

Building, Boston, MA 02203-2211;
(617) 565-2773;

Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401-7671q

Dated: March 8, 1997.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 97-9106 Filed 4-8-97; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3190

[WO-300-07-1310-00]

RIN 1004-AD09

Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; Cooperative Agreements

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to streamline and amend its cooperative agreement regulations. The purpose of this amendment is to implement section 8(a) of the Federal Oil and Gas Royalty Simplification and Fairness Act that eliminates State cooperative agreements on Federal lands and to implement a policy change for funding of cooperative inspection agreements. In response to the overall effort to reform regulations and convert them to a more user friendly and understandable format, this rule is written in plain English.

DATES: *Comments:* Any comments must be received by BLM at the address below on or before May 9, 1997. Comments received after the above date will not necessarily be considered in the decision making process on the proposed rule.

ADDRESSES: *Comments:* 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, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240. You may also comment via the Internet to WOCComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also

include "attn: 1004-AD09" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452-5030. Finally, you may hand-deliver comments to BLM at 1620 L Street, NW, Room 401, Washington, D.C. Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request that their name and/or home address be kept confidential and state the reasons that one believes that his or her interest in privacy outweighs the public interest in disclosure. BLM will evaluate each request for confidentiality on a case-by-case basis. If you wish to withhold your name or street address, except for the city or town, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Ian Senio, 202-452-5049 or Sue Stephens, (505) 438-7553.

SUPPLEMENTARY INFORMATION:

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

I. Public Comment Procedures

Written Comments

Your written comments on the proposed rule should—

- (a) Be specific;
- (b) Be confined to issues pertinent to the proposed rule;
- (c) Explain the reason for any recommended change; and
- (d) Where possible, reference the specific section or paragraph of the proposal which you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background

In 1987 and 1991, BLM promulgated regulations, found at 43 CFR 3190 (52

FR 27182) and 3192 (56 FR 2998), respectively, implementing Section 202 of the Federal Oil and Gas Royalty Management Act of 1982, (30 U.S.C. 1732) (FOGRMA). Section 202 of FOGRMA provides for cooperative agreements with States and Tribes to share oil or gas royalty management information, and to carry out inspection, auditing, investigation or enforcement activities on Federal and Indian oil and gas leases. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (P.L. 104-185), which amended FOGRMA, eliminated cooperative agreements on Federal lands.

BLM has cooperative agreements with several tribes for oil and gas inspection and enforcement activities on Tribal lands. These agreements are funded at 50 percent of allowable costs. The Minerals Management Service (MMS) also entered into cooperative agreements with several tribes for royalty accounting activities. Initially these MMS agreements were funded at 50 percent, but in 1991, MMS increased its funding for cooperative agreements to 100 percent.

This rule would amend Part 3190 by removing references to cooperative agreements for States on Federal lands and by increasing funding for cooperative agreements with Indian tribes to up to 100 percent. This would eliminate discrepancies in funding these types of agreements between bureaus within the Department of the Interior.

III. Discussion of Proposed Rule

This rulemaking amends 43 CFR Subpart 3190 as follows: First, this rule would amend 43 CFR 3190.2-2(b) to increase funding for cooperative agreements with Indian tribes to up to 100 percent. This would eliminate discrepancies in funding these types of agreements between agencies within the Department of the Interior.

Second, this rule would amend the regulations to implement Section 8(a) of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (P.L. 104-185), which made Section 202 of FOGRMA (30 U.S.C. 1732), no longer applicable to Federal lands. The effect of section 8(a) is to eliminate cooperative agreements with States to conduct oil and gas inspections on Federal lands. The proposed regulations would implement this requirement by deleting from existing regulations references to cooperative agreements on Federal lands. States may still enter into a cooperative agreement on Tribal lands with the permission of the Tribe or affected allottee.

Third, on March 4, 1995, President Clinton issued a memorandum to all

Federal Departments and Agencies directing them to simplify their regulations. In response to the President's directive, BLM is proposing this rule in a user-friendly and understandable, plain English format.

Organizationally, existing regulations (43 CFR Part 3190) implement three related sections of FOGMA (202, 205 and 301) that provide for non-Federal entities (States, Tribes and contractors) to assist in carrying out the Secretary's responsibilities under the Act either by delegation of authority, cooperative agreement, or contract. 43 CFR Subpart 3190 covers common elements of the three programs; Subpart 3191 addresses delegations of authority; and Subpart 3192 addresses cooperative agreements. BLM has not yet promulgated regulations for contracts, but should they become necessary they will be published at Subpart 3193.

IV. Procedural Matters

National Environmental Policy Act

BLM has determined that this proposed rule to increase funding for cooperative agreements with Tribes; eliminate cooperative agreements on Federal lands; and convert existing regulations to plain English is administrative, financial, and legal in nature. Increasing funding for cooperative agreements with tribes is purely financial in nature, and eliminating cooperative agreements on Federal lands is a legal and administrative change from existing regulations. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule does not contain information collection requirements that

the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act, (RFA), 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the discussion contained in this preamble above, the economic impact of the proposed amendment increasing funding for Indian cooperative agreements will be less than \$250,000. The other proposed changes, deleting cooperative agreements on Federal lands and converting the regulations to plain English, will have no economic impact. BLM anticipates that this proposed rule will have no significant impact on the public at large. Therefore, BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Amendment of 43 CFR Part 3190 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year.

Executive Order 12612

The proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

The elimination of cooperative agreements with States for inspection and enforcement of oil and gas leases on Federal lands is a requirement of Section 8(a) Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

States that are interested in conducting inspections on Federal oil and gas leases may still do so under a Delegation of Authority as provided in Section 205 of FOGMA (30 U.S.C. 1735).

Therefore, in accordance with Executive Order 12612, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The primary effect of the proposed rule is to increase Federal funding to Tribes that conduct inspections of Tribal oil and gas leases under a cooperative agreement with BLM. Since the rule has no impact on lands or other properties, there will be no private property rights impaired as a result. 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.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this rule is Sue Stephens of BLM's New Mexico State Office, assisted by Ian Senio of BLM's Regulatory Management Group.

List of Subjects in 43 CFR Part 3190

Administrative practice and procedure, Authority delegations (Government agencies), Government contracts, Indians-lands, Intergovernmental relations, Mineral royalties, Reporting and recordkeeping requirements.

Accordingly, BLM proposes to amend 43 CFR Part 3190 as follows:

PART 3190—DELEGATION OF AUTHORITY, COOPERATIVE AGREEMENTS AND CONTRACTS FOR OIL AND GAS INSPECTIONS

1. Revise the authority citation to read as follows:

Authority: 30 U.S.C. 1735 and 1751.

2. In § 3190.2–2 revise paragraph (b)(2) to read as follows:

§ 3190.2–2 Funding.

* * * * *

(b) * * *

(2) Up to 100 percent for a cooperative agreement.

* * * * *

3. Revise Subpart 3192 of part 3190 to read as follows:

Subpart 3192—Cooperative Agreements

Sec.

- 3192.1 What is a cooperative agreement?
- 3192.2 Who may apply for a cooperative agreement with BLM to conduct oil and gas inspections?
- 3192.3 What must a Tribe or State include in its application for a cooperative agreement?
- 3192.4 What is the term of a cooperative agreement?
- 3192.5 How do I modify a cooperative agreement?
- 3192.6 How will BLM evaluate my request for proprietary data?
- 3192.7 What must I do with Federal assistance I receive?
- 3192.8 May I subcontract activities in the agreement?
- 3192.9 What terms must a cooperative agreement contain?
- 3192.10 What costs will BLM pay?
- 3192.11 How are civil penalties shared?
- 3192.12 What activities may Tribes or States perform under cooperative agreements?
- 3192.13 What activities must BLM keep?
- 3192.14 What are the requirements for Tribal or State inspectors?
- 3192.15 May cooperative agreements be terminated?
- 3192.16 How will I know if BLM intends to terminate my agreement?
- 3192.17 Can BLM reinstate cooperative agreements that have been terminated?
- 3192.18 Can I appeal a BLM decision?

Subpart 3192—Cooperative Agreements**§ 3192.1 What is a cooperative agreement?**

(a) A cooperative agreement is a contract that BLM enters into with a Tribe or State to conduct inspection, investigation, or enforcement activities on producing Indian oil and gas leases.

(b) BLM will enter into a cooperative agreement with a State to inspect oil and gas leases on Indian lands only with the permission of the Tribe with jurisdiction over the lands.

§ 3192.2 Who may apply for a cooperative agreement with BLM to conduct oil and gas inspections?

(a) The Tribal chairman, or other authorized official, of any Tribe with producing oil or gas leases, or agreements under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*), for Indian lands under the Tribe's jurisdiction.

(b) Tribes may join together to apply for a multi-tribe cooperative agreement.

(c) The Governor of a State having a tribal resolution from the tribe with jurisdiction over the land, permitting the Governor to enter into cooperative agreements.

§ 3192.3 What must a Tribe or State include in its application for a cooperative agreement?

- (a) You must complete—
 - (1) Standard Form 424, Application for Federal Assistance;
 - (2) Standard Form 424A, Budget Information—Non-Construction Programs; and
 - (3) Standard Form 424B, Assurances—Non-Construction Programs.
- (b) You must describe the type and extent of oil and gas inspection, enforcement, and investigative activities proposed under the agreement and the period of time the proposed agreement will be in effect.
- (c) You may include allotted lands under an agreement with the allottee's written consent.

§ 3192.4 What is the term of a cooperative agreement?

Cooperative agreements can be in effect for a period from 1 to 5 years from the effective date of the agreement, as set out in the agreement.

§ 3192.5 How do I modify a cooperative agreement?

You may modify a cooperative agreement by having both parties to the agreement consent to the change in writing. If the agreement is with a State, and the modification would effect the duration or scope of the agreement, then you must obtain the Tribe's written consent.

§ 3192.6 How will BLM evaluate my request for proprietary data?

BLM will evaluate Tribal or State requests for proprietary data on a case-by-case basis according to the requirements of § 3190.1 of this part.

§ 3192.7 What must I do with Federal assistance I receive?

You must use Federal assistance that you receive only for costs incurred which are directly related to the activities carried out under the cooperative agreement.

§ 3192.8 May I subcontract activities in the agreement?

Yes. You must obtain BLM's written approval before you subcontract any activities in the agreement with the exception of financial audits of program funds, that are required by the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*).

§ 3192.9 What terms must a cooperative agreement contain?

The cooperative agreement must—

- (a) State its purpose, objective, and authority;

(b) Define terms used in the agreement;

(c) Describe the lands covered;

(d) Describe the roles and responsibilities of BLM and the Tribe or State;

(e) Describe the activities the Tribe or State will carry out;

(f) Define the minimum performance standards to evaluate Tribal or State performance;

(g) Include provisions to—

(1) Protect proprietary data, as provided in § 3190.1 of this part;

(2) Prevent conflict of interest, as provided in § 3192.13(d);

(3) Share civil penalties, as provided in § 3192.10; and

(4) Terminate the agreement;

(h) List BLM and Tribal or State contacts;

(i) Provide for the avoidance of duplication of effort between BLM and the Tribe or State when conducting inspections;

(j) List schedules for—

(1) Inspection activities;

(2) Training of Tribal or State inspectors;

(3) Periodic reviews and meetings;

(k) Specify the limit on the dollar amount of Federal funding;

(l) Describe procedures for Tribes or States to request payment reimbursement;

(m) Describe allowable costs subject to reimbursement; and

(n) Describe plans for BLM oversight of the cooperative agreement.

§ 3192.10 What costs will BLM pay?

(a) BLM will pay expenses allowed under part 12, subpart A, Administrative and Audit Requirements and Cost Principles for Assistance Programs, of this title.

(b) BLM will fund the agreements up to 100 percent of allowable costs.

(c) Funding is subject to the availability of BLM funds.

(d) Funding for cooperative agreements is subject to the shared civil penalties requirement of § 3192.11.

§ 3192.11 How are civil penalties shared?

When a Tribe or State conducts an inspection that results in the collection of a civil penalty, that Tribe or State and the Federal government share the civil penalty equally. The law requires BLM to recover its cost for the cooperative agreement. As a result, BLM will pay you your share of civil penalties only after civil penalties for the year exceed the amount of your Federal funding for the year.

§ 3192.12 What activities may Tribes or States perform under cooperative agreements?

Activities carried out under the cooperative agreement must be in accordance with the policies of the appropriate BLM State or field office and as specified in the agreement, and may include—

- (a) Inspecting tribal oil and gas leases for compliance with BLM regulations;
- (b) Issuing initial Notices of Incidents of Non-Compliance, Form 3160-9, and Notices to Shut Down Operation, Form 3160-12;
- (c) Conducting investigations; or
- (d) Conducting oil transporter inspections.

§ 3192.13 What activities must BLM keep?

- (a) Under cooperative agreements, BLM continues to—
 - (1) Issue Notices of Incidents of Noncompliance that impose monetary assessments and penalties;
 - (2) Collect assessments and penalties;
 - (3) Calculate and distribute shared civil penalties;
 - (4) Train and certify Tribal or State inspectors;
 - (5) Issue and control inspector identification cards; and
 - (6) Identify leases to be inspected, taking into account the priorities of the Tribe.
- (b) Entering into a cooperative agreement does not affect the right of BLM to enter lease sites to conduct inspections, enforcement, investigations or other activities necessary to supervise lease operations.

§ 3192.14 What are the requirements for Tribal or State inspectors?

- (a) BLM must certify Tribal or State inspectors before they conduct independent inspections on Indian oil and gas leases.
- (b) The standards for certifying Tribal or State inspectors must be the same as the standards used for certifying BLM inspectors.
- (c) Tribal and State inspectors must satisfactorily complete on-the-job and classroom training in order to qualify for certification.
- (d) Tribal or State inspectors must not—
 - (1) Inspect the operations of companies in which they, a member of their immediate family, or their immediate supervisor, have a direct financial interest; or
 - (2) Use for personal gain, or gain by another person, information he or she acquires as a result of his or her participating in the cooperative agreement.

§ 3192.15 May cooperative agreements be terminated?

- (a) Cooperative agreements may be terminated at any time if all parties agree to the termination in writing.
- (b) BLM may terminate an agreement without Tribal or State agreement if the—
 - (1) Tribe or State fails to carry out the terms of the agreement; or
 - (2) Agreement is no longer needed.

§ 3192.16 How will I know if BLM intends to terminate my agreement?

- (a) If BLM plans to terminate your agreement because you did not carry out the terms of the agreement, BLM must send a notice to you that lists the reasons BLM plans to terminate the agreement.
- (b) You must send BLM a plan to correct the problems BLM listed in the notice.
- (c) If you submit a plan for correction and BLM approves the plan, you have 30 days to correct the problem(s).
- (d) If you have not corrected the problem within 30 days, BLM will send you a second termination notice.
- (e) If you do not respond to the second notice within 30 days, BLM will terminate the agreement.

§ 3192.17 Can BLM reinstate cooperative agreements that have been terminated?

- (a) If your cooperative agreement was terminated by consent, you may request that BLM reinstate the agreement.
- (b) If BLM terminated an agreement because you did not carry out the terms of the agreement, you must prove that you have corrected the problem(s) and are able to carry out the terms of the agreement.
- (c) BLM will then decide whether or not your cooperative agreement may be reinstated and, if so, whether you must make any changes to the agreement before it can be reinstated.

§ 3192.18 Can I appeal a BLM decision?

Yes, you may appeal a BLM decision under the provisions of 43 CFR part 4.

Dated: March 31, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 97-9100 Filed 4-8-97; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

43 CFR Parts 3400, 3410, 3420, 3440, 3450, 3460, 3470, 3480

[WO-320-1320-02-1A]

RIN 1004-AD11

Coal Management Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Land Management (BLM) requests comments to assist in the revision of its regulations governing coal operations on Federally leased lands. The purpose of the revision is to clarify and streamline current processes and policies related to exploration and post-lease actions and to comply with the President's Government-wide regulatory reform initiative to eliminate, streamline, or rewrite regulations in plain English. The proposed rule will reorganize, clarify and revise portions of the existing Federal coal management program regulations, including exploration licenses, lease suspensions, lease administration, diligence, and exploration and mining operations on leased Federal coal. Many of the changes contemplated will be administrative and procedural in nature and provide more explicit and coherent direction for situations not anticipated by the existing regulations.

DATES: BLM will accept comments until 5:00 p.m. Eastern time on May 9, 1997. BLM will not necessarily consider comments received after this time in developing the proposed rule or include them in the administrative record.

ADDRESSES: Commenters may mail written comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, D.C. 20240; or hand-deliver written comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C. See the **SUPPLEMENTARY INFORMATION** section for the electronic access and filing address. Comments will be available for public review at the L Street address from 7:45 a.m. to 4:15 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bill Radden-Lesage, (202) 452-0350 (Commercial or FTS).