

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

**43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180**

[BLM\_HQ\_FRN\_MO4500172196]

RIN 1004–AE80

**Fluid Mineral Leases and Leasing Process**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) is proposing to revise the BLM’s oil and gas leasing regulations. Among other things, the proposed rule would reflect provisions of the Inflation Reduction Act pertaining to royalty rates, rentals, and minimum bids, and would update the bonding requirements for leasing, development, and production. The proposed rule would also improve the BLM’s leasing process to ensure proper stewardship of public lands and resources and would revise some operating requirements.

**DATES:** Send your comments on this proposed rule to the BLM on or before September 22, 2023. The BLM is not obligated to consider any comments received after this date in making its decision on the final rule.

*Information Collection Requirements:* This proposed rule includes revised and new information-collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the information-collection requirements, please note that those comments should be sent directly to OMB. OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB on the proposed information-collection revisions is best assured of being given full consideration if the OMB receives it by September 19, 2023.

**ADDRESSES:** Mail, personal, or messenger delivery: U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C St. NW, Room 5646, Washington, DC 20240, Attention: 1004–AE80. *Federal eRulemaking Portal:* <https://www.regulations.gov>. In the Search-box, enter “RIN 1004–AE80” and click the “Search” button. Follow the instructions at this website.

**For Comments on Information—Collection Activities**

*Information-Collection Requirements:* Written comments and suggestions on the information-collection requirements should be submitted by the date specified earlier in **DATES** to <https://www.reginfo.gov/public/do/PRAMain>. Find this specific information-collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

If you submit comments on these information-collection burdens, you should provide the BLM with a copy at one of the addresses shown earlier in this section so that we can summarize all written comments and address them in the final rulemaking. Please indicate “Attention: Paperwork Reduction Act Comments (RIN 1004–AE80).” Comments not pertaining to the proposed rule’s information-collection burdens should not be submitted to OMB. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments that are improperly directed to OMB.

**FOR FURTHER INFORMATION CONTACT:**

Peter Cowan, Senior Mineral Leasing Specialist, telephone: (720) 838–1641 or email: [picowan@blm.gov](mailto:picowan@blm.gov), for information regarding the substance of this proposed rule or Matt Warren, Acting Division Chief for the Division of Fluid Minerals, telephone: (505) 216–8832, or email: [mwarren@blm.gov](mailto:mwarren@blm.gov), for information about the BLM’s fluid minerals program. For questions relating to regulatory process issues, contact Faith Bremner at email: [fbremner@blm.gov](mailto:fbremner@blm.gov). Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Warren. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

- I. List of Acronyms
- II. Executive Summary
- III. Public Comment Procedures
- IV. Background
- V. Discussion of the Proposed Rule
- VI. Overview of Modifications
- VII. Procedural Matters

**I. List of Acronyms**

ANWR = Arctic National Wildlife Refuge  
 BLM = Bureau of Land Management  
 CA = Communization Agreement  
 CD = Certificate of Deposit  
 CFIUS = Committee on Foreign Investment in the United States

CFR = Code of Federal Regulations  
 DOI = Department of the Interior  
 E.O. = Executive Order  
 EOI = Expression of Interest  
 EPAct = Energy Policy Act of 2005  
 FLPMA = Federal Land Policy and Management Act  
 FOOGLRA = Federal Onshore Oil and Gas Leasing Reform Act of 1987  
 GAO = Government Accountability Office  
 IBLA = Interior Board of Land Appeals  
 IJJA = Infrastructure Investment and Jobs Act of 2021  
 IRA = Inflation Reduction Act of 2022  
 LOC = Letter of Credit  
 MLA = Mineral Leasing Act of 1920, as amended (MLA is also referred to as “Act” in the regulations.)  
 MLAAL = Mineral Leasing Act for Acquired Lands of 1947, as amended  
 MLRS = Mineral and Land Records System  
 NEPA = National Environmental Policy Act  
 NFLSS = National Fluids Lease Sale System  
 NPR–A = National Petroleum Reserve—Alaska  
 OIG = Office of the Inspector General  
 OMB = Office of Management and Budget  
 ONRR = Office of Natural Resources Revenue  
 OPM = Office of Personnel Management  
 PRA = Paperwork Reduction Act  
 RIA = Regulatory Impact Analysis  
 ROW = Right-of-way  
 SBA = Small Business Administration  
 SO = Secretarial Order  
 SME = Subject matter expert  
 U.S.C. = United States Code  
 USFS = United States Forest Service

**II. Executive Summary**

This proposed rule aims to enhance the administration of oil and gas-related activities on America’s public lands and reflects provisions in recently enacted laws that modify aspects of the Federal onshore oil and gas program. Specifically, the proposed rule would implement changes pertaining to royalty rates, rentals, and minimum bids for BLM-issued oil and gas leases and would update the bonding requirements for leasing, development, and production. The BLM has not comprehensively updated the Federal onshore oil and gas program’s regulatory framework since 1988. As a result, many of the program’s regulatory requirements are outdated, do not adequately protect the fiscal interests of the American public, and do not promote leasing practices that are consistent with diligent development requirements and multiple-use and sustained-yield principles. This proposed rule seeks to update the existing regulations accordingly.

The Secretary of the Interior manages a Federal onshore oil and gas program pursuant to the requirements of various statutes, including the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*) (FLPMA), the Mineral Leasing Act of

1920, as amended (30 U.S.C. 181 *et seq.*) (MLA), and the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351 *et seq.*) (MLAAL), as well as the recently enacted Inflation Reduction Act (IRA) of 2022 and Infrastructure Investment and Jobs Act (IIJA) of 2021. Under FLPMA, the BLM manages approximately 245 million acres of public lands and approximately 700 million acres of federally owned subsurface minerals “on the basis of multiple use and sustained yield,” which requires the BLM to achieve “a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources.” The BLM is required to avoid “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.” Oil and gas-related activities are one of the multiple land uses that FLPMA authorizes and which the BLM administers in accordance with the MLA and MLAAL. Both of those Acts govern the leasing of public lands to explore for and develop petroleum, natural gas, coal, and other hydrocarbons, amongst other mineral deposits.

Over the past 2 years, Congress has modified certain aspects of the Federal onshore oil and gas program through the IRA and IIJA. In the IRA, Congress updated the onshore oil and gas program’s fiscal terms and established a new leasing scheme for Federal lands. In the IIJA, Congress directed the BLM to proactively “reduce the inventory of idled wells on Federal land.” Idled wells can cause a wide range of impacts on public lands, waters, wildlife, and nearby communities. There are currently thousands of idled wells on Federal lands, many of which have not produced oil or gas in years. The BLM intends to address the IRA and IIJA in this rulemaking.

Prior to the enactment of the IRA and IIJA, the Government Accountability Office (GAO) and the Department of the Interior’s (DOI) Office of the Inspector General (OIG) reviewed and audited the BLM’s Federal onshore oil and gas program to identify problematic areas in this program and recommended actions to address them. As part of the GAO’s and OIG’s respective audits, they highlighted weaknesses in the onshore program’s fiscal framework and recommended that the BLM take steps to ensure that the American public receives a fair return from oil and gas

activities on public lands. The DOI and the BLM concurred with these recommendations in the *Report on the Federal Oil and Gas Leasing Program* issued in November 2021. Accordingly, the BLM is proposing to adjust its oil and gas bonding requirements, including by increasing minimum bond amounts for the first time in decades. The BLM believes that doing so, along with other proposed changes, would help ensure that reclamation costs reside primarily with oil and gas lessees, operating rights owners, and operators and not the American public. In the same vein, the BLM is proposing to adjust its cost recovery mechanisms so that project applicants provide a more appropriate share of up-front costs. Finally, the BLM is proposing several changes to encourage diligent development of leased lands and to direct leasing to areas with fewer multiple-use conflicts and a greater likelihood of achieving responsible development.

### III. Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments to the BLM by mail, personal or messenger delivery, or through <https://www.regulations.gov> (see the **ADDRESSES** section). Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, explain the reason for any changes you recommend, and include any supporting documentation. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed previously (see **ADDRESSES**). Comments, including names and street addresses of respondents, will be available for public review at the address listed under “**ADDRESSES: Mail, personal or messenger delivery**” during regular hours (7:45 a.m. to 4:15 p.m. Eastern Time), Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we

cannot guarantee that we will be able to do so.

As explained later, this proposed rule includes revisions to information collection requirements that must be approved by the OMB. If you wish to comment on the revised information collection requirements in this proposed rule, please note that such comments must be sent directly to the OMB in the manner described in the **ADDRESSES** section. The OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB on the proposed information collection revisions is best assured of being given full consideration if the OMB receives it by September 19, 2023.

### IV. Background

The BLM is undertaking this rulemaking for two primary reasons: (1) to reflect provisions in recently enacted laws that modify aspects of the Federal onshore oil and gas program; and (2) to enhance the administration of the onshore program, consistent with the BLM’s multiple-use and sustained-yield mission. As documented in a DOI report released in November 2021,<sup>1</sup> and in numerous reports from the GAO and DOI’s OIG,<sup>2</sup> the onshore program, historically, has failed to provide the Federal Government with a fair return; exposed the Federal Government to significant reclamation-related liabilities; lacked adequate cost recovery mechanisms; and encouraged speculative leasing and wasteful development practices. Through this rulemaking, the BLM intends to adopt new procedures and requirements to address those issues.

The Secretary of the Interior manages Federal oil and gas resources pursuant to the MLA, MLAAL, and other statutes pertaining to specific categories of lands. The MLA and MLAAL prescribe

<sup>1</sup> DOI, “Report on the Federal Oil and Gas Leasing Program” (Nov. 2021).

<sup>2</sup> See, e.g., OIG, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior” (Nov. 2022); GAO, “OIL AND GAS LEASING—BLM Should Update Its Guidance and Review Its Fees” (Nov. 2021); GAO, “OIL AND GAS—Onshore Competitive and Noncompetitive Lease Revenues” (Nov. 2020); GAO, “FEDERAL ENERGY DEVELOPMENT—Challenges to Ensuring a Fair Return for Federal Energy Resources” (Sept. 2019); GAO, “OIL AND GAS—Bureau of Land Management Should Address Risk from Insufficient Bonds to Reclaim Wells” (Sept. 2019); GAO, “OIL AND GAS LEASE MANAGEMENT—BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures” (June 2018); OIG, “Bureau of Land Management’s Idle Well Program” (Jan. 2018).

the minimum bid amounts, minimum rental rates, and minimum percentage of royalty reserved to the United States under onshore oil and gas leases on most Federal lands. The BLM is the agency within DOI responsible for regulating onshore leasing activities for federally managed lands and the subsurface mineral estate. The BLM regulations governing onshore oil and gas leasing activities are set out in 43 CFR parts 3000 and 3100. Aside from updating certain application fees for consistency, the BLM is not proposing in this rule to revise the regulations at 43 CFR part 3130, which govern oil and gas activity in the National Petroleum Reserve—Alaska.

In 1976, FLPMA established particular land and resource management authorities for the BLM, emphasizing multiple use, sustained yield, and environmental protection as the guiding principles for public land management. FLPMA directs the BLM to manage some areas for conservation, to consider the best use of public lands in a broader context than just economic return, and to take action necessary to prevent unnecessary or undue degradation of the lands.

Today, Federal onshore oil and gas production accounts for approximately 10 percent of domestically produced oil and 8 percent of domestically produced natural gas. As of the end of Fiscal Year (FY) 2022, the BLM managed 34,409 Federal oil and gas leases covering 23.7 million acres with nearly 89,350 wells that are capable of production. Of the more than 23 million onshore acres under lease today, over 11 million (approximately 48 percent) of those acres are non-producing.

#### A. Addressing Recently Enacted Laws Concerning the Federal Onshore Oil and Gas Program

Over the past 2 years, Congress has enacted two laws—the IRA (Pub. L. 117–169) and the IJA (Pub. L. 117–58)—that modify the Federal onshore oil and gas program’s statutory framework. Through this rulemaking, the BLM will incorporate the provisions that are contained in these Acts into its oil and gas regulations.

##### 1. Inflation Reduction Act

In August 2022, Congress passed the IRA, two sections of which the BLM intends to implement, in part, through this rulemaking: (1) Section 50262—Mineral Leasing Act Modernization; and (2) Section 50265—Ensuring Energy Security.

##### Section 50262—Mineral Leasing Act Modernization

In IRA section 50262, Congress modernized the onshore oil and gas program’s fiscal terms. Over the past decade, the GAO and OIG have repeatedly raised concerns about the fiscal soundness of the onshore program.<sup>3</sup> Furthermore, in 2011, the GAO added the “Management of Federal Oil and Gas Resources” to its list of “high-risk” Federal programs after determining that DOI “does not have reasonable assurance that it is collecting its share of revenue from oil and gas produced on Federal lands.”<sup>4</sup> “High-risk” programs are “vulnerable to waste, fraud, abuse, or mismanagement, or in need of transformation.” GAO reaffirmed this “high-risk” determination in 2021 and specifically recommended that DOI “needs to commit to developing policies that consistently lead towards improvements in . . . ensuring the government receives a fair return.”<sup>5</sup>

The IRA addressed some of the GAO and OIG’s concerns by increasing the onshore program’s statutory royalty rate, minimum rental rates, and minimum lease bid, and establishing a new fee on expressions of interest (EOI). The BLM proposes to incorporate these statutory changes into its oil and gas regulations.

##### Section 50265—Ensuring Energy Security

In section 50265 of the IRA, Congress enacted new oil and gas leasing terms for Federal lands. Under these terms, the BLM “may not issue a right-of-way for wind or solar energy development on Federal land” unless it has: (1) held an onshore oil and gas lease sale during the 120-day period ending on the date of the issuance of the right-of-way; and (2) “the sum total of acres offered for lease in onshore lease sales during the 1-year period ending on the date of the issuance of the right-of-way . . . is not less than the lesser of . . . 2,000,000 acres[] and 50 percent of the acreage for which expressions of interest have been submitted for lease sales during that period. . . .”

<sup>3</sup> See, e.g., OIG, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior” (Nov. 2022); GAO, “FEDERAL ENERGY DEVELOPMENT—Challenges to Ensuring a Fair Return for Federal Energy Resources” (Sept. 2019).

<sup>4</sup> GAO, “HIGH-RISK SERIES—An Update” (Feb. 2011).

<sup>5</sup> GAO, “HIGH-RISK SERIES—Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas” (Mar. 2021).

##### 2. Infrastructure Investment and Jobs Act

In November 2021, Congress passed the IJA, which amended section 349 of the Energy Policy Act of 2005 (EPAct) (Pub. L. 109–58). Section 349 of EPAct directs the BLM to “establish a program . . . 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.” Section 349 defines an “idled well” as “a well . . . [that] has been nonoperational for at least 7 years” and has “no anticipated beneficial use.”

Since EPAct’s passage in 2005, the BLM has gained additional information, experience, and insights into its efforts to inventory and manage idled wells. In 2018, the OIG issued a report finding that “[i]dled wells pose notable financial risk to the U.S. Government and the taxpayer, as idle wells can fall into disrepair creating environmental, safety, and public health hazards. In addition, idle wells pose a risk of becoming orphaned, thus creating an undue financial burden on the taxpayer to pay for plugging and reclaiming. Idle wells have the potential to cost taxpayers millions of dollars if not properly reviewed and managed.”<sup>6</sup> The OIG also identified “various program management issues,” including a “lack of an accurate inventory of idle wells” and “unreliable data in managing idle wells,” “that have contributed to BLM’s inability to reduce its idle well numbers.” To address these issues, the OIG recommended that the BLM strengthen its procedures for monitoring and tracking idled wells.

The GAO also addressed the idled well program in a pair of reports issued in May 2018 and September 2019.<sup>7</sup> In these reports, the GAO stated that the BLM has “few policy tools to manage shut-in wells,” which represent a “large portion” of wells that become idled and orphaned.<sup>8</sup> The GAO also identified nearly 2,300 idled wells “at increased risk of becoming orphaned because they have not produced since June 2008 and have not been reclaimed.” The bonds for “a majority of these at-risk wells” were “too low to cover” their anticipated reclamation costs, which,

<sup>6</sup> OIG, “Bureau of Land Management’s Idle Well Program” (Jan. 2018).

<sup>7</sup> GAO, “OIL AND GAS—Bureau of Land Management Should Address Risk from Insufficient Bonds to Reclaim Wells” (Sept. 2019); GAO, “OIL AND GAS WELLS—Bureau of Land Management Needs to Improve Its Data and Oversight of Its Potential Liabilities” (May 2018).

<sup>8</sup> See § 3160.0–5 for a proposed definition of shut-in well.

according to the GAO, may exceed \$330 million.

In the IJJA, Congress provided the BLM with additional direction concerning the idled well program. Specifically, the IJJA requires the BLM to “periodically review” and proactively “reduce the inventory of idled wells on Federal land.” The IJJA also reduces the nonoperational period after which a well is considered idled from 7 to 4 years. In light of these statutory directives, as well as the recommendations from the OIG and GAO, the BLM is proposing to adopt additional requirements for operators of nonoperational wells (specifically, shut-in and temporarily abandoned wells). The BLM believes that these requirements would help the BLM reduce its inventory of idled wells through improved identification, tracking, and proactive management.

### *B. Enhancing the Administration and Functioning of the Federal Onshore Oil and Gas Program*

In addition to addressing recent Congressional directives, the BLM is undertaking this rulemaking for the purpose of adopting new procedures and requirements that would enhance the administration of the Federal onshore oil and gas program, consistent with the BLM’s multiple use and sustained yield mission. The BLM has not updated its oil and gas regulations comprehensively since 1988 and believes that changes are needed to reduce taxpayer exposure to reclamation-related liabilities; provide adequate cost recovery mechanisms; direct oil and gas leasing to appropriate locations; and encourage diligent development by parties that are responsible and qualified to conduct such development.

#### 1. Reducing Taxpayer Exposure to Reclamation-Related Liabilities

The MLA requires the BLM to “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” (see 30 U.S.C. 226(g)). The MLA further requires the BLM to include in oil and gas leases “such provisions as [it] deem[s] necessary . . . for the protection of the interests of the United States . . . and for the

safeguarding of the public welfare” (see 30 U.S.C. 187). To comply with these statutory requirements, the BLM is proposing to update its bonding framework for the first time in over 60 years and adopt additional changes to limit the reclamation-related liabilities of the Federal Government.

The BLM’s current minimum bond amounts are outdated, expose the Federal Government to significant financial risks in the event of bankruptcies, and delay “complete and timely” reclamation and restoration of lease tracts, which can cause or exacerbate a range of environmental issues, including methane leaks, surface and groundwater contamination, interference with agricultural activities, and degraded wildlife habitat.<sup>9</sup> The BLM has not increased its minimum bond amounts, which are currently \$10,000 for individual lease bonds, \$25,000 for statewide bonds, and \$150,000 for nationwide bonds, since 1951 (statewide and nationwide bonds) and 1960 (individual lease bonds). Accounting for inflation, the 2022 equivalents of those bond amounts are \$100,105, \$281,399, and \$1,688,394 respectively. (See <https://www.usinflationcalculator.com/>). Consequently, the BLM’s current bonding requirements “may not create an incentive for operators to promptly reclaim wells after operations cease because it costs more to reclaim the wells than the operator could collect from its bond.”<sup>9</sup> According to the BLM’s internal estimates, plugging costs alone typically range from \$35,000 to \$200,000 per well.

In addition to increasing minimum bond amounts, the BLM is proposing other measures to protect taxpayers from reclamation-related liabilities. These include enhanced oversight of idled wells, as discussed previously. The BLM also intends to streamline the process for adding noncompliant entities to its list of entities and their officers that may not receive new leases under section 17(g) of the MLA, 30 U.S.C. 226(g).

#### 2. Providing Adequate Cost Recovery Mechanisms

As explained in greater detail in the Discussion of the Proposed Rule, the BLM is proposing to revise the onshore program’s cost recovery mechanisms. The BLM is doing so to ensure that the program’s application fees reflect actual processing costs. In 2021, the GAO released a report on the BLM’s fee

structure for the onshore oil and gas program, which stated that the “BLM does not have assurance that its current application fees reflect changes in conditions because its biennial fee review does not examine all the costs BLM intended to recover through its application fees.”<sup>10</sup> The BLM concurred with that finding, and, in conjunction with this rulemaking, evaluated those costs, which informed the proposed adjustments to the onshore program’s application fees.

#### 3. Directing Oil and Gas Leasing to Appropriate Locations

To assist with the consideration and selection of lease sale parcels, the BLM intends to incorporate preference criteria into its oil and gas regulations. Historically, the BLM has not employed nationwide criteria to inform its selection of sale parcels. The BLM has invested a considerable amount of time and resources on evaluating parcels that the public does not purchase and that lessees do not develop. Between 2013 and 2022, the BLM offered approximately 40.3 million acres and leased approximately 9.5 million acres from competitive lease sales.<sup>11</sup> Even when parcels sell at or above the minimum bid, they are rarely developed or generate royalties for the Federal Government. The GAO found that only about 7 percent of the leases reviewed produced oil and gas in the primary term of the lease.<sup>12</sup> The BLM believes that by directing Federal oil and gas leasing towards areas that are more likely to produce, it can appropriately utilize the BLM’s time and resources. When new technology becomes available, the BLM would reevaluate development potential in light of that technology, which could change the identified areas that are more likely to produce.

The lack of preference criteria to aid in the selection of sale parcels also leads to conflict when leases are offered in areas with sensitive cultural, wildlife, and recreation resources. By directing leasing toward areas that do not have such resources, the BLM believes it can proactively avoid some of these conflicts. Additionally, the BLM believes that this approach would provide stakeholders with greater certainty, as it would be understood at the outset of the leasing process that the

<sup>10</sup> GAO, “OIL AND GAS LEASING—BLM Should Update Its Guidance and Review Its Fees” (Nov. 2021).

<sup>11</sup> BLM Public Lands Statistics, Table 11, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.

<sup>12</sup> GAO, “OIL AND GAS—Onshore Competitive and Noncompetitive Lease Revenues” (Nov. 2020).

<sup>9</sup> GAO, “OIL AND GAS—Bureau of Land Management Should Address Risk from Insufficient Bonds to Reclaim Wells” (Sept. 2019).

preference criteria would guide the BLM's decision-making.

While the proposed rule text sets out a number of criteria to aid the BLM in selecting parcels for potential inclusion in lease sales, the analysis of the impacts of leasing these parcels would also address the potential impacts of direct, indirect, and cumulative greenhouse gas emissions from leasing in accordance with the National Environmental Policy Act (NEPA) and applicable legal precedent. While the preference criteria will also affect the environmental consequences of proposed leasing, the BLM requests comment on whether the preference criteria or other portions of this proposed rule should be expanded, or new provisions added, to discuss analysis of greenhouse gas emissions and related decision-making based on the analysis.

#### 4. Encouraging Diligent Development of Federal Oil and Gas Leased Resources

The BLM has added provisions to the proposed rule that would incentivize diligent development of leased resources by responsible and qualified parties. When oil and gas leases are not diligently developed, as required by the MLA and expressly stated in the BLM's oil and gas lease form,<sup>13</sup> there can be significant opportunity costs. For example, the BLM expends time and resources processing and administering lease suspensions and drilling permit extensions that often do not lead to development.<sup>14</sup> Additionally, leases that are not diligently developed can limit the BLM's ability to manage public lands for other uses and resources and fulfill its multiple-use and sustained-yield missions. For these reasons, the BLM is proposing to limit the use of lease suspensions and drilling permit extensions, and, prior to issuing or approving the transfer of leases, strengthen its oversight of whether the potential transferees are responsible and qualified to pursue development.

### V. Discussion of the Proposed Rule

#### A. Summary

The proposed modifications to parts 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180 are described in detail in the following section-by-section discussion. In

<sup>13</sup> BLM Form 3100–11, "Offer to Lease and Lease for Oil and Gas," available at [https://www.blm.gov/sites/blm.gov/files/uploads/Services\\_National-Operations-Center\\_Eforms\\_Fluid-and-Solid-Minerals\\_3100-011.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/Services_National-Operations-Center_Eforms_Fluid-and-Solid-Minerals_3100-011.pdf).

<sup>14</sup> GAO, "OIL AND GAS LEASE MANAGEMENT—BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures" (June 2018).

addition, minor non-substantive changes, which do not warrant detailed discussion, are also proposed throughout the rule. For example, the rule proposes to change "the Bureau" to "the BLM," change "Service" to "ONRR," spell out single-digit numbers, and change the question-and-answer formatting to be consistent with other regulations that appear in the CFR. Throughout the proposed rule, the existing term "shall" has been replaced with the words "must," "will," or "may," as appropriate, to reduce confusion. The proposed rule would update all time frames to specify either business or calendar days in order to reduce confusion.

In addition, all sections in the parts that are being revised and replaced would be redesignated to remove the hyphens from the existing section numbers to comply with the Office of the Federal Register's updated style requirements. For example, § 3000.0–5 would be redesignated to § 3000.5. Removing the hyphens would require the BLM to redesignate some of the existing section numbers with decimals by adding more place values to them, which would allow the BLM to subsequently delineate the different sections. For example, § 3000.1 would be redesignated as § 3000.10, § 3000.2 would be redesignated as § 3000.20, and so on. This redesignation would be carried throughout the proposed rule, even in sections that are not otherwise being updated. Finally, the BLM would remove the regulatory section numbers for headings that have no text associated with them. These are referred to as "undesignated center headings" and serve as section guideposts in the regulations.

Each section of each subpart, and each provision within those sections, is separate and severable from the other sections and provisions. If any provision of this rule is stayed or determined to be invalid or unenforceable, that provision shall be severable from the rest of the rule and not affect any remaining provisions. The remaining provisions would remain in force. This rule should be construed to continue to give the maximum effect to each provision as permitted by law.

#### B. Section-by-Section Discussion

The following discussion addresses the proposed changes to the existing regulations. If a provision is not specifically discussed in this section-by-section analysis, then the provision would be essentially the same as the existing regulation, except for the minor non-substantive changes discussed previously.

#### 1. Section-by-Section Discussion for Changes to 43 CFR Subpart 3000

The proposed rule would add a new section to the existing subpart 3000 regulations and revise five section headings. The goal of the revisions is to replace the existing question-and-answer formats and use more commonly used terms, consistent with other changes made throughout this rule.

##### Section 3000.5 Definitions

The BLM is proposing to alphabetize the definitions in this section.

The proposed rule would add a definition for "acreage for which expressions of interest have been submitted" to refer to acreage that is identified in an expression of interest received by BLM, that has not been proposed for leasing in any pending sale or other expression of interest pending BLM disposition, and for which BLM may lawfully issue an oil and gas lease. This definition and the below definition of "acres offered for lease" are intended to clarify the means by which BLM will internally track its leasing progress for purposes of the Inflation Reduction Act, as further specified in new § 3120.42.

The proposed rule would add a definition for "acres offered for lease" to mean all acres that BLM has offered for oil and gas lease, regardless of whether those acres are acreage for which expressions of interest have been submitted.

The proposed rule would update the definition for "Act" to include the acronym MLA for the Mineral Leasing Act of 1920, as this acronym would appear in the proposed regulatory text.

The proposed rule would replace the term "Service" in this section with "ONRR" because the relevant functions of the prior Minerals Management Service (also referred to throughout the existing regulations as "Service") are now performed by the ONRR. The proposed rule would likewise change the term "Service" to "ONRR" wherever it appears in the parts 3000 and 3100 regulations.

The proposed rule would add a definition for "Person" to unify the terms "person" and "entity." The proposed definition would define "person" to mean any individual or entity, such as a partnership, association, State, political subdivision of a State or territory, or a private, public, or municipal corporation.

The proposed rule would modify the existing definition for "Proper BLM office" to remove the reference to the BLM Alaska State Office. The definition of this term would continue to refer the reader to § 1821.10, which contains the

location information for all BLM state offices.

A new definition for “Properly filed” would be added to proposed § 3000.5 to correspond to the use of the term in § 3000.60. The new definition would describe “Properly filed” as a document or form submitted to the appropriate office with all necessary information and payments, as provided in 43 CFR subpart 1822.

The proposed rule would modify the existing definition for “Surface managing agency” to ensure that the definition includes other agencies within the DOI with which the BLM must coordinate, in addition to non-DOI agencies that have management responsibility for the surface resources that overlay federally owned minerals. The revised definition would replace the phrase “any Federal agency outside of the Department of the Interior with jurisdiction over the surface overlying federally owned minerals” with “any Federal agency, other than the BLM, having management responsibility for the surface resources that overlay federally owned minerals.”

#### Section 3000.20 False Statements

The purpose of this section is to inform the public that submitting false or fraudulent statements to the agency is a crime punishable by imprisonment or a fine, or both. The proposed rule would remove the references to specific imprisonment times and fine amounts for violations provided in 18 U.S.C. 1001. The purpose of this change is to ensure that this regulation does not become inaccurate or obsolete if the penalty provisions in 18 U.S.C. 1001 are updated. The penalties are already referenced at 18 U.S.C. 1001, which is cited in the BLM’s regulation.

#### Section 3000.40 Appeals

A BLM decision is subject to appeal to the Interior Board of Land Appeals (IBLA) in accordance with the regulations contained in 43 CFR part 4, when a decision accomplishes, authorizes, or prohibits some action. See *International Petroleum*, 190 IBLA 130, 134–35 (2017). The BLM will identify the applicable authority under which it made its decision. Actions under certain sections of BLM’s oil and gas leasing regulations, for example the BLM’s filing fees, are not subject to appeal, because such actions are authorized pursuant to a previous notice-and-comment process. The proposed rule would add a reference to § 3000.120 to clarify that point, consistent with existing language found under § 3000.12(b), which states the amount of a fixed fee is not an agency decision

subject to appeal under § 3000.40 and part 4. The BLM also proposes to also add a reference to proposed § 3000.130, which includes a similar paragraph stating the financial terms for new leases are not subject to appeal. The proposed rule would update an existing CFR reference from § 3101.7–3(b) to § 3101.53(b). This change reflects the proposed redesignation changes to the process for oil and gas lease issuances under § 3101. The proposed rule would remove a reference to § 3120.1–3, as the title and language in that section are proposed to change from “protests and appeals” to “protest” only. (See the discussion on the proposed § 3120 later in this preamble.)

#### Section 3000.50 Limitations On Time To Institute Suit To Challenge a Decision of the Secretary

The proposed rule would update the word “contesting” in this section to the more commonly used term “challenging” to provide clarity.

#### Section 3000.60 Filing of Documents

This section describes how to file documents with the BLM. The proposed rule would update this section to enable the BLM to accept electronically filed documents. The provision would still allow the use of hard-copy mailing services. In addition, this section would update the reference to § 1821.2 to the correct citation of subpart 1822.

#### Section 3000.90 Enforcement Actions Under 30 U.S.C. 195

This section explains that the U.S. Department of Justice is the agency responsible for enforcement actions described in section 41 of the MLA. The proposed rule would update the title and language in this section to cite 30 U.S.C. 195. The U.S. Code reference is more informative than the current reference to “provisions of section 41 of the Act.” The proposed rule would add language from 30 U.S.C. 195 to make this provision more informative.

#### Section 3000.100 Fees in General

The proposed rule would rename this section from “What do I need to know about fees in general?” to “Fees in general.”

#### Section 3000.110 Processing Fees on a Case-by-Case Basis

The proposed rule would rename this section from “When and how does BLM charge me processing fees on a case-by-case basis?” to “Processing fees on a case-by-case basis.” In addition, the BLM proposes to add “and in accordance with all other applicable laws and regulations” into paragraph

(b)(1) to avoid implying that an applicant may prepare or assist in the preparation of certain NEPA documents that, under CEQ regulations, are to be prepared solely by the applicable agency.

#### Section 3000.120 Fee Schedule for Fixed Fees

Consistent with the IRA, the BLM has implemented a nonrefundable filing fee of \$5 per acre, or fraction thereof, for EOIs. This fee is not considered a cost-recovery fee, and the monies collected are transferred to the Treasury as miscellaneous receipts (see 30 U.S.C. 191).

The proposed rule would update the existing fee for name changes, corporate mergers, or transfers to heirs and devisees to include corporate dissolutions and sheriff’s deeds. The BLM accepts corporate dissolutions and sheriff’s deeds to recognize the change in the ownership of interest in a lease per existing policy at H–3106–1, *Transfers by Assignment, Sublease or Otherwise*. The BLM processes these types of changes in the same manner as name changes, corporate mergers or transfers to heirs and devisees. Thus, these changes should also require a fixed filing fee.

The BLM is also proposing to adjust the existing oil and gas filing fees for competitive lease applications, leasing under rights-of ways, class I lease reinstatements, and geophysical exploration permits. When these fees were initially set in 2005, the BLM explained that it reserved the right to amend the fees in future rulemakings to reflect new data or other evidence that the fees did not accurately reflect reasonable costs (70 FR 41532 (July 19, 2005)). The GAO has since found that the BLM has not reviewed its application fees in response to changing conditions. See GAO–22–103968, *Oil and Gas Leasing: BLM Should Update Its Guidance and Review Its Fees*. The BLM concurred with GAO’s findings because the cost to the BLM of its oil and gas leasing process has changed since 2005. For example, the BLM moved to online auctions in 2016, and it no longer expends resources on holding auctions because the winning bidders pay the auction company directly for auction expenses. Previously, a portion of the competitive leasing application fees was intended to recover the BLM’s costs for holding in-person auctions. Conversely, the BLM proposes to include the cost related to complying with the NEPA in the filing fee for a competitive lease application; that causes an increase to the filing fee. To reflect the cost changes, the BLM is

proposing to amend the fee for the following document filings or actions: competitive leasing application fee, leasing under rights-of ways, class I lease reinstatements, and geophysical exploration permits.

The BLM is proposing to include new fixed filing fees for the following Federal oil and gas actions to reimburse the BLM for its reasonable processing costs: designation of successor operator; unit agreement applications; subsurface storage agreement applications; unit agreement expansion applications; and formal lease nominations. The BLM considered proposing new fixed filing fees for Federal communitization agreements (CA), Federal participating area applications, and royalty rate reduction applications, but it ultimately declined to propose these fees due to the low value and the public benefit related to these items. Royalty rate reductions occur at the end of a lease's life and allow the operator to continue producing from the property based on reduced royalties. This gives the American public the benefit of additional production and Federal revenue without additional surface disturbance or environmental impact.

The BLM considered both case-by-case and fixed filing fees for the new fees proposed in this rule. Historically, the BLM has determined costs on a case-by-case basis for types of documents where the costs may differ significantly

in each case. In this proposal, the BLM has opted to institute fixed filing fees for designation of successor operator; unit agreement applications; subsurface storage agreement applications; unit agreement expansion applications; and a formal lease nomination fee because charging processing costs on a case-by-case basis would be time consuming and would not be the most efficient use of BLM resources. Collecting cost data on a case-by-case basis for each document to be processed adds to the processing costs. The BLM decided that, for the oil and gas documents at issue, it would likely be more efficient and sufficiently reliable to set a fixed fee based on average costs and indexed to inflation. In addition, applicants benefit from knowing fees in advance.

To determine the new oil and gas fixed filing fees, the BLM followed the same method it used in 2005 to set the current fixed fees: using a weighted average rather than a simple average to determine the processing cost for each type of document. This method gives greater weight to the processing cost data from state offices with a heavy workload and, thus, more expertise in processing a particular type of document. The BLM's fluid minerals program identified the processing steps and then asked the state office subject matter experts (SMEs) to identify the appropriate job position, salary level,

and time required for particular steps specified by the BLM handbooks. The fluid minerals program considered changes to the processing of each type of document since the handbooks were last updated. The BLM then calculated a direct cost for each process and adjusted to 2021 salary rates without a locality factor. The BLM's fluid minerals program spot-checked the data and sent each state office a summary of the cost data that the office had previously submitted for these types of documents, along with the BLM-wide weighted average cost for each. State offices were asked to review the cost data and report whether that data, adjusted to current filing fee amounts, remained reasonable. They were also asked to re-estimate costs if the state office found the re-examined adjusted cost data to be inaccurate. A re-examination verified that the BLM's data continued to be valid and ensured that figures, which varied significantly among offices, had not been submitted in error.

Processing Steps for the Fixed Fees

The BLM reviewed the changes in processing steps due to changes in the law, regulations, and policy to determine how processing the different fixed fee applications have changed since the BLM established the fixed filing fee in 2005. The following table summarizes the results of this review.

Document/action	Current processing steps	Added processing steps	Removed processing steps
Formal lease nomination *	Validating data received; Sorting parcels (developing parcel configuration/ acreage); Preparing stipulations; Preparing sale notices.		
Competitive lease application	Preparing sale notices; Noting land status records; Preparing and conducting sale auctions; Preparing lease decisions; Entering and transmitting data updates.	Adjudicating high bids; Conducting environmental reviews.	Sorting parcels (developing parcel configuration/acreage); Preparing sale notices; Preparing and conducting sale auctions; Entering data updates.
Leasing under right-of-way	Receiving, validating, and entering data; Examining land status; Sorting parcels (developing parcel configuration/acreage); Preparing stipulations; Preparing sale notices; Noting land status records; Preparing and conducting sale auctions; Preparing lease decisions; Entering and transmitting data updates.	Adjudicating the application and preparing the notice/invitation to bid; Conducting environmental review.	Sorting parcels (developing parcel configuration/acreage); Preparing sale notices; Preparing and conducting sale auctions; Entering data updates.
Lease consolidation	Receiving, validating, and entering data; Examining requests, lease term conditions, and production; Preparing new leases and decisions; Entering and transmitting updates.		
Assignment and transfer of record title or operating rights.	Receiving, validating, and entering data; Examining assignment and transfer forms; Reviewing leases and bonds; Approving, entering, and transmitting updates.		
Overriding royalty transfer, payment out of production.	Receiving, validating, and entering data.		



Document/action	Current processing steps	Added processing steps	Removed processing steps
Name change, corporate merger, sheriff's deed, corporate dissolution, or transfer to heir/devisee.	Receiving, validating, and entering data; Examining requests; Determining successors-in-interest or other special requirements; Reviewing leases and bonds; Preparing decisions; Entering and transmitting updates.		
Lease reinstatement, Class I .....	Receiving, validating, and entering data; Examining eligibility; Preparing decisions; Entering and transmitting updates.	Conducting environmental review.	
Geophysical exploration permit application.	Nominal filing fee for Alaska only .....	For all states—Receiving, validating, and entering data; Examining land status; Conducting environmental review; Preparing notices/decisions; Entering data updates.	
Final application for Federal unit approval, Federal unit agreement expansion, Federal subsurface gas storage application*.	Receiving, validating, and entering data; Technical review; Determine commitment status; Preparing notices/decisions; Entering data updates.		
Designation of successor operator for Federal agreements*.	Receiving, validating, and entering data; Technical review; Preparing notices/decisions; Entering and transmitting data updates.		

\* New proposed fixed filing fee.

The fixed fee for lease renewals would be removed, as there are no longer any leases eligible for renewal. Under the MLA, any lease renewal issued on or after November 15, 1990, “continue[s] for twenty years and so long thereafter as oil and gas is produced in paying quantities.” 30 U.S.C. 188(f)(3). If a lease renewed on or after November 15, 1990, fails to produce oil and gas in paying quantities at the end of its renewal term, the lease expires with no further option of renewal.

The current \$500 fee for Class II lease reinstatements is located at existing 43 CFR 3108.2–3(b)(3)(vi). The BLM considered moving the existing fee to 43 CFR 3000.120 for inclusion alongside the fixed filing fees, increasing the fee to reflect the processing costs, and then adjusting the fee annually for inflation. However, the MLA, at 30 U.S.C. 188(e), specifically states for Class II lease reinstatements that “[t]he lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed \$500.” Accordingly, the BLM proposes to leave the administrative fee of \$500 in its current location at 43 CFR 3108.23(b)(3)(vi).

FLPMA Factors and Processing Fees

Section 304(b) of FLPMA lists six factors, commonly known as the “FLPMA reasonableness factors,” that the BLM must consider when deciding the amount of a reasonable processing fee. Those factors are:

(1) The BLM’s actual costs to process a document not including management overhead, *i.e.*, the processing time spent by the BLM State Directors, Deputy

State Directors, and other management staff. Actual costs include (but are not limited to) time spent at the state and field office levels by SMEs who work on a specific authorization, such as a lease, and funds spent on environmental reviews, technical reviews, and analyses.

(2) The monetary value, or objective worth, of the right or privilege that the applicant seeks.

(3) The efficiency with which the BLM processes a document, *i.e.*, minimizing of waste by carefully managing agency expenses and time.

(4) Whether any of the BLM’s processing costs, for actions such as studies or data collection, benefit the general public or the Federal Government, rather than just the applicant alone.

(5) Whether the project provides any significantly tangible improvement, such as a road, or other direct service to the public. Occasionally, a negative factor, such as an adverse impact on wildlife, habitats, or surface drainage, may prevent an improvement from qualifying as a public service. Data collection that the BLM requires of an applicant for monitoring an activity is not a public service.

(6) Other relevant factors.

The BLM considered each of the FLPMA reasonableness factors for each type of document for which the BLM is proposing to adjust the existing fee or add a new fixed fee. The BLM first estimated the actual cost to process a type of document. When estimating the processing costs, the BLM determined a range based on the range of costs provided by the BLM State Offices. The BLM then considered each of the other

FLPMA factors to determine if they warranted setting the fee at less than actual cost. If so, the BLM then considered whether any of the remaining factors acted as an enhancing factor that would mitigate against setting the fee at less than actual cost. Lastly, the BLM decided the amount of the fee, which cannot be more than the processing cost. For all of the fees in this proposal, this method resulted in fees set at the lower end of the BLM’s processing cost.

Actual Costs

Actual costs are the sum of both direct and indirect costs. Direct costs include such things as labor, material, and equipment. The BLM estimated the direct costs by reaching out to each BLM state office and requesting an estimate of the processing time for each application based on the steps detailed in the previous table. Then using the average hourly wage, the BLM calculated the direct cost for the BLM to process the application. Indirect costs include items such as rent and overhead, excluding State Director and management overhead. For an example of how the BLM would determine the sum of direct and indirect costs, assume the measured direct cost of processing a document is \$200. To estimate the indirect cost for processing that document, the BLM uses a ratio that it calculates annually. Annually, the BLM calculates the indirect cost rate, which is assessed on these fixed filing fees. Indirect costs are the overhead costs, which remain after direct costs have been computed, and may include utilities, telecommunications, information



technology, space rental, and other administrative support functions. Currently that ratio is 10 to 2, or 20 percent, meaning for every \$10 of direct costs there would be \$2 of indirect costs. The BLM would estimate the indirect cost using the ratio and direct cost figures. In this example, since the direct cost was \$200 and the ratio is 10 to 2, the indirect cost is \$40. The BLM then would add the direct and indirect cost figures to arrive at the actual cost figure of \$240 to process the document. This method is generally accepted in the private and public sectors.

#### Monetary Value of the Right or Privilege

Historically, the BLM concluded that its processing costs to prepare parcels for lease sale benefit three classes of beneficiaries: the party who requests that the parcel be included in the sale, all parties who bid on the parcel, and the successful bidder. The party who requests that a parcel be included in a lease sale benefits by influencing the selection of parcels offered. The BLM considered this benefit to be greatly outweighed by the benefit to the successful bidder who ultimately obtains the lease and can develop the minerals on the parcel. Similarly, while all bidders receive the benefit of being considered for a lease, the BLM considered this benefit to be greatly outweighed by the benefits to the successful bidder who obtains the lease. With respect to the new proposed fees for agreements, the operator benefits through economic gain if and when drilling activity occurs and through development of the lease. In addition, any benefit to the general public that would accrue from increased oil and gas availability or lower prices is considered too speculative and indirect to warrant consideration.

#### Monetary Value to the Applicant

The BLM did not attempt to calculate the monetary benefit to each applicant because those values are not always knowable to the BLM, and it would be inefficient to attempt to calculate them for each application or submission.

#### Monetary Value of the Right or Privilege Granted

To gauge the monetary value, the BLM considered the monetary value of similar rights or privileges granted to applicants historically. The BLM reviewed each type of document and compared the proposed filing fee for a given type of document with our professional judgment of the historical values of similar rights or privileges the BLM has granted. In each case, the BLM believes the value of the right or

privilege is so much greater than the processing cost that a fee based on the average actual cost would not significantly affect the applicant's proposed action. This is not surprising considering that the costs pertain to documents related to the commercial development of minerals. The BLM did not reduce any fees because of this factor.

#### Monetary Value Change

The BLM bases its decision about the monetary value of the benefit to the applicant on the value at the time the applicant submits its application. All leases have relatively large monetary value before exploration compared with the proposed fees. The basic value of the opportunity provided by a lease to explore for minerals is shown by the willingness of applicants to pay large sums before exploration for bonus bids, for lease transfers, and for exploration activities such as drilling. Because the monetary value of the right sought in a lease is much greater than the cost of processing the lease, the BLM considers it reasonable to charge a fee equal to processing costs for all lease applications.

#### The Efficiency Factor

The BLM's fluid minerals program asked the state office's SMEs to provide a minimum, maximum, and average time spent on each application process. Some SMEs stated that their estimated range depended on the experience of the staff. The estimates from less experienced staff increased the amounts for the average and the high estimate for processing costs. In addition, some state offices receive fewer applications than compared with other state offices. This can increase the processing time spent for researching and processing applications when they are not frequently received in a particular office. Therefore, the BLM chose to use the lowest estimate for time spent on processing applications to create the weighted average so that applicants are not penalized for understaffed offices or offices with fewer seasoned employees.

The BLM ensured that the field offices efficiently process the documents for which fees are charged. For all of the new and existing fees, the BLM based the processing procedures on standardized steps as outlined in the BLM Handbooks and Instruction Memoranda in order to eliminate duplication and extraneous procedures. The BLM developed these detailed and measurable processing steps to be efficient.

#### The Public Benefit Factor

Possible public benefits from the BLM processing activities, such as studies or data collection, are also difficult to measure. For example, studies related to document processing often provide information about an area's natural resources. This is sometimes a public benefit, but the value of the information, or whether there will be a benefit at all, is not predictable. The BLM concluded that document processing for types of fixed fee documents in this rulemaking does not usually produce studies or data that significantly benefits the public. In addition, the BLM determined that for each type of document in this rulemaking, the monetary value to the applicant outweighs the possible benefit of such studies to the public. The BLM analysts used their knowledge of the historical values of such cases to make these determinations. The BLM has, therefore, decided that this factor does not warrant setting any fee in this rulemaking at less than its actual processing cost.

#### The Public Service Factor

A project's service to the public concerns whether the applicant's project itself, as opposed to the BLM's processing of the related documents, provides some significant direct service or benefit to the general public. FLPMA refers to this as public service. Examples include improvements, such as roads, trails, or recreation facilities. Occasionally, a negative factor, such as an adverse impact on wildlife, habitats, or surface drainage, may prevent the BLM from regarding an improvement as a public service.

The BLM reviewed exploration data shared with the government to consider whether it constitutes a public service. Applicants for geophysical exploration for the oil and gas program in Alaska are required to share with the government the mineral resource data they derive from exploration. However, that information likely would not be made public. Moreover, if the information is valuable for mineral development, the BLM expects the findings would result in oil and gas leases in that area. In that case, the monetary value of the information to the permittee would outweigh its value to the public. The BLM considered that even information that is not valuable to the permit holder for mineral development might still provide some geological or geophysical information of value to the government, which the BLM could sometimes use for some types of resource management, such as land classifications. However, because there is very little information

obtained in this way and because its use is unpredictable, the potential benefits of the information to the public are too small to warrant an adjustment to the proposed fee. Finally, the operator may consider geophysical information indicating low-development potential valuable because the identification of low-development potential helps the operator avoid unprofitable

development; therefore, the value to the operator outweighs any public benefit.

The projects with a proposed fixed fee do not generally provide a public service. Large projects could include road construction, but such roads are rarely open to the public or built to public safety standards. In addition, they eventually must be removed. Consequently, for fixed fee documents,

the likelihood of providing such a public service is too remote and speculative to warrant charging a fee less than actual costs.

Other Factors

The BLM did not find other factors that made it reasonable to adjust fees in this proposed rulemaking.

New Proposed Oil and Gas Fixed Fees

TABLE 1—CATEGORY: FIXED FEES

[Note that fees will be adjusted annually for inflation according to the IPD–GDP and posted on the BLM’s website. Revised fees are effective each October 1]

Document/action	Existing fee	Proposed fee
<b>Oil and Gas (parts 3100, 3110, 3120, 3130, 3150, 3160 and 3180)</b>		
Formal lease nomination .....	\$0	\$125
Expression of Interest fee per acre, or fraction thereof .....	0	5
Competitive lease application .....	185	3,100
Leasing under right-of-way .....	475	660
Leases consolidation .....	525	525
Assignment and transfer of record title or operating rights .....	105	105
Overriding royalty transfer, payment out of production .....	15	15
Name change, corporate merger, sheriff’s deed, corporate dissolution, or transfer to heir/devisee .....	250	250
Lease reinstatement, Class I .....	90	1,260
Geophysical exploration permit application—all states .....	<sup>a</sup> 30	<sup>b</sup> 1,150
Renewal of exploration permit—Alaska .....	30	30
Final application for Federal unit agreement approval, Federal unit agreement expansion, Federal subsurface gas storage application .....	0	1,200
Designation of successor operator for Federal agreements .....	0	120

<sup>a</sup>Alaska only.  
<sup>b</sup>All states.

We have rounded estimated fees down or up to the nearest \$5.00, for ease of payment and administration. This is consistent with general business practices.

Annual Inflation Adjustments

The BLM is also proposing to cease publishing the annual fee adjustments in the **Federal Register** and the CFR. The BLM would instead post the updated table on the BLM’s web page with the historical fees posted in the same location. Revised fees would be effective each year on October 1. The BLM is requesting comments on this process change.

Annual inflation adjustments would be calculated based on the percentage change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) for the 1-year period between the fourth quarters of the previous 2 years, consistent with the 2005 Cost Recovery Rule. For example, the FY 2022 fees were set based on the change in the IPD–GDP from the fourth quarter of 2020 to the fourth quarter of 2021. The BLM would then multiply the current fee amounts by that multiplier to obtain the adjusted fee amounts. The resulting amounts would be rounded to the nearest \$5 at the end of the calculation

process for ease of payment and administration. This is consistent with general business practices.

Existing Applications

The BLM would not charge a new fixed fee under this rule for processing a document that the BLM received before the effective date of the rule. Documents submitted before the effective date of the final rule will be processed with the appropriate fees under the regulations existing as of the submittal date.

Section 3000.130 Fiscal Terms of New Leases

The BLM is proposing a new provision consisting of a table outlining the fiscal terms for new leases. Under the existing regulations, various subparts describe the base rental rate for leases. Likewise, various subparts describe the minimum bonus bids for competitive leases. In this rule, the BLM proposes to conform its regulations to the IRA by increasing the minimum bids and base rental rates. The BLM proposes to identify these rates in a new section and table so the rates can be regularly adjusted for inflation. The IRA precludes the adjustment of these fiscal terms until after August 16, 2032. Each

of the various sections would now refer to this new section, rather than itemizing the relevant fees. The BLM proposes to include a paragraph (b) to state that these rates are not subject to appeal, since these base rates would be applied through the publication of a final rule in the **Federal Register**.

Consistent with 43 CFR 3000.120, the BLM is also proposing to no longer publish the annual fee adjustments in the **Federal Register** and the CFR. The BLM would instead post the updated table on the BLM’s website before October 1 of each year. Revised fees would be effective each year on October 1. The BLM is requesting comments on this process change.

Annual inflation adjustments would be calculated based on the percentage change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) for the 1-year period between the fourth quarters of the previous 2 years, consistent with the 2005 Cost Recovery Rule. For example, the FY 2022 fees were set based on the change in the IPD–GDP from the fourth quarter of 2020 to the fourth quarter of 2021. The BLM would then multiply the current fee amounts by that multiplier to obtain the adjusted fee amounts. The resulting amounts would be rounded to the

nearest \$5 at the end of the calculation process for ease of payment and administration. This is consistent with general business practices.

## 2. Section-by-Section Discussion for Changes to 43 CFR Subpart 3100

The proposed rule does not make any revisions to the section headings in the existing subpart 3100 regulations.

### Section 3100.3 Authority

The purpose of this section is to describe lands that are subject to leasing. The proposed changes to this section were made to provide clarity and to conform the regulations to various other laws. This proposed section would remove the reference to the National Petroleum Reserve—Alaska (NPR—A) from the exceptions listed under both Public Domain and Acquired lands to reduce confusion. The NPR—A is appropriately listed under 43 CFR 3100.3(c) and would remain as lands that are subject to leasing under the Department of the Interior Appropriations Act, FY 1981 (42 U.S.C. 6508). These lands are subject to leasing under the regulations found under 43 CFR part 3130.

The proposed rule updates the exceptions for lands within the National Wilderness Preservation System to cite to 16 U.S.C. 1133. The proposed reference to the United States Code is more informative than the current reference to “section 4(d)(3) of the Wilderness Act.”

This proposed section would also add lands within Wild and Scenic Rivers to the exceptions listed under both Public Domain and Acquired lands. Subject to valid existing rights, the Wild and Scenic Rivers Act (16 U.S.C. 1280) withdraws from leasing lands within designated Wild and Scenic Rivers that constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river.

This proposed rule would move the reference to lands within wildlife refuges in existing 43 CFR 3101.5–1 to the exceptions listed under both Public Domain and Acquired lands in the proposed redesignated 43 CFR 3100.3. This change would not impose new requirements. The proposed rule would remove the reference to noncompetitive lease offers, consistent with changes made by the IRA.

Currently, existing 43 CFR 3101.6 states that lands within Recreation and Public Purposes leases and patents are subject to lease under 43 CFR part 3100. The proposed rule would move that statement to § 3100.3(h) because it belongs in the list of authorities. It

would not result in any substantive regulatory change.

Finally, this proposed section would add a reference to the Fish and Wildlife Coordinating Act (16 U.S.C. 661) in paragraphs (j)(1) through (3) dealing with coordination lands and refuges in Alaska. These references are currently found in the existing 43 CFR 3101.5–2(a), § 3101.5–2(b), and § 3101.5–3, but are more appropriately listed under the authority for leasing. These are not new requirements.

### Section 3100.5 Definitions

The purpose of this section is to provide definitions of terms used through subpart 3100. The proposed rule would alphabetize the definitions and remove embedded definitions, so the terms are defined separately.

The proposed rule would update the definition for the term “bid” to include a specific definition corresponding to the term’s use in 43 CFR 3109 as, in the BLM’s experience, this has caused confusion in the past. For leases or compensatory royalty agreements issued under 43 CFR 3109, the term “bid” would mean an amount or percent of royalty or compensatory royalty that the owner or lessee must pay for the extraction of the oil and gas underlying the ROW, which is different from the bonus bids received on competitive leases.

The proposed rule would add a definition for “competitive auction,” which would mean an in-person or internet-based bidding process where leases are offered to the highest bidder. The addition of this term would help the BLM to streamline the regulations by obviating the need to use the longer phrase “oral or internet-based auction” throughout the regulations.

The proposed rule would add a new definition for the term “exception” which would mean a limited exemption, for a particular site within the leasehold, to a stipulation. The addition of this term would help to provide clarity in the regulations. The term is used in 43 CFR subpart 3101 and is further discussed later.

The proposed rule would add a new definition for the term “modification” which would mean a change to the provisions of a lease stipulation for some or all sites within the leasehold and either temporarily or for the term of the lease. The term is used in 43 CFR subpart 3101 and is further discussed later. The addition of this term would allow the BLM to incorporate existing policy into its regulations and help to provide clarity in the regulations.

The proposed rule would add a new definition for the term “oil and gas

agreement” which would mean an agreement between lessees and the BLM to govern the development and allocation of production for existing leases, including, but not limited to, CAs, unit agreements, secondary recovery agreements, and gas storage agreements. The BLM would add this term to identify regulations that apply to multiple types of agreements. The term is used in the proposed rule in 43 CFR subpart 3105 and is further discussed later.

The proposed rule would update the definition for “operating right (working interest)” to include the holder’s obligations under the lease. The amended rule would state, “Operating rights include the obligation to comply with the terms of the original lease, as it applies to the area or horizons for the interest acquired, including the responsibility to plug and abandon all wells that are no longer capable of producing, reclaim the lease site, and remedy environmental problems.” The update to this term would provide clarity in the regulations.

The proposed rule would update the definition for the “primary term of all other leases” to state that it means the initial term of the lease, which is set at 10 years. The change in this definition updates the outdated reference to 5-year terms for competitive leases used prior to FOOGLRA.

The proposed rule would update the definition for “record title” to include the lessee’s obligations under the lease. The lessee’s interest, which is also referred to as the record title, includes the obligations to perform and bear ultimate responsibility to adhere to lease terms, including requirements relating to well operations and abandonment. The update to this term would provide clarity in the regulations.

The proposed rule would add a new definition for “qualified bidder” to mean any person in compliance with the laws and regulations governing a bid. The addition of this term would provide clarity in the regulations.

The proposed rule would add a new definition for “qualified lessee” to mean any person that is compliant with the laws and regulations governing the BLM issued leases held by that person. The addition of this term would provide clarity in the regulations.

The proposed rule would add a new definition for “responsible bidder” to mean any person who has not defaulted on winning bids, is capable of fulfilling the requirements of onshore BLM oil and gas leases, and does not have a history of noncompliance with applicable statutes and regulations or the terms of a BLM-issued oil and gas

lease. The term “responsible bidder” would not include persons who bid with no intention of paying a winning bid or persons who default on a winning bid. The addition of this term would provide clarity in the regulations.

The proposed rule would add a new definition for “responsible lessee” to mean any person who has not defaulted on previous winning bids, is capable of fulfilling the requirements of onshore Federal oil and gas leases, and does not have a history of noncompliance with applicable statutes or the terms of a BLM-issued oil and gas lease. The addition of this term would provide clarity in the regulations.

The proposed rule would add a new definition for the term “waiver” which would mean a permanent exemption from a lease stipulation. The term is used in subpart 3101 and is further discussed later. The addition of this term would allow the BLM to incorporate existing policy into its regulations and help to provide clarity in the regulations.

Finally, the BLM split out the definitions for “assignment” and “sublease” from the current definition of “transfer” in the existing regulations. This will assist the public in finding the applicable definition as well as highlight the differences between an assignment and a sublease.

#### Section 3100.9 Information Collection

The current regulation lists out-of-date OMB control numbers for information collection requirements. The proposed rule would update those control numbers and restructure the format of this section to include the authority for and purpose of the section, including a table that lists the current OMB control numbers.

#### Section 3100.31 Enforceability

The proposed rule would streamline the section on options. The MLA expressly authorizes and restricts options to acquire an interest in a lease. *See* 30 U.S.C. 184(d). While the BLM has not previously received option statements from the industry, the BLM cannot prohibit options and will continue to accept option statements for the record if they are submitted to the BLM. Under the “Enforceability” section (43 CFR 3100.31(a)), the BLM would remove the phrase “without the approval of the Secretary.” That would eliminate the discretion to authorize options for a period of more than 3 years. Paragraph (b)(3) would be revised for clarity to change the reference to “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” to read “the number of acres and the type and percentage of interest to be conveyed and retained by the parties to the option, including the expiration date of the option.”

#### Section 3100.40 Public Availability of Information

The proposed rule would not make any substantive changes to this section; however, the BLM is considering adding language that would provide notice that names and addresses of the nominator, lessee, operating rights holders, and operators would be made public through the BLM’s automated system. The BLM’s lease and agreement case files are already public records, and any change to this section would merely reflect the BLM’s current practice.

#### 3. Section-by-Section Discussion for Changes to 43 CFR Subpart 3101

The proposed rule would remove 10 sections in the existing subpart 3101 as outlined in Section VI of this preamble titled Overview of Modifications. The removal of these sections would cause some of the sections to be redesignated accordingly. The purpose of this removing and redesignating is to achieve consistency and ease of reference throughout subpart 3101, as sections were consolidated and reorganized.

#### Section 3101.12 Surface Use Rights

This section was promulgated in 1988 to clarify the BLM’s authority to use the terms and conditions of the standard lease form to control site-specific environmental impacts on leaseholds, as opposed to lease-specific protective measures, addressed in lease stipulations, to mitigate impacts to specific resources values identified on leased lands. The standard lease form authorizes the BLM to require “reasonable measures” to the extent that such measures would be consistent with the lessee’s rights. However, this revised section would more clearly outline the measures that the BLM may require to promote development practices that are consistent with multiple use and sustained yield and the terms of the BLM’s oil and gas leases.

Specifically, this section would be updated to state that the authorized officer may require and detail reasonable measures to avoid, minimize, or mitigate adverse impacts to other resource values, land uses or users, federally recognized Tribes, and underserved communities. Such reasonable measures may include, but are not limited to, relocation or modification to siting or design of

facilities, timing of operations, specification of interim and final reclamation measures, and specification of rates of development and production in the public interest. These measures are consistent with the BLM’s standard lease form, which has been in effect since October 2008 and which states that the BLM “reserves [the] right to specify rates of development and production in the public interest. . . .” Additionally, the MLA authorizes the BLM to adopt “such other provisions as [it] may deem necessary . . . for the protection of the interests of the United States . . . and for the safeguarding of the public welfare.” 30 U.S.C. 187. The BLM may also manage the manner of development under this section, which may include waste prevention measures, containment of fluids, and monitoring both water and air quality in the project area. As set out in E.O. 14035, “[t]he term ‘underserved communities’ refers to populations sharing a particular characteristic, as well as geographic communities, who have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.” E.O. 14008 provides additional guidance on securing environmental justice by requiring agencies to “[develop] programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.” For the purposes of E.O. 14008, the Council on Environmental Quality has provided interim guidance on the definition of community to “mean either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.”<sup>15</sup> These underserved communities can be impacted as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to

<sup>15</sup> M–21–28, July 20, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

persistent environmental health disparities.

Due to the advances in horizontal and directional drilling, and in an effort to strike the best multiple use balance, the BLM proposes to update the following language: “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.” The proposed language would state, “Modifications that are consistent with lease rights include, but are not limited to: requiring relocation of proposed operations by more than 800 meters and prohibiting new surface disturbing operations for a period of 90 days in any lease year.” With the changes in technology allowing 3-mile laterals and ½-mile directional wells, the BLM considers 800 meters (approximately ½ mile) to be a reasonable floor for moving operations due to resource concerns. The BLM proposes updating the floor to account for changes in technology.

The BLM also proposes these changes because the existing provision has been misconstrued as limiting BLM’s authority to require relocation only up to 200 meters. The IBLA has upheld the BLM’s authority to move operations and confirmed that the siting and timing parameters in the current regulations are minimums. The BLM has the authority to impose measures higher than those in the regulations as long as they “constitute [ ] reasonable measure[s] to minimize adverse impacts under 43 CFR 3101.1–2.” *Yates Petroleum*, 176 IBLA 144, 156 (2008). The BLM is requesting comments on the proposed distance standard for reasonable measures.

#### Section 3101.13 Stipulations and Information Notices

The proposed rule would split the existing content of this section into two paragraphs for clarity and would add a new paragraph (a) to state that, when developing stipulations, the BLM would consider the sensitivity and importance of potentially affected resources and any uncertainty concerning the present or future condition of those resources. The BLM is proposing this change to more explicitly recognize its mandate to manage the Federal lands for multiple use and to provide for the protection of the resources on those lands. When evaluating stipulations to be included in a lease, the BLM will assess whether a resource is adequately protected by stipulation without regard to the

restrictiveness of the stipulation on operations.

The proposed rule also would update the existing content of this section (paragraph (b)) to reflect the IRA’s elimination of the noncompetitive leasing process. Paragraph (b) refers to lease stipulations, and paragraph (c) refers to lease information notices. No other substantive changes have been made to the language that now constitutes these two paragraphs. In addition, the BLM proposes to move the language and requirements from the existing regulation found at § 3101.5–4 (which refers to stipulations applied to leases for lands managed by the Fish and Wildlife Service) to a new paragraph (d) under this section to consolidate all stipulation requirements in one section.

#### Section 3101.14 Modification, Waiver, or Exception

The proposed rule would update the title of this section from “Modification or waiver of lease terms and stipulations” to “Modification, waiver, or exception.” The first paragraph in this section describes the standards the BLM will use when evaluating modifications, waivers, or exceptions. It states that a public review period will be required when a change to a lease term or stipulation is substantial or involves a major concern to the public.

In paragraph (a), the proposed rule proposes to add the existing modification, waiver, or exception policy for lease stipulations into the regulations based on Instruction Memorandum Number 2022–003, *Documentation and Tracking Requirements for Waivers, Exceptions, and Modifications for Fluid Minerals Exploration and Development Activities*. Unlike the existing policy, the BLM is proposing to remove the provision that allows the BLM to grant modifications, waivers, or exceptions (MWEs) to lease stipulations if the authorized officer determines that the “proposed operations would not cause unacceptable impacts.” This very subjective standard has been overused at times and has led to unnecessary adverse environmental impacts in some instances. The BLM would consider a change to the lease terms to be substantial if the change would have an important, considerable, consequential, major, or meaningful effect on the environment that was not previously considered, thus requiring public notification (30-day public review) of a lease term or stipulation.

In paragraphs (b) and (c), the proposed rule would split an existing provision in the regulations related to

modifications of stipulations into two provisions, one of which would address modifications made before lease issuance and the other of which would address modifications made after lease issuance. This regulatory change reflects decisions of the IBLA, which have stated that if a lease is issued without prior notice of an additional stipulation, the stipulation is not binding on the potential lessee and is without effect in the absence of the potential lessee’s acceptance of the stipulation. See *Emery Energy, Inc*, 64 IBLA 175 (1982). For modifications to stipulations prior to lease issuance, the BLM proposes to add language clarifying that the potential lessee must be given an opportunity to accept the additional or modified stipulation. If the potential lessee does not accept the additional or modified stipulation, the BLM may reject the bid and include the lands in the next Notice of Competitive Lease Sale. If the modification in stipulation(s) increases the value of the parcel, the BLM, following current policy, will reject the bid and include the lands in the next Notice of Competitive Lease Sale. For example, if the lease is currently subject to a no-surface-occupancy stipulation, and the BLM determines a controlled-surface-use stipulation is appropriate instead, this could increase the value of the lease. After lease issuance, if the BLM adds or modifies a stipulation without notice to the lessee, the additional or modified stipulation is not binding on the lessee and is without effect in the absence of the lessee’s acceptance of the stipulation. When a stipulation is required by the relevant Resource Management Plan and the BLM inadvertently omits it, a lessee’s failure to sign and accept modifications to the stipulations when requested by the authorized officer may subject the lease to cancellation.

#### Section 3101.22 Acquired Lands

For clarity, the BLM proposes to repeat the language found in the existing 43 CFR 3101.2–1(a) for public domain lands to describe the same acreage limitations that also apply to acquired lands.

#### Section 3101.23 Excepted Acreage

The proposed rule would update the existing 43 CFR 3101.2–3(a)(1) to change the language from “unit or cooperative plan or communitization agreement” to read “oil and gas agreement.” Under this proposed rule, unit agreements and CAs would no longer be referred to as cooperative plans and, as discussed earlier in this preamble, a new definition would be added to define “oil and gas

agreements,” which includes unit agreements and CAs. In addition, the BLM has noticed that the phrase “operating, drilling, or development contract” in the existing 43 CFR 3101.2–3(a)(3) has often been confused with approved Applications for Permit to Drill. A reference to 43 CFR 3105.30 would be added to this section to clarify the phrase since “operating, drilling, or development contract” has a specific regulatory meaning.

#### Section 3101.25 Computation

The proposed rule would remove as outdated all language referencing an entity’s ownership in a company, parties to a contract, and acreage held in common by the same persons. In 1982, the BLM eliminated the requirement to submit documents related to qualifications and now requires entities to certify their compliance with law on the lease or assignment application, subject to the criminal sanctions in 18 U.S.C. 1001 (see 47 FR 8544, February 28, 1982). Accordingly, the BLM no longer keeps documents related to qualifications and does not collect information on stock ownership, company or corporate structures (resolutions or company formation documents), or ownership in a company.

#### Section 3101.2–6 Showing Required

As explained in the previous section, the BLM eliminated qualification statements in 1982. The proposed rule would remove this section in its entirety, as it is outdated and no longer necessary. The BLM can run reports through its Mineral and Lands Record System to obtain the data confirming compliance with acreage limitations. When an entity exceeds its acreage limitation, the BLM provides the company with a list of the entity’s leases for a particular State and provides the entity with an appropriate timeframe to identify inconsistencies or to relinquish, transfer, or otherwise divest sufficient interests before the BLM takes appropriate action to cancel the entity’s excessive leases or interests.

#### Section 3101.30 Leases Within Unit Areas, Joinder Evidence Required

It is the policy of the BLM not to include lands that are partly within and partly outside the boundary of an oil and gas agreement in any one parcel listed in a Notice of Competitive Lease Sale. The proposed rule would remove 43 CFR 3101.3–2, “Separate Leases to Issue,” in its entirety due to the elimination of noncompetitive offers from the IRA. Incorporating this change, the heading of 43 CFR 3101.30 would

now read, “Leases within unit areas, joinder evidence required.” In the remaining language regarding joinder evidence, the BLM proposes to change the term “operator” to “lessee” because this section is referring to the time of lease issuance.

#### Section 3101.40 Terminated Leases

The proposed rule would remove the existing 43 CFR 3101.4, “Lands Covered by Application to Close Lands to Mineral Leasing” in its entirety, since this section only applies to noncompetitive leases, which the IRA eliminated. Section 3101.40 would now be referred to as “Terminated leases.” The BLM proposes to move the content of the existing regulations at 43 CFR 3108.2–2(d) and 43 CFR 3108.2–3(c) to this section to consolidate the requirements for issuing a lease for previously leased lands that have terminated.

#### Section 3101.5–1 Wildlife Refuge Lands (Existing Rule)

The BLM proposes to move the content of this existing section to the Authority for leasing section (43 CFR 3100.3), for ease of reference. The BLM proposes to move paragraph (a) and the first sentence of paragraph (b), which refer to lands subject to leasing, to the Authority for leasing section at 43 CFR 3100.3(b)(2)(xiv). The BLM proposes to move the remaining language in paragraph (b) to 43 CFR 3101.52(d), to consolidate it with the regulations addressing consent from other Federal agencies.

#### Section 3101.5–2 Coordination Lands (Existing Rule)

The BLM proposes to move the content of this existing section to the Authority for leasing section (43 CFR 3100.03) for ease of reference.

#### Section 3101.53 Alaska Wildlife Areas (Existing Rule)

The BLM proposes to move the content of this existing section to the Authority for leasing section (43 CFR 3100.3(k)) for ease of reference.

#### Section 3101.5–4 Stipulations (Existing Rule)

The BLM proposes to move the content of this existing section, which refers to stipulations prescribed by the Fish and Wildlife Service, to the general stipulations section (43 CFR 3101.13) for ease of reference.

#### Section 3101.6 Recreation and Public Purposes Lands (Existing Rule)

The BLM proposes to move the content of this existing section, which

refers to lands subject to leasing, to the Authority for leasing section (43 CFR 3100.3(i)) for ease of reference.

#### Section 3101.50 Federal Lands Administered by an Agency Outside of the Department of the Interior

The proposed rule would redesignate this section from 43 CFR 3101.7 to 43 CFR 3101.50 because of the consolidation and reorganization of neighboring sections.

#### Section 3101.51 General Requirements

The proposed rule would consolidate the three paragraphs under this existing section into one paragraph. Currently, there are separate paragraphs for (a) Acquired lands, (b) Public Domain lands, and (c) National Forest System lands. The new paragraph would provide that all lands will be leased only with the consent of the surface managing agency and that the surface management agency will report to the BLM whether it consents to leasing with stipulations, or, alternately, withholds consent or objects to leasing. On acquired lands, National Forest System lands, and public lands reserved for the use of the Department of Defense, the consent of the surface management agency is statutorily required prior to offering the lands for oil and gas lease. The surface management agency has the authority to refuse to consent to lease. Pursuant to longstanding BLM policy, public domain lands withdrawn or reserved for the use of another agency will be leased only after consultation with the surface management agency or upon recommendation for leasing by the surface management agency. The BLM deems a surface management agency’s recommendation to not lease to have the same effect as the agency withholding consent or objecting to leasing. Regardless of whether the lands are acquired or public domain lands, the BLM will not lease lands when a surface management agency objects to leasing or withholds its consent. Consolidating these paragraphs would reduce any confusion. When an agency has given its consent to leasing, the BLM incorporates all the stipulations provided by the agency for a lease parcel. The BLM may add its own stipulations to the lease parcel. The Secretary of the Interior has the final authority and discretion to decide to offer and issue a lease. Therefore, although an agency agrees that the lands may be leased, the BLM has the authority, on behalf of the Secretary, to not issue a lease for all or a portion of the lands.

Section 3101.52 Action by the Bureau of Land Management

The proposed rule would update paragraph (b) to remove the phrase “and shall reject any lease offer,” because the IRA, by eliminating noncompetitive leasing, eliminated such offers. For ease of reference, the proposed rule would add a paragraph (d) from language now found at 43 CFR 3101.5–1(b), which references the consent required for lands managed by the Fish and Wildlife Service. The proposed rule would also remove from paragraph (d) the phrase “on a form approved by the director,” as there is no such standard form for stipulations.

#### 4. Section-by-Section Discussion for Changes to 43 CFR Subpart 3102

The proposed rule would revise one section heading in the existing subpart 3102. The purpose of this revision is to replace outdated terminology.

##### Section 3102.20 Non-U.S. Citizens

The BLM proposes to rename the section on “aliens” and to replace this outdated, derogatory terminology with the phrase “non-U.S. citizens” in both the heading of the section and the language used in the paragraph. The BLM proposes to add a new paragraph (b) due to a final rule from the Office of Investment Security, Department of the Treasury, implementing the provisions relating to real estate transactions in section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018. That final rule was published at 85 FR 3158 (Jan. 17, 2020) and codified at 31 CFR part 802. The rule sets forth the process relating to the national security review by the Committee on Foreign Investment in the United States (CFIUS) of certain transactions, referred to in the rule as “covered real estate transactions,” that involve the purchase or lease (including an assignment or other transfer) by, or concession to, a foreign person of certain real estate in the United States. Covered real estate transactions may include certain transactions involving the Federal mineral estate. The CFIUS looks not only at the entities that are lessees, but also to any (legal) person with the ability to exercise control, as defined by the regulations of the Department of Treasury’s implementing regulations, over the lessee. The CFIUS review could result in the modification, suspension, or prohibition of the acquisition of a lease or interest therein. Accordingly, the BLM recommends that each potential bidder, lessee, or other interest holder review the regulations at

31 CFR part 802 before bidding on or acquiring an interest in a Federal oil and gas lease.

##### Section 3102.40 Signatures

The BLM proposes to add a new introductory paragraph to clarify that this section applies to signatures on all applications and forms. When applicants submit a form or application to the BLM, they are certifying their acceptance of lease terms and stipulations, as well as their compliance with the regulations under subpart 3100. The BLM may, in its discretion, accept electronic signatures and submissions. Paragraph (a) would be updated to include that when copies of the BLM-approved forms are submitted to the BLM, they must be exact reproductions without additions, omissions, or other changes. The existing paragraph (b), referring to assignments and transfers, would be removed from this section since this language is already covered in the existing 43 CFR 3106.4–1. The existing paragraph (d), which refers to qualification numbers, would be removed as obsolete: the BLM discarded qualification statements in favor of self-certifications in 1982.

##### Section 3102.51 Compliance

The proposed rule would revise the introductory paragraph to more clearly define the qualifications to hold interest in a lease. The BLM proposes to update paragraph (a) to change the term “alien stockholders” to “non-U.S. citizens who own stock” for consistency with the changes described earlier. Paragraph (d) would be updated to remove the sentence, “The term *entity* is defined at 43 CFR 3400.0–5(rr) of this title,” because the proposed rule would add a new definition for “person,” which would include “entities” as explained earlier in 43 CFR 3000.5. Paragraphs (d), (e), and (f) would be updated to include the appropriate references to the United States Code, which are more meaningful than “sections 2(a)(2)(A) of the Act,” “section 41 of the Act,” “section 17(g) of the Act,” and “section 30A of the Act.”

In addition, the BLM proposes to revise paragraph (f) to emphasize that reclamation obligations reside primarily with oil and gas lessees, operating rights owners, and operators and not the American public and to ensure that those who are in non-compliance with section 17(g) of the MLA are not qualified to hold a lease. The BLM reviewed the timeframe it takes to add a person to the list of persons in noncompliance with MLA section 17(g). Under the current policy, it takes a

minimum of 100 days from the date when the BLM first issues an incident of noncompliance (INC), or 130 days from the date when the BLM first issues a written order, due to the time it takes to complete each enforcement action. The timeframe to complete each enforcement action is generally as follows:

- Written Order (30 days)
- First INC (30 days)
- Second INC (30 days)
- Impose civil penalties (40 days)

Therefore, the BLM proposes to modify paragraph (f) and specify that noncompliance with MLA section 17(g) begins when a person has failed to comply with their reclamation obligations in the time specified by notice from the BLM, not, as under the current regulations, when the authorized officer has imposed a civil penalty or collected a bond, whichever is first. The new language would more closely track the language of the MLA at 30 U.S.C. 226(g) and would recognize the changes that were made in 2016 to 43 CFR 3163.1 and 3163.2 (81 FR 81609, Nov. 17, 2016) regarding notice of noncompliance. This language clearly states that a person’s failure to timely comply with a notice of noncompliance with reclamation requirements or other standards would trigger the noncompliance with section 17(g); it would not rely on a specific follow-up action (assessment, civil penalty, or bond collection) by the BLM. This would allow the BLM flexibility in how it responds to a person’s failure to comply, while clearly stating when noncompliance with section 17(g) begins.

With the regulations matching the law, the BLM would expect to quickly identify persons in noncompliance and prevent these persons from acquiring future Federal leases. The BLM would add a person to the list of persons in noncompliance with MLA section 17(g) after the abatement date has passed for the first enforcement action, either a written order or the first INC. This would result in a person being added to the 17(g) list in a minimum of 30 days, instead of the current minimum of 100 or 130 days.

Finally, the BLM proposes to add a new paragraph (h) to state that, in accordance with 2 CFR parts 180 and 1400, compliance means that the lessee, potential lessee, and all parties described at the beginning of the section are not excluded or disqualified from participating in a transaction covered by Federal non-procurement debarment and suspension, unless the DOI explicitly approves an exception for a



transaction pursuant to the regulations in those parts.

#### Section 3102.52 Certification of Compliance

The BLM proposes to update the last sentence of this paragraph to remove the phrase “an offer,” because the IRA, by eliminating noncompetitive leasing, eliminated such offers.

#### 5. Section-by-Section Discussion for Changes to 43 CFR Subpart 3103

The proposed rule would revise one section heading and remove two others in the existing 43 CFR subpart 3103 regulations, necessitating redesignating throughout the subpart.

#### Section 3103.11 Form of Remittance

The BLM proposes to update the existing paragraph by changing the reference from the Minerals Management Service to the successor agency, the ONRR.

#### Section 3103.12 Where Remittance Is Submitted

The proposed rule would rename this section from “Where submitted” to “Where remittance is submitted.” The BLM proposes to update paragraph (a)(1) to clarify that the processing fees for various applications would be found in the fee schedule in 43 CFR 3000.120. The BLM proposes to update paragraph (a)(2) to replace the ONRR’s mailing address and direct rental payments to the ONRR’s online rental payment system to conform to ONRR’s regulations at 30 CFR 1218.51. The BLM proposes to update paragraph (b) to replace the phrase “communitized leases in producing well units” with the more commonly used language of “communitized leases in producing spacing units.” In addition, the BLM proposes to remove the phrase “and easements for directional drilling,” as this is an outdated reference, and the BLM has never issued easements for directional drilling.

#### Section 3103.21 Rental Requirements

The proposed rule would update paragraph (a) to remove the phrases “or competitive nomination” and “List of Lands Available for Competitive Nominations or” consistent with the changes made to 43 CFR part 3120. The proposed rule would also remove the reference to noncompetitive lease offers, the phrase “if known, and, if not known, shall be based on 40 acres for each smallest legal subdivision,” as well as the last two sentences in their entirety, because the IRA ended noncompetitive leasing. The proposed rule would update paragraph (b) in this

section to remove the phrase “List of Lands Available for Competitive Nominations or a” due to modifications made to 43 CFR part 3120 to make nominations nonbinding.

#### Diligent Development

The BLM is considering adding a new requirement for diligent development obligations under Federal oil and gas leases and is particularly interested in receiving comments on this topic. As stated in the DOI’s *Report on the Federal Oil and Gas Leasing Program*, dated November 2021, noncompetitive leases are frequently less developed than competitive leases. Similarly, the GAO reported (see GAO 22–103968 and GAO 21–138) that competitive leases with higher bonus bids were more likely to produce than competitive leases with lower bonus bids or noncompetitive leases. Accordingly, the BLM is considering adding a section to further promote development of leases by specifying the steps that must be taken to meet diligent development obligations. For example, the lessee would meet the diligent development obligation if, at the end of the fifth year of the lease term, the lessee: (a) has established actual production in paying quantities on the lease; (b) has established allocated production in paying quantities on the lease; (c) has filed a complete Application for Permit to Drill; (d) has extended the lease term by committing it to an oil and gas agreement, 43 CFR 3107.30; (e) has filed a Notice of Intent to undertake geophysical exploration. The BLM reviewed existing leases and the development milestones on those leases and determined that 56 percent of the current leases have met the proposed diligent development obligation under one of the options set out here prior to the fifth lease year.

In addition, the BLM is considering requiring the lessee to provide notice to the BLM of how and when the lessee met the diligent development obligation, and a provision increasing the rent if the lessee has not satisfied the diligent development obligation by the end of the fifth lease year. Under this provision, the lease would be subject to a supplemental escalating rental rate of an additional \$1 per acre, or fraction thereof, for each lease year between the sixth and tenth lease years until the diligent development obligation is met. The BLM solicits comments as to whether the increased rental rates prescribed by the IRA may render a diligent development obligation unnecessary.

#### Section 3103.22 Annual Rental Payments

This section provides information on the royalty rate for existing and future leases. The proposed rule would revise the phrase “timely payment” in the introductory paragraph to “payment on or before the lease anniversary date” to more clearly specify what constitutes a timely payment. The proposed rule would update paragraph (a) to simply state that the annual rental for all leases is as stated in the lease.

To implement the IRA, for all new oil and gas leases issued in the next 10 years, rentals are set at \$3 per acre, or fraction thereof, for lease years 1 and 2; \$5 per acre, or fraction thereof, for years 3 through 8; and \$15 per acre, or fraction thereof, thereafter. After 10 years following the enactment of the IRA, those rental rates become minimums and are subject to increase. Paragraph (b) reflects that following the commencement of production, the rental requirement converts to a minimum royalty in lieu of rental. The minimum royalty is “not less than the rental which otherwise would be required for that lease year” when production begins in paying quantities. (See § 3103.32(a)(2)).

The proposed rule would revise paragraph (b) because the existing paragraph (b) is obsolete. The proposed rule would eliminate the existing introductory paragraph (b). The proposed rule would remove the existing paragraph (d) because, due to the IRA’s amendment of the MLA, reinstatements will no longer be available for noncompetitive leases issued for public domain lands. The proposed paragraph (c) would now state the annual rental for a reinstated lease is located in 43 CFR 3000.130. As required by the IRA, the rental rate for reinstated competitive leases is \$20 per acre, or fraction thereof. The proposed rule would redesignate the existing paragraph (f) to paragraph (d) to state that each succeeding time a specific lease is reinstated, the rental rate will increase by an additional \$10 per acre, or fraction thereof, as required by the IRA.

#### Section 3103.31 Royalty on Production

All updates to this section would implement provisions of the IRA. The proposed rule would update paragraph (a)(1) to state that leases issued before the passage of the IRA will have a rate as prescribed in the lease or applicable regulations at the time of lease issuance. In paragraph (a)(2), the proposed rule would increase the royalty rates for leases issued on or after the effective

date of the IRA and for the next 10 years to 16.67 percent. Paragraph (a)(3) would be updated to state that for leases issued after the 10-year period following the passage of the IRA, the royalty rate will be not less than 16.67 percent. The proposed paragraph (a)(4) would state that ROW leases issued under subpart 3109 would have a minimum royalty rate of 16.67 percent.

The proposed paragraph (a)(5) would be updated to state that for reinstated leases, the royalty rate is the rate used for royalty determination that applies to new leases at the time of the reinstatement plus 4 percentage points, plus an additional 2 percentage points for each succeeding reinstatement. In no case will the reinstated lease have royalties at a rate less than 20 percent. The IRA amended the MLA to state that competitive leases may be reinstated under a condition that “a requirement for future royalties at a rate of not less than 20 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 [*i.e.*, at the time of the lease] and used for royalty determination for competitive leases issued pursuant to such section, as determined by the Secretary.” (30 U.S.C. 188(e)(3)). To implement this provision of the IRA, the reinstatement of a terminated lease with a royalty rate of 12.5 percent would be conditioned on a reinstated royalty rate of not less than 20 percent. Leases issued after the enactment of the IRA that carry a royalty rate of 16.67 percent royalty would be conditioned on a reinstated royalty rate of not less than 4 percentage points greater than the competitive royalty schedule in force at the time of the lease, or 20.67 percent. The current regulation increases the royalty rate 2 percentage points for each succeeding reinstatement. This language would remain in the regulation.

#### Section 3103.32 Minimum Royalties

The proposed rule would revise the exception clause in paragraph (a) by changing “except that on unitized leases” to “except on unitized leases that lack production.” This change clarifies the intended exception without suggesting that rental should be paid on the leased area outside the participating area, even when the producing well for the participating area is located on the leasehold. In general, once oil and/or gas is discovered in paying quantities on the lands committed to a unit, all lands included in the participating area are charged a minimum royalty per acre per year in lieu of rental. Rental for those

portions of unitized leases that are not within such participating areas continue at the rental rate established in the lease. That is, the portion of a lease inside the participating area will pay minimum royalty and the portion outside the participating area is subject to rental. However, if there is actual production on a unitized lease, then minimum royalty should apply to the entire lease (*i.e.*, both portions within and outside the participating area). The proposed changes clarify that for leases partly inside and partly outside the participating area and containing a producing well (or a well that was once capable of production in paying quantities), the entire lease is obligated to pay minimum royalty.

Paragraph (a)(2) would be updated to change “competitive leases issued from successful bids placed at oral or internet-based auctions conducted after December 22, 1987” to read “competitive leases issued after December 22, 1987.” The extra language was necessary to implement changes from FOOGLRA in 1987, but it no longer applies, since the BLM does not have pending competitive lease applications that date back to 1987.

Paragraph (d) would be updated to remove the reference to 43 CFR 3108.2–4, since the section for Class III reinstatements would be eliminated, as further described in the discussion of subpart 3108.

The proposed rule would add a new paragraph (e) to state that if the royalty paid during any year aggregates to less than the minimum royalty, then the lessee must pay the difference at the end of the lease year. This is not a new requirement or a change in the BLM’s policy; it is only added to clarify the pre-existing requirement.

#### Section 3103.41 Royalty Reductions

The proposed rule would revise paragraph (a) to change the phrase “successfully operated” to “produced in paying quantities,” which has a clearly understood meaning within the oil and gas industry. This change is to clarify the prerequisite for obtaining this relief as the previous term “successfully operated” is not a term that is easily defined.

The BLM considered additional changes to this section due to the GAO’s report entitled, “Federal Oil and Gas Revenue: Actions Needed to Improve BLM’s Royalty Relief Policy” GAO–21–169T. In this report, the GAO found that the BLM’s decisions to grant royalty relief during the COVID–19 pandemic were not made efficiently and equitably across the states. The BLM considered using the Bureau of Ocean Energy

Management (BOEM) regulations and policy on royalty rate reductions. The BOEM has multiple authorities to provide royalty relief. The BOEM regulations include the authority to grant royalty relief for deep water leases and for development and expansion projects (see 30 CFR 203.60 to 203.80), drilling ultra-deep wells on leases not subject to deep water royalty relief (see 30 CFR 203.30 to 203.36), drilling deep gas wells on leases not subject to deep water royalty relief (see 30 CFR 203.40 to 203.49), and end-of-life leases (see 30 CFR 203.50 to 203.56). The BLM provides royalty relief only for a lease’s end-of-life (equivalent to the BOEM’s regulations at 30 CFR 203.50 through 203.56). After reviewing BOEM’s authority, the BLM concluded that the BOEM’s regulations were based on specific legal authorities that the BLM does not have. Therefore, the BLM is not proposing any changes to this section at this time. The existing regulations require evaluation of royalty reduction applications on a lease-by-lease basis, require applicants to provide a detailed statement with “all facts tending to show whether the wells can be successfully operated upon the fixed royalty or rental,” and generally provide for royalty rate reductions. The BLM is committed to adhering to those rules and will ensure that they are consistently and faithfully applied to future royalty relief applications.

The BLM solicits feedback to improve the royalty rate reduction section. Revised regulations could provide explicit criteria on royalty rate reductions, which could include setting a limit on the lower end of a royalty rate reduction, implementing a calculation to decide if the BLM should approve a royalty rate reduction, implementing an automatic lifting provision similar to BOEM (see 30 CFR 203.55), or making it explicit that a royalty rate reduction would transfer to the new lessee when a lease is assigned.

#### Sections 3103.4–2 Stripper Well Royalty Reductions and 3103.4–3 Heavy Oil Royalty Reductions

The proposed rule would eliminate both of these sections in their entirety because they are obsolete. Both sections were revised on October 6, 2010 (75 FR 61624), to eliminate these types of royalty relief. However, these provisions were retained in the final rule because, while these types of royalty relief were no longer available for current production, prior production subject to this relief continued to be subject to audits. In addition, the 7-year statute of limitations period during which ONRR could pursue a demand for royalty

continued to apply. Since that statute of limitations period has passed for all production that qualified for relief under these sections, they are no longer necessary and are being removed.

#### Section 3103.42 Suspension of Operations and/or Production

This section of the existing regulations implements the provisions of 30 U.S.C. 226(i) and 209 for suspending oil and gas leases. The proposed rule would redesignate this section from 43 CFR 3103.4–4 to 43 CFR 3103.42 as discussed at the beginning of the preamble. The proposed rule would change the language in paragraph (b) to clarify that the term of a suspended lease will be adjusted to account for the time of suspension, *i.e.*, by calculating the running of the primary term without including the time during which the lease was suspended. In the BLM's experience, the language in the current regulations—providing that the primary term of a lease will be “extended by adding the period of the suspension”—has been incorrectly interpreted to mean that the length of the suspension is added to the lease term when the suspension is lifted. For example, consider a lease issued for a primary term of 10 years. In the ninth year, a suspension is granted. The suspension lasts for 2 years. When the suspension is lifted, the time remaining on the primary term is the 1 year that was left prior to the suspension. The 2 years of the suspension are not added to the primary term.

Paragraph (d) would be clarified to state that if there is any production sold or removed during the month the suspension is granted, the lessee must pay royalty on that production. Paragraph (d) would also be split into three sections due to the length of the paragraph and for clarity. The other two sections would become new paragraphs (e) and (f), and the remaining paragraphs would be redesignated.

Redesignated paragraph (g) would update the term “terminating a suspension” to “lifting a suspension,” since “termination” is a term of art that refers to a lease ending through operation of law when the rental is not paid.

The proposed rule would update redesignated paragraph (h) to change the language from “unit or cooperative plan” to read “agreement” to conform to the definitional change made earlier in this proposed rule.

#### 6. Section-by-Section Discussion for Changes to 43 CFR Subpart 3104

The BLM proposes to revise its oil and gas bonding requirements in several

respects. The BLM proposes to increase minimum bond amounts for the first time since 1951 (statewide and nationwide bonds) and 1960 (lease bonds). In addition, the proposed rule would add one section, § 3104.90, into the existing subpart 3104 regulations to address when lessees must come into compliance with the new bond amounts and would revise two section headings in the existing subpart 3104 to more accurately reflect the contents of those sections. The proposed rule would also remove nationwide and unit operator's bonds and add surface owner protection bonds. The BLM believes these proposed changes, particularly the increased bond amounts and the elimination of nationwide bonding, would help ensure that reclamation responsibilities reside primarily with oil and gas lessees and operators and not the American public.

The MLA authorizes the Secretary to establish 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.” (30 U.S.C. 226(g)). The existing regulations at § 3104.1 implement this authority and require that, prior to surface-disturbing activities related to drilling operations, the lessee, sublessee, or operator submit a surety or personal bond. The purpose of the bond is to ensure the “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.” (43 CFR 3104.1(a)). The regulations at §§ 3104.2 through 3104.4 currently set forth four different bond types:

- *Lease/Individual Bonds*, which provide coverage for one lease and must be in an amount of not less than \$10,000;

- *Statewide Bonds*, which cover all leases and operations in one State and must be in an amount of not less than \$25,000;

- *Nationwide Bonds*, which cover all leases and operations nationwide and must be in an amount of not less than \$150,000; and

- *Unit Operator's Bonds*, which may be used in lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases

committed to an approved unit agreement.

Existing regulations set a minimum amount for these types of bonds. The BLM has not increased its minimum bond amounts since 1951 (statewide and nationwide bonds) and 1960 (individual lease bonds). In September of 2019, the GAO issued a report recommending that the BLM address risks from insufficient bonding (GAO–19–615). The GAO found the bonds held by the BLM were insufficient to prevent wells from becoming orphan wells and thereby shifting the costs to plug and abandon and reclaim these wells onto the taxpayer. Specifically, GAO found that 84 percent of the bonds reviewed were not sufficient to cover the costs to reclaim the wells covered by the bonds. Further, GAO determined the bond amounts, which were usually set at the regulatory minimum, “does not account for variables such as the number of wells [the bonds] cover or other characteristics that affect reclamation costs, such as well depth.”

Currently, the BLM uses Instruction Memorandum 2019–014, *Oil and Gas Bond Adequacy Reviews*, to review existing Federal bond amounts and request increases to the bond amount based on the potential risk or liability posed by the operators. Similar policy has been in place for the past decade, see Instruction Memorandums 2013–151, 2010–161, 2008–122, and 2006–206. The BLM is proposing to increase the minimum bond amounts to reflect inflation and the minimum coverage that would be required for operations on Federal land, based on the BLM's estimate of current plugging and reclamation costs. The proposed minimum bond amounts would provide sufficient protection to allow an operator to begin drilling; however, the BLM would still need to review bond amounts periodically to determine whether the bond amount should be increased based upon the risk of default posed by the operator or the risk to the environment posed by the operations. In the past 2 fiscal years, the BLM has spent \$2.7 million annually on orphaned wells. Without an increase in the bond amounts, the BLM expects to continue to incur similar annual costs to address orphaned wells. Because of inflation, the lack of increased bond amounts for almost 40 years, and the increased number of orphaned wells resulting from insufficient funds available under current bonds and associated costs ultimately borne by the American taxpayer, the revisions to the bond amounts proposed here are justified.

In addition to the proposed rule, the BLM also considered two alternatives: adjusting the bond only for inflation (alternative 2) and requiring a full liability bond (alternative 3). The second alternative, only adjusting the bond amount for inflation, would increase the lease/individual bond to \$100,000 and the statewide bond to \$300,000. The third alternative considered adjusting the bond to cover the full plugging and reclamation cost of all Federal onshore operations covered by the bond. In this alternative, the BLM would allow the operator to use either a statewide bond or an individual bond; however, the operator would be required to submit a bond rider for each additional well drilled to ensure the bond amount covers the full cost for plugging and reclamation for all wells covered by the bond. In this instance, the BLM estimated an average lease/individual bond of \$994,000 would cover 14 wells and an average statewide bond of \$4,686,000 would cover 66 wells. The BLM concluded that implementing the third alternative would require increased staffing at the field and state offices to manage increased workload surrounding the additional bond riders. In addition, it is expected that the BLM's application for permit to drill processing time would slow down due to waiting for additional bond riders.

Although the BLM analyzed the second and third alternatives in the economic analysis, the BLM did not propose either of these alternatives in the proposed rule. The BLM is requesting commenters to provide information on additional alternatives for bonding that the BLM might consider.

Additionally, the BLM is requesting comments on whether it should propose to adjust the minimum bond amounts by inflation. Currently, the BLM is not proposing this in the rule; however, the BLM would prefer to have a method to adjust minimum bond amounts by inflation factors. Please provide comments on if and how the BLM should adjust minimum bond amounts in the future.

Finally, the BLM also proposes to remove the nationwide and unit operator bond types to reduce the cost and burden on the American public for administering these types of bonds. For nationwide bonds, the state office that is administering a nationwide bond must coordinate with not only the field offices within the state, but also every other state office. With the proposed elimination of nationwide bonds, the BLM would not need to coordinate with all the other state offices for a bond

adequacy review. In addition, the BLM state office could more easily ensure that the field offices within the State have completed the required bond reviews. As a result, the BLM would be able to better tailor the bond amounts to the local conditions and State-specific requirements when reviewing a bond for adequacy. The BLM also would be able to review statewide bond amounts and ensure that the bond amount is adjusted before an operator defaults, thus reducing the financial burden on the American taxpayer. Overall, the elimination of nationwide bonding in favor of the proposed increase in the amount of the statewide and lease bonds would allow the agency to ensure improved bonding, with an appropriate focus on specific areas and fields, which should reduce the burden to the taxpayer if an operator fails to complete proper plugging and abandonment.

#### Section 3104.10 Bond Obligations

To enhance the administration of oil and gas bonding on America's public lands, the BLM is proposing to remove paragraphs (c)(1) and (5), which allow certificates of deposits (CDs) and letters of credit (LOCs) to secure a personal bond. The BLM is proposing to remove CDs because they are difficult to manage: the face of these instruments do not include the BLM's required language that Secretarial approval is required prior to redemption of the CD by any party. The BLM is proposing to remove LOCs because the BLM has found it is difficult for banks to include the BLM's requirements in LOCs. Under the proposed rule, any existing personal bond that is secured by a CD or a LOC need not change the security until the bond is replaced. However, the BLM would not accept CDs or LOCs as security for a new personal bond after the final rule takes effect. Finally, the BLM requests comments with any supporting information on whether the final regulation should provide for any other types of approved financial arrangements and the types of financial arrangements that the BLM should consider.

#### Section 3104.20 Lease Bond

The proposed rule would change the specifications regarding who must post a bond to state that the operator must be covered by a bond in its name as principal or obligor. The existing regulations authorize a lessee, owner of operating rights (sublease), or operator to post a lease bond. The proposed change would not result in any administrative changes for the BLM, because under the existing regulations, when a lessee or an operating rights

owner posts the bond for the operator, the bond must include the operator as principal. The proposed language is intended to simplify these provisions by requiring an operator to have a bond in its own name and removing the requirement for lessees and sublessees to ensure their bonds cover the operator. The BLM recognizes that lessees and owners of operating rights (sublessees) have certain obligations and are ultimately responsible for operations on their lease, as required by 43 CFR 3106.76, and additional bonding may be required by the authorized officer when, for example, an operator is noncompliant.

The proposed rule would increase the minimum lease bond amount to be not less than \$150,000. The existing lease bond amount of \$10,000, established in 1960, no longer provides an adequate incentive for companies to meet their reclamation obligations, nor does it cover the potential costs to reclaim a well should this obligation not be met. This current bond requirement increases the risk that taxpayers will cover the cost of reclaiming wells in the event the operator refuses to do so or declares bankruptcy. According to a GAO report entitled, Federal Energy Development, Challenges to Ensuring a Fair Return for Federal Energy Resources, GAO-19-718T, "weaknesses with bonds for coal mining and for oil and gas development pose a financial risk to the Federal Government as laws, regulations, or agency practices have not been adjusted to reflect current economic circumstances."

To determine the appropriate minimum lease bond amount, the BLM reviewed its existing lease bonds and the number of wells tied to the lease bonds. The BLM currently manages 933 lease bonds; however, only 369 lease bonds cover existing wells or liability. The lease bonds that do not cover any existing liability are usually put in place for a well that has not yet been drilled or where the principal forgot to request termination of the bond after transferring or plugging and abandoning its prior oil and gas liability. For the lease bonds with existing wells, each lease bond, on average, covers 14 wells; however, lease bonds cover a median number of one well per bond. In addition, the lease bonds covering existing wells average \$26,000 per bond. For background, the BLM calculated the average by adding up all the lease bond amounts and dividing this total by the number of lease bonds. The BLM calculated the median by taking the middle value, *i.e.*, the value for which half of the lease bonds are larger and half are smaller. Thus, half of the lease

bonds with existing liability cover one well per bond. The cost to plug one well and reclaim the surface, however, can vary significantly based on the depth of the well. The proposed rule would require the minimum bond amount to be sufficient to reclaim two wells to account for the uncertainty surrounding the depth of wells and the large variability in reclamation costs for orphaned wells. The BLM would conduct bond adequacy reviews on all bonds and increase the required bond amount based upon the risk of the operations. This review would include several risk factors regarding the wells covered by the bond and the operator's compliance history.

Between 1960 and 2022, the cumulative inflation rate, as measured by the U.S. Consumer Price Index was 901 percent and, accordingly, the 2022 equivalent of \$10,000 (the 1960 lease bond amount) would be \$100,105 (<https://www.usinflationcalculator.com>). After reviewing the costs to plug orphaned wells, the BLM determined the cost to plug a well and reclaim the surface ranges from \$35,000 to \$200,000, with an average cost of \$71,000. Considering that the median number of wells is one well per lease bonds, the BLM is proposing to set the new minimum lease bond amount at \$150,000 (rounded up from \$142,000), which would cover the estimated plugging and reclamation costs for two wells. The BLM is proposing to round the bond amount up to the nearest \$50,000 for ease of payment and administration. Through the BLM's current policy for bond adequacy reviews, the BLM will increase the lease bond amount for operators with more than two wells tied to the bond. The proposed minimum lease bond amount would provide sufficient coverage for an operator starting operations with a lease bond.

Based upon a review of the lease bond and related operations, the BLM determined that the minimum lease bond amount should be not less than \$150,000. In addition, the minimum lease bond amount of \$150,000 matches the amounts proposed in Congress by Senator Michael Bennet (S. 2177) and Representative Teresa Leger Fernandez (H.R. 2415). The BLM believes this update would help ensure that reclamation responsibilities reside primarily with oil and gas lessees and operators and not the American public. The BLM requests comments with any supporting information on whether the final regulation should provide a higher or lower amount for lease bonds.

#### Section 3104.30 Statewide Bonds

The proposed rule would rename this section from "Statewide and nationwide bonds" to "Statewide Bonds" as BLM proposes to remove nationwide bonds. The proposed rule increases the statewide bond amount to not less than \$500,000, covering all leases and operations in any one State to reflect current economic circumstances. The BLM established the previous statewide bond amount of \$25,000 in 1951. As stated earlier, insufficient bonding levels provide an inadequate incentive for companies to meet their reclamation obligations and do not provide sufficient funding in the event a company fails or refuses to meet its obligations, thereby ultimately shifting the reclamation obligations on the taxpayer.

To determine the appropriate minimum statewide bond amount, the BLM reviewed its existing statewide bonds, and the number of wells tied to the statewide bonds. The BLM currently manages 1,815 statewide bonds; however, only 1,007 statewide bonds cover existing wells. For the statewide bonds with wells, each statewide bond, on average, covers 66 wells; however, the statewide bonds cover a median number of seven wells per bond. The larger number of wells covered provides the BLM more time to conduct a bond adequacy review and increase bond amounts if needed. In addition, the statewide bonds covering existing wells averaged \$387,000 per bond. For background, the BLM calculated the average by adding up all the statewide bond amounts and dividing this total by the number of statewide bonds. The BLM calculated the median by taking the middle value, *i.e.*, the value for which half of the statewide bonds are larger and half are smaller. Since half of the statewide bonds, with existing liability, cover seven wells per bond, the proposed rule would require the minimum bond amount to cover seven wells, the median number of wells. Unlike bonds for individual leases where the BLM is proposing to cover more than the median number of wells, for statewide bonds, the larger number of wells covered (7) reduces the uncertainty related to depth of individual wells and the variability of reclamation costs. It also gives the BLM more time to conduct a bond adequacy review and increase bond amounts if needed. The BLM would conduct bond adequacy reviews on all bonds and increase the required bond amount based upon the risk of the operations. This review would include the number of wells covered by the bond.

Between 1951 and 2022, the cumulative inflation rate, as measured by the U.S. Consumer Price Index was 1,040 percent and, accordingly, the 2022 equivalent of \$25,000 (the 1951 statewide bond amount) would be \$284,914 (<https://www.usinflationcalculator.com>). After researching the BLM's data on orphaned wells, the cost to plug a well and to reclaim the surface ranged from \$35,000 to \$200,000, with an average cost of \$71,000. Considering that the median number of wells is seven wells per statewide bond, the BLM opted to have the minimum statewide bond cover seven wells, which resulted in a statewide bond of \$500,000, rounded from \$497,000. The BLM rounded the bond to the nearest \$50,000 for ease of payment and administration. Through the BLM's current policy for bond adequacy reviews, the BLM will increase the statewide bond amount for operators with more than seven wells tied to the bond. The new minimum statewide bond amount would provide sufficient coverage for an operator starting operations with a statewide bond.

Based upon a review of the statewide bond and related operations, the BLM determined that the minimum statewide bond amount should be not less than \$500,000. In addition, the minimum statewide bond amount of \$500,000 matches the amounts proposed in congress by Senator Michael Bennet (S. 2177) and Representative Teresa Leger Fernandez (H.R. 2415). The BLM believes this update would help ensure that end-of-life liabilities reside primarily with oil and gas lessees and operators and not the American public. The BLM requests comments with any supporting information on whether the final regulation should provide a higher or lower amount for statewide bonds.

Finally, the proposed rule would rescind the use of nationwide bonds, which call upon the BLM to manage nationwide risks and liabilities and are therefore administratively inefficient. The elimination of nationwide bonding in favor of the proposed increase in the amount of the statewide and lease bonds described earlier would allow the agency to ensure improved bonding, with an appropriate focus on specific areas and fields, which should reduce the burden to the taxpayer if an operator fails to complete proper plugging and abandonment.

For more background, the BLM reviewed its existing nationwide bonds, and the number of wells tied to the nationwide bonds. The BLM currently manages 241 nationwide bonds; however, only 129 nationwide bonds

cover existing wells or liability. For the nationwide bonds with wells, each nationwide bond, on average, covers 295 wells; however, the nationwide bonds cover a median number of 35 wells per bond. The nationwide bonds covering existing wells averaged \$198,000 per bond. Compared to statewide bonds, nationwide bonds cover more wells and averaged lower amounts per bond. The BLM believes the increased administrative burden related to managing nationwide bonds has caused nationwide bonds to lag behind statewide bonds for bond increases and reviews. Overall, the BLM believes the elimination of nationwide bonds would result in prompt adjustments to bond amounts with changing circumstances of the bonded parties' operations. The BLM seeks public comment on the appropriate minimum amount for a nationwide bond, if it opts to retain the nationwide bonding provision.

#### Section 3104.4 Unit Operator's Bond

The proposed rule would eliminate unit operator bonds in their entirety, as currently found in 43 CFR 3104.4. Currently, these bonds are treated like statewide bonds and may be used in lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement. The language for the unit operator bond can be found at 43 CFR 3186.2. The BLM has less than 20 active unit operator's bonds nationwide. The BLM's review of bonds shows that the forms predating June 1987 did not clearly cover the principal in the capacity of a unit operator where the operator does not hold an interest in the lease. Prior to June 1987, the BLM required the principal or obligor to provide a rider to a statewide or nationwide bond extending the bond's coverage to include all obligations of the principal or obligor under the terms and conditions of unit agreements. The current bond forms do not have this deficiency as they contain the statement, "WHEREAS the principal and surety agree(s) that with notice to the surety the coverage of this bond, in addition to the present holding(s) of and/or authorization(s) granted to the principal, shall extend to and include: [ . . . ] Any activity subsequent hereto of the principal as operator under a lease(s) issued pursuant to the Acts cited in this bond." Today, unit operator bonds are usually submitted to the BLM when a unit agreement includes lands located in more than one State as it costs less to post a single unit operator bond for \$25,000 rather than posting two statewide bonds for \$50,000 or a

nationwide bond for \$150,000. This was not BLM's intention for the unit operator bond in 1987 when the bond forms were updated. Therefore, eliminating and replacing the unit operator's bond, which is already treated and managed like statewide bonds, would bring efficiencies to the program.

#### Section 3104.40 Surface Owner Protection Bond

The proposed rule would add a provision related to surface owner protection bonds to consolidate all of the bonding provisions in one place. The BLM promulgated the current requirements for surface owner protection bonds through Onshore Order 1 in 2007. The BLM recently codified these requirements in 43 CFR subpart 3171. In this proposed rule, the BLM would incorporate the existing bonding requirements set out in Onshore Order 1. It also would add a new requirement that the surface owner protection bond must be filed on the BLM approved form and specify that the type of bond can either be a personal or surety bond. The BLM requests supporting documentation and comments on whether the final rule should change the minimum bond amount for surface owner protection bonds.

#### Section 3104.60 Where Filed and Number of Copies

The proposed rule would remove the last sentence in this paragraph, which states that nationwide bonds may be filed in any BLM state office. As noted previously, this rule would eliminate nationwide bonds.

#### Section 3104.70 Default

The proposed rule would divide the current paragraph (b) into three paragraphs for clarity. Paragraph (b)(1) would state that all the leases covered by the bond may be subject to cancellation if the principal fails to comply with the paragraph (b) requirements. The BLM proposes to add information on failure to comply by referencing section 17 of the MLA and the DOI's suspension and debarment program to ensure the bonded principal understands the risks that incur for a default under the bond. The rule proposes to add paragraphs (b)(2) and (3). Paragraph (b)(2) would state that the bonded party may be prevented from acquiring any new lease or interest when the entity is in violation of section 17 of the MLA; it references the provisions for qualifications to hold a lease at 43 CFR 3102.51(f). Paragraph (b)(3) would state that the bonded party

may be referred to the DOI's Suspension and Debarment Program under 2 CFR part 1400 to determine if the person will be suspended or debarred from doing business with the Federal Government for failure to comply with the paragraph (b) requirements.

#### Section 3104.90 Bonds Held Prior to [EFFECTIVE DATE OF THE FINAL RULE]

The proposed rule would add a new section entitled "Bonds Held Prior to [EFFECTIVE DATE OF THE FINAL RULE]" to manage the elimination of existing nationwide and unit bonds. Paragraph (a) would state that the current unit operator bonds accepted by the BLM prior to the effective date of the final rule must be replaced by a statewide bond within 2 years from the effective date of the final rule. The BLM would no longer accept new unit operator bonds. Paragraph (b) would provide a phase-in period within which bonds held prior to the final rule must meet the increased minimum bond amounts. The phase-in period for individual, state, and nationwide bonds would be 1, 2, and 3 years, respectively (for nationwide bonds, the phase-in period refers to the time in which nationwide bonds must be converted into state bonds).

The phase-in period should be as short as possible to account for the large number of inadequate bonds and the associated taxpayer exposure. The BLM opted for a 3-year phased approach based on the workload related to reviewing and accepting new bonds or bond riders. This approach would spread out the workload of replacing bonds over a 3-year period and allow the BLM to process the bond increases without requiring additional adjudication staff to manage the increased workload. The BLM opted to start with individual bonds as these are usually smaller operations with an increased risk of bankruptcies. The BLM requests supporting documentation and comments on whether the final regulation should change the priority order for the phase-in period.

#### 7. Section-by-Section Discussion for Changes to 43 CFR Subpart 3105

The proposed rule would add one section and remove five sections in existing 43 CFR subpart 3105. The proposed rule would revise one section heading in the existing 43 CFR subpart 3105 to remove an unnecessary reference to drilling agreements.

### Section 3105.10 Cooperative or Unit Agreement

The proposed rule would add a new paragraph (b) to this section to require that all applications to form a unit agreement, a unit expansion, or a designation of a successor operator include the new processing fee found in the fee schedule in 43 CFR 3000.120 of this chapter.

### Communitization Agreements

This section of the regulations covers the BLM's management and approval of communitization agreements, which are oil and gas agreements covering one or more Federal leases that cannot be independently developed due to well-spacing or well development programs. The CA allows the lessees to cooperatively develop such tracts. The proposed rule would rename this section from "Communitization or Drilling Agreements" to "Communitization Agreements." The proposed rule would eliminate "drilling agreements" in this section, since the BLM has determined that such agreements are rarely if ever used.

### Section 3105.21 Where Filed

The proposed rule would remove the triplicate filing requirement in paragraph (a) as the BLM believes this requirement is no longer needed given electronic filing. The proposed rule would replace the language in current paragraph (b) with a list of three items that an application for a CA must include. Paragraph (b)(1) would require that all applications to form a CA must include a statement as to whether the proposed CA deviates from the BLM's current model CA form and a certification that the applicant received the required signatures. Paragraph (b)(2) would require an Exhibit A to display a map of the area covered by the agreement and the separate agreement tracts, and paragraph (b)(3) would require the filing of an Exhibit B displaying the separate tracts and ownership. The new paragraph (c) would state that all applications to form a CA should be submitted at least 90 calendar days prior to first production to ensure accurate reporting to the ONRR. Finally, the new paragraph (d) would require operators to file the designation of successor operator with the filing fee in the fee schedule at 43 CFR 3000.120.

### Section 3105.22 Purpose

The proposed rule would remove the unnecessary reference to drilling agreements.

### Section 3105.23 Requirements

The proposed rule would remove the unnecessary reference to drilling agreements.

### Section 3105.24 Communitization Agreement Terms

The proposed rule would add a new section to outline CA terms to provide clarity. The new paragraph in this section would provide that these agreements would remain in effect for a period of 2 years from the effective date of the CA or approval date, whichever is later, and as long thereafter as communitized substances may be produced in paying quantities, or as otherwise specified in the agreement.

### Section 3105.31 Where Filed

The proposed rule would remove the requirement for five copies of an operating, drilling, or development contract to be submitted when these contracts are submitted to the BLM for approval as the BLM believes this requirement is no longer necessary because of electronic filing.

### Section 3105.4 Combination for Joint Operations or for Transportation of Oil

The proposed rule would eliminate the section on the combination for joint operations or for transportation of oil. These provisions are not used by the BLM or operators and are therefore obsolete. A ROW for pipelines may be granted, as provided in 43 CFR part 2880, without retaining the duplicative language under this subpart. A ROW grant is an authorization to use a specific piece of public land for a certain project, such as a road, pipeline, transmission line, or communication site. A more complete explanation of the BLM ROW program is found in Title 43 CFR parts 2800 and 2880.

### Subsurface Storage of Oil and Gas

The proposed rule would change the existing 43 CFR 3105.5 to just the heading "Subsurface storage of oil and gas."

### Section 3105.41 Where Filed

The proposed rule would update paragraph (a) to include designation of successor operators for gas storage agreements among the applications to be filed in the proper BLM office. This information needs to be filed with the BLM when there is a change in operator. The proposed rule would update paragraph (b) to remove the requirement for five copies of a gas storage agreements to be submitted when these are filed with the BLM as the BLM believes this requirement is no longer necessary because of electronic filing. A

new paragraph (c) would require that all applications for a subsurface gas storage agreement or a designation of a successor operator must include the new processing fee found in the fee schedule in 43 CFR 3000.120.

### Section 3105.42 Purpose

The proposed rule would add clarification that a gas storage agreement will require a bond under 43 CFR part 3104.

### Section 3105.43 Requirements

The proposed rule would update the language in this section to mirror the language found in 43 CFR 3105.42 for clarity.

### Section 3105.50 Consolidation of Leases

The proposed rule would split the single paragraph under this section into several paragraphs for clarity. These paragraphs would also incorporate language from 43 CFR 3135.17 to provide a consistent approach across leasing in the NPR-A and under the MLA. Paragraph (a) would incorporate language stating that leases may be consolidated upon written request of the lessee filed with the proper BLM office. This change is proposed to identify who should submit the request for consolidation. The request must identify each lease involved by serial number and must explain the factors that justify the consolidation. Paragraph (b) would state that all parties holding any undivided interest in any lease involved in the consolidation must agree to enter into the same lease consolidation. Consistent with the existing language, paragraph (c) would clarify the circumstances under which leases cannot be consolidated. Paragraph (d) would state that a consolidated lease will not exceed acreage limits of 2,560 acres for competitive leases and 10,240 acres for noncompetitive leases, as required by 30 U.S.C. 226. Paragraph (e) would require the effective date, anniversary date, and the primary term of the consolidated lease to be those of the oldest original lease included in the consolidation. It would also allow the term of a consolidated lease to be extended beyond the primary lease term pursuant to 43 CFR subpart 3107. Paragraph (f) would state that the highest royalty and rental rates of the each of the leases to be consolidated would apply to the consolidated lease. Paragraph (g) would state that lease stipulations and other terms and conditions of each original lease would, in general, continue to apply to the lease to which they originally applied, regardless of the lease becoming a part



of a consolidated lease. These additions bring consistency between §§ 3135.17 and 3105.50.

#### 8. Section-by-Section Discussion for Changes to 43 CFR Subpart 3106

The proposed rule would add one section and remove two sections in existing subpart 3106. The proposed rule would revise five section headings in the existing subpart 3106 to provide clarity and replace the existing question-and-answer formats.

##### Section 3106.10 Transfers, General

The proposed rule would split paragraph (a) into two paragraphs and add a provision regarding transfers of operating rights to provide clarity and reduce the confusion the BLM has seen in applications. The new paragraph (b) would state that an assignment of a separate zone, deposit, depth, formation, a specific well, or part of a legal subdivision will be denied. The proposed rule would add a new paragraph (c) to state that operating rights may only be divided with respect to legal subdivisions, depth ranges, and formations within the boundaries of a Federal lease. Terms, such as stratigraphic equivalent, pools, reservoirs, wellbores, and references to unnamed formations occurring at a specified depth within a specific well are not allowed, as they are not definitive, and introduce ambiguity into the boundaries along which lease rights are split.

The proposed language more clearly states the BLM's current obligations. The current regulation at 43 CFR 3106.1(a) states: "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." The "stratigraphic equivalent" of a formation (*i.e.*, a division that extends beyond that formation) meets the definition of a "zone." A "pool" of oil or gas trapped in the rocks below the ground surface meets the definition of a "deposit." Under the current regulations, therefore, the BLM must disapprove these types of assignments.

The BLM's practice is sound as a practical matter. The BLM cannot approve assignments or transfers that attempt to separate rights along boundaries that cannot be defined without geological interpretation (for example, "the stratigraphic equivalent of the formation encountered in Well X, at a depth of Y feet below the surface"). A boundary that requires geological

interpretation is inherently imprecise. As for wellbore-only transfers, a wellbore is essentially a line, not a spatial region within a leasehold. The BLM cannot define a distribution of lease rights relative to a linear feature in three-dimensional space below the surface of the ground. Wellbore-only rights that purportedly encompass the area drained by that wellbore pose the problem of defining the boundaries of the area drained, which may require geological interpretation and/or engineering analysis.

The proposed rule would also split the existing paragraph (b) into five paragraphs due to the length of the paragraph and for clarity. The proposed paragraph (d) would revise the second sentence to simply reference 43 CFR 3102.51(g) for certification of compliance rather than repeating the language set out in 43 CFR 3102.51(g). The proposed rule would redesignate the existing paragraph (c) to paragraph (i) because of the previously mentioned reorganization.

##### Section 3106.20 Qualifications of Transfers

The purpose of this section is to ensure new lessees and operating rights owners comply with the provisions of 43 CFR subpart 3102. The proposed rule would update the title of the section from "Qualifications of transferees" to "Qualifications of assignees and transferees." The proposed rule would also update the paragraph to include "assignees" as well as "transferees." The purpose of these changes is to clarify that this section on qualifications applies to both assignments of record title as well as transfers of operating rights. The proposed rule would add a sentence that states "Only qualified and responsible lessees may own, hold, or control an interest in a lease." This addition is made to conform the language in this provision with similar proposed changes.

##### Section 3106.30 Fees

This section includes the requirement to submit the requisite filing fees with assignment and transfer applications. The proposed rule would split the current paragraph into two paragraphs for clarity. The reference to the filing fee for assignments and transfers would now be found under paragraph (a). The reference to the filing fee for transfer of overriding royalty or payment out of production would now be found under paragraph (b). References to the filing fees for mergers and name changes and for transfers to heirs or devisees would be removed from this section as the

filing fee requirement is included in the sections for those specific topics.

##### Section 3106.41 Transfers of Record Title and of Operating Rights (Subleases)

This section describes the forms required for assignment and transfers. The proposed rule would update this section to allow for the acceptance of electronic submissions. The proposed rule would reduce the triplicate filing to a duplicate filing so that the BLM can keep one copy for the official case file and return one copy of the approved assignment or transfer for the applicant's records. The BLM does not require a duplicate copy of the assignment or transfer when it is electronically submitted.

The proposed rule would also require assignments and transfers to be submitted on a current form and would no longer allow the use of obsolete forms. All current forms can be located on the BLM's web pages. The BLM believes that lessees may locate the current form far easier now than in the days prior to widespread internet access.

The current regulations allow for the assignee or transferee to sign only one copy of the assignment or transfer, while the assignor or transferor must sign all three copies of the form. In light of the proposal to reduce the triplicate filing to (at most) a duplicate filing, the BLM believes it would no longer be a burden for the assignee or transferee to sign both copies of the form submitted to the BLM. This change would streamline the BLM's verification of the required signatures.

##### Section 3106.42 Transfers of Other Interest, Including Royalty Interests and Production Payments

The proposed rule would update paragraphs (a) and (b) to ensure overriding royalty transfers are submitted on the BLM's current assignment or transfer forms.

##### Section 3106.43 Mass Transfers

This section allows an assignor or transferor to make a mass assignment or transfer when conveying any type of interest in a large number of Federal leases to the same assignee or transferee. The proposed rule would update paragraph (a) to include the words "assignor" and "assignee." As explained earlier, the term "transferees" usually refers to transfers of operating rights, but this section has always functioned to apply to both assignments of record title as well as transfers of operating rights. The BLM believes that adding assignors and assignees to this

language would reduce any confusion on this matter. In addition, the regulatory language was clarified to ensure that the minimum number of leases for a mass transfer is more than one lease.

The proposed rule would update paragraph (b) to reduce the triplicate filing to a duplicate filing so the BLM can keep one copy for the official case file and return one copy of the approved assignment or transfer for the applicant's records. The proposed rule would update paragraph (c) to state that the BLM does not require a duplicate copy of the assignment or transfer when it is electronically submitted. In addition, a new paragraph (c)(2) would be added to state that when the BLM does not receive the requisite number of copies for mass transfers, the applicant would reimburse the BLM for the full costs incurred to make the required number of copies. The BLM would waive any copy fees under one dollar.

#### Section 3106.50 Description of Lands

The proposed rule would update the language in this paragraph from "transfer of record title" to "assignment of record title" for consistency. In addition, the reference to 43 CFR 3110.5 would be removed to more simply state that each assignment must describe the lands in the same manner as the lands described in the lease.

#### Section 3106.60 Bond Requirements

The purpose of this section is to ensure the new lessee or operating rights owner obtains a bond equivalent in coverage to the assignor's or transferor's bond before approval of the assignment or transfer. The proposed rule would update the title of this section from "Bonds" to "Bond requirements." This section would also consolidate the separate sections for "Lease bond" (43 CFR 3106.6-1) and "Statewide/nationwide bond" (43 CFR 3106.6-2) into one paragraph to streamline the regulations. In addition, the rule would remove references to a transferee or a new operator as a co-principal on the transferor's or operator's bond. In the BLM's experience, this dynamic does not occur. An assignee assumes all the obligations incurred by the assignor as well as the benefits that have accrued to the assignor. The bond the assignee, transferee, or new operator must provide is a proper bond that would cover any obligations arising under the lease to the same extent as the assignor's bond. The BLM's practice is to ascertain the adequacy of such bond before approving the assignment.

#### Approval of Transfer or Assignment

The proposed rule would change the existing 43 CFR 3106.7 "Approval of transfer" to the heading "Approval of transfer or assignment." The reference to both assignments and transfers conforms the title of this section with similar proposed changes.

#### Section 3106.71 Failure To Qualify

The proposed rule would update the paragraph in this section to active voice and update the language from "transfer of record title or of operating rights (sublease)" to "assignment of record title or transfer of operating rights (sublease)," consistent with the other changes made to this subpart. In addition, the term "qualified lessee" is used in place of the existing language "qualified to hold the transferred interest." i.

#### Section 3106.72 Continuing Obligation of an Assignor or Transferor

The purpose of this section is to describe the continuing obligation of the assignor or transferor after the BLM approves the assignment or transfer. The proposed rule would update the title and paragraphs of this section to remove the question-and-answer format. The title would change from "If I transfer my lease, what is my continuing obligation?" to read "Continuing obligation of an assignor or transferor." In paragraph (a), the proposed rule would change "you are responsible" to "the lessee or sublessee remains responsible" and paragraph (b) would change "you" to "the assignor or transferor." This is intended to clarify who "you" is in this section.

#### Section 3106.73 Lease Account Status

The proposed rule would update this section to active voice and revise the phrase "unless the lease account is in good standing" to clarify that the lease account must not be delinquent with respect to royalty payments; lease obligations, such as, but not limited to, rent and minimum royalty; or production reporting to the ONRR for a lease in non-terminable status.

#### Section 3106.75 Effect of Transfer

This section requires that an assignment to 100 percent of a portion of the lease segregates the transferred and retained portions into separate leases. The proposed rule would update the language in this paragraph from "transfer of record title" to "assignment of record title," consistent with the other changes made to this subpart. The proposed rule would also update the paragraph in this section to clarify the meaning of undivided interest to the

more commonly used phrase of "less than 100 percent of a portion of the lease."

#### Section 3106.76 Obligations of Assignee or Transferee

The purpose of this section is to describe the obligations the lessee or sublessee assumes after the BLM approves the assignment or transfer. By seeking approval of the assignment or transfer and being substituted in place of the assignor or transferor, the assignee or transferee assumes the responsibility for complying with all lease obligations in existence and that a purchaser exercising reasonable diligence should have known existed at the time of the transfer. The proposed rule would update the title and paragraphs of this section to remove the question-and-answer format. The title would change from "If I acquire a lease by an assignment or transfer, what obligations do I agree to assume?" to read "Obligations of assignee or transferee." This formatting change brings overall consistency with the other regulations in this subpart. The proposed rule would also replace "you" in this section with "the record title holder" or "transferee of operating rights," as appropriate. It would also state more clearly that the transferee assumes the responsibility to plug and abandon all wells that are no longer capable of producing.

#### Section 3106.81 Heirs and devisees

The proposed rule would split paragraph (a) into two paragraphs for clarity. The existing paragraph (b) would become paragraph (c) due to the reorganization of the section. The language in paragraph (a) would be updated to state that the lease interest would be assigned or transferred to the heirs, devisees, executor, or administrator of the estate, as appropriate, upon the filing of a court order, death certificate, or other legal document demonstrating that the assignee is to be recognized as the successor of the deceased. New paragraph (b) would contain the requirement for the filing fee. Newly redesignated paragraph (c) would include a requirement to file a qualification statement, as well as the current language found in existing paragraph (b). The proposed rule would add a new paragraph (d) that would contain the bonding requirements that are found in paragraph (a) in the current regulation.

#### Section 3106.82 Change of Name

The proposed rule would split the reference to the filing fee and bond into

three separate paragraphs for clarity. The current regulation requires a notice of the name change to be accompanied by a list of the serial numbers of the leases affected by the name change. This requirement would be removed, as it is outdated. In practice, the BLM generates a report of the leases affected by the name change and returns that list to the lessee with a notice that recognizes the name change. The proposed paragraph (a) would be updated to require that for a corporate name change, the request must include the Secretary of State's Certificate of Name Change, along with the Articles of Incorporation, or Amendment, if available. This is consistent with the BLM's current approach for processing these types of documents. New paragraph (b) would contain the requirement for the filing fee. The proposed rule would add a new paragraph (c) that would contain the bonding requirements that are found in the current regulation.

#### Section 3106.83 Corporate Mergers and Dissolution of Corporations, Partnerships, and Trust

The proposed rule would update the title of this section from "Corporate merger" to "Corporate Mergers and Dissolution of Corporations, Partnerships, and Trust." The goal of renaming the section is to incorporate other types of changes to lease ownership interests that may occur without any intention by the holder of an interest to assign or transfer the interest. The proposed rule would split the current paragraph into three paragraphs for clarity.

The current regulation requires a notification of merger to be accompanied by a list of the serial numbers of the leases affected by the merger. This requirement would be removed, as it is outdated. In practice, the BLM does not rely on a list of leases provided by a lessee and, instead, generates its own report of the leases affected by the merger. The BLM returns that list to the lessee with a notice that recognizes the corporate merger.

This section would be updated to require that, for a merger, the request must include the Secretary of State's Certificate of Merger, along with the Articles of Incorporation, or Amendment, if available. This requirement is consistent with the BLM's current approach for processing these types of documents. New paragraphs would be added allowing the BLM to recognize lease interests assigned through dissolutions of corporations and dissolutions of partnerships and trust. The new provision would state that the BLM

would not recognize any transfers provided by the Articles of Dissolution unless an entity has filed with the BLM a Certificate of Dissolution of an incorporated entity, certified as accepted by the State where the entity was incorporated. Dissolution of a partnership or trust through an order or decree that authorizes settlement, discharge, and distribution of the lease holdings and/or interests must be filed with the BLM for official recognition of the assignment of lease interests. These requirements are consistent with the BLM's current approach for processing these types of documents.

#### Section 3106.84 Sheriff's Sale/Deed

The proposed rule would add a new section under § 3106.80, to include sheriff's sales as another type of transfer. The BLM accepts these types of assignments to recognize lease interests assigned to other parties through foreclosure actions. The proposed rule would state that where a notice of sale of the leasehold interest is published pursuant to State law applicable to the execution of sales of real property, the purchaser must submit to the proper BLM office a copy of the Sheriff's Certificate of Sale after any redemption period has passed. Additional paragraphs under this new section would include a filing fee requirement, a qualification statement, and bonding requirements. These requirements are consistent requirements with the BLM's current approach for processing these types of documents.

### 9. Section-by-Section Discussion for Changes to 43 CFR Subpart 3107

The proposed rule would remove six sections in existing 43 CFR subpart 3107. The proposed rule would change the title of this subpart from "Continuation, Extension or Renewal" to "Continuation and Extension" due to the removal of the sections on renewal of leases, as explained later. The proposed rule would revise two section headings in the existing 43 CFR subpart 3107. The goal of the revisions is to replace "plans" with "agreements" to provide clarity and to conform this language with other changes in this proposed rule.

#### Section 3107.10 Extension by Drilling

The proposed rule would split the existing paragraph into two separate paragraphs for clarity. In paragraph (a), a sentence would be added to state that the BLM would not grant a drilling extension for a lease in its extended term. This change would clarify and complement the first sentence of this section, which states that a drilling

extension would only be granted for a lease on which actual drilling operations are being diligently pursued at the end of the primary lease term or any lease that is committed to an approved oil and gas agreement. A new paragraph (c) would be added to address directional or horizontal wells on off-lease locations by stating that when a BLM-approved directional or horizontal well is drilled within the leased area from an off-lease location with the intent to produce from the leased area, the BLM would consider drilling to have commenced on the leased area when drilling is commenced at the off-lease location. This addition is consistent with the leasing regulations under 43 CFR part 3130.

#### Section 3107.22 Cessation of Production

The proposed rule would update this section because the IBLA has held that the current regulations—which provide that "[t]he 60-day period commences upon receipt of notification from the authorized officer"—directly conflicts with the statutory provision of section 17(i) of the MLA (30 U.S.C. 226(i)). Refer to *Two Bay Petroleum, Inc*, 166 IBLA 329 (2005), *International Metals & Petroleum Corp*, 158 IBLA 15 (2002), and *Merit Productions, et al.*, 144 IBLA 156 (1998). In summary, these cases explain that through operation of law a lease in its extended term expires 60 days following cessation of production, not 60 days after the lessee receives the BLM notice.

The paragraph in the proposed rule would now read that a lease in its extended term because of production (and lacking a well capable of production in paying quantities) would not expire upon cessation of production, if, within 60 calendar days of cessation of production, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction. The proposed rule would also add a sentence stating, "If these reworking or drilling operations fail to result in production in paying quantities, the lease will expire by operation of law, effective as of the date production ceased."

#### Section 3107.23 Leases Capable of Production

The proposed rule would update the existing paragraph to specify 60 "calendar days" in order to be clearer.

**Section 3107.30 Extension for Terms of Agreements**

The proposed rule would update the title of this section from “Extension for terms of cooperative or unit plan” to “Extension for Terms of Agreements.” This conforms this language to other changes in this proposed rule.

**Section 3107.31 Leases Committed to an Agreement**

The proposed rule would update the title of this section from “Leases committed to plan” to “Leases committed to an agreement.” The proposed rule would also remove the reference to the existing 43 CFR 3107.3–3 (renewal leases) due to the changes made to that section, as further described later.

The proposed rule would add a new paragraph (b) because IBLA cases have held that a well that is capable of production in paying quantities on a lease basis and that is completed on a committed tract within a unit agreement will extend the term of all expiring Federal leases committed to the unit agreement for the term of the unit agreement and/or for so long as the well is capable of production in paying quantities. Refer to *Yates Petroleum Corp.* 67 IBLA 246 (1982).

**Section 3107.32 Segregation of Leases Committed in Part**

This section addresses any lease committed to a unit agreement that covers less than the entirety of the lands covered by the lease. In paragraph (a), a sentence would be added to state that, for unproven areas, segregation would occur only when the public interest requirement is satisfied pursuant to 43 CFR 3183.4(b). The sentence would also provide that, upon satisfaction of the public interest requirement, the BLM would deem the segregation to have been effective as of the date of commitment of the lands to the unit. Segregating a lease after the public interest requirement is met would create efficiencies in the program. If the public interest requirement is not met, the BLM would not be required to consolidate the improperly segregated leases, and the ONRR would not be required to consolidate improperly segregated lease accounts for payments.

The proposed rule would delete the portion of existing paragraph (b), which described how a lease segregation would be declared invalid if the public interest requirement was not met. This change is consistent with the changes made to paragraph (a).

The proposed rule would add a new paragraph (b)(2) to clarify that the base

or segregated lease may be extended by production on the associated lease by stating that, if a partially committed lease is in an extended term because of production, the segregated, non-producing lease would continue in effect so long as the producing lease exists and rentals are paid, and so long thereafter as oil or gas is produced from the committed lease.

**Section 3107.3–3 20-Year Lease or Any Renewal Thereof.**

The proposed rule would eliminate this section because it is outdated. All 20-year leases, also known as renewal leases, have either expired or are held by production. Renewal leases are further described in detail under 43 CFR 3107.80.

**Section 3107.51 Extension After Discovery on Other Segregated Portions**

The proposed rule would update the language in this paragraph from “the date of first discovery of oil or gas in paying quantities” to read “the date a well capable of production in paying quantities is established.” The change reflects language more commonly used by the BLM.

**Section 3107.7 Exchange Leases: 20-Year Term**

The proposed rule would eliminate this section because it is obsolete. Exchange leases were outstanding MLA leases that could be exchanged for a new lease under the Act of August 21, 1935, Public Law 74–295 § 2(a), 49 Stat. 674, 679. The August 8, 1946, Act eliminated the 1935 Act provisions for exchange leases, and the BLM no longer accepts these types of applications. Public Law 79–696 sec. 3, 60 Stat. 950, 951.

**Section 3107.8 Renewal Leases**

The proposed rule would eliminate §§ 3107.8–1 through 3107.8–3, which are the provisions related to renewal leases, in their entirety because they are obsolete. Renewal leases that had an expiration date after November 15, 1990, were eligible for a final renewal under the provisions of the November 15, 1990, Act, (for 10 years and for so long thereafter as oil and gas is produced in paying quantities). Public Law 101–567, 104 Stat. 2802. If a lease was renewed after the 1990 amendment and was not producing oil or gas at the end of its 10-year renewal term, the lease expired with no further option for renewal. The BLM no longer accepts these types of applications.

**Section 3107.71 Payment of Compensatory Royalty**

The proposed rule would redesignate this section from §§ 3107.9–1 to 3107.71 pursuant to the reorganization identified earlier.

**Section 3107.72 Subsurface Storage of Oil and Gas**

Instead of citing to 43 CFR 3105.5–4, the proposed rule would add the language from 43 CFR 3105.5–4 to this section. This change negates the need to refer to another section of the rule.

**10. Section-by-Section Discussion for Changes to 43 CFR Subpart 3108**

The proposed rule would remove one section and revise two section headings in the existing 43 CFR subpart 3108. The goal of the revisions is to replace the question-and-answer format and to remove obsolete language related to Class III reinstatements.

**Section 3108.10 Relinquishment**

The proposed rule would update the title from “As a lessee, may I relinquish my lease?” to read “Relinquishment.” The proposed rule would also change references to “you” to “the lessee(s).” In addition, the proposed rule would update paragraph (c) to allow either the BLM or the appropriate surface management agency to approve a plan for the reclamation of the oil and gas operations on a relinquished lease.

**Section 3108.21 Automatic Termination**

The proposed rule would update paragraph (b) to remove the phrase “bill rendered by the designated Service Office, or,” because the ONRR updated its policy in 2015 to eliminate the mailing of courtesy notices. The proposed rule would add a new paragraph (c) to incorporate caselaw providing that Congress intended the automatic termination provision of 30 U.S.C. 188 to apply to the regular, annual rental payment, the necessity for which a lessee had continuous notice, and that the automatic termination provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued, e.g., where a lease suspension is lifted or where the lease account reverts from a royalty to a rental status. See *Husky Oil Company of Delaware Depco, Inc.*, 5 IBLA 7 (1972). This might happen where a lease suspension is lifted or where the leases were held by allocated production from an agreement and the agreement terminates, thus reverting the lease account from a royalty to a rental status. The new paragraph (c) would state that the

automatic termination provision does not apply where, due to other contingencies such as a suspension being lifted or unit terminating, additional rental is due on a date other than the lease anniversary date and where the lessee did not receive notice that the obligation had accrued, unless the lessee fails to pay the rental within the period prescribed in the BLM notice.

#### Section 3108.22 Reinstatement at Existing Rental and Royalty Rates: Class I Reinstatements

The proposed rule would update paragraph (a)(2) to replace the reference to a postmark by the U.S. Postal Service with a reference to the ONRR's online rental payment system, since the ONRR updated its policy in 2015 to require only electronic rental payments. The proposed rule would move paragraph (d)—which provides that the BLM would not issue a new lease for lands that have been covered by a lease that terminated automatically until 90 days after the date of termination—to 43 CFR 3101.40(a). The intent is to ensure that this language is not overlooked by placing it more prominently with lease issuance provisions. The IRA did not make any changes to the grounds and conditions for Class I reinstatements.

#### Section 3108.23 Reinstatement at Higher Rental and Royalty Rates: Class II Reinstatements

To further implement the IRA, the proposed rule would update paragraph (a) so that the grounds for a Class II reinstatement only apply to competitive leases. The IRA explicitly rescinded the BLM's authority to approve Class II reinstatements for noncompetitive leases issued for public domain lands under the MLA and implicitly did the same for the MLAAL (by eliminating references to higher rental requirements for reinstated, noncompetitive leases). In any event, reinstatements are discretionary; had Congress not directed the BLM to eliminate reinstatement of noncompetitive leases under the MLAAL, the BLM has concluded that such reinstatements are not prudent because the grounds for a reinstatement should be based on the type of lease and not be based on the land status.

The proposed rule would eliminate the existing paragraph (b)(1) in its entirety. This provision addresses the timeliness of Class II reinstatement petitions for leases that terminated on or before August 8, 2005, and is no longer applicable. The proposed rule would update the proposed redesignated paragraph (b)(2)(iii) to remove the reference to funds held in escrow, as this is outdated. The BLM would not

approve a reinstatement if the BLM does not collect all back rentals and royalties at the rates established in the reinstated lease, but the BLM would not require the funds to be held in escrow until a reinstatement is approved.

The proposed rule would move existing paragraph (c)—which states that the BLM will not issue a new lease for lands covered by a terminated lease until all action on the petition is final—to 43 CFR 3101.40(a). The intent is to ensure that this language is not overlooked by placing it more prominently with lease issuance provisions. The proposed rule would update the reference to the Committee on Interior and Insular Affairs (which no longer exists) to the current House Committee on Natural Resources. The proposed rule would remove existing paragraph (f), which refers to royalty reductions, as this language would already be covered under the proposed 43 CFR 3103.41(c).

#### Section 3108.2-4 Conversion of Unpatented Oil Placer Mining Claims: Class III Reinstatements (Existing Rule)

The purpose of the existing section is for converting unpatented oil placer mining claims validly located prior to February 24, 1920, to an oil and gas lease. The proposed rule would remove the language related to Class III reinstatements in its entirety because the IRA removed the authority for Class III reinstatements.

#### Section 3108.30 Cancellation

The proposed rule would update the last sentence in paragraph (a) to remove the phrase “after notice to the lessee in accordance with section 31(b) of the Act and only.” This phrase does not add anything to the existing regulation and has therefore led to confusion. The proposed rule would state instead that “The lease may be canceled only after default continues for 30 calendar days after a notice of default has been delivered in accordance with 43 CFR 1810.2.” The proposed rule would update paragraphs (b) and (c) to change the phrase from “by judicial proceedings” to “by court order” to align with the text found in 43 CFR 3136.3(b), bringing consistency to the regulations.

#### 11. Section-by-Section Discussion for Changes to 43 CFR Subpart 3109

The proposed rule would not make any revisions to the section headings in the existing subpart 3109 regulations. This subpart covers the process for leasing lands under the provisions in 30 U.S.C. 301–306, which addresses

leasing under railway and other rights-of-ways.

#### Section 3109.12 Application

The proposed rule would split the existing paragraph into four separate paragraphs by topic (no specific form is required, who can file, the filing fee, and what an application must include) for clarity. The proposed rule would also add a new requirement (proposed paragraph (d)(5)) that the applicant must include a map of the applicable lands, which would support the bidding process related to the lease or compensatory royalty agreement. In many cases, the adjacent mineral owners or lessees, who can bid upon the parcel, require a map to identify the lands. The requirement for the applicant to provide a map would reduce the cost to the public and would ensure that the BLM is reviewing the correct lands for a lease.

#### Section 3109.13 Notice

The proposed rule would update the phrase “a bid for the amount or percent of compensatory royalty” to read “a bid for the percent of compensatory royalty.” This change aligns with the BLM's existing process and reduces confusion.

#### Section 3109.15 Compensatory Royalty Agreement or Lease

The proposed rule would adjust the terms of a ROW lease to match the terms of a competitive lease issued under the MLA with respect to the rental, royalty, and primary term of the lease (10 years). The proposed rule would also specify for clarity that the provisions of 43 CFR part 3100 apply to the issuance and administration of leases for oil and gas deposits underlying a ROW issued under this part.

#### 12. Section-by-Section Discussion for Changes to 43 CFR Part 3110

The proposed rule would remove the existing 43 CFR part 3110 in its entirety. The IRA removed the BLM's authority to issue a noncompetitive lease. The BLM is rejecting all pending noncompetitive lease applications received before enactment of the IRA.

#### 13. Section-by-Section Discussion for Changes to 43 CFR Subpart 3120

The proposed rule would add two new sections and remove four sections in existing 43 CFR subpart 3120. The proposed rule would revise four section headings. The goal of the revisions is to streamline and provide clarity and consistency with other changes in this proposed rule.

### Section 3120.11 Lands Available for Competitive Bidding

The proposed rule would update the introductory paragraph from “All lands available for leasing shall be offered” to “All lands eligible and available for leasing may be offered” to conform this section with the language of 30 U.S.C 226(a) and (b). This language will also better reflect Interior’s statutory discretion to identify lands available for oil and gas leasing.

The proposed rule would update paragraph (a) to change the language from “Lands in oil and gas leases” to “Lands that were covered by previously issued oil and gas leases” to provide clarity.

The proposed rule would update paragraph (c) to clarify that a lease interest forfeited through a bankruptcy to the United States may be reoffered through a competitive auction.

The proposed rule would also revise existing paragraph (e) to reflect the IRA’s removal of noncompetitive leasing.

The proposed rule would add a new paragraph (g) to implement provisions of the IRA by stating that lands offered in a previous sale for which no bids were accepted or received may be offered for competitive auction under this subpart. Prior to the IRA, these lands would have been eligible for noncompetitive leasing.

### Section 3120.12 Requirements

The proposed rule would update paragraph (a) to conform this section with the language of 30 U.S.C 226(a) and (b). The proposed rule would update paragraph (b) to change “competitive oral or internet-based bidding process” to read “a competitive auction process.” A definition for competitive auction would be added to 43 CFR 3100.5 as explained previously.

The proposed rule would add a new paragraph (c) to codify existing policy and strengthen the bidder registration process. The MLA provides that leases may be issued only to a “responsible qualified bidder” (30 U.S.C. 226(b)(1)(A)). A bid submitted at a competitive auction represents a good-faith intention to acquire an oil and gas lease, and any winning bid constitutes a legally binding commitment to accept the lease and pay monies owed. Any bidder who has not paid the minimum monies owed on the day of sale is not a “responsible qualified bidder” and would be referred to the DOI’s Office of the Inspector General, Administrative Remedies Division, for appropriate action, including potential suspension and debarment. Definitions for qualified

bidder and responsible bidder would be added to 43 CFR 3100.5 as explained previously.

The proposed rule would redesignate the existing paragraph (c) to paragraph (d). The proposed rule would update this paragraph to refer to the increased national minimum bid of \$10 per acre, or fraction thereof, in 43 CFR 3000.130. The cross-reference to § 3000.130 allows BLM to adjust the minimum bid regularly for inflation. The IRA raised the national minimum bid from \$2 per acre to \$10 per acre. Notably, the IRA specifically authorizes the Secretary to, at the conclusion of the 10-year period established by the statute, “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.” The minimum acceptable bid is important because it establishes the starting bid at the BLM’s oil and gas lease sale auctions.

### Section 3120.13 Protests

The proposed rule would rename this section from “Protests and appeals” to “Protests” and would update the paragraphs in this section to change the term “appeal” to “protest.” This change reflects IBLA decisions providing that the current use of the term “appeal” is imprecise and creates confusion. Refer to *Wyoming Outdoor Council, et al.*, 156 IBLA 377 (2002). The BLM’s issuance of a Notice of Competitive Lease Sale is not an appealable action, because a notice merely distributes and communicates general information about a proposed action. The term “protest,” which is any objection raised by any person before an action is taken by the BLM, is the proper term. Appeals are covered under 43 CFR 3000.40 and do not need to be repeated in this section.

### Section 3120.30 Nomination Process

The BLM is proposing to update the process by which it formally nominates parcels for sale at a competitive auction. The BLM is considering using this process for certain BLM state offices or for future leases sales and requests comments on whether the regulations should retain this process and, if so, what changes to the formal nomination process should be made.

In 1988, following the passage of FOOGLRA, the BLM published new oil and gas regulations that established two separate processes for leasing public lands: (1) the informal process, which primarily relies on EOIs from the public;

and (2) the formal nomination process. 53 FR 22829 (“the final rulemaking provides administrative flexibility to allow for either informal EOIs or a formal nomination process to determine the lands offered competitively”). Aside from a few test sales following the enactment of FOOGLRA, the BLM has never employed the formal nomination process. See 53 FR 22829 (“the Director elects to permit informal expressions of interest to be submitted to the proper BLM office but declines at this time to employ formal nominations under 43 CFR 3120.30”). However, the existing regulations, as well as the BLM’s current competitive leasing handbook, continue to provide for the use of the formal nomination process, following notice to the public in the **Federal Register**.

The BLM believes that aspects of this process could be used as a possible mechanism to implement the recommendations from the DOI’s November 2021 “Report on the Federal Oil and Gas Leasing Program,” including “carefully consider[ing] what lands make the most sense to lease in terms of expected yields of oil and gas, prospects of earning a fair return for U.S. taxpayers, and conflicts with other uses” and “evaluat[ing] operational adjustments to its leasing program that will avoid nomination or leasing of low potential lands.”<sup>16</sup> The proposed rule would update the following sections for the formal nomination process with the intent to make these nominations nonbinding as the BLM considered a nomination to be similar to the noncompetitive pre-sale leasing process, and the IRA removed the noncompetitive leasing process. In addition, the rule proposes to eliminate the allowance for unnominated parcels to become available for noncompetitive leasing.

### Section 3120.31 General

The proposed rule would update this paragraph to remove the requirement that a nomination be submitted with a national minimum bid. The purpose of removing this requirement is to make formal nominations nonbinding. To provide the BLM with flexibility, this paragraph would also be updated to remove the citation to 43 CFR 3120.4; that would remove the requirement that a List of Lands Available for Competitive Nominations be posted in the same manner as the Notice of Competitive Lease Sale. This paragraph would also be updated to include language stating that nominations may

<sup>16</sup> <https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-ee-14008.pdf>.

be filed on a form or by a method approved by the Director, providing the BLM with flexibility and discretion to continue to improve the program (by, for example, allowing the public to send electronic nominations).

#### Section 3120.32 Filing of a Nomination for Competitive Leasing.

The proposed rule would revise the introductory paragraph under this section to state that nominations may be filed “on a form or using a method approved by the Director” similar to the change in § 3120.31 described earlier. The existing paragraph (b) would be revised to remove the second sentence referring to the execution of a nomination constituting a legally binding offer, due to the removal of the noncompetitive leasing process as prescribed by the IRA. The existing paragraph (c) would be updated to remove the reference to refunding all moneys if the nomination has not been completed or timely filed, since the administrative filing fees are nonrefundable. The existing paragraph (d) would be updated to remove the requirement that a nomination must be submitted with a minimum bid and first year rental to reflect the nonbinding nature of the nomination. Through these changes, the only fee that would be required to be submitted with a nomination is the nonrefundable, administrative filing fee, as specified in the proposed 43 CFR 3000.120.

#### Section 3120.3–3 Minimum Bid and Rental Remittance

The proposed rule would remove this existing section in its entirety, consistent with the changes made to the nomination process, to make formal nominations nonbinding.

#### Section 3120.3–4 Withdrawal of a Nomination

The proposed rule would remove this existing section in its entirety, consistent with the changes made to the nomination process, to make formal nominations nonbinding.

#### Section 3120.33 Parcels Receiving Nominations

The proposed rule would redesignate this section from 43 CFR 3120.3–5 to 43 CFR 3120.33 due to the proposed removal of the sections preceding this one. The language for parcels receiving nominations would be updated to use “may” (rather than “shall”) be included in a Notice of Competitive Lease Sale to be consistent with the BLM’s statutory discretion to lease.

#### Section 3120.3–6 Parcels Not Receiving Nominations

The proposed rule would remove this section in its entirety, due to the removal of the noncompetitive leasing process, consistent with changes made by the IRA.

#### Section 3120.3–7 Refund

The proposed rule would remove this section because the minimum bid and first year’s rental would not be required for nominations, as explained earlier. The administrative filing fees found under the proposed 43 CFR 3000.120 are nonrefundable and would not be refunded to nominators who are unsuccessful at the competitive auction.

#### Expression of Interest

The proposed rule would add a new heading, “Expression of Interest,” to include rules for receiving EOIs for competitive leasing.

#### Section 3120.41 Process

The proposed rule would add requirements for submitting an EOI to the BLM. Paragraph (a) would state that a party submitting an EOI must include the submitter’s name and address and must submit the EOI through the BLM’s online leasing system. The National Fluids Lease Sale System (NFLSS) supports BLM administration of the leasing program for Federal onshore oil and gas and geothermal leasing. Using the NFLSS for the submittal of EOIs gives the BLM the capability for real-time reporting, which can streamline the leasing process and reduce the BLM’s costs by (1) eliminating data entry by BLM staff, placing the onus for correct EOI submissions on the submitter; (2) automatically publishing EOIs in the NFLSS, which facilitates transparency of the EOI process; and (3) supporting the BLM’s communication with submitters by allowing them to track the status of their EOIs through the NFLSS.

Paragraph (b) would require the use of legal land descriptions in EOIs. The scenarios cover: (1) lands surveyed under the public land survey system; (2) unsurveyed lands; (3) lands approved by protracted surveys; (4) lands that have water boundaries; (5) fractional mineral interest in lands; and (5) fractional interest lands. The proposed rule would add the requirement under paragraph (b)(6) that the submitter provide the surface owner information for split estate lands to reflect current policy in Handbook H–3120–1, *Competitive Leases*, and add paragraph (7) to allow the BLM to accept an acquisition or tract number in lieu of the

legal land description, if it constitutes an adequate description of the lands.

Paragraph (c) would allow the submission of more than one EOI by a submitter, so long as each expression separately satisfies the requirements of paragraph (b).

Paragraph (d) would state that each EOI must include the filing fee set out in the proposed 43 CFR 3000.120.

Paragraph (e) would allow the BLM to include lands in a lease sale on its own initiative.

Paragraph (f) would state that, when determining whether the BLM should offer lands specified in an EOI at a lease sale, the BLM would evaluate the Secretary’s obligations to manage public lands for multiple use and sustained yield and to take any action required to prevent unnecessary or undue degradation of the lands and their resources, along with other applicable legal requirements. At a minimum, the BLM would consider: (1) proximity to oil and gas development existing at the time of the BLM’s evaluation, giving preference to lands upon which a prudent operator would seek to expand existing operations; (2) the presence of important fish and wildlife habitats, including wetland habitats, or connectivity areas, giving preference to lands that would not impair the proper functioning of such habitats or corridors; (3) the presence of historical properties, sacred sites, and other high-value leasing lands, giving preference to lands that would not impair the cultural significance of such resources; (4) the presence of recreation and other important uses or resources, giving preference to lands that would not impair the value of such uses or resources; and (5) the potential for oil and gas development, giving preference to lands with high potential for development.

Although paragraph (f) lists specific criteria for the BLM to review, the listed criteria do not limit the BLM’s authority to fulfill its legal obligations under FLPMA, NEPA, and MLA. The BLM would consider additional criteria and factors when evaluating parcels for a lease sale. The BLM requests comments on additional criteria the BLM might consider when giving preference to leasing parcels. Should this rule include among the listed criteria compliance with the goals and objectives of applicable land use plans and protecting communities with environmental justice concerns? How can the rule better achieve the BLM’s intent to give preference to leasing parcels where development would have less impacts on nearby communities?



The BLM proposes that promulgating rules for this EOI preference process would provide a mechanism for implementing the recommendations from the DOI's "Report on the Federal Oil and Gas Leasing Program," including the recommendation to "carefully consider what lands make the most sense to lease in terms of expected yields of oil and gas, prospects of earning a fair return for U.S. taxpayers, and conflicts with other uses" and to "evaluate operational adjustments to its leasing program that will avoid nomination or leasing of low potential lands." This process would ensure that oil and gas leasing on public lands occurs in a way that is consistent and deliberate, focus development where there is the most potential for recovery, and allow the agency to manage public lands for other uses as well, including conservation and restoration of wildlife habitat. For example, offering leases where current infrastructure exists should reduce the overall footprint of energy development and limit wildlife impacts and habitat fragmentation. Giving preference to leasing outside of important wildlife habitat would help to ensure that important seasonal ranges remain connected, and that species can access important resources undeterred as they move across the landscape.

The BLM would implement this EOI preference process to conserve certain public lands while ensuring the American taxpayer receives a fair return and meeting the energy demands of the future. The BLM does not intend that parcels must meet all five of the preference criteria in order to be available for leasing, and the term "preference" should not be interpreted to mean "absolute." The BLM recognizes the need for balance and for the preference criteria to be situational and considered on a case-by-case basis. The preference criteria generally would be applied before the NEPA analysis is completed. A summary of how the criteria apply would be included for public comment. The BLM could then take the public comments into account when considering current and future sales.

The BLM requests comments addressing whether or how the preference criteria should be applied when the Federal surface lands are administered by another Federal agency. For example, in National Forest System lands, the Forest Service typically prepares a pre-leasing NEPA analysis that the BLM subsequently relies upon when making its leasing determination.

Paragraph (g) would allow the BLM to reconfigure the lands that are included

in an expression of interest in the parcels that the BLM offers for sale.

#### Section 3120.42 Agency Inventory of Leasing

The proposed rule would add this new section to provide that periodically the BLM will calculate the acreage for which EOIs have been submitted in the previous year, along with the total acreage offered for lease. This would clarify how the BLM will comply with section 50265 of the IRA, consistent with Instruction Memorandum 2023-006, *Implementation of Section 50265 in the Inflation Reduction Act for Expressions of Interest for Oil and Gas Lease Sales*. The BLM requests public comments on this point.

#### Section 3120.50 Notice of Competitive Lease Sale

The proposed rule would redesignate this section from 43 CFR 3120.4 to 43 CFR 3120.50 per the previously mentioned reorganization.

#### Section 3120.51 General

The proposed rule would redesignate this section from 43 CFR 3120.4-1 to 43 CFR 3120.51 per the previously mentioned reorganization.

#### Section 3120.52 Posting Timeframes

The proposed rule would revise the title of this section from "Posting of notice" to "Posting timeframes." The proposed rule would add a new paragraph (a), providing that, after identifying a preliminary list of lands for a lease sale, the BLM would provide a scoping period, of not less than 30 calendar days, for public comment. The BLM uses preliminary parcel lists to roughly organize potential parcels for sale and to initiate environmental review. While the BLM invites public feedback on the parcel list, preliminary parcel lists do not constitute an official notice of a proposed BLM action or final action and are not subject to protests or appeals.

The proposed rule would add a new paragraph (b) providing that, after drafting a preliminary NEPA document for a lease sale, the BLM would provide a comment period, not less than 30 calendar days. Similar to preliminary parcel lists, preliminary NEPA documents do not constitute an official notice of a proposed BLM action or a final action and are not subject to protests or appeals.

The proposed rule would add a new paragraph (c) providing that the BLM would post the Notice of Competitive Lease Sale at least 60 calendar days prior to the sale and would make available to the public a list of lands to

be offered for competitive sale. This is an additional 15 calendar days from the BLM's current practice. The extended posting timeframe would provide the BLM more time to resolve protests prior to any proposed lease sale. The BLM routinely receives one or more protests on posted sale offerings, but it often does not receive the protests until shortly before or on the morning of the protest deadline. The BLM state offices need a reasonable amount of time to review the reasons for the protest in advance of the sale and decide if withdrawing the protested parcel from the sale is appropriate. Consequently, in new paragraph (d), the BLM would provide that the protest period is allowed only for the first 30 days that the sale notice is posted to provide the second 30 days as the time in which the BLM would review protests.

The proposed rule would also remove the requirement for the notice to be posted in the BLM office or any surface managing agency office. In the BLM's experience, the public finds information concerning Notices of Competitive Lease Sale through the NFLSS or on the individual state office web page, rather than a posted sale notice in the individual offices. The BLM believes that remaining silent in the regulations on how the sale notice would be made available to the public allows the BLM the flexibility and discretion to continue to improve the program. This silence, however, does not in any way abrogate any applicable legal obligations to provide notice in the first instance.

The proposed rule would also add a new paragraph (d) to state that the BLM would provide a protest period, of not less than 30 days, for public input on the upcoming lease sale during the first 30 days of the 60-day public notice period provided for in paragraph (c) earlier. Establishing a deadline for filing protests ensures an orderly and efficient leasing process. Finally, the proposed rule would add a new paragraph (e) to state that "the BLM will make available the final NEPA compliance documents prior to issuing a lease from the lease sale." The BLM plans to post the NEPA compliance documents on ePlanning, but the proposed rule would not codify that practice so that BLM retains flexibility for future sales.

#### Competitive Auction

The proposed rule would redesignate this section from 43 CFR 3120.5 to remove the regulatory section number, as this is a heading that has no text associated it. The proposed rule would revise the title of this section from "Competitive sale" to "Competitive

auction,” consistent with the proposed definition.

#### Section 3120.61 Competitive Auction

The proposed rule would redesignate this section from 43 CFR 3120.5–1 to 43 CFR 3120.61 due to the previously mentioned reorganization. The proposed rule would rename this section from “Oral or internet-based auction” to “Competitive auction” and update the paragraphs in this section to replace the reference to oral or internet-based bidding with the term “competitive auction,” consistent with the proposed definition.

Paragraph (a) would also be updated to remove the reference to the formal nominations process, consistent with the changes made to the nomination process.

For this same reason, paragraph (c) would be removed in its entirety.

#### Section 3120.62 Payments Required

The proposed rule would redesignate this section from 43 CFR 3120.5–2 to 43 CFR 3120.62 due to the previously mentioned reorganization.

The proposed rule would update paragraph (b)(1) to increase the minimum bonus bid to reference 43 CFR 3000.130, consistent with the change described earlier in the proposed 43 CFR 3120.12.

The proposed rule would update paragraph (c) to replace “10 working days” with “10 business days” and would replace the reference to “oral or internet-based auction” with the term “competitive auction.”

#### Section 3120.63 Award of Lease

The proposed rule would redesignate this section from 43 CFR 3120.5–3 to 43 CFR 3120.63 due to the previously mentioned reorganization.

The proposed rule would update paragraph (c) to remove the reference to noncompetitive offers, consistent with the proposed removal of 43 CFR part 3110.

The proposed rule would revise paragraph (d) to remove the reference to noncompetitive lease offers as required by the IRA. The proposed rule would update Paragraph (d) to require the BLM to resolve all protests covering the lands to be leased prior to issuing a lease to comport with the BLM’s longstanding policy not to issue a lease until all protests covering the lands to be leased have been resolved by the BLM.

Finally, the proposed rule would add a statement that leases would be issued within 60 calendar days following resolution of any protests not resolved prior to the sale and payment by the successful bidder of the remainder of

the bonus bid, if any, and the annual rental for the first lease year. This text corresponds to the provisions in the MLA at 30 U.S.C. 226(b)(1)(A). The proposed rule would also add to paragraph (e) a provision stating that, if the BLM cannot issue the lease within 60 days, the BLM may reject the offer. The BLM has received an increased number of protests and legal challenges to its decision to offer lands for lease or issue leases. These protests and challenges may require the BLM to complete a corrective environmental analysis to reach resolution. The protests, challenges, and new analysis can lead to lengthy delays after the sale before the BLM can issue the lease, with the BLM holding the first-year rentals and bonus bids collected from the sales. In these cases, the BLM’s policy is to reach out to the successful bidder to see if they want to decline the lease or continue to wait until there is a resolution. If the successful bidder declines the lease, the BLM would reject the lease offer.

#### Section 3120.70 Parcels Not Bid on at Auction

The proposed rule would redesignate this section from 43 CFR 3120.6 to 43 CFR 3120.70 due to the previously mentioned reorganization. The proposed rule would update the paragraph to replace the reference to “oral or internet-based” auction with the term “competitive auction,” consistent with the changes made earlier in this subpart. The section would also remove references to noncompetitive leases pursuant to the IRA and would provide that parcels not bid on at auction would be available for future competitive sale.

#### Section 3120.80 Future Interest

The proposed rule would redesignate this section from 43 CFR 3120.7 to 43 CFR 3120.80 due to the previously mentioned reorganization.

#### Section 3120.81 Nomination or Expression of Interest To Make Lands Available for Competitive Lease

The proposed rule would redesignate this section from 43 CFR 3120.7–1 to 43 CFR 3120.81 due to the previously mentioned reorganization. The proposed rule would update the title and paragraph of this section from “Nomination” to “Nomination or Expression of Interest to make lands available for competitive lease,” consistent with the changes made in this subpart.

#### Section 3120.82 Future Interest Terms and Conditions

The proposed rule would redesignate this section from 43 CFR 3120.7–2 to 43 CFR 3120.82 due to the previously mentioned reorganization.

#### Section 3120.83 Compensatory Royalty Agreements

The proposed rule would redesignate this section from 43 CFR 3120.7–3 to 43 CFR 3120.82 due to the previously mentioned reorganization.

#### 14. Section-by-Section Discussion for Changes to 43 CFR Subpart 3137

The proposed rule would revise two of the sections and their headings in the existing subpart 3137 regulations. The purpose of updating these sections is to add the processing fees for unit applications and successor operators.

#### Section 3137.23 NPR–A Unitization Application

The proposed rule would update the title from “What must I include in my NPR–A unitization application?” to “NPR–A unitization application.” The proposed rule would update paragraphs (d)(1) and (4) to change “you” to “the operator.” This is intended to clarify who “you” is in this section. The proposed rule would add a new paragraph (i) to include the required new processing fee for unit agreement applications found in the fee schedule in 43 CFR 3000.120 of this chapter.

#### Section 3137.61 Change in Unit Operators

The proposed rule would update the title from “How do I change unit operators?” to “Change in unit operators.” The proposed rule would update paragraph (a)(1)(i) by changing “It” to “The new operator.” This is intended to clarify who “it” references in this section. The proposed rule would add a new paragraph (a)(3) to include the required new processing fee for designation of a successor operator found in the fee schedule in 43 CFR 3000.120 of this chapter.

#### 15. Section-by-Section Discussion for Changes to 43 CFR Subpart 3138

The proposed rule would revise one section and its headings in the existing 43 CFR subpart 3138 regulations. The purpose of updating this section is to add the processing fee for subsurface storage agreement.

#### Section 3138.11 Applications for a Subsurface Storage Agreement

The proposed rule would revise the title from “How do I apply for a subsurface storage agreement?” to

“Applications for a subsurface storage agreement.” The proposed rule would update paragraphs (a)(6), (b), and (c) to change “you” to “the operator.” This is intended to clarify who “you” references in this section. The proposed rule would add a new paragraph (a)(12) to include the required new processing fee for subsurface gas storage agreement applications found in the fee schedule in 43 CFR 3000.120 of this chapter.

#### 16. Section-by-Section Discussion for Changes to 43 CFR Subpart 3140

The proposed rule would not make any revisions to the section headings in the existing 43 CFR subpart 3140 regulations.

#### Section 3140.5 Definitions

The BLM is proposing to alphabetize the definitions in this section.

#### Section 3140.11 Existing Rights

The proposed rule would update paragraph (a) to state the application time period ended on November 15, 1983. These regulations are not proposed for elimination because the BLM is still processing applications. The BLM has been working on the planning efforts surrounding the special tar sand areas and the environmental analysis under NEPA to support the conversion to a combined hydrocarbon lease. This process has delayed the BLM in issuing decisions related to the applications.

#### Section 3140.12 Notice of Intent To Convert

The proposed rule would update paragraphs (a) and (c) to have the specific effective date of November 15, 1983, to ensure there is no confusion related to this rulemaking. In addition, the language in this section would be updated to past tense.

#### Section 3140.14 Other Provisions

The proposed rule would increase the rental rate in paragraph (b) from \$2 per acre to the annual rental, as specified in 43 CFR 3000.130, consistent with the rental increases in this proposed rule.

The proposed rule would update paragraph (c)(2) to update the royalty rate for a combined hydrocarbon lease from 12.5 percent to 16.67 percent to implement provisions of the IRA. The proposed rule would update paragraph (c)(3) to clarify that the royalty rate reduction requested for tar sands will not apply to the oil and gas and vice versa. Due to the different methods to extract tar sands versus oil and gas, the lessee may need a royalty rate reduction for one resource to continue operations

and no royalty rate reduction for another resource.

#### Section 3140.23 Application Requirements

The proposed rule would update paragraph (a) to clarify that the application window has closed. The remaining paragraphs under this section would remain unchanged because the BLM continues to process applications; however, the BLM proposed to update the language to past tense.

#### Section 3140.42 Issuance of the Combined Hydrocarbon Lease

The proposed rule would update paragraph (d) to state that the BLM would issue one combined hydrocarbon lease to cover the existing oil and gas lease or valid claim based on mineral locations which have been approved for conversion within the special tar sand area. The existing paragraph (d)(2) is eliminated in its entirety as the BLM would not issue a combined hydrocarbon lease covering multiple oil and gas leases. Together, these changes permit the existing lease to be converted to a combined hydrocarbon lease without changes to the legal land description or leased area. The BLM believes that converting multiple leases into a combined hydrocarbon lease is not necessary, because combined hydrocarbon leases can be unitized. Unitization allows for the joining together of large areas such as an entire reservoir or field to optimize operations. Existing combined hydrocarbon leases have already been unitized, and the BLM believes there is no need to maintain the conversion of multiple leases in the regulations.

#### Section 3140.50 Duration of the Lease

The proposed rule would update the paragraph in this section to state that if the applicant withdraws the combined hydrocarbon lease application or the BLM denies the conversion application, the suspension on the oil and gas lease would be lifted and the term would be adjusted by the time remaining on the term of the lease.

#### Section 3140.70 Lands Within the National Park System

The proposed rule would update the paragraph in this section to make it clear that the conversion application window closed in 1983, consistent with the previously described proposed changes.

#### 17. Section-by-Section Discussion for Changes to 43 CFR Subpart 3141

The proposed rule would not make any revisions to section headings in the

existing 43 CFR subpart 3141 regulations.

#### Section 3141.10 General

The proposed rule would update paragraph (b) to remove the reference to noncompetitive leasing, as described in 43 CFR subpart 3110. This change is consistent with the implementation of the IRA. The proposed rule would update paragraph (g) to increase the minimum acceptable bid from \$2 per acre to reference the minimum bid in 43 CFR 3000.130, consistent with the change described earlier in 43 CFR 3120.12.

#### Section 3141.22 Exploration Licenses

The proposed rule would update paragraph (b)(2) to refer to the fee schedule in 43 CFR 3000.120. The proposed rule would update paragraph (b)(4) to remove the triplicate filing requirement. The proposed rule would update paragraph (e)(2) to increase the rental from \$2 per acre for new oil and gas leases issued after August 16, 2022, to the rental rate in 43 CFR 3000.130, consistent with the requirements of the IRA.

#### Section 3141.52 Term of Lease

The proposed rule would update paragraph (a) to clarify that this section pertains to the primary term of oil and gas leases in special tar sands areas.

#### Section 3141.53 Royalties and Rentals

The proposed rule would increase the royalty in paragraph (a) from 12.5 percent to 16.67 percent and change the reference from the “Minerals Management Service” to the “ONRR,” consistent with the other changes in this proposed rule and the IRA.

The proposed rule would update paragraph (b) to reference the oil shale lease procedures for reducing the royalty rate applicable to a tar sand lease prior to the commencement of commercial operations, currently at 43 CFR 3903.54. The BLM considers the current regulations to be unclear on which procedures to reference to reduce the royalty rate applicable to a tar sand lease prior to the commencement of commercial operations.

The proposed rule would update paragraph (c) to simply state that the annual rental for all combined hydrocarbon leases is as stated in the lease. The BLM will increase the rentals for combined hydrocarbon leases issued after the effective date of the final rule using 43 CFR 3000.130 for the rental rate, consistent with the changes described previously.

The proposed rule would likewise update paragraph (d) to simply state that

the annual rental for all tar sand leases is as stated in the lease. The BLM will increase the rentals for tar sand leases issued after the effective date of the final rule using 43 CFR 3000.130 for the rental rate, consistent with the changes described previously.

#### Section 3141.62 Publication of a Notice of Competitive Lease Offering

The proposed rule would remove paragraph (a) in its entirety, eliminating the requirement that the BLM publish a lease sale notice in the **Federal Register** and in a newspaper and providing the BLM with flexibility when determining the appropriate notice method. The remaining paragraph in this section, which refers to making a sale notice available to the public, would be extended to combined hydrocarbon leases in addition to the tar sand and oil and gas leases listed in this paragraph. The proposed rule would change the remaining paragraph to make the Notice of Competitive Lease Sale requirements consistent with the proposed 43 CFR 3120.61 requirements.

#### Section 3141.63 Conduct of Sales

The proposed rule would eliminate paragraph (a) in its entirety and update the proposed paragraph (b) so there is a single consistent approach for conducting lease sales by competitive auction for both combined hydrocarbon leases and tar sand leases. This change would remove the written sealed bid approach for combined hydrocarbon leases.

The proposed paragraph (b)(2) would be updated to increase the minimum bonus bids for combined hydrocarbon leases and tar sand leases issued after the effective date of the final rule, and it moves the bids to 43 CFR 3000.130 for the Fiscal Terms of New Leases, consistent with the changes described earlier. Finally, the BLM proposes to set the minimum bonus bid for hydrocarbon leases based upon an economic evaluation, which the BLM will complete prior to holding a competitive sale for a hydrocarbon lease.

#### Section 3141.65 Rejection of Bid

The proposed rule would eliminate existing § 3141.6–4. Since the BLM would hold competitive auctions in a similar manner for oil and gas leases, tar sand leases, and hydrocarbon leases and would use the economic analysis to set the minimum bonus bid, the BLM would not need to reject a bid based upon the fair market value. The reference to the “one-fifth bonus” was changed to “minimum bonus” as needed to reflect the proposed changes

to have a consistent sale approach for both tar sand leases and hydrocarbon leases.

#### Section 3141.70 Award of Lease

The proposed rule would eliminate the requirement for triplicate copies of the lease forms to be executed by the successful bidder. In addition, the proposed rule would update this section to specify the 30th “calendar day” in order to reduce confusion.

#### 18. Section-by-Section Discussion for Changes to 43 CFR Subpart 3142

The proposed rule would rename the title of this subpart from “Paying Quantities/Diligent Development for Combined Hydrocarbon Leases” to “Paying Quantities/Diligent Development for Combined Hydrocarbon and Tar Sand Leases.” The proposed rule would not make any revisions to the section headings in the existing 43 CFR subpart 3142 regulations.

##### Section 3142.1 Purpose

The proposed rule would add “and tar sand leases” so that this subpart applies to both combined hydrocarbon and tar sand leases.

##### Section 3142.5 Definitions

The proposed rule would amend the first defined term to be “Production in paying quantities for combined hydrocarbon leases.” The proposed rule would add definitions for the terms “Production in paying quantities for oil and gas leases” and “Production in paying quantities for tar sand leases.”

##### Section 3142.21 Minimum Production Schedule

The proposed rule would add a new paragraph (b) to specify that the minimum annual tar sand production schedule for the lease or unit operations would be set at an economical level. The proposed new paragraph (b) would also state that, if the operator or lessee cannot establish economic production, the lease would terminate at the end of the lease’s primary term.

#### 19. Section-by-Section Discussion for Changes to 43 CFR Subpart 3151

The proposed rule would revise § 3151.10 and add a new § 3151.30. The BLM proposes these changes to protect the fiscal and scientific interests of the American public by ensuring the BLM has adequate cost recovery mechanisms for geophysical exploration permits and that it has access to the information obtained by the permittees.

#### Section 3151.10 Notice of Intent To Conduct Oil and Gas Geophysical Exploration Operations

The introductory paragraph would be updated to include the requirement for the filing fee.

#### Section 3151.30 Collection and Submission of Data

The proposed rule would add a new section entitled “Collection and submission of data” that would require the permittee to submit to the BLM all data and information obtained from the exploration permit. This new requirement is consistent with exploration permits carried out in Alaska, as set forth in the existing regulations at 43 CFR 3152.6.

#### 20. Section-by-Section Discussion for Changes to 43 CFR Subpart 3160

The proposed rule would not make any revisions to the numbering or section headings in the existing 43 CFR 3160.0–5 regulations.

##### Section 3160.0–5 Definitions

The BLM is proposing to modify the existing definition for “New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act.” The revised definition would remove the sentence describing circumstances in which a gas well would be considered to have been off of production, providing consistency in the BLM’s management of both oil wells (which does not include this language) and gas wells. The BLM is proposing to add a new requirement for operators to notify the BLM when they shut-in a gas well, as described in greater detail under the proposed changes for 43 CFR 3162.3–4. The potential amount of plugging and remediation liability related to long-term shut-in wells is often difficult to identify. The update would therefore require operators to notify the BLM when it is shutting in a well and would allow the BLM to adequately track and evaluate the risk of nonproducing wells.

The BLM proposes new definitions for “Shut-in well” and “Temporarily abandoned well.” These definitions would clarify the terms for the new proposed requirements. The definition would describe a “Shut-in well” as a nonoperational well that can physically and mechanically operate by opening valves or activating existing equipment. The definition would describe a “Temporarily abandoned well” as a nonoperational well that is not physically or mechanically capable of production or injection without additional equipment or without

servicing the well, but that may have future beneficial use.

These definitions were pulled from the BLM's existing policy and are similar to existing industry standard definitions for the two well statuses. The International Association of Drilling Contractors (IADC) and the Alaska Oil and Gas Conservation Commission defines "shut in" as "to close a well's surface, wellhead, or subsurface valves to halt flow from or into the well, with the completion interval remaining open to the tubing below the closed valve" (see <https://iadclexicon.org/shut-in/>). The IADC and the Colorado Oil and Gas Conservation Commission defines "temporarily abandoned well" to "mean a well which is incapable of production or injection without the addition of one or more pieces of wellhead or other equipment, including valves, tubing, rods, pumps, heater-treaters, separators, dehydrators, compressors, piping or tanks" (see <https://iadclexicon.org/temporarily-abandoned-well/>). The BLM proposes to add the statement "may have future beneficial use" into the temporarily abandoned well definition to clarify that the BLM expects an operator to promptly plug a well without future beneficial use. In some cases, the operator could use a nonproductive well bore for enhanced recovery operations or water disposal, even though the well cannot produce hydrocarbons.

#### 21. Section-by-Section Discussion for Changes to 43 CFR Subpart 3162

The proposed rule would not make any revisions to the numbering or section headings in the existing 43 CFR 3162.3–4 regulations.

#### Section 3162.3–4 Well Abandonment

The proposed rule would modify paragraph (c) to state that no well may be temporarily abandoned for more than 30 days without the prior approval of the authorized officer and unless the operator provides adequate and detailed justification for the abandonment, verifies the mechanical integrity of the wells, and isolates the completed interval(s). The BLM would not accept vague assertions that the well may produce. See *Goldmark Engineering, Inc.*, 146 IBLA 225, 227 (1998). The BLM requests comments on whether a temporary abandonment should trigger a bond review in addition to the adequate and detailed justification for the abandonment.

In addition, except in extraordinary circumstances, the proposed rule would provide that the maximum period of time for an operator to delay permanent abandonment of a temporarily

abandoned well would not exceed 4 years. The Energy Policy Act of 2005, as amended by the IJA, defines an idled well as "a well that has been nonoperational for at least 4 years and for which there is no anticipated beneficial use" (see 42 U.S.C. 15907). Therefore, to help avoid wells becoming idled in the first place, the BLM is proposing new reporting and operational requirements for operators of temporarily abandoned wells. When an operator does not address a temporarily abandoned well by returning the well to production in paying quantities (*i.e.*, production sufficient to cover the operator's operational costs) or plugging and permanently abandoning the well, historical data available to the BLM indicates that such wells are at an increased risk of becoming orphaned.

The proposed rule would add a new paragraph (d) outlining new requirements for operators of shut-in wells. Paragraph (d)(1) would require notification to the BLM of the well's shut-in status and shut-in date within 90 days of well shut-in. Paragraph (d)(2) would require, within 3 years of well shut-in, the operator to provide the authorized officer with verification of the mechanical integrity of the well and confirmation that the well remains capable of producing in paying quantities. Currently, an operator is not required to inform the BLM when they shut-in a well, and these additions would allow the BLM to better track its shut-in well inventory and to take proactive steps to ensure that those wells do not become idled, as directed by Congress at 42 U.S.C. 15907.

The proposed rule would add a paragraph (d)(3) stating that, within 4 years of well shut-in, the operator must: (i) permanently abandon the well; (ii) resume production in paying quantities; or (iii) provide the authorized officer with a detailed plan and timeline for future beneficial use for the well. The proposed rule would further provide that if the BLM determines that there is a legitimate future beneficial use for the well, it may allow the operator to delay permanent abandonment by 1 year. The proposed rule would provide that the authorized officer may grant additional delays in 1-year increments, provided that the operator confirms the future beneficial use of the well and is making verifiable progress on returning the well to a beneficial use. The BLM believes these new requirements with yearly interval checks would help operators manage shut-in wells, preventing them from becoming orphaned in the future.

#### 22. Section-by-Section Discussion for Changes to 43 CFR Subpart 3165.1

The proposed rule would revise the 43 CFR 3165.1 heading from "Relief from operating and producing requirements" to "Relief from operating and/or producing requirements."

#### Section 3165.1 Relief From Operating and/or Producing Requirements

The purpose of this section is to describe the requirements for lease suspension applications. The BLM proposes to update this section to encourage diligent development of leased lands and ensure lease suspensions are justified and tied to an end date. The BLM is proposing to modify paragraph (b) to clarify who may apply for a lease suspension.

The proposed rule would add a new paragraph (c) to state the BLM would not approve an application for a suspension of a lease in circumstances where an APD on the subject lease is filed less than 90 calendar days before the expiration date of the lease. Applications for lease suspensions are often filed late in the primary term of a lease. Although lessees and operating rights owners are entitled to the full primary term of the lease, they are also responsible for timely filing required plans and necessary applications. Lessees and operating rights owners should not assume the BLM will grant a suspension merely to relieve them of their obligations of diligence and timeliness when complying with these and related requirements. See *Vaquero Energy Inc.*, 185 IBLA 233, 237 (2015). On average, the BLM requires 90 days to complete the required reviews and analysis before issuing a decision on an APD. This change would encourage lessees and operators to diligently pursue development when APDs are filed with the BLM near the end of the primary term of the lease; otherwise, the lease would expire.

The proposed rule would also update the proposed paragraph (d) to ensure lease suspensions would not exceed 1 year when they are requested by the operator. If the circumstances that warranted the suspension are still applicable, a request to extend the suspension prior to the lifting date of the suspension would be required.

The proposed rule would add a new paragraph (e) to state that BLM-directed suspensions may exceed 1 year.

The proposed rule would add a new paragraph (f) to state that lease suspensions would lift when they are no longer justified, when lifting the suspension is in the public interest of the lessor, or as stated in the approval

letter. The BLM requests comments on the best approach for making determinations on lease suspensions that would reduce the cost to the American public and encourage diligent development of leased lands. In June 2018, the GAO issued a final report entitled, “BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures” (GAO–18–411). In summary, oil and gas leases on Federal lands generate billions of dollars in rents and royalty payments each year, but these revenues decline if leases are suspended (*i.e.*, the lease term is placed on hold). In response to GAO recommendations, the BLM issued policy guidance requiring the BLM state offices to regularly review suspended leases and monitor lease suspensions to ensure that lease suspensions in effect are warranted.<sup>17</sup> The BLM believes the proposed additions and updates are warranted to ensure lease suspensions are justified and tied to an end date.

23. Section-by-Section Discussion for Changes to 43 CFR Subpart 3171

The proposed rule would not make any revisions to the numbering or section headings in the existing 43 CFR subpart 3171.6 regulations.

Section 3171.6 Components of a Complete APD Package

The proposed rule would update the existing paragraph (b)(1)(i) to replace the phrase “referenced to the National

Spatial Reference System, North American Datum 1983 or latest edition” with the phrase “generated by an electronic navigation system, and document the datum referenced to generate these coordinates.” The BLM is proposing this change to modernize the existing language that dates to 2007 and avoid the need to incorporate by reference the National Spatial Reference System, North American Datum 1983.

Section 3171.14 Valid Period of Approved APD

The proposed rule would not make any revisions to the numbering or section headings in the existing subpart 43 CFR 3171.14 regulations and proposes to adjust the valid period of time for approved APDs and address instances when an operator does not drill to total depth.

The BLM reviewed the number of APD extensions granted in the past and estimates that operators request extensions on approximately 33 percent or one-third of the APDs approved. The BLM approved 4,859 APDs in FY 2021 and expects to receive approximately 1,600 APD extension requests in FY 2023. This would result in an estimated 3,800 hours of BLM staff time and \$136,000 annually to process APD extension requests, based upon an average processing time of 2.4 hours and processing cost of \$85 per APD extension application. Therefore, the BLM proposes adjusting the valid

period of time for approved APDs to reduce the cost to the American public and encourage diligent development of leased lands.

To find the correct approach, the BLM reviewed the timeframe for operators to drill an approved APD based on well spuds from calendar year 2015 through calendar year 2021. On average, an operator spuds a Federal well 0.78 years after APD approval. Based on the data reviewed, 74 percent of the wells were spud in the first year after APD approval, 15 percent of the wells were spud in the second year after APD approval, 6 percent of the wells were spud in the third year after APD approval, and 5 percent of the wells were spud in fourth year after APD approval. Therefore, because APD approvals are ordinarily valid for 2 years, only 11 percent of the wells spud required an APD extension approval from the BLM.

The BLM also reviewed the valid period for State permits to drill based upon State regulations or conditions tied to the permits. The State permits are valid for different times depending on the state; however, the time frame ranges from 6 months to 2 years with some states granting extensions and some states requiring the operator to resubmit the APD for a new permit if the well is not drilled. The BLM summarizes the State’s permit to drill terms in the following table:

State	Term for State permit to drill	Reference
California .....	1-year permit with an optional 1-year extension upon application of the operator.	Chapter 4. Subchapter 1. Article 3. § 1722(d). Regulations here.
Colorado .....	3-year permit with no extensions. ....	Permitting Process Regulations: 311.a. & b. Regulations here.
Louisiana .....	6-month or 1-year permit. Must re-apply for the APD after it expires.	Title 30. RS 30:28. section 28(B). Regulations here.
Montana .....	6-month permit. Must re-apply for the APD after the 6-months.	36.22.604 Permit Issuance—Expiration—Extensions. Regulations here.
New Mexico .....	2-year permit with an optional 1-year extension upon application by the operator on C–103.	Based on conditions of approval tied to the permit, found here. NM regulations do not specify permit validity.
North Dakota .....	1-year permit with the ability to extend the APD with a \$100 filing fee.	Found on ND DMR website here.
Oklahoma .....	18-month permit with an optional 6-month extension without fee. Only one extension may be granted.	Okla. Admin. Code § 165:10–3–1(j). Regulations here.
Texas .....	2-year permit. ....	Title 16. Part 1. Chapter 3. section 3.5(g). Regulations here.
Utah .....	1-year permit .....	R649–3–4. 6. Regulations here.
Wyoming .....	2-year permit with the ability to resubmit the APD with an extension filing fee for an additional 2 years.	WY OGCC Chapter 3. section 8(h). Regulations here.

Therefore, the BLM is considering changes to this section and is requesting comments on the best approach to adjust APD extensions that would

reduce the cost to the American public and encourage diligent development of leased lands. The BLM is considering two options. The first option would

involve removing the option to extend APDs and changing the APD term from 2 years to 3 years. The second option would retain the 2-year APD term with

<sup>17</sup> PIM 2019–007, Monitoring and Review of Lease Suspensions. <https://www.blm.gov/policy/pim-2019-007>.

a potential for a 1-year extension. The BLM would require a filing fee based upon the required review in Instruction Memorandum 2023–011, *Approved Application for Permit to Drill Extensions*, and incorporate this policy for APD extensions into the regulations. Either option would continue to allow operators to spud 95 percent of the wells approved in the initial APD based upon the current time between APD approval and well spud. If the operator does not drill the APD in the time provided, then the operator would need to apply for a new APD.

At this time, the BLM is proposing the first option to change the APD term from 2 years to 3 years with no extensions to reduce the administrative burden. This would reduce the cost for both the American public and the operators by eliminating the need for operators to file and BLM to review applications for APD extensions. The current proposal would update the existing paragraph (a) to state that an APD is valid for 3 years. The BLM proposes to remove the sentence describing the 2-year extension.

The BLM is proposing to add two new paragraphs to this section to address the many partially drilled and uncompleted

wells remaining on Federal lands and to require operators to comply with the approved APD prior to the permit’s expiration date. Under the BLM’s current regulations, operators can spud wells near the APD’s expiration date by setting conductor or surface casing. The operators could then extend past the APD’s primary term and delay reclamation of the disturbed land by arguing that it would return and drill to total depth in the future. The BLM is proposing to add paragraphs (b) and (c) to remove the loophole and encourage operators to pursue diligent development of leased lands.

The proposed rule would add a new paragraph (b) to state that the approved APD expires on the date as written unless the operator has: (1) drilled the well to the approximate total depth in the approved APD; (2) is drilling the well with a rig capable of drilling the well to total depth; or (3) submits a plan, approved by the BLM, for continuously drilling the well to reach the proposed total depth in the approved APD. If the APD expiration date passes without satisfying one of these three requirements, the operator would need to submit a new APD to

drill or continue drilling the well under the expired APD.

The proposed rule adds a new paragraph (c) to address outstanding surface disturbance or wellbores upon the APD’s expiration. The new section states that upon expiration of the approved APD, if the operator created surface disturbance or began drilling the well under the approved APD, the operator or lessee must comply with plugging, abandonment, and reclamation requirements. The BLM proposes to add this section to ensure operators will promptly resolve any surface disturbance or wellbores upon expiration of the APD.

24. Section-by-Section Discussion for Changes to 43 CFR Subpart 3186

The proposed rule would remove the existing § 3186.2 regulations in their entirety, consistent with the changes in 43 CFR 3104.4 to remove the unit operator’s bond.

**VI. Overview of Modifications**

The following is an overview table of the proposed significant modifications to parts 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3171, and 3180:

**43 CFR SUBPART 3000—MINERALS MANAGEMENT: GENERAL**

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3000.0–5—Definitions .....	43 CFR 3000.5—Definitions .....	No significant change.
43 CFR 3000.1—Nondiscrimination .....	43 CFR 3000.10—Nondiscrimination .....	No significant change.
43 CFR 3000.2—False statements .....	43 CFR 3000.20—False statements .....	No significant change.
43 CFR 3000.3—Unlawful interests .....	43 CFR 3000.30—Unlawful interests .....	No significant change.
43 CFR 3000.4—Appeals .....	43 CFR 3000.40—Appeals .....	No significant change.
43 CFR 3000.5—Limitations on time to institute suit to contest a decision of the Secretary.	43 CFR 3000.50—Limitations on time to institute suit to challenge a decision of the Secretary.	No significant change.
43 CFR 3000.6—Filing of documents .....	43 CFR 3000.60—Filing of documents .....	No significant change.
43 CFR 3000.7—Multiple development .....	43 CFR 3000.70 Multiple development .....	No significant change.
43 CFR 3000.8—Management of Federal minerals from reserved mineral estates.	43 CFR 3000.80—Management of Federal minerals from reserved mineral estates.	No significant change.
43 CFR 3000.9—Enforcement .....	43 CFR 3000.90—Enforcement actions under 30 U.S.C. 195.	No significant change.
43 CFR 3000.10—What do I need to know about fees in general?	43 CFR 3000.100—Fees in general .....	No significant change.
43 CFR 3000.11—When and how does BLM charge me processing fees on a case-by-case basis?	43 CFR 3000.110—Processing fees on a case-by-case basis.	No significant change.
43 CFR 3000.12—What is the fee schedule for fixed fees?	43 CFR 3000.120—Fee schedule for fixed fees.	The proposed rule would add a new fee for EOs, as required by the IRA; Would propose a new fixed filing fees for various oil and gas applications; and Would propose an update to existing oil and gas fixed filing fees.
New .....	43 CFR 3000.130—Fiscal terms of new leases.	The proposed rule would add a new section covering the financial terms of new leases (including rentals and minimum bonus bids).



43 CFR SUBPART 3100—OIL AND GAS LEASING

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3100.0-3—Authority .....	43 CFR 3100.3—Authority .....	The proposed rule would add or remove legal references for lands identified as eligible for leasing; and Would move wildlife refuge lands, as well as lands patented under the Recreation and Public Purposes Act, formerly found under subpart 3101, to this part's authority section;
43 CFR 3100.0-5—Definitions .....	43 CFR 3100.5—Definitions .....	The proposed rule would alphabetize and add new definitions for “competitive lease sale,” “exception,” “modification,” “oil and gas agreements,” “qualified bidder,” “qualified lessee,” “responsible bidder,” “responsible lessee,” and “waiver.”
43 CFR 3100.0-9—Information collection .....	43 CFR 3100.9—Information collection .....	The proposed rule would remove the outdated Paperwork Reduction Act Information Collection (IC) Control Numbers and updates the IC section to include a table summarizing the current OMB-approved Control Numbers for oil and gas leasing; and would add a new section to allow the BLM to accept electronic signatures and submission of documents.
43 CFR 3100.1—Helium .....	43 CFR 3100.10—Helium .....	No significant change.
43 CFR 3100.2—Drainage .....	Drainage .....	No significant change.
43 CFR 3100.2-1—Compensation for drainage	43 CFR 3100.21—Compensation for drainage	No significant change.
43 CFR 3100.2-2—Drilling and production or payment of compensatory royalty.	43 CFR 3100.22—Drilling and production or payment of compensatory royalty.	No significant change.
43 CFR 3100.3—Options .....	Options .....	No significant change.
43 CFR 3100.3-1—Enforceability .....	43 CFR 3100.31—Enforceability .....	No significant change.
43 CFR 3100.3-2—Effect of option on acreage	43 CFR 3100.32—Effect of option on acreage	No significant change.
43 CFR 3100.3-3—Option statements .....	43 CFR 3100.33—Option statements .....	No significant change.
43 CFR 3100.4—Public availability of information.	43 CFR 3100.40—Public availability of information.	No significant change.

43 CFR SUBPART 3101—ISSUANCE OF LEASES

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3101.1—Lease terms and conditions ...	Lease terms and conditions .....	No significant change.
43 CFR 3101.1-1—Lease form .....	43 CFR 3101.11—Lease form .....	No significant change.
43 CFR 3101.1-2—Surface use rights .....	43 CFR 3101.12—Surface use rights .....	No significant change.
43 CFR 3101.1-3—Stipulations and information notices.	43 CFR 3101.13—Stipulations and information notices.	No significant change.
43 CFR 3101.1-4—Modification or waiver of lease terms and stipulations.	43 CFR 3101.14—Modification, waiver, or exception.	The proposed rule would update the provisions on modification or waiver of lease terms and stipulations.
43 CFR 3101.2—Acreage limitations .....	Acreage limitations .....	No significant change.
43 CFR 3101.2-1—Public domain lands .....	43 CFR 3101.21—Public domain lands .....	No significant change.
43 CFR 3101.2-2—Acquired lands .....	43 CFR 3101.22—Acquired lands .....	No significant change.
43 CFR 3101.2-3—Excepted acreage .....	43 CFR 3101.23—Excepted acreage .....	No significant change.
43 CFR 3101.2-4—Excess acreage .....	43 CFR 3101.24—Excess acreage .....	No significant change.
43 CFR 3101.2-5—Computation .....	43 CFR 3101.25—Computation .....	No significant change.
43 CFR 3101.2-6 Showing required .....	Removed .....	The proposed rule would remove this section and other portions of the regulations related to qualification statements declared out of date (see 47 FR 8544 (Feb. 26, 1982)).
43 CFR 3101.3—Leases within unit areas .....	43 CFR 3101.30—Leases within unit areas, joinder evidence required.	No significant change.
43 CFR 3101.3-1—Joinder evidence required ..	Removed .....	The proposed rule would remove this title since the next section would be removed.
43 CFR 3101.3-2—Separate leases to issue ...	Removed .....	The proposed rule would remove this section, as well as references to the nomination process based on proposed changes to part 3120.
43 CFR 3101.4—Lands covered by application to close lands to mineral leasing.	Removed .....	The proposed rule would remove this section, as well as references to the nomination process based on proposed changes to part 3120.

## 43 CFR SUBPART 3101—ISSUANCE OF LEASES—Continued

Existing regulation	Proposed regulation	Substantive changes
New .....	43 CFR 3101.40—Terminated leases .....	The proposed rule would move 43 CFR 3108.2–2(d) and 43 CFR 3108.2–3(c) on issuing leases for lands that were previously covered by a terminated lease to this section on lease issuance.
43 CFR 3101.5—National Wildlife Refuge System lands.	Removed .....	The proposed rule would move this part to 43 CFR 3100, which is in the Authority section.
43 CFR 3101.5–1—Wildlife refuge lands .....	Removed .....	The proposed rule would move this section to 43 CFR 3100.0–3(a)(2)(xii) and 3100.0–3(b)(2)(xiv), which are in the Authority section.
43 CFR 3101.5–2—Coordination lands .....	Removed .....	The proposed rule would move this section to 43 CFR 3100.3, which is in the Authority section.
43 CFR 3101.5–3—Alaska wildlife areas .....	Removed .....	The proposed rule would move this section to 43 CFR 3100.3, which is in the Authority section.
43 CFR 3101.5–4—Stipulations .....	Removed .....	The proposed rule would consolidate this section with 43 CFR 3101.13.
43 CFR 3101.6—Recreation and public purposes lands.	Removed .....	The proposed rule would move this section to 43 CFR 3100.3, which is in the Authority section.
43 CFR 3101.7—Federal lands administered by an agency outside of the Department of the Interior.	Federal lands administered by an agency outside of the Department of the Interior.	No significant change.
43 CFR 3101.7–1—General requirements .....	43 CFR 3101.51 General requirements .....	The proposed rule would consolidate the separate paragraphs under this section into one paragraph.
43 CFR 3101.7–2—Action by the Bureau of Land Management.	43 CFR 3101.52—Action by the Bureau of Land Management.	No significant change.
43 CFR 3101.7–3—Appeals .....	43 CFR 3101.53—Appeals .....	No significant change.
43 CFR 3101.8—State’s or charitable organization’s ownership of surface overlying federally owned minerals.	43 CFR 3101.60—State’s or charitable organization’s ownership of surface overlying federally owned minerals.	No significant change.

## 43 CFR SUBPART 3102—QUALIFICATIONS OF LESSEES

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3102.1 Who may hold leases .....	43 CFR 3102.10 Who may hold leases .....	No significant change.
43 CFR 3102.2 Aliens .....	43 CFR 3102.20 Non-U.S. Citizens .....	The proposed rule would change the terminology for referring to citizens of other countries; and Would add language from the Treasury Department regulations at 31 CFR part 802, where the Committee on Foreign Investment in the United States (CFIUS) is authorized to review covered real estate transactions and to mitigate any risk to the national security of the United States that arises as a result of such transactions.
43 CFR 3102.3 Minors .....	43 CFR 3102.30 Minors .....	No significant change.
43 CFR 3102.4 Signature .....	43 CFR 3102.40 Signature .....	The proposed rule would update this section to give the BLM the ability to accept documents with electronic signatures; Would remove the requirement for multiple copies of assignments or transfers to be submitted to the BLM; and Would remove the reference to qualification numbers, which were declared obsolete (see 47 FR 8544 (Feb. 26, 1982)).
43 CFR 3102.5 Compliance, certification of compliance and evidence.	Compliance, certification of compliance and evidence.	No significant change.

43 CFR SUBPART 3102—QUALIFICATIONS OF LESSEES—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3102.5-1 Compliance .....	43 CFR 3102.51 Compliance .....	The proposed rule would update the current section to refer to reclamation obligations to be compliant with requirements of section 17(g) of the MLA start at the Notice of Proposed Civil Penalties instead of the imposition of a civil penalty; and Would add a qualification requirement to ensure compliance with 2 CFR parts 180 and 1400, based on which the BLM would reject any lease issuance, assignment, or transfer to any entity excluded from doing business with the Federal government through suspension and debarment.
43 CFR 3102.5-2 Certification of compliance	43 CFR 3102.52 Certification of compliance	No significant change.
43 CFR 3102.5-3 Evidence of compliance .....	43 CFR 3102.53 Evidence of compliance .....	No significant change.

43 CFR SUBPART 3103—FEES, RENTALS AND ROYALTY

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3103.1—Payments .....	Payments .....	No significant change.
43 CFR 3103.1-1—Form of remittance .....	43 CFR 3103.11—Form of remittance .....	No significant change.
43 CFR 3103.1-2—Where submitted .....	43 CFR 3103.12—Where remittance is submitted.	No significant change.
43 CFR 3103.2—Rentals .....	Rentals .....	No significant change.
43 CFR 3103.2-1—Rental requirements .....	43 CFR 3103.21—Rental requirements .....	No significant change.
43 CFR 3103.2-2—Annual rental payments .....	43 CFR 3103.22—Annual rental payments .....	The proposed rule would remove outdated phase-in language from past rulemakings; and Would update the following financial terms of new leases as required by the IRA: <ul style="list-style-type: none"> <li>• Rental amount for competitive leases is to be \$3 per acre, or fraction thereof, for the first 2 years, then \$5 per acre, or fraction thereof, for lease years 3 through 8, and then \$15 per acre, or fraction thereof, thereafter;</li> <li>• For Class II reinstated competitive leases, the rent increases to \$20 per acre;</li> <li>• Royalty percentage is proposed to be not less than 16.67 percent for competitive leases; and</li> <li>• For reinstated competitive leases, the royalty increases to not less than 20 percent, plus 2 percentage points for each succeeding reinstatement.</li> </ul>
43 CFR 3103.3—Royalties .....	Royalties .....	No significant change.
43 CFR 3103.3-1—Royalty on production .....	43 CFR 3103.31—Royalty on production .....	No significant change.
43 CFR 3103.3-2—Minimum royalties .....	43 CFR 3103.32—Minimum royalties .....	The proposed rule would clarify the intent of minimum royalty to be reduced by the actual royalty paid throughout the year.
43 CFR 3103.4—Production incentives .....	Production incentives .....	No significant change.
43 CFR 3103.4-1—Royalty reductions .....	43 CFR 3103.41—Royalty reductions .....	No significant change.
43 CFR 3103.4-2—Stripper well royalty reductions.	Removed .....	The proposed rule would remove the regulations governing stripper well royalty reductions.
43 CFR 3103.4-3—Heavy oil royalty reductions	Removed .....	The proposed rule would remove the regulations governing heavy oil royalty reductions.
43 CFR 3103.4-4—Suspension of operations and/or production.	43 CFR 3103.42 Suspension of operations and/or production.	No significant change.

43 CFR SUBPART 3104—BONDS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3104.1—Bond obligations .....	43 CFR 3104.10—Bond obligations .....	The proposed rule would remove Certificates of Deposits (CD) and Letters of Credit (LOC) as forms of security for personal bonds.

43 CFR SUBPART 3104—BONDS—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3104.2—Lease bond .....	43 CFR 3104.20—Lease bond .....	The proposed rule would increase the minimum bonding amounts to \$150,000 per lease bond.
43 CFR 3104.3—Statewide and nationwide bonds.	43 CFR 3104.30—Statewide bonds .....	The proposed rule would increase the minimum bonding amounts to \$500,000 per statewide bond; and would remove nationwide bonds.
43 CFR 3104.4—Unit operator’s bond .....	43 CFR 3104.40—Surface owner protection bond.	The proposed rule would remove unit operator’s bonds.
43 CFR 3104.5—Increased amount of bonds ...	43 CFR 3104.50—Increased amount of bonds	No significant change.
43 CFR 3104.6—Where filed and number of copies.	43 CFR 3104.60—Where filed and number of copies.	No significant change.
43 CFR 3104.7—Default .....	43 CFR 3104.70—Default .....	The proposed rule would update the language to state reference that noncompliance is in violation of section 17 of the MLA; and would add language stating that being in noncompliance would result in not being able to acquire new lease interests, as well as referring the entity for a determination as to whether the entity should be suspended or debarred from doing business with the Federal government in accordance with 2 CFR part 1400.
43 CFR 3104.8—Termination of period of liability.	43 CFR 3104.80—Termination of period of liability.	No significant change.
New .....	43 CFR 3104.90—Bonds held prior to [EFFECTIVE DATE OF FINAL RULE].	The proposed rule would add a phase-in period for the new minimum bond amounts.

43 CFR SUBPART 3105—COOPERATIVE CONSERVATION PROVISIONS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3105.1—Cooperative or unit agreement.	43 CFR 3105.10—Cooperative or unit agreement.	The proposed rule would add a reference to the new fixed filing fees proposed in 43 CFR 3000.120.
43 CFR 3105.2—Communitization or drilling agreements.	Communitization agreements .....	The proposed rule would remove references to drilling agreements that the BLM does not create or manage.
43 CFR 3105.2-1—Where filed .....	43 CFR 3105.21—Where filed .....	The proposed rule would remove the requirement for multiple copies of applications to be filed with the BLM.
43 CFR 3105.2-2—Purpose .....	43 CFR 3105.22—Purpose .....	No significant change.
43 CFR 3105.2-3—Requirements .....	43 CFR 3105.23—Requirements .....	The proposed rule would add conditions and requirements for Communitization Agreements (self-certification statement, maps, exhibits showing tracts and ownership).
New .....	43 CFR 3105.24—Communitization agreement terms.	The proposed rule would add the primary term of communitization agreements.
43 CFR 3105.3—Operating, drilling or development contracts.	Operating, drilling or development contracts ...	No significant change.
43 CFR 3105.3-1—Where filed .....	43 CFR 3105.31—Where filed .....	The proposed rule would remove the requirement for multiple copies of applications to be filed with the BLM.
43 CFR 3105.3-2—Purpose .....	43 CFR 3105.32—Purpose .....	No significant change.
43 CFR 3105.3-3—Requirements .....	43 CFR 3105.33—Requirements .....	No significant change.
43 CFR 3105.4—Combination for joint operations or for transportation of oil.	Removed .....	The proposed rule would remove this section as it is not used by the BLM or operators.
43 CFR 3105.4-1—Where filed .....	Removed .....	The proposed rule would remove this section as it is not used by the BLM or operators.
43 CFR 3105.4-2—Purpose .....	Removed .....	The proposed rule would remove this section as it is not used by the BLM or operators.
43 CFR 3105.4-3—Requirements .....	Removed .....	The proposed rule would remove this section as it is not used by the BLM or operators.
43 CFR 3105.4-4—Rights-of-way .....	Removed .....	The proposed rule would remove this section as it is covered under 43 CFR part 2880.
43 CFR 3105.5—Subsurface storage of oil and gas.	Subsurface storage of oil and gas .....	No significant change.

43 CFR SUBPART 3105—COOPERATIVE CONSERVATION PROVISIONS—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3105.5-1—Where filed .....	3105.41—Where filed .....	The proposed rule would add a reference to the new fixed filing fees proposed in 43 CFR 3000.120; and would remove the requirement for multiple copies of applications to be filed with the BLM.
43 CFR 3105.5-2—Purpose .....	43 CFR 3105.42—Purpose .....	No significant change.
43 CFR 3105.5-3—Requirements .....	43 CFR 3105.43—Requirements .....	No significant change.
43 CFR 3105.5-4—Extension of lease term .....	43 CFR 3105.44—Extension of lease term .....	No significant change.
43 CFR 3105.6—Consolidation of leases .....	43 CFR 3105.50—Consolidation of leases .....	The proposed rule would split this section into multiple paragraphs to increase readability.

43 CFR SUBPART 3106—TRANSFERS BY ASSIGNMENT, SUBLEASE, OR OTHERWISE

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3106.1—Transfers, general .....	43 CFR 3106.10—Transfers, general .....	The proposed rule would clarify the requirements for transfers of operating rights. The proposed rule would state that operating rights may only be divided with respect to legal subdivision, depth ranges, and formations, within the boundaries of a Federal lease.
43 CFR 3106.2—Qualifications of transferees ..	43 CFR 3106.20—Qualifications of assignees and transferees.	No significant change.
43 CFR 3106.3—Fees .....	43 CFR 3106.30—Fees .....	No significant change.
43 CFR 3106.4—Forms .....	Forms .....	No significant change.
43 CFR 3106.4-1—Transfers of record title and of operating rights (subleases).	43 CFR 3106.41—Transfers of record title and of operating rights (subleases).	The proposed rule would change the triplicate filing requirement to a duplicate filing requirement.
43 CFR 3106.4-2—Transfers of other interests, including royalty interests and production payments.	43 CFR 3106.42—Transfers of other interests, including royalty interests and production payments.	The proposed rule would require transfers of overriding royalty to be submitted on a BLM form.
43 CFR 3106.4-3—Mass transfers .....	43 CFR 3106.43—Mass transfers .....	The proposed rule would change the triplicate filing requirement to a duplicate filing requirement and would waive the need for the duplicate when the filing is submitted electronically.
43 CFR 3106.5—Description of lands .....	43 CFR 3106.50—Description of lands .....	No significant change.
43 CFR 3106.6—Bonds .....	43 CFR 3106.60—Bond Requirements .....	No significant change.
43 CFR 3106.6-1—Lease bond .....	Removed .....	The proposed rule would update the bond section related to a new interest owner's responsibility for holding a bond.
43 CFR 3106.6-2—Statewide/nationwide bond	Removed .....	No significant change.
43 CFR 3106.7—Approval of transfer .....	Approval of transfer or assignment .....	No significant change.
43 CFR 3106.7-1—Failure to qualify .....	43 CFR 3106.71—Failure to qualify .....	No significant change.
43 CFR 3106.7-2—If I transfer my lease, what is my continuing obligation?	43 CFR 3106.72—Continuing obligation of an assignor or transferor.	No significant change.
43 CFR 3106.7-3—Lease account status .....	43 CFR 3106.73—Lease account status .....	No significant change.
43 CFR 3106.7-4—Effective date of transfer .....	43 CFR 3106.74—Effective date of transfer .....	No significant change.
43 CFR 3106.7-5—Effect of transfer .....	43 CFR 3106.75—Effect of transfer .....	No significant change.
43 CFR 3106.7-6—If I acquire a lease by an assignment or transfer, what obligations do I agree to assume?	43 CFR 3106.76—Obligations of assignee or transferee.	No significant change.
43 CFR 3106.8—Other types of transfers .....	Other types of transfers .....	No significant change.
43 CFR 3106.8-1—Heirs and devisees .....	43 CFR 3106.81—Heirs and devisees .....	No significant change.
43 CFR 3106.8-2—Change of name .....	43 CFR 3106.82—Change of name .....	No significant change.
43 CFR 3106.8-3—Corporate merger .....	43 CFR 3106.83—Corporate mergers and dissolution of corporations, partnerships, and trust.	The proposed rule would include the new filing fee and requirements for other types of transfers that the BLM accepts (for example, dissolutions of corporations).
New .....	43 CFR 3106.84—Sheriff's sale/deed .....	The proposed rule would include the new filing fee and requirements for other types of transfers that the BLM accepts (for example, Sheriff's sale/deeds).

## 43 CFR SUBPART 3107—CONTINUATION AND EXTENSION

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3107.1—Extension by drilling .....	43 CFR 3107.10—Extension by drilling .....	The proposed rule would add language pertaining to lease extensions to address circumstances where directional or horizontal wells are drilled from an off-lease location with the intent to produce from the leased area.
43 CFR 3107.2—Production .....	Production .....	No significant change.
43 CFR 3107.2-1—Continuation by production	43 CFR 3107.21—Continuation by production	No significant change.
43 CFR 3107.2-2—Cessation of production .....	43 CFR 3107.22—Cessation of production .....	The proposed rule would rephrase the provision regarding cessation of production to better reflect section 17(i) of the MLA.
43 CFR 3107.2-3—Leases capable of production.	43 CFR 3107.23—Leases capable of production.	No significant change.
43 CFR 3107.3—Extension for terms of cooperative or unit plan.	Extension for terms of agreements .....	No significant change.
43 CFR 3107.3-1—Leases committed to plan ..	43 CFR 3107.31—Leases committed to an agreement.	No significant change.
43 CFR 3107.3-2—Segregation of leases committed in part.	43 CFR 3107.32—Segregation of leases committed in part.	The proposed rule would revise the section for the segregation of leases committed in part to units to state this would occur only after the public interest requirement has been met; and would clarify when leases may be extended by production from associated leases.
43 CFR 3107.3-3—20-year lease or any renewal thereof.	Removed .....	The proposed rule would remove this section and all references to renewal leases as this was removed by the Act of November 15, 1990.
43 CFR 3107.4—Extension by elimination .....	43 CFR 3107.40—Extension by elimination .....	No significant change.
43 CFR 3107.5—Extension of leases segregated by assignment.	Extension of leases segregated by assignment.	No significant change.
43 CFR 3107.5-1—Extension after discovery on other segregated portions.	43 CFR 3107.51—Extension after discovery on other segregated portions.	No significant change.
43 CFR 3107.5-2—Undeveloped parts of leases in their extended term.	43 CFR 3107.52—Undeveloped parts of leases in their extended term.	No significant change.
43 CFR 3107.5-3—Undeveloped parts of producing leases.	43 CFR 3107.53—Undeveloped parts of producing leases.	No significant change.
43 CFR 3107.6—Extension of reinstated leases	43 CFR 3107.60—Extension of reinstated leases.	No significant change.
43 CFR 3107.7—Exchange leases: 20-year term.	Removed .....	The proposed rule would remove this section and all references to exchange leases as these have either expired or are held by production.
43 CFR 3107.8—Renewal leases .....	Removed .....	The proposed rule would remove this section and all references to renewal leases as this was removed by the Act of November 15, 1990.
43 CFR 3107.8-1—Requirements .....	Removed .....	The proposed rule would remove this section and all references to renewal leases as this was removed by the Act of November 15, 1990.
43 CFR 3107.8-2—Application .....	Removed .....	The proposed rule would remove this section and all references to renewal leases as this was removed by the Act of November 15, 1990.
43 CFR 3107.8-3—Approval .....	Removed .....	The proposed rule would remove this section and all references to renewal leases as this was removed by the Act of November 15, 1990.
43 CFR 3107.9—Other types .....	Other types .....	No significant change.
43 CFR 3107.9-1—Payment of compensatory royalty.	43 CFR 3107.71—Payment of compensatory royalty.	No significant change.
43 CFR 3107.9-2—Subsurface storage of oil and gas.	43 CFR 3107.72—Subsurface storage of oil and gas.	No significant change.

## 43 CFR SUBPART 3108—RELINQUISHMENT, TERMINATION, CANCELLATION

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3108.1—As a lessee, may I relinquish my lease?.	43 CFR 3108.10—Relinquishment .....	No significant change.

43 CFR SUBPART 3108—RELINQUISHMENT, TERMINATION, CANCELLATION—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3108.2—Termination by operation of law and reinstatement.	Termination by operation of law and reinstatement.	No significant change.
43 CFR 3108.2-1—Automatic termination .....	43 CFR 3108.21—Automatic termination .....	The proposed rule would remove the reference to “a bill rendered by the designated Service office” from the section on automatic terminations, since the Office of Natural Resources Revenue’s (ONRR) no longer sends courtesy notices; and would specify that the automatic termination provision does not apply when rental becomes due on a date other than the anniversary date, unless the lessee fails to pay the rental within the period prescribed by the BLM notice to reflect developments in case law.
43 CFR 3108.2-2—Reinstatement at existing rental and royalty rates: Class I reinstatements.	43 CFR 3108.22—Reinstatement at existing rental and royalty rates: Class I reinstatements.	The proposed rule would revise the explanation of “reasonable diligence” to reference payment to the ONRR’s online rental payment system.
43 CFR 3108.2-3—Reinstatement at higher rental and royalty rates: Class II reinstatements.	43 CFR 3108.23—Reinstatement at higher rental and royalty rates: Class II reinstatements.	The proposed rule would remove the grounds for a Class II reinstatement to apply to all noncompetitive leases; would remove references to reinstating leases that terminated before 2005; would change outdated references to the House Committee on Interior and Insular Affairs to the House Committee on Natural Resources; and would remove the reference to royalty reductions, which are already covered under 43 CFR subpart 3103.
43 CFR 3108.2-4—Conversion of unpatented oil placer mining claims: Class III reinstatements.	Removed .....	The proposed rule would remove this section as the IRA rescinded the authority for Class III reinstatements.
43 CFR 3108.3—Cancellation .....	43 CFR 3108.30—Cancellation .....	No significant change.
43 CFR 3108.4—Bona fide purchasers .....	43 CFR 3108.40—Bona fide purchasers .....	No significant change.
43 CFR 3108.5—Waiver or suspension of lease rights.	43 CFR 3108.50 Waiver or suspension of lease rights.	No significant change.

43 CFR SUBPART 3109—LEASING UNDER SPECIAL ACTS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3109.1—Rights-of-way .....	Rights-of-way .....	No significant change.
43 CFR 3109.1-1—Generally .....	43 CFR 3109.11—Generally .....	No significant change.
43 CFR 3109.1-2—Application .....	43 CFR 3109.12—Application .....	The proposed rule would add a requirement for applicants to provide a map to process rights-of-way (ROW) lease applications.
43 CFR 3109.1-3—Notice .....	43 CFR 3109.13—Notice .....	No significant change.
43 CFR 3109.1-4—Award of lease or compensatory royalty agreement.	43 CFR 3109.14—Award of lease or compensatory royalty agreement.	No significant change.
43 CFR 3109.1-5—Compensatory royalty agreement or lease.	43 CFR 3109.15—Compensatory royalty agreement or lease.	The proposed rule would add a list of references to the part 3100 regulations that apply to ROW leases covered by subpart 3109 for clarity.
43 CFR 3109.2—Units of the National Park System.	43 CFR 3109.20—Units of the National Park System.	No significant change.
43 CFR 3109.2-1—Authority to lease. [Reserved].	Removed .....	No significant change.
43 CFR 3109.2-2—Area subject to lease. [Reserved].	Removed .....	No significant change.
43 CFR 3109.3—Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.	43 CFR 3109.30—Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.	No significant change.

43 CFR Part 3110—Noncompetitive Leases

- Removes this part in its entirety as required by the IRA.



## 43 CFR SUBPART 3120—COMPETITIVE LEASES

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3120.1—General .....	General .....	No significant change.
43 CFR 3120.1-1—Lands available for competitive leasing.	43 CFR 3120.11—Lands available for competitive leasing.	No significant change.
43 CFR 3120.1-2—Requirements .....	43 CFR 3120.12—Requirements .....	No significant change.
43 CFR 3120.1-3—Protests and appeals .....	43 CFR 3120.13—Protests .....	The proposed rule would update the language under protests and appeals to reflect developments in case law.
43 CFR 3120.2—Lease terms .....	Lease terms .....	No significant change.
43 CFR 3120.2-1—Duration of lease .....	43 CFR 3120.21—Duration of lease .....	No significant change.
43 CFR 3120.2-2—Dating of leases .....	43 CFR 3120.22—Dating of leases .....	No significant change.
43 CFR 3120.2-3—Lease size .....	43 CFR 3120.23—Lease size .....	No significant change.
43 CFR 3120.3—Nomination process .....	43 CFR 3120.30—Nomination process .....	The proposed rule would update the nomination process to make clear that they are nonbinding, would add a new filing fee, and would remove the allowance for non-competitive lease offers to be submitted on un-nominated parcels.
43 CFR 3120.3-1—General .....	43 CFR 3120.31—General .....	No significant change.
43 CFR 3120.3-2—Filing of a nomination for competitive leasing.	43 CFR 3120.32—Filing of a nomination for competitive leasing.	No significant change.
43 CFR 3120.3-3—Minimum bid and rental remittance.	Removed .....	The proposed rule would update this section to make nominations nonbinding.
43 CFR 3120.3-4—Withdrawal of a nomination	Removed .....	The proposed rule would update this section to make clear that nominations are non-binding.
43 CFR 3120.3-5—Parcels receiving nominations.	43 CFR 3120.33—Parcels receiving nominations.	No significant change.
43 CFR 3120.3-6—Parcels not receiving nominations.	Removed .....	The proposed rule would update this section to remove the allowance for noncompetitive lease offers to be submitted on un-nominated parcels.
43 CFR 3120.3-7—Refund .....	Removed .....	The proposed rule would update this section to make clear that nominations are non-binding.
New .....	Expressions of interest .....	The proposed rule would add information on the submission of EOIs; and would add a new filing fee for EOIs, as required by the IRA.
New .....	43 CFR 3120.41—Process .....	The proposed rule would clarify the BLM's existing discretion to deny EOIs that are not in the public interest.
New .....	43 CFR 3120.42—Agency Inventory of Leasing.	The proposed rule would add a section providing that periodically the BLM will calculate the acreage for which EOIs have been submitted in the previous year and the total acreage offered for lease.
43 CFR 3120.4—Notice of competitive lease sale.	Notice of competitive lease sale .....	No significant change.
43 CFR 3120.4-1—General .....	43 CFR 3120.51 General .....	No significant change.
43 CFR 3120.4-2—Posting of notice .....	43 CFR 3120.52—Posting timeframes .....	No significant change.
43 CFR 3120.5—Competitive sale .....	Competitive auction .....	No significant change.
43 CFR 3120.5-1—Oral or Internet-based auction.	43 CFR 3120.61—Competitive auction .....	No significant change.
43 CFR 3120.5-2—Payments required .....	43 CFR 3120.62—Payments required .....	The proposed rule would increase the minimum bonus bid from \$2 per acre to \$10 per acre, or fraction thereof as required by the IRA; and would add a new requirement that, if a person or entity does not pay the minimum monies owed the day of the sale, the BLM may refer that person or entity to the DOI's Office of the Inspector General, Administrative Remedies Division, for appropriate action, including potential suspension and debarment.
43 CFR 3120.5-3—Award of lease .....	43 CFR 3120.63—Award of lease .....	No significant change.
43 CFR 3120.6—Parcels not bid on at auction	43 CFR 3120.70—Parcels not bid on at auction.	No significant change.
43 CFR 3120.7—Future interest .....	Future interest .....	No significant change.
43 CFR 3120.7-1—Nomination to make lands available for competitive lease.	43 CFR 3120.81—Nomination or Expression of Interest to make lands available for competitive lease.	No significant change.

43 CFR SUBPART 3120—COMPETITIVE LEASES—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3120.7-2—Future interest terms and conditions.	43 CFR 3120.82—Future interest terms and conditions.	No significant change.
43 CFR 3120.7-3—Compensatory royalty agreements.	43 CFR 3120.83—Compensatory royalty agreements.	No significant change.

43 CFR SUBPART 3137—UNITIZATION AGREEMENTS-NATIONAL PETROLEUM RESERVE-ALASKA

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3137.23—What must I include in my NPR-A unitization application?	43 CFR 3137.23—NPR-A unitization application.	The proposed rule would add a new filing fee for unit applications.
43 CFR 3137.61—How do I change unit operators?	43 CFR 3137.61—Change in unit operators ...	The proposed rule would add a new filing fee for successor operators.

43 CFR SUBPART 3138—SUBSURFACE STORAGE AGREEMENTS IN THE NATIONAL PETROLEUM RESERVE-ALASKA (NPR-A)

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3138.11—How do I apply for a subsurface storage agreement?	43 CFR 3138.11—Applications for a subsurface storage agreement.	The proposed rule would add a new filing fee for subsurface storage agreements.

43 CFR SUBPART 3140—CONVERSION OF EXISTING OIL AND GAS LEASES AND VALID CLAIMS BASED ON MINERAL LOCATIONS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3140.0-1—Purpose .....	43 CFR 3140.1—Purpose .....	No significant change.
43 CFR 3140.0-3—Authority .....	43 CFR 3140.3—Authority .....	No significant change.
43 CFR 3140.0-5—Definitions .....	43 CFR 3140.5—Definitions .....	No significant change.
43 CFR 3140.1—General provisions .....	General provisions .....	No significant change.
43 CFR 3140.1-1—Existing rights .....	43 CFR 3140.11—Existing rights .....	The proposed rule would clarify that the application time period ended on November 15, 1983.
43 CFR 3140.1-2—Notice of intent to convert ..	43 CFR 3140.12—Notice of intent to convert	No significant change.
43 CFR 3140.1-3—Exploration plans .....	43 CFR 3140.13—Exploration plans .....	No significant change.
43 CFR 3140.1-4—Other provisions .....	43 CFR 3140.14—Other provisions .....	The proposed rule would specify that royalty rate reductions for tar sands would not apply to oil and gas leases and vice versa.
43 CFR 3140.2—Applications .....	Applications .....	No significant change.
43 CFR 3140.2-1—Forms .....	43 CFR 3140.21—Forms .....	No significant change.
43 CFR 3140.2-2—Who may apply .....	43 CFR 3140.22—Who may apply .....	No significant change.
43 CFR 3140.2-3—Application requirements ....	43 CFR 3140.23—Application requirements ...	No significant change.
43 CFR 3140.3—Time limitations .....	Time limitations .....	No significant change.
43 CFR 3140.3-1—Conversion applications ....	43 CFR 3140.31—Conversion applications ....	No significant change.
43 CFR 3140.3-2—Action on an application ....	43 CFR 3140.32—Action on an application ....	No significant change.
43 CFR 3140.4—Conversion .....	Conversion .....	No significant change.
43 CFR 3140.4-1—Approval of plan of operations (and unit and operating agreements).	43 CFR 3140.41—Approval of plan of operations (and unit and operating agreements).	No significant change.
43 CFR 3140.4-2—Issuance of the combined hydrocarbon lease.	43 CFR 3140.42—Issuance of the combined hydrocarbon lease.	No significant change.
43 CFR 3140.5—Duration of the lease .....	43 CFR 3140.50—Duration of the lease .....	No significant change.
43 CFR 3140.6—Use of additional lands .....	43 CFR 3140.60—Use of additional lands .....	No significant change.
43 CFR 3140.7—Lands within the National Park System.	43 CFR 3140.70—Lands within the National Park System.	No significant change.

43 CFR SUBPART 3141—LEASING IN SPECIAL TAR SAND AREAS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3141.0-1—Purpose .....	43 CFR 3141.1—Purpose .....	No significant change.
43 CFR 3141.0-3—Authority .....	43 CFR 3141.3—Authority .....	No significant change.
43 CFR 3141.0-5—Definitions .....	43 CFR 3141.5—Definitions .....	No significant change.
43 CFR 3141.0-8—Other Applicable Regulations.	43 CFR 3141.8—Other Applicable Regulations.	No significant change.
43 CFR 3141.1—General .....	43 CFR 3141.10—General .....	No significant change.
43 CFR 3141.2—Prelease exploration within Special Tar Sand Areas.	Prelease exploration within Special Tar Sand Areas.	No significant change.

43 CFR SUBPART 3141—LEASING IN SPECIAL TAR SAND AREAS—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3141.2–1—Geophysical exploration .....	43 CFR 3141.21—Geophysical exploration ....	No significant change.
43 CFR 3141.2–2—Exploration licenses .....	43 CFR 3141.22—Exploration licenses .....	No significant change.
43 CFR 3141.3—Land use plans .....	43 CFR 3141.30—Land use plans .....	The proposed rule would specify that royalty rate reductions for tar sands would not apply to oil and gas leases and vice versa.
43 CFR 3141.4—Consultation .....	Consultation .....	No significant change.
43 CFR 3141.4–1—Consultation with the Governor.	43 CFR 3141.41—Consultation with the Governor.	No significant change.
43 CFR 3141.4–2—Consultation with others .....	43 CFR 3141.42—Consultation with others ....	No significant change.
43 CFR 3141.5—Leasing procedures .....	Leasing procedures .....	No significant change.
43 CFR 3141.5–1—Economic evaluation .....	43 CFR 3141.51—Economic evaluation .....	No significant change.
43 CFR 3141.5–2—Term of lease .....	43 CFR 3141.52—Term of lease .....	No significant change.
43 CFR 3141.5–3—Royalties and rentals .....	43 CFR 3141.53—Royalties and rentals .....	No significant change.
43 CFR 3141.5–4—Lease size .....	43 CFR 3141.54—Lease size .....	No significant change.
43 CFR 3141.5–5—Dating of lease .....	43 CFR 3141.55—Dating of lease .....	No significant change.
43 CFR 3141.6—Sale procedures .....	Sale procedures .....	No significant change.
43 CFR 3141.6–1—Initiation of competitive lease offering.	43 CFR 3141.61—Initiation of competitive lease offering.	No significant change.
43 CFR 3141.6–2—Publication of a notice of competitive lease offering.	43 CFR 3141.62—Publication of a notice of competitive lease offering.	No significant change.
43 CFR 3141.6–3—Conduct of sales .....	43 CFR 3141.63—Conduct of sales .....	No significant change.
43 CFR 3141.6–4—Qualifications .....	43 CFR 3141.64—Qualifications .....	No significant change.
43 CFR 3141.6–5—Fair market value for combined hydrocarbon leases.	43 CFR 3141.65—Fair market value for combined hydrocarbon leases.	The proposed rule would remove this section as it is not needed with the changes to §3141.63.
43 CFR 3141.6–6—Rejection of bid .....	43 CFR 3141.65—Rejection of bid .....	No significant change.
43 CFR 3141.6–7—Consideration of next highest bid.	43 CFR 3141.66—Consideration of next highest bid.	No significant change.
43 CFR 3141.7—Award of lease .....	43 CFR 3141.70—Award of lease .....	No significant change.

43 CFR SUBPART 3142—PAYING QUANTITIES/DILIGENT DEVELOPMENT FOR COMBINED HYDROCARBON AND TAR SAND LEASES

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3142.0–1—Purpose .....	43 CFR 3142.1—Purpose .....	No significant change.
43 CFR 3142.0–3—Authority .....	43 CFR 3142.3—Authority .....	No significant change.
43 CFR 3142.0–5—Definitions .....	43 CFR 3142.5—Definitions .....	Added definitions for production in paying quantities.
43 CFR 3142.1—Diligent development .....	43 CFR 3142.10—Diligent development .....	No significant change.
43 CFR 3142.2—Minimum production levels ....	Minimum production levels .....	No significant change.
43 CFR 3142.2–1—Minimum production schedule.	43 CFR 3142.21—Minimum production schedule.	No significant change.
43 CFR 3142.2–2—Advance royalties in lieu of production.	43 CFR 3142.22—Advance royalties in lieu of production.	No significant change.
43 CFR 3142.3—Expiration .....	43 CFR 3142.30—Expiration .....	No significant change.

43 CFR SUBPART 3151—EXPLORATION OUTSIDE OF ALASKA

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3151.1—Notice of intent to conduct oil and gas geophysical exploration operations.	43 CFR 3151.10—Notice of intent to conduct oil and gas geophysical exploration operations.	The proposed rule would require notices of intent to include the filing fee required by 43 CFR 3000.120 in order to be to consider a Notice of Intent to Conduct Oil and Gas Exploration Operations properly filed.
43 CFR 3151.2—Notice of completion of operations.	43 CFR 3151.20—Notice of completion of operations.	No significant change.
New .....	43 CFR 3151.30—Collection and submission of data.	The proposed rule would add a new requirement for the permittee to provide the BLM with all data and information obtained in carrying out the exploration plan, matching the requirement for geophysical exploration permits in Alaska.

43 CFR SUBPART 3160—ONSHORE OIL AND GAS OPERATIONS: GENERAL

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3160.0–5—Definitions .....	43 CFR 3160.0–5—Definitions .....	The proposed rule would add definitions for “shut-in well” and “temporarily abandoned well.”

43 CFR SUBPART 3162—REQUIREMENTS FOR OPERATING RIGHTS OWNERS AND OPERATORS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3162.3–4—Well abandonment .....	43 CFR 3162.3–4—Well abandonment .....	The proposed rule would add a cap for temporarily abandoning a well and new requirements for shut-in wells to reduce the liability to the public.

43 CFR SUBPART 3165—RELIEF, CONFLICTS, AND APPEALS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3165.1—Relief from operating and producing requirements.	43 CFR 3165.1—Relief from operating and/or producing requirements.	The proposed rule would clarify that the BLM would not grant lease suspensions based solely on an APD filed at the end of a lease’s life cycle and would ensure that any suspension is justified and tied to an end date.

43 CFR 3171—APPROVAL OF OPERATIONS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3171.6—Components of a complete APD package.	43 CFR 3171.6—Components of a complete APD package.	The proposed rule would avoid the need to incorporate by reference the National Spatial Reference System, North American Datum 1983.
43 CFR 3171.14—Valid Period of Approved APD.	43 CFR 3171.14—Valid Period of Approved APD.	The proposed rule would change the validity period for an APD from 2 years to 3 years and would remove the potential for an extension of an APD.

43 CFR 3186—MODEL FORMS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3186.2—Model Collective Bond .....	Removed .....	The proposed rule would remove this section in its entirety due to changes made under 3104.

**VII. Procedural Matters**

*A. Regulatory Planning and Review (E.O. 12866, E.O. 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) within the OMB will review all significant rules. The OIRA has determined that this proposed rule is economically significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to

consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

This proposed rule would replace the BLM’s current rules governing oil and gas leasing, which are contained in 43 CFR 3100 through 3140, and revise some oil and gas operations, which are contained in 43 CFR 3160 and 3171.

The BLM developed this proposed rule in a manner consistent with the requirements in Executive Order 12866 and Executive Order 13563.

The BLM reviewed the requirements of the proposed rule and determined that it would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. For more detailed information, see the RIA prepared for this proposed rule. The RIA has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004–AE80”, click the

“Search” button, open the Docket Folder, and look under Supporting Documents.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the SBA size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the Economic Census. The number of small businesses in states where there are existing Federal oil and gas leases is estimated to be 20,975 for the Crude Petroleum Extraction and Natural Gas Extraction industries (NAICS codes 211120 and 21130, respectively). The BLM concludes that the proposed bonding requirement changes might increase challenges when securing bonds, especially for small businesses. This will increase the cost for business on Federal onshore oil and gas leases and might provide some incentives to shift leasing and operations to State or private lands. The cost of securing bonds may have a disproportionately larger impact on small businesses because it results in a larger percentage of the companies’ net revenue. However, because the bonds would cost an estimated 1 to 3.5 percent of the bond value (one bonding agency reported that over 70 percent of their small-business customers paid 2 percent or less on their surety bond premiums) the annual cost to secure a bond would not be material (see <https://www.insureon.com/small-business-insurance/surety-bonds/cost>).

Finally, the rule would have a distributional and positive impact on the Direct Property and Casualty Insurance Carriers Industry (NAICS 524126). Additional premiums would be paid by lessees in the oil and natural gas extraction industries to surety companies who would be providing the coverage to meet the proposed requirements. The number of small businesses in states where there are

existing Federal oil and gas leases is estimated to be 476,687 in that industry.

### C. Congressional Review Act

Based upon the economic analysis, this proposed rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. This proposed rule:

- (a) Would not have an annual effect on the economy of \$100 million or more.
- (b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) 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.

### D. Unfunded Mandates Reform Act (UMRA)

The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed rule contains no requirements that would apply to State, local, or tribal governments. The proposed rule would revise requirements that would otherwise apply to the private sector participation in a voluntary Federal program. The costs that the proposed rule would impose on the private sector are below the monetary threshold established at 2 U.S.C. 1532(a). A statement containing the information required by the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*) is therefore not required for the proposed rule. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations upon them.

### E. Governmental Actions and Interference With Constitutionally Protected Property Right—Takings (Executive Order 12630)

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. The proposed rule would replace the BLM’s current rules governing oil and gas leasing, which are contained in 43 CFR 3100 through 3140, and some oil and gas operations, which are contained in 43 CFR 3160 and 3171. Therefore, the proposed rule would impact future leases on Federal land; however, it

would not impact current leases. All other terms in the regulations are not considered a taking of private property as such operations are subject to the existing lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and regulations.

This proposed rule conforms to the terms of the existing leases and applicable statutes and, as such, the rule is not a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the rule would not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

### F. Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism impact statement is not required.

The proposed rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. It would not apply to States or local governments or State or local governmental entities. The rule would affect the relationship between operators, lessees, and the BLM, but it does not directly impact the States. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

### G. Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. More specifically, this proposed rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This proposed rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

### H. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through

a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty.

The BLM evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 to identify possible effects of the rule on federally recognized Indian Tribes. Since the proposed changes to leasing only apply to Federal lands, the proposed rule will not impact the leasing of Indian minerals.

In August of 2021, the BLM sent a letter to each registered Tribe informing them of certain rulemaking efforts, including the development of this proposed rule. The letter offered Tribes the opportunity for individual government-to-government consultation regarding the proposed rule. The opportunity for tribal consultation will remain open throughout the rulemaking process.

#### *I. Paperwork Reduction Act*

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor, and not withstanding any other provision of law a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)).

This proposed rule contains information-collection requirements that are subject to review by OMB under the PRA. OMB has generally approved the existing information collection requirements contained in the regulations that would be affected by this proposed rule under the following OMB Control Numbers:

- 43 CFR 3100, 3120, and Subpart 3162—OMB Control Number 1004–0185;
- 43 CFR 3106—OMB Control Number 1004–0034;
- 43 CFR part 3130—OMB Control Number 1004–0196;
- 43 CFR 3150—OMB Control Number 1004–0162; and
- 43 CFR 3160—OMB Control Number 1004–0137.

The BLM plans to transfer the information collection requirements contained in 43 CFR 3106 from OMB control number 1004–0034 to OMB Control Number 1004–0185 in order to keep similar information collections requirements together under the same

OMB Control Number. Additionally, the BLM plans to transfer information collection requirements contained in 43 CFR 3160 from OMB Control Number 1004–0137 to a new OMB Control Number. The new and revised information collection requirements are discussed as follows, along with the resulting changes in public burdens.

#### **1. Proposed Changes Impacting Information Collections Formerly Under OMB Control Number 1004–0137**

The proposed rule would result in new information collection requirements that would require OMB approval under a new OMB control number (formerly 1004–0137). This proposed rule is estimated to result in 33,121 annual responses, 252,928 annual burden hours, \$35,400,000 non-hour cost burdens under this new OMB Control Number.

The proposed new information collection requirements are described as follows.

##### *43 CFR 3162.3–4—Well*

*Abandonment.* The BLM is proposing to modify paragraph (c) to include that no well may be temporarily abandoned unless the operator provides adequate and detailed justifications, verifies the mechanical integrity of the wells, and isolates the completed interval(s). The BLM proposes to add a new paragraph (d) outlining new requirements for operators of shut-in wells. Paragraph (d)(1) provides for notification of the well's shut-in status and shut-in date within 90 days of shut in. Paragraph (d)(2) provides for the verification of the mechanical integrity of the well and confirmation that the well remains capable of producing in paying quantities within 3 years. When a well remains in a shut-in status by the fourth year, as outlined in paragraph (d)(3), the operator must either: (i) permanently abandon the well; (ii) resume production; or (iii) provide a detailed plan and timeline for the beneficial use for the well. The BLM may grant additional delays provided the operator submits information that confirms the use and is making progress on returning the well to a beneficial use. The new information collection requirements would include:

- Justification for Temporary Well Abandonment—43 CFR 3162.3–4(c);
- Abandon Well Shut-in Status—43 CFR 3162.3–4(d);
- Verification of Mechanical Integrity—43 CFR 3162.3–4(d)(2); and
- Plan and Timeline for Future Beneficial Use—43 CFR 3162.3–4(d)(3)(iii).

The BLM believes these new requirements with yearly interval

checks will help operators stay on top of shut-in wells, thus preventing them from becoming orphaned in the future. The addition of these information collection requirements would result in an addition of 5,000 annual responses, 44,000 annual burden hours.

Currently, there are 301,663 annual responses, 1,835,888 annual burden hours, and \$31,080,000 annual non-hour cost burdens inventoried under the OMB Control Number 1004–0137. This rule will create a new OMB Control Number and removes 28,121 annual responses, 208,298 annual burden hours, and \$31,080,000 annual non-hour cost burdens inventoried under OMB Control Number 1004–0137 into this OMB Control Number.

In addition, there is an adjustment of \$4.3 million in annual non-hour cost burdens (from \$31 million to 35.4 million). This adjustment results from the annual inflation adjustment of filing fees and do not result from the proposed rule. The resulting new estimated total burdens for this new OMB Control Number are provided as follows.

*Title of Collection:* Onshore Oil and Gas Operations and Production (43 CFR parts 3160 and 3170).

*OMB Control Number:* 1004–NEW.

*Form Numbers:* BLM Form 3160–003; BLM Form 3160–004; and BLM Form 3160–005 (these forms will not change).

*Type of Review:* Revision of a currently approved collection of information.

*Respondents/Affected Public:* Oil and gas operators on public lands and some Indian lands.

*Total Estimated Number of Annual Respondents:* 7,500.

*Total Estimated Number of Annual Responses:* 33,121.

*Estimated Completion Time per Response:* Varies from 4 to 32 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 252,928.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion; One-time; and Monthly.

*Annual Burden Cost:* \$35,400,000.

#### **2. Proposed Changes Impacting OMB Control Number 1004–0162**

Currently, there are 68 annual responses, 26 annual burden hours, and \$25 annual non-hour cost burdens inventoried under OMB Control Number 1004–0162. It is not anticipated that the proposed rule will change the results to the annual responses, annual burden hours, or non-hour cost burdens under this OMB Control Number. The proposed revised information collection requirement is described as follows.

*43 CFR 3151.3—Collection and submission of data.* The proposed rule would add a new requirement for the permittee to provide the BLM with all data and information obtained in carrying out the exploration plan, matching the requirement for geophysical exploration permits in Alaska. This does not change the existing burden for what applicants need to submit to the BLM for acquiring a geophysical exploration permit.

*Title of Collection:* Onshore Geophysical Exploration (43 CFR part 3150 and 36 CFR parts 228 and 251).

*OMB Control Number:* 1004–0162.

*Form Number:* BLM 3150–4/FS 2800–16; BLM 3150–5/FS 2816a (these forms will not change).

*Type of Review:* Revision of a currently approved collection of information.

*Respondents/Affected Public:* The respondents for this collection of information are businesses that seek to conduct geophysical exploration on Federal lands.

*Respondent's Obligation:* Required to Obtain or Retain a Benefit.

*Frequency of Collection:* On occasion.

*Estimated Completion Time per*

*Response:* Varies from 20 minutes to 1 hour, depending on activity.

*Number of Respondents:* 68.

*Annual Responses:* 68.

*Annual Burden Hours:* 26.

*Annual Burden Cost:* \$1,150.

### 3. Proposed Changes Impacting OMB Control Number 1004–0185

Currently, there are 9,132 annual responses, 37,695 annual burden hours, and \$751,415 annual non-hour cost burdens inventoried under OMB Control Number 1004–0185. This proposed rule is estimated to result in 16,340 annual responses, 29,410 annual burden hours, \$1,793,159, non-hour cost burdens under this OMB Control Number. The proposed rule would result in new, revised, and removed information collection requirements. Additionally, as discussed earlier, the BLM will also be transferring certain information collection requirements, along with the associated burdens from OMB Control Number 1004–0034 to OMB Control Number 1004–0185. These proposed changes are discussed as follows.

#### Revised Information Collection Requirements

*43 CFR 3100.31(b)—Option Enforceability.* The proposed rule revises this requirement to clarify that a statement of the number of acres and the type and percentage of interest to be conveyed and retained by the parties to

the option must be submitted for an option or renewal to be enforceable. This does not change the burden requirement. The existing regulation already states the interest to be conveyed and retained in exercise of the option. The BLM needs to understand if the type of interest is referring to record title or operating rights and the percentage to be conveyed and retained by the option holder.

*43 CFR 3105.21—Where to File Communitization Agreements.* The proposed rule removes the triplicate filing requirement. The proposed rule adds a new paragraph (b) to this section to require that all applications to form a CA be filed with a statement as to whether the proposed CA deviates from the BLM's current model CA form, and a certification that the applicant received the required signatures.

Further, all applications to form a CA shall include an Exhibit A displaying a map of the agreement and the separate agreement tracts and all applications to form a CA shall include an Exhibit B displaying the separate tracts and ownership. The new paragraph (c) states that all applications to form a CA should be submitted at least 90 calendar days prior to first production to ensure correct reporting to the ONRR. These requirements codify existing policy requirements and does not change the existing burden for what applicants to submit to the BLM. The information is needed to understand all the parties that share in the production of a well due to State spacing orders.

*43 CFR 3105.31—Where to file Operating, Drilling or Development Contracts.* The proposed rule would remove the requirement for five copies of an operating, drilling or development contract to be submitted when these contracts are submitted to the BLM for approval. This reduces the burden to respondents.

*43 CFR 3105.40—Subsurface storage application (formerly 3105.5).* The proposed rule would designate the existing 43 CFR 3105.5 for gas storage agreements to the proposed numbering 43 CFR 3105.40. This redesignation would be due to the elimination of the section on the combination for joint operations or for transportation of oil. The proposed rule would update paragraph (a) to include designation of successor operators for gas storage agreements among the applications to be filed in the proper BLM office. The proposed rule would update paragraph (b) to remove the requirement for five copies of a gas storage agreements to be submitted when these are filed with the BLM. A new paragraph (c) would require that all applications for a gas

storage agreement or a designation of a successor operator must include the new processing fee found in the fee schedule in 43 CFR 3000.120. The new processing fee is intended to reimburse the BLM for processing the applications.

*43 CFR 3105.50—Consolidation of Leases (formerly 3105.6).* Leases may be consolidated upon written request of the lessee filed with the proper BLM identify each lease involved by serial number and shall explain the factors that justify the consolidation and requires that each request for a consolidation of leases the processing fee found in the fee schedule in 43 CFR 3000.120. The proposed rule splits the single paragraph under this section into several paragraphs for clarity, however these are not new requirements and do not change the existing burden.

*43 CFR 3106.81—Heirs and devisees.* The proposed updates this information collection requirement to state that the lease interest will be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a court order, death certificate, or other legal document demonstrating that transferee is to be recognized as the successor of the deceased. These requirements codify existing policy requirements and does not change the existing burden for what applicants currently submit to the BLM to show proof on how the lease interest transferred to another party.

*43 CFR 3106.82—Change of name.* The current regulation requires a notice of the name change to be accompanied by a list of the serial numbers of the leases affected by the name change. This requirement is removed as it is outdated and unenforceable. This lessens the burden to respondents. In practice, the BLM generates a report of the leases affected by the name change and returns that list to the lessee with a notice that recognizes the name change that occurred through operation of law. This section is updated to require that, for a corporate name change, the request should include the Secretary of State's Certificate of Name Change along with the Articles of Incorporation, or Amendment, if available. This is consistent with the BLM's current approach for processing these types of documents. These requirements codify existing policy requirements and do not change the existing burden for what applicants currently submit to the BLM to show proof on how the lease interest transferred to another party.

*43 CFR 3106.83—Corporate mergers and dissolution of corporations, partnerships and trust.* The proposed rule updates the title of this section from "Corporate merger" to "Corporate



mergers and dissolution of corporations, partnerships and trust.” The goal of the renaming of this section is to incorporate these other types of transfers that have the same process. The current regulation requires a notification of merger to be accompanied by a list of the serial numbers of the leases affected by the merger. This requirement is eliminated as it is outdated and unenforceable. This lessens the burden to respondents. In practice, the BLM does not rely on a list of leases provided by a lessee and instead generates its own report of the leases affected by the merger. The BLM returns that list to the lessee with a notice that recognizes the merger that occurred through operation of State law. This section is updated to require that, for a merger, the request should include the Secretary of State’s Certificate of Merger along with the Articles of Incorporation, or Amendment, if available. This is consistent with the BLM’s current approach for processing these types of documents. These requirements codify existing policy requirements and do not change the existing burden for what applicants currently submit to the BLM to show proof on how the lease interest transferred to another party.

**43 CFR 3108.23—Reinstatement at higher rental and royalty rates: Class II reinstatements.** The proposed rule would eliminate the existing paragraph (b)(1) in its entirety. This provision addresses the timeliness of Class II reinstatement petitions for leases that terminated on or before August 8, 2005, and is no longer applicable. This does not change an existing burden since a petition to reinstate a lease that terminated on or before August 8, 2005, would have already been received by an applicant.

**43 CFR 3109.12—Application.** The proposed rule also adds a new requirement that the applicant must include a map of the applicable lands which will support the bidding process related to the lease or compensatory royalty agreement. These requirements codify existing policy requirements and does not change the existing burden for what applicants to submit to the BLM.

#### New Information Collection Requirements

**43 CFR 3106.84—Sheriff’s sale/deed.** The proposed rule adds a new section under other types of transfers to include sheriff’s sales. The BLM accepts these types of transfers to recognize lease interests transferred to other parties through foreclosure actions. The proposed rule states that where a notice of sale of the leasehold interest is

published pursuant to State law applicable to the execution of sales of real property, the purchaser shall submit a copy of the Sheriff’s Certificate of Sale after any redemption period has passed to the proper BLM office. Additional paragraphs under this new section include a filing fee requirement, a qualification statement, and bonding requirements. These requirements are consistent with the BLM’s current approach for processing these types of documents. These documents are already submitted and recognized by the BLM when changes in ownership of interests in Federal oil and gas leases occur without any intention by the holder of interest to assign or transfer interest. The addition of this information collection would result in an addition of 1 annual response, 1 annual burden hour, and \$55.80 annual non-hour cost burdens.

**43 CFR 3120.43—Expression of Interest.** The proposed rule adds a new section titled “Expression of Interest” to codify the current process of receiving EOIs for competitive leasing to the BLM’s online leasing system. An expression of interest is a description of lands that an applicant seeks to include in a competitive auction. The expression must provide a description of the lands identified by legal land description and identify the U.S. mineral ownership percentage. The addition of this information collection would result in an addition of 395,864 annual responses (calculated by acreage received), 3,958,640 annual burden hours (to process the acreage received), and \$220,892,112 annual non-hour cost burdens.

#### Removed Information Collection Requirements

**43 CFR 3101.26—Ad-Hoc Acreage Statement.** At any time, the BLM may require a lessee or operator to file a statement showing as of the 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. The BLM uses the information to determine whether or not a lessee is in compliance with the law with respect to statutory acreage limitations. This revision results in the reduction of 1 response and 1 burden hour, annually.

**43 CFR 3105.4—Combination for joint operations or for transportation of oil.** The proposed rule eliminates the section on the combination for joint operations or for transportation of oil. These provisions are not used by the BLM or operators and are outdated. This revision results in the reduction of 1 response and 1 burden hour, annually.

**43 CFR 3107.8—Renewal leases.** The proposed rule eliminates the provisions on renewal leases in their entirety because they are outdated. Renewal leases that had an expiration date after November 15, 1990, were eligible for one last renewal under the provisions of the November 15, 1990, Act, *i.e.*, for 10 years, and for so long thereafter as oil and gas is produced in paying quantities. If a lease was renewed after the 1990 amendment and was not producing oil or gas at the end of its 10-year renewal term, the lease expired with no further option for renewal. The removal of this information collection would result in a reduction 1 annual response, 1 annual burden hour, and \$475 annual non-hour cost burdens.

#### D. Class III reinstatement petition (43 CFR 3108.2–4).

The requirement would be removed from the proposed rule resulting in a reduction of one annual response and one burden hour as well as \$651 in non-hour cost burden.

Information Collection Requirements Transferred From OMB Control Number 1004–0034.

The following two information collection will be moved into OMB Control Number 1004–0185 to keep information collection requirements in Subpart 3106 under the same OMB Control Number:

1. **43 CFR 3106.41—Transfers of record title and of operating rights (subleases) and 3106.42, Transfers of other interests, including royalty interests and production payments.** This transfer would result in 3,852 annual responses, 1,926 annual burden hours, and \$404,460 non-hours cost burdens being added to this OMB Control Number.

2. **43 CFR 3106.43—Mass transfers.** This transfer would result in 4,944 annual responses, 2,472 annual burden hours, and \$519,120 non-hours cost burdens being added to this OMB Control Number.

The resulting new estimated total burdens for OMB Control Number 1004–0185 are provided as follows.

**Title of Collection:** Onshore Oil and Gas Leasing, and Drainage Protection (43 CFR parts 3100, 3120, and 3150, and Subpart 3162).

**OMB Control Number:** 1004–0185.

**Form Number:** None.

**Type of Review:** Revision of a currently approved collection of information.

**Respondents/Affected Public:** Holders of onshore oil and gas lease and public lands and Indian lands (except on the Osage Reservation), operators of such

leases, and holders of operating rights on such leases.

*Respondent's Obligation:* Required to Obtain or Retain a Benefit.

*Frequency of Collection:* Varies from 1 hour to 24 hours per response, depending on activity.

*Number of Respondents:* 16,339.

*Annual Responses:* 16,340.

*Annual Burden Hours:* 29,410.

*Annual Burden Cost:* \$1,793,159.

4. Proposed Changes Impacting OMB Control Number 1004–0196

Currently, there are there are 21 annual responses and 220 annual burden hours associated with this OMB control number. There are also no non-hours cost burden currently associated with this OMB control number. The proposed rule is not projected to result in any new annual responses The additional requirements proposed in 43 CFR 3170.80(b) include description of the anticipated PA(s) size and define the proposed PAs in the unit designation agreements required by 43 CFR 3137.21, and 3137.23 is not projected to result in additional burden for that information collection.

43 CFR 3000.12 would introduce new filing fees for the following information collections, resulting in a new non-hour burden cost of \$1,320:

- Statement of change of unit operator (43 CFR 3137.61); and
- Application for storage agreement (43 CFR 3138.11). Additionally, 43 CFR 3137.86, New information demonstrating that the participating area should be larger or smaller than previously determined, contains the following three information collection requirements for which the burden has not been formerly captured in this OMB control number:
  - Information demonstrating that a participating area should be larger than previously determined (43 CFR 3137.86(a)(1));
  - Application to enlarge participating area outside of existing boundaries (43 CFR 3137.86(a)(2)); and
  - Statement for additional committed tract or tracts are added to the unit under paragraph (a)(2) (43 CFR 3137.86(a)(3)).

The resulting new estimated total burdens for OMB Control Number 1004–0196 are provided as follows.

*Title of Collection:* Oil and Gas Leasing; National Petroleum Reserve—Alaska (43 CFR part 3130).

*OMB Control Number:* 1004–0196.

*Form Number:* None.

*Type of Review:* Revision of a currently approved collection of information.

*Respondents/Affected Public:* Participants within the oil and gas leasing program within the National Petroleum Reserve-Alaska.

*Respondent's Obligation:* Required to Obtain or Retain a Benefit.

*Frequency of Collection:* On occasion.

*Estimated Completion Time per Response:* Varies from 15 minutes to 80 hours, depending on activity.

*Number of Respondents:* 24.

*Annual Responses:* 24.

*Annual Burden Hours:* 223.

*Annual Burden Cost:* \$1,320.

In summary, the net burden changes that would result from the new, revised, and removed information collection requirements as contained in the proposed rule are as follows:

OMB Control No.	Annual responses			Annual burden hours			Non-hour burden costs		
	Current	Proposed	Change	Current	Proposed	Change	Current	Proposed	Change
1004–ONEW (transfer from 1004–0137) .....	28,121	33,121	+5,000	208,928	252,928	+44,000	\$31,080,000	\$35,400,000	+\$4,320,000
1004–0162 .....	68	68	0	26	26	0	25	1,150	+1,125
1004–0185 .....	9,132	16,340	+7,208	37,695	29,410	+ – 8,285	751,415	1,793,159	+1,041,744
1004–0196 .....	21	24	+3	220	223	+3	0	1,320	+1,320
<b>Total Burden Changes .....</b>	<b>37,342</b>	<b>49,553</b>	<b>+12,211</b>	<b>246,869</b>	<b>282,587</b>	<b>+35,716</b>	<b>31,831,440</b>	<b>39,125,897</b>	<b>+5,364,189</b>
Minus Burden Transferers from 1004–0034: .....			– 8,796			– 4,398			– 923,580
Minus Burden Transfer from 1004–0137 .....			– 28,121			– 208,928			4,320,000
Minus changes from the IRA in 1004–0185 for EOIs: .....			– 395			– 3,160			– 1,975,000
<b>Net Burden Changes Resulting from the Proposed Rule: .....</b>			<b>+3,020</b>			<b>+28,160</b>			<b>1,854,391</b>

If you want to comment on the information-collection requirements of this proposed rule, please send your comments and suggestions on this information-collection by the date indicated in the DATES and ADDRESSES sections as previously described

J. National Environmental Policy Act

A detailed environmental analysis under NEPA is not required, because the proposed rule is covered by a categorical exclusion (see 43 CFR 46.205). This proposed rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this proposed rule is “of an administrative, financial, legal, technical, or procedural nature.” We have also determined that the proposed rule does not involve any of the

extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

Under Executive Order 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This statement is to include a detailed statement of “any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies)” for the action and reasonable alternatives and their effects.

Section 4(b) of Executive Order 13211 defines a “significant energy action” as

“any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking; (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by OIRA as a significant energy action.”

The BLM believes that the rule may affect the location chosen for future oil or gas development but will have little impact on an entity’s decision to invest in energy development, the size of that development, or the production from that development. As a result of this

rule, an entity holding existing nonproducing leases may choose to shift more future development to these existing leases or to develop non-Federal acreage instead of securing new Federal leases, and some entities may be relatively less likely to choose a new Federal lease to a comparable non-Federal lease. Also, any incremental changes in oil or gas production estimated to result from the rule's enactment would constitute a small fraction of total U.S. gas production, and any potential and temporary deferred production of oil would likewise constitute a small fraction of total U.S. oil production. For these reasons, we do not expect that the proposed rule would significantly impact the supply, distribution, or use of energy. As such, the rulemaking is not a "significant energy action" as defined in Executive Order 13211.

*L. Clarity of This Regulation (Executive Orders 12866, 12988, and 13563)*

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help the BLM revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Authors**

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**List of Subjects**

*43 CFR Part 3000*

Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3100*

Government contracts, Mineral royalties, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3110*

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3120*

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3130*

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3140*

Government contracts, Hydrocarbons, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3150*

Administrative practice and procedure, Alaska, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*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.

*43 CFR Part 3170*

Administrative practice and procedure, Flaring, Immediate assessments, Indians-lands, Mineral royalties, Oil and gas exploration, Oil and gas measurement, Public lands—mineral resources, Reporting and recordkeeping requirements, Royalty-free use, Venting.

*43 CFR Part 3180*

Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

**43 CFR Chapter II**

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR parts 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180 as follows:

- 1. Revise part 3000 to read as follows:

**PART 3000—MINERALS MANAGEMENT: GENERAL**

Sec.	
3000.5	Definitions.
3000.10	Nondiscrimination.
3000.20	False statements.
3000.30	Unlawful interests.
3000.40	Appeals.
3000.50	Limitations on time to institute suit to challenge a decision of the Secretary.
3000.60	Filing of documents.
3000.70	Multiple development.
3000.80	Management of Federal minerals from reserved mineral estates.
3000.90	Enforcement actions under 30 U.S.C. 195.
3000.100	Fees in general.
3000.110	Processing fees on a case-by-case basis.
3000.120	Fee schedule for fixed fees.
3000.130	Fiscal terms of new leases.

**Authority:** 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

**§ 3000.5 Definitions.**

As used in 43 CFR parts 3000 and 3100, the term:

*Acquired lands* means lands which the United States obtained by deed through purchase or gift, or through condemnation proceedings, including lands previously disposed of under the public land laws including the mining laws.

*Acreage for which expressions of interest have been submitted* means acreage that is identified in an expression of interest received by BLM, that has not been proposed for leasing

in any pending sale or other expression of interest pending BLM disposition, and for which BLM may lawfully issue an oil and gas lease.

*Acres offered for lease* means all acres that BLM has offered for oil and gas lease, regardless of whether those acres are acreage for which expressions of interest have been submitted.

*Act or MLA* means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

*Anniversary date* means the same day and month in succeeding years as that on which the lease became effective.

*Authorized officer* means any BLM employee authorized to perform the duties described in parts 3000 and 3100.

*BLM or Bureau* means the Bureau of Land Management.

*Director* means the Director of the Bureau of Land Management.

*Gas* means 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.

*Interest* means ownership in a lease, or prospective lease, of all or a portion of the record title, working interest, operating rights, overriding royalty, payments out of production, carried interests, net profit share or similar instrument for participation in the benefit derived from a lease. An *interest* may be created by direct or indirect ownership, including options. *Interest* does not mean stock ownership, stockholding or stock control in an application, offer, competitive bid or lease, except for purposes of acreage limitations in 43 CFR 3101.20 and qualifications of lessees in 43 CFR subpart 3102.

*Oil* means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale or gilsonite (including all vein-type solid hydrocarbons).

*ONRR* means the Office of Natural Resources Revenue.

*Party in interest* means a party who is or will be vested with any interest under the lease as defined in this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest.

*Person* means any individual or entity, including a partnership, association, State, political subdivision of a State or territory, or a private, public, or municipal corporation.

*Proper BLM office* means the Bureau of Land Management state office having jurisdiction over the lands subject to the regulations in parts 3000 and 3100. (See 43 CFR 1821.10 for office location and

area of jurisdiction of Bureau of Land Management offices.)

*Properly filed* means a document or form submitted to the proper BLM office with all necessary information and payments, as provided in 43 CFR subpart 1822.

*Public domain lands* means lands, including mineral estates, which never left the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of the United States through the operation of the public land laws and other lands specifically identified by the Congress as part of the public domain.

*Secretary* means the Secretary of the Interior.

*Surface managing agency* means any Federal agency, other than the BLM, having management responsibility for the surface resources that overlay federally owned minerals.

#### **§ 3000.10 Nondiscrimination.**

Any person acquiring a lease under this chapter must comply fully with the equal opportunity provisions of Executive Order 11246 dated September 24, 1965, as amended, and the rules, regulations and relevant orders of the Secretary of Labor (41 CFR part 60 and 43 CFR part 17).

#### **§ 3000.20 False statements.**

As provided in 18 U.S.C. 1001, it is a crime punishable by imprisonment or a fine, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

#### **§ 3000.30 Unlawful interests.**

No member of, or delegate to, Congress, or Resident Commissioner, and no employee of the Department of the Interior, except as provided in 43 CFR part 20, is allowed or entitled to acquire or hold any Federal lease, or interest therein. (Officer, agent or employee of the Department—see 43 CFR part 20; Member of Congress—see R.S. 3741; 41 U.S.C. 22; 18 U.S.C. 431–433.)

#### **§ 3000.40 Appeals.**

Except as provided in 43 CFR 3000.120, 3000.130, 3101.53(b), 3165.4, and 3427.2, any party adversely affected by a decision of the authorized officer made pursuant to the provisions of 43 CFR parts 3000 or 3100 has a right of appeal pursuant to 43 CFR part 4.

#### **§ 3000.50 Limitations on time to institute suit to challenge a decision of the Secretary.**

No action challenging a decision of the Secretary involving any oil or gas lease, offer or application can be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

#### **§ 3000.60 Filing of documents.**

All necessary documents must be filed in the proper BLM office. Documents may be submitted to the BLM using hard-copy delivery services, in-person delivery, or by electronic filing. A document will be considered filed when it is received in the proper BLM office. When using hard-copy delivery services or in-person delivery, the document will be considered filed only when received during regular business hours. See 43 CFR part 1820, subpart 1822.

#### **§ 3000.70 Multiple development.**

The granting of a permit or lease for the prospecting, development or production of deposits of any one mineral does not preclude the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations or selections of leased lands with a reservation of the mineral deposits to the United States.

#### **§ 3000.80 Management of Federal minerals from reserved mineral estates.**

Where nonmineral public land disposal statutes provide that in conveyances of title all or certain minerals are reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of the use of such minerals will be accomplished under the regulations of 43 CFR parts 3000 and 3100. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

#### **§ 3000.90 Enforcement actions.**

The United States Department of Justice is the agency responsible for the enforcement actions described in 30 U.S.C. 195, which makes it unlawful for any person to organize or participate in any scheme, arrangement, plan, or agreement to circumvent or defeat the

provisions of the MLA or its implementing regulations; or 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 the:

- (a) Value of any lease or portion thereof issued or to be issued under the MLA;
- (b) Availability of any land for leasing under the MLA;
- (c) Ability of any person to obtain leases under the MLA; or
- (d) Provisions of the MLA and its implementing regulations.

#### **§ 3000.100 Fees in general.**

(a) *Setting fees.* Fees may be statutorily set fees, relatively nominal filing fees, or processing fees intended to reimburse the BLM for its reasonable processing costs. For processing fees, the BLM takes into account the factors in section 304(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1734(b)) before deciding a fee. The BLM considers the factors for each type of document when the processing fee is a fixed fee and for each individual document when the fee is decided on a case-by-case basis, as explained in § 3000.110.

(b) *Conditions for filing.* The BLM will not accept a document that the applicant submits without the proper filing or processing fee amounts except for documents where the BLM sets the fee on a case-by-case basis. Fees are not refundable except as provided for case-by-case fees in § 3000.110. The BLM will keep the fixed filing or processing fee as a service charge even if the BLM does not approve the application or the applicant withdraws it completely or partially.

(c) *Periodic adjustment.* The BLM will periodically adjust fees established in this subchapter according to changes in the Implicit Price Deflator for Gross Domestic Product, which is published quarterly by the U.S. Department of Commerce. Because the fee recalculations are simply based on a mathematical formula, the BLM will change the fees in final rules without opportunity for notice and comment.

(d) *Timing of fee applicability.* (1) For a document that the BLM received before November 7, 2005, the BLM will not charge a fixed fee or a case-by-case fee under this subchapter for processing that document, except for fees applicable under then-existing regulations.

(2) For a document that the BLM receives on or after November 7, 2005, the applicant must include the required fixed fees with the documents filed, as provided in § 3000.120(a) of this chapter, and the applicant is subject to case-by-case processing fees as provided in § 3000.110 and under other provisions of this chapter.

#### **§ 3000.110 Processing fees on a case-by-case basis.**

(a) Fees in this subchapter are designated either as case-by-case fees or as fixed fees. The fixed fees are established in this subchapter for specified types of documents. However, if the BLM decides at any time that a particular document designated for a fixed fee will have a unique processing cost, such as the preparation of an Environmental Impact Statement, the BLM may set the fee under the case-by-case procedures in this section.

(b) For case-by-case fees, the BLM measures the ongoing processing cost for each individual document and considers the factors in section 304(b) of FLPMA on a case-by-case basis according to the following procedures:

(1) The applicant may request the BLM's approval to do all or part of any study or other activity according to standards the BLM specifies, thereby reducing the BLM's costs for processing the document, in accordance with all other applicable laws and regulations.

(2) Before performing any case processing, the BLM will give the applicant a written estimate of the proposed fee for reasonable processing costs after the BLM considers the FLPMA section 304(b) factors.

(3) The applicant may comment on the proposed fee.

(4) The BLM will then give the applicant the final estimate of the processing fee amount after considering the applicant's comments and any BLM-approved work that the applicant will do.

(i) If the BLM encounters higher or lower processing costs than anticipated, the BLM will re-estimate the reasonable processing costs following the procedure in paragraphs (b)(1) through (4) of this section, but the BLM will not stop ongoing processing unless the applicant does not pay in accordance with paragraph (b)(5) of this section.

(ii) If the fee the applicant would pay under this paragraph (b)(4) is less than the BLM's actual costs as a result of consideration of the FLPMA section 304(b) factors, and the BLM is not able

to process the document promptly because of the unavailability of funding or other resources, the applicant will have the option to pay the BLM's actual costs to process the document.

(iii) Once processing is complete, the BLM will refund to the applicant any money that the BLM did not spend on processing costs.

(5)(i) The BLM will periodically estimate what its reasonable processing costs will be for a specific period and will bill the applicant for that period. Payment is due to the BLM 30 days after the applicant receives its bill. The BLM will stop processing the document if the applicant does not pay the bill by the date payment is due.

(ii) If a periodic payment turns out to be more or less than the BLM's reasonable processing costs for the period, the BLM will adjust the next billing accordingly or make a refund. Do not deduct any amount from a payment without the BLM's prior written approval.

(6) The applicant must pay the entire fee before the BLM will issue the final document.

(7) The applicant may appeal the BLM's estimated processing costs in accordance with the regulations in 43 CFR part 4, subpart E. The applicant may also appeal any determination the BLM makes under paragraph (a) of this section that a document designated for a fixed fee will be processed as a case-by-case fee. The BLM will not process the document further until the appeal is resolved, in accordance with paragraph (b)(5)(i) of this section, unless the applicant pays the fee under protest while the appeal is pending. If the appeal results in a decision changing the proposed fee, the BLM will adjust the fee in accordance with paragraph (b)(5)(ii) of this section.

#### **§ 3000.120 Fee schedule for fixed fees.**

(a) The table in this section shows the fixed fees that must be paid to the BLM for the services listed for FY 2024. These fees are nonrefundable and must be included with documents filed under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product since the previous adjustment and will subsequently be posted on the BLM website (<https://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

TABLE 1 TO PARAGRAPH (a)—FY 2024 PROCESSING AND FILING FEE TABLE

Document/action	FY 2023 fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150, 3160, and 3180):	
Formal Lease nomination .....	\$125.
Expression of Interest fee per acre, or fraction thereof .....	5.
Competitive lease application .....	3,100.
Leasing under right-of-way .....	660.
Lease consolidation .....	525.
Assignment and transfer of record title or operating rights .....	105.
Overriding royalty transfer, payment out of production .....	15.
Name change, corporate merger, sheriff's deed, corporate dissolution, or transfer to heir/devisee ...	250.
Lease reinstatement, Class I .....	1,260.
Geophysical exploration permit application—all states .....	1,150.
Renewal of exploration permit—Alaska .....	30.
Final application for Federal unit agreement approval, Federal unit agreement expansion, and Federal subsurface gas storage application.	1,200.
Designation of successor operator for Federal agreements .....	120.
Geothermal (part 3200):	
Noncompetitive lease application .....	475.
Competitive lease application .....	185.
Assignment and transfer of record title or operating rights .....	105.
Name change, corporate merger or transfer to heir/devisee .....	250.
Lease consolidation .....	525.
Lease reinstatement .....	90.
Nomination of lands .....	135.
plus per acre nomination fee .....	0.13.
Site license application .....	70.
Assignment or transfer of site license .....	70.
Coal (parts 3400, 3470):	
License to mine application .....	15.
Exploration license application .....	390.
Lease or lease interest transfer .....	80.
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):	
Applications other than those listed below .....	45.
Prospecting permit application amendment .....	80.
Extension of prospecting permit .....	130.
Lease modification or fringe acreage lease .....	35.
Lease renewal .....	610.
Assignment, sublease, or transfer of operating rights .....	35.
Transfer of overriding royalty .....	35.
Use permit .....	35.
Shasta and Trinity hardrock mineral lease .....	35.
Renewal of existing sand and gravel lease in Nevada .....	35.
Public Law 359; Mining in Powersite Withdrawals: General (part 3730):	
Notice of protest of placer mining operations .....	15.
Mining Law Administration (parts 3800, 3810, 3830, 3860, 3870):	
Application to open lands to location .....	15.
Notice of location* .....	20.
Amendment of location .....	15.
Transfer of mining claim/site .....	15.
Recording an annual FLPMA filing .....	15.
Deferment of assessment work .....	130.
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands .....	35.
Mineral patent adjudication .....	3,585 (more than 10 claims). 1,790 (10 or fewer claims).
Adverse claim .....	130.
Protest .....	80.
Oil Shale Management (parts 3900, 3910, 3930):	
Exploration license application .....	375.
Application for assignment or sublease of record title or overriding royalty .....	75.
Onshore Oil and Gas Operations and Production (parts 3160, 3170):	
Application for Permit to Drill .....	11,805.

\* To record a mining claim or site location, this processing fee along with the initial maintenance fee and the one-time location fee required by statute must be paid.

(b) The amount of a fixed fee is not subject to appeal to the Interior Board of Land Appeals pursuant to 43 CFR part 4, subpart E.

**§ 3000.130 Fiscal terms of new leases.**

(a) The table in this section shows the fiscal terms for new leases. Terms will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product since the

previous adjustment and will subsequently be posted on the BLM website (<https://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

TABLE 1 TO PARAGRAPH (a)—FISCAL TERMS FOR NEW LEASES TABLE

Oil and gas (parts 3100, 3110, 3120, 3130, 3140)	Fiscal term
Competitive oil and gas, tar sand, and combined hydrocarbon leases.	Rental of \$3 per acre, or fraction thereof, per year during the first 2-year period beginning upon lease issuance, \$5 per acre per year, or fraction thereof, for the following 6 years, and then \$15 per acre, or fraction thereof, per year thereafter.
Competitive lease reinstatement, Class II Competitive combined hydrocarbon leases.	Base rental of \$20 per acre, or fraction thereof. Minimum bonus bids of \$25 per acre, or fraction thereof.
Competitive oil and gas and tar sand leases.	Minimum bonus bids of \$10 per acre, or fraction thereof.

(b) The financial terms for new leases are not subject to appeal to the Interior Board of Land Appeals pursuant to 43 CFR part 4, subpart E.

■ 2. Revise part 3100 to read as follows:

**PART 3100—OIL AND GAS LEASING**

**Subpart 3100—Oil and Gas Leasing: General**

- Sec.
- 3100.3 Authority.
- 3100.5 Definitions.
- 3100.9 Information collection.
- 3100.10 Helium.

**Drainage**

- 3100.21 Compensation for drainage.
- 3100.22 Drilling and production or payment of compensatory royalty.

**Options**

- 3100.31 Enforceability.
- 3100.32 Effect of option on acreage.
- 3100.33 Option statements.
- 3100.40 Public availability of information.

**Subpart 3101—Issuance of Leases**

**Lease Terms and Conditions**

- 3101.11 Lease form.
- 3101.12 Surface use rights.
- 3101.13 Stipulations and information notices.
- 3101.14 Modification, waiver, or exception.

**Acreage Limitations**

- 3101.21 Public domain lands.
- 3101.22 Acquired lands.
- 3101.23 Excepted acreage.
- 3101.24 Excess acreage.
- 3101.25 Computation.
- 3101.30 Leases within unit areas, joinder evidence required.
- 3101.40 Terminated leases.

**Federal Lands Administered by an Agency Outside of the Department of the Interior**

- 3101.51 General requirements.
- 3101.52 Action by the Bureau of Land Management.
- 3101.53 Appeals.
- 3101.60 State's or charitable organization's ownership of surface overlying federally owned minerals.

**Subpart 3102—Qualifications of Lessees**

- 3102.10 Who may hold leases.
- 3102.20 Non-U.S. Citizens.
- 3102.30 Minors.
- 3102.40 Signature.

**Compliance, Certification of Compliance and Evidence**

- 3102.51 Compliance.
- 3102.52 Certification of compliance.
- 3102.53 Evidence of compliance.

**Subpart 3103—Fees, Rentals, and Royalty**

**Payments**

- 3103.11 Form of remittance.
- 3103.12 Where remittance is submitted.

**Rentals**

- 3103.21 Rental requirements.
- 3103.22 Annual rental payments.

**Royalties**

- 3103.31 Royalty on production.
- 3103.32 Minimum royalties.

**Production Incentives**

- 3103.41 Royalty reductions.
- 3103.42 Suspension of operations and/or production.

**Subpart 3104—Bonds**

- 3104.10 Bond obligations.
- 3104.20 Lease bond.
- 3104.30 Statewide bonds.
- 3104.40 Surface owner protection bond.
- 3104.50 Increased amount of bonds.
- 3104.60 Where filed and number of copies.
- 3104.70 Default.
- 3104.80 Termination of period of liability.
- 3104.90 Bonds held prior to [EFFECTIVE DATE OF THE FINAL RULE].

**Subpart 3105—Cooperative Conservation Provisions**

- 3105.10 Cooperative or unit agreement.

**Communitization Agreements**

- 3105.21 Where filed.
- 3105.22 Purpose.
- 3105.23 Requirements.
- 3105.24 Communitization agreement terms.

**Operating, Drilling, or Development Contracts**

- 3105.31 Where filed.
- 3105.32 Purpose.
- 3105.33 Requirements.

**Subsurface Storage of Oil and Gas**

- 3105.41 Where filed.
- 3105.42 Purpose.
- 3105.43 Requirements.
- 3105.44 Extension of lease term.
- 3105.50 Consolidation of leases.

**Subpart 3106—Transfers by Assignment, Sublease, or Otherwise**

- 3106.10 Transfers, general.
- 3106.20 Qualifications of assignees and transferees.
- 3106.30 Fees.

**Forms**

- 3106.41 Transfers of record title and of operating rights (subleases).
- 3106.42 Transfers of other interests, including royalty interests and production payments.
- 3106.43 Mass transfers.
- 3106.50 Description of lands.
- 3106.60 Bond requirements.

**Approval of Transfer or Assignment**

- 3106.71 Failure to qualify.
- 3106.72 Continuing obligation of an assignor or transferor.
- 3106.73 Lease account status.
- 3106.74 Effective date of transfer.
- 3106.75 Effect of transfer.
- 3106.76 Obligations of assignee or transferee.

**Other Types of Transfers**

- 3106.81 Heirs and devisees.
- 3106.82 Change of name.
- 3106.83 Corporate mergers and dissolution of corporations, partnerships, and trusts.
- 3106.84 Sheriff's sale/deed.

**Subpart 3107—Continuation and Extension**

- 3107.10 Extension by drilling.

**Production**

- 3107.21 Continuation by production.
- 3107.22 Cessation of production.
- 3107.23 Leases capable of production.

**Extension for Terms of Agreements**

- 3107.31 Leases committed to an agreement.
- 3107.32 Segregation of leases committed in part.
- 3107.40 Extension by elimination.

**Extension of Leases Segregated by Assignment**

- 3107.51 Extension after discovery on other segregated portions.
- 3107.52 Undeveloped parts of leases in their extended term.
- 3107.53 Undeveloped parts of producing leases.
- 3107.60 Extension of reinstated leases.

**Other Types**

- 3107.71 Payment of compensatory royalty.
- 3107.72 Subsurface storage of oil and gas



**Subpart 3108—Relinquishment, Termination, Cancellation**

3108.10 Relinquishment.

**Termination by Operation of Law and Reinstatement**

3108.21 Automatic termination.

3108.22 Reinstatement at existing rental and royalty rates: Class I reinstatements.

3108.23 Reinstatement at higher rental and royalty rates: Class II reinstatements.

3108.30 Cancellation.

3108.40 Bona fide purchasers.

3108.50 Waiver or suspension of lease rights.

**Subpart 3109—Leasing Under Special Acts****Rights-of-Way**

3109.11 Generally.

3109.12 Application.

3109.13 Notice.

3109.14 Award of lease or compensatory royalty agreement.

3109.15 Compensatory royalty agreement or lease.

3109.20 Units of the National Park System.

3109.21–3109.22 [Reserved]

3109.30 Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

**Authority:** 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, and 1740; and 42 U.S.C. 15801.

**Subpart 3100—Onshore Oil and Gas Leasing: General****§ 3100.3 Authority.**

(a)(1) *Public domain.* Oil and gas in public domain lands and lands returned to the public domain under 43 CFR 2370 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;

(v) Lands north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve—Alaska;

(vi) Lands recommended for wilderness allocation by the surface managing agency;

(vii) Lands within the BLM's wilderness study areas;

(viii) 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;

(ix) 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;

(x) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act (16 U.S.C. 1133) established before midnight, December 31, 1983, unless otherwise provided by law;

(xi) Lands designated under the Wild and Scenic Rivers Act, subject to valid existing rights, and that constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated as a wild river under the Wild and Scenic Rivers Act (16 U.S.C. 1280); and

(xii) Wildlife refuge lands, which are those lands embraced in a withdrawal of 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. No expressions of interest covering wildlife refuge lands will be considered for oil and gas leasing, except as provided by applicable law.

(b)(1) *Acquired lands.* 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 et seq.).

(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;

(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 the BLM's 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;

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act (16 U.S.C. 1133) established before midnight, December 31, 1983, unless otherwise provided by law;

(xiii) Lands designated under the Wild and Scenic Rivers Act, subject to valid existing rights, and that constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated as a wild river under the Wild and Scenic Rivers Act (16 U.S.C. 1280); and

(xiv) Wildlife refuge lands, which are those lands embraced in a withdrawal of 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. No expressions of interest for wildlife refuge lands will be considered except as provided in applicable 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 BLM 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) *Certain lands in Nevada.* 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) *Lands patented to the State of California.* 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) *National Forest Service Lands in Minnesota.* 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 *et seq.*), 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.

(h) 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.

(i)(1) 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 Fish and Wildlife Coordination Act (16 U.S.C. 661), 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.

(2) Representatives of the BLM and the Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those coordination lands which will not be subject to oil and gas leasing. Coordination lands not closed to oil and gas leasing may 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 BLM.

(j) No lands within a refuge in Alaska open to leasing will be available until the Fish and Wildlife Service has first completed compatibility determinations.

#### § 3100.5 Definitions.

As used in this part, the term: *Actual drilling operations* includes not only the physical drilling of a well,

but also the testing, completing or equipping of such well for production.

*Assignment* means a transfer of all or a portion of the lessee's record title interest in a lease.

*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 for a lease parcel in a competitive lease sale. For leases or compensatory royalty agreements issued under 43 CFR subpart 3109, "bid" means an amount or percent of royalty or compensatory royalty that the owner or lessee must pay for the extraction of the oil and gas underlying the right-of-way.

*Competitive auction* means an in-person or internet-based bidding process where leases are offered to the highest bidder.

*Exception* is a limited exemption, for a particular site within the leasehold, to a stipulation.

*Lessee* means a person holding record title in a lease issued by the United States.

*Modification* is a change to the provisions of a lease stipulation for some or all sites within the leasehold and either temporarily or for the term of the lease.

*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.

*Oil and gas agreement* means an agreement between lessees and the BLM to govern the development and allocation of production for existing leases, including, but not limited to, communitization agreements, unit agreements, secondary recovery agreements, and gas storage agreements.

*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. Operating rights include the obligation to comply with the terms of the original lease, as it applies to the area or horizons for the interest acquired, including the responsibility to plug and abandon all wells that are no longer capable of producing, reclaim the lease site, and remedy environmental problems.

*Operating rights owner* means a person 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.

*Operator* means any person, 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.

*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

*Primary term of all other leases* means the initial term of the lease, which is 10 years.

*Qualified bidder* means any person in compliance with the laws and regulations governing a bid.

*Qualified lessee* means any person in compliance with the laws and regulations governing the BLM issued leases held by that person.

*Record title* means a lessee's interest in a lease, which includes the obligation to pay rent and the ability to assign and relinquish the lease. Record title includes the obligation to comply with the lease terms, including requirements relating to well operations and abandonment. Overriding royalty and operating rights are severable from record title interests.

*Responsible bidder* means any person who has not defaulted on the payment of winning bids for BLM-issued oil and gas leases, is capable of fulfilling the requirements of onshore BLM oil and gas leases, and does not have a history of noncompliance with applicable statutes and regulations or with the terms of a BLM-issued oil and gas lease. The term "responsible bidder" does not include persons who bid with no intention of paying a winning bid or persons who default on a winning bid.

*Responsible lessee* means any person who has not defaulted on previous winning bids, is capable of fulfilling the requirements of onshore Federal oil and gas leases, and does not have a history of noncompliance with applicable statutes or the terms of a BLM-issued oil and gas lease.

*Sublease* 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.

*Transfer* means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: *Assignment* and *Sublease*. *Unit operator* means the person authorized under the unit

agreement approved by the Department of the Interior to conduct operations within the unit.

*Waiver* is a permanent exemption from a lease stipulation.

**§ 3100.9 Information collection.**

(a) Authority: 44 U.S.C. 3501-3520.

(b)(1) *Purpose*. The Paperwork Reduction Act of 1995 generally provides that an agency may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) Control Number. This part displays OMB control numbers assigned to information collection requirements contained in the BLM's regulations at 43 CFR part 3100. This section aids in fulfilling the requirements of the Paperwork Reduction Act to display current OMB Control Numbers for these information collection requirements. Interested persons should consult <https://www.reginfo.gov> for the most current information on these OMB control numbers; including among other things, the justification for the information collection requirements, description of likely respondents, estimated burdens, and current expiration dates.

(2) *Table 1 to Paragraph (b)—OMB Control number assigned pursuant to the Paperwork Reduction Act.*

43 CFR part or section	OMB Control No.
§§ 3100, 3103.41, 3120, and Subpart 3162 .....	1004-0185
§§ 3106, 3135, and 3216 .....	1004-0034
Part 3130 .....	1004-0196
Subpart 3195 .....	1004-0179
§ 3150 .....	1004-0162
§§ *, 3160 3171, 3176, and 3177 .....	1004-NEW
§§ 3172, 3173, 3174, 3175 .....	1004-0137
§§ 3162.3-1, 3178.5, 3178.7, 3178.8, 3178.9 and Subpart *3179 .....	1004-0211

\* Information collection requirements for onshore oil and gas operations are generally accounted for under OMB Control Number 1004-NEW; however, information collection requirements pertaining to particular to waste prevention, production subject to royalties, and resource conservation are accounted for under OMB Control Number 1004-0211.

**§ 3100.10 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.

**Drainage**

**§ 3100.21 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 will be compensated for such drainage. Such agreements must be made with the consent of any lessee affected by an agreement. Such lands may also be offered for lease in accordance with 43 CFR part 3120.

**§ 3100.22 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 must 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 43 CFR 3162.2-4.

## Options

### § 3100.31 Enforceability.

(a) No option to acquire any interest in a lease is enforceable if entered into for a period of more than 3 years (including any renewal period that may be provided for in the option).

(b) No option or renewal thereof is enforceable until a signed copy or notice of the option has been filed in the proper BLM office. Each such signed copy or notice must 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 and the type and percentage of interests to be conveyed and retained by the parties to the option, including the date and expiration date of the option.

(c) The signatures of all parties to the option or their duly authorized agents. The signed copy or notice of the option required by this paragraph must 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 must 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.

### § 3100.32 Effect of option on acreage.

The acreage to which the option is applicable will 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.

### § 3100.33 Option statements.

Each option holder must file in the proper BLM office within 90 days after June 30 and December 31 of each year a statement showing:

- (a) Any changes to the statements submitted under § 3100.31(b); and
- (b) The number of acres covered by each option and the total acreage of all options held in each State.

### § 3100.40 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this part 3100 and parts 3120 through 3190 of this chapter are subject to 43 CFR part 2, except as provided in paragraph (c) of this section. 43 CFR part 2 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 43 CFR part 2 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 3120 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. The BLM will keep all such data and information confidential to the extent allowed by 43 CFR 2.26.

(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) The 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) The BLM will notify the Indian mineral owner(s) identified in the records of the Bureau of Indian Affairs (BIA) and give them a reasonable period of time to state objections to disclosure, using the standards and procedures of 43 CFR 2.28, 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 43 CFR 2.28, the BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA; but

(iii) The 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.

## Subpart 3101—Issuance of Leases

### Lease Terms and Conditions

#### § 3101.11 Lease form.

A lease will be issued only on the standard form approved by the Director.

#### § 3101.12 Surface use rights.

A lessee will have the right to use only 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 applicable requirements, including stipulations attached to the lease, restrictions deriving from specific, nondiscretionary statutes, and such reasonable measures as may be required and detailed by the authorized officer to avoid, minimize, or mitigate adverse impacts to other resource values, land uses or users, federally recognized Tribes, and underserved communities. Such reasonable measures may include, but are not limited to, relocation or modification to siting or design of facilities, timing of operations, specification of interim and final reclamation measures, and specification of rates of development and production in the public interest. Modifications that are consistent with lease rights include, but are not limited to, requiring relocation of proposed operations by more than 800 meters and prohibiting new surface disturbing operations for a period of up to 90 days in any lease year.

#### § 3101.13 Stipulations and information notices.

(a) The BLM may consider the sensitivity and importance of potentially affected resources and any uncertainty concerning the present or future condition of those resources and will assess whether a resource is adequately protected by stipulation without regard for the restrictiveness of the stipulation on operations.

(b) The authorized officer may require stipulations as conditions of lease issuance. Stipulations will become part of the lease and will supersede inconsistent provisions of the standard lease form. Any party submitting a bid under subpart 3120 will be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the Notice of Competitive Lease Sale available from the proper BLM office.

(c) The BLM may attach an information notice to the lease. 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 may not be a basis for denial of lease operations.

(d) Where the surface managing agency is the Fish and Wildlife Service, leases will 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 will be subject to site-specific stipulations prescribed by the Fish and Wildlife Service.

**§ 3101.14 Modification, waiver, or exception.**

(a) A stipulation included in an oil and gas lease will be subject to modification, waiver, or exception if the authorized officer determines, in conjunction with any surface management agency, that the factors leading to its inclusion in the lease have changed sufficiently to make the specific protections provided by the stipulation no longer justified. If the authorized officer determines that a change to a lease term or stipulation is substantial or a stipulation involves an issue of major concern to the public, the changes to the stipulation will be subject to public review for at least 30 calendar days.

(b) Prior to lease issuance, if the BLM determines that an additional stipulation will be added to the lease or a modification to an existing stipulation is required, the potential lessee must be given an opportunity to accept the additional or modified stipulation. If the potential lessee does not accept the additional or modified stipulation, the BLM may reject the bid, and may include the lands in the next Notice of Competitive Lease Sale. If the change in stipulation(s) increases the value of the parcel, the BLM will reject the bid, and will include the lands in the next Notice of Competitive Lease Sale.

(c) After lease issuance, if a lessee does not accept an additional or modified stipulation, that additional or modified stipulation is not binding on the lessee and is without effect. When a stipulation is required by the relevant Resource Management Plan, or surface management agency land management plan, and was inadvertently omitted, a lessee's failure to sign and accept changes in the stipulations when

requested by the authorized officer may subject the lease to cancellation.

**Acreage Limitations**

**§ 3101.21 Public domain lands.**

(a) No person may 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 two leasing districts. The boundary between the two leasing districts in Alaska begins at the northeast corner of the Tetlin National Wildlife Refuge as established by section 302(8) of the Alaska National Interest Lands Conservation Act, 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.

**§ 3101.22 Acquired lands.**

No person may 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. 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 will be charged as acreage holdings. The acreage embraced in a future interest lease will not be charged as acreage holdings until the lease for the future interest becomes effective.

**§ 3101.23 Excepted acreage.**

(a) The following acreage will not be included in computing acreage limitations:

(1) Acreage under any lease any portion of which is committed to any federally approved oil and gas agreement;

(2) Acreage under any lease for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year; and

(3) Acreage under leases subject to an operating, drilling or development contract approved by the Secretary, as provided in 43 CFR 3105.30.

(b) Acreage subject to offers to lease, overriding royalties and payments out of production will not be included in computing acreage limitations.

**§ 3101.24 Excess acreage.**

(a) Where, as the result of the termination or contraction of an oil and gas agreement or the elimination of a lease from an operating, drilling, or development contract, a party holds or controls excess accountable acreage, that party will have 90 calendar days from the date of termination, contraction or elimination, 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, a party acquired acreage in excess of the amount permitted, the party holding the excess acreage will have 180 calendar 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 days provided herein.

(b) If any person is found to hold accountable acreage in violation of the provisions of these regulations, lease(s) or interests therein will 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 will be cancelled in the inverse order of acquisition.

**§ 3101.25 Computation.**

The accountable acreage of a party owning an undivided interest in a lease will be the party's proportionate part of the total lease acreage.

**§ 3101.30 Leases within unit areas, joinder evidence required.**

Before issuance of a lease for lands within an approved unit, the lease offeror must file evidence with the proper BLM office that it has joined in the unit agreement and unit operating agreement or a statement giving satisfactory reasons for its failure to enter into such agreement. If such statement is satisfactory to the authorized officer, the lessee may be permitted to operate independently but will be required to conform to the terms and provisions of the unit agreement with respect to such operations.

**§ 3101.40 Terminated leases.**

(a) The authorized officer will not issue a lease for lands which have been

covered by a lease which terminated automatically until 90 calendar days after the date of termination.

(b) The authorized officer will 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.

#### **Federal Lands Administered by an Agency Outside of the Department of the Interior**

##### **§ 3101.51 General requirements.**

Public domain and acquired lands will be leased only with the consent of the surface managing agency, which, upon receipt of a description of the lands from the authorized officer, will report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

##### **§ 3101.52 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 will incorporate the stipulations into any lease which it may issue. The authorized officer may add stipulations.

(b) The authorized officer will not issue a lease on lands to which the surface managing agency objects or withholds consent. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

(c) The authorized officer will review all recommendations and will accept all reasonable recommendations of the surface managing agency.

(d) Where the surface managing agency is the Fish and Wildlife Service, there will 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 must be conducted in accordance with BLM stipulations.

##### **§ 3101.53 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 43 CFR part 4.

(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 will be subject to the administrative remedies if provided for by the particular surface managing agency.

##### **§ 3101.60 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 will 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 may be given consideration and each case will be 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.

#### **Subpart 3102—Qualifications of Lessees**

##### **§ 3102.10 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.

##### **§ 3102.20 Non-U.S. Citizens.**

(a) Leases or interests therein may be acquired and held by non-U.S. Citizens 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 BLM State office.

(b) The Committee on Foreign Investment in the United States is authorized to review covered real estate transactions and to mitigate any risk to the national security of the United States that arises as a result of such transactions. Covered real estate transactions may include certain transactions involving the Federal mineral estate (see 31 CFR part 802).

##### **§ 3102.30 Minors.**

Leases must not be acquired or held by someone considered to be 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 on their behalf. Such legal guardians or trustees must be citizens of the United States or otherwise meet the provisions of 43 CFR 3102.10.

##### **§ 3102.40 Signature.**

Signatures on all applications and BLM forms certify acceptance of lease terms and stipulations, as well as compliance with the regulations under 43 CFR part 3100. Refer to § 3102.50 for certification of compliance and evidence. The BLM also accepts electronic signatures and submissions.

(a) A bid to lease must be made on a current form approved by the Director. Copies must be exact reproductions of the official approved form, without additions, omissions, or other changes. When the bid is filed in person at the proper BLM office, the bid must be typed or printed plainly, signed, and dated by the offeror or an authorized agent on behalf of the present or potential lessee. Bids may be made to the BLM by other arrangements, such as electronically signed and filed, when specifically authorized by the BLM.

(b) Documents signed by any party other than the present or potential lessee must 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.

### **Compliance, Certification of Compliance and Evidence**

#### **§ 3102.51 Compliance.**

Only responsible and qualified bidders and lessees may own, hold, or control an interest in a lease or prospective lease. Responsible and qualified bidders and lessees, including corporations, and all members of associations, including partnerships of all types, will, without exception, be qualified and in compliance with the Act. Compliance means that the persons are:

(a) Citizens of the United States (see § 3102.10) or non-U.S. citizens who own stock in a corporation organized under State or Federal law (see § 3102.20);

(b) In compliance with the Federal acreage limitations (see § 3101.20);

(c) Not minors (see § 3102.30);

(d) Except for an assignment or transfer under 43 CFR subpart 3106, in compliance with section 2(a)(2)(A) of the Act (30 U.S.C. 201(2)(A)), in which case the signature on a bid or lease constitutes evidence of compliance. A lease issued to any person in violation of this paragraph (d) will be subject to the cancellation provisions of 43 CFR 3108.30.

(e) Not in violation of the provisions of section 41 of the Act (30 U.S.C. 195); and

(f) In compliance with section 17(g) of the Act (30 U.S.C. 226(g)), in which case the signature on an offer, lease, assignment, or 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 43 CFR 3400.0–5(rr), has not failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person has an interest. A person is noncompliant with section 17(g) of the Act when they fail to comply with their reclamation obligations or other standards established under 30 U.S.C. 226 in the time specified in a notice from the BLM. A lease issued, or an assignment or transfer approved, to any such person in violation of this paragraph (f) will be subject to the cancellation provisions of 43 CFR 3108.30, 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 will 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 43 CFR 3106.10(d) and section 30A of the Act (30 U.S.C. 187(a)). 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 43 CFR 3102.53.

(h) Not excluded or disqualified from participating in a transaction covered by Federal non-procurement debarment and suspension (2 CFR parts 180 and 1400), unless the Department explicitly approves an exception for a transaction pursuant to the regulations in those parts.

#### **§ 3102.52 Certification of compliance.**

Any party(s) seeking to obtain an interest in a lease must certify that it is in compliance with the Act as set forth in 43 CFR 3102.51. A corporation or publicly traded association, including a publicly traded partnership, must 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 a competitive bid form or request for approval of a transfer of record title or of operating rights (sublease), constitutes certification of compliance.

#### **§ 3102.53 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 will result in adjudication of the action based on the incomplete submission.

### **Subpart 3103—Fees, Rentals and Royalty Payments**

#### **§ 3103.11 Form of remittance.**

All remittances must be by personal check, cashier's check, certified check, or money order, and must be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Office of Natural Resources Revenue, as appropriate. Payments made to the BLM may be made by other arrangements

such as by electronic funds transfer or credit card when specifically authorized by the BLM. In the case of payments made to the ONRR, such payments may also be made by electronic funds transfer.

#### **§ 3103.12 Where remittance is submitted.**

(a)(1) All processing fees for the respective lease applications, nominations, or requests for approval of a transfer found in the fee schedule in § 3000.120 of this chapter and all first-year rentals and bonuses for leases issued under 43 CFR part 3100 must be paid to the proper BLM office.

(2) All second-year and subsequent rentals, except for leases specified in paragraph (b) of this section, must be paid to the ONRR through its online rental payment system.

(b) All rentals and royalties on producing leases, communitized leases in producing spacing units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all payments under subsurface storage agreements must be paid to the ONRR.

### **Rentals**

#### **§ 3103.21 Rental requirements.**

(a) Each competitive bid submitted in response to a Notice of Competitive Lease Sale must be accompanied by full payment of the first year's rental based on the total acreage in the Notice of Competitive Lease Sale.

(b) If the acreage is incorrectly indicated in 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 will not be prorated for any lands in which the United States owns an undivided fractional interest and must be paid for the full acreage in such lands.

#### **§ 3103.22 Annual rental payments.**

Rentals must be paid on or before the lease anniversary date. A full year's rental must be submitted even when less than a full year remains in the lease term, except as provided in 43 CFR 3103.42(d). Failure to make the required payment on or before the lease anniversary date will cause a lease to terminate automatically by operation of law. If the designated ONRR office is not open on the anniversary date, payment received on the next day the designated ONRR office is open to the public will be deemed to be timely made. Payments made to an improper BLM or ONRR office will be returned and will not be forwarded to the designated ONRR



office. Rental must be paid at the following rates:

(a) The annual rental for all leases is as stated in the lease;

(b) Rental will 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 will be due in addition to compensatory royalty;

(c) For leases that are reinstated under § 3108.23, the annual rental will be as specified in 43 CFR 3000.130 beginning with the termination date upon the filing of a petition to reinstate a lease; and

(d) Each succeeding time a specific lease is reinstated under § 3108.23, the annual rental on that lease will increase by an additional \$10 per acre or fraction thereof.

### Royalties

#### § 3103.31 Royalty on production.

(a) Royalty on production will be payable only on the mineral interest owned by the United States. Royalty must be paid in the amount or value of the production removed or sold as follows:

(1) For leases issued before August 16, 2022, the rate prescribed in the lease or in applicable regulations at the time of lease issuance;

(2) For leases issued between August 16, 2022, and August 16, 2032, the royalty rate will be 16.67 percent;

(3) For leases issued on or after August 16, 2032, a rate of not less than 16.67 percent on all leases issued under the Act;

(4) A minimum of 16.67 percent on all leases issued under 43 CFR subpart 3109;

(5) For reinstated leases, the rate used for royalty determination that applies to new leases at the time of the reinstatement plus 4 percentage points, plus an additional 2 percentage points for each succeeding reinstatement. In no case will royalties on the reinstated lease be less than 20 percent.

(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 12½ percent royalty rate.

(c) The average production per well per day for oil and gas will be determined pursuant to 43 CFR 3162.7–4.

(d) Payment of a royalty on the helium component of gas will not convey the right to extract the helium from the gas stream. Applications for the right to extract helium from the gas stream will be made under 43 CFR part 16.

#### § 3103.32 Minimum royalties.

(a) A minimum royalty must be paid 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 on unitized leases that lack production, the minimum royalty must be paid 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 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 will not be prorated for any lands in which the United States owns a fractional interest and must be paid on the full acreage of the lease.

(c) Minimum royalties and rentals on non-participating acreage must be paid to the ONRR.

(d) The minimum royalty provisions of this section are applicable to leases reinstated under 43 CFR 3108.23.

(e) If the royalty paid during any year aggregates to less than the minimum royalty, then the lessee must pay the difference at the end of the lease year.

### Production Incentives

#### § 3103.41 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 produced in paying quantities 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 must be filed by the operator/payor in the proper BLM office. 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 must 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 must 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 produced in paying quantities upon the fixed royalty or rental. Where the application is for a reduction in royalty, complete information must 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 must 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 a reduction of royalty for leases reinstated under 43 CFR 3108.23. Petitions to waive, suspend or reduce rental or minimum royalty for leases reinstated under 43 CFR 3108.23 may be made under this section.

#### § 3103.42 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 must be filed in the proper BLM office. Complete information showing the necessity of such relief must be furnished.

(b) The term of any lease will be adjusted to account for the suspension. Beginning on the date the suspension is lifted, the term will be extended by the time that was remaining on the term of the lease on the effective date of the suspension. No lease will expire during any suspension.

(c) A suspension will take effect as of the time specified in the direction or assent of the authorized officer, in accordance with the provisions of 43 CFR 3165.1.

(d) Rental and minimum royalty payments will 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. However, if there is any production sold or removed during the suspension, the lessee must pay royalty on that production.

(e) Rental and minimum royalty payments will resume on the first day of the lease month in which the suspension of all operations and production is lifted. Where rentals are creditable against royalties and have been paid in advance, proper credit may be allowed on the next rental or royalty due under the terms of the lease.

(f) Rental and minimum royalty payments will not be suspended during any period of suspension of operations only or suspension of production only.

(g) 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 will be regarded as lifting the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (e) of this section.

(h) The relief authorized under this section also may be obtained for any Federal lease included within an approved oil and gas agreement. Oil and gas agreement obligations will not be suspended by relief obtained under this section but will be suspended only in accordance with the terms and conditions of the specific agreement.

### Subpart 3104—Bonds

#### § 3104.10 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator must 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 must 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 43 CFR 3162.3 and 3162.5 and orders issued by the authorized officer.

(b) Surety bonds must be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds must be accompanied by a:

- (1) Cashier's check;
- (2) Certified check; or
- (3) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond.

Negotiable Treasury securities must 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.

#### § 3104.20 Lease bond.

The operator must be covered by a bond in its own name as principal or obligor in an amount of not less than \$150,000 for each lease conditioned upon compliance with all of the terms of the lease. Additional bonding may be posted by a lessee, or owner of operating rights (sublessee), as they are ultimately responsible under § 3106.72. Where two or more principals have interests in different formations or portions of the lease, separate bonds may be posted.

#### § 3104.30 Statewide bonds.

In lieu of lease bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than \$500,000 covering all leases and operations in any one State.

#### § 3104.40 Surface owner protection bond.

(a) If a good-faith effort by the Federal lessee, its operator, or representatives has not resulted in an agreement with the surface owner to pay compensatory damages to the surface owner, the authorized officer will require an adequate surface owner protection bond in an amount sufficient to indemnify the surface owner against the reasonable and foreseeable damages to crops and tangible improvements from the proposed operations that would not otherwise be covered by a bond held by the BLM. This surface owner protection bond is not part of the bond obligations under lease or statewide bonds.

(b) The surface owner protection bond must be provided on a BLM-approved form.

(c) The surface owner protection bond may be a personal or surety bond and must be not less than \$1,000.

(d) The BLM will notify the surface owner of the proposed surface owner protection bond amount.

(e) If the surface owner objects to the sufficiency of the surface owner protection bond, the BLM authorized officer will determine the sufficiency of the bond necessary to indemnify the surface owner for the reasonable and foreseeable damages to crops and tangible improvements.

#### § 3104.50 Increased amount of bonds.

(a) When an operator desiring approval of an APD has caused the BLM, or a surface management agency, to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the APD, due to failure to plug a well or reclaim lands completely in a timely manner, the authorized officer will require, prior to approval of the APD, a bond in an amount equal to the costs, when higher than the minimum bond amounts, 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 ONRR 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 will it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the ONRR, plus the amount of money owed to the lessor due to previous violations remaining outstanding.

#### § 3104.60 Where filed and number of copies.

All bonds must 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 will be acceptable, unless such form has been declared obsolete by the Director prior to the filing of such bond. For purposes of 43 CFR 3104.20 and

3104.30, bonds or bond riders must be filed in the BLM State office having jurisdiction over the lease or operations covered by the bond or rider.

**§ 3104.70 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 will 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 must 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 bonds for each lease covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal must make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and must 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 must be made within 6 months or less after receipt of notice from the authorized officer. Failure to comply with these requirements may:

(1) Subject all leases covered by such bond(s) to cancellation under the provisions of 43 CFR 3108.30;

(2) Prevent the bond obligor or principal from acquiring any additional Federal leases in accordance with 43 CFR 3102.51(f); and

(3) Result in the bond obligor or principal being referred to the Department's Suspension and Debarment Program under 2 CFR part 1400 to determine if the person will be suspended or debarred from doing business with the Federal Government.

**§ 3104.80 Termination of period of liability.**

The authorized officer will 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.

**§ 3104.90 Bonds held prior to [EFFECTIVE DATE OF THE FINAL RULE].**

(a) Unit operator bonds accepted by the BLM prior to [EFFECTIVE DATE OF THE FINAL RULE] must be replaced with a statewide bond by [DATE TWO YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE]. The BLM will not accept any new unit operator bonds.

(b) All bonds not meeting the appropriate minimum bond amount as of [EFFECTIVE DATE OF THE FINAL RULE] must meet that amount by:

(1) [DATE ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE] for lease bonds; and

(2) [DATE TWO YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] for statewide bonds;

(c) All nationwide bonds must be converted to statewide bonds by [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

**Subpart 3105—Cooperative Conservation Provisions**

**§ 3105.10 Cooperative or unit agreement.**

(a) The suggested contents of such an agreement and the procedures for obtaining approval are contained in 43 CFR part 3180.

(b) An application to form a unit agreement, a unit expansion, or a designation of a successor operator must include the processing fee found in the fee schedule in § 3000.120 of this chapter.

**Communitization Agreements**

**§ 3105.21 Where filed.**

(a) An application to form a communitization agreement (CA) or modify an existing agreement must be filed with the proper BLM office for final approval.

(b) An application for a CA must include:

(1) A statement as to whether the proposed CA deviates from the BLM's current model CA form, and a certification that the applicant received the required signatures;

(2) An Exhibit A displaying a map of the area covered by the proposed agreement and the separate agreement tracts; and

(3) An Exhibit B displaying the separate tracts and ownership;

(c) To ensure accurate reporting to ONRR, an application for a CA should be submitted at least 90 calendar days prior to first production.

(d) An application for designations of successor operator for a CA must include the processing fee found in the fee schedule in § 3000.120 of this chapter.

**§ 3105.22 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 a CA 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 will be deemed to be operations or production as to each lease committed thereto.

**§ 3105.23 Requirements.**

(a) The CA must describe the separate tracts comprising the drilling or spacing unit, must show the apportionment of the production or royalties to the several parties, the name of the operator, and contain adequate provisions for the protection of the interests of the United States. The agreement must be signed by or on behalf of all necessary parties and must 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 will be effective as to the Federal lease(s) involved only if approved by the authorized officer. Approved CAs 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 will be the effective date of the order.

(c) The public interest requirement for an approved CA will 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 establishes 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 CA 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 will be invalid and no Federal lease included in the CA will be eligible for an extension under 43 CFR 3107.40.

**§ 3105.24 Communitization agreement terms.**

The CA will remain in effect for a period of 2 years from the effective date or approval date, whichever is later, and so long thereafter as communitized substances may be produced in paying quantities, or as otherwise specified in the agreement.

## Operating, Drilling or Development Contracts

### § 3105.31 Where filed.

A contract submitted for approval under this section must be filed with the proper BLM office.

### § 3105.32 Purpose.

Approval of operating, drilling or development contracts will 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.

### § 3105.33 Requirements.

The contract must 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 must be submitted for approval at the same time and full disclosure of the projects made.

## Subsurface Storage of Oil and Gas

### § 3105.41 Where filed.

(a) Applications for subsurface storage or designations of successor operator must be filed in the proper BLM office.

(b) The final gas storage agreement signed by all the parties in interest must be submitted to the BLM.

(c) Applications for subsurface storage agreements or designations of successor operator must include the processing fee found in the fee schedule in § 3000.120 of this chapter.

### § 3105.42 Purpose.

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 will 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. The BLM will require a bond as provided under § 3104 for operations conducted in a subsurface storage agreement.

### § 3105.43 Requirements.

The agreement must 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 information demonstrating such storage would avoid waste and promote the conservation of natural resources.

### § 3105.44 Extension of lease term.

Any lease used for the storage of oil or gas will be extended for the period of storage under an approved agreement. The obligation to pay annual lease rent continues during the extended period.

### § 3105.50 Consolidation of leases.

(a) Leases may be consolidated upon written request of the lessee filed with the proper BLM office. The request must identify each lease involved by serial number and justify the consolidation. Each request for a consolidation of leases must include the processing fee found in the fee schedule in § 3000.120 of this chapter.

(b) All parties holding any undivided interest in any lease involved in the consolidation must agree to enter into the same lease consolidation.

(c) Leases containing different types of lands (public domain lands vs. acquired lands), mixed fractional mineral interest, or provisions required by law that cannot be reconciled, will not be consolidated.

(d) Consolidation of leases will not exceed acreage limits of 2,560 acres for competitive leases and 10,240 acres for noncompetitive leases.

(e) The effective date, the anniversary date, and the primary term of the consolidated lease will be those of the oldest original lease included in the consolidation. The term of a consolidated lease may be extended beyond the primary lease term under subpart 3107.

(f) The highest royalty and rental rates of the each of the leases to be consolidated will apply to the consolidated lease.

(g) Lease stipulations and other terms and conditions of each original lease, except as noted in paragraphs (e) and (f) of this section, will continue to apply to that lease or any portion thereof regardless of the lease becoming a part of a consolidated lease.

## Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

### § 3106.10 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.

(b) An assignment of a separate zone, deposit, depth, formation, specific well, or of part of a legal subdivision, will be denied.

(c) Within the boundaries of a Federal lease, operating rights may only be divided with respect to legal subdivisions, depth ranges, and formations.

(d) An assignment of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska will be denied 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. Reference 43 CFR 3102.51(g) for certification of compliance.

(e) The rights of the transferee to a lease or an interest therein will not be recognized by the Department until the transfer has been approved by the authorized officer.

(f) 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.

(g) A request for approval of a transfer of a lease or interest in a lease must be filed within 90 days from the date of its execution. The 90-day filing period will 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.

(h) A transfer of production payments or overriding royalty or other similar payments, arrangements, or interests must be filed in the proper BLM office but will not require approval.

(i) No transfer of an offer to lease or interest in a lease will be approved prior to the issuance of the lease.

### § 3106.20 Qualifications of assignees and transferees.

Assignees and transferees must comply with the provisions of 43 CFR subpart 3102 and post any bond that may be required. Only responsible and qualified lessees may own, hold, or control an interest in a lease.

### § 3106.30 Fees.

(a) Each transfer of record title or of operating rights (sublease) for each lease must include payment of the processing fee for assignments and transfers found in the fee schedule in § 3000.120 of this chapter.

(b) Each transfer of overriding royalty or payment out of production must include payment of the processing fee for overriding royalty transfers or payments out of productions found in the fee schedule in § 3000.120 of this chapter for each lease to which it applies.

## Forms

### § 3106.41 Transfers of record title and of operating rights (subleases).

Each transfer of record title or of an operating right (sublease) must be filed with the proper BLM office on a current form approved by the Director. A separate form for each transfer, in duplicate, must be filed for each lease out of which a transfer is made. The BLM does not require a duplicate copy of the assignment or transfer when it is electronically submitted. Copies of documents other than the current form approved by the Director must not be submitted. However, reference(s) to other documents containing information affecting the terms of the transfer may be made on the submitted form.

### § 3106.42 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 must be described for each lease on the current assignment or transfer form when filed.

(b) A single executed copy of each such transfer of other interests for each lease must be filed with the proper BLM office.

### § 3106.43 Mass transfers.

(a) A mass transfer may be utilized in lieu of the provisions of 43 CFR 3106.41 and 3106.42 when an assignor or transferor transfers interests of any type in more than one Federal lease to the same assignee or transferee.

(b) The mass transfer must be filed with each proper BLM office administering any lease affected by the mass transfer. The transfer must be on a current form approved by the Director 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 43 CFR 3106.50.

(c)(1) One duplicate copy of the form must 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. The BLM does not require a duplicate copy of the assignment or transfer when it is electronically submitted.

(2) When the BLM does not receive the requisite number of copies, the applicant must reimburse the BLM for

the full costs incurred to make the required number of copies. The BLM will waive fees under one dollar.

(d) A mass transfer must include the processing fee for assignments and transfers found in the fee schedule in § 3000.120 of this chapter for each such interest transferred for each lease.

### § 3106.50 Description of lands.

Each assignment of record title must describe the lands involved in the same manner as the lands are described in the lease, except no land description is required when 100 percent of the entire area encompassed within a lease is conveyed.

### § 3106.60 Bond requirements.

Where the lessee or operating rights owner (sublessee) maintains a bond covering the lease (including a statewide bond), the assignee of record title interest or transferee of operating rights in such lease must furnish, if bond coverage continues to be required, a proper bond that will cover any obligations arising under the lease to the same extent as the assignor's or transferor's bond.

### Approval of Transfer or Assignment

#### § 3106.71 Failure to qualify.

The BLM will not approve any assignment of record title or transfer of operating rights (sublease) if any party in interest is not a qualified lessee, or if the bond is insufficient. The BLM approves assignments and transfers for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

#### § 3106.72 Continuing obligation of an assignor or transferor.

(a) The lessee or sublessee remains responsible for performing all obligations under the lease until the date the BLM approves an assignment of record title interest or transfer of operating rights.

(b) After the BLM approves the assignment or transfer, the assignor or transferor 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 drilled, installed, or used before the effective date of the assignment or transfer.

#### § 3106.73 Lease account status.

The BLM will not approve a transfer if the lease account is delinquent with

respect to: royalty payments; lease obligations, such as, but not limited to, rent and minimum royalty; or production reporting to ONRR for a lease in non-terminable status.

#### § 3106.74 Effective date of transfer.

The signature of the authorized officer on the official form will constitute approval of the assignment of record title or transfer of operating rights (sublease) which will 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.

#### § 3106.75 Effect of transfer.

An assignment 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. An assignment of record title to less than 100 percent of a portion of the lease or a transfer of operating rights (sublease) will not segregate the transferred and retained portions into separate leases.

#### § 3106.76 Obligations of assignee or transferee.

(a) The assignee of record title agrees to comply with the terms of the original lease during the lease tenure. The assignee assumes 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 existed at the time of the transfer. When required, the record title holder must also maintain an adequate bond to ensure performance of these responsibilities.

(b) The transferee of operating rights agrees to comply with the terms of the original lease as it applies to the area or horizons for the interest acquired. The transferee assumes the responsibility to plug and abandon all wells that 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 of the transfer. When required, the operating rights holder must also maintain an adequate bond to ensure performance of these responsibilities.

### Other Types of Transfers

#### § 3106.81 Heirs and devisees.

(a) If an offeror, applicant, lessee or transferee dies, their rights will be

assigned or transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of legal documents demonstrating that the assignee or transferee is recognized as the successor of the deceased.

(b) The filing must include the processing fee for the assignment to an heir/devisee found in the fee schedule in § 3000.120 of this chapter with the request to assign lease rights.

(c) The filing must include a qualification statement demonstrating qualification to hold an interest in a lease in accordance with 43 CFR subpart 3102. Any ownership or interest otherwise forbidden by the regulations in this part which may be acquired by descent, will, judgment 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 may be subject to cancellation.

(d) A bond rider or replacement bond may be required for any bond(s) previously furnished by the decedent.

#### **§ 3106.82 Change of name.**

(a) A legally recognized change of name of a lessee or sublessee must be reported to the proper BLM office. The notice of name change must be submitted in writing with adequate information concerning the name change. For a corporate name change, the request must include the Secretary of State's Certificate of Name Change, along with the Articles of Incorporation, or Amendment, if available.

(b) An entity must include with the notice of name change the required processing fee listed in the fee schedule in § 3000.120 of this chapter.

(c) If a bond(s) has been furnished, a change of name on the bond may be made by surety consent or a rider to the original bond or by a replacement bond.

#### **§ 3106.83 Corporate mergers and dissolution of corporations, partnerships, and trusts.**

(a) In the event a corporate merger affects leases where property of the dissolving corporation to the surviving corporation is accomplished by operation of law, an assignment of any affected lease interest is not required. An entity must notify the BLM of the merger and provide copies of the Secretary of State's Certificate of Merger, along with the Articles of Incorporation, or Amendment, if available, to the BLM.

(b) The BLM will not recognize any transfers provided by the Articles of Dissolution unless an entity has filed with the BLM a Certificate of

Dissolution of an incorporated entity, certified as accepted by the State where the entity was incorporated.

(c) An entity must file with the BLM a dissolution of a partnership or trust through an order or decree that authorizes settlement, discharge, and distribution of the lease holdings and/or interests for official recognition of the assignment of lease interests.

(d) An entity must include the processing fee for corporate merger found in the fee schedule in § 3000.120 of this chapter.

(e) The authorized officer may require a bond rider or replacement bond for all affected corporations, partnerships or trusts.

#### **§ 3106.84 Sheriff's sale/deed.**

(a) Where a notice of sale of the leasehold interest is published pursuant to State law applicable to the execution of sales of real property, the purchaser must submit a copy of the Sheriff's Certificate of Sale to the proper BLM office after any redemption period has passed.

(b) When submitting the certificate described in paragraph (a), an entity must include the processing fee for sheriff's deed found in the fee schedule in § 3000.120 of this chapter.

(c) The purchaser(s) must file a qualification statement to hold an interest in a lease in accordance with 43 CFR subpart 3102. Failure to provide a qualification statement after 2 years will result in the BLM cancelling the lease or interest.

(d) If a bond has been furnished by the previous interest holder, the authorized officer may require a new bond.

#### **Subpart 3107—Continuation and Extension**

##### **§ 3107.10 Extension by drilling.**

(a) 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 oil and gas agreement upon which such drilling takes place, will be extended for 2 years subject to the rental being timely paid as required by 43 CFR 3103.20, and subject to the provisions of 43 CFR 3105.23 and 3186.1, if applicable. The BLM will not grant a drilling extension for a lease in its extended term.

(b) Actual drilling operations must be conducted in a manner that a reasonable person 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, it must be taken to a depth sufficient to penetrate at least one formation recognized in the area as potentially productive of oil or gas, or where an existing well is reentered, it must be taken to a depth sufficient to penetrate at least one 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.

(c) When a BLM-approved directional or horizontal well is drilled within the leased area from an off-lease location with the intent to produce from the leased area, the BLM will consider drilling to have commenced on the leased area when drilling is commenced at the off-lease location.

#### **Production**

##### **§ 3107.21 Continuation by production.**

A lease will be extended so long as oil or gas is being produced in paying quantities.

##### **§ 3107.22 Cessation of production.**

A lease in its extended term because of production (and lacking a well capable of production in paying quantities) will not expire upon cessation of production, if, within 60 calendar days of cessation of production, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction. If these reworking or drilling operations fail to result in production in paying quantities, the lease will expire by operation of law, effective as of the date production ceased.

##### **§ 3107.23 Leases capable of production.**

No lease for lands on which there is a well capable of producing oil or gas in paying quantities will 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 calendar days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to do so. Such production must be continued unless and until suspension of production is granted by the authorized officer.

#### **Extension for Terms of Agreements**

##### **§ 3107.31 Leases committed to an agreement.**

(a) Any lease or portion of a lease committed to an oil and gas agreement that contains a general provision for

allocation of oil or gas will continue in effect so long as the lease or portion thereof remains subject to the agreement; *provided*, that there is production of oil or gas in paying quantities under the agreement prior to the expiration date of such lease.

(b) A well that is drilled and completed on a lease committed to a unit agreement, and that is capable of production in paying quantities on a lease basis, will extend the term of all expiring Federal leases committed to the unit agreement for the term of the unit agreement and for so long as the well is capable of production in paying quantities.

**§ 3107.32 Segregation of leases committed in part.**

(a) Any lease committed after July 29, 1954, to any unit agreement, which covers lands within and lands outside the area covered by the agreement, will be segregated, as of the effective date of commitment to the unit, into separate leases; one covering the lands committed to the agreement, the other lands not committed to the agreement. For unproven areas, such segregation will occur only when the public interest requirement is satisfied pursuant to 43 CFR 3183.4(b). Upon satisfaction of the public interest requirement, the BLM will deem the segregation to have been effective as of the date of commitment of the lands to the unit.

(b)(1) The segregated lease covering the non-unitized portion of the lands will continue in force and effect for the term of the lease or for 2 years from the date of segregation, whichever is longer.

(2) If a partially committed lease is in an extended term because of production, the segregated, non-producing lease will continue in effect so long as the producing lease exists and rentals are paid, and so long thereafter as oil or gas is produced from the committed lease.

**§ 3107.40 Extension by elimination.**

Any lease eliminated from any approved or prescribed oil and gas agreement authorized by the Act and any lease in effect at the termination of such agreement, unless relinquished, will continue in effect for the original term of the lease or for 2 years after its elimination from the 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 will be extended if the public interest requirement for an approved oil and gas agreement has not been satisfied, as determined by the authorized officer.

**Extension of Leases Segregated by Assignment**

**§ 3107.51 Extension after discovery on other segregated portions.**

Any lease segregated by assignment, including the retained portion, will continue in effect for the primary term of the original lease, or for 2 years after the date a well capable of production in paying quantities is established upon any other portion of the original lease, whichever is the longer period.

**§ 3107.52 Undeveloped parts of leases in their extended term.**

Undeveloped parts of leases retained or assigned out of leases which are in their extended term will continue in effect for 2 years after the effective date of assignment, provided the parent lease was issued prior to September 2, 1960.

**§ 3107.53 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 will 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.

**§ 3107.60 Extension of reinstated leases.**

Where a reinstatement of a terminated lease is granted under 43 CFR 3108.20 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 will be subject to the following conditions:

(a) No extension will 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.

**Other Types**

**§ 3107.71 Payment of compensatory royalty.**

The payment of a compensatory royalty will 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.

**§ 3107.72 Subsurface storage of oil and gas.**

Any lease used for the storage of oil or gas will be extended for the period of storage under an approved agreement.

**Subpart 3108—Relinquishment, Termination, Cancellation**

**§ 3108.10 Relinquishment.**

The lessee(s) may relinquish the lease or any legal subdivision of the lease at any time. The lessee(s) must file a written relinquishment with the BLM State Office with jurisdiction over the lease. All lessees holding record title interests in the lease must sign the relinquishment. A relinquishment takes effect on the date the lessee filed it with the BLM. However, the lessee(s) 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 relinquishment;

(b) Place all wells to be relinquished in condition for suspension or abandonment as the 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 BLM or the appropriate surface management agency.

**Termination by Operation of Law and Reinstatement**

**§ 3108.21 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 will automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the designated ONRR office on or before the lease anniversary date. However, if the designated ONRR office is closed on the anniversary date, a rental payment received on the next business day the ONRR office is open to the public will be considered 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 decision rendered by the authorized officer, and such figure is found to be in error resulting in a deficiency, such lease will 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 will 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 ONRR office will send a Notice of Deficiency to the lessee. The Notice will 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 ONRR office. If the payment required by the Notice is not paid within the time allowed, the lease will have terminated by operation of law as of its anniversary date.

(c) The automatic termination provision does not apply where, due to other contingencies, additional rental is due on a date other than the lease anniversary date and where the lessee did not receive notice that the obligation had accrued, unless the lessee fails to pay the rental within the period prescribed in the BLM Notice.

**§ 3108.22 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 includes a rental payment that is paid to the ONRR through its online rental payment system on or before the lease anniversary date. If the designated ONRR office or payment system is not operational on the anniversary date, payment received on the next business day in which the designated ONRR office or payment system is operational to the public will be deemed timely); and

(3) A petition for reinstatement and the processing fee for lease reinstatement, Class I, found in the fee schedule in § 3000.120 of this chapter, are 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 must be paid to the ONRR.

(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 is on the lessee.

(c) Under no circumstances will 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.

**§ 3108.23 Reinstatement at higher rental and royalty rates: Class II reinstatements.**

(a) The authorized officer may, if the requirements of this section are met, reinstate a competitive 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 calendar 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) Such leases may be reinstated 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 calendar days after the last date that any lessee of record received Notice of Termination by certified mail; or

(ii) Twenty-four 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 has been made;

(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 43 CFR 3103.22 and future royalties at the rates set in 43 CFR 3103.31 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 an oil and gas agreement;

(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 must reimburse the BLM for the full costs incurred in the publishing of said notice; and

(vi) The lessee has paid the BLM a nonrefundable administrative fee of \$500.

(c) The authorized officer will furnish to the Chairpersons of the Committee on Natural Resources 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.

(d) If the authorized officer reinstates the lease, the reinstatement will be effective 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.

**§ 3108.30 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 oil and gas agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only if the default continues for 30 calendar days after a notice of default has been delivered in accordance with 43 CFR 1810.2.

(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 oil and gas agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by court order in the manner provided by section 31(a) of the Act (30 U.S.C. 188).

(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 court order in the manner provided by section 27(h)(1) of the Act (30 U.S.C. 184).

(d) Leases will be subject to cancellation if improperly issued.

#### **§ 3108.40 Bona fide purchasers.**

A lease or interest therein may 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 will be charged with constructive notice as to all pertinent regulations and all BLM records pertaining to the lease and the lands covered by the lease. Prompt action may 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 will be necessary upon such showing unless prima facie evidence is presented that the purchaser is not a *bona fide* purchaser.

#### **§ 3108.50 Waiver or suspension of lease rights.**

If, during any proceeding with respect to a violation of any provision of the regulations in 43 CFR parts 3000 and 3100 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 will 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.

### **Subpart 3109—Leasing Under Special Acts**

#### **Rights-of-Way**

##### **§ 3109.11 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 will 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 will not be leased under the Act of May 21, 1930.

##### **§ 3109.12 Application.**

(a) No approved form is required for an application to lease oil and gas deposits underlying a right-of-way.

(b) The right-of-way owner or his/her transferee must file the application in the proper BLM office.

(c) Include the processing fee for leasing under right-of-way found in the fee schedule in § 3000.120 of this chapter.

(d) An application must include:

(1) Facts as to the ownership of the right-of-way, and of the transfer if the application is filed by a transferee;

(2) An executed transfer of the right to obtain a lease, if necessary;

(3) A description of 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;

(4) A description of each legal subdivision through which a portion of the right-of-way desired to be leased traverses; however, a description by metes and bounds of the right-of-way is not required; and

(5) A map of the applicable lands.

##### **§ 3109.13 Notice.**

After the BLM 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 will serve notice on the owner or lessee of the oil and gas rights of the adjoining lands. The adjoining landowner or lessee will be allowed a reasonable time, as provided in the notice, within which to submit a bid for the percent of compensatory royalty, the owner or lessee must 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 will be given the same time period to submit a bid for the lease.

##### **§ 3109.14 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 will 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.

##### **§ 3109.15 Compensatory royalty agreement or lease.**

(a) The lease or compensatory royalty agreement will be on a form approved by the Director.

(b) The primary term of the lease will be for a period of 10 years.

(c) The following provisions of 43 CFR part 3100 apply to the issuance and administration of leases for oil and gas deposits underlying a right-of-way issued under this part:

(1) All of subpart 3101, except § 3101.20; and

(2) All of subparts 3102 through 3108;

##### **§ 3109.20 Units of the National Park System.**

(a) Oil and gas leasing in units of the National Park System will be governed by 43 CFR part 3100 and all operations conducted on a lease or permit in such units will be governed by 43 CFR parts 3160 and 3180.

(b) Any lease or permit respecting minerals in units of the National Park System may be issued or renewed only with the consent of the Regional Director, National Park Service. Such consent will 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 will 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 will 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 will 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 ½ 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 ½ mile of State Highway 20;

(v) Pyramid Lake Research Natural Area and all lands within ½ 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 BLM State Offices, Arizona and Utah.

#### §§ 3109.21–3109.22 [Reserved]

#### § 3109.30 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.

#### PART 3110 [REMOVED]

■ 3. Under the authority of 30 U.S.C. 189, part 3110 is removed.

■ 4. Revise part 3120 to read as follows:

#### PART 3120—COMPETITIVE LEASES

##### Subpart 3120—Competitive Leases

Sec.

##### General

3120.11 Lands available for competitive leasing.

3120.12 Requirements.

3120.13 Protests.

##### Lease Terms

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##### Expressions of Interest

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##### Notice of Competitive Lease Sale

3120.51 General.

3120.52 Posting timeframes.

##### Competitive Auction

3120.61 Competitive auction.

3120.62 Payments required.

3120.63 Award of lease.

3120.70 Parcels not bid on at auction.

##### Future Interest

3120.81 Nomination or expression of interest to make lands available for competitive lease.

3120.82 Future interest terms and conditions.

3120.83 Compensatory royalty agreements.

**Authority:** 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 40 U.S.C. 471 *et seq.*; 43 U.S.C. 1701 *et seq.*; Pub. L. 113–291, 128 Stat. 3762; and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

#### Subpart 3120—Competitive Leases

##### General

##### § 3120.11 Lands available for competitive leasing.

All lands eligible and available for leasing may be offered for competitive auction under this subpart, including but not limited to:

(a) Lands that were covered by previously issued 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 through a bankruptcy or otherwise 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 may be sold to the highest responsible and 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 may 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 30 U.S.C. 184(h)(2) 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 will 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 submitted to the authorized officer;

(f) Lands selected by the authorized officer; and

(g) Lands that were offered on a previous sale for which no bid was accepted or received.

#### **§ 3120.12 Requirements.**

(a) Each BLM State Office will hold sales at least quarterly if eligible lands are available for competitive leasing.

(b) Lease sales will be conducted by a competitive auction process.

(c) The BLM may issue a lease only to the highest responsible and qualified bidder. If a person does not pay the minimum monies owed the day of the sale, the BLM may refer that person to the Department of the Interior's Office of the Inspector General, Administrative Remedies Division, for appropriate action, including potential suspension and debarment.

(d) The national minimum acceptable bid will be as specified in § 3000.130 of this chapter and payable on the gross acreage and will not be prorated for any lands in which the United States owns a fractional interest.

#### **§ 3120.13 Protests.**

(a) No action pursuant to the regulations in this subpart will be suspended under 43 CFR 4.21(a) due to a protest from a notice by the authorized officer to hold a lease sale.

(b) Notwithstanding paragraph (a) of this section, the authorized officer may suspend the offering of a specific parcel while considering a protest against its inclusion in a Notice of Competitive Lease Sale.

(c) Only the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good cause after reviewing the reason(s) for a protest.

### **Lease Terms**

#### **§ 3120.21 Duration of lease.**

Competitive leases will be issued for a primary term of 10 years.

#### **§ 3120.22 Dating of leases.**

All competitive leases will be considered issued when signed by the authorized officer. Competitive leases, except future interest leases issued under § 3120.80, will 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 will be effective as of the date the mineral interests vest in the United States.

#### **§ 3120.23 Lease size.**

Lands may be offered in leasing units of not more than 2,560 acres outside Alaska, or 5,760 acres within Alaska, which may be as nearly compact in form as possible.

#### **§ 3120.30 Nomination process.**

The Director may elect to implement the provisions contained in §§ 3120.31 through 3120.33 after review of any comments received during a period of not less than 30 calendar days following publication in the **Federal Register** of notice that implementation of those sections is being considered.

#### **§ 3120.31 General.**

The Director may elect to accept nominations, 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, and nominations in response to this list must be made in accordance with instructions contained therein and on a form or by a method approved by the Director. Those parcels receiving nominations will be included in a Notice of Competitive Lease Sale, unless the parcel is withdrawn by the BLM.

#### **§ 3120.32 Filing of a nomination for competitive leasing.**

Nominations filed in response to a List of Lands Available for Competitive Nominations and on a form or using a method approved by the Director must:

(a) Include the nominator's name and personal or business address. The name of only one citizen, association or partnership, corporation or municipality must appear as the nominator. All communications relating to leasing will be sent to that name and address, which

will constitute the nominator's name and address of record;

(b) Be completed, and filed in accordance with the instructions printed on the form and the regulations in this subpart;

(c) Be filed within the filing period and in the BLM State Office specified in the List of Lands Available for Competitive Nominations. A nomination will be unacceptable and will be returned 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, as specified in § 3000.120 of this chapter for a formal lease nomination.

#### **§ 3120.33 Parcels receiving nominations.**

Parcels which receive nominations may be included in a Notice of Competitive Lease Sale. The Notice will indicate the number of nominations received for each parcel.

### **Expressions of Interest**

#### **§ 3120.41 Process.**

(a) A party submitting an expression of interest in leasing land available for disposition under section 17 of the Mineral Leasing Act must include the submitter's name and address and must submit the expression of interest through the BLM's online leasing system.

(b) The expression must provide a description of the lands identified by legal land description, as follows:

(1) For lands surveyed under the public land survey system, describe the lands to the nearest aliquot part within the legal subdivision, section, township, range, and meridian;

(2) For unsurveyed lands, describe the lands by metes and bounds, giving courses and distances, and tie this information to an official corner of the public land surveys, or to a prominent topographic feature;

(3) For approved protracted surveys, include an entire section, township, range, and meridian. Do not divide protracted sections into aliquot parts;

(4) For lands that have water boundaries, describe the lands based on the initial survey or deed acquiring ownership;

(5) For fractional interest lands, identify the United States mineral ownership by percentage;

(6) For split estate lands, where the surface rights are in private ownership and the rights to develop the oil and gas are managed by the Federal Government, submit the private surface owner's name and address.

(7) For lands where the acquiring agency has assigned an acquisition or tract number covering the lands applied, submit the 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.

(c) A submitter may submit more than one expression of interest, so long as each expression separately satisfies the requirements of paragraph (b) of this section.

(d) Each expression of interest must include a filing fee, as found in the fee schedule in § 3000.120 of this chapter.

(e) The BLM may include lands in a lease sale on its own initiative.

(f) When determining whether the BLM should offer lands specified in an expression of interest at lease sales, the BLM will evaluate the Secretary's obligations to manage public lands for multiple use and sustained yield and to take any action required to prevent unnecessary or undue degradation of the lands and their resources, along with other applicable legal requirements. At a minimum, the BLM will consider:

(1) Proximity to oil and gas development existing at the time of the BLM's evaluation, giving preference to lands upon which a prudent operator would seek to expand existing operations;

(2) The presence of important fish and wildlife habitats or connectivity areas, giving preference to lands that would not impair the proper functioning of such habitats or corridors;

(3) The presence of historic properties, sacred sites, and other high value leasing lands, giving preference to lands that would not impair the cultural significance of such resources;

(4) The presence of recreation and other important uses or resources, giving preference to lands that would not impair the value of such uses or resources; and

(5) The potential for oil and gas development, giving preference to lands with high potential for development.

(g) The BLM may offer for sale all or some of the lands specified in an expression of interest and may offer those lands as part of a parcel that includes lands not specified in the expression of interest.

#### **§ 3120.42 Agency inventory of leasing.**

Until August 16, 2032, the BLM will from time to time calculate, for the

preceding 1-year period, the acreage for which expressions of interest have been submitted to the BLM and the sum total of acres offered for lease.

#### **Notice of Competitive Lease Sale**

##### **§ 3120.51 General.**

(a) The lands available for competitive lease sale under this subpart will be described in a Notice of Competitive Lease Sale.

(b) The time, date, and place of the competitive lease sale will be stated in the notice.

(c) The notice will include an identification of, and a copy of, stipulations applicable to each parcel.

##### **§ 3120.52 Posting timeframes.**

(a) After identifying a preliminary list of lands for a lease sale, the BLM will provide a scoping period, of not less than 30 calendar days, for public comment on the preliminary parcel list for the upcoming lease sale. The preliminary parcel list is not subject to protests.

(b) After drafting a National Environmental Policy Act (NEPA) document for a lease sale, the BLM will provide a comment period, of not less than 30 calendar days, for public comment on the NEPA document for the upcoming lease sale. The draft NEPA document is not subject to protests or appeals.

(c) At least 60 calendar days prior to conducting a competitive auction, the BLM will make available to the public a list of lands to be offered for competitive lease sale in a Notice of Competitive Lease Sale.

(d) After posting the Notice of Competitive Lease Sale notice, the BLM will provide a protest period, of not less than 30 calendar days, for public input on the upcoming lease sale.

(e) The BLM will make available the final NEPA compliance documents prior to issuing a lease from the lease sale.

#### **Competitive Auction**

##### **§ 3120.61 Competitive auction.**

(a) Parcels will be offered by competitive auction.

(b) A winning bid will be the highest bid by a responsible and qualified bidder, equal to or exceeding the national minimum acceptable bid. The decision of the auctioneer will be final.

##### **§ 3120.62 Payments required.**

(a) Payments must be made in accordance with 43 CFR 3103.11.

(b) Each winning bidder must 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 as specified in § 3000.130 of this chapter;

(2) The total amount of the first year's rental; and

(3) The processing fee for competitive lease applications found in the fee schedule in § 3000.120 of this chapter for each parcel.

(c) The winning bidder must submit the balance of the bonus bid to the proper BLM office within 10 business days after the last day of the competitive auction.

##### **§ 3120.63 Award of lease.**

(a) A bid will not be withdrawn and will 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 processing fee. Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with 43 CFR subpart 3102, will constitute a binding lease offer, including all terms and conditions applicable thereto, and must be submitted when payment is made in accordance with § 3120.62(b). Failure to comply with § 3120.62(c) will result in rejection of the bid and forfeiture of the monies submitted under § 3120.62(b).

(b) A lease will be awarded to the highest responsible and qualified bidder. A copy of the lease will be provided to the lessee after signature by the authorized officer.

(c) If a bid is rejected, the land may be reoffered competitively under this subpart.

(d) The BLM will not issue a lease until it resolves all protests covering the lands to be leased.

(e) Leases will be issued within 60 calendar 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. If the BLM cannot issue the lease within 60 days, the BLM may reject the offer.

##### **§ 3120.70 Parcels not bid on at auction.**

Lands offered at the competitive auction that received no bids may be offered in a future competitive auction.

#### **Future Interest**

##### **§ 3120.81 Nomination or expression of interest to make lands available for competitive lease.**

A nomination or expression of interest for a future interest lease must be filed in accordance with this subpart.

##### **§ 3120.82 Future interest terms and conditions.**

(a) No rental or royalty will 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 must 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 must file in the proper BLM office an assignment or transfer, in accordance with 43 CFR subpart 3106, 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 will 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 will be as for any competitive lease issued under this subpart, as provided in 43 CFR subpart 3103, and the acreage will be chargeable in accordance with 43 CFR 3101.20.

#### **§ 3120.83 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 will be established on an individual case basis. Such agreements may 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.

#### **PART 3130—OIL AND GAS LEASING: NATIONAL PETROLEUM RESERVE, ALASKA**

■ 5. The authority citation for part 3130 continues to read as follows:

**Authority:** 42 U.S.C. 6508, 43 U.S.C. 1733 and 1740.

■ 6. Revise § 3137.23 to read as follows:

#### **§ 3137.23 NPR—A unitization application.**

The unitization application must include:

- (a) The proposed unit agreement;
- (b) A map showing the proposed unit area;
- (c) A list of committed tracts including, for each tract, the:
  - (1) Legal land description and acreage;
  - (2) Names of persons holding record title interest;
  - (3) Names of persons owning operating rights; and
  - (4) Name of the unit operator.
- (d) A statement certifying:

(1) The operator invited all owners of oil and gas rights (leased or unleased) and lease interests (record title and operating rights) within the external boundary of the unit area described in the application to join the unit;

(2) That there are sufficient tracts committed to the unit agreement to reasonably operate and develop the unit area;

(3) The commitment status of all tracts within the area proposed for unitization; and

(4) The operator accepts unit obligations under § 3137.60 of this subpart.

(e) Evidence of acceptable bonding;

(f) A discussion of reasonably foreseeable and significantly adverse effects on the surface resources of the NPR—A and how unit operations may reduce impacts compared to individual lease operations;

(g) A discussion of the proposed methodology for allocating production among the committed tracts. If the unit includes non-Federal oil and gas mineral estate, you must explain how the methodology takes into account reservoir heterogeneity and area variation in reservoir producibility; and

(h) Other documentation that the BLM may request. The BLM may require additional copies of maps, plats, and other similar exhibits.

(i) The processing fee found in the fee schedule in § 3000.120 of this chapter.

■ 7. Revise § 3137.61 to read as follows:

#### **§ 3137.61 Change in unit operators.**

(a) To change unit operators, the new unit operator must submit to the BLM:

- (1) Statements that:
  - (i) The new operator accepts unit obligations; and
  - (ii) The percentage of required interest owners consented to a change of unit operator;
- (2) Evidence of acceptable bonding (see § 3137.60(b)); and
- (3) The processing fee found in the fee schedule in § 3000.120 of this chapter.

(b) The effective date of the change in unit operator is the date the BLM approves the new unit operator.

■ 8. Revise § 3138.11 to read as follows:

#### **§ 3138.11 Applications for a subsurface storage agreement.**

(a) An application for a subsurface storage agreement must include:

- (1) The reason for forming a subsurface storage agreement;
- (2) A description of the area to be included in the subsurface storage agreement;
- (3) A description of the formation to be used for storage;
- (4) The proposed storage fees or rentals. The fees or rentals must be

based on the value of the subsurface storage, injection, and withdrawal volumes, and rental income or other income generated by the operator for letting or subletting the storage facilities;

(5) The payment of royalty for native oil or gas (oil or gas that exists in the formation before injection and that is produced when the stored oil or gas is withdrawn);

(6) A description of how often and under what circumstances the operator and the BLM intend to renegotiate fees and payments;

(7) The proposed effective date and term of the subsurface storage agreement;

(8) Certification that all owners of mineral rights (leased or unleased) and lease interests have consented to the gas storage agreement in writing;

(9) An ownership schedule showing lease or land status;

(10) A schedule showing the participation factor for all parties to the subsurface storage agreement;

(11) Supporting data (geologic maps showing the storage formation, reservoir data, etc.) demonstrating the capability of the reservoir for storage; and

(12) The processing fee found in the fee schedule in § 3000.120 of this chapter.

(b) The BLM will negotiate the terms of a subsurface storage agreement with the operator, including bonding, and reservoir management.

(c) The BLM may request documentation in addition to that which the operator provides under paragraph (a) of this section.

■ 9. Revise part 3140 to read as follows:

#### **PART 3140—LEASING IN SPECIAL TAR SAND AREAS**

##### **Subpart 3140—Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations**

Sec.

3140.1 Purpose.

3140.3 Authority.

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##### **Applications**

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##### **Time Limitations**

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3140.41 Approval of plan of operations (and unit and operating agreements).

- 3140.42 Issuance of the combined hydrocarbon lease.  
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#### Subpart 3141—Leasing in Special Tar Sand Areas

- 3141.1 Purpose.  
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#### Prelease Exploration Within Special Tar Sand Areas

- 3141.21 Geophysical exploration.  
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- 3141.41 Consultation with the Governor.  
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#### Leasing Procedures

- 3141.51 Economic evaluation.  
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#### Sale Procedures

- 3141.61 Initiation of competitive lease offering.  
 3141.62 Publication of a notice of competitive lease offering.  
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 3141.64 Qualifications.  
 3141.65 Rejection of bid.  
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#### Subpart 3142—Paying Quantities/Diligent Development for Combined Hydrocarbon and Tar Sand Leases

- 3142.1 Purpose.  
 3142.3 Authority.  
 3142.5 Definitions.  
 3142.10 Diligent development.

#### Minimum Production Levels

- 3142.21 Minimum production schedule.  
 3142.22 Advance royalties in lieu of production.  
 3142.30 Expiration.

**Authority:** 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 43 U.S.C. 1701 *et seq.*; Pub. L. 97–78, 95 Stat. 1070; 42 U.S.C. 15801, unless otherwise noted.

#### Subpart 3140—Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations

##### § 3140.1 Purpose.

The purpose of this subpart is to provide for the conversion of existing oil and gas leases and valid claims based on mineral locations within Special Tar Sand Areas to combined hydrocarbon leases.

##### § 3140.3 Authority.

These regulations are issued under the authority of the Mineral Lands

Leasing Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*), and the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78).

##### § 3140.5 Definitions.

As used in this subpart, the term: *Combined hydrocarbon lease* means a lease issued in a Special Tar Sand Area for the removal of gas and nongaseous hydrocarbon substances other than coal, oil shale or gilsonite.

*Complete plan of operations* means a plan of operations that is in substantial compliance with the information requirements of 43 CFR part 3592 for both exploration plans and mining plans, as well as any additional information required in this part and under 43 CFR part 3593, as may be appropriate.

*Owner of an oil and gas lease* means all of the record title holders of an oil and gas lease.

*Owner of a valid claim based on a mineral location* means all parties appearing on the title records recognized as official under State law as having the right to sell or transfer any part of the mining claim, which was located within a Special Tar Sand Area prior to January 21, 1926, for any hydrocarbon resource, except coal, oil shale or gilsonite, leaseable under the Combined Hydrocarbon Leasing Act.

*Special Tar Sand Area* means an area designated by the Department of the Interior's orders of November 20, 1980 (45 FR 76800), and January 21, 1981 (46 FR 6077) referred to in those orders as Designated Tar Sand Areas, as containing substantial deposits of tar sand.

*Unitization* means unitization as that term is defined in 43 CFR part 3180.

##### General Provisions

##### § 3140.11 Existing rights.

(a) The owner of an oil and gas lease issued prior to November 16, 1981, or the owner of a valid claim based on a mineral location situated within a Special Tar Sand Area may convert that portion of the lease or claim so situated to a combined hydrocarbon lease, provided that such conversion is consistent with the provisions of this subpart. The application time period ended on November 15, 1983.

(b) Owners of oil and gas leases in Special Tar Sand Areas who elect not to convert their leases to a combined hydrocarbon lease do not acquire the rights to any hydrocarbon resource except oil and gas as those terms were defined prior to the enactment of the Combined Hydrocarbon Leasing Act of 1981. The failure to file an application

to convert a valid claim based on a mineral location within the time herein provided will have no effect on the validity of the mining claim nor the right to maintain that claim.

##### § 3140.12 Notice of intent to convert.

(a) Owners of oil and gas leases in Special Tar Sand Areas which were scheduled to expire prior to November 15, 1983, could have preserved the right to convert their leases to combined hydrocarbon leases by filing a Notice of Intent to Convert with the BLM Utah State Office.

(b) A letter, submitted by the lessee, notifying the BLM of the lessee's intention to submit a plan of operations constituted a notice of intent to convert a lease. The Notice of Intent must have contained the lease number.

(c) The Notice of Intent must have been filed prior to the expiration date of the lease. The notice would have preserved the lessee's conversion rights only until November 15, 1983.

##### § 3140.13 Exploration plans.

(a) The authorized officer may grant permission to holders of existing oil and gas leases to gather information to develop, perfect, complete or amend a plan of operations required for conversion upon the approval of the authorized officer of an exploration plan developed in accordance with 43 CFR 3592.1.

(b) The approval of an exploration plan in units of the National Park System requires the consent of the Regional Director of the National Park Service in accordance with § 3140.70.

(c) The filing of an exploration plan alone will be insufficient to meet the requirements of a complete plan of operations as set forth in § 3140.2–3.

##### § 3140.14 Other provisions.

(a) A combined hydrocarbon lease will be for no more than 5,760 acres. Acreage held under a combined hydrocarbon lease in a Special Tar Sand Area is not chargeable to State oil and gas limitations allowable in 43 CFR 3101.2.

(b) The annual rental rate for all combined hydrocarbon leases will be as stated in the lease. The rental rate for a combined hydrocarbon lease will be payable upon conversion and annually, in advance, thereafter.

(c)(1) The royalty rate for a combined hydrocarbon lease converted from an oil and gas lease will be that provided for in the original oil and gas lease.

(2) The royalty rate for a combined hydrocarbon lease converted from a valid claim based on a mineral location will be 16.67 percent.

(3) A reduction of royalties may be granted either as provided in § 3103.40 or, at the request of the lessee and upon a review of information provided by the lessee, prior to commencement of commercial operations if the purpose of the request is to promote development and the maximum production of tar sand. A reduction of royalties for the tar sand will not apply to the oil and gas resource. A reduction of royalties for the oil and gas will not apply to the tar sand resource.

(d)(1) Existing oil and gas leases and valid claims based on mineral locations may be unitized prior to or after the lease or claim has been converted to a combined hydrocarbon lease. The requirements of 43 CFR part 3180 will provide the procedures and general guidelines for unitization of combined hydrocarbon leases. For leases within units of the National Park System, unitization requires the consent of the Regional Director of the National Park Service in accordance with § 3140.41(b).

(2) If the plan of operations submitted for conversion is designed to cover a unit, a fully executed unit agreement will be approved before the plan of operations applicable to the unit may be approved under § 3140.20. The proposed plan of operations and the proposed unit agreement may be reviewed concurrently. The approved unit agreement will be effective after the leases or claims subject to it are converted to combined hydrocarbon leases. The plan of operations will explain how and when each lease included in the unit operation will be developed.

(e) Except as provided for in this subpart, the regulations set out in 43 CFR part 3100 are applicable, as appropriate, to all combined hydrocarbon leases issued under this subpart.

## Applications

### § 3140.21 Forms.

No special form is required for a conversion application.

### § 3140.22 Who may apply.

Only owners of oil and gas leases issued within Special Tar Sands Areas, on or before November 16, 1981, and owners of valid claims based on mineral locations within Special Tar Sands Areas, are eligible to convert leases or claims to combined hydrocarbon leases in Special Tar Sands Areas.

### § 3140.23 Application requirements.

(a) The BLM stopped accepting conversion applications on November 15, 1983. The applicant must have submitted to the BLM Utah State Office,

a written request for a combined hydrocarbon lease signed by the owner of the lease or valid claim which must be accompanied by three copies of a plan of operations which must meet the requirements of 43 CFR 3592.1 and which must have provided for reasonable protection of the environment and diligent development of the resources requiring enhanced recovery methods of development or mining.

(b) A plan of operations may be modified or amended before or after conversion of a lease or valid claim to reflect changes in technology, slippages in schedule beyond the control of the lessee, new information about the resource or the economic or environmental aspects of its development, changes to or initiation of applicable unit agreements or for other purposes. To obtain approval of a modification or amended plan, the applicant must submit a written statement of the proposed changes or supplements and the justification for the changes proposed. Any modifications will be in accordance with 43 CFR 3592.1(c). The approval of the modification or amendment is the responsibility of the authorized officer. Changes or modification to the plan of operations will have no effect on the primary term of the lease. The authorized officer will, prior to approving any amendment or modification, review the modification or amendment with the appropriate surface management agency. For leases within units of the National Park System, no amendment or modification will be approved without the consent of the Regional Director of the National Park Service in accordance with § 3140.70.

(c) The plan of operations may be for a single existing oil and gas lease or valid claim or for an area of proposed unit operation.

(d) The plan of operations must identify by lease number all Federal oil and gas leases proposed for conversion and identify valid claims proposed for conversion by the recordation number of the mining claim.

(e) The plan of operations must include any proposed designation of operator or proposed operating agreement.

(f) The plan of operations may include an exploration phase, if necessary, but it must include a development phase. Such a plan can be approved even though it may indicate work under the exploration phase is necessary to perfect the proposed plan for the development phase as long as the overall plan demonstrates reasonable protection of

the environment and diligent development of the resources requiring enhanced recovery methods of mining.

(g)(1) Upon determination that the plan of operations is complete, the authorized officer will suspend the term of the Federal oil and gas lease(s) as of the date that the complete plan was filed until the plan is finally approved or rejected. Only the term of the oil and gas lease will be suspended, not any operation and production requirements thereunder.

(2) If the authorized officer determines that the plan of operations is not complete, the applicant will be notified that the plan is subject to rejection if not completed within the period specified in the notice.

(3) The authorized officer may request additional data after the plan of operations has been determined to be complete. This request for additional information will have no effect on the suspension of the running of the oil and gas lease.

## Time Limitations

### § 3140.31 Conversion applications.

A plan of operations to convert an existing oil and gas lease or valid claim based on a mineral location to a combined hydrocarbon lease must have been filed on or before November 15, 1983, or prior to the expiration of the oil and gas lease, whichever was earlier, except as provided in § 3140.12.

### § 3140.32 Action on an application.

The authorized officer will take action on an application for conversion within 15 months of receipt of a proposed plan of operations.

## Conversion

### § 3140.41 Approval of plan of operations (and unit and operating agreements).

(a) The owner of an oil and gas lease, or the owner of a valid claim based on a mineral location will have such lease or claim converted to a combined hydrocarbon lease when the plan of operations, filed under § 3140.23, is deemed acceptable and is approved by the authorized officer.

(b) The conversion of a lease within a unit of the National Park System will be approved only with the consent of the Regional Director of the National Park Service in accordance with § 3140.70.

(c) A plan of operations may not be approved in part but may be approved where it contains an appropriately staged plan of exploration and development operations.



**§ 3140.42 Issuance of the combined hydrocarbon lease.**

(a) After a plan of operations is found acceptable, and is approved, the authorized officer will prepare and submit to the owner, for execution, a combined hydrocarbon lease containing all appropriate terms and conditions, including any necessary stipulations that were part of the oil and gas lease being converted, as well as any additional stipulations, such as those required to ensure compliance with the plan of operations.

(b) The authorized officer will not sign the combined hydrocarbon lease until it has been executed by the conversion applicant and the lease or claim to be converted has been formally relinquished to the United States.

(c) The effective date of the combined hydrocarbon lease will be the first day of the month following the date that the authorized officer signs the lease.

(d) The authorized officer will issue one combined hydrocarbon lease to cover the existing contiguous oil and gas leases or valid claims based on mineral locations which have been approved for conversion within the special tar sand area.

**§ 3140.50 Duration of the lease.**

A combined hydrocarbon lease will be for a primary term of 10 years and for so long thereafter as oil or gas is produced in paying quantities. If the applicant withdraws the combined hydrocarbon lease application or the BLM denies the conversion application, the suspension on the oil and gas lease will be lifted and the term will be extended by the time remaining on the term of the lease.

**§ 3140.60 Use of additional lands.**

(a) The authorized officer may noncompetitively lease additional lands for ancillary facilities in a Special Tar Sand Area that are needed to support any operations necessary for the recovery of tar sand. Such uses include, but are not limited to, mill site or waste disposal. Application for a lease or permit to use additional lands must be filed under the provisions of 43 CFR part 2920 with the proper BLM office having jurisdiction of the lands. The application for additional lands may be filed at the time a plan of operations is filed.

(b) A lease for the use of additional lands will not be issued when the use can be authorized under 43 CFR parts 2800 and 2880. Such uses include, but are not limited to, reservoirs, pipelines, electrical generation systems, transmission lines, roads, and railroads.

(c) Within units of the National Park System, permits or leases for additional lands will only be issued by the National Park Service. Applications for such permits or leases must be filed with the Regional Director of the National Park Service.

**§ 3140.70 Lands within the National Park System.**

The BLM stopped accepting conversion applications on November 15, 1983. Conversions of existing oil and gas leases and valid claims based on mineral locations to combined hydrocarbon leases within units of the National Park System will be allowed only where mineral leasing is permitted by law and where the lands covered by the lease or claim proposed for conversion are open to mineral resource disposition in accordance with any applicable minerals management plan. (See 43 CFR 3100.3(h)(4)). In order to consent to any conversion or any subsequent development under a combined hydrocarbon lease requiring further approval, the Regional Director of the National Park Service must find that there will be no resulting significant adverse impacts on the resources and administration of such areas or on other contiguous units of the National Park System in accordance with 43 CFR 3109.20(b).

**Subpart 3141—Leasing in Special Tar Sand Areas****§ 3141.1 Purpose.**

The purpose of this subpart is to provide for the competitive leasing of lands and issuance of combined hydrocarbon leases, oil and gas leases, or tar sand leases within special tar sand areas.

**§ 3141.3 Authority.**

The regulations in this subpart are issued under the authority of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), and the Energy Policy Act of 2005 (Pub. L. 109–58).

**§ 3141.5 Definitions.**

As used in this subpart, the term:

*Combined hydrocarbon lease* means a lease issued in a Special Tar Sand Area for the removal of any gas and nongaseous hydrocarbon substance other than coal, oil shale or gilsonite.

*Oil and gas lease* means a lease issued in a Special Tar Sand Area for the

exploration and development of oil and gas resources other than tar sand.

*Special Tar Sand Area* means an area designated by the Department of the Interior's Orders of November 20, 1980 (45 FR 76800), and January 21, 1981 (46 FR 6077), and referred to in those orders as Designated Tar Sand Areas, as containing substantial deposits of tar sand.

*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.

*Tar sand lease* means a lease issued in a Special Tar Sand area exclusively for the exploration for and extraction of tar sand.

**§ 3141.8 Other applicable regulations.**

(a) *Combined hydrocarbon leases.* (1) The following provisions of 43 CFR part 3100, as they relate to competitive leasing, apply to the issuance and administration of combined hydrocarbon leases issued under this part.

- (i) All of 43 CFR subpart 3100;
- (ii) The following sections of 43 CFR subpart 3101: §§ 3101.11, 3101.21, 3101.22, 3101.24, 3101.25, 3101.61, 3101.62, and 3101.65;
- (iii) All of 43 CFR subpart 3102;
- (iv) All of 43 CFR subpart 3103, with the exception of §§ 3103.21, and 3103.31–1 (a), (b), and (c);
- (v) All of 43 CFR subpart 3104;
- (vi) All of 43 CFR subpart 3105;
- (vii) All of 43 CFR subpart 3106, with the exception of § 3106.10(i);
- (viii) All of 43 CFR subpart 3107;
- (ix) All of 43 CFR subpart 3108; and
- (x) All of 43 CFR subpart 3109, with special emphasis on § 3109.20(b).

(2) Prior to commencement of operations, the lessee must develop either a plan of operations as described in 43 CFR 3592.1 which ensures reasonable protection of the environment or file an application for a permit to drill as described in 43 CFR part 3160, whichever is appropriate.

(3) The provisions of 43 CFR part 3180 will serve as general guidance to the administration of combined hydrocarbon leases issued under this part to the extent they may be included in unit or cooperative agreements.

(b) *Oil and gas leases.* (1) All of the provisions of 43 CFR parts 3100, and 3120 apply to the issuance and administration of oil and gas leases issued under this part.



(2) All of the provisions of 43 CFR parts 3160 and 3170 apply to operations on an oil and gas lease issued under this part.

(3) The provisions of 43 CFR part 3180 apply to the administration of oil and gas leases issued under this part.

(c) *Tar sand leases.* (1) The following provisions of 43 CFR part 3100, as they relate to competitive leasing, apply to the issuance of tar sand leases issued under this part.

(i) All of 43 CFR subpart 3102;

(ii) All of 43 CFR subpart 3103 with the exception of §§ 3103.21, 3103.22(d), and 3103.30;

(iii) All of 43 CFR 3120.50; and

(iv) All of 43 CFR 3120.60.

(2) Prior to commencement of operations, the lessee must develop a plan of operations as described in 43 CFR 3592.1 which ensures reasonable protection of the environment.

#### **§ 3141.10 General.**

(a) Combined hydrocarbons or tar sands within a Special Tar Sand Area will be leased only by competitive bonus bidding.

(b) Oil and gas within a Special Tar Sand Area will be leased by competitive bonus bidding as described in 43 CFR part 3120.

(c) The authorized officer may issue either combined hydrocarbon leases, or oil and gas leases for oil and gas within such areas.

(d) The rights to explore for or develop tar sand deposits in a Special Tar Sand Area may be acquired through either a combined hydrocarbon lease or a tar sand lease.

(e) An oil and gas lease in a Special Tar Sand Area does not include the rights to explore for or develop tar sand.

(f) A tar sand lease in a Special Tar Sand Area does not include the rights to explore for or develop oil and gas.

(g) The minimum acceptable bid for a lease issued for tar sand will be as specified in § 3000.130 of this chapter.

(h) The acreage of combined hydrocarbon leases or tar sand leases held within a Special Tar Sand Area will not be charged against acreage limitations for the holding of oil and gas leases as provided in 43 CFR 3101.21.

(i)(1) The authorized officer may noncompetitively lease additional lands for ancillary facilities in a Special Tar Sand Area that are shown by an applicant to be needed to support any operations necessary for the recovery of tar sand. Such uses include, but are not limited to, mill siting or waste disposal. An application for a lease or permit to use additional lands must be filed under the provisions of 43 CFR part 2920 with the proper BLM office having

jurisdiction of the lands. The application for additional lands may be filed at the time a plan of operations is filed.

(2) A lease for the use of additional lands will not be issued under this part when the use can be authorized under 43 CFR part 2800. Such uses include, but are not limited to, reservoirs, pipelines, electrical generation systems, transmission lines, roads and railroads.

(3) Within units of the National Park System, permits or leases for additional lands for any purpose will be issued only by the National Park Service. Applications for such permits or leases must be filed with the Regional Director of the National Park Service.

#### **Prelease Exploration Within Special Tar Sand Areas**

##### **§ 3141.21 Geophysical exploration.**

Geophysical exploration in Special Tar Sand Areas will be governed by 43 CFR part 3150. Information obtained under a permit must be made available to the BLM upon request.

##### **§ 3141.22 Exploration licenses.**

(a) Any person(s) responsible and qualified to hold a lease under the provisions of 43 CFR subpart 3102 and this subpart may obtain an exploration license to conduct core drilling and other exploration activities to collect geologic, environmental and other data concerning tar sand resources only on lands, the surface of which are under the jurisdiction of the BLM, within or adjacent to a Special Tar Sand Area. The application for such a license must be submitted to the proper BLM office having jurisdiction over the lands. No drilling for oil or gas will be allowed under an exploration license issued under this subpart. No specific form is required for an application for an exploration license.

(b) The application for an exploration license will be subject to the following requirements:

(1) Each application must contain the name and address of the applicant(s);

(2) Each application must be accompanied by a nonrefundable filing fee based on the coal exploration license application fee found in the fee schedule in § 3000.120 of this chapter;

(3) Each application must contain a description of the lands covered by the application according to section, township and range in accordance with the official survey;

(4) Each application must include an exploration plan which complies with the requirements of 43 CFR 4392.1(a); and

(5) An application must cover no more than 5,760 acres, which will be as

compact as possible. The authorized officer may grant an exploration license covering more than 5,760 acres only if the application contains a justification for an exception to the normal limitation.

(c) The authorized officer may, if he/she determines it necessary to avoid impacts resulting from duplication of exploration activities, require applicants for exploration licenses to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis. If joint participation is determined necessary, it will be conducted according to the following:

(1) Immediately upon the notification of a determination that parties will be given an opportunity to participate in the exploration license, the applicant must publish a "Notice of Invitation," approved by the authorized officer, once every week for 2 consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the exploration license are situated. This notice must contain an invitation to the public to participate in the exploration license on a pro rata cost sharing basis. Copies of the "Notice of Invitation" must be filed with the authorized officer at the time of publication by the applicant for posting in the proper BLM office having jurisdiction over the lands covered by the application for at least 30 days prior to the issuance of the exploration license.

(2) Any person seeking to participate in the exploration program described in the Notice of Invitation must notify the authorized officer and the applicant in writing of such intention within 30 days after posting in the proper BLM office having jurisdiction over the lands covered by the Notice of Invitation. The authorized officer may require modification of the original exploration plan to accommodate the legitimate exploration needs of the person(s) seeking to participate and to avoid the duplication of exploration activities in the same area, or that the person(s) should file a separate application for an exploration license.

(3) An application to conduct exploration which could have been conducted under an existing or recent exploration license issued under this paragraph may be rejected.

(d) The authorized officer may accept or reject an exploration license application. An exploration license will become effective on the date specified by the authorized officer as the date when exploration activities may begin. The exploration plan approved by the

BLM will be attached and made a part of each exploration license.

(e) An exploration license will be subject to these terms and conditions:

(1) The license will be for a term of not more than 2 years;

(2) The annual rental rate for an exploration license will be as stated in the license;

(3) The licensee must provide a bond in an amount determined by the authorized officer, but not less than \$5,000. The authorized officer may accept bonds furnished under 43 CFR subpart 3104, if adequate. The period of liability under the bond will be terminated only after the authorized officer determines that the terms and conditions of the license, the exploration plan and the regulations have been met;

(4) The licensee must provide to the BLM, upon request, all required information obtained under the license. Any information provided will be treated as confidential and proprietary, if appropriate, at the request of the licensee, and will not be made public until the areas involved have been leased or if the BLM determines that public access to the data will not damage the competitive position of the licensee.

(5) Operations conducted under a license will not unreasonably interfere with or endanger any other lawful activity on the same lands, must not damage any improvements on the lands, and will not result in any substantial disturbance to the surface of the lands and their resources;

(6) The authorized officer will include in each license requirements and stipulations to protect the environment and associated natural resources, and to ensure reclamation of the land disturbed by exploration operations;

(7) When unforeseen conditions are encountered that could result in an action prohibited by paragraph (e)(5) of this section, or when warranted by geologic or other physical conditions, the authorized officer may adjust the terms and conditions of the exploration license and may direct adjustment in the exploration plan;

(8) The licensee may submit a request for modification of the exploration plan to the authorized officer. Any modification will be subject to the regulations in this section and the terms and conditions of the license. The authorized officer may approve the modification after any necessary adjustments to the terms and conditions of the license that are accepted in writing by the licensee; and

(9) The license will be subject to termination or suspension as provided in 43 CFR 2920.9–3.

#### **§ 3141.30 Land use plans.**

No lease will be issued under this subpart unless the lands have been included in a land use plan which meets the requirements under 43 CFR part 1600 or an approved Minerals Management Plan of the National Park Service. The decision to hold a lease sale and issue leases will be in conformance with the appropriate plan.

#### **Consultation**

##### **§ 3141.41 Consultation with the Governor.**

The Secretary will consult with the Governor of the State in which any tract proposed for sale is located. The Secretary will give the Governor 30 days to comment before determining whether to conduct a lease sale. The Secretary will seek the recommendations of the Governor of the State in which the lands proposed for lease are located as to whether or not to lease such lands and what alternative actions are available and what special conditions could be added to the proposed lease(s) to mitigate impacts. The Secretary will accept the recommendations of the Governor if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Secretary will communicate to the Governor in writing and publish in the **Federal Register** the reasons for his/her determination to accept or reject such Governor's recommendations.

##### **§ 3141.42 Consultation with others.**

(a) Where the surface is administered by an agency other than the BLM, including lands patented or leased under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), all leasing under this subpart will be in accordance with the consultation requirements of 43 CFR subpart 3100.

(b) The issuance of combined hydrocarbon leases, oil and gas leases, and tar sand leases within special tar sand areas in units of the National Park System will be allowed only where mineral leasing is permitted by law and where the lands are open to mineral resource disposition in accordance with any applicable Minerals Management Plan. In order to consent to any issuance of a combined hydrocarbon lease, oil and gas lease, tar sand lease, or subsequent development of hydrocarbon resources within a unit of National Park System, the Regional Director of the National Park Service will find that there will be no resulting

significant adverse impacts to the resources and administration of the unit or other contiguous units of the National Park System in accordance with 43 CFR 3109.20(b).

#### **Leasing Procedures**

##### **§ 3141.51 Economic evaluation.**

Prior to any lease sale for a combined hydrocarbon lease, the authorized officer will request an economic evaluation of the total hydrocarbon resource on each proposed lease tract exclusive of coal, oil shale, or gilsonite.

##### **§ 3141.52 Term of lease.**

(a) Oil and gas leases in special tar sand areas will have a primary term of 10 years and will remain in effect so long thereafter as oil or gas is produced in paying quantities.

(b) Tar Sand leases will have a primary term of 10 years and will remain in effect so long thereafter as tar sand is produced in paying quantities.

##### **§ 3141.53 Royalties and rentals.**

(a) The royalty rate on all combined hydrocarbon leases or tar sand leases is 16.67 percent of the value of production removed or sold from a lease. The ONRR will be responsible for collecting and administering royalties.

(b) The lessee may request the Secretary to reduce the royalty rate applicable to a tar sand lease prior to commencement of commercial operations in order to promote development and maximum production of the tar sand resource in accordance with procedures established by the BLM for oil shale leases and may request a reduction in the royalty after commencement of commercial operations in accordance with 43 CFR 3103.41.

(c) The annual rental rate for a combined hydrocarbon lease will be as stated in the lease.

(d) The annual rental rate for a tar sand lease will be as stated in the lease.

(e) Except as explained in paragraphs (a) through (c) of this section, all other provisions of 43 CFR 3103.20 and 3103.30 apply to combined hydrocarbon leasing.

##### **§ 3141.54 Lease size.**

Combined hydrocarbon leases or tar sand leases in Special Tar Sand Areas will not exceed 5,760 acres.

##### **§ 3141.55 Dating of lease.**

A combined hydrocarbon lease will be effective as of the first day of the month following the date the lease is signed on behalf of the United States, except where a prior written request is made, a lease may be made effective on

the first of the month in which the lease is signed.

### Sale Procedures

#### § 3141.61 Initiation of competitive lease offering.

The BLM may, on its own motion, offer lands through competitive bidding. A request or expression(s) of interest in tract(s) for competitive lease offerings must be submitted in writing to the proper BLM office.

#### § 3141.62 Publication of a notice of competitive lease offering.

*Combined Hydrocarbon Leases, Tar Sand Leases or Oil and Gas Leases.* At least 45 days prior to conducting a competitive auction, lands to be offered for a competitive lease sale, as in a Notice of Competitive Lease Sale, will be made available to the public. The notice will specify the time and place of sale; the manner in which the bids may be submitted; the description of the lands; the terms and conditions of the lease, including the royalty and rental rates; the amount of the minimum bid; and will state that the terms and conditions of the leases are available for inspection and designate the proper BLM office where bid forms may be obtained.

#### § 3141.63 Conduct of sales.

(a) *Oil and gas leases.* Lease sales for oil and gas leases will be conducted using the procedures for oil and gas leases in 43 CFR 3120.60.

(b) *Combined hydrocarbon leases and tar sand leases.* (1) Parcels will be offered by competitive auction.

(2) The winning bid will be the highest bid by a responsible and qualified bidder, equal to the minimum bonus bid amount as specified in § 3000.130 of this chapter or for hydrocarbon leases, the minimum bonus bid amount determined under § 3141.51, whichever is larger.

(3) Payments must be made as provided in 43 CFR 3120.62.

#### § 3141.64 Qualifications.

Each bidder must submit with the bid a statement over the bidder's signature with respect to compliance with 43 CFR subpart 3102.

#### § 3141.65 Rejection of bid.

If the high bid is rejected for failure by the successful bidder to execute the lease forms and pay the balance of the bonus bid, or otherwise to comply with the regulations of this subpart, the minimum bonus payment accompanying the bid will be forfeited.

#### § 3141.66 Consideration of next highest bid.

The Department reserves the right to accept the next highest bid if the highest bid is rejected. In no event will an offer be made to the next highest bidder if the difference between that bid and the bid of the rejected successful bidder is greater than the minimum bonus payment forfeited by the rejected successful bidder.

#### § 3141.70 Award of lease.

After determining the highest responsible and qualified bidder, the authorized officer will send the lease on a form approved by the Director, and any necessary stipulations, to the successful bidder. The successful bidder must, not later than the 30th calendar day after receipt of the lease, execute the lease, pay the balance of the bid and the first year's rental, and file a bond as required in 43 CFR subpart 3104. Failure to comply with this section will result in rejection of the lease.

### Subpart 3142—Paying Quantities/ Diligent Development for Combined Hydrocarbon and Tar Sand Leases

#### § 3142.1 Purpose.

This subpart provides definitions and procedures for meeting the production in paying quantities and the diligent development requirements for tar sand in all combined hydrocarbon leases and tar sand leases.

#### § 3142.3 Authority.

These regulations are issued under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070).

#### § 3142.5 Definitions.

As used in this subpart, the term: *Production in paying quantities for combined hydrocarbon leases* means:

(1) Production, in compliance with an approved plan of operations and by nonconventional methods, of oil and gas which can be marketed; or

(2) Production of oil or gas by conventional methods as the term is currently used in 43 CFR part 3160.

*Production in paying quantities for oil and gas leases* means production of oil or gas by conventional methods that meets the definition of "production in paying quantities" in 43 CFR 3160.0–5.

*Production in paying quantities for tar sand leases* means production of shale oil quantities that provide a positive

return after all costs of production have been met, including the amortized costs of the capital investment.

#### § 3142.10 Diligent development.

A lessee will have met its diligent development obligation if:

(a) The lessee is conducting activity on the lease in accordance with an approved plan of operations; and

(b) The lessee files with the authorized officer, not later than the end of the eighth lease year, a supplement to the approved plan of operations which must include the estimated recoverable tar sand reserves and a detailed development plan for the next stage of operations;

(c) The lessee has achieved production in paying quantities, as that term is defined in § 3142.5(a), by the end of the primary term; and

(d) The lessee annually produces the minimum amount of tar sand established by the authorized officer under the lease in the minimum production schedule which will be made part of the plan of operations or pays annually advance royalty in lieu of this minimum production.

### Minimum Production Levels

#### § 3142.21 Minimum production schedule.

(a) Upon receipt of the supplement to the plan of operations described in § 3142.10(b), the authorized officer will examine the information furnished by the lessee and determine if the estimate of the recoverable tar sand reserves is adequate and reasonable. In making this determination, the authorized officer may request, and the lessee must furnish, any information that is the basis of the lessee's estimate of the recoverable tar sand reserves. As part of the authorized officer's determination that the estimate of the recoverable tar sand reserves is adequate and reasonable, he/she may consider, but is not limited to, the following: ore grade, strip ratio, vertical and horizontal continuity, extract process recoverability, and proven or unproven status of extraction technology, terrain, environmental mitigation factors, marketability of products and capital operations costs. The authorized officer will then establish as soon as possible, but prior to the beginning of the eleventh year, based upon the estimate of the recoverable tar sand reserves, a minimum annual tar sand production schedule for the lease or unit operations which will start in the eleventh year of the lease. This minimum production level will escalate in equal annual increments to a maximum of 1 percent of the estimated recoverable tar sand reserves in the twentieth year of the

lease and remain at 1 percent each year thereafter.

(b) The minimum annual tar sand production schedule for the lease or unit operations will be set at a level for paying quantities. If the operator or lessee cannot establish production in paying quantities, the lease will terminate at the end of the lease's primary term.

**§ 3142.22 Advance royalties in lieu of production.**

(a) Failure to meet the minimum annual tar sand production schedule level in any year will result in the assessment of an advance royalty in lieu of production which will be credited to future production royalty assessments applicable to the lease or unit.

(b) If there is no production during the lease year, and the lessee has reason to believe that there will be no production during the remainder of the lease year, the lessee must submit to the authorized officer a request for suspension of production at least 90 days prior to the end of that lease year and a payment sufficient to cover any advance royalty due and owing as a result of the failure to produce. Upon receipt of the request for suspension of production and the accompanying payment, the authorized officer may approve a suspension of production for that lease year and the lease will not expire during that year for lack of production.

(c) If there is production on the lease or unit during the lease year, but such production fails to meet the minimum production schedule required by the plan of operations for that lease or unit, the lessee must pay an advance royalty within 60 days of the end of the lease year in an amount sufficient to cover the difference between such actual production and the production schedule required by the plan of operations for that lease or unit and the authorized officer may direct a suspension of production for those periods during which no production occurred.

**§ 3142.30 Expiration.**

Failure of the lessee to pay advance royalty within the time prescribed by the authorized officer, or failure of the lessee to comply with any other provisions of this subpart following the end of the primary term of the lease, will result in the automatic expiration of the lease as of the first of the month following notice to the lessee of its failure to comply. The lessee will remain subject to the requirement of applicable laws, regulations and lease terms which have not been met at the expiration of the lease.

**PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION**

■ 10. The authority citation for part 3150 continues to read as follows:

**Authority:** 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189 and 359; 42 U.S.C. 6508; 43 U.S.C. 1201, 1732(b), 1733, 1734, 1740.

■ 11. Revise subpart 3151 to read as follows:

**Subpart 3151—Exploration Outside of Alaska**

Sec.

3151.10 Notice of intent to conduct oil and gas geophysical exploration operations.

3151.20 Notice of completion of operations.

3151.30 Collection and submission of data.

**Subpart 3151—Exploration Outside of Alaska**

**§ 3151.10 Notice of intent to conduct oil and gas geophysical exploration operations.**

Parties wishing to conduct oil and gas geophysical exploration outside of the State of Alaska must file a Notice of Intent to Conduct Oil and Gas Exploration Operations, referred to herein as a notice of intent. The notice of intent must include the filing fee required by 43 CFR 3000.120 and must be filed with the authorized officer of the proper BLM office on the form approved by the Director. Within 5 business days of the filing date, the authorized officer will process the notice of intent and notify the operator of practices and procedures to be followed. If the notice of intent cannot be processed within 5 business days of the filing date, the authorized officer will promptly notify the operator as to when processing will be completed, giving the reason for the delay. The operator must, within 5 business days of the filing date, or such other time as may be convenient for the operator, participate in a field inspection if requested by the authorized officer. Signing of the notice of intent by the operator will signify agreement to comply with the terms and conditions contained therein and in this part, and with all practices and procedures specified at any time by the authorized officer.

**§ 3151.20 Notice of completion of operations.**

Upon completion of exploration, the permittee must file with the District Manager a Notice of Completion of Oil and Gas Exploration Operations. Within 30 days after this filing, the authorized officer will notify the permittee whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary, specifying the nature and

extent of actions to be taken by the permittee.

**§ 3151.30 Collection and submission of data.**

(a) The permittee must submit to the authorized officer all data and information obtained in carrying out the exploration plan.

(b) All information submitted under this section is subject to 43 CFR part 2, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records, as provided at § 3100.40 of this chapter.

**PART 3160—ONSHORE OIL AND GAS OPERATIONS**

■ 12. 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; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

■ 13. Revise § 3160.0–5 to read as follows:

**§ 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.

*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 aquatic 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.

*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.

*Shut-in well* means a nonoperational well that can physically and mechanically operate by opening valves or activating existing equipment.

*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.

*Temporarily abandoned well* means a nonoperational well that is not physically or mechanically capable of production or injection without additional equipment or without servicing the well, but that may have future beneficial use.

*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.

■ 14. Revise § 3162.3–4 to read as follows:

**§ 3162.3–4 Well abandonment.**

(a) The operator must 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 approves 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 a 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 operator must provide adequate and detailed justification for the abandonment, verify the mechanical integrity of the well, and isolate the completed interval(s) prior to abandonment. The authorized officer may authorize a delay in the permanent abandonment of a well for a period of up to 1 year and the authorized officer may authorize additional delays, no one of which may exceed an additional 1-year period. Except in extraordinary circumstances, the maximum period of time for an operator to delay permanent abandonment of a temporarily abandoned well will not exceed 4 years. 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 must be

reclaimed in accordance with a plan first approved or prescribed by the authorized officer.

(d) Operators of shut-in wells must:

(1) Notify the authorized officer of the well's shut-in status and provide the date the well was shut-in within 90 days of well shut-in;

(2) Within 3 years of well shut-in, provide the authorized officer with verification of the mechanical integrity of the well and confirmation that the well remains capable of producing in paying quantities; and

(3) Within 4 years of well shut-in, complete one of the following actions:

(i) Permanently abandon the well;

(ii) Resume production in paying quantities; or

(iii) Provide the authorized officer with a detailed plan and timeline for future beneficial use of the well. If the authorized officer determines that there is a legitimate future beneficial use for the well, the officer may allow the operator to delay permanent abandonment by 1 year. The authorized officer may grant additional delays in 1-year increments, provided that the operator confirms the future beneficial use of the well and is making verifiable progress on returning the well to a beneficial use.

■ 15. Revise § 3165.1 to read as follows:

**§ 3165.1 Relief from operating and/or producing requirements.**

(a) Applications for relief from either the operating or the producing requirements of a lease, or both, must be filed with the authorized officer, and must include a full statement of the circumstances that render such relief necessary.

(b) The authorized officer will act on applications submitted for a suspension of operations or production, or both, filed pursuant to 43 CFR 3103.42. The application for suspension must be filed with the authorized officer prior to the expiration date of the lease; must be executed by all operating rights owners or by the operator on behalf of the operating rights owners; and must include a full statement of the circumstances that makes such relief necessary.

(c) The authorized officer will not approve an application for a suspension of a lease where the applicant cites, as the basis for the suspension, a pending APD filed less than 90 calendar days prior to the expiration date of the lease.

(d) 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 in the approval.

Approved suspensions will not exceed 1 year. If the circumstances warrant all operating rights owners, or the operator on behalf of the operating rights owners, may submit a request to extend the suspension prior to the end of the suspension.

(e) BLM-directed suspensions may exceed 1 year.

(f) Suspensions will lift when the basis provided for the suspension no longer exists, when lifting the suspension is in the public interest, or as otherwise stated by the authorized officer in the approval letter.

**PART 3170—ONSHORE OIL AND GAS PRODUCTION**

■ 16. The authority citation for part 3170 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.

■ 17. Revise § 3171.6 to read as follows:

**§ 3171.6 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:

(a) A completed Form 3160-3; and

(b) A 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.

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

(i) Geographical coordinates generated by an electronic navigation system, and

document the datum referenced to generate these coordinates; and

(ii) 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.

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

(3) 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:

(i) Lands administered by the Department of Defense;

(ii) Other lands used for military purposes;

(iii) Indian lands; or

(iv) Where more than negligible surface disturbance is likely to occur or is otherwise prohibited.

(4) 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.

■ 18. Revise § 3171.14 to read as follows:

**§ 3171.14 Valid Period of Approved APD.**

(a) An APD approval is ordinarily valid for 3 years from the date that it is approved, or until lease expiration, whichever occurs first.

(b) Notwithstanding paragraph (a) of this section, if an APD approval expires by reason other than lease expiration, the APD approval shall remain valid if the operator or lessee:

(1) Has drilled the well to the approximate total depth in the approved APD;

(2) Is drilling the well with a rig capable of drilling the well to the proposed total depth in the approved APD; or

(3) Has submitted a plan, approved by the BLM prior to expiration of the APD approval, for continuously drilling the well to reach the proposed total depth in the approved APD.

(c) If, upon expiration of the approved APD, the operator created surface disturbance or began drilling the well

under the approved APD, the operator or lessee must comply with all applicable plugging, abandonment, and reclamation requirements.

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

**PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS**

■ 19. The authority citation for part 3180 continues to read as follows:

Authority: 30 U.S.C. 189.

**§ 3186.2 [Removed]**

■ 20. Remove § 3186.2.

**Laura Daniel-Davis,**

*Principal Deputy Assistant Secretary, Land and Minerals Management.*

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