

determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 100.35–T05–075 to read as follows:

#### § 100.35–T05–075 Choptank River, Cambridge, MD.

(a) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the 2005 Cambridge Offshore Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Regulated area* includes all waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD and Oystershell Point, MD. All coordinates reference Datum: NAD 1983.

(b) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) Unless otherwise directed by the Official Patrol, operate at a minimum wake speed not to exceed six (6) knots.

(c) *Enforcement period.* This section will be enforced from 9:30 a.m. to 5:30 p.m. on September 25, 2005.

Dated: July 2, 2005.

**L.L. Hereth,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 05–14754 Filed 7–26–05; 8:45 am]

**BILLING CODE 4910–15–P**

### DEPARTMENT OF AGRICULTURE

#### Forest Service

#### 36 CFR Part 228

**RIN 0596–AC20**

### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

#### 43 CFR Part 3160

**[W0–610–411H12–24 1A]**

**RIN 1004–AD59**

#### Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations

**AGENCIES:** U.S. Forest Service, Agriculture; Bureau of Land Management, Interior.

**ACTION:** Joint proposed rule.

**SUMMARY:** This proposed rule would revise existing Onshore Oil and Gas Order Number 1, which was published in the October 21, 1983, edition of the **Federal Register**. The Order provides the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except Osage tribe) onshore oil and gas leases, including leases where the surface is managed by the U.S. Forest Service (FS). It also covers most approvals necessary for subsequent well operations, including abandonment. The revision is necessary due to provisions of the 1987 Federal Onshore Oil and Gas Leasing Reform Act (Reform Act), legal opinions, court cases since the Order was issued, and other policy and procedural changes. The revised Order would address the submittal of a complete Application for Permit to Drill or Deepen package (APD), including a Drilling Plan, Surface Use Plan of Operations, evidence of bond coverage and Operator Certification.

**DATES:** Send your comments to reach the Bureau of Land Management (BLM) on or before August 26, 2005. The BLM and the FS will not necessarily consider any comments received after the above date during its decision on the proposed rule.

**ADDRESSES:** Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, VA 22153.

Hand Delivery: 1620 L Street, NW., Suite 401, Washington, DC 20036.

E-mail:

[comments\\_washington@blm.gov](mailto:comments_washington@blm.gov).

Federal eRulemaking Portal: <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

James Burd at (202) 452-5017 or Ian Senio at (202) 452-5049 at BLM or Barry Burkhardt at (801) 625-5157 at the Forest Service. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

#### SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

### I. Public Comment Procedures

#### A. How Do I File Comments?

You may submit your comments by any one of several methods:

- You may mail your comments to: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004-AD59.

- You may deliver comments to 1620 L Street NW., Suite 401, Washington, DC 20036.

- You may e-mail your comment to: [comments\\_washington@blm.gov](mailto:comments_washington@blm.gov) (Include "Attn: AD59" in the subject line).

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

The Department of the Interior and the FS may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

#### B. May I Review Comments Others Submit?

BLM intends to post all comments on the internet. If you are requesting that your comment remain confidential, do not send us your comment at the direct internet address or the e-mail address because we immediately post all

comments we receive on the internet. Also, comments, including names and street addresses of respondents, will be available for public review at the address listed under "**ADDRESSES: Personal or messenger delivery**" during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### II. Background

The regulations at 43 Code of Federal Regulations (CFR) part 3160, Onshore Oil and Gas Operations, in section 3164.1 provide for the issuance of Onshore Oil and Gas Orders to "implement and supplement" the regulations in part 3160. Also, 36 CFR 228.105 provides for the issuance of FS Onshore Orders or for the co-signing of Orders with BLM. Although they are not codified in the CFR, all onshore orders are issued using notice and comment rulemaking and, when issued in final form, apply nationwide to all Federal and Indian (except the Osage Tribe) onshore oil and gas leases. The table in 43 CFR 3164.1(b) lists existing Orders. This proposed rule would revise existing Onshore Oil and Gas Order Number 1 (the Order) which supplements primarily 43 CFR 3162.3 and 3162.5. 43 CFR 3162.3 covers conduct of operations, applications to drill on a lease, subsequent well operations, other miscellaneous lease operations, and abandonment. Section 3162.5 covers environmental and safety obligations. The FS would adopt the Order which would supplement 36 CFR part 228 subpart E. The existing Order has been in effect since November 21, 1983. For further information, see the October 21, 1983 **Federal Register** at 48 FR 48916.

### III. Discussion of the Proposed Rule

There are four primary reasons the Order is being revised:

1. The 1987 Reform Act, which amended the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, included two significant changes affecting APD processing on Federal leases. The first important change is the addition of a provision for public notification of a

proposed action before APD approval or substantial modification of the terms of a Federal lease.

The second important change the Act made is the assignment of authority to the FS to approve and regulate the surface disturbing activity associated with oil and gas wells on National Forest System (NFS) lands. Where NFS lands are involved, a Surface Use Plan of Operations, included in an APD, is now approved by the FS. The FS also approves surface disturbing aspects of related and subsequent operations. The FS has actively participated in this revision, and is a cosigner of this Order. The Order would apply to FS review of oil and gas surface operations.

2. In response to protests to two Resource Management Plans in April 1988, the Office of the Solicitor of the Department of the Interior issued two memorandums related to oil and gas issues. The first and most far-reaching (issued by the Associate Solicitor, Energy and Resources on April 1, 1988, titled "Legal Responsibilities of BLM for Oil and Gas Leasing and Operations on Split Estate Lands"), concerned BLM responsibilities on Federal leases overlain by private surface (split-estate). In this memorandum the Solicitor's Office opined that the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA) require BLM to regulate exploration, development, and abandonment on Federal leases on split-estate lands in essentially the same manner as a lease overlain by Federal surface. The memorandum also stated that while a private owner's wishes should be considered in decisions, they do not overrule requirements of these statutes and their implementing regulations.

The second memorandum (issued by the Assistant Solicitor, Onshore Minerals, Division of Energy and Resources on April 4, 1988, titled "Legal Responsibilities of BLM for Oil and Gas Leasing and Operations under the National Historic Preservation Act") lays out in more detail BLM's responsibilities under NHPA, elucidating further the discussion on cultural resources in the first opinion.

The pertinent requirements of existing Order Number 1 do not fully conform to the memorandums issued by the Solicitor's Office in 1988.

3. The existing Order does not adequately address BLM Rights-of-Way or FS Special Use Authorizations which are often required for off-lease facilities or those activities outside of lands committed to a unitized area. This has led to confusion and delays on the part

of both the agencies and industry. Under the existing Order, APD approval is often delayed pending completion and approval of a Right-of-Way or Special Use Authorization. We intend for the proposal to eliminate or reduce this delay. The proposed rule provides for early identification of any needed Right-of-Way or Special Use Authorization, allows for conducting a single environmental analysis for the APD and Right-of-Way or Special Use Authorization, and permits concurrent approval of the Right-of-Way or Special Use Authorization with the APD. On NFS lands, the FS will approve off-lease activities directly related to the drilling and production of the well as part of the Surface Use Plan of Operations instead of through issuing a separate Special Use Authorization. Please specifically comment on the provisions in the proposal (see proposed Section V.

Rights-of-Way (R/W) "Special Use Authorization (SUA)) that would expedite Right-of-Way or Special Use Authorization approvals. We are interested in suggestions of other methods BLM and the FS could incorporate to expedite approval of energy projects.

4. Existing Order Number 1 is over 20 years old. Conditions, regulations, policies, procedures, and requirements have been altered, added, and eliminated since the Order was issued. BLM is in the process of reviewing field office practices and the preliminary findings from that review were considered in the proposed revisions to the Order. BLM has reorganized the Order to follow the review and approval process and the processing timeframes for each step are now in one section. Also, split estate operations are discussed in more detail.

BLM encourages operators to employ best management practices when they develop their APDs. Best management practices are innovative, dynamic, and economically feasible mitigation measures applied on a site-specific basis to reduce, prevent, or avoid adverse environmental or social impacts. BLM field offices incorporate appropriate best management practices into proposed APDs and associated on and off-lease Rights-of-Way approvals after required NEPA evaluation. They can then be included in approved APDs as Conditions of Approval. Typical best management practices can currently be found on BLM's Web site at <http://www.blm.gov/nhp/300/wo310/O&G/Ops/operations.html>.

The following chart explains the major changes between the existing Order and the proposed Order.

Existing order	Proposed order	Substantive changes
Introduction .....	I. Introduction .....	The proposed rule would add a discussion of the authority for issuing Orders and the requirements of the Federal Onshore Oil and Gas Leasing Reform Act. The rule would eliminate the discussion of summary information related to other sections in this Order because they are redundant of this proposed section.
	A. Authority	
I. Accountability .....	IV. General Operating Requirements.	The rule would revise the accountability items and special situations in the existing Order and move them to Section IV. General Requirements.
None .....	I.B. Purpose .....	The rule would add a new section describing the purpose of the Order.
None .....	I.C. Scope .....	The rule would add a short section describing the extent to which the Order applies.
None .....	II. Definitions .....	The rule would add a section that defines key terms to ensure consistent understanding of the terms. Terms that are defined in other regulations or Orders are not repeated here. The rule defines the meaning of "Complete APD" for clarification and to ensure consistent application of these terms. Please see the more detailed discussion below. The rule would also add a definition of the new "Master Development Plan." Utilizing a Master Development Plan would provide for environmental analysis and approval of field development or multiple proposed wells as a single approval. "Days" are defined as calendar days. The existing Order uses both "business days" and "calendar days."
II. Special Situations .....	IV. General Operating Requirements.	The rule would amend the accountability items and special situations in the existing Order and move them to Section IV. General Requirements.
A. Surveying and Staking .....	III.E. 1. Surveying, Staking, and Inventories.	The rule would move the Surveying and Staking provisions to Section III.E. and include new information related to more current surveying technology. Maps would be required in both paper and electronic geospatial database format. The rule also contains a provision that the operator make an effort to obtain approval from the surface owner before entering private lands. This provision does not require approval before entry, only a good faith effort to obtain approval.
III. Drilling Operations		
B. Material to be Filed .....	None .....	The information in existing Section III.A. would be incorporated into proposed Sections III.E. Required Components of a Complete APD Package and III.F. Notice of Staking option is retained.
1. Notice of Staking	III.F. Notice of Staking	
2. Application for Permit to Drill		The requirements for, and scheduling of, onsite inspections and the overall processing timeframes would be incorporated into a new section on processing. The new section would consolidate all references to processing issues into one section.
C. Conferences and Inspections .....	III.C.2. Processing .....	
D. Processing Time Frames		Information pertaining to cultural resources, threatened and endangered species, watershed protection, and safety would be moved to Section IV. General Operating Requirements.
E. Cultural Resources Clearance .....	IV. General Operating Requirements.	
F. Threatened and Endangered Species Clearance and Other Critical Environmental Concerns		

Existing order	Proposed order	Substantive changes
G. Components of a Complete Application for Permit to Drill.	III.E. Components of a Complete ADP Package.	Some of the information contained in the first subsections of existing Section III.G. would be moved into the Drilling Plan ( <i>i.e.</i> , item 3.e.) in the proposed Order and duplication eliminated. The requirements would be unchanged.
IV. Subsequent Operations .....	VIII. Subsequent Operations/Sundry Notice.	The rule would delete language in the existing Order that addresses well conversions because it would be addressed in Section IX. of the proposed Order.
A. Production Facilities .....	None .....	The rule would incorporate information relative to production facilities into other sections.
B. Other Operations .....	VIII.A. Surface Disturbing Operations.	The rule would make minor editorial changes especially to incorporate FS approval of subsequent surface disturbing activities.
C. Emergency Repairs .....	VIII.B. Emergency Repairs .....	There would be no substantive change to these provisions.
D. Environmental Review .....	None .....	The rule would delete this section since the information would be covered in proposed Section III.C.2. Processing.
V. Well-Abandonment .....	XI. Abandonment .....	The rule would divide this section into two subsections; A) Plugging and B) Reclamation. The rule would also incorporate additional information and make clearer the reclamation subsection.
None .....	V. Rights-of-Way (R/W)—Special Use Authorization (SUA).	The rule would add this section to explain when the BLM or FS may require a Right-of-Way or Special Use Authorization and how these authorizations would be incorporated into the APD approval process.
VI. Water Well Conversion .....	IX. Well Conversions .....	The rule would add a paragraph to address conversion to a class II injection well and would clarify the process to convert a well to a water well.
VII. Privately Owned Surface .....	VI. Operating on Lands with Private/State Surface and Federal or Indian Oil and Gas.	This section would change the provisions regarding compensation to surface owners to that which is required by the authority that granted the surface patent. It would incorporate the latest policy requiring a statement from the operator regarding whether or not there is surface owner agreement. If the operator cannot reach an agreement with the surface owner, the operator must provide a bond for the benefit of the surface owner. The bond must be sufficient to compensate the surface owner in an amount established by the original land patent or statute authorizing the patent.
A. Federal oil and gas leases	VII. Leases for Indian Oil and Gas	
B. Indian oil and gas cases		
VIII. Reports and Activities Required After Well Completion.	None.	The rule would move the requirements to submit completion or recompletion reports to Section IV. General Requirements.
	X. Variances .....	
	XII. Appeal Procedures .....	
	The rule would add a new section to explain how an operator may request a variance from a requirement of the Order or a waiver, exemption, or modification of a lease stipulation and appeals from denials of those requests..	
	The rule would add a new section to identify the various appeal processes and the timeframes associated with certain FS appeals. This section would also clarify that the incorporation of a FS approved Surface Use Plan of Operations into the approval of an APD is not subject to protest to BLM or appeal to IBLA..	

## Discussion of Major Changes

### Definition of Complete APD

The most significant change in the proposed rule is that it would eliminate the term “Technically and Administratively Complete” and replace it with a clear definition of “Complete APD.” This new definition is consistent with the common practice in many field offices and would require all field offices to adopt the same convention. The new definition would bring needed

consistency to the approval process. BLM previously considered defining Administratively and Technically complete separately, but decided to abandon this distinction because of the difficulty in separating the two concepts and in potential delays that might be caused in processing APDs in certain circumstances.

The Reform Act requires each APD (except on Indian lands) to be posted for public review for 30 days. BLM, and the Surface Managing Entity if appropriate,

will post the required parts of the APD immediately after receiving the application, therefore the 30 days will commence immediately after the APD or Notice of Staking is filed. No decision can be made before the end of the 30 day posting period. This is not a change to existing practice. When possible, a copy will be posted electronically on the internet.

Under the proposed process, BLM would review the APD package, consult with FS if appropriate, and within 10

days of the filing determine if the package contains all the documents and information sufficient and necessary for processing. If the APD package did not contain the minimum documentation and information, BLM or the FS would notify the operator about the deficiencies. If an incomplete package were to contain sufficient information to continue processing, BLM or the FS would process the package to the point where continued processing would either be impractical or impossible without additional information. Generally, a "complete" determination would follow after the applicant submits any additional material.

Under the proposal, within 10 days of receiving an APD package or a Notice of Staking, BLM will establish a future date for an onsite inspection. Under the existing Order, the onsite is held within 15 days of filing. Under this proposal, BLM and/or the FS would hold the onsite inspection as soon as practical after filing. Providing more flexibility in scheduling the onsite inspection will allow BLM to take into account weather conditions and the availability of the operator and agency staff, as well as the surface owner if split estate is involved. It is both agencies' intent to hold the onsite as soon as possible and normally within 15 days after filing. The agencies recognize that conducting this event so soon after filing may be difficult, but we consider it, nevertheless, desirable and necessary.

The proposal makes BLM, rather than the operator, responsible for inviting surface owners to participate in onsite inspections.

BLM would initiate the review of the APD package as soon as practical after filing by the operator. Some deficiencies are difficult to detect and may not be evident until the onsite inspection. Therefore, a determination of completeness may be delayed beyond 10 days after filing. Under this proposed Order, BLM may notify the operator of any remaining deficiencies and any other changes necessary within 7 days after the onsite inspection.

The operator is encouraged to respond to BLM requests for additional information or to correct deficiencies within 45 days of the request. Faster response times by the operator will help to expedite the review process. BLM envisions that the operator may be asked for additional information on more than one occasion. The technical review of the APD package is made by many different specialists. In an effort to expedite the approval process, BLM will not wait to compile a complete list of all deficiencies in a particular application. Instead, BLM will provide requests for

additional information to the operator as soon as BLM or FS staff identifies a specific deficiency. Waiting to notify the operator of separate issues may unnecessarily slow the approval process.

Under the proposed Order, after the operator provides all requested information, BLM would determine if the package is complete, that is, that the data submitted is accurate, complete, and fully describes the proposed action. A complete package must contain the information listed in 43 CFR 3162.3-1 and 43 CFR 3164.1, as appropriate, and the information this Order would require. A complete application does not include a cultural or wildlife inventory, NEPA documentation, or other materials that are not requirements of the sections cited above or in this Order. It is the policy of BLM and FS to begin the NEPA analysis and other inventories as soon as sufficient information is present to support the work.

It is the intent of BLM and the FS to process APDs within 30 days after the APD package is complete. However, other regulatory requirements, such as those in the NEPA, NHPA, and ESA, may result in further delay. Neither BLM nor the FS can make a final decision on any APD or Surface Use Plan of Operations until these regulatory requirements are completed.

Compliance in some cases may depend on actions taken by other agencies over which BLM and the FS have no administrative control. Therefore, neither BLM nor the FS can commit to processing all APDs within a given time, but intend to process all APDs within the minimum time necessary to meet all regulatory requirements. This is consistent with existing policy and practice. The existing Order, effective in 1983, says that "the 30-day time frame for completion of the APD process may sometimes be exceeded where it is necessary to prepare an EA. \* \* \*" BLM did not routinely prepare EAs for each APD in 1983 because they were categorically excluded from NEPA analysis until 1992. We now conduct some form of NEPA analysis for all submitted APD packages. In addition, since the 1983 Order, NHPA and ESA requirements have become more extensive. With these added regulatory requirements, it is not realistic for BLM to commit to processing all APDs in 30 days.

#### *Drilling and Surface Use Plans*

This proposal would make specific changes to the drilling and surface use plans as follows:

The former 8-point Drilling Program (also referred to as the Subsurface Use Plan) would be replaced with a 9-point Drilling Plan. This proposal would expand the required description in the existing Order addressing the anticipated casing program, and add a new requirement to the Drilling Plan to address the type and amount of cement operators propose to use in setting each casing string.

We would replace the former 13-point Surface Use Program (or Plan) with a 12-point Surface Use Plan of Operations. We would remove the former point 13 of the Surface Use Plan of Operations "Operator Certification" and make it a separate component of the APD package. This change makes it clear that the Operator Certification covers the entire APD package and not just the Surface Use Plan of Operations.

The 13-point Surface Use Plan is currently codified in Forest Service Regulations at 36 CFR 228 Subpart E, Appendix A. Under this rule, Appendix A would be deleted. Although it would not be codified in 36 CFR, section III.E. of the proposed Order would apply to surface use operations on NFS lands. That proposed section defines the components of a complete Surface Use Plan of Operations or Master Development Plan. The rule would also revise 36 CFR 228.105(a)(1) to direct operators to submit surface use plans or Master Development Plans in accordance with the proposed Order, or other applicable onshore orders.

#### *Master Development Plans*

This proposal would establish a new approval process for multiple well proposals called a Master Development Plan. This process would be used by an operator to submit plans for field development or a multiple well program in lieu of several individual APDs.

These proposals could be addressed in a single NEPA analysis and approval. This process would facilitate the consideration of cumulative effects early in the process and enable broad application of identified mitigation measures, while minimizing or significantly reducing the cumulative timeframe for approval. We also anticipate that this approval will lead to better planning of field development which will minimize adverse environmental impacts.

The proposed rule envisions the APD as an application for a proposed action that is impacted by other analytical requirements such as the NHPA and the ESA. The documents other statutes require are not part of a complete APD package. This proposal also explains the approval process for certain subsequent

well operations. The revised Order would describe the relationship between the APD package and any application for an associated BLM Right-of-Way or FS Special Use Authorization that may be required. This Order would replace the 1983 Order incorporated by the FS into its oil and gas regulations.

#### *Bonding*

This proposal would also clarify that BLM authority to require additional bond in 43 CFR 3104.5 applies to off-lease facilities required to further development of the lease, such as the large impoundments being created in Wyoming for produced water from Federal and nonfederal coalbed natural gas wells. BLM is obligated by the Reform Act to require sufficient bond to insure "the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease" 30 U.S.C. 226(g). An Assistant Solicitor's memorandum of July 19, 2004, concluded that BLM has the authority to require additional bond for such facilities and that the current regulation does not limit BLM to increasing the required amount of an existing bond. Accordingly, the proposal does not represent a change in the regulatory scheme.

Provisions in the final Order will supersede any inconsistent provisions of existing regulations, inasmuch as they will constitute a later exercise of Administrative Procedure Act rulemaking. To the maximum extent practical, we will identify such inconsistencies and include conforming amendments to titles 36 or 43, or both, of the CFR in the final rule.

#### **IV. Procedural Matters**

##### *Executive Order 12866, Regulatory Planning and Review*

These proposed regulations are not a significant regulatory action and are not subject to review by Office of Management and Budget (OMB) under Executive Order 12866. OMB makes the final determination under the Executive Order. These proposed regulations will not have an effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These proposed regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed regulations do not alter the

budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The revisions this rule would make to the Order primarily involve changes to BLM and FS administrative processes. For example, changes to the term "Administratively and Technically Complete" only pertain to the process BLM and the FS would use to review APD packages and would not have any significant economic impact. Other changes, such as the proposal to add a provision for the use of a Master Development Plan, may improve processing and predictability of operations due to better advance planning of field development. Clarifying that our authority to require additional bond applies to off-lease facilities would have no economic impact since BLM already has the authority under the existing regulatory scheme to require this bond. Also, as a result of more clear rules, operators will have a better understanding of BLM and FS requirements, processes, and timelines leading to reduction in delays in processing and possible administrative cost savings for BLM, the FS, and operators.

##### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. For the purposes of this analysis, we will assume that all entities (all lessees and operators) that may be impacted by these regulations are small entities.

The rule principally deals with the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except Osage tribe) onshore oil and gas leases. These changes are not significantly different from the existing Order and primarily consist of changes to BLM and FS administrative processes that would not significantly impact operators or lessees. As a result of more clear rules, operators will have a better understanding of BLM and FS requirements, processes, and timelines leading to a reduction in delays in processing and some administrative cost savings for BLM, the FS, and operators. Therefore, BLM and the FS have determined that under the RFA this proposed rule would not have

a significant economic impact on a substantial number of small entities.

The use of best management practices in conditions of approval for a permit to drill is not new. BLM currently uses them as conditions of approval and therefore this provision will have no economic impact on small entities.

The bonding provision in the rule would not impact small entities since the provisions merely reflect existing authority. As stated earlier, an Assistant Solicitor's opinion of July 19, 2004, concluded that BLM has the authority to require additional bond for such facilities and that the current regulation does not limit BLM to increasing the required amount of an existing bond. Accordingly, the proposal does not represent a change in the regulatory scheme.

##### *Small Business Regulatory Enforcement Fairness Act*

These proposed regulations are not a "major rule" as defined at 5 U.S.C. 804(2). For the reasons stated in the RFA discussion, this proposed rule would not have an annual effect on the economy greater than \$100 million; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

##### *Unfunded Mandates Reform Act*

These proposed regulations do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year; nor do these proposed regulations have a significant or unique effect on state, local, or tribal governments or the private sector. This proposed rule would primarily involve changes to BLM's and the FS's administrative processes that would not have any significant effect monetarily, or otherwise, on the entities listed. Therefore, BLM and the FS are not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

##### *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. This proposed rule has no potential to effect property rights as the changes it would make to

existing procedures primarily involve changes to BLM's and the FS's administrative processes. Therefore, the Department of the Interior and the Department of Agriculture have determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

#### *Executive Order 13132, Federalism*

The proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposal will not have any effect on any of the items listed. As stated above, the rule principally deals with the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except Osage tribe) onshore oil and gas leases. In other words, the rule affects the relationship between operators, lessees, and BLM and the FS and would not impact states. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

BLM approves proposed operations on all Indian (except Osage) onshore oil and gas leases and agreements. BLM has begun consultation on the proposed revisions to the Order and will continue to consult with Tribes during the formal comment period on the rule.

#### *Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have reviewed these regulations to eliminate drafting errors and ambiguity. They have been written to minimize litigation, provide clear legal standards for affected conduct rather than general standards, and promote simplification. Drafting the regulations in clear language and working closely with legal counsel assists in all of these areas.

#### *Paperwork Reduction Act*

These regulations contain information collection requirements. As required by

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted a copy of the proposed information collection requirements to the OMB for review. The OMB approved the information collection requirements under Control Number 1004-0137, which expires on March 31, 2007.

#### *National Environmental Policy Act*

BLM and the FS have prepared an environmental assessment (EA) and have found that the proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the NEPA, 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

The proposed revisions to Order 1 would not impact the environment significantly. For the most part, the revisions would involve changes to BLM's and the FS's administrative processes. For example, replacing the term "Administratively and Technically Complete" with the term "Complete APD" only changes the process BLM would use to review APD packages and would not have any impact on the environment whatsoever. Other changes, such as the proposal to add provisions for the use of a Master Development Plan, may actually provide improved environmental protection due to better advance planning of field development. The use of best management practices can lead to reduced environmental damage. Also, the procedural and clarifying changes would have no meaningful impact of any kind on the physical or economic environment. Any environmental effects of APDs on Federal lands are analyzed on a case-by-case basis.

#### *Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

In accordance with Executive Order 13211, BLM has determined that the proposed rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This rule would clarify the administrative processes involved in approving an APD and more clearly lay out the timeline for processing applications. It is not clear to what extent clarification of the rules will save BLM, the FS, or operators administrative cost, but we anticipate that the cost savings will be minimal, as

will any direct effects on the energy supply, distribution or use.

#### *Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed regulations clearly stated?
2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?
3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?
5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

#### **Authors**

The principal authors of this rule are: James Burd of the BLM Washington Office; Bo Brown of the BLM Alaska State Office; Brian Pruiett of the BLM Buffalo, Wyoming Field Office; Gary Stephens of the BLM New Mexico State Office; Hank Szymanski of the BLM Colorado State Office; Howard Clevinger of the BLM Vernal, Utah Field Office; Roy Swalling of the Montana State Office; and Barry Burkhardt of the FS Intermountain Regional Office, Ogden, Utah, and assisted by the staff of BLM's Regulatory Affairs Group and the Department of the Interior's Office of the Solicitor.

#### **List of Subjects**

##### *36 CFR Part 228*

Environmental protection; Mines; National forests; Oil and gas exploration; Public lands-mineral resources; Public lands-rights-of-way; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

##### *43 CFR part 3160*

Administrative practice and procedure; Government contracts; Indians-lands; Mineral royalties; Oil and gas exploration; Penalties; Public lands-

mineral resources; Reporting and recordkeeping requirements.

### 36 CFR Chapter II

For the reasons set out in the joint preamble, the FS proposes to amend 36 CFR part 228 as follows:

#### PART 228—MINERALS

1. The authority citation for part 228 continues to read as follows:

**Authority:** 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551); 41 Stat. 437, as amended, sec. 5102(d), 101 Stat. 1330–256 (30 U.S.C. 226); 61 Stat. 681, as amended (30 U.S.C. 601); 61 Stat. 914, as amended (30 U.S.C. 352); 69 Stat. 368, as amended (30 U.S.C. 611); and 94 Stat. 2400.

2. Revise § 228.105(a)(1) to read as follows:

#### § 228.105 Issuance of onshore orders and notices to lessees.

(a) \* \* \*

(1) Operators shall submit surface use plans of operations or Master Development Plans in accordance with

the applicable Onshore Oil and Gas Order. Approval of a Master Development Plan constitutes approval of any surface use plan of operations submitted as a part of, or consistent with, the approved Master Development Plan.

\* \* \* \* \*

3. Revise § 228.107(c) to read as follows:

#### § 228.107 Review of surface use plan of operations.

\* \* \* \* \*

(c) The authorized Forest officer will give public notice of the decision on a plan and include in that notice whether the decision may be appealed under the applicable Forest Service appeal procedures.

\* \* \* \* \*

#### Appendix A to Subpart E of Part 228 [Removed]

4. Remove Appendix A to Subpart E of Part 228.

Dated: August 26, 2004.

**Sally D. Collins,**

*Acting Chief, USDA—Forest Service.*

**Editorial Note:** This document was received at the Office of the Federal Register on July 13, 2005.

### 43 CFR Chapter II

For the reasons set out in the joint preamble, the Bureau of Land Management proposes to amend 43 CFR part 3160 as follows:

#### PART 3160—ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for part 3160 continues to read as follows:

**Authority:** 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

2. Amend § 3164.1(b) by revising the first entry in the chart as follows:

#### § 3164.1 Onshore Oil and Gas Orders.

\* \* \* \* \*  
(b) \* \* \*

Order No.	Subject	Effective date	Federal Register reference	Super-sedes
1. ....	Approval of operations ...	[insert 60 days after date of publication of final rule] .....	70 FR * * *	NTL–6

\* \* \* \* \*

#### Appendix—Text of Oil and Gas Onshore Order

**Note**—This appendix will not appear in the BLM regulations in 43 Code of Federal Regulations.

Dated: August 26, 2004.

**Rebecca W. Watson,**

*Assistant Secretary, Land and Minerals Management.*

**Editorial Note:** This document was received at the Office of the Federal Register on July 13, 2005.

The following Order would be implemented by the BLM and FS, but will not be codified in the Code of Federal Regulations.

#### Onshore Oil and Gas Order Number 1

##### Approval of Operations

##### I. Introduction

- A. Authority
- B. Purpose
- C. Scope

##### II. Definitions

##### III. Application for Permit to Drill (APD)

- A. Where to File
- B. Early Notification
- C. APD Posting and Processing
- D. Valid Period of Approved APD
- E. Components of a Complete APD Package
- F. Notice of Staking Option
- G. Approval of APDs

##### IV. General Operating Requirements

##### V. Rights-of-Way and Special Use Authorizations

##### VI. Operating on Lands with Private/State Surface and Federal or Indian Oil and Gas

##### VII. Leases for Indian Oil and Gas

- A. Approval of Operations
- B. Surface Use

##### VIII. Subsequent Operations and Sundry Notices

- A. Surface Disturbing Operations
- B. Emergency Repairs

##### IX. Well Conversions

##### X. Variances

##### XI. Abandonment

- A. Plugging
- B. Reclamation

##### XII. Appeal Procedures

##### Attachment I—Sample Format for Notice of Staking

#### Onshore Oil and Gas Order Number 1

##### Approval of Operations

##### I. Introduction

##### A. Authority

The Secretaries of the Interior and Agriculture have authority under various Federal and Indian mineral leasing laws, as defined in 30 U.S.C. 1702, to manage oil and gas operations. The Secretary of the Interior has delegated this authority to the BLM, which has issued onshore oil and gas operating regulations codified at part 3160 of Title 43 of the Code of Federal Regulations. The operating regulations at 43 CFR 3164.1 authorize BLM's Director to issue Onshore

Oil and Gas Orders when necessary to implement and supplement the operating regulations. The section also states that all such Orders are binding on the operator(s) of Federal and Indian onshore oil and gas leases (except the Osage Tribe). For leases on Indian lands, the delegation to BLM appears at 25 CFR parts 211, 212, 213, 225, and 227.

The Secretary of Agriculture has authority under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100–203) (Leasing Reform Act) to regulate surface disturbing activities on NFS lands. This authority has been delegated to the FS. Its regulatory authority is at Title 36 CFR, Chapter II, including, but not limited to, part 228 Subpart E, part 251 Subpart B, and part 261. Section 228.105 of 36 CFR authorizes the Chief of the FS to issue, or cosign with the Director, BLM, Onshore Oil and Gas Orders necessary to implement and supplement the operating regulations. The FS is responsible only for approving and administering surface disturbing activities on NFS lands and appeals related to FS decisions or approvals.

##### B. Purpose

The purpose of this Order is to state the application requirements for the approval of all proposed oil and gas and service wells, certain subsequent well operations, and abandonment.

##### C. Scope

This Order applies to all onshore leases of Federal and Indian oil and gas (except those of the Osage Tribe), and Federally-approved



unit or communitization agreements. It also applies to Indian Mineral Development Act agreements. References in this Order to leases means unit or communitization agreements, as applicable.

## II. Definitions

As used in this Order, the following definitions apply:

*Bloolie Line* means a discharge line used in conjunction with a rotating head in drilling operations when air or gas is used as the circulating medium.

*Complete APD* means that BLM and the Surface Managing Entity, if appropriate, have determined that the information in the APD package is accurate and addresses all BLM requirements. The APD package must contain:

- A completed Form 3160–3 (Application for Permit to Drill or Reenter) (see 43 CFR 3162.3–1(d)),
- A well plat certified by a registered surveyor with a surveyor's original stamp (see Section III.E.1. of this Order),
- A Drilling Plan (see 43 CFR 3162.3–1(d) and Section III.E.2. of this Order),
- A Surface Use Plan of Operations (see 43 CFR 3162.3–1(d) and Section III.E.3. of this Order),
- Evidence of bond coverage (see 43 CFR 3162.3–1(d) and Section III.E.5. of this Order),
- Operator certification (see Section III.E.6. of this Order),
- An original signature, which may be an electronic signature that meets BLM standards (see Section III.E.6. of this Order), and
- Other information that may be required by Order or Notice (see 43 CFR 3162.3–1(d)(4)).

All maps and plats required as part of the APD must be submitted in both hard copy and geospatial database formats. BLM or the Surface Managing Entity, as appropriate, will review the APD package and determine that all information in the drilling plan, the surface use plan of operations, bonding requirements, and other information that BLM may require (43 CFR 3162.3–1(d)(4)), including the well location plat and geospatial databases, completely describe the proposed action. A complete APD is not defined to include cultural, wildlife, or other inventories that may be required or an environmental assessment or environmental impact statement that may be required by the NEPA.

*Condition of Approval (COA)* means a site-specific requirement included in an approved APD or Sundry Notice that may limit or amend the specific actions proposed by the operator. Conditions of Approval minimize, mitigate, or prevent impacts to public lands or other resources. Best management practices may be incorporated as a Condition of Approval.

*Days* means all calendar days including holidays.

*Drilling Plan* means those documents an operator submits as part of an APD package or as a supplement to an approved plan of operations detailing the proposed drilling operations and containing the information required by 43 CFR 3160 and applicable Orders.

*Emergency Repairs* means actions necessary to correct an unforeseen problem that could cause or threaten immediate substantial adverse impact on public health and safety or the environment.

*Geospatial Database* means a set of georeferenced computer data that contains both spatial and attribute data. The spatial data defines the geometry of the object and the attribute data defines all other characteristics.

*Indian lands* means any lands or interest in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation.

*Indian Oil and Gas* means any oil and gas interest of an Indian tribe or on allotted lands where the interest is held in trust by the United States or is subject to Federal restrictions against alienation. It does not include minerals subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539), but does include oil and gas on lands administered by the United States under section 14(g) of Public Law 92–203, as amended.

*Master Development Plan* means information common to multiple planned wells, including drilling plans, surface use plans of operations, and plans for future production.

*National Forest System Lands* means those Federal lands administered by the U.S. Forest Service, such as the National Forests and the National Grasslands.

*Onsite Inspection* means an inspection of the proposed drill pad, access road, flowline route, and any associated Right-of-Way or Special Use Authorization needed for support facilities, conducted before the approval of the APD or Surface Use Plan of Operations and construction activities.

*Reclamation* means returning disturbed land as near to its predisturbed condition as is reasonably practical.

*Split Estate* means lands where the surface is owned by an entity or person other than the owner of the Federal or Indian oil and gas.

*Surface Managing Entity* means any Federal or state agency having jurisdiction over the surface, or a private owner of the surface, overlying Federal or Indian oil and gas.

*Variance* means an approved alternative to a provision or standard of an Order, Notice to Lessee, or other requirement (see 43 CFR 3101.1–4).

## III. Application for Permit To Drill (APD)

An Application for Permit to Drill or Reenter (APD), on Form 3160–3, is required for each proposed well, and for reentry and deepening of existing wells (including disposal and service wells), to develop an onshore lease for Federal or Indian oil and gas.

### A. Where To File

The operator must file an APD, Sundry Notice, or other required document in the BLM field office having jurisdiction over the lands described in the application. As an alternative to filing in a local BLM office, an operator may file an APD using BLM's

electronic commerce application for oil and gas permitting and reporting. Contact the local BLM field office for details before using the electronic commerce application.

### B. Early Notification

The operator should contact BLM and any applicable Surface Managing Entity, including all private surface owners, to request an initial planning conference as soon as the operator has identified a potential area of development. Early notification is voluntary, but it allows the involved Surface Managing Entity to apprise the prospective operator of any unusual conditions on the lease area. Early notification also provides both the Surface Managing Entity and the prospective operator with the earliest possible identification of time-sensitive requirements and determination of potential areas of conflict. The prospective operator should have a map of the proposed project available for Surface Managing Entity review to determine if a cultural or wildlife inventory or other information may be required.

### C. APD Posting and Processing

#### 1. Posting

The Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, as amended, requires BLM and the Federal Surface Managing Entity, if other than BLM, to provide at least 30 days public notice before BLM or the FS may approve an APD or Master Development Plan on a Federal oil and gas lease. Posting is not required for Indian leases.

BLM will post the APD notice in an area of the BLM field office having jurisdiction that is readily accessible to the public and, when possible, electronically on the internet. If the surface is managed by a Federal agency other than BLM, that agency also is required to post the notice for 30 days. The posted notice is for informational purposes only and is not an appealable decision. The purpose of the posting is to give any interested party notification that a Federal approval of mineral development has been requested. BLM or the FS will not post confidential information.

If the operator subsequently moves the proposed location of the well, reposting of the proposal for an additional 30-day period may be necessary if BLM or the FS determines that the change is significant.

#### 2. Processing

The timeframes established in this subsection apply to both individual APDs and to the multiple APDs included in Master Development Plans.

(a) Within 10 days of receiving an APD package, BLM, in consultation with the FS, if appropriate, will notify the operator as to whether or not the APD is complete and will request additional information and correction of any deficiencies if necessary. If there is enough information to begin processing the APD package, BLM and the FS will do so up to the point that missing information or uncorrected deficiencies renders further processing impractical or impossible. The operator has 45 days after receiving notice from BLM to provide any additional information requested or the APD may be returned to the operator.

(b) Within 10 days of receiving the APD package, BLM, in coordination with the operator and Surface Managing Entity (including, in the case of split estate, the private surface owners), if appropriate, will schedule a future date for the onsite inspection unless the onsite inspection was held as part of the Notice of Staking (see Section III.F. of this Order). The onsite inspection will be held as soon as practicable based on schedules and weather conditions. Within 7 days of the onsite inspection, BLM, and the FS if appropriate, will notify the operator that the APD is complete or that additional information is required to make the APD complete.

The operator has 45 days after receiving notice from BLM or the FS to submit additional information or correct deficiencies noted during or after the onsite inspection. BLM may return the APD without taking action if any additional information is not received or deficiencies are not corrected within that period. Within 7 days of receiving requested information, BLM will notify the operator if the APD is complete.

(c) Once the APD or the Master Development Plan is complete, BLM and the FS will expeditiously review and process the APD or Master Development Plan. Neither BLM nor the FS can make a final decision on any APD, Master Development Plan, or Surface Use Plan of Operations until the regulatory requirements of the Endangered Species Act, the National Historic Preservation Act, and the National Environmental Policy Act have been satisfied.

(d) For APDs on NFS lands, the decision to approve a Surface Use Plan of Operations or Master Development Plan may be subject to the current applicable FS appeal procedures and may take up to 105 days from the date of the decision before that decision can be implemented.

BLM does not approve Surface Use Plans of Operations for National Forest Service lands. The FS notifies BLM of its Surface Use Plan of Operations approval and BLM proceeds with its APD review.

#### *D. Valid Period of Approved APD*

1. An APD approval is valid for 1 year from the date that it is approved, or until lease expiration, whichever occurs sooner. Lease suspension will not extend the 1 year APD approval period. If the operator submits a written request before the expiration of the original approval, BLM in coordination with the FS, as appropriate, may extend the APD's validity for up to 1 additional year.

2. If no drilling occurs during the original or extended periods, the APD expires. If the operator later decides to drill a well, it must submit a new APD package for approval. The operator cannot start drilling operations if the APD has expired. The operator is responsible for reclaiming any surface disturbance that resulted from its actions, even if a well was not drilled.

#### *E. Components of a Complete APD Package*

Best management practices help to minimize the footprint of energy development. The BLM has developed a best management practices policy that includes

smart, up-front planning and good implementation to reduce short- and long-term environmental impacts to public and private resources. Best management practices are voluntary unless they have been analyzed as mitigation measures in the NEPA process for a plan of development, APD, right-of-way, or other related facility and included as a Condition of Approval for an APD. Operators are encouraged to incorporate best management practices into their APDs because they can result in reduced processing times and appeals, protests, and litigation.

An APD package must include a completed Form 3160-3 and the following information that technical specialists of the appropriate agency will review to determine its technical adequacy:

##### 1. Surveying, Staking, and Inventories

(a) Surveying, staking, and inventories are necessary casual uses, typically involving negligible surface disturbance, and may be done without advance approval from the Surface Managing Entity, except for:

- Lands administered by the Department of Defense,
- Other lands used for military purposes,
- Indian lands, or
- Where more than negligible surface disturbance is likely to occur.

No entry on private lands for surveying, staking, and inventories should occur without the operator first making an effort to obtain approval from the surface owner. Also, operators are encouraged to notify BLM or FS, as appropriate, before entering the lands.

Typical off-road vehicular use, when conducted in conjunction with these activities, will not cause the activity to be considered more than casual use because it is a necessary action for obtaining a permit for a regulated activity.

Operators must include in the APD package a well location plat prepared by a registered surveyor depicting the proposed location of the well and identifying the points of control and datum used to establish the section lines or metes and bounds. The purpose of this plat is to ensure that operations are within the boundaries of the lease/agreement and that the depiction of these operations is accurately recorded both as to location (latitude and longitude) and in relation to the surrounding lease/agreement boundaries (public land survey corner and boundary ties). The registered surveyor should coordinate with the cadastral survey section of the appropriate BLM State Office, particularly where the lands have not been surveyed under the Rectangular Survey System.

The plat and geospatial database must describe the location of operations in:

- Geographical coordinates referenced to the National Spatial Reference System, North American Datum 1983, and
- In feet and direction from the nearest two adjacent section lines, or, if not within the Rectangular Survey System, the nearest two adjacent property lines, generated from BLM's current Geographic Coordinate Data Base.

The surveyor who prepared the plat must sign it, certifying that the location has been staked on the ground as shown on the plat.

(b) The operator is responsible for making access arrangements with the appropriate Surface Managing Entity (other than BLM and FS) before surveying, staking, conducting inventories, or for other purposes. On allotted Indian lands, the operator must contact the appropriate Area Office of the Bureau of Indian Affairs (BIA) to make access arrangements.

(c) Staking of the proposed drill pad must include:

- The well location,
- Two 200-foot (61-meter) directional reference stakes,
- The exterior pad dimensions,
- The reserve pit,
- Cuts and fills,
- Outer limits of the area to be disturbed (catch points), and
- Any off-location facilities.

All surface disturbances that will result from construction of ancillary facilities must also be staked. Proposed new roads require centerline flagging with stakes clearly visible from one to the next. In rugged terrain, cut and fill staking and/or slopestaking of proposed new access roads and locations for ancillary facilities may be necessary, as determined by BLM or the FS.

(d) The onsite inspection will not occur until the required surveying and staking is complete, and any new access road(s) have been flagged, unless a variance is first granted under Section X. of this Order.

##### 2. Drilling Plan

With each copy of Form 3160-3 the operator must submit to BLM either a Drilling Plan or reference a previously approved field-wide drilling plan. These plans must be in sufficient detail to permit a complete appraisal of the technical adequacy of, and environmental effects associated with, the proposed project. The Drilling Plan must adhere to the provisions and standards of Onshore Oil and Gas Order Number 2 (see 53 FR 46790) (Order 2) and, if applicable, Onshore Oil and Gas Order Number 6 (see 55 FR 48958) (Order 6), and must include the following information:

- a. Names and estimated tops of all geologic groups, formations, members, or zones.
- b. Estimated depth and thickness of formations, members, or zones potentially containing usable water, oil, gas, or prospectively valuable deposits of other minerals that the operator expects to encounter, and the operator's plans for protecting such resources.

c. The operator's minimum specifications for blowout prevention equipment and diverter systems to be used, including size, pressure rating, configuration, and the testing procedure and frequency. Blowout prevention equipment must meet the minimum standards outlined in Order 2.

d. The operator's proposed casing program, including size, grade, weight, type of thread and coupling, the setting depth of each string, and its condition. The operator must include the minimum design criteria, including casing loading assumptions and corresponding safety factors for burst, collapse, and tensions (body yield, and joint

strength). The operator must also include the lengths and setting depth of each casing when a tapered casing string is proposed. The hole size for each section of hole drilled must be included. Special casing designs such as the use of coiled tubing or expandable casing may necessitate additional information.

e. The estimated amount and type(s) of cement expected to be used in the setting of each casing string. If stage cementing will be used, provide the setting depth of the stage tool(s) and amount and type of cement, including additives, to be used for each stage. Provide the yield of each cement slurry and the expected top of cement, with excess, for each cemented string or stage.

f. Type and characteristics of the proposed circulating medium or mediums proposed for the drilling of each well bore section, the quantities and types of mud and weighting material to be maintained, and the monitoring equipment to be used on the circulating system. The operator must submit the following information when air or gas drilling is proposed:

- Length, size, and location of the blooie line, including the gas ignition and dust suppression systems,
- Location and capacity of the compressor equipment, including safety devices, the distance from the well bore, and location on the drill site, and
- Anticipated amounts, types, and other characteristics as defined in this Section, of the stand-by mud or kill fluid and associated circulating equipment.

g. The testing, logging, and coring procedures proposed, including drill stem testing procedures, equipment, and safety measures.

h. The expected bottom-hole pressure and any anticipated abnormal pressures, temperatures, or potential hazards that the operator expects to encounter, such as lost circulation and hydrogen sulfide (see Onshore Oil and Gas Order Number 6 (55 FR 48958) for information on hydrogen sulfide operations). A description of the operator's plans for mitigating such hazards must be included.

i. Any other facets of the proposed operation that the operator would like BLM to consider in reviewing the application. Examples include, but are not limited to:

- For directional wells include proposed directional design, plan view and vertical section in true vertical and measured depths,
- Horizontal drilling, and
- Coil tubing operations.

### 3. Surface Use Plan of Operations

With each copy of Form 3160-3, the operator must submit to BLM a Surface Use Plan of Operations. The Surface Use Plan of Operations must:

- Describe the access road(s) and drill pad, the construction methods that the operator plans to use, and the proposed means for containment and disposal of all waste materials,
- Provide for safe operations, adequate protection of surface resources, groundwater, and other environmental components,
- Include adequate measures for stabilization and reclamation of disturbed lands, and

- Where the surface is privately owned, include a certification of surface owner agreement or an adequate bond, as described in Section VI. of this Order.

The Surface Use Plan of Operations must describe any best management practices the operator plans to use or is required to use.

All maps that are included in the Surface Use Plan of Operations must be of a scale no smaller than 1:24,000, unless otherwise stated below. Geospatial vector and raster data must include appropriate attributes and metadata. Georeferenced raster images must be from the same source as hardcopy plats and maps submitted in the APD package.

Maps, plats, and narrative descriptions must include the following:

a. Existing Roads: The operator must submit a legible map such as a highway or county road, United States Geological Survey (USGS) topographic, Alaska Borough, or other such map that shows the proposed well site and access route to the proposed well in relation to a town, village, or other locatable public access point.

(1) The operator must improve or maintain existing roads in a condition the same as or better than before operations began. The operator must provide any plans for improvement and/or maintenance of existing roads. The information provided by the operator for construction and use of roads will be used by BLM for any Right-of-Way application, as described in Section V. of this Order. The operator may use existing terrain and two-track trails, where appropriate, to assure environmental protection. The operator should consider using best management practices in improving or maintaining existing roads.

(2) The operator may use existing roads under the jurisdiction of the FS for access if they meet the transportation objectives of the FS. When access involves the use of existing roads, the FS may require that the operator contribute to road maintenance. This is usually authorized by a Special Use Authorization or a joint road use agreement. The FS will charge the operator a pro rata share of the costs of road maintenance and improvement, based upon the anticipated use of the road.

Information required by the paragraphs that follow that relate to the Surface Use Plan of Operations also may be shown on this map, if appropriately labeled, or on a separate plat or map.

b. New or Reconstructed Access Roads. The operator must identify on a map or plat all permanent and temporary access roads that it plans to construct or reconstruct in connection with the drilling of the proposed well. Locations of all existing and proposed road structures (culverts, bridges, low water crossings, etc.) must be shown. The proposed route to the proposed drill site must be shown, including distances from the point where the access route exits established roads. All permanent and temporary access roads must be located and designed to meet the applicable standards of the appropriate Surface Managing Entity, and be consistent with the needs of the operator. Final route location may be made by the Surface Managing Entity at the time of the onsite inspection or during approval of the APD.

The operator should consider using best management practices in designing road construction.

The operator must design roads based upon the class or type of road, the safety requirements, traffic characteristics, environmental conditions, and the vehicles the road is expected to carry. The operator must describe for all road construction or reconstruction:

- Road width,
- Maximum grade,
- Crown design,
- Turnouts,
- Drainage and ditch design,
- On and off site erosion control,
- Re-vegetation of disturbed areas,
- Location and size of culverts and/or bridges,
- Fence cuts and/or cattleguards,
- Major cuts and fills,
- Source and storage sites of topsoil, and
- Type of surfacing materials, if any will be used.

c. Location of Existing Wells: The operator must include a map or plat and geospatial database that includes all known wells, regardless of status, within a 1-mile radius of the proposed location.

d. Location of Existing and/or Proposed Production Facilities: The operator must include a plat diagram and geospatial database of facilities planned either on or off the well pad that shows, to the extent known or anticipated, the location of all production facilities and lines likely to be installed if the well is successfully completed for production.

The map and geospatial database must show and differentiate between proposed and existing flow lines, overhead and buried power lines, and water lines. If facilities will be located on the well pad, the information should be consistent with the layout provided in item i. of this Section.

The operator must show the dimensions of the facility layouts for all new construction. This information may be used by BLM or the FS for Right-of-Way or Special Use Authorization application information, as specified in Section V. of this Order.

If the operator has not developed information regarding production facilities, it may defer submission of that information until a production well is completed, in which case the operator will follow the procedures in Section VIII. of this Order. However, for purposes of NEPA analysis, BLM will need a reasonable estimate of the facilities to be employed.

e. Location and Types of Water Supply: Information concerning water supply, such as rivers, creeks, springs, lakes, ponds, and wells, may be shown by quarter-quarter section on a map or plat, or may be described in writing. The operator must identify the source, access route, and transportation method for all water anticipated for use in drilling the proposed well. The operator must describe any newly constructed or reconstructed access roads crossing Federal or Indian lands that are needed to haul the water as provided in item b. of this Section. The operator must indicate if it plans to drill a water supply well on the lease and, if so, the operator must describe the location,

construction details, and expected production requirements, including a description of how water will be transported and procedures for well abandonment.

f. **Construction Materials:** The operator must state the character and intended use of all construction materials, such as sand, gravel, stone, and soil material. If these materials are Federally-owned, the proposed source must be shown on a quarter-quarter section either of a map or plat, or in a written description. See 43 CFR 3602.33 for additional guidance.

The affected Surface Managing Entity or private or Indian mineral materials owner must be contacted and agreement reached on the use of mineral materials before those mineral materials are used.

g. **Methods for Handling Waste:** The Surface Use Plan of Operations must contain a written description of the methods and locations proposed for safe containment and disposal of each type of waste material (*e.g.*, cuttings, garbage, salts, chemicals, sewage, etc.) that results from drilling the proposed well. Likewise, the narrative must include plans for the eventual disposal of drilling fluids and any produced oil or water recovered during testing operations. The operator must describe plans for the construction and lining, if necessary, of the reserve pit.

h. **Ancillary Facilities:** The operator must identify the location and construction methods and materials for all anticipated ancillary facilities such as camps, airstrips, and staging areas on a map or plat. The operator must stake on the ground the approximate center of proposed camps and the centerline of airstrips. If the ancillary facilities are located off-lease, depending on Surface Managing Entity policy, BLM or the FS may require the operator to obtain an additional authorization, such as a Right-of-Way or Special Use Authorization.

i. **Well Site Layout:** The plat and geospatial database must have an arrow indicating the north direction. Plats and geospatial database with cuts and fills must be surveyed, designed, drawn, digitized, and certified by licensed professional surveyors or engineers. The operator must submit a plat of a scale of not less than 1 inch = 50 feet showing:

- The proposed drill pad,
- Reserve pit/blooiie line/flare pit location,
- Access road entry points and their

approximate location with respect to topographic features, along with cross section diagrams of the drill pad, and

- The reserve pit showing all cuts and fills and the relation to topography.

The plat and geospatial database must also include the approximate proposed location and orientation of the:

- Drilling rig,
- Dikes and ditches to be constructed, and
- Topsoil and/or spoil material stockpiles.

j. **Plans for Surface Reclamation:** The operator must submit a plan for the surface reclamation or stabilization of all disturbed areas. This plan must address interim (during production) reclamation for the area of the well pad not needed for production, as well as final abandonment of the well location. Such plans must include, as appropriate:

- Configuration of the reshaped topography,

- Drainage systems,
- Segregation of spoil materials,
- Surface manipulations,
- Back fill requirements,
- Proposals for pit/sump closures,
- Redistribution of topsoil,
- Soil treatments,
- Seeding or other steps to reestablish vegetation,
- Weed control, and
- Practices necessary to reclaim all disturbed areas, including any access roads and pipelines.

The operator may amend this reclamation plan at the time of abandonment. Further details for reclamation are contained in Section XI. of this Order.

k. **Surface Ownership:** The operator must indicate the surface ownership at the well location, and of all lands crossed by roads that the operator plans to construct or upgrade, including, if known, the name of the agency or owner, phone number, and address.

**Other Information:** The operator must include other information required by applicable orders and notices (43 CFR 3162.3–1(d)–(4)). When an integrated pest management program is needed for weed or insect control, the operator must coordinate plans with state or local management agencies and include the pest management program in the Surface Use Plan of Operations. BLM also encourages the operator to submit any additional information that may be helpful in processing the application.

#### 4. Master Development Plans

An operator may elect to submit a Master Development Plan addressing two or more APDs that share a common drilling plan, Surface Use Plan of Operations, and plans for future development and production. Submitting a Master Development Plan facilitates early planning, orderly development, and the cumulative effects analysis for all the APDs expected in a developing field. Approval of a Master Development Plan constitutes approval of all of the APDs submitted with the Plan. Processing of a Master Development Plan follows the processes in Section III.C.2. of this Order. After the Master Development Plan is approved, subsequent APDs can reference the Master Development Plan in future applications. Therefore, an approved Master Development Plan results in timelier processing of subsequent APDs. Each subsequent proposed well must have a survey plat and an APD (Form 3160–3) that references the Master Development Plan and any specific variations for that well.

#### 5. Bonding

(a) Most bonding needs for oil and gas operations on Federal leases are discussed in 43 CFR subpart 3104. The operator must obtain a bond in its own name as principal, or a bond in the name of the lessee or sublessee. If the operator uses the lessee's or sublessee's bond, the operator must furnish a rider (consent of surety and principal) that includes the operator under the coverage of the bond. The operator must specify on the APD, Form 3160–3, the type of bond and bond number under which the operations will be conducted.

For Indian oil and gas, the appropriate provisions at 25 CFR part 200, Subchapter I, govern bonding.

Under the regulations at 43 CFR 3104.5 and 36 CFR 228.109, BLM or the FS may require additional bond coverage for specific APDs. Other factors that BLM or the FS may consider include:

- History of previous violations,
- Location and depth of wells,
- The total number of wells involved,
- The age and production capability of the field, and
- Unique environmental issues.

These bonds may be in addition to any statewide, nationwide, or separate lease bond already applicable to the lease. In determining the bond amount, BLM may consider impacts of activities on both Federal and nonfederal lands required to develop the lease that impact lands, waters, and other resources off the lease.

Separate bonds may be required for associated Rights-of-Way and/or Special Use Authorizations that authorize activities not covered by the approved APD.

(b) On Federal leases, operators may request a phased release of an individual lease bond. BLM will grant this reduction only if the operator:

- Has satisfied the terms and conditions in the plan for surface reclamation for that particular operation, and
- No longer has any down-hole liability.

If appropriate, BLM may reduce the bond in the amount requested by the appropriate Surface Managing Entity. The FS also may reduce bonds it requires (but not BLM-required bonds). BLM and the FS will base the amount of the bond reduction on a calculation of the sum that is sufficient to cover the remaining operations and abandonment, including reclamation, as authorized by the Surface Use Plan of Operations.

#### 6. Operator Certification

The operator must include its name, address, and telephone number, and the same information for its field representative, in the APD package. The following certification must carry the operator's original signature or meet BLM standards for electronic commerce:

I hereby certify that I, or someone under my direct supervision, have inspected the drill site and access route proposed herein; that I am familiar with the conditions which currently exist; that I have full knowledge of state and Federal laws applicable to this operation; that the statements made in this APD package are, to the best of my knowledge, true and correct; and that the work associated with the operations proposed herein will be performed in conformity with this APD package and the terms and conditions under which it is approved. I also certify that I, or the company I represent, am responsible for the operations conducted under this application. Bond coverage is provided under BLM/BIA bond # \_\_\_\_\_. These statements are subject to the provisions of 18 U.S.C. 1001 for the filing of false statements.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.  
Name \_\_\_\_\_

Position Title \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone \_\_\_\_\_  
 Field representative (if not above signatory).  
 Address (if different from above). \_\_\_\_\_  
 Telephone (if different from above). \_\_\_\_\_

Agents not directly employed by the operator must submit a letter from the operator authorizing that agent to act or file this application on their behalf.

#### F. Notice of Staking Option

Before filing an APD or Master Development Plan, the operator may file a Notice of Staking with BLM. The purpose of the Notice of Staking is to provide the operator with an opportunity to gather information to better address site-specific resource concerns before preparing the APD package. This may expedite approval of the APD. Attachment I, Sample Format for Notice of Staking, provides the information for the Notice of Staking option.

For Federal lands managed by other Surface Managing Entities, BLM will provide a copy of the Notice of Staking to the appropriate Surface Managing Entity office. In Alaska, when a subsistence stipulation is part of the lease, the operator must also send a copy of the Notice of Staking to the appropriate Borough and/or Native Regional or Village Corporation.

Within 10 days of receiving the Notice of Staking, BLM or the FS will review it for completeness and schedule a date for the onsite inspection. The onsite inspection will be conducted as soon as weather and other conditions permit. The operator must complete staking of the proposed drill pad and ancillary facilities, and flagging of new or reconstructed access routes, before the onsite inspection. The staking must include a center stake for the proposed well, two reference stakes, and a flagged access road centerline. Staking activities are considered casual use unless the particular activity is likely to cause more than negligible disturbance or damage. Off-road vehicular use is casual use unless, in a particular case, it is likely to cause more than negligible disturbance or damage. Before APD approval, the operator must submit a complete survey as described in Section III. E. of this Order.

If the surface is privately owned, the operator must furnish the name, address, and telephone number of the surface owner if known. The BLM will invite the surface owner to participate in the onsite inspection. Within 7 days of the onsite inspection, all parties, including the Surface Management Entity, will jointly develop a list of resource concerns that the operator must address in the APD. Surface owner concerns will be considered to the extent practical within the law. Failure to submit an APD within 60 days of the onsite inspection will result in the Notice of Staking being returned to the operator.

#### G. Approval of APDs

(a)(1) Except for NFS lands, BLM has the lead responsibility for completing the environmental review process.

(2) BLM cannot approve an APD or Master Development Plan until it complies with

certain other laws and regulations including NEPA, the National Historic Preservation Act, and the Endangered Species Act. BLM must document that the needed reviews have been adequately conducted. In some cases, operators conduct these reviews, but BLM remains responsible for their scope and content and makes its own evaluation of the environmental issues, as required by 40 CFR 1506.5(b).

(3) The approved APD will contain Conditions of Approval that reflect necessary mitigation measures, if necessary.

(4) BLM will establish the terms and Conditions of Approval for both the APD and any associated Right-of-Way when the application is approved.

(b) For NFS lands, the FS will establish the terms and Conditions of Approval for both the Surface Use Plan of Operations and any associated Surface Use Authorization.

After the FS notifies BLM it has approved a Surface Use Plan of Operations on NFS lands, BLM must approve the APD before the operator may begin any surface-disturbing activity. BLM will not approve an APD until it is complete.

(c) On Indian lands, BIA has responsibility for approving Rights-of-Way. In these cases, the BLM will be a cooperating or co-lead agency for NEPA compliance.

The responsible agency will incorporate any mitigation requirements, identified through the APD review and associated NEPA and related analyses, as Conditions of Approval to the APD. In accordance with 43 CFR 3101.1–2 and 36 CFR 228.107, the BLM or the FS may require reasonable mitigation measures to ensure that the proposed operations minimize adverse impacts to other resources, uses, and users, consistent with granted lease rights.

#### IV. General Operating Requirements

##### Operator Responsibilities

In the APD package, the operator must describe or show, as set forth in this Order, the procedures, equipment, and materials to be used in the proposed operations. The operator must conduct operations to minimize adverse effects to surface and subsurface resources, prevent unnecessary surface disturbance, and conform with currently available technology and practice. While compliance with certain statutes, such as NEPA, the National Historic Preservation Act, and the Endangered Species Act, are Federal responsibilities, the operator may choose to conduct inventories and provide other supporting documentation to meet these requirements. The inventories and other work may require entering the lease and adjacent lands before approval of the APD. As in Staking and Surveying, the operator is urged to contact the Surface Managing Entity before entry upon the lands for these purposes.

The operator can not commence either drilling operations or preliminary construction activities before BLM's approval of the APD. Operators are responsible for their contractor's and subcontractor's compliance with the requirements of the approved APD and/or plan. Drilling without approval or causing surface disturbance without approval is a violation of 43 CFR

3162.3–1(c) and is subject to an immediate daily assessment under 43 CFR 3163.1(b)(2).

The operator must comply with the provisions of the approved APD, and applicable laws, regulations, Orders, and notices to lessees, including, but not limited to, those that address:

a. *Cultural and Historic Resources.* If historic or archaeological materials are uncovered during construction, the operator must immediately stop work that might further disturb such materials, and contact BLM and, if appropriate, the FS or other Surface Managing Entity. BLM or the FS will inform the operator within 7 days as to whether the materials appear eligible for listing on the National Register of Historic Places.

The operator is responsible for recording the location of any historic or archaeological resource that is discovered as a result of the operator's actions, even if the operator decides to relocate operations to avoid further costs to mitigate the site. The operator also is responsible for stabilizing the exposed cultural material if the operator created an unstable condition that must be addressed immediately. BLM, the FS, or other appropriate Surface Managing Entity will assume responsibility for further work related to the historic or archaeological site.

If the operator does not relocate, the operator is responsible for mitigation and stabilization costs and BLM, the FS, or appropriate Surface Managing Entity will provide technical and procedural guidelines for conducting mitigation. The operator may resume construction when BLM or the FS verifies that the operator has completed the required mitigation. Relocation of activities may subject the proposal to additional environmental review. Therefore, if the presence of such sites is suspected, the operator may want to submit alternate locations for advance approval before starting construction.

b. *Endangered Species Act.* To comply with the Endangered Species Act, as amended (16 U.S.C. 1531, *et seq.*), and its implementing regulations (50 CFR part 402), the operator must conduct all operations to avoid jeopardizing protected fisheries, wildlife, plants, and their habitats.

c. *Watershed Protection.* Except as otherwise provided in an approved Surface Use Plan of Operations, the operator must not conduct operations in areas subject to mass soil movement, riparian areas, floodplains, lakeshores, and/or wetlands. The operator also must take measures to minimize or prevent erosion and sediment production. Such measures may include, but are not limited to:

- Avoiding steep slopes and excessive land clearing when siting structures, facilities, and other improvements, and
- Temporarily suspending operations when frozen ground, thawing, or other weather-related conditions would cause otherwise avoidable or excessive impacts.

d. *Safety Measures.* The operator must maintain structures, facilities, improvements, and equipment in a safe condition in accordance with the approved APD. The operator must also take appropriate measures as specified in Orders and Notices to Lessees

and Operators to protect the public from any hazardous conditions resulting from operations.

In the event of an emergency, the operator may take immediate action without prior Surface Managing Entity approval to safeguard life or to prevent significant environmental degradation. BLM or the FS must receive notification of the emergency situation and the remedial action taken by the operator as soon as possible, but not later than 24 hours after the emergency occurred. If the emergency involves surface resources on Surface Managing Entity lands, the operator must notify the Surface Managing Entity within 24 hours. Upon conclusion of the emergency, BLM or the FS, where appropriate, will review the incident and take appropriate action. If the emergency only affected drilling operations and had no surface impacts, only BLM must be notified.

(e) *Completion Reports.* Within 30 days after the well completion, the lessee or operator must submit to BLM two copies of Form 3160-4, Well Completion or Recompletion Report and Log. Well logs may be submitted to BLM in an electronic format such as “.LAS” format. Surface and bottom hole locations must be in latitude and longitude.

#### **V. Rights-of-Way and Special Use Authorizations**

BLM or the FS will notify the operator of any additional Rights-of-Way, Special Use Authorizations, licenses, or other permits that are needed for roads and support facilities for drilling or off-lease access. This will normally occur at the time the operator submits the APD or Notice of Staking package, or Sundry Notice, or during the onsite inspection.

BLM or the FS, as appropriate, will approve or accept on-lease activities that are associated with actions proposed in the APD or Sundry Notice and that will occur on the lease as part of the APD or Sundry Notice. These actions do not require a Right-of-Way or Special Use Authorization. For pipeline Rights-of-Way crossing lands under the jurisdiction of two or more Federal Surface Managing Entities, except lands in the NPS or Indian lands, applications should be submitted to BLM. Refer to 43 CFR parts 2800 and 2880 for guidance on BLM Right-of-Ways and 36 CFR part 251 for guidance on FS Special Use Authorizations.

A. *Rights-of-Way (BLM).* For BLM lands, the APD package may serve as the supporting document for the Right-of-Way application in lieu of a Right-of-Way plan of development. Any additional information, specified in 43 CFR parts 2800 and 2880, will be required in order to process the Right-of-Way.

BLM will notify the operator within 10 days of receipt of a Notice of Staking, APD, or other notification if any parts of the project require a Right-of-Way. This information may be submitted by the operator with the APD package if the Notice of Staking option has been used.

B. *Special Use Authorizations (FS)* (36 CFR 251 Subpart B). On NFS lands, uses directly related to the drilling and production of a well (e.g., an access road off-lease or crew camp, or connecting pipeline to a gathering

system), will be incorporated into the approved Surface Use Plan of Operations, rather than a separate Special Use Authorization. When a Special Use Authorization is required, the Surface Use Plan of Operations may serve as the application for the Special Use Authorization if the facility for which a Special Use Authorization is required is adequately described. Conditions regulating the authorized use may be imposed to protect the public interest, to ensure compatibility with other NFS lands programs and activities, and to comply with directions provided in the Forest Land and Resources Management Plan. The Special Use Authorization requires payment of an annual fee in advance, commensurate with the fair market value of the rights or privileges authorized, except where otherwise authorized by statute or regulation. A Special Use Authorization will include terms and conditions (36 CFR 251.56) and may require a specific reclamation plan or incorporate applicable parts of the Surface Use Plan of Operations reclamation plan by reference.

#### **VI. Operating on Lands With Private/State Surface and Federal or Indian Oil and Gas**

When authorizing lease operations on split estate lands where the surface is not Federally-owned and the oil and gas is Federal or Indian, BLM must comply with NEPA, the National Historic Preservation Act, the Endangered Species Act, and related Federal statutes. For split estate lands within FS administrative boundaries, BLM has the lead responsibility, unless there is a local BLM/FS agreement that gives the FS this responsibility. For any split estate involving Indian lands, refer to Section VII.B. of this Order.

The operator must make a good faith effort to notify the private surface owner before entry and obtain an access agreement from the surface owner. The access agreement may include terms or conditions of use, be a waiver, or an agreement for compensation. The operator must certify to BLM that (1) it made a good faith effort to notify the surface owner before entry and (2) that an agreement with the surface owner has been reached or that a good faith effort to reach an agreement failed. If no agreement was reached, the operator must submit an adequate bond to BLM for the benefit of the surface owner sufficient to pay for loss or damages, such as loss of or damage to agriculture, other tangible improvements, or structures, as required by the specific statutory authority under which the surface was patented or the terms of the lease. The minimum acceptable bond amount is \$1,000.

Surface owners have the right to appeal the sufficiency of the bond. Before the approval of the APD, BLM will make a good faith effort to contact the surface owner to assure that they understand their rights of appeal.

The operator must describe the terms of the Surface Owner Agreement, if one was obtained, in sufficient detail in the Surface Use Plan of Operations to enable BLM to evaluate impacts to adjacent off-site Federal and Indian lands and resources and prepare the necessary NEPA documentation. BLM will make the final determination of

appropriate surface use requirements. In doing so, BLM will carefully consider the views of the surface owner and the effect on the surface owner's use of the surface before implementing mitigation measures. The operator must submit the name, address, and phone number of the surface owner, if known. BLM will invite the surface owner to the onsite inspection to assure that their concerns are considered. Surface owner concerns will be considered to the extent that they are consistent with Federal land management policy.

#### **VII. Leases for Indian Oil and Gas**

##### *A. Approval of Operations*

BLM will process APDs, Master Development Plans, and Sundry Notices on Indian tribal and allotted oil and gas leases and Indian Mineral Development Act mineral agreements in a manner similar to Federal leases. However, the approval procedures, including environmental and archaeological clearance procedures, may vary between Reservations depending on tribal ordinances. For processing such applications, BLM considers the tribe to be the Surface Managing Entity for tribal lands and the BIA to be the Surface Managing Entity for allotted lands. Operators are responsible for obtaining any special use or access permits from appropriate BIA and tribal offices. BLM is not required to post for public inspection APDs for minerals subject to Indian leases or agreements.

##### *B. Surface Use*

Where the wellsite and/or access road is proposed on Indian lands, the operator is responsible for entering into a surface use agreement with the Indian tribe or the BIA on behalf of the individual Indian owners. This agreement must specify the requirements for protection of surface resources, mitigation, and reclamation of disturbed areas. The BIA (25 CFR 211.4, 212.4 and 225.4), the tribe, and BLM will develop the Conditions of Approval.

#### **VIII. Subsequent Operations and Sundry Notices**

Subsequent operations must follow 43 CFR part 3160, applicable lease stipulations, and APD Conditions of Approval.

##### *A. Surface Disturbing Operations*

Lessees and operators must submit for BLM or FS approval, an amendment to the approved APD on Form 3160-5 before:

- Undertaking any subsequent new construction outside the approved area of operations, or
- Reconstructing, or altering existing facilities including, but not limited to, roads, emergency pits, firewalls, flowlines, or other production facilities on any lease that will result in additional surface disturbance.

If, at the time the original APD was filed, the lessee or operator elected to defer submitting information under Section III.E.3.d. (Location of Existing and/or Proposed Facilities) of this Order, the lessee or operator must supply this information before construction and installation of the facilities. BLM, in consultation with any other involved Surface Managing Entity, may

require a field inspection before approving the proposal. The lessee or operator may not begin construction until BLM approves the proposed plan in writing.

#### **B. Emergency Repairs**

Lessees or operators may undertake emergency repairs without prior approval if they promptly notify BLM. Lessees or operators must submit sufficient information to BLM or the FS to permit a proper evaluation of any:

- Resulting surface disturbing activities, or
- Planned accommodations necessary to mitigate potential adverse environmental effects.

### **IX. Well Conversions**

#### **(a) Conversion to an Injection Well**

When subsequent operations will result in a well being converted to a Class II injection well (*i.e.*, for disposal of produced water, oil and gas production enhancement, or underground storage of hydrocarbons), the operator must file with the appropriate BLM office and the Surface Managing Entity a Sundry Notice, Notice of Intent to Convert to Injection on Form 3160–5. BLM, and the Surface Managing Entity, if appropriate, will review the information to ensure its technical and administrative adequacy. Following the review, BLM, and the Surface Managing Entity, where applicable, will decide upon the approval or disapproval of the application based upon relevant laws and regulations and the circumstances (*e.g.*, well used for lease or non-lease operations, surface ownership, and protection of subsurface mineral ownership). BLM will determine if a Right-of-Way or Special Use Authorization and additional bonding are necessary and notify the operator.

#### **(b) Conversion to a Water Supply Well**

In cases where the Surface Managing Entity desires to acquire an oil and gas well and convert it to a water supply well or acquire a water supply well that was drilled by the operator to support lease operations, the Surface Managing Entity must inform the appropriate BLM office of its intent before the approval of the APD in the case of a dry hole and no later than the time a Notice of Intent to Abandon is submitted for a depleted production well. The operator must abandon the well according to BLM instructions, and must complete the surface cleanup and reclamation, in conjunction with the approved APD, Surface Use Plan of Operations, or Notice of Intent to Abandon, if BLM or the FS require it. The Surface Managing Entity must reach agreement with the operator as to the satisfactory completion of reclamation operations before BLM will approve any abandonment or reclamation. BLM approval of the partial abandonment under this section, completion of any required reclamation operations, and the signed release agreement will relieve the operator of further obligation for the well.

### **X. Variances**

The operator may make a written request to the agency with jurisdiction to request a variance from this Order. The operator may include the request in the APD package. A

variance from the requirements of this Order does not constitute a variance to provisions of other regulations, laws, or orders. When BLM is the decision maker on a request for a variance, the decision whether to grant or deny the variance request is entirely within BLM's discretion. The decision is not subject to administrative appeals either to the State Director or pursuant to 43 CFR part 4.

An operator may also request that BLM waive, except or modify a lease stipulation for a Federal lease. An exception is a one-time waiver. In the case of Federal leases, a request to waive, except or modify a stipulation should also include information demonstrating that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or that the proposed operation would not cause unacceptable impacts.

When the waiver, exception or modification is substantial, the proposed waiver, exception or modification is subject to public review for thirty days. Prior to such public review, the BLM, and when applicable the FS, will post it in their local field office and, when possible, electronically on the internet. When the request is included in the Notice of Staking or APD, the request will be included as part of the well posting under Section III. C. of this Order. Prior to granting a waiver, exception or modification, the BLM will obtain the concurrence or approval of the FS or Federal surface management entity. Decisions on such waivers, exceptions or modifications are subject to administrative review by the State Director and thereafter appeal pursuant to 43 CFR Part 4.

After drilling has commenced, the BLM and FS may consider verbal requests for variances. However, the operator must submit a written notice within 7 days after the verbal request. BLM and the FS will confirm in writing any verbal approval. Decisions on waivers, exceptions or modifications submitted after drilling has commenced are final for the Department and not subject to administrative review by the State Director or pursuant to 43 CFR Part 4.

### **XI. Abandonment**

In accordance with the requirements of 43 CFR 3162.3–4, before starting abandonment operations the operator must submit a Notice of Intent to Abandon on Sundry Notices and Reports Form 3160–5. If the operator proposes to modify the plans for surface reclamation approved at the APD stage, the operator must attach these modifications to the Notice of Intent to Abandon.

#### **A. Plugging**

The operator must obtain BLM approval for the plugging of the well by submitting a Notice of Intent to Abandon. In the case of dry holes, drilling failures, and in emergency situations, verbal approval for plugging may be obtained from BLM, with the Notice of Intent to Abandon promptly submitted as written confirmation. Within 30 days following completion of well plugging, the operator must file with BLM a Subsequent Report of Plug and Abandon, using Sundry Notices and Reports Form 3160–5. For depleted production wells, the operator must

submit a Notice of Intent to Abandon in advance of plugging.

#### **B. Reclamation**

Plans for surface reclamation are a part of the Surface Use Plan of Operations, as specified in Section III.E.3.j., and must be designed to return the disturbed area to productive use and to meet the objectives of the land and resource management plan. If the operator proposes to modify the plans for surface reclamation approved at the APD stage, the operator must attach these modifications to the Subsequent Report of Plug and Abandon using Sundry Notices and Reports Form 3160–5.

For wells not having an approved plan for surface reclamation, operators must submit a proposal describing the procedures to be followed for complete abandonment, including a map showing the disturbed area and roads to be reclaimed. The operator must submit the request to BLM. BLM will forward the request to the FS or other Surface Managing Entity, if appropriate. Neither BLM nor the FS will approve the complete abandonment of a well if the Surface Managing Entity commits to acquiring the well for water use purposes. The party acquiring the well assumes liability for the well.

Earthwork for intermediate and final reclamation must be completed within 6 months of well completion or well plugging (weather permitting). All pads, pits, and roads must be reclaimed to a satisfactorily revegetated, safe, and stable condition, unless an agreement is made with the landowner or Surface Managing Entity to keep the road or pad in place. Pits containing fluid must not be breached (cut) and pit fluids must be removed or solidified before backfilling. Pits may be allowed to air dry subject to BLM or FS approval, but the use of chemicals to aid in fluid evaporation, stabilization, or solidification must have prior BLM or FS approval. Seeding or other activities to reestablish vegetation must be completed within the time period approved by BLM or the FS.

Upon completion of reclamation operations, the lessee or operator must notify BLM or the FS using Form 3160–5, Final Abandonment Notice, when the location is ready for inspection. Final abandonment will not be approved until the surface reclamation work required in the Surface Use Plan of Operations or Subsequent Report of Plug and Abandon has been completed to the satisfaction of BLM or the FS and Surface Managing Entity, if appropriate.

### **XII. Appeal Procedures**

Complete information concerning the review and appeal processes for BLM actions is contained in 43 CFR part 4 and subpart 3165. Incorporation of an FS approved Surface Use Plan of Operations into the approval of an APD or a Master Development Plan is not subject to protest to BLM or appeal to the Interior Board of Land Appeals.

FS decisions approving use of National Forest System Lands are subject to agency appeal procedures, currently in accordance with 36 CFR part 215 or 251. Decisions governing Surface Use Plan of Operations



and Special Use Authorization approvals on NFS lands that involve analysis, documentation, and other requirements of the NEPA are subject to agency appeal procedures, currently under 36 CFR part 215. If an appeal is filed, the FS must respond within 45 days and operations must not occur for 15 days following the date of appeal disposition.

FS regulations at 36 CFR part 251 govern appeals of written decisions of the FS related to issuance, denial, or administration of written instruments to occupy and use NFS lands. A list of the types of written instruments is provided at 36 CFR 251.82, and includes an SUA and Surface Use Plan of Operations related to the authorized use and occupancy of a particular site or area.

The operator may appeal decisions of the BIA under 25 CFR part 2.

#### Attachment I—Sample Format for Notice of Staking

##### *Attachment I—Sample Format for Notice of Staking*

(Not to be used in place of Application for Permit to Drill Form 3160–3)

1. Oil Well, Gas Well, Other (Specify).
2. Name, Address, and Telephone of Operator.
3. Name and Telephone of Specific Contact Person.
4. Surface Location of Well.  
Attach:
  - (a) Sketch showing road entry onto pad, pad dimensions, and reserve pit.
  - (b) Topographical or other acceptable map showing location, access road, and lease boundaries.
- 4a. A map (e.g., a USGS 7½" Quadrangle) of the area including the proposed well location and access road.
5. Lease Number.
6. If Indian, Allottee or Tribe Name.
7. Unit Agreement Name.
8. Well Name and Number.
9. American Petroleum Institute Well Number (if available).
10. Field Name or Wildcat.
11. Section, Township, Range, Meridian; or Block and Survey; or Area.
12. County, Parish, or Borough.
13. State.
14. Name and Depth of Formation
- Objective(s).
15. Estimated Well Depth.
16. For directional or horizontal wells, anticipated bottom hole location, if known.
17. Additional Information (as appropriate; include surface owner's name, address and, if known, telephone).
18. Signed \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**Note:** When the Bureau of Land Management or Forest Service, as appropriate, receives this Notice, the agency will schedule the date of the onsite inspection. You must stake the location and flag the access road before the onsite inspection. Operators should consider the following before the onsite inspection and incorporate these considerations into the Notice of Staking Option, as appropriate:

- (a) H<sub>2</sub>S Potential.
- (b) Cultural Resources (Archeology).

(c) Federal Right-of-Way or Special Use Permit.

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**BILLING CODE 3410–11–P; 4310–84–P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 270

[Docket No. RM 2005–2]

#### Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Supplemental request for comments.

**SUMMARY:** The Interim Chief Copyright Royalty Judge, on behalf of the Copyright Royalty Board of the Library of Congress, is issuing a supplemental request for comments regarding rules for the delivery and format of records of use of sound recordings for statutory licenses under sections 112 and 114 of the Copyright Act.

**DATES:** Written comments should be received no later than August 26, 2005. Reply comments should be received no later than September 16, 2005.

**ADDRESSES:** If hand delivered by a private party, an original and five copies of comments and reply comments must be brought to Room LM–401 of the James Madison Memorial Building, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and other similar overnight delivery services), an original and five copies of comments and reply comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000. If sent by mail (including overnight delivery using United States Postal Service Express Mail), an original and five copies of comments and reply comments must be addressed to: Copyright Royalty Board,

P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

Comments and reply comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

#### FOR FURTHER INFORMATION CONTACT:

William J. Roberts, Jr., Senior Attorney, or Abioye E. Oyewole, CRB Program Specialist. Telephone (202) 707–8380. Telefax: (202) 252–3423.

#### SUPPLEMENTARY INFORMATION:

##### I. Overview

The Copyright Act, as amended by the Digital Millennium Copyright Act (Pub. L. 105–304, 112 Stat. 2860 (1998)), provides a statutory license for digital audio transmissions by certain eligible subscription, nonsubscription, satellite digital audio radio, business establishment and new subscription services (17 U.S.C. 114(f)(4)(A)) and a related “ephemeral” statutory license for the temporary recordings used in those transmissions (17 U.S.C. 112(e)(4)). The statute directs the Librarian of Congress to “establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of use shall be kept and made available by entities performing sound recordings[]” by digital audio transmission. 17 U.S.C. 114(f)(4)(A); see, also 17 U.S.C. 112(e)(4). Avoidance of infringement liability is contingent upon “complying with such notice requirements \* \* \*.” 17 U.S.C. 114(f)(4)(B)(i).

Through extensive prior proceedings, the Librarian has partially “establish[ed] requirements by which copyright owners may receive reasonable notice of the use of their sound recordings,” adopting interim regulations on the types of information that must be kept by digital audio services under 17 U.S.C. 114(f)(4)(A) and 112(e)(4). See, 69 FR 11515 (March 11, 2004). A notice of proposed rulemaking on the issues of delivery and formatting was published on April 27, 2005, by the Copyright Office. 70 FR 21704. Responsibility for the notice and recordkeeping regulations was transferred by Congress to the Copyright Royalty Judges (“CRJs”) by amended sections 114(f)(4)(A) and 112(e)(4) in the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108–419, 118 Stat. 2341 (November 30, 2004), which became effective on May 31, 2005. As anticipated in the April 27, 2005, notice of proposed rulemaking, the rulemaking record, including the comments received on the proposed