DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3130 and 3160

[WO–310–1310–00 24 1A]

RIN 1004–AD13

National Petroleum Reserve, Alaska—Unitization

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new subpart to the Bureau of Land Management's oil and gas regulations implementing new statutory authority allowing operators to form units in the National Petroleum Reserve, Alaska (NPRA). Units allow for the sharing of costs and spreading of revenues among several leases, and allow for production from unit leases to occur without regard to lease or property boundaries. The rule would also allow for waiver, suspension, or reduction of rental or royalty for NPRA leases; allow for suspension of operations and production for NPRA leases; amend existing regulatory language to set the primary lease term for an NPRA lease at 10 years. Current regulations allow 10 years, or a shorter term if it is in the notice of sale; and add a new subpart to the NPRA regulations on subsurface storage agreements. Subsurface storage agreements allow operators to store gas in existing geologic structures on Federal lands.

This proposal would also make it clear that existing suspension regulations would not apply to the NPRA.

DATES: You must submit your comments to BLM at the appropriate address below on or before June 26, 2000. BLM will not necessarily consider any comments received after the above date in making its decisions on the final rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240.

Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, D.C. 20036.

Internet e-mail: WOComment@blm.gov. (Include ''Attn: AD13'')

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela at (202) 452–0340, or Ian Senio at (202) 452–5049, or write to Director (630), Bureau of Land Management, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240. Persons who use a telecommunications device for the deaf may contact these persons through the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Comment on the Proposed Rule?

If you wish to comment, you may submit your comments by any one of several methods.

You may mail comments to Director (630), Bureau of Land Management, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240.

You may deliver comments to Room 401, 1620 L Street, NW, Washington, D.C. 20036.

You may also comment via the Internet to WOComment@blm.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: AD13'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at (202) 452–5030.

Please make your written 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.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives 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 Submitted by Others?

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at 1620 L Street, NW, Room 401, Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays.

Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

Why is BLM Proposing This Rule?

Part 3130 of 43 Code of Federal Regulations (CFR) contains the regulations that apply to oil and gas leasing in the National Petroleum Reserve, Alaska (NPRA) authorized under the Naval Petroleum Reserves Production Act of 1976, as amended (the ''Act''), (42 U.S.C. 6501 *et seq.*). Part 3130 does not contain regulations on unitization, suspensions, or waivers of royalty or rental, suspensions of operations and production or subsurface storage of oil and gas. This proposed rule would implement amendments to the Act (see Pub. L. 105–83) authorizing operational activities, including unitization of leases, suspensions or waivers of royalty or rental, the suspension of operation and production for leases in NPRA and subsurface storage agreements.

Is this Rule Related to the Environmental Impact Statement or the Record of Decision to Lease Oil and Gas in the NPRA?

No. BLM completed and made publicly available an Environmental Impact Statement/Integrated Activity Plan (EIS/IAP) regarding oil and gas leasing in the NPRA on August 7, 1998. The Secretary issued a Record of Decision (ROD) for that action on October 7, 1998. This proposal does not address the EIS/IAP or the ROD or any action involved with the actual leasing process, but would cover operational activities carried out under leases issued as a result of that process.

III. The Rule as Proposed

How Would This Rule Change BLM's Oil and Gas Regulations?

The proposed rule applies to operations under Federal oil and gas leases in NPRA and would add a new

subpart allowing the formation of oil and gas units in the NPRA. The rule would also—

(A) Allow for waiver, suspension or reduction of rental or royalty for NPRA leases;

(B) Allow for suspension of operations and production for NPRA leases;

(C) Amend existing regulatory language to set the primary lease term for an NPRA lease at 10 years. Current regulations allow 10 years or a shorter term if it is in the notice of sale;

(D) Add a new subpart to the NPRA regulations on subsurface storage agreements. Subsurface storage agreements allow operators to store gas in existing geologic structures on Federal lands in return for fees; and

(E) Make it clear that existing suspension regulations that preceded the enactment of P.L. 105–83, would no longer apply to the NPRA.

What is Unitization?

Unitization is a means for a group of oil and gas lessees in a given area to share in the risks and costs associated with oil and gas exploration and development and also to share in the possible benefits. Unitization of leases reduces the need for surface disturbing activities by enhancing the likelihood that fewer wells would need to be authorized in order to produce the oil or gas reservoir. The proposed regulations implement statutory changes and are intended to recognize the unique climatic conditions of NPRA, the needs and practices of the oil and gas industry in light of those conditions, and the need to protect natural resources in NPRA.

The Secretary is obligated to protect surface resources within NPRA (*see* 42 U.S.C. 6508). The protection of surface resources includes the protection of subsistence needs of rural residents. This proposal does not directly address subsistence because unitization will not change the obligation to comply with subsistence related stipulations in leases. Please comment on whether these proposed regulations will meet the needs of the public and the industry while protecting the NPRA environment and whether these regulations should specifically address subsistence.

Why is BLM Proposing a Rule on Unitization of Oil and Gas Leases in NPRA?

While there is already a detailed set of regulations governing oil and gas leasing in NPRA in Part 3130 of 43 CFR, there are no regulations allowing for unitization. The proposed rule implements paragraph (8) of section 6508 of the Act that authorizes unitization of NPRA leases.

Is This Proposal Similar to That Proposed in BLM's Earlier Oil and Gas Rulemaking on Unitization?

This proposal closely follows the proposed unit regulations in BLM's proposed comprehensive oil and gas rule published on December 3, 1998, at 63 FR 66840. Those unit regulations would apply on Federal lands in the lower 48 States and Alaska, but not in NPRA. This proposal differs from that proposal where the statute requires differences or where, because of environmental, climatic, or geologic concerns, we determined that rules in NPRA should differ from those applying to other Federal lands. This proposal is also different in that it applies only to exploratory units and would not apply to enhanced or secondary recovery units.

What Are the Major Differences Between This Proposal and the Unit Regulations That Currently Apply to Federal Lands Outside of NPRA?

Increased Flexibility

Like the unit regulations proposed earlier (63 FR 66911), these regulations would increase the flexibility of the unitization process by allowing operators and BLM to negotiate exploration and development terms before entering into a unit agreement. The focus of this process would be to protect the public interest rather than to rely on the model unit agreement contained in existing regulations at 43 CFR subpart 3186, which is currently applicable to Federal lands outside of NPRA.

Up-Front Negotiation and Limited Number of Unit Terms

The primary change to the unitization process that you may be familiar with would be an emphasis on up-front negotiation among the various interest owners and BLM. Operators would be able to use any agreement format in their unit agreement as long as it addressed the following four basic issues: (1) Unit area; (2) Initial and continuing development obligations; (3) Productivity criteria and participating areas; and (4) BLM's ability to set or modify the quantity, rate, and location of development and production.

BLM would accept only a limited number of additional unit agreement terms beyond the mandatory terms. If the unit agreement does not specifically address modifications, they would not be permitted unless all of the parties to the agreement agree. The unit agreement would include all producing intervals unless the unit agreement specifies those producing interval(s) to which it applies.

What Would be the Basis for the Negotiations?

The unit operator and BLM would base the negotiation of unit agreement terms on many factors. These factors may include the history of the area, economics, the number and depth of wells previously drilled in the area, the size of the area, and the cost of the proposed operations and the unique environmental and climatic and geologic conditions in the NPRA.

How Would the Unit Agreement Process Work?

Under the proposed regulations, generally, if you own or lease tracts you could apply to BLM for review of your proposed unit agreement. You and BLM would negotiate the terms of the unit agreement. BLM would review the agreement and determine whether we should approve it. After BLM approves the unit agreement, tracts joining the unit would be committed tracts. BLM would designate a participating area if it found that a well meets the negotiated productivity criteria laid out in the unit agreement. To meet the productivity criteria, a well must have future production potential sufficient to pay for the costs of drilling, completing and operating a unit well. Each participating area would have at least one well meeting the productivity criteria. Participating areas are used to allocate production to committed tracts within the unit. A tract shares in production if there is anywhere within the tract a participating area containing a well that meets the productivity criteria.

When a unit well in a participating area stops producing, the participating area terminates unless there is another unit well that is producing in that participating area. Normally, when the last unit well in the last participating area stops producing and there are no approved drilling or reworking operations on committed tracts, the unit terminates. After unit termination, all committed leases that were part of the unit would return to their individual lease status in effect at the time of termination and would not receive any further benefits of unitization. For example, if a committed Federal lease's primary term expires before unit termination, the Federal lease would terminate when the unit terminates, unless the lease qualifies for extension under current regulations at 43 CFR 3135.1–5. There is no automatic extension of the lease term provided for

Federal leases which have been previously committed to terminated units. Federal leases that have not completed their primary term would continue under their terms.

What Are Participating Areas and How Does This Proposal Treat Them?

Participating areas are used to allocate production from wells in a unit to the tracts committed to the unit and unleased Federal land. A participating area includes the land around a well that meets certain criteria negotiated for and laid out in the agreement. In general, these criteria must show that the production from the well can pay for its operation. You and BLM would negotiate the productivity criteria and the participating area and revision size, and would include these terms in the unit agreement. To establish a participating area, you must prove to BLM that the production from the area you propose to include in the participating area can cover the costs of operating the area.

This proposal would change the current procedure involving the creation and size of initial participating areas and additions to existing participating areas. This rule would provide that the amount of land to be included in any participating area or revision be specified in the unit agreement. Under current procedures that apply to Federal lands outside of NPRA you are not required to specify the amount of land and BLM determines participating area size after a detailed review of production data. Under existing procedure, participating areas include only specific producing intervals. Under this proposal we presume that a participating area includes all producing intervals unless the agreement specifies that it doesn't. An addition to an existing participating area would occur when a new well that meets the productivity criteria defined in the unit agreement is drilled outside of that participating area.

Does This Proposal Require a Plan of Operations?

The obligation in the model unit agreement to drill an exploratory well and subsequent wells under a plan of operations would be replaced with initial and continuing development obligations. Under this proposal, you and BLM would negotiate the initial and continuing development obligations and would include those terms in the unit agreement. These terms would define the number and frequency of wells you plan to drill or operations that would establish new unitized production. You would be required to submit a plan of operations to BLM after you completed initial development obligations that would detail how you plan to develop the area. Under this proposal, the unit would automatically contract (decrease in size) to the existing participating area(s) when you do not meet a continuing development obligation.

Existing regulations that apply to Federal lands outside of NPRA allow five years for drilling and development of the unitized area before automatic elimination would occur for lands not in a participating area. This proposal would not contain the 5-year initial drilling and development period of current regulations applying to Federal lands outside of NPRA. BLM believes this new requirement would increase the potential for oil and gas development by encouraging operators to follow a continuous development program on a schedule appropriate for the area, or risk contraction of the unit area to the participating area(s).

What Are Paying Well Determinations and How Does This Proposal Treat Them?

Under current regulations that apply to Federal lands outside of NPRA, paying well determinations are the basis to authorize the creation of a participating area. Under this proposal, paying well determinations would be replaced with well productivity criteria laid out in the unit agreement. This would allow the unit operator to negotiate criteria that are not tied strictly to well economics. Currently, production must cover the drilling and operating costs attributed to that well. Under this proposal, costs for that well would be considered as part of unit costs and not be required to be covered by production from that well alone. Productivity criteria must be adequate to indicate a well has established future production potential to pay for the cost of drilling, completing, and operating.

Under This Proposal, Is There a Set Time in Which I Must Develop the Entire Unit?

Under existing procedures that apply to Federal lands outside of NPRA, operators are limited to a set time to develop the entire unit. Under the proposed regulations, the unit would not contract as long as development continued at the rate set out in the agreement. Once you meet your initial development obligations (set out in the agreement), all tracts committed to a unit would continue to receive the benefits of unitization as long as the unit is producing oil and gas.

Why is BLM Proposing Rules on Waiver, Suspension, or Reduction of Rental or Royalty?

Recent amendments to the Act made by Public Law 105–83 authorize BLM to approve waiver, suspension, or reduction of rental or royalty for NPRA leases (see paragraph (10) of section 6508 of the Act). In accordance with the Act, BLM would approve these only if they encouraged the greatest ultimate recovery of oil and gas or it was in the interest of conservation. Operators would get the benefit only if they proved to BLM that they could not successfully operate the lease without the benefit. These standards are high because we should take these actions only as a last resort, to save a lease which ''cannot be successfully operated under the terms provided therein.'' (42 U.S.C. 6508).

Why is BLM Proposing a Rule on Suspensions of Operations and Production?

Recent amendments to the Act made by Public Law 105–83 authorize BLM to approve suspensions of operations and production for an NPRA lease. The rule would implement paragraph (10) of section 6508 of the Act that gives BLM the authority to suspend operations and production on NPRA leases. Because of the extreme sensitivity of Alaska's north slope environment, any surface disturbing activity requires a long construction lead-time and careful planning. The lapse of time between the discovery of oil and gas and the connection of that discovery well with transportation facilities is much greater in northern Alaska and is much more expensive than in the lower 48 States.

A lease should not be lost, or the opportunity to develop a new field foregone, simply because a multi-year planning and construction process may be required. It is important that the environment receive maximum protection while providing the lessee, the United States, and the State of Alaska the opportunity to develop new mineral resources. These regulations would allow BLM to grant suspensions of operations and production of unitized leases to protect the surface resources, to promote the greatest ultimate recovery of resources to allow for the careful planning and construction of a transportation system to a new area of discovery, or to mitigate reasonably foreseeable and significant adverse effects on the surface resources.

How Does a Suspension of Operations and Production Affect a Lease?

During the period of the suspension, operations and production would stop. Operators would not be required to pay any rental or royalty during the period of suspension, but neither would they have beneficial use of the lease. Suspensions of operations and production would also extend the term of a suspended lease, and add the period of the suspension to the lease term.

Why is BLM Proposing a Rule on NPRA Lease Extensions?

Recent amendments to the Act made by Public Law 105–83 authorize BLM to approve lease extensions. Paragraph (8) of section 6508 of the Act provides that extensions can only occur by production or by reworking or drilling as approved by the Secretary. However, BLM is charged with administering this statute and has the duty to interpret and implement these provisions. If a very narrow construction is given to the words production, drilling or reworking, the result would be the expenditure of time and money without the opportunity to start operations that would otherwise extend the lease term. Accordingly, the proposed regulations would address the concepts of ''constructive drilling'' and ''constructive reworking operations,'' and recognize demonstrations of diligence in operations as a basis for extension.

What are Subsurface Storage Agreements?

Subsurface storage agreements are agreements between an operator and BLM to store oil or gas on Federal lands in existing geologic structures in return for a fee. Tanks are not installed: The gas is reinjected, and is stored in, a geologic structure that exists naturally. There is very little environmental impact involved in storing oil or gas in this manner. Most times oil or gas is reinjected by existing surface and subsurface operating equipment from prior operations. Existing regulations that apply to Federal lands outside of NPRA allow subsurface storage agreements (see 43 CFR 3105.5). There is a similar need for subsurface storage agreements within the NPRA.

Why is BLM Proposing a Rule on Subsurface Storage Agreements?

Subsurface storage agreements are important for NPRA because they would allow operators to store oil or gas with minimal environmental impact while waiting for distribution. Climatic conditions in NPRA are often severe, making gas storage necessary until it can be distributed.

Are There any Other Changes to Existing Regulations That This Proposal Would Make?

Yes. This rulemaking would make two more minor changes to the NPRA regulations.

1. Fixing the Lease Term at 10 Years

In recent amendments to the Act made by Public Law 105–83, Congress mandated that the initial NPRA lease term be 10 years. These regulations would implement that provision. Under current regulations, the lease term could be less. Longer lease terms in the NPRA are preferable since there are harsh geologic and climatic conditions in the NPRA that make it difficult to operate in that region. Longer lease terms would allow operators additional time to deal with the geologic and climatic conditions in NPRA.

2. Administrative Provision

Existing provisions on suspensions that apply to leases in the lower 48 States would no longer apply to NPRA leases. This proposal would amend existing language in subpart 3160 that cross-references § 3104–3 and make it clear that that provision does not apply to NPRA leases. This amendment is strictly administrative. As discussed above, this proposal would implement statutory authority by adding suspension provisions that apply only to NPRA leases.

IV. Section-by-Section Analysis

Subpart 3130—Oil and Gas Leasing, National Petroleum Reserve, Alaska: General

Section 3130.4–2 would set NPRA lease terms at 10 years. Existing regulations allow lease terms to be less than 10 years if it is in the notice of lease sale. This change was mandated by Congress.

Subpart 3133—Rentals and Royalties

Section 3133.3 would provide for waiver, suspension, or reduction of rental, royalty, or minimum royalty for NPRA leases if it encouraged the greatest ultimate recovery of oil and gas or it was in the interest of conservation. Applicants would be required to prove to BLM that they couldn't operate under their current lease terms without a waiver, suspension, or reduction of rental, royalty, or minimum royalty.

Section 3133.4 would require you to submit to BLM an application and describe in it the relief you are requesting. BLM would also require you to submit the items listed in this section in your application so that BLM can determine if you meet the standards of the regulations.

Subpart 3135—Transfers, Extensions, Consolidations and Suspensions

The suspension of operations and production in this subpart should be distinguished from the suspensions of rental, royalty, or minimum royalty in subpart 3133. Those suspensions relate to payments only and do not relate to suspensions of operations and production contained in this subpart.

Section 3135.2 would describe the circumstances under which BLM would approve a request for a suspension of operations and production on an NPRA lease. BLM would approve suspensions of operations and production if you are prevented from operating your lease for reasons beyond your control, and your request:

(A) Is in the interest of conservation of natural resources. This could include conservation of oil and gas as well as other NPRA resources;

(B) Encourages the greatest ultimate recovery of oil and gas, including the planning and construction of a transportation system to a new area of discovery; or

(C) Mitigates reasonably foreseeable and significantly adverse effects on surface resources.

The suspension stops the running of the lease term and during the period of the suspension you:

(A) Are not required to pay rental or royalty; and

(B) Do not have beneficial use of and may not operate on your lease.

Examples of reasons that BLM might grant a suspension could be related to protection of natural habitat and wildlife, and protection of subsistence needs of rural residents. Please comment on whether the regulation should include specific reasons to support a grant of suspension, and whether additional or different reasons should be the basis supporting a grant of suspension.

Section 3135.3 would provide the suspension application requirements. BLM would require the listed items to determine whether you qualify for a lease suspension.

Sections 3135.4 and 3135.5 would describe the effective date of the suspension and when you should stop paying rental or royalty.

Sections 3135.6 and 3135.7 would state when your suspension terminates and how the termination of the suspension would affect your lease. BLM will terminate suspensions when you begin any operations on your lease, or when BLM determines that the

reason for granting the suspension no longer exists. You must notify BLM at least 24 hours before starting operations on a suspended lease. Once the lease suspension terminates, your rental or minimum royalty obligation resumes. Your lease will be extended by adding the period of the suspension to the term of your lease.

Subpart 3137—Unitization Agreements, National Petroleum Reserve, Alaska

Section 3137.5 would contain a definitions section that includes the terms you need to know to understand this subpart.

This section introduces two terms, *constructive drilling* and *constructive reworking* operations, that would be unique to the NPRA. These terms are important for the extension provisions of §§ 3137.111 through 3137.113 and would allow you to get an extension of a lease in a unit if you prove there are ongoing constructive drilling or reworking operations in the unit. Since oil and gas operations are difficult and expensive in the NPRA, we believe, as we noted in the overview discussion above, that it is reasonable for constructive drilling or reworking operations to extend your lease.

We would use of the term *operating rights* instead of the use of the more universal term ''working interest'' here to be consistent with BLM's proposed Onshore Oil and Gas Leasing and Operations regulations (63 FR 66879) and current regulations that apply to Federal lands outside of NPRA. (see §§ 3100.0–5 and 3160.0–7). Please specifically comment on this definition and how it compares to standard industry usage of this term.

General

Section 3137.10 would explain the benefits to entering into a unitization agreement in the NPRA. One of the major benefits of unitization is that operations or production from one part of the unit meets the development obligations for all leases committed to the unit. You receive the benefits of operations or production, even if the operations are not on, or the production does not occur from, your lease. We give identical benefits to all the tracts in the unit for extensions and wells that meet the productivity requirements laid out in the agreement. As long as one well in the unit has met the productivity criteria, all leases in the unit are extended.

Another benefit of unitization is that operations may occur in the unit without regard to restrictions such as spacing requirements and lease offsets. For example, if there were a 200-foot limit to drilling next to a lease boundary, it would not apply among unitized tracts and you would be able to drill within the 200-foot limit. Finally, since unit operator(s) would be responsible for operations for all unitized tracts, lessees benefit by being able to consolidate operations and reporting requirements.

Application

Sections 3137.20 would describe the format of the unit agreement BLM will accept. BLM would accept any format as long as it protects the public interest, including oil and gas resources and environmental concerns, and includes the mandatory terms required by these regulations.

Section 3137.21 would introduce the basic terms of a unit agreement. It would also cross reference other sections of the regulation whose subject is referenced here. This section would contain a provision that would allow BLM to request additional supporting documentation after reviewing your initial application.

Section 3137.22 would lay out the size and shape requirements for the unit area. Units must be made up of tracts that are contiguous so that unit operations and production could be conducted in an efficient and logical manner. BLM considers this to be the minimum qualification for a tract to be included in a unit area. The unit area must also include at least one NPRA lease since these regulations would not apply if an NPRA lease were not in the unit.

This section would also make it clear that BLM may limit the size and shape of the unit, considering the type, amount and rate of development and production and the location of the oil and gas. BLM would approve reasonable sizes and shapes as long as they comply with the other provisions of this section.

Section 3137.23 would describe what you must submit to BLM in your application. This would include a statement that there are sufficient tracts in the agreement to reasonably operate and develop the unit area. This means that BLM expects unit operators to be able to operate the unit area efficiently without the need for participation in unit operations or production by non-committed parties.

Your application would include a discussion of the reasonably foreseeable and significantly adverse effects on the surface resources of the NPRA. This standard is laid out in paragraph (1) of 42 U.S.C. 6508. This section would also require you to explain how unit operations may reduce impacts compared to individual lease operations. In other words, your unit application must explain how:

(A) Operations under the unit will comply with the environmental, subsistence, archaeological, and historical preservation requirements under laws or regulations; and

(B) The unit operations' impacts on surface resources would be less than those impacts of lease operations were they to be performed individually.

Section 3137.24 would list the reasons BLM would reject a unit agreement application.

BLM would reject a unit application that:

(A) Does not contain the mandatory terms these regulations require, and any additional terms BLM may require you to include;

(B) Proposes a unit operator who has an unsatisfactory record of complying with applicable laws, regulations, the terms of any lease or permit, or the requirements of any notice or order. BLM has determined that only responsible, qualified operators should be allowed to operate a unit in the NPRA. Operators with satisfactory records of compliance are more likely to comply with the terms and conditions of leases and these regulations than those who have unsatisfactory records of compliance. BLM would also reject any unit application that proposes an operator who is not qualified, under any statute or regulation, to operate within NPRA;

(C) Does not conserve natural resources. BLM interprets paragraph (10) of 42 U.S.C. 6508 as establishing this standard. BLM has interpreted ''in the interest of conservation'' from the statute to mean that the unit agreement must conserve natural resources, including oil and gas and other resources in the area of development;

(D) We determined was not in the public interest. BLM would not approve unit applications that do not protect the resources in an oil and gas pool, field, or similar area;

(E) Does not comply with any special conditions in effect for any part of the NPRA that would be affected by the unit or any lease subject to the unit. BLM often imposes special conditions, such as stipulations and conditions of approval, to protect surface and subsurface resources; or

(F) Does not comply with the requirements of this subpart.

Sections 3137.25 and 3137.26 would explain how parties to the unit would know if BLM approves or disapproves the unit agreement and when the unit agreement will become effective. BLM would provide notice to unit operators. The unit operator would be required to

notify in writing all parties to the unit agreement within 30 calendar days of receiving BLM notice. One important reason for this is to notify lessees of when the unit operator began acting on their behalf. A unit agreement is effective the date BLM approves it.

Sections 3137.27 and 3137.28 would explain the effect of other agreements on the unit agreement and whether a unit agreement includes all oil and gas committed to the unit.

This section would make it clear that private agreements between operators, among lessees, or between the operator(s) and lessees do not affect or modify the terms of the BLM approved unit agreement. Likewise, agreements entered into with any other parties, including lease agreements, do not modify unit terms or conditions. However, the unit agreement does not modify Federal lease stipulations.

The regulations would require a unit agreement to include all oil and gas resources of committed tracts unless BLM approves agreement terms to the contrary.

Development

Section 3137.40 and 3137.41 would explain that you must define initial and continuing development obligations in a unit agreement. You and BLM would negotiate the details of these terms before you submit a final application.

Initial development obligations must be such that when you complete them, you will be able to estimate the size and shape of the reservoir within the unit area and understand the geologic conditions existing within the reservoir and unit area. You must complete initial development obligations before beginning continuing development obligations.

Continuing development obligations should promote development within unit areas. BLM has determined that, as a matter of policy, in exchange for the benefits of unitization, operators must commit to development exceeding that of non-unit development in the area surrounding the unit.

Optional Terms

Section 3137.50 would describe the optional terms BLM may allow you to include in your unit agreement if they promote additional development or enhanced production potential. These include optional terms that:

(A) Limit the unit to certain formations;

(B) Allow multiple unit operators; or (C) Allow modifications to the agreement by less than 100% of the parties to the unit.

BLM would also allow other optional terms not listed above if you prove to BLM that they promote the greatest economic recovery of oil and gas.

Section 3137.51 would establish the requirements for multiple unit operators. The unit agreement must explain the conditions under which additional unit operators would be acceptable. For example, a justification for multiple unit operators may be the need for different sets of operations to produce oil and gas with different and distinct characteristics from the same unit. Multiple unit operators may be necessary to have distinct, but not redundant, surface production facilities to handle that production. The unit agreement must also establish the responsibilities of the different operators so that lessees and BLM are informed of who is responsible for what, including bond coverage.

You must also define in the unit agreement the consequences if one or more of the unit operators defaults, such as which operator(s) would be responsible for particular operations in case another operator defaults. Finally, the unit agreement must define which unit operator is responsible for unit obligations not specifically assigned in the unit agreement such as the division of responsibilities for different types of operations that might occur within the same unit.

Section 3137.52 would set out the requirements to allow you to modify the unit agreement. You would be able to modify the unit agreement if:

(A) All current parties (original parties or their successors) agree to the modification; or

(B) You meet the modification provision in the unit agreement. In order to permit you to modify the unit agreement in this manner, the unit agreement must identify which parties, and what percentage of those parties, must consent to each type of modification named in the unit agreement.

Before BLM approves a modification, you must certify that all necessary parties, as spelled out in the unit agreement, have agreed to the modification. Modifications would be effective retroactive to the date you filed a complete modification application.

Unit Agreement Operating Requirements

Section 3137.60 would describe the unit operator's obligations. Operators must:

(A) Comply with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations, and BLM notices and orders; and

(B) Provide evidence of acceptable bonding. The proposal provides that the amount of acceptable bonding would be no less than the sum of the individual Federal bonding requirements for each of the Federal leases committed to the unit.

Evidence of acceptable bonding could include:

(A) A list of the bonds, their identification numbers, and their amounts; and

(B) Certification that the bond amounts are sufficient to cover the proposed unit operations.

Operators who do not comply with this section are not eligible to operate an NPRA unit.

This section would require bonds to be payable to the Secretary of the Interior. This is standard practice for bonding on public lands.

Section 3137.61 would make clear how you can change the unit operator. If you are the new unit operator of an existing unit, you must file statements with BLM that you accept unit obligations and that the required percentage of interest owners according to the unit terms consented to a change of the unit operator. New operators must also file evidence of acceptable bonding. The effective date of the change in the unit operator would be the date BLM approves it.

Section 3137.62 would describe your liabilities as a former unit operator. Former unit operators would be liable for any duties and obligations that accrued before BLM approved a new unit operator.

Section 3137.63 would describe your liabilities as the new unit operator. Liability would be joint and several with the former unit operator. This means that each person who holds an undivided interest in the lease is responsible for the full amount of liability if the other holders of the lease can't satisfy the liability. The new unit operator would have joint and several liability with the record title and operating rights owners for:

(A) Compliance with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations and BLM notices and orders;

(B) Plugging unplugged wells that were drilled and reclaiming unreclaimed facilities that were installed or used before the effective date of the change in unit operators; and

(C) Liabilities that accrue during the time you are the unit operator. Under the proposed regulation, the new unit operator's liability for obligations under

the lease, such as royalties and other payments, would be limited by Section 102(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1712(a).

Section 102(a) of FOGRMA provides that, while a lessee may designate some other person, such as a unit operator, to make payments due to the Government on the lessee's behalf, the designated payer does not thereby become liable to the Government for those payment obligations. A designated payer, such as a unit operator, only has liability to the Government if he is also the owner of the operating rights in a lease or is the record title owner. The statute provides that the operating rights owners are primarily liable to the Government for payment obligations and that owners of record title are secondarily liable if they do not own the operating rights.

Accordingly, the proposed regulation would recognize that a new unit operator's potential liability for the payments due the Government would not be automatic, but would be dependent upon whether he is an operating rights owner or an owner of record title, in accordance with the limitations contained in Section 102(a) of FOGRMA.

Section 3137.64 would set out the requirements for preventing drainage or compensating the Federal Government for it. To prevent uncompensated drainage of oil and gas from unit land by wells on land not subject to the agreement, you must take such measures as BLM determines are necessary. This would include:

(A) Drilling protective wells that are economically feasible. A protective well is considered economically feasible if it is projected to have production in quantities sufficient to pay for the cost of drilling, completing and producing operations;

(B) Paying the Federal Government compensatory royalty for oil or gas lost through drainage from a unit. BLM would determine the amount of compensatory royalty that would cover oil and gas lost through drainage;

(C) Forming other agreements or modifying existing agreements to allow the tracts in the unit to share in production. BLM would agree to this provision only if we determine that the Federal Government is being fairly compensated for drainage; or

(D) Any additional measures that BLM considers necessary to prevent uncompensated drainage.

Development Requirements

Sections 3137.70 would explain:

(A) The requirements to meet initial development obligations; and

(B) What you must submit to BLM after you meet initial development obligations. To meet initial development obligations by the time you agreed to in your unit agreement, you must have:

(1) Drilled the required test well(s) to the primary target. This term would have been negotiated with BLM before you submitted to BLM your complete unit application;

(2) Drilled at least one well that meets the productivity criteria (see the discussion of § 3137.82 for a discussion of productivity criteria); or

(3) Established to BLM's satisfaction that further drilling to meet the productivity criteria is unwarranted or impracticable. BLM would require you to submit information showing that the primary target defined in the unit has been adequately drilled and tested as proof that further drilling is unwarranted or impracticable. This information could include well logs and production test data. If you meet this standard, and BLM agrees that further drilling should not occur, the unit may terminate. Alternatively, if you have a modification provision in your unit agreement, you could submit, for BLM approval, a request to modify the initial development obligations and/or productivity criteria in your unit agreement.

You would be required to submit to BLM certification that you met initial development obligations within 60 calendar days after having done so.

Section 3137.71 would explain the requirements to meet continuing development obligations and would list what kinds of operations BLM would consider to be continuing development. (See the discussion of §§ 3137.40 and 3137.41.) Work you conducted before meeting initial development requirements would not be continuing development. You would be required to submit to BLM, no later than 90 days after meeting initial development obligations, a plan that describes how you will meet continuing development obligations. No later than 90 days after BLM's approval of your plan, you would be required to certify to BLM in writing that you started operations to fulfill continuing development obligations.

Section 3137.72 would explain that you may conduct additional development within or outside a participating area to fulfill continuing development obligations.

Section 3137.73 would explain that a unit contracts if you do not meet a deadline for performing a continuing development obligation. This section would also explain contraction and when it is effective. Contraction means that all areas outside any participating area will be eliminated from the unit and only established participating areas (producing or non-producing, depending on unit terms) remain in the unit. After contraction, any producing wells no longer in the unit would produce oil or gas under the terms of the lease or other agreement (*e.g.,* communitization agreement) under which they are operating. If you do not meet a continuing development obligation before a participating area is established, the unit terminates.

Participating Areas

Sections 3137.80 and 3137.81 would define participating areas and describe their function. Whether an area surrounding a well becomes a participating area depends on whether the well within the unit area meets the productivity criteria set out in the unit agreement. The function of a participating area is to allocate production to each committed tract that is within or partially within the participating area according to that tract's surface acreage within the participating area. Section 3137.80 would require you to delineate a participating area at the time it meets the productivity criteria defined in § 3137.82.

Section 3137.82 would define productivity criteria as the characteristics of a well that warrant including an area (defined in the unit agreement) surrounding the well in a participating area. The criteria would be required to be defined in the unit agreement for each producible interval. Well characteristics include things like the:

(A) Depth of the well;

(B) Geology surrounding the well that might affect drainage from the oil and gas reservoir; and

(C) Area you estimate the well to be draining.

You must be able to determine whether you meet the criteria when the well is drilled and you have completed testing. This means that as soon as you complete testing, it must be evident whether or not the well meets the productivity criteria.

To meet the productivity criteria, you must be able to demonstrate to BLM that the well has sufficient future production potential to pay for the costs of drilling, completing, and operating the well as a *unit well.* This is different from a paying lease well, since those wells need only cover the operating costs on a *lease basis.* A unit benefits from the efficiencies and economics of operating several leases jointly, whereas a non-unit lease must stand on its own.

Section 3137.83 would explain that the first well you drill after unitization that meets the productivity criteria would establish the initial participating area. If that initial participating area contains wells that meet the productivity criteria that existed before BLM approved the unit agreement, the wells will either:

(A) Be added to the participating area if the well is in the same producible interval; or

(B) Establish a separate participating area if the well is in a different producible interval. This would occur unless the unit agreement defines the productivity criteria to include separate producible intervals in a single participating area.

Section 3137.84 would describe what you must submit to BLM to establish an initial or new participating area or add to an existing participating area. You must submit to BLM:

(A) A statement that the well meets the productivity criteria as defined in the unit agreement. BLM may request you to submit information verifying your statement. This could include well logs and production test data.

(B) A map showing the new or revised participating area and acreage. This map should be detailed enough for BLM to determine the participating area boundary and the exact acreage.

(C) An allocation schedule for each participating area that establishes production allocation for each tract and for each record title and operating rights owners in the participating area. This information is necessary to determine proper allocation of production and for royalty purposes.

Section 3137.85 would set the effective date of an initial, new, or revised participating area as the first day of the month in which you complete a well that meets the productivity criteria.

However, this date can't be earlier than the effective date of the unit, even if the well was drilled and met the productivity criteria before BLM approved the unit.

Section 3137.86 would lay out what happens to a participating area when you drill new wells that meet the productivity criteria. The participating area will remain the same, a new participating area will be established, or an existing participating area will be expanded, depending on whether the well is:

(A) Inside or outside the participating area boundaries; and

(B) In the same or different producible interval as an existing well.

Section 3137.87 would describe your responsibilities if there are unleased Federal tracts in a participating area. You must include any unleased Federal tracts in a participating area even though BLM will not share in unit costs. BLM cannot be a party to the unit agreement. However, you must allocate production to the unleased Federal tracts for royalty purposes as if they were committed to the agreement. The Federal Government would receive royalties based on the production allocated to that land in the participating area.

If there are unleased Federal tracts that are leased after the effective date of the unit, you must admit them as of the effective date of the lease. Any time there is a new Federal lease admitted to the unit, you must submit to BLM:

(A) Revised maps;

(B) A new list of committed leases; and

(C) New allocation schedules reflecting introduction of the new lease to the unit.

Section 3137.88 would explain that wells on committed tracts outside any existing participating area that do not meet the productivity criteria would be considered to be non-unit wells, and operations on those wells are non-unit operations. Not later than 60 calendar days after a unit well does not meet the productivity criteria, you must notify BLM and treat the well as a non-unit well. This means that you must conduct operations under the terms of the lease or any other federally approved cooperative agreements such as communitization agreements and drainage compensation agreements but not under the unit terms.

Section 3137.89 would explain how production is allocated from wells that do not meet the productivity criteria. If a well that does not meet the productivity criteria was drilled before the unit was formed, or outside the participating area but still within the unit, production from that well must be allocated on a lease or other agreement basis. If a well was drilled after BLM approved the unit and was completed within an existing participating area, the production from that well becomes part of the participating area production. This is true whether or not the well meets the productivity criteria.

Section 3137.90 would explain that wells on committed tracts outside an existing participating area that do not meet the productivity criteria may be operated by someone other than the unit operator. However, as the unit operator, you must continue to operate wells you drilled after unit formation that do not meet the productivity criteria. You must do this until BLM approves a new operator for those wells.

Section 3137.91 would explain that a well BLM previously determined was a non-unit well (it did not meet the productivity criteria) that now meets the productivity criteria may establish or revise a participating area. You must notify BLM within 60 days of when this occurs and demonstrate to us that the well meets the productivity criteria before you revise an existing participating area or establish a new one. Operators would be required to submit engineering and geologic and geophysical exploration information to prove to BLM that a well meets the productivity criteria.

Section 3137.92 would explain that after contraction under § 3137.73 of this subpart, a participating area terminates 60 calendar days after BLM notifies you that there is insufficient production to meet the operating costs of that production, unless you show that within 60 days after BLM's notification—

(A) Your operations to restore or establish new production are in progress; and

(B) You are diligently pursuing oil and gas production.

Production Allocation

Section 3137.100 would explain how to allocate production when a participating area includes unleased Federal lands as if the unleased Federal lands were leased and committed to the agreement. This protects the Federal interest and ensures that the public is fairly compensated for Federal oil and gas produced.

The obligation to pay the United States for production from unleased Federal lands accrues from the later of the date:

(A) The committed leases in the participating area that includes unleased Federal lands receive a production allocation; or

(B) Federal lands become unleased, whichever is later.

Federal lands that were committed to the unit may become unleased for a variety of reasons; such as BLM determining that the lessee of record is ineligible to hold a lease.

The royalty rate for production from unleased Federal lands in the unit would be the greater of 121/2% or the highest royalty rate of any lease in the unit. This provision would be consistent with how royalty rates are determined for unleased Federal lands in Federal units outside of the NPRA.

Obligations and Extensions

Section 3137.110 would make it clear that nothing in a unit agreement modifies Federal lease stipulations

including lease-specific environmental stipulations.

Section 3137.111 would explain that BLM will extend the primary term of a unit if there is:

(A) Actual production from a well in the unit that meets the productivity criteria; or

(B) Actual or constructive drilling or reworking operations.

These actions should demonstrate to BLM that you expended sufficient effort to explore for oil and gas that should be rewarded with an extension of the unit.

Section 3137.112 would contain a chart that explains that as long as the unit exists:

(A) Production from any unit well that meets the productivity criteria from any tract committed to the unit will extend all leases in the unit as long as that production is occurring;

(B) BLM would approve an extension of up to three years for all leases committed to the unit if you perform actual or constructive drilling or reworking operations on any tract in the unit; and

(C) After an extension for actual or constructive drilling or reworking operations, all leases in the unit would be eligible for an extension of up to three more years if you demonstrate reasonable diligence and reasonable monetary expenditures in performing the approved drilling or reworking operations during the initial extension. If, after the second extension, you still have not drilled a well within the unit that meets the productivity criteria and within the unit there is no producing well that meets the productivity criteria, the unit terminates.

Section 3137.113 would explain that BLM will extend all committed leases if, for reasons beyond your control, you were prevented from starting actual or constructive reworking or drilling operations. You would be eligible for two extensions for a total of six years. You must resume actual or constructive drilling or reworking operations as soon as the reasons that prevented you from starting operations no longer exist. If you do not resume operations, BLM will cancel the extension and the unit would terminate.

Change in Ownership

Section 3137.120 would make it clear that grantees, transferees, and successors in interest of a unitized lease are subject to the terms and conditions of the unit agreement. This is standard practice for BLM-approved units and in the oil and gas industry in general.

Unit Termination

Section 3137.130 would describe the circumstances under which BLM will approve voluntary termination. BLM will approve voluntary termination of the unit any time before the unit operator discovers production that meets the productivity criteria, or the unit operator certifies that at least 75% of the operating rights (working interest) owners on a surface acreage basis agree to the termination. BLM chose 75% of operating rights (working interest) owners as the standard to discourage voluntary unit termination against the will of most of the lessees, and to protect interest owners in the unit.

Section 3137.131 would explain that if the unit terminated before the unit operator met the initial development obligations, BLM's approval of the agreement is revoked. The consequences of this are that lessees forfeit any benefits they may have received as a result of unitization, such as lease extensions and suspensions. Any lease that BLM extended as a result of being committed to the unit would expire unless it qualified for an extension under § 3135.1–5 of this part. Any lease suspension BLM granted as a result of a lease being committed to the unit would be canceled.

Section 3137.132 would explain that a unit automatically terminates if you did not meet a continuing development obligation before any participating area is established. You would have negotiated continuing development obligations with BLM that would be specified in the unit agreement, and as such, BLM will strictly enforce the obligations. The effective date of the termination is the day after you did not meet a continuing development obligation.

Section 3137.133 would explain that a unit terminates when the last participating area of a unit terminates. If there are no participating areas in the unit, it means that there is no production from any well that meets the productivity criteria in the unit area. Consequently, the reason for the unit no longer exists.

Section 3137.134 would explain that when the unit terminates, all committed leases are subject to their original provisions. Any lease that has completed its primary term on or before the unit expires, unless it qualifies for an extension under current § 3135.1–5.

Section 3137.135 would explain that the unit operator must submit to BLM a plan and schedule for mitigating the impact of unit operations within 3 months after unit termination. Operators would be required to describe in detail planned plugging and abandonment and surface restoration operations.

Appeals

Section 3137.150 would explain that any person who is adversely affected by a BLM decision under this subpart may appeal that decision. This section would also cross-reference State Director Review (SDR) regulations that BLM is developing. Details of how the SDR process would work will be in an upcoming proposed rule. Under this proposal, you would be able to request an SDR of decisions BLM issues under these regulations. This section would not become final until the SDR regulations are final.

In the event that these regulations become final before the SDR regulations are final, SDRs would be available for decisions issued under these regulations following the process in existing regulations at § 3165.3(b).

Possible Alternative

Please specifically comment on whether or not the existing regulations in subparts 3180–3183 and the model unit agreement form in subpart 3186 could apply to units in the NPRA in lieu of the unit agreement process we are proposing. We also invite comments on how the model agreement form should be modified to apply to NPRA units.

Due to statutory requirements and policy considerations, such as the difficulties of conducting operations in the NPRA, we believe that if BLM were to decide to use the existing unit agreement regulations, instead of the regulations in this proposal, several sections of the proposal would need to be incorporated into the regulatory process. In addition to the existing regulations on units and the model unit agreement for unproven areas (43 CFR 3186.1), the following sections of the proposal would apply to NPRA units:

- The definitions of constructive drilling and constructive reworking operations in proposed § 3137.5.
- Paragraphs (b) through (e) of proposed § 3137.24, dealing with the reasons BLM would reject a unit application.
- Proposed § 3137.60, which lays out the unit operator's obligations.
- Proposed § 3137.63, describing liabilities of a new unit operator after a change in unit operators.
- Proposed § 3137.112, which addresses lease extensions for actual or constructive drilling operations. The concept in the proposal of ''productivity criteria'' would be replaced with ''paying well'' determinations contained in the existing unit agreement regulations.

• Proposed § 3137.113, which also addresses lease extensions.

• Proposed § 3137.150, which has to do with appeals of decisions under the subpart.

Several provisions of the model form in § 3186.1 would also be modified for NPRA units as follows:

• Replacing the ''Mineral Leasing Act of February 25, 1920, as amended,'' with ''Naval Petroleum Reserves Production Act of 1976, as amended,'' wherever it appears.

• Section 9 of the model form would be modified by removing ''6 months'' from the first sentence of the section and replacing it with a blank. BLM would determine a reasonable time frame in which particular operations would be required to occur. BLM realizes that, due to the more severe climate in NPRA, operations there are more difficult and more time consuming than in the lower 48 and therefore operators may require more than 6 months to establish drilling operations. For the same reasons the same modification would apply to optional section 9a.

• Paragraph 18(g) would be eliminated since that paragraph pertains to and directly quotes from the Mineral Leasing Act, which does not apply to NPRA.

• Sections 7, 8, 9 and 10 of the ''General Guidelines'' would be eliminated. Section 7 would be eliminated since there are no NFS lands in NPRA. Section 8 applies to the Jackson Hole Area of Wyoming only. There are no reclamation lands in NPRA to which section 9 could apply. Finally, there are no existing or planned power sites in the NPRA , so section 10 would be eliminated.

Subpart 3138—Subsurface Storage Agreements

This proposal would add a new subpart to BLM's NPRA leasing regulations dealing with subsurface storage agreements.

Section 3138.10 would make it clear that BLM will allow you to store oil or gas in existing geologic structures on either leased or unleased Federal lands, if you prove to BLM that the storage is necessary to avoid waste or to promote conservation of natural resources, including oil and gas. Under this subpart you would be able to store gas produced from Federal or non-Federal lands.

Section 3138.11 would require you to submit to BLM an application to receive a subsurface storage agreement. In the application you must:

(A) Provide the reason for forming a subsurface storage agreement. This is in addition to the proof required by § 3138.10. For example, your justification could be that you require subsurface storage while awaiting the building of a distribution system or that you require storage for economic reasons, or to avoid waste;

(B) Describe the area you plan to include in the agreement. This should include a legal land description of all Federal or non-Federal leases within the area of the storage agreement;

(C) Describe the formation you plan to use for storage. This should include the standard geologic name or designation, if any, of the reservoir, and the depths at which the formation exists;

(D) Pay proposed storage or rental fees based on the value of the storage, injection, and withdrawal volumes and rental or other income you might generate for letting or subletting the storage area. BLM could approve or disapprove your proposed fee structure or make a counter-proposal;

(E) Pay any royalty payment for oil and gas that you may produce from the formation;

(F) Describe how often and under what circumstances you propose that you and BLM renegotiate fees and payments. For example, this could be based on anticipated changes in the rate of reservoir fill-up or withdrawal from the reservoir;

(G) Propose an effective date and term of the agreement. This should be tied to your justification for the agreement (see A above);

(H) Certify that all owners of mineral rights and lease interests have consented to the gas storage agreement in writing. This is to protect mineral owners' and lessees' mineral rights. BLM will reject subsurface storage agreement applications that do not comply with this provision;

(I) Provide an ownership schedule showing lease or land status. This should include the status of leased and unleased and Federal and non-Federal properties;

(J) Provide a schedule of the participation factor for all parties to the agreement. The schedule should list the parties to the agreement and the percent or volume of oil or gas stored for each of them; and

(K) Demonstrate the capability of the reservoir to store oil or gas. This demonstration could include geologic maps showing the storage formation, reservoir data demonstrating the volume of area available for storage, and similar data.

This section would also explain that the terms of the storage agreement are negotiated between you and BLM. The agreement will include terms on bonding and reservoir management. BLM may request additional data we find necessary to approve your application.

Section 3138.12 would describe what you must pay for storage. The fee could be based on any combination of storage fees, rentals, or royalties to which you and BLM agree. When determining a fair storage fee, typically, BLM would also take into consideration what operators in the same area are paying for similar gas storage arrangements whether on Federal or non-Federal land.

Part 3160—Onshore Oil and Gas Operations

This proposal would amend the existing purpose section of BLM's operating regulations. Subpart 3160 applies to NPRA lease operations and to unit operations. This section would revise subpart 3160 to make it clear that the referenced suspension regulations apply to operations on other Federal lands but not to NPRA.

V. Procedural Matters

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB).

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government since the costs of operating and leasing in the NPRA would not be substantially affected (see the economic analysis).

b. This rule will not create inconsistencies with other agencies' actions. This rule does not change the relationships of the oil and gas program with other agencies' actions. These relationships are all encompassed in agreements and memorandums of understanding that will not change with this proposed rule.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The proposal does not deal with entitlements, grants, loan programs, or rights and obligations of their recipients; BLM's oil and gas program does not typically have an impact on these issues and neither would this proposal. BLM does charge user fees for certain activities on Federal lands. However, this proposal would not implement any new user fees. Any fees, such as filing fees for leases, already exist under other regulations.

d. This rule will not raise novel legal or policy issues. NPRA leasing

regulations already exist. However, those regulations do not address unitization, suspension of rental and royalty, suspension of operations and production or subsurface storage agreements. This rule would make operating practices in the NPRA more consistent with those on Federal lands outside of NPRA in that unitization would be made available in NPRA.

Clarity of 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.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601–612) (RFA), 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.

This rule will not have a significant economic effect on a substantial number of small entities as defined under RFA. A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

For the purposes of this section, a ''small entity'' is considered to be an individual, limited partnership, or small company with fewer than 500 employees. Many of the operators BLM deals within the oil and gas program would be considered to be small entities.

Leasing decisions could potentially impact small operators. However, this rule is independent of leasing decisions. The rule is neutral as to whether or not leasing will occur in NPRA. Due to the significant costs associated with oil and gas operations in the NPRA, we do not anticipate many small operators will lease oil and gas in the NPRA. Having an NPRA lease, as that is defined in the proposal, is a condition precedent to unit formation in NPRA. If small operators did lease in NPRA, the economic impacts associated with this proposal are positive, but minimal, for operators in general (see the economic analysis) and would also be so for small operators. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more (see the economic analysis).

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The proposal would not effect costs or prices for consumers since the actions associated with the proposal would have minimal economic impact on the industry (see the economic analysis).

c. Does 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, but could positively effect them by making it more attractive to lease oil and gas in the NPRA.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501, *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The proposal would not change the relationship between BLM's oil and gas program and small governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act (see the economic analysis). 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.

Takings Implications

In accordance with Executive Order 12630, the proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required. The proposed rule would not take anyone's property. The proposed rule would not take away or restrict an operator's right to develop an NPRA oil and gas lease under the lease terms. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Federalism Implications

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have substantial direct effects 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 rule does not preempt State law. The proposed rule would make operations in the NPRA more consistent with practices on other Federal lands.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM drafted this rule in plain-language to provide clear standards and to ensure that the rule is clearly written. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the rule drafting process for the same reasons.

Paperwork Reduction Act

These regulations would contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), BLM has submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. BLM will not require

collection of this information until OMB has given its approval.

The recordkeeping and information collection items required under various provisions of this proposal in subparts 3133, 3135, 3137, and 3138 pertain to data that would be submitted by the operator or operating rights owner. The information would provide data so that BLM may approve a proposed unit agreement or storage agreements or enable BLM to monitor compliance with granted approvals. For unit agreements, BLM would use the information to grant approval to begin or modify unit operations or to allow unit agreements to continue.

The information required under the 3130 subparts would cover a range of activities, and a specific operator would not be required to obtain or provide each item. Many of the requirements are one-time filings BLM would use to approve operations under a unit agreement or to apply for reduction of royalty, suspension or operations or production, or a subsurface storage agreement. BLM would use other routine data submissions to monitor drilling and production and ensure compliance with the unit agreement, lease terms, regulations, orders, notices to lessees, lease stipulations, and conditions of approval. All recordkeeping burdens are associated with the items requested in this regulation.

The information burden in subparts 3133, 3135, 3137, and 3138 totals an estimated 410¼ hours. BLM professional staff derived these estimates by relying on personal experiences in working with the oil and gas industry and by consulting with field office staff. This collection comprises non-form items, and BLM expects the public reporting burden to be as follows:

Section 3133.4. An application for waiver, suspension, or reduction of rental, royalty, or minimum royalty on a lease would include:

(1) A description of the requested relief.

(2) The lease serial number.

(3) Number, locations, and status of each well drilled.

(4) A statement that shows the amount of oil or gas subject to royalty for each month covering a period of at least 6 months immediately before the filing date of the application.

(5) The number of wells counted as producing each month and the average production per well per day.

(6) A detailed statement of expenses and costs of operating the entire lease.

(7) All facts that demonstrate why the wells cannot be successfully operated under the terms of the lease.

(8) The amount of any outstanding overriding royalty and payments out of production or similar interests.

(9) Other information BLM may require.

The information and data provide the basis and evidence to BLM that the lease cannot be operated under its terms without the rental or royalty relief and that the applicant meets the standards of the regulations, the benefit would be granted if it would encourage the greatest ultimate recovery of oil and gas, or the waiver, suspension, etc., is in the interest of conservation of natural resources.

We estimate it would take approximately 16 hours to comply with the information requirement for application for waiver, suspension, or reduction of rental or royalty. The estimate includes time for gathering, preparing, completing, and maintaining the specified information, much of which is already maintained by the operator. We estimate that there will be one application for royalty suspension for a total information collection burden of 16 hours.

Section 3135.3. An application for suspension of lease operations and production would include a description of the circumstances that are beyond the operator's reasonable control that prevent operation of, or production on, the entire lease.

The information is required to determine whether the applicant qualifies for a lease suspension, the suspension is in the interest of conservation of oil and gas or other natural resources, the lease cannot be operated for reasons beyond the control of the operator, and the lessee is complying with the other requirements of the regulations.

We estimate it would take approximately four hours to comply with the information requirement for application for suspension. We estimate that there will be one application for suspension within a given year, for a total information collection burden of four hours.

Section 3135.6. After BLM terminates a suspension of operations or production, the operator would be required to notify BLM before resuming operations or production.

Notification ensures proper monitoring by BLM of operations activities. The information is required so that BLM may approve the proposed operations. It would also enable BLM to monitor operations for compliance with the regulations and lease terms.

We estimate it would take approximately ¼ of an hour to comply with the notification requirement, and we estimate one response for a total information burden of ¼ of an hour.

Section 3137.23. An application for NPRA unitization would include:

(1) The proposed agreement.

The agreement would provide the information requested in § 3137.21 as follows:

(A) A description of the unit area and the geologic and engineering factors on which the area is based.

The information is required for BLM to determine if the proposed unitization of leases is technically feasible and to adequately assess you proposed initial and continuing development obligations. The information would also be necessary for BLM to ensure that operations are conducted in a manner that promotes the conservation of natural resources.

(B) Initial and continuing development obligations.

This information would allow BLM to verify that the operator has planned a program of exploration or development that meets or exceeds the rate of well operations in the vicinity of the unit without unitization and represents an investment proportionate to the size of the area in the unit agreement.

(C) Proposed participating area size and locations.

This requirement would be necessary for BLM to determine whether the lands within the unit area have been reasonably proven to contain unitized substances that can be produced in paying quantities.

(D) Acknowledgment of BLM's authority to set or modify the quantity, rate, and location of development and production.

(E) Any optional terms authorized by section 3137.50.

(2) A map showing the unit area and committed leases and other tracts;

The map would show all tracts that are to be included in the unit.

(3) A list of committed leases and other tracts with legal descriptions, record titles, working interests, and acreage.

This would list owners of record title and all working interest owners that have agreed to abide by the terms and conditions of the unit agreement.

(4) Written certification that: (a) All owners of leased or unleased minerals rights and record title and operating rights lease interests were invited to join the unit; (b) there is sufficient commitment to the unit agreement for reasonable control of the unit area; (c) all of the interests are committed to the unit; and (d) there is agreement to unit obligations under 3170.60.

The certification would provide BLM information to determine whether there is sufficient commitment of leases or tracts in the unit area for reasonable control of the unit area and that the committed parties agree to abide by the terms and conditions of the unit agreement.

(5) Evidence of acceptable bonding. BLM requires this information to determine that operations under the unit agreement are covered by a bond in an amount sufficient to protect public lands and resources.

(6) A discussion of the reasonably foreseeable and significantly adverse effects on the surface resources of the NPRA. This standard is laid out in paragraph (1) of 42 U.S.C. 6508. This section would also require you to explain how unit operations may reduce impacts compared to individual lease operations. BLM requires this information to determine if:

(A) Unit operations will comply with the environmental, subsistence, archaeological, and historical preservation requirements under laws or regulations; and

(B) The unit operations' impacts on surface resources would be less than those impacts of lease operations were they to be performed individually. BLM considers this to be an important factor in determining whether or not to approve the unit agreement.

We estimate it would take approximately 80 hours to comply with the information requirement for application for unit designation. The estimate includes time for gathering, preparing, completing, and maintaining the specified information, but not the time normally required to obtain, analyze, and interpret the information normally expended as part of an exploration program without unitization. We estimate that there will be no more than three unit applications made within a given year, for a total information collection burden of 240 hours.

Section 3137.25 would require the operator to notify in writing all parties to the unit agreement that BLM approved the unit.

We estimate that it would take approximately one hour to comply with the notification requirement. The estimate includes the time to draft the notifications to the different parties to the unit. We expect three respondents for a total information collection burden of three hours.

Section 3137.52. An application for modification of a unit agreement would include certification that:

(1) All parties to the agreement consent to the modification; or

(2) The operator meets the modification provision in the agreement, which identifies which parties and what percentage of those parties consent to each type of modification.

BLM requires this certification by the operator to ensure that the terms of the unit agreement previously approved are met.

We estimate that application for modification of a unit agreement will take approximately four hours, and that there will be one application for a total burden of four hours.

Section 3137.60. The operator would be required to provide BLM evidence of acceptable bonding.

BLM would require evidence of such bonding because bonding is required under the regulations and the terms of the lease.

We estimate the information would take approximately ½ of an hour to provide for each new occurrence, and estimate three respondents, for a total information burden of 1½ hours.

Section 3137.61. To change unit operators, and when there is a change of unit operator, the new unit operator must provide, for BLM's approval:

(1) A statement that it accepts unit obligations;

(2) A statement of the percentage of interest owners required by the unit agreement consenting to a change of unit operator; and

(3) Evidence of acceptable bonding.

Statements of unit obligation acceptance and percentage of interest owners consenting to the change are required so that unit requirements and the terms of the previously-approved unit agreement are continued to be met, and that the unit may remain in effect.

Evidence of acceptable bonding is necessary because bonding is required under the regulations and the terms of the lease and so that BLM can determine that operations under the unit agreement are continued to be covered by a bond sufficient to protect public lands and resources.

We estimate it will take approximately ¾ hour to provide the statements and the evidence of acceptable bonding. We estimate two responses, for a total information burden of 1½ hours.

Section 3137.70. The operator would be required to submit certification that it met the initial unit obligation.

Certification is required to document that the initial unit obligation, as required in the unit agreement, was timely met so that the unit may remain in effect.

We estimate it will take approximately two hours to comply with the certification information. The estimate includes time for gathering and compiling data showing that unit requirements such as drilling and production are met, and for providing certification. We estimate three responses, for a total information burden of six hours.

Section 3137.71. The operator would be required to provide a plan describing how it will meet continuing development obligations. The plan would include a description of the activities needed for full development of the oil and gas field and any further actual or constructive drilling operations that will be conducted.

BLM requires the information to determine if the plan would actually comply with the unit terms on continuing development.

The operator would also be required to submit certification, and supporting documentation if requested, that it met continuing development obligations.

This certification documents that continuing development obligations, as required in the unit agreement, were met on time to ensure compliance with unit terms.

We estimate it will take approximately two hours to comply with the certification requirement. The estimate includes time for gathering and compiling drilling, testing, completion, and recompletion data and providing certification. We estimate three responses, for a total information burden of six hours.

Section 3137.84. The respondent would be required to submit a statement that the well meets the productivity criteria and economic, geologic, and engineering data; a map; and a production allocation schedule to establish or revise a participating area (PA).

The information is necessary for BLM to determine whether the unit meets the requirements to form a PA and to determine that the unit is productive.

We estimate it will take approximately 12 hours to comply with the information required for an operator's request to establish or revise a PA. The estimate includes time for compiling and preparing the various data requirements. We estimate two responses, for a total information burden of 24 hours.

Section 3137.87. If there are unleased Federal tracts in a participating area, the operator would be required to include the unleased Federal tracts in the unit. If the tract is later leased you must provide revised maps, a list of committed leases, and production allocation schedules to BLM.

The information enables BLM to monitor the terms of the participating area and to ensure that royalty revenue is properly allocated and reported.

The information would require approximately three hours to prepare and provide. We estimate one respondent, for a total information burden of three hours.

Section 3137.88. The respondent would be required to provide notification to BLM that a well does not meet the productivity criteria.

This information is necessary for BLM to determine whether to approve the well for non-unit operations and to ensure proper allocation of production.

We estimate it will take approximately a ½ of an hour to comply with the notification requirement, and one response, for a total information burden of ½ of an hour.

Section 3137.91. The respondent would be required to notify BLM when a non-unit well meets productivity criteria, which is then used to revise or establish a PA.

BLM would use the required information to determine whether a non-unit well meets the productivity criteria and therefore will revise or establish a PA.

We estimate it would take approximately ½ of an hour to comply with the notification requirement, and estimate one response, for a total information burden of ½ of an hour.

Section 3137.92. The respondent would be required to provide information that it restored or established production and well completion information so that a participating area would not terminate after BLM notification of insufficient production.

BLM requires this information to determine whether to keep a PA in effect.

We estimate it will take approximately one hour to comply with the production information requirement. The estimate includes time to compile production data. We estimate one response, for a total information burden of one hour.

Section 3137.112. The operator would be required to provide information that shows actual well production meets the productivity criteria or that there is actual or constructive drilling or reworking operations in order to request an extension of the primary term of all leases committed to a unit agreement.

BLM would require verification that the operator met the requirements for obtaining a lease extension.

We estimate there will be one respondent and the information, which is already maintained by the operator, will take approximately three hours to organize and compile. The total burden would be three hours.

Section 3137.113. The operator would be required to demonstrate to BLM that it cannot start actual or constructive drilling or reworking activities because of reasons beyond the operator's control.

BLM requires the information to determine the validity of the operator's inability to conduct drilling or reworking activities, as required under the terms of the lease.

We estimate one respondent and that two hours would be needed to fulfill the information requirement for a total information burden of two hours.

Section 3137.130. If a unit operator requests approval for voluntary termination of the unit, and production is insufficient to establish a participating area, the operator would be required to certify that at least 75 percent of the interest owners in the agreement agree to the voluntary termination.

BLM requires the certification to approve termination of the unit based on production data and consent of the interest owners under the terms of the agreement.

This information would take approximately one hour to compile. We estimate one respondent, for a total information burden of one hour.

Section 3137.135. The respondent would be required to submit a plan for mitigating the impacts from unit operations after termination of the unit.

The information is necessary for BLM approval of mitigation plans for timely, proper, and efficient management of the surface impacts resulting from unit operations.

We estimate it would take approximately four hours to comply with the information requirement for application for unit designation. The estimate includes time for formulating and preparing the specified information. We estimate three responses, for a total information burden of 12 hours. The estimate includes the time for reviewing the instructions, searching existing data bases, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Section 3138.11. An application for a subsurface storage agreement would include:

(1) The reason for forming the agreement;

(2) Descriptions of both the area that is to be included and the formation;

(3) The proposed storage fees or rentals;

(4) Royalty for oil or gas present in the formation before injection and produced when stored oil or gas is withdrawn;

(5) A description of fees and payments renegotiations;

(6) The proposed effective date and term of the agreement;

(7) Certification that all owners of leased or unleased minerals rights and lease interests have committed or consented to the commitment of their interest in writing;

(8) An ownership schedule showing lease or land status;

(9) A schedule showing the participation factor for all parties to the agreement;

(10) Geologic maps and other data that demonstrate storage capability of the reservoir.

The information is necessary so that BLM can determine whether the proposed agreement is technically feasible and is necessary to avoid waste and that operations will be conducted in a manner that promotes conservation of natural resources.

We estimate it would take approximately 80 hours to comply with the information requirement for application for storage agreement. The estimate includes time for compiling and preparing the various specified information and obtaining commitments and providing certification. We estimate that there will be one storage agreement application, for a total information collection burden of 80 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Interior Desk Officer (1004–NEW) New Executive Office Building, Washington, D.C. 20503.

BLM considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of BLM, including whether the information will have practical use;

Evaluating the accuracy of BLM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; such as permitting electronic submittal of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to BLM on the proposed regulations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

BLM has prepared an environmental assessment and has 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 National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required.

Environmental effects that could occur would be the result of leasing, not the result of these proposed regulations. To the extent that there are any environmental effects incident to the proposed regulations, they would likely be beneficial. Unitization combines the development plans of several lessees into a single consolidated plan of development under one operator instead of separate operators and separate plans of development for each lease. The advantage of having one operator and one plan of development under one unit agreement is that the effect on the environment could be minimized in contrast to having several plans of development for each lease covering an oil and/or gas field with a relatively greater environmental effect.

For subsurface storage agreements, the oil or gas is reinjected, and would be stored in a geologic structure. There are no tanks installed and the oil or gas usually is reinjected using existing surface and subsurface operating equipment from prior operations. There is very little environmental impact involved in storing oil or gas in this manner. The operator must demonstrate that storage is necessary to avoid waste or to promote the conservation of natural resources which otherwise may be vented or lost. Therefore, the proposed regulations could encourage better, more efficient development with a smaller environmental ''footprint'' and effects.

These regulations would not add to the effects of other actions, but could facilitate less of an environmental footprint due to consolidating and unifying the development of a given oil or gas field under one operator. The authorization of subsurface storage agreement would promote the conservation of oil or gas which otherwise may be vented or lost. This would conserve natural resources.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated whether formal government-to-government consultation with Indian Tribes is required with respect to the proposed rules. In this case, we have concluded that, within the context of this rulemaking, formal consultation other than opportunities provided to the public for notice and comment is not required.

Executive Order 13084 (''E.O. 13084''), ''Consultation and Coordination with Indian Tribal Governments'' (May 14, 1998), (63 FR 27655) supplements the President's memorandum of April 29, 1994. E.O. 13084 provides that Federal agencies must consult with Indian Tribal Governments before formal promulgation of regulations that ''significantly or uniquely affect'' Tribal communities. E.O. 13084 defines ''Indian Tribes'' for purposes of government-to-government consultation as those ''that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.'' E.O. 13084 at Section 1(b). In accordance with this mandate, the Bureau of Indian Affairs recently published a list of recognized Tribes, including a large number of Native Alaskan entities including Villages, Communities, and Tribes. *See* 63 FR 71941 (December 30, 1998). If there is a duty of government-to-government consultation, it would be owed to those listed Tribal governments.

The proposed regulations are designed to permit consolidated operation of oil and gas leases on Federal lands and thereby promote conservation. We are not aware that any of the recognized Tribal governments have significant oil and gas interests within NPRA or within the vicinity of NPRA. To the extent that any of those Tribes acquire oil and gas interests and choose to join a unit which includes Federal NPRA leases, they would be eligible to participate in those unit agreements in the same manner as any other participants. Accordingly, the proposed regulations would not ''significantly or uniquely affect'' those Tribes and there is no government-to-government consultation obligation in this case.

Additionally, we are aware that a number of Alaska Native corporations organized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) (ANCSA) may have oil and gas interests. These corporations could potentially become participants in units which include Federal NPRA leases. If so, they would be eligible to participate in those unit agreements in the same manner as any other participants. However, no special consultation with such corporations is required. The Bureau of Indian Affairs has recently declined to include such corporations on the list of recognized Tribes eligible for government-to-government consultation. The Bureau of Indian Affairs indicated that ANCSA corporations ''are formally state-chartered corporations rather than tribes in the conventional legal or political sense'' and that Alaskan Native Villages were Indian Tribes. *See* ''Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs,'' 60 FR 9250 (February 16, 1995).

Finally, while the proposal of these regulations imposes no special government-to-government consultation obligation upon the Department, there will be ample opportunity for the Tribal governments, along with the public generally, to comment in accordance with the notice and comment requirements of the Administrative Procedure Act.

Economic Analysis

Unitization

The proposal implements the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 *et seq.*), which was amended by Public Law 105–83, and allowed for the creation of units in the Naval Petroleum Reserves, Alaska (NPRA). Unitization could increase the potential value of NPRA leases, which could result in higher bonus bids at lease sales. Operators could also obtain some benefit due to some reduction in operating and reporting costs. These reduced costs are a benefit derived from unitization since production may occur from fewer areas and reporting requirements could be consolidated. However, the essential costs of

operating and leasing in NPRA would not be substantially affected. As previously noted, there are other non-economic benefits to unitization (see discussion of § 3137.10).

Once leasing occurs in NPRA, the proposed unitization rules may increase the probability of finding and producing oil and gas there through more efficient and economic exploration and production, but the net effect should be small enough that there would not be a measurable net effect on oil and gas prices. Any impacts on the economy, productivity, competition, or jobs would be positive. Development could only occur if it did not endanger the environment, public health, or safety.

To the extent that the proposed rules may increase the bonus bids for leases and the probability of production, the potential increase in revenue and economic activity could have a positive effect on State, local, and tribal governments and communities.

Subsurface Storage

The proposal would also allow for subsurface storage agreements in the NPRA. This would have little economic effect. Most often, companies use existing infrastructures to re-inject oil or gas into existing geologic structures. Companies would derive an economic benefit since they could store oil or gas while waiting for distribution of it or while waiting for more favorable economic conditions. The Federal government would derive a benefit in the form of storage fees. The benefits derived by the companies operating in NPRA or the Federal government would not be significant. In 1998 BLM had in effect 32 oil and gas storage agreements in the lower 48 states which provided $982,346 in revenues. That averages out to about $30,698 in revenue payments to the United States per agreement. We anticipate far fewer agreements in NPRA than in the lower 48 with about the same average income stream being generated per agreement. These could impact State, local, and tribal governments and communities positively, but only minimally. Any impacts on the economy, productivity, competition, or jobs would be positive, but minimal.

Waiver, Suspension, or Reduction of Rental or Royalty

The proposal would also allow for the waiver, suspension, or reduction of rental or royalty on NPRA leases. This provision would have minimal economic impact. BLM would not allow for any to take place unless it encouraged the greatest ultimate recovery of oil and gas or it was in the interest of conservation. Operators would only get the benefit if they proved to BLM that they could not successfully operate the lease without the benefit. These standards are high because BLM believes we should take these actions only as a last resort, to save a lease which ''cannot be successfully operated under the terms provided therein.'' (42 U.S.C. 6508).

Operators would benefit since they would be able to continue to operate their leases. BLM would benefit as well since producible leases would not be shut down and the Federal government would continue to receive revenue, albeit at a reduced rate. State, local, and Tribal governments and communities would be positively affected since leases that would under other circumstances be shut down, would continue to produce, providing jobs and revenues to local areas. Any impacts on the economy, productivity, competition, or jobs would be positive, but minimal.

Suspensions of Operations and Production

This proposal would allow for suspension of operations and production for NPRA leases. Suspensions of operations and production give operators relief from lease obligations when they are prevented from complying with the obligations for reasons that are beyond their control. During the period of the suspension, lessees are not required to pay rental or royalty on their lease, but they do not have beneficial use of their lease during the period. The lease term would be extended by the time period of the suspension.

One example where lease suspensions would be appropriate would be where an operator has found oil and gas in producible quantities, but there is no transportation system available to get the oil and gas to market. BLM would suspend operations and production on the lease until operations on the lease resume or when BLM determines the reason for the suspension no longer exists.

Any economic impacts associated with this provision would, in the long run, be positive. The alternative to suspension would be shutting down lease operations. This alternative is not beneficial to the government or operators. Short-term loss in rentals and royalties is preferable to shutting down a lease completely. State and local governments and native communities could be positively impacted since leases that would under other circumstances be shut down, would, in the long run, continue to produce, providing jobs and revenues to local areas. Any impacts on the economy, productivity, competition, or jobs would be positive, but minimal.

Lease Extensions

This proposal would allow for the extension of unit leases if, from anywhere in the unit there is—

(A) Actual production from a well in the unit that meets the productivity criteria set out in the unit agreement;

(B) Actual or constructive drilling operations; or

(C) Actual or constructive reworking operations.

This proposal would have little economic impact on the industry as a whole, but could make unitizing leases in the NPRA more attractive to individual operators. Operators would get the benefit of diligently developing their leases by way of lease extensions. This is a benefit to industry, since leases in units which otherwise would be canceled would be extended if there was constructive drilling or reworking within the unit.

Any economic impacts associated with this provision would, in the long run, be positive. The alternative to extending leases in the unit would be canceling a lease and shutting down operations. This alternative is not beneficial to the government or operators. State, local, and Tribal governments and communities would be positively affected since leases that would under other circumstances be shut down would continue to operate, increasing the chances of discovering oil and gas. If producible oil and gas is discovered, the unit could provide jobs and revenues to local areas. Any impacts on the economy, productivity, competition, or jobs would be positive, but minimal.

Fixing Lease Term at 10 Years

Congress mandated that the initial NPRA lease term be 10 years. The provision setting the lease term at 10 years would have little, if any, economic impact. It could benefit operators since the term would be fixed at 10 years consistent with the statute, whereas under current regulations, the term could be less. Longer lease terms in the NPRA are preferable since there are harsh geology and climate in the NPRA make it difficult to operate in that region. Longer lease terms would allow operators additional time to deal with the geologic and climatic conditions in NPRA.

Administrative Provision

The provision that clarifies which suspension regulations apply to NPRA

is strictly administrative and would have no economic impact.

Authors

The principal authors of this rule are Erick Kaarlela (Washington Office), Sherri Thompson (Colorado State Office), Rick Wymer (Tulsa Field Office), Duane Spencer (Colorado State Office), and Chris Gibson (Alaska State Office), assisted by Ian Senio of BLM's Regulatory Affairs Group (Washington Office) and Harvey Blank (Office of the Solicitor, Department of the Interior).

List of Subjects

43 CFR Part 3130

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

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians'lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands'mineral resources, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, and under the authorities cited below, amend Title 43, Subtitle B, Chapter II, Subchapter C, Part 3130 as follows:

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

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

Authority: 42 U.S.C. 6508, 43 U.S.C. 1733 and 1740.

2. Revise § 3130.4–2 to read as follows:

§ 3130.4–2 Lease term.

The primary term of an NPRA lease is 10 years.

3. Add § 3133.3 and § 3133.4 to subpart 3133 to read as follows:

§ 3133.3 Under what circumstances will BLM waive, suspend, or reduce the rental, royalty, or minimum royalty on my NPRA lease?

BLM will waive, suspend, or reduce the rental, royalty, or minimum royalty of your lease if BLM finds that—

(a) It encourages the greatest ultimate recovery of oil or gas or it is in the interest of conservation; and

(b) You can't successfully operate the lease under its terms. This means that your cost to operate the lease exceeds income from the lease.

§ 3133.4 How do I apply for a waiver, suspension or reduction of rental, royalty or minimum royalty for my NPRA lease?

(a) Submit to BLM your application and in it describe the relief you are requesting and include—

(1) The lease serial number;

(2) The number, location and status of each well drilled;

(3) A statement that shows the aggregate amount of oil or gas subject to royalty for each month covering a period of at least six months immediately before the date you filed the application;

(4) The number of wells counted as producing each month and the average production per well per day;

(5) A detailed statement of expenses and costs of operating the entire lease;

(6) All facts that demonstrate that you can't successfully operate the wells under the terms of the lease;

(7) The amount of any overriding royalty and payments out of production or similar interests applicable to your lease; and

(8) Any other information BLM requires.

(b) Your application must be signed by—

(1) All lessees of record; or

(2) By the operator on behalf of the lessees of record.

4. Revise the subpart 3135 heading to read as follows:

Subpart 3135—Transfers, extensions, consolidations, and suspensions

5. Add §§ 3135.2 through 3135.7 as follows:

§ 3135.2 Under what circumstances will BLM approve my request for a suspension of operations and production for my lease?

(a) BLM will approve your request for a suspension of operations and production for your lease(s) if BLM determines that—

(1) It is in the interest of conservation of natural resources;

(2) It encourages the greatest ultimate recovery of oil and gas, including the planning and construction of a transportation system to a new area of discovery; or

(3) It mitigates reasonably foreseeable and significantly adverse effects on surface resources.

(b) BLM will suspend lease obligations if it determines that, despite the exercise of due care and diligence, you can't comply with those obligations for reasons beyond your control.

(c) If BLM approves your request for a suspension of operations and production, the suspension—

(1) Stops the running of your lease term and prevents it from expiring for as long as the suspension is in effect;

(2) Relieves you of your obligation to pay rent, royalty, or minimum royalty during the suspension; and

(3) Prohibits you from operating on, producing from, or having any other beneficial use of your lease during the suspension.

§ 3135.3 How do I apply for a suspension of operations and production?

(a) You must submit to BLM an application stating the circumstances that are beyond your reasonable control that prevent you from operating or producing your lease(s).

(b) Your suspension application must be signed by—

(1) All record title owners of the lease; or

(2) By the operator on behalf of the record title owners of the leases committed to an approved agreement.

(c) You must submit your application to BLM before your lease expires.

(d) Your application must be for your entire lease.

§ 3135.4 When is a suspension of operations and production effective?

A suspension of operations and production is effective—

(a) The first day of the month in which you file the application for suspension; or

(b) Any other date BLM specifies in the approval document.

§ 3135.5 When should I stop paying rental or royalty after my suspension of operations and production is approved?

You should stop paying rental or royalty on the first day of the month following BLM's approval of the suspension.

§ 3135.6 When will my suspension terminate?

(a) Your suspension terminates—

(1) On the first day of the month in which you begin to operate or produce on your lease; or

(2) The date BLM specifies in a written notice to you.

(b) You must notify BLM at least 24 hours before you begin operations or production under paragraph (a)(1) of this section.

§ 3135.7 How will termination of the suspension affect my lease?

(a) BLM extends your lease term by adding the period of the suspension to the term of the lease.

(b) Your rental and/or minimum royalty obligation resumes on the date the suspension terminates.

6. Add a new subpart 3137 to part 3130 to read as follows:

Subpart 3137—Unitization Agreements—National Petroleum Reserve, Alaska

Subpart 3137—Unitization Agreements—National Petroleum Reserve, Alaska

§ 3137.5 What terms do I need to know to understand this subpart?

As used in this subpart—

Actual drilling means operations you conduct that are similar to those that a person seriously looking for oil or gas could be expected to conduct in that particular area, given the existing knowledge of geologic and other pertinent facts about the area to be drilled. The term includes the testing, completing, or equipping of the drill hole (casing, tubing, packers, pumps, etc.) so that it is capable of producing oil or gas. Actual drilling operations do not include preparatory or preliminary work such as grading roads and well sites, or moving equipment onto the lease.

Actual production means oil or gas flowing from the wellbore into treatment or sales facilities.

Actual reworking operations means reasonably continuous well-bore operations such as fracturing, acidizing, and tubing repair.

Committed tract means—

(1) A Federal lease where all owners of record title and all operating rights owners have agreed to the terms and conditions of a unit agreement and agreed to accept responsibility for unit operations; or

(2) A State lease or private parcel of land where all owners and all operating rights owners have agreed to the terms and conditions of a unit agreement and agreed to accept responsibility for unit operations.

Constructive drilling means those activities that are necessary to prepare for actual drilling that occurs after BLM approves an application to drill, but before you actually drill the well. These include, but are not limited to, activities such as road and well pad construction, and drilling rig and equipment set-up.

Constructive reworking operations means activities that are necessary to prepare for well-bore operations. These may include rig and equipment set-up and pit construction.

Continuing development obligations means a program of development or operations you conduct that, after you complete initial obligations defined in a unit agreement—

(1) Meets or exceeds the rate of non-unit operations in the vicinity of the unit; and

(2) Represents an investment proportionate to the size of the area covered by the unit agreement.

NPRA lease means any oil and gas lease within the boundaries of the National Petroleum Reserve, Alaska

(NPRA), issued by the United States under the Naval Petroleum Reserves Production Act of 1976, as amended (42 U.S.C. 6501–6508), that authorizes exploration for and removal of oil and gas.

Operating rights (working interest) means any interest you hold that allows you to explore for, develop, or produce oil and gas.

Participating area means those committed tracts or portions of those committed tracts within the unit area that contain a well meeting the productivity criteria specified in the unit agreement.

Primary target means the principal geologic formation that you intend to develop and produce.

Producible interval means the section of any pool, deposit, zone, or portion thereof capable of producing oil and gas.

Record title means legal ownership of an oil and gas lease recorded in BLM's records.

Tract means land that may be included in an NPRA oil and gas unit agreement and that may or may not be in a Federal lease.

Unit agreement means a BLM-approved agreement to cooperate in exploring, developing, operating and sharing in production of all or part of an oil or gas pool, field or like area, including at least one NPRA lease, without regard to lease boundaries and ownership.

Unit area means all tracts committed to a BLM-approved unit. Tracts not committed to the unit, even though they may be within the external unit boundary, are not part of the unit area.

Unit operations are all activities associated with exploration, development drilling, and production operations conducted by the unit operator(s) on committed tracts.

General

§ 3137.10 What benefits do I receive for entering into a unit agreement?

(a) Each individual tract committed to the agreement meets its full performance obligation if one or more tracts in the unit meets the development or production requirements;

(b) Production from a well that meets the productivity criteria (see § 3137.82 of this subpart) under the unit agreement extends all NPRA leases committed to the agreement as provided in § 3137.112 of this subpart;

(c) You may drill within the unit without regard to certain lease restrictions, such as lease boundaries within the unit and spacing offsets; and

(d) You may consolidate operations and permitting and reporting requirements.

Application

§ 3137.20 Is there a standard unit agreement form?

There is no standard unit agreement form. BLM will accept any unit agreement format if it protects the public interest and includes the mandatory terms required in § 3137.21 of this subpart.

§ 3137.21 What must I include in an NPRA unit agreement?

(a) Your NPRA unit agreement must include—

(1) A description of the unit area and any geologic and engineering factors upon which the area may be based;

(2) Initial and continuing development obligations (see §§ 3137.40 and 3137.41 of this subpart);

(3) The proposed participating area size and locations (see § 3137.80(b) of this subpart);

(4) A provision that acknowledges BLM's authority to set or modify the quantity, rate, and location of development and production; and

(5) Any optional terms authorized by § 3137.50 of this subpart.

(b) You must include in the unit agreement any additional terms and conditions that result from consultation with BLM. After your initial application, BLM may request additional supporting documentation.

§ 3137.22 What are the size and shape requirements for a unit area?

(a) The unit area must—

(1) Be composed of tracts, each of which must be contiguous to at least one other tract in the unit, that are located so that you can perform operations and production in an efficient and logical manner; and

(2) Include at least one NPRA lease.

(b) BLM may limit the size and shape of the unit considering the type, amount and rate of the proposed development and production and the location of the oil and gas.

§ 3137.23 What must I include in my NPRA unitization application?

Submit your unitization application to BLM and include in it—

(a) The proposed agreement;

(b) A map showing the unit area;

(c) A list of committed tracts including, for each tract, the—

(1) Legal land description and acreage;

(2) Names of persons holding record title interest;

(3) Names of persons holding operating rights; and

(4) Name of the unit operator.

(d) You must certify—

(1) That you invited all owners of oil and gas rights (leased or unleased) and lease interests (record title and operating rights) within the external boundary of the unit area described in the application to join the unit;

(2) That there are sufficient tracts committed to the unit agreement to reasonably operate and develop the unit area;

(3) The commitment status of all tracts within the area proposed for unitization; and

(4) That you accept unit obligations under § 3137.60 of this subpart.

(e) Evidence of acceptable bonding;

(f) A discussion of reasonably foreseeable and significantly adverse effects on the surface resources of NPRA and how unit operations may reduce impacts compared to individual lease operations; and

(g) Other documentation BLM may request. BLM may require additional copies of maps, plats, and other similar exhibits.

§ 3137.24 Why would BLM reject a unit agreement application?

BLM will reject a unit agreement application—

(a) That does not address all mandatory terms, including those required under § 3137.21(b) of this subpart;

(b) If the unit operator—

(1) Has an unsatisfactory record of complying with applicable laws, regulations, the terms of any lease or permit, or the requirements of any notice or order; or

(2) Is not qualified to operate within NPRA under applicable laws and regulations;

(c) That does not conserve natural resources;

(d) That is not in the public interest;

(e) That does not comply with any special conditions in effect for any part of the NPRA that would be affected by the unit or any lease subject to the unit; or

(f) That does not otherwise comply with the requirements of this subpart.

§ 3137.25 How will the parties to the unit know if BLM approves the unit agreement?

BLM will notify the unit operator in writing when it approves or disapproves the proposed unit agreement. The unit operator must notify in writing all parties to the agreement within 30 calendar days after receiving BLM's notice of approval or disapproval.

§ 3137.26 When is a unit agreement effective?

The agreement is effective on the date BLM approves it.

§ 3137.27 What effect do other agreements have on the unit agreement?

No other agreement—

(a) Modifies the terms or conditions of the unit agreement; or

(b) Relieves the unit operator of any right or obligation under the unit agreement.

§ 3137.28 What oil and gas resources of committed tracts does the unit agreement include?

A unit agreement includes all oil and gas resources of committed tracts unless BLM approves agreement terms to the contrary.

Development

§ 3137.40 What initial development obligations must I define in a unit agreement?

You must define—

(a) The number of wells required to assess the reservoir adequately;

(b) A primary target for each well;

(c) A schedule for starting and completing drilling operations for each well; and

(d) The time between starting operations on a well to the start of operations on the next well.

§ 3137.41 What continuing development obligations must I define in a unit agreement?

A unit agreement must obligate the operator to a program of exploration and development that, after completion of the initial obligations—

(a) Meets or exceeds the rate of non-unit operations in the vicinity of the unit; and

(b) Represents an investment proportionate to the size of the area covered by the unit agreement.

Optional Terms

§ 3137.50 What optional terms may I include in a unit agreement?

BLM may approve the following optional terms if they promote additional development or enhanced production potential—

(a) Limiting the agreement to certain formations and their intervals (see § 3137.28 of this subpart);

(b) Multiple unit operators (see § 3137.51 of this subpart);

(c) Modifying the agreement terms by less than 100 percent of the parties to the agreement (see § 3137.52 of this subpart); or

(d) Other terms that BLM determines will promote the greatest economic recovery of oil and gas consistent with applicable law.

§ 3137.51 Under what conditions does BLM permit multiple unit operators?

BLM permits multiple unit operators only if the unit agreement defines—

(a) The conditions under which additional unit operators are acceptable;

(b) The responsibilities of the different operators, including obtaining BLM approvals, reporting, paying Federal royalties and conducting operations;

(c) Which unit operators are obligated to ensure bond coverage for each NPRA lease in the unit;

(d) The consequences if one or more unit operators defaults. For example, if an operator defaults, the agreement would list which unit operators would conduct that operator's operations and ensure bonding of those operations; and

(e) Which unit operator is responsible for unit obligations not specifically assigned in the unit agreement.

§ 3137.52 When may I modify the agreement?

(a) You may modify a unit agreement if—

(1) All current parties to the agreement agree to the modification; or

(2) You meet the requirements of the modification provision in the unit agreement. The modification provision must identify which parties, and what percentage of those parties, must consent to each type of modification.

(b) You must submit to BLM an application for modification.

(c) The operator must certify that the necessary parties have agreed to the modification.

(d) A modification is not effective unless BLM approves it. After BLM approves the modification, it is effective retroactively to the date you filed a complete application for modification. However, BLM may approve a different effective date if you request it and provide acceptable justification.

(e) BLM will reject any modifications that do not comply with BLM regulations or applicable law.

Unit Agreement Operating Requirements

§ 3137.60 As the unit operator, what are my obligations?

(a) You must comply with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations, and BLM notices and orders.

(b) You must provide BLM evidence of acceptable bonding. *Acceptable bonding* means a bond in an amount which is no less than the sum of the individual Federal bonding requirements for each of the NPRA leases committed to the unit. This requirement may also be met if the unit operator is added as a principal to lease bonds to reach the required amount.

(c) The bond must be payable to the Secretary of the Interior.

§ 3137.61 How do I change unit operators?

(a) To change unit operators, the new unit operator must submit to BLM—

(1) Statements that—

(i) It accepts unit obligations; and

(ii) The percentage of required interest owners consented to a change of unit operator; and

(2) Evidence of acceptable bonding (see § 3137.60(b) of this subpart).

(b) The effective date of the change in unit operator is the date BLM approves the new unit operator.

§ 3137.62 What are my liabilities as a former unit operator?

You are responsible for all duties and obligations of the unit agreement that accrued while you were unit operator up to the date BLM approves a new unit operator.

§ 3137.63 What are my liabilities after BLM approves me as the new unit operator?

(a) After BLM approves the change in unit operator, you, as the new unit operator, assume full liability, jointly and severally with the record title and operating rights owners, except as otherwise provided in paragraph (c) and to the extent permitted by law, for—

(1) Compliance with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations, and BLM notices and orders;

(2) Plugging unplugged wells and reclaiming unreclaimed facilities that were installed or used before the effective date of the change in unit operator (this liability is joint and several with the former unit operator); and

(3) Those liabilities accruing during the time you are unit operator.

(b) Your liability includes, but is not limited to—

(1) Rental and royalty payments;

(2) Protecting the lease from loss due to drainage as provided in § 3137.64 of this subpart;

(3) Well plugging and abandonment;

(4) Surface reclamation;

(5) All environmental remediation or restoration required by law, regulations, lease terms, or conditions of approval; and

(6) Other requirements related to operations on the lease.

(c) Your liability for royalty and other payments on the lease is limited by section 102(a) of the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1712(a)).

§ 3137.64 As a unit operator, what must I do to prevent or compensate for drainage?

You must prevent uncompensated drainage of oil and gas from unit land

by wells on land not subject to the agreement. This includes, but is not limited to—

(a) Drilling a protective well if it is economically feasible;

(b) Paying compensatory royalty;

(c) Forming other agreements, or modifying existing agreements, that allow the tracts committed to the agreement to share in production; or

(d) Any additional measures BLM considers necessary to prevent uncompensated drainage.

Development Requirements

§ 3137.70 What must I do to meet initial development obligations?

(a) To meet initial development obligations by the time specified in your unit agreement you must—

(1) Drill the required test well(s) to the primary target;

(2) Drill at least one well that meets the productivity criteria (see § 3137.82 of this subpart); or

(3) Establish, to BLM's satisfaction, that further drilling to meet the productivity criteria is unwarranted or impracticable.

(b) You must certify to BLM that you met initial development obligations no later than 60 calendar days after meeting the obligations. BLM may require you to supply documentation that supports your certification.

§ 3137.71 What must I do to meet continuing development obligations?

(a) Once you meet initial development obligations, you must perform additional development. Work you did before meeting initial development obligations is not continuing development. Continuing development includes the following operations—

(1) Drilling, testing, or completing additional wells to the primary target or other unit formations;

(2) Drilling or completing additional wells that establish production of oil and gas;

(3) Recompleting wells or other operations that establish new unit production; or

(4) Drilling existing wells to a deeper target.

(b) No later than 90 calendar days after meeting initial development obligations, submit to BLM a plan that describes how you will meet continuing development obligations.

(1) If you have drilled a well that meets the productivity criteria, your plan must describe the activities to fully develop the oil and gas field.

(2) If you fulfilled your initial development obligations, but did not establish a well that meets the productivity criteria, your plan must describe any further actual or constructive drilling operations you will conduct.

(c) No later than 90 calendar days after BLM's approval of your plan submitted under paragraph (b) of this section, you must certify to BLM that you started operations to fulfill your continuing development obligations. BLM may require you to—

(1) Supply documentation to support your certification; and

(2) Submit periodic reports that demonstrate continuing development.

§ 3137.72 May I perform additional development outside established participating areas to fulfill continuing development obligations?

You may perform additional development either within or outside a participating area, depending on the terms of the unit agreement.

§ 3137.73 What happens if I do not meet a continuing development obligation?

(a) After you establish a participating area, if you do not meet a continuing development obligation and BLM has not granted you an extension of time to meet the obligation, the unit contracts. This means that—

(1) All areas within the unit that do not have participating areas established will be eliminated from the unit. Any eliminated areas are subject to their original lease terms; and

(2) Only established participating areas, whether they are actually producing or not, remain in the unit.

(b) Units contract effective the first day of the month after the date on which the unit agreement required the continuing development obligations to begin.

(c) If you do not meet a continuing development obligation before you establish a participating area, the unit terminates (see § 3137.132 of this subpart).

Participating Areas

§ 3137.80 What are participating areas and how do they relate to the unit agreement?

(a) Participating areas are those committed tracts or portions of those committed tracts within the unit area that contain a well meeting the productivity criteria specified in the unit agreement.

(b) You must include the proposed participating area size in the unit agreement for planning purposes and to mitigate reasonably foreseeable and significantly adverse effects on NPRA surface resources. The unit agreement must define the proposed participating areas. Your proposed participating area may be limited to separate producible intervals or areas.

(c) At the time you meet the productivity criteria discussed in § 3137.82 of this subpart, you must delineate those participating areas.

§ 3137.81 What is the function of a participating area?

The function of a participating area is to allocate production to each committed tract within a participating area. Allocation to each committed tract within the participating area is in the same proportion as that tract's surface acreage in the participating area to the total acreage in the participating area.

§ 3137.82 What are productivity criteria?

(a) Productivity criteria are characteristics of a unit well that warrant including a defined area surrounding the well in a participating area. The unit agreement must define these criteria for each separate producible interval. You must be able to determine whether you meet the criteria when the well is drilled and you complete well testing.

(b) To meet the productivity criteria the well must indicate future production potential sufficient to pay for the costs of drilling, completing, and operating the well on a unit basis.

§ 3137.83 What establishes a participating area?

The first well you drill after the unit agreement is formed that meets the productivity criteria establishes an initial participating area. When you establish an initial participating area, lands that contain previously existing wells in the unit that meet the productivity criteria (see § 3137.82 of this subpart), will—

(a) Be added to that initial participating area as a revision, if it is in the same producible interval; or

(b) Become a separate participating area, if it is in a different producible interval (see also § 3137.88 of this subpart for wells that do not meet the productivity criteria).

§ 3137.84 What must I submit to BLM to establish a new participating area, or add to an existing participating area?

To establish a new participating area or add to an existing participating area, you must submit to BLM a—

(a) Statement that the well meets the productivity criteria (see § 3137.82 of this subpart). BLM may require you to submit information supporting your statement;

(b) Map showing the new or revised participating area and acreage; and

(c) Schedule that establishes the production allocation for each NPRA lease or tract, and each record title and operating rights owner in the

participating area. You must submit a separate allocation schedule for each participating area.

§ 3137.85 What is the effective date of a participating area?

The effective date of either an initial or revised participating area is the first day of the month in which you complete a well that meets the productivity criteria, but no earlier than the effective date of the unit.

§ 3137.86 What happens to the participating area when I drill new wells that meet the productivity criteria?

If a new well that meets the productivity criteria is—

(a) Inside a participating area boundary and completed in the same producible interval, the participating area will remain the same;

(b) Outside a participating area boundary and completed in the same producible interval as the well in an existing participating area, the participating area expands to include the new area; or

(c) In a different producible interval, inside or outside the participating area, a new participating area may be established for the well.

§ 3137.87 What must I do if there are unleased Federal tracts in a participating area?

If there are unleased Federal tracts in a participating area, you must—

(a) Include the unleased Federal tracts in the participating area, even though BLM will not share in unit costs;

(b) Allocate production for royalty purposes as if the unleased Federal tracts were leased and committed to the agreement under § 3137.100 of this subpart;

(c) Admit Federal tracts leased after the effective date of the unit agreement into the agreement on the date the lease is effective; and

(d) Submit to BLM revised maps, a list of committed leases, and allocation schedules that reflect the commitment of the newly leased Federal tracts to the unit.

§ 3137.88 What happens when a well outside a participating area does not meet the productivity criteria?

If a well outside any of the established participating area(s) does not meet the productivity criteria, all operations on that well are non-unit operations and we do not revise the participating area. No later than 60 calendar days after the well did not meet the productivity criteria, you must notify BLM that unit operations are no longer occurring. You must conduct non-unit operations under the terms of the underlying lease or other federally approved cooperative oil and gas agreements.

§ 3137.89 How does production allocation occur from wells that do not meet the productivity criteria?

(a) If a well that does not meet the productivity criteria was drilled before the unit was formed, the production is allocated on a lease or other federally approved cooperative oil and gas agreement basis. You must pay and report the royalties from any such well either as specified in the underlying lease or other federally approved cooperative oil and gas agreements.

(b) If you drilled a well after the unit was formed and the well is completed within an existing participating area, the production becomes a part of that participating area production. This paragraph applies whether or not the well meets the productivity criteria.

(c) If a well that does not meet the productivity criteria is outside a participating area, the production is allocated the same as under paragraph (a) of this section.

§ 3137.90 Who must operate wells that do not meet the productivity criteria?

(a) If a well that does not meet the productivity criteria was drilled before the unit was formed, the operator of the well at the time the unit was formed may continue as operator.

(b) As unit operator, you must continue to operate wells drilled after unit formation that do not meet the productivity criteria, until BLM approves a change in the designation of operator for those wells.

§ 3137.91 When may a well BLM previously determined to be a non-unit well establish or revise a participating area?

If you, as the unit operator, complete sufficient work so that a well BLM previously determined to be a non-unit well now meets the productivity criteria, you must demonstrate this to BLM within 60 calendar days of when this occurs. You must then revise an existing participating area or establish a new participating area (see § 3137.84 of this subpart).

§ 3137.92 When does a participating area terminate?

After contraction under § 3137.73 of this subpart, a participating area terminates 60 calendar days after BLM notifies you that there is insufficient production to meet the operating costs of that production, unless you show that within 60 days after BLM's notification—

(a) Your operations to restore or establish new production are in progress; and

(b) You are diligently pursuing oil or gas production.

Production Allocation

§ 3137.100 How must I allocate production to the United States when a participating area includes unleased Federal lands?

(a) When a participating area includes unleased Federal lands, you must allocate production as if the unleased Federal lands were leased and committed to the agreement (see §§ 3137.80 and 3137.81 of this subpart). The obligation to pay royalty for production attributable to unleased Federal lands accrues from the later of the date the—

(1) Committed leases in the participating area that includes unleased Federal lands receive a production allocation; or

(2) Previously leased tracts within the participating area become unleased.

(b) The royalty rate applicable to production allocated to unleased Federal lands is the greater of 121/2% or the highest royalty rate for any lease committed to the unit.

Obligations and Extensions

§ 3137.110 Do the terms and conditions of a unit agreement modify Federal lease stipulations?

A unit agreement does not modify Federal lease stipulations.

§ 3137.111 When will BLM extend the primary term of all leases committed to a unit agreement?

If the unit operator requests it, BLM will extend the primary term of an NPRA lease committed to a unit agreement if, from anywhere in the unit area, there is—

(a) Actual production from a well that meets the productivity criteria;

(b) Actual or constructive drilling operations; or

(c) Actual or constructive reworking operations.

§ 3137.112 Under what circumstances will BLM extend my NPRA lease?

BLM will extend all NPRA leases committed to the unit, for as long as the unit exists, for the following types of operations from any NPRA lease committed to the unit—

Type of operations	Length of extension	Additional extension
(a) Actual production	As long as there is production from a well in the unit that meets the productivity criteria.	Does not apply.
(b) Actual or constructive drilling operations	Up to 3 years	Up to three more years if you demonstrate reasonable diligence and reasonable monetary expenditures in carrying out the approved drilling or reworking operations during the initial extension.
(c) Actual or constructive reworking operations	Up to 3ears	Up to three more years if you demonstrate reasonable diligence and reasonable monetary expenditures in carrying out the approved drilling or reworking operations during the initial extension.

§ 3137.113 What happens if I am prevented from performing actual or constructive drilling or reworking operations?

(a) If you demonstrate to BLM that reasons beyond your control prevent you, despite reasonable diligence, from starting actual or constructive drilling, reworking, or completing operations, BLM will extend all committed leases as if you were performing constructive or actual drilling or reworking operations. You are limited to two extensions under this section.

(b) You must resume actual or constructive drilling or reworking operations when conditions permit. If you do not resume operations—

(1) BLM will cancel the extension; and

(2) The unit terminates (see § 3137.131 of this subpart).

Change in Ownership

§ 3137.120 As a transferee of an interest in a unitized NPRA lease, am I subject to the terms and conditions of the unit agreement?

As a transferee of an interest in an NPRA lease that is included in a unit agreement, you are subject to the terms and conditions of the unit agreement.

Unit Termination

§ 3137.130 Under what circumstances will BLM approve a voluntary termination of the unit?

BLM will approve the voluntary termination of the unit at any time—

(a) Before the unit operator discovers production sufficient to establish a participating area; and

(b) The unit operator submits to BLM certification that at least 75 percent of the operating rights owners in the agreement, on a surface acreage basis, agree to the termination.

§ 3137.131 What happens if the unit terminated before the unit operator met the initial development obligations?

If the unit terminated before the unit operator met the initial development obligations, BLM's approval of the agreement is revoked. You, as lessee, forfeit all further benefits, including extensions and suspensions, granted any NPRA lease as a result of having been committed to the unit. Any lease that BLM extended as a result of being committed to the unit would expire unless it qualified for an extension under § 3135.1–5 of this part.

§ 3137.132 What if I do not meet a continuing development obligation before I establish any participating area in the unit?

If you do not meet a continuing development obligation before any participating area is established, the unit terminates automatically. Termination is effective the day after you did not meet a continuing development obligation.

§ 3137.133 After participating areas are established, when does the unit terminate?

After participating areas are established, the unit terminates when the last participating area of the unit terminates (see § 3137.92 of this subpart).

§ 3137.134 What happens to committed leases if the unit terminates?

(a) If the unit terminates, all committed NPRA leases return to individual lease status and are subject to their original provisions.

(b) An NPRA lease that has completed its primary term on or before the date the unit terminates expires unless it qualifies for extension under § 3135.1–5 of this part.

§ 3137.135 What are the unit operator's obligations after unit termination?

Within 3 months after unit termination, the unit operator must submit to BLM for approval a plan and schedule for mitigating the impacts resulting from unit operations. The plan must describe in detail planned plugging and abandonment and surface restoration operations. The unit operator must then comply with the BLM-approved plan and schedule.

Appeals

§ 3137.150 Who may appeal a decision BLM issues under this subpart?

(a) Any person adversely affected by a BLM decision under this subpart may appeal the decision under parts 4 and 1840 of this title.

(b) You may file for a State Director Review (SDR) of decision BLM issues under this subpart. Sections [to be specified in the final rule] of this title contain regulations on SDR.

7. Add a new subpart 3138 to part 3130 to read as follows:

Subpart 3138—Subsurface Storage Agreements

Sec.

§ 3138.10 When will BLM allow subsurface storage agreements covering federally-owned lands?

BLM will allow you to use either leased or unleased federally-owned lands for the subsurface storage of oil and gas, whether or not the oil or gas you intend to store is produced from federally-owned lands, if you demonstrate that storage is necessary to—

(a) Avoid waste; or

(b) Promote conservation of natural resources.

§ 3138.11 How do I apply for a subsurface storage agreement?

(a) You must submit an application to BLM for a subsurface storage agreement that includes—

(1) The reason for forming a subsurface storage agreement;

(2) A description of the area you plan to include in the subsurface storage agreement;

(3) A description of the formation you plan to use for storage;

(4) The proposed storage fees or rentals. The fees or rentals must be

based on the value of the subsurface storage, injection, and withdrawal volumes, and rental income or other income generated by the operator for letting or subletting the storage facilities;

(5) The payment of royalty for native oil or gas (oil or gas that exists in the formation before injection and that is produced when the stored oil or gas is withdrawn);

(6) A description of how often and under what circumstances you and BLM intend to renegotiate fees and payments;

(7) The proposed effective date and term of the subsurface storage agreement;

(8) Certification that all owners of mineral rights (leased or unleased) and lease interests have consented to the gas storage agreement in writing;

(9) An ownership schedule showing lease or land status;

(10) A schedule showing the participation factor for all parties to the subsurface storage agreement; and

(11) Supporting data (geologic maps showing the storage formation, reservoir data, etc.) demonstrating the capability of the reservoir for storage.

(b) BLM will negotiate the terms of a subsurface storage agreement with you, including bonding, and reservoir management.

(c) BLM may request documentation in addition to that which you provide under paragraph (a) above of this section.

§ 3138.12 What must I pay for storage?

You must pay any combination of storage fees, rentals, or royalties to which you and BLM agree. The royalty you pay on production of native oil and gas from leased lands will be the royalty required by the underlying lease(s). You must not produce native oil and gas from unleased lands in the storage agreement area.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

8. Revise the authority citation for part 3160 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.

9. Revise 3160.0–1 to read as follows:

§ 3160.0–1 Purpose.

The regulations in this part govern operations associated with the exploration, development and production of oil and gas deposits from—

(a) Leases issued or approved by the United States;

(b) Restricted Indian land leases; and

(c) Those leases under the jurisdiction of the Secretary of the Interior by law or administrative arrangement including the National Petroleum Reserve-Alaska (NPR–A). However, § 3103.4–4 of this chapter does not apply to the NPR–A.

Dated: April 11, 2000.

Kathy Karpan,

Acting Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 00–10150 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–84–P