changes and reevaluated when warranted.

C. Lessee Does Not Respond to Demand Letter. If the lessee does not respond, conduct an independent technical analysis with available data. If the Bureau findings conclude that no drainage is occurring, the case will be closed. However, if the Bureau's findings indicate drainage is occurring, and a favorable economic well determination is made, the responsible lessee will be advised via a decision letter, Certified Mail, Return Receipt Requested. Compensatory royalty is assessed until such time that the lessee provides an alternative method of protection that is acceptable to the authorized officer. An example of such a decision letter is provided in Illustration 33 of the Handbook.

.17 Final Technical Analyses. Independent final technical analyses shall be conducted by Bureau petroleum engineers and geologists when the lessee response has been received or the allotted time for a response has passed. A comparison of the Bureau's independent findings and the lessee's submittal shall be made. Any significant differences shall be resolved or explained, and final geologic and engineering reports shall be completed for the case file. These consist of a geologic analysis and report and a reservoir engineering/economic analysis and report.

A. Geologic Analysis. The geologic analysis is a final comprehensive examination of the lithologic, structural, and stratigraphic components of the subject area to determine whether drainage is geologically possible. The subject reservoir is analyzed as to its limits and physical characteristics using all available data. Similarities and differences between the Bureau's independent geologic analysis and the lessee's geologic analysis, if submitted, are discussed and resolved in the final report. The report describes in detail how the geology affects drainage in the subject area. The technical components necessary to complete the final geologic analysis and subsequent final report are outlined as follows:

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1. Use all available well logs from the draining well and well logs from as many surrounding wells as necessary and prepare geologic maps and cross sections to determine:

a. Areal extent and net pay of the producing reservoir(s).

b. Trapping mechanism (structural/stratigraphic).

c. Position of gas /oil/water contacts, if they exist.

d. Geologic conditions that would preclude or otherwise influence the drainage pattern, such as:

(l) Structural dip.

(2) Faults, folds, fractures.

(3) Stratigraphic pinch-outs, facies changes.

(4) Porosity/permeability barriers.

2. Correlate well logs from the draining well with the well logs from the surrounding wells. Analyze the well logs to determine:

a. Lithologic characteristics of the reservoir.

b. Net pay.

c. Porosity.

d. Water saturation.

e. Formation temperature.

f. Gas/oil/water contacts, if they exist.

g. Other geologic features or properties that may influence drainage.

3. Substantiate and support the findings.

a. Consult published and unpublished literature covering the geology of the field.

b. Consult published and unpublished structure contour maps, structural and stratigraphic cross sections, and isopach maps of the field.

4. Geologic Map Standard. Geologic maps may be plotted on standard base maps. Each geologic map shall contain the following.

a. A border line.

b. A legend block that includes:

(l) Title, author, and study completion date (same date as report).

(2) North arrow.

(3) State and county boundaries.

(4) Signature of the geologist and date (dated same as report).

(5) Signature of reviewers and date reviewed.

(6) Bar scale.

(7) Line(s) of cross section (when applicable).

(8) Definitions of all symbols used on map.

c. Supporting geological data. Examples are:

(l) Structural closure on an anticline or dome.

(2) Isopach of a porous and permeable body containing oil or gas.

(3) Oil/gas/water interface(s).

(4) Porosity/permeability barriers.

(5) Faults.

(6) Other geologic characteristics that restrict the movement of oil, gas, or geothermal fluid.

5. Geologic Report. Document the geologic analysis above and file a complete, signed, and dated comprehensive geologic report with appropriate maps.

B. Reservoir Engineering/Economic Analysis. The reservoir engineering/economic analysis is the final examination of the reservoir performance, production history, and economic determinants to determine whether drainage is occurring or has occurred and whether an economic protective well could have been drilled. Evaluate any data submitted by the lessee and resolve or explain any significant differences.

1. Ultimate Recoverable Reserves. Use the geologic and engineering data and information available from such sources as RER, GR, lessees, operators, approved BLM software, publications, analogy wells, etc., to compute the Estimated Ultimate Recovery (EUR) attributable to the draining well. The method of analysis will be determined by the parameters available and may include material balance, production decline curves, pressure analysis, and volumetric or geometric calculations. Document the method, including formulae used in the analyses and the parameters used and their source. As necessary, examine the reservoir and fluid properties from the wells, surrounding the draining well as necessary to determine:

a. Pressure history.

b. Recovery factor.

c. Permeability.

d. Net pay.

e. Residual oil saturation.

f. Production history.

g. Reservoir energy mechanisms.

h. Reservoir boundaries.

i. Specific gravity.

j. Compressibility.

k. Formation volume factor.

1. Viscosity.

m. Gas/oil ratio.

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2. Drainage Area and Configuration. After the recovery factor and the ultimate recoverable reserves of the draining well have been estimated, determine the drained volume and estimate the probable drainage area and configuration. This requires a combined effort of reservoir engineering and geology. All known or calculated flow boundaries, such as faults, permeability barriers, interference from nearby wells, etc., should be considered in determining the drainage configuration. If the bottom-hole location differs significantly from the surface location, the location in the drained reservoir should be used to determine the drainage configuration.

3. Determine Whether Drainage Occurs. After the drainage configuration has been determined, establish if the drainage area of the well intersects a property boundary. If it does, determine the reserves in the drained portion of the lease and the drainage factor. The drainage factor is the percentage of the draining well's production attributable to the drained jurisdictional lease. It is calculated as the percentage of the draining well's total drainage volume that lies below the drained lease.

4. Assessment Factor. The drainage factor is the percentage of the draining well's production attributable to the involved Federal or Indian lease being drained. The drainage factor established by the authorized officer is used by MMS to compute the amount of the monthly compensatory royalty assessment for each product using the following equation:

Monthly Compensatory Royalty Charge	=	Product Sold from Draining Well	X	Product Value	X	Royalty Rate of Drained Area	X	Drainage Factor	X	Special Factors (as needed)*

*Special factors may include differences in royalty rates or allocation factors if both the draining tract and drained tracts are Federal, Indian tribal, or Indian allotted, and other applicable considerations.

5. Economic Well Determination. If drainage is indicated, an economic well determination shall be conducted to determine if a prudent operator can or could have drilled a protective well on the lease being evaluated for drainage. This analysis should be conducted using a discounted cash flow (DCF) procedure to calculate before Federal income tax (BFIT) rate of return (ROR). An economic protective well could be drilled if the analysis of the well returns a positive net present value when using the applicable discount rate as established in these Guidelines (see .l7B5g below) or, equivalently, results in a DCFROR greater than the discount rate. See Illustration 21 of the Handbook for a summary sheet that may be used for an economic well determination.

a. Gross Production. The ultimate recoverable reserves are the total oil, gas, or geothermal reserves that a protective well could be expected to produce at the time an economical well could first be drilled. The production of these reserves are to be projected and modeled using conventional reservoir engineering methods (volumetrics, decline curve analysis, material balance, etc.) when applicable. The modeling may be based on the draining well or other area wells, considering all pertinent reservoir factors. The condition of the reservoir at the time the well is expected to be drilled must also be considered in determining the EUR and the projected production.

b. Net Production. Net production is calculated by multiplying the gross annual production by the revenue interest of the lessee. The revenue interest is 100 percent less the Federal or Indian royalty.

c. Product Price. The value for oil and gas pricing is based on the sale prices of similar nearby wells during the appropriate time period. The current price per barrel of oil, per thousand standard cubic feet (MCF) of gas, or per pounds of steam or per kilowatt-hour is based on the particular quality of the resource in the specific geographic area. Escalation of current prices should be consistent with the escalations used at the time the project is to be started. Industry standard projections for the time the well was to have been drilled should be used.

d. Net Revenue. The net revenue is calculated by multiplying the net production by the product price. The net revenue is projected annually until the economic limit of the well is reached. The economic limit is reached when the operating costs of the well equal the net revenue.

e. Expenses. The primary expenses associated with drilling an economic well are drilling, completing, and operating expenses. These expenses are cash expenses and are obtained from industry, professional publications, paying well determinations for similar wells, or experience in specific producing areas. The expenses of the draining well and other similar nearby wells should be reviewed with respect to the prudent operator rule, that is, the costs used should not be those of a particular operator but of a prudent operator. Escalation of operating expenses should be consistent with the relevant market conditions, reviewed with particular attentiveness because they may not be the same as the escalations used for product prices as, for example, when dramatic worldwide oil price declines in 1985-1986 reduced oil prices more than one-half, but operating expenses remained high. Costs, prices, and expected escalations should be those that were appropriate at the time the project is to be started, rather than the actual subsequent prices or costs.

f. Taxes. Certain taxes are to be considered in the economic evaluation. These include severance, ad valorem, and, where applicable, wind fall profits taxes. Severance tax is a sales tax based on production. Ad valorem tax is property tax based on a diminishing asset. These taxes vary between States, and current rates for each particular area should be used. The Windfall Profits Tax (WPT) is a Federal excise tax on production and is regulated by the 1980 WPT Act. It has no effect on production that is under approximately $18 per barrel and is currently being phased out. However, historical cases can require its application.

g. Reasonable Rate of Return and Discount Rate. The minimum reasonable rate of return to be used for these analyses is listed in the Handbook, ROR 1926 through 1988. The rate to be used is that of the date the well was to have been drilled. The list shall be updated regularly for later time periods. The rate includes the components of the time value of money, inflation expectations, and perceived risk. The time value of money and the inflation expectations are independent of the borrower and can be estimated by the intermediate-term Government bond yield rate. The perceived risk for this type of project is similar to that of "B" bonds. To isolate the risk component of the yield for "B" bonds, the yield for the Government bond, which is perceived to be risk-free, is subtracted. Although there have been variations in the difference between the two rates, for the time data were available, the spread stayed fairly constant at around 3.38 percent. This value was projected back to 1926, the earliest date data were available for Government bond yield rates.

6. Reservoir Engineering/Economic Report. Document the procedures and methods, including formulae and parameters, used to determine the reserves and the economics. File a complete, signed and dated comprehensive engineering report with appropriate maps.

.18 Quality Control. Drainage cases that are prosecuted or retired (either administratively or technically) must comply with the established standards and procedures of these Guidelines, and must have complete records of analyses and decisions. Regular quality control is necessary for the defense of appeals and audits. Quality control reviews are required for monitoring the review process. Implementation of the quality control program is the responsibility of each State Office.

A. Technical Review. The technical review may be performed by peers with expertise in petroleum evaluations as applied to the Reservoir Management Program. The objectives of the review are to ensure that (l) established policy and procedures are followed, (2) normal technical principles and procedures are applied as appropriate, (3) all reasonably available information is considered, and (4) the analysis is technically accurate. A sufficient number of Quality Control Reviews must be conducted to ensure that program objectives are being met. Checklists are provided in the Handbook (Illustrations 23, 24, and 25) as examples of the documentation required for the quality control review.

B. State Office Role. The State Office must continually monitor the drainage program to ensure quality control. Oversight responsibilities may include:

1. Ongoing communication with the technical staff.

2. Routine visits to Field Offices conducting drainage reviews.

3. Review of drainage documentation and tracking systems.

4. Review of training needs and ensuring that the need for adequate training funds is recognized and utilized by District or Field Offices.

5. Review of automation needs and ensuring that the technical staff has appropriate hardware and software.

6. Coordination with the appropriate Field Offices and Field Solicitor on appeals and State Director Reviews.

.19 Coordination and Documentation. At this point, the authorized officer notifies the responsible lessee and affected agencies of the final decision in the appropriate sequence. In Indian cases, the BIA's concurrence is documented prior to sending a decision letter to the lessee(s) and affected parties.

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A. The Decision Letter. A decision letter is prepared that documents the drainage protective actions, if any, that are required. The decision letter to assess compensatory royalty shall be conveyed initially only to the responsible lessee(s) and always sent Certified Mail/Return Receipt Requested. The decision letter shall contain the following information:

1. Lease serial number.

2. Description of drained tract and formation(s).

3. Summary of the drainage determination.

4. Drainage factor, if applicable.

5. Draining well(s) name(s) and location(s).

6. Period of compensatory royalty assessment, if applicable.

7. State Director Review and appeal rights pursuant to 43 CFR 3l65.3(b), 3165.4, 4.411 and 4.413.

B. Notification and Request to MMS. The MMS is notified once the appeal period is exhausted or, if appealed, once MMS is notified once a decision by the authorized officer, or by the State Director if a State Director Review (SDR) is requested, is final. If for Federal lands, the decision is appealed to IBLA, MMS will not be notified unless IBLA renders a final decision upholding the authorized officer. If for Indian lands, the decision is appealed to IBLA, MMS shall be notified once the appeal is taken and shall be advised that the decision/determination is on appeal to IBLA. The MMS is notified with a copy of the certified decision letter, supplied the required information, and requested to compute, bill, and collect the monies owed. See the Handbook, Illustration 34, for an example letter to MMS. The required information to be provided when notifying MMS of a decision to assess compensatory royalty for drainage is as follows:

1. Draining Well.

   a. Operator's name.

   b. Well name and/or number.

   c. Well location (quarter-quarter and/or footages, section, township, range, principal meridian, county, and State).

d. If a jurisdictional well (i.e., one located on a Federal or Indian lease or on a tract within and committed to a federally approved and supervised communitization or unitization agreement), provide, as appropriate, the complete lease serial number, or communitization agreement number, or unit agreement name and number.

e. The formation name (and depth of the producing interval) in which the drainage is occurring.

f. The date on which compensatory royalty is to begin.

g. If established, the date on which compensatory royalty is to terminate; otherwise, indicate that compensatory royalty is to continue until MMS is subsequently notified of its termination.

h. The average gravity of the oil or condensate produced from the formation involved.

i. The average BTU content of the gas produced from the formation involved.

j. As appropriate, the established Natural Gas Policy Act (NGPA) category for the well as to the gas produced from the formation involved or, if not determined, the predicted NGPA category based on available information. Also, indicate the period of time during the assessment of compensatory royalty that such category determination is applicable since most NGPA categories are now deregulated.

k. For all jurisdictional wells (see .19B1d, above), a copy of, or the necessary information from, the applicable Monthly Report of Operations (Form 9-329 and/or 3160-6) for each month that compensatory royalty is to be assessed. If compensatory royalty is to continue beyond the date of the initial advice to MMS, MMS will obtain the necessary information from the State or payor. Where any such reports are unavailable because the lease, communitization agreement, or unit participating area has been or subsequently was converted to the Production Accounting and Auditing System (PAAS), that fact should be brought to the attention of MMS.

1. For nonjurisdictional wells, information regarding the monthly production and sales of oil and gas for the draining well from the beginning of the assessment period through the conclusion thereof or the available production to date should be provided to MMS. If the assessment is to continue beyond the initial advice, MMS should thereafter obtain the needed information from the State or payor.

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2. Drained Acres.

a. The drainage factor and special factor, if applicable.

b. As appropriate to the acreage being drained, the complete serial number of the Federal or Indian lease, or the communitization agreement number, or the unit agreement name and number.

c. The name of the lessee(s)/operator responsible for protecting the lease, communitized area, or unit area from drainage.

d. Where a communitized area is being drained, the complete serial number of each Federal and/or Indian lease within the communitized area and the respective percentage of participation attributable to each such lease.

e. Where a unit area is being drained, the complete serial number of all Federal and Indian leases within the affected participating area and the respective percentage of participation attributable to each such Federal and Indian lease. Where the unit acreage being drained is not in a participating area, the complete serial number of all Federal and Indian leases affected and the respective percentage of the drainage factor attributable to each such lease.

f. Where the drainage is occurring between jurisdictional leases having the same mineral ownership and distribution of funds (for example, a public land lease draining another public land lease or a Navajo tribal lease draining another Navajo tribal lease) because of diverse royalty rates, include the applicable royalty rate for both the draining and drained lease.

3. The aforementioned information shall be addressed to Chief, Royalty Compliance Division, at the following address:

Minerals Management Service
Royalty Compliance Division
P. O. Box 25165
Denver West, MS 3600
Denver, Colorado 80225-0165

C. Notification from MMS to BLM. When compensatory royalty is assessed, MMS will notify the BLM that a collection account for the recommend assessment of compensatory royalty has been established for the case. The case is not closed or retired until the notification from MMS is received.

D. Reporting Requirements. The reporting requirements of the drainage portion of the Quarterly Fluid Minerals Report is explained at VIII.A of the Handbook. The basic reporting elements are the number of cases retired during the investigation process and through protective measures, and the estimated revenues from the latter. All elements are to be reported on a case basis as established in this Manual under the procedures for Administrative Review (.11B) and Case Prioritization (.11C).

.2

H-3160-2 - DRAINAGE PROTECTION GUIDELINES

.2 Appeals. Any lessee who is adversely affected by a decision letter sent by the authorized officer in regard to drainage of its lease has the right to request an SDR and, if adversely affected by the SDR decision, to appeal that decision to IBLA. The filing of an SDR or an appeal to IBLA shall not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken. For Federal lands, MMS shall not be requested to assess compensatory royalty until the decision is final, although the royalty is accruing during that time if IBLA upholds the decision of the State Director. The reviewing officer may, under appropriate circumstances, order suspension of the requirement for compliance with an order or decision upon the timely filing of a request for SDR or appeal to IBLA. Drainage appeals processes are shown on three time lines in Illustrations 15 and 16 in the Handbook.

.21 The SDR. If the lessee or other adversely affected party wishes to obtain an SDR for a decision on drainage, the request must be made in accordance with 43 CFR 3l65.3(b). The SDR procedures should essentially follow the guidelines presented in Technical Review (.18A), and should be restricted to the issues raised in the request for SDR. Technical issues must be reviewed by qualified petroleum geologists or reservoir engineers, as appropriate. A report may be required to substantiate the decision of the SD and should be placed in the official case file. Additional data submitted by the appellant should be evaluated as part of the SDR unless the data were not reasonably available to the appellant prior to the original decision. State Director Review decisions are appealable to IBLA. Use Form 1842-1 to notify the lessee of the right of appeal to the IBLA.

.22 Notice of Appeal to IBLA. All appeals to IBLA must strictly follow the regulations in 43 CFR Part 4. If an SDR decision is appealed, the appellant must file the notice of appeal to the IBLA in the office of the authorized officer that issued the decision within 30 days from the appellant's receipt of the decision, so that the case file can be transmitted to the Board. A complete copy of the case file should be made and the original file sent to the Board within 5 working days of the receipt of the notice. The case file should contain the lease document, all pertinent correspondence, the Final Technical Reports, a map or plat of the drainage situation, and any other relevant material. The notice of appeal may include a Statement of Reasons for the appeal. However, if it does not include a Statement of Reasons, the appellant must file such a Statement with the Board within 30 days after the notice of appeal was filed.

.23 Preparing the Response to the Statement of Reasons. The Regional or Field Solicitor is responsible for filing an answer to the Statement of Reasons within 30 days of receipt, unless an extension is requested and granted. The office issuing the decision appealed should request a copy of the Statement of Reasons and should forward the information below to the Solicitor to assist in preparing the answer. The Solicitor will forward this response as the answer to the Statement of Reasons and will address any legal issues as requested by the Bureau.

H-3160-2 - DRAINAGE PROTECTION GUIDELINES

A. A case chronology including the draining well's spud, completion, and date of first production, lease effective date, term and ownership of record title and operating rights, as appropriate, all related correspondence and attempts to resolve the drainage situation, and the dates determined for constructive notice, reasonable time, and assessment.

B. An explanation of the Bureau's position with respect to all technical points cited in the appeal.

H-3160-2 - DRAINAGE PROTECTION GUIDELINES

Glossary of Terms

- A -

administrative review: conducted to determine if lands being reviewed for drainage are or could be protected by existing agreements, protective wells, or well tests.

- B -

bench price: the price that is used to determine when a drainage case warrants a reevaluation due to economic factor It may be, for example, the estimated dollar value per barrel of oil or a ratio of product price to drilling cost per foot at which it is estimated that a prudent operator would drill a protective well on a lease based on the estimated ultimate recoverable reserves, drilling, completion, operating costs, taxes, and other economic factors.

- C -

compensatory royalty agreement: a negotiated agreement by which the Federal government is compensated for lost royalties due to drainage on unleased lands.

compensatory royalty assessment: royalty assessed by the BLM to compensate the lessor for the loss of royalty caused by the failure of the lessee to take appropriate protective measures.

- D -

decision letter: letter sent to the responsible lessee which either assesses compensatory royalty for failure to take appropriate protective measures if drainage is occurring and an economic protective well could be drilled, or, if drainage is not occurring or an economic protective well could not have been drilled since the obligation to protect from drainage began, informs the responsible party that no drainage protection is required at this time.

demand letter: letter sent to the lessee informing the lessee that a PDS exists on its lands and requires the lessee to protect the leased lands from drainage. The demand letter explains the lessee's options for protecting the lease, which include drilling a protective well(s), executing protective agreements, paying compensatory royalty, relinquishing all or part of the lease, or any combination of the above that protects the Federal or Indian lease. The demand letter requires the lessee to submit a plan to protect the lease from drainage or to submit geologic, reservoir and economic data sufficient to show that either drainage is not occurring or that an economic protective well cannot and could have not been drilled.

discount rate: the rate at which future cash flow is discounted in order to calculate the present value of an investment.

drainage: the uncompensated loss of hydrocarbons, inert gases or geothermal resources from Federal, Indian tribal or Indian allotted mineral lands from wells on adjacent nonjurisdictional lands or jurisdictional lands with lower participation, allocation, royalty rate, or distribution of funds, resulting in revenue losses to the Federal or Indian lessors.

drainage case: exists for each Federal or Indian lease or unleased tract affected by each potential drainage situation that is not eliminated during the well review. A drainage case is fully defined by the following: (l) lease or agreement number, (2) area drained,(3) potentially draining well, and (4) drained reservoir. The Handbook provides details and examples of drainage cases.

drainage case file: the file created for each drainage case for each lease or unleased tract that is subject to potential drainage. The findings of all reviews and decisions are documented in this file.

drainage factor: the percentage of the draining well's production attributable to the lease being drained.

-E-

economic determinants: factors that pertain to an economic well determination, e.g., prices, costs, minimum rate of return, etc.

economic limit: the time at which current operating costs of a well equal the current net revenue from production.

economic well: a well that, if drilled, would have realized a reasonable rate of return based on the technical and economic data and projections available at the time of drilling.

express covenant (drainage): the specific intent of the lease terms pertaining to the responsibility of the lessee to protect Indian and Federal leases from the uncompensated loss of mineral interests.

Indian: references to Indian and Indian interests throughout these Guidelines apply to all Indian tribes and allottees for which the United States has minerals management responsibility, except for those lands within the Osage Indian Reservation, Oklahoma.

jurisdictional lands: land for which the Federal Government holds mineral interests or Indian tribal or allotted mineral interests for which the Federal Government has trust responsibility.

-L-

lessee: the person or entity holding the record title interest in a lease issued by the United States. Record title includes operating rights unless the operating rights have been severed from record title.

lessor: the Federal or Indian royalty interest owner.

-N-

net revenue from production: income from the production of a well after royalties have been paid.

-O-

operating expenses: the direct costs for producing and maintaining production from a well.

operator: for Federal or Indian lands, any person or entity, including, but not limited to, the lessee, operating rights owner, or designated agent or operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof. For fee lands, the individual or entity who drills and/or operates a well.

-P-

potential drainage situation (PDS): a PDS exists when Federal or Indian lands are offset by a producing well on adjoining fee land, lower royalty, participation or allocation Federal or Indian land, different ownership Indian land, or Federal land for which the revenues are distributed to different accounts, provided the Federal or Indian spacing unit, or common well development or spacing pattern, is not protected by (l) a well that is then producing from the same reservoir(s); (2) a well that formerly produced from said reservoir(s) and is now exhausted; or (3) a well that sufficiently but unsuccessfully tested said reservoir(s). When such a Federal or Indian spacing unit (pattern) is offset by multiple wells and/or wells with multiple completions, each well and reservoir involved is a separate potential drainage situation.

protective action: action taken to protect jurisdictional lands from drainage. These actions include: (1) drilling a protective well;(2) executing a communitization agreement, compensatory royalty agreement, unit agreement, or unit participating area agreement; or (3) paying compensatory royalty.

protective well: the well drilled on a Federal or Indian lease to protect the lease from drainage by an offset well.

- R -

reservoir: for the purpose of drainage determinations, a reservoir is defined as the individual continuous accumulation of oil, gas, or geothermal resources within a geologic container.

- S -

spacing unit: the development pattern established by State or Federal order roughly. encompassing the area that can abe efficiently and economically drained by one well. Spacing units typically vary by formation, depth, or product produced. Field orders may also stipulate where, within a spacing unit, a well can be drilled.

- U -

uncompensated loss: production of oil or gas or geothermal resources for which the Federal or Indian lessor does not receive the appropriate royalty.

3160-3 - FIRST PRODUCTION/DISCOVERY REPORTS

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3160-3 - FIRST PRODUCTION/DISCOVERY REPORTS

.01 Purpose. This Manual Section provides instructions regarding actions that must be taken following the first production/discovery of oil or gas from a well that directly or indirectly affects the Department's leasing, lease management, or royalty management functions.

.02 Objectives. Federal or Indian lands can be affected by the discovery and/or initial production of oil and gas from a well located (a) on a Federal or Indian leasehold; (b) on a committed tract within a unitized or communitized area (CA) that includes Federal and/or Indian lands; or (c) on adjacent nonjurisdictional (State or private-land) leases. The objective to be accomplished by preparing and distributing first production/discovery reports is to ensure that appropriate offices within the Department are notified promptly of each such event, since the extension of leases and agreements beyond their primary terms, drainage determinations, royalty management determinations, and the creation or expansion of known geologic structures (KGS) or unit participating areas may be triggered or affected whenever a well, meeting any of the above circumstances, is completed for oil or gas production.

.03 Authority.

A. 43 CFR Group 3100.

B. Memorandum of Understanding Between the Bureau of Land Management and Minerals Management Service Regarding Working Relationships Affecting Mineral Lease Activities, January 9, 1984.

.04 Responsibility.

A. State Director. The State Director is responsible for making paying well determinations and for reviewing the procedures used by District Managers in reporting discoveries and first production.

B. District Manager. The District Manager, as delegated, is responsible for monitoring all well completions affecting Federal or Indian minerals; preparing first production/discovery reports (memoranda); making paying well determinations; and for notifying the BLM State Director, the Minerals Management Service, and, as appropriate, other BLM offices and the Bureau of Indian Affairs (BIA).

C. Area Managers. The Area Manager is responsible for operations in his/her area, if further delegated.

3160-3 - FIRST PRODUCTION/DISCOVERY REPORTS

.05 References.

A. Manual Section 3160-2 - Drainage Protection.

B. Former USGS Conservation Division Manual chapter on extension of leases, R17-CDM 645.6.

C. Former USGS Conservation Division Manual chapter on unitization, R29-CDM 645.1.

D. 67 IBLA 246 (September 24, 1982), Yates Petroleum Corp. et al. Appeal from decision of Wyoming State Office, Bureau of Land Management, holding noncompetitive oil and gas lease W-28314 to have terminated by operation of law.

.06 Policy. It is the BLM policy to require preparation of the first production/discovery memorandum in order to accomplish the objectives stated above.

3160-3 - FIRST PRODUCTION/DISCOVERY REPORTS

.1 Guidelines. These instructions apply to wells on (a) Federal public domain and acquired lands, (b) Indian tribal and allotted lands, (c) communitized and unitized areas that include Federal or Indian lands, and (d) nonjurisdictional lands that may affect adjacent Federal or Indian lands.

.11 Reporting Discoveries/First Production on or Affecting Federal Lands. Discovery and/or first production reports must be prepared promptly in all cases where Federal lands are directly involved, i.e., where the well is located on the Federal leasehold or on non-Federal lands communitized or unitized with Federal lands. Accordingly, the authorized officer must monitor all new well completions and recompletions on public domain and acquired land leases and on non-Federal lands within all unitized or communitized areas that include Federal lands. The first production/discovery report should contain the operator's name, well identification and location, geological data, the initial potential test data and, if possible, a paying well determination.

A. First Production/Discovery Memoranda. A first production/discovery memorandum (Illustration 1) must be prepared immediately following first production/discovery on a Federal lease. A memorandum is also required upon completion of the initial well under a communitization action or unitization agreement involving Federal lands, even if previous memoranda have been written for all or some of the individual leases committed to the agreement.

B. Coordination with the Minerals Management Service. At the time each lease or agreement (communitization or unitization) becomes productive, MMS must be provided a copy of all pertinent lease instruments, approved assignments, designations of operator, other relevant documents, and the first production/discovery memorandum. The MMS must be provided copies of unit or communitization agreements and associated documents and exhibits upon approval of the agreements. In those instances where there is nonunitized production within the boundaries of an agreement, MMS must be advised clearly of these circumstances. MMS must also be advised clearly of those circumstances where unitized lands are communitized with nonunit lands, i.e., with lands within the unit area but not committed to the unit plan, or with lands outside but adjacent to the unit area. Also, MMS must be apprised of overlapping or concurrent unit areas, communitized areas, or unit participating areas.

C. Preliminary Determination of Paying Quantities. If the authorized officer cannot initially determine from the initial potential test data and other available information that the well is capable of production in paying quantities, a comment to this effect should be in the "Remarks" section of the memorandum. In that case, a supplemental report must follow as soon as sufficient information is available to determine the capability of the well.

.12 Reporting First Production/Discoveries on Nonjurisdictional Lands. First production/discovery reports for nonjurisdictional lands must be submitted only when such well completions may affect adjacent Federal or Indian lands. Accordingly, the authorized officer must monitor drilling wells on nonjurisdictional lands when the completion of such wells may affect nearby Federal or Indian lands.. A first production/discovery memorandum (Illustration 2) must be prepared as soon as possible following such completions. Any information that may be of value to the users of such reports should be included in the "Remarks" paragraph of the memorandum.

.13 Reporting First Production/Discoveries on or Affecting Indian Lands. First production/discovery memoranda for Indian leases are prepared the same as for Federal leases (see Illustration 3).

.14 Reporting Initial Completion in Unit or Communitized Areas. A Federal oil and gas lease may be extended past its primary term by commitment to a federally approved unit or communitization agreement if a well is completed on a committed tract that is capable of producing unitized/communitized substances in paying quantities prior to the expiration date of the lease. Production in such quantities on any committed tract within the agreement area is considered to be on or for the benefit of each committed lease. Accordingly, a first production/discovery memorandum (Illustration 1) must be prepared as soon as possible after the completion of the first unit or communitized well capable of producing unitized/communitized substances in paying quantities. Even if the first production/discovery in the unit does not qualify as a well capable of producing unitized substances in paying quantities, a first production/discovery memorandum must be prepared if the well is or may be capable of production in paying quantities on a lease basis (see Glossary). This is necessitated by the fact that 67 IBLA 246, dated September 24, 1982 (Yates Petroleum Corp. et al.), concluded that the completion of a unit well that is capable of production in paying quantities on a lease basis is sufficient to extend the term of all Federal leases committed to the unit plan.

3160-3 - FIRST PRODUCTION/DISCOVERY REPORTS

.2 Procedures. The following general procedures must be followed in fulfilling responsibilities and assuring intra- and interagency coordination and cooperation.

.21 Monitoring New Well Completions. The District Manager or Area Manager, if so delegated, monitors new well completions or recompletions on public domain, acquired, and Indian lands leases, on unitized/communitized areas involving Federal or Indian lands, and on State and privately owned leases adjacent to Federal or Indian lands.

.22 Preparation of Memoranda. Immediately following the completion of a well that constitutes first production and/or a discovery, the appropriate memorandum (Illustration 1, 2, or 3) is prepared by the authorized officer. If a paying well determination cannot be made, the memorandum will state that the production is questionable. Such memorandum will be followed by a second memorandum, once sufficient information is available to make the determination.

.23 Distribution of Memorandum. Copies of all first production/discovery memoranda are distributed within the District, to the State Office, MMS, and, as appropriate, to other BLM offices and to the involved office(s) of the BIA. Intra-~~District (or~~ Intra-State Office, ~~where not~~ delegated) notification of first production/discovery should include all affected organizational entities. Copies of the memorandum also must be forwarded to the bordering State Offices, if the subject well is located within 5 miles of the border with the adjacent States. If the well is located within 5 miles of the border with adjacent Districts within the same State jurisdiction, a copy of the memorandum must also be sent to those District Offices.

3160-3 - FIRST PRODUCTION/DISCOVERY REPORTS

Glossary of Terms

- A -

authorized officer: any employee of the Bureau of Land Management authorized to perform the duties described herein.

- D -

discovery: a well that has been drilled, deepened, or plugged back and completed for oil or gas production in sands, formations, or sources of supply from which hydrocarbons have not previously been produced or tested in the field or area where the well is located.

discovery memorandum: a memorandum prepared after a well has been drilled, deepened, or plugged back and completed for oil or gas production from a sand, formation, or source of supply not previously known to be productive in the field or area in which the well is located. However, where the well also qualifies as the first production from a lease, the memorandum is styled as a first production/discovery memorandum. The well may be located on leased Federal or Indian lands, in a communitized or unitized area that includes committed Federal and/or Indian leases, or on nonjurisdictional lands in close proximity to Federal or Indian lands (leased or unleased). The memorandum should provide the full particulars concerning the well and, if possible, a determination as to whether it is capable of production in paying quantities. If such a determination is not then possible, a subsequent report in that regard must be submitted. The information contained in the report may affect the royalty management program and may relate to lease and agreement extensions, KGS determinations, and drainage reviews.

- F -

first production memorandum: a memorandum prepared after a well has been drilled, deepened, or plugged back and completed for oil and/or gas production from a sand, formation, or source of supply that previously was known to be productive in the field or area in which the well is located, whenever such well represents the first production from that lease. The well may be located on leased Federal or Indian lands, in a communitized or unitized area that includes committed Federal or Indian leases, or on nonjurisdictional lands in close proximity to Federal or Indian lands (leased or unleased). The memorandum should provide the full particulars concerning the well and, if possible, a determination as to whether the well is capable of production in paying quantities. If such a determination is not then possible, a subsequent report in that regard must be submitted. The information contained in the memorandum may affect the royalty management program and may relate to lease and agreement extensions, KGS determinations, and drainage reviews.

- P -

paying quantities:

1. lease wells: quantities of sufficient value to exceed the direct operating costs (including marketing costs) of the well plus rentals or minimum royalty. Drilling and completion costs and costs of related surface facilities are not considered on a lease basis.

2. unit wells: quantities sufficient to repay the costs of drilling, completing, and producing operations with a reasonable profit. If it is not a paying unit well, then determination of paying quantities is on a lease basis, as in 1, above.

3. communitized wells: see 1, above.

3160-3 - FIRST PRODUCTION/DISCOVERY REPORTS

Format and Distribution for a First Production/Discovery Memorandum Where Federal Lands are Directly Involved

Memorandum

To: State Director

From:

Subject: Discovery/First Production, Lease No. (or CA or unit if applicable)

Date of Completion: Field:

Lessee or Operator/Well Name/Number:

Location:

Total Depth and Surface Elevation:

Producing Formation and Intervals: (Show name of formation and top and bottom perforation, or top and bottom of producing interval.)

Initial Daily Production: (Report all production including water, gas from an oil well, distillate, or condensate from a gas well.)

Well Capable of Production in Paying Quantities? (Determine for first production on Federal lease, communitized area, or unit involving Federal lands in accordance with definitions.)

Current Status: (Producing, shut-in, etc.)

Reported Formation Tops:

Remarks: (Include additional information that may be pertinent to the State Office, other BLM offices, MMS, BIA, or BLM geologists, including the identification of other jurisdictional lands, leases, and agreements that may be affected in any manner by the first production/discovery.)

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cc: Minerals Management Service
Bureau of Indian Affairs (as appropriate)
BLM Geologist
District Files
Bordering State and District Offices (as appropriate)

3160-3 - FIRST PRODUCTION/DISCOVERY REPORTS

Format and Distribution for a
First Production/Discovery Memorandum on Nonjurisdictional Lands

Memorandum

To: State Director

From:

Subject: First Production/Discovery on Nonjurisdictional Lands

Date of Completion: Field:

Lessee or Operator/Well Name/Number:

Location:

Total Depth and Surface Elevation:

~~Proximity to Federal Lands:~~
Indian Lands:
Production:

Producing Formation and Intervals:	(Show name of formation and top or bottom perforation, or top and bottom of producing interval.)
Initial Daily Production:	(Report all production, including water, gas from an oil well, distillate, or condensate from a gas well.)
Well Capable of Production in Paying Quantities?	(Apply the same standards as applicable to Federal/Indian leases.)

Reported Formation Tops:

Remarks: (Include additional information that may be pertinent to the State Office, other BLM offices, MMS, BIA, or BLM geologists, including the identification of jurisdictional lands, leases, and agreements that may be affected in any manner by the first production/ discovery.)

---

cc: BLM Geologist
District Files
Bureau of Indian Affairs (as appropriate)
Bordering State and District Offices (as appropriate)

3160-3 - FIRST PRODUCTION/DISCOVERY REPORTS

Format and Distribution for a
First Production/Discovery Memorandum on Indian Lands

Memorandum

To: Area Director

From:

Subject: First Production/Discovery, Lease (or CA or unit if applicable)

Date of Completion: Field:

Lessee or Operator/Well Name/Number:

Location:

Total Depth and Surface Elevation:

Producing Formation and Intervals:	(Show name of formation and top and bottom perforation, or top and bottom of producing interval.)
Initial Daily Production:	(Report all production, including water, gas from an oil well, distillate, or condensate from a gas well.)
Well Capable of Production in Paying Quantities?	(Determine for first production on Indian lease, communitized area, or unit involving Indian lands, in accordance with definitions.)

Reported Formation Tops:

Remarks: (Include additional information that may be pertinent to the State Office, other BLM offices, MMS, BIA, or BLM geologist, including the identification of other jurisdictional lands, leases, and agreements that may be affected in any manner by the first production/ discovery.)

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cc: Minerals Management Service
State Office
District Files
Other Bureau of Indian Affairs Offices (as appropriate)
BLM Geologist
Bordering State and District Offices (as appropriate)

3160-4 - CONVERSION TO WATER WELL

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5. Format for a Water Well Release--Tribal/Allotted Surface-Tribal/Allotted Minerals

3160-4 - CONVERSION TO WATER WELL

.01 Purpose. This Manual Section provides guidelines and procedures for converting unsuccessful oil and gas tests and abandoned oil and gas wells to water supply wells, and for the disposition of water supply wells that are drilled for use in oil and gas exploration, development, and producing operations.

.02 Objectives. The objective of this program is to ensure that, when needed by the Bureau of Land Management (BLM), by other surface management agencies (SMA), or by private surface owners, all wells that have encountered usable water are abandoned in a manner that allows the future beneficial use of that water.

.03 Authority.

A. Federal Land Policy and Management Act of 1976.

B. 43 CFR 2300, 3040, 3160; Onshore Oil and Gas Order No. 1, Approval of Operations on Onshore Federal and Indian Oil and Gas Leases (Circular No. 2538). The following passages from 43 CFR 2300, 3040, and 3160 and from Order No. 1 are relevant to the conversion of oil and gas wells to water wells:

1. Subpart 2310--Withdrawals, General--Procedure.

2. Subpart 3045--Geophysical Exploration (Oil and Gas).

3. Section 3162.3-4 Well Abandonment.

4. Section 3162.4-2 Samples, Tests, and Surveys.

5. Order No. 1, Section VI, Water Well Conversion.

C. Indian Oil and Gas Leases. Many Indian oil and gas leases are issued with language similar to the following: If so required by the Commissioner or his authorized representative, the lessee shall condition, under the direction of the authorized officer, any wells drilled which do not produce oil and/or gas in paying quantities, as determined by the authorized officer, but which are capable of producing water satisfactory for domestic, agricultural, or livestock use by the lessor. Adjustment of cost for conditioning of the well will be made in said cases where it is determined that the well will produce water satisfactorily as aforesaid.

D. Standard Oil and Gas Leases. Standard Federal oil and gas lease terms provide that the lessor reserves the right to purchase casing and to lease or operate valuable water wells.

.04 Responsibility.

A. Secretary. The Secretary has the authority to withdraw federally owned surface around the site of a water well and, if such option is exercised, the authority to reserve the appurtenant water rights.

B. State Director. The State Director is authorized to initiate requests for Secretarial withdrawal of federally owned surface around the site of a well used for water supply purposes and to submit requests for the acquisition of appropriative water rights from individual States, whenever the related water well is situated on surface managed by the Bureau.

C. District Manager. If delegated, the District Manager is responsible for: (1) facilitating the acquisition of wells that can be utilized beneficially for water supply purposes, (2) approving related water well releases, and (3) submitting requests to individual States for the acquisition of appropriative water rights when the related water well is situated on Bureau managed lands.

D. Resource Area Manager. The Area Manager may undertake those responsibilities of the District Manager that are delegated.

.05 References.

A. Manual Section 3160-1 - Application for Permit to Drill and Subsequent Operations.

B. Former USGS Conservation Division Manual chapter on well abandonment, R62-CDM 643.3.

C. 43 U.S.C. 300.

D. 30 U.S.C. 229a.

E. Organic Adminstration Act of 1897.

F. Multiple Use-Sustained Yield Act of 1960.

.06 Policy. It is the policy of the BLM to identify and protect all usable water resources on jurisdiction lands for beneficial use now or in the future. The individual States have the primary authority and responsibility for the allocation and management of water resources within their respective borders. Thus, except where the Secretary elects to withdraw the surface of involved Federal lands and to reserve the appurtenant water rights, the BLM or other SMA, as the case may be, must comply with applicable State laws to secure the appropriation of the necessary water rights.

3160-4 - CONVERSION TO WATER WELL

.1 Guidelines. The Bureau of Land Management will seek to acquire wells on lands that it manages for water supply purposes and will cooperate with and assist other SMA's and private surface owners in acquiring wells for this purpose. As such, the Bureau of Land Management must work closely with the involved operator when it is desirable to acquire a particular well for this purpose. Potentially suitable wells include those that: (1) were drilled as a water supply source in support of exploration, development, and producing operations and are no longer needed by the operator; (2) encountered usable water but were unsuccessful in discovering commercial quantities of oil and/or gas and are to be plugged and abandoned; and (3) encountered usable water and are to be plugged and abandoned because they no longer are capable of producing oil or gas in commercial quantities. The BLM's primary responsibility, whenever any well is to be abandoned, is to ensure that it is plugged properly, either to the surface or, if it is to be acquired for future use as a water well, to the base of the deepest water-bearing interval of interest. Additional guidance for well abandonment is provided in former USGS Conservation Division Manual chapter R62-CDM 643.3. Any entity (BLM, other SMA, or private surface owner) desiring to obtain such a well as a water source well must assume the cost for any additional work on the well beyond the normal plugging and abandonment required of the operator, and the cost of subsequent operations, and must assume future liability for the well by written agreement.

.11 Restrictions. The conversion of a noncommercial oil or gas well to a water supply well and its subsequent operation is subject to all applicable State laws, BLM regulations, and/or special use permits and, if on lands managed by another SMA, to that SMA's applicable requirements. Those who obtain and/or operate such wells are responsible for compliance with all such applicable requirements.

.12 Liability. Each release from future liability for a well acquired for water supply purposes must be signed by the appropriate party or parties. Suggested formats for release from future liability are provided in Illustrations 1-5. If the well originally was drilled as a water supply well, the operator should furnish BLM with a copy of any statement of completion and description of well filed with the State at the time that execution of the water well release is completed. Thereafter, any other agency and/or individual desiring to use the well must make appropriate arrangement with the party who has accepted liability.

.13 Water Quality Determinations. The authorized officer may require samples, tests, and surveys to be taken by the lessee, without cost to the lessor, to ascertain the presence of or to determine the quality of waters that are encountered during oil and gas drilling operations. Accordingly, routine water analyses are to be required whenever significant finds of water are encountered during such drilling operations, unless the quality of the water in the interval or intervals in question generally is known from available data, or where obtaining representative water samples would be impractical. When an analysis is required to determine water quality, it must be performed by a recognized and/or accredited laboratory. The authorized officer will act on requests for water quality determinations that are initiated by the Bureau or received from other Federal agencies when there is interest in obtaining a particular well as a water supply source.

.14 Water Rights. The Bureau or other SMA's may acquire, for water supply purposes, those noncommercial oil and gas wells, unsuccessful tests, and associated water supply wells located on lands under their respective management at the time the operator intends to abandon such wells. The water rights associated with those wells that were acquired for this purpose prior to the enactment of the Federal Land Policy and Management Act (FLPMA), i.e., prior to October 21, 1976, were reserved automatically under the provisions of 43 U.S.C. 300 and/or 30 U.S.C. 229a. These previously reserved water rights are still valid and will remain in full force and effect, pursuant to Section 701(c) of FLPMA. However, with the enactment of FLPMA, the automatic reservation provisions of 43 U.S.C. 300 and 30 U.S.C. 229a were repealed. Thus, the water rights associated with wells acquired after October 21, 1976, must be obtained by the Bureau or other SMA (if located on non-BLM land), either by filing for appropriated water rights in accordance with applicable State water laws, or be reserved by a Secretarial election to withdraw the land around the well site pursuant to Section 204(d) and (i) of FLPMA. (Note that some States do not grant water rights to groundwater.) Where a well is to be drilled specifically for a water supply source in support of oil and gas activities, some States require that the operator file for the water rights prior to the commencement of drilling operations. In those instances, the appropriation of the water rights by BLM or another SMA under State law cannot take effect until the initial right has expired. The operator should be requested to inform BLM whether such a permit has been obtained and, if so, when it will expire. Once any well has been acquired, the well may be operated by the Bureau or other SMA, as appropriate, to produce water for use on the lands it manages, or may be leased to private entrepreneurs to impound, store, transport, and/or distribute the water for beneficial uses on the managed lands or other lands. In the latter case, the Bureau or other SMA, as appropriate, may charge the fair market value for the use of the land necessary for the operation of the well and access thereto and for the rights-of-way associated with the distribution of the water to customers.

.15 Protection of Other Minerals. All wells must be completed and abandoned in a manner that: (1) prevents the intermingling of fluids (oil, gas, and water) between formations or intervals that contain fluids of significantly different quality, and (2) protects other minerals (coal, trona, etc.). When a well is no longer needed by the operator, the authorized officer shall require it to be properly plugged, either to the surface or to the base of the deepest water interval of interest, when it is to be acquired from the operator for future use.

.16 Water Supply Wells. All wells that are drilled specifically for water supply purposes in support of oil and gas leasehold operations must receive the prior approval of the authorized officer via the Application for Permit to Drill (APD) process. In accordance with Order No. 1, the drilling of such a water supply well by the operator generally is authorized in conjunction with the Bureau's approval of a related APD for the oil and gas well. A separate application to drill a water supply well by means of an additional APD is required only where the proposed water supply well will penetrate one or more potentially oil and gas bearing intervals, or where an approval is not associated with a related APD for an oil and gas well. Prior to approval, the authorized officer establishes the surface protection and rehabilitation requirements and determines whether there is an interest in ultimately acquiring the well. When a water supply well is not needed by the operator and is to be abandoned, the authorized officer will approve its plugging to the surface, or its partial plugging or capping in a manner that will enable BLM, another SMA, or a private surface owner to acquire and utilize it as a water supply well.

A. Other Applicable Regulations. The authorized officer's approval to drill a water supply well does not convey any water rights to the operator, and the use of water from the well is subject to applicable State laws and regulations. The use of water from such wells also may be subject to the regulations of and/or stipulations imposed by BLM or the appropriate SMA.

B. On Unleased Land. Water supply wells drilled on unleased land or on a lease other than that for which the water is used are subject to special land use permits or similar authorizations issued by the appropriate SMA. For example, the construction of a ditch, canal, reservoir, or water pipeline on or across public lands will require a Bureau right-of-way under Title V of FLPMA.

.2 Procedures. For lands where the surface is owned by the Federal Government, the following procedures and associated responsibilities must be followed in acquiring a well for use as a water supply source.

.21 BLM Managed Lands.

A. Decision on Acquiring a Water Well. The authorized officer should decide whether or not a water well is desired at the site while the related APD is being reviewed. If the decision is affirmative and the well encounters usable water, it may be acquired by the Bureau at the time the operator proposes to abandon it.

B. Notifying the Lessee. If a water well is desired, the authorized officer should so notify the operator at the time the APD is approved, and request the operator to provide the necessary cost data when a notice of intention to abandon the well is subsequently filed.

C. Cost Reimbursement and Liability. If, at abandonment, BLM elects to assume further responsibility for the well, the Bureau must reimburse the operator (while required, this rarely occurs in practice) for any recoverable casing or surface equipment to be left in or on the hole solely because the Bureau intends to maintain it as a water supply well or to convert it for such purposes. The payment is based on cost figures (salvage value) supplied by the operator (and verified by the authorized officer) prior to abandonment. When conversion of an unsuccessful test or noncommercial oil and/or gas well is involved, the operator must abandon the well to the base of the deepest fresh water interval of interest, as required by the authorized officer, and complete the reclamation operations, as required by the drilling permit. The process also includes assuring that all paperwork pertaining to the transfer of future liability is signed by the necessary parties before the partial plugging occurs. By signing the release form, the authorized officer accepts, on behalf of the Bureau, the future liability for the operation of the well, including the final plugging when it is no longer needed as a water supply well. However, the operator is not relieved entirely of its responsibility for the well until the required reclamation operations have been completed to the Bureau's satisfaction and the authorized officer has approved the partial abandonment.

D. Acquiring Water Rights. Upon receipt of a notice of intention to abandon, BLM must make its final decision as to whether it wishes to acquire the well for future use as a water supply source. In many instances, it will be necessary that this decision be made within a few hours after notification of the proposed abandonment. If BLM elects to accept the well, the water rights must be acquired. This is accomplished by the State Director, District Manager, or Area Manager either filing for the appropriated water rights with the State (the more common practice) or, in rare instances, by asserting a Federal reserved water right after obtaining a Secretarial withdrawal of the land around the well site pursuant to Section 204(d) of the FLPMA (see 43 CFR 2310 for withdrawal procedures). In the latter case, the acreage withdrawn should be the least amount necessary to support the use of the well for water supply purposes, but the amount of acreage recommended for withdrawal is left to the discretion of the authorized officer. Since both methods for acquiring the water rights are time consuming, well abandonment to the base of the deepest water bearing interval of interest should, in practice, be allowed to proceed once all appropriate parties (operator, lessee, and authorized officer) have signed the water well release form. Acquisition of the appropriated water rights via State laws or by the assertion of Federal reserved water rights via a Secretarial withdrawal will be accomplished ~~after completion of the abandonment operations~~.

.22 Other SMA Lands.

A. SMA Informed of Proposed Application. Upon receipt of an APD, the authorized officer immediately furnishes the involved SMA with a copy of the APD.

B. SMA Decision on Acquiring a Water Well. The SMA should provide the authorized officer with a written declaration, proposed prior to approval of the drilling operations, as to whether or not a water well is desired at the site, with its proposed reclamation requirements for the well. If the decision is affirmative and the well encounters usable water, the well may be acquired by the SMA at the time the operator proposes to abandon it.

C. Notifying the Lessee. If the SMA indicates that a water well is desired, the authorized officer should so notify the operator at the time the APD is approved and request the operator to provide the necessary cost data when a notice of intention to abandon is subsequently filed.

D. Cost Reimbursement and Liability. If, at abandonment, the SMA elects to assume future responsibility for the well, the SMA must reimburse the operator (while required, this rarely occurs in practice) for any recoverable casing or surface equipment to be left in or on the hole, solely because the SMA intends to maintain it as a water supply well or to convert it for such purposes. The payment is based on cost figures (salvage value) supplied by the operator (and verified by the authorized officer) prior to abandonment. When conversion of an unsuccessful test or noncommercial oil and/or gas well is involved, the operator must abandon the well to the base of the deepest fresh water interval of interest, as required by the authorized officer, and complete the reclamation operations, as required by the drilling permit. This process also includes assuring that all paperwork pertaining to the transfer of future liability is signed by an appropriate official of the SMA before the partial plugging occurs. By signing the release form, the appropriate SMA official accepts, on behalf of that SMA, the future liability for the operation of the well, including the final plugging when it is no longer needed as a water supply well. However, the operator is not relieved entirely of its responsibility for the well until the required reclamation operations have been completed to the SMA's satisfaction and the authorized officer has approved the partial abandonment.

E. Acquiring Water Rights. Upon receipt of a notice of intention to abandon, the authorized officer furnishes the appropriate SMA with a copy of the notice and the estimated cost of the casing and the surface equipment to be left in or on the hole, for those wells previously requested. The SMA then must make its final decision as to whether it wishes to acquire the well for future use as a water supply well. The authorized officer provides as much advance notice as possible, but it is recognized that, in many instances, the SMA's decision must be made within a few hours after notification of the proposed abandonment. If the SMA elects to accept the well, the water rights must be acquired. This is accomplished by the SMA either filing for the appropriated water rights with the State (the more common practice) or, in rare instances and with the consent of the head of the SMA, by asserting a Federal reserved water right after obtaining a Secretarial (Interior) withdrawal of the land around the well site pursuant to Section 204(d) and (i) of the FLPMA (see 43 CFR 2310 for withdrawal procedures). In the latter case, the acreage withdrawn should be the least amount necessary to support the use of the well for water supply purposes, but the amount of acreage recommended for withdrawal should be left to the discretion of the SMA. In the case of the U.S. Forest Service, a Federal reserved water right may be claimed if the water is to be used for the primary purposes of the Organic Administration Act of 1897 or for the purposes of the Multiple Use-Sustained Yield Act of 1960. Since both methods for acquiring the water rights are time consuming, well abandonment to the base of the deepest water bearing interval of interest should, in practice, be allowed to proceed once all appropriate parties (operator, lessee, and SMA official) have signed the water well release form. Acquisition of the appropriated water rights via State laws or by the assertion of Federal reserved water rights via a Secretarial withdrawal will be accomplished after completion of the abandonment operations.

.3 Seismic Operation. The drilling of shot holes in association with the conduction of seismic operations may result in the discovery of usable water. Thus, when a notice of intent to conduct seismic operations involving this technique is received for an area in which there is an interest in establishing a water supply source, the authorized officer should require the applicant to provide prompt notification of any such water discovery. If the quantity and quality of the discovered water are such that a decision is made to acquire the hole for use as a water supply well, the authorized officer must so inform the operator and execute an appropriate water well release form relieving the operator from any further liability for the operation and subsequent plugging of the hole. The Bureau is responsible for the cost of completing the hole as a water supply well. The authorized officer may utilize the operator's personnel and equipment in this regard, if the operator is willing to do so and has the necessary capability. However, the cost of the casing, materials such as cement, and other services are borne by the Bureau, and the operator must be compensated for the use of its equipment and personnel, at least to the extent of the additional expense incurred over and above that which would have been associated with merely plugging the hole. The associated water rights must also be acquired through one of the two available procedures discussed in .21D.

.4 Private Surface Ownership. The above procedures do not apply where the surface is owned by an individual. In those instances, copies of the operator's applications are not furnished to the private surface owner, and the owner is responsible for making arrangements with the operator to acquire a well for use as a water supply source. The private surface owner and the operator should advise the authorized officer of any such pending arrangement. However, when it is established that a particular well is to be left as a water supply well, the BLM acts as liaison between the operator and the private surface owner in obtaining a release from future liability (Release Agreement, Illustration 1) by requiring the well to be plugged and abandoned in a manner that facilitates its conversion to a water supply well. The private surface owner is responsible for compliance with any applicable State requirements.

3160-4 - CONVERSION TO WATER WELL

Glossary of Terms

- A -

authorized officer: any employee of the Bureau of Land Management authorized to perform the duties described herein.

- S -

surface management agency: a Federal agency, other than BLM, having jurisdiction over certain lands and the responsibility for protecting and managing the surface resources and uses of those lands, even though they have been leased for oil and gas exploration, development, and production subject to the approval and supervision of the authorized officer.

- W -

water well: any well containing a water source that is of such quality and quantity as to be usable at a reasonable cost for agricultural, domestic, or other beneficial purposes.

3160-4 - CONVERSION TO WATER WELL

Format for a Release Agreement--Patented Surface

RELEASE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that I _____,
of the County of _____ in the State of _____,
am the surface owner of the hereinafter described land upon which a well for oil or gas was drilled, to wit:

Operator _____

Lease Number _____

Lessee _____

Well No. _____ (__1/4__1/4) Sec.____, Twp.____, Rge.____.

The well is located _____ from the _____ line and

_____ feet from the _____ line of Sec. _____.

I do hereby notify the Bureau of Land Management of my desire to utilize said well as a water supply well and I do hereby release and discharge the operator, lessee, and the Bureau of Land Management from any further work or responsibility in relation to the plugging of said well.

WITNESS by hand and seal this _____ day of _____, 19___.

_____
Surface Owner

_____
Address

IN THE PRESENCE OF:

_____ Address _____

_____ Address _____ _____

3160-4 - CONVERSION TO WATER WELL

Format for a Water Well Release--Surface Managed by BLM

WATER WELL RELEASE

Instructions: District Manager prepares five copies. File orignial in District file. Submit one copy each to lessee and/or operator, surface owner, and State Office.	Lease Number or Notice of Intent Number

_____, hereinafter called operator and _____, hereinafter called lessee, do enter into an agreement by and between the United States of America, through the Bureau of Land Management, hereinafter called the Bureau, for release of water well no longer needed by lessee or operator.

Said water well was

____ drilled expressly for water to be used in drilling operation
____ discovered in the course of drilling for oil and gas
____ discovered by seismograph operators
____ other

Said water well is located in (give legal description)

in the State of _____.

The Bureau, acting through the Secretary of the Interior, agrees to assume control and responsibility of water well, with condition that subsequent use will not restrict operations of lessee and operator and thereby relieves lessee and operator of any further liability for plugging water well.

The lessee and the operator agree to quitclaim all rights to water well to the Bureau in lieu of plugging water well to surface.

It is further agreed by the undersigned that the owners of record title to the above oil and gas lease and the operator for lessee (name) _____ and well number _____, with surety bonds are relieved from liability in connection with water well, effective the date this instrument is signed, for extent of liability for satisfactorily plugging of water well to the surface.

IN WITNESS WHEREOF, the undersigned hereto have executed this instrument

By (signature)	For Lessee (name)	(date)
By (signature)	For Operator (name)	(date)

EXECUTED AND ACCEPTED BY BUREAU OF LAND MANAGEMENT	Authorized Officer. (signature)	(date)

3160-4 - CONVERSION TO WATER WELL

Format for a Water Well Release--Federal Surface Managed by Another SMA

WATER WELL RELEASE

WHEREAS, that certain Oil and Gas Lease was made and entered into on _____, by and between the United States of America, Lessor, and _____ _____, Lessee, bearing serial number _____; and

WHEREAS, _____, whose address is _____ _____ is the present Lessee of record; and

WHEREAS, said Lease provides that there is reserved by the Lessor all rights pursuant to Section 40 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437, as amended), to acquire casing and lease or operate valuable water wells located on said Lease and lands; and

WHEREAS, _____, as operator has drilled a water well/an oil or gas test well located _____ feet from the _____ line and _____ feet from the _____ line of Section _____ in Township _____, Range _____, _____, said well being located in _____ of the said Section _____, a portion of the above lease, which well appears to contain water of such quality and quantity to be valuable and usable at a reasonable cost for agricultural, domestic, or other beneficial purposes; and

WHEREAS, _____, as lessee, and _____, as operator, desire to release, relinquish, and quitclaim all right, title, and interest in ~~and to said well to~~ the United States of America in lieu of plugging same to surface; and

WHEREAS, the United States of America, acting by and through the _____ desires, pursuant to said Lease and said Mineral Leasing Act of February 25, 1920, as amended, to take over said well with the express understanding and agreement that the taking over of such well will not restrict operations of said lease.

NOW, THEREFORE, for and in consideration of the above grant, the (SMA) _____ assumes all further responsibility for the said well and does relieve the oil and gas lessee, the operator, and the Bureau of Land Management of any future liability insofar as authorized by applicable laws and regulations pertaining to such use.

This instrument, regardless of the date of execution thereof, shall be effective as of _____.

IN WITNESS WHEREOF, the undersigned has executed this Release on this _____ day of _____, 19__.

Accepted _____ (Date)

_____ (Lessee/Operator)

With the _____ (SMA) assuming all future responsibility for same, thereby relieving the oil and gas lessee, operator, and the Bureau of Land Management of any future liability for the well.

By _____
(Title)

DEPARTMENT OF _____
(Agency)

3160-4 - CONVERSION TO WATER WELL

Format for Water Well Release--Indian Surface-Federal Minerals

WATER WELL RELEASE

WHEREAS, that certain Oil and Gas Lease was made and entered into on _____, by and between the United States of America, Lessor, and _____, Lessee, bearing serial number _____; and

WHEREAS, _____

_____

are the present Lessees of record; and

WHEREAS, said Lease provides that there is reserved by the Lessor all rights pursuant to Section 40 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437, as amended), to acquire casing and lease or operate valuable water wells located on said Lease and lands; and

WHEREAS, _____, as operator has drilled a water well/an oil or gas test well located ____ feet from the _____ line and _____ feet from the ____ line of Section _____ in Township _____, Range _____, said well being located in _____ of the said Section _____, a portion of the above lease, which well appears to contain water of such quantity to be valuable and usable at a reasonable cost of agricultural, domestic, or other beneficial purposes; and

WHEREAS, _____ as lessees, and _____, as operator, desire to release, relinquish, and quitclaim all right, title, and interest in and to said well to the United States of America in lieu of plugging same to surface; and

WHEREAS, the United States of America, acting by and through the _____ desires, pursuant to said Lease and said Mineral Leasing Act of February 25, 1920, as amended, to take over said well with the express understanding and agreement that the taking over of such well will not restrict operations of said lease.

NOW, THEREFORE, for and in consideration of the premises, the undersigned has released, relinquished, and quitclaimed, and does hereby release, relinquish, and quitclaim unto the United States of America, acting by and through the _____, all right, title, and interest in and to said above described well.

This instrument, regardless of the date of execution thereof, shall be effective as of _____.

IN WITNESS WHEREOF, the undersigned has executed this Release on this _____ day of _____, 19__.

Accepted _____(Date)_____ _____(Lessee/Operator)_____
With the _____(SMA)_____ assuming all future responsibility for same, thereby relieving the oil and gas lessee, operator, and the Bureau of Land Management of any futher liability for the well.

_____
(Agency Superintendent) (Area Director)
Bureau of Indian Affairs

3160-4 - CONVERSION TO WATER WELL

Format for a Water Well Release--
Tribal/Allotted Surface-Tribal/Allotted Minerals

WATER WELL RELEASE

WHEREAS, that certain Oil and Gas Lease was made and entered into on _____, by and between _____, Lessor, and _____, Lessee, bearing lease serial number _____; and

WHEREAS, _____

_____

are the present Lessees of record; and

WHEREAS, said Lease provides that there is reserved by the Lessor all rights to acquired casing and lease or operate wells located on said Lease and lands, which do not produce oil and/or gas in paying quantities, but which are capable of producing water satisfactory for domestic, agricultural, or livestock use; and

WHEREAS, _____, as operator has drilled a water well/an oil or gas test well located _____ feet from the _____line and _____ feet from the _____line of Section _____ in Township _____, Range _____, said well being located in _____ of the said Section _____, a portion of the above lease, which well appears to contain water of such quantity to be valuable and usable at a reasonable cost for agricultural, domestic, or other beneficial other purposes; and

WHEREAS, _____ as lessees, and _____, as operator, desire to release, relinquish, and quitclaim all right, title, and interest in and to said well to the Lessor in lieu of plugging same to surface; and

WHEREAS, the Lessor desires to take over said well with the express understanding and agreement that the taking over of such well will not restrict operations of said lease.

NOW, THEREFORE, for and in consideration of the premises, the undersigned has released, relinquished, and quitclaimed, and does hereby release, relinquish, and quitclaim unto the Lessor, all right, title, and interest in and to said above described well.

This instrument, regardless of the date of execution thereof, shall be effective as of _____.

IN WITNESS WHEREOF, the undersigned has executed this Release on this _____ day of _____, 19__.

Accepted _____(Date)_____ _____(Lessee/Operator)_____
With the _____(SMA)_____ assuming all future responsibility for same, thereby relieving the oil and gas lessee, operator, and the Bureau of Land Management of any futher liability for the well.

_____
(Agency Superintendent) (Area Director)
Bureau of Indian Affairs

3160-10 - SUSPENSION OF OPERATIONS AND/OR PRODUCTION

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Bibliography

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1. Solicitor's Opinion, Suspension of the Operating and Producing Requirements of Onshore Federal Oil and Gas Leases for Environmental Reasons, July 14, 1975
2. Solicitor's Opinion, Oil and Gas Lease Suspensions, May 31, 1985

3160-10 - SUSPENSION OF OPERATIONS AND/OR PRODUCTION

.01 Purpose. This Manual Section provides guidelines and procedures for reviewing, processing, approving, and terminating suspensions of operations and/or production (SOP) on onshore Federal (except the National Petroleum Reserve in Alaska) and Indian oil and gas leases, including those within an approved or prescribed plan for unit or cooperative development and operation.

.02 Objectives. The objective of this program is to provide a mechanism for relieving lessees from lease operating and producing requirements under situations beyond the lessee's control.

.03 Authority.

A. 43 CFR 3103.4-2, Suspension of operations and production.

B. 43 CFR 3107.2-3, Nonproduction from leases capable of production.

C. 43 CFR 3165.1, Relief from operating and producing requirements.

D. 25 CFR 225.32, Duration of leases.

E. 25 CFR 225.54, Suspension of production; Remedial workover/shut-in.

.04 Responsibility.

A. State Director. The State Director (SD) is responsible for:

1. Reviewing and approving SOP's for Federal leases.

2. Reviewing SOP's for Indian leases when requested by Bureau of Indian Affairs (BIA)

3. Notifying Minerals Management Service (MMS) for suspensions involving a suspension of rental/minimum royalty.

4. Assuring that SOP's for Federal leases are timely terminated.

5. Advising BIA when diligent remedial workover operations commence and cease on SOP's for Indian leases.

B. District Manager. If delegated, the District Manager (DM) may be responsible for all or any of the responsibilities of the SD. Redelegation of the above responsibilities to the District Manager is greatly encouraged.

3160-10 - SUSPENSION OF OPERATIONS AND/OR PRODUCTION

.05 References.

A. Onshore Oil and Gas Order No. 1, Approval of Operations on Onshore Federal and Indian Oil and Gas Leases (Circular No. 2538).

B. BLM Manual Handbook H-3103-1, Fees, Rentals, and Royalty.

.06 Policy. Under the Mineral Leasing Act (MLA), holders of Federal oil and gas leases have the full primary term to develop the resources subject to their leases. Suspensions, when deemed necessary by the appropriate authority, will be given only in the interest of conservation of natural resources (see Appendix 1) or in a force majeure case, and when the lessee has diligently pursued lease development and has timely filed an application for suspension.

3160-10 - SUSPENSION OF OPERATIONS AND/OR PRODUCTION

.1 Background. No suspension of the operating and producing requirements of a lease shall be granted except where the authorized officer directs or consents to a suspension in the interest of conservation of natural resources. No suspension of the operating or producing requirements of a lease shall be granted except where the authorized officer directs or consents to a suspension in a force majeure situation that may include actions taken in the interests of conservation of natural resources.

.11 Tolling of the Lease Term. Section 39 of the MLA provides for a suspension of operation and production, under which the term of the lease shall be extended by adding any such suspension period thereto. Likewise, Section 17(f) of the MLA provides in part that no lease shall be deemed to expire during a suspension of either operations or production. Although there was an uncertainty as to whether suspension under section 17(f) of the Act also tolls (stops) the running of the lease term, the Solicitor has advised that this was indeed the Congressional intent (Appendix 2). Therefore, for leases not in their extended term due to production, a suspension tolls the running of the lease term and adds the period of suspension to the term of the lease.

.12 Waiver of Rental or Minimum Royalty. Section 39 of the MLA provides a suspension of rental or minimum royalty payment requirements during the period of any suspension of operation and production. However, section 17(f) provides no similar suspension of payments during the period of any suspension of operations or of production. The Solicitor has advised that the lessee must continue these payments during the period of suspension under section 17(f), unless the lessee separately qualifies for a waiver, reduction, or suspension of rental or minimum royalty under the first sentence of section 39.

.2 Guidelines.

.21 Suspension--Federal Leases.

A. Types of Suspension. The interpretation of the requirements related to suspensions are largely based on the Solicitor's Opinion in Appendix 2, which should be studied in its entirety. Note that the interpretation contained in that Appendix should be applied only to suspensions that are directed or approved after the date of the memorandum.

1. Suspension of Operations and Production. Suspension of operations and production under Section 39 of the MLA suspends both operations and production activities. Therefore, the lessee is denied all beneficial use of the lease. Such suspension may be granted, even though the lease does not contain a producible well. The suspension may be granted by the authorized officer only in the interest of conservation of natural resources. Suspension of operations and production tolls the running of the term of a lease and adds the period of suspension to the term of the lease. Any payment of rental or of minimum royalty also shall be suspended during the period of suspension of operations and production. Activities designed to benefit the lease (operations or production) may not be commenced or continued on the lease while the lease is so suspended. This requirement applies to Federal oil and gas leases regardless of the surface ownership. However, casual uses that do not require a permit under the lease (e.g., survey and staking) or activities that may be conducted without the need for a lease (e.g., seismic exploration) may be conducted during the period of suspension. Furthermore, there is the obvious exception for operations that consist strictly of routine maintenance in order to prevent damage to wells but shut in as a result of the suspension. Such operations do not constitute beneficial use of the lease. When all operations and production are suspended, the commencement of operations (as defined in the Glossary) or production shall be regarded as terminating the suspension and the suspension of the rental and minimum royalty payment. However, if necessary, the lessee may then apply for a suspension of operations or production, whichever would be appropriate.

2. Suspension of Operations. Suspension of operations under Section 17(f) of the MLA suspends the operational obligation of the lessee. Suspension of operations may be directed or consented to by the authorized officer in cases where a lessee is prevented from operating on the lease, despite the exercise of care and diligence, by reason of force majeure, that is, by matters beyond the reasonable control of the lessee. A suspension of operations tolls the running of the term of the lease and adds the period of suspension to the term of the lease, but does not suspend the payment of rental or minimum royalty.

3. Suspension of Production. Suspension of production under Section 17(f) of the MLA suspends the production obligation of the lessee. Suspension of production may be directed or consented to by the authorized officer in cases where a lessee is prevented from producing from the lease, despite the exercise of due care and diligence, by reason of force majeure, that is, by matters beyond the reasonable control of the lessee. A lessee may conduct operations during a suspension of production, but the lease must be producible before a suspension of production may be granted. No lease shall be deemed to expire during the suspension of production. However, it does not suspend the payment of rental or minimum royalty. Suspension of production is unnecessary in most cases, since the ability of a lease to produce in paying quantities, regardless of whether or not it is actually producing, will generally prevent the lease from expiring. An exception to this is that 43 CFR 3107.2-3 requires production from a lease containing a well(s) that is specifically bound by a written order to produce; unless, of course, a suspension of production is granted. It may be appropriate under certain extraordinary circumstances as determined by Washington Headquarters, such as the sharply declining oil prices in early 1986, to grant a suspension of production to a producible lease (the lease may be either in its primary or extended term) in order to avoid the premature abandonment of the wells and resulting loss of recoverable reserves. As nationwide unique situations develop, Headquarters will issue appropriate guidance. If part of the lease is subject to drainage, the protective well on the lease must continue to produce in order to protect the Federal or Indian interests. In that case, granting of a suspension of production for the lease would not be appropriate.

B. Circumstances That Normally Warrant Suspensions. The following examples illustrate circumstances under which granting of suspensions may be appropriate. Each case must be considered on its merit.

1. Suspension of Operations and Production	Suspension of Operations
BLM orders a suspension of all operational activities on a lease to protect natural resources (e.g., delay oil and gas drilling to allow extraction of coal).	Action of other Federal or State agencies that prevent commencement or continuation of operations.
Operational proposal was denied by BLM for reasons of conservation of natural resources, but the likelihood of denial was not specified as a lease term or stipulation.	Extraordinary weather conditions, that is, conditions that are not reasonably expected, or that are more severe than reasonably expected, for the location and time of year, or other catastrophe that prevents roads construction or drilling.
BLM or other surface managing agency (SMA) initiates environmental studies (Environmental Assessment/Environmental Impact Statement/Resource Management Plan) that prohibit beneficial use of the lease(s).	Inability to conduct cultural resources or threatened and endangered species survey due to extraordinary weather conditions.
BLM or other SMA needs more time to arrive at the decision on the proposal.	Litigation over title to lease or surface access being diligently pursued by lessee.
Environmental litigation related to issuance of leases or BLM lease management related issues, and meanwhile no operational proposal can be approved.	Operational proposal was denied by BLM for reasons other than for conservation of natural resources, but the likelihood of denial was not specified as a lease term or stipulation.

2. Determining the Type of Suspension. It is not always clear whether a particular application should be considered for suspension of operations and production or for suspension of operations. The major distinction between the two suspensions should be based on judicious determination as to whether or not the hardship is generated by the action of, or need by, the BLM for conservation of natural resources, rather than situations that are simply beyond the control of the lessee/operator. No suspension of operations and production may be granted for the latter situation. As actions taken in the conservation of natural resources are a type of force majeure situation, suspension of operation may be granted for any of the circumstances described under the above column for Suspension of Operations and Production.

C. Circumstances That Normally do not Warrant Suspensions. Examples of cases where a suspension should not normally be granted are: (1) Applications for Permit to Drill (APD's) submitted incomplete or untimely (less than 30 days before lease expiration); (2) spacing exceptions untimely applied for; (3) the lessee is merged or taken over; (4) the lessee files bankruptcy; (5) the lessee is involved in farm in/out agreements; (6) the lessee fails to obtain a rig when proper rigs are available in the open market; (7) proposed operations are not on the lease and unconnected to the suspension proposal by any approvable Federal agreement; (8) restrictions on the proposed activity were clearly specified in the lease term or stipulation; and (9) weather conditions, although severe, are reasonably expected for the location and time of year.

.22 Suspension--Indian Leases. According to 25 CFR 225.54, the Secretary (defined in this case as the BIA Superintendent) may authorize suspension of producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner, provided that such remedial operations are conducted with reasonable diligence during the period of nonproduction. Any such suspension shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract. An application for permission to suspend producing requirements for economic or marketing reasons on an oil and/or gas well capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of production.

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.3 Procedures.

.31 Federal Leases.

A. Filing of Applications. Suspensions apply to the entire leasehold and not just to any portion thereof. The suspension application must be preceded by a request from the operator to conduct leasehold operations.

1. Parties Executing the Application. The application for suspension must be executed by all lessees of record or, in the case of an approved Federal unit, by the unit operator on behalf of committed tracts or by all lessees of such tracts. Suspensions executed only by the holders of operating rights or by a designated operator of a single lease or communitization agreement are not valid. A lessee may authorize another party to act on the lessee's behalf by means of a power of attorney.

2. Other Requirements. All suspension applications must be filed in triplicate with the authorized officer prior to the lease expiration date. An oral request for a suspension made prior to the lease expiration date and followed by a written request after the lease expiration date does not meet the requirements of the regulations.

3. Documentation. The applicant requesting the suspension must submit thorough documentation of reasons for requesting a suspension. This should include evidence that activity has been attempted on the lease (such as filing a Notice of Staking or an APD) and the activity has been stopped by actions beyond the operator's control.

B. Processing of Applications. Upon receipt of a suspension application, the authorized officer must review the application and decide whether to approve or disapprove the application.

1. Background Information. To facilitate the review, the following should be compiled and retained in the case file: Land description; expiration date of lease; present lessee(s); and any special lease stipulations. In cases where the reason for filing for a suspension on a lease applies to other leases not included in the suspension application (e.g., other leases in the same unit or wilderness study area), the information should be recorded so that suspension applications for the other leases may be speedily considered when applications are received.

2. Late Filing Application. A suspension application must be denied if it is received after the lease expiration date. A suspension application received prior to the lease expiration date but related to an APD that was filed less than 30 days prior to the lease expiration date should normally be denied unless: (1) Unusual circumstances are involved; (2) the authorized officer was able to process the APD in a shorter time; or (3) necessary environmental reviews precluded completing processing earlier. Examples of such denial letters are shown as Illustrations 1 and 2.

3. Approval/Disapproval. For those applications timely filed, the authorized officer reviews and evaluates the documented reasons for the request and the background information. The authorized officer should discuss the request with the appropriate surface managing agency if the requested suspension is on land managed by that agency. If the reasons for the request are acceptable and justify a suspension, the application will be approved. Illustration 3 is an example of a letter to the applicant granting a suspension. Copies of the approval letter must be sent to the State Office (Adjudication Unit), Minerals Management Service, within 5 working days and the local office of the surface managing agency where applicable. If a disapproval is concluded, the letter of notification of disapproval must inform the applicant of the right to request a technical and procedural review and appeal in accordance with 43 CFR 3165.3 and 3165.4, respectively.

C. Effective Date and Termination of Suspensions.

1. Effective Date. Suspensions are normally effective the first day of the month in which the application is filed. However, suspensions may become effective on any day specified by the authorized officer.

2. Termination. The authorized officer should grant the suspension for an indefinite term, rather than for a definite term, because it is difficult to predict the period of delay. The suspension terminates automatically:

a. If operations (see Glossary of Terms) or production is resumed.

b. On the first day of the month in which the lessee is notified in writing of a decision not to approve the APD.

c. On the first of the month in which actual operations are commenced after the APD has been approved. If the lessee has not timely commenced operations within the time specified as a condition of approval (usually 30 days after all necessary approvals of APD have been granted), the suspension terminates on the first of the month in which the time specified for commencement of operations terminates.

3. Monitoring the Suspension. The authorized officer shall monitor the suspension on a regular basis to determine if conditions for granting the suspension are extant, and should terminate the suspension when it is deemed no longer necessary. When the authorized officer terminates such a suspension, the effective date should normally be the first day of the second month following the month in which the termination notice is dated. Illustration 4 is an example of a letter terminating a suspension. Copies of the termination letter must be sent to the State Office (Adjudication Unit), Minerals Management Service, within 5 working days and to the local office of the surface managing agency, where applicable.

4. Rental and Minimum Royalty. Rental and minimum royalty payments shall be suspended during any period of suspension of operations and production directed or assented to by the authorized officer beginning with the first day of the lease month on which the suspension of operations and production becomes effective; or if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day the termination of the suspension of operations and production is effective. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease.

D. Coordination. The authorized officer is responsible for promptly notifying the State Office Adjudication staff in accordance with Handbook H-3103-1 for appropriate lease case file processing.

.32 Indian Leases. If requested by BIA, the authorized officer will timely review the technical aspects of a suspension involving Indian leases and provide BLM evaluation or recommendation to BIA.

.4 Specific Situations.

.41 Secretary's Potash Area (Southeastern New Mexico). The concurrent development by the oil and gas and potash industries in the area designated as the Secretary's Potash Area is subject to specific Secretarial instructions. Several Secretarial Orders have been issued, and Departmental Decision A-28449 granted a suspension in the interest of potash conservation on an oil and gas lease in the Potash Area, which had no producing wells.

.42 Other Minerals. Situations similar to the Potash Area involving other minerals are likely to arise and require the establishment of development priorities or first development rights. (Normally, the first developer has priority; however, because of various lease stipulations and other factors, this is not always true.) When situations of this type result in denial of an oil and gas lessee's right to develop a lease, a suspension of operations and production is justified. Applications should be processed as described in this Manual Section.

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Glossary of Terms

-F-

force majeure: an unexpected and disruptive event operating to excuse a lessee from a lease contract, such as these caused by strikes; acts of God; Federal, State or municipal laws or agencies; unavoidable accidents; uncontrollable delays in transportation; inability to obtain necessary materials or equipment in the open market despite diligent effort; or other matters beyond the reasonable control of the lessee.

-I-

interest of conservation: the protection of all natural resources, subsurface and surface. As used in this Manual Section, the term includes the preparation of environmental studies made to comply with the National Environmental Policy Act (42 U.S.C. 4321-4347). An action taken in the interest of conservation is also a type of force majeure situation.

-O-

operations: all beneficial use of the lease, including construction of access roads on the leased land, site preparation, well repair, drilling or similar activity.

-P-

production in paying quantities: lease production of oil and/or gas of sufficient value to exceed direct operation costs and the cost of lease rentals or minimum royalty.

-S-

surface management agency: a Federal agency, other than BLM, having jurisdiction and responsibility for protecting and managing the surface resources and uses of certain public land that has been leased for oil and gas development.

suspension: a temporary abrogation of a lessee's obligation to perform specific functions stipulated in Federal oil and gas lease terms, regulations, etc., due to the fact that a suspension stops the running of the term of the lease.

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Example of a Letter Denying a Suspension
Because of Expiration of Lease Term

DECISION

(Date)

_____
_____
_____
_____

Gentlemen:

Your application for suspension of operations and production on lease _____ was received _____.

Our records indicate that your application for a permit to drill on this lease was submitted to the _____ Office on _____, _____ days after the lease expiration date of _____.

Since the lease terms automatically expired prior to your submittal of the application for suspension, there is nothing in existence for the Bureau of Land Management to suspend. Therefore, your request for suspension of operations and production is denied.

You may request a technical and procedural review of any instructions, orders, or decisions issued by the Bureau of Land Management as described in 43 CFR 3165.3, or you may appeal pursuant to 43 CFR 3165.4 and 43 CFR 4.400, either directly or following the technical and procedural review. Copies of these regulations are enclosed.

Sincerely yours,

Authorized Officer

3160-10 - SUSPENSION OF OPERATIONS AND/OR PRODUCTION

Example of a Letter Denying a Suspension
Because of Untimely Filing of Application

DECISION

(Date)

_____
_____
_____
_____

Gentlemen:

Your application for suspension of operations and production on lease _____ was received _____.

Our records indicate that your application for a permit to drill on this lease was submitted to the _____ Office on _____, _____ days prior to the lease expiration date of _____.

As you have been informed by our Office and Onshore Oil and Gas Order No. 1, "Approval of Operations on Onshore Federal and Indian Oil and Gas Leases," an application for a permit to drill filed less than 30 days prior to the lease expiration date may not allow adequate time for processing. Your drilling application is not considered timely filed. Therefore, your request for suspension of operations and production is denied.

You may request a technical and procedural review of any instructions, orders, or decisions issued by the Bureau of Land Management as described in 43 CFR 3165.3, or you may appeal pursuant to 43 CFR 3165.4 and 43 CFR 4.400, either directly or following the technical and procedural review. Copies of these regulations are enclosed.

Sincerely yours,

Authorized Officer

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Example of a Letter Granting a Suspension

(Date)

_____
_____
_____
_____

Dear _____:

Your letter of _____ on behalf of _____ requests that a suspension of operations and production be granted for _____ of the Federal leases committed to the _____ unit agreement, should environmental considerations prevent the timely commencement of the initial unit well. Said leases are listed in Exhibit A, attached.

The _____ unit agreement was approved and became effective on _____, and the application for a permit to drill the initial unit well was filed on _____. The Forest Service subsequently advised that it would not be able to complete its environmental study and approve the well location before _____. Until the Forest Service has ~~completed its tasks~~ in this regard, the BLM cannot approve the application for a permit to drill the initial unit well.

Therefore, pursuant to the provisions of 43 CFR 3103.4-2, approval of your application for suspension of operations and production on the leases shown in Exhibit A is granted. The suspension is effective _____, the first day of the month in which the application was filed, and shall remain in effect for an indefinite term. The suspension will terminate upon commencement of operations, approval or denial of the application to drill, or when the authorized officer deems the suspension is no longer in the interest of conservation. The approval of this suspension does not suspend the filing requirements of Form 3160-6, "Monthly Report of Operations." In addition, the 5-day reporting requirements in 43 CFR 3162.4-1(c) must be complied with.

Sincerely yours,

Authorized Officer

cc: State Office (Adjudication Unit)
Minerals Management Service
Local office of the surface managing agency, where applicable

NOTE: When only one or a few leases are involved, the lease numbers may be incorporated in the letter rather than be attached.

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Example of a Letter Terminating a Suspension

(Date)

_____
_____
_____
_____

Dear _____:

By letter dated _____, this office approved a suspension of operations and production effective _____ for an indefinite term for Federal leases _____.

This suspension terminated effective _____ due to (state reason, for example, commencement of operations on _____/the approval on _____ of an application for permit to drill/the determination that the suspension is no longer in the interest of conservation).

Sincerely yours,

Authorized Officer

cc: State Office (Adjudication Unit)
Minerals Management Service
Local office of the surface managing agency, where applicable

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INTERIM GUIDANCE

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

JUL 14 1975

Memorandum

To: Director, Geological Survey

From: Assistant Solicitor--Minerals
Division of Energy and Resources

Subject: Suspension of the operating and producing requirements of onshore Federal oil and gas leases for environmental reasons.

You have asked about the authority of the Department to direct or assent to suspensions of operations or production or both while environmental studies are being made. This authority has been exercised in the past, most notably with respect to the suspension of operations and production on July 7, 1971, on 163 Federal oil and gas leases in the Ocala National Forest, Florida. That suspension was extended from time to time through July 22, 1974, for the express purpose of allowing sufficient time for the Department to determine whether additional special terms and conditions should be imposed to prevent damage to the environment within that national forest. Ample authority existed for the action of the Secretary in making that suspension. Section 39 of the Mineral Leasing Act, as amended (30 U.S.C. § 209), states that: "In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this Act, . . . the term of such lease shall be extended by adding any such suspension period thereto." Through the years the Department has interpreted section 39 as authorizing the Secretary to suspend operations and production, or either, in the interest of conservation.

The term "interest of conservation" has probably been interpreted differently through the years. It should be noted that in the first sentence of section 39 the phrase is "conservation of natural resources" and the normal reading of the second sentence which I have quoted above is that the simple term "conservation" as used there refers back to the first sentence and thus means conservation of all natural resources. There is no indication in section 39 that a suspension is to be merely

for the conservation of the resources subject to the lease or even of the resources subject to the Mineral Leasing Act. Instead the normal reading is that it should be for the conservation of all natural resources.

The term "natural resources" is not defined in the Mineral Leasing Act at any point. In Gulf Oil Corporation v. Morton, 493 F.2d 141 (9th Cir. 1974), the Court of Appeals for the Ninth Circuit concluded that "natural resources" as used in the Outer Continental Shelf Lands Act (43 U.S.C. §§ 1331-1343) should be interpreted as meaning all natural resources and not just minerals. As used in that statute, the court stated, it incorporated the definition of "natural resources" in section 2(e) of the Submerged Lands Act (43 U.S.C. § 1301(e)). In the Submerged Lands Act the term is defined to include minerals and marine animal and plant life. Obviously the OCS Act and the Submerged Lands Act have no direct connection with section 39, but I believe that the Gulf case shows the type of definition which a court would give to the term "natural resources". Section 102(1) of the National Environmental Policy Act (NEPA) (42 U.S.C. § 4332(1)) directs that to the fullest extent possible the laws of the United States should be interpreted and administered in accordance with the policies set forth in NEPA. The policies set forth in NEPA require a wise use and protection of the environment and of all the resources of the environment. These policies are said to be to encourage the "productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation". 42 U.S.C. § 4321. The preparation of environmental impact statements comes within the scope of those purposes, and, therefore, section 102(1) of NEPA provides a positive direction that section 39 is to be interpreted in a manner that is most consistent with protection of the environment and the preparation of environmental studies. It is possible to interpret "interest of conservation" as including the preparation of environmental studies, and, since this interpretation is possible under the requirements of NEPA, it is an interpretation which should now be adopted. Accordingly, it seems clear that the Secretary of the Interior is authorized to suspend operations and production for the preparation of environmental impact studies.

If the Secretary has this authority, the next question is inevitably whether he is under a duty to exercise this authority. It seems evident that it is the intention of the Congress that, where it is in the interest of conservation that operations should be prevented for a time, the lessee should not be deprived of any of the full term of his lease. When section 39 was added to the Mineral Leasing Act in 1933, the long delays for environmental studies which we now experience were

not expected but, nevertheless, Congress provided the means by which the Secretary could see to it that, despite the long delays inevitable in the compliance with NEPA procedures, lessees would not lose any of the time to which they are entitled. Congress has determined that the holder of a noncompetitive oil and gas lease should have a full ten years in which to develop the resources subject to his lease. The Congress has also directed the Secretary to engage in lengthy environmental studies. The only way in which these two purposes of Congress can be effectively reconciled is by authorizing suspension and consequent extension. Accordingly, it is my view that the Department ought in all cases, where the preparation of an environmental impact statement or other environmental studies is required, to suspend operations and thus assure the lessee that he will receive an extension comparable to the period during which operations are prohibited and thus not be deprived of any of the development period which the Congress has granted him.

I recognize that in some circumstances, such as when a lessee has failed to take any action until the last two or three months of his lease term or perhaps even the last week and then requests a suspension when he submits a drilling plan, his equitable rights will not be readily evident. Nevertheless I think it only proper that, where drilling plans are submitted and where approval must be delayed for environmental studies, suspensions and resulting extensions be granted.

Frederick N. Ferguson

Frederick N. Ferguson

Enclosures

INTERIM GUIDANCE

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

BLM.ER.0336

May 31, 1985

Memorandum

To: Director, Bureau of Land Management

From: Frank K. Richardson, Solicitor

Subject: Oil and gas lease suspensions

You have requested an interpretation of the lease suspension provisions set out in sections 39 and 17(f) of the Mineral Leasing Act of 1920 (Act), 30 U.S.C. §§ 209 and 226(f). You have also asked what effect, if any, our interpretation may have on leases which were suspended in a manner contrary to this memorandum, particularly cases where lease activity may have been allowed during the period of suspension.

SUMMARY

We conclude as follows:

(1) A suspension of operations and production under section 39, which by law extends the term of the lease for the period of suspension, must be a suspension of both operations and production such that the lessee has been denied beneficial use of the lease by the Department in the interest of conservation. Lease activity (operations or production) is beneficial use and may not be allowed to commence or continue while the lease is suspended.

(2) Suspensions of operations or of production under section 17(f) toll the running of the lease term but do not suspend the payment of rental or minimum royalty.

(3) Previous suspensions that were granted, but where the Department allowed lease activity during the period of suspension, were made in the absence of clear legal guidance to the contrary. One was based on the surname of the Solicitor. In such situations, later advice that the action taken is

not in accordance with a proper interpretation of the statute should only be given prospective application. However, in the future, suspensions should only be granted or directed in a manner consistent with the law as interpreted in this memorandum.

BACKGROUND

The Act prescribes that oil and gas leases be issued for a primary term (5 years competitive, 10 years noncompetitive) and for so long thereafter as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e). The Act further provides that a lease will not expire for lack of actual production if it contains a well capable of producing oil or gas in paying quantities. 30 U.S.C. § 226(f). In addition, the Act allows various extensions beyond the primary term for specific reasons and specific periods, such as two years if diligent drilling operations are being conducted at the end of the primary term. 30 U.S.C. § 226(e); also 30 U.S.C. §§ 187a, 226(g), 226(j). Thus, a lessee seeking to preserve a lease in the absence of one of the statutory extensions referred to in the previous sentence must be producing in paying quantities from the lease at the end of a primary or extended term, or have a well capable of production in paying quantities on the lease at the end of the primary or extended term.

Section 17(j) of the Act, 30 U.S.C. § 226(j), allows leases to be combined under unit, cooperative or communitization agreements. Leases committed to these agreements are subject to the same requirements as regular leases, that is, the leases expire at the end of the primary term unless they qualify for a statutory extension or unless actual production or a well capable of production in paying quantities exists at the end of the primary or extended term. The difference is that production, or a well capable of production, under the terms of the unit, cooperative or communitization agreement satisfies the requirements for all committed leases regardless on which lease (or non-federal property) the well is located. 30 U.S.C. § 226(j).

The Act provides two exceptions to the prescribed lease term -- section 17(f), 30 U.S.C. § 226(f), and section 39, 30 U.S.C. § 209. Section 17(f) provides in part: "No lease shall be deemed to expire during a suspension of either operations or production." Section 39 of the Act provides in part:

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> In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this Act, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operation and production; and the term of such lease shall be extended by adding any such suspension period thereto. The provisions of this section shall apply to all oil and gas leases issued under this Act, including those within an approved or prescribed plan for unit or cooperative development and operation.

In some instances, an applicant for suspension will seek to construct roads on the lease, prepare a well site, or conduct well repair operations during the suspension. This would give the lessee more time to initiate actual drilling or to complete a well before the lease would otherwise expire after the suspension is lifted. Over the past several years, the propriety of allowing such lease activity has been discussed with this office but we have issued no written opinion. Two such cases have generated some controversy.

True Oil Company (True), operator of the Deadman Unit, and Arco Exploration Company (Arco), operator of the Rock Creek Unit, sought suspensions of operations and production under section 39 for the leases committed to their respective units. The applicants further requested that they be authorized to continue certain repair and drilling activities during the period of the suspensions. A detailed chronology of the facts of each case has been prepared by the Bureau of Land Management (BLM); rather than repeat all the facts, a brief summary is set out below.

Each operator had encountered severe difficulty in drilling a unit well and had spent considerable time attempting to overcome down-hole problems encountered during drilling operations. Both had expended large amounts of money in their drilling activity. Both stated as a basis for the suspension that they wished to preserve the affected leases for the additional period of time necessary to complete the unit wells then being drilled. Both operators had very little time remaining in the extended terms of leases critical to the unit within which to complete wells capable of production in paying quantities. Both, therefore, sought permission to correct the down-hole problems and to finish drilling during the period of suspension. In both cases the suspensions were granted along with authorization to continue lease activity.

True's application was the first received. After several months of discussion with True and within the Department, the BLM prepared a memorandum recommending that the application be granted and lease activity be allowed which was surnamed by then Solicitor Coldiron.1/ Subsequently, when BLM processed

Arco's application, it did not seek review by the Office of the Solicitor but merely granted the suspension, allowing lease activity to continue on the basis of the precedent set in the True suspension.

DISCUSSION

1. Lease Activity During Suspension of Operations and Production

As described above, the Act specifically establishes the primary term of an oil and gas lease and provides for the extension of the term under specific circumstances. Although section 39 refers to extending the term of a lease, it must be remembered that this "extension" differs from other extensions in two important respects. It is designed to correspond to, or make up for, the suspension period, in recognition that: (1) no time elapsed from the lease term during the suspension; and (2) no rental or minimum royalty was due during the suspension of all operations and production. To avoid confusion and to clarify the difference in types of "extensions", we will refer to section 39 extensions as "tolling the running of the lease term."

1/ True filed a request for a retroactive suspension to give it lease extensions for the period of time spent in recovering drill pipe lost in the hole. BLM denied the request in October 1982. In November 1982, True reinstated its request. The Office of the Solicitor advised BLM that a retroactive suspension might be permissible: if True had been denied beneficial use of its lease, it might be possible to extend the lease term for the period of time that beneficial use was previously denied. This advice was consistent with prior Departmental decisions. E.g., Jones-O'Brien, Inc., 85 I.D. 89 (1978). However, no conclusion concerning the propriety or the effect of the well repair and drilling operations during the proposed period of suspension was communicated to BLM prior to the surname by Solicitor Coldiron on the BLM recommendation.

Prior to the enactment of section 39 in the Act of February 9, 1933, 47 Stat. 798, the Secretary could use his general supervisory authority over the public lands to order the suspension of operations and production, but he lacked the authority to toll the running of a lease term. Lessees owning suspended leases, although they could not produce from or otherwise use their leases, were forced to continue rental payments. E.g., Maurice M. Armstrong, 49 L.D. 445 (1923); Ralph A. Shugart, 51 L.D. 274 (1925). Congress recognized this situation as one where the lessee, during the period of suspension, had "but a paper title the legal use of which is suspended." S. Rep. No. 812, 72d Cong., 1st Sess. 3 (1932). Both the House and Senate reports relied upon this inequity--denial of beneficial use to the lessee because no operations or production were allowed--to provide a justification for tolling the running of the term of the lease and suspending rentals.2/ S. Rep. No. 812, supra at 3; H.R. Rep. No. 1737, 72d Cong., 1st Sess. 3 (1932). In 1935, Congress changed the term of oil and gas leases from a fixed period with renewal, under which production was not necessary to continue a lease beyond its initial term, to a fixed period and "for so long thereafter as oil or gas is produced in paying quantities." Thus, after 1935, a suspension which did not toll the lease term had the added adverse consequence of potential lease expiration.

Congress remedied the inequity by giving the Secretary the authority to toll the running of the term of a lease accompanied by a suspension of rental for the period of time that he suspended operations and production, although it phrased the authority as a directive to extend the term of the lease by the period of suspension. The extension would cover the period that the lessee was denied beneficial use of its lease by the Department in the interest of conservation. A lessee who is allowed to continue operations during a "suspension" is not being

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2/Suspension of minumum royalty was added in 1946 when annual payment of minimum royalty (one dollar per acre) was added to section 17 of the Act. Act of August 8, 1946, 49 Stat. 676.

denied beneficial use of its lease by the Department, even though no rental or minimum royalty would be due, the lease term would be tolled, and the lessee would be given an extension of the lease. Although the Secretary has the authority to issue regulations and to do all things necessary to carry out the purposes of the Act, 30 U.S.C. § 189, this general authority has never been construed to allow alteration of specific statutory requirements. Solicitor's Opinion M-36779 (Supp.), 92 I.D. ___ (1985)(signed August 13, 1984). Congress has provided specific primary terms and has allowed extensions of those terms for specified reasons. During these periods, the lessee has the right of beneficial use consistent with the terms and conditions of the lease. Section 39 cannot be used to expand the actual period beneficial use granted a lessee beyond that prescribed by Congress, no matter how justified such an expansion appears in a given case. Section 39 can only serve to postpone the period of beneficial use in order to preserve the length of this use specified by the Act.

In behalf of its request for suspension, True submitted to the Department an argument which relied in part on American Resources Management Corp., 40 IBLA 195 (1979),[3/] to support its request for a force majeure extension of the leases under the provisions of section 39 and the unit agreement. In American Resources, the unit operator had been unable to complete a well capable of production in paying quantities despite conducting well operations up to the date of lease expiration. The operator subsequently requested suspensions under the unavoidable delay authority set out in section 25 of the standard unit agreement. 43 C.F.R. 3186.1. In discussing this argument, the Board of Land Appeals misleadingly refers to the regulations implementing section 39 of the Act and to the Jones-O'Brien, Inc., 85 I.D. 89 (1978), decision which interprets section 39 of the Act. Although the Board rejected the operator's argument because the suspension request was not filed prior to lease expiration, these references leave the implication that had the request been timely filed, the nonproducing leases could have been suspended under section 25 of the unit agreement, the terms of the leases could have been extended past the expiration date by the period of suspension, and well operations could have continued during the period of suspension.

3/The suit for judicial review of this administrative decision was remanded to the Board of Land Appeals by stipulation of the parties in American Resources Management Corp. v. U.S. Department of the Interior, Civil No. 77-0362 (D. Utah April 28, 1982). On remand, it is docketed as IBLA 82-797. A hearing has been held and the Administrative Law Judge has submitted a recommended decision to the Board. Neither the recommended decision nor the exceptions filed by appellant raise the issue discussed above.

This implication is incorrect. A unit agreement requires, among other things, that wells be drilled at specific time intervals until discovery and mandates contraction of the unit to participating areas five years after the effective date of the initial participating area "unless diligent drilling operations are in progress" on lands not then entitled to be in a participating area. Section 25 of the unit agreement allows suspension of all "obligations under the agreement requiring the unit operator to commence or to continue drilling or to operate or to produce unitized substances" (emphasis added) when the unit operator is prevented from doing so for reasons beyond his control, that is, for unavoidable delay. However, neither section 25 nor other parts of the unit agreement alter the underlying lease term that will expire if the operator is not diligently drilling at the end of the primary term, or has not completed a well capable of production in paying quantities prior to expiration of leases committed to the unit. In fact, the unitization provisions of the Act, 30 U.S.C. § 226(j), require a discovery of oil or gas under the terms of the unit agreement prior to lease expiration. Section 25 only relieves the operator from compliance with unit drilling, operating and producing requirements. In the absence of production or of a well capable of production, the operator must still obtain a section 39 suspension, and must comply with the requirements of section 39, to prevent leases from expiring while he is excused from unit requirements. The Board in American Resources partially noted this distinction when it stated that "the Secretary may suspend only in the interests of conservation" under the section 39 regulations, despite the much broader suspension authority for unit drilling, operating and producing requirements in section 25 of the unit agreement. 40 IBLA at 199. Since the Board did not need to address the further question of operations while a lease is under a section 39 suspension, this confusion has resulted.

We conclude that a "suspension of operations and production" under section 39 of the Act means just that--no operations are allowed and no production is allowed. 4/ Section 39 was enacted

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4/ There is the obvious exception of operations necessary to maintain wells capable of production in paying quantities but shut in as a result of the suspension. Such operations do not constitute beneficial use of the lease. To conclude otherwise would be contrary to the statutory purpose of "in the interest of conservation." In addition, activity which may be conducted without the need for a lease, such as seismic exploration, may be conducted during a period of suspension under applicable permit requirements. Similarly, casual use which does not require a permit under the lease, such as survey and staking work, may be conducted during a period of suspension.

to provide extraordinary relief when lessees are denied beneficial use of their leases. No Congressional statement or Departmental precedent recognizes section 39 as granting a lessee relief from lease expiration while at the same time allowing the lessee to conduct operations he should have completed during the primary term or the extensions authorized by the Act. Therefore, if a lease is suspended under section 39 of the Act, the lessee may not conduct activity on the leased lands which would otherwise be beneficial use authorized under the terms and conditions of the lease.

2. Suspensions under section 17(f)

You have also asked us to analyze whether there is any difference between suspensions granted under section 39 and suspensions granted under section 17(f). Because the suspension provision contained in the second sentence of section 17(f) is silent as to the effect on the lease of the suspension (other than to prevent expiration), you specifically ask whether a section 17(f) suspension tolls the lease term and extends the lease for the period of suspension and whether a section 17(f) suspension also suspends rental and minimum royalty. Moreover, the question was asked whether section 17(f) may be used to suspend production on a lease while allowing operations to continue.

Section 17(f) was added to the Act in 1954 principally to provide relief for lessees who have a well capable of production but are not actually producing and to expand the then-existing provision for relief from lease expiration when production ceases but drilling operations are being conducted by allowing 60 days for diligent drilling or reworking to commence to reestablish production. Act of July 29, 1954, 68 Stat. 583; S. Rep. No. 1609, 83d Cong., 2d Sess. 2 (1954). Congress also added the suspension provision: "No lease shall be deemed to expire during a suspension of either operations or production" (emphasis supplied). The language of section 17(f) differs from section 39, in addition to the scope of activity suspended, in three important elements: (1) it does not specifically toll the lease term; (2) it does not specifically suspend rental and minimum royalty payments; and (3) it provides no standard under which to grant suspensions. Compare 30 U.S.C. § 226(f) with 30 U.S.C. § 209. To understand what Congress intended, we turn to the history of section 17(f).

This suspension language, along with a similar suspension of rental payments, was originally added to section 17 by the Act of August 21, 1935, 49 Stat. 676:

> Provided further, That in the event the Secretary of the Interior shall direct or shall assent to the suspension of operations or of production of oil or gas under any such

> lease, any payment of acreage rental as herein provided shall likewise be suspended during the period of suspension of operations or production: . . ..
>
> * * * * *
>
> Provided, That no such lease shall be deemed to expire by reasons of suspension of prospecting, drilling, or production pursuant to any order or consent of the said Secretary: . . ..

The legislative history of the 1935 law provides no explanation for these provisions nor does it explain their relationship to section 39, which had been added two years earlier. Congress deleted both quoted provisions of the 1935 amendment to section 17 in the Act of August 8, 1946, 49 Stat. 676, as part of a consolidation of various relief provisions in section 39. S. Rep. No. 1392, 79th Cong., 2d Sess. 3 (1946).

The committee reports on the 1954 legislation quote with approval the following BLM analysis of the suspension language:

> Under existing law and interpretation by the Department, where operations and production are suspended, that period is added to the term of the lease, but not so if either operations or production is suspended. The proposed change in paragraph 2 of section 17 [now section 17(f)5/] would remedy this situation and have the same effect if relief is granted for operations alone, or for production alone, as it now has when relief is granted for suspension of both operations and production.

S. Rep. No. 1609, 83d Cong., 2d Sess. 3 (1954); H.R. Rep. No. 2238, 83d Cong., 2d Sess. 3 (1954).

Congress thus thought that the stay of lease expiration contained in section 17(f) would also toll the running of the lease term as in section 39. If the lease term were not tolled, some suspensions would be meaningless. For example, if operations are suspended and the suspension lasts past the end of the primary or extended term of a lease in the absence of a well capable of production, there would be no time left to complete a well when

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5/ Section 17 was subdivided into its current paragraphs by the Mineral Leasing Act Revision of 1960, 74 Stat. 790. Minor wording changes were made to the first and third sentences of section 17(f) but the second sentence, containing the suspension provision, was not altered.

the suspension is lifted. The lease would expire for lack of production. Congress could not have intended this absurd result when it enacted a relief provision. The committee reports clearly reflect Congressional intent that a section 17(f) suspension tolls the running of the lease term and adds the period of suspension to the term of the lease. You should amend 43 C.F.R. 3103.4-2(e) to be consistent with this opinion.

Nothing in the legislative history of section 17(f) suggests that Congress reconsidered the other relief provision (quoted first above) deleted in 1946 which had suspended rental payments. Thus, a suspension under section 17(f) does not relieve the lessee from paying an annual holding cost, either rental or minimum royalty. However, a lessee whose lease is suspended under section 17(f) may also qualify for suspension, waiver or reduction of rental or minimum royalty if the lessee meets the tests for this relief set out in the first sentence of section 39. (Suspension of operations and production is set out in the third sentence.) In fact, this rental relief provision was added in 1946 as part of the consolidation of relief provisions referred to above, in which the section 17 rental suspension provision was deleted.

The legislative history of section 17(f) is also silent regarding the standards under which suspensions are ordered or approved. The current regulation, 43 C.F.R. 3103.4-2(a), contains no specific standards for granting section 17(f) suspensions other than the conservation standard set out for section 39 suspensions.6/ Under the Secretary's general authority to carry out the purposes of the Act, 30 U.S.C. § 189, you are free to adopt the section 39 standard or another appropriate standard for section 17(f). Whatever standard you choose should be adopted through rulemaking. 30 U.S.C. § 189.

6/In 1959, the Acting Solicitor construed this regulation as applying the section 39 standard to section 17(f) suspensions. Memorandum from Solicitor to Director, U.S. Geological Survey, Application for suspension of operations under Las Cruces 060585 et al. (March 24, 1959). Although this opinion is cited in Texaco, Inc., 68 I.D. 194, 197 (1961), as stating that section 17(f) suspensions may only be granted in the interest of conservation, the 1959 opinion does not support such a broad interpretation because it only construed the regulation, not the statute.

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A lessee may conduct operations during a suspension of production, but there must be production before such a suspension may be granted. H.K. Riddle, 62 I.D. 81, 87 (1955). In the absence of a well capable of production, a suspension of operations that allowed lease activity would be a contradiction in terms. Regardless of our conclusion on the extent of the relief granted by a section 17(f) suspension, Congress clearly thought it was providing relief in a situation where a lessee was prevented from exercising lease rights.

3. Effect of the suspensions previously granted

Under our above conclusions, True and Arco would not have been allowed to conduct down-hole repair and drilling operations while their leases were suspended. We are advised that other lessees have also been allowed to conduct on-lease activity such as road construction and site preparation while their leases were suspended. While this issue has been discussed with the Office of the Solicitor, no written opinion has been given until now on the propriety of this practice. Moreover, the Solicitor approved the BLM document which recommended that True be allowed to conduct these operations while its leases were suspended. We now address the question whether this opinion affects those earlier actions.

The question of retroactive effect has been addressed several times in the past where the Department has concluded that a prior interpretation or practice was inconsistent with the Act. Several decisions and opinions have concluded that the Secretary has the discretion to apply the new, legally correct interpretation prospectively only: E.g. Solicitor's Opinion M-36945, 89 I.D. 610 (1982) (railroad affiliates may not acquire interests in coal leases--existing interests may remain); Solicitor's Opinion M-36888 (Supp. II), 84 I.D. 171 (1977) (opinion concluding that certain gas production which is not sold is subject to royalty will not be applied to past production); Solicitor's Opinion M-36686, 74 I.D. 285 (1967) (noncompetitive oil and gas lease applications must be rejected if lands are within known geological structure of a producing oil or gas field at the time the lease would be issued regardless of status of lands at the time the application was filed--no action should be taken against leases issued under the discarded interpretation); Franco Western Oil Co. (Supp.), 65 I.D. 427 (1958) (opinion concluding that partial assignments filed for approval during the last month of the five-year extended term cannot effectuate lease segregation and further extension because the lease expires the day before the assignment would become effective should not be applied to assignments approved under the discarded interpretation); see also, Extension of Oil and Gas Lease Pursuant to Acts of December 22, 1943, and September 27, 1944, where Leased Lands are Partly Within Known Producing Structure, 58 I.D. 766 (1944); Rights-of-Way Across Tribal and Allotted Indian Reservation, Montana, 58 I.D. 319 (1943). One element is common to all of these new or revised interpretations--retroactive application of the current rule would cause hardship to those who acquired and relied on contractual rights created under the discarded interpretation.

The issue of retroactive application of a changed interpretation has been addressed in two court decisions involving oil and gas leases. In Safarik v. Udall, 304 F.2d 944 (D.C. Cir.), cert. denied, 371 U.S. 901 (1962), the court affirmed the Department's decision in Franco Western Oil Co. (Supp.), supra, not to apply the corrected interpretation retroactively. The court noted that both interpretations were reasonable and that retroactive application would adversely affect lessees who had relied on the original interpretation. The court then held that the Secretary has much discretion in the administration and management of the public lands, including the authority to apply a changed interpretation prospectively in order to avoid injustice or hardship. In Enfield v. Kleppe, 566 F.2d 1143 (10th Cir. 1977), the court upheld application of the Department's new regulation, which limited lessees to one drilling extension under 30 U.S.C. § 226(e), to leases issued before the change. The court held that the repealed regulation, which allowed more than one drilling extension, was void and unenforceable because it was directly contrary to the plain language of 30 U.S.C. § 226(e). The Enfield court distinguished the Safarik decision because, in Safarik, the first interpretation was not void from the beginning and, more importantly, because "the question whether the Secretary could properly apply a new ruling retroactively was not before the trial court in this case." 566 F.2d at 1143.

Neither case clearly settles the issue of retroactive application of this opinion other than to recognize the Department's authority, in a proper case, to apply a changed interpretation prospectively only. Retroactive application here would affect two categories of lessees: (1) those who have received suspensions, who have been allowed to conduct lease activity during the suspension, and who continue to hold their leases either by production or by further extension such as unit termination; and (2) those existing lessees who may seek a suspension in the future and who also seek to conduct lease activity under the prior practice. In the first category, lessees have utilized their leases as valid contracts and exercised their rights under those contracts, both during the period of suspension and after the suspension was lifted, but prior to announcement of the correct interpretation. In the second category, lessees are seeking to obtain the benefit of an erroneous interpretation after it has been corrected.

In Enfield, the Department applied its new interpretation to a lessee who was seeking a second drilling extension which would have been available under the discarded interpretation. 566 F.2d at 1141. The case did not involve, as the Safarik case did, a lessee who had obtained the benefit of the incorrect interpretation before it was overruled. A similar distinction was used in the retroactive application of Solicitor's Opinion M-36686, supra, to lease applications pending on the date of the opinion but not to leases actually issued under the discarded interpretation. See McDade v. Morton, 353 F. Supp. 1006 (D.D.C.), aff'd without opinion, 494 F.2d 1156 (D.C. Cir. 1973). This distinction should be applied here.

We will discuss the True and Arco leases although the same principles should be applied to other leases in similar circumstances. The Deadman Unit resulted in no producing well, but the leases were preserved and were later extended for two years under section 17(j) by unit termination. Another unit was then formed and new exploratory drilling was commenced within five months. In the Rock Creek Unit, the additional drilling discovered gas in two different formations but of insufficient quality or quantity to warrant completion of the well as a well capable of production for purposes of continuing the leases. Thus, the lessees have utilized their leases as valid contracts and exercised their rights under those contracts. If the suspensions are now considered ineffective, many leases that were in these units would have expired. This would not only cause hardship to True and Arco, but also to other lessees who participated in the units and those who have combined with some of the former Deadman leases in a new unit. In light of the potential hardship to the lessees, the reliance placed by the lessees on the Department's actions in these cases and the lack of guidance from the Office of the Solicitor to BLM on the correct legal interpretation, this opinion should not affect suspensions granted in the past where lease activity was allowed.

CONCLUSION

In the future, a suspension of operations and production should prohibit all beneficial use of the lease. No lessee should be allowed to conduct access road construction on the leased lands, site preparation, well repair, drilling or similar activity while a lease is suspended as to both operations and production or as to operations. Thus, a suspension ends when lease activity, not just actual drilling, commences. Separate suspensions of operations or production may be approved, under appropriate standards, which toll the running of the lease term but which do not suspend rental or minimum royalty payments. Finally, the interpretations contained in this memorandum should only be applied to suspensions which are directed or approved after this date.

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.01 Purpose. This Manual provides procedural and policy guidance necessary to assure the diligent development of producing Indian oil and gas leases in an orderly and timely manner.

.02 Objectives. The objective of the Indian diligent development program is to assure that producing Indian oil and gas leases are diligently developed in accordance with lease terms and regulations. Accomplishment of these objectives may result in (1) drilling of additional well(s) or operations that lead to the enhancement of production; (2) recompletion and testing in other horizons; (3) relinquishment of undeveloped acreage; (4) additional payments in lieu of diligent drilling where authorized by the terms of the lease; or (5) lease cancellation.

.03 Authority.

A. Act of March 3, 1909 (35 Stat. 783) - Allotted Lands.

B. Act of May 11, 1938 (52 Stat. 347) - Tribal Lands.

C. Act of August 9, 1955 (69 Stat. 540) - Restricted Allotted/Tribal Lands.

D. Indian Mineral Development Act of December 22, 1982.

E. Federal Oil and Gas Royalty Management Act of 1982.

F. 43 CFR 3162.2, Drilling and producing obligations.

G. 43 CFR 3186.1, Model onshore unit agreement for unproven areas.

H. 43 CFR Part 4, Subpart E, Appeals Procedures.

I. 25 CFR 211-213 and 227, Leasing of Indian lands.

J. 25 CFR Part 2, Indian Appeals from Administrative Actions.

K. Indian Tribal and Allotted Lease Terms.

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.04 Responsibility.

A. The Director and Deputy Director have responsibility for the overall management of Bureau programs, including management of the Indian diligent development program within the oil and gas program.

B. The Assistant Director and Deputy Assistant Director for Energy and Mineral Resources are responsible for ensuring that the Indian diligent development program is conducted in accordance with Bureau policy.

C. The State Director is delegated responsibility to:

1. Monitor producing Indian leases to determine whether such leases are fully developed, diligently developed for the current review cycle, or not diligently developed.

2. Assure that additional development occurs or required wells are timely drilled on undeveloped spacing units consistent with the prudent operator rule.

3. Recommend to the Bureau of Indian Affairs (BIA) that it, in consultation with the affected tribe or allottee, require the lessee to relinquish undeveloped acreage, or require additional payments in lieu of diligent drilling pursuant to lease terms, or cancel leases.

4. Provide guidance and assistance to Field Offices, as needed.

5. Ensure quality control of the Indian Diligence Program.

D. If delegated, the District Manager shall carry out any or all of the above responsibilities of the State Director.

E. If delegated, the Area Manager shall carry out any or all of the above responsibilities of the District Manager.

F. The Bureau of Indian Affairs is responsible for leasing Indian lands, managing lease information, canceling leases, and approving agreements involving Indian lands.

.05 References.

A. BLM Manual 3160-2 - Drainage Protection.

B. BLM Handbook H-3160-2 - Drainage Standards and Procedures.

C. BLM Manual 3160-9 - Communitization.

D. BLM Manual 3180 - Unitization (Exploratory).

E. BLM Handbook H-3180-1 - Unitization (Exploratory).

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.06 Policy. The Department of the Interior is responsible for assuring the diligent development of Indian Trust lands. The authority to manage this program has been delegated to the Bureau of Land Management which, through the authorized officer, shall supervise the development of producing Indian oil and gas leases. The authorized officer may require lessees of Trust lands to submit plans for the further development of these lands, or to require lessees to drill wells in a timely manner when the drilling of such wells is supported by the prudent operator rule. The diligence program is not intended to require exploratory drilling in unproven areas, or to require the drilling of deeper, untested horizons.

.07 File and Records Maintenance. Documentation requirements are found at .13, .23, .24, and Appendices 1, 2, and 3.

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.1 Guidelines. The following guidelines are to be used for Indian diligent development reviews. Due to the complexities of oil and gas development, there will always be special cases that cannot be fully addressed in this Manual. Some of these situations result from communitization of multiple zones, in-fill drilling on communitization agreements, etc. Such cases must be addressed on a case-by-case basis.

.11 Leases Subject To Review. All Indian leases with actual or allocated production shall be reviewed for diligence. Leases that are wholly committed to an approved agreement need not receive separate diligence reviews. Note that some formations or portions of an Indian lease may be committed to an agreement, where others are not. Those formations or portions not committed to an agreement would be reviewed separately for diligence. The diligence requirements for leases committed to unit agreements are met by operations performed under an approved unit plan of development.

.12 Frequency of Review. Each lease subject to review should be reviewed for compliance with diligence requirements annually. If all such leases cannot be reviewed annually, the authorized officer shall establish a reasonable review cycle which, at a minimum, shall include 20 percent of all not fully developed leases. Leases determined to be fully developed do not require periodic diligence reviews and would be reviewed only when there is a change in status as discussed at .21A1.

.13 Establishing Case Files. A diligence case file must be established for every producing Indian oil and gas lease. Leases that are wholly committed to an approved agreement may be combined into one file for that agreement. Agreement case files must, however, contain a listing of all leases committed to that agreement.

A. Lease Case Files. Case files for individual Indian leases must contain the following:

1. A dated plat or field map showing the lease, any agreement boundaries, and all wells on or adjacent to the lease. Wells should be marked as to their status and producing horizon(s).

2. A chronological log showing dates of all reviews, correspondence, and determinations made concerning the case.

3. Copies of diligence correspondence.

4. Geologic, engineering, and economic reviews, as appropriate, including the data used and findings. All reviews should be dated and signed.

5. All determinations, such as "Diligently developed for (year)" or "Fully developed as of (date)," must be dated and signed.

B. Agreement Case Files. Case files for agreements must contain the following:

1. A dated plat or field map showing the agreement boundary and all wells on or adjacent to the agreement.

2. A chronological log showing dates of all reviews, correspondence, and determinations made concerning the case.

3. Upon approval of the unit plan of development, a statement that those Indian leases wholly committed are diligently developed for the review cycle.

4. A listing of all Indian leases wholly committed to the agreement and a description of producing zones covered by the agreement.

.14 Reporting Requirements. Appendix 1 illustrates the reporting requirements for the Federal Financial System and the diligence portion of the Quarterly Fluid Minerals Report.

.15 Quality Control. All diligence reviews must comply with established standards and procedures and must have complete documentation of analyses and decisions. The objectives of quality control should be to determine whether (1) established policy and procedures were followed, (2) accepted engineering and geological practices were applied as appropriate, (3) all reasonably available information was considered, and (4) the analyses were technically accurate. Quality control is necessary for the defense of appeals and audits and is the responsibility of the authorized officer.

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.2 Procedures. The following procedures are outlined in the Indian Diligent Development Procedures Flow Chart in Illustration 1.

.21 Preliminary Review. The preliminary review is a cursory review of the administrative records and exploration and development history of a lease to make the determination whether or not the lease is fully developed. Special diligence requirements should be identified at this time.

A. Fully Developed Leases. Fully developed leases are leases for which each spacing unit on the lease has (1) a producing or producible well or operations that lead to the enhancement of production, (2) been adequately tested by a well, or (3) been determined by geologic and engineering analysis to be devoid of recoverable reserves.

1. Leases that are determined to be fully developed do not require periodic reviews. However, certain events can occur that may change the status of a fully developed lease. Examples of these events include:

a. Changes in field rules (well spacing).

b. Completion or recompletion in different zones.

c. Changes in agreement status or boundaries.

d. Formation of agreements.

e. New geologic or engineering information.

2. Offices should review Indian leases when affected by these events to determine whether or not leases remain fully developed.

B. Not Fully Developed Leases. Leases that are not fully developed are reviewed further to determine whether they are "diligently developed" or "not diligently developed" for the current review period.

1. A diligently developed lease is a producing lease that is not yet fully developed but as of the review date the lessee has demonstrated diligent development to the satisfaction of the authorized officer. Diligent development can be demonstrated if one or more of the following has occurred within the previous 12 months:

a. Drilling.

b. Recompletion.

c. Testing.

d. Other operations that lead to the enhancement of production.

2. A not diligently developed lease is a producing lease that has not met the requirements for diligent development explained at .21B1. After this determination, a technical review will be conducted.

.22 Technical Review (TR). The technical review consists of a combination of geologic, reservoir engineering, and economic reviews, as appropriate. The geologic review (GR) determines the quality and extent of the reservoir and provides reservoir parameters for comprehensive geologic reports and appropriate maps. The reservoir engineering review (RER) examines the reservoir to determine recoverable reserves expected from additional development on the undeveloped acreage. The economic review (ER) determines whether an economic well can be drilled on the undeveloped acreage. At the conclusion of the TR, Indian leases are determined to be fully developed, diligently developed, or not diligently developed.

A. Geologic Review. The GR is conducted prior to, or in conjunction with, the RER. The purpose of the GR is to determine through geologic analysis whether or not a reservoir exists beneath the undeveloped spacing units of the lease. The GR also develops reservoir parameters for use during the RER. If the results of the GR indicate that each of the undeveloped spacing units are not underlain by hydrocarbons, the geologist should conclude that the lease is fully developed for diligence purposes. This finding is then documented in the work file. Specifics of the GR are addressed in Appendix 2.

B. Reservoir Engineering Review. The RER will determine the ultimate recoverable reserves and producing characteristics for development well(s) in the undeveloped spacing units determined by the GR to be underlain by hydrocarbons. Supporting documentation and calculations must be included or referenced in the work file to substantiate the conclusions of this review. A description of the RER is found at Appendix 3.

C. Economic Review. The ER will determine whether a prudent operator can drill an economic well on any undeveloped spacing unit of the lease or agreement. A description of the ER is found at Appendix 3.

.23 Diligence Determination At the conclusion of the TR, Indian leases are determined to be fully, diligently, or not diligently developed. Leases with undeveloped spacing units that cannot support the drilling of an additional well under present economics shall be documented in the case file as "diligently developed for __(year)__." If the ER indicates that an additional well(s) can be drilled under current economic conditions, the case file is documented as "not diligently developed for __(year)__," and the lessee is notified of the obligation to diligently develop the lease and to submit plans for further development. Refer to Illustration 2 for an example of a lessee notification letter.

.24 Lessee Responses. Lessees should be allowed 60 days to respond to the authorized officer's request for their diligent development plans. The lessee may propose to drill an additional well(s) or perform other development operations; contest the technical analysis; relinquish undeveloped spacing units; make additional payments; or not respond at all.

A. Lessee Proposes Development Operations. The lessee may propose to drill one or more wells on the undeveloped portions of the lease or perform other development operations. The authorized officer shall determine if the lessee's plan provides for the orderly and timely development of the lease.

1. Well is Drilled. If the plan is approved and the lessee drills, the case file shall be documented as either "diligently developed for __(year)__." or "fully developed as of __(date)__," whichever is appropriate.

2. Other Development Operations Performed. If the plan is approved and the operations are carried out, the case file shall be documented as either "diligently developed for __(year)__" or "fully developed as of __(date)__," whichever is appropriate.

3. Operations Not Performed. If the plan is approved and the lessee fails to develop the lease, the authorized officer shall notify the BIA and advise it of its options (see Illustration 3 for example memorandum). These options include, but are not limited to, relinquishment of the undeveloped acreage, requirement of additional payments in lieu of diligent drilling, or lease cancellation.

B. Lessee Contests Findings. The lessee may dispute the findings of the authorized officer. The geologic, engineering, or economic data submitted by the lessee should be reviewed for validity and the TR modified if appropriate. If, as a result of new information, the authorized officer determines that the lease is diligently developed, the lessee will be notified of this finding (see Illustration 4 for example letter) and the case file documented. If the authorized officer determines that the lease is not diligently developed, the lessee will be notified of the lessee's obligation to drill within the specified period (see Illustration 5).

C. Lessee Elects To Relinquish. The lessee may elect to relinquish undeveloped lease acreage in lieu of drilling an additional well(s). If the lessee responds and elects to relinquish the undeveloped acreage, a memorandum to the BIA must be sent along with the lessee's response and the authorized officer's recommendation. After relinquishment of the undeveloped acreage, the lease should be documented in the case file as "diligently developed for __(year)__."

D. Lessee Requests To Pay Additional Payment. Some Indian lease terms allow a lessee to pay additional payments in lieu of drilling an additional well(s). This payment is in addition to any rental or royalty payments and is an option of the lessor(s) after the authorized officer has determined that additional drilling is supported under the prudent operator rule. Where allowed by the lease terms, the authorized officer should include this option in the memorandum to the BIA. The BIA consults with the affected lessor(s) to determine the appropriate final action. If the lessor accepts the lessee's request to make additional payments, once payment has been made the lease should be documented as "diligently developed for the (year)."

E. Lessee Does Not Respond. If the lessee does not respond within the 60-day timeframe allowed, a follow-up notice or order may be sent informing the lessee of the requirement to respond within 30 days. Include the statement that failure to begin diligent drilling operations may result in lease cancellation (see Illustration 6 for an example letter). If the lessee does not respond to the follow-up notice, a decision letter shall be issued requiring the lessee to drill. If the lessee does not drill, a memorandum must be sent advising the BIA of its options (see Illustration 3).

.25 Appeals. Any party who is adversely affected by a decision letter sent by the authorized officer has the right to request a State Director Review (SDR), 43 CFR 3165.3, and, if adversely affected by the SDR decision, to appeal that decision to the Interior Board of Land Appeals (IBLA), 43 CFR 3165.4. The filing of an SDR or an appeal to IBLA will not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken, except as provided for in 43 CFR 3165.3 and 43 CFR 3165.4.

A. Request for an SDR. If the lessee or other adversely affected party wants to file a request for an SDR, the request must be made in accordance with 43 CFR 3165.3. The SDR decisions are appealable to IBLA.

B. Notice of Appeal to IBLA. If an SDR decision is appealed, the notice of appeal to the IBLA must be filed in the office of the authorized officer that issued the decision, so that the case file can be transmitted to the IBLA. The notice of appeal must be transmitted in time to be received in the appropriate office within 30 days after the person filing the appeal is served with the decision from which the appeal is taken. The notice of appeal should include a statement of reasons for the appeal. However, if it does not include a statement of reasons, such a statement must be filed with the Board within 30 days after the notice of appeal was filed.

C. Serving the Appeal. The appellant shall provide copies of the notice of appeal and any statement of reasons, written arguments, or briefs to any adverse party named in the decision being appealed, and to the appropriate Field Solicitor within 15 days of filing any document in connection with the appeal.

3160-16 - INDIAN DILIGENT DEVELOPMENT

Glossary of Terms

- D -

diligence case file: the file created for each producing lease or agreement. The findings of all reviews and decisions are documented in this file.

diligent development: the recompletion, testing, or operations that lead to the enhancement of production, or drilling of well(s) necessary for the orderly and timely development of the lease or agreement at a rate reasonable for the area in question. A reasonable development schedule requires consideration by the authorized officer of the specific factual and economic situation for each lease or agreement at the time of the determination, including (1) evaluation of geologic and reservoir engineering information; (2) market demand for additional production; (3) the price and conditions under which new oil and gas production may be sold; (4) drilling and production costs; and (5) effect of additional wells on total resource recovery and cumulative proceeds.

- E -

exploratory drilling: a well drilled to an unexplored depth or in unproven areas in search of a new oil and gas pool.

- L -

lease: for the purposes of this Manual, the term "lease" shall apply to any Indian oil and gas lease, mineral agreement, Indian Mineral Development Act agreement, or drilling contract issued, approved, or accepted by the Department of the Interior, under the mineral leasing laws.

lessee(s): the person(s) or corporation(s) who holds record title for an Indian lease.

lessor(s): the Indian royalty interest owner.

- N -

notification letter: letter sent to the lessee(s) requesting plans for diligent development of the lease or agreement.

- P -

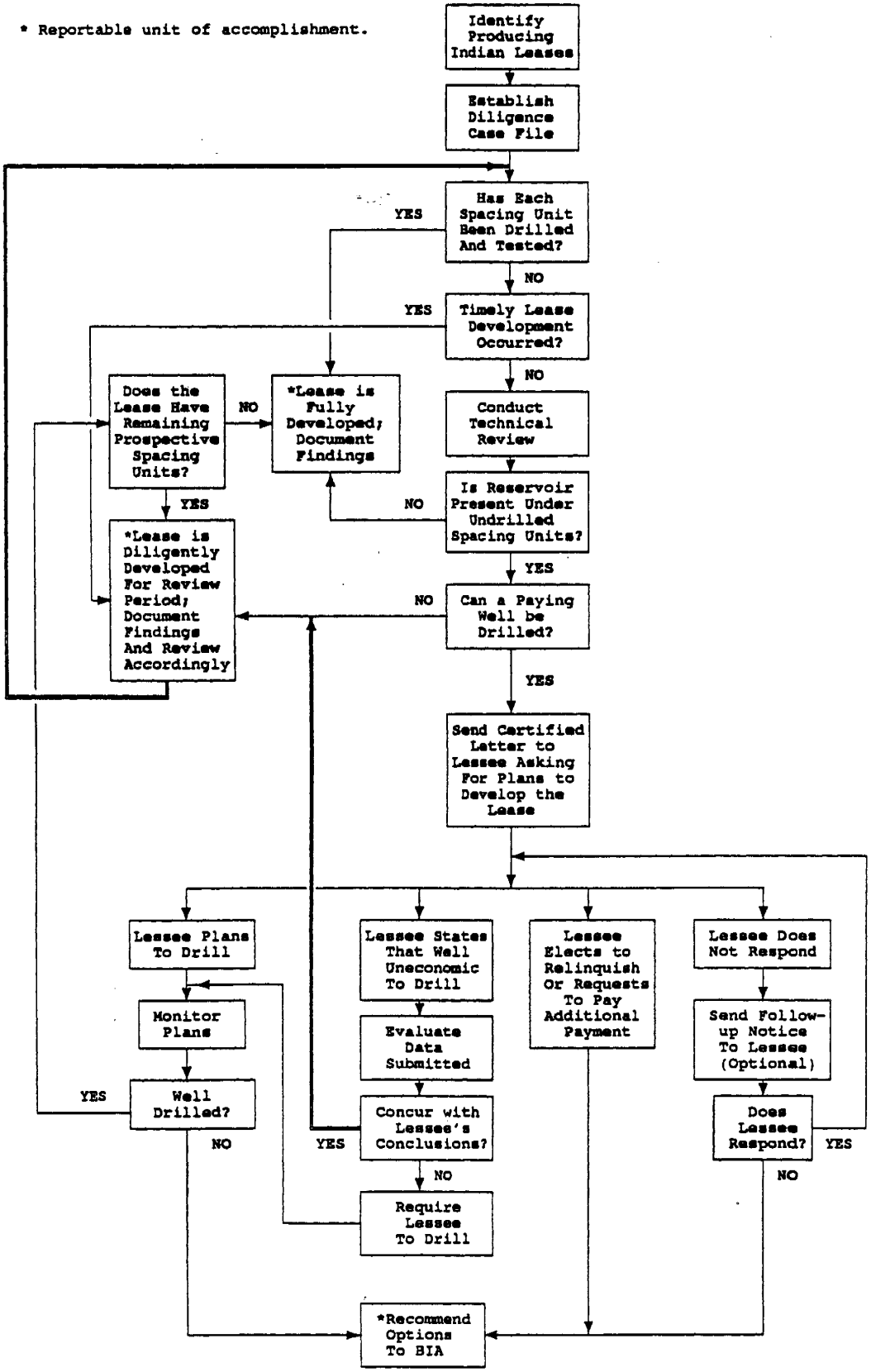
prudent operator rule: in order for a well to be economic, it must be determined that it can produce a sufficient quantity of oil or gas to pay reasonable profit to the lessee over and above the cost of drilling and operating the well.

producing lease: a lease with actual production, or production allocated from a communitized or unitized tract.

- S -

spacing unit: the development pattern that encompasses the area that can be efficiently drained by one well (see 43 CFR 3162.3-1). Spacing units typically vary by formation, depth, or product produced. Field orders may also stipulate where, within a spacing unit, a well can be drilled.

3160-16 - INDIAN DILIGENT DEVELOPMENT
Indian Diligent Development Procedures Flowchart



3160-16 - INDIAN DILIGENT DEVELOPMENT
Example of Notice to Lessee

Certified Mail - Return Receipt Requested

_____
_____
_____

Gentlemen:

Our records indicate that you are the lessee of record for Indian oil and gas lease no. _____, which includes _____ acres in _____ County, _____.

This office has completed a review of diligent development on your lease. Based on this review, we determined that the geologic, engineering, and economic reviews indicated that there are sufficient reserves to support the drilling of an additional well(s) on the lease. As lessee, you are required to (1) submit your plans for further development of the lease; (2) relinquish the undeveloped acreage; or (3) if you believe that an economic well cannot be drilled, submit geologic, engineering, and economic data to support your conclusion.

Within 60 days of receipt of this letter, please advise this office as to your plans for diligently developing the remaining undeveloped acreage for the spacing units in the _____ Formation(s) on your lease:

(Describe the undeveloped portions of the lease.)

If you have any questions, please contact _____ at _____.

Sincerely,

cc: BIA
Tribe (if tribal lease)

3160-16 - INDIAN DILIGENT DEVELOPMENT
Example of Memorandum to BIA

Memorandum

To: (Appropriate Bureau of Indian Affairs Office)

From: (Appropriate Bureau of Land Management Office)

Subject: Diligence Determination on Indian Oil and Gas Lease No. _____

We have completed a diligent development review of the subject lease. We have determined that it is not being diligently developed and are recommending that the BIA consider the following options:

(Note: Enter options, such as (1) relinquishment of the undeveloped acreage; (2) pay additional payments in lieu of drilling; and (3) lease cancellation.)

(Explanation as to why lease is not diligently developed.)

If you have any questions or would like to discuss these options prior to your issuing a decision, please contact _____ at _____.

Sincerely,

cc: BIA
Tribe (if tribal lease)

3160-16 - INDIAN DILIGENT DEVELOPMENT
Example of Notification That BLM Concurs

Certified Mail - Return Receipt Requested

_____
_____
_____

Gentlemen:

We have examined the information submitted by your letter dated _____ and concur that additional development is not warranted at present. Accordingly, we will not require the drilling of an additional well(s) on Indian oil and gas lease no. _____ at this time.

We will continue to monitor the undeveloped portions of the lease.

If you have any questions, please contact _____ at _____.

Sincerely,

cc: BIA
Tribe (if tribal lease)

3160-16 - INDIAN DILIGENT DEVELOPMENT
Example of Decision Letter

Certified Mail - Return Receipt Requested

_____
_____
_____

Gentlemen:

We have examined the information submitted by your letter dated _____. Our findings indicate _____
_____
_____
_____
_____.

Therefore, you are to begin diligent drilling operations by (date).

(Include appeal language here.)

If you have any questions, please contact _____ at _____.

Sincerely,

cc: BIA
Tribe (if tribal lease)

3160-16 - INDIAN DILIGENT DEVELOPMENT
Example of Follow-up Letter

Certified Mail - Return Receipt Requested

_____
_____
_____

Gentlemen:

By letter dated _____ (see Enclosure), you were requested to provide your plans for the additional development of Indian oil and gas lease no. _____. However, to date we have not received your reply.

You are required to submit the information requested in our letter dated _____, within 30 days of receipt of this letter.

If no response is received within the specified timeframe, you will be required to begin diligent drilling operations by ___(date)___. Failure to begin drilling operations may result in lease cancellation.

If you have any questions, please contact _____ at _____.

Sincerely,

Enclosure

cc: BIA Office
Tribe (if tribal lease)

3160-16 - INDIAN DILIGENT DEVELOPMENT
Instructions for Reporting Requirements

Reporting requirements for the Federal Financial System (FFS) annual work plan units of accomplishment are given below:

FFS CODE	4112 PROGRAM ELEMENT	WORKLOAD MEASURE
19	Diligent Development	Leases Reviewed

Report a unit of accomplishment when a diligence review is completed through administrative action or technical review.

Diligence reporting is required on a quarterly basis as part of the Quarterly Fluids Mineral Report as shown on the following chart.

3160-16 - INDIAN DILIGENT DEVELOPMENT
Instructions for Reporting Requirements

INDIAN DILIGENT DEVELOPMENT

STATE OFFICE:
QUARTER:
FISCAL YEAR:

GEOGRAPHIC STATE	LEASE CATEGORY	NUMBER OF PRODUCING LEASES (Start of Quarter) (1)	NON-PRODUCING LEASES CONVERTED TO PRODUCING (2)	PRODUCING LEASES TERMINATED OR CONVERTED TO NON-PRODUCING (3)	NUMBER OF FULLY DEVELOPED LEASES (Start of Quarter) (4)	TOTAL NUMBER OF NOT FULLY DEVELOPED LEASES (5)	TOTAL NUMBER OF LEASES REVIEWED (6)	RESULTS OF LEASES REVIEWED			FULLY DEVELOPED LEASES (End of Quarter) (10)	NOT FULLY DEVELOPED LEASES (End of Quarter) (11)	TOTAL PRODUCING LEASES (End of Quarter) (12)
								FULLY DEVELOPED (7)	NOT FULLY DEVELOPED				
									Diligent (8)	Not Diligent (9)			
	Allotted					0	0				0	0	0
	Tribal					0	0				0	0	0
TOTALS	ALLOTTED	0	0	0	0	0	0	0	0	0	0	0	0
	TRIBAL	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL	0	0	0	0	0	0	0	0	0	0	0	0

1. Number of Diligence Notification Letters Sent This Reporting Period. _____
2. Number of Wells Drilled This Reporting Period. _____
3. Number of Recommendations to BIA For Further Action (i.e. options: relinquishment of the undeveloped acreage, additional payments in lieu of drilling, or lease cancellation). _____
4. Number of Appeals (SDR & IBLA) Filed This Quarter (Identify by Lease Number in Item 5). _____
5. Other. (Use to provide explanation for discrepancies in the above columns or other comments).

Formulas: Column (1) = Column (12) from previous report.
Column (4) = Column (10) from previous report.
Column (5) = Column(s) (1) + (2) - (3) - (4).
Column (6) = Column(s) (7) + (8) + (9).

Column (10) = Column(s) (4) + (7).
Column (11) = Column(s) (5) - (7).
Column (12) = Column(s) (10) + (11).

3160-16 - INDIAN DILIGENT DEVELOPMENT
Instructions for Preparing the Geologic Review

The geologic review (GR) is a comprehensive examination of the lithologic, structural, and stratigraphic components of the subject area. The subject reservoir is analyzed as to its limits and physical characteristics using all available data. Similarities and differences between the Bureau's independent geologic analysis and the lessee's geologic analysis (if submitted) are discussed and resolved. The record must describe in detail how the geology affects diligent development in the subject area. The technical components necessary to complete the geologic analysis are outlined as follows:

1. Use all available geologic and geophysical data, including well logs from the lease and surrounding area to prepare geologic maps and cross sections determining:

   a. Areal extent of the producing reservoir(s) on the lease or agreement.

   b. Trapping mechanism (structural/stratigraphic).

   c. Position of gas/oil/water contacts, if present.

   d. Geologic conditions that would preclude or otherwise influence the development pattern, such as:

      (1) Structural dip.

      (2) Faults, folds, fractures.

      (3) Stratigraphic pinch-outs, facies changes, etc.

      (4) Porosity/permeability barriers.

2. Correlate geologic and geophysical data, including well logs from the lease and surrounding area. Analyze the data to determine:

   a. Lithologic characteristics of the reservoir.

   b. Net pay.

   c. Porosity.

   d. Water saturation.

   e. Formation temperature.

   f. Gas/oil/water contacts.

   g. Other geologic features or properties that may influence development.

3. Substantiate and support your findings.

   a. Consult published and unpublished literature covering the geology of the field.

   b. Consult published and unpublished structure contour maps, structural and stratigraphic cross sections, and isopach maps of the field.

4. Document the Geologic Review. Document the geologic review described with appropriate maps and technical findings.

5. Base Map Standards. Base maps shall conform to the following standards:

   a. A map of appropriate scale.

   b. Required data:

      (1) Public land or legal survey including lots.

      (2) Well locations (use API standard symbols and identification).

      (3) Agreement boundaries,

      (4) Indian mineral estate.

      (5) A legend that includes well symbols and boundary symbols (unit, CA, PA).

      (6) North arrow.

      (7) Bar scale

6. Geologic Map Standard. Geologic maps may be plotted on standard base maps. Each geologic map shall contain the following:

   a. Signature of the geologist and date.

   b. Signature of any additional reviewers, and date reviewed.

   c. Line(s) of cross section (when applicable).

3160-16 - INDIAN DILIGENT DEVELOPMENT

d. Supporting geological data. Examples are:

(1) Structural closure on an anticline or dome.

(2) Isopach of a porous and permeable body containing oil or gas.

(3) Oil/gas/water interface(s).

(4) Porosity/permeability barriers.

(5) Faults.

(6) Other geologic conditions that restrict the movement of oil or gas.

3160-16 - INDIAN DILIGENT DEVELOPMENT
Instructions for Preparing the Reservoir Engineering/Economic Reviews

The reservoir engineering review (RER) is the comprehensive examination of the reservoir performance and production history. The economic review (ER) is the analysis that determines whether a prudent operator would drill an additional well in an undeveloped spacing unit.

1. Computing the Recoverable Reserves. Utilize the geologic and engineering data and information available from all sources to compute the ultimate recoverable reserves attributable to model an additional offset well. Examine the reservoir and fluid properties surrounding the model well:

a. Pressure history.

b. Temperature.

c. Porosity.

d. Recovery factor.

e. Permeability.

f. Net pay.

g. Water saturation.

h. Residual oil saturation.

i. Structural anomalies.

j. Production history.

k. Reservoir energy mechanisms.

l. Reservoir boundaries.

m. Specific gravity.

n. Compressibility.

o. Reservoir volume factor.

p. Viscosity.

q. Gas/oil ratio.

The method of analysis will be determined by the parameters available and may include material balance, production decline curves, pressure analysis, and volumetric or geometric calculations. Document the method (including formulae) utilized in the analyses, as well as the parameters and the source of parameter values used.

2. Economic Well Determination (Prudent Operator Rule). Utilizing the above findings, an economic well determination will be conducted to determine if a prudent operator can drill an offset well in the spacing unit being evaluated. Use the discount rates provided by the Washington Office.

a. Gross production. The ultimate recoverable reserves are the total oil and gas reserves that a development well could be expected to produce. The production of these reserves are projected and modeled using conventional reservoir engineering methods (volumetric, decline curve analysis, material balance, etc.). When applied to discounted cash flow, the net revenue of gross production is projected annually until the economic limit of the well is reached. The economic limit is reached when the operating costs of the well equal the net value of production.

b. Oil and Gas Price. The value for oil and gas pricing is based on the appropriate time period. The current price per barrel of oil, or thousand standard cubic feet (MCF) of gas is based on the particular quality crude or natural gas in the specific geographic area.

c. Expenses. The primary expenses associated with drilling an economic well are drilling, completion, and operating expenses. These expenses are obtained from industry, professional publications, or professional experience in specific producing areas. Escalation of operating expenses should be considered only when market conditions support it.

d. Taxes. Certain taxes should be considered as legitimate cost items to the operator. These include severance, ad valorem, and other applicable State taxes, and tribal taxes. Severance tax is a sales tax based on production. Ad valorem tax is property tax based on a diminishing asset. These taxes vary between States, and current rates for each particular area should be used.

3. Filing the Reservoir Engineering/Economic Report. File the signed and dated engineering/economic report, along with appropriate maps.

INTERIM GUIDANCE

DRAFT BLM HANDBOOK H-3180-1 - UNITIZATION (EXPLORATORY)

NOTE TO USERS: The attached DRAFT BLM Handbook H-3180-1 is being issued as INTERIM GUIDANCE for those involved in administration of the oil and gas units program.

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H-3180-1 - UNITIZATION (EXPLORATORY)

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Bibliography

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H-3180-1 - UNITIZATION (EXPLORATORY)

I. Introduction.

The objective of unitization is to proceed with a program that will adequately and timely explore and develop all committed lands within the unit area without regard to internal ownership boundaries. Exploratory units normally embrace a prospective area that has been delineated on the basis of geological and/or geophysical inference. Exploratory unit agreements normally encompass all oil and gas interests in all formations within the unit area and provide for the allocation of unitized production to the committed lands reasonably proven to be productive of unitized substances in paying quantities on the basis of the surface acreage included within the controlling participating area. By effectively eliminating internal property boundaries within the unit area, unitization permits the most efficient and cost-effective means of developing the underlying oil and gas resources.

The BLM will approve the commitment of Federal lands to a unit agreement in the interest of conserving the natural resources, when it is determined to be necessary or advisable in the public interest. When such a determination is made and Federal lands are committed to the unit, the authorized officer has a responsibility to ensure that unit development proceeds in a way that continues to serve the public interest, regardless of whether the Federal lands comprise only a small fraction or a major part of the unit area.

The guidelines and procedures discussed in this Handbook apply generally to all unit agreements involving Federally-supervised leases, but specifically to those agreements that adopt the text of the form of agreement contained in 43 CFR 3186.1. While reference is made throughout this Handbook to specific sections of the Federal form of unit agreement (43 CFR 3186.1), any such reference should be understood as applying also to the equivalent provision in a non-Federal form of agreement, if appropriate.

Section II of this Handbook discusses the general procedures to be followed in administering oil and gas exploratory unit agreements. As an aid to BLM personnel involved in units administration, the Handbook also provides, in Illustration 1, a recommended format for the various notices and approvals that are required during the life of a unit. Illustration 2 of the Handbook provides general guidance and suggested formats for submissions required from the unit operator. Further illustrations are included that provide supplemental guidance for managing units information, for treating communitized areas within units and for including special provisions in the unit agreement.

II. Guidelines and Procedures.

A. Procedures for Designation of Unit Area; Depth of Test Well.

When requesting designation of an area as logically subject to development under a unit plan, an applicant must submit all required information in duplicate to the authorized officer. An application for designation of unit area should consist of an application letter accompanied by a geologic report and land ownership map, as follows.

1. Application letter. In its request for designation, the applicant must:

a. Accurately define the proposed unit area either by reference to the accompanying map or by including a legal description of all lands in the proposed unit area. The description should show lots and tracts, if any, and the exact acreage thereof, including the total acreage in each section and the entire unit area.

b. List in sequence (grouped by Land Office identities) the serial numbers of all Federal leases and pending lease applications, Indian leases, and the expiration date of each lease.

c. If geological and geophysical data and discussions are to be confidential, the applicant should so state and clearly mark each page of such documents as CONFIDENTIAL INFORMATION. The geologic report should be a separate report supporting the application for designation of a unit area.

d. Cite the deepest formation that the proponent plans to test, the projected depth that the initial test well(s) must reach to adequately test that formation, and the number of initial wells to be required.

2. Geologic Report. The geologic report should include:

a. A map on the public land survey base showing the proposed unit boundary and a detailed geologic map illustrating the limiting mechanism for production of the objective formation, along with structural cross section(s) and other geologic data as they relate to the proposed unit area. The geologic map and the cross section(s) should show the strike and dip of all pertinent faults. The map must show the location of all wells drilled in the unit area and immediate vicinity thereof and should indicate the status and depth of each well and the lowest formation penetrated.

b. Appropriate cross-sections and stratigraphic columns, identifying prospectively productive formations and indicating expected depths.

c. Pertinent geophysical interpretations.

d. The geologic basis for selecting the proposed unit area boundary, such as closing structural or stratigraphic contour, fault, or pinch-out.

e. A brief discussion of the unit area, including (1) the location of the prospect geographically and physiographically; (2) pertinent geologic factors, including structure and stratigraphy, as they relate to the proposed unit area; and (3) the location of existing wells with emphasis as to why the prospect has not been evaluated by these tests.

f. The location of the initial test well, its proposed total depth, projected formations to be tested, and a brief discussion of the rationale for drilling the initial test well at the chosen location.

3. Land Ownership Map. The land ownership map, on a scale not less than 1 inch to 1 mile, shall show:

a. The specified outline of the proposed unit area based on the official public land survey, including the acreage and official number of each lot, tract, and section, and total acreage of the unit area.

b. The boundary of each lease and unleased tract of land. Insofar as possible, the lands should be identified with the same tract numbers that will be used later in Exhibit B of the unit agreement.

c. By use of distinctive colors or symbols, the different types of land, such as Federal, Indian, State, railroad, and other fee lands. Also indicate different types of Federal lands, such as Forest Service, Fish and Wildlife Service, and Indian allotted or tribal lands.

d. Working interest owners and lease numbers of Federal and Indian leases and lease expiration dates.

4. Special Unit Provisions. Use of the model form of unit agreement (43 CFR 3186.1) is encouraged. However, certain types of lands require the inclusion in the unit agreement of special provisions, which must be approved in advance unless recited in the designation letter. If any other deviations from such form are deemed advisable, the proposed form, with Exhibits A and B, or equivalents, attached to each copy and with all deviations from the model form plainly marked and explained, must be submitted for approval by the authorized officer.

5. Review of the Application. To ensure the adequacy of the application, the authorized officer reviews the application for correctness and acceptability as to format, unit area, initial well requirement(s), and information presented in the geologic report. Individual Federal and Indian leases are checked for expiration dates and for any special land stipulations that should be included in the agreement. For unit agreements that contain unleased right-of-way or other lands, additional steps should be taken to have these lands leased prior to final approval of the unit.

The proposed form of unit agreement is reviewed to determine if the agreement language meets the needs of the specific case. The proposed location of the initial unit well(s) should be reviewed and, if the location is near the edge of the proposed area and it is not justified geologically, the operator should be requested to select a more appropriate well site or to consider revising the unit boundary.

Each application for designation submitted to the authorized officer for approval must be accompanied by a report demonstrating that the proposed unit outline is consistent with the geologic information submitted. Geologic information should show that unitization is necessary and advisable in the public interest.

Illustration 1-1 is a form letter recommended for use by the authorized officer in notifying the applicant that the land identified in his application has been designated a logical unit area.

B. Unit Area and Well Obligation

The general intent of unitization is to pool mineral interest ownership in an entire geologic structure or area in order to provide for adequate control of operations so that exploration, development, and production can proceed in the most efficient and economical manner. It follows that a unit area should encompass only those lands considered necessary for the proper development of the unitized resources. An actual unit boundary may be established by honoring structural, stratigraphic, or other limiting geologic parameters. Administrative boundaries should not be used except in rare circumstatunces such as an adjoining unit boundary. A unit area may extend into designated Wilderness, Park System, Wildlife Refuge, or other protected area. In that instance, the unit proponent should be made aware that operations (surface or sub-surface) may be conducted within the protected area only on lands that are leased and only if such operations are not precluded by law, regulation, or by surface use restrictions imposed by the surface management agency (SMA).

Historically, the ratio of one well per 25,000 acres has been used. However, the authorized officer shall require the unit proponent to drill sufficient number of wells to adequately test the trap or series of traps identified in the geologic report and supporting maps. Contributing factors would include the nature, extent and depth of the potential reservoir(s), and pertinent information from any wells which have already been drilled in the general area. If the unit agreement requires more than one obligation well, then all obligation wells must be drilled to the formation/depth requirements specified in the unit agreement in order to fulfill the public interest requirement (43 CFR 3183.4[b]), unless the authorized officer determines that the public interest requirement has been satisfied with the drilling of less than the full multiple well commitment. Section 9(a) of the model form of exploratory unit agreement (43 CFR 3186.1) contains substitute language that should be used in agreements that incorporate a multiple well obligation.

C. Approval of an Executed Unit Agreement.

When an executed unit agreement is received for approval, it is processed as follows.

1. The application is reviewed for proper format, including the filing of a sufficient number of copies. Unless specified otherwise in the designation letter, a minimum of four signed counterparts are required.

2. The text of the executed agreement must be identical to that approved in the designation letter. Any exceptions are noted and, if significant, the application is returned unapproved for correction by the applicant.

3. All tracts listed on Exhibit B (43 CFR 3186.1) are reviewed as to proper arrangement, land description, and acreage. Lease numbers, expiration dates, royalty rates, and lessees of record for all Federal and Indian leases are verified from BLM and Bureau of Indian Affairs records. The subtotal of acreage for each type of land and its percentage of the total unit area should be shown.

4. The ratification and joinders submitted with the agreement are checked against the lessees of record, basic royalty owners, and working interest owners to determine the commitment ~~status of each tract (see paragraph II-U.)~~ All lessees of record and working interest owners for each Federal/Indian tract must submit a ratification and joinder before the tract is considered fully committed. Since the basic royalty, lessee of record, and working interest ownership in State and fee lands cannot be verified, joinders by parties purported to own such interests are to be accepted as correct.

5. All signatures should be either witnessed or acknowledged before a notary. Execution by a corporate officer should show that person's title and carry proper attestation and the corporate seal. The commitment of overriding royalty and production payment interests can be accomplished either by the unit operator submitting a list of such owners which indicates those who have executed the unit agreement, or by the filing of appropriate joinders. When specific interests are held by different individuals or companies, each such entity holding an interest should execute the agreement even where one company may be wholly owned by another signatory party.

6. To assure effective control over unit operations, generally at least 85 percent, on an acreage basis, of the lands within the unit area must be fully, effectively, or partially committed to the unit agreement. Approval may be granted with a lesser commitment when all or a substantial portion of the noncommitted land is "fringe acreage", i.e., is located adjacent to the outer boundary of the unit area or otherwise far removed from the site of the initial unit well.

7. Every owner of an interest in the unit must be invited to join the unit agreement. If any owner fails or refuses to join, evidence of reasonable effort to obtain joinder should be submitted by the unit proponent, together with a copy of each refusal giving the reasons for nonjoinder.

8. Two true copies of any unit operating agreement should accompany the executed unit agreement.

9. Any lands in the unit area that are subject to an option agreement should be identified in Exhibit B (43 CFR 3186.1), and the basic provisions of the option should be described. In all cases, the person committing such interest should exercise the option promptly after approval of the unit agreement.

10. Fully and effectively committed Federal leases are subject to segregation pursuant to 30 U.S.C. 226(m) and, where segregation is appropriate, the lease is so noted on Exhibit B (43 CFR 3186.1). Horizontal segregation is discouraged and should be avoided whenever possible. Horizontal segregation normally can be averted if a statement is submitted by the unit operator advising that it is not the intent of the signatory parties to the unit agreement that horizontal segregation occur as a result of the unitization (see Solicitor's Opinion M-36776, May 7, 1969.)

11. A Certification-Determination page (see Illustrations 1-2A and 1-2B for recommended format) and approval letter (Illustration 1-2C) are prepared and signed by the authorized officer. Generally, if State, Indian, and/or fee lands are involved, the unit agreement should be approved by the appropriate State and Indian agency before the agreement is submitted for approval by the authorized officer. However, where a majority of acreage within the proposed unit is Federal, and where sufficient acreage has been committed to assure effective control, the authorized officer may approve the agreement prior to its approval by the appropriate State or Indian Agency. In all cases, the State or Indian Agency should be notified of the proposed unitization and be given the opportunity to commit its lands prior to authorized officer approval. Unit agreements that contain only Indian lands are not approved by the authorized officer. For such units, a memorandum giving the reviewing officer's recommendations, with the unit instruments filed for review, are transmitted to the appropriate BIA office for final approval.

12. Upon approval, the unit is assigned a Case Recordation System (CRS) number (see Illustration 3) and entered into the CRS.

13. One complete copy of the unit agreement, unit operating agreement, designation, approval, and associated papers is retained in the office of record. Where the authorized officer is a State Office official, one copy of such documents is transmitted to the appropriate District Office.

14. The effective date of a unit is not negotiable, and a retroactive date may not be used even if justification is submitted by the proponent. A unit agreement will be effective as of the date of the authorized officer's approval signature. However, for non-Federal form units that are not designated by the authorized officer, the effective date will be that date specified in the agreement.

15. While it is desirable to have the owners of Federal overriding royalty interest (ORRI) join in the unit, approval will not be denied if they do not join. Private basic royalty owners must execute joinders to the unit agreement unless the lease specifically authorizes the lessee to commit their basic royalty interest to a unit agreement.

D. Operating Rights

Certain unit approvals (e.g., final unit agreement approval, successor operators, subsequent joinders, etc.) depend on the consent of a sufficient percentage of working interest owners. Since BLM does not verify present working interest ownership, the most current Exhibit "B" must be accepted as the unit operator's self-certification of ownership. If the actual working interest ownership does not correspond with necessary consent or executed instruments submitted with the approval request, then an updated Exhibit B must be submitted by the unit operator. Any approval letter related to working interest ownership, such as for the approvals noted above, must contain the following, or similar, disclaimer:

> "In accepting/approving this (unit agreement, designation, etc.) the authorized officer neither warrants nor certifies that the (unit operator, designated party, etc.) has obtained all required approvals that would entitle it to conduct operations or otherwise exercise its rights under terms of the _____ Unit Agreement."

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E. Exploratory Drilling Operations.

Section 9 of the model form of unit agreement for unproven areas (43 CFR 3186.1) contains the initial test well requirements for the unit. Generally, this section requires the unit operator to commence an adequate test well within 6 months of the effective date of the unit agreement and to diligently drill such well to completion; to continue drilling one well at a time, allowing not more than 6 months between the completion of one such well and the commencement of the next such well; and to pursue such operations until a well capable of producing unitized substances in paying quantities is completed. Production in paying quantities is defined in the model agreement as "quantities sufficient to repay the costs of drilling, completing, and producing operations with a reasonable profit . . . ." A well that is commenced prior to the effective date of the unit agreement may satisfy the initial test well requirements if it is being drilled conformably with the terms of the agreement on the effective date, i.e., the well can not have penetrated the objective horizon specified in Section 9 (43 CFR 3186.1) prior to the effective date of unitization (also, see paragraph R.)

1. Drilling to Discovery - Initial Test Well. In order for a well to be considered as fulfilling the initial test well requirements under the unit agreement, the well must be drilled diligently and meet one of the following criteria:

a. Test the formation specified in Section 9 (43 CFR 3186.1).

b. Reach the depth requirement specified in Section 9.

c. Discover unitized substances which can be produced in paying quantities at a lesser depth than the formation or depth requirement specified in Section 9.

d. Establish to the satisfaction of the authorized officer that further drilling of the well would be unwarranted or impracticable.

When a well satisfies the requirements of Section 9 (i.e., satisfies the PIR under 43 CFR 3183.4[b]), then all committed unit leases would qualify for extension by drilling. If a well fails to satisfy the Section 9 requirement, yet was drilled diligently, then only the lease on which the well was drilled would qualify for extension by drilling. The standard for diligent drilling operations is that set out in 43 CFR 3107.1.

2. Further Drilling and Development. The initial participating area under an exploratory unit agreement is established by the completion of the first unit well capable of producing unitized substances in paying quantities (as defined in 43 CFR 3186.1, Section 9). After such discovery, further drilling or development is to take place under an approved plan of development (see paragraph II-H), except as may be necessary to protect the unit area from drainage. The drilling to discovery provisions in Section 9 of the model form permit the authorized officer to modify the drilling requirements by granting reasonable extensions of time when, in his opinion, such action is warranted (see paragraph II-K).

3. Multiple Test Well. When the unit agreement incorporates a multiple well requirement, the operator is obligated to drill all required wells. Failure to commence drilling all required wells beyond the first obligation well, and to drill them diligently, may result in the unit agreement approval being declared invalid ab initio by the authorized officer.

4. Producible Wells Prior to Unitization. Where producible wells exist in the unit area prior to unitization, Section 11 (Participation After Discovery) of the model form of unit agreement should be modified to provide that wells completed prior to the effective date of the unit agreement will not be recognized as unit wells until after an initial participating area is established based on the completion of a unit well capable of producing unitized substances in paying quantities as defined in Section 9 of the model unit agreement (see also paragraph II-R).

F. Determining Production of Unitized Substances in Paying Quantities.

The term "paying quantities" is defined in the model form of unit agreement as "quantities sufficient to repay the costs of drilling, completing, and producing operations with a reasonable profit . . ." The cost of producing operations is defined as "the cost of maintaining the lease and producing the wells, including the cost of marketing the products." The phrase "cost of marketing the products" is further defined as "the normal or usual handling, treating, measurement, and transportation costs which a responsible lessee could be expected to pay to market his leasehold production. Such costs would not include abnormal or extraordinary charges, such as construction of a lengthy pipeline." This definition of the cost of producing operations, with the criteria applied to such definition, is also applicable to unit operations. However, the definition of paying quantities for unit purposes also includes the burden of return of drilling and completing costs. Generally, the drilling and completion costs to be considered will be the actual costs involved; however, consideration should also be given to those reasonable costs which a responsible operator could be expected to incur while drilling and completing the well in question. Extraordinary costs, such as drill string failure, extensive coring and testing programs, loss of well control, etc., normally should not be allowed.

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Generally, no more than 12 months of well production data should be required to conduct a paying well analysis. On rare occasions, if additional well production data beyond 12 months is necessary to conduct a paying well analysis, a letter to the unit operator should be sent outlining the reason(s). However, the requirement that additional wells be drilled with no more than 6 months between wells shall continue in effect during any such test period unless extensions are granted by the authorized officer.

1. Paying Well Evaluations. To evaluate a "paying well" determination (PWD), a reserve-economic analysis showing a well's discounted pay-out and the estimated ultimate recovery to be realized usually is required. To retain quality and consistency in performing a paying well analysis, the use and application of various economic input parameters should be uniform. At the time of the paying well determination, the current market or contract price should be used as the current product price. If the well has produced for a period of time prior to the paying well determination, then the actual product price should be used for that period of time. If no contract price for gas is available, then the highest current gas price being paid for a majority of like quality gas in the area or field should be used.

Since product prices and field operating costs will likely not remain constant with time, reasonable projections of these economic variables should be used in unit PWDs. For consistency in these analyses, a reliable and readily available source of forecasting data is desirable. The ~~Energy Information Administration (EIA) in the U.S. Department of Energy is such a source for~~ oil and gas price forecasting, and publishes periodic reports, such as their Annual Energy Outlook and Short-Term Energy Outlook, which contain this information. These oil and gas price forecasts are normally developed for a range of market assumptions. The product price forecasts developed by EIA for the medium or base case scenario should be used in unit PWDs. Price forecasts should be used for all future years to be analyzed. However, since these forecasts are generally not reported for all future years, interpolating price inputs for intervening years may be necessary. In addition, since oil price forecasts are generally made for the world oil price, it may be necessary to make price adjustments that reflect quality and market differences between the forecasted product and the resource being analyzed. A reasonable estimate of future operating costs can be deduced from the Producer Price Index, published monthly by the Bureau of Labor Statistics, U.S. Department of Labor.

Additional consistency in unit paying well determinations is achieved through adoption of a standard discount factor for use in the economic analysis. Normally, in evaluating the economics of a proposal through discounted cash flow (DCF) analysis, a certain level of risk is assumed. This degree of presumed risk is reflected in the discount rate selected for use in the analysis. Since the well being evaluated in a PWD has already been drilled and been shown to be producible, the risk of failure has been reduced considerably. For consistency, the risk component of the discount rate used in BLM's paying well determinations is assumed to be zero. Under that assumption, an acceptable proxy for the discount rate used in a unit PWD would be the yield on United States Government intermediate-term (10-year) bonds, an essentially risk free investment that captures both inflation expectations and the time value of money. The average yield (rounded up to the next whole percent) on intermediate-term Government bonds, as reported in national financial publications and many major newspapers, should be used as the discount factor in the economic evaluation for a unit PWD. The discount rate would continue unchanged for the life of the estimated ultimate recoverable reserve projection. The use of a conservative discount rate favors the operator's well in qualifying as a unit paying well and ultimately furthers the resource conservation objectives of unitization.

The DCF analysis starts at the time the well is completed using actual or projected production. There is no set limit on the number of years for a well to payout. However, if payout is longer than 10 years, the economic assumptions used in the paying well analysis should be reexamined. The use of the windfall profits tax (repealed in 1988) should not be considered in the paying well analysis. If such a tax is enacted in the future, however, it would then be utilized in the analysis.

State Offices are responsible for assuring that adequate source information for product price/operating cost forecasting and Government Bond yields is available to offices responsible for conducting unit PWDs.

2. Non-Paying Well/Recompletion Evaluations. The drilling and completion costs to be used in the economic analysis for a paying well determination for a recompleted or reentered well should be the typical cost of drilling and/or completing the same well at the time of recompletion or reentry. The economic factors and the total remaining reserves at the time of recompletion or reentry should be utilized. Each producing horizon in a completed well should be evaluated separately. If a workover is performed in the current horizon (e.g. additional perforations, frac job, etc.) then the following guidelines for a non-paying well reevaluation would apply.

Wells initially determined to be non-paying normally should not be considered for reevaluation. However, if there is a significant change in conditions (such as a sustained increase in product price or significant increase of monthly production) a non-paying well may be considered for reevaluation. A non-paying well may be reconsidered upon request by the unit operator, or may be initiated by the authorized officer if it is believed it would serve the public interest. When reevaluating a well previously determined to be a non-paying well, the following economic factors should be applied, as of the effective date the well potentially becomes paying: (1) typical cost of drilling and/or completing the same well, (2) remaining reserves, and (3) the applicable economic parameters. The historical data prior to the effective date should not be considered in the reevaluation. The effective date of any revision of a participating area caused by the reevaluation of a non-paying well should be the first of the month on which the changing condition occurred regardless of when the request for reevaluation is received from the unit operator or when initiated by the authorized officer. For wells completed before a unit was formed, the same economic factors would apply. Illustration 1-3 may be used in notifying the operator that a unit well has been determined to be a non-paying well, as defined in Section 9 of the unit agreement.

G. Establishment or Revision of Participating Areas.

After the first unit well capable of producing unitized substances in paying quantities is completed, a participating area is established in accordance with Section 11, "Participation After Discovery", of the unit agreement (43 CFR 3186.1).

1. Initial Participating Area. The land that is to be included in a participating area is that land reasonably proven capable of producing unitized substances in paying quantities or, if so provided in the unit agreement, that land necessary for unit operations (most older units, i.e., prior to 1968, do not provide for such additional lands). In the event that State spacing orders are still applicable to lands in the unit area, spacing should be accepted in determining the participating area, unless the authorized officer determines that it is not in the public interest. Accordingly, participating areas should include the acreage within the spacing unit established for every well that is included in the participating area. Additional acreage is also included where the available information indicates that such lands reasonably are proven to be capable of producing unitized substances in paying quantities. The establishment of the initial participating area causes the unit to convert to a producing status, and all subsequent unit wells and operations are to be conducted under an approved plan of operations. The effective date of the initial participating area usually is the date the "discovery" well was completed, i.e., the date the well was determined to be physically capable of producing unitized substances in paying quantities. Illustration 2-2 presents a suggested format for use by the unit operator in requesting approval of an initial participating area. Illustration 1-4A is a form letter advising the unit operator that the initial participating area has been approved.

If an application to establish an initial participating area has not been filed within 3 months after completion of a unit well, the authorized officer should contact the unit operator and follow up, as needed, until the necessary actions are completed.

An application for the authorized officer's concurrence that a well is not capable of producing unitized substances in paying quantities should be submitted for every nonpaying unit well by the unit operator. Every unit well completed for production should either be included in a participating area or determined to be a non-paying well as soon as possible after completion.

A recommended method for establishing the initial participating area for an exploratory unit should incorporate basic engineering and geologic principles. The following equation can be used as a basis for determining the size of the participating area:

$$N_p = N \times E_r$$

Where N_p is recoverable reserves, N is the original hydrocarbons in place and E_r is the recovery factor.

Recoverable reserves can be calculated by using decline curve analysis based on the available production history. If gas reserves are involved, a graph of P/Z versus cumulative production can be used where there is available pressure and temperature data. An economic limit or cut-off point will also need to be established when determining recoverable reserves. A substantial amount of the calculation was probably accomplished while making the paying well determination. If available, modeling can be used to determine recoverable reserves.

A recovery factor can be determined by empirical correlation or through field experience given a specific reservoir. The reservoir drive mechanism(s) may have to be determined and used in estimating the recovery factor.

Once the recovery factor and recoverable reserves are determined, the original hydrocarbons in place can be calculated. Using the volumetric equation for oil or gas, the area necessary for the participating area can be determined. Values for porosity, net pay thickness, water saturation, and formation volume factor can and should be obtained from independent log and reservoir analysis. If the area calculated compares favorably with what the unit operator files for approval and the configuration is reasonable, the application can be approved.

The actual configuration of the participating area should be consistent with available geologic data. Since this configuration logically may be something other than circular, detailed geologic mapping may be necessary if adequate data exists. Radial drainage should be assumed when insufficient data exists and when not contradicted by available information. Since participating areas are based on subdivisions of the public land survey or aliquot parts thereof, any subdivision cut 50 percent or more by the outer boundary of the participating area configuration should be included in the participating area.

The following table based on participating area size can be used as a guideline to determine what subdivision should be considered for inclusion in the participating area.

Participating Area Size-Acres	Subdivision Acres
Greater than or equal to 320	40
Less than 320	10

Smaller divisions of less than 10 acres can be considered when sizing participating areas as well as cases involving metes and bound surveys. These situations should be evaluated on a case-by-case basis.

The above method may not be appropriate in all circumstances and the authorized officer should use discretion in determining the configuration of the participating area.

2. Revision of Participating Area. A participating area will be revised in accordance with Section 11 of the unit agreement (43 CFR 3186.1), when additional paying wells are completed in the formation for which the participating area has been established. When a revision brings in additional lands, such lands will be contiguous to the existing participating area. Although the additional geologic and engineering information obtained from the completion of each new paying well is used, the amount of acreage that is brought into the participating area by a revision is dependent on the same criteria used in determining the initial participating area. Similarly, land previously included in a participating area that is proven by the subsequent completion of a dry hole to be incapable of producing unitized substances in paying quantities should be eliminated from the participating area. The completion of a well not capable of producing unitized substances in paying quantities also may be grounds for eliminating acreage if there is no reason to believe that drainage of the lands in question has occurred from other unit wells. Since it is virtually impossible to delineate the exact limits of production in paying quantities, any doubts as to whether or not a tract should be placed in a participating area should be resolved against participation, since a participating area can be enlarged more easily than it can be reduced.

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A request for the authorized officer's approval for the establishment or revision of a participating area should be accompanied by comprehensive engineering and geologic data that support and justify the unit operator's proposed definition or redefinition of lands entitled to be in the participating area. This information should include the status of all wells, current rates of production, and cumulative volumes of oil and gas production. Illustrations 2-3 and 1-4B are suggested formats for the application for and approval of a revision to a participating area.

Separate participating areas should be established for each separate productive reservoir, pool, formation, or zone covered by a unit agreement. Separate participating areas should be established for the same producing horizon when there is uncertainty as to whether the production is continuous between the two areas. However, separate participating areas should be combined into one contiguous participating area if subsequent information shows them to be producing from a common reservoir. Lands may not be eliminated from a participating area because of the depletion of unitized substances. However, such lands may be eliminated when reasonable proven to be nonproductive of unitized substances in paying quantities.

Lands not reasonably proven to be productive of unitized substances, but which are shown to be necessary for unit operations, may be taken into a participating area if such inclusion is provided for under terms of the unit agreement. The phrase, "lands necessary for unit operations" is construed to mean that the operations thereon would result in improved recovery of unitized substances (see Champlin Petroleum Co., 100 IBLA 157, decided December 3, 1987.) Lands on which unit operations provide only an indirect benefit to the participating area such as those that contain water disposal wells, water supply wells, or product treatment equipment, should not be included in the participating area. Any request for the inclusion of nonproductive lands considered necessary for unit operations into a participating area shall present a rational basis for such inclusion.

When it becomes necessary to revise a participating area by inclusion of acreage to be determined necessary for unit operations, a detailed geologic and engineering report will be necessary for justification of additional acreage. The probability exists that nonproductive acreage will be included in the participating area; hence, a rational basis should be used when adding additional acreage. This may include a negotiated agreement between working interest owners, and the unit operators with the acceptance of the authorized officer on what acreage should be included. Another consideration would be to analyze the reservoir area affected receiving the benefit of injection. In an exploratory unit surface acreage will be used for expanding the participating area.

The effective date for revision of a participating area is normally the first of the month in which the information upon which the revision is based is obtained, but a more appropriate date may be used when justified (older units may specify a different effective date). After a discovery has been made, the authorized office shall not approve an application for permit to drill or to perform other operations (except routine operations such as stimulation, well repair, etc.) under a unit unless the proposed operations were included in the currently approved plan of development (see paragraph H below), except where protective drilling is required.

State spacing may be used as a guide in determining the acreage to be included in participating areas, unless the authorized officer determines that such spacing is not in the public interest. Accordingly, participating areas should include the drilling and spacing unit established for every well included in the participating area. Additional acreage may also be included if the lands meet the requirements of Section 11 of the model unit agreement.

3. MMS Notification of Participating Area Approvals. All BLM approvals of Federal/Indian initial or revised participating areas will contain the following notice from MMS notifying the unit operator to inform payers to make adjustments to royalty payments within 90 days after a participating area has been approved:

IMPORTANT NOTICE FROM THE MINERALS MANAGEMENT SERVICE

If this well(s) is producing, this approval requires the submission of a Payor Information Form MMS-4025 to the Minerals Management Service (MMS) within 30 days (30 CFR 210.51). Please notify the designated payor or payors (purchasers, working interest owners, or others) as soon as possible regarding this requirement. Any production royalties that are due must be reported and paid within 90 days of the Bureau of Land Management's approval date or the payors will be assessed interest for late payment under the Federal Oil and Gas Royalty Management Act of 1982 (See 30 CFR 218.54.) If you need assistance or clarification, please contact the Minerals Management Service at 1-800-525-9167 or 303-231-3504.

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H. Plan of Further Development and Operation.

1. Purpose. The main purpose of a plan of development and operation is to provide for the progressive exploration and development of the unit area in an orderly and timely manner until such time as the productive limits of each participating area have been defined as fully as practicable. Generally, plans of development and operation should be designed to ensure that the exploration and development drilling needed to delineate the unitized land capable of producing unitized substance in paying quantities will be accomplished as early as 5 years from the effective date of the initial participating area, and certainly within 10 years from such date. Until the limits of paying production in each participating area have been determined, the number of proposed exploratory wells should approximate the number of proposed development wells. However, the authorized officer should exercise reasonable judgment in determining this ratio.

2. Plan of Development. Section 10 of the model form of unit agreement (43 CFR 3186.1) requires that a plan of development and operation be filed for approval within 6 months after the effective date of the initial participating area (see paragraph II-G1.) This plan should describe all anticipated unit operations for the next 6 to 12 months, including the drilling, completing, conversion, and producing of unit wells, and other surface disturbing operations, and may be supplemented as necessary. Prior to the expiration of the initial or any subsequent plan of development and operation, a new plan covering the next period (the following calendar year) ~~should be submitted on a calendar year basis not later than March 1 of each year, for the~~ authorized officer's approval. Any proposed modification or addition to the existing plan should be filed as a supplement to the plan. Plans of development and operation should be approved with a notation that the authorized officer's approval of specific operations must be obtained prior to commencement of such operations.

A plan of development should describe the exploratory and development drilling operations and other related operations proposed to be performed within the unit during the coming year and should be revised or supplemented as necessary. Generally, all work that would change a well's producing
formation or status, or operations that would require the prior approval of the authorized officer (such as drill deeper, plug back, abandonment, or conversion to an injection well), should be included in the plan of development. Routine stimulation and workover operations need not be covered by a plan of development as long as the resulting producing interval of the well remains within the productive limits of the participating area for the well. Each annual plan must provide for additional exploration and/or development drilling necessary to fully delineate the productive limits within the unit area, or must fully justify the lack of such drilling during the period covered by the plan. Since all proposed wells must be included under an approved plan of development once the initial participating area is established, subsequent unit operations should not be approved by the authorized officer if these operations were not included in the latest approved plan, unless drilling is necessary to protect the unit from drainage. 2-23

When the annual plan of development and operation is reviewed, the authorized officer shall determine whether the exploration and development of the unit, in accordance with good oil field practice, requires the drilling and/or producing of additional wells or the commencement of pressure maintenance or enhanced recovery operations. If further exploration of unit lands outside the participating area(s) is believed necessary, the authorized officer may approve the plan of development, subject to the condition that additional exploratory drilling operations will be required and that a supplemental plan covering such operations must be submitted for approval. The operator may also be requested to submit a new plan which provides for such additional exploratory drilling operations.

Upon approval, one approved copy of the plan of development will be returned to the unit operator; the original will be retained by the approving office; and, if the authorized officer is a State Office official, one copy will be sent to the appropriate District Office.

3. Summary of Operations. Section 10 of the model form of unit agreement (43 CFR 3186.1) requires that a summary of operations be included with the annual plan of development. Such summary should include complete up-to-date maps showing the latest structural and geologic interpretations; all participating area boundaries; a field map showing all wells, flow-lines, and roads; status of all wells; and a summary of all operations conducted during the past year. Any proprietary geologic information should be submitted as a separate report and should be clearly marked by the unit operator on each page as CONFIDENTIAL INFORMATION. Performance graphs covering the productive life of each horizon or reservoir for which a participating area has been established should also be included. The operations summary should be reviewed by the authorized officer to determine that all well completion and production data agree with the data contained in the authorized officer's records.

When additional unit drilling operations are no longer necessary because the area has been fully developed, the authorized officer may require an annual summary of operations to be submitted in lieu of the annual plan of further development and operations. All annual plans and/or summaries should be submitted in triplicate. A plan of development or summary of operations may be requested but not required for a non-Federal form of unit agreement, since BLM supervision is maintained only over Federal and Indian leases in such units.

I. Procedures for Expansion or Contraction of Unitized Areas.

Applications for the expansion or contraction of a unit area should be filed with the authorized officer in accordance with the following procedures.

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1. Filing of the Request. The unit operator shall file two copies of the request with the authorized officer. The request should describe the contemplated changes in the boundary of the unit area, the reasons therefor, and the proposed effective date. Any geologic report justifying the proposed expansion or contraction should be similar to the one that accompanied the application for designation of unit area as logically subject to unitization.

2. Notification of Involved Parties. After the authorized officer has given preliminary concurrence to the request, the unit operator should send out notices of the proposed change of unit area to each working interest owner, lessee, lessor, and State or Federal agency whose interests are affected, advising that 30 days will be allowed for submission to the unit operator of any objections. A copy of the notice should be submitted to the authorized officer. The date on which the expansion or contraction is to be effective should be specified in the notice. Normally, the effective date should be either the first of the month following approval by the authorized officer, or the first of the month following expiration of the 30-day period. A plat clearly showing the current area and the area to be added and/or deleted should be included with the notice.

3. Request for Approval. After the expiration of the required 30 days, an application should be filed in quadruplicate with the authorized officer requesting final approval of the proposed action. The application should include a statement that all principals were provided proper notice, with a copy of any objections that were received by the unit operator. The application should also contain a copy of the notice indicating the proposed effective date.

4. Effective Date of Expansion or Contraction. After due consideration of all pertinent information, the expansion or contraction shall, upon approval by the authorized officer, become effective as of the date prescribed in the notice. The authorized officer should notify the personnel responsible for realty actions of the contraction or expansion so that appropriate action can be taken.

5. Submission of Exhibits and Joinders. Revised Exhibits A and B (43 CFR 3186.1) should be submitted concurrently with or shortly after approval for contractions, but always concurrently for expansions so that the commitment status of new unit tracts can be established. Tract numbers of the new tracts included in the unit area by an expansion should follow the original tract numbers on Exhibits A and B in proper sequence. Tracts that existed prior to the expansion should not be renumbered. For effective commitment of new tracts, in the case of expansions, current signatory parties to the unit agreement who also own interests in the expanded area, and new parties, must submit joinders to the unit agreement and, if a working interest owner, a joinder to the unit operating agreement.

Section 2(e) of the model form of unit agreement provides for the automatic elimination of lands not entitled to be in a participating area at the end of the initial or extended unit term, if diligent drilling operations are not underway on such nonparticipating lands. Within 90 days of any such automatic elimination of lands, the unit operator must describe to the satisfaction of the authorized officer, all eliminated lands and must also promptly notify all parties in interest. Illustration 1-5A is a suggested format for the authorized officer to request a description of lands automatically eliminated under Section 2(e); while Illustration 1-5B may be used for authorized officer concurrence in the operator's land description.

Illustrations 1-6A and 1-6B are suggested formats for the authorized officer's preliminary and final approval for a unit expansion.

J. Suspensions.

1. Unavoidable Delay. There are three general circumstances that may qualify as unavoidable delay. The three are: (1) when actions by the BLM (or other surface management agency) taken in the interest of conservation prohibit the unit operator from beneficially using the unit area; (2) when events beyond the control of the operator prevent operations in the unit area (force majeure); and (3) when there is a lack of product market due to remote location or, in certain cases, a lack of sufficient demand.

Under Section 25 of the model unit agreement (43 CFR 3186.1), a suspension of the unit operator's drilling obligations for the initial obligation well, multiple obligation wells, and wells required to be drilled under Section 2(e) of the model agreement must be granted when events beyond the operator's reasonable control result in unavoidable delays that prevent the operator from complying with such obligations. Subsequent test well requirements under Section 9 (Drilling to Discovery) may also be suspended for unavoidable delay under Section 25; however, more commonly, the operator will request an extension of time under Section 9 if additional time is required to commence drilling the well. If obligatory drilling has not commenced, temporary relief of drilling obligations may be granted for a period generally not to exceed 6 months, upon receipt of a statement from the unit operator that it has been unable to obtain the necessary rig, casing, or associated equipment, or that adverse weather or other conditions beyond its control prevent commencement or continuance of operations. No unit obligation that is suspended under this section shall become due less than 30 days after such suspension is terminated.

Where a product market is available but the operator wants more for the oil and gas than a purchaser will offer, a suspension should not be granted unless the AO determines that the price offered is significantly less than what that purchaser and other purchasers are offering for like quality oil and gas in the area. Compelling the operator to sell at such an artificially depressed price would not be in the public interest since the royalty value to the Government would be similarly depressed.

Suspensions under Section 25 apply only to unit requirements and will not serve to extend leases that otherwise would expire. However, if actual drilling operations had commenced and were being diligently conducted when the above referenced problem arose, similar relief could be granted that would serve to hold expiring leases until operations resume or the relief period otherwise is terminated.

2. Suspension of Lease Terms. Pursuant to 43 CFR 3103.4-2(f), the authorized officer may grant a suspension of operations and/or production for any or all leases effectively or fully committed to the unit agreement due to existing circumstances that prohibit the unit operator from drilling and/or producing on unitized land. If suspension of the terms of the Federal leases is desired, the unit operator, on behalf of the lessees, must submit an application requesting such suspension of operations and/or production and indicating whether the suspension is being requested for all or only some of the committed leases. Circumstances that warrant suspension approval must be deemed to be beyond the control of the unit operator, despite the operator's exercise of due diligence.

If a suspension of production and/or operations is granted for a lease in a unit and the unit is subsequently declared invalid, the suspension is valid for the period prior to the unit being declared invalid. This would be true even if the application for suspension was executed only by the unit operator and not by the working interest owners. When a unit that is benefitting from a suspension of production and/or operations is declared invalid, working interest owners must be notified that the suspension will be terminated as of the date the unit is declared invalid, unless sufficient justification for continuation of the suspension is provided. The working interest owners should be given a reasonable period of time to submit this justification.

Manual 3160-10, Suspension of Operations and/or Production, provides additional guidance on the various types of lease suspensions.

3. Suspension of Automatic Elimination Provisions of the Unit Agreement. A suspension of the automatic elimination provisions of Section 2(e) may be granted, if justified, due to unavoidable delay. In order to receive this relief, the unit operator must obtain consent from the owners of 90 percent of the working interest and 60 percent of the basic royalty interest (exclusive of the basic royalty interests of the United States) in the current nonparticipating lands.

A request for this type of suspension may be submitted at any time after the establishment of an initial participating area, but prior to the effective date of the automatic elimination of lands not entitled to participation. If the suspension is approved, it would be effective the first of the month in which the request is received. This type of suspension is normally granted for not more than a two-year period, but may be extended thereafter, subject to an annual review as to whether continuation is warranted. The authorized officer may terminate the suspension at any time it is decided that circumstances warranting the suspension have been resolved. The operator should be provided notice of termination and granted a minimum of sixty days in which to resume unit operations, in order to forestall automatic elimination.

A suspension of the automatic elimination provision serves to extend the initial or second five-year development term for the period of time covered by the suspension. Note that if suspension of the automatic elimination provision is granted during the initial five-year development term of the unit, the operator will likely have additional time to resume drilling to forestall automatic elimination. This time period would be equivalent to the amount of time remaining in the first five-year term at the time the suspension was granted. Of course, if diligent drilling operations are commenced timely in accordance with Section 2(e) after a suspension is terminated, then the automatic elimination date would be further extended by the terms of the unit agreement.

~~Suspension of the Section 2(e) automatic~~ contraction ~~provision would not serve to~~ suspend the operating and producing requirements of any leases committed to the unit agreement, and committed Federal lessees would need to continue making minimum royalty and advanced rental payments during the term of suspension. However, suspension of the automatic contraction date would serve to extend the life of a committed lease since such leases are held by unit production during the period of the suspension.

K. Extensions of Time.

There are certain provisions in the model unit agreement (43 CFR 3186.1) under which the automatic elimination date (Section 2(e)), the time within which to fulfill certain drilling requirements (Section 9), and the fixed term of the unit agreement (Section 20) may be extended.

Under Section 2(e) of the model agreement, the automatic exclusion of nonparticipating acreage at the end of the initial five-year unit term may be postponed and an additional five years in the unit term may be obtained if diligent drilling is occurring and pursued on nonparticipating unitized lands within the timeframes stated in the agreement. Section 2(e) allows the authorized officer to approve a further, two-year waiver of the automatic elimination provision, upon consent of the owners of 90 percent of the working interests and 60 percent of the basic royalty interests (exclusive of the basic royalty interests of the United States) in the nonparticipating unitized lands.

Section 9 of the model unit agreement details the unit operator's drilling requirements and provides for automatic termination of the agreement if these requirements are not satisfied. Except for unit obligation wells, this section of the agreement gives the authorized officer the authority and discretion to grant reasonable extensions of time to meet these requirements. Such an extension (if approved prior to expiration of the initial term of the unit) is granted for a period normally not to exceed 6 months, unless a longer period is deemed justifiable by the authorized officer.

Section 20 of the model agreement provides for extension of the initial five-year unit term upon request of the unit operator and approval of the authorized officer, or upon the discovery of unitized substances in paying quantities on unitized lands. Such a discovery serves to extend the effective term of the unit agreement for so long as unitized substances can be produced in quantities sufficient to pay production costs.

Extensions granted for meeting unit drilling requirements do not toll the running of lease terms. Thus, depending upon the circumstances, a suspension of operations and/or production pursuant to 43 CFR 3103.4-2 and 43 CFR 3165.1 may also be needed to preserve any committed lease that would otherwise expire.

L. Effect of Unit Agreement on Committed Lease Terms, Lease Segregations and Lease Extensions.

When only a portion of a Federal lease is made subject to an approved unit agreement, the lease is segregated into two separate leases, one containing the committed land within the unit, and the other containing the **(uncommitted lands)** [land outside the unit]. The segregated lease covering the nonunitized portion continues for the term of the base lease or for 2 years, whichever is greater, pursuant to 43 CFR 3107.3-2.

The effect of lease segregation on the term of the resultant unitized and nonunitized leases will depend on whether or not the original lease was in extended term by reason of production. A producing Federal lease in its primary term, upon segregation, results in two leases that are separate and distinct. Production on one will not extend the term of the other. Conversely, the segregation of a producing Federal lease in its extended term by production, creates a situation where the production on either lease will serve to extend the term of the other (See Anadarko Production Co., 92 IBLA 212, June 16, 1986, and Celsius Energy Co., Southland Royalty Co., 99 IBLA 53, September 8, 1987.)

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If the unit agreement does not provide for unitization of all formations, Federal leases may be subject to horizontal as well as vertical segregation. Horizontal segregation should be avoided whenever possible and can be averted if a statement advising that it is not the intent of the parties to the agreement that horizontal segregation occur as a result of unitization is submitted by the unit operator with its application for final approval. Upon final approval, the authorized officer should advise the appropriate BLM office that horizontal segregation is not desired.

Once a discovery of unitized substances is made that can be produced in paying quantities (as defined under Section 9 of the model form of unit agreement, 43 CFR 3186.1), a committed Federal lease will continue in force for as long as it remains subject to a unit agreement. In accordance with an Interior Board of Land Appeals (IBLA) decision (67 IBLA 246) dated September 24, 1982 (Yates Petroleum Corp., et al.), a committed Federal lease can be extended by production if a unit well on any lease committed to a unit agreement is capable of production in paying quantities on a lease basis i.e., production in quantities sufficient to cover the cost of production and marketing, but not drilling. This would serve to extend leases committed to a unit plan only for the initial 5-year fixed term of the agreement so long as production in paying quantities on a lease basis is maintained and the unit is still in effect (i.e., all unit obligations are continued throughout the five-year term of the unit.)

Upon the authorized officer's approval of the initial participating area, the unit plan ~~assumes a producing status as defined under Section 11 of the model unit agreement. Once a unit~~ plan is in this status, any Federal lease committed to the plan will remain in effect for as long as it remains subject thereto. However, if production of unitized substances in paying quantities ceases prior to the end of the initial five-year unit term, and operations are not in progress to restore production or to establish new production within 60 days, any individual lease that is in its extended term at that point, solely by reason of its commitment to a producing unit plan, would expire.

Federal leases committed to a unit agreement also are eligible for a 2-year extension pursuant to 43 CFR 3107.1, if drilling operations are commenced on unitized land and are being diligently prosecuted across the end of the primary term of the lease. (See also paragraph II-E1 of this Handbook.)

Any Federal lease issued for a fixed term of 20 years, or any renewal thereof (or any portion of such lease) that is committed to a unit plan, will continue beyond its term for as long as it remains committed to the plan (43 CFR 3107.3-3).

Indian leases are not subject automatically to the Section 18 (Leases and Contracts Conformed and Extended) provisions of the model Federal unit agreement. Accordingly, BIA may insert appropriate language in Section 18 that modifies the terms and conditions which apply to committed Indian leases, with approval of the involved tribe and/or allottees. For this reason, the text of the specific unit agreement must always be consulted to determine the effect of unitization on committed Indian leases.

M. Unleased Federal Lands

On January 29, 1990, BLM field offices were instructed to include in all new Federally-approved oil and gas exploratory unit agreements, a provision requiring the payment of drainage compensation to the Government whenever a unit participating area contains unleased Federal lands. Illustration 4 provides the modified text of sections 12 and 17 that should be used in new agreements.

At the time of designation of a unit area, every effort should be made to identify and, if possible, lease any unleased Federal lands within the designated area. When a unit with unleased Federal lands is approved, an increased effort should be made to lease the Federal acreage, with a requirement for joinder to the unit and unit operating agreements prior to lease issuance (see 43 CFR 3101.3-1.)

If after discovery of unitized substances in paying quantities, the established participating area includes unleased Federal lands, the following steps should be taken. If not already underway, initiate actions to lease the unleased tracts with a stipulation requiring joinder to the unit and unit operating agreements. Advise potential lease applicants that negotiations with the unit operator will be necessary.

Once a successful applicant has been chosen to acquire the lease and evidence of an acceptable joinder has been received, the lease can be issued. In some cases, an acceptable joinder to the unit will not be obtained (e.g., if the unit operator and successful lease applicant can not come to terms on monetary settlements). In such cases, the applicant must provide a statement giving reasons for non joinder that are acceptable to the authorized officer before the lease can be issued. Upon lease issuance without joinder, the lessee must be advised that protection of the Federal lease from drainage will be required. Protection of the Federal lease can be accomplished by drilling an offset well, paying compensatory royalty, entering into a communitization agreement or obtaining a pooling order through the appropriate State agency.

N. Termination.

Most unit agreements contain provisions for automatic or voluntary termination. However, each agreement must be reviewed to determine the circumstances under which such terminations may occur.

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1. Automatic Termination. A Federal exploratory unit agreement will normally terminate 5 years after its effective date unless production of unitized substances in paying quantities, as defined in Section 9 of the unit agreement, has been established, or the term is otherwise extended pursuant to Section 20(a) of the unit agreement. If production of unitized substances in paying quantities is established, the agreement remains in effect for as long as unitized substances can be produced in quantities sufficient to pay for the cost of operation or for the initial 5-year term, whichever is longer. Should production cease beyond the initial 5-year term, the unit agreement will terminate automatically unless diligent operations are in progress within 60 days for the restoration of production or discovery of new production (see Section 20(c) of the model agreement at 43 CFR 3186.1.)

Section 9 of the model unit agreement provides for the drilling of an initial test well within 6 months after unit approval. If the initial well fails to discover unitized substances in paying quantities, the unit operator is required to commence and continue drilling additional wells, allowing not more than 6 months between the completion of one such well and the beginning of the next such well, until a well capable of producing unitized substances in paying quantities is completed to the satisfaction of the authorized officer.

General conditions for satisfying the public interest requirement under an approved unit agreement for unproven areas can be found at 43 CFR 3183.4(b). Failure to commence drilling the initial obligation well, or the first of multiple obligation wells, on time and to drill it diligently shall result in the unit agreement approval being declared invalid ab initio by the AO. In the case of a multiple well requirement, failure to commence drilling the required wells beyond the first well, and to drill them diligently, may also result in the unit agreement approval being declared invalid ab initio by the AO. Failure to timely commence any well required under Section 9 subsequent to the drilling of the initial obligation well or wells (in the case of a multiple well requirement) will result in automatic termination of the unit agreement.

Automatic termination for failure to perform certain required unit actions requires no formal advance notice by the authorized officer or operator. However, the authorized officer must concur in all determinations of automatic termination made by the unit operator. The unit operator should then notify all other interested parties. All terminations by the authorized officer shall be in writing to the unit operator. Illustration 1-7A is an acceptable format for use by the authorized officer in notifying the unit operator of automatic unit termination for failure to meet the production requirements of the unit agreement, while the format shown in Illustration 1-7B may be used in notification of automatic unit termination for failure to meet the drilling requirements of Section 9 of the agreement. Where required by the unit agreement, prior approval by appropriate State officials should be obtained before the authorized officer approves the termination.

2. Voluntary Termination. Section 20(d) of the model unit agreement states that the parties to the unit agreement may initiate a request for voluntary termination of the agreement at any time prior to the discovery of unitized substances which can be produced in paying quantities, provided the public interest requirement has been satisfied. If the public interest requirement is not met, the approval of the unit by the authorized officer would be invalid. In cases where voluntary termination is requested, the application should be reviewed to ensure that the requisite percentage of working interest approvals has been obtained. The effective date of the termination may not be a date prior to the receipt of an approvable application by the authorized officer. Illustration 1-7C provides a format for the approval of a request for voluntary unit termination. Further clarification as to when a voluntary termination is effective may be found in Aquarius Resources Corp., 64 IBLA 153, May 24, 1982.

0. Amendment of Approved Unit Agreement.

A unit agreement may be amended when such action is justified by circumstances or events not previously anticipated. Amendment of a unit agreement is accomplished in much the same manner as the designation and approval of a unit agreement. A request for preliminary approval of the text of the proposed amendment with supporting data normally is submitted to the authorized officer. After the authorized officer approves the text of the proposed amendment, it is circulated by the unit operator for signature by the owners of interest that are subject to the unit agreement. ~~All parties committed to the agreement must sign or consent to the amendatory~~ language before it may be approved by the authorized officer.

P. Allocation of Production.

Unitized substances normally are allocated to the committed working interest owners in the manner prescribed in the unit operating agreement. Royalty proceeds on this production are allocated to each tract of unitized land within the controlling participating area, normally on the basis of the surface acre percentage each committed tract in the participating area contributes to the total acres of unitized land within the participating area. While noncommitted tracts within a participating area generally receive no allocation from production under the unit agreement, compensatory royalty payments are due the Government for any unleased Federal lands located within a participating area, when provided for in the unit agreement (see Illustration 4 for model text of this provision.)

A situation may be encountered where a communitized area (CA) and a unit participating area (PA) overlap. Illustration 5 shows several examples to follow in allocating production under those circumstances.

Q. Drainage - Compensatory Royalty.

Section 17 of the model unit agreement provides that the unit operator will take such measures as are necessary to prevent drainage of unitized substances by wells on land not subject to the agreement. Accordingly, any producing non-unit well offsetting unitized land, regardless of the ownership of the land on which such well is located, subjects the unit to possible drainage. Prompt drilling of necessary unit protective wells and/or payment of an appropriate compensatory royalty, as determined by the authorized officer, may be required. Compensatory royalty payments may be due for presumed drainage of unleased Federal lands in a participating area. While all exploratory unit agreements approved since January 29, 1990, should provide for such compensation, older agreements may not. The specific unit agreement must be examined to see if it provides for drainage compensation for unleased lands.

Communitization agreements that include unitized and nonunitized lands in conformity with State spacing requirements also may be used to remedy potential drainage situations. Manual Handbook H-3160-2 provides additional guidelines concerning drainage determinations and computations.

R. Treatment of Existing Wells.

At times, producing or producible oil or gas wells may be present within the area proposed for unitization. When such wells indicate a discovery of questionable significance, the following paragraph should be added to Section 11, Participation After Discovery, of the model unit agreement for unproven areas (43 CFR 3186.1):

> Determination as to whether a well completed within the unit area prior to the effective date of this agreement is capable of producing unitized substances in paying quantities shall be deferred, until an initial participating area is established as the result of the completion of a well for production of unitized substances in paying quantities in accordance with Section 9 hereof.

This determination should be made at the time the previously completed well(s) is to be included in a participating area and should be based on the same criteria applied in making any paying well determination. Existing wells should be evaluated for inclusion in a participating area as of the effective date of the initial participating area.

In unusual cases, where an existing well indicates that a significant discovery of oil or gas has been made on land proposed for unitization, but where additional exploration and development is necessary, an initial participating area based on the information from such wells may be established effective as of the effective date of the unit agreement. However, a participating area application based on such well(s) should not be approved until after a unit test well has been drilled and completed as a paying well under the terms of Section 9 of the unit agreement (43 CFR 3186.1). In this situation, all committed leases including those that otherwise would expire are extended automatically, since the effective date of the participating area and the unit agreement would be the same date. A requirement for the concurrent submission of a plan of operations and development may be added to Section 9, if warranted.

S. Reporting Format for Unit Wells.

For reporting purposes, the unit operator or his delegated party is responsible for submitting all required reports for unit wells, be it a paying or non-paying unit well as long as the well remains on land that is considered committed to the unit agreement. Wells located on non-committed lands or lands that have been automatically eliminated from the unit area, would be reported on a lease basis. A chart detailing how the Automated Inspection Record Systems (AIRS) should be set up for unit wells is presented in Illustration 6.

T. Unit Activity Report.

A unit activity report similar in format to that shown in Illustration 7, should be prepared monthly by the BLM Office having jurisdiction over well operations. This report will be used by the BLM Office that administers the unit agreement to fulfill its responsibilities concerning wells drilled to meet unit obligations, establishment and revision of participating areas, automatic elimination dates, and unit terminations. Guidelines for completing the activity report are also included in Illustration 7.

U. Lease Commitment Status.

Before a Federal lease can be considered for segregation or for benefits by unitization, it must be fully or effectively committed to the unit agreement.

1. Fully Committed (FC). Fully committed indicates that all interest owners in that tract have committed their interests therein. This includes the lessee(s) of record, basic royalty owners in fee tracts, owners of overrides or production payments, if any, and working interest owners if different from the lessee of record. The working interest owners also must have signed the operating agreement. A fully committed tract is subject to segregation, if applicable, and is eligible for all benefits under the unit.

2. Effectively Committed (EC) or (FC ex OR)). Effectively committed indicates that all interest owners, except the owners of overrides or production payments have signed. An effectively committed tract is also subject to segregation, if applicable, and is eligible for all benefits under the unit.

3. Partially Committed (PC). In reference to a fee tract, partially committed indicates that the basic royalty interest owner has not signed the unit agreement, but the lessee and working interest owner have committed their interests. Absent joinder by the basic royalty owner, such interest may be considered committed only if the underlying lease empowers the lessee/working interest owner to commit that interest to the unit agreement. A State or Federal tract is considered partially committed to the unit agreement when the lessee of record has not signed but the working interest owner has committed its interests (Note: In some States, commitment under a State or fee tract by a lessee of record who owns no working interest is considered unnecessary, and the tract may be considered as fully or effectively committed without such signature.) A partially committed lease is not subject to segregation or any benefit by unit operations unless there are actual operations and/or production on the lease itself, or it is included within and receives an allocation of production from an approved participating area. Unitized drilling is permissible on a partially committed tract, however, if unitized production is obtained on such a tract and a participating area is established on the basis thereof, the entire production must be allocated to the participating area, and the responsible working interest owner must pay the noncommitted parties their just royalty on a leasehold basis.

4. Not Committed (NC). Any tract in which a working interest has not committed, regardless of other committed interest, is considered as not committed and is not subject to the unit agreement.

V. Designation of Agent.

Whenever a party other than the unit operator files an application for permit to drill a well on unitized land, the application must include an acceptable Designation of Agent from the unit operator (Illustration 2-4). This designation covers only the drilling and completion of the well, and must clearly state who has authority to operate the well, once completed. If the well encounters unitized substances capable of being produced in paying quantities, as defined in Section 9 of the unit agreement (43 CFR 3186.1), then either the unit operator will take over operation of the well or the designated agent will be named as successor unit operator and assume responsibility for operating the well. If a well is completed as a nonpaying unit well and a party other than the unit operator is designated to operate the well, the unit operator will remain ultimately responsible for all legal and regulatory obligations related to such operations, as long as the well is located on land that is considered committed to the unit agreement.

Illustration 2-5 provides a model form for the delegation of authority to operate a non-paying unit well. If a form different from that in Illustration 2-5 is submitted for approval, either the form itself or the authorized officer's approval must clearly reference the responsibilities and obligations retained by the unit operator for operation of this well.

W. Designation of Suboperator.

Except as provided above, all operations on unitized land must be performed by the unit operator, and designations of a suboperator will not be accepted or approved unless it is the only way to (1) allow operations in a unit involving special projects or operating techniques that could be handled more appropriately by a party other than the unit operator; or (2) prevent the premature termination of a unit agreement or the abandonment of marginal production. In such cases, suboperators must file all necessary reports covering all unit operations and production for which they are responsible as designated suboperators.

In extreme cases, the authorized officer may accept certain unit work to be performed and reports filed in behalf of or under the unit operator's name by a nonunit operator. This is considered as work performed by the unit operator, and acceptance of such work or reports does not relieve the unit operator of any obligation or responsibility under the unit agreement.

X. Successor Unit Operator.

Procedures for selecting a successor unit operator are included in Section 6 of the model unit agreement (43 CFR 3186.1) to provide orderly succession if the unit operator resigns or is removed. Generally, this succession is accomplished through the approval of an instrument executed by or on behalf of the unit operator, the successor unit operator, and the owners of committed working interests. That instrument provides for the resignation of the unit operator, acceptance by the successor unit operator of the duties and responsibilities of unit operator, as described in Section 4 of the model form, and approval of the new unit operator by owners of committed working interests in the manner prescribed in the unit agreement (Section 6 of the model form) or unit operating agreement, as appropriate.

The authorized officer may accept a Designation of Successor Operator which has not been formally ratified by working interest owners, provided the successor operator certifies in writing that it has obtained the required working interest owner approvals. The authorized officer's written approval of such a designation (see Illustration 1-8A) shall include and be subject to the following, or similar disclaimer:

> "In approving this designation, the Authorized Officer neither warrants nor certifies that the designated party has obtained all required approvals that would entitle it to conduct operations under the _____ Unit Agreement."

Normally, if no successor unit operator is selected and qualified within a reasonable period of time, the authorized officer shall declare the unit agreement terminated. The Successor Operator Instrument in Illustration I-8B may be used for the concurrent resignation of a unit operator and designation of a successor operator.

Y. Bankrupt Unit Operator.

A unit operator who declares bankruptcy may continue to operate the unit if he so desires. The Bureau lacks the authority to unilaterally remove a unit operator simply because they have declared bankruptcy. Section 5 of the model form of unit agreement (43 CFR 3186.1) provides for such removal of a unit operator, for whatever reason, by consent of a majority of the working interest owners.

If a unit operator declares bankruptcy, then the Bureau may accept an appointed agent to act on behalf of the operator to ensure compliance with all applicable requirements of the unit agreement and regulations. Acceptance of an agent can occur even if the unit operating agreement is rejected as an executory contract. Our acceptance of an agent does not relieve the unit operator of his/her ultimate responsibility for compliance with all the terms and conditions of the unit agreement. Our acceptance of an agent should terminate if a sale of the unit properties is consummated because the purchaser should assume all unit responsibilities. Where unassumed liabilities exist, the BLM may be able to take action against a bankrupt operator's unit bond, since a bond is not considered an asset of the bankrupt debtor's estate.

Z. Subsequent Joinder and Late Joinder.

The commitment of oil and gas interests in lands within the unit area subsequent to final approval of the unit agreement is governed by the appropriate provisions of the agreement (Section 28 of the model form,
43 CFR 3186.1).

Usually, once operations are commenced, the unit agreement allows the commitment of a working interest by the owner who signs joinders to both the unit and unit operating agreements and obtains such approvals of the owners of committed working interests as may be required by the unit operating agreement. Such joinders should be accompanied by a statement from the unit operator that the terms of the unit operating agreement have been satisfied.

A nonworking interest may be committed to a unit agreement by the owner of the interest signing a joinder to the unit agreement and the owner of the corresponding committed working interest approving the commitment of said interest. Normally, a nonworking interest may not be committed to a unit agreement unless the corresponding working interest is committed thereto. In order for a working interest to be committed to a unit agreement, it must also be committed to the unit operating agreement.

Illustrations 1-9A and 1-9B are suggested formats for use by the authorized officer in approving subsequent and late joinders to the unit agreement.

AA. Bond Requirements.

The operator of a Federally approved unit must furnish a bond prior to the commencement of any surface disturbing activities on a Federal lease. Such a bond must be conditioned on faithful performance of duties and obligations under the unit agreement and the terms and conditions of all Federal leases subject thereto, and be for an amount that the authorized officer shall determine to be adequate to protect the interests of the United States. The bond may be posted by one of the following three methods:

1. The unit operator may post a unit bond to cover operations on Federal leases committed to a specific unit in the language of the sample at 43 CFR 3186.2. The amount of the unit bond must not be less than $25,000. In the event of unit contraction, lands excluded from the unit area should be checked for proper bond coverage.

2. The unit operator may use his own statewide/nationwide bond to cover operations on Federal leases committed to the unit. If his statewide/nationwide bond was filed on a pre-1987 edition of the bond form, the unit operator should attach an operator rider which extends coverage of the bond to all leases he operates, whether or not he owns an interest in the leases. The unit operator in accordance with 43 CFR 3104.4 may submit a unit operator rider covering his operations on that specific unit to the statewide/nationwide bond.

3. The unit operator may be covered on Federal leases committed to the unit under another lessee/sublessee's individual lease/statewide/nationwide bond provided that, in accordance with regulations at 43 CFR 3104.2, a consent of surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the (lessee's) bond is furnished to the BLM Office maintaining the bond. If the unit operator utilizes his own individual lease bond, the coverage will only apply to that specific lease and will not cover operations on other committed Federal leases within the unit.

A designated agent (or sub-operator) may conduct operations under his own bond or under the unit operator's bond or under the lessees bond with consent of surety. A statement must be submitted by the unit operator identifying the type of bond coverage to be used to cover operations on the Federal leases committed to the unit, including the BLM Bond Number. A bond is not required for Federal leases receiving allocated production. The authorized officer may, when justified, require an increase of the bond amount in accordance with 43 CFR 3104.5.

AB. Development or Operation of Nonparticipating Lands.

Whenever the owner of a working interest in unitized land and the unit operator are unable to reach agreement providing for the drilling of a desired test well, the working interest owner may cause the well to be drilled at its sole risk and expense. If the well is to test a formation for which a participating area has been established, it must be drilled at a location outside the existing participating area. Operations on noncommitted land not subject to the unit agreement are approved on an individual lease basis.

Whenever a party other than the unit operator files an application for a permit to drill a well on unitized land, it may be accompanied by a Designation of Agent from the unit operator. Adequate bond coverage must be provided. Such designation must clearly state, or be approved conditioned upon the requirement that the unit operator will assume the operation of such well if it is determined to be capable of producing unitized substances in paying quantities. If the completed well is capable of producing unitized substances in paying quantities, it must either be turned over to the unit operator for operation or the operator of the well must take over as successor unit operator, since only one operator may be responsible for unit operations. If the well is determined to be nonpaying under the terms of the unit agreement, it will be operated and produced on a lease or spacing unit basis, as appropriate.

AC. Non-Federal Form of Unit Agreement.

If Federal lands proposed for inclusion in a unit comprise less than 10 percent of the unit area, a non-Federal form of unit agreement may be used. Typically, an American Petroleum Institute (API) model agreement is submitted. Procedures for processing and administering non-Federal form unit agreements involving Federal lands should be consistent within the BLM. The authorized officer should take an active role in approving and monitoring such agreements. Unit regulations set forth in 43 CFR 3181-3185 may be applied to non-Federal form agreements, as appropriate. Specifically, the unit proponent should be asked to initiate a preliminary review process that allows for authorized officer concurrence with the proposed unit boundary and with the proposed terms of the unit agreement. Following preliminary review and concurrence by the authorized officer, the unit operator should submit the executed agreement for final approval. These types of agreements normally are approved by a State jurisdictional agency.

If the authorized officer agrees to the commitment of Federal land to the unit agreement, then the authorized officer executes an approval letter and a modified certification-determination page (see Illustration 1-2B.) An agreement number should be assigned and reflected on the modified certification-determination page. The certification-determination page should contain a statement that site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements found in 43 CFR Part 3160 are applicable to any well and facility on land considered committed to the unit agreement which affects Federal interests. References to the article provisions in the modified certification-determination page should be checked for conformance with the articles in the unit agreement.

Upon final approval of a unit agreement, all committed Federal leases are subject to the provisions of 43 CFR 3107 concerning Federal leases committed to units and cooperative plans. A Federal lease committed to an approved unit agreement is subject to segregation and any corresponding extensions. A Federal lease committed to an approved unit agreement will not expire by its own terms if the agreement is considered producing.

If the authorized officer deems the non-Federal from of unit agreement to be not in the public interest, then the unit agreement should not be approved. Consequently, the terms and provisions of the agreement would not apply to the Federal lands and such lands would have to be operated and administered on a leasehold basis.

AD. Indian Land.

1. Special Provisions in Unit Agreement.

Many of the basic provisions of the model Federal unit agreement (43 CFR 3186.1) are generally applicable for exploratory unit agreements involving Indian lands; however, various modifications and/or additions may be required by the BIA or the Indian tribe. Appropriate language also must be included in the proposed unit agreement to provide for the preferential hiring of available Indian labor. The following language from a unit agreement involving both allotted and tribal Indian land and private land provides an example, but is not intended to represent a standard format.

> 1. Whereas Section. Whereas, the rules and regulations governing the leasing of restricted allotted and tribal Indian lands for oil and gas promulgated by the Secretary of the Interior (25 CFR Part 211 and 212) under and pursuant to the Allotted Land Mineral Leasing Act of March 3, 1909, 35 Stat. 783, 25 U.S.C. 396, and the Tribal Land Mineral Leasing Act of May 11, 1938, 52 Stat. 347, 25 U.S.C. 396a et seq., and the oil and gas leases covering said allotted and tribal Indian lands provide for the commitment of such leases to a cooperative or unit plan of development or operations.

2. Enabling Act and Regulations. The Indian Tribal and Allotted Leasing Acts, supra, and all valid pertinent regulations, including operating and unit plan regulations, heretofore issued thereunder or valid pertinent and reasonable regulations hereafter issued thereunder are accepted and made a part of this agreement as to Indian lands, provided such regulations are not inconsistent with the terms of this agreement.

3. Expansion of Unit Area. The unit area may, therefore, with approval of the Commissioner of the Bureau of Indian Affairs or his duly authorized representative hereinafter referred to as 'Commissioner', be expanded to include therein any additional tract or tracts. (Note: Requires preliminary recommendations by the BLM.)

4. Indian Employment. The unit operator shall comply with the terms and conditions of the leases on Indian lands with respect to the employment of available Indian labor while engaged in operations hereunder.

The normal responsibilities of the authorized officer with respect to approvals of successor unit operator, plans of development, establishment and revision of participating areas, and other unit activities will be done in accordance with the Memorandum of Understanding between the Bureau of Land Management, Bureau of Indian Affairs, and Minerals Management Service Regarding Working Relationships Affecting Mineral Lease Activities. For units involving only Indian land or Federal and Indian lands, these provisions and other appropriate references to Indian lands may be incorporated in the model Federal form prior to circulation of the agreement for execution. Where both Federal and Indian lands are involved, the authorized officer's approval of such actions should be made after approvals are obtained from the Bureau of Indian Affairs and the Indian owners.

2. Procedures for Unitization of Indian Lands.

In summary, the steps in the unitization of Indian lands are:

a. The authorized officer's review of the proponent's proposal with recommendations furnished to the Bureau of Indian Affairs (may be in the form of a proposed letter designating the area as logically subject to unitization).

b. Preliminary approval of agreement by BIA and/or the Indian tribe. (BIA's concurrence may be indicated in a memorandum or by endorsement of the proposed designation letter.)

c. Designation of the area as logically subject to unitization by the authorized officer. (If no Federal lands are involved, BIA may show approval of the proposal by a letter indicating preliminary approval of the proposal to unitize and approval of the text of the proposed unit agreement.)

d. Approved form of unit agreement is circulated to interest owners for execution.

e. The executed agreement is submitted to the authorized officer for review and forwarding with recommendations to BIA.

f. Final approval by BIA (Indian owners should have approval prior to submission of executed agreement). If Federal lands are also involved, BIA returns the approved agreement to the authorized officer for approval, which should determine the effective date of the agreement.

AE. State Agencies.

The control of specific operations on State and fee lands is the general responsibility of the appropriate State regulatory agency. Some earlier versions of the model form of unit agreement for unproven unit areas incorporate provisions which provide parallel authority to be exercised by State agencies, as appropriate. Generally, any provisions which a State wishes to include in a unit agreement will be acceptable as long as they do not adversely affect Federal/Indian lands or the authorized officer's authority and responsibility. Illustration 8 provides an example of State land provisions that may be found in joint Federal/State agreements.

If a proposed unit includes lands which are subject to existing State spacing orders covering unitized formations, the BLM may recommend to the unit proponent that a request be made to have the spacing order, as it applies to the unit area, rescinded. Some BLM offices have an agreement with the corresponding State agency whereby, whenever the BLM approves a unit agreement, the spacing order is automatically vacated as it applies to the unit area. This generally is the preferable situation. However, it is recognized that in some circumstances it is necessary to retain State spacing within the unit area to provide a means for allocating production (i.e., when the unit area contains prior unit wells that have been communitized or when non-committed tracts within the unit area would be eligible for production allocation under the spacing order). In these cases, spacing should be accepted in the unit area unless the authorized officer determines that such spacing is not in the public interest.

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Bibliography

Ashland Oil, Inc., et al., 7 IBLA 58 (August 9, 1972), which determined that an oil and gas lease extended only by reason of its inclusion in a producing unit is not within its "primary term."

Martin Yates III, et al., 7 IBLA 261 (September 15, 1972), concerning the effect of unitization on 20-year oil and gas leases.

Amoco Production Company, 10 IBLA 215 (April 3, 1973), concerning royalty computation on unitized leases.

Atlantic Richfield Company, 16 IBLA 329 (August 14, 1974), concerning royalty computation on unitized leases.

Marathon Oil Company, 16 IBLA 298 (August 14, 1974), concerning royalty computation on unitized leases.

Bruce Anderson, 30 IBLA 179 (May 19, 1977), concerning nonjoinder and subsequent joinder to a unit agreement.

Aquarius Resources Corp., 64 IBLA 153 (May 24, 1982), concerning voluntary termination of a unit agreement.

Yates Petroleum Corp., et al., 67 IBLA 246 (September 24, 1982), concerning extension of leases committed to unit agreement by production in paying quantities.

Conoco, Inc., 80 IBLA 161 (April 11, 1984), concerning consolidation of oil and gas leases.

Anadarko Production Co., 92 IBLA 212 (June 16, 1986), concerning oil and gas lease segregation and extension.

Celsius Energy Co. and Southland Royalty Co., 99 IBLA 53 (September 8, 1987), concerning oil and gas lease segregation and extension.

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Champlin Petroleum Company, 100 IBLA 157 (December 3, 1987), concerning the inclusions of lands in a participating area considered necessary for unit operations.

Coors Energy Co., 110 IBLA 250 (September 11, 1989), concerning protection of the Federal royalty interest in unleased Federal lands in units.

Solicitor's Opinion M-36629 concerning constructive production. A unitized lease shall not be subject to automatic termination for failure to pay rental if there is a producing or producible well anywhere in the unit, June 25, 1962.

Solicitor's Opinion M-36776 concerning horizontal lease segregation when less than all formations are unitized, May 7, 1969.

Solicitor's Opinion interpreting the unitization provisions of the Mineral Leasing Act, June 4, 1973.

Unitization Instructions, Northern Rocky Mountain Area (May 1, 1972).

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FORM LETTERS AND NOTICES USED IN UNITS ADMINISTRATION

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Unit Designation Letter

_____
_____
_____
_____

Gentlemen:

Your application of _____, filed with the _(BLM office name)__, requests the designation of __ ___ acres, more or less, in _____ County, _____, as logically subject to exploration and development under unitization provisions of the Mineral Leasing Act, as amended.

Pursuant to unit plan regulations 43 CFR Part 3180, the land requested, as outlined on your plat marked "Exhibit 'A', _____" is hereby designated as a logical unit area.

The unit agreement to be submittedse for the area designated should provide for a well located in the ____of Section _____ Township _____ Range _____,_____ County, _____ to test the _____ Formation or to a depth of_____ feet. Your proposed use of the Form of Agreement for Unproven Areas at 43 CFR 3186.1, modified only as shown in your application, will be accepted.

If conditions are such that further modification of said standard form is deemed necessary, two copies of the proposed modifications with appropriate justification must be submitted to this office for preliminary approval.

In the absence of any other type of land requiring special provisions or of any objections not now apparent, a duly executed agreement identical with said form, modified only as outlined above, will be approved if submitted in approvable status within a reasonable period of time. However, notice is hereby given that the right is reserved to deny approval of any executed agreement submitted that, in our opinion, does not have the full commitment of sufficient lands to afford effective control of operations in the unit area.

Please include the latest status of all acreage when the executed agreement is submitted for final approval. The format of the sample exhibits attached to the model unit agreement (43 CFR 3186.1) should be followed closely in the preparation of Exhibits A and B. A minimum of _____ copies of the executed agreement should be submitted with your request for final approval.

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Optional Paragraph

Inasmuch as this unit area contains State of _____ lands, we are sending a copy of this letter to the State (appropriate agency) at _____, and we hereby request that you contact the State promptly in connection with this letter before soliciting joinders.

Sincerely yours,

_____
(Authorized Officer)

cc: Appropriate District or Resource Area Office
BIA (if appropriate)
State Agency (if appropriate)
Surface Management Agency (if appropriate)

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Unit Approval Certification-Determination Page
(Federal Form Agreement)

CERTIFICATION-DETERMINATION

Pursuant to the authority vested in the Secretary of the Interior, under the Act approved February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. sec 181, et seq., and delegated to the Authorized Officer of the Bureau of Land Management, under the authority of 43 CFR 3180, I do hereby:

A. Approve the attached agreement for the development and operation of the _____ Unit Area, State of _____. This approval shall be invalid *ab initio* if the public interest requirement under § 3183.4(b) of this title is not met.

B. Certify and determine that the unit plan of development and operation contemplated in the attached agreement is necessary and advisable in the public interest for the purpose of more properly conserving the natural resources.

C. Certify and determine that the drilling, producing, rental, minimum royalty and royalty requirements of all Federal leases committed to said Agreement are hereby established, altered, changed or revoked to conform with the terms and conditions of this agreement.

Dated: _____, 19___

_____
(Authorized Officer)
Bureau of Land Management

Contract No: _____

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H-3180-1 - UNITIZATION (EXPLORATORY)

Unit Approval Certification-Determination Page
(Non-Federal Form Agreement)

CERTIFICATION-DETERMINATION

Pursuant to the authority vested in the Secretary of the Interior, under the act approved February 25, 1920, as amended (41 Stat. 437, 30 U.S.C. 181, et seq.) and delegated to the Authorized Officer of the Bureau of Land Management by Order of the Secretary of the Interior, I do hereby:

A. Approve the attached agreement for the development and operation of the _____ __ Unit, _____ County, _____.

B. Certify and determine that the unit plan of development and operation contemplated in the attached agreement is necessary and advisable in the public interest for the purpose of more properly conserving the natural resources.

C. Certify and determine that the drilling, producing, rental, minimum royalty, and royalty requirements of the Federal lands committed to said agreement are hereby established, altered, changed, or revoked to conform with the terms and conditions of this agreement, except as follows:

1. The provisions of Article 6.3* requiring a party to bear any extra expenditures incurred in the taking in kind or separate disposition of its proportionate share of the production shall be ineffective as to any royalty which may be taken in kind by the Federal Government.

2. The provisions of Article 6.6* relative to the royalty free recovery of Outside Substances shall be rendered ineffective as to Federal lands. In the event an Outside Substance is injected into a Unitized Formation, its recovery on royalty free basis shall be in accordance with such formula as the Authorized Officer may approve or prescribe.

3. The provisions of Article 9.2* shall be ineffective as to Federal lands.

4. Regulations relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to the unit agreement which affect Federal or Indian interests, notwithstanding any provision of the unit agreement to the contrary.

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(Optional) 5. In the event the lands subject to this agreement are re-surveyed, the Federal Government shall have the right to require a redetermination of tract participation percentage for the Federal tracts subject to this agreement.

Approved: _____ Date: _____
(Authorized Officer)
Bureau of Land Management

Contract No.: _____

* The actual agreement should be reviewed to ensure the articles are consistenet with the intent.

H-3180-1 - UNITIZATION (EXPLORATORY)

Unit Approval Letter

_____
_____
_____

Gentlemen:

The _____ Unit Agreement, _____ County, _____,
was approved on _____, 19__. This agreement has been assigned Number _____X and is effective as of the date of approval.

The basic information is as follows:

1. No oil and gas has been discovered in the unit area. The depth of the test well and the area to be unitized were approved by letter dated _____, 19__.

~~2. _____ formation(s) are unitized.~~

3. The unit embraces _____ acres, more or less, of which _____ acres (__._ percent) are Federal lands, _____ acres (__._ percent) are Indian lands, _____ acres (__._ percent) are State lands, and _____ acres (_____ percent) are patented lands.

4. The following Federal leases embrace lands within the unit area:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

*Indicates committed leases to be considered for segregation pursuant to Section 18(g) of the unit agreement, Public Law 86-705, and 43 CFR 3107.3-2.

All lands and interests are fully committed except Tracts ___, totaling ___ acres (__._ percent) which are not committed and Tracts ___, totaling ___ acres (__._ percent) which are partially committed. Certain overriding royalty interest owners have not signed the unit agreement. All parties owning interests within the unit were invited to join the unit agreement.

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In view of the foregoing commitment status, effective control of operations within the unit area is assured. We are of the opinion that the agreement is necessary and advisable in the public interest and for the purpose of more properly conserving natural resources.

This unit provides for the drilling of an "obligation well" and subsequent drilling obligations pursuant to Section 9 of the unit agreement. The obligation well is considered to be a contractual commitment on the part of the Unit Operator. No extension of time beyond _____, 19__, will be granted to commence the obligation well other than "unavoidable delay" (Section 25), where justified. Any extension granted for "unavoidable delay" requires convincing written justification and documentation prior to the critical date, and is limited to 30 days with possible renewal for 30-day periods if the delay is extensive, with timely written documentation for each extension.

Pursuant to 43 CFR 3183.4(b) and Section 9 of the unit agreement, if the Public Interest Requirement is not fulfilled, the unit will be declared invalid and no lease committed to this agreement shall receive the benefits of 43 CFR 3107.3-2 and 3107.4.

Approval of this agreement does not warrant or certify that the operator thereof and other holders of operating rights hold legal or equitable title to those rights in the subject leases which are committed hereto.

Copies of the approved agreement are being distributed to the appropriate Federal offices. You are requested to furnish all interested parties with appropriate evidence of this approval.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager _____ w/enc
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch w/exhibit B
State Land Board

H-3180-1 - UNITIZATION (EXPLORATORY)

Non Paying Well Determination Notice

_____ 19___

_____
_____
_____
_____

Re: _____

Gentlemen:

Pursuant to your request of _____, it has been determined by this office that under existing conditions the _____ Unit Well No._____,_____ Lease No._____, Unit Tract No._____, located in the ___¼ ___¼, Section ___ Township _____, Range _____, _____ County, _____ is not capable of producing unitized substances in paying quantities as defined in Section 9 of the unit agreement. Production from this well shall be handled and reported on a lease basis.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager _____
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch

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H-3180-1 - UNITIZATION (EXPLORATORY)

Initial Participating Area Approval Letter

_____ 19___

_____
_____
_____
_____

Re: Initial _____Formation PA "___"
_____ Unit
_____ County, _____

Gentlemen:

The Initial _____ Formation Participating Area, "____" _____ Unit, _____, is hereby approved effective as of _____, 19___, pursuant to Section 11 of the _____ Unit Agreement, _____ County, _____.

The Initial _____ Formation Participating Area results in an Initial Participating Area of _____.__ acres and is based upon the completion of Unit Well No. _____, located in the ____¼ _____¼, Section _____, Township _____, Range _____, _____, Unit Tract No. _____, Lease No. _____, as being a well capable of producing unitized substances in paying quantities. Enclosed is a schedule showing the lands and their percentage of allocation in the participating area. Copies of the approved request are being distributed to the appropriate agencies and one copy is returned herewith. Please advise all interested parties of the establishment of the _____ Formation Participating Area, _____ Unit, and the effective date.

H-3180-1 - UNITIZATION (EXPLORATORY)

For production and accounting reporting purposes all submissions pertaining to the _____ participating area should refer to _____ (appropriate participating area identifier).

If the subject well is producing, this approval requires the submission of a Payor Information Form MMS-4025 to the Minerals Management Service (MMS) within 30 days (30 CFR 210.51). Please notify the designated payor or payors as soon as possible regarding this requirement. Any producing royalties that are due must be reported and paid within 90 days of the Bureau of Land Management's approval date or the payors will be assessed interest for late payment under the Federal Oil and Gas Royalty Management Act of 1982 (See 30 CFR 218.54). If you need assistance or clarification, please contact the Minerals Management Service at 1-800-525-9167 or 303-231-3504.

Sincerely,

(Authorized Officer)
Bureau of Land Management

Enclosure

bcc: District Manager _____
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch w/exhibit B

H-3180-1 - UNITIZATION (EXPLORATORY)

Participating Area Revision Approval Letter

_____ 19____

_____
_____
_____
_____

Re: ___ Revision of _____ Formation PA "___"
_____ Unit
_____ County, _____

Gentlemen:

The ____ Revision of the _____ Formation Participating Area, "___"
_____ Unit, _____, is hereby approved effective as of
_____, 19___, pursuant to Section 11 of the _____ Unit Agreement,
_____ County, _____.

The ____ Revision of the _____ Formation Participating Area, "____" results in the addition of _____.____ acres to the participating area for a total of _____.___ acres and is based upon the completion of Unit Well No. _____, located in the ____¼ ____¼, Section _____, Township _____, Range _____, Unit Tract No. _____, Lease No. _____, as a well capable of producing unitized substances in paying quantities.

Copies of this approval letter are being distributed to the appropriate Federal agencies and one copy is returned herewith. Please advise all interested parties of the ____ Revision of the _____ Formation Participating Area, "___" _____ Unit and the effective date.

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For production and accounting reporting purposes all submissions pertaining to the _____ participating area should refer to _____ (appropriate participating area identifier).

If the subject well is producing, this approval requires the submission of a Payor Information Form MMS-4025 to the Minerals Management Service (MMS) within 30 days (30 CFR 210.51). Please notify the designated payor or payors as soon as possible regarding this requirement. Any producing royalties that are due must be reported and paid within 90 days of the Bureau of Land Management's approval date or the payors will be assessed interest for late payment under the Federal Oil and Gas Royalty Management Act of 1982 (See 30 CFR 218.54). If you need assistance or clarification, please contact the Minerals Management Service at 1-800-525-9167 or 303-231-3504.

Sincerely,

_____

(Authorized Officer)
Bureau of Land Management

Enclosure

bcc: District Manager _____
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch w/exhibit B

H-3180-1 - UNITIZATION (EXPLORATORY)

Automatic Contraction Concurrence Letter

_____ 19_____

_____
_____
_____
_____

Re: Automatic Contraction
_____ Unit
_____ County, _____

Gentlemen:

Your letter of _____, 19___, describes the lands automatically eliminated effective _____, 19___ from the_____ Unit, _____ County, _____, pursuant to Section 2(e) of the unit agreement and requests our concurrence. The lands you have described contain _____ acres, more or less, and constitute all legal subdivisions, no parts of which are in the _____ Participating Area "___" _____, _____ Participating Area "___" _____, _____ Participating Area "___" _____,and the _____ Participating Area "____" _____. As a result of the automatic elimination, the unit area is reduced from _____ acres to _____ acres.

The following Federal leases are entirely eliminated from the unit area.

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____			

H-3180-1 - UNITIZATION (EXPLORATORY)

The following Federal leases are partially eliminated from the unit area.

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

The following Federal leases are contained entirely within the unit area.

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

You have complied with the requirements of Section 2(e), provided you promptly notify all interested parties.

Sincerely,

(Authorized Officer)
Bureau of Land Management

Enclosure

bcc: District Manager _____ w/enc
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch w/exhibit B
State Oil and Gas Regulatory Agency
State Land Board

H-3180-1 - UNITIZATION (EXPLORATORY)

Request For Lands Automatically Eliminated from Unit

_____ 19_____

_____
_____
_____
_____

Re: Automatic Contraction
_____ Unit
_____ County, _____

Gentlemen:

All legal subdvision of lands (i.e., 40 acres by government survey or its nearest lot or tract equivalent) no part of which is the _____ Participating Area "____", _____ Unit Agreement, _____ County, _____, were automatically eliminated from the unit area effective _____, 19___, pursuant to Section 2(e) of the unit agreement.

You are requested to timely submit a description of the lands eliminated within 90 days after the effective date of the automatic elimination, as required by Section 2(e). Revised Exhibits "A" and "B" should also be submitted showing the lands remaining in the unit area.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager _____
_____ Unit File
Lease Adjudication Section

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H-3180-1 - UNITIZATION (EXPLORATORY)

Preliminary Approval for Unit Expansion Letter

_____ 19_____

_____
_____
_____
_____

Re: Preliminary Approval of the
Proposed Expansion of the
_____ Unit
_____ County, _____

Gentlemen:

Your application of _____, 19___, requests preliminary approval of the proposed expansion of the _____ Unit Area, _____ County, _____. This expansion will add _____.___ acres to the _____.___ acre unit, resulting in an enlarged unit area of _____.__ acres, more or less.

* The expansion of the unit must provide for an obligation well to test the upper _____ feet of the _____ Formation. The obligation well will be located in the ____ ¼ ____¼ Section ____, Township _____, Range _____, _____, _____ County, _____. The well must commence drilling operations within 6 months after final approval. Said obligation shall be considered the Public Interest Requirement pursuant to 43 CFR 3183.4(b). Should you fail to meet the Public Interest Requirement, this expansion will be invalidated *ab initio*.

The expansion is regarded as acceptable on the basis of the geologic/reservoir information accompanying your application. We hereby concur in the proposed expansion, provided it is accomplished pursuant to Section 2 of the unit agreement. The effective date of the proposed expansion will be _____, 19___, in accordance with your application, pursuant to Section 2(a).

* Optional paragraph for use when an obligation well will be required.

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A minimum of _____ copies of the application for final approval, accompanied by the appropriate joinders and supplements to Exhibits "A" and "B" should be filed with the Authorized Officer. The format of Exhibits "A" and "B" attached with your application is acceptable.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager, _____
_____ Unit File
Lease Adjudication Section
State Oil and Gas Regulatory Agency
State Land Board

H-3180-1 - UNITIZATION (EXPLORATORY)

Final Approval for Unit Expansion Letter

_____ 19____

_____
_____
_____
_____

Re: Final Approval ____ Expansion
_____ Unit
_____ County, _____

Gentlemen:

The _____ Unit, _____ County, _____, was approved _____, 19__. Request for final approval for expansion of the unit was received by letter dated _____, 19__. All of the requirements set forth in Section 2 of the unit agreement have been fulfilled. Said expansion is hereby approved, to be effective as of _____, 19__.
The basic information is as follows:

1. The expansion of the unit area was given preliminary approval by Bureau letter dated _____ , 19__.

2. As a result of the expansion, the unit area is increased from ____ acres to ____ acres, more or less, of which ____ acres (__ percent) are Federal lands, ____ acres (__ percent) are State lands, and ____ acres (__ percent) are patented lands.

3. The following Federal leases embrace lands within the expanded unit area:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

*Indicates committed leases to be considered for segregation pursuant to Section 18(g) of the unit agreement, Public Law 86-705, and 43 CFR 3107.3-2.

H-3180-1 - UNITIZATION (EXPLORATORY)

4. All lands in the expanded area are fully committed except Tracts ___, totaling ___.__ acres (__.__ percent) which are not committed and Tracts
___, totaling ___.__ acres (__.__ percent) which are partially committed. Certain overriding royalty interest owners have not signed the unit agreement.

In view of the foregoing commitment status, effective control of operations within the expanded unit area is assured. We are of the opinion that the expansion is necessary and advisable in the public interest for the purpose of more properly conserving natural resources.

* The unit expansion provides for the drilling of one "obligation well" pursuant to our preliminary approval of _____, 19___. The obligation well will be located in the _____ of Section ____, T. ____, R. ____, _____, _____ County, _____ and wil be drilled to a depth of _____ feet or to a depth sufficient to test the upper _____ feet of the _____ Formation. Failure to commence drilling the obligation well within the expanded area, if required, within 6 months of the approval date will result in this expansion being invalidated ab initio. No extension of time will be granted to commence the obligation well other than that justified as "unavoidable delay" under Section 25 of the unit agreement.

Approval of this expansion does not warrant or certify that the operator thereof and other holders of operating rights hold legal or equitable title to those rights in the subject leases which are committed hereto.

Copies of the approved expansion are being distributed to the appropriate Federal offices. You are requested to furnish all interested parties with appropriate evidence of this approval.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager, _____
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch w/exhibit B
State Oil and Gas Regulatory Agency
State Land Board

* Optional paragraph for use when an obligation well is required.

H-3180-1 - UNITIZATION (EXPLORATORY)

Automatic Unit Termination Notice
for Cessation of Production

_____ 19____

_____
_____
_____
_____

Re: _____Unit_____County, _____

Gentlemen:

The _____ Unit, No. _____X, _____ County, _____, automatically terminated effective _____, 19___, in accordance with Section 20(c) of the unit agreement.

The termination is based on the plugging of Well No. _____ located in the ___¼ ___¼, Section ___, Township _____, Range _____, on _____, 19____, as the last well within a participating area capable of producing unitized substances in quantities sufficient to pay for the cost of producing same from said well.

Please advise all interested parties of this unit termination and its effective date.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager _____
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch
State Oil and Gas Regulatory Agency
State Land Board

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H-3180-1 - UNITIZATION (EXPLORATORY)

Automatic Unit Termination Notice for
Failure to Meet Drilling Requirements

_____ 19____

_____
_____
_____
_____

Re: Automatic Termination
_____Unit_____County,
_____

Gentlemen:

The _____ Unit, No. _____X, _____ County, _____, automatically terminated effective _____, 19____, pursuant to the last paragraph of Section 9 of the unit agreement.

Copies of this letter are being distributed to the appropriate Federal agencies. It is requested that you furnish notice of this termination to each working interest owner, lessee and lessor.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager, _____
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch
State Oil and Gas Regulatory Agency
State Land Board

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H-3180-1 - UNITIZATION (EXPLORATORY)

Voluntary Unit Termination Approval Letter

_____ 19_____

_____
_____
_____
_____

Re: Voluntary Termination
_____ Unit
_____ County, _____

Gentlemen:

Your request for voluntary termination of the _____ Unit Agreement, _____ County, _____, is hereby approved, effective _____, 19___, pursuant to the last paragraph of Section 20 thereof. You have fulfilled the Public Interest Requirement as defined in 43 CFR 3183.4(b).

Copies of this letter are being distributed to the appropriate Federal agencies. It is requested that you furnish notice of this termination to each interested owner, lessee, and lessor.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager, _____
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch
State Oil and Gas Regulatory Agency
State Land Board

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H-3180-1 - UNITIZATION (EXPLORATORY)

Successor Operator Approval Letter

_____ 19_____

_____
_____
_____
_____

Re: _____ Unit _____County, _____

Gentlemen:

On _____, 19__, we received an indenture dated _____, 19__, whereby _____ resigned as Unit Operator and _____
was designated as Successor Unit Operator for the _____ Unit,
_____ County, _____. The indenture was executed by both parties and the signatory parties (working interest owners) have complied with Sections 5 and 6 of the unit agreement.

The instrument is hereby approved effective _____ 19___. In approving this designation, the Authorized Officer neither warrants nor certifies that the designated party has obtained all required approvals that would entitle it to conduct operations under the _____ Unit Agreement.

Your _____ oil and gas bond, No. _____ (BLM Bond No. ____) will be used to cover unit operations.

It is requested that you notify all interested parties of the change in unit operator. Copies of the approved instruments are being distributed to the appropriate Federal offices, with one copy returned herewith.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager _____
_____ Unit File
Lease Adjudication Section
State Oil and Gas Regulatory Agency
State Land Board

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H-3180-1 - UNITIZATION (EXPLORATORY)

Successor Operator Request Letter and Instrument

_____ 19____

_____
_____
_____
_____

Re: _____
_____

Gentlemen:

A designation of a successor operator for the _____ Unit Agreement, _____ County, _____, authorizing _____ to operate the unitized area has not been filed with this office.

A successor operator is designated by the owners of the working interests, in accordance with Section ____ of the unit agreement. If the change of operator is not filed with and approved by this office, you are operating the _____ Unit Area without authority.

The procedure for processing and approving successor operator designations under unit agreements has been amended to provide an optional method for obtaining approval of successor operators which should expedite the approval process. Bureau of Land Management (BLM) offices now have a self-certification procedure for unit agreements. A party proposing to become the successor operator may submit a statement certifying that the required working interest owner approvals have been obtained. The party to be designated successor operator must still execute a Designation of Successor Unit Operator, but the document does not necessarily need to be signed by the working interest owners. Upon verification that adequate bonding has been obtained, the Authorized Officer (AO) may accept and approve in writing the designation of successor operator.

For consistency in processing requests for successor operator, a standardized statement certifying that working interest owner approvals have been obtained can be used to facilitate processing the requests for approvals of designations of successor unit operator. The certification statement submitted to BLM offices requesting approval of the successor operator should contain the following language:

H-3180-1 - UNITIZATION (EXPLORATORY)

(Name of the proposed successor unit operator), as the designated successor operator under the _____ Unit Agreement, hereby certifies that the requisite approvals of the current working interest owners in the agreement have been obtained to satisfy the requirements for selection of a successor operator as set forth under the terms and provisions of the agreement.

Please be advised that you may adopt the self-certification procedure to complete the change in operator for the above Unit Agreement, or you may submit the working interest owner signatures and a revised Exhibit "B" showing the current ownership under the Unit Agreement. A copy of the latest Exhibit "B" on file with this office is available at your request.

Please complete the enclosed forms for effecting a change in operator for the _____ Unit Agreement and submit them, in triplicate, to this office within 60 days from receipt of this letter.

Should you have any questions, please contact _____ at

Sincerely,

(Authorized Officer)
Bureau of Land Management

Enclosures

bcc: District Manager _____
_____ Unit File

H-3180-1 - UNITIZATION (EXPLORATORY)

Successor Operator Instrument

RESIGNATION OF UNIT OPERATOR

_____ Unit Area

County of _____

State of _____

Unit Agreement No. _____

Under and pursuant to the provisions of Section 5 of the Unit Agreement for the Development and Operation of the _____ Unit Area, _____County, _____, _____ , the designated Unit Operator under said Unit Agreement, does hereby resign as Unit Operator, effective upon the selection and approval of a successor Unit Operator.

EXECUTED with effect as aforesaid the ___ day of _____, 19__.

ATTEST: _____

_____

DESIGNATION OF
SUCCESSOR UNIT OPERATOR

_____ Unit Area

County of _____

State of _____

Unit Agreement No. _____

THIS INDENTURE, dated as of the ____ day of _____, 19____, by and between _____ ____, hereinafter designated as "First Party," and the owners of unitized working interests, hereinafter designated as "Second Parties,"

H-3180-1 - UNITIZATION (EXPLORATORY)

W I T N E S S E T H :

WHEREAS, under the provisions of the Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. Secs. 181, et seq., as amended by the Act of August 8, 1946, 60 Stat. 950, the Secretary of the Interior, on the ___ day of _____, 19__, approved a Unit Agreement for the _____Unit Area; and

WHEREAS (current operator) has resigned as such Operator and the designation of a successor Unit Operator is now required pursuant to the terms thereon; and

WHEREAS the First Party has been and hereby is designated by Second Parties as Unit Operator, and said First Party desires to assume all the rights, duties and obligations of Unit Operator under the said Unit Agreement:

NOW, THEREFORE, in consideration of the premises hereinbefore set forth and the promises hereinafter stated, the First Party hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of the _____ Unit Agreement, and the Second Parties covenant and agree that, effective upon approval of this indenture by the Authorized Officer, Bureau of Land Management, First Party shall be granted the exclusive right and privilege of exercising any and all rights and privileges as Unit Operator, pursuant to the terms and conditions of said Unit Agreement; said Unit Agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said Unit Agreement were expressly set forth in this instrument.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date hereinabove set forth.

FIRST PARTY (Successor Unit Operator)

_____

BY _____

SECOND PARTIES (Working Interests)

_____

BY _____

Execution Date: _____

_____

BY _____

Execution Date: _____

H-3180-1 - UNITIZATION (EXPLORATORY)

CORPORATE ACKNOWLEDGEMENT

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19__, by _____, President, and by _____, Secretary of _____ _____, a corporation.

WITNESS my hand and official seal.

My Commission Expires:_____

_____
Notary Public

Place of Residence:

_____

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19__, by _____, President, and by _____, Secretary of _____ _____, a corporation.

WITNESS my hand and official seal.

My Commission Expires:_____

_____
Notary Public

Place of Residence:

_____

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H-3180-1 - UNITIZATION (EXPLORATORY)

Subsequent Joinder Approval Letter

_____ 19_____

_____
_____
_____
_____

Re: Subsequent Joinder Tract #
_____ Unit _____ County, _____

Gentlemen:

Your letter dated _____, 19__, transmitted a _____ ratification and joinder to the _____ Unit and Unit Operating Agreements, _____County, _____. The document was executed by _____ __, as the working interest owner in Tract No. __, Federal Lease No. _____.

Pursuant to Section 28 of the unit agreement, this joinder is approved as of _____, 19__. (Tract No. ___ is now considered fully committed and Federal Lease No. ____ is now eligible for segregation pursuant to Section 18(g) of the unit agreement, Public Law 86-705, and 43 CFR 3107.3-2).

It is requested that you notify all interested parties of the joinder approval. This office will make distribution to the appropriate Federal offices.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager _____
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch w/exhibit B
State Oil and Gas Regulatory Agency
State Land Board

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H-3180-1 - UNITIZATION (EXPLORATORY)

Late Joinder Approval Letter

_____ 19_____

_____
_____
_____
_____

Re: Late Joinder Tract # _____
_____

Gentlemen:

Your letter dated _____, 19__, transmitted a _____ ratification and joinder to the _____ Unit and Unit Operating Agreements, _____County, _____. The document was executed by _____ ___, as the working interest owner in Tract No. __, Federal Lease No. _____. No working interest owner consent is required for this joinder due to the fact that unit operations have not commenced.

Pursuant to Section 28 of the unit agreement, this joinder is approved as of _____, 19__. (Tract No. ___ is now considered fully committed and Federal Lease No. _____ is now eligible for segregation pursuant to Section 18(g) of the unit agreement, Public Law 86-705, and 43 CFR 3107.3-2).

It is requested that you notify all interested parties of the joinder approval. This office will make distribution to the appropriate Federal offices.

Sincerely,

(Authorized Officer)
Bureau of Land Management

bcc: District Manager _____
_____ Unit File
Lease Adjudication Section
MMS-RMP Reference Data Branch w/exhibit B
State Oil and Gas Regulatory Agency
State Land Board

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H-3180-1 UNITIZATION (EXPLORATORY)

GUIDELINES AND SUGGESTED FORMATS FOR OPERATOR SUBMISSIONS

H-3180-1 UNITIZATION (EXPLORATORY)

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H-3180-1 UNITIZATION (EXPLORATORY)

LETTER TO THE APPLICANT PROVIDING INFORMATION ON PREPARING APPLICATION FOR UNIT AGREEMENT

Gentlemen:

The attachments to this letter have been prepared as an aid to those responsible for preparing and handling requests for the Bureau of Land Management's (BLM) approval of actions relating to unit agreements. If the suggestions contained in the attachments are followed carefully, our personnel will be able to process requests with a minimum of delay, and the time and effort of your personnel will be employed more effectively.

All requests relating to unit agreements should be submitted to the appropriate BLM office having jurisdiction over the area in question. Preliminary discussions with the appropriate BLM office personnel during the preparation of an application are very helpful. Such discussions are especially desirable in connection with requests for approval of proposed forms of unit agreement and designation of areas as logically subject to unitization and requests defining or redefining areas reasonably proven productive of unitized substances in paying quantities.

Since some filing systems bind on the left and others bind on the top, special effort should be ~~made to ensure that there is an adequate margin along the left side and at the top~~ of all material prepared for submittal to the BLM.

Please ensure that all personnel who are responsible for the preparation and handling of actions relating to unit agreements are aware of the contents of the attachments to this letter.

Sincerely yours,

(Authorized Officer)
Bureau of Land Management

Attachments:

1 - Guidelines for Requesting Approval of a Proposed Form of Unit Agreement
2 - Guidelines for Requesting Designation of an Area as Logically Subject to Unitization
3 - Guidelines for Requesting Approval of the Executed Unit Agreement
4 - Guidelines for Expanding or Contracting the Unit Area
5 - Participating Areas
6 - Format for a Designation of Agent
7 - Format for the Delegation of Authority to Operate a Non-Paying Unit Well

H-3180-1 UNITIZATION (EXPLORATORY)

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H-3180-1 UNITIZATION (EXPLORATORY)

GUIDELINES FOR REQUESTING APPROVAL OF A PROPOSED FORM OF UNIT AGREEMENT

(This request is normally combined with the application requesting designation of an area as logically subject to unitization.)

Use of the model form of unit agreement approved by the BLM is encouraged. Whenever circumstances justify or require the use of special provisions, their inclusion in the agreement must have prior approval by the BLM authorized officer. Whenever conditions require major deviations from the forms approved by the BLM, three copies of the proposed form, including Exhibits A and B, should be submitted for the authorized officer's approval.

Every deviation from the model form of agreement should be plainly marked on the proposed form of agreement and explained in the material submitted in support of the request for approval of the form of unit agreement.

H-3180-1 UNITIZATION (EXPLORATORY)

GUIDELINES FOR REQUESTING DESIGNATION OF AN AREA AS LOGICALLY SUBJECT TO UNITIZATION

(Submit in duplicate.)

Application should be addressed to the appropriate BLM authorized officer and should consist of an application letter accompanied by a supporting geologic report and land ownership map.

The application letter should:

1. Identify the area proposed for unitization.

2. Cite the deepest formation to be tested and the depth to which the initial test well must be drilled to test that formation.

3. List the serial numbers of all Federal leases, lease offers, Indian leases, and lease expiration dates. This list must be in proper sequence and may be included as part of the land ownership map.

4. State if geological and geophysical data and discussions are to be kept confidential. If this information is to be kept confidential, each page must be clearly marked as CONFIDENTIAL INFORMATION.

The geologic report should include:

1. A map drawn on the public land base showing the proposed unit boundary, with detailed structural and stratigraphic conditions pertinent to the proposed unit area. The map also should show the status, depth, and lowest formation penetrated by each well drilled in the unit area and the immediate vicinity.

2. Appropriate cross sections and stratigraphic columns, identifying prospectively productive formations and indicating expected depths.

3. Pertinent geophysical interpretations.

4. Discussion of the specific geologic basis used in delineating the boundary of the proposed unit area, such as closing contour, fault, or pinch-out.

H-3180-1 UNITIZATION (EXPLORATORY)

The land ownership map should:

1. Show the area proposed for unitization on a legible plat based on the official public land survey. (Include the official number of each lot, tract, and section, the acreage in each, and the total acreage in the proposed unit area.)

2. Show the boundaries of each lease and each unleased tract of land, and the working interest owners and lease numbers of Federal and Indian leases. Unless otherwise specifically approved, the same numbers will be used on Exhibit "B" of the unit agreement.

3. Distinguish between the different types of land, such as Federal, Indian, State, or fee lands by distinctive coloring or symbols. Different types of Federally supervised lands, such as Forest Service, Fish and Wildlife Service, and Indian allotted or tribal lands should also be identified in a similar manner.

H-3180-1 UNITIZATION (EXPLORATORY)

GUIDELINES FOR REQUESTING APPROVAL OF THE EXECUTED UNIT AGREEMENT

(Submit minimum of ____ duplicate originals.)

Generally, when more than four duplicate originals are required, the authorized officer's letter designating an area as logically subject to unitization will specify the number of executed agreements to be filed with the request for final approval. The executed agreements submitted with the request for final approval should include an original of the agreement and all joinders, consents, and exhibits. The proponent is responsible for meeting non-Federal requirements for copies of the agreement.

During the preparation of an executed agreement for final approval, review the following requirements.

1. Executed agreement.

   a. The executed agreement must be identical to that approved in the designation letter. The unit area, objective formation, and drilling depths cited in the agreement must conform with those prescribed in the designation letter.

   b. Exhibit B should list the lands in the unit area in the following order: Federal, Indian, State, and fee.

      (1) Tracts. Each separately owned lease, portion of a lease, or unleased tract of land should be given a tract number. This tract number should be determined by the order of its listing in Exhibit B and should appear in its appropriate place on Exhibit A.

      (2) Federal leases should be listed in numerical order by issuing land office.

      (3) Indian leases should be listed in numerical order.

      (4) The total acreage of each type of land and its percentage of the total unit area should be included in Exhibit B.

H-3180-1 UNITIZATION (EXPLORATORY)

2. Number of duplicate originals of the unit agreement to be filed.

   a. For Federal leases, all of which are under the jurisdiction of the BLM, complete duplicate originals are required.

   b. For Federal leases involving other surface management agencies (SMA's), those in 2a plus the quantities needed for the other SMA's.

   c. For Federal and Indian leases with no other SMA's involved, add two to requirements under 2a.

3. Joinder and nonjoinder.

   a. Invite every owner of an interest to join the unit agreement.

   b. Submit evidence of reasonable effort to obtain joinder from all owners who fail or refuse to sign the unit and unit operating agreement. (Include copy of each refusal letter giving reasons for nonjoinder.)

4. Signatures and executions.

   a. Signatures should be witnessed or acknowledged before a notary.

   b. Execution by a corporate official should show title and carry proper attestation and the corporate seal.

   c. Agreements submitted for final approval may include a list of the overriding royalty interest owners who have executed ratification of the unit agreement in lieu of duplicate originals of said joinders.

5. Tract Committment Status (optional)

A summary showing the committment status of teh tracts withinb thge unit boundary (see attached)

H-3180-1 UNITIZATION (EXPLORATORY)

GUIDELINES FOR EXPANDING OR CONTRACTING THE UNIT AREA

It is necessary to secure the preliminary concurrence of the authorized officer for a change in a unit boundary before notices reflecting the proposed change are sent to the interested parties. Most agreements include provisions that set forth the procedures to be followed in changing the unit boundaries.

An application for final approval of an expansion or contraction of a unit area should not be submitted until all pertinent provisions of the unit agreement have been satisfied.

The procedures recommended in connection with expansion or contraction of unit areas are outlined below.

1. Preliminary approval (submit request in quadruplicate). (This action is comparable to designation of an area as logically subject to unitization.)

   The request for preliminary approval of the proposed action (contraction or expansion) may be in letter form. It must contain sufficient information and supporting data to justify the proposed action. The supporting engineering and geologic data may be submitted as a separate report. Any data considered proprietary should be clearly marked on each page as CONFIDENTIAL INFORMATION.

2. Notice to interested parties (submit four copies to authorized officer).

   Notices of the proposed change in the unit area should be sent to all parties whose interest will be affected only after the authorized officer gives preliminary concurrence in the proposal. Extreme care should be taken to see that each principal is notified of the proposal. The date of proper notice establishes the start of the 30-day period allowed for the submission of objections to the unit operator. The effective date for the proposed expansion or contraction should be specified in the notice. (The first day of a month subsequent to the dispatching of the notice is suggested as a desirable effective date.) The notice should include a small plat that clearly shows the current unit area and the area to be added and/or eliminated.

H-3180-1 UNITIZATION (EXPLORATORY)

3. Request for final approval (submit in quadruplicate).

The request for final approval may be submitted after the required 30-day waiting period has expired. The application should summarize the procedures followed and show that all requirements prescribed in the unit agreement have been fulfilled. If the application requests approval for expansion of the unit area, joinders to the unit agreement and, when appropriate, to the unit operating agreement must accompany the request. Joinders must be submitted by the owners of interests within the area being added, even though the interest owner is already a party to the unit agreement. Copies of any objections to the proposed expansion and/or contraction should be submitted with the request for final approval, along with the operator's reply and/or discussion of the relative merits of the objections received.

4. Revised Exhibits A and B.

Revised Exhibits A and B must be submitted concurrently with a request for approval of an expansion of the unit area and should be submitted concurrently with or immediately following approval of a request for contraction of the unit area. Revised exhibits prepared in connection with an expansion or contraction should retain the tract numbers contained in the original exhibits. Lands being added to the unit area should be assigned tract numbers that follow the original tract numbers in proper sequence.

H-3180-1 UNITIZATION (EXPLORATORY)

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H-3180-1 UNITIZATION (EXPLORATORY)

PARTICIPATING AREAS

Participating areas (PA's) are established and revised in accordance with the applicable provisions of the controlling unit agreement.

The application for approval of the initial PA or for the revision of an existing PA must be accompanied by a request for determination of production of unitized substances in paying quantities (see Section 9 of the model form of unit agreement, 43 CFR 3186.1) for the well or wells being used to justify the PA, or its revision, unless these determinations have already been made.

Applications for establishment or revision of a PA should be accompanied by comprehensive engineering and geologic information which justifies the proposed definition or redefinition of the lands reasonably proven to be productive of unitized substances in paying quantities. These reports should indicate which wells are shut in and which wells are producing. Current and cumulative production figures should also be cited. Comments on expectations relative to the development of a market should be included when wells are shut in for lack of a market.

Noncommitted lands within the unit area reasonably proven productive in paying quantities should be included within the area defined as constituting the initial or revised participating area for the formation in question. Such noncommitted lands should be shown on the schedule of participation as receiving no allocation. Normally, the percentage of participation attributable to each committed tract within a participating area shall be computed to four decimals.

Preliminary discussions with the BLM authorized officer should prove helpful to those responsible for preparation of participating area applications. The model applications that are attached hereto have been prepared for use as guides in the preparation of requests for the authorized officer's approval of the establishment or revision of participating areas.

H-3180-1 UNITIZATION (EXPLORATORY)

FORMAT FOR INITIAL PARTICIPATING AREA APPLICATION

In Re: _____ Unit Area
Application for
_____ County, _____. approval of initial
participating area
for the _____
Formation.

(Authorized Officer)
Bureau of Land Management
_____
_____
_____

Re: _____ Unit Area
Application for _____ County, _____.
approval of initial participating area for the
_____ Formation

_____, as unit operator for the _____Unit Agreement, pursuant to provisions of Section __ thereof, respectfully submits for your approval the selection of the following described lands to constitute the initial participating area for the _____ producing zone or formation, to wit: (Description of initial participating area by township, range, section, and subdivisions, with exact total acreage.)

In support of this application, the following numbered items are attached and made a part hereof:

(1) A paying well determination showing that the well upon which the participating area is based is capable of producing unitized substances in paying quantities.

(2) An ownership map (Exhibit "A") showing thereon the boundaries of the unit area and the proposed initial participating area.

(3) A schedule showing the lands entitled to participation in the unitized substances produced from the _____ Formation, with the percentage of participation of each lease or tract indicated thereon. (The schedule may be patterned after Exhibit "B" of the unit agreement with appropriate adjustments.)

Applicant is submitting separately in triplicate a geological and engineering report with accompanying geologic maps supporting and justifying the proposed selection of lands for inclusion in the initial _____ Formation participating area.

H-3180-1 UNITIZATION (EXPLORATORY)

This proposed initial participating area is predicated upon the knowledge and information first obtained upon the completion in paying quantities under the terms of the unit agreement on _____, 19__, of Unit Well No. _____, in the __1/4 __1/4, Sec.__,T.__,R.__, with an initial production of _____ from the _____ Formation at a depth of ____ to ____ feet (if several wells, recite or tabulate in detail). The effective date of this initial participating area shall be _____, 19__, pursuant to Section __ of the unit agreement.

Applicant respectfully requests your approval of the above selection of lands to constitute the initial _____ Formation participating area, effective as of _____, 19__.

Dated this _____.

(Signature, with typed name and title)

Exhibit "B"
Initial _____ Formation
Participating Area
_____ Unit Agreement
_____ County, _____

Tract No.	Lease No. or type of land	Description	Participating acres	Percent of participation	Working interest owner
1	B-038470	Sec. 14: SW SW Sec. 15: S½ SE Sec. 23: W½ NW	200.00	55.5556	Frost Oil Co.
2	Patented	Sec. 22: NE	160.00	44.4444	W. W. Smith

Total Federal lands	200.00	55.5556
Total patented lands	160.00	44.4444
Total	360.00	100.0000

H-3180-1 UNITIZATION (EXPLORATORY)

FORMAT FOR APPLICATION FOR REVISION OF A PARTICIPATING AREA

(Authorized Officer)
Bureau of Land Management
_____
_____
_____

Re: _____ Unit Area
Application for _____ County, _____.
approval of the ____ revision of the participating area
for the _____ Formation.

_____, as unit operator for the _____ Unit Agreement, approved by the Bureau of Land Management, effective _____, pursuant to the provisions of Section ____ thereof, respectfully submits for your approval the selection of the following described land to constitute the _____ revision of the participating area for the _____ producing zone or formation, to wit: (Give only the accurate description and the exact number of acres being added to or being subtracted from the participating area as established or revised.)

In support of this application, the following numbered items are attached and made a part hereof:

(1) A paying well determination showing that the well upon which the participating area is based is capable of producing unitized substances in paying quantities.

(2) An ownership map (Exhibit "A") showing thereon the boundary of the unit area, the participating area as established or revised, and the boundary of the proposed revision requested herein.

(3) A schedule (Exhibit "B") showing the lands entitled to participation in the unitized substances produced from the _____ Formation, with the percentage of participation of each lease or tract indicated thereon.

H-3180-1 UNITIZATION (EXPLORATORY)

Applicant is submitting separately in triplicate a geological and engineering report with accompanying maps supporting and justifying the proposed selection of lands for inclusion in the _ ___ revision of the
_____ Formation participating area.

This proposed ____ revision of the participating area is predicated upon the knowledge and information first obtained upon completion in paying quantities under the terms of the unit agreement on _____, 19__, of Unit Well No. ___, in the _1/4 _1/4, Sec._,T.__, R. __, with an initial production of _____ from the _____ Formation at a depth of ___ to ___ feet (if several wells, recite or tabulate in detail). The effective date of this _____ revision shall be _____, 19_ , pursuant to Section __ of the unit agreement.

Applicant requests your approval of the above selection of lands to constitute the ____ revision of the _____ Formation participating area effective as of _____, 19__.

Dated _____.

(Signature, with typed name and title)

H-3180-1 UNITIZATION (EXPLORATORY)

H-3180-1 UNITIZATION (EXPLORATORY)

Exhibit "B"
Revision _____ Formation
Participating Area
_____ Unit Agreement
_____ County, _____

Tract No.	Lease No. or type of land	Description	Participating acres	Percent of participation	Working interest owner
1	B-038470	Sec. 14: SW SW Sec. 15: S½ S½ Sec. 23: W½ NW	280.00	38.8889	Frost Oil Co.
3	W-041345	Sec. 21: E½ NE	80.00	11.1111	Frost Oil Co.
7	State	Sec. 16: SE SE	40.00	5.5556	Deer Oil Co.
9	Patented	Sec. 22: N½	320.00	44.4444	W. W. Smith

Total Federal lands	360.00	50.0000
~~Total State land~~	~~40.00~~	~~5.5556~~
Total patented lands	320.00	44.4444
Total	720.00	100.0000

H-3180-1 UNITIZATION (EXPLORATORY)

FORMAT FOR A DESIGNATION OF AGENT

(Submit in triplicate)

The undersigned is, on the records of the Bureau of Land Management, Unit Operator under the _____ Unit Agreement, _____ County, _____, No. _____, approved and effective on _____

and hereby designates:

Name: _____

Address: _____

_____

as its agent, with full authority to act on its behalf in complying with the terms of the unit agreement and regulations applicable thereto and on whom the Authorized Officer or his representative may serve written or oral instructions in securing compliance with the Oil and Gas Operating Regulations with respect to drilling, testing, and completing Unit Well No. _____ in the ___1/4___1/4, Sec. ___, T.___, R.___, _____ County, _____. Bond coverage will be provided under (Statewide, Nationwide, Lessee) Bond No._____.

It is understood that this Designation of Agent does not relieve the Unit Operator of responsibility for compliance with the terms of the unit agreement and the oil and gas operating regulations. It is also understood that this Designation of Agent does not constitute an assignment of any interest under the unit agreement or any lease committed thereto.

In case of default on the part of the designated agent, the Unit Operator will make full and prompt compliance with all regulations, lease terms, or orders of the Secretary of the Interior or his duly authorized representative.

The Unit Operator agrees promptly to notify the Authorized Officer of any change in the designated agent.

This Designation of Agent is deemed to be temporary and in no manner a permanent arrangement, and a designated agent may not designate another party as agent.

H-3180-1 - UNITIZATION (EXPLORATORY)

This designation is given only to enable the agent herein designated to drill the above specified well. It is understood that this Designation of Agent is limited to the field operations performed while drilling and completing the specified well and does not include administrative actions requiring specific authorization of the Unit Operator. This designation in no way will serve as authorization for the agent to conduct field operations for the specified well after it has been completed for production. Unless sooner terminated, this designation shall terminate when there is filed in the appropriate office of the Bureau of Land Management all reports and a Well Completion Report and Log (Form 3160-4) as required by the approved Application for Permit to Drill for the specified well.

In the event the above specified well is completed as a non-paying unit well, the authority for the designated agent to operate this well shall be established by completion of the Delegation of Authority to Operate Non-paying Unit Well form and submittal of the form to the appropriate office of the Authorized Officer.

_____ _____
Date Unit Operator

_____ By: _____
Date Authorized Officer

H-3180-1 - UNITIZATION (EXPLORATORY)

FORMAT FOR THE DELEGATION OF AUTHORITY
TO OPERATE A NON-PAYING UNIT WELL

(Submit in triplicate)

The undersigned delegates authority to:

Name: _____

Address: _____

_____

to produce and maintain the following described well which has been determined to be a non-paying unit well within the _____ Unit.

Well No. _____ Lease No. _____

Location: ___1/4___1/4, Sec.___, T.___, R.___,

_____ County, _____.

Bond coverage will be provided under (Nationwide, Statewide, Lessee) Bond No. _____. The undersigned will promptly notify the appropriate Bureau of Land Management office of any change in this delegation of authority. This delegation does not relieve the Unit Operator of unit obligations and related reporting responsibilities as they apply to the unit well or for compliance with all applicable laws and regulations for operations conducted on the well so long as the lands upon which the well is located shall remain subject to the unit agreement.

_____ _____
Operator - Non-paying Unit Well Unit Operator

By: _____ By: _____
Authorized Signature Authorized Signature

_____ ____ _____ ____
Title Date Title Date

Approved By: _____
Authorized Officer

_____ ____
Title Date

Attachment 7

H-3180-1 - UNITIZATION (EXPLORATORY)

Numbering System For Approved Unit Agreements

The official Bureau of Land Management number for exploratory and secondary recovery unit agreements approved prior to January 1, 1988, will be considered to be the Automated Financial System (AFS) number assigned by the Minerals Management Service (MMS) with an "X" suffix (i.e., 891003502X). All initial and consolidated participating areas approved for a unit agreement approved prior to January 1, 1988, will be assigned a unique AFS number which is the base AFS number with an alpha suffix that sequentially follows the already assigned alpha suffixes for existing participating areas. This applies to all participating areas in units approved prior to January 1, 1988, regardless of when the participating area is approved. New numbers are not assigned to revisions of participating areas.

For exploratory and secondary recovery unit agreements approved after January 1, 1988, a Case Recordation System (CRS) number with an "X" suffix (i.e., COC12345X) will be assigned to all agreements. The same CRS number with a corresponding A, B, C, D, etc., suffix will be used to identify each initial or consolidated participating area in a unit area. The first participating area established for the unit will always be assigned the same CRS number for the unit agreement but instead of an "X" suffix an "A" suffix (i.e., COC12345A) will be used. All subsequent participating areas would have a number composed of the core CRS number for the unit agreement with an appropriate alpha suffix assigned by effective date in alphabetical order (i.e., ~~COC12345B, COC12345C, etc.). Again, revised participating areas do not receive a new alpha~~ suffix.

The old 14-digit contract numbering system will not be used for agreements approved after January 1, 1988. This 14-digit contract number is only considered a cross-reference number for agreements approved prior to that date.

Since initial and consolidated participating areas have a unique number, it needs to be assigned when the participating area is approved and so stated in the approval letter to the operator.

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H-3180-1 - UNITIZATION (EXPLORATORY)

Compensatory Royalty Provision in Unit Agreement
for Unleased Federal Lands

The following text which revises Section 12, reassigns the existing text of Section 17 as paragraph 17(a), and adds a new paragraph (b) to Section 17 of the model form of unit agreement found at 43 CFR 3186.1, should be used in all future Federally-approved exploratory unit agreements.

12. ALLOCATION OF PRODUCTION. All unitized substances produced from a participating area established under this agreement, except any part thereof used in conformity with good operating practices within the unitized area for drilling, operating, and other production or development purposes, or for repressuring or recycling in accordance with a plan of development and operations which has been approved by the AO, or unavoidably lost, shall be deemed to be produced equally on an acreage basis from the several tracts of unitized land and unleased Federal land, if any, included in the participating area established for such production. Each such tract shall have allocated to it such percentage of said production as the number of acres of such tract included in said participating area bears to the total acres of unitized land and unleased Federal land, if any, included in said participating area. Each working interest owner of a tract of unitized land in said participating area shall have allocated to it, in addition, such percentage of the production attributable to the unleased Federal land within the participating area as the number of acres of such unitized tract included in said participating area bears to the total acres of unitized land in said participating area, for the payment of the compensatory royalty specified in Section 17 of this agreement. Allocation of production hereunder for purposes other than for settlement of the royalty, overriding royalty, or payment out of production obligations of the respective working interest owners including compensatory royalty obligations under Section 17, shall be prescribed as set forth in the unit operating agreement or as otherwise mutually agreed to by the affected parties. It is hereby agreed that production of unitized substances from a participating area shall be allocated as provided herein, regardless of whether any wells are drilled on any particular part or tract of the participating area. If any gas produced from one participating area is used for repressuring or recycling purposes in another participating area, the first gas withdrawn from the latter participating area for sale during the life of this agreement, shall be considered to be the gas so transferred, until an amount equal to that transferred shall be so produced for sale

and such gas shall be allocated to the participating area from which initially produced as such area was defined at the time that such transferred gas was finally produced and sold.

* * * * *

17. DRAINAGE.

(a) * * * * *

(b) Whenever a participating area designated under Section 9 of this agreement contains unleased Federal lands, the value of 12 1/2 percent of the production that would be allocated to such Federal lands under Section 12 of this agreement, if such lands were leased, committed and entitled to participation, shall be payable as compensatory royalties to the Federal Government. Working interest owners party to this agreement and within the applicable participating area shall be responsible for such compensatory royalty payment on the volume of production reallocated from the unleased Federal lands to their unitized tracts under Section 12. The value of such production subject to the payment of said royalties shall be determined pursuant to 30 CFR Part 206. Payment of compensatory royalties on the production reallocated from unleased Federal land to committed Federal tracts within the participating area shall fulfill the Federal royalty obligation for such production and said production shall be subject to no further Federal royalty assessment under Section 14. Payment of compensatory royalties as provided herein shall accrue from the date the committed tracts in the participating area which includes unleased Federal lands receive a production allocation, and shall be due and payable monthly by the last day of the calendar month next following the calendar month of actual production. If leased Federal lands receiving a production allocation from the participating area become unleased, compensatory royalties shall accrue from the date the Federal lands become unleased. Payment due under this provision shall end when the unleased Federal tract is leased or when production of unitized substances ceases within the participating area and the participating area is terminated, whichever occurs first.

H-3180-1 - UNITIZATION (EXPLORATORY)

Communitization Agreements in Units

In situations involving an overlapping communitization agreement (CA) and participating area (PA), the following procedures should be invoked:

(1) CA entirely within the PA; all CA lands committed to the unit agreement. Under these conditions, the CA is considered to be silent as far as production allocation is concerned. Because the CA serves no purpose from an allocation standpoint, an attempt should be made to have the CA terminated effective as of the effective date of the PA. For reporting purposes, if the CA is not terminated, the CA well should be reported under the PA, with one hundred percent of the CA well's production reported under and attributed to the PA. The letter approving the PA engulfing the CA should state that 100 percent of the royalties due from the CA well's production is to be applied to and paid for under the PA. A courtesy copy of this letter should be sent to the CA operator.

(2) CA entirely or partially overlapped by a PA; some overlapped land not committed to the unit agreement. Under this scenario, all of the CA well's production is to be reported under the CA. The location of the CA well makes no difference. The approval letter for the overlapping PA should state what percentage of the royalties due from the CA well's production is to be applied to and paid for under the PA (i.e., the number of acres of CA lands within the PA that are considered committed to the unit agreement, divided by the total acres of the CA), and also what percentage of each CA tract considered committed to the unit is also contained in the PA. A courtesy copy of this letter should be sent to the CA operator.

(3) CA partially overlapped by PA; all overlapped lands committed to the unit agreement. The guidelines described in (2) would also apply in this situation.

MMS has agreed to internally account for the payment of proper royalties for leases subject to overlapping agreements pursuant to these procedures. These procedures are applicable if the overlapping CA/PA cover the same formation; otherwise, there is no potential conflict. The following examples reflect the situations described above.

H-3180-1 - UNITIZATION (EXPLORATORY)

Case 1: CA ENTIRELY WITHIN PA; ALL CA LANDS COMMITTED TO UA

CA boundary

In this scenario, where the entire CA is contained within the PA and all lands in the CA are committed to the unit, the CA could probably have been terminated by mutual consent. However, the CA was not terminated. In either case, the CA well is essentially considered a unit well and 100 percent of its production would be allocated to the participating area. Lease Nos. 1 and 2 each get 20 percent of the gross production for the participating area.

Recording Data in AIRS

1. AIRS will contain an inspection item identifier for the participating area. The participating area will contain a well record for each well, including the CA well. The "Lease-CA-Number" data field should show the lease number for the well bottomhole location. The remarks section for the CA well should reflect the CA numbers and the allocated amount according to the participating area schedule.

2. Do not set up records for the CA or leases in AIRS.

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Case 2: CA WITHIN PA; SOME OVERLAPPED LANDS UNCOMMITTED TO UA

CA boundary

In this scenario, the CA could never be terminated even though it is entirely included in a PA. It contains lease No. 2, which is not committed to the UA. Without the CA or joinder to the UA, lease No. 2 could never be protected from drainage due to the constraints of State spacing. Lease No. 2 is totally within the PA's boundary. It receives 25 percent allocation from the CA and nothing from the PA. Lease No. 1 is committed to the unit and within the PA boundary. It receives 75 percent allocation from the CA which is attributed to the PA. Subsequently, lease No. 1 receives 20 percent of the production from the PA.

Recording Data in AIRS:

1. The CA will be recorded in AIRS as an inspection item. The CA well record will cross-reference the PA identifier in the well remarks data field. The CA's Lease-CA-Number element should show the lease for the well bottomhole location included in the CA with their allocated amount.

2. AIRS will contain an inspection item for the participating area if there are Federal wells. However, the CA well will not be recorded under the participating area. Cross-reference to the CA may be placed in the participating area's inspection record remarks section.

3. AIRS will not contain a separate inspection item for the leases in the CA.

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Case 3: CA PARTIALLY WITHIN PA; ALL OVERLAPPED LANDS COMMITTED TO UA

CA boundary

In this scenario, the participating area was effective March 1958. A communitization agreement was formed June 1974 and comprised lease 1 and lease 2. The CA well is located outside unit boundaries. Lease 1 is committed to the unit and 50 percent of this lease is contained inside the PA. Lease 2 is totally outside the unit. Lease 1 comprises 33 percent of the CA and lease 2 comprises 67 percent of the CA. Therefore, 16.5 percent of the CA well's production is attributed to lease 1 with the remaining 16.5 percent of the 33 percent allocation for lease 1 being attributed to the participating area. From this participating area lease 1 will receive an allocation from the gross production attributed to the participating area. The allocation of production attributed to the participation area will be the same if the CA well is located inside the unit boundaries.

Recording Data in AIRS:

1. The CA will be recorded in AIRS as an inspection item. The CA well record will cross-reference the PA identifier in the well remarks data field with their allocated amount. The CA Lease-CA-Number element should show the leases included in the CA.

2. No well record for the CA well is to be carried under the inspection item identifier for the PA. Cross-reference to the CA may be placed in the inspection record remarks section.

3. AIRS will not contain an inspection item for the leases in the CA.

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AIRS/MRO Reporting Format for Unit Wells

UNIT WELL STATUS

AIRS Elements	Spud	Completed (Pending Determination)	Paying Well Determination	Non-paying Well Determination.
1. Inspection Item Identifier (ID)				
A. Lease No.		X**		X***
B. Unit Agreement (UA) No.	X*		X+PA suffix (replacing "X" suffix)	
2. Lease Name				
A. Lease No.		X**		X
B. Unit Name	X		X	
C. Participating Area (PA)/ Unit Name		X		
3. Operator				
A. Lessee/ Designated Operator				X****
B. Unit Operator (UO) or Suboperator	X	X	X	
4. General Remarks/ Well Records				
A. Unit Inspection ID	"Drilling"	Completion Date "Pending Determination"	Lease No.	
B. Lease Inspection ID				Unit Name "Non-paying Unit Well" and possibly UO

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X = Is what entry is to occur on AIRS under a specific inspection identifier.
* = If UA approved prior to 1/1/88, then the number is the Automated Financial System No. If UA approved on or after 1/1/88, then the number is the Case Recordation System No. which includes an "X" suffix. An inspection record for the UA must be created when the first unit well is spudded. All wells being drilled in the unit would be carried under this inspection item ID. However, in the formation covered by the PA, then this well should be carried under the number for the PA. If there is no drilling activity or there are no completed wells which have a pending paying well determination on non-participating area lands for an existing UA, then no inspection record under the UA number with an X suffix should be created.

** = The exception to reporting unit wells which have a pending paying/nonpaying well determination under the unit number would be when a paying well determination for a Federal well completed for production outside an existing participating area will be delayed for a significant period of time due to extended production testing requirements or due to a unit suspension. If the authorized officer approves/orders such a delay for a Federal well, then this well is to be recorded in AIRS under the lease inspection item identifier until the determination is made. The remarks section of the well record should reflect when the well was completed, unit name, pending determination delayed, and reason for delay (i.e., comp. 9/15/87, McElmo Dome, Pend. Det. Delay, Production Test Req.).

*** = If a fee/State well is determined to be a non-paying unit well and is not covered by a PA, then its well record should be removed from AIRS. In some cases, a unit well, be it Federal or non-Federal, may be a non-paying well, but is situated on land considered part of a PA established for the same formation from which the well can produce. These unique wells should be carried under the PA number since all of the wells' production would be attributed to the gross production for the PA.

**** = In many cases, someone other than the unit operator is allowed to operate a nonpaying unit well. Whoever is accepted as operator of the well should be responsible for reporting.

Whenever a non-paying unit well is automatically eliminated from the unit area, the UO and the unit name can be removed from the remarks section of the well record which is carried under the lease number for the inspection item ID.

For a contracted unit area, only those wells drilled in the unit area having an objective formation not covered by the corresponding PA will be reported under the UA number with an X suffix.

This reporting format is referenced in the AIRS User Handbook, which instructs field offices on how to enter unit wells into AIRS. This structuring of AIRS will be compatible with the way the Monthly Report of Operations is to be submitted to MMS by the Unit Operator.

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Guidelines for the Unit Activity Report

UNIT ACTIVITY REPORT

The Unit Activity Report should be used for the following unit wells.

1. Any well drilled to extend the date of automatic elimination of lands as provided in subsection 2(e), 43 CFR 3186.1. The completion date of any well drilled under this section is very important. The period of time allowed between wells commences after the well is completed and, if another well is not timely started, the automatic elimination is effective the first day thereafter, as provided in the model unit agreement (43 CFR 3186.1). If a later well is completed prior to a well that was started earlier, the completion date of the latter well would govern. These wells should be put on the report when spudded and carried every month, showing the status until the well is completed.

2. Any well drilled under Section 9 (43 CFR 3186.1). These wells are usually required every 6 months and keep the unit in effect for its fixed term until a well capable of producing unitized substances in paying quantities is completed. As provided in the model unit agreement (43 CFR 3186.1), failure to commence a well timely will result in automatic termination of the unit agreement. These wells should be put on the report when the well is spudded and carried until completed.

3. Any well completed or recompleted that may result in the revision of an existing participating area or establishment of an initial participating area. It should be noted in the "Paying Well" column of the form whether you consider the well capable of producing unitized substances in paying quantities. This should be noted with a "yes", "no", or "questionable". You need not make a detailed study on this point. These wells need to be listed on the report for the month in which they are commenced and the month they are completed.

4. Any well plugged and abandoned that is the last producing well in a participating area. These wells need to be listed on the report only for the month in which they are plugged and abandoned. The model unit agreement (43 CFR 3186.1) provides that a participating area will automatically terminate upon the abandonment of the last producing well. Prior to June 10, 1983, the model unit agreement did not provide for such participating area termination and, under those earlier agreements, such a nonproducing participating area will continue for the life of the unit agreement.

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H-3180-1 - UNITIZATION (EXPLORATORY)

Sample Text for State Land Provisions in the Unit Agreement

WYOMING STATE LAND PROVISIONS

35. STATE LAND PROVISIONS. Certain of the unitized land is public land of the State of Wyoming, and in connection with the approval of this agreement by the Board of Land Commissioners of said State pursuant to Title 36, Section 36-74, Wyoming Statutes, 1957, it is agreed that there shall be filed with the Commissioner of Public Lands of said State:

(a) Two copies of the complete unit agreement and two copies of any revised Exhibits "A" and "B" concurrently with the filing thereof with the AO, pursuant to Section 2 hereof.

(b) Two copies of any notice of the proposed expansion or contraction of the unit area required to be delivered to the AO pursuant to Section 2(b) hereof.

(c) Two copies of any unit operating agreement executed pursuant to Section 7 hereof.

(d) Two copies of any schedule of proposed participating area submitted for approval under Section 11, concurrently with its submission to the AO. The Commissioner or his authorized representative shall have a period of fifteen days from receipt of said schedule within which to file with the AO any objection thereto, together with any recommendation for revision thereof. If such objection or recommendation is not concurred in by Unit Operator and the AO prior to submission of the schedule to the AO for final approval, the AO shall approve or disapprove the schedule after giving due consideration to the objections and recommendations filed by the Commissioner or his representative.

(e) Two copies of any proposed plan of development or modification thereof, which if filed with the AO under Section 10 hereof.

(f) Two copies of all instruments of subsequent joinder executed under Section 28 hereof.

It is further agreed that:

(1) All valid, pertinent and reasonable regulations hereafter issued governing drilling and producing operations on non-Federal lands which are not inconsistent with the terms hereof or with the laws of the State of Wyoming are hereby accepted and made a part of this agreement.

H-3180-1 - UNITIZATION (EXPLORATORY)

WYOMING STATE LAND PROVISIONS

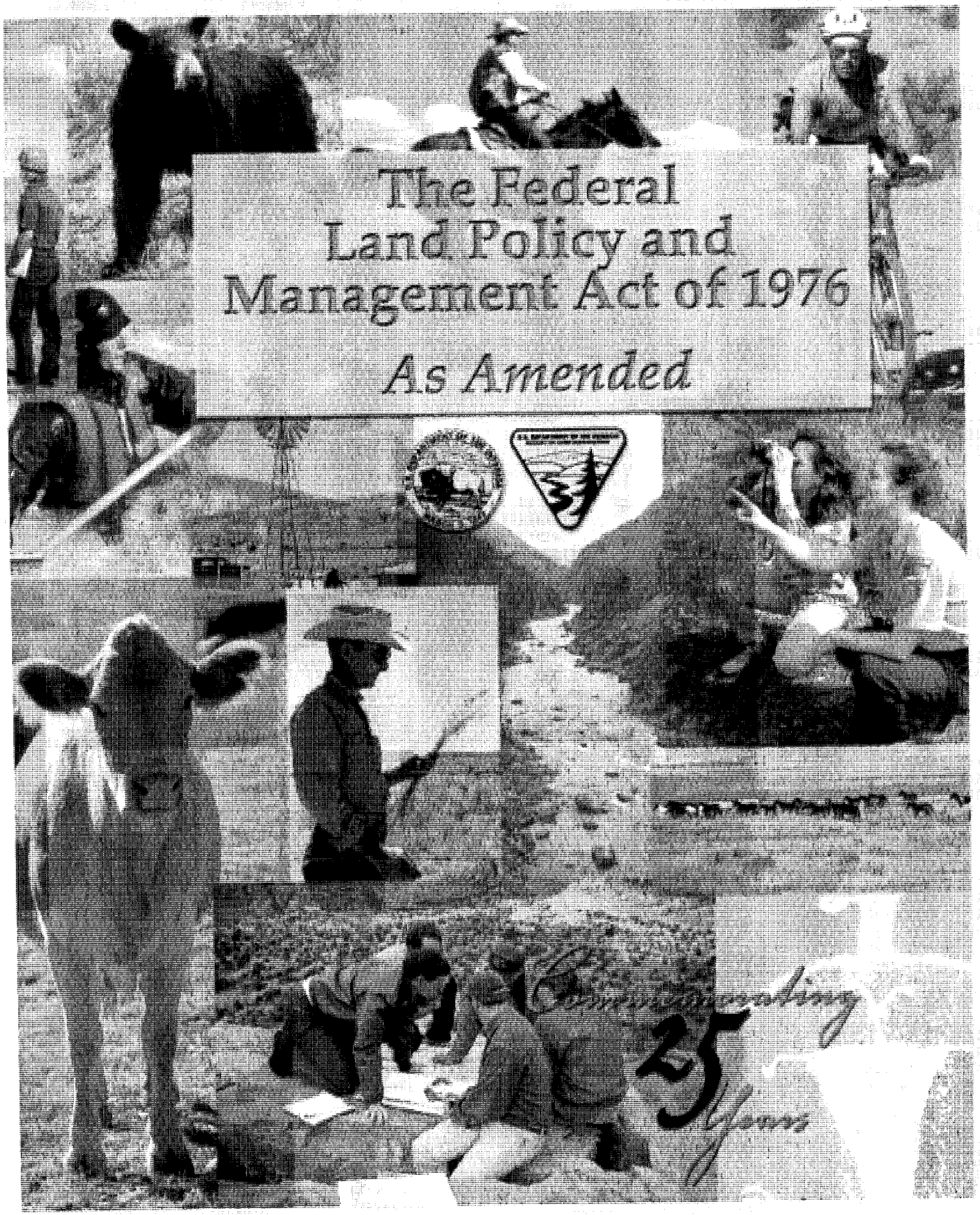
(2) Nothing in this agreement contained shall relieve lessees of the public lands of the State of Wyoming from their obligations to pay rentals and royalties with respect to unitized substances allocated to such lands thereunder, at the rate specified in their respective leases.

(3) In the event that a title dispute arises as to State lands or leases, no payment of funds due the State of Wyoming shall be withheld, but such funds shall be deposited as directed by the Commissioner of Public Lands to be held as unearned money pending final settlement of the title dispute, and then applied as earned or returned in accordance with such final settlement.

Each party to this agreement, holding any lease or leases of public lands from the State of Wyoming subject to this agreement, or holding any interest in or under such lease or leases or in the production from the lands covered thereby, agrees that said Board of Land Commissioners may, and by its approval thereof, does hereby alter, change, modify or revoke the drilling, producing and royalty requirements of such lease or leases, and the regulations in respect thereto, to conform the provisions of said lease or leases to the provisions of this agreement. Such parties and said Board further agree that, except as otherwise expressly provided in this agreement, no such lease shall be deemed to terminate or expire so long as it shall remain committed hereto. Notwithstanding anything to the contrary in Section 18 hereof contained, should any of the public lands of the State of Wyoming outside of a participating area established hereunder cease to be committed to this agreement, such lands shall thereafter be free from the effect of this agreement unless and until such lands are expressly recommitted to this agreement pursuant to Section 28 hereof, with the approval of the Board of Land Commissioners.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed and have set opposite their respective names the date of execution.

FLPMA



The Federal Land Policy and Management Act of 1976

As Amended

The Federal Land Policy and Management Act of 1976, as amended, is the Bureau of Land Management "organic act" that establishes the agency's multiple-use mandate to serve present and future generations.

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As Amended

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U.S. Department of the Interior
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FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Public Law 94-579
94th Congress

An Act

To establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled [italics in original],

Editor's Note

This version of FLPMA was created and updated to include all sections of the Act as originally passed by Congress in 1976; consequently, it is more inclusive and annotated than most. In the text, additions have been italicized and deletions have been removed. Editor's notes are in a different, smaller font, and are framed by brackets "[ ]."

This document was prepared by the Bureau of Land Management and the Office of the Solicitor. Great care was taken to ensure that all amendments were included correctly and with precision. Nevertheless, we recognize that this document still could contain errors. The user is encouraged to consult the official United States Code if there is any doubt about the accuracy of the information contained herein.

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TITLE I

SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

SHORT TITLE

Sec. 101. [43 U.S.C. 1701 note] This Act may be cited as the "Federal Land Policy and Management Act of 1976".

DECLARATION OF POLICY

Sec. 102. [43 U.S.C. 1701] (a) The Congress declares that it is the policy of the United States that–

(1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;

(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before the date of enactment of this Act be reviewed in accordance with the provisions of this Act;

(4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;

(5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decision making;

(6) judicial review of public land adjudication decisions be provided by law;

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;

(9) the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute;

(10) uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage;

(11) regulations and plans for the protection of public land areas of critical environmental concern be promptly developed;

(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from

the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and

(13) the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation.

(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.

DEFINITIONS

Sec. 103. [43 U.S.C. 1702] Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act–

(a) The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

(b) The term "holder" means any State or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under title V of this Act.

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) The term "public involvement" means the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

(e) The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except–

(1) lands located on the Outer Continental Shelf; and

(2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(f) The term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in title V of this Act.

(g) The term "Secretary," unless specifically designated otherwise, means the Secretary of the Interior.

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

(i) The term "wilderness" as used in section 603 shall have the same meaning as it does in section 2(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131–1136).

(j) The term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

(k) An "allotment management plan" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which:

(1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and

(2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.

(l) The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

(m) The term "department" means a unit of the executive branch of the Federal Government which is headed by a member of the President's Cabinet and the term "agency" means a unit of the executive branch of the Federal Government which is not under the jurisdiction of a head of a department.

(n) The term "Bureau" means the Bureau of Land Management.

(o) The term "eleven contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(p) The term "grazing permit and lease" means any document authorizing use of public lands or lands in National Forests in the eleven contiguous Western States for the purpose of grazing domestic livestock.

[The term "sixteen contiguous Western States," where changed by P.L. 95-514, refers to: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming. This term is defined by P.L. 95-514 and found in sections 401(b)(1), 402(a) and 403(a).]

TITLE II

LAND USE PLANNING; LAND ACQUISITION AND DISPOSITION

INVENTORY AND IDENTIFICATION

Sec. 201. [43 U.S.C. 1711] (a) The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

(b) As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands.

LAND USE PLANNING

Sec. 202. [43 U.S.C. 1712] (a) The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approval tribal land resource management programs.

(c) In the development and revision of land use plans, the Secretary shall–

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) give priority to the designation and protection of areas of critical environmental concern;

(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) consider present and potential uses of the public lands;

(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) weigh long-term benefits to the public against short-term benefits;

(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the

lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460l–4 et seq. note], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

(d) Any classification of public lands or any land use plan in effect on the date of enactment of this Act is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

(e) The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be

debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) Withdrawals made pursuant to section 204 of this Act may be used in carrying out management decisions, but public lands shall be removed from or restored to the operation of the Mining Law of 1872, as amended (R.S. 2318–2352; 30 U.S.C. 21 et seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to section 204 or other action pursuant to applicable law: *Provided*, That nothing in this section shall prevent a wholly owned Government corporation from acquiring and holding rights as a citizen under the Mining Law of 1872.

(f) The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.

SALES

Sec. 203. [43 U.S.C. 1713] (a) A tract of the public lands (except land in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails) may be sold under this Act where, as a result of land use planning required under section 202 of this Act, the Secretary determines that the sale of such tract meets the following disposal criteria:

(1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or

(2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

(b) Where the Secretary determines that land to be conveyed under clause (3) of subsection (a) of this section is of agricultural value and is desert in character, such land shall be conveyed either under the sale authority of this section or in accordance with other existing law.

(c) Where a tract of the public lands in excess of two thousand five hundred acres has been designated for sale, such sale may be made only after the end of the ninety days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the day the Secretary has submitted notice of such designation to the Senate and the House of Representatives, and then only if the Congress has not adopted a concurrent resolution stating that such House does not approve of such designation. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the designation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same designation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the

consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(d) Sales of public lands shall be made at a price not less than their fair market value as determined by the Secretary.

(e) The Secretary shall determine and establish the size of tracts of public lands to be sold on the basis of the land use capabilities and development requirements of the lands; and, where any such tract which is judged by the Secretary to be chiefly valuable for agriculture is sold, its size shall be no larger than necessary to support a family-sized farm.

(f) Sales of public lands under this section shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper in order (1) to assure equitable distribution among purchasers of lands, or (2) to recognize equitable considerations or public policies, including but not limited to, a preference to users, he may sell those lands with modified competitive bidding or without competitive bidding. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers:

(1) the State in which the land is located;

(2) the local government entities in such State which are in the vicinity of the land;

(3) adjoining landowners;

(4) individuals; and

(5) any other person.

(g) The Secretary shall accept or reject, in writing, any offer to purchase made through competitive bidding at his invitation no later than thirty days after the receipt of such offer or, in the case of a tract in excess of two thousand five hundred acres, at the end of thirty days after the end of the ninety-day period provided in subsection (c) of this section, whichever is later, unless the offeror waives his right to a decision within such thirty-day period. Prior to the expiration of such periods the Secretary may refuse to accept any offer or may withdraw any land or interest in land from sale under this section when he determines that consummation of the sale would not be consistent with this Act or other applicable law.

WITHDRAWALS

Sec. 204. [43 U.S.C. 1714] (a) On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

(b) (1) Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of two years from the date of the notice.

(2) The publication provisions of this subsection are not applicable to withdrawals under subsection (e) hereof.

(c) (1) On and after the dates of approval of this Act a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at

the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) With the notices required by subsection (c)(1) of this section and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees–

(1) a clear explanation of the proposed use of the land involved which led to the withdrawal;

(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;

(3) an identification of present users of the land involved, and how they will be affected by the proposed use;

(4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;

(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;

(6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;

(7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;

(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;

(9) a statement of the expected length of time needed for the withdrawal;

(10) the time and place of hearings and of other public involvement concerning such withdrawal;

(11) the place where the records on the withdrawal can be examined by interested parties; and

(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

(d) A withdrawal aggregating less than five thousand acres may be made under this subsection by the Secretary on his own motion or upon request by a department or an agency head–

(1) for such period of time as he deems desirable for a resource use; or

(2) for a period of not more than twenty years for any other use, including but not limited to use for administrative sites, location of facilities, and other proprietary purposes; or

(3) for a period of not more than five years to preserve such tract for a specific use then under consideration by the Congress.

(e) When the Secretary determines, or when the *Committee on Natural Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate* [P.L. 103-437, 1994] notifies the Secretary, that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost, the Secretary notwithstanding the provisions of subsections (c) (1) and (d) of this section, shall immediately make a withdrawal and file notice of such emergency withdrawal with *both of those Committees* [P.L. 103-437, 1994]. Such emergency withdrawal shall be effective when made but shall last only for a period not to exceed three years and may not be extended except under the provisions of subsection (c) (1) or (d), whichever is applicable, and (b) (1) of this section. The information required in subsection (c) (2) of this subsection shall be furnished the committees within three months after filing such notice.

(f) All withdrawals and extensions thereof, whether made prior to or after approval of this Act, having a specific period shall be reviewed by the Secretary toward the end of the withdrawal period and may be extended or further extended only upon compliance with the provisions of subsection (c) (1) or (d), whichever is applicable, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period no longer than the length of the original withdrawal period. The Secretary shall report on such review and extensions to the *Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.* [P.L. 103-437, 1994]

(g) All applications for withdrawal pending on the date of approval of this Act shall be processed and adjudicated to conclusion within fifteen years of the date of approval of this Act, in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date.

(h) All new withdrawals made by the Secretary under this section (except an emergency withdrawal made under subsection (e) of this section) shall be promulgated after an opportunity for a public hearing.

(i) In the case of lands under the administration of any department or agency other than the Department of the Interior, the Secretary shall make, modify, and revoke withdrawals only with the consent of the head of the department or agency concerned, except when the provisions of subsection (e) of this section apply.

(j) The Secretary shall not make, modify, or revoke any withdrawal created by Act of Congress; make a withdrawal which can be made only by Act of Congress; modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433); or modify, or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to the date of approval of this Act or which thereafter adds lands to that System under the terms of this Act. Nothing in this Act is intended to modify or change any provision of the Act of February 27, 1976 (90 Stat. 199; 16 U.S.C. 668dd (a)).

(k) There is hereby authorized to be appropriated the sum of $10,000,000 for the purpose of processing withdrawal applications pending on the effective date of this Act, to be available until expended.

(l) (1) The Secretary shall, within fifteen years of the date of enactment of this Act, review withdrawals existing on the date of approval of this Act, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming of (1) all Federal lands other than withdrawals of the public lands

administered by the Bureau of Land Management and of lands which, on the date of approval of this Act, were part of Indian reservations and other Indian holdings, the National Forest System, the National Park System, the National Wildlife Refuge System, other lands administered by the Fish and Wildlife Service or the Secretary through the Fish and Wildlife Service, the National Wild and Scenic Rivers System, and the National System of Trails; and (2) all public lands administered by the Bureau of Land Management and of lands in the National Forest System (except those in wilderness areas, and those areas formally identified as primitive or natural areas or designated as national recreation areas) which closed the lands to appropriation under the Mining Law of 1872 (17 Stat. 91, as amended; 30 U.S.C. 22 et seq.) or to leasing under the Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(2) In the review required by paragraph (1) of this subsection, the Secretary shall determine whether, and for how long, the continuation of the existing withdrawal of the lands would be, in his judgment, consistent with the statutory objectives of the programs for which the lands were dedicated and of the other relevant programs. The Secretary shall report his recommendations to the President, together with statements of concurrence or nonconcurrence submitted by the heads of the departments or agencies which administer the lands. The President shall transmit this report to the President of the Senate and the Speaker of the House of Representatives, together with his recommendations for action by the Secretary, or for legislation. The Secretary may act to terminate withdrawals other than those made by Act of the Congress in accordance with the recommendations of the President unless before the end of ninety days (not counting days on which the Senate and the House of Representatives has adjourned for more than three consecutive days) beginning on the day the report of the President has been submitted to the Senate and the House of Representatives the Congress has adopted a concurrent resolution indicating otherwise. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) There are hereby authorized to be appropriated not more than $10,000,000 for the purpose of paragraph (1) of this subsection to be available until expended to the Secretary and to the heads of other departments and agencies which will be involved.

ACQUISITIONS

Sec. 205. [43 U.S.C. 1715] (a) Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided*, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are

confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by eminent domain within the boundaries of units of the National Forest System.

(b) Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.

(c) *Except as provided in subsection (e) of this section* [P.L. 99-632, 1986], lands and interests in lands acquired by the Secretary pursuant to this section or section 206 shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to the first section of the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315) (commonly known as the " Taylor Grazing Act"), they shall become a part of that district. Lands and interests in lands acquired pursuant to this section which are within boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable thereto.

(d) Lands and interests in lands acquired by the Secretary of Agriculture pursuant to this section shall, upon acceptance of title, become National Forest System lands subject to all the laws, rules, and regulations applicable thereto.

(e) *Lands acquired by the Secretary pursuant to this section or section 206* [43 U.S.C. 1716] *in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919* [16 U.S.C. 342] *(40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the revested or reconveyed lands exchanged for the lands acquired by the Secretary.* [P.L. 99-632, 1986]

EXCHANGES

Sec. 206. [43 U.S.C. 1716] (a) A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: *Provided*, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

(b) In exercising the exchange authority granted by subsection (a) or by section 205 (a) of this Act, the Secretary *concerned* [P.L. 100-409 §3, Aug. 20, 1988] may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired. For the purposes of this subsection, unsurveyed school sections which, upon survey by the Secretary, would become State lands, shall be considered as "non-Federal lands". The values of the lands exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. *The Secretary concerned and the other party or parties involved in the exchange may mutually agree to waive the requirement for the payment of money to equalize*

values where the Secretary concerned determines that the exchange will be expedited thereby and that the public interest will be better served by such a waiver of cash equalization payments and where the amount to be waived is no more than 3 per centum of the value of the lands being transferred out of Federal ownership or $15,000, whichever is less, except that the Secretary of Agriculture shall not agree to waive any such requirement for payment of money to the United States. [P.L. 100-409 §9, Aug. 20, 1988] The Secretary concerned shall try to reduce the amount of the payment of money to as small an amount as possible.

(c) Lands acquired by *the Secretary* by exchange under this section which are within the boundaries of *any unit* of the National Forest System, *National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress, or the boundaries of the California Desert Conservation Area, or the boundaries of any national conservation area or national recreation area established by Act of Congress, upon acceptance of title by the United States shall immediately be reserved for and become a part of the unit or area within which they are located, without further action by the Secretary, and shall thereafter be managed in accordance with all laws, rules, and regulations applicable to such unit or area.* [P.L. 100-409 §3, Aug. 20, 1988]

(d)(1) No later than ninety days after entering into an agreement to initiate an exchange of land or interests therein pursuant to this Act or other applicable law, the Secretary concerned and other party or parties involved in the exchange shall arrange for appraisal (to be completed within a time frame and under such terms as are negotiated by the parties) of the lands or interests therein involved in the exchange in accordance with subsection (f) of this section.

(2) If within one hundred and eighty days after the submission of an appraisal or appraisals for review and approval by the Secretary concerned, the Secretary concerned and the other party or parties involved cannot agree to accept the findings of an appraisal or appraisals, the appraisal or appraisals shall be submitted to an arbitrator appointed by the Secretary from a list of arbitrators submitted to him by the American Arbitration Association for arbitration to be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. Such arbitration shall be binding for a period of not to exceed two years on the Secretary concerned and the other party or parties involved in the exchange insofar as concerns the value of the lands which were the subject of the appraisal or appraisals.

(3) Within thirty days after the completion of the arbitration, the Secretary concerned and the other party or parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or to withdraw from the exchange. A decision to withdraw from the exchange may be made by either the Secretary concerned or the other party or parties involved.

(4) Instead of submitting the appraisal to an arbitrator, as provided in paragraph (2) of this section, the Secretary concerned and the other party or parties involved in an exchange may mutually agree to employ a process of bargaining or some other process to determine the values of the properties involved in the exchange.

(5) The Secretary concerned and the other party or parties involved in an exchange may mutually agree to suspend or modify any of the deadlines contained in this subsection.

(e) Unless mutually agreed otherwise by the Secretary concerned and the other party or parties involved in an exchange pursuant to this Act or other applicable law, all patents or titles to be issued for land or interests therein to be acquired by the Federal Government and lands or interests therein to be transferred out of Federal ownership shall be issued simultaneously after the Secretary concerned has taken any necessary steps to assure that the United States will receive acceptable title.

(f)(1) Within one year after August 20, 1988, the Secretaries of the Interior and Agriculture shall promulgate new and comprehensive rules and regulations governing exchanges of land and interests

therein pursuant to this Act and other applicable law. Such rules and regulations shall fully reflect the changes in law made by subsections (d) through (i) of this section and shall include provisions pertaining to appraisals of lands and interests therein involved in such exchanges.

(2) The provisions of the rules and regulations issued pursuant to paragraph (1) of this subsection governing appraisals shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions: Provided, however, That the provisions of such rules and regulations shall –

(A) ensure that the same nationally approved appraisal standards are used in appraising lands or interest therein being acquired by the Federal Government and appraising lands or interests therein being transferred out of Federal ownership; and

(B) with respect to costs or other responsibilities or requirements associated with land exchanges –

(i) recognize that the parties involved in an exchange may mutually agree that one party (or parties) will assume, without compensation, all or part of certain costs or other responsibilities or requirements ordinarily borne by the other party or parties; and

(ii) also permit the Secretary concerned, where such Secretary determines it is in the public interest and it is in the best interest of consummating an exchange pursuant to this Act or other applicable law, and upon mutual agreement of the parties, to make adjustments to the relative values involved in an exchange transaction in order to compensate a party or parties to the exchange for assuming costs or other responsibilities or requirements which would ordinarily be borne by the other party or parties.

As used in this subparagraph, the term "costs or other responsibilities or requirements" shall include, but not be limited to, costs or other requirements associated with land surveys and appraisals, mineral examinations, title searches, archeological surveys and salvage, removal of encumbrances, arbitration pursuant to subsection (d) of this section, curing deficiencies preventing highest and best use, and other costs to comply with laws, regulations and policies applicable to exchange transactions, or which are necessary to bring the Federal or non-Federal lands or interests involved in the exchange to their highest and best use for the appraisal and exchange purposes. Prior to making any adjustments pursuant to this subparagraph, the Secretary concerned shall be satisfied that the amount of such adjustment is reasonable and accurately reflects the approximate value of any costs or services provided or any responsibilities or requirements assumed.

(g) Until such time as new and comprehensive rules and regulations governing exchange of land and interests therein are promulgated pursuant to subsection (f) of this section, land exchanges may proceed in accordance with existing laws and regulations, and nothing in the Act shall be construed to require any delay in, or otherwise hinder, the processing and consummation of land exchanges pending the promulgation of such new and comprehensive rules and regulations. Where the Secretary concerned and the party or parties involved in an exchange have agreed to initiate an exchange of land or interests therein prior to the day of enactment of such subsections, subsections (d) through (i) of this section shall not apply to such exchanges unless the Secretary concerned and the party or parties involved in the exchange mutually agree otherwise.

(h)(1) Notwithstanding the provisions of this Act and other applicable laws which require that exchanges of land or interests therein be for equal value, where the Secretary concerned determines it is in the public interest and that the consummation of a particular exchange will be expedited thereby, the Secretary concerned may exchange lands or interests therein which are of approximately equal value in cases where –

(A) the combined value of the lands or interests therein to be transferred from Federal ownership by the Secretary concerned in such exchange is not more than $150,000; and

(B) the Secretary concerned finds in accordance with the regulations to be promulgated pur-

suant to subsection (f) of this section that a determination of approximately equal value can be made without formal appraisals, as based on a statement of value made by a qualified appraiser and approved by an authorized officer; and

(C) the definition of and procedure for determining "approximately equal value" has been set forth in regulations by the Secretary concerned and the Secretary concerned documents how such determination was made in the case of the particular exchange involved.

(2) As used in this subsection, the term "approximately equal value" shall have the same meaning with respect to lands managed by the Secretary of Agriculture as it does in the Act of January 22, 1983 (commonly known as the "Small Tracts Act").

(i)(1) Upon receipt of an offer to exchange lands or interests in lands pursuant to this Act or other applicable laws, at the request of the head of the department or agency having jurisdiction over the lands involved, the Secretary of the Interior may temporarily segregate the Federal lands under consideration for exchange from appropriation under the mining laws. Such temporary segregation may only be made for a period of not to exceed five years. Upon a decision not to proceed with the exchange or upon deletion of any particular parcel from the exchange offer, the Federal lands involved or deleted shall be promptly restored to their former status under the mining laws. Any segregation pursuant to this paragraph shall be subject to valid existing rights as of the date of such segregation.

(2) All non-Federal lands which are acquired by the United States through exchange pursuant to this Act or pursuant to other laws applicable to lands managed by the Secretary of Agriculture shall be automatically segregated from appropriation under the public land law, including the mining laws, for ninety days after acceptance of title by the United States. Such segregation shall be subject to valid existing rights as of the date of such acceptance of title. At the end of such ninety day period, such segregation shall end and such lands shall be open to operation of the public land laws and to entry, location, and patent under the mining laws except to the extent otherwise provided by this Act or other applicable law, or appropriate actions pursuant thereto.

[P.L. 100-409 §3, Aug. 20, 1988]

QUALIFIED CONVEYEES

Sec. 207. [43 U.S.C. 1717] No tract of land may be disposed of under this Act, whether by sale, exchange, or donation, to any person who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any State or of the United States.

CONVEYANCES

Sec. 208. [43 U.S.C. 1718] The Secretary shall issue all patents or other documents of conveyance after any disposal authorized by this Act. The Secretary shall insert in any such patent or other document of conveyance he issues, except in the case of land exchanges, for which the provisions of subsection 206 (b) of this Act shall apply, such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest: *Provided*, That a conveyance of lands by the Secretary, subject to such terms, covenants, conditions, and reservations, shall not exempt the grantee from compliance with applicable Federal or State law or State land use plans: *Provided further*, That the Secretary shall not make conveyances of public lands containing terms and conditions which would, at the time of the conveyance, constitute a violation of any law or regulation pursuant to State and local land use plans, or programs.

RESERVATION AND CONVEYANCE OF MINERALS

Sec. 209. [43 U.S.C. 1719] (a) All conveyances of title issued by the Secretary, except those involving land exchanges provided for in section 206, shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe,

except that if the Secretary makes the findings specified in subsection (b) of this section, the minerals may then be conveyed together with the surface to the prospective surface owner as provided in subsection (b).

(b) (1) The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate non-mineral development of the land and that such development is a more beneficial use of the land than mineral development.

(2) Conveyance of mineral interests pursuant to this section shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(3) Before considering an application for conveyance of mineral interests pursuant to this section–

(i) the Secretary shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance: *Provided*, That, if the administrative costs exceed the deposit, the applicant shall pay the outstanding amount; and, if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess; or

(ii) the applicant, with the consent of the Secretary, shall have conducted, and submitted to the Secretary the results of, such an exploratory program, in accordance with standards promulgated by the Secretary.

(4) Moneys paid to the Secretary for administrative costs pursuant to this subsection shall be paid to the agency which rendered the service and deposited to the appropriation then current.

COORDINATION WITH STATE AND LOCAL GOVERNMENTS

Sec. 210. [43 U.S.C. 1720] At least sixty days prior to offering for sale or otherwise conveying public lands under this Act, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such lands are located, in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance. The Secretary shall also promptly notify such public officials of the issuance of the patent or other document of conveyance for such lands.

OMITTED LANDS

Sec. 211. [43 U.S.C. 1721] Omitted Lands.– (a) The Secretary is hereby authorized to convey to States or their political subdivisions under the Recreation and Public Purposes Act (44 Stat. 741 as amended; 43 U.S.C. 869 et seq.), as amended, but without regard to the acreage limitations contained therein, unsurveyed islands determined by the Secretary to be public lands of the United States. The conveyance of any such island may be made without survey: *Provided, however*, That such island may be surveyed at the request of the applicant State or its political subdivision if such State or subdivision donates money or services to the Secretary for such survey, the Secretary accepts such money or services, and such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management. Any such island so surveyed shall not be conveyed without approval of such survey by the Secretary prior to the conveyance.

(b) (1) The Secretary is authorized to convey to States and their political subdivisions under the Recreation and Public Purposes Act, [43 U.S.C. 869 to 869-4] but without regard to the acreage limitations contained therein, lands other than islands determined by him after survey to be public lands of the United States erroneously or fraudulently omitted from the original surveys (hereinafter referred to as "omitted lands"). Any such conveyance shall not be made without a survey: *Provided*, That the prospective recipient may donate money or services to the Secretary for the surveying necessary prior to conveyance if the Secretary accepts such money or services, such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management, and such survey is approved by the Secretary prior to the conveyance.

(2) The Secretary is authorized to convey to the occupant of any omitted lands which, after survey, are found to have been occupied and developed for a five-year period prior to January 1, 1975, if the Secretary determines that such conveyance is in the public interest and will serve objectives which outweigh all public objectives and values which would be served by retaining such lands in Federal ownership. Conveyance under this subparagraph shall be made at not less than the fair market value of the land, as determined by the Secretary, and upon payment in addition of administrative costs, including the cost of making the survey, the cost of appraisal, and the cost of making the conveyance.

(c) (1) No conveyance shall be made pursuant to this section until the relevant State government, local government, and area wide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262) [42 U.S.C. 3334] and/or title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103–4) [31 U.S.C. 6506(a)-(e)] have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(2) The provisions of section 210 of this Act shall be applicable to all conveyances under this section.

(d) The final sentence of section 1(c) of the Recreation and Public Purposes Act [43 U.S.C. 869(c)] shall not be applicable to conveyances under this section.

(e) No conveyance pursuant to this section shall be used as the basis for determining the baseline between Federal and State ownership, the boundary of any State for purposes of determining the extent of a State's submerged lands or the line of demarcation of Federal jurisdiction, or any similar or related purpose.

(f) The provisions of this section shall not apply to any lands within the National Forest System, defined in the Act of August 17, 1974 (88 Stat. 476; 16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

(g) Nothing in this section shall supersede the provisions of the Act of December 22, 1928 (45 Stat. 1069; 43 U.S.C. 1068), as amended, and the Act of May 31, 1962 (76 Stat. 89), or any other Act authorizing the sale of specific omitted lands.

RECREATION AND PUBLIC PURPOSES ACT

Sec. 212. The Recreation and Public Purposes Act of 1926 (44 Stat. 741, as amended; 43 U.S.C. 869 et seq.), as amended, is further amended as follows:

(a) The second sentence of subsection (a) of the first section of that Act (43 U.S.C. 869(a)) is amended to read as follows: "Before the land may be disposed of under this Act it must be shown to the satisfaction of the Secretary that the land is to be used for an established or definitely proposed project, that the land involved is not of national significance nor more than is reasonably necessary for the proposed use, and that for proposals of over 640 acres comprehensive land use plans and zoning regulations applicable to the area in which the public lands to be disposed of are located have been adopted by the appropriate State or local authority. The Secretary shall provide an opportunity for participation by affected citizens in disposals under this Act, including public hearings or

meetings where he deems it appropriate to provide public comments, and shall hold at least one public meeting on any proposed disposal of more than six hundred forty acres under this Act."

(b) Subsection (b) (i) of the first section of that Act (43 U.S.C. 869(b)) is amended to read as follows:

"(b) Conveyances made in any one calendar year shall be limited as follows:

"(i) For recreational purposes:

"(A) To any State or the State park agency or any other agency having jurisdiction over the State park system of such State designated by the Governor of that State as its sole representative for acceptance of lands under this provision, hereinafter referred to as the State, or to any political subdivision of such State, six thousand four hundred acres, and such additional acreage as may be needed for small road-side parks and rest sites of not more than ten acres each.

"(B) To any nonprofit corporation or nonprofit association, six hundred and forty acres.

"(C) No more than twenty-five thousand six hundred acres may be conveyed for recreational purposes under this Act in any one State per calendar year. Should any State or political subdivision, however, fail to secure, in any one year, six thousand four hundred acres, not counting lands for small roadside parks and rest sites, conveyances may be made thereafter if pursuant to an application on file with the Secretary of the Interior on or before the last day of said year and to the extent that the conveyance would not have exceeded the limitations of said year."

(c) Section 2(a) of that Act (43 U.S.C. 869–1) is amended by inserting "or recreational purposes" immediately after "historic-monument purposes".

(d) Section 2(b) of that Act (43 U.S.C. 869–1) is amended by adding ", except that leases of such lands for recreational purposes shall be made without monetary consideration" after the phase "reasonable annual rental".

NATIONAL FOREST TOWNSITES

Sec. 213. The Act of July 31, 1958 (72 Stat. 438, 7 U.S.C. 1012a, 16 U.S.C. 478a), is amended to read as follows: "When the Secretary of Agriculture determines that a tract of National Forest System land in Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest System land for any one application. After public notice, and satisfactory showing of need therefor by any county, city, or other local governmental subdivision, the Secretary may offer such area for sale to a governmental subdivision at a price not less than the fair market value thereof: *Provided, however,* That the Secretary may condition conveyances of townsites upon the enactment, maintenance, and enforcement of a valid ordinance which assures any land so conveyed will be controlled by the governmental subdivision so that use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands."

UNINTENTIONAL TRESPASS ACT

Sec. 214. [43 U.S.C. 1722] (a) Notwithstanding the provisions of the Act of September 26, 1968 (82 Stat. 870; 43 U.S.C. 1431–1435), hereinafter called the "1968 Act," with respect to applications under the 1968 Act which were pending before the Secretary as of the effective date of this subsection and which he approves for sale under the criteria prescribed by the 1968 Act, he shall give the right of first refusal to those having a preference right under section 2 of the 1968 Act. The Secretary shall offer such lands to such preference right holders at their fair market value (exclusive of any values added to the land by such holders and their predecessors in interest) as determined by the Secretary as of September 26, 1973.

(b) Within three years after the date of approval of this Act, the Secretary shall notify the filers of applications subject to paragraph (a) of this section whether he will offer them the lands applied for and at what price; that is, their fair market value as of September 26, 1973, excluding any value added to the lands by the applicants or their predecessors in interest. He will also notify the President of the Senate and the Speaker of the House of Representatives of the lands which he has determined not to sell pursuant to paragraph (a) of this section and the reasons therefor. With respect to such lands which the Secretary determined not to sell, he shall take no other action to convey those lands or interests in them before the end of ninety days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the date the Secretary has submitted such notice to the Senate and House of Representatives. If, during that ninety-day period, the Congress adopts a concurrent resolution stating the length of time such suspension of action should continue, he shall continue such suspension for the specified time period. If the committee to which a resolution has been referred during the said ninety-day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the suspension of action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same suspension of action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(c) Within five years after the date of approval of this Act, the Secretary shall complete the processing of all applications filed under the 1968 Act and hold sales covering all lands which he has determined to sell thereunder.

Sec. 215. [43 U.S.C. 1723] (a) When the sole impediment to consummation of an exchange of lands or interests therein (hereinafter referred to as an exchange) determined to be in the public interest, is the inability of the Secretary of the Interior to revoke, modify, or terminate part or all of a withdrawal or classification because of the order (or subsequent modification or continuance thereof) of the United States District Court for the District of Columbia dated February 10, 1986, in Civil Action No. 85-2238 (National Wildlife Federation v. Robert E. Burford, et al.), the Secretary of the Interior is hereby authorized, notwithstanding such order (or subsequent modification or continuance thereof) to use the authority contained herein, in lieu of other authority provided in this Act including section 204, to revoke, modify, or terminate in whole or in part, withdrawals or classifications to the extent deemed necessary by the Secretary to enable the United States to transfer land or interests therein out of Federal ownership pursuant to an exchange.

(b) REQUIREMENTS. – The authority specified in subsection (a) of this section may be exercised only in cases where –

(1) a particular exchange is proposed to be carried out pursuant to this Act, as amended, or other applicable law authorizing such an exchange;

(2) the proposed exchange has been prepared in compliance with all laws applicable to such exchange;

(3) the head of each Federal agency managing the lands proposed for such transfer has submitted to the Secretary of the Interior a statement of concurrence with the proposed revocation, modification, or termination;

(4) at least sixty days have elapsed since the Secretary of the Interior has published in the Federal Register a notice of the proposed revocation, modification, or termination; and

(5) at least sixty days have elapsed since the Secretary of the Interior has transmitted to the Committee on Natural Resources [P.L. 103-437 1994] of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report which includes –

(A) a justification for the necessity of exercising such authority in order to complete an exchange;

(B) an explanation of the reasons why the continuation of the withdrawal or a classification or portion thereof proposed for revocation, modification, or termination is no longer necessary for the purposes of the statutory or other program or programs for which the withdrawal or classification was made or other relevant programs;

(C) assurances that all relevant documents concerning the proposed exchange or purchase for which such authority is proposed to be exercised (including documents related to compliance with the National Environmental Policy Act of 1969 and all other applicable provisions of law) are available for public inspection in the office of the Secretary concerned located nearest to the lands proposed for transfer out of Federal ownership in furtherance of such exchange and that the relevant portions of such documents are also available in the offices of the Secretary concerned in Washington, District of Columbia; and

(D) an explanation of the effect of the revocation, modification, or termination of a withdrawal or classification or portion thereof and the transfer of lands out of Federal ownership pursuant to the particular proposed exchange, on the objectives of the land management plan which is applicable at the time of such transfer to the land to be transferred out of Federal ownership.

(c) LIMITATIONS. – (1) Nothing in this section shall be construed as affirming or denying any of the allegations made by any party in the civil action specified in subsection (a), or as constituting an expression of congressional opinion with respect to the merits of any allegation, contention, or argument made or issue raised by any party in such action, or as expanding or diminishing the jurisdiction of the United States District Court for the District of Columbia.

(2) Except as specifically provided in this section, nothing in this section shall be construed as modifying, terminating, revoking, or otherwise affecting any provision of law applicable to land exchanges, withdrawals, or classifications.

(3) The availability or exercise of the authority granted in subsection (a) may not be considered by the Secretary of the Interior in making a determination pursuant to this Act or other applicable law as to whether or not any proposed exchange is in the public interest.

(d) TERMINATION. – The authority specified in subsection (a) shall expire either (1) on December 31, 1990, or (2) when the Court order (or subsequent modification or continuation thereof) specified in subsection (a) is no longer in effect, whichever occurs first. [P.L. 100-409 1988]

[The termination clause in subsection (d) was satisfied on November 4, 1988, when the Court order specified in subsection (a) was vacated by National Wildlife Federation v. Burford, 699 F. Supp. 327, 332 (D.D.C. 1988). That reversal was upheld in a 1989 Appeals court decision, 878 F.2d 422, and by the Supreme Court in 1990, 497 U.S. 871.]

TITLE III

ADMINISTRATION

BLM DIRECTORATE AND FUNCTIONS

Sec. 301. [43 U.S.C. 1731] (a) The Bureau of Land Management established by Reorganization Plan Numbered 3, of 1946 (5 U.S.C. App. 519) shall have as its head a Director. Appointments to the position of Director shall hereafter be made by the President, by and with the advice and consent of the Senate. The Director of the Bureau shall have a broad background and substantial experience in public land and natural resource management. He shall carry out such functions and shall perform such duties as the Secretary may prescribe with respect to the management of lands and resources under his jurisdiction according to the applicable provisions of this Act and any other applicable law.

(b) Subject to the discretion granted to him by Reorganization Plan Numbered 3 of 1950 (43 U.S.C. 1451 note), the Secretary shall carry out through the Bureau all functions, powers, and duties vested in him and relating to the administration of laws which, on the date of enactment of this section, were carried out by him through the Bureau of Land Management established by section 403 of Reorganization Plan Numbered 3 of 1946. The Bureau shall administer such laws according to the provisions thereof existing as of the date of approval of this Act as modified by the provisions of this Act or by subsequent law.

(c) In addition to the Director, there shall be an Associate Director of the Bureau and so many Assistant Directors, and other employees, as may be necessary, who shall be appointed by the Secretary subject to the provisions of title 5, United States Code [5 U.S.C. 101 et seq.], governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title [5 U.S.C. 5101 et seq., 5331] relating to classification and General Schedule pay rates.

(d) Nothing in this section shall affect any regulation of the Secretary with respect to the administration of laws administered by him through the Bureau on the date of approval of this section.

MANAGEMENT OF USE, OCCUPANCY, AND DEVELOPMENT

Sec. 302. [43 U.S.C. 1732] (a) The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

(b) In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act, and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under subsection (b) of section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as

enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species. Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

(c) The Secretary shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands and compliance with applicable State or Federal air or water quality standard or implementation plan: *Provided*, That such violation occurred on public lands covered by such instrument and occurred in connection with the exercise of rights and privileges granted by it: *Provided further*, That the Secretary shall terminate any such suspension no later than the date upon which he determines the cause of said violation has been rectified: *Provided further,* That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect health or safety or the environment: *Provided further,* That, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit, license, or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

(d) (1) The Secretary of the Interior, after consultation with the Governor of Alaska, may issue to the Secretary of Defense or to the Secretary of a military department within the Department of Defense or to the Commandant of the Coast Guard a nonrenewable general authorization to utilize public lands in Alaska (other than within a conservation system unit or the Steese National Conservation Area or the White Mountains National Recreation Area) for purposes of military maneuvering, military training, or equipment testing not involving artillery firing, aerial or other gunnery, or other use of live ammunition or ordnance.

(2) Use of public lands pursuant to a general authorization under this subsection shall be limited to areas where such use would not be inconsistent with the plans prepared pursuant to section 202. Each such use shall be subject to a requirement that the using department shall be responsible for any necessary cleanup and decontamination of the lands used, and to such other terms and conditions (including but not limited to restrictions on use of off-road or all-terrain vehicles) as the Secretary of the Interior may require to –

(A) minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved; and

(B) minimize the period and method of such use and the interference with or restrictions on other uses of the public lands involved.

(3) (A) A general authorization issued pursuant to this subsection shall not be for a term of more than three years and shall be revoked in whole or in part, as the Secretary of the Interior finds necessary, prior to the end of such term upon a determination by the Secretary of the Interior that there has been a failure to comply with its terms and conditions or that activities pursuant to such an authorization have had or might have a significant

adverse impact on the resources or values of the affected lands.

(B) Each specific use of a particular area of public lands pursuant to a general authorization under this subsection shall be subject to specific authorization by the Secretary and to appropriate terms and conditions, including such as are described in paragraph (2) of this subsection.

(4) Issuance of a general authorization pursuant to this subsection shall be subject to the provisions of section 202(f) of this Act, section 810 of the Alaska National Interest Lands Conservation Act, and all other applicable provisions of law. The Secretary of a military department (or the Commandant of the Coast Guard) requesting such authorization shall reimburse the Secretary of the Interior for the costs of implementing this paragraph. An authorization pursuant to this subsection shall not authorize the construction of permanent structures or facilities on the public lands.

(5) To the extent that public safety may require closure to public use of any portion of the public lands covered by an authorization issued pursuant to this subsection, the Secretary of the military department concerned or the Commandant of the Coast Guard shall take appropriate steps to notify the public concerning such closure and to provide appropriate warnings of risks to public safety.

(6) For purposes of this subsection, the term "conservation system unit" has the same meaning as specified in section 102 of the Alaska National Interest Lands Conservation Act [16 U.S.C. 3102]. [P.L. 100-586, 1988]

ENFORCEMENT AUTHORITY

Sec. 303. [43 U.S.C. 1733] (a) The Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon. Any person who knowingly and willfully violates any such regulation which is lawfully issued pursuant to this Act shall be fined no more than $1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate *judge* [P.L. 101-650, 1990] designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.

(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary under this Act.

(c) (1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. The Secretary shall negotiate on reasonable terms with such officials who have authority to enter into such contracts to enforce such Federal laws and regulations. In the performance of their duties under such contracts such officials and their agents are authorized to carry firearms; execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any evidentiary item as provided by Federal law. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities. While exercising the powers and authorities provided by such contract pursuant to this section, such law enforcement officials and their agents shall have all the immunities of Federal law enforcement officials.

(2) The Secretary may authorize Federal personnel or appropriate local officials to carry out his law enforcement responsibilities with respect to the public lands and their resources.

Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.

(d) In connection with the administration and regulation of the use and occupancy of the public lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or subdivision. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands.

(e) Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 601 of this Act for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of subsection (c) of this section.

(f) Nothing in this Act shall be construed as reducing or limiting the enforcement authority vested in the Secretary by any other statute.

(g) The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.

SERVICE CHARGES, REIMBURSEMENT PAYMENTS, AND EXCESS PAYMENTS

Sec. 304. [43 U.S.C. 1734] (a) Notwithstanding any other provision of law, the Secretary may establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands and may change and abolish such fees, charges, and commissions.

(b) The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands. The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. As used in this section "reasonable costs" include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities. In determining whether costs are reasonable under this section, the Secretary may take into consideration actual costs (exclusive of management overhead), the monetary value of the rights or privileges sought by the applicant, the efficiency to the government processing involved, that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, the public service provided, and other factors relevant to determining the reasonableness of the costs.

(c) In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

[43 U.S.C. 1734a] *In Fiscal Year 1997 and thereafter, all fees, excluding mining claim fees, in excess of the fiscal year 1996 collections established by the Secretary of the Interior under the authority of section 1734 of this title for processing, recording, or documenting authorizations to use public lands or public land natural resources (including cultural, historical, and mineral) and for providing specific services to public land users, and which are not presently being covered into any Bureau of Land Management appropriation accounts, and not otherwise dedicated by law for a specific distribution, shall be made immediately available for program operations in this account and remain available until expended.* [P.L. 104-208, 1996]

DEPOSITS AND FORFEITURES

Sec. 305. [43 U.S.C. 1735] (a) Any moneys received by the United States as a result of the forfeiture of a bond or other security by a resource developer or purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Secretary; or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to the public lands shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any improvement, protection, or rehabilitation work on those public lands which has been rendered necessary by the action which has led to the forfeiture, compromise, or settlement.

(b) Any moneys collected under this Act in connection with lands administered under the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), shall be expended for the benefit of such land only.

(c) If any portion of a deposit or amount forfeited under this Act is found by the Secretary to be in excess of the cost of doing the work authorized under this Act, the Secretary, upon application or otherwise, may cause a refund of the amount in excess to be made from applicable funds.

[43 U.S.C. 1735 note. P.L. 106-291, 2000, defines the conditions under which excess repair funds may be used to repair other lands. P.L. 106-291 was intended to clarify, but did not amend 43 U.S.C. 1735. It should be consulted when relevant (see Title I, "Service Charges, Deposits, And Forfeitures").]

WORKING CAPITAL FUND

Sec. 306. [43 U.S.C. 1736] (a) There is hereby established a working capital fund for the management of the public lands. This fund shall be available without fiscal year limitation for expenses necessary for furnishing, in accordance with the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, as amended), [40 U.S.C. 471 note] and regulations promulgated thereunder, supplies and equipment services in support of Bureau programs, including but not limited to, the purchase or construction of storage facilities, equipment yards, and related improvements and the purchase, lease, or rent of motor vehicles, aircraft, heavy equipment, and fire control and other resource management equipment within the limitations set forth in appropriations made to the Secretary for the Bureau.

(b) The initial capital of the fund shall consist of appropriations made for that purpose together with the fair and reasonable value at the fund's inception of the inventories, equipment, receivables, and other assets, less the liabilities, transferred to the fund. The Secretary is authorized to make such subsequent transfers to the fund as he deems appropriate in connection with the functions to be carried on through the fund.

(c) The fund shall be credited with payments from appropriations, and funds of the Bureau, other agencies of the Department of the Interior, other Federal agencies, and other sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities, supplies, equipment, and services (including depreciation and accrued annual leave). Such payments may be made in advance in connection with firm orders, or by way of reimbursement.

(d) There is hereby authorized to be appropriated a sum not to exceed $3,000,000 as initial capital of the working capital fund.

[43 U.S.C. 1736a] *There is hereby established in the Treasury of the United States a special fund to be derived hereafter* [October 5, 1992] *from the Federal share of moneys received from the disposal of salvage timber prepared for sale from the lands under the jurisdiction of the Bureau of Land Management, Department of the Interior. The money in this fund shall be immediately available to the Bureau of Land Management without further appropriation, for the purposes of planning and preparing salvage timber for disposal, the administration of salvage timber sales, and subsequent site preparation and reforestation.* [P.L. 102-381, 1992]

STUDIES, COOPERATIVE AGREEMENTS, AND CONTRIBUTIONS

Sec. 307. [43 U.S.C. 1737] (a) The Secretary may conduct investigations, studies, and experiments, on his own initiative or in cooperation with others, involving the management, protection, development, acquisition, and conveying of the public lands.

(b) Subject to the provisions of applicable law, the Secretary may enter into contracts and cooperative agreements involving the management, protection, development, and sale of public lands.

(c) The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition, and conveying of the public lands, including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or intermingled lands. Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function toward the administration of which the contributions were made and for refunds to depositors of amounts contributed by them in specific instances where contributions are in excess of their share of the cost.

(d) The Secretary may recruit, without regard to the civil service classification laws, rules, or regulations, the services of individuals contributed without compensation as volunteers for aiding in or facilitating the activities administered by the Secretary through the Bureau of Land Management.

(e) In accepting such services of individuals as volunteers, the Secretary –

(1) shall not permit the use of volunteers in hazardous duty or law enforcement work, or in policymaking processes or to displace any employee; and

(2) may provide for services or costs incidental to the utilization of volunteers, including transportation, supplies, lodging, subsistence, recruiting, training, and supervision.

(f) Volunteers shall not be deemed employees of the United States except for the purposes of – [P.L. 98-540, 1984]

(1) the tort claims provisions of title 28;

(2) subchapter 1 of chapter 81 of title 5; and

(3) claims relating to damage to, or loss of, personal property of a volunteer incident to volunteer service, in which case the provisions of 31 U.S.C. 3721 shall apply. [P.L. 101-286, 1990]

(g) Effective with fiscal years beginning after September 30, 1984, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of subsection (d), but not more than $250,000 may be appropriated for any one fiscal year. [P.L. 98-540, 1984]

CONTRACTS FOR SURVEYS AND RESOURCE PROTECTION

Sec. 308. [43 U.S.C. 1738] (a) The Secretary is authorized to enter into contracts for the use of aircraft, and for supplies and services, prior to the passage of an appropriation therefor, for airborne cadastral survey and resource protection operations of the Bureau. He may renew such contracts annually, not more than twice, without additional competition. Such contracts shall obligate funds for the fiscal years in which the costs are incurred.

(b) Each such contract shall provide that the obligation of the United States for the ensuing fiscal years is contingent upon the passage of an applicable appropriation, and that no payment shall be made under the contract for the ensuing fiscal years until such appropriation becomes available for expenditure.

ADVISORY COUNCILS AND PUBLIC PARTICIPATION

Sec. 309. [43 U.S.C. 1739] (a) The Secretary *shall* [P.L. 95-514, 1978] establish advisory councils of not less than ten and not more than fifteen members appointed by him from among persons who are representative of the various major citizens' interests concerning the problems relating to land use

planning or the management of the public lands located within the area for which an advisory council is established. At least one member of each council shall be an elected official of general purpose government serving the people of such area. To the extent practicable there shall be no overlap or duplication of such councils. Appointments shall be made in accordance with rules prescribed by the Secretary. The establishment and operation of an advisory council established under this section shall conform to the requirements of the Federal Advisory Committee Act (86 Stat. 770; 5 U. S.C. App. 1).

(b) Notwithstanding the provisions of subsection (a) of this section, each advisory council established by the Secretary under this section shall meet at least once a year with such meetings being called by the Secretary.

(c) Members of advisory councils shall serve without pay, except travel and per diem will be paid each member for meetings called by the Secretary.

(d) An advisory council may furnish advice to the Secretary with respect to the land use planning, classification, retention, management, and disposal of the public lands within the area for which the advisory council is established and such other matters as may be referred to it by the Secretary.

(e) In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.

RULES AND REGULATIONS

Sec. 310. [43 U.S.C. 1740] The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the provisions of chapter 5 of title 5 of the United States Code, without regard to section 553 (a) (2). Prior to the promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the extent practical.

PUBLIC LANDS PROGRAM REPORT

Sec. 311. [43 U.S.C. 1741] (a) For the purpose of providing information that will aid Congress in carrying out its oversight responsibilities for public lands programs and for other purposes, the Secretary shall prepare a report in accordance with subsections (b) and (c) and submit it to the Congress no later than one hundred and twenty days after the end of each fiscal year beginning with the report for fiscal year 1979.

(b) A list of programs and specific information to be included in the report as well as the format of the report shall be developed by the Secretary after consulting with the *Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate* [P.L. 103-437, 1994] and shall be provided to the committees prior to the end of the second quarter of each fiscal year.

(c) The report shall include, but not be limited to, program identification information, program evaluation information, and program budgetary information for the preceding current and succeeding fiscal years.

SEARCH AND RESCUE

Sec. 312. [43 U.S.C. 1742] Where in his judgment sufficient search, rescue, and protection forces are not otherwise available, the Secretary is authorized in cases of emergency to incur such expenses as may be necessary (a) in searching for and rescuing, or in cooperating in the search for and rescue of, persons lost on the public lands, (b) in protecting or rescuing, or in cooperating in the protection and rescue of, persons or animals endangered by an act of God, and (c) in transporting deceased persons

or persons seriously ill or injured to the nearest place where interested parties or local authorities are located.

SUNSHINE IN GOVERNMENT

Sec. 313. [43 U.S.C. 1743] (a) Each officer or employee of the Secretary and the Bureau who–

(1) performs any function or duty under this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit, lease, or right-of-way under, or (B) applies for or acquires any land or interests therein under, or (C) is otherwise subject to the provisions of, this Act, shall, beginning on February 1, 1977, annually file with the Secretary a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) The Secretary shall–

(1) act within ninety days after the date of enactment of this Act–

(A) to define the term "known financial interests" for the purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Sec. 314. [43 U.S.C. 1744] (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28–1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to the date of approval of this Act shall, within the three-year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after the date of approval of this Act shall, within ninety days after the date of

location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

(d) Such recordation or application by itself shall not render valid any claim which would not be otherwise valid under applicable law. Nothing in this section shall be construed as a waiver of the assessment and other requirements of such law.

RECORDABLE DISCLAIMERS OF INTEREST IN LAND

Sec. 315. [43 U.S.C. 1745] (a) After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States.

(b) No document or disclaimer shall be issued pursuant to this section unless the applicant therefor has filed with the Secretary an application in writing and notice of such application setting forth the grounds supporting such application has been published in the Federal Register at least ninety days preceding the issuance of such disclaimer and until the applicant therefor has paid to the Secretary the administrative costs of issuing the disclaimer as determined by the Secretary. All receipts shall be deposited to the then-current appropriation from which expended.

(c) Issuance of a document of disclaimer by the Secretary pursuant to the provisions of this section and regulations promulgated hereunder shall have the same effect as a quit-claim deed from the United States.

CORRECTION OF CONVEYANCE DOCUMENTS

Sec. 316. [43 U.S.C. 1746] The Secretary may correct patents or documents of conveyance issued pursuant to section 208 of this Act or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands.

MINERAL REVENUES

Sec. 317. [30 U.S.C. 191] (a) Section 35 of the Act of February 25, 1920 (41 Stat. 437, 450; 30 U.S.C. 181, 191), as amended, is further amended to read as follows: "All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 note.], notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of

public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act [43 U.S.C. 391 note.], approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 note.] from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts', as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts."

(b) Funds now held pursuant to said section 35 [30 U.S.C. 191 note.] by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C-A; C-B; U-A and U-B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services.

[43 U.S.C. 1747](c)(1) The Secretary is authorized to make loans to States and their political subdivisions in order to relieve social or economic impacts occasioned by the development of minerals leased in such States pursuant to the Act of February 25, 1920, as amended [30 U.S.C. 181 et seq.]. Such loans shall be confined to the uses specified for the 50 per centum of mineral leasing revenues to be received by such States and subdivisions pursuant to section 35 of such Act [30 U.S.C. 191].

(2) The total amount of loans outstanding pursuant to this subsection for any State and political subdivisions thereof in any year shall be not more than the anticipated mineral leasing revenues to be received by that State pursuant to section 35 of the Act of February 25, 1920, as amended [30 U.S.C. 191], for the ten years following.

(3) The Secretary, after consultation with the Governors of the affected States, shall allocate such loans among the States and their political subdivisions in a fair and equitable manner, giving priority to those States and subdivisions suffering the most severe impacts.

(4) Loans made pursuant to this subsection shall be subject to such terms and conditions as the Secretary determines necessary to assure the achievement of the purpose of this subsection. The Secretary shall promulgate such regulations as may be necessary to carry out the provisions of this subsection no later than three months after August 20, 1978.

(5) Loans made pursuant to this subsection shall bear interest equivalent to the lowest interest rate paid on an issue of at least $1,000,000 of tax exempt bonds of such State or any agency thereof within the preceding calendar year.

(6) Any loan made pursuant to this subsection shall be secured only by a pledge of the revenues received by the State or the political subdivision thereof pursuant to section 35 of the Act of February 25, 1920, as amended [30 U.S.C. 191], and shall not constitute an obligation upon the general property or taxing authority of such unit of government.

(7) Notwithstanding any other provision of law, loans made pursuant to this subsection may be used for the non-Federal share of the aggregate cost of any project or program otherwise funded by the Federal Government which requires a non-Federal share for such project or program and which provides planning or public facilities otherwise eligible for assistance under this subsection.

(8) Nothing in this subsection shall be construed to preclude any forbearance for the benefit of the borrower including loan restructuring, which may be determined by the Secretary as justified by the failure of anticipated mineral development or related revenues to materialize as expected when the loan was made pursuant to this subsection.

(9) Recipients of loans made pursuant to this subsection shall keep such records as the Secretary shall prescribe by regulation, including records which fully disclose the disposition of the proceeds of such assistance and such other records as the Secretary may require to facilitate an effective audit. The Secretary and the Comptroller General of the United States or their duly authorized representatives shall have access, for the purpose of audit, to such records.

(10) No person in the United States shall, on the grounds of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or part with funds made available under this subsection.

(11) All amounts collected in connection with loans made pursuant to this subsection, including interest payments or repayments of principal on loans, fees, and other moneys, derived in connection with this subsection, shall be deposited in the Treasury as miscellaneous receipts. [P.L. 95-352, 1978]

APPROPRIATION AUTHORIZATION

Sec. 318. [43 U.S.C. 1748] (a) There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes and provisions of this Act, but no amounts shall be appropriated to carry out after *October 1, 2002* [P.L. 104-333, 1996], any program, function, or activity of the Bureau under this or any other Act unless such sums are specifically authorized to be appropriated as of October 21, 1976, or are authorized to be appropriated in accordance with the provisions of subsection (b) of this section.

(b) Consistent with section 607 of the Congressional Budget Act of 1974 [31 U.S.C. 1110], beginning May 15, 1977, and not later than May 15 of each second even numbered year thereafter, the Secretary shall submit to the Speaker of the House of Representatives and the President of the Senate a request for the authorization of appropriations for all programs, functions, and activities of the Bureau to be carried out during the four-fiscal-year period beginning on October 1 of the calendar year following the calendar year in which such request is submitted. The Secretary shall include in his request, in addition to the information contained in his budget request and justification statement to the Office of Management and Budget, the funding levels which he determines can be efficiently and effectively utilized in the execution of his responsibilities for each such program, function, or activity, notwithstanding any budget guidelines or limitations imposed by any official or agency of the executive branch.

(c) Nothing in this section shall apply to the distribution of receipts of the Bureau from the disposal of lands, natural resources, and interests in lands in accordance with applicable law, nor to the use of contributed funds, private deposits for public survey work, and townsite trusteeships, nor to fund allocations from other Federal agencies, reimbursements from both Federal and non-Federal sources, and funds expended for emergency firefighting and rehabilitation.

(d) In exercising the authority to acquire by purchase granted by subsection (a) of section 205 of this Act, the Secretary may use the Land and Water Conservation Fund to purchase lands which are necessary for proper management of public lands which are primarily of value for outdoor recreation purposes.

TITLE IV

RANGE MANAGEMENT

GRAZING FEES

Sec. 401. [43 U.S.C. 1751] (a) The Secretary of Agriculture and the Secretary of the Interior shall jointly cause to be conducted a study to determine the value of grazing on the lands under their jurisdiction in the eleven Western States with a view to establishing a fee to be charged for domestic livestock grazing on such lands which is equitable to the United States and to the holders of grazing permits and leases on such lands. In making such study, the Secretaries shall take into consideration the costs of production normally associated with domestic livestock grazing in the eleven Western States, differences in forage values, and such other factors as may relate to the reasonableness of such fees. The Secretaries shall report the result of such study to the Congress not later than one year from and after the date of approval of this Act, together with recommendations to implement a reasonable grazing fee schedule based upon such study. If the report required herein has not been submitted to the Congress within one year after the date of approval of this Act, the grazing fee charge then in effect shall not be altered and shall remain the same until such report has been submitted to the Congress. Neither Secretary shall increase the grazing fee in the 1977 grazing year.

(b) (1) Congress finds that a substantial amount of the Federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and could lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. Congress therefore directs that 50 per centum or *$10,000,000 per annum, whichever is greater* [P.L. 95-514, 1978] of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than from ceded Indian lands) under the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315 et seq.) and the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181d), and on lands in National Forests in the *sixteen* [P.L. 95-514, 1978] contiguous Western States under the provisions of this section shall be credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appropriated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range management. Such rehabilitation, protection, and improvements shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement as the respective Secretary may direct after consultation with user representatives. The annual distribution and use of range betterment funds authorized by this paragraph shall not be considered a major Federal action requiring a detailed statement pursuant to section 4332(c) of title 42 of the United States Code.

(2) The first clause of section 10 (b) of the Taylor Grazing Act (48 Stat. 1269), as amended by the Act of August 6, 1947 (43 U.S.C. 315i), [43 U.S.C. 1751] is hereby repealed. All distributions of moneys made under section (b) (1) of this section shall be in addition to distributions made under section 10 of the Taylor Grazing Act [43 U.S.C. 315i] and shall not apply to distribution of moneys made under section 11 of that Act [43 U.S.C. 315j]. The

remaining moneys received by the United States as fees for grazing domestic livestock on the public lands shall be deposited in the Treasury as miscellaneous receipts.

(3) Section 3 of the Taylor Grazing Act, [43 U.S.C. 315b] as amended (43 U.S.C. 315), is further amended by–

(a) Deleting the last clause of the first sentence thereof, which begins with "and in fixing," deleting the comma after "time," and adding to that first sentence the words "in accordance with governing law."

(b) Deleting the second sentence thereof.

GRAZING LEASES AND PERMITS

Sec. 402. [43 U.S.C. 1752] (a) Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a-1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the *sixteen* [P.L. 95-914, 1978] contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b) Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that–

(1) the land is pending disposal; or

(2) the land will be devoted to a public purpose prior to the end of ten years; or

(3) it will be in the best interest of sound land management to specify a shorter term: *Provided, That the absence from an allotment management plan of details the Secretary concerned would like to include but which are undeveloped shall not be the basis for establishing a term shorter than ten years: Provided further, That the absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless the Secretary determines on a case-by-case basis that the information to be contained in such land use plan or court ordered environmental impact statement is necessary to determine whether a shorter term should be established for any of the reasons set forth in items (1) through (3) of this subsection.* [P.L. 95-914, 1978]

(c) So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 202 of this Act or section 5 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 477; 16 U.S.C. 1601), (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

(d) All permits and leases for domestic livestock grazing issued pursuant to this section may incorporate an allotment management plan developed by the Secretary concerned. However, nothing in this subsection shall be construed to supersede any requirement for completion of court ordered environmental impact statements prior to development and incorporation of allotment management plans. If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the district grazing advisory boards established pursuant to section 403 of the Federal Land Policy and Management Act (43 U.S.C. 1753), and any State or States having lands within the area to be

covered by such allotment management plan. Allotment management plans shall be tailored to the specific range condition of the area to be covered by such plan, and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved or whether such lands can be better managed under the provisions of subsection (e) of this section. The Secretary concerned may revise or terminate such plans or develop new plans from time to time after such review and careful and considered consultation, cooperation and coordination with the parties involved. As used in this subsection, the terms "court ordered environmental impact statement" and "range condition" shall be defined as in the "Public Rangelands Improvement Act of 1978(43 U.S.C. 1901 et seq.)". [P.L. 95-514, 1978]

(e) *In* [P.L. 95-514, 1978] all cases where the Secretary concerned has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations and will not be prepared, the Secretary concerned shall incorporate in grazing permits and leases such terms and conditions as he deems appropriate for management of the permitted or leased lands pursuant to applicable law. The Secretary concerned shall also specify therein the numbers of animals to be grazed and the seasons of use and that he may reexamine the condition of the range at any time and, if he finds on reexamination that the conditions of the range requires adjustment in the amount or other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned.

(f) Allotment management plans shall not refer to livestock operations or range improvements on non-Federal lands except where the non-Federal lands are intermingled with, or, with the consent of the permittee or lessee involved, associated with, the Federal lands subject to the plan. The Secretary concerned under appropriate regulations shall grant to lessees and permittees the right of appeal from decisions which specify the terms and conditions of allotment management plans. The preceding sentence of this subsection shall not be construed as limiting any other right of appeal from decisions of such officials.

(g) Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under this subsection without two years' prior notification.

(h) Nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits and leases.

GRAZING ADVISORY BOARDS

Sec. 403. [43 U.S.C. 1753] (a) For each Bureau district office and National Forest headquarters office in the *sixteen* [P.L. 95-514, 1978] contiguous Western States having jurisdiction over more than five hundred thousand acres of lands subject to commercial livestock grazing (hereinafter in this section referred to as "office"), the Secretary and the Secretary of Agriculture, upon the petition of a simple majority of the livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one grazing advisory board of not more than fifteen advisers.

(b) The function of grazing advisory boards established pursuant to this section shall be to offer advice and make recommendations to the head of the office involved concerning the development of allotment management plans and the utilization of range-betterment funds.

(c) The number of advisers on each board and the number of years an adviser may serve shall be

determined by the Secretary concerned in his discretion. Each board shall consist of livestock representatives who shall be lessees or permittees in the area administered by the office concerned and shall be chosen by the lessees and permittees in the area through an election prescribed by the Secretary concerned.

(d) Each grazing advisory board shall meet at least once annually.

(e) Except as may be otherwise provided by this section, the provisions of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S. C. App. 1) shall apply to grazing advisory boards.

(f) The provisions of this section shall expire December 31, 1985.

MANAGEMENT OF CERTAIN HORSES AND BURROS

Sec. 404. Sections 9 and 10 of the Act of December 15, 1971 (85 Stat. 649, 651; 16 U.S.C. 1331, 1339–1340) are renumbered as sections 10 and 11, respectively, and the following new section is inserted after section 8:

"Sec. 9. [16 U.S.C. 1338a] In administering this Act, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47(a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary."

[16 U.S.C. 1338a Note: Subsequent amendments were made to this section in 1996 concerning management of the National Park System.]

TITLE V

RIGHTS-OF-WAY

AUTHORIZATION TO GRANT RIGHTS-OF-WAY

Sec. 501. [43 U.S.C. 1761] (a) The Secretary, with respect to the public lands *(including public lands, as defined in section 103(e) of this Act, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. 818))* [P.L. 102-486, 1992] and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-or-way over, upon, under, or through such lands for–

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the *Federal Energy Regulatory Commission under the Federal Power Act, including part I thereof* (41 Stat. 1063, 16 U.S.C. 791a-825r) [P.L. 102-486, 1992];

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

(b) (1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-to-way pursuant to this title, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each share-holder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting

stock of that entity owned, directly or indirectly, by the affiliate.

(3) The Secretary of Agriculture shall have the authority to administer all rights-of-way granted or issued under authority of previous Acts with respect to lands under the jurisdiction of the Secretary of Agriculture, including rights-of-way granted or issued pursuant to authority given to the Secretary of the Interior by such previous Acts. [P.L. 99-545, 1986]

(c) (1) Upon receipt of a written application pursuant to paragraph (2) of this subsection from an applicant meeting the requirements of this subsection, the Secretary of Agriculture shall issue a permanent easement, without a requirement for reimbursement, for a water system as described in subsection (a)(1) of this section, traversing Federal lands within the National Forest System ('National Forest Lands'), constructed and in operation or placed into operation prior to October 21, 1976, if –

(A) the traversed National Forest lands are in a State where the appropriation doctrine governs the ownership of water rights;

(B) at the time of submission of the application the water system is used solely for agricultural irrigation or livestock watering purposes;

(C) the use served by the water system is not located solely on Federal lands;

(D) the originally constructed facilities comprising such system have been in substantially continuous operation without abandonment;

(E) the applicant has a valid existing right, established under applicable State law, for water to be conveyed by the water system;

(F) a recordable survey and other information concerning the location and characteristics of the system as necessary for proper management of National Forest lands is provided to the Secretary of Agriculture by the applicant for the easement; and

(G) the applicant submits such application on or before December 31, 1996.

(2) (A) Nothing in this subsection shall be construed as affecting any grants made by any previous Act. To the extent any such previous grant of right-of-way is a valid existing right, it shall remain in full force and effect unless an owner thereof notifies the Secretary of Agriculture that such owner elects to have a water system on such right-of-way governed by the provision of this subsection and submits a written application for issuance of an easement pursuant to this subsection, in which case upon the issuance of an easement pursuant to this subsection such previous grant shall be deemed to have been relinquished and shall terminate.

(B) Easements issued under the authority of this subsection shall be fully transferable with all existing conditions and without the imposition of fees or new conditions or stipulations at the time of transfer. The holder shall notify the Secretary of Agriculture within sixty days of any address change of the holder or change in ownership of the facilities.

(C) Easements issued under the authority of this subsection shall include all changes or modifications to the original facilities in existence as of October 21, 1976, the date of enactment of this Act.

(D) Any future extension or enlargement of facilities after October 21, 1976, shall require the issuance of a separate authorization, not authorized under this subsection.

(3) (A) Except as otherwise provided in this subsection, the Secretary of Agriculture may terminate or suspend an easement issued pursuant to this subsection in accordance with the procedural and other provisions of section 506 [43 U.S.C. 1766] *of this Act. An easement issued pursuant to this subsection shall terminate if the water system for which such easement was issued is used for any purpose other than agricultural irrigation or livestock watering use. For purposes of subparagraph (D) of paragraph (1) of this subsection, non-use of a water system for agricultural irrigation or livestock watering purposes for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the facilities comprising such system.*

(B) Nothing in this subsection shall be deemed to be an assertion by the United States of any right

or claim with regard to the reservation, acquisition, or use of water. Nothing in this subsection shall be deemed to confer on the Secretary of Agriculture any power or authority to regulate or control in any manner the appropriation, diversion, or use of water for any purpose (nor to diminish any such power to authority of such Secretary under applicable law) or to require the conveyance or transfer to the United States of any right or claim to the appropriation, diversion, or use of water.

(C) Except as otherwise provided in this subsection, all rights-of-way issued pursuant to this subsection are subject to all conditions and requirements of this Act.

(D) In the event a right-of-way issued pursuant to this subsection is allowed to deteriorate to the point of threatening persons or property and the holder of the right-of-way, after consultation with the Secretary of Agriculture, refuses to perform the repair and maintenance necessary to remove the threat to persons or property, the Secretary shall have the right to undertake such repair and maintenance on the right-of-way and to assess the holder for the costs of such repair and maintenance, regardless of whether the Secretary had required the holder to furnish a bond or other security pursuant to subsection (i) of this section. [P.L. 99-545, 1986]

(d) With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act [16 U.S.C. 791a et seq.] which is located on lands subject to a reservation under section 24 of the Federal Power Act [16 U.S.C. 818] and which did not receive a permit, right-of-way or other approval under this section prior to enactment of this subsection, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to section 15 of the Federal Power Act [16 U.S.C. 808]*, of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation.* [P.L. 102-486, 1992]

COST-SHARE ROAD AUTHORIZATION

Sec. 502. [43 U.S.C. 1762] (a) The Secretary, with respect to the public lands, is authorized to provide for the acquisition, construction, and maintenance of roads within and near the public lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of timber and other products from the public lands, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That, where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of timber and other products from public lands shall not, except when the provisions of the second proviso of this subsection apply, be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate: *Provided further,* That when timber is offered with the condition that the purchaser thereof will build a road or roads in accordance with standards specified in the offer, the purchaser of the timber will be responsible for paying the full costs of construction of such roads.

(b) Copies of all instruments affecting permanent interests in land executed pursuant to this section shall be recorded in each county where the lands are located.

(c) The Secretary may require the user or users of a road, trail, land, or other facility administered by him through the Bureau, including purchasers of Government timber and other products, to maintain such facilities in a satisfactory condition commensurate with the particular use requirements

of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a facility to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

(d) Whenever the agreement under which the United States has obtained for the use of, or in connection with, the public lands a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

RIGHT-OF-WAY CORRIDORS

Sec. 503. [43 U.S.C. 1763] In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act. In designating right-of-way corridors and in determining whether to require that rights-of-way be confined to them, the Secretary concerned shall take into consideration national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary concerned shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

GENERAL PROVISIONS

Sec. 504. [43 U.S.C. 1764] (a) The Secretary concerned shall specify the boundaries of each right-of-way as precisely as is practical. Each right-of-way shall be limited to the ground which the Secretary concerned determines (1) will be occupied by facilities which constitute the project for which the right-of-way is granted, issued, or renewed, (2) to be necessary for the operation or maintenance of the project, (3) to be necessary to protect the public safety, and (4) will do no unnecessary damage to the environment. The Secretary concerned may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) Each right-of-way or permit granted, issued, or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project. In determining the duration of a right-of-way the Secretary concerned shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The right-of-way shall specify whether it is or is not renewable and the terms and conditions applicable to the renewal.

(c) Rights-of-way shall be granted, issued, or renewed pursuant to this title under such regulations or stipulations, consistent with the provisions of this title or any other applicable law, and shall also be subject to such terms and conditions as the Secretary concerned may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination.

(d) The Secretary concerned prior to granting or issuing a right-of-way pursuant to this title for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulations or with regulations issued by that Secretary, including the terms and conditions required under section 505 of this Act.

(e) The Secretary concerned shall issue regulations with respect to the terms and conditions that will be included in rights-of-way pursuant to section 505 of this title. Such regulations shall be regularly revised as needed. Such regulations shall be applicable to every right-of-way granted or issued pursuant to this title and to any subsequent renewal thereof, and may be applicable to rights-of-way not granted or issued, but renewed pursuant to this title.

(f) Mineral and vegetative materials, including timber, within or without a right-of-way, may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws or *for emergency repair work necessary for those rights-of-way authorized under section 501(c) of this Act.* [P.L. 99-545, 1986]

(g) *The holder of a right-of-way shall pay in advance the fair market value thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way. The Secretary concerned may require either annual payment or a payment covering more than one year at a time except that private individuals may make at their option either annual payments or payments covering more than one year if the annual fee is greater than one hundred dollars. The Secretary concerned may waive rentals where a right-of-way is granted, issued or renewed in consideration of a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder.* [P.L. 99-545, 1986] The Secretary concerned may, by regulation or prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: *Provided, however,* That the Secretary concerned need not secure reimbursement in any situation where there is in existence a cooperative cost share right-of-way program between the United States and the holder of a right-of-way. Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profit making corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest. Such rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The moneys received for reimbursement of reasonable costs shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. *Rights-of-way shall be granted, issued, or renewed, without rental fees, for electric or telephone facilities, eligible for financing pursuant to the Rural Electrification Act of 1936, as amended [7 U.S.C. 901 et seq.], determined without regard to any application requirement under that Act,* [P.L. 104-333, 1996] *or any extensions from such facilities: Provided, That nothing in this sentence shall be construed to affect the authority of the Secretary granting, issuing, or renewing the right-of-way to require reimbursement of reasonable administrative and other costs pursuant to the second sentence of this subsection.* [P.L. 98-300, 1984]

[43 U.S.C. 1764 Note: effective date shall apply with respect to rights-of-way leases held on or after the date of enactment of this Act. [P.L. 104-333, 1996]]

(h) (1) The Secretary concerned shall promulgate regulations specifying the extent to which holders of rights-of-way under this title shall be liable to the United States for damage or injury incurred by the United States caused by the use and occupancy of the rights-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages, or claims caused by their use and occupancy of the rights-of-way.

(2) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(i) Where he deems it appropriate, the Secretary concerned may require a holder of a right-of-way to furnish a bond, or other security, satisfactory to him to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary concerned.

(j) The Secretary concerned shall grant, issue, or renew a right-of-way under this title only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this title.

TERMS AND CONDITIONS

SEC. 505. [43 U.S.C. 1765] Each right-of-way shall contain–

(a) terms and conditions which will (i) carry out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards; and

(b) such terms and conditions as the Secretary concerned deems necessary to (i) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.

SUSPENSION OR TERMINATION OF RIGHTS-OF-WAY

Sec. 506. [43 U.S.C. 1766] Abandonment of a right-of-way or noncompliance with any provision of this title, condition of the right-of-way, or applicable rule or regulation of the Secretary concerned may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way, and with respect to easements, an appropriate administrative proceeding pursuant to section 554 of title 5 of the United States Code, the Secretary concerned determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary concerned determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary concerned shall give written notice to the holder of the grounds for

such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be. Failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed, for any continuous five-year period, shall constitute a rebuttable presumption of abandonment of the right-of-way, except that where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control, the Secretary concerned is not required to commence proceedings to suspend or terminate the right-of-way.

RIGHTS-OF-WAY FOR FEDERAL AGENCIES

Sec. 507. [43 U.S.C. 1767] (a) The Secretary concerned may provide under applicable provisions of this title for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose.

(b) Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of such department or agency.

CONVEYANCE OF LANDS

Sec. 508. [43 U.S.C. 1768] If under applicable law the Secretary concerned decides to transfer out of Federal ownership any lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576; 30 U.S.C. 185), the lands may be conveyed subject to the right-of-way; however, if the Secretary concerned determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this title will be carried out, the terms and conditions of the right-of-way complied with, or the lands protected, he shall (a) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or (b) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents.

EXISTING RIGHTS-OF-WAY

Sec. 509. [43 U.S.C. 1769] (a) Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title.

(b) When the Secretary concerned issues a right-of-way under this title for a railroad and appurtenant communication facilities in connection with a realinement of a railroad on lands under his jurisdiction by virtue of a right-of-way granted by the United States, he may, when he considers it to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value, notwithstanding the provisions of this title, provide in the new right-of-way the same terms and conditions as applied to the portion of the existing right-of-way relinquished to the United States with respect to the payment of annual rental, duration of the right-of-way, and the nature of the interest in lands granted. The Secretary concerned or his delegate shall take final action upon all applications for the grant, issue, or renewal of rights-of-way under subsection (b) of this section no later than six months after receipt from the applicant of all information required from the applicant by this title.

EFFECT ON OTHER LAWS

Sec. 510. [43 U.S.C. 1770] (a) Effective on and after the date of approval of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, under, or through such lands except under and subject to the provisions, limitations, and conditions of this title:

Provided, That nothing in this title shall be construed as affecting or modifying the provisions of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532–538) and in the event of conflict with, or inconsistency between, this title and the Act of October 13, 1964, the latter shall prevail: *Provided further*, That nothing in this Act should be construed as making it mandatory that, with respect to forest roads, the Secretary of Agriculture limit rights-of-way grants or their term of years or require disclosure pursuant to Section 501 (b) or impose any other condition contemplated by this Act that is contrary to present practices of that Secretary under the Act of October 13, 1964. Any pending application for a right-of-way under any other law on the effective date of this section shall be considered as an application under this title. The Secretary concerned may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of lands covered by this title for highway purposes pursuant to sections 107 and 317 of title 23 of the United States Code.

(c) (1) Nothing in this title shall be construed as exempting any holder of a right-of-way issued under this title from any provision of the antitrust laws of the United States.

(2) For the purposes of this subsection, the term "antitrust laws" includes the Act of July 2, 1890 (26 Stat. 15 U.S.C. 1 et seq.); the Act of October 15, 1914 (38 Stat. 730, 15 U.S.C. 12 et seq.); the Federal Trade Commission Act (38 Stat. 717; 15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894. [15 U.S.C. 8, 9]

COORDINATION OF APPLICATIONS

Sec. 511. [43 U.S.C. 1771] Applicants before Federal departments and agencies other than the Department of the Interior or Agriculture seeking a license, certificate, or other authority for a project which involve a right-of-way over, upon, under, or through public land or National Forest System lands must simultaneously apply to the Secretary concerned for the appropriate authority to use public lands or National Forest System lands and submit to the Secretary concerned all information furnished to the other Federal department or agency.

TITLE VI

DESIGNATED MANAGEMENT AREAS

CALIFORNIA DESERT CONSERVATION AREA

Sec. 601. [43 U.S.C. 1781] (a) The Congress finds that–

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;

(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plan to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles;

(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the public lands in the California desert; and

(6) to insure further study of the relationship of man and the California desert environment, preserve the unique and irreplaceable resources, including archeological values, and conserve the use of the economic resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be provided to the Secretary to facilitate effective implementation of such planning and management.

(b) It is the purpose of this section to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality.

(c) (1) For the purpose of this section, the term "California desert" means the area generally depicted on a map entitled "California Desert Conservation Area—Proposed" dated April 1974, and described as provided in subsection (c) (2).

(2) As soon as practicable after the date of approval of this Act, the Secretary shall file a revised map and a legal description of the California Desert Conservation Area with the Committees on Interior and Insular Affairs of the United States Senate and the House of Representatives, and such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in such legal description and a map may be made by the Secretary. To the extent practicable, the Secretary shall make such legal description and map available to the public promptly upon request.

(d) The Secretary, in accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area. Such plan shall take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights-of-way, and mineral development. Such plan shall be completed and implementation thereof initiated on or before September 30, 1980.

(e) During the period beginning on the date of approval of this Act and ending on the effective

date of implementation of the comprehensive, long-range plan, the Secretary shall execute an interim program to manage, use, and protect the public lands, and their resources now in danger of destruction, in the California Desert Conservation Area, to provide for the public use of such lands in an orderly and reasonable manner such as through the development of campgrounds and visitor centers, and to provide for a uniformed desert ranger force.

(f) Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent issued on any such mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within the California Desert Conservation Area.

(g) (1) The Secretary, within sixty days after the date of approval of this Act, shall establish a California Desert Conservation Area Advisory Committee (hereinafter referred to as "advisory committee") in accordance with the provisions of section 309 of this Act.

(2) It shall be the function of the advisory committee to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required under subsection (d) of this section.

(h) The Secretary of Agriculture and the Secretary of Defense shall manage lands within their respective jurisdictions located in or adjacent to the California Desert Conservation Area, in accordance with the laws relating to such lands and wherever practicable, in a manner consonant with the purpose of this section. The Secretary, the Secretary of Agriculture, and the Secretary of Defense are authorized and directed to consult among themselves and take cooperative actions to carry out the provisions of this subsection, including a program of law enforcement in accordance with applicable authorities to protect the archeological and other values of the California Desert Conservation Area and adjacent lands.

(i) The Secretary shall report to the Congress no later than two years after the date of approval of this Act, and annually thereafter, on the progress in, and any problems concerning, the implementation of this section, together with any recommendations, which he may deem necessary, to remedy such problems.

(j) There are authorized to be appropriated for fiscal years 1977 through 1981 not to exceed $40,000,000 for the purpose of this section, such amount to remain available until expended.

KING RANGE

Sec. 602.Section 9 of the Act of October 21, 1970 (84 Stat. 1067), [16 U.S.C. 460y-8] is amended by adding a new subsection (c), as follows:

"(c) In addition to the lands described in subsection (a) of this section, the land identified as the Punta Gorda Addition and the Southern Additions on the map entitled 'King Range National Conservation Area Boundary Map No. 2,' dated July 29, 1975, is included in the survey and investigation area referred to in the first section of this Act."

BUREAU OF LAND MANAGEMENT WILDERNESS STUDY

Sec. 603. [43 U.S.C. 1782] (a) Within fifteen years after the date of approval of this Act, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of this Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability

or nonsuitability of each such area or island for preservation as wilderness: *Provided*, That prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the *United States* Geological Survey [P.L. 102-154, 1991] and the *United States* Bureau of Mines [P.L. 102-285, 1992] to determine the mineral values, if any, that may be present in such areas: *Provided further,* That the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedure specified in section 3(d) of the Wilderness Act.

(b) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

(c) During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976: *Provided*, That, in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 204 of this Act for reasons other than preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act [16 U.S.C. 1131 et seq.] which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act, [16 U.S.C. 1133(d)(2)] and mineral development, access, exchange of lands, and ingress and egress for mining claimants and occupants.

43 U.S.C. 1783. **Yaquina Head Outstanding Natural Area** [P.L. 96-199, §119, 1980]

(a) In order to protect the unique scenic, scientific, educational, and recreational values of certain lands in and around Yaquina Head, in Lincoln County, Oregon, there is hereby established, subject to valid existing rights, the Yaquina Head Outstanding Natural Area (hereinafter referred to as the "area"). The boundaries of the area are those shown on the map entitled "Yaquina Head Area", dated July 1979, which shall be on file and available for public inspection in the Office of the Director, Bureau of Land Management, United States Department of the Interior, and the State Office of the Bureau of Land Management in the State of Oregon.

(b)(1) The Secretary of the Interior (hereinafter referred to as the "Secretary") shall administer the Yaquina Head Outstanding Natural Area in accordance with the laws and regulations applicable to the public lands as defined in section 103(e) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1702) [43 U.S.C. 1702(e)], in such a manner as will best provide for–

(A) the conservation and development of the scenic, natural, and historic values of the area;

(B) the continued use of the area for purposes of education, scientific study, and public recreation which do not substantially impair the purposes for which the area is established; and

(C) protection of the wildlife habitat of the area.

(2) The Secretary shall develop a management plan for the area which accomplishes the purposes and is consistent with the provisions of this section. This plan shall be developed in accordance

with the provisions of section 202 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1712).

(3) Notwithstanding any other provision of this section, the Secretary is authorized to issue permits or to contract for the quarrying of materials from the area in accordance with the management plan for the area on condition that the lands be reclaimed and restored to the satisfaction of the Secretary. Such authorization to quarry shall require payment of fair market value for the materials to be quarried, as established by the Secretary, and shall also include any terms and conditions which the Secretary determines necessary to protect the values of such quarry lands for purposes of this section.

(c) The reservation of lands for lighthouse purposes made by Executive order of June 8, 1866, of certain lands totaling approximately 18.1 acres, as depicted on the map referred to in subsection (a) of this section, is hereby revoked. The lands referred to in subsection (a) of this section are hereby restored to the status of public lands as defined in section 103(e) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1702) [43 U.S.C. 1702(e)], and shall be administered in accordance with the management plan for the area developed pursuant to subsection (b) of this section, except that such lands are hereby withdrawn from settlement, sale, location, or entry, under the public land laws, including the mining laws (30 U.S.C., ch. 2), leasing under the mineral leasing laws (30 U.S.C. 181 et seq.), and disposals under the Materials Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

(d) The Secretary shall, as soon as possible but in no event later than twenty-four months following the date of enactment of this section [March 5, 1980], acquire by purchase, exchange, donation, or condemnation all or any part of the lands and waters and interests in lands and waters within the area referred to in subsection (a) of this section which are not in Federal ownership except that State land shall not be acquired by purchase or condemnation. Any lands or interests acquired by the Secretary pursuant to this section shall become public lands as defined in the Federal Land Policy and Management Act of 1976, as amended [43 U.S.C. 1701 et seq.]. Upon acquisition by the United States, such lands are automatically withdrawn under the provisions of subsection (c) of this section except that lands affected by quarrying operations in the area shall be subject to disposals under the Materials Act of July 31, 1947, as amended (30 U.S.C. 601, 602). Any lands acquired pursuant to this subsection shall be administered in accordance with the management plan for the area developed pursuant to subsection (b) of this section.

(e) The Secretary is authorized to conduct a study relating to the use of lands in the area for purposes of wind energy research. If the Secretary determines after such study that the conduct of wind energy research activity will not substantially impair the values of the lands in the area for purposes of this section, the Secretary is further authorized to issue permits for the use of such lands as a site for installation and field testing of an experimental wind turbine generating system. Any permit issued pursuant to this subsection shall contain such terms and conditions as the Secretary determines necessary to protect the values of such lands for purposes of this section.

(f) The Secretary shall develop and administer, in addition to any requirements imposed pursuant to subsection (b) (3) of this section, a program for the reclamation and restoration of all lands affected by quarrying operations in the area acquired pursuant to subsection (d) of this section. All revenues received by the United States in connection with quarrying operations authorized by subsection (b) (3) of this section shall be deposited in a separate fund account which shall be established by the Secretary of the Treasury. Such revenues are hereby authorized to be appropriated to the Secretary as needed for reclamation and restoration of any lands acquired pursuant to subsection (d) of this section. After completion of such reclamation and restoration to the satisfaction of the Secretary, any unexpended revenues in such fund shall be returned to the general fund of the United States Treasury.

(g) There are hereby authorized to be appropriated in addition to that authorized by subsection (f) of this section, such sums as may be necessary to carry out the provisions of this section.

43 U.S.C. 1784. **Lands in Alaska; Bureau of Land Management Land Reviews.** [P.L. 96-487, title XIII, §1320, 1980]

Notwithstanding any other provision of law, section 1782 of the Federal Land Policy and Management Act of 1976 shall not apply to any lands in Alaska. However, in carrying out his duties under sections 1711 and 1712 of this title and other applicable laws, the Secretary may identify areas in Alaska which he determines are suitable as wilderness and may, from time to time, make recommendations to the Congress for inclusion of any such areas in the National Wilderness Preservation System, pursuant to the provisions of the Wilderness Act [16 U.S.C. 1131 et seq.]. In the absence of congressional action relating to any such recommendation of the Secretary, the Bureau of Land Management shall manage all such areas which are within its jurisdiction in accordance with the applicable land use plans and applicable provisions of law.

43 U.S.C. 1785. **Fossil Forest Research Natural Area.** [P.L. 98-603, title I, §103, 1984; P.L. 104-333, div. I, title X, §1022, 1996]

(a) Establishment. – To conserve and protect natural values and to provide scientific knowledge, education, and interpretation for the benefit of future generations, there is established the Fossil Forest Research Natural Area (referred to in this section as the "Area"), consisting of the approximately 2,770 acres in the Farmington District of the Bureau of Land Management, New Mexico, as generally depicted on a map entitled "Fossil Forest", dated June 1983.

(b) Map and Legal Description. –

(1) In General. – As soon as practicable after the date of enactment of this paragraph [November 12, 1996], the Secretary of the Interior shall file a map and legal description of the Area with the Committee on Energy and Natural Resources of the Senate and the Committee on [P.L. 106-176, 2000] Resources of the House of Representatives.

(2) Force and Effect. – The map and legal description described in paragraph (1) shall have the same force and effect as if included in this Act.

(3) Technical Corrections. – The Secretary of the Interior may correct clerical, typographical, and cartographical errors in the map and legal description subsequent to filing the map pursuant to paragraph (1).

(4) Public Inspection. – The map and legal description shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior.

(c) Management. –

(1) In General. – The Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall manage the Area–

(A) to protect the resources within the Area; and

(B) in accordance with this Act, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and other applicable provisions of law.

(2) Mining. –

(A) Withdrawal. – Subject to valid existing rights, the lands within the Area are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing, geothermal leasing, and mineral material sales.

(B) Coal Preference Rights. – The Secretary of the Interior is authorized to issue coal leases in New Mexico in exchange for any preference right coal lease application within the Area. Such exchanges shall be made in accordance with applicable existing laws and regulations relating to coal leases after a determination has been made by the Secretary that the applicant is entitled to a preference right lease and that the exchange is in the public interest.

(C) Oil and Gas Leases. – Operations on oil and gas leases issued prior to the date of enactment of this paragraph [November 12, 1996], shall be subject to the applicable provisions of Group 3100 of title 43, Code of Federal Regulations (including section 3162.5-1), and such other terms, stipulations, and conditions as the Secretary of the Interior considers necessary to avoid significant disturbance of the land surface or impairment of

the natural, educational, and scientific research values of the Area in existence on the date of enactment of this paragraph [November 12, 1996].

(3) Grazing. – Livestock grazing on lands within the Area may not be permitted.

(d) Inventory. – Not later than 3 full fiscal years after the date of enactment of this subsection [November 12, 1996], the Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall develop a baseline inventory of all categories of fossil resources within the Area. After the inventory is developed, the Secretary shall conduct monitoring surveys at intervals specified in the management plan developed for the Area in accordance with subsection (e).

(e) Management Plan. –

(1) In General. – Not later than 5 years after the date of enactment of this act [November 12, 1996], the Secretary of the Interior shall develop and submit to the Committee on Energy and Natural Resources of the Senate and the Committee on [P.L. 106-176, 2000] Resources of the House of Representatives a management plan that describes the appropriate use of the Area consistent with this subsection [P.L. 106-176, 2000].

(2) Contents. – The management plan shall include–

(A) a plan for the implementation of a continuing cooperative program with other agencies and groups for–

(i) laboratory and field interpretation; and

(ii) public education about the resources and values of the Area (including vertebrate fossils);

(B) provisions for vehicle management that are consistent with the purpose of the Area and that provide for the use of vehicles to the minimum extent necessary to accomplish an individual scientific project;

(C) procedures for the excavation and collection of fossil remains, including botanical fossils, and the use of motorized and mechanical equipment to the minimum extent necessary to accomplish an individual scientific project; and

(D) mitigation and reclamation standards for activities that disturb the surface to the detriment of scenic and environmental values.

TITLE VII

EFFECT ON EXISTING RIGHTS; REPEAL OF EXISTING LAWS; SEVERABILITY

EFFECT ON EXISTING RIGHTS

Sec. 701. [43 U.S.C. 1701 note] (a) Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

(b) Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail.

(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law.

(d) Nothing in this Act, or in any amendments made by this Act, shall be construed as permitting any person to place, or allow to be placed, spent oil shale, overburden, or byproducts from the recovery of other minerals found with oil shale, on any Federal land other than Federal land which has been leased for the recovery of shale oil under the Act of February 25, 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(e) Nothing in this Act shall be construed as modifying, revoking, or changing any provision of the Alaska Native Claims Settlement Act (85 Stat. 688, as amended; 43 U.S.C. 1601 et seq.).

(f) Nothing in this Act shall be deemed to repeal any existing law by implication.

(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or–

(1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on public lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

(5) as modifying the terms of any interstate compact; or

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands; or as amending, limiting, or infringing the existing laws providing grants of lands to the States.

(h) All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

(i) The adequacy of reports required by this Act to be submitted to the Congress or its committees shall not be subject to judicial review.

(j) Nothing in this Act shall be construed as affecting the distribution of livestock grazing revenues to local governments under the Granger-Thye Act (64 Stat. 85, 16 U.S.C. 580h), under the

Act of May 23, 1908 (35 Stat. 260, as amended; 16 U.S.C. 500), under the Act of March 4, 1913 (37 Stat. 843, as amended; 16 U.S.C. 501), and under the Act of June 20, 1910 (36 Stat. 557).

REPEAL OF LAWS RELATING TO HOMESTEADING AND SMALL TRACTS

Sec. 702. Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed except the effective date shall be on and after the tenth anniversary of the date of approval of this Act insofar as the listed homestead laws apply to public lands in Alaska:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Homesteads:				
Revised Statute 2289				161, 171.
Mar. 3, 1891	561	5	26:1097	161, 162.
Revised Statute 2290				162.
Revised Statute 2295				163.
Revised Statute 2291				164.
June 6, 1912	153		37:123	164, 169, 218
May 14, 1880	89		21:141	166, 185, 202, 223.
June 6, 1900	821		31:683	166, 223.
Aug. 9, 1912	280		37:267	
Apr. 6, 1914	51		38:312	167.
Mar. 1, 1921	90		41:1193	
Oct. 17, 1914	325		38:740	168.
Revised Statute				169.
Mar. 31, 1881	153		21:511	
Oct. 22, 1914	335		38:766	170.
Revised Statute 2292				171.
June 8, 1880	136		21:166	172.
Revised Statute				173.
Mar. 3, 1891	561	6	26:1098	
June 3, 1896	312	2	29:197	
Revised Statute 2288				174.
Mar. 3, 1891	561	3	26:1097	
Mar. 3, 1905	1424		36:991	
Revised Statute 2296				175.
Apr. 28, 1922	155		42:502	
May 17, 1900	479	1	31:179	179.
Jan. 26, 1901	180		31:740	180.
Sept. 5, 1914	294		38:712	182.
Revised Statute 2300				183.
Aug. 31, 1918	166	8	40:957	
Sept. 13, 1918	173		40:960	
Revised Statute 2302				184, 201.
July 26,1892	251		27:270	185.
Feb. 14, 1920	76		41:434	186.
Jan. 21, 1922	32		42:358	
Dec. 28, 1922	19		42:1067	
June 12, 1930	471		46:580	
Feb. 25, 1925	326		43:081	187.
June 21, 1934	690		48:1185	187a.
May 22, 1902	821	2	32:203	187b.
June 5, 1900	716		31:27	188, 217.
Mar. 3, 1875	131	15	18:420	189.
July 4, 1884	180	Only last paragraph of sec. 1.	23: 96	190.
Mar. 1, 1933	160	1	47:1418	190a.

The following words only: "Provided, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C. title 48, sec. 190)."

Revised Statutes 2310, 2311				191.
June 13, 1902	1080		32:384	203.
Mar. 3, 1879	191		20:472	204.
July 1, 1879	60		21:46	205.
May 6, 1886	88		24:22	206.
Aug. 21, 1916	361		39:518	207.
June 3, 1924	240		43:357	208.
Revised Statute 2298				211.
Aug. 30, 1890	837		26:391	212.

The following words only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but his limitation shall not operate to curtail

the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act:"

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Mar. 3, 1891	561	17	26: 1101	

The following words only: "and that the provision of 'An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes,' which reads as follows, viz: ' No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws,' shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."

Apr. 28, 1904	1776		33:527	213.
Aug. 3, 1950	521		64:398	
Mar. 2, 1889	381	6	25:854	214.
Feb. 20, 1917	98		39:925	215.
Mar. 4, 1921	162	1	41:1433	216.
Feb. 19, 1909	160		35:639	218.
June 13, 1912	166		37:132	
Mar. 3, 1915	84		38:953	
Mar. 3, 1915	91		38:957	
Mar. 4, 1915	150	2	38:1163	
July 3, 1916	220		39:344	
Feb. 11, 1913	39		37:666	218, 219.
June 17, 1910	298		36:531	219.
Mar. 3, 1915	91		38:957	
Sept. 5, 1916	440		39:724	
Aug. 10, 1917	52	10	40:275	
Mar. 4, 1915	150	1	38:1162	220.
Mar. 4, 1923	245	1	42:1445	222.
Apr. 28, 1904	1801		33:547	224.
Mar. 2, 1907	2527		34:1224	
May 29, 1908	220	7	35:466	
Aug. 24, 1912	371		37:499	
Aug. 22, 1914	270		38:704	231.
Feb. 25, 1919	21		40:1153	
July 3, 1916	214		39:341	232.
Sept. 29, 1919	64		41:288	233.
Apr. 6, 1922	122		42:491	233, 272, 273.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Mar. 2, 1889	381	3	25:854	234.
Dec. 29, 1894	14		28:599	
July 1, 1879	63	1	21:48	235.
Dec. 20, 1917	6		40:430	236.
Jult 24, 1919	126	Next to last paragraph only.	41:271	237.
Mar. 2, 1932	69		47:59	237a.
May 21, 1934	320		48:787	237b.
May 25, 1935	135		49:286	237c.
Aug. 19, 1935	560		49:659	237d.
Mar. 31, 1938	57		52:149	
Apr. 20, 1936	239		49:1235	237e
July 30, 1956	778	1, 2, 4	70:715	237f,g,h.
Mar. 1, 1921	102		41:1202	238.
Apr. 7, 1922	125		42:492	
Revised Statute				239.
June 16, 1898	458		30:473	240.
Aug. 29, 1916	420		39:671	
Apr. 7, 1930	108		46:144	243.
Mar. 3, 1933	198		47:1424	243a.
Mar. 3, 1879	192		20:472	251.
Mar. 2, 1889	381	7	25:855	252.
June 3, 1878	152		20:91	253.
Revised Statute 2294				254.
May 26, 1890	355		26:121	
Mar. 11, 1902	182		32:63	
Mar. 4, 1904	394		33:59	
Feb. 23, 1923	105		42:1281	
Revised Statute 2293				255.
Oct. 6, 1917	86		40:391	
Mar. 4, 1913	149	Only last paragraph of section headed "Public Land Service."	37:925	256.
May 13, 1932	178		47:153	256a.
June 16, 1933	99		48:274	
June 26, 1935	419		49:504	
June 16, 1937	361		50:303	
Aug. 27, 1935	770		49:909	256b.
Sept. 30, 1890	J. Res. 59		26:684	261.
June 16, 1880	244		21:287	263.
Apr. 18, 1904	25		33:589	
Revised Statute 2304				271.
Mar. 1, 1901	674		31:847	271, 272.
Revised Statute 2305				272.
Feb. 25, 1919	37		40:1161	272a.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Dec. 28, 1922	19		42:1067	
Revised Statute 2306				274.
Mar. 3, 1893	208		27:593	275.

The following words only: "And provided further: That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land: but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."

Aug. 18, 1894	301	Only last paragraph of section headed "Surveying the Public Lands."	28:397	276.
Revised Statute 2309				277.
Revised Statute 2307				278.
Sept. 21, 1922	357		42:990	
Sept. 27, 1944	421		58:747	279-283.
June 25, 1946	474		60:308	279.
May 31, 1947	88		61:123	279, 280, 282.
June 18, 1954	306		68:253	279, 282.
June 3, 1948	399		62:305	283, 284.
Dec. 29, 1916	9	1 - 8	39:862	291-298.
Feb. 28, 1931	328		46:1454	291.
June 9, 1933	53		48:119	291.
June 6, 1924	274		46:469	292.
Oct. 25, 1918	195		40:1016	293.
Sept. 29, 1919	63		41:287	294, 295.
Mar. 4, 1923	245	2	42:1445	302.
Aug. 21, 1916	361		39:518	1075.
Aug. 28, 1937	876	3	50:875	1181c.
2. Small tracts:				
June 1, 1938	317		52:609	682a-e.
June 8, 1954	270		68:239	
July 14, 1945	298		59: 467	

REPEAL OF LAWS RELATED TO DISPOSAL

Sec. 703. (a) Effective on and after the tenth anniversary of the date of approval of this Act, the statutes and parts of statutes listed below as "Alaska Settlement Laws," and effective on and after the date of approval of this Act, the remainder of the following statutes and parts of statutes are hereby repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Sale and Disposal laws:				
Mar. 3, 1891	561	9	26: 1099	671.
Revised Statute 2354				673.
Revised Statute 2355				674.
May 18, 1898	344	2	30:418	675.
Revised Statute 2365				676.
Revised Statute 2357				678.
June 15, 1880	227	3, 4	21:238	679-680.
Mar. 2, 1889	381	4	25:854	681.
Mar. 1, 1907	2286		34:1052	682.
Revised Statute 2361				688.
Revised Statute 2362				689.
Revised Statute 2363				690.
Revised Statute 2368				691.
Revised Statute 2366				692.
Revised Statute 2369				693.
Revised Statute 2370				694.
Revised Statute 2371				695.
Revised Statute 2374				696.
Revised Statute 2372				697.
Feb. 24, 1909	181		35:645	
May 21, 1926	353	The 2 provisos only.	44:591	

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statute 2375				698.
Revised Statute 2376				699.
Mar. 2, 1889	381	1	25:854	700.
2. Townsite Reservation and Sale:				
Revised Statute 2380				711.
Revised Statute 2381				712.
Revised Statute 2382				713.
Aug. 24, 1954	904		68:792	
Revised Statute 2383				714.
Revised Statute 2384				715.
Revised Statute 2386				717.
Revised Statute 2387				718.
Revised Statute 2388				719.
Revised Statute 2389				720.
Revised Statute 2391				721.
Revised Statute 2392				722.
Revised Statute 2393				723.
Revised Statute 2394				724.
Mar. 3, 1877	113	1, 3, 4	19:392	725-727.
Mar. 3, 1891	561	16	26:1101	728.
July 9, 1914	138		38:454	730.
Feb. 9, 1903	531		32:820	731.
3. Drainage Under State Laws:				
May 20, 1908	181	1-7	35:171	1021-1027.
Mar. 3, 1919	113		40:1321	1028.
May 1, 1958	P.L. 85-387		72:99	1029-1034.
Jan. 17, 1920	47		41:392	1041-1048.
4. Abandoned Military Reservation:				
July 5, 1884	214	5	23:104	1074.
Aug. 21, 1916	361		39:518	1075.
Mar. 3, 1893	208		27:593	1076.

The following words only: "Provided, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Aug. 23, 1894	314		23:491	1077, 1078.
Feb. 11, 1903	543		32:822	1079.
Feb. 15, 1895	92		28:664	1080, 1077.
Apr. 23, 1904	1496		33:306	1081.
5. Public Lands; Oklahoma:				
May 2, 1890	182	Last paragraph of sec. 18 and secs. 20, 21, 22, 24, 27.	26:90	1091-1094, 1096, 1097.
Mar. 3, 1891	543	16	26:1026	1098.
Aug. 7, 1946	772	1,2	60:872	1100-1101.
Aug. 3, 1955	498	1-8	69:445	1102-1102g.
May 14, 1890	207		26:109	1111-1117.
Sept. 1, 1893	J. Res. 4		28:11	1118.
May 11, 1896	168	1,2	29:116	1119.
Jan. 18, 1897	62	1-3, 5, 7	29:490	1131-1134.
June 23, 1897	8		30:105	
Mar. 1, 1899	328		30:966	
6. Sales of Isolated Tracts:				
Revised Statute 2455				1171.
Feb. 26, 1895	133		28:687	
June 27, 1906	3554		34:517	
Mar. 28, 1912	67		37:77	
Mar. 9, 1928	164		45:253	
June 28, 1934	865	14	48:1274	
July 30, 1947	383		61:630	
Apr. 24, 1928	428		45:457	1171a.
May 23, 1930	313		46:377	1171b.
Feb. 4, 1919	13		40:1055	1172.
May 10, 1920	178		41:595	1173.
Aug. 11, 1921	62		42:159	1175.
May 19, 1926	337		44:566	1176.
Feb. 14, 1931	170		46:1105	1177.
7. Alaska Special Laws:				
Mar. 3, 1891	561	11	26:1099	732.
May 25, 1926	379		44:629	733-736.
May 29, 1963	P.L. 88-34		77:52	
July 24, 1947	305		61:414	738.
Aug. 17, 1961	P.L.87-147		75:384	270-13.
Oct. 3, 1962	P.L. 87-742		76:740	
July 19, 1963	P.L. 86-66		77:80	687b-5.
May 14, 1898	299	1	30:409	270.
Mar. 3, 1903	1002		32:1028	
Apr. 29, 1950	137	1	64:94	
Aug. 3, 1955	496		69:444	270, 687a-2
Apr. 29, 1950	137	2-5	64:95	270-5, 260-6, 270-7, 687a-1.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
July 11, 1956	571	2	70:529	270-7.
July 8, 1916	228		39:352	270-8, 270-9.
June 28, 1918	110		40:632	270-10, 270-14.
July 11, 1956	571	1	70:528	
8. Alaska Settlement Laws:				
Mar. 8, 1922	96	1	42:415	270-11.
Aug. 23, 1958	P.L. 85-725	1,4	72:730	
Apr. 13, 1926	121		44:243	270-15.
Apr. 29, 1950	134	3	64:93	270-16, 270-17.
May 14, 1898	299	10	30:413	270-4, 687a to 687a-5.
Mar. 3, 1927	323		44:1364	
May 26, 1934	357		48:809	
Aug. 23, 1958	P.L. 85-725	3	72:730	
Mar. 3, 1891	561	13	26:1100	687a-6.
Aug. 30, 1949	521		63:679	687b to 687b-4.
9. Pittman Underground Water Act:				
Sept. 22, 1922	400		42:1012	356.

(c) [43 U.S.C. 270–12, 270–12 note] Effective on and after the tenth anniversary of the date of approval of this Act, section 2 of the Act of March 8, 1922 (42 Stat. 415, 416), as amended by section 2 of the Act of August 23, 1958 (72 Stat. 730), is further amended to read:

"The coal, oil, or gas deposits reserved to the United States in accordance with the Act of March 8, 1922 (42 Stat. 415; 43 U.S.C. 270–11 et seq.), as added to by the Act of August 17, 1961 (75 Stat. 384; 43 U.S.C. 270–13), and amended by the Act of October 3, 1962 (76 Stat. 740; 43 U.S.C. 270–13), shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits or coal, oil, or gas lands in Alaska in force at the time of such disposal. Any person qualified to acquire coal, oil, or gas deposits, or the right to mine or remove the coal or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times to enter upon the lands patented under the Act of March 8, 1922, as amended, and in accordance with the provisions hereof, for the purpose of prospecting for coal, oil, or gas therein, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal, oil, or gas deposits in any such land, or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove oil and gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That the owner under such limited patent shall have the right to mine the coal for use on the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: *Provided further,* That nothing in this Act shall be construed as authorizing the exploration upon or entry of any coal deposits withdrawn from such exploration and purchase."

(d) Section 3 of the Act of August 30, 1949 (63 Stat. 679; 43 U.S.C. 687b et seq.), [43 U.S.C. 687b-2] is amended to read:

"Notwithstanding the provisions of any Act of Congress to the contrary, any person who prospects for, mines, or removes any minerals from any land disposed of under the Act of August 30, 1949 (63 Stat. 679), shall be liable for any damage that may be caused to the value of the land and tangible improvements thereon by such prospecting for, mining, or removal of minerals. Nothing in this section shall be construed to impair any vested right in existence on August 30, 1949."

REPEAL OF WITHDRAWAL LAWS

Sec. 704. (a) Effective on and after the date of approval of this Act, the implied authority of the President to make withdrawals and reservations resulting from acquiescence of the Congress (U.S. v. Midwest Oil Co., 236 U.S. 459) and the following statutes and parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Oct. 2, 1888	1069		25: 527	662.

Only the following portion under the section headed U.S. Geological Survey: The last sentence of

the paragraph relating to investigation of irrigable lands in the arid region, including the proviso at the end thereof.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Mar. 3,1891	561	24	26: 1103	16 U.S.C. 471.
Mar. 1, 1893	183	21	27: 510	33 U.S.C. 681.
Aug. 18, 1894	301	4	28: 422	641.

Only that portion of the first sentence of the second paragraph beginning with "and the Secretary of the Interior" and ending with "shall not be approved."

May 14, 1898	299	10	30: 413	687a-4.

Only the fifth proviso of the first paragraph.

June 17, 1902	1093	3	32: 388	416.

Only that portion of section three preceding the first proviso.

Apr. 16, 1906	1631	1	34: 116	561.

Only the words "withdraw from public entry any lands needed for townsite purposes", and also after the word "case", the word "and."

June 27, 1906	3559	4	34: 520	561.

Only the words "withdraw and."

Mar. 15, 1910	96		36: 237	643.
June 25, 1910	421	1, 2	36: 847	141,142,16 U.S.C. 471(a).

All except the second and third provisos.

June 25, 1914	431	13	36: 858	148.
Mar. 12, 1914	37	1	38: 305	975b.

Only that portion which authorizes the President to withdraw, locate, and dispose of lands for townsites.

Oct. 5, 1914	316	1	38: 727	569(a).
June 9, 1916	137	2	39: 219	

Under "Class One," only the words "withdrawal and."

Dec. 29, 1916	9	10	39:865	300.
June 7, 1924	348	9	43:655	16 U.S.C. 471.
Aug. 19, 1935	561	"Sec. 4"	49:661	22 U.S.C. 277c.

In "Sec. 4," only paragraph "c" except the proviso thereof.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Mar. 3, 1927	299	4	44: 1347	25 U.S.C. 389d.

Only the proviso thereof.

May 24, 1928	729	4	45: 729	49 U.S.C. 214.
Dec. 21, 1928	42	9	45: 1063	617h.
Mar. 6, 1946	58		69: 36	617h.

First sentence only.

June 16, 1934	557	"Sec. 40(a)"	48: 977	30 U.S.C. 229a.

The proviso only.

May 1, 1936	254	2	49: 1250	
May 31, 1938	304		52: 593	25 U.S.C. 497.
July 20, 1939	334		53: 1071	16 U.S.C. 471b.
May 28, 1940	220	1	54: 224	16 U.S.C. 552a.

All except the second proviso.

Apr. 11, 1956	203	8	70: 110	620g.

Only the words "and to withdraw public lands from entry or other disposition under the public land laws."

Aug. 10, 1956	Chapter 949	9772	70A: 588	10 U.S.C. 4472, 9772.
Aug. 16, 1952	P.L. 87-590	4	76:389	616c.

Only the words "and to withdraw public lands from entry or other disposition under the public land laws."

(b) The second sentence of the Act of March 6, 1946 (60 Stat. 36; 43 U.S.C. 617(h)), [43 U.S.C. 617h] is amended by deleting "Thereafter, at the direction of the Secretary of the Interior, such lands" and by substituting therefor the following: "Lands found to be practicable of irrigation and reclamation by irrigation works and withdrawn under the Act of March 6, 1946 (43 U.S.C. 617(h))."

REPEAL OF LAW RELATING TO ADMINISTRATION OF PUBLIC LANDS

Sec. 705. (a) Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1.Mar. 2,1895	174		28:744	176.
2. June 28,1934	865	8	48:1272	315g.
June 26, 1936	842	3	49:1976, title I	
June 19, 1948	548	1	62:533	
July 9, 1962 P.L.87-524			76:140	315g-1.
3.Aug. 24, 1937	744		50:748	315p.
4.Mar. 3, 1909	271	2d proviso only.	35:845	772.
June 25, 1910	J.Res. 40		36:884	
5. June 21, 1934	689		48:1185	871a.
6. Revised Statute 2447				1151.
Revised Statute 2448				1152.
7.June 6, 1874	223		18:62	1153; 1154.
8.Jan. 28, 1879	30		20:274	1155.
9. May 30, 1894	87		28:84	1156.
10. Revised Statute 2471				1191.
Revised Statute 2472				1192.
Revised Statute 2473				1193.
11. July 14, 1960 P.L. 86-649		101-202(a), 203-204(a), 301-303.	74:506	1361, 1362, 1363-1383.
12. Sept. 26, 1970 P.L. 91-429			84:885	1362a.
13. July 31, 1939	401	1,2	53:1144	

REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY

Sec. 706. (a) Effective on and after the date of approval of this Act, R.S. 2477 (43 U.S.C. 932) is repealed in its entirety and the following statutes or parts of statutes are repealed insofar as they apply to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statute 2339				661.

The following words only: "and the right-of-way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed: but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damages shall be liable to the party injured for such injury or damage."

Revised Statute 2340				661.

The following words only: ", or rights to ditches and reservoirs used in connection with such water rights,"

Feb. 26, 1897	335		29: 599	664.
Mar. 3, 1899	427	1	30: 1233	665, 958, (16 U.S.C. 525).

The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plots of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoirs site when in his judgment the public interests will not be injuriously affected thereby."

Mar. 3, 1875	152		18:482	934-939.
May 14, 1898	299	2-9	30:409	942-1 to 942-9.
Feb. 27, 1901	614		31:815	943.
June 26, 1906	3548		34:481	944.
Mar. 3, 1891	561	18-21	26:1101	946-949.
Mar. 4, 1917	184	1	39:1197	
May 28, 1926	409		44:668	
Mar. 1, 1921	93		41:1194	950.
Jan. 13, 1897	11		20:484	952-955.
Mar. 3, 1923	219		42:1437	
Jan. 21, 1895	37		28:635	951, 956, 957.
May 14, 1896	179		29:120	
May 11, 1898	292		30:404	
Mar. 4, 1917	184	2	39:1197	
Feb. 15, 1901	372		31:790	959 (16 U.S.C. 79, 522).

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Mar. 4, 1911	238		36:1253	951 (16 U.S.C. 5, 420, 523).

Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service."

May 27, 1952	338		66: 95	
May 21, 1896	212		29: 127	962-965.
Apr. 12, 1910	155		36: 296	966–970.
June 4, 1897	2	1	30: 35	16 U.S.C. 551.

Only the eleventh paragraph under Surveying the public lands.

July 22, 1937	517	31, 32	50:525	7 U.S.C. 1010-1012.
Sept. 3, 1954	1255	1	68:1146	931c.
July 7, 1960	Public Law 86-608.		74:363	40 U.S.C. 345c
Oct. 23, 1962	Public Law 87-852.	1-3	76:1129	40 U.S.C 319-319c.
Feb. 1, 1905	288	4	33:628	16 U.S.C. 524.

(b) Nothing in section 706(a), [43 U.S.C. 1701 note] except as it pertains to rights-of-way, may be construed as affecting the authority of the Secretary of Agriculture under the Act of June 4, 1897 (30 Stat. 35, as amended, 16 U.S.C. 551); the Act of July 22, 1937 (50 Stat. 525, as amended, 7 U.S.C. 1010–1212); or the Act of September 3, 1954 (68 Stat. 1146, 43 U.S.C. 931c).

SEVERABILITY

Sec. 707. If any provision of this Act [43 U.S.C. 1701 note] or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby.

Approved October 21, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94–1163 accompanying H.R. 13777 (Comm. on Interior and Insular Affairs) and No. 94–1724 (Comm. of Conference).

SENATE REPORT No. 94–583 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 122 (1976): Feb. 23, 25, considered and passed Senate. July 22, considered and passed House, amended, in lieu of H.R. 13777. Sept. 30, House agreed to conference report. Oct. 1, Senate agreed to conference report.

PL 94-579, 1976 S 507

Remembering Eleanor Schwartz

(1912–2000)

Commemoration of the 25th anniversary of the passage of FLPMA would be incomplete without also celebrating the life and contributions of a woman who helped legislators craft the bill that would fundamentally change the way our public lands are managed. Eleanor Schwartz, who worked with the Bureau of Land Management (BLM) until her death in December 2000 at age 88, was head of the BLM's Office of Legislative and Regulatory Management for many years, including the period during which FLPMA was initially conceived, drafted, and eventually passed.

Schwartz, an attorney who joined the Department of the Interior in 1962, was instrumental in assisting legislators on the technical and legal aspects of the Act. Her work ethic and ability to assimilate into what was then a male-dominated agency paid off when she became the first woman GS-15 in BLM history.

Throughout her tenure at Interior, she remained active in the field of Equal Employment Opportunity, serving as the Federal Women's Coordinator for the BLM. She was honored twice with Interior's highest commendation, the Distinguished Service Award, which recognized, among other accomplishments, her work on the Federal Land Policy and Management Act.

In her passing, the BLM not only lost a devoted worker but also an institutional memory that can not be replaced.

BLM Photo

Eleanor Schwartz receives a Federal Women's Award from Boyd Rasmussen (BLM Director 1966–1971).

A Capsule Examination of the Legislative History of the Federal Land Policy and Management Act of 1976

*Eleanor R. Schwartz**

Eleanor Schwartz, A Capsule Examination of the Legislative History of the Federal Land Policy and Management Act (FLPMA) of 1976, 21 ARIZ. L. Rev. 285 (1979).

The "organic act" originally proposed by the Administration in 1971 for the Bureau of Land Management (BLM) was a relatively simple document.[1] The proposed legislation would have repealed several hundred outdated and duplicative laws, provided BLM with broad policy guidelines and management tools, and given BLM disposal and enforcement authority. However, by the time the Federal Land Policy and Management Act (FLPMA) was passed in 1976, it had become a lengthy, complex document, much more than an organic act.[2] In addition to broad management guidelines and authority, FLPMA provides legislative direction to numerous specific interests and areas of management.

Perhaps in recognition of the importance of the Act, particularly to the western states and because of its complex origins, the Senate Committee on Energy and Natural Resources in 1978 published a committee print, Legislative History of the Federal Land Policy and Management Act of 1976.[3] Prefacing the document is a memorandum in which Senator Henry M. Jackson, Chairman, summarizes for fellow committee members the background and need for the Act. He concludes with this statement:

> The Federal Land Policy and Management Act of 1976 represents a landmark achievement in the management of the public lands of the United States. For the first time in the long history of the public lands, one law provides comprehensive authority and guidelines for the administration and protection of the Federal lands and their resources under the jurisdiction of the Bureau of Land Management. This law enunciates a Federal policy of retention of these lands for multiple use management and repeals many obsolete public land laws which heretofore hindered effective land use planning for and management of public lands. The policies contained in the Federal Land Policy and Management Act will shape the future development and conservation of a valuable national asset, our public lands.[4]

Much has been written about the significance of the Federal Land Policy and Management Act, its meaning and impact, and its relationship to the report, *One Third of the Nation's Land,* issued in June 1970 by the Public Land Law Review Commission. This Article will discuss briefly the legislative history of the policies and provisions set forth in the Act.

Curiously, recreation was the subject of the first piece of public land legislation that might be considered a predecessor of FLPMA. In February 1970, Senators Jackson and Moss introduced into the 91st Congress a bill designed to improve outdoor recreation activities on the public lands administered by the Bureau of Land Management. The bill, S.3389, was passed by the Senate on

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1. *See* S. 2401, 92d Cong., 1st Sess., 117 CONG. REC. 28956, 28957 (1971).

2. *See* 43 U.S. C. __ 1701-1782 (9176).

3. SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES, 95TH CONG., 2D SESS., LEGISLATIVE HISTORY OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 (1978).

4. *Id.* at vi.

October 7, 1970,[5] about four months after the report by the Public Land Law Review Commission was released. The Senate committee's report on S.3389 acknowledged that the bill embodied some of the recommendations made by the Public Land Law Review Commission. The report identified needs of the public lands and shortcomings of management:

> Years of neglect have created many problems on the public lands administered by the Bureau of Land Management. Lack of regulations and enforcement authority have resulted in wanton vandalism and destruction of resources. Lack of sanitation facilities has created health hazards. Littering, overuse, and neglect have created unsightly blights on the landscape. Lack of public access has locked up millions of acres of public land for the private use of but a few, and many outstanding hunting, fishing, and other recreation opportunities are not available. As a result of the lack of enforcement authority and interpretive and restoration work, irreplaceable archeological values have been lost.[6]

S. 3389 recognized that the public lands administered by BLM are vital national assets that contain a wide variety of natural resource values, including outdoor recreation value, which should be developed and administered "for multiple use and sustained yield of the several products obtainable therefrom for the maximum benefit of the general public."[7] The bill contained a definition of multiple use,[8] which in substantial parts is the same as the definition in FLPMA,[9] and a definition of sustained yield[10] also similar to that in FLPMA.[11]

S. 3389 would have given the Secretary of the Interior the authority to acquire lands or interests necessary to provide access by the general public to public lands for outdoor recreational purposes. It also would have authorized allocation of Land and Water Conservation Fund money for this purpose.[12] Of more interest perhaps is the fact that S. 3389 would have provided comprehensive enforcement authority to the Bureau of Land Management. It made violations of public land laws and regulations of the Secretary relating to the protection of the public lands a violation punishable by a fine of not more than $500 or imprisonment for not more than six months or both.[13] It also provided that the Secretary could authorize BLM personnel to make arrests for violations of laws and regulations.[14]

No action was taken on S. 3389 by the House of Representatives.

In the 92d Congress, the Interior and Insular Affairs Committees of both the House and the Senate reported out bills relating to the management of the public lands. The Senate committee had before it two bills: Senators Jackson, Anderson, Cranston, Hart, Humphrey, Magnuson, Metcalf, and Nelson co-sponsored a bill, S. 921, "[t]o provide for the management, protection, and development of the national resource lands, and for other purposes."[15] At the same time, Senators Jackson and Allott co-sponsored at the Administration's request S. 2401 "[to provide for the management, protection and development of the national resource lands, and for other purposes."[16]

As its title indicated, S. 921 addressed not only the management of the public lands but also the disposal of federally owned minerals. Title II of

5. S. 3389, 91st Cong., 2d Sess., 116 CONG. REC. 35401 (1970).
6. S. REP. No. 91-1256, 91st Cong., 2d Sess. 2 (1970).
7. S. 3389, 91st Cong., 2d Sess. § 2, 116 CONG. REC. 35401 (1970).
8. *Id* § 3(b), 116 CONG. REC. at 35402.
9. 43 U.S. C. § 1702(c) (1976).
10. S. 3389, 91st Cong., 2d Sess § 3(c), 116 CONG. REC. 35401, 35402 (1970).
11. 43 U.S.C. § 1702(h) (1976).
12. S. 3389, 91st Cong., 2d Sess § 4(b), 116 CONG. REC. 35401, 35402 (1970).
13. *Id.* § 5, 116 CONG. REC. at 35402.
14. *Id.* § 6, 116 CONG. REC. at 35402.
15. S. 921, 92d Cong., 1st Sess., 117 CONG. REC. 3558-61 (1971).
16. S. 2401, 92d Cong., 1st Sess., 117 CONG. REC. 28956 (1971). S. 2401 referred to the lands administered by the Bureau of Land Management as "national resource lands." This term was being used at the time by the Bureau and the Department of the Interior in an effort to establish a more representative and mission-oriented identification for the lands than the less specific expression "public lands."

that bill would have been cited as the "Federal Land Mineral Leasing Act of 1971." It would have replaced and repealed both the Mining Law of 1872 and the Mineral Leasing Act of 1920, as well as several other mineral-related laws. Since S. 2401 was the Administration's proposal, it will be described in somewhat more detail than other forerunners of FLPMA. This fuller analysis will afford a basis for comparison between what the Administration sought as an organic act for the Bureau of Land Management and what Congress finally enacted.

S. 2401 had a short two-paragraph declaration of Congressional policy: (1) that the national interest would best be served by retaining the national resource lands in federal ownership except where the Secretary of the Interior determined that disposal of particular tracts was consistent with the purposes, terms, and conditions of the Act, and (2) that the lands be managed under principles of multiple use and sustained yield in a manner which would, "using all practicable means and measures," protect the environmental quality of those lands to assure their continued value for present and future generations.[17]

The bill prohibited the use, occupancy, or development of the national resource lands contrary to any regulation issued by the Secretary or to any order issued under a regulation.[18] S. 2401 also specified that an inventory of all national resource lands and their resources be maintained and that priority be given to areas of critical environmental concern.[19] Development and maintenance of land use plans would be required and management of the lands would be in accordance with these plans. Specific guidelines were provided. These included, among others, a requirement for land reclamation as a condition of use and revocation of permits upon violation of secretarial regulations or state and federal air or water quality standards and implementation plans. Also included was a requirement for prompt development of regulations for the protection of areas of critical environmental concern.[20]

Another provision of S. 2401 authorized the Secretary to sell public lands if he found that the sale would lead to significant improvement in the management of national resource lands or if he found that it would serve important public objectives which could not be achieved prudently and feasibly on land other than national resource lands. Sales were to be made at not less than fair market value.[21] Generally, conveyances of title were to reserve minerals to the United States, together with the right to develop them. However, the Secretary could grant full fee title if he found there were no minerals on the land or that reservation of mineral rights would interfere with or preclude development of the land and that such development was a more beneficial use of the land than mineral development. The Secretary would also have been required to insert in document of conveyance terms and conditions he considered necessary to ensure proper land use, environmental integrity, and protection of the public interest. In the event an area which the Secretary identified as an area of critical environmental concern was conveyed out of federal ownership, the Secretary would be required to provide for the continued protection of the area in the patent or other document of conveyance.[22] Liberal acquisition and exchange authority was provided by the bill.[23]

S. 2401, as introduced, would have made violations of regulations adopted to protect national resource lands, other public property and public health, safety and welfare a misdemeanor punishable by a fine of not more than $10,000 or imprisonment for not more than one year or both. It would have allowed the Secretary to designate employees as special officers authorized to make arrests or serve citations for violations committed on the public lands.[24] The bill also provided for

17. S. 2401, 92d Cong., 1st Sess., § 3 (1971).
18. *Id.* § 4.
19. *Id.* § 5.
20. *Id.* § 7.
21. *Id.* § 8.
22. *Id.* § 9.
23. *Id.* § 10.
24. *Id.* § 11.

public hearings, where appropriate, to give federal, state, and local governments and the public an opportunity to comment on "the formulation of standards and criteria in the preparation and execution of plans and programs and in the management of the national resource lands."[25] It specifically required that any proposed "significant change in land use plans and regulations pertaining to areas of critical environmental concern be the subject of a public hearing."[26] Finally, the bill authorized the appropriation of such sums "as are necessary to carry out the purposes of this Act"[27] and repealed a long list of prior laws.[28]

As reported out by the Senate Committee on Interior and Insular Affairs, S. 2401 contained a few significant changes and additions. Specific examples of areas of critical environmental concern were deleted, leaving only a short definition of the term. The statement of congressional policy was expanded, and the fine for violation of a regulation was reduced to $1,000. There was a requirement that the Director of the Bureau of Land Management be appointed by the President, with the advice and consent of the Senate. The Director would have to possess a broad background and experience in public land and natural resources management.[29] There was no provision for repeal of any public land laws.[30]

Eight members voted for and four against reporting S. 2401 out of the Senate Committee on Interior and Insular Affairs. The minority statement of Senators Hansen, Fannin, Hatfield, and Bellmon expressed agreement with the comment of President Nixon in his 1972 Environmental Message that this type of legislation was "something which we have been without for too long."[31] However, these Senators felt that the legislation had been the subject of too little discussion by the Committee. They noted that the bill granted broad authority to the Secretary of the Interior, but just how broad this authority was had never been discussed. Their view was that the legislation was too important to deal with in a hasty manner, and that the Committee should have the opportunity to study and analyze the legislation during the next session of Congress.[32] As a matter of fact, the Committee studied, discussed, and analyzed the legislation for two more Congresses before an organic act was enacted into law. The full Senate did not consider S. 2401 in the 92d Congress. As will be seen, many provisions of S. 2401 considered by the 92d Congress were enacted in the Federal Land Policy and Management Act of 1976, sometimes with only subtle changes or differences in emphasis.

The Interior and Insular Affairs Committee of the House of Representatives followed a different approach in the 92d Congress. That committee did not consider the Administration proposal but considered and reported out instead H.R. 7211,[33] a bill that had been introduced by Chairman Wayne Aspinall on behalf of himself and Congressmen Baring, Taylor, Udall, and Kyl. Although as introduced, H.R. 7211 would have been cited as the "Public Land Policy Act of 1971," when it was reported out its title was changed to "National Land Policy, Planning, and Management Act of 1972." The reported bill was a comprehensive piece of legislation designed to reflect as many as possible of the policies and recommendations of the Public Land Law Review Commission.[34] Included was an extensive statement of findings, goals, and objectives.[35]

The stated objective of H.R. 7211 was to provide for an overall land use planning effort on the part of all public land management agencies and to

25. *Id.*
26. *Id.* § 15.
27. *Id.* § 18.
28. *Id* § 19.
29. *Id*
30. S. REP. No. 92-1163, 92d Cong., 2d Sess. § 19, at 5 (1972).
31. *Id.* at 51.
32. *Id.*
33. H.R. 7211, 92d Cong., 2d Sess., 118 CONG. REC. 27179 (1972).
34. *See* PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND (1970).
35. H. R. 7211, 92d Cong., 2d Sess. § 101, 118 CONG. REC. 27179 (1972).

strengthen management by providing statutory guidelines applicable to all agencies having jurisdiction over the public lands. The goal was management practices that would be more uniform, more easily administered, and more easily understood by the public.[36] Title II of the bill, "National Land Use Planning," provided for federal grants to eligible states to be used in developing comprehensive land use planning. The bill contained detailed descriptions of the requirements to be met, specific provision as to how and for what the funds allotted could be expended, specifications for financial record keeping, and provisions for termination or suspension of the grants if the Secretary found that the state's comprehensive land use planning process no longer met the requirements of the bill or that the state was making no substantial progress toward the development of a comprehensive land use planning process.[37]

Title III of H.R. 7211 addressed "Coordination of Land Use Planning and Policy." It would have established within the Department of the Interior an Office of Land Use Policy and Planning to administer the grant-in-aid program under Title II and to coordinate between Title II programs with the planning responsibilities of the federal government spelled out in Title IV. The Committee report on H.R. 7211 stated: "To insure the absence of any mission-orientation in such administration and coordination, the Office is separate from any existing bureau or agency in the Department."[38] The bill as reported out of Committee also would have established a complex advisory system that included a National Land Use Policy and Planning Board,[39] land use policy coordinators appointed by the Board members,[40] Departmental Advisory Committees,[41] and local advisory councils.[42]

Title IV of H.R. 7211 was "Public Land Policy and Planning." The term "public lands" was defined as "any lands owned by the United States without regard to how the United States acquired ownership, and without regard to the agency having responsibility for management thereof."[43] Excluded were lands held in trust for the Indians, Aleuts, and Eskimos and certain lands acquired by the General Services Administration and other federal agencies.[44] Thus, the coverage of H.R. 7211 was far broader than had been proposed in any other of the public land bills before the Congress. Because many of the lands encompassed by its definition were covered by existing statutes, the bill declared specifically that the policies therein were supplemental to and not in derogation of the purposes for which units of the National Park System, National Forest System, and National Wildlife Refuge System were established and administered and for which public lands were administered by departments other than Agriculture and the Interior in the fulfillment of their statutory obligations.[45]

Title IV of H.R. 7211 contained sixteen declarations of policy that were based generally on recommendations of the Public Land Law Review Commission. The House Committee in its report recognized that each of the declarations would require additional legislative and administrative action.[46] An anticipated five to ten years would be required for the Congress to consider all the recommendations of the Commission and to develop the specific and detailed statutory language necessary to implement the recommendations that Congress agreed to. H.R. 7211 was designed to establish a "policy framework" within which the legislation to implement each policy could be

36. H.R. REP. No. 1306, 92d Cong., 2d Sess. 39 (1972).
37. H.R. 7211, 92d Cong., 2d Sess. tit. II, 118 CONG. REC. 27179 (1972).
38. H.R. REP. No. 92-1306, 92d Cong., 2d Sess. 30 (1972).
39. H.R. 7211, 92d Cong., 1st Sess. § 303, 118 CONG. REC. 27179 (1972).
40. *Id.* § 304, 118 CONG. REC. at 27179.
41. *Id.* § 306, 118 CONG. REC. at 27179.
42. *Id.* § 307, 118 CONG. REC. at 27179.
43. *Id.* § 503(n), 118 CONG. REC. at 27179.
44. *Id.* § 503(n)(3), 118 CONG. REC. at 27179.
45. *Id.* § 401, 118 CONG. REC. at 27179.
46. H.R. REP. No. 92-1306, 92d Cong., 2d Sess. 35 (1972).

contained, so that future congressional action could be on a coordinated basis.[47]

The sixteen statements of policy are interesting as a reflection of the recommendations of the Public Land Law Review Commission and in the light of the legislation finally enacted by Congress. Stated briefly, as they appear in the report of the House Committee, these recommended policies are:

(1) Public lands generally be retained in federal ownership;

(2) public land classifications be reviewed to determine the type of use that will provide maximum benefit for the general public in accordance with overall land use planning goals;

(3) Executive withdrawals be reviewed to ascertain if they are of sufficient extent, adequately protected from encroachment, and in accordance with the overall land use planning goals of the Act, with a view toward securing a permanent statutory base for units of the National Park, Forest, and Wildlife Refuge Systems;

(4) Congress exercise withdrawal authority generally and establish specific guidelines for limited Executive withdrawals;

(5) public land management agencies be required to establish and adhere to administrative procedures;

(6) statutory land use planning guidelines be established providing for management of the public lands generally on the basis of multiple use and sustained yield;

(7) public lands be managed for protection of quality of scientific, scenic, historical, ecological, and archeological values; for preservation and protection of certain lands in their natural conditions; to reconcile competing demands; to provide habitat for fish and wildlife; and to provide for outdoor recreation;

(8) fair market value generally be received for the use of the public lands and their resources;

(9) equitable compensation be provided to users if use is interrupted prior to the end of the period for which use is permitted;

(10) an equitable system be devised to compensate state and local governments for burdens borne by reason of the tax immunity of the federal land;

(11) when public lands are managed to accomplish objectives unrelated to protection or development of public lands, the purpose and authority therefore be provided expressly by statute;

(12) administration of public land programs by various agencies be similar;

(13) uniform procedures for disposal, acquisition, and exchange be established by statute;

(14) regulations for protection of areas of critical environmental concern be developed; and that authorizations for use of the public lands provide for revocation upon violation of applicable regulations;

(15) persons engaging in extractive or other activities "likely to entail significant disturbance" be required to have a land reclamation plan and a performance bond guaranteeing such reclamation; and

(16) the public lands be administered uniformly as to use and contractual liability conditions, except when otherwise provided by law.[48]

In addition to the extensive declaration of policy, Title IV of H.R. 7211 contained provisions relating to inventory, planning, public land use, management directives, and executive withdrawals. The bill also provided enforcement authority to land managing agencies and made violations of regulations issued by an agency head with reference to public lands administered by him punishable by fine or imprisonment or both. Title V of H.R. 7211 contained appropriation authorization, the repeal of many prior public land laws, and a series of definitions of terms used.

Time did not permit consideration of H.R. 7211 by the full House before the 92d Congress ended.

47. *See id.* at 36.
48. *Id.* at 36-39.

In the 93d Congress, the Senate had before it S. 424,[49] which Senator Jackson introduced on behalf of himself and Senators Bennett, Church, Gurney, Haskell, Humphrey, Inouye, Metcalf, Moss, Pastore, and Tunney. The Senate also had the Administration's proposal, S. 1041.[50] On July 8, 1974, S. 424 was passed by the Senate by a vote of 71 to 1, with 28 members not voting.[51] S. 424, with very few changes, was reintroduced in the 94th Congress as S. 507.[52] The new bill applied only to national resource lands—those lands administered by the Bureau of Land Management except the Outer Continental Shelf.

S. 507 contained these basic provisions relating to land management:

(1) management of the national resource lands under principles of multiple use and sustained yield;

(2) a return of fair market value to the federal government for the use or sale of lands;

(3) inventory;

(4) emphasis on planning;

(5) authority to issue regulations;

(6) public participation;

(7) advisory boards;

(8) annual reports;

(9) general management authority with specific guidelines;

(10) sales authority;

(11) expanded exchange authority;

(12) authority to convey reserved mineral interests;

(13) reenactment of the Public Land Administration Act of 1960 to put all land managing authorities into one statute;

(14) authority to issue recordable disclaimers of interest and to issue and correct patents;

(15) to afford an opportunity to zone or otherwise regulate the use of land, a requirement to notify states and local governmental units with zoning authority of any proposal to convey lands;

(16) authority to acquire land;

(17) creation of a working capital fund;

(18) enforcement authority;

(19) authority in the Secretary to cooperate with state and local governments in the enforcement of state and local laws on national resource lands;

(20) special provisions for cadastral survey operations and resource protection;

(21) special provisions for long-range planning for the "California Desert Area";

(22) provisions for oil shale revenues;

(23) a complete consolidation and revision of the authority to grant rights-of-way; and

(24) repeal of disposal, rights-of-way, and other statutes which this law was replacing.

S. 507, as passed by the Senate in the 94th Congress on February 25, 1976,[53] had these additional provisions that were not in S. 424 in the 93d Congress:

(1) provisions for disposal of "omitted" lands;

(2) amendments to the Mineral Leasing Act of 1920 to increase the percentage of revenues paid to states;

(3) provision for mineral impact relief loans; and

(4) provisions for recordation of mining claims and a conclusive presumption that any recorded claim for which the claimant did not make application for a patent within ten years after recordation is abandoned and therefor void.

There were two points of particular interest in the Senate floor debate on S. 507. The first point involved an amendment by Senator McClure that would have deleted from the provisions relating to

49. S. 424, 93d Cong., 1st Sess., 119 CONG. REC. 1339 (1973).
50. S. 1041, 93d Cong., 1st Sess., 119 CONG. REC. 5741 (1973).
51. 120 CONG. REC. 22296 (1974).
52. S. 507, 94th Cong., 1st Sess., 121 CONG. REC. 1821 (1975).
53. 122 CONG. REC. 4423 (1976).

mining claims the requirement that application for patents for mining claims be made within ten years.[54] The second point of particular interest involved grazing fees. Senator Hansen introduced an amendment that incorporated a formula for establishing a fee for grazing of domestic livestock on the public lands. The issue was vigorously debated on February 23 and again on the 25th. The grazing fee was opposed by Senators Jackson and Metcalf and by the National Wildlife Federation and the American Forestry Association, all of whose letters of opposition appear in the Congressional Record.[55] The amendment was also opposed by the Administration and eventually was rejected 36 to 53.[56] On February 25, after this amendment was rejected, S. 507 was passed by the Senate 78 to 11, with 11 members not voting.[57]

During the 93d and 94th Congresses, the Interior and Insular Affairs Committee of the House of Representatives was taking a different approach to public land legislation. Under the leadership of Representative John Melcher as Chairman, the Subcommittee on Public Lands held a series of meetings during which the members discussed and debated what they believed should be included in a bill. The Committee staff put proposed provisions into legislative language as the sessions went along. Committee prints were prepared and circulated for comment. By the end of the 93d Congress, eight prints had been prepared. Congressman John Dellenback had prepared a series of correcting amendments to the last print, but Congress adjourned before all the amendments could be incorporated into a bill. Two bills were actually introduced – H.R. 16676 and then H.R. 16800, a clean bill which corrected some errors discovered in the earlier bill.

During the 94th Congress, the Public Lands Subcommittee of the House Interior Committee conducted additional work sessions that culminated in the introduction of H.R. 13777.[58] This bill as reported out by the Committee not only granted management and enforcement authorities to the Bureau for public lands under its jurisdiction but also applied to public domain lands in the National Forest System. Some of the provisions relating to the Forest Service System were deleted when the bill was debated on the floor of the House. Passed by the House on July 22, 1976,[59] H.R. 13777 contained all the now familiar provisions of previous bills plus many new ones. The new provisions included:

(1) a grazing fee formula applicable to BLM-administered lands and lands in the National Forest System;

(2) provisions relating to duration of grazing leases applicable to BLM and National Forest System lands;

(3) requirements for grazing advisory boards, applicable to both BLM and Forest Service;

(4) provisions relating to wild horses and burros, also applicable to both BLM and Forest Service;

54. Senator Haskell and Senator McClure debated the issue briefly. On the calling of the question, Senator Haskell noted the absence of a quorum. This led Senator McClure to withdraw his amendment saying:

> Mr. President, I know that the Senate as a whole will probably follow the lead of the committee. If we have a roll call on this, I would anticipate that the majority of them walking through these doors would never have heard of this question before and would be very apt to follow the lead of the committee under those circumstances. Under those circumstances, I think it is likely that the result can be forecast.
>
> In the expectation that this matter might be considered somewhat differently in the other body and with the full confidence that we can move forward on a comprehensive bill, perhaps before this bill has been passed and becomes law, I am suggesting, therefore, it might be varied by subsequent legislation or conference between the Senate and the other body on the Organic Act, and I will withdraw the amendment at this time.

112 CONG. REC. 4053 (1976). As Senator McClure anticipated, the provision was not in S. 507 as it passed the House. The conferees did not adopt the provision, and it is not in the Act.

55. 122 CONG. REC. 4419 (1976).

56. *Id.* at 4422.

57. *Id.* at 4423.

58. H.R. 13777, 94th Cong., 2d Sess., 122 CONG. REC. 13815 (1976).

59. 122 CONG. REC. 23483 (1976).

(5) amendment of what is frequently called the Unintentional Trespass Act;[60]

(6) provisions relating to the "California Desert Conservation Areas;" and

(7) the "King Range National Conservation Areas."[61] After the House passed H.R. 13777, S. 507 was considered, amended to read as H.R. 13777 did, and passed.[62]

As expected, the Senate disagreed to the amendments of the House and requested a conference. On July 30, 1976, Senate conferees were appointed: Jackson, Church, Metcalf, Johnston, Haskell, Bumpers, Hansen, Hatfield, and Fannin. Senator Fannin was replaced later by Senator McClure. Conferees from the House were Representatives Melcher, Johnson (California), Seiberling, Udall, Phillip Burton, Santini, Weaver, Steiger (Arizona), Clausen and Young (Alaska). At an organizational meeting held on August 30, 1976, Congressman Melcher was elected chairman. The conferees determined that because of all the primaries scheduled for early September, the first working session of the conferees could not be held until September 15. Staff were instructed to study the Senate and House versions of S. 407, identify areas of virtual agreement, outline areas of disagreement, and recommend alternatives for resolving those areas of disagreement.

The first difference in text addressed by the conferees was the short title of the Act. The title of the House amendment was "Federal Land Policy and Management Act of 1976." The title of the Senate amendment was "National Resource Lands Management Act." The Senate staff deferred to the House staff on the title, and the conferees concurred. The second issue involved the term to be used in referring to lands administered by the Bureau of Land Management. The conferees adopted the term used by the House—public lands —although they recognized, as the staff pointed out, that in the past that had been a confusing term, referring sometimes to public domain lands and other times to acquired lands. And so it went. During four sessions, on September 15, 20, 21, and 22 and spanning more than twelve hours, the conferees had extensive discussions but relatively little problem agreeing to language to be incorporated into the Act—with four major exceptions. These exceptions almost killed the Act.

The House version of the Act contained a grazing fee formula and a provision for ten-year grazing permits.[63] It also provided for grazing district advisory boards, as distinct from the multiple use advisory councils.[64] The Senate conferees, particularly Senator Metcalf, objected to these provisions. The Senate version of the Act contained a provision that required mining claimants to make application for patent within ten years after the date of recordation of the claim. If the claimant failed to do so, the claim would be conclusively presumed to be abandoned and would be void.[65] The House conferees, particularly Congressman Santini, objected to this.

These issues of grazing and mining were debated extensively on September 22nd. Before the end of that five-hour session, Senator Metcalf offered a "package compromise."[66] The proposed compromise required:

(1) that the grazing fee provisions be deleted from the bill—in effect that the House would accede to the Senate on Section 401;

(2) that the Senate agree with the House on the already adopted Metcalf/Santini amendment that all grazing leases be for ten years;

(3) that the conferees accept the grazing advisory boards with their functions limited to expenditure of range improvement fees;[67] and

60. 43 U.S. C. __ 1431-1435 (1976).

61. These add-ons have sometimes been called the "Christmas-tree amendments."

62. 122 CONG. REC. 23508 (1976).

63. H.R. 13777, 94th Cong., 1st Sess. __ 210, 211, 122 CONG. REC. 23447-48 (1976).

64. *Id* § 212, 122 CONG. REC. at 23448.

65. S. 507, 94th Cong., 1st Sess., § 207, 122 CONG. REC. 23497 (1976).

66. The proposal actually was brought to the conferees by D. Michael Harvey, Staff Counsel, because Senator Metcalf was at a meeting of the Committee on Committees.

67. Mr. Harvey noted that this was as far as Senator Metcalf would go on an individual basis, but as part of the package he would add to the functions of the grazing advisory boards the development of the management allotment plans.

(4) with respect to the Senate language on mining claims, that the language be applicable only to mining claims filed after enactment of the Act, not pre-existing claims.

The conferees could not agree on the compromise that day but did agree to meet again on September 23rd just in advance of the Conference on the National Forest Management Act of 1976 that was due to start at 1:30 p.m. Several of the conferees on S. 507 were also on the Forest Act conference. The conferees convened at 1:10 p.m. on September 23rd. Congressman Santini offered a substitute compromise that would knock out advisory boards, have five-year leases in return for keeping grazing fees, and knock out the patent provisions. Senator Metcalf countered with a proposal to accept the first three amendments he had offered and knock out the Senate language on mining. This was rejected by the Senate conferees and at 1:20 p.m., the Conference was adjourned by Chairman Melcher who said he saw no point in prolonging the meeting. For the moment, hopes dimmed for passage of an Organic Act for the Bureau of Land Management. The 94th Congress was in its last-minute rush before adjournment. But as with many pieces of landmark legislation, a compromise was reached at the eleventh hour, reportedly as a result of behind-the-scenes lobbying by interested private parties.[68]

On September 28, Congressman Melcher made a last minute effort to reach a compromise and get a public land management act in the 94th Congress. He called a meeting of the Conference Committee to commence at 5:30 p.m. that evening. The meeting was held in a very small room in the Congress. Very few persons, other than conferees and staff, were permitted in the room. Dozens of interested persons filled the halls and corridors leading to the meeting room. Within a few minutes of coming together, the conferees took a thirty-minute break.

68. The struggle to achieve an acceptable middle ground was reported in the October 7, 1976, issue of *Public Land News: How the BLM Organic Act came back from the grave in five days*

The final, fateful meeting of the House-Senate conference committee that revived the BLM Organic Act pitted two unyielding antagonists—Sen. Lee Metcalf (D-Mont.) And Rep. James Santini (D-Nev.).

Simply put, Santini wanted a statutory grazing fee he co-authored to stay in the bill. Metcalf didn't.

So, on September 23, the conference deadlocked over the grazing fee when the House refused by a 5-5 vote to give up the provision. At the same time, the Senate conferees refused to allow the grazing fee to stay in. The bill was effectively dead for 1976 . . . or so the conferees said.

The deadlock began to give way the following day when the mining industry, principally the American Mining Congress, realized the Senate would give up its provision on requiring patent in 10 years. But only if the House dropped the grazing fee. The mining industry abhors the patent requirement.

So, the mining industry started pressuring the ranching industry to ask its Congressional allies to yield on the grazing fee, said sources in the cattle industry.

And Rep. John Melcher (D-Mont.)—chief sponsor of the House bill, candidate for the U.S. Senate—continued to push for a further compromise.

Pressure was applied primarily to Reps. Don Young (R-Alaska) and Don Clausen (R-Calif.), *PLNews* sources said.

Then on Tuesday morning (September 28) a meeting was held among the House supporters of the statutory grazing fee. They decided to yield on the grazing fee, reasoning that a freeze was better than no bill at all.

With that a meeting of the full conference was held in room S 224 of the Capitol at 5:30 p.m, just minutes after a compromise timber management bill had been hammered out in conference down the hall.

The last BLM conference, with only a half dozen attendees other than Congressmen and their staff, started badly. Metcalf and Santini, almost shouting at times, argued forcefully that each had already compromised too much. But Santini eventually offered a compromise on the grazing fee. It called for a statutory grazing fee for two years while a study was conducted. The Senate conferees refused to even consider it.

Then Clausen offered a compromise calling for freezing the present grazing fee, developed administratively by BLM and the Forest Service, for two years while a study was conducted. Again, the Senate refused to consider it.

Then the conferees, with no one in particular sponsoring it, agreed to consider a one-year freeze with study. Santini asked for and received a 30-minute break.

During the break, *PLNews* talked to representatives of the American National Cattlemen's Association and the Public Lands Council. They said, resignedly, the one-year freeze plus study was the most they could hope for, given the Senate conferees adamant opposition to anything else.

Finally, at 7 p.m. on September 28, the conferees reassembled and Melcher asked for a show of hands from the House members. He, Rep. James Johnson (R-Colo.), Rep. Harold T. Johnson (D- Calif.), Clausen, and Santini voted for the compromise. Melcher said Reps. Mo Udall (D-Ariz.), Jim Weaver (D-Ore.), and John Seiberling (D-Ohio) also would have agreed to the compromise if they had been present.

Word spread among the assembled crowd that the meeting was going badly. However, when the conferees reassembled at 7 p.m., those present voted almost immediately for the compromise that had been suggested earlier. The conferees and staff walked quickly out of the conference room. As they made their way down the corridor, they received the quiet congratulations of the very interested group of people who had waited to hear the final outcome of the session.

In keeping with its somewhat stormy and cliff-hanger history, the conference report was passed by the House on September thirtieth, and by the Senate on October first, just hours before the 94th session ended. The Act was signed by the President on October 21, 1976, and became Public Law 94-579, 90 Stat. 2743.

The Senate members present—Metcalf, Floyd Haskell (D-Colo.), and Frank Church (D-ID)—also agreed without a formal vote.

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