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Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3000, etc.

Minerals Management; Onshore Oil and Gas and Geothermal Leasing; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3260

[AA-620-88-4111-01-24-10; Circular No. 2608]

Minerals Management; General Oil and Gas Leasing; Noncompetitive Leases; Competitive Leases; Oil and Gas Leasing—National Petroleum Reserve—Alaska; Onshore Oil and Gas Operations; Onshore Oil and Gas Unit Agreements—Unproven Areas; Geothermal Resources Leasing; General; Geothermal Resources Unit Agreements—Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations covering competitive and noncompetitive onshore oil and gas leasing on Federal mineral lands managed by the Bureau of Land Management, including Federal minerals underlying National Forest System lands, to comply with the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100-203), enacted as part of the Omnibus Budget Reconciliation Act of 1987, hereinafter referred to as the Reform Act. Section 5107 of the Reform Act requires that final regulations be issued within 180 days after the date of enactment, December 22, 1987, to be effective when published in the **Federal Register**. This final rulemaking also contains amendments to implement bonding and reclamation provisions contained in the Reform Act as well as revisions of bonding requirements recommended by a Bureau of Land Management task force that reviewed bonding procedures for oil and gas and geothermal resources leasing.

The provisions of this final rulemaking include procedures for the conduct of oral auctions by each Bureau of Land Management State Office at least quarterly for lands available for oil and gas leasing. The payments required on the day of the auction for each parcel bid on are required to include the national minimum acceptable bid of $2 per acre, the total first year's rental, and a $75 administrative fee to help defray the costs of the sale. The remainder of the bonus bid moneys for each parcel are required to be remitted within 10 working days from the last day of the auction, otherwise all moneys submitted are forfeited. Noncompetitive offers for parcels not sold will be accepted for a 2-year period beginning the first business day following the auction or, where formal nominations are used, the first business day following the posting of the sale notice. Those offers filed from the first day following the end of the competitive process until the end of that same month are required to be described only by the parcel number used in the sale list or notice. For the remainder of the 2-year period, the legal land description of the parcel(s) or any portion thereof must be provided. In addition to offering parcels selected by the Bureau, the final rulemaking provides administrative flexibility to allow for either informal expressions of interest or a formal nomination process to determine the lands to be offered competitively. As stated later in this preamble, the Director elects to permit informal expressions of interest but declines to implement a formal nomination process at this time. Additionally, noncompetitive offers may be filed on certain unleased lands prior to the competitive process. However, no noncompetitive lease may issue for any such lands until they have been offered competitively and filed to receive a bid. The final rulemaking allows letters of credit and certificates of deposit as acceptable forms of bonding, and also requires 100 percent bond coverage for any entity that has failed to comply with the reclamation requirements on other leases over the past 5 years. For the majority of operators, the existing bond amounts are considered adequate to ensure the complete and timely reclamation of the lease tract and restoration of any lands or surface waters adversely affected by lease operations. An acceptable surface use plan of operations, in addition to the drilling plan, is required from all operators prior to approval, following 30 days posting, of the drilling permit by the authorized officer.

EFFECTIVE DATE: June 17, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Judith I. Reed, (202) 653-2190.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the regulations in 43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280 was published in the **Federal Register** on March 21, 1988 (53 FR 9214), with a 30-day comment period. During the comment period, comments were received from 94 sources: 62 from business interests, primarily related to the oil and gas industry; 4 from attorneys; 11 from associations; 3 from State Governments; 1 from a Member of Congress; and 13 from Federal agencies. A few comments requested that the comment period be extended. Other commenters did not request an extension of the comment period, but rather suggested that the Department continue to solicit comments or that public hearings be held. Because of the short statutory deadline under section 5107 of the Reform Act, the Bureau of Land Management could not allow an extension of the comment period and still be able to meet the statutory 180-day deadline. Many of the Bureau State Offices have held oil and gas meetings and forums during this 6-month period to describe and discuss the program changes and to address a great many of the questions and comments raised concerning the changes required by the Reform Act. The Bureau State Office oil and gas meetings will continue to provide a forum to discuss matters concerning the leasing program. The Bureau will consider reviewing the regulations implementing new provisions mandated by the Reform Act in connection with the statutory provision for the Secretary's review, following the second anniversary of the Reform Act, of the minimum acceptable competitive bid.

A few comments expressed concern regarding the impact of the Reform Act and its implementing regulations on independent operators of the oil and gas industry. The comments stated that the Federal onshore oil and gas leasing provisions of the Reform Act would pressure the independent operators and limit wildcat drilling and exploration. The Bureau of Land Management is aware of these concerns. The final rulemaking allows as much administrative flexibility and simplicity as possible within the constraints of the Reform Act, to serve the public interest.

Numerous comments were received on specific sections of the proposed rulemaking. The comments and the action taken in response to them are discussed in this preamble. In some instances, comments were concerned with matters that were addressed in the final rulemaking published on May 18, 1988 (53 FR 17340).

Part 3000—Minerals Management: General

One comment suggested that authority citations be limited to Groups rather than Parts of each Code of Federal Regulations section. The regulations of the Office of the Federal Register require that an "authority citation" be included prior to each part of the rules. The

authority section also is included within certain parts of the Code of Federal Regulations since it makes the part complete, particularly where there are special statutory provisions in certain parts that need to be fully identified in the authority section of the specific rule part.

Two comments recommended that the citations of authorities should include the Federal Oil and Gas Leasing Reform Act of 1987. Since the Reform Act is an amendment to the Mineral Leasing Act (30 U.S.C. 181 *et seq.*), no further citation is required. The final rulemaking makes no change in the authority citations contained in the proposed rulemaking.

Section 3000.0–5 Definitions.

A few comments suggested removal of the proposed rulemaking § 3000.0–5(f)(1) that would allow parcel nominations of expressions of interest to be filed in a Bureau of Land Management office other than the Bureau office having jurisdiction over the lands. This suggestion is adopted by the final rulemaking. Experience during the test sales has shown that the handling of nominations by another Bureau office is a cumbersome process. This section of the regulation has been removed in the final rulemaking.

Some comments suggested that a new paragraph "(p)" be added in § 3000.0–5 of the final rulemaking to define "control" as found in section 5102(d) of the Reform Act (30 U.S.C. 226(g)). The final rulemaking has been amended at § 3102.5–1(f) to include a reference to § 3400.0–5(rr) for a definition of "controlled by or under common control with."

Section 3000.4 Appeals.

A few comments noted an inconsistency between the appeal provisions of this section of the existing regulations and those contained in §§ 3101.7–3 and 3120.1–3 of the proposed rulemaking. This section has been amended in the final rulemaking to add certain citation cross-references to clarify when the appeal provisions of 43 CFR Part 4 are not wholly applicable.

Section 3000.9 Enforcement.

Several comments addressed § 3000.9 of the proposed rulemaking. The majority of the comments expressed a need to clarify and establish the limits of this provision. Most of the comments were concerned that parties other than the Government would use the new provision of the Mineral Leasing Act to create a private right of action. One comment suggested that the anti-fraud provisions of the Reform Act were aimed only at past abuses. One comment expressed the view that the final rulemaking should limit the applicability of this provision and penalties to leases issued under the mineral leasing laws subsequent to enactment of the Reform Act. One comment expressed concern that the wording of the regulation does not allow the Bureau of Land Management special agents, U.S. Postal Inspectors, the authorized officer, and others, to participate in enforcement actions. The enforcement paragraph in the proposed rulemaking was intended to recognize the existence of section 41 of the Mineral Leasing Act. The provisions of this section of the Act, including the interpretation thereof, are under the jurisdiction of the Department of Justice. The language in the regulation does not preclude such other parties from assisting the Justice Department in carrying out the enforcement provisions of the Reform Act. The final rulemaking adopts the proposed language without change.

Part 3100—Oil and Gas Leasing

Section 3100.0–3 Authority.

One comment expressed concern about § 3100.0–3 (a)(2) and (b)(2) of the proposed rulemaking, and suggested that a surface managing agency would informally, without proper procedure, recommend wilderness allocation for lands whenever it received a leasing request. The comment requested identification of the procedures for recommending wilderness allocation. The Bureau is not aware of any specific procedures by which a surface managing agency recommends that land be allocated for wilderness. The Bureau interprets this provision of the regulations to refer to lands that the surface managing agency has already recommended for wilderness allocation to the President or to the Congress. The final rulemaking adopts the proposed language of § 3100.0–3 (a)(2) and (b)(2) without change.

Another comment suggested that lease offers within the specific types of wilderness study areas identified in § 3100.0–3 (a)(2) and (b)(2) of the proposed rulemaking that were pending upon enactment of the Reform Act should not be rejected, and contended that the provision of the new law prohibiting leasing of these areas did not require rejection of such pending offers. Apart from this rulemaking, by administrative action, the Bureau of Land Management will keep as pending those pending offers located in Bureau wilderness study areas or in areas allocated for wilderness or further planning in Executive Communication 1504.

One commenter suggested that § 3100.0–3(g)(4) concerning National Parks and Monuments be revised to be consistent with the terminology used in § 3100.0–3 (a)(2) and (b)(2) of the final rulemaking published in the **Federal Register** on May 16, 1988 (53 FR 17340). The Bureau of Land Management concurs and this change to refer to units of the National Park System has been adopted in the final rulemaking.

Section 3100.0–5 Definitions.

Several comments suggested that "control" for purposes of determining compliance with section 5102(d) of the Reform Act (30 U.S.C. 226(g)) should be defined in § 3100.0–5 of the regulations. The final rulemaking clarifies this matter by placing in § 3102.5–1(f) a cross-reference to the definition contained in 43 CFR 3400.0–5(rr) of the existing regulations. The requirements for "control" in section 5102(d) of the Reform Act are consistent with those in the Mineral Leasing Act, 30 U.S.C. 201(a)(2)(A) pertaining to control of Federal coal lease holdings. There is further discussion of this matter later in this preamble under § 3102.5.

A few comments suggested that the Bureau was premature in removing the definition of a "known geological structure" in this section and in § 3100.3 of the existing regulations. However, since the "grandfathered" offers will be adjudicated under the regulations in effect at the time of filing, which remain available for reference in earlier editions of the CFR, this provision is now obsolete and should not be retained. Including it in current regulations could cause confusion when new offers are submitted.

Several comments noted that Subpart 3110 and the definition in § 3100.0–5(k) of the proposed rulemaking failed to allow for the filing of noncompetitive offers prior to the competitive offering of such lands. The commenters suggested that such offers be allowed for wildcat lands for leasing such lands so long as they are first processed through the competitive process. This recommendation is adopted. The definition of the term "offer for noncompetitive lease" in paragraph (k) of this section in the proposed rulemaking has been removed. A specific definition of this term is not necessary. Subpart 3110 more properly addresses the provisions concerning noncompetitive lease offers. Further discussion of this provision is made later in this preamble under Subpart 3110.

A few comments suggested that § 3100.0-5(1) of the proposed rulemaking be amended to require that all bids be on a per-acre basis. The type of approach of bidding has not been specified in the final rulemaking in order to allow administrative flexibility in setting bidding procedures by individual Bureau of Land Management State Offices. Further discussion on this issue is made later in this preamble in conjunction with Subpart 3120.

Section 3101.1-3 Stipulations and information notices.

A technical change is made in this section of the final rulemaking published on May 16, 1988 (53 FR 17340) to clarify that when noncompetitive lease offers are filed during the 2-year period subsequent to competitive offering, the offeror is deemed to have agreed to all applicable lease stipulations that are indicated in the list or notice of parcels available that was posted in the proper BLM office.

In response to comments made on § 3110.4 of the proposed rulemaking requesting that offerors be notified of the stipulations placed on lands in offers filed prior to a competitive offering, the final rulemaking amends § 3101.1-3 to specify that, unless the offer is withdrawn, the offeror is deemed to have agreed to the stipulations applicable to the parcel as indicated in the List of Land Availale for Competitive Nominations or the Notice of Competitive Lease Sale. Further discussion may be found later in this preamble under § 3110.6.

Section 3101.1-4 Modification or waiver of lease terms and stipulations.

Use of the term "waiver" in this section of the proposed rulemaking resulted in misunderstanding in numerous comments. There are situations where a stipulation is no longer needed to protect other resources and under such situations waiver is an appropriate remedy as well as lease modification. The Bureau will undertake to identify such actions which are deemed substantial and, as required by statute, provide at least 30 days notice.

Two comments on this section of the proposed rulemaking suggested that the proposed language does not fully impement the Reform Act in that all stipulation "waivers" would not be subjected to public review. These commenters contended that the Reform Act's reference to "substantial modification" of lease terms should include all stipulation "waivers." Given the nature of stipulation exceptions that are generally granted, and the basis used for granting such exceptions, it is clear that not all involve substantial modification of the lease terms. Approval of waiver or modification will reside with the authorized officer who is in the best position to exercise that judgment.

Some of the comments suggested that this section specifically provide lessees and operators an opportunity to request waivers and require the authorized officer to make a determination on a waiver within 30 days of receipt of evidence of whether the condition justifying a stipulation modification continues to exist. No change is made in the final rulemaking to accommodate these comments because lessees and operators are not precluded from petitioning for a lease modification. However, consideration of lease modifications should ordinarily be prompted by a specific proposal for lease operations rather than by a desire to, in effect, renegotiate the terms of a lease. A technical change is made in the final rulemaking to make it clear that a substantial modification or waiver of a lease term subsequent to lease issuance is also required to be subject to public review for at least 30 days.

A few comments requested that the final rulemaking clarify, with respect to National Forest System lands, who is the appropriate authorized officer, a representative of the Forest Service, the Bureau, or both agencies. These comments also suggested that the final rulemaking require that the authorized officer follow the posting procedures required in the Reform Act in such a manner that the stipulation modification would be required to be posted concurrently with the Application for Permit to Drill in order to avoid additional delay in development plans of an operator. Some comments also suggested that the time necessary for the Bureau to identify the need for stipulation waivers not identified by the operator could delay posting of the Application for Permit to Drill. Operators and the public are advised that posting of a lease waiver or modification will be as prompt as possible. The final rulemaking has not adopted this suggestion. The authorized officer for any lease waiver or modification is the Bureau of Land Management State Director since that is the office of lease issuance. However, with respect to National Forest System lands, the Bureau cannot waive or modify a stipulation that involves surface disturbance without the approval of the U.S. Forest Service since the Reform Act directs the Secretary of Agriculture th regulate all surface disturbing lease activities within the National Forest System.

Section 3101.7-1 Federal lands administered by an agency outside of the Department of the Interior.

Numerous comments were received on this section. Some of the comments recommended that the final rulemaking make it clear whether approval from the surface managing agency to lease is required to be received prior to or after a competitive lease sale. A few comments objected to the requirement that the surface managing agency must give approval before leasing. It is Bureau of Land Management policy to offer lands, the surface of which is administered by another agency, only after leasing recommendations or, when statutorily required, consent or lack of objection and stipulation requirements have been rendered from the surface managing agency. The proposed provision is adopted without change in the final rulemaking.

Other comments suggested that specific language should be added in the final rulemaking to clarify the requirements for consent for Forest Service administered lands. The comments have been adopted in the final rulemaking and a new paragraph (c) is added to address lands reserved from the public domain as well as acquired lands administered by the Forest Service.

Several comments expressed concern about the effect of inaction by the Forest Service on requests for leasing. Some comments suggested that the Bureau of Land Management publish a list of lands "withdrawn" from leasing due to Forest Service nonconsent. This suggestion has not been adopted by the final rulemaking since it is Bureau policy to offer only those lands for which consent, as required by law, and stipulation requirements have been received from the surface managing agency. The Forest Service is required to respond favorably or to object to leasing requests from the authorized officer of BLM, based on Forest management plans. The information in these plans is available to the public. The public also may request information from the U.S. Forest Service directly.

One comment suggested that the final rulemaking combine the proposed § 3101.7-1(a) and (b) into one paragraph and expressed the view that the criteria for agency consent for leasing public domain and acquired lands minerals now appear to be the same. This recommendation has not been adopted in the final rulemaking, because new paragraph (c) in the final rulemaking has added further clarification. Accordingly, the applicability of these regulations to

agencies other than the Forest Service, with respect to recommendations to lease public domain minerals, also is clarified.

Several comments recommended that surface managing agency consent and stipulations submitted to the Bureau for sale parcels should be binding on the surface managing agency for the 2-year noncompetitive period as well. The comments expressed the view that such a requirement would eliminate repeated reviews of leasing proposals by the surface managing agency during this brief period when surface conditions likely would not change. This recommendation has not been adopted by the final rulemaking because changing environmental conditions may require modification of stipulations and/or reaffirmation of the consent to lease at some later time within the 2-year period prior to the issuance of a noncompetitive lease. Moreover, the Bureau cannot impose such a binding requirement on any other surface managing agency. In practice, however, a change in consent or stipulations is not likely to occur immediately after a lease sale.

Section 3101.7–2 Action by the Bureau of Land Management.

This section received only a few comments. One comment suggested that this section should more clearly reflect the role of Bureau of Land Management in the leasing of National Forest System lands in light of the expanded role provided the Forest Service in the Reform Act. Another comment suggested that the Bureau should not be involved in the management of Forest Service lands. The Bureau cannot abrogate its legal responsibility for the final discretionary authority for issuance of leases. The comments have not been adopted in the final rulemaking.

Section 3101.7–3 Appeals.

Several of the comments received on this section of the proposed rulemaking supported the process of appealing decisions of the surface managing agency directly to that agency (particularly with respect to the U.S. Forest Service) for decisions made by that agency objecting to leasing, refusing to lease, or consenting to leasing only with stipulations. However, some comments expressed the view that appeals should be handled cooperatively between the Department of the Interior and the Forest Service, or that only one agency should be designated to handle appeals to avoid dual appeal processes or the "stacking" of appeals first to the Forest Service and then to the Interior Board of Land Appeals. One comment suggested that the final rulemaking clarify which appeals are required to be made to the Forest Service. After consideration of all of the comments, the section is amended in the final rulemaking to clarify those instances when appeals are properly made to the surface managing agency.

Section 3101.8 State's or charitable organization's ownership of surface overlying federally-owned minerals.

One comment objected to the 30-day period allowed State or charitable organizations to formulate stipulations under this section of the proposed rulemaking. In response to this comment, this section in the final rulemaking has been modified to bring it into conformance with the coordination procedures used for lands under the jurisdiction of a surface managing agency other than the Bureau.

Section 3102.1 Who may hold leases.

One comment suggested that § 3102.1(b) of the proposed rulemaking unnecessarily repeats the information contained in § 3102.5–1. The comment expressed the view that the purpose of § 3102.1 has always been to furnish a qualifications listing of those persons or entities who are authorized to hold leases in accordance with section 1 of the Mineral Leasing Act, and that paragraph (b) of the proposed rulemaking does not fall within this category. The comment is adopted in the final rulemaking and paragraph (b) has been removed.

Section 3102.4 Signature.

One comment noted that this section of the existing regulations should be amended to remove reference to former Subpart 3112. The final rulemaking published in the **Federal Register** on May 16, 1988 (53 FR 17340), made this revision.

Section 3102.5–1 Compliance.

A large number of comments were received on this section of the proposed rulemaking. A few comments expressed concern that companies, associations, partnerships, etc., could not be responsible for all of their partners' or potential partners' actions in complying with the requirements of this section, and, consequently, would be faced with cancellation of leases if a violation occurred. The statute itself establishes the requirements. To be in compliance with section 1 of the Mineral Leasing Act (30 U.S.C. 181), it is necessary that all associations of companies, individuals, etc., ensure that their members are complying with the requirements of the law. The introductory paragraph of § 3102.5–1 of the proposed rulemaking has been adopted without change.

Another comment on this section suggested that the final rulemaking add a provision to allow the authorized officer to request information relative to compliance at any time. This suggestion has not been adopted because the Bureau of Land Management has the authority to require this information when necessary under § 3102.5–3 of the final rulemaking published on May 16, 1988 (53 FR 17340).

One comment suggested § 3102.5–1 of the final rulemaking should include the provision that submission of an offer to lease or a request for approval of an assignment constitutes certification of compliance with the regulations. This provision is included in § 3102.5–2 in the final rulemaking published on May 16, 1988 (53 FR 17340). Therefore, no change is necessary is this final rulemaking.

Several comments requested that § 3102.5–1(e) be modified to indicate that a party is determined to be in noncompliance with the Reform Act beginning on the date of the final decision of imposition of a civil penalty. As discussed earlier in this preamble at § 3000.9, the interpretation of section 41 of the Act is required to be made by the Department of Justice. Section 3102.5–1(e) is adopted in the final rulemaking without amendment.

Several comments suggested that a definition of "control" be added in § 3102.5–1(f) of the final rulemaking. These comments have merit and the final rulemaking adds a cross-reference to the defintion contained in § 3400.0–5(rr) of the existing regulations. This definition, promulgated to comply with the section 2(a)(2)(A) requirements of the Federal Coal Leasing Amendments Act, 30 U.S.C. 201(a)(2)(A), meets the requirements of section 5102(d) of the Reform Act as well.

A number of comments on § 3102.5–1(f) of the proposed rulemaking questioned cancellation of a lease while an administrative or judicial appeal is pending. Since there also is an appeal provision in conjunction with a lease cancellation decision, no change has been made in the final rulemaking. Notwithstanding the concerns expressed in several comments that there may be a genuine dispute concerning either the adequacy of the reclamation performed or the civil penalty imposed, as well as a potential for invalidation of leases or transfers entered into subsequent to the failure or refusal to perform reclamation work properly, these measures are necessary to ensure compliance with section 17(g) of the Mineral Leasing Act,

and disputes can be resolved upon appeal of the cancellation.

Several comments expressed concern that the beginning of the noncompliance period for section 17(g) of the Act, as stated in § 3102.5–1(f) of the proposed rulemaking, could be interpreted as being at two different times. The final rulemaking has been amended to indicate that noncompliance shall begin on whichever date occurs first, either the date of imposition of a civil penalty or the date of attachment of a bond and that noncompliance shall end when the United States has been reimbursed for all costs incurred as a result of the specific infraction.

In response to several comments, a new § 3102.5–1(g) is added in the final rulemaking to provide a cross-reference to redesignated § 3106.1(b) of the final rulemaking, which specifies that signature on a request for approval of a record title assignment of less than 640 acres outside of Alaska (2,560 acres within Alaska) shall certify that the assignment would further the development of oil and gas. However, the Bureau may request further evidence of compliance with the provision of the Reform Act.

Section 3102.6 Agents.

Several comments on this section of the proposed rulemaking recommended that it be either clarified or removed. Most of the comments stated that it was not advantageous to corporations or entities to execute special agency agreements solely for persons attending and bidding at lease sales who assist and execute documents on behalf of a firm. One comment felt this section of the proposed rulemaking constituted a Government intrusion into the conduct of business of the private sector. This section has been removed in the final rulemaking. Section 3102.5–3 of the final rulemaking published on May 16, 1988, gives the Bureau sufficient authority to request further evidence and to review any necessary documents to determine compliance.

Section 3103.1–1 Form of remittance.

Several comments requested that this section of the final rulemaking include sight drafts. U.S. Department of the Treasury requirements prohibit the acceptance of sight drafts by any Federal agency for payments of obligations. Therefore, the final rulemaking does not include sight drafts as a form of remittance.

Several comments were received concerning the use of credit cards since no provisions for such are currently in place. The Government presently is negotiating the provisions that would in the future allow the use of credit cards for receipt of payments. The final rulemaking would allow the use of this type of payment when it is authorized and specific procedures have been developed and announced to the public.

Two comments on this section of the proposed rulemaking addressed the fact that cash was not included as an acceptable form of remittance in the proposed rulemaking. The final rulemaking does not allow remittance of cash because it is administratively difficult to monitor and handle for security reasons, particularly at competitive sales.

A few comments requested that the Bureau of Land Management be more flexible with regard to the required description of "payable to" on remittances to avoid frivolous lawsuits on technical grounds. The rulemaking identifies the correct payee name to be used for all remittances. However, any remittances made out to "BLM," "DOI," or "Bureau of Land Management" are accepted as payment and no problems have been encountered.

Section 3103.2–1 Rental requirements.

One comment on this section of the proposed rulemaking suggested that the statement in the preamble of the proposed rulemaking that the requirement that nominations and bids be accompanied by the first year's rental to ensure "serious" bids was unlikely to have any bearing on how serious bids are apt to be and, in fact, might diminish ultimate revenues available for bidding. The final rulemaking has not been changed because submission of these moneys is a measure of bidder intent, and a nomination or bid must be accompanied by the rental to allow prompt lease issuance.

Several comments suggested that allowing only 10 calendar days for curing a deficient rental in § 3103.2–1(b) of the proposed rulemaking was too short and unreasonable. One comment pointed out that the proposed rule language did not specify that the 10-calendar day period does not begin until receipt by the applicant of a notice of the deficiency. This section of the final rulemaking is amended to clarify the provision and to allow 15 calendar days from receipt of a deficiency notice.

Another comment on § 3103.2–1(b) suggested that the Bureau allow correction of errors made "in good faith." Aside from the judgmental factors involved and the creation of undue dispute, not all types of defects can be considered curable with no loss of priority, but instead must be treated on a case-by-case basis. The final rulemaking has not been amended to include this suggestion.

Several comments suggested that § 3103.2–1 of the proposed rulemaking be revised to require rental on a net acre basis instead of a gross acre basis. Section 3103.2–1(c) of the existing regulations, which was not a part of the proposed rulemaking and has been in existence for many years, requires that rentals not be prorated for undivided fractional interest lands but be payable for the full acreage in such lands. The Government charges the rental for the acreage in which it owns an interest, whether it be the entire interest or less. The comments have been considered, but no change has been made in the final rulemaking. Moreover, because of the wide variation in the fractional interest that may be held in certain lands and the difficulty of administering leases with varying mineral interest lands, it is necessary to require rental on the full acreage.

Section 3103.2–2 Annual rental payments.

One comment recommended the § 3103.2–2(i) of the existing regulations be retained in the final rulemaking. Retention of this section is not necessary because the final rulemaking provides for rental provisions "as stated in the lease". The recommendation is not adopted in the final rulemaking. Another comment suggested that the final rulemaking specify in § 3103.2–2 that rentals should not be increased for leases extended beyond their fifth year by drilling or production. Since the Reform Act requires that the rental shall not be less than $2 after the fifth year, this suggestion has not been adopted in the final rulemaking.

A few comments on § 3103.2–2(b) of the proposed rulemaking suggested that, to comply with the law, the phrase "application" as well as "offer" be included in this section and that it be reformatted in the same manner as paragraph (a) of the section to make it clearer. These suggestions have been adopted in the final rulemaking with regard to those leases "grandfathered" by the Reform Act.

Several comments were received on § 3103.2–2(b)(1) of the proposed rulemaking. One comment expressed strong concern that this section would double the annual rental rate beginning in the sixth year for leases issued under former Subpart 3112 because the final rulemaking was viewed to end the rental rate reduction from $3 to $1 per acre previously granted by the Secretary of the Interior. The comment was concerned that this increase would

discourage exploration. Because the proposed rulemaking merely applies the rental rate set by the Reform Act to leases issued under former Subpart 3112 (and would lower the present regulated rate from $3 to $2 per acre), this comment has not been adopted by the final rulemaking. The Secretary of the Interior would continue to have the authority and discretion to grant a rental rate reduction in accordance with section 39 of the Mineral Leasing Act.

Another comment on § 3103.2–2(b)(1) of the proposed rulemaking suggested that the date cited should be changed to that date when the rental increase provision actually will become effective because of the Secretary's granting a rental reduction until February 1, 1989. In response to this comment, the final rulemaking specifies the date that leases issued under former Subpart 3112 after February 19, 1982, become subject to the annual rental increase in the sixth and subsequent lease years of $2 per acre or fraction thereof.

A few comments on § 3103.2–2(b)(2) of the proposed rulemaking suggested removing the known geological structure and favorable petroleum geological province terminology. No change has been made in the final rulemaking because these two terms must continue to be recognized for all leases issued in accordance with the regulations in effect on or before December 22, 1987.

Several comments were received on § 3103.2–2(c) of the proposed rulemaking. The comments questioned the payment both of annual rental and royalty on leases assessed compensatory royalty. Most of the comments argued that the 1959 Solicitor's Opinion is in error since the compensatory royalties compensate the Department of the Interior as if the production has occurred. The comments also suggested that such double charges are inequitable and could result in termination of the lease. The Department has reviewed the issues raised by the comments. However, based on the Solicitor's Opinion, which remains in force, it is clear that both rental and royalty are due in this situation. Rental is due until a discovery is made on the lease. By paying compensatory royalty in lieu of drilling, the lessee in effect has also opted to continue rental payments. The final rulemaking makes no change in this provision.

One comment received on § 3103.2–2(d) of the proposed rulemaking pointed out a discrepancy between this section and § 3103.2–3 of the existing regulations. This suggestion has been adopted and § 3103.2–2(d) of the final rulemaking has been modified to indicate that the $5 rental rate is due beginning with the termination date of the lease. Section 3103.2–2(e) also has been modified in the final rulemaking to clarify when the $10 annual rental rate is required for reinstated competitive leases.

Section 3103.3–1 Royalty on production.

Numerous comments were received on this section of the proposed rulemaking. The majority of comments supported the 12½ percent fixed royalty rate in § 3103.3–1(a)(1), expressing the view that this flat rate would promote drilling on marginal lands, generate higher bonus bids, and would be easier to administer.

Some of the comments, however, pointed out that Congress did not alter the competitive royalty rate when it enacted the Reform Act. Since 1920, section 17 of the Mineral Leasing Act has provided that the royalty rate for competitive oil and gas leases shall be "not less than 12½ percent." Some of the comments suggested that this discretionary provision must be implemented today as it was in the past; that is, that the discretion is illusory. This provision of the law has been implemented in the past by delegating to the authorized officer the discretion to prescribe the royalty rate in the Notice of Competitive Lease Sale. While the Bureau's authorized officers in the past have prescribed a Bureau standard form rate schedule based on the rate of production, the existing oil and gas leasing regulations have not required this. The competitive oil and gas royalty rate has been interpreted in the same manner as the coal royalty rate in section 7(a) of the Act as added by the Federal Coal Leasing Amendments Act, that is, while the royalty rate cannot be lower than 12½ percent, it does not, by law, have to be higher.

A review of recent revenues from producing oil and gas leases indicates that approximately 12 percent of the producing lease accounts (3,114 of 24,109) administered by the Minerals Management Service are variable royalty rate leases. The impact of the variable royalty leases, however, is insignificant because, in calendar year 1987, of almost $1 billion in royalty revenues received from leases only $5,528,658 was derived from the portion of royalty above 12½ percent from those leases with a variable royalty rate schedule. This is much less than 1 percent of the royalty revenues received. Since 50 percent of the lease revenues go to the States, and 40 percent goes to the Reclamation Fund, only $552,865 from royalty revenues remains for the Government to administer the inspection program for all Federal leases and to determine whether well production figures are being properly allocated. The flat rate simplifies this complex task. In addition, higher royalty rates on competitive leases may direct more activity toward the noncompetitive leasing program in which leases, by statute, have a primary term of 10 years with a fixed 12½ percent royalty rate. The Reform Act's deemphasis of the noncompetitive leasing program through increased incentives in competitive leasing activity is preferable and in the public interest in accordance with the provisions of the Reform Act.

The Bureau is mindful of the comments expressing concern with the adoption in this final rulemaking of a fixed royalty rate of 12½ percent and will continue to study this matter. Various suggestions that have been made and may be considered for future use by the Bureau include rate differentials based on the existence or level of production within a geographic area, or a different flat rate royalty such as a 16⅔ percent royalty in lieu of the 12½ percent royalty rate. The Department of the Interior will continue to consider alternatives from all sources. In the course of considering any further change in the regulations with respect to the royalty rates, public comment will be sought.

Several comments on § 3103.3–1(a) (2) and (3) of the proposed rulemaking expressed the view that the royalty rate should not be increased when leases are reinstated. The Mineral Leasing Act requires increased royalty for leases reinstated under the Class II procedures. The Interior Board of Land Appeals has held that Congress intended a penalty provision to apply to reinstated leases. The final rulemaking adopts the proposed language with no change.

A number of comments noted the typographical error in § 3103.3–1(b) of the proposed rulemaking. The final rulemaking corrects the word "quality" to read "qualify."

Section 3103.3–2 Minimum royalties.

Several comments were received on this section of the proposed rulemaking. One comment suggested retaining the language of the existing regulation at the end of paragraph (a) that requires payment of the difference if the actual royalty paid during any year is less than $1 per acre. The final rulemaking clearly specifies under paragraph (a)(1) that a minimum of $1 per acre is payable. In addition, the lease terms contain this language. No change has been made and the final rulemaking is adopted as

proposed. A few comments suggested that the final rulemaking should specify that the lessee receive notification from the authorized officer that the lease is subject to minimum royalty. Royalty is paid to the Minerals Management Service, and it determines whether sufficient royalties are paid to meet the minimum royalty due. The final rulemaking adopts the proposed rulemaking with no change.

Section 3104.1 Bond obligations.

Several comments were received on this section. Some of the comments suggested that the time for requiring bond coverage should not be limited to the commencement of surface disturbing activities related to drilling, but should start at the beginning of any surface disturbing activities. A few of the comments indicated that any surface disturbing activities related to any aspects of lease development should require bonding. The first sentence of § 3104.1(a) of the proposed rulemaking revised the existing regulation to change the time when a bond is required: From the commencement of surface disturbing activities related to drilling operations rather than from the commencement of drilling operations. Lease operations are conducted in accordance with the operations and surface use activities contained in the approved Application for Permit to Drill. The language of the proposed rulemaking, which is adopted in the final rulemaking, will ensure that any surface disturbing activities requiring reclamation will be bonded. No entity may undertake any surface disturbance requiring reclamation, such as road construction, without an approved permit to drill. Building roads on Federal surface without approval would result in trespass proceedings. No change is made in this section of the final rulemaking.

Another comment on § 3104.1(a) of the proposed rulemaking recommended that holders of operating rights (sublessees) be removed as parties who may furnish bonding coverage since the current Bureau of Land Management adjudication procedures for handling operating rights transfer approvals would make it difficult to accept bonds from those parties without extensive title review. No change is made in the final rulemaking since any party furnishing bond coverage has the burden and responsibility to the Bureau for the lease activities being conducted.

One comment on § 3104.1(c) of the proposed rulemaking questioned the elimination of the acceptance of cash for a personal bond. Cash is eliminated as an acceptable personal bond because of guidelines from the Federal Reserve Board as well as Bureau field office concerns about security problems in accepting and handling large sums of cash. Potential obligors should be capable of converting cash easily into either a cashier's or certified check or a certificate of deposit, all of which are acceptable forms of personal bonding.

Several comments commended the proposed expansion of types of acceptable personal bonds in § 3104.1(c) to include certificates of deposit and letters of credit. One comment indicated that this provision would greatly assist operators in obtaining the guarantees needed for reclamation work required for disturbed areas. A few comments were adverse to the acceptance of letters of credit and expressed the view that such letters of credit would be inadequate to ensure that the Bureau would be able to recover damages after the expiration of any fixed term of the letter of credit. The comments suggested that the specific term of a letter of credit could easily result in inadequate coverage after the term expired and would be difficult to manage. However, other Federal agencies accept letters of credit without difficulties. Accordingly, in the final rulemaking letters of credit are an acceptable form of security for a personal bond.

Another comment recommended that only letters of credit with an indefinite term be considered acceptable to accommodate leases that become indefinite in duration upon completion of a producing well. The final rulemaking is modified to require that *letters of credit shall include language* requiring automatic renewal for one-year periods in the absence of specific notice to the proper BLM office at least 90 days prior to the expiration date of the letter of credit or prior to the intent not to renew. Other changes adopted in this section of the final rulemaking make it consistent with that contained in 30 CFR 800.21(b), which contains requirements used by the Office of Surface Mining for letters of credit. A final comment recommended that letters of credit should be issued by Federally insured institutions in the same manner as certificates of deposit. This suggestion has been adopted in the final rulemaking.

One comment received on § 3104.1 of the proposed rulemaking expressed concern that operators may be required to furnish bonds to both the Bureau of Land Management and the Forest Service for the same lease obligation. The commenter requested that the Bureau and Forest Service provide a means whereby a single statewide or nationwide bond would cover compliance with all lease terms and the reclamation requirements of both surface agencies. The Department of the Interior is committed to not requiring duplicate bonding coverage whenever possible, and will coordinate with the Department of Agriculture in implementing each agency's respective responsibilities under the Reform Act. The Bureau of Land Management will continue to be the official office of record for accepting and maintaining bonds associated with Federal oil and gas leases and operations thereon. The Bureau, in accordance with the interagency agreement with the Forest Service, also would consider any Forest Service recommendations to increase bond coverage as may be required by § 3104.5. Final determination as to the method by which the Secretary of Agriculture implements his/her *responsibilities under the Reform Act*, however, will be made by that Secretary. Accordingly, no change has been made in the final rulemaking.

Another comment on § 3104.1 of the proposed rulemaking requested that the final rulemaking implement the Bureau of Land Management Director's Task Force recommendation that "piggybacking" of Federal and State bond requirements be permitted in order to preclude unnecessary duplicate coverage for reclamation requirements. The final rulemaking provides the minimum requirements acceptable to the Department of the Interior. Any implementation of the concept of allowing coverage for both Federal and State concerns related to development of oil and gas leases can be addressed only through individual agreements between the Bureau and the State concerned. The Bureau would favor such alternate bonding proposals for any State that would desire to pursue such arrangements, provided that both parties needs are met, but cannot make such commitments at this time.

For consistency with the bonding provisions contained in § 3104.1(a), the bonding requirements for geothermal resources leasing contained in § 3206.1-1 also are amended in this final rulemaking.

Section 3104.2 Lease bond.

Two comments received on § 3104.2 of the proposed rulemaking recommended that holders of operating rights (sublessees) be eliminated as parties who may furnish lease bonds. No change is made in the final rulemaking since the party furnishing bond coverage has the responsibility for activities related to lease development and

reclamation, and a holder of operating rights may be such a party.

A few comments on this section also requested that the final rulemaking add specific provisions to allow phased release of bonds when reclamation has progressed to a point where continuation of the full bond amount is no longer necessary. Since current Bureau policy allows phased release of bonds in the manner recommended no amendment is needed in the final rulemaking. Nothing in the rulemaking prohibits reducing bond amounts through a phased release as special conditions may warrant.

One comment suggested that § 3104.2 be modified to require attachment of any operator's bond before attaching a lessee's bond. This recommendation is not adopted in the final rulemaking since a default in performing any lease obligation must leave the Government in a position to pursue all possible options to remedy the situation. Lessees remain free to pursue other civil remedies against non-performing operators.

A few comments requested that the last sentence of § 3104.2 of the proposed rulemaking be clarified to specify what documentation is required in order for an operator to use a lessee's or sublessee's bond. This suggestion is adopted and the final rulemaking has been clarified. The specific documentation usually required is a consent from the surety to include the operator under the coverage of the lessee's or sublessee's bond.

Section 3104.4 Unit operator's bond.

Two comments on this section of the proposed rulemaking suggested elimination of the duplication of § 3104.4 and Subpart 3184. This suggestion has been adopted in the final rulemaking by the removal of Subpart 3184. Two comments recommended revisions to simplify and clarify the language in § 3104.4. In response to these comments, the final rulemaking revises this section and removes § 3184.1. For consistency, the final rulemaking also removes § 3184.1 concerning geothermal resources unit bonds, and adds a new § 3206.6 containing revised language consistent with the provisions in amended § 3104.4.

Section 3104.5 Increased amount of bonds.

Several comments on § 3104.5(a) of the proposed rulemaking expressed concern that requiring a bond in the full amount of the estimated costs of plugging the well and reclaiming the involved disturbed area, if any demand for payment has occurred within the past 5 years, is too stringent. Another comment suggested that increasing bond levels to an adequate amount only after an operator has failed to fulfill lease obligations is not a responsible Bureau practice. Some comments recommended that the 5-year period should be prospective and not retrospective to events preceding this rulemaking, and that the authorized officer should have the discretion not to increase the bond amount. The Reform Act requires the Secretary of the Interior to ensure that adequate bond coverage is provided. An operator's refusal to plug a well or reclaim the surface is a serious breach of the regulations that casts doubt on the integrity of that operator. Therefore, in such circumstances a very firm uniform national policy is appropriate.

Another comment on this section of the proposed rulemaking suggested that the bond coverage for full reclamation be required in all cases. The Reform Act does not require such a bond, but does require the Secretary to ensure that bonding is adequate. The regulation language accomplishes the requirement of the law and the proposed rulemaking is adopted with only minor technical changes.

Two comments on this section also recommended that the authorized officer be able to increase bonding for any actions other than an Application for Permit to Drill. Section 3104.5(b) provides this authority.

Some of the comments received on § 3104.5(b) of the proposed rulemaking noted that a notice received from the Minerals Management Service that there may be uncollected royalties due would be grounds for the bond amount to be increased even if such a notice is later determined to be incorrect with no final determination occurring. The Bureau agrees with these comments, and the final rulemaking is modified to indicate that such a notice from the Service must have determined that uncollected royalties are due prior to requiring any increased bond amount for such infraction.

Several comments on § 3104.5 expressed the view that the provisions of this section should not be applied during the pendency of an appeal. The payment under a bond would not be required until a decision is rendered under any administrative appeal taken and when all such appeal rights have also been exhausted. The Bureau would not expect payments to be made prior to that time.

Section 3106.1 Transfers, general.

Numerous comments were received on § 3106.1 concerning approval of assignments and transfers. Many of the comments addressed the first two sentences of § 3106.1(a) of the proposed rulemaking. Many comments raised the point that the proposed rulemaking did not provide for discretionary approval of record title assignments for separate zones or parts of legal subdivisions. The Bureau's experience with these types of assignments is that they are never approved. In order to avoid implying that these types of assignments may be approved, the final rulemaking specifies that the Secretary is exercising his or her discretionary authority, under the statute and this rulemaking, to disapprove such record title assignments. The option for lessees to execute transfers of non-record title interests is unaffected and is believed sufficient for the conduct of business.

The language in § 3106.1(a) of the proposed rulemaking was incorrect as to the difference between the terms "transfer," "assignment," and "sublease." Transfers include both assignments and subleases. An assignment refers only to a transfer of record title interest, and a sublease refers to a transfer of operating rights interests. The definition of the term "transfer" in § 3100.0–5(e) of the final rulemaking published on May 18, 1988 (53 FR 17340), clarifies use of these terms. The approval requirements in § 3106.1(a) of this rulemaking relate to assignments of separate zones or deposits and parts of legal subdivisions, not to subleases. Subleases of operating rights interests may be disapproved only for lack of bonding or qualifications of transferees.

A few commenters expressed the view that the intent of the Reform Act allowing the Secretary discretion to disapprove assignments of less than 640 acres (2,560 acres in Alaska) was to eliminate the activities of "forty-acre merchants" who subdivide leases with no intent to develop. The commenters felt that the discretionary authority should be exercised in such a way as not to unduly inconvenience legitimate operators when assignments resulting from farmouts, spacing unit restrictions, options, etc., would further development. One comment suggested that the authorized officer should normally assume that the assignment was legitimate and would further the development of oil and gas, absent evidence to the contrary. This suggestion has been adopted in the final rulemaking with creation of a new paragraph (b), which establishes that execution and submission of the request for approval of an assignment will certify that the assignment will further the development of oil and gas. In addition, in accordance with the

provisions in § 3102.5–3 of the May 16, 1988, final rulemaking, the authorized officer may require additional information and statements, from both the assignor and assignee, where there is any question whether the assignment will further the development of oil and gas.

Some of the comments suggested that the standards that would constitute "to further the development of oil and gas" be specified in the final rulemaking, if only by example. Another comment took an opposite position, recommending broad discretion on the part of the authorized officer. Given inclusion in the final rulemaking of the provision for self-certification that assignment will lead to development, described above, and recognizing the wide variety of legitimate reasons for making assignments, it has been determined that the purposes of the Act could be best carried out by leaving unspecified the standards that would be applied to determine whether a particular assignment would further development. This will afford the authorized officer the greatest latitude for approval of assignments.

Many comments suggested that the final rulemaking include a specific requirement, echoing the Reform Act, that, except when the assignment is determined not to be in accordance with applicable law, approval of the assignment be required within 60 days of receipt of the request for approval. This suggestion is not adopted in the final rulemaking. The requirement is specified in the Act, and no purpose would be served by repeating the requirement in rulemaking. The Bureau of Land Management State Offices are committed to act in a timely manner on all assignments and transfers in accordance with this requirement of the Reform Act.

Sections 3107.2–2 Cessation of production.

A number of comments were received on § 3107.2–2 concerning the additional language added in the proposed rulemaking to clarify the 60-day period for reworking a well upon cessation of production. Most of the comments expressed the view that the added language would eliminate uncertainty and misinterpretation. A few comments, however, requested that the authorized officer be allowed discretion to waive the 60-day period. The Mineral Leasing Act (30 U.S.C. 226(i)) requires the 60-day period. The final rulemaking, therefore, has adopted the language of the proposed rulemaking without change.

Section 3107.2–3 Leases capable of production.

Several comments received on § 3107.2–3 of the proposed rulemaking suggested that the final rulemaking be amended to provide discretion to the authorized officer due to the current depressed price of oil. An application for a suspension of production and/or operations is the appropriate vehicle for seeking relief in these situations. Another comment on this section expressed the view that a lease capable of production should not terminate due to a failure to produce from a shut-in well. This would be true unless the authorized officer orders the lease into production. Accordingly, the proposed rulemaking is adopted without change.

Section 3107.7 Exchange leases—20-year term.

Section 3107.8 Renewal leases.

Several comments expressed concern that the proposed rulemaking required a greater obligation by applicants for exchange and renewal leases under §§ 3107.7, 3107.8–1(a) and 3107.8–3(a) to show compliance with reclamation requirements than is required under § 3102.5–1(f). The comments suggested that reference to certification of compliance under § 3102.5–1 sufficiently includes compliance with reclamation standards. The final rulemaking adopts this suggestion.

A few comments suggested removal from § 3107.8–1(a) of the final rulemaking of the requirement that sublessees be required to join in applications for renewals of leases, because ownership of operating rights is no longer adjudicated as part of the Bureau's approval process. This suggestion is valid and the requirement has been removed in the final rulemaking.

Several comments objected to the requirement in § 3107.8–1(a) of the proposed rulemaking for applicants seeking renewal of a lease to show that all moneys due to the United States have been paid. This requirement does not represent any change from the requirement contained in the existing regulations. Such a showing by applicants has been routinely made in the application by including a statement that all moneys due have been paid. This requirement has not presented any problem to date and has been routinely complied with by those holding rights to renewal leases. Accordingly, no change is made in the final rulemaking.

Section 3108.1 Relinquishments.

Several comments recieved on this section of the proposed rulemaking requested clarification of the use of the term "suspension." While this term remains unchanged from that contained in the existing regulations, a technical amendment is made in this section of the final rulemaking to clarify that a suspension relates to an authorized shut-in of a well.

Section 3108.3 Cancellation.

One comment received on § 3108.3(a) of the proposed rulemaking objected to the provision allowing cancellation of a nonproducing lease for failure to comply with any provisions of the law, indicating that such notice would be insufficient. This comment has not been adopted in the final rulemaking since this provision is consistent with the language of the Mineral Leasing Act, both prior to and subsequent to the enactment of the Reform Act. The proposed rulemaking spells out the specific requirements of the law that had previously been incorporated only by reference in § 3108.3(a) of the existing regulations. Paragraph (a) of this section is adopted with only a technical change to refer specifically to section 31(b) of the Mineral Leasing Act.

Another comment on this section contended that the proposed revision broadened the powers of the Bureau for cancellation by court proceedings of a lease without a productive well. The distinction between administrative and judicial cancellation prior to enactment of the Reform Act was based on whether the leased lands were known to contain valuable deposits of oil or gas. The Reform Act changed the provision to make no distinction concerning whether a lease contains a well capable of production. The statutory language in the Reform Act encompasses both actual and allocated production by providing protection to communitized and unitized leases. The comment is not adopted in the final rulemaking since the Reform Act clearly changes the requirements for administrative cancellation. As a practical matter, any cancellation proceeding will generate the due process rights for any affected lessee to appeal to the Interior Board of Land Appeals and subsequent judicial review. Thus, no lease cancellation would become final without judicial review so long as the lessee pursues his or her rights.

Another comment on this section of the proposed rulemaking objected that a lease may be subject to cancellation if a partner or co-lessee has acquired an interest in the lease in violation of section 17(g) of the Mineral Leasing Act, which prohibits issuance of a lease or approval of a lease assignment to any

party not in compliance with the reclamation requirements after due notice. Section 3102.5–1 clearly meets the intent of the Reform Act to prevent improper acquisition of lease interests by a party through lease issuance, assignment, or sublease in violation of reclamation requirements. However, the lease interest of an innocent co-lessee in such a situation would not be subject to cancellation. The final rulemaking does not adopt this comment.

As a result of the Bureau's review of the comments on § 3108.3, and a review of the language of the proposed rulemaking and the cancellation provisions of the law, it has been determined that the proposed rulemaking did not clearly implement the Secretary of the Interior's oil and gas lease cancellation authority. The final rulemaking has, therefore, been revised by adding a separate paragraph setting out the administrative cancellation authority in section 31(b) of the Mineral Leasing Act (30 U.S.C. 188(b)), as amended by the Reform Act, for breach of the lease, another paragraph setting out the judicial cancellation authority in section 31(a) of that Act (30 U.S.C. 188(a)), for breach of the lease, and a separate paragraph setting out the judicial cancellation and divestiture authority in section 27(h)(1) of that Act (30 U.S.C. 184(h)(1)), for interests held in violation of the Act.

Section 3109.2 Units of the National Park System.

A comment requested a technical change in this section of the existing regulations to revise the terminology relating to leasing requirements in National Park areas in order to be consistent with the amendments made in § 3100.0–3(g)(4) and those previously made in § 3100.0–3 (a)(2) and (b)(2) of the final rulemaking of May 18, 1988 (53 FR 17340). This suggestion is adopted in the final rulemaking.

Part 3110—Noncompetitive Leases

Section 3110.1 Lands available for noncompetitive offer and lease.

Section 3110.2 Priority.

Many comments were received on §§ 3110.1 and 3110.2 of the proposed rulemaking. The comments addressed three primary issues: Whether a noncompetitive offer can be filed prior to a competitive sale and retain priority in the event the parcel is not competitively sold; the nature of the postsale noncompetitive process; and the period, if any, during which offers are considered simultaneously filed after the competitive process.

Comments were received on all sides of these questions and represented a broad spectrum of opinion regarding the nature of the noncompetitive process under the Reform Act. One group of comments emphasized the postsale simultaneous aspect; another group emphasized the desire for presale noncompetitive filings leading to a priority standing that could be maintained in the event the parcel is not sold competitively; and a third group emphasized the pre-eminence of the competitive program over the noncompetitive leasing process. A few comments strongly supported presale parcel priority, and an almost equal number of comments opposed it. Numerous comments addressed the length of the "simultaneous" filing period following the competitive offering. Several comments wanted one day, and an equal number of comments requested a period from 10 to 30 days, and others expressed a desire for 5 days. In addition, there were a few comments that suggested elimination of the postsale noncompetitive process altogether, recommending the substitution of either another competitive sale using noncompetitive lease terms or the recycling of any parcels which received multiple noncompetitive offers directly back into the competitive system. One comment suggested a return to the former automated simultaneous oil and gas leasing system, the lottery.

Several comments concerned the posting of results of noncompetitive offers, an issue that also is pertinent to the nature of the postsale process. Some comments requested that results be posted, but others suggested that results not be posted. The issues raised by many of these comments can be resolved by looking at the intent of the legislation. Clearly the legislation is designed to emphasize the competitive process. In fact, the Congress has confirmed this emphasis and restated its desire to depart from the former simultaneous leasing process and to de-emphasize noncompetitive leasing. The Bureau is persuaded by the test sales, and the comments that have been received, that the competitive oral auction is an efficient and desirable method of leasing the public's onshore oil and gas resources.

The legislation also is clearly designed to provide a noncompetitive reward for risk-taking in frontier areas. This concept rewards exploration activity rather than rewarding success at a game of chance.

To the extent that the noncompetitive choices are between a simultaneous program based on chance that only rewards speculation and a program that rewards risk-taking based on exploration, it is clear that the intent of the legislation is toward the latter. It is vital, also, to recognize that the former simultaneous leasing process was not a creation of Congress, and that the former process was not confirmed in any way by the Reform Act. Rather, the simultaneous process had been instituted solely by regulation and was conducted for administrative convenience due to conditions that existed in the late 1950's. It is the intent of the Bureau that the regulations implementing the Reform Act follow these guidelines: emphasis on competitive rather than noncompetitive leasing, and emphasis on a noncompetitive reward for risk-taking in frontier areas rather than risk-taking in a game of chance.

The Bureau of Land Management has taken certain steps in § 3110.2 of the final rulemaking to minimize the role of postsale simultaneous filings, and particularly to deinstitutionalize the process. First, a period of a single day is specified, immediately following the end of the competitive process, in which offers will be considered simultaneously filed. Since business and office hours vary somewhat from Bureau office to office, the times of day will be specified in each Notice of Competitive Lease Sale or List of Lands Available for Competitive Nomination. In furtherance of the idea that the simultaneous period is not special, relative to the following or subsequent days after this single day, but rather is simply a period in which many offers are expected, the Bureau has made a deliberate decision to not publish and provide results for that period.

In response to numerous comments, the Bureau has amended the final rulemaking in § 3110.2(a) to provide that offers received after the one-day simultaneous period shall be prioritized as of the time received, rather than as of the day received. This system predates the former simultaneous system, has always been used for previous over-the-counter offers, and is the Bureau's normal practice of doing business. As such, the provisions do not provide any special status to any class of noncompetitive offer.

Several comments expressed the view that the Bureau should maintain the proscription in former Subpart 3112 against multiple filings for the same parcel by the same individual or individuals with a common interest. The proposed rulemaking was silent on this matter. The final rulemaking also is

intentionally silent. Enforcement of the proscription was one of the hallmarks of the former simultaneous program, and because of its complexities, proved to be a major source of litigation and a great drain on public resources. The Reform Act was intended to remove the more valuable lands from the noncompetitive arena, thereby leaving far less concern regarding multiple filings. Because circumstances have changed, the Bureau is no longer persuaded that costly enforcement of the multiple-filing rules is in the public interest.

All noncompetitive offers, whether filed before or after the competitive offering, have the same requirements, including the same terms, configuration, acreage requirements, and costs, that is, submission with the offer of the first year's rental of $1.50 per acre and a nonrefundable $75 filing fee. The final rulemaking continues the 10,240-acre maximum limit, a ten-year term, and other configuration requirements contained in § 3110.3–3. If the lands are sold competitively, competitive lease terms will apply with the noncompetitive offer rejected and the rental submitted refunded.

Beginning on January 3, 1989, § 3110.1 of the final rulemaking provides that all unleased lands will be available for noncompetitive lease offer prior to their competitive offering, with two exceptions. Lands in terminated, expired, relinquished, or canceled leases will not be available for the filing of a noncompetitive offer until one year from the date of lease termination, expiration, cancellation, or relinquishment and also from the date of posting of a nomination or sale notice until the lands have been through the competitive offering without receiving a nomination or a bid, as appropriate.

The public shall take notice that under § 3110.1(a)(1) noncompetitive filings prior to a competitive auction will not be permitted until after January 2, 1989. It should be clearly understood that all lands still must be subjected to competition before being leased. An offer filed for lands prior to those lands being posted in a List of Lands Available for Competitive Nominations or a Notice of Sale will trigger processing of the lands to determine availability and stipulations, the placement of the parcel in the competitive sale process and, failing its receiving a bid, leasing it to the priority offeror. Priority will be established as of the day the offer was properly filed and will have seniority over subsequent offers, including any offers filed following the sale.

Many comments dealt with ambiguities regarding when lands would be available for filing of noncompetitive lease offers following competition. The final rulemaking is amended in § 3110.1 to make it clear that lands are available noncompetitively the first business day after the sale, or where formal nominations are used the first business day after the posting of the Notice of Competitive Lease Sale. Other comments objected that the term, "bid," is imprecise, preferring the phrase "bid less than the national minimum". The term is defined in § 3000.0–5(k) of this final rulemaking, and there is no need to redefine it.

There were several comments and questions on § 3110.2(a), which dealt with offers filed between December 22, 1987, and the promulgation of this final rulemaking. Some comments questioned the meaning of the phrase "lands then available for noncompetitive leasing." Others maintained that, prior to the promulgation of final regulations, no lands were available for noncompetitive filing. No distinction is now made in the final rulemaking between offers filed between the date of the Reform Act and this final rulemaking, and noncompetitive offers filed after January 2, 1989, and prior to the competitive offering of such lands. Regular noncompetitive offers had been routinely accepted for filing with priority up to the date of the Reform Act, and the Act did not prohibit the filing of such offers, but required that all lands including those contained in such filings be first exposed to competition. The Bureau made no attempt to halt such filings and, under statute, has exposed them to competition, issuing competitive leases where a bid was received and issuing a noncompetitive lease to the priority filer when no bid was received. The public should note that these filings will not be accepted between June 12, 1988, and January 2, 1989, to provide all parties adequate notice to this provision in the final rulemaking. Offers filed before June 12, 1988, will receive priority and, unless a competitive bid is received for such lands, a noncompetitive lease will be issued to the priority filer, all else being regular.

Numerous comments were received on § 3110.2(b) of the proposed rulemaking. The reference to priority as of the time of filing, remains in the final rulemaking. However, the meaning of the term "noncompetitive offers" is broadened in the final rulemaking to include offers for all available lands outside the competitive sale process.

The two sentences in § 3110.2(b) of the proposed rulemaking referring to conflicting offers have been revised in this final rulemaking to specify that the period in which all offers will be considered simultaneously filed is the single business day following an oral auction or following the posting of a Notice of Competitive Lease Sale when formal nominations are used. Offers received on subsequent days shall receive priority as of the time of filing, e.g., an offer filed at 10:15 a.m. will have priority over an offer filed at 10:16 a.m.

The last sentence of § 3110.2(b) of the proposed rulemaking has been modified to specify that offers will not be available for public inspection the day they are filed, but the final rulemaking is purposely silent as to when after that time such offers are available for public review. This change is necessary because of the large volume of offers which may be received on that day. While it is the Bureau's policy to make public records available as soon as practicable, it is not appropriate to specify a certain time for availability which could conflict with the orderly processing of such offers. Many comments expressed the need for confidentiality of offerors prior to an auction. As a matter of practicality, offerors have many means to accomplish anonymity.

Several comments on § 3110.2(c) of the proposed rulemaking questioned the concept of allowing noncompetitive offers pursuant to an opening order. In the final rulemaking, lands in an opening order or other notice may be available for noncompetitive offer depending on their status vis-a-vis the competitive process. Section 3110.2(c) of the proposed rulemaking is, therefore, retained and revised as § 3110.1(a)(2) in the final rulemaking to cover such special situations.

Section 3110.2(d) of the proposed rulemaking led to a great deal of confusion as indicated in several comments. The proposed language referred only to simultaneous applications received under former Subpart 3112. The provision is designed to address and handle a quirk in that former program whereby an application was drawn in priority, the lease offer was refused (rejected), and a reselection of another priority applicant was made. For many parcels, this process has been repeated endlessly resulting in much wasted effort with no lease yet issued. The Bureau is still executing cyclical reselections for simultaneous parcels first drawn in 1983, and has hundreds of such lease parcels, through late 1987, which have not been accepted by an applicant for lease issuance. The proposed rule was designed to allow one more reselection cycle after the effective date of this final rulemaking for

each such "unclaimed" parcel, after which all remaining applications are to be considered rejected without further notice. Rentals for these applications were refunded long ago. The provision will not apply to over-the-counter offers that were made subsequent to enactment of the Reform Act and those offers that are filed under this final rulemaking. Accordingly, this provision is amended to clarify the provision and is redesignated in the final rulemaking as § 3110.2(b).

Section 3110.3–1 Duration of lease.

One comment on this section of the proposed rulemaking concerning the length of the primary term for competitive and noncompetitive leases suggested a 10-year competitive term and 5-year noncompetitive term. Another comment suggested keeping the primary term for noncompetitive leases at 10 years but requiring a well to hold the lease beyond 5 years. The final rulemaking has not adopted these suggestions since the lease terms are clearly established by law.

Section 3110.3–2 Dating of leases.

Some comments suggested that the proposed rulemaking overlooked the requirement for lease issuance within 60 days of the date the first qualified applicant is identified, and recommended that this be included in the final rulemaking. The time period is specified in the Reform Act, and does not need to be repeated in regulations. The final rulemaking does not adopt this suggestion. The Bureau, however, is committed to act in a timely manner on all lease actions to meet this requirement of the Reform Act.

Section 3110.3–3 Lease offer size.

Several comments were receive on § 3110.3–3 of the proposed rulemaking. Most comments favored the minimum size specified in the proposed rulemaking for a public domain lease offer, and commended the retention of the maximum size of 10,240 acres within a 6-mile square. One comment, however, suggested allowing an offer for less than 640 acres or 1 full section, whichever is less, rather than whichever is larger. This comment recommended that since some irregular sections are less than 640 acres, the final rulemaking should indicate that a lease offer may be made on all Federal lands available in a section. Another comment stated that the provision in the proposed rulemaking that an offer may include less than all available lands in a section if the offer exceeds the minimum 640-acre provision contradicts the first sentence within the same paragraph. The final rulemaking does not adopt these two comments. The intent of the rule is to promote efficient resource development by requiring leases to be formed in reasonably large, compact blocks. If an irregular section contains more than 640 acres, the offer must include the entire section, thus, the requirement in the rule of "larger" rather than "less". If the section of land is less than 640 acres, any contiguous available lands must be included, unless the offer contains other available lands which bring the lease offer to at least 640 acres.

Another comment on § 3110.3–3(a) of the proposed rulemaking suggested that the exception to the 640-acre minimum requirement for noncompetitive offers filed on a parcel offered by the Bureau in a competitive lease sale should be limited to the time period when the description by parcel number is required under § 3110.8–1 of the proposed rulemaking, which is redesignated § 3110.5–1. This suggestion is adopted in the final rulemaking, and this exception is moved to the end of paragraph (a) of § 3110.3–3 for clarity.

Section 3110.4 Requirements for offer.

A Bureau of Land Management review of §§ 3110.4, 3110.5, 3110.6, 3110.7, and 3110.8 of the proposed rulemaking recognized that these sections were not in the appropriate order to follow the logical sequence of actions when a noncompetitive offer is filed. The final rulemaking is amended to place the sections required in this subpart in the correct order of events.

Section 3110.7 of the proposed rulemaking, redesignated § 3110.4 in the final rulemaking, received several comments expressing the view that the word "shall" in the first sentence seems to require use of the current lease form. The comments suggested that this requirement conflicts with § 3110.5(d) of the proposed rulemaking, redesignated as § 3110.7(e) in the final rulemaking, in which a form not currently in use shall be allowed, unless such lease form has been declared obsolete by the Director prior to the filing. This suggestion is not adopted in the final rulemaking. The Bureau is completing revisions to the lease form to conform to the requirements of the Reform Act. The revised lease form is expected to be available for public use soon after this final rulemaking is published. Until the revised lease form is available, and sufficient time has been allowed for general circulation existing lease forms will be acceptable for filing noncompetitive lease offers. The Bureau will publish a notice in the Federal Register (anticipated in July 1988) specifying the acceptable lease form and will give interested parties a reasonable time period in which to obtain them before declaring the previous lease form obsolete. The provision relating to the lease form in paragraph (d) in § 3110.5 of the proposed rulemaking, redesignated as § 3110.7 in the final rulemaking, is revised and placed in a new paragraph (e), but certain language is retained in the final rulemaking in the event that future modifications or changes to the lease form are necessary.

One comment on § 3110.7 of the proposed rulemaking, redesignated § 3110.4 in the final rulemaking, suggested that in order to save paperwork only one original lease form should be required as opposed to the requirement of an original and 2 copies. This recommendation is not adopted in the final rulemaking. Each offer to lease may eventually mature into a lease. Accordingly, an original and 2 copies of the offer are necessary to provide sufficient copies for the lessor, the lessee, and the surface managing agency.

Another comment on this section recommended that the phrase "or attorney-in-fact" be added after the term "authorized agent" in paragraph (a). This suggestion is not adopted since an attorney-in-fact is an agent.

A few other comments on paragraph (a) of this section of the proposed rulemaking suggested that the phrase "by a nonrefundable application fee of $75 and the first year's rental" be clarified. The commenters expressed the view that the language as proposed implies that the first year's rental is nonrefundable. It was not intended that noncompetitive rentals would be subject to forfeiture. The final rulemaking has been modified to make this clear.

Several comments requested clarification or correction of references to §§ 3103.2–1(a) and 3103.3–3(c) in § 3110.7(b) of the proposed rulemaking, redesignated in the final rulemaking as § 3110.4(b). The reference to § 3103.2–1(a) is correct. Offers deficient in the first year's rental by not more than 10 percent or $200, whichever is less, shall be acceptable. The reference in the proposed rulemaking to § 3103.3–3(c) was incorrect, and is corrected in the final rulemaking to specify § 3110.3–3(c), which addresses curable defects of an offer that exceeds the 10,240-acre maximum size by not more than 160 acres. No loss in priority to an offer to lease would occur in these two instances, provided that the requirements are satisfied within the time allowed in these regulations.

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Several comments on this section raised questions concerning the provision for a correction of an offer to lease. One comment requested clarification as to what circumstances would prompt the authorized officer to request a correction to an offer. Another comment stated that correction of an offer is a very broad notion, and that not all corrections should result in a new priority date being set as of the date the correction has been made. The effect of corrections on the amount of filing fees required also was questioned. The intent of the regulation is to allow correction of minor errors in an offer, if there is no intervening offer, which otherwise would cause a rejection of the offer. Curable defects with no loss in priority will be allowed only in those instances specified in §§ 3103.2–1(a) and 3110.3–3(c) of the final rulemaking. No new filing fee would be required if the offer is acceptable with the corrections made.

Several comments objected to the provision in § 3110.7(e) of the proposed rulemaking, redesignated in the final rulemaking as § 3110.4(e), which requires that all offers to lease should name the United States agency from which consent to the issuance of a lease shall be obtained. The comments suggested that the Bureau can more easily identify the surface managing agency. The Bureau recognizes that this identification may create some burden to offerors. However, where title information for the mineral interest is uncertain on Bureau records and a title abstract is needed, identification of the surface managing agency expedites processing of lease offers. The Bureau will continue to request this information for lands nominated through filing of a noncompetitive offer or an informal expression of interest prior to inclusion of the lands in a competitive offering. Inclusion of the information on the lease form is not mandatory for a noncompetitive offer and will not result in a loss of priority. The language of the proposed rulemaking is adopted without change.

Section 3110.5 Description of lands in offer.

A large number of comments was received on § 3110.5–1 of the proposed rulemaking, redesignated § 3110.5–1 in the final rulemaking, concerning the requirement that applicants making noncompetitive offers during the month of the noncompetitive process be required to describe the lands only by a single parcel number as it appeared in the List of Lands Available for Competitive Nominations *and* the Notice of Competitive Lease Sale. One comment pointed out that the "and" requirement would be impossible to meet where the direct sale method is used and there is no List of Lands Available for Competitive Nominations. Additionally, the comments suggested that if the parcel numbers were not the same on both the List of Lands Available for Competitive Nominations and the Notice of Competitive Lease Sale, even more confusion could result. The final rulemaking corrects this defect in this section, redesignated as § 3110.5–1, to indicate that the parcel number to be used will be that number as specified in the notice *or* list. When the nomination process is used, internal Bureau procedure will require that the same parcel number appearing on a nominations list also must be used on the corresponding Notice of Competitive Lease Sale.

Other comments on this section objected to the phrase, "the end of the month of the competitive process." The Bureau concurs that this terminology is ambiguous. The final rulemaking has been amended to specify that the period required for use of the parcel number (the parcel number period) in submitting lease offers commences on the day following the oral auction, or where formal nominations are used, the day following the posting of the sale notice, until the end of that same month.

Several comments on this section also questioned the rationale for limiting the noncompetitive offer to a single parcel or for requiring that those offers filed within the parcel number period must retain the configuration contained in the nomination lists and sale notices that offered the lands competitively. The Bureau adopts this restriction in anticipation that some parcels may pass through the competitive process without a bid but still may be attractive enough to invite several noncompetitive offers. Retaining the parcel configuration, and limiting the offer to a single parcel, will prevent overlapping and partial offers, and allow the Bureau to adjudicate conflicting offers on the same parcel more quickly. Additionally, this requirement will obviate the need to obtain revised stipulations to fit a different lease parcel configuration, thus removing a possible impediment to lease issuance.

One comment on this section of the proposed rulemaking suggested that the final regulation should be flexible enough to allow lease offers on the basis of the parcel number description throughout the two years the lands are available noncompetitively following the competitive offering. The comment recommended that offerors also should be able to rely on the acreage figure associated with the parcel as indicated in the listing. Another comment contended that the parcel number description requirement should be required for the entire 2-year period. A few comments supported limiting the parcel number period to a single day or other extremely brief period. These suggestions are not adopted in the final rulemaking since such a provision would permanently prevent a potential offeror from acquiring only the land configuration he or she might desire in a single lease. Such a requirement could also create confusion in the later stages of the 2-year period of availability of the lands for noncompetitive leasing, since parcel numbers could become numerous following several sale processes. After the required period, the lands in the offer shall be properly described; use of the parcel number by itself will result in rejection of the offer.

Section 3110.6–3 of the proposed rulemaking, redesignated in the final rulemaking as § 3110.5–3, received several comments suggesting deletion of paragraph (e) allowing the authorized officer to waive the land description requirements, stating that it duplicates paragraph (d). Another comment opposed the provision allowing an acquisition tract number in lieu of a legal description because it would complicate the Bureau's automated lands and minerals record system. This provision of the proposed rulemaking was designed to allow the offeror the greatest possible flexibility in clearly and accurately describing lands covered by an offer without loss of priority. The final rulemaking removes paragraph (e) of the proposed rulemaking and redesignates paragraph (f) of the proposed rulemaking as paragraph (e). Redesignated § 3110.5–3(d) is amended to state clearly that the authorized officer may allow the description by acquisition or tract number without any other legal land description required by this section.

Section 3110.6 Withdrawal of offer.

Section 3110.4 of the proposed rulemaking, redesignated as § 3110.6 in the final rulemaking, received several comments that opposed the prohibition of withdrawal of a noncompetitive lease offer earlier than 60 days following its filing. On balance, the reasons for imposing the limitations on withdrawal of an offer filed on lands available after the competitive process outweigh the disadvantages of such a limitation. Experience has shown that offers are treated by some as an "option" on a lease during which time efforts are made to sell it to a third party. When such

efforts fail, the offer is then withdrawn. This practice, although not widespread in the industry, has the effect of encouraging offers filed in less than good faith, and keeps legitimate developers from acquiring available lands as prospects. A 60-day prohibition on withdrawal maximizes the lands available, facilitates orderly issuance of leases, and ensures that the public's resources are spent in furtherance of leasing rather than in aiding lease speculation.

Some comments suggested that allowing withdrawals of offers would speed refunds when a lease is issued to the senior offeror. Junior offers are rejected by the Bureau at the time the senior offeror is issued the lease, and rental refunds are authorized as soon as a lease issues. Allowing such withdrawals would not speed this process but would merely add an unnecessary paperwork burden. When unexpected delays, such as litigation, prevent timely lease issuance, the offer could be withdrawn after the 60 days. The final rulemaking retains the 60-day limitation on withdrawal of offers made in accordance with § 3110.1(b) of the final rulemaking on those lands available during the 2-year period following the end of the competitive offering. In such an offer is withdrawn, the lands would continue to be available for noncompetitive leasing for the remainder of the 2-year period under § 3110.1(b).

A few comments on this section of the proposed rulemaking suggested that the phrase specifying withdrawal "at least 60 days after the date of filing" in this section of the proposed rulemaking was unclear. In response to these comments, the final rulemaking is amended to state that such a withdrawal is allowed only after 60 days from the date of filing of such an offer.

A few comments received on this section of the proposed rulemaking suggested that if noncompetitive offers are allowed to be filed as a means of establishing priority before the competitive offering of the lands, that the offeror should be allowed to withdraw the offer prior to the competitive offering if the stipulations are found to be unacceptable to the offeror. The comment further contended that such offerors should be notified of the stipulations prior to inclusion of the lands in the Notice of Competitive Lease Sale, and that if the stipulations are unacceptable, the lands should not be placed on the sale list or notice. Notification of any stipulations for the lands in such an offer filed prior to the competitive offering is inappropriate and unnecessary. Since the Reform Act places greater emphasis on the competitive offering of lease parcels, all members of the public should be advised of the terms and conditions through the normal competitive procedures for conducting competitive sales. However, this section and § 3101.1–3 have been amended in the final rulemaking to allow for the withdrawal of an offer filed prior to the competitive process, if at any time prior to lease issuance, the offeror finds that the stipulations would be unacceptable. Unlike offers filed under § 3110.1(b), those offers filed prior to the competitive offering would not be affected by the 60-day limitation for withdrawal provided that the withdrawal is made prior to lease issuance.

Section 3110.7 Action on offer.

A number of comments were received on § 3110.5 of the proposed rulemaking, redesignated as § 3110.7 in the final rulemaking. Most comments suggested that paragraph (b), as well as the reference in paragraph (a) to extensions, petitions for reinstatements, and existing or former leases, be removed from this section and placed in Subpart 3120, because it would take at least 90 days for the lands to progress through the competitive process and become available for noncompetitive leasing. The comments contended that such matters as lease reinstatements and extensions should be resolved before offering the lands competitively. It is unlikely that a noncompetitive lease could be issued in such a short time frame, and that reinstatements and extensions should normally be resolved prior to competitive offering of the lands. However, no change is made in these paragraphs in the final rulemaking since the possibility does exist that a recently terminated lease could be offered competitively, receive no bids, and then be available for noncompetitive offer. In view of these comments, § 3120.5–3 of the final rulemaking also has been amended to include this same provision.

Another comment on this section suggested that paragraph (a) be clarified to specify that if a lease is issued for lands included in a terminated lease before a petition for reinstatement is filed, the subsequent lease shall not be canceled. This suggestion is not adopted in the final rulemaking because the regulations provide for cancellation of a lease that should not have been issued. The last sentence of paragraph (a) sufficiently states that the subsequent lease will be canceled if the petitioner is entitled to reinstatement. If the petition is filed after a lease is issued, reinstatement of the prior lease cannot be made.

Several comments on this section suggested that the word "erroneously" be inserted in paragraph (a) to make it clear that leases will not be indiscriminately issued before the necessary paperwork is completed. The comments contended that unless an error is made, a lease should not be issued until final action is taken on all previous offers or leases. The final rulemaking does not adopt this suggestion because it is unnecessary to specify the reason the lease was issued. The intent of this provision is to require cancellation if the lease should not have been issued.

Section 3110.9 Future interest offers.

One comment received on §§ 3110.9–1 and 3120.7 of the proposed rulemaking suggested that the question of competitive and noncompetitive leasing of future interests be addressed by further specific legislation. This comment is beyond the scope of this rulemaking since these final regulations must implement the statute now in effect. Another comment on § 3110.9 of the proposed rulemaking questioned whether a future interest could be leased noncompetitively without first going through the competitive process, and requested clarification of the meaning of the phrase "substantially all of the present operating rights in the lands," suggesting "substantially all" means 50 percent or more and that "lands" could mean future interest lands or all lands in a communitized area.

Under the Reform Act, future interest lands may be leased both competitively and noncompetitively. Since no lease may be issued under the Reform Act without first being subjected to the competitive process, the present interest holder may gain the sole right to a lease with a successful competitive bid over any noncompetitive applicant whose offer is nullified by the competitive bid. Accordingly, the provision limiting leasing noncompetitively only to one who owns "all or substantially all" is removed in §§ 3110.9–1 and 3110.9–2 of the final rulemaking.

A few comments questioned the meaning of the phrase, "the same type and proportion," in § 3110.9–4(a) of the proposed rulemaking. The language is sufficiently clear in the proposed rulemaking that a transfer of a present interest, either record title or operating rights, generates a concurrent transfer of the future interest. No change is made in the final rulemaking.

Part 3120—Competitive Leases

Section 3120.1–1 Lands available for competitive leasing.

Several comments addressed the term "available" in § 3120.1–1 of the proposed rulemaking. One comment suggested a change to clarify the term, expressing concern that the Bureau would offer all available lands whether or not it would be in the public interest to lease and prior to compliance with National Environmental Policy Act requirements. Another comment questioned whether the Bureau could retain the option to withhold tracts. One comment suggested a provision be included requiring the Bureau to offer *all* available lands for competitive leasing within 18 months from their date of availability. Other comments expressed concern as to how unleased lands (those available over-the-counter prior to enactment of the Reform Act and those newly available due to a change in status or the law) could be cycled through the competitive process.

The term "available" means any lands subject to leasing under the Mineral Leasing Act. As used in the context of this section, all such lands are required to be offered competitively. It is Bureau policy prior to offering the lands to determine whether leasing will be in the public interest and to identify stipulation requirements, obtain surface management agency leasing recommendations and consent where applicable and required by law. Since these requirements are required to be met and an identification and copy of the stipulations applicable to each parcel is to be included in the Notice of Competitive Lease Sale, it would be virtually impossible to offer *all* available lands within 18 months. Also, far more lands are and always have been available than have been leased. Moreover, many if not most lands will not be "offered" by the Bureau but are nonetheless available for filing or expressions of interest. Offering unleased lands for cycling through the competitive process is discussed under Subpart 3110 regarding opening orders in special situations for newly available lands. The final rulemaking expands the categories of available lands in this section to include lands for which an offer or expression of interest has been received by the proper BLM office, and lands included by Bureau motion.

A few comments on § 3120.1–1(c) of the proposed rulemaking suggested that when an undivided interest in a lease is canceled, the regulations should include a provision requiring the Bureau to offer to the other holders of interest in that lease a right of first refusal to purchase that interest in an amount equal to the highest bid received at the oral auction or the opportunity to exceed such highest acceptable bid. Offering the right of first refusal is contrary to the competitive intent of the law. Other interest holders would have the opportunity at the sale to exceed the highest bid. The suggestions is not adopted in the final rulemaking.

One comment alleged that § 3120.1–1(d) of the proposed rulemaking allowed leasing within units of the National Park System without consent. This is not the case since this paragraph states only that lands subject to drainage are available for competitive leasing.

Another comment concerning § 3120.1–1(d) suggested that a definition of "protective leasing" be included in this subpart. The suggestion is not adopted as this subject is properly addressed in § 3100.2.

Section 3120.1–2 Requirements.

Several comments on this section of the proposed rulemaking expressed concern about the scheduling of the sale dates, suggesting that the dates not overlap among the Bureau State Offices. It is Bureau policy to plan sale dates on a non-conflicting basis. Sale notices will give those parties wishing to participate an ample amount of time to make plans to attend the oral auctions. Depending on the availability of lands and individual State Office workloads, the sales normally will be scheduled bi-monthly by some State Offices and at least quarterly by other State offices. Where a State Office has few lands available, rather than delaying offering them, it may include these parcels in nearby State Office sales.

Several comments on this section questioned whether oral auctions are required to be held in the States where the available lands are located. The Reform Act allows the Bureau to hold sales in any State where the office has jurisdiction over the lands. The final rulemaking amends this section to make this clear.

A number of comments on § 3120.1–2(c) of the proposed rulemaking recommended that the national minimum acceptable bid be prorated on a net-acre basis rather than on a gross-acre basis. The Bureau has no evidence of Congressional intent to permit proration of bonus bids. Bidders will be made aware of the percentage of Federal mineral interest held in the lands in order to adjust their bids accordingly. Administratively, proration is cumbersome. The recommendation has not been adopted in the final rulemaking.

Section 3120.1–3 Protests and appeals.

One comment of this section of the proposed rulemaking requested that the final rulemaking clarify the provisions for suspension of a lease sale when a protest or appeal is received. The final rulemaking amends this section to specify that only the Assistant Secretary for Land and Minerals Management may suspend a sale for good and just cause after reviewing the reason(s) for such action.

Other comments on this section recommended that, in order to preclude indefinite suspension, specific limitation (e.g., 30 days) should be imposed on the length of time that a parcel can be suspended from competitive sale. Such a time frame is not feasible because the Department cannot determine in advance when the grounds for suspension of any parcel would be resolved.

Section 3120.2–1 Duration of leases.

Several comments addressed the primary term of competitive and noncompetitive leases and requested varying changes in this section of the final rulemaking. Since the Reform Act did not change this provision of the Mineral Leasing Act, there is no need to amend this section.

Section 3120.2–3 Lease size.

Varying comments were received on this section of the proposed rulemaking concerning lease size. A few of the comments requested that the lease size continue to be no larger than 640 acres. After consideration of these comments, it has been determined that the final rulemaking should allow discretion to decide how much acreage should be included in each lease parcel, up to the maximum 2,560 acres specified in the Reform Act. Expressions of interest from industry, the extent of lands available within a particular area, and the goal of parcels having compact form, will be considered by the Bureau in configuring parcels. The final rulemaking adopts the language of the proposed rulemaking without change.

Section 3120.3 Nomination process.

Section 3120.3–1 General.

A large number of comments was received on the type of sale method to be used by the Bureau: The nomination method or the direct sale method. The comments were essentially evenly divided between both methods. The majority of the comments did recommend that the Bureau choose a consistent method nationwide to lessen confusion and assist industry planning.

Several comments questioned the legality of the formal nomination process and expressed the view that this method does not comply with the Reform Act. The Department has considered all the views presented and remains convinced that the nomination process is legally consistent with the Reform Act. Considering the Bureau's experience with the test sales, the variations apparent in the oil and gas leasing activities nationwide, and the many comments received, it is appropriate that Subpart 3120 of the final rulemaking should allow regulatory flexibility to permit the use of either sale method should conditions warrant in the future. The final rulemaking, under § 3120.3, vests in the Director of the Bureau of Land Management and authority to implement the formal nomination process or permit expressions of interest following a public comment period of at least 30 days. This final rulemaking completes the 30-day comment period, and based on the many comments received with regard to expressions of interest (informal nominations) as well as formal nominations, effective with the publication of this final rulemaking, 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 § 3120.3.

All Bureau of Land Management State Offices, at this time, will use the direct sale method. The public hereby is invited to submit informal expressions of interest for available lands by land description to the proper BLM office for processing by Bureau personnel for inclusion in future oral auctions. The identity of filers of expressions of interest will be kept confidential. No specific form or format is required to submit an informal expression of interest.

Several comments suggested inclusion in the final rulemaking of a provision to allow a person who has submitted an informal expression of interest the opportunity to appeal if the Bureau withdraws a parcel from competitive sale. This suggestion to make a Bureau action to withdraw a parcel an appealable decision has not been adopted. In most instances, parcels are withdrawn from sale only for critical reasons, such as lack of surface managing agency consent, title questions, or restrictive stipulations that would cloud title or restrict lease issuance. When a parcel is withdrawn due to errors or factors that are irreconcilable in the requisite time frame, the parcel may be reoffered in a future competitive offering.

In response to several comments pointing out that §§ 3120.3–1 and 3120.3–2(d) of the proposed rulemaking appear to be in conflict, the final rulemaking is amended to clarify that formal nominations require submission of the national minimum acceptable bid.

Section 3120.3–2 Filing of a nomination for competitive leasing.

Numerous comments requested that nominations submitted to the Bureau be kept confidential. If and when this sale method is elected by the Director following a public comment period, confidentiality is anticipated to be provided. The Bureau has determined that confidentiality is both desirable and permissible as part of this sale method.

Section 3120.3–3 Minimum bid and rental remittance.

A few comments requested that a nomination with a deficient payment not result in the elimination of the nominated parcel from the sale. The final rulemaking does not adopt this suggestion due to the confusion that would be caused in ascertaining whether the nomination is valid. The final rulemaking is amended in this section and in § 3120.3–2 to provide for refund of all moneys in instances where nominations are unacceptable.

Section 3120.3–4 Withdrawal of a nomination.

Several comments objected to this section of the proposed rulemaking, which disallowed withdrawal of nominations. Any party submitting the minimum national acceptable bid should be required to accept a lease under the terms specified in the List of Lands Available for Competitive Nominations if that party is the sole nominator and bidder, provided no higher bid is received at the oral auction. High bidders at a sale also are required to accept the lease. Withdrawal of a parcel by the Bureau of Land Management is discussed earlier in this preamble under § 3120.3. If the formal nomination process is implemented in the future, and a parcel is withdrawn by the Bureau, all moneys submitted with the nomination will be refunded. The final rulemaking is amended accordingly.

Section 3120.3–7 Refund.

A number of comments on this section of the proposed rulemaking requested that the Bureau of Land Management be required to refund the amounts tendered by unsuccessful nominators in a timely fashion. Specific time periods suggested by commenters ranged from 30 to 60 days following the oral auction. Some of the comments suggested payment of interest to nominators for the time that the funds are held by the Bureau. The Bureau is without authority to pay interest on such funds. It is Bureau policy to refund unearned funds as promptly as possible consistent with limitations imposed by the U.S. Department of the Treasury. Currently, refunds may not be authorized until 30 days following the receipt of a remittance to prevent dispersal of funds when a remittance subsequently may be dishonored. The Bureau will continue its policy of issuing such refunds as promptly as possible, but such a provision is not necessary in the final rulemaking.

Section 3120.4 Notice of competitive lease sale.

Section 3120.4–1 General.

Several comments expressed the view that this section of the proposed rulemaking was inadequate since it failed to require inclusion in a Notice of Competitive Lease Sale of such items as bidding and payment requirements, lease terms and stipulations, surface managing agency information, and other helpful details. The comments have been considered and certain amendments are incorporated in the final rulemaking to require that the sale notice contain the identification and language of the applicable stipulation(s) for each parcel. As a matter of policy and internal Bureau procedure, the notice generally will contain bidding and payment requirements. However, it is unnecessary to include a high level of detail in this section of the final rulemaking.

Section 3120.4–2 Posting of notice.

A few comments on this section of the proposed rulemaking requested that the Bureau of Land Management prepare an affidavit, setting forth the date of posting of the Notice of Competitive Lease Sale in the proper BLM office, and the date the sale notice is made available to the surface managing agency. Such a process is unnecessary. Affidavits, statements, etc., prepared by the authorized officer swearing that the Bureau has complied with the law would be of no value to a lessee should questions on this procedure ever be raised. The final rulemaking does not adopt these comments.

Another comment on this section of the proposed rulemaking questioned the posting of maps in the surface managing agency's office. The Reform Act requires a map or a narrative description of the affected lands to be posted in the

appropriate office of the leasing and land management agencies. Since all Bureau offices use a narrative description, at a minimum, in sale notices and also have tract books or land plats available that depict leased and unleased lands, there is no need for additional language to be added to this section of the final rulemaking. The comment has not been adopted in the final rulemaking.

Section 3120.5 Competitive sale.

Section 3120.5–1 Oral auction.

One general comment on this section of the proposed rulemaking suggested slower-paced sales to accommodate all bidders, and requested Bureau reconsideration of the use of "rapid fire" auctioneers. The Bureau of Land Management will not regulate the process, allowing Bureau State Offices to use familiar local practice to facilitate the oral auction.

Another comment on this section suggested that the final rulemaking allow mail-in bids prior to the oral auction to accommodate those people not able to be present at the oral auction. This suggestion is not adopted, since the Reform Act does not allow consideration of sealed bids.

Some comments on this section suggested that all bidders should be registered. Another comment recommended that confidential bidding numbers be assigned. Based on the test sales, it has been determined that this practice need not be regulated. The proposed rule language is adopted without change in the final rulemaking.

Many of the comments on paragraph (a) of this section of the proposed rulemaking favored bidding on a per-acre basis rather than on a per-parcel basis. However, it has been determined that a flexible posture on this issue is appropriate and a specific practice will not be required. This will allow Bureau State Offices to utilize either method, depending on the standard practices normally used within the area of each office's jurisdiction. No change is made in the final rulemaking.

Several comments objected to the announcement at the oral auction of nominations accompanied by the national minimum acceptable bid. The concern raised by the comments was that announcement of the names of nominators at the oral auction could influence bidding or nonbidding by other parties. The final rulemaking is amended to provide that only the existence of a nomination will be announced at the oral auction in order to establish the base bidding level for a parcel above which oral bidding must commence. The name of the nominator would not be revealed as no purpose would be served by doing so.

Several comments suggested that § 3120.5–1(c) of the proposed rulemaking was confusing as to the treatment of parcels receiving 2 or more bids with one comment expressing the view that a parcel should be offered at the next competitive sale and that any noncompetitive offer previously filed should retain its priority through the next sale. The final rulemaking has been amended to clarify that this section applies only when multiple nominations result in tie bids for a parcel under the formal nomination process. Such bids will be returned (not rejected) with all moneys refunded to the nominators. Any parcel receiving such multiple nominations when no higher bid is made at the oral auction will be reoffered in a future competitive sale. Additionally, a pending noncompetitive offer filed under § 3110.1(a) for the same parcel in this situation would retain priority if no bids are received for the parcel in a subsequent auction.

Section 3120.5–2 Payments required.

Several comments suggested that the phrase "close of official business hours" in § 3120.5–2(b) of the proposed rulemaking be more specifically defined. This provision in the rule is intended to require that all specified payments for each parcel be made on the same day the parcel is sold. The final rulemaking is amended to allow administrative flexibility to accept payment after official business hours on the same day the parcel is sold in the event that the oral auction extends late, after the normal business time has passed.

Numerous comments expressed dissatisfaction with § 3120.5–2(b)(1) of the proposed rulemaking concerning the payment requirement of 20 percent of the bonus bid on the day of the sale. The comments stated that the $2 national minimum acceptable bid based on acreage is a known amount prior to the sale, allowing checks to be prepared prior to the sale, but that the 20 percent figure, same as the total bonus bid amount, is an unknown. One comment suggested no payment be required on the day of the sale. A few comments recommended requiring payment of the full bonus bid on the day of the sale. In response to these comments, consideration was given to the merits of requiring either the full bonus bid amount or the $2 minimum bonus bid on the day of the sale. It has been decided to require only the $2 minimum bonus bid per acre or fraction thereof at the oral auction. The final rulemaking has been amended accordingly. If experience at future oral auctions finds that payment of the balance of the bonus bid fails to be remitted in a timely manner within 10 working days following the last day of the auction, a future rulemaking will be considered to require 100 percent of bonus payments at the oral auction, similar to requirements now made by some State governments.

Some comments addressed the requirement in § 3120.5–2(b)(3) of the proposed rulemaking regarding fees covering administrative costs, arguing that Congress did not intend that a filing fee be charged in a competitive sale process. The Reform Act does not support this contention. The administrative fee is charged to help defray the costs of the sale and replaces the charge for the proportionate share of the publication costs previously required in the existing regulations. The final rulemaking adopts the proposed rulemaking without change.

A few comments were directed to § 3120.5–2(c) of the proposed rulemaking. Some commenters suggested that the time allowed to submit the balance of the bonus bid after the sale should be extended to 15 days instead of 10 days. The Departmental decision to require only the $2 national minimum acceptable bonus bid on the day of the sale rather than the total bonus was partially based on the understanding that the balance of the bonus bid must be received within 10 working days. This shorter time frame will allow interest revenues to accrue to the U.S. Treasury more rapidly, in conformance with a General Accounting Office (GAO) 1985 study concerning loss of such revenues. The GAO study recommended that the Bureau of Land Management reduce the time frame in which bonus bid balance moneys are required to be remitted. No change is made in the final rulemaking. Other comments on this section of the proposed rulemaking suggested that a new paragraph be added either in this section or in § 3120.5–3(a) to avoid forcing a potential lessee to take a parcel if the stipulations or terms were modified after posting of the parcel on a list or notice. Such a lease parcel modification would require the Bureau to reoffer the parcel due to the Reform Act's notice requirement for modifications of lease terms, so that the suggested change is unnecessary.

Section 3120.5–3 Award of lease.

Some comments suggested revising the phrase "high bidder" to "lessee" in the second sentence of § 3120.5–3(a), because it is the lessee who is

responsible for certifying compliance. For purposes of awarding the lease, the terms high bidder and lessee are considered synonymous. The proposed rulemaking is adopted without change.

A few comments suggested that a bid should be binding and supported a penalty for failure to honor a bid. Another comment, however, questioned the right of the Government to retain the first year's rental when a lease never issues and, further, whether a bidder could be deemed liable as well, under any circumstances, for the balance of the bonus bid. A bid is binding and does commit the bidder to payment of the full bonus amount. This provision as well as retention of the minimum bonus bid, the first year's rental and the administrative fee should deter irresponsible bidders.

Several comments on § 3120.5–3(b) of the proposed rulemaking pointed out that the Reform Act requires that competitive leases be issued within 60 days from the date of the sale. The comments requested that this requirement be specified in the final rulemaking. The recommendation is not adopted. The Bureau is committed to adhere to the time frame required by the Reform Act, and no purpose is served by repeating the requirement in the final rulemaking.

A few comments requested that the final rulemaking clarify whether lands will be reoffered competitively if a bid is rejected, and further questioned whether, in such circumstances, a noncompetitive offer filed prior to the competitive process would retain its priority. The final rulemaking adopts the comments and also provides that such a noncompetitive offer will retain priority, provided no bid is received in a subsequent oral auction that would nullify the offer.

Section 3120.6 Parcels not bid on at auction.

A technical amendment is made in the title of this section in the final rulemaking more properly to describe the procedures that are addressed in this section.

Numerous comments were received on this section of the proposed rulemaking. Several comments favored a uniform policy for the period commencing the availability of lands for filing of noncompetitive offers. Other comments requested that lands not receiving bids be made available on the next business day after the competitive sale. A few comments recommended a cooling off period of varying duration prior to noncompetitive opening of the lands in order to allow review of the available lands before the appointed time for filing of lease offers. The final rulemaking has amended this section to make it consistent with Subpart 3110 regarding availability of those lands for noncompetitive leasing when no bids are received on competitive parcels.

Several comments on the proposed rulemaking suggested that a conflict exists between §§ 3120.6 and 3120.5–1(c). No change is made in the final rulemaking, as parcels receiving no bids in the competitive process are required to be offered noncompetitively, whereas parcels with tie bids resulting from multiple nominations are to be reoffered competitively.

One comment suggested that the Bureau of Land Management should recycle parcels into another competitive offering when no bids are received at the competitive oral auction and no offers are filed during the 2-year period. Such lands should not be recycled until the public identifies the lands to be of interest, e.g., through an expression of interest or a noncompetitive offer filed under § 3110.1(a). This suggestion is not adopted in the final rulemaking.

Section 3120.7 Future interest.

Section 3120.7–1 Nomination to make lands available for competitive lease.

Several comments were received on § 3120.7–1(b) of the proposed rulemaking that would have allowed the holder(s) of the present operating rights to exceed the highest bid received at the competitive sale. A few comments argued strenuously that the present interest holder should have no preferential right. One comment indicated that to allow such a preferential right would subvert the competitive process under the Reform Act by allowing the present owner to avoid bidding in the competitive process. Another comment suggested that allowing a party to exceed the highest bid would not comport with any previous policy. Some comments observed that the Bureau apparently would have to undertake the burden of both identifying and ensuring that the present owner of the oil and gas rights was identified and offered the opportunity to bid. A final comment expressed the view that the present interest owner should be required to protect his or her interest by bidding at the competitive sale.

The Reform Act allows no preference to a present interest holder following a competitive offering of such future interest lands. Accordingly, the final rulemaking removes § 3120.7–1(b).

Section 3120.7–2 Future interest terms and conditions.

A few comments contended that compliance with § 3120.7–2(a) of the proposed rulemaking would be impossible should the future interest owner not hold the present operating rights. The suggestion to limit the requirement to those future interest lessees who also hold the present oil and gas interests has been adopted in the final rulemaking.

A few comments suggested that clarification was needed for the phrase "the same type and proportion," as used in this section of the proposed rulemaking with respect to the requirement that any transfer of the present interest lease would require a similar transfer of the future interest lease. This issue has been discussed earlier in this preamble under § 3110.9–3. For the same reasons addressed previously, no change has been made in the final rulemaking.

Section 3162.3–1 Drilling applications and plans.

Numerous comments were received on this section of the proposed rulemaking. One comment suggested that if the authorized officer denied drilling permits on a lease such that a lease could not be developed, that the leaseholder should be refunded all bonus and rental moneys that had been paid. If such denials were to occur, the lessee or operator could resort to the administrative appeals process and then proceed with judicial recourse for the return of any moneys. This issue is beyond the scope of this rulemaking.

A few comments felt that the 30-day Application for Permit to Drill approval process was too short for completion of the environmental review needed for the drilling proposal. However, the time frame stated in the regulation language does not require the approval of an Application for Permit to Drill on the 30th day. As may be necessary, the Bureau may delay approval based on appropriate reasons. The 30-day period, however, is a period of time in which the Bureau can normally process the majority of the applications to drill.

Numerous comments on this section of the proposed rulemaking were received concerning the administrative delay in approval of an application to drill that would result from the 30-day notice requirement. One comment expressed the view that the additional 30 days of public notice is a superfluous requirement. Other comments also expressed concern that if a lease were to expire during this 30-day period,

particularly if a protest is received during this public review period, the primary term of the lease would, in effect, be shortened by one month. Many comments suggested that those filing an Application for Permit to Drill during the final 30 days of the primary term should be awarded an automatic lease suspension or that any delay in approval be compensated by an automatic extension of the lease. This suggestion has not been adopted in the final rulemaking. As stated above, 30 days is a reasonable period in which the review and approval process on an Application for Permit to Drill can be completed. Onshore Oil and Gas Order No. 1 already establishes a 30-day period for processing a Notice of Staking or an Application for Permit to Drill. In Order No. 1, Operators are forewarned that they should not always expect timely approval if they do not submit their applications at least 30 days prior to the day they wish to start operations. Lack of action on the part of an operator to initiate the required permitting process in a timely manner does not generally constitute reason for a suspension of lease terms or extension of a lease. If the Bureau is unable to take action prior to lease expiration, the operator would be advised and reasons would be given for the delay so that the operator can exercise any appeal rights provided by the regulations.

Another comment suggested that in order to be fully effective on National Forest System lands the rulemaking for § 3162.3-1 should be jointly promulgated with the Department of Agriculture. The Forest Service is developing its separate regulations to govern surface activities on National Forest System lands. The Bureau has no control over the content and timing of the regulations developed by another agency. The Bureau has coordinated with the Forest Service and will comment on its rulemaking to assist in the development of a process that is as streamlined and uniform as possible for drilling applications and surface use plans of operations in order to meet the provisions of the Reform Act.

A few comments recommended that, because the general public, i.e., all interested parties, had the opportunity to consider lease development activities prior to lease issuance through the land use planning and environmental analysis processes, potential opposition to drilling proposals should be limited only to those parties that have a direct interest in the lands affected by the Application for Permit to Drill. Other comments expressed the view that consultation with only the necessary Federal and State agencies was appropriate. The Reform Act states that notice of an Application for Permit to Drill shall be posted at least 30 days before approval and does not address any specific element of the public. There are instances when the authorized officer may have knowledge of parties having specific interests, and consultation with such parties may be appropriate. The final rulemaking is amended to indicate that the authorized officer shall consult with Federal surface management agencies and other interested parties as required and appropriate.

Another comment expressed concern that potential administrative delays in processing Applications for Permit to Drill could occur due to agencies not having established procedures in effect. The Bureau of Land Management currently has procedures in place as specified in Onshore Oil and Gas Order No. 1. New authority is given by the Reform Act to the Secretary of Agriculture for approval of surface use plans of operations. The Forest Service is currently promulgating regulations and procedures to address its processing of these surface use plans of operations.

One comment suggested that the final rulemaking needs to provide specific terms and conditions governing reclamation of disturbed lands and expressed concern that the proposed rulemaking provided for reclamation only upon abandonment. Regulations are not the appropriate place for site specific reclamation standards to be addressed. Such site specific standards are more properly contained as a part of each surface use plan of operations, tailored to the location of the proposed activity. Order No. 1 requires that the lessee or operator must reclaim those portions of disturbed lands that are no longer required for operations. The final rulemaking adopts the proposed language without change.

A few comments were received concerning the distinction made in the proposed rulemaking between the surface use plan of operations and the drilling plan. Some comments stated that there is not a distinct division between the two plans and that the Bureau should still retain authority over some of contents of the surface use plan of operations. Some comments suggested that the reference to the surface use plan of operations in § 3162.3-1 (d)(2), (f), and (h)(3) should be amended to define more clearly the purpose for the surface use plan. In response to these comments, the final rulemaking has added a definition in § 3160.0-5 of a surface use plan of operations as a plan for surface use, disturbance, and reclamation for oil and gas drilling operations. The details of the contents of a surface use program are contained in the Onshore Order No. 1. The Bureau will revise Onshore Order No. 1 to distinguish the surface use program as a separate plan that is not a part of the drilling plan, and to clearly show those activities that will require Forest Service approval in accordance with the Reform Act provisions.

A few comments suggested that § 3162.3-1(b) of the proposed rulemaking be revised to require that the surface use plan of operations for National Forest Systems lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the drilling plan by the Bureau of Land Management authorized officer. Similar language already exists in § 3162.3-1(h)(3). Also, the revised Interagency Agreement between the Bureau of Land Management and the Forest Service will clearly outline the approval steps for each agency. The final rulemaking makes no change to the proposed language which is adopted without change.

Some comments recommended that § 3162.3-1(c) be revised to require that no drilling operations or surface disturbance preliminary thereto be commenced prior to approval of the drilling plan and the surface use plan of operations. Similar language already exists in this section and since the Bureau of Land Management approves the Application for Permit to Drill (which consists of the drilling plan and surface use plan) no change is made in the language of the final rulemaking. For any Application for Permit to Drill on National Forest System lands, the Bureau would obtain the specific requirements concerning the surface use plan of operations from the Forest Service prior to approval of the drilling plan. Accordingly, the suggestion is not adopted.

Numerous comments were received on § 3162.3-1(d) of the proposed rulemaking. Some of the comments recommended that the Application for Permit to Drill be submitted directly to the appropriate surface managing agency in order to speed up the permit review process, with the appropriate information forwarded to the Bureau of Land Management, since the key posting times are those at the "local offices" of the surface management agency. The Bureau of Land Management has the principal responsibility for approval of the permit to drill, and the surface use plan of operations is a part of the Application for Permit to Drill. As required by Order No. 1, the authorized

officer of the Bureau of Land Management has 7 days to notify the operator whether the application is technically and administratively correct. To delay receipt by the Bureau of an application by having a surface management agency receive it first and then forward the appropriate information to the appropriate Bureau office would not allow the 7-day deadline to be met. Since both the Bureau and the Forest Service have approval authority over parts of the permit to drill, the posting requirements will have to be met in both local offices to meet the provisions of the Reform Act. The recommendation has not been adopted in the final rulemaking.

A comment suggested that an applicant be allowed to send a copy of the Application for Permit to Drill for surface not under Bureau jurisdiction to the appropriate surface management agency at the same time as it is submitted to the Bureau of Land Management to speed up the processing. Onshore Order No. 1 will be revised to encourage, but not require, operators to submit a duplicate copy of the application for lands and surface of which is not under the Bureau's jurisdiction to the other surface managing agency when posting would be required at both locations.

Another comment suggested that § 3162.3-1(d) be clarified by substituting the phrase "commencement of operations is desired" in lieu of the phrase "commencement of operations is anticipated" that was contained in the proposed rulemaking. The comment expressed the view that "anticipated" could be interpreted to mean that approval to commence operations is not needed. This change is adopted in the final rulemaking.

Several comments received on § 3162.3-1(e) of the proposed rulemaking expressed the view that the phrase "expected problems" contained in this section is confusing and unrealistic since companies plan to drill problem-free wells. The comments felt that it was not clear what specific information would be expected to be addressed and submitted in response to this provision. The comments also indicated that the phrase "proposed mitigation" was not clear and suggested that the sentence read "* * * and proposed mitigation measures to address such hazards." These comments have been adopted and the final rulemaking has been amended to remove ambiguity.

Some comments suggested that the word "restoration" in § 3162.3-1(f) of the proposed rulemaking be changed to "reclamation" to be more consistent with the language used in the Reform Act. This recommendation is adopted.

One comment suggested adding language in § 3162.3-1(f) that would identify the information the Secretary of Agriculture would require in the surface use plan of operations for National Forest System lands. This recommendation is not adopted since the Forest Service will address such requirements in its rulemaking.

A few comments suggested that the language contained at the end of § 3162.3-1(e) of the proposed rulemaking also be added in § 3162.3-1(f). This amendment would allow for surface use plans of operations to be submitted for multiple wells. This suggestion would benefit the permitting process and, therefore, it has been adopted in the final rulemaking.

Some comments suggested that the Bureau should specify more clearly in the final rulemaking where the Application for Permit to Drill, including the surface use of plan of operations, is required to be posted. The Bureau agrees that this would add clarity to the regulations and language is added in § 3162.3-1(g) to require that the posting shall be in the office of the authorized officer of the BLM and in the appropriate surface management agency if other than the BLM.

Numerous comments were received on § 3162.3-1(g) of the proposed rulemaking questioning what would constitute timely posting of notice for the submittal of the Application for Permit to Drill. A few comments requested that the posting period and review and approval process should run concurrently. The Reform Act requires the posting of the Application for Permit to Drill for at least 30 days prior to approval. The law does not limit posting to only 30 days. The Bureau office where the application will be approved is the office where the application is required to be posted. To allow for concurrent posting in the office of the surface management agency, the Bureau will strive to complete the posting as soon as possible after receipt of the Application for Permit to Drill and/or the Notice of Staking. This suggestion is adopted and appropriate language is added in § 3162.3-1(g) of the final rulemaking. Bureau field offices will be instructed to use all available means to process each Application for Permit to Drill and/or Notice of Staking during the 30-day posting period to minimize the need for additional time beyond this prescribed minimum period.

A few comments questioned the level of detail required in the posting of the notice required in § 3162.3-1(g) of the proposed rulemaking. One of the comments pointed out that the proposed rulemaking required a map *and* a narrative description, but the Reform Act requires maps *or* a narrative description. To be more consistent with the law, the final rulemaking is amended to require maps *or* a narrative description. In addition, this section is revised in the final rulemaking to specify the level of information required when maps are used. The level of detail required should be sufficient to allow a person to determine reasonably the area where an action would occur. The purpose of the posting, however, is not to give a detailed account of the actions proposed which would be included in the surface use plan of operations that is available in the posting office for public review.

Another comment questioned when a new posting would be required if a drill site location was moved subsequent to the start of the 30-day posting period. If the proposed location is moved, the authorized officer would have to determine if the affected areas have changed significantly enough to require a 30-day posting period. This should remain an administrative decision, since each case will have to be judged on its own merits.

A few comments expressed concern that if both an Application for Permit to Drill and a request for modification of lease terms were concurrently applied for that there would be separate 30-day posting periods that would run in tandem. The Reform Act and these regulations do so specify. The practice of the Bureau generally will be that each request would be treated as a separate application and a 30-day posting period would be required for each regardless of their time of submittal. However, in normal circumstances these two review periods could occur at the same time without delay of approval of the proposed action. The final rulemaking does not adopt this suggestion.

A few cominents were received on the language concerning appeals to the Forest Service for the surface use plan of operations contained in § 3162.3-1(h)(3) of the proposed rulemaking. The language in this section is sufficiently clear that the Forest Service alone is responsible for reviewing the decisions rendered on National Forest System lands.

One comment felt that the 30-day notice requirement should not apply to those Applications for Permit to Drill on private surface. The Reform Act is silent with respect to any distinction concerning private surface and Federally-administered surface. No

change is adopted in the final rulemaking since the law requires posting of the required notice.

A comment suggested that the language "as soon as practicable but in no event later that 5 working days" be added in § 3162.3-1(h). This change is adopted in the final rulemaking as suggested and will make it clear that the authorized officer is to act within a specific time period.

A final comment on this section of the proposed rulemaking suggested that the use of the word "stipulations" could cause confusion because that term is used only in legal documents that convey rights. The final rulemaking adopts the suggestion and replaces "stipulations" with "conditions".

Section 3162.3-2 Subsequent well operations.

Section 3162.3-2(a) is revised to make a technical change to specify that if additional surface disturbance is involved in a proposed drilling plan for subsequent well operations, the applicant's proposal also is required to contain a surface use plan of operations.

Section 3162.3-3 Other lease operations.

This section of the rulemaking is also amended to provide that any proposal for other lease operations is required to include a surface use plan of operations. These revisions, along with a revision in § 3164.3(b), will clarify the role of the U.S. Forest Service in the permitting process as required by the Reform Act.

Section 3162.3-4 Well abandonment.

Section 3162.3-4 in the final rulemaking is amended in response to comments to change the phrase "rehabilitated or restored" to "reclaimed" to be consistent with the language used in the Reform Act. Section 3162.5-1(b) also is amended to make this change in the final rulemaking.

A few comments requested that specific procedures be established in § 3162.3-4(a) of the final rulemaking or in an Onshore Operating Order to document the reclamation compliance requirements. The comments also requested that the language in this section be revised to require that the lessee or operator shall promptly plug and abandon, in accordance with applicable notices and orders. In response to these comments, the specific procedures for documenting operator compliance with reclamation requirements are already contained in Onshore Order No. 1. The intent of this rulemaking is to ensure that operators follow site-specific requirements for the plugging and abandonment of wells as contained in the surface use plan of operations. Such specific information is not appropriately covered universally in an onshore operating order or notice. Two onshore orders are currently in preparation which will outline the Bureau's general well bore requirements for abandonment.

Section 3164.3 Surface rights

A few comments on § 3164.3(b) recommended that this section be revised to reflect more accurately the responsibilities of the U.S. Forest Service as stated in the Reform Act. These comments are adopted and the final rulemaking is amended to include the addition of a new paragraph (c) to specify that the Forest Service shall regulate all surface disturbing activities in accordance with its regulations, and provide the Bureau's authorized officer the notification of appropriate approvals for such activities on National Forest System lands. The provisions of this regulation and approval by the Forest Service are required to be consistent with the terms and conditions of the specific oil and gas lease contract. The Forest Service has no more authority to disapprove activities authorized by the lease rights granted specifically by the lease contract than does the Bureau of Land Management.

Subpart 3220—Competitive leases; General

A comment recommended that the competitive geothermal resources leasing regulations be brought into conformance with the competitive oil and gas leasing regulations contained in this rulemaking by changing the geothermal competitive bidding system from sealed bids to oral auction. Even though the Geothermal Steam Act of 1970 does not prohibit the Secretary from adopting rule changes allowing for oral sales under the geothermal leasing program, such a change were not included in the proposed rulemaking and cannot be included in this final rulemaking.

A few comments were received which were not directed at specific provisions of the proposed rulemaking but rather questioned why the opportunity had not been taken in this rulemaking to revise the procedures for compliance with the National Environmental Policy Act of 1970. These comments referenced two court decisions as evidence that Bureau procedures were deficient. One is a 5-year old decision, *Sierra Club* v. Peterson, 717 F.2d 1409 (D.C. Cir. 1983), and the other is *Conner* v. *Burford*, 836 F.2d 1521 (9th Cir. 1988), both of which involved a National Environmental Policy Act document prepared by the U.S. Forest Service for leasing within the National Forest System in 1981. The Bureau's *National Environmental Policy* Act compliance procedures have been evolving and improving in recent years. In particular, revised planning regulations were promulgated effective July 1983. These regulations address the oil and gas leasing program as well as all Bureau programs in a systematic, cohesive manner. Also, in November 1986, supplemental guidance specifically addressing planning and National Environmental Policy Act compliance within the Bureau's oil and gas leasing program was implemented through Bureau Manual 1624.2. Both the rulemaking and the Bureau Manual were developed with full public involvement. The Bureau will continue to review its planning and National Environmental Policy Act compliance procedures for all programs on an ongoing basis. At such time as additional regulatory changes appear necessary, proposed rulemaking will be initiated.

Editorial and technical changes, and grammatical and spelling corrections, have been made as needed.

The principal authors of this final rulemaking are Rob Cervantes, Sie Ling Chiang, Karl Duscher, Lois Mason, Judy Reed, and Jeff Zabler, of the Bureau of Land Management Washington Office assisted by numerous Bureau of Land Management Field Office representatives and the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this final rulemaking will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirements contained in Parts 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004-0034, 1004-0065, 1004-0067, 1004-0074, 1004-0132,

1004–0134, 1004–0135, 1004–0136, 1004–0137, 1004–0138, and 1004–0145.

List of Subjects

43 CFR Part 3000

Public lands—mineral resources.

43 CFR Part 3100

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

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 3160

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

43 CFR Part 3180

Government contracts, Oil and gas exploration, Public lands—mineral resources, Surety bonds.

43 CFR Part 3200

Geothermal energy, Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3280

Geothermal energy, Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds

Under the authority of the Federal Onshore Oil and Leasing Reform Act of 1987, Pub. L. 100–203, and other authorities cited below, Part 3000, Group 3000, and Parts 3100, 3110, 3120, 3130, 3160, and 3180, Group 3100, and Parts 3200 and 3280, Group 3200, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, are amended as set forth below.

June 2, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

1. The table of contents of Part 3000 is amended by adding the following section:

3000.9 *Enforcement.*

PART 3000—[AMENDED]

1a. The authority citation for Part 3000 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41).

2. Section 2000.0–5 is amended by revising paragraph (f) to read:

§ 3000.0–5 Definitions.

(f) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Groups 3000 and 3100, except that all oil and gas lease offers, and assignments or transfers for lands in Alaska shall be filed in the Alaska State Office, Anchorage, Alaska.

(See § 1821–2–1 of this title for office location and area of jurisdiction of Bureau of Land Management offices).

2a. Section 3000.4 is revised to read as follows:

§ 3000.4 Appeals.

Except as provided in §§ 3101.7–3(b), 3120.1–3, 3165.4, and 3427.2 of this title, any party adversely affected by a decision of the authorized officer made pursuant to the provisions of Group 3000 or Group 3100 of this title shall have a right of appeal pursuant to Part 4 of this title.

3. Section 3000.9 is adopted to read as follows:

§ 3000.9 Enforcement.

Provisions of section 41 of the Act shall be enforced by the United States Department of Justice.

PART 3100—OIL AND GAS LEASING

3a. The table of contents of Subpart 3100 is amended by removing the entries for §§ 3100.3, 3100.3–1, and 3100.3–2, and by redesignating §§ 3100.4, 3100.4–1, 3100.4–2, and 3100.4–3 as §§ 3100.3, 3100.3–1, 3100.3–2, and 3100.3–3, respectively.

3b. The table of contents of Subpart 3101 is amended by revising the title of § 3101.1–1 to read "Lease form."; by revising the title of § 3101.1–2 to read "Surface use rights."; by adding the following entries after § 3101.1–2:

3101.1–3 Stipulations and information notices.

3101.1–4 Modification or waiver of lease terms and stipulations.

by revising the title of § 3101.7–2 to read "Action by the Bureau of Land Management."; by removing §§ 3101.7–3 and 3101.7–4; and by redesignating § 3101.7–5 as § 3101.7–3.

3c. The table of contents of Subpart 3109 is amended by revising the title of § 3109.2 to read "Units of the National Park System."

4. The authority citation for Part 3100 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd–ee), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), and the Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41).

Subpart 3100—Oil and Gas Leasing; General

5. Section 3100.0–3 is amended by removing the word "and" at the end of paragraphs (a)(2) (iii) and (v), by adding paragraphs (vii), (viii), (ix), (x), and (xi) to paragraph (a)(2), by removing the word "and" at the end of paragraph (b)92)(vi), and adding paragraphs (viii), (ix), (x), (xi), and (xii) to paragraph (b)(2), by revising the title of paragraph (g)(4), and by removing the word "areas" in the first sentence of paragraph (g)(4) and replacing it with the phrase "units of the National Park System", to read as follows:

§ 3100.0–3 Authority.

(a) * * *

(2) * * *

(vii) Lands recommended for wilderness allocation by the surface managing agency;

(viii) Lands within Bureau of Land Management wilderness study areas;

(ix) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(x) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xi) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(b) • • •

(2) • • •

(viii) Lands recommended for wilderness allocation by the surface managing agency;

(ix) Lands within Bureau of Land Management wilderness study areas;

(x) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(xi) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

• • • • • •

(g) • • •

(4) *Units of the National Park System.*

• • • • • •

6. Section 3100.0–3(c) is amended by removing the citation "(Pub. L. 96–514)" and replacing it with the citation "(42 U.S.C. 6506)".

7. Section 3100.0–5 is amended by adding paragraph (k) to read:

§ 3100.0–5 Definitions.

• • • • • •

(k) "Bid" means an amount of remittance offered as partial compensation for a lease equal to or in excess of the national minimum acceptable bonus bid set by statute or by the Secretary, submitted by a person or entity for a lease parcel in a competitive lease sale.

§§ 3100.3, 3100.3–1, and 3100.3–2 [Removed]

8. Sections 3100.3, 3100.3–1, and 3100.3–2 are removed in their entirety.

§§ 3100.4, 3100.4–1, 3100.4–2, and 3100.4–3 [Redesignated as §§ 3100.3, 3110.3–1, 3100.3–2, and 3100.3–3]

9. Sections 3100.4, 3100.4–1, 3100.4–2, and 3100.4–3 are redesignated as §§ 3100.3, 3100.3–1, 3100.3–2, and 3100.3–3, respectively, and the cross reference to "§ 3100.4–1(b)" in newly redesignated § 3100.3–3 is amended to read "§ 3100.3–1(b)".

Subpart 3101—Issuance of Leases

9a. Section 3101.1–3 is amended by revising the third and fourth sentences to read:

§ 3101.1–3 Stipulations and information notices.

• • • •

• • • Any party submitting a bid under Subpart 3120 of this title, or an offer under § 3110.1(b) of this title during the period when use of the parcel number is required pursuant to § 3110.5–1 of this title, shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale available from the proper BLM office. A party filing a noncompetitive offer in accordance with § 3110.1(a) of this title shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, unless the offer is withdrawn in accordance with § 3110.6 of this title. • • •

10. A new § 3101.1–4 is added to read:

§ 3101.1–4 Modification or waiver of lease terms and stipulations.

A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. If the authorized officer has determined, prior to lease issuance, that a stipulation involves an issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is require before modification or waiver. If subsequent to lease issuance the authorized officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for a least a 30-day period.

11. Section 3101.7–1 is revised to read:

§ 3101.7–1 General requirements.

(a) Acquired lands shall be leased only with the consent of the surface managing agency, which upon receipt of a description of the lands from the authorized officer, shall report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

(b) Public domain lands shall be leased only after the Bureau has consulted with the surface managing agency and has provided it with a description of the lands, and the surface managing agency has reported its recommendation to lease with stipulations, if any, or not to lease to the authorized officer. If consent or lack of objection of the surface managing agency is required by statute to lease public domain lands, the procedure in paragraph (a) of this section shall apply.

(c) National Forest System lands whether acquired or reserved from the public domain shall not be leased over the objection of the Forest Service. The provisions of paragraph (a) of this section shall apply to such National Forest System lands.

§§ 3101.7–2 and 3101.7–3 [Removed]

12. Sections 3101.7–2 and 3101.7–3 are removed in their entirety.

§ 3101.7–4 [Redesignated as § 3101.7–2 and Amended]

13. Section 3101.7–4 is redesignated as § 3101.7–2 and paragraph (b) is revised to read:

§ 3101.7–2 Action by the Bureau of Land Management.

• • • • • •

(b) The authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency objects or withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

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§ 3101.7-5 [Redesignated as § 3101.7-3 and Revised]

14. Section 3101.7-5 is redesignated as § 3101.7-3 and is revised to read:

§ 3101.7-3 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under Part 4 of this title.

(b) Where, as provided by statute, the surface managing agency has required that certain stipulations be included in a lease or has consented, or objected or refused to consent to leasing, any appeal by an affected lease offeror shall be pursuant to the administrative remedies provided by the particular surface managing agency.

15.-16. Section 3101.8 is amended by revising the first sentence to read:

§ 3101.8 State's or charitable organization's ownership of surface overlying federally-owned minerals.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of lands to any State or political subdivision, agency, or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, with reservation of the oil and gas rights to the United States, such party shall be given an opportunity to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations and also to file any objections it may have to the issuance of a lease. * * *

Subpart 3102—Qualifications of Lessees

17. Section 3102.5-1 is revised to read:

§ 3102.5-1 Compliance.

In order to actually or potentially own, hold, or control an interest in a lease or prospective lease, all parties, including corporations, and all members of associations, including partnerships of all types, shall, without exception, be qualified and in compliance with the act. Compliance means that the lessee, potential lessee, and all such parties (as defined in § 3000.0-5(k)) are:

(a) Citizens of the United States (see § 3102.1) or alien stockholders in a corporation organized under State or Federal law (see § 3102.2);

(b) In compliance with the Federal acreage limitations (see § 3101.2);

(c) Not minors (see § 3102.3);

(d) Except for an assignment or transfer under Subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the Act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions of § 3108.3 of this title. The term "entity" is defined at § 3400.0-5(rr) of this title.

(e) Not in violation of the provisions of section 41 of the Act; and

(f) In compliance with section 17(g) of the Act, in which case the signature on an offer, lease, assignment, transfer, constitutes evidence of compliance that the signatory and any subsidiary, affiliate, or person, association, or corporation controlled by or under common control with the signatory, as defined in §3400.0-5(rr) of this title, has not failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person or entity has an interest. Noncompliance with section 17(g) of the Act begins on the effective date of the imposition of a civil penalty by the authorized officer under § 3163.2 of this title, or when the bond is attached by the authorized officer for reclamation purposes, whichever comes first. A lease issued, or an assignment or transfer approved, to any such person or entity in violation of this paragraph (f) shall be subject to the cancellation provisions of § 3108.3 of this title, notwithstanding any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings. Noncompliance shall end upon a determination by the authorized officer that all required reclamation has been completed and that the United States has been fully reimbursed for any costs incurred due to the required reclamation.

(g) In compliance with § 3106.1(b) of this title and section 30A of the Act. The authorized officer may accept the signature on a request for approval of an assignment of less than 640 acres outside of Alaska (2,560 acres within Alaska) as acceptable certification that the assignment would further the development of oil and gas, or the authorized officer may apply the provisions of § 3102.5-3 of this title.

§ 3102.5-2 [Corrected]

18. Section 3102.5-2 as published in the Federal Register on May 16, 1988 (53 FR 17340), is amended by correcting the transposed letters "fo" in the second sentence thereof to read "of".

Subpart 3103—Fees, Rentals, and Royalty

19. Section 3103.1-1 is revised to read:

§ 3103.1-1 Form of remittance.

All remittances shall be by personal check, cashier's check, certified check, or money order, and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. Payments made to the Bureau may be made by other arrangements such as by electronic funds transfer or credit card when specifically authorized by the Bureau. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

20. Section 3103.2-1 is amended by revising the first sentence of paragraph (a) and all of paragraph (b) to read:

§ 3103.2-1 Rental requirements.

(a) Each competitive bid or competitive nomination submitted in response to a List of Lands Available for Competitive Nominations or Notice of Competitive Lease Sale, and each noncompetitive lease offer shall be accompanied by full payment of the first years rental based on the total acreage, if known, and, if not known, shall be based on 40 acres for each smallest legal subdivision. * * *

(b) If the acreage is incorrectly indicated in a List of Lands Available for Competitive Nominations or a Notice of Competitive Lease Sale, payment of the rental based on the error is curable within 15 calendar days of receipt of notice from the authorized officer of the error.

* * * * *

21. Section 3103.2-2 is amended by correcting the first sentence as published in the Federal Register of May 16, 1988 (53 FR 17340), to read, "Rentals shall be paid on or before the lease anniversary date." and by removing paragraphs (a) through (k) and inserting in their place paragraph (a) through (f) to read:

§ 3103.2-2 [Amended]

* * * * *

(a) The annual rental for all leases issued subsequent to December 22, 1987, shall be $1.50 per acre or fraction thereof for the first 5 years of the lease term and $2 per acre or fraction for any subsequent year, except as provided in paragraph (b) of this section;

(b) The annual rental for all leases issued on or before December 22, 1987, or issued pursuant to an application or

offer to lease filed prior to that date shall be as stated in the lease or in regulations in effect on December 22, 1987, except:

(1) Leases issued under former Subpart 3112 of this title on or after February 19, 1982, shall be subject after February 1, 1989, to annual rental in the sixth and subsequent lease years of $2 per acre or fraction thereof;

(2) The rental rate of any lease determined after December 22, 1987, to be in a known geological structure outside of Alaska or in a favorable petroleum geological province within Alaska shall not be increased because of such determination;

(3) Exchange and renewal leases shall be subject to rental of $2 per acre or fraction thereof upon exchange or renewal;

(c) Rental shall not be due on acreage for which royalty or minimum royalty is being paid, except on nonproducing leases when compensatory royalty has been assessed in which case annual rental as established in the lease shall be due in addition to compensatory royalty;

(d) On terminated leases that were originally issued noncompetitively and are reinstated under § 3108.2–3 of this title, and on noncompetitive leases that were originally issued under § 3108.2–4 of this title, the annual rental shall be $5 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease or convert an abandoned, unpatented oil placer mining claim;

(e) On terminated leases that were originally issued competitively, the annual rental shall be $10 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease under § 3108.2–3 of this title; and

(f) Each succeeding time a specific lease is reinstated under § 3108.2–3 of this title, the annual rental on that lease shall increase by an additional $5 per acre or fraction thereof for leases that were originally issued noncompetitively and by an additional $10 per acre or fraction thereof for leases that were originally issued competitively.

22. Section 3103.3–1 is revised to read:

§ 3103.3–1 Royalty on production.

(a) Royalty on production shall be payable only on the mineral interest owned by the United States. Royalty shall be paid in amount or value of the production removed or sold as follows:

(1) 12½ percent on all leases, including exchange and renewal leases and leases issued in lieu of unpatented oil placer mining claims under § 3108.2–4 of this title, issued after December 22, 1987, except:

(i) Leases issued after December 22, 1987, resulting from offers to lease or bids filed on or before December 22, 1987, which are subject to the rates in effect on December 22, 1987; and

(ii) Leases issued on or before December 22, 1987, which are subject to the rates contained in the lease or in regulations at the time of issuance;

(2) 16⅔ percent on noncompetitive leases reinstated under § 3108.2–3 of this title plus an additional 2 percentage-point increase added for each succeeding reinstatement;

(3) Not less than 4 percentage points above the rate used for royalty determination contained in the lease that is reinstated or in force at the time of issuance of the lease that is reinstated for competitive leases, plus an additional 2 percentage-point increase added for each succeeding reinstatement.

(b) Leases that qualify under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12½ percent royalty rate.

(c) The average production per well per day for oil and gas shall be determined pursuant to 43 CFR 3162.7–4.

(d) Payment of a royalty on the helium component of gas shall not convey the right to extract the helium. Applications for the right to extract helium shall be made under Part 16 of this title.

§ 3103.3–2 [Amended]

23. Section 3103.3–2(a) is revised to read:

(a) A minimum royalty shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that on unitized leases the minimum royalty shall be payable only on the participating acreage, at the following rates:

(1) On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of $1 per acre or fraction thereof in lieu of rental, except as provided in paragraph (a)(2) of this section; and

(2) On leases issued from offers filed after December 22, 1987, and on competitive leases issued from successful bids placed at oral auctions conducted after December 22, 1987, a minimum royalty in lieu of rental of not less than the amount of rental which otherwise would be required for that lease year.

* * * * *

Subpart 3104—Bonds

24. Section 3104.1 is revised to read:

§ 3104.1 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or a personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) in accordance with, but not limited to, the standards and requirements set forth in §§ 3162.3 and 3162.5 of this title and orders issued by the authorized officer.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease.

Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

25. Section 3104.2 is revised to read:

§ 3104.2 Lease bond.

A lease bond may be posted by a lessee, owner of operating rights (sublessee), or operator in an amount of not less than $10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different formations or portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond.

26. Section 3104.3 is revised to read:

§3104.3 Statewide and nationwide bonds.

(a) In lieu of lease bonds, lessees owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $25,000 covering all leases and operations in any one State.

(b) In lieu of lease bonds or statewide bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $150,000 covering all leases and operations nationwide.

27. Section 3104.4 is revised to read:

§ 3104.4 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3104.1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3186.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

28. Section 3104.5 is revised to read:

§ 3104.5 Increased amount of bonds.

(a) When an operator desiring approval of an Application for Permit to Drill has caused the Bureau to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the Application for Permit to Drill, due to failure to plug a well or reclaim lands completely in a timely manner, the authorized officer shall require, prior to approval of the Application for Permit to Drill, a bond in an amount equal to the costs as estimated by the authorized officer of plugging the well and reclaiming the disturbed area involved in the proposed operation, or in the minimum amount as prescribed in this subpart, whichever is greater.

(b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the Service that there are uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer. The increase in bond amount may be to any level specified by the authorized officer, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

29. Section 3106.1 is revised to read as follows:

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit, or of part of a legal subdivision, shall be disapproved.

(b) An assignment of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska shall be disapproved unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas to the satisfaction of the authorized officer. Execution and submission of a request for approval of such an assignment shall certify that the assignment would further the development of oil and gas, subject to the provisions of § 3102.5–3 of this title. The rights of the transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer. A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer. A request for approval of a transfer of a lease or interest in a lease shall be filed within 90 days from the date of its execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect. A transfer of production payments or overriding royalty or other similar payments, arrangements, or interests shall be filed in the proper BLM office but shall not require approval.

(c) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

Subpart 3107—Continuation, Extension or Renewal

§ 3107.1 [Corrected]

29a. Section 3107.1 is amended by correcting the word "lease" in the phrase "penetrate at least 1 formation recognized" in the second sentence thereof as published in the Federal Register of May 16, 1988 (53 FR 17340), to read "least".

30. Section 3107.2–2 is amended by adding at the end thereof a sentence to read:

§ 3107.2-2 Cessation of production.

* * * The 60-day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities.

31. Section 3107.2-3 is amended by revising the first sentence to read:

§ 3107.2-3 Leases capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to so.* * *

32. Section 3107.7 is amended by revising the last sentence and adding an additional sentence to read:

§ 3107.7 Exchange leases—20-year term.

* * * An application to exchange a lease for a new lease shall be filed, in triplicate, by the lessee at the proper BLM office, shall show full compliance by the applicant with the terms of the lease and applicable regulations, and shall be accompanied by a nonrefundable application fee of $75. Execution of the exchange lease by the applicant is certification of compliance with § 3102.5 of this title.

33. Section 3107.8-1(a) is revised to read:

§ 3107.8-1 Requirements.

(a) Twenty year leases and renewals thereof may be renewed for successive terms of 10 years. Any application for renewal of a lease shall be made by the lessee, and may be joined in or consented to by the operator. The application shall show whether all monies due the United States have been paid and whether operations under the lease have been conducted in compliance with the applicable regulations.

* * * * *

34. Section 3107.8-3(a) is amended by revising the last sentence to read:

§ 3107.8-3 Approval.

(a) * * * Upon receipt of the executed lease forms, which constitutes certification of compliance with § 3102.5 of this title, and any required bond, the authorized officer shall execute the lease and deliver 1 copy to the lessee.

* * * * *

Subpart 3108—Relinquishments, Termination, Cancellation

35. Section 3108.1 is amended by revising the last sentence to read:

§ 3108.1 Relinquishment.

* * * A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and surety to make payments of all accrued rentals and royalties, to place all wells on the lands to be relinquished in condition for suspension by authorized shut-in or abandonment, and to complete reclamation of the leased lands or surface waters adversely affected by lease operations in a timely manner after abandonment or cessation of oil and gas operations on the lease, in accordance with the regulations and the terms of the lease.

§ 3108.2-4 [Amended]

36. Section 3108.2-4(e)(2) is amended by removing "§ 3102.3-1" and replacing it with "§ 3103.3-1."

37. Section 3108.3 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (d), and adding new paragraphs (b) and (c), to read as follows:

§ 3108.3 Cancellation.

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only after notice to the lessee in accordance with section 31(b) of the Act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply.

(b) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, and if the leasehold contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by judicial proceedings in the manner provided by section 31(a) of the Act.

(c) If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of the act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, only by judicial proceedings in the manner provided by section 27(h)(1) of the Act.

37a. The caption of § 3108.5 as published in the Federal Register of May 16, 1988 (53 FR 17340), is corrected to read as follows:

§ 3108.5 Waiver or suspension of lease rights.

Subpart 3109—Leasing Under Special Acts

§ 3109.1-2 [Corrected]

37b. Section 3109.1-2 as published in the Federal Register of May 16, 1988 (53 FR 17340), is amended by correcting the word "by" the second time it appears in the last sentence thereof to read "but".

§ 3109.2 [Amended]

37c. Section 3109.2 is amended by revising its title to read "Units of the National Park System", by revising the phrase "National Park Service areas" wherever it appears to read "units of the National Park System", and by revising the words "area" and "areas" wherever they appear to read "unit" and "units", respectively.

§ 3109.3 [Removed]

§ 3109.4 [Redesignated as § 3109.3]

38. Section 3109.3 is removed, and § 3109.4 is redesignated as § 3109.3.

39. Part 3110 is revised to read:

PART 3110—NONCOMPETITIVE LEASES

Subpart 3110—Noncompetitive Leases

Sec.

Authority: Mineral Leasing Act of 1920, as amended and supplemental (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-

359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

Subpart 3110—Noncompetitive Leases

§ 3110.1 Lands available for noncompetitive offer and lease.

(a) *Offer.* (1) Effective June 12, 1988, through January 2, 1989, noncompetitive lease offers may be filed only for lands available under § 3110.1(b) of this title. Noncompetitive lease offers filed after December 22, 1987, and prior to June 12, 1988, for lands available for filing under § 3110.1(a) of this title shall receive priority. Such offers shall be exposed to competitive bidding under Subpart 3120 of this title and if no bid is received, a noncompetitive lease shall be issued all else being regular. After January 2, 1989, noncompetitive lease offers may be filed on unleased lands, except for:

(i) Those lands which are in the one-year period commencing upon the *expiration, termination, relinquishment,* or cancellation of the leases containing the lands; and

(ii) Those lands included in a Notice of Competitive Lease Sale or a List of Lands Available for Competitive Nominations. Neither exception is applicable to lands available under § 3110.1(b) of this title.

(2) Noncompetitive lease offers may be made pursuant to an opening order or other notice and shall be subject to all provisions and procedures stated in such order or notice.

(3) No noncompetitive lease may issue for any lands unless and until they have satisfied the requirements of § 3110.1(b) of this title.

(b) *Lease.* Only lands that have been offered competitively under Subpart 3120 of this title, and for which no bid has been received, shall be available for noncompetitive lease. Such lands shall become available for a period of 2 years beginning on the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in § 3120.23-1 of this title, or the first business day following the posting of the Notice of Competitive Lease Sale, and ending on that same day 2 years later. A lease may be issued from an offer properly filed any time within the 2-year noncompetitive leasing period.

§ 3110.2 Priority.

(a) Offers filed for lands available for noncompetitive offer or lease, as specified in §§ 3110.1(a)(1) and 3110.1(b) of this title, shall receive priority as of the date and time of filing as specified in § 1821.2-3(a) of this title, except that all noncompetitive offers shall be considered simultaneously filed if received in the proper BLM office any time during the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in § 3120.3-1 of this title, on the first business day following the posting of the Notice of Competitive Lease Sale. An offer shall not be available for public inspection the day it is filed.

(b) If more than 1 application was filed for the same parcel in accordance with the regulations contained in former Subpart 3112 of this title, and if no lease has been issued by the authorized officer prior to the effective date of these regulations, only a single priority application shall be selected from the filings. If the selected application fails to mature into a lease, the lands shall be available for offer under § 3110.1(a) of this title.

§ 3110.3 Lease terms.

§ 3110.3-1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 days.

§ 3110.3-2 Dating of leases.

All noncompetitive leases shall be considered issued when signed by the authorized officer. Noncompetitive leases, except future interest leases issued under § 3110.9 of this title, shall be effective as of the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Future interest leases issued under § 3110.9 of this title shall be effective as of the date the mineral interests vest in the United States.

§ 3110.3-3 Lease offer size.

(a) Lease offers for public domain minerals shall not be made for less than 640 acres or 1 full section, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within a section and there are no contiguous lands available for lease. Such public domain lease offers in Alaska shall not be made for less than 2,560 acres or 4 full contiguous sections, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within the subject section and there are no contiguous lands available for lease. Where an offer exceeds the minimum 640-acre provision of this paragraph, the offer may include less than all available lands in any given section. Cornering lands are not considered contiguous lands. This paragraph shall not apply to offers made under § 3108.2-4 of this title or where the offer is filed on an entire parcel as it was offered by the Bureau in a competitive sale during that period specified under § 3110.5-1 of this title.

(b) An offer to lease public domain or acquired lands may not include more than 10,240 acres. The lands in an offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer to lease acquired lands may exceed the 6 mile square limit if:

(1) The lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) The tract desired is described by the acquisition or tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area, and such acquisition or tract number is provided in accordance with § 3110.5-2(d) of this title in lieu of any other description.

(c) If an offer exceeds the 10,240 acre maximum by not more than 160 acres, the offeror shall be granted 30 days from notice of the excess to withdraw the excess acreage from the offer, failing which the offer shall be rejected and priority lost.

§ 3110.4 Requirements for offer.

(a) An offer to lease shall be made on a current form approved by the Director, or on unofficial copies of that form in current use. For noncompetitive leases processed under § 3108.2-4 of this title, the current lease form shall be used. Copies shall be exact reproductions on 1 page of both sides of the official approved form, without additions, omissions, or other changes, or advertising. The original copy of each offer shall be typewritten or printed plainly in ink, signed in ink and dated by the offeror or the offeror's duly authorized agent, and shall be accompanied by the first year's rental and a nonrefundable filing fee of $75. The original and 2 copies of each offer to lease, with each copy showing that the original has been signed, shall be filed in the proper BLM office. A

noncompetitive offer to lease a future interest applied for under § 3109.9 of this title shall be accompanied by a nonrefundable filing fee of $75. Where remittance for offers are returned for insufficient funds, the offer shall obtain priority of filing until the date the remittance is properly made.

(b) Where a correction to an offer is made, whether at the option of the offeror or at the request of the authorized officer, it shall gain priority as of the date the filing is correct and complete. The priority that existed before the date the corrected offer is filed, may be defeated by an intervening offer to the extent of any conflict in such offers, except as provided under §§ 3103.2–1(a) and 3110.3–3(c) of this title.

(c) An offer shall be limited to either public domain minerals or acquired lands minerals, subject to the provisions for corrections under paragraph (b) of this section.

(d) Compliance with Subpart 3102 shall be required.

(e) All offers for leases should name the United States agency from which consent to the issuance of a lease shall be obtained, or the agency that may have title records covering the ownership for the mineral interest involved, and identify the project, if any, of which the lands covered by the offer are a part.

§ 3110.5 Description of lands in offer.

§ 3110.5–1 Parcel number description.

From the first day following the end of a competitive process until the end of that same month, the only acceptable description for a noncompetitive lease offer for the lands covered by that competitive process shall be the parcel number on the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, whichever is appropriate. Each such offer shall contain only a single parcel. Thereafter, the description of the lands shall be made in accordance with the remainder of this section.

§ 3110.5–2 Public domain.

(a) If the lands have been surveyed under the public land rectangular survey system, each offer shall describe the lands by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands have not been surveyed under the public land rectangular system, each offer shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an official corner of the public land surveys.

(c) When protracted surveys have been approved and the effective date thereof published in the Federal Register, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands in the same manner as provided in paragraph (a) of this section for officially surveyed lands.

(d)(1) Where offers are pending for unsurveyed lands that are subsequently surveyed or protracted before the lease issuance, the description in the lease shall be conformed to the subdivisions of the approved protracted survey or the public land survey, whichever is appropriate.

(2) The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

(e) The requirements of this section shall apply to applications for conversion of abandoned unpatented oil placer mining claims made under § 3108.2–4 of this title, except that deficiencies shall be curable.

§ 3110.5–3 Acquired lands.

(a) If the lands applied for lie within and conform to the rectangular system of public land surveys and constitute either all or a portion of the tract acquired by the United States, such lands shall be described by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands applied for do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner, or a copy of the deed or other conveyance document by which the United States acquired title to the lands may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description on the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(c) If the lands applied for lie outside an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described as in the deed or other conveyance document by which the United States acquired title to the lands, or a copy of that document may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by courses and distances between successive angle points tying by courses and distances into the description in the deed or other conveyance document. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description in the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(d) Where the acquiring agency has assigned an acquisition or tract number covering the lands applied for, without loss of priority to the offeror, the authorized officer may require that number in addition to any description otherwise required by this section. If the authorized officer determines that the acquisition or tract number, together with identification of the State and county, constitutes an adequate description, the authorized officer may allow the description in this manner in lieu of other descriptions required by this section.

(e) Where the lands applied for do not conform to the rectangular system of public land surveys, without loss of priority to the offeror, the authorized officer may require 3 copies of a map upon which the location of the desired lands are clearly marked with respect to the administrative unit or project of which they are a part.

§ 3110.5–4 Accreted lands.

Where an offer includes any accreted lands, the accreted lands shall be

described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the tract to which the accretions appertain.

§ 3110.5-5 Conflicting descriptions.

If there is any variations in the land description among the required copies of the official forms, the copy showing the date and time of receipt in the proper BLM office shall control.

§ 3110.6 Withdrawal of offer.

An offer for noncompetitive lease under this subpart may be withdrawn in whole or in part by the offeror. However, a withdrawal of an offer made in accordance with § 3110.1(b) of this title may be made only if the withdrawal is received by the proper BLM office after 60 days from the date of filing of such offer. No withdrawal may be made once the lease, an amendment of the lease, or a separate lease, whichever covers the lands so described in the withdrawal, has been signed on behalf of the United States. If a public domain offer is partially withdrawn, the lands retained in the offer shall comply with § 3110.3-3(a) of this title.

§ 3110.7 Action on offer.

(a) No lease shall be issued before final action has been taken on any prior offer to lease the lands or any extension of, or petition for reinstatement of, an existing or former lease on the lands. If a lease is issued before final action, it shall be canceled, if the prior offeror is qualified to receive a lease or the petitioner is entitled to reinstatement of a former lease.

(b) The authorized officer shall not issue a lease for lands covered by a lease which terminated automatically, until 90 days after the date of termination.

(c) The United States shall indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease, by signature of the authorized officer on the current lease form. A signed copy of the lease shall be delivered to the offeror.

(d) Except as otherwise specifically provided in the regulations of this group, an offer that is not filed in accordance with the regulations in this part shall be rejected.

(e) Filing an offer on a lease form not currently in use, unless such lease form has been declared obsolete by the Director prior to the filing shall be allowed, on the condition that the offeror is bound by the terms and conditions of the lease form currently in use.

§ 3110.8 Amendment to lease.

After the competitive process has concluded in accordance with Subpart 3120 of this title, if any of the lands described in a lease offer for lands available during the 2-year period are open to oil and gas filing when the offer is filed but are omitted from the lease for any reason the original lease shall be amended to include the omitted lands unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the offer with respect to such lands or the offeror elects to receive a separate lease in lieu of an amendment. Such election shall be made by submission of a signed statement of the offeror requesting a separate lease, and a new offer on the required form executed pursuant to this part describing the remaining lands in the original offer. The new offer shall have the same priority as the old offer. No new application fee is required with the new offer. The rental payment held in connection with the original offer shall be applied to the new offer. The rental and the term of the lease for the lands added by an amendment shall be the same as if the lands had been included in the original lease when it was issued. If a separate lease is issued, it shall be dated in accordance with § 3110.3-2 of this title.

§ 3110.9 Future interest offers.

§ 3110.9-1 Availability.

A noncompetitive future interest lease shall not be issued until the lands covered by the offer have been made available for competitive lease under Subpart 3120 of this title. An offer made for lands that are leased competitively shall be rejected.

§ 3110.9-2 Form of offer.

An offer to lease a future interest shall be filed in accordance with this subpart, and may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought.

§ 3110.9-3 Fractional present and future interest.

Where the United States owns both a present fractional interest and a future fractional interest in the minerals in the same tract, the lease, when issued, shall cover both the present and future interests in the lands. The effective date and primary term of the present interest lease is unaffected by the vesting of a future fractional interest. The lease for the future fractional interest, when such interest vests in the United States, shall have the same primary term and anniversary date as the present fractional interest lease.

§ 3110.9-4 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any noncompetitive lease issued under this subpart, as provided in Subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

Subparts 3111 and 3112 [Removed]

40. Subparts 3111 and 3112 are removed in their entirety.

41. Part 3120 is revised in its entirety to read:

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

Sec.

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Subpart 3120—Competitive Leases

§ 3120.1 General.

§ 3120.1-1 Lands available for competitive leasing.

All lands available for leasing shall be offered for competitive bidding under this subpart, including but not limited to:

(a) Lands in oil and gas leases that have terminated, expired, been cancelled or relinquished.

(b) Lands for which authority to lease has been delegated from the General Services Administration.

(c) If, in proceeding to cancel a lease, interest in a lease, option to acquire a lease or an interest therein, acquired in violation of any of the provisions of the act, an underlying lease, interest or option in the lease is cancelled or forfeited to the United States and there are valid interests therein that are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease, interest, or option shall be sold to the highest responsible qualified bidder by competitive bidding under this subpart, subject to all outstanding valid interests therein and valid options pertaining thereto. If less than the whole interest in the lease, interest, or option is cancelled or forfeited, such partial interest shall likewise be sold by competitive bidding. If no satisfactory bid is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold in accordance with section 27 of the Act by such other methods as the authorized officer deems appropriate, but on terms no less favorable to the United States than those of the best competitive bid received. Interest in cutstanding leases(s) so sold shall be subject to the terms and conditions of the existing lease(s).

(d) Lands which are otherwise unavailable for leasing but which are subject to drainage (protective leasing).

(e) Lands included in any expression of interest or noncompetitive offer, except offers properly filed within the 2-year period provided under § 3110.1(b) of this title, submitted to the authorized officer.

(f) Lands selected by the authorized officer.

§ 3120.1-2 Requirements.

(a) Each proper BLM Sale office shall hold sales at least quarterly if lands are available for competitive leasing.

(b) Lease sales shall be conducted by a competitive oral bidding process.

(c) The national minimum acceptable bid shall be $2 per acre or fraction thereof payable on the gross acreage, and shall not be prorated for any lands in which the United States owns a fractional interest.

§ 3120.1-3 Protests and appeals.

No action pursuant to the regulations in this subpart shall be suspended under § 4.21(a) of this title due to an appeal from a decision by the authorized officer to hold a lease sale. The authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale.

Only the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good and just cause after reviewing the reason(s) for an appeal.

§ 3120.2 Lease terms.

§ 3120.2-1 Duration of lease.

Competitive leases shall have a primary term of 5 years.

§ 3120.2-2 Dating of leases.

All competitive leases shall be considered issued when signed by the authorized officer. Competitive leases, except future interest leases issued under § 3120.7 of this title, shall be effective as of the first day of the month following the date the leases are signed on behalf of the United States. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Leases for future interest shall be effective as of the date the mineral interests vest in the United States.

§ 3120.2-3 Lease size.

Lands shall be offered in leasing units of not more than 2,560 acres outside Alaska, or 5,760 acres within Alaska, which shall be as nearly compact in form as possible.

§ 3120.3 Nomination process.

The Director may elect to implement the provisions contained in §§ 3120.3-1 through 3120.3-7 of this title after review of any comments received during a period of not less than 30 days following publication in the Federal Register of notice that implementation of those sections is being considered.

§ 3120.3-1 General.

The Director may elect to accept nominations requiring submission of the national minimum acceptable bid, as set forth in this section, as part of the competitive process required by the act, or elect to accept informal expressions of interest. A List of Lands Available for Competitive Nominations may be posted in accordance with § 3120.4 of this title, and nominations in response to this list shall be made in accordance with instructions contained therein and on a form approved by the Director. Those parcels receiving nominations shall be included in a Notice of Competitive Lease Sale, unless the parcel is withdrawn by the Bureau.

§ 3120.3-2 Filing of a nomination for competitive leasing.

Nominations filed in response to a List of Lands Available for Competitive Nominations and on a form approved by the director shall:

(a) Include the nominator's name and personal or business address. The name of only one citizen, association or partnership, corporation or municipality shall appear as the nominator. All communications relating to leasing shall be sent to that name and address, which shall constitute the nominator's name and address of record;

(b) Be completed, signed in ink and filed in accordance with the instructions printed on the form and the regulations in this subpart. Execution of the nomination form shall constitute a legally binding offer to lease by the nominator, including all terms and conditions;

(c) Be filed within the filing period and in the BLM office specified in the List of Lands Available for Competitive Nominations. A nomination shall be unacceptable and shall be returned with all moneys refunded if it has not been completed and timely filed in accordance with the instructions on the form or with the other requirements in this subpart; and

(d) Be accompanied by a remittance sufficient to cover the national minimum acceptable bid, the first year's rental per acre or fraction thereof, and the administrative fee as set forth in

§ 3120.5–2(b) of this title for each parcel nominated on the form.

§ 3120.3–3 Minimum bid and rental remittance.

Nominations filed in response to a List of Lands Available for Competitive Nominations shall be accompanied by a single remittance. Failure to submit either a separate remittance with each form or an amount sufficient to cover all the parcels nominated on each form shall cause the entire filing to be deemed unacceptable with all moneys refunded.

§ 3120.3–4 Withdrawal of a nomination.

A nomination shall not be withdrawn, except by the Bureau for cause, in which case all moneys shall be refunded.

§ 3120.3–5 Parcels receiving nominations.

Parcels which receive nominations shall be included in a Notice of Competitive Lease Sale. The Notice shall indicate which parcels received multiple nominations in response to a List of Lands Available for Competitive Nominations, or parcels which have been withdrawn by the Bureau.

§ 3120.3–6 Parcels not receiving nominations.

Lands included in the List of Lands Available for Competitive Nominations which are not included in the Notice of Competitive Lease Sale because they were not nominated, unless they were withdrawn by the Bureau, shall be available for a 2-year period, for noncompetitive leasing as specified in the List.

§ 3120.3–7 Refund.

The minimum bid, first year's rental and administrative fee shall be refunded to all nominators who are unsuccessful at the oral auction.

§ 3120.4 Notice of competitive lease sale.

§ 3120.4–1 General.

(a) The lands available for competitive lease sale under this subpart shall be described in a Notice of Competitive Lease Sale.

(b) The time, date, and place of the competitive lease sale shall be stated in the Notice.

(c) The notice shall include an identification of, and a copy of, stipulations applicable to each parcel.

§ 3120.4–2 Posting of notice.

At least 45 days prior to conducting a competitive auction, lands to be offered for competitive lease sale, as included in a List of Lands Available for Competitive Nominations or in a Notice of Competitive Lease Sale, shall be posted in the proper BLM office having jurisdiction over the lands as specified in § 1821.2–1(d) of this title, and shall be made available for posting to surface managing agencies having jurisdiction over any of the included lands.

§ 3120.5 Competitive sale.

§ 3120.5–1 Oral auction.

(a) Parcels shall be offered by oral bidding. The existence of a nomination accompanied by the national minimum acceptable bid shall be announced at the auction for the parcel.

(b) A winning bid shall be the highest oral bid by a qualified bidder, equal to or exceeding the national minimum acceptable bid. The decision of the auctioneer shall be final.

(c) Two or more nominations on the same parcel when the bids are equal to the national minimum acceptable bid, with no higher oral bid being made, shall be returned with all moneys refunded. If the Bureau reoffers the parcel, it shall be reoffered only competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received at an oral auction.

§ 3120.5–2 Payments required.

(a) Payments shall be made in accordance with § 3103.1–1 of this title.

(b) Each winning bidder shall submit, by the close of official business hours, or such other time as may be specified by the authorized officer, on the day of the sale for the parcel:

(1) The minimum bonus bid of $2 per acre or fraction thereof;

(2) The total amount of the first year's rental; and

(3) An administrative fee of $75 per parcel.

(c) The winning bidder shall submit the balance of the bonus bid to the proper BLM office within 10 working days after the last day of the oral auction.

§ 3120.5–3 Award of lease.

(a) A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and administrative fee. Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with Subpart 3102 of this title, shall constitute a binding lease offer, including all terms and conditions applicable thereto, and shall be required when payment is made in accordance with § 3120.5–2(b) of this title. Failure to comply with § 3120.5–2(c) of this title shall result in rejection of the bid and forfeiture of the monies submitted under § 3120.5–2(b) of this title.

(b) A lease shall be awarded to the highest responsible qualified bidder. A copy of the lease shall be provided to the lessee after signature by the authorized officer.

(c) If a bid is rejected, the lands shall be reoffered competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received in an oral auction.

(d) Issuance of the lease shall be consistent with § 3110.7 (a) and (b) of this title.

§ 3120.6 Parcels not bid on at auction.

Lands offered at the oral auction that receive no bids shall be available for filing for noncompetitive lease for a 2-year period beginning the first business day following the auction at a time specified in the Notice of Competitive Lease Sale.

§ 3120.7 Future interest.

§ 3120.7–1 Nomination to make lands available for competitive lease.

A nomination for a future interest lease shall be filed in accordance with this subpart.

§ 3120.7–2 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if, he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any competitive lease issued under this subpart, as provided in Subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

§ 3120.7-3 Compensatory royalty agreements.

The terms and conditions of compensatory royalty agreements involving acquired lands in which the United States owns a future or fractional interest shall be established on an individual case basis. Such agreements shall be required when leasing is not possible in situations where the interest of the United States in the oil and gas deposit includes both a present and a future fractional interest in the same tract containing a producing well.

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

42. The authority citation for Part 3130 is revised to read:

Authority: The Department of the Interior Appropriations Act, Fiscal year 1981 (42 U.S.C. 6508), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

§ 3134.1 [Amended]

43. Section 3134.1(a) is amended by inserting the words "in accordance with the provisions of § 3104.1 of this title" after the word "bond" in the first sentence, and by removing the word "special" in the two places it appears in this paragraph.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

44. The authority citation for Part 3160 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of May 21, 1930 (30 U.S.C. 301-306), Act of March 3, 1909, as amended (25 U.S.C. 369), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396g), the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); The Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*); the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

44a. Section 3160.0-5 is amended by redesignating paragraph (v) as paragraph (w), and by inserting a new paragraph (v) to read as follows:

§ 3160.0-5 Definitions.

* * * * *

(v) "Surface use plan of operations" means a plan for surface use, disturbance, and reclamation.

Subpart 3162—Requirements for Lessees and Operators

45. Section 3162.3-1 is amended by revising paragraphs (d) and (e), by redesignating paragraphs (f) and (g) as (h) and (i), respectively, by adding new paragraphs (f) and (g), and by revising newly redesignated paragraphs (h) and (i), all to read as follows:

§ 3162.3-1 Drilling applications and plans.

* * * * *

(d) The Application for Permit to Drill process shall be initiated at least 30 days before commencement of operations is desired. Prior to approval, the application shall be administratively and technically complete. A complete application consists of Form 3160-3 and the following attachments:

(1) A drilling plan, which may already be on file, containing information required by paragraph (e) of this section and appropriate orders and notices.

(2) A surface use plan of operations containing information required by paragraph (f) of this section and appropriate orders and notices.

(3) Evidence of bond coverage as required by the Department of the Interior regulations, and

(4) Such other information as may be required by applicable orders and notices.

(e) Each drilling plan shall contain the information specified in applicable notices or orders, including a description of the drilling program, the surface and projected completion zone location pertinent geologic data, expected hazards, and proposed mitigation measures to address such hazards. A drilling plan may be submitted for a single well or for several wells proposed to be drilled to the same zone within a field or area of geological and environmental similarity. A drilling plan may be modified from time to time as circumstances may warrant, with the approval of the authorized officer.

(f) The surface use plan of operations shall contain information specified in applicable orders or notices, including the road and drillpad location, details of pad construction, methods for containment and disposal of waste material, plans for reclamation of the surface, and other pertinent data as the authorized officer may require. A surface use plan of operations may be submitted for a single well or for several wells proposed to be drilled in an area of environmental similarity.

(g) For Federal lands, upon receipt of the Application for Permit to Drill or Notice of Staking, the authorized officer shall post the following information for public inspection at least 30 days before action to approve the Application for Permit to Drill: the company/operator name; the well name/number; the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased and of all leases already issued in the general area; and any substantial modifications to the lease terms. Where the inclusion of maps in such posting is not practicable, maps of the affected lands shall be made available to the public for review. This information also shall be provided promptly by the authorized officer to the appropriate office of the Federal surface management agency, for lands the surface of which is not under Bureau jurisdiction, requesting such agency to post the proposed action for public inspection for at least 30 days. The posting shall be in the office of the authorized officer and in the appropriate surface managing agency if other than the Bureau. The posting of an Application for Permit to Drill is for information purposes only and is not an appealable decision.

(h) Upon initiation of the Application for Permit to Drill process, the authorized officer shall consult with the appropriate Federal surface management agency and with other interested parties as appropriate and shall take one of the following actions as soon as practical, but in no event later than 5 working days after the conclusion of the 30-day notice period for Federal lands, or within 30 days from receipt of the application for Indian lands:

(1) Approve the application as submitted or with appropriate modifications or conditions;

(2) Return the application and advise the applicant of the reasons for disapproval; or

(3) Advise the applicant, either in writing or orally with subsequent written confirmation, of the reasons why final action will be delayed along with the date such final action can be expected.

The surface use plan of operations for National Forest System lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the Application for Permit to Drill by the authorized officer. Appeals from the denial of approval of such surface use plan of operations shall

be submitted to the Secretary of Agriculture.

(i) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

§ 3162.3-2 [Amended]

46. Section 3162.3-2(a) is amended by removing the phrase "A plan proposing" at the beginning thereof, and replacing it with the phrase "A proposal for", and by adding at the end of the first sentence thereof the words "to injection. If there is additional surface disturbance, the proposal shall include a surface use plan of operations.", and by revising the word "plan" in the last sentence thereof to read "proposal".

§ 3162.3-3 [Amended]

46a. Section 3162.3-3 is amended by removing the words "proposed plan of operations" and substituting therefor the word "proposal", and by adding at the end thereof the sentence, "The proposal shall include a surface use plan of operations."

§ 3162.3-4 [Amended]

46b. Section 3162.3-4(c) is amended by removing the phrase "rehabilitated or restored" from the last sentence thereof and substituting therefor the word "reclaimed".

§ 3162.5-1 [Amended]

46c. Section 3162.5-1(b) is amended by removing the phrase "restore or rehabilitate" from the last sentence thereof and substituting therefor the word "reclaim".

Subpart 3163—Noncompliance and Assessments

§ 3163.1 [Amended]

47. Section 3163.1(a)(5) is amended by removing the words "and forfeiture declared under the surety bond" from the second sentence.

Subpart 3164—Special Provisions

48. Section 3164.3(b) is amended by removing the initial word "The" and replacing it with the words "Except for National Forest System lands, the * * *".

48a. Section 3164.3 is amended by adding at the end thereof the following new paragraph (c):

§ 3164.3 *Surface rights.*

* * * * *

(c) On National Forest System lands, the Forest Service shall regulate all surface disturbing activities in accordance with Forest Service regulations, including providing to the authorized officer appropriate approvals of such activities.

PART 3180—[AMENDED]

Subpart 3184—[Removed and Reserved]

49. Subpart 3184 (consisting of § 3184.1) is removed and reserved.

§ 3184.1 [Removed and Reserved]

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL

50. The authority citation for Part 3200 is revised to read:

Authority: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

Subpart 3206—Lease Bonds

51. Section 3206.1-1 is revised to read:

§ 3206.1-1 Bond obligations.

(a) A surety of personal bond conditioned upon compliance with the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operating rights owner (sublessee), or operator prior to commencement of drilling operations.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly state on its face the Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in case of default in the performance of the terms and conditions of a lease. Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its terms. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions of failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

§§ 3206.4, 3206.4-1, 3206.4-2, and 3206.4-3 [Removed]

52. Sections 3206.4, 3206.4-1, 3206.4-2, and 3206.4-3 are removed in their entirety.

§ 3206.5 [Redesignated as § 3206.4 and Revised]

53. Section 3206.5 is redesignated as § 3206.4 and revised to read:

§ 3206.4 Statewide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $50,000 for full statewide coverage for all geothermal leases in the applicable State.

§ 3206.6 [Redesignated as § 3206.5 and Revised]

54. Section 3206.6 is redesignated § 3206.5 and revised to read:

§ 3206.5 Nationwide bond.

In lieu of bonds required under this subpart, the lessee, operating rights

owner [sublessee], or operator may furnish a bond in an amount of not less than $150,000 for full nationwide coverage for all geothermal leases.

55. Section 3606.6 is added to read as follows:

§ 3206.6 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3206.1-1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3280.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

PART 3280—GEOTHERMAL RESOURCES UNIT AGREEMENTS—UNPROVEN AREAS

56. The authority citation for Part 3280 is revised to read:

Authority: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

Subpart 3284 [Removed and Reserved]

57. Subpart 3284 (consisting of § 3284.1) is removed and reserved.

§ 3284.1 [Removed and Reserved]

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