Park, NC 27711, telephone (919) 541–3354.

List of Subjects in 40 CFR Part 52

Environmental protection, air pollution control, Ozone, and Nitrogen Oxides.

Dated: January 6, 1998.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–769 Filed 1–12–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3106, 3130, and 3160

[AA–610–08–4111–2410]

RIN 1004–AC54

Oil and Gas Leasing; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify the responsibilities of oil and gas lessees for protecting Federal oil and gas resources from drainage by operations on nearby lands that would result in lower royalties to the Federal government. It would specify when the obligations of the lessee or operating rights owner to protect against drainage begin and end and specify what steps should be taken to determine if drainage is occurring. It also would clarify the obligation of the assignor and assignee for drainage obligations, well abandonment and environmental remediation when the Bureau of Land Management (BLM) approves an assignment of record title or operating rights.

DATES: BLM may not necessarily consider comments postmarked, hand-delivered, or received by electronic mail after March 16, 1998 the above date in the decisionmaking process on the final rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Bureau of Land Management, Administrative Record, 1849 C Street, N.W., Room 401LS, Washington, D.C. 20240. You may also comment via the Internet to WOComment@Wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: AC54'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Finally, you may hand-deliver comments to Bureau of Land Management at 1620 L Street, N.W., Room 401, Washington, D.C. Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, (202) 452–0340.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background

The existing regulations in 43 CFR Part 3100 provide for agreements whereby the United States is compensated for oil or gas resources that are drained from Federal lands by operations on adjacent lands. These rules further require the lessee or operating rights owner to drill and produce wells necessary to prevent drainage or, in lieu thereof, to pay compensatory royalties. These regulations are based on BLM's authority under the Mineral Leasing Act of 1920, as amended and supplemented, and other cited authority to promulgate a rule to implement the Act. It and its implementing lease terms make express the covenant to protect the lessor against drainage implicit in the law of all oil and gas producing states. An audit by the Office of the Inspector General and an Internal Control Review by BLM in 1990, recommended that BLM revise the oil and gas regulations pertaining to drainage protection to clarify who is responsible for drainage protection, when that responsibility begins and ends, and to specify what actions are required on the part of Federal oil and gas lessees to ensure that their leases are protected from drainage. In 1995 the Director appointed a Bureau Performance Review Bonding and Unfunded Liability Team to review a broad range of liability issues. That Team recommended that BLM revise and clarify its regulations on lessee and operating rights owner liability with regard to prevention of drainage, payment of compensatory royalties, plugging and abandonment of wells, and reclamation and remediation of the lease site. This rulemaking should enable BLM to do an effective job in fulfilling its responsibility with regard to ensuring that the public receives full value for its oil and gas resources notwithstanding drainage. The rule would also insure that the Government's right to drainage compensation cannot be defeated by the expedient of lease assignment while the drainage continues.

III. Proposed Rule

The proposed rule would amend existing provisions on the responsibilities of lessees of Federal oil and gas leases. It would clarify and codify the responsibilities of oil and gas lessees for protecting Federal oil and gas resources from drainage by operations on nearby lands that would result in lower royalties from Federal leases. The rule would add definitions of the terms ''drainage'' and ''protective well'', and clarify when and how lessees receive notice, either actual or constructive, that drainage from their leases may be occurring. The proposed rule would amend the regulations on transfers of leases and onshore oil and gas operations to allocate the responsibility for drainage protection and to clarify when the obligation to protect Federal leases from drainage begins. It would make it clear that once BLM has made a *prima facie* case that drainage is occurring, the lessee has the burden of

proving that drainage is not occurring or has not occurred. Moreover, the lessee has the burden of proving that it could not make a reasonable profit over and above the cost of drilling, producing, and operating a well to protect the leased lands from drainage. That prudent operator test would be applied once, when drainage was or should first have been known, and not each time there is an assignment of lease interests. Additionally, the proposed rule would renumber sections within subpart 3100 which were not being changed substantively, to make the numbering system consistent throughout that subpart. The proposed rule would also expressly recognize that a lessee can satisfy its obligation to protect against drainage by entering into unitization or communitization agreements.

The rule would provide that once it is determined that a protective well is economic, the Government's receipt of compensatory royalties for continuing drainage would not be affected by transfers of lease interests. It would do so by fixing the point at which economic feasibility of a protective well is determined at the earliest time any lessee knew or should have known of drainage. Currently, a new determination is made every time an interest in the lease is assigned, cutting off compensatory royalty obligations sooner than if the lease is not assigned. Assignment should affect the identity of the person owing compensation, not whether there is a duty to compensate.

The proposed rule would expressly state that where undivided record title interests or operating rights in the lease are held by more than one party, all such lessees and operating rights owners are jointly and severally responsible for drainage protection, including payment of all compensatory royalty due in lieu of drilling a protective well. Public comments are also requested on the requirement that, upon BLM's approval of an assignment of record title, a prospective assignee assumes the obligation to pay any compensatory royalties that accrue during its lease tenure, if a protective well would have been economic at the earliest time drainage was known or should have been known by the previous lessee. BLM will amend Oil and Gas Lease Form 3100–11, Assignment of Record Title Form 3000–3, and Transfer of Operating Rights (Sublease) Form 3000–3a to reflect this rulemaking.

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 made a number of changes in the Federal Oil and Gas Royalty Management Act (FOGRMA). Section 6(g) of that legislation amended section 102(a) of FOGRMA, 30 U.S.C. 1712(a), to make an operating rights owner primarily liable for ''its pro rata share of payment obligations under the lease.'' Record title lessees were made secondarily liable for such pro rata shares.

BLM's attorneys have concluded that this provision does not affect the joint and several obligation of lessees and operating rights owners to protect the lessor from drainage or pay damages in the form of compensatory royalties if they fail to do so. An ''obligation'' for FOGRMA purposes is a duty to pay, offset or credit monies, including any royalty, rental, interest, penalty or assessment. In contrast, the obligation addressed by these regulations is a joint and several duty to diligently develop to prevent the lessor's oil and gas from being drained by drilling on adjacent lands. A compensatory royalty is payable under the terms of the lease, in lieu of, or upon the failure to meet, the drilling obligation.

Nor does compensatory royalty constitute interest owed on a sum not paid timely or a civil or criminal penalty as authorized by sections 109 or 110 of FOGRMA. Nor is it an assessment, which is a ''fee or charge'' levied or imposed by the Secretary or a delegated State. Just as the other means of satisfying the obligation are joint and several, so is the alternative of paying compensatory royalty. Further, if BLM were to allow some portion to remain unpaid, by treating the liability as proportionate only, there would be little incentive to drill protective wells. This proposed rule conforms to the treatment of offshore leases in the final rule promulgated by the Minerals Management Service on May 22, 1997 (62 FR 27948).

BLM is proposing the following specific changes to its oil and gas regulations that deal with drainage:

Sections within subpart 3100 would be renumbered. The following discussion uses the new section designations.

Section 3100.5 Definitions (previously § 3100.0–5) would be amended by deleting paragraph designations, and alphabetizing the definitions for ease of reading. New definitions of ''drainage'' and ''protective well'' would be added to the list of definitions.

Section 3100.21 (previously § 3100.2–1) would be amended to indicate what steps BLM will take to ensure that the government is compensated for drainage of oil and gas from federally-owned lands. It would retain the existing explanation of how the government seeks protection from drainage of unleased lands and add a provision to explain how the government seeks protection for leased lands.

Section 3100.22 (previously § 3100.2–2) would be amended to clarify under what circumstances lessees are responsible for protecting their leases on Federal lands from drainage, but the list of actions BLM might require a lessee to take to provide this protection would be made a separate Section 3100.23.

Section 3100.24 would be added to specify that all record title lessees are jointly and severally liable for paying compensatory royalties when more than one such person owns interests in the same lease. Operating rights owners having an interest in the same area are jointly and severally liable with one another and with the record title owners for the compensatory royalties attributable to drainage from that area.

Section 3100.40 would be added to specify that the duty of a lessee or operating rights owner to pay compensatory royalty for drainage begins a reasonable period after a reasonably prudent operator should or could have known that drainage was occurring, or when the lease is acquired from a lessee who knew or should have known of the drainage.

Section 3100.45 would be added to clarify that after BLM approves an assignment, the assignor remains responsible for drainage obligations that accrued during its lease tenure.

Section 3100.50 would provide that a party with interest in a Federal lease will have constructive notice that drainage is or is not occurring when well completion or first production reports are filed with State oil and gas commissions or regulatory agencies or become publicly available, whichever is earlier, or when that party completes drill stem, production, pressure analysis, or flow tests of the offending well, if that party owns any interest in the offending well or the lease.

Section 3100.51 would provide that lessees and operating rights owners have duties to monitor the drilling of wells on adjacent lands and to gather sufficient information to determine whether drainage is occurring. This information may be in various forms, including but not limited to, well completion reports, sundry notices, or monthly production reports. The prudent lessee or operating rights owner must analyze and evaluate this information and make the necessary calculations to determine the drainage area of the offending well, the amount of oil and gas resources being drained by the offending well from their Federal

lease, if any, and whether a protective well would be economic to drill after notice has been established. The lessee and operating rights owners would also be required within 60 days to provide BLM with their plans for drainage protection. Further they would be required to provide BLM with the analysis itself upon request from BLM.

Section 3100.52 would be added to inform the lessee or operating rights owner that BLM will send a demand letter by certified mail once it has determined that drainage is occurring, but their liability for drainage protection commences from the date of actual or constructive knowledge under Section 3100.50, when earlier than BLM's demand.

Section 3100.55 would be added to inform a party with interest in an oil and gas lease that BLM has the burden of establishing the existence of drainage and the operator's knowledge of that drainage, but once a *prima facie* case is established, the lessee or operating rights owner has the burden of proving that drainage has not occurred or it should not have known of the drainage.

Moreover, the lessee/operating rights owner has the burden of proving that a protective well would not be economic.

Section 3100.60 would be added to indicate that the party holding an interest in a Federal lease must begin to take protective action at the earliest reasonable time after an offending well begins to produce oil and gas resources on adjacent lands, with the actual time being determined case-by-case on the basis of specified factors. While you may contest BLM's determination, upon a final determination that protective measures were required, your liability for failure to protect the lessor will be calculated from the date established under 3100.50 or the date of BLM's initial demand, whichever is earlier.

Section 3100.61 would be added to describe the period of time for which the Department will assess compensatory royalties against a lessee or operating rights owner who does not drill and produce from a protective well or enter into a unitization or communitization agreement to protect the lease from drainage.

Section 3100.70 would be added to indicate that a party holding an interest in a lease does not have to pay compensatory royalty if it can prove that drilling and producing from a protective well would not have been economically feasible when drainage first should have been known to be occurring.

Section 3100.71 would be added to inform an assignee or transferee that if it acquires a lease that is being drained, it would be assessed compensatory royalty for all drainage occurring during its lease tenure, if it would have been economically feasible to drill and produce from a protective well at the time drainage was first known or should have been known by the parties holding the lease interest at that time.

Section 3100.80 would be added to indicate that a lessee or operating rights owner may appeal a BLM decision to require that drainage protection measures be taken under the procedures outlined in 43 CFR Parts 4 and 1840.

Section 3106.7–2 would be revised to specify that an assignor or transferor remains responsible for all obligations accruing prior to the approval of the assignment or transfer, including the payment of compensatory royalties for drainage and the plugging and abandonment of any unplugged wells drilled or used prior to the effective date of the transfer.

Section 3106.7–6 would be added to inform a transferee of its obligations with regards to complying with the original lease terms, plugging and abandonment of unplugged wells, reclamation of the lease site, remediation of environmental problems in existence and knowable at the time of assignment, as well as maintaining an adequate bond to ensure performance of those responsibilities.

Section 3108.1 would be revised to add a requirement that where more than one party holds record title interest in the same lease, all such parties must sign the relinquishment form. In addition, all parties relinquishing the lease are still responsible for settling all outstanding obligations of the lease, including placement of all wells on the lease in proper condition for suspension or abandonment, and for reclamation of leased lands in a proper manner in accordance with an approved plan.

Section 3130.3 would be revised to cross-reference these provisions of Subpart 3100, rather than the incorrectly cited 3100.3.

Section 3162.2 would be revised to add ''lessees'' to the persons who must satisfy the requirement of drilling and producing operations related to drainage, whereas the current regulations list only the operating rights owners as being responsible for this requirement.

Section 3165.3 would be revised to add ''lessee'' to the list of those parties who would be notified by BLM in the case that such parties are in violation of any agreements or regulations pertaining to operations on an oil and gas lease. Existing regulations only list the operating rights owner and the operator as being notified.

Section 3165.4 would be amended to add a provision specifying that an appeal of BLM's determination of drainage does not stay the determination and that compensatory royalties and interest will accrue during the appeal. This provision is necessary to avoid preclusion of Minerals Management Service demands to pay compensation should the government prevail on appeal.

The BLM also has the responsibility for enforcing those provisions in Indian oil and gas leases requiring lessees to protect the Indian mineral owner from drainage. The bulk of this proposal consists of amendments to 43 CFR Part 3100, which governs the leasing of Federal minerals. The proposal leaves largely unchanged 43 CFR 3162.2, which obliges the operating rights owners of Indian leases, as well as Federal leases, to protect the lessor from drainage. The Department is particularly interested in receiving comments from Indian mineral owners on the appropriateness of modifying Subpart 3162, which governs drainage of Indian mineral leases, in the same fashion as proposed here for Federal minerals. Depending on comments received, and discussions with Indian tribes and mineral owners, BLM may either adopt this proposal for Indian as well as Federal leases, or develop different regulations for the protection of Indian mineral owners from drainage.

IV. Procedural Matters

The principal author of this proposed rulemaking is Donnie Shaw, Fluid Minerals Group, assisted by Annetta Cheek, Regulatory Affairs Group.

National Environmental Policy Act

BLM has determined that this proposed rulemaking is not subject to the review process established by the National Environmental Policy Act (NEPA) of 1969, inasmuch as it is categorically excluded pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and 516 DM, Chapter 2, Appendix 2. It has further determined that the proposed rule does not meet any of the ten criteria for exceptions to categorical exclusion listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures

adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The environmental effects of this rule are too speculative or conjectural to lend themselves to meaningful analysis. Although this rulemaking requires that BLM ensure that Federal lessees and operating rights owners protect their leases from drainage of oil and gas resources by producing wells on adjacent lands, there are several steps that must be taken before it is determined that an operator will take actions subject to NEPA review. The lessee must monitor well activities on adjacent lands and then conduct an analysis of information available to determine if the adjacent well is too far away to be capable of draining the Federal lease. Even if it is draining the Federal lease, the lessee might be able to exercise options such as forming a protective agreement with the owners of the draining well or paying compensatory royalties. These two options are exercised in over 80 percent of the cases where there is economic drainage and a NEPA analysis is not required.

In about 10 percent of all drainage cases identified, it might be determined that drilling a protective well is the only option for protecting the lease from drainage. However, the lessee might prove that even if it drilled a protective well, it might not be economic. This is perhaps true in 75 percent of the cases where drilling a protective well is considered. If the lessee determines it can drill an economic protective well, then obtaining approval to drill the well is subject to a review in accordance with procedures established by BLM to comply with NEPA.

Paperwork Reduction Act

BLM has submitted an information collection clearance package to the Office of Management and Budget for its approval of the information requirements contained in 43 CFR Part 3100, Drainage Protection of the proposed rule, under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Proposed changes in the regulations would increase the information burden by 2000 hours (2 hours for preliminary analysis by 1000 respondents); an additional 2400 hours (24 hours for detailed analysis by 100 of those 1000 respondents); and, finally, an additional 200 hours (20 hours for more extensive analysis by 10 of those 100 respondents). We estimate the total information burden to be 4600 hours. The BLM expects the public reporting burden of these regulations to be as follows:

Section 3100.51 requires the respondent to notify BLM of plans for drainage protection when there is drainage potential or provide information as to why no drainage protection is necessary.

The information is required so that BLM can determine whether lessees and operating rights owners have complied with their lease agreements to monitor oil and gas drilling and production activities on nearby lands to determine whether there are any potential producing wells draining their Federal leases that would result in lower royalties to the Federal Government. If drainage is occurring, the lessee or operating rights owner must notify BLM of plans for drainage protection, and provide the analysis, if requested by BLM, that includes the drainage area of the ultimate recovery of the offending well, the amount of oil and gas resources drained from the lease, and whether a protective well would be economic to drill.

We estimate it will take between 2 and 46 hours per respondent to comply with the requirements for drainage protection depending on the level of analysis required. The analysis on the potential for drainage may include drafting, analyzing, and evaluating well completion reports, sundry notices, and production reports. If drainage is occurring, the respondent must also submit plans for protection of the affected leases.

These estimates include the time for reviewing the instructions, searching existing data bases, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We specifically request your comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (2) the accuracy of BLM's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used, (3) ways to enhance the quality, utility and clarity of the information to be collected, and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will analyze any comments sent in response to the notices and include them in preparing the final rulemaking.

Send comments regarding this information collection, including suggestions for reducing the burden, to: Office of Management and Budget, Interior Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, D.C. 20503 and Information Collection Clearance Officer, Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact on a substantial number of small entities. BLM has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities under the RFA. This rule does not add new requirements to protect the lessor from drainage, or impose new obligations on assignors, but simply clarifies ambiguities in the existing regulations.

Unfunded Mandates Reform Act

Pursuant to requirements of section 205 of the Unfunded Mandates Reform Act of 1995, BLM has selected the most cost-effective and least burdensome alternative that achieves the objectives of the rule. These regulatory changes will not result in any unfunded mandate to State, local or tribal governments in the aggregate, or to the private sector, of $100,000,000 or more in any one year.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action and therefore the rule is not subject to Office of Management and Budget review under section 6 (a)(3) of the order. The proposed rule will not have an annual effect on the economy of $100 million or more or 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.

Since Fiscal Year (FY) 1992, the drainage protection program has generated an average of about $25 million to the U.S. Treasury per year, with about 10 percent of these revenues attributed to compensatory royalty assessments. These funds are from payments by lessees and operating rights owners obligated to pay royalties

and compensatory royalties under the drainage protection program. The rule requirement to hold both the lessees and operating rights owners responsible for the obligation to pay compensatory royalties resulting from drainage could increase revenues to the Federal Government by as much as $250,000 per year if this provision of the rule is adopted. This is far below the $100 million threshold set out in the executive order. In addition, because the proposed rule clarifies the responsibilities of oil and gas lessees to protect Federal oil and gas resources from drainage, it may reduce the loss of future royalty revenues.

Since FY 1992, Federal expenditures for the drainage protection program have averaged about $1.5 million per year. The clarification of the regulations to hold both lessees and operating rights owners responsible for drainage protection obligations may increase Federal expenditures for the management of the program by as much as 10 percent or about $150,000 per year. Again, this is below the $100 million threshold set out in the executive order. The increase in expenditures would be more than offset by an increase in revenues resulting from the compensatory royalty assessments. Also, clarifying what puts a party on notice that he or she is obliged to protect BLM from drainage will not increase expenditures. This proposal should actually decrease the number of challenges to the issue of notice of drainage because it would make it clear when a party is considered to have been notified that drainage is occurring.

The rule will not adversely affect the ability of the oil and gas industry operating on BLM lands to compete in the marketplace, nor will it adversely affect the economy, a sector of the economy, or productivity. The rule does not add new requirements to protect the lessor from drainage, or impose new obligations on assignors, but simply clarifies ambiguities in the existing regulations. The net economic effects of this clarification will be beneficial to stakeholders as well as to the public, because the implementation of the proposed rule should decrease the number of drainage cases that are appealed or decided in courts, and should result in an increase of compensatory royalty assessments.

Executive Order 12988

The Department has determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects

43 CFR Part 3100

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

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 3160

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

Dated: November 28, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

Under the authorities cited below and for the reasons presented above, BLM proposes to amend Parts 3100, 3130, and 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

1. Remove the heading and the note following Group 3000—Minerals Management.

PART 3000—MINERALS MANAGEMENT: GENERAL

2. Revise the authority citation for Part 3000 to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359, and 40 Op. Atty. Gen. 41.

3. Remove the heading and the note following Group 3100—Oil and Gas Leasing.

4. Revise the authority citation for Part 3100 to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 43 U.S.C. 1732(b); 43 U.S.C. 1733; 43 U.S.C. 1740, and 40 Op. Atty. Gen. 41.

Subpart 3100—Onshore Oil and Gas Leasing: General

§ 3100.2 [Removed]

5. Amend Subpart 3100 by removing § 3100.2 and by redesignating existing sections as set forth in the following table:

Existing section	New section
3100.0–3	3100.3
3100.0–5	3100.5
100.0–9	3100.9
3100.1	3100.10
3100.2–1	3100.21
3100.2–2	3100.22 and 3100.23
3100.3	3100.30
3100.3–1	3100.31
3100.3–2	3100.32
3100.3–3	3100.33

6. Amend redesignated § 3100.5 by removing the paragraph designations, revising the introduction, arranging the definitions in alphabetical order, and adding two new definitions, as follows:

§ 3100.5 Definitions.

As used in this group, the term:

* * * * *

Drainage means the migration of hydrocarbons, inert gases or 27 associated resources from Federal lands caused by production from wells on adjacent lands.

* * * * *

Protective well means a well drilled by or on the behalf of the lessee to prevent or offset drainage of oil and gas resources from its Federal lease by a producing well on adjacent or nearby lands.

7. Revise redesignated § 3100.21 to read as follows:

§ 3100.21 What steps may BLM take to avoid uncompensated drainage of oil and gas from federally owned lands?

If BLM determines that wells drilled on adjacent lands are draining oil or gas from Federal lands, it may take any of the following actions:

(a) If the lands being drained are leased Federal lands, BLM may require the lessee to drill and produce all wells that are necessary to protect the lease from drainage unless the conditions in § 3100.70 of this part are met. BLM alternatively may accept other equivalent protective measures as outlined in § 3100.23;

(b) If the lands being drained are either unleased or leased Federal lands, BLM may execute agreements with the owners of interests in the producing well under which the United States may be compensated for the drainage (with the consent of its lessees, if any); or

(c) BLM may offer for lease any qualifying unleased lands under part 3120 of this chapter or enter into a communitization agreement under subpart 3105 of this part.

8. Revise redesignated § 3100.22 to read as follows:

§ 3100.22 What is my responsibility for protecting my lease on Federal lands from drainage?

You must protect your lease from drainage if you are a lessee and your lease on Federal lands is being drained of oil or gas by wells:

(a) Located on non-Federal lands;

(b) Located on Federal leases with a lower royalty rate;

(c) Located in another unit with a lower Federal participation factor than your lease; or

(d) Located in a different communitization agreement area with a lower Federal allocation factor than your lease.

9. Add new § 3100.23 to read as follows:

§ 3100.23 What may BLM require me to do to protect the oil and gas on my lease from drainage?

BLM may require you to:

(a) Drill and produce all wells that are necessary to protect the leased lands from drainage, subject to the provisions of § 3100.70;

(b) Enter into a unitization or communitization agreement with the lease containing the draining well. BLM must approve the agreement under subpart 3105 of this part or part 3180 of this chapter; or

(c) Pay compensatory royalties for drainage that has occurred or is occurring.

10. Add new § 3100.24 to read as follows:

§ 3100.24 Who is liable for drainage if more than one person holds undivided interests in the record title or operating rights for the same lease?

If more than one person holds record title interests in the lease, each person is jointly and severally liable for taking any action BLM may require under this part to protect the lessor from drainage, including paying compensatory royalty, accruing during the period it holds its record title interest. Operating rights owners are jointly and severally liable with each other and with all record title owners for drainage affecting the area in which they hold operating rights accruing during the period they hold operating rights.

11. Add new § 3100.40 to read as follows:

§ 3100.40 When does my liability to pay compensatory royalties for drainage begin?

Your liability for paying compensatory royalties begins a reasonable period after a reasonably prudent operator knew or should have known that drainage was occurring. If you acquire your lease interest after this time, your liability to pay compensatory royalties begins on the date you acquire the lease interest. See § 3100.51 of this part for the circumstances when BLM considers that you should have knowledge that drainage may be occurring.

12. Add new § 3100.45 to read as follows:

§ 3100.45 Does my responsibility for drainage protection end when I assign the lease?

If you assign your record title interest in a lease or transfer your operating rights, you are not liable for drainage that occurs after the date BLM approves the assignment or transfer. However, you remain responsible for the payment of compensatory royalties for any drainage that occurred when you held the lease interest.

13. Add new § 3100.50 to read as follows:

§ 3100.50 When will I have constructive notice that drainage may be occurring?

You have constructive notice that drainage may be occurring when:

(a) Well completion or first production reports are filed with BLM, State oil and gas commissions, or regulatory agencies and become publicly available, whichever is earlier; or

(b) You complete drillstem, production, pressure analysis, or flow tests of the offending well, if you own any interest in that well or the lease.

14. Add new § 3100.51 to read as follows:

§ 3100.51 What is my duty to inquire about the potential for drainage and inform BLM of my findings?

(a) When you first acquire a lease interest, and at all times while you hold the lease interest, you must monitor the drilling of wells on adjacent lands and gather sufficient information to determine whether drainage is occurring. This information can be in various forms, including but not limited to, well completion reports, sundry notices, or available production information. As a prudent lessee or operating rights owner, it is your responsibility to analyze and evaluate this information and make the necessary calculations to determine:

(1) The drainage area of the ultimate recovery of the offending well;

(2) The amount of oil and gas resources which will be drained from your Federal lease during the life of the offending well, if any; and

(3) Whether a protective well would be economic to drill after a reasonable time following notice as established under § 3100.50.

(b) You must notify BLM, within 60 days from the date of notice established under § 3100.50, of your plans for drainage protection, when the facts indicate a potential for drainage.

(c) You must provide BLM with the analysis under paragraph (a) of this section within 60 days after BLM requests it.

15. Add new § 3100.52 to read as follows:

§ 3100.52 Will BLM notify me when it has determined that drainage is occurring?

BLM will send you a demand letter by certified mail, return receipt requested, or personally serve you with notice, if BLM believes that drainage is occurring. However, your responsibility to take protective action arises when you first knew or should have known of the drainage under § 3100.50 of this part, even when that date precedes the BLM demand letter.

16. Add new § 3100.55 to read as follows:

§ 3100.55 Who has the burden of proof if, as a lessee or operating rights owner, I contest BLM's drainage determination?

BLM has the burden of establishing a *prima facie* case that drainage is occurring and that you should have known of such drainage. Then the burden of proof shifts to you to refute the existence of drainage or of sufficient information to put you on notice of the need for drainage protection. You also have the burden of proving that drilling and producing from a protective well would not be economically feasible.

17. Add new § 3100.60 to read as follows:

§ 3100.60 How soon after I know of the likelihood of drainage must I take protective action?

You must take protective action at the earliest reasonable time after you knew or should have known that the offending well had begun to produce oil or gas from the lands adjacent or near to your Federal lease, or BLM issues a demand for protective action, whichever is earlier. Since the time required to drill and produce a protective well varies according to the location and conditions of the oil and gas reservoir, BLM will determine this time on a case-by-case basis. When it determines whether you took protective action at the earliest reasonable time, BLM will consider several factors including, but not limited to:

(a) Time required to evaluate the offending well's production performance;

(b) Rig availability;

(c) Well depth;

(d) Required environmental assessments;

(e) Special lease stipulations which provide limited time frames in which to drill; and

(f) Weather conditions.

18. Add new § 3100.61 to read as follows:

§ 3100.61 If I hold interests in a lease, for what period will the Department assess compensatory royalty against me?

The Department will assess you compensatory royalty beginning on the first day of the month following the date of the earliest reasonable time BLM determines you should have taken protective actions under § 3100.60, if you have not yet drilled a protective well or entered into a unitization or communitization agreement. You must continue to pay compensatory royalty until:

(a) Sufficient protective wells are drilled and are in continuous production;

(b) BLM approves a unitization or communitization agreement that includes the lands being drained;

(c) The draining well ceases production; or

(d) You relinquish the oil and gas lease interests in spacing units, lots, or aliquot parts of the Federal lands being drained.

19. Add new § 3100.70 to read as follows:

§ 3100.70 Are there any conditions under which I will not be assessed compensatory royalty?

The Department will not assess you compensatory royalty if you can prove to BLM that when you first knew or should have known of drainage, there was not a sufficient quantity of oil or gas producible from a protective well on your lease to pay a reasonable profit above the cost of drilling, completing, and operating the protective well at that time.

20. Add new § 3100.71 to read as follows:

§ 3100.71 If I am assigned an interest in a lease that is being drained, will the Department assess me for compensatory royalty?

If you acquire an interest in a Federal lease through an assignment of record title or transfer of operating rights, you are liable for all drainage obligations under this part accruing on or after the date BLM approves the assignment or transfer.

21. Add new § 3100.80 to read as follows:

§ 3100.80 May I appeal BLM's decision to require protective measures?

All of BLM's decisions requiring that you take drainage protection measures are subject to review and appeal in accordance with provisions of 43 CFR part 4 and subpart 1840.

22. Revise § 3106.7–2 to read as follows:

§ 3106.7–2 If I transfer my lease, when do my obligations under the lease end?

You are responsible for the performance of all obligations under the lease until the date BLM approves an assignment of your record title interest or transfer of your operating rights. You will continue to be responsible for obligations that accrued prior to the approval date, whether or not they were identified at the time of the assignment or transfer, including the payment of compensatory royalties for drainage. As the assignor or transferor, you remain responsible for plugging wells and abandoning facilities you drilled, installed or used prior to the effective date of the assignment or transfer.

23. Add new § 3106.7–6 to read as follows:

§ 3106.7–6 If I acquire a lease by an assignment or transfer, what obligations do I agree to assume?

If you acquire a Federal lease interest by assignment or transfer, you agree to comply with the terms of the original lease during your lease tenure, notwithstanding any terms of your assignment or sublease. Also, you must plug and abandon all unplugged wells, reclaim the lease site, and remedy all environmental problems in existence and knowable to a purchaser exercising reasonable diligence at the time you receive the assignment or transfer. You must also maintain an adequate bond to ensure performance of these responsibilities.

24. Revise § 3108.1 to read as follows:

§ 3108.1 As a lessee, may I relinquish my lease?

You may relinquish your lease or any legal subdivision of your lease at any time. You must file a written relinquishment with the BLM State Office with jurisdiction over your lease. All lessees holding record title interests in the lease must sign the relinquishment. A relinquishment takes effect on the date you file it with BLM. However, you and the party that issued the bond will continue to be obligated to:

(a) Make payments of all accrued rentals and royalties, including payments of all compensatory royalty, which may be due for all drainage that occurred prior to the relinquishment;

(b) Place all wells on the lands to be relinquished in condition for suspension or abandonment as required by BLM; and

(c) Complete reclamation of the leased lands in a timely manner after cessation or abandonment of oil and gas operations on the lease, in accordance with a plan approved by the appropriate surface management agency.

PART 3130—OIL AND GAS LEASING: NATIONAL PETROLEUM RESERVE, ALASKA

25. Revise the authority citation for part 3130 to read as follows:

Authority: 42 U.S.C. 6508; 43 U.S.C. 1732(b); 43 U.S.C. 1733; 43 U.S.C. 1740, and 40 Op. Atty. Gen. 41.

§ 3130.3 [Amended]

26. Revise § 3130.3 by substituting ''§§ 3100.21–3100.80'' for ''§ 3100.3.''

PART 3160—ONSHORE OIL AND GAS OPERATIONS

27. Revise the authority citation for part 3160 to read as follows:

Authority: 25 U.S.C. 396d; 30 U.S.C. 189; 30 U.S.C. 359; 43 U.S.C. 1733; 43 U.S.C. 1740, and 40 Op. Atty. Gen. 41.

§ 3162.2 [Amended]

28. Amend § 3162.2 by adding the term ''lessee(s) and'' before ''operating rights owner'' in the second sentence of paragraph (a) and by adding an ''(s)'' after ''operating rights owner'' each time it appears.

§ 3165.3 [Amended]

29. Amend § 3165.3 by adding the term ''a lessee(s),'' after ''Whenever'' and deleting the word ''an'' before ''operating rights owner'' in the first sentence of paragraph (a).

30. Amend § 3165.4 by adding a new paragraph (e)(4) to read as follows:

§ 3165.4 Appeals.

* * * * *

(e) * * *

(4) When an appeal is filed under paragraph (a) of this section from a decision to require drainage protection, BLM's drainage determination will remain in effect during the pendency of the appeal, notwithstanding the provisions of 43 CFR 4.21. Compensatory royalty and interest determined under 30 CFR part 218 will continue to accrue throughout the pendency of the appeal.

* * * * *

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