

BUREAU OF LAND MANAGEMENT
43 CFR 3160

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**Onshore Oil and Gas Operations; Federal and Indian Oil & Gas Leases;
Onshore Oil and Gas Order No. 5; Measurement of Gas**

I. Introduction.

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the director to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter, be issued.

Specific authority for the provisions contained in this Order is found at: section 3162.7-1, Disposition of production; section 3162.7-3, Measurement of gas; and subpart 3163, Noncompliance and assessments.

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the measurement of gas by the methods authorized in 43 CFR 3162.7-3, i.e., measurement by orifice meter or other methods acceptable to the authorized officer. Proper gas measurement ensures that the Federal Government, the general public, State Governments which share in the proceeds, and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected. The assessments and penalties that will be imposed as a result of noncompliance and/or failure to correct the noncompliance within the specified abatement period.

This Order also serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided that the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to all wells and facilities on State or privately owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

II. Definitions.

A. Authorized Officer means any employee of the Bureau of Land Management authorized to perform the duties described in 43 CFR Groups 3000 and 3100 (see 43 CFR 3000.0-5).

B. Business Day means any day Monday through Friday excluding Federal holidays.

C. Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions (see 43 CFR 3000.0-5(a)).

D. INC means incident of noncompliance, which serves as a Notice of Violation under 43 CFR Subpart 3163.

E. Lessee means a person or entity holding record title in a lease issued by the United States (see 43 CFR 3160.0-5).

F. Major violation means noncompliance which causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0-5).

G. Minor violation means noncompliance which does not rise to the level of a major violation (see 43 CFR 3160.0-5).

H. Operating Rights Owner means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been served from the record title.

I. Operator means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the terms and conditions of the lease for the operations conducted on the leased lands or portion thereof.

J. Production unit means, for purposes of reporting production, a measurement unit of 1000 standard cubic feet (Mcf).

K. Standard cubic foot means the volume of gas contained in one cubic foot at a base pressure of 14.73 pounds per square inch absolute (psia), at a base temperature of 60°F or 519.67° Rankine (43 CFR 3162.7-3).

III. Requirements

A. Required Recordkeeping

The operator shall keep all test data, meter reports, charts/recordings, or other similar records for 6 years from the date they were generated, or if involved in an audit or investigation, the records shall be maintained until the record holder is released by the Secretary from the obligation to maintain them. The authorized officer may request these records any time within this period. Records submitted shall include all additional information used to compute volumes so that computations may be verified.

B. General

All gas production shall be measured in accordance with an authorized method of measurement. As set out in 43 CFR 3162.7-3, gas produced from leases, units, unit participating areas, and communitization agreements subject to the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1, may be by orifice meter or other methods acceptable to the authorized officer. The requirements and minimum standards for gas measurement are set out below.

The requirements of this Order are based on the standards and specifications published by the American Gas Association (AGA) and officially designated as ANSI/API 2530 and AGA Committee Report No. 3, second edition, 1985, hereafter referred to AGA Committee Report No. 3. The AGA published standards and specifications are considered to be appropriate for proper gas measurement by both the Department of the Interior and the Oil and Gas Industry. The requirements set minimum standards necessary to promote conservation of natural resources and to ensure proper measurement of gas production for sales and allocation purposes, so that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases.

All future sales and allocation facilities sales and allocation facilities and sales or allocation facilities in existence on the effective date of this Order, unless covered by a valid variance, shall meet the minimum standards prescribed in this Order, provided, however, that all gas produced from or allocated to Federal and Indian (except Osage) oil and gas leases wherein the gas leases wherein the gas is measured through sales or allocation meters handling 100 MCF per day or less on a monthly basis are exempt from the standards in Section III.C.1, C.2, and C.4 of this Order. The authorized officer may, where appropriate and necessary for proper measurement, work with the operators in designating consolidated gas sales and/or allocation meter stations.

Meter installations constructed in accordance with the AGA Committee Report No. 3 standards in effect at that time shall not automatically be required to retrofit if the standards are revised. The Bureau will review any revised standards, and when it is deemed necessary will amend the Order accordingly through the rulemaking process. The intent of these minimum standards is to ensure that when equipment malfunctions that could result in inaccurate measurement occur, proper corrective actions are taken, the authorized officer is notified, and an amended production report is submitted.

Failure to comply with these minimum standards will be considered as noncompliance and an incident of noncompliance (INC) will be issued. Operators who discover noncompliance with these minimum standards and take immediate corrective action will not be issued an INC. If the authorized officer or his representative is present when an operator discovers a malfunction or uses incorrect procedures as specified in this Order, an INC will be issued unless immediate corrective action is taken. Failure of equipment will not be considered a violation. However, the incidents of noncompliance which may result from equipment failure are considered violations and a partial list is as follows:

- Failure to install equipment properly.
- Failure to repair or correct equipment malfunction properly or in a timely manner.
- Failure to submit report of alternate methods of sales.
- Failure to submit amended production reports in a timely manner.
- Fail to adhere to minimum standard procedures specified in this Order.

The use of improper equipment, when discovered, will be considered as a violation and a formal INC will be issued.

The use of improper procedures will be considered as a violation and when witnessed by the authorized officer or his representative, immediate corrective action will be required. In the event that proper procedures are

then used as required by this Order, and prior to completing the operation, calibration, or proving, the violation will be considered as properly corrected. In this case, although the violation will be documented in the agency files, no INC will be issued.

A major violation as defined in this Order will generally require an immediate shut-in of the metering device. However, where the nonrecoupable loss is not significant or where damage to the resource is likely to occur if a shut-in is required, an abatement period of 24 hours may be given.

Where abatement is required "prior to sales or removal", this means that necessary action is required to be taken so that no gas may be removed beyond the measurement point until properly measured.

C. Gas Measurement by Orifice Meter

The following are minimum standards for the measurement of natural gas using orifice meters.

1. The orifice to pipe diameter ratio (d/D) or the betaratio, with meters using "flange taps," shall be between 0.15 and 0.70.

Violation: Major.

Corrective Action: Install an orifice of such size that subsequent measurements will be within the appropriate beta ratio range. If changing the orifice causes the differential pressure to be recorded in the lower one-third of the chart, then either the meter tube or the differential element shall be changed, sizing the straight pipe sections in a manner that will provide subsequent measurement within the appropriate beta ratio range.

Abatement Period: Prior to sales.

2. The orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "pipe taps," shall be between 0.20 and 0.67.

Violation: Major.

Correction Action: Same as A.1.

Abatement Period: Prior to sales.

3. To obtain flow conditions as near optimum as possible and minimize the effects of turbulence in gas flow, the minimum length of straight pipe preceding and following an orifice and the use of straightening vanes, shall conform to those specifications detailed in Figures 4 through 9 of AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Install proper length of pipe where appropriate or install straightening vanes in accordance with appropriate AGA Committee Report 3 specifications.

Abatement Period: Prior to sales.

4. The orifice shall be sized to make the pen that records differential pressure operate in the outer 2/3 of the chart range for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size orifice to meter tube so that differential pen will deflect and record in the outer 2/3 of the chart range and so that the measurement will be within the prescribed beta ratio range.

Abatement Period: 20 days.

5. The static element shall be sized to make the pen that records the static pressure operate in the outer 2/3 of the chart range for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size static element so as to cause static pen to record in the outer 2/3 of the chart range.

Abatement Period: 20 days.

6. There shall be no pipe connections between the orifice and the nearest pipe fitting other than the pressure taps and/or thermometer wells as specified in AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Replace entire length of pipe ahead of orifice meter with pipe of appropriate length and inside smoothness in accordance with AGA Committee Report No. 3.

Abatement Period: Prior to sales.

7. Continuous temperature recorders to measure the flowing gas temperature are required on all sales or allocation meters measuring 200 MCF per day or more on a monthly basis. All other sales or allocation meters shall have a continuous temperature recorder or an indicating thermometer to measure flowing gas temperature. Sales or allocation meters measuring between 200 and 500 MCF per day on a monthly basis may be considered for a variance by the authorized officer on a case by case basis.

Violation: Major

Corrective Action: Install temperature measuring device as required.

Abatement Period: Prior to sales.

8. The internal diameters of the meter tube pipe and the orifice fittings shall be the same or, if not, within tolerance limits set by AGA.

Violation: Major.

Corrective Action: Install properly sized meter tube.

Abatement Period: Prior to sales.

9. Meter tubes using flange taps or pipe taps shall have the pressure tap holes located as specified in AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Install pressure tap as specified.

Abatement Period: Prior to sales.

10. Orifice plates shall be removed from the flange or plate holder, and inspected for visual conformance with AGA standards and specifications, at least semi- annually, during testing of the accuracy of measuring equipment.

Violation: Minor.

Corrective Action: Remove and inspect orifice plate for visual conformance with AGA standards and specifications.

Abatement Period: No later than the next meter calibration.

11. Any plate or orifice that is determined not in conformance with AGA standards shall be replaced with one that is in conformance.

Violation: Major.

Corrective Action: Replace orifice plate.

Abatement Period: Prior to sales.

12. All connections and fittings of the secondary element (including meter pots and meter manifolds) shall be leak tested prior to conducting tests of the meter's accuracy.

Violation: Minor.

Corrective Action: Stop meter calibration and conduct leak test. When leaks are detected the meter setting shall be determined and recorded "as found", the meter calibrated, and readings recorded "as left".

Abatement Period: Prior to completion of calibration.

13. The appropriate "zero" position of the static and differential meter pens shall be checked during each test of meter accuracy, and adjustments made if necessary.

Violation: Minor.

Corrective Action: Stop meter calibration and record "as found" readings; calibrate meter and record readings "as left".

Abatement Period: Prior to completion of calibration.

14. The meter's differential pen arc, the ability of the differential pen to duplicate the test chart's time arc over the full range of the test chart, shall be checked during each testing of the meter's accuracy and adjustments made if necessary.

Violation: Minor.

Corrective Action: Stop meter calibration and record "as found" readings; adjust differential pen arc, and record "as left" readings.

Abatement Period: Prior to completion of calibration.

15. Differential and static pen accuracy shall be tested for linearity at zero and 100 percent and at 1 point within the normal range of the differential and static recordings to assure accuracy.

Violation: Minor.

Corrective Action: Adjust pens to assure accuracy. Abatement Period: Prior to completion of calibration.

16. During testing of the meter accuracy, the static pen time lag shall be adjusted to ensure independent movement of the static pen in relation to the differential pen.

Violation: Minor.

Corrective Action: Make appropriate adjustments.

Abatement Period: Prior to completion of calibration.

17. For all sales and allocation meters, the accuracy of the measuring equipment at the point of delivery or allocation shall be tested following initial meter installation or following repair and, if proven adequate, at least quarterly thereafter unless a longer period is approved by the authorized officer. All extensions of intervals between tests of meters shall be approved in writing by the authorized officer.

Violation: Minor.

Corrective Action: Test meter for accuracy.

Abatement Period:

- a. 24 hours for initial meter installation or following repair.
- b. 30 days for failure to calibrate meter quarterly.

18. At least a 24-hour notice shall be given to the authorized officer prior to conducting the tests and calibrations required by this order.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled meter tests and calibrations at least 24 hours prior to next tests and calibrations.

Abatement Period: Prior to next calibration.

19. If the inaccuracy in the measuring equipment results in a volume calibration more than 2 percent in error, the volume measured since the last calibration shall be corrected in addition to adjusting the meter to zero error. Also, the operator shall submit a corrected report adjusting the volumes of gas measured, and showing or discussing all calculations made in correcting the volumes. The volumes shall be corrected back to the time the inaccuracy occurred, if known. If this time is unknown, volumes shall be corrected for the last half of the period elapsed since the date of the last calibration.

Violation: Minor.

Corrective Action:

- a. Adjust meter to zero error.
- b. Submit corrected report.

Abatement Period:

- a. Prior to completion of calibration
- b. 60 days.

20. If, for any reason, the measuring equipment is out of service or malfunctioning so that the quantity of gas delivered is not known, the volume delivered during this period shall be estimated using one of the following methods, in this order of priority:

- a. Record data on check metering equipment if used in lieu of main meter recordings. If check meters are not installed or are found to be recording inaccurately; then,
- b. Base corrections on the percentage error found during the instrument test. If that is not feasible; then,

c. Estimate the quantity of gas run, based on deliveries made under similar conditions when the metering equipment was registering accurately.

Violation: Minor.

Corrective Action: Estimate volumes delivered during those periods cited using one or more of the approved methods identified in the order of priority and, when necessary, submit an amended report showing corrected volumes.

Abatement Period: 60 days.

21. Volumes of gas delivered shall be determined according to the flow equations specified in AGA Committee Report No. 3.

Violation: Minor.

Corrective Action: Recalculate all gas volumes not determined in accordance with flow equations specified in § 6.3 of AGA Committee Report No. 3 and submit an amended Form 3160 report.

Abatement Period: 60 days.

22. Unless otherwise established, the point of sales delivery and appropriate measurement shall be on the leasehold (or within the boundaries of the communitized area (CA) or unit participating area). Sales measurement off the leasehold (or outside the CA or unit participating area) may be approved by the authorized officer.

Violation: Minor.

Corrective Action: Submit application to authorized officer for approval of off lease (CA or Unit participating area) measurement.

Abatement Period: 30 days.

23. The BTU content shall be determined at least annually, unless otherwise required by the authorized officer, by means of (1) a recording calorimeter, (2) calculations based on a complete compositional analysis of the gas and the heating value of each constituent, in accordance with AGA Committee Report No. 3, or (3) any other method acceptable to the authorized officer. The authorized officer shall be apprised of the method used for each determination and be furnished with all needed analytical data or other documentation upon request. The BTU content most recently determined and used for royalty purposes shall be reported.

Violation: Minor.

Corrective Action: Determine BTU values and submit an amended report.

Abatement Period: 30 days.

24. All meter calibration report forms shall include the following information, if applicable, and shall be submitted to authorized officer upon request.

- a. Name of producer or seller.
- b. Name of purchaser.
- c. Federal or Indian lease number, communitization agreement number, or unit name or number, and participating area identification.
- d. Station or meter number.
- e. Meter data (make, differential and static range, recording period).
- f. Type of connections (flange or pipe, upstream, or downstream static connections).
- g. Orifice data (plate size and ID of meter tube).
- h. Base of data used on each chart or record (temperature, specific gravity, atmospheric pressure).
- i. Time and date of test.
- j. Instrument error(s) found and certification of corrections, and "found" and "left" data for all instruments.
- k. Signatures and affiliations of tester and witness.
- l. Remarks.

Violation: Minor.

Corrective Action: Submit amended meter calibration report(s) to authorized officer, including all required information.

Abatement Period: 15 days.

25. For purposes of measurement and meter calibration, atmospheric pressure is that value defined in the buy/sell contract (normally assumed to be a constant value). In the absence of such a definition in the buy/sell contract, the atmospheric pressure shall be established through an actual measurement or assumed to be a constant value based on the elevation at the metering station.

Violation: Minor.

Corrective Action: Recalibrate gas meter and submit amended report indicating corrected volumes using the adjusted absolute zero or properly calculated pressure extensions.

Abatement Period: 30 days.

26. The method and frequency of determining specific gravity are normally defined in the buy/sell contract. Except when a continuous recording gravitometer is used, specific gravity may be determined at the time of an instrument check using a spot or cumulative gas sample, and is usually effective the first of the following month. The continuous recorder may be of a gravity balance or kinematic type. Also, specific gravity may be determined from a laboratory analysis of a spot or cumulative gas sample.

Violation: Minor.

Corrective Action: Determine specific gravity of gas by approved method and submit an amended report with a corrected volume.

Abatement Period: 30 days.

D. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Using any method of gas measurement other than by orifice meter at a location on the lease, unit, unit participating area, or communitized area, requires prior approval from the authorized officer pursuant to 43 CFR 3162.7-3. Other measurement methods include, but are not limited to:

Turbine metering systems
Positive displacement meter
Pitot tube
Orifice well tester critical flow prover
Gas-oil ratio

The requirements and minimum standards for gas measurements on the lease, unit, unit participating area, or communitized area by an alternate method of measurement, or at a location off the lease, unit, unit participating area, or communitized area by either an authorized or an alternate method of measurement, as follows:

1. Measurement of the Lease, Unit, Unit Participating Area, or Communitized Area

a. A written application for approval of an alternate gas measurement method shall be submitted to the authorized officer and written approval obtained before any such alternate gas measurement method is installed or operated. Any operator requesting approval of any alternate gas sales measurement system shall submit performance data, actual field tests results, or any other supporting data or evidence acceptable to the authorized officer, that will demonstrate that the proposed alternate gas sales measurement system will meet or exceed the objectives of the

applicable minimum standard or does not adversely affect royalty income or production accountability.

Violation: Major.

Corrective Action: Submit application and obtain approval.

Abatement Period: Prior to sales.

2. Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area

a. A written application for off-lease measurement shall be submitted to the authorized officer and written approval obtained before any such off- lease gas measurement shall justify location of the measurement facilities are installed or operated. The application for approval of off- lease measurement facilities at the desired off- lease location before approval will be granted, but no additional approval as to the gas sales measurement method is required, provided measurement is to be accomplished by orifice meter pursuant to the requirements and minimum standards of this Order.

Violation: Minor.

Corrective Action: Submit application and obtain approval.

Abatement Period: 20 days.

b. If gas measurement is to be accomplished at a location off the lease, unit, unit participating area, or communitized area by any alternate measurement method (any method other than measurement by orifice meter), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate method pursuant to See III.D.1. of this Order.

Violation: Major.

Corrective Action: Submit application and obtain approval.

Abatement Period: Prior to sales.

IV. Variances From Minimum Standards

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in Section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances warranting approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) if it is determined that the

proposed alternative(s) meets or exceeds the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability.

In addition, approval may be given orally by the authorized officer before the operator initiates actions which require a variance from minimum standards. The oral request, if granted, shall be followed by a written request not later than the fifth business day following oral approval, and written approval will then be appropriate.

The authorized officer may also issue NTLs that establish modified standards and requirements for specific geographic areas of operations. After notice to the operator the authorized officer may also require compliance with standards that exceed those contained in this Order whenever such additional requirements are necessary to achieve protection of royalty income or production accountability. The rationale for any such additional requirements shall be documented in writing to the operator.

Attachment

I. Sections from 43 CFR Subparts 3163 and 3165.

SUBPART 3163 - NONCOMPLIANCE, ASSESSMENT, AND PENALTIES

§ 3163.1, Remedies for Acts of Noncompliance

(a) Whenever an operating rights owner or operator fails or refuses to comply with the regulations in this part, the terms of any lease or permit, or the requirements of any notice or order, the authorized officer shall notify the operating rights owner or operator, as appropriate, in writing of the violation or default. Such a notice shall also set forth a reasonable abatement period:

(1) If the violation or default is not corrected within the time allowed, the authorized officer may subject the operating rights owner or operator, as appropriate, to an assessment of not more than \$500 per day for each day nonabatement continues where the violation or default is deemed a major violation;

(2) Where noncompliance involves a minor violation, the authorized officer may subject the operating rights owner or operator, as appropriate, to an assessment of \$250 for failure to abate the violation or correct the default within the time allowed;

(3) When necessary for compliance, or where operations have been commenced without approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income, the authorized officer may shut down operations. Immediate shut-in action may be taken where operations are initiated and conducted without prior approval, or where operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. Shut-in actions for other situations may be taken only after due notice, in writing, has been given;

(4) When necessary for compliance, the authorized officer may enter upon a lease and perform, or have performed, at the sole risk and expense of the operator, operations that the operator fails to perform when directed to in writing by the authorized officer. Appropriate charges shall include the actual cost of performance, plus an additional 25 percent of such amount to compensate the United States for administrative costs. The operator shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be entered;

(5) Continued noncompliance may subject the lease to cancellation and forfeiture under the bond. The operator shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be recommended for cancellation;

(6) Where actual loss or damage has occurred as a result of the operator's noncompliance, the actual amount of such loss or damage shall be charged to the operator.

(b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, \$500 per day for each day that the violation existed, including the days the violation existed prior to discovery, not to exceed \$5,000;

(2) For drilling without approval or for causing surface disturbance on Federal or Indian Surface preliminary to drilling without approval, \$500 per day for each day that the violation existed, including days the violation existed prior to discovery, not exceed \$5,000;

(3) For failure to obtain approval of a plan for well abandonment prior to commencement of such operations, \$500.

(c) Assessments under paragraph (a)(1) of this section shall not exceed \$1,000 per day, per operating rights owner or operator, per lease. Assessments under paragraph (a)(2) of this section shall not exceed a total of \$500 per operating rights owner or operator, per lease, per inspection.

(d) Continued noncompliance shall subject the operating rights owner or operator, as appropriate, to penalties described in 3163.2 of this title.

(e) On a case-by-case basis, the State Director may compromise or reduce assessments under this section. In compromising or reducing the amount of the assessment, the State Director shall state in the record the reasons for such determination.

§ 3163.2, Civil Penalties

(a) Whenever an operating rights owner or operator, as appropriate, fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation thereunder, or the terms of any lease or permit issued thereunder, the authorized officer shall

notify the operating rights owner or operator, as appropriate, in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice was previously issued under 3163.1 of this title. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the operating rights owner or operator, as appropriate, shall be liable for a civil penalty of up to \$500 per violation for each day such violation continues, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of 3163.1 (a)(1) of this title shall be deducted from penalties under this section.

(b) If the violation specified in paragraph (a) of this section is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the operating rights owner or operator, as appropriate, shall be liable for a civil penalty of up to \$5,000 per violation for each day the violation continues, not exceed a maximum of 60 days, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of 3163.1 (a)(1) of this title shall be deducted from penalties under this section.

(c) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(d) Whenever a transporter fails to permit inspection for proper documentation by any authorized representative, as provided in 3162.7-1(c) of this title, the transporter shall be liable for a civil penalty of up to \$500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

(e) Any person shall be liable for a civil penalty of up to \$10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by 3162.1(b) of this title; or

(2) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, Form 3160-5 or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a civil penalty of up to \$25,000 per violation for each violation continues, not to exceed a maximum of 20 days if he/she;

(1) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

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

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site.

(g) Determinations of Penalty Amounts for this section are as follows:

(1) For major violations, all initial proposed penalties shall be at the maximum rate provided in paragraphs (a), (b), and (d) through (f) of this section, i.e., in paragraph (a) of this section, the initial proposed penalty for a major violation shall be at the rate of \$500 per day through the 40th day of a noncompliance beginning after service of notice, and in paragraph (b) of this section \$5,000 per day for each day the violation remains uncorrected after the date of notice or report of the violation. Such penalties shall not exceed a rate of \$1,000 per day, per operating rights owner or operator, per lease under paragraph (a) of this section or \$10,000 per day, per operating rights owner or operator, per lease under paragraph (b) of this section. For paragraph (d) through (f) of this section, the rate shall be \$500, \$10,000, and \$25,000, respectively.

(2) For minor violations, no penalty under paragraph (a) of this section shall be assessed unless:

(i) The operating rights owner or operator, as appropriate, has been notified of the violation in writing and did not correct the violation within the time allowed; and

(ii) The operating rights owner or operator, as appropriate, has been assessed \$250 under 3163.1 of this title and a second notice has been issued giving an abatement period of not less than 20 days; and

(iii) The noncompliance was not abated within the time allowed by the second notice. The initial proposed penalty for a minor violation under paragraph (a) of this section shall be at the rate of \$50 per day beginning with the date of the second notice. Under

paragraph (b) of this section, the penalty shall be at a daily rate of \$500. Such penalties shall not exceed a rate of \$100 per day, per operating rights owner or operator, per lease under paragraph (a) of this section, of \$1,000 per day, per operating rights owner or operator, per lease under paragraph (b) of this section.

(h) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under this section. In compromising or reducing the amount of a civil penalty, the Secretary shall state on the record the reasons for such determination.

(i) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of the law, except as provided in paragraphs (a) and (b) of this section.

(j) If the violation continues beyond the 60-day maximum specified in paragraph (b) of this section or beyond the 20 day maximum specified in paragraphs (e) and (f) of this section, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(k) If the violation continues, beyond the 20-day maximum specified in paragraph (d) of this section, the authorized officer shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that authorized officer or to remove any crude oil or liquid hydrocarbons allocation to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and related penalty paid.

§ 3163.3, Criminal Penalties

Any person who commits an act for which a civil penalty is provided in 3163.2 of this title shall, upon conviction, be punished by a fine of not more than \$50,000 or by imprisonment for not more than two years or both.

§ 3163.4, Failure to Pay

If any person fails to pay an assessment or a civil penalty under 3163.1 or 3163.2 of this title after the order making the assessment or penalty becomes a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by 3165.4(e) of this title. The Federal Oil and Gas Royalty Management Act requires that any judgment by the court shall include an order to pay.

§ 3163.5, Assessments and Civil Penalties

(a) Assessments made under 3163.1 of this title are due upon issuance and shall be paid within 30 days of receipt of certified mail written notice or personal service, as directed by the authorized officer in the notice. Failure to pay assessed damages timely will be subject to late payment charges as prescribed under Title 30 CFR Group 202.

(b) Civil penalties under 3163.2 of this title shall be paid within 30 days of completion of any final order of the Secretary or the final order of the Court.

(c) Payments made pursuant to this section shall not relieve the responsible party of compliance with the regulations in this part or from liability for waste or any other damage. A waiver of any particular assessment shall not be construed as precluding an assessment pursuant to 3163.1 of this title for any other act of noncompliance occurring at the same time or at any other time. The amount of any civil penalty under 3163.2 of this title, as finally determined, may be deducted from any sums owing by the United States to person charged.

§ 3163.6, Injunction and Specific Performance

(a) In addition to any other remedy under this part or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States to:

(1) Restrain any violation of the Federal Oil and Gas Royalty and Management Act or any mineral leasing law of the United States; or

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

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

SUBPART 3165 - RELIEF, CONFLICTS, AND APPEALS

§ 3165.1, Relief, From Operating and Producing Requirements

(a) Applications for relief from either the operating or the producing requirements of a lease, or both, shall include a full statement of the circumstances that render such relief necessary.

(b) The authorized officer shall act on applications submitted for a suspension of operations or production, or both, filed pursuant to 3103.4-2 of this title. The application for suspension shall be filed with the authorized officer prior to the expiration date of the lease; shall be executed by all operating rights owners or, in the case of a Federal unit approved under Part 3180 of this title, by the unit operator on behalf of the committed tracts or by all operating rights owners of such tracts; and shall include a full statement of the circumstances that makes such relief necessary.

(c) If approved, a suspension of operations and production will be effective on the first of the month in which the completed application was filed or the date specified by the authorized officer. Suspensions will terminate when they are no longer justified in the interest of the lessor, or as otherwise stated by the authorized officer in the approval letter.

§ 3165.1-1, Relief From Royalty and Rental Requirements

Applications for any modification authorized by law of the royalty or rental requirements of a lease for lands of the United States shall be filed in the office of the authorized officer having jurisdiction of the lands. (For other regulations relating to royalty and rental relief, and suspension of operations and production, see Part 3103 of this title.)

§ 3165.2 Conflicts Between Regulations

In the event of any conflict between the regulations in this part and the regulations in Title 25 CFR concerning oil and gas operations on Federal and Indian leaseholds, the regulations in this part shall govern with respect to obligations in conduct of oil and gas operations, acts of noncompliance, and the jurisdiction and authority of the authorized officer.

§ 3165.3 Notice, State Director Review, and Hearing on the Record

(a) *Notice.* Whenever an operating rights owner or operator, as appropriate, fails to comply with any provisions of the lease, the regulations in this part, applicable orders of the authorized officer, written notice shall be given the appropriate party

to remedy any defaults or violations. Written orders or a notice of violation, assessment, or proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 7 business days after the date it is mailed, whichever is mailed, whichever is earlier. Any person may designate a representative to receive any notice of violation, assessment, or proposed penalty on his/her behalf. In the case of a major violation, the authorized officer shall make a good faith effort to contact such designated representative by telephone to be followed by a written notice. Receipt of notice shall be deemed to occur at the time of such verbal communication, and the time of notice and the name of the receiving party shall be confirmed in the file. If the good faith effort to contact the designated representative is unsuccessful, notice of the major violation may be given to any person conducting or supervising operations subject to the regulations in this part. In the case of a minor violation, written notice shall be provided as described above. A copy of all orders, notices, or instructions served on any contractor or field employee or field employee or designated representative shall also be mailed to the operator. Any notice involving a civil penalty shall be mailed to the operating rights owner.

(b) *State Director Review.* Any adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part may request an administrative review, before the State Director, either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received and shall be filed with the appropriate State Director. Upon request and showing of good cause, an extension for submitting supporting data may be granted by the State Director. Such review shall include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals (IBLA) as provided in 3165.4 of this part.

(c) *Review of Proposed Penalties.* Any adversely affected party wishing to contest a notice of proposed penalty shall request an administrative review before the State Director under the procedures set out in paragraph (b) of this section. However, no civil penalties shall be assessed under this part until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Therefore, any party adversely affected by the State Director's decision on the proposed penalty may request a hearing on the record before an Administrative Law Judge or, in lieu of a hearing, may appeal that decision directly to the Interior Board of Land Appeals as provided in 3165.4(b)(2) of this part. If such party elects to request a hearing on the record, such request shall be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the State Director's decision on the notice

of proposed penalty. Where a hearing on the record is requested, the State Director shall refer the complete case file to the Office of Hearing and Appeals for a hearing before an Administrative Law Judge in accordance with part 4 of this title. A decision shall be issued following completion of the hearing and shall be served on the parties. Any party, including the United States, adversely affected by the decision of the Administrative Law Judge may appeal to the Interior Board of Land Appeals as provided in 3163.4 of this title.

(d) *Action on the Request for State Director Review.* Action on request for administrative review. The State Director shall issue a final decision within 10 business days of the receipt of a complete request for administrative review or, where oral presentation has been made, within 10 business days there from. Such decision shall represent the final Bureau decision from which further review may be obtained as provided in paragraph (c) of this section for proposed penalties, and in 3165.4 of this title for all decisions.

(e) *Effect of Request for State Director Review or for Hearing on the Record.*

(1) Any request for review by the State Director under this section shall not result in a suspension of the requirement for compliance with the notice of violation or proposed penalty, or stop the daily accumulation of assessments or penalties, or stop the daily accumulation of assessments or penalties, unless the State Director to whom the request is made so determines.

(2) Any request for a hearing on the record before an administrative law judge under this section shall not result in a suspension of the requirement for compliance with the decision, unless the administrative law judge so determines. Any request for hearing on the record shall stop the accumulation of additional daily penalties until such time as a final decision is rendered, except that within 10 days of receipt of a request for a hearing on the record, the State Director may, after review of such request, recommend that the Director reinstate the accumulation of daily civil penalties until the violation is abated. Within 45 days of the filing of the request for a hearing on the record, the Director may reinstate the accumulation of civil penalties if he/she determines that the public interest requires a reinstatement of the accumulation and that the violation is causing or threatening immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not reinstate the daily accumulation within 45 days of the filing of the request for a hearing on the record, the suspension shall continue.

§ 3165.4, Appeals

(a) *Appeal of a Decision of State Director.* Any party adversely affected by the decision of the State Director after the State Director review, under 3165.3(b) of this title, of a notice of violation or assessment or of an instruction, order, or decision, may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations set out in Part 4 of this title.

(b) *Appeal From Decision on a Proposed Penalty After a Hearing on the Record.*

(1) Any party adversely affected by the decision of an Administrative Law Judge on a proposed penalty after a hearing on the record under 3165.3(c) of this title may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations in Part 4 of this title.

(2) In lieu of a hearing on the record under 3165.3(c) of this title, any party adversely affected by the decision of the decision of the State Director on a proposed penalty may waive the opportunity for such a hearing on the record by appealing directly to the Interior Board of Land Appeals under Part 4 of this title. However, if the right to a hearing on the record is waived, further appeal to the District Court under Section 109(j) of the Federal Oil and Gas Royalty Management Act is precluded.

(c) *Effect of Appeal on Compliance Requirements.* Except as provided in paragraph (d) of this section, any appeal filed pursuant to paragraphs (a) and (b) of this section shall not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken unless the Interior Board of Land Appeals determines that suspension of the requirements of the order or decision will not be detrimental to the interests of the lessor or upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

(d) *Effect of Appeal on Assessments and Penalties.*

(1) Except as provided in paragraph (d)(3) of this section, an appeal filed pursuant to paragraph (a) of this section shall suspend the accumulation of additional daily assessments. However, the pendency of an appeal shall not bar the authorized officer from assessing civil penalties under 3163.2 of this title in the event the operator has failed

to abate the violation which resulted in the assessment. The Board of Land Appeals may issue appropriate orders to coordinate the pending appeal and the pending civil penalty proceeding.

(2) Except as provided in paragraph (d)(3) of this section, an appeal filed pursuant to paragraph (b) of this section shall suspend the accumulation of additional daily civil penalties.

(3) When an appeal is filed under paragraph (a) or (b) of this section, the State Director may, within 10 days of receipt of the notice of appeal, recommend that the Director reinstate the accumulation of assessments and daily civil penalties until such time as a final decision is rendered or until the violation is abated. The Director may, if he/she determines that the public interest requires it, reinstate such accumulation(s) upon a finding that the violation is causing or threatening immediate substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not act on the recommendation to reinstate the accumulation(s) within 45 days of the filing of the notice of appeal, the suspension shall continue.

(e) *Judicial Review.* Any person who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of civil penalty determinations only where a person has requested a hearing precludes further review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after issuance of final decision as provided in § 4.21 of this title.