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43 CFR Parts 3130 and 3160
National Petroleum Reserve-Alaska-Unitization; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3130 and 3160

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RIN 1004–AD13

National Petroleum Reserve-Alaska-Unitization

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule adds a new subpart to the Bureau of Land Management's (BLM) oil and gas regulations implementing new statutory authority allowing operators to form units in the National Petroleum Reserve-Alaska (NPR–A). Units allow for the sharing of costs and spreading of revenues among several leases, and allow for production to be attributed to committed leases in the unit. The final rule also: allows for waiver, suspension, or reduction of rental or royalty for NPR–A leases; allows for suspension of operations and production for NPR–A leases; amends existing regulatory language to set the primary lease term for an NPR–A lease at 10 years. Current regulations allow 10 years, or a shorter term if it is in the notice of sale; and adds a new subpart to the NPR–A regulations on subsurface storage agreements. Subsurface storage agreements allow operators to store gas in existing geologic structures on Federal lands.

This rule also makes clear that existing suspension and royalty reduction regulations do not apply to the NPR–A.

EFFECTIVE DATE: This final rule is effective June 10, 2002.

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Persons who use a telecommunications device for the deaf may contact these persons through the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

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I. Background

Why Is BLM Implementing This Rule?

Part 3130 of 43 Code of Federal Regulations (CFR) contains the regulations that apply to oil and gas leasing in the NPR–A authorized under the Naval Petroleum Reserves Production Act of 1976, as amended (the ''Act''), (42 U.S.C. 6501 *et seq.*). Until this final rule, part 3130 did 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 rule implements 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 NPR–A and subsurface storage agreements.

How Does This Rule Change BLM's NPR–A Oil and Gas Regulations?

The final rule applies to operations under Federal oil and gas leases in NPR–A and adds a new subpart allowing the formation of oil and gas units in the NPR–A. Units allow for the sharing of costs and spreading of revenues among several leases, and allow for development from unit leases to occur without regard to lease or property boundaries. The rule also:

(A) Allows for waiver, suspension or reduction of rental or royalty for NPR–A leases and clarifies the rights of native corporations;

(B) Allows for suspension of operations and production for NPR–A leases;

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

(D) Adds a new subpart to the NPR–A 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) Makes it clear that existing suspension and royalty reduction regulations that preceded the enactment of Pub. L. 105–83, no longer apply to the NPR–A.

II. Final Rule as Adopted and Response to Comments

General

BLM proposed this rule in the **Federal Register** on April 26, 2000 (65 FR 24541). As a result of public requests, we extended the comment period on June 26, 2000 (65 FR 39334). The extended comment period closed on August 10, 2000.

As a result of public comments we made several changes to the final rule. We did this by:

(A) Clarifying the effect of suspensions of operations and production on a lease;

(B) Adding a definition of drainage consistent with a previous rule (see 66 FR 1883) and modifying the definitions for ''committed tract,'' ''NPR–A lease,'' and ''producible interval;'

(C) Allowing use of a nonfederal unit agreement if the lands in the proposed unit comprise less than 10 percent of the lands in the unit. BLM will approve commitment in these cases if the unit agreement protects the public interest;

(D) Defining what is ''economically feasible'' for drilling protective wells in drainage situations;

(E) Allowing for delay in meeting the initial or a continuing development obligation if you cannot perform the obligation for reasons beyond your control;

(F) Adding a BLM customer service standard for approving continuing development obligation plans;

(G) Addressing secondary recovery operations in a unit;

(H) Allowing acreage reduction in a participating area;

(I) Allowing participating area expansion based on available data and information rather than basing it solely on drilling and testing new wells; and

(J) Allowing extension of time to demonstrate that BLM should not terminate a participating area if you are prevented from doing so for reasons beyond your control.

Several comments lead us to believe many commenters misunderstand the function of Federal unit agreements and the role BLM plays in approving and administering them. Our main concern in approving and administering Federal units is to ensure that our actions serve in the public interest (*see* 42 U.S.C. 6508). Our interpretation of administering in the public interest includes protecting Federal royalties and natural resources. For instance, we believe that the relations among unit participants are appropriately managed by the participants. Accordingly, we consider those issues to be outside the scope of Federal concern. These issues should be addressed in the context of secondary or third party agreements or unit operating agreements. Other issues that are outside the scope of Federal concerns include royalty or payment issues between or among working interest owners, and issues between nonfederal lessees and between nonfederal lessees and the operator.

Under an approved Federal unit agreement, BLM will look to the unit operator as its contact. Other parties are generally not directly involved in formal negotiations of Federal unit agreements. BLM has found it to be administratively efficient to deal directly with the unit operator, rather than all parties committed to the unit. Concerns between other interest owners and the unit operator may be addressed in third party unit operating agreements to which BLM is not a party. However, BLM welcomes input and additional information from any party with an interest in production or allocations from the unit agreement.

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

Section 3130.4–2 sets NPR–A lease terms at 10 years to reflect statutory language at 42 U.S.C. 6508(8). 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. This section remains as proposed.

Subpart 3133—Rentals and Royalties

Sections 3133.3 and 3133.4 provide for waiver, suspension, or reduction of rental, royalty, or minimum royalty for NPR–A leases if it encourages the greatest ultimate recovery of oil and gas or it is in the interest of conservation. BLM requires applicants to demonstrate that they can't operate their lease under its terms without a waiver, suspension, or reduction of rental, royalty, or minimum royalty. BLM also requires applicants to submit certain items in their application so BLM can determine if the applicant meets the standards of the regulations. We received no comments on these sections. However, we added a new paragraph (b) to section 3133.3 to recognize situations where an Alaska Native regional corporation holds the subsurface estate of leased lands which have been conveyed to an Alaska Native village corporation pursuant to 43 U.S.C. 1613. Under this new paragraph, BLM would consult with the regional corporation before taking an action under this section affecting leased lands in which the subsurface estate is held by the regional corporation. This new provision conforms this section with existing regulations at 43 CFR 2650.4–3 and with the statutory provision at 43 U.S.C. 1613 (g). We also amended paragraphs (b)(1) and (b)(2) of section 3133.4 to make it clear that we are requiring the signature of record title holders of the lease on an application for waiver, suspension or reduction of rental, royalty or minimum royalty.

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 latter suspensions relate to payments only and do not relate to suspensions of operations and production.

Section 3135.2 describes the circumstances under which BLM will require or approve a request for a suspension of operations and production on an NPR–A lease. This section differs from the proposal in that it allows BLM to require a suspension of operations. We made this change in the final rule because the statute (*see* section 10 of 42 U.S.C. 6508) authorizes BLM to ''direct or assent to the suspension of operations or production.'' We also amended paragraph (b) of this section to make it clear that the suspension pertains to operations and production on the lease. We also replaced the phrase ''those obligations'' with ''your lease requirements'' to more accurately describe the requirement. BLM will require or approve suspensions of operations and production if you are prevented from operating your lease for reasons beyond your control, and the suspension:

(A) Is in the interest of conservation of natural resources. This includes conservation of oil and gas as well as other NPR–A resources;

(B) Encourages the greatest ultimate recovery of oil and gas, such as by encouraging 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 require or grant a suspension could be those related to protection of natural habitat and wildlife, and protection of subsistence needs of rural residents.

In the final rule we also require the operator to continue to perform necessary maintenance and safety activities on the lease during the period of the suspension. This is consistent with existing policy and practice of BLM field offices.

One commenter encouraged BLM to work with the operator to ensure that issues such as environmental protection and subsistence issues related to granting a suspension are addressed prior to operations commencing. BLM is committed to addressing environmental and subsistence issues prior to any development. However, there may be unanticipated issues, such as undiscovered archaeological finds or endangered species, that may not be evident prior to operations commencing. In these cases, BLM would, of course, work with the operator to address the concerns in a manner that attempts to mitigate impacts to operators while still protecting Federal resources.

Section 3135.3 provides the suspension application requirements. BLM requires the listed items to determine whether you qualify for a lease suspension. We received no comment on this section, but we amended it by replacing ''owners'' with ''holders'' wherever it appeared. We did this to be consistent with BLM terminology and the rest of this rule.

Sections 3135.4 describes the effective date of the suspension. We received no comments on this section. The final rule is slightly different from the proposal in that we made changes to agree with the changes to section 3135.2, explained above.

Section 3135.5 explains when you should stop paying rental or royalty. This section is different from the proposal in that it corrects a logical flaw in what we proposed. Under the proposed rule, the suspension could be the first day of the month in which you file an application for suspension and you would stop paying rental or royalty on the first day of the month following our approval of the suspension. This would have put lessees in the position of having to pay rental or royalty for one full month after the effective date of the suspension. The final rule corrects this by allowing you to stop paying rental or royalty on the first day of the month the suspension is effective. The final rule also explains that if there is any production sold or removed during that final month, you must pay royalty on it.

Sections 3135.6 states that 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. We received no comment on this section. However, we amended paragraph (a)(1) of this section to make it clear that the operator does not have unilateral authority to resume

operations or production and must have BLM approval before doing so.

Section 3135.7 lays out the effect that a suspension of operations and production has on the term of your lease. This section is different than what we proposed. The final rule breaks up the effect a suspension has on a lease into two categories and explains that:

(A) For leases in their primary term, the suspension stops the running of the primary term for the period of the suspension; and

(B) For leases in their extended term, the suspension holds your lease in its extended term for the period of suspension as if it were in production. In this case, the lease will not terminate for failure to produce.

These changes more accurately describe the effects of a suspension on lease terms.

We also moved the explanation of the impact a suspension has on rental and royalty into a new section 3135.8.

Section 3135.8 is a new section to the final rule. It explains in more detail than the proposed rule when you must next pay advance annual rental, royalty or minimum royalty and includes an example. It also explains that if you remove or sell any production from the lease during the term of the suspension, you must pay royalty on that production.

Subpart 3137—Unitization Agreements, National Petroleum Reserve—Alaska

Section 3137.5 contains 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 are unique to the NPR–A and have no parallel in the regulations affecting Federal lands outside of NPR–A. These terms are important for the extension provisions of sections 3137.111 and 3137.112 and allow BLM to grant you an extension of a lease in a unit if you demonstrate that there are ongoing constructive drilling or reworking operations in the unit. Since oil and gas operations are difficult and expensive in the NPR–A, we believe that it is reasonable for constructive drilling or reworking operations to extend your lease.

The definition of the term *operating rights* is the same as the definition of working interest: It means any interest you hold that allows you to explore for, develop, or produce oil and gas. The use of this term instead of the term ''working interest'' is adopted here to be consistent with current regulations that apply to Federal lands outside of NPR–A (*see* 43 CFR 3100.0–5 and 3160.0–6).

Several commenters thought that we should use the term ''working interest'' instead of the term ''operating rights.'' Commenters said that ''working interest'' is a more universally used term and that it is a term used by the State of Alaska. ''Working interest'' means the same thing as ''operating rights.'' Because we use the term ''operating rights'' for Federal lands outside of NPR–A, we use that term in this final rule.

Several commenters suggested that we add definitions for the terms ''multiple unit owners'' and ''other fee owners.'' We did not add these terms. Those terms are not necessary for BLM to administer NPR–A units. Issues having to do with multiple owner units and other fee owners may be dealt with in unit operating agreements to which BLM is not a party. We recognize that there may be several different land owners whose land is committed to an NPR–A unit. However, we do not believe it is necessary to add those terms in order to administer NPR–A units.

Committed Tract

Two commenters suggested that we amend the definition of committed tract to make it clear that neither the State of Alaska nor the Arctic Slope Regional Corporation (ASRC) should be responsible for unit operations. We agree that the proposed definition was not clear. We did not intend that either Alaska or ASRC be responsible for unit operations. In the final rule, we amended the definition, to the extent it is applicable to State leases or private lands, by replacing the word ''owners'' with ''oil and gas lessees.'' This change makes it clear that the oil and gas lessees and operating rights owners would agree to unit agreement terms and conditions and to accept responsibility for unit operations. We also eliminated the phrase ''and agreed to accept responsibility for unit operations'' from paragraphs (1) and (2), since that language has nothing to do with whether or not a tract is committed to a unit agreement.

Another commenter suggested that we amend the term ''committed tract'' by replacing ''Federal lease'' with ''NPR–A lease'' in the first paragraph. We didn't make this change. There are circumstances where it would be possible for a Federal lease outside of NPR–A issued under the Mineral Leasing Act to be committed to an NPR–A unit agreement.

One commenter suggested that we amend the definition by introducing the concept of ''other fee owner'' as someone who could commit their lands to an NPR–A unit. We believe other fee owners are already covered in the definition under ''private parcel of land'' and therefore it would be redundant and possibly confusing to amend the definition as suggested.

Finally, we amended the definition by adding the phrase ''or the owners of unleased minerals'' to paragraph (2), to make it clear that we are not precluding owners of unleased minerals from committing to a unit.

NPR–A Lease

Several commenters suggested that we amend the definition to make it clear that leases issued by the Federal Government that are subsequently selected by ASRC are not NPR–A leases. We agree and amended the definition by adding the phrase ''and administered'' to make it clear that NPR–A leases are only those leases the Federal Government issues and administers.

Participating Area

One commenter suggested we amend the definition of the term to say ''those committed tracts or portions of committed tracts within the unit area that meet the productivity criteria for inclusion in a participating area (PA) specified in the unit agreement.'' We did not adopt the commenter's language in the final rule. PAs will consist of all acreage around a well that a unit operator can reasonably prove productive. When we approve the creation of a PA, we will consider all information available at the time; however, we will not approve a PA without at least one well that meets the productivity criteria.

One commenter suggested that we revise the definition by saying that the PA includes committed tracts within the unit area that contain a well meeting the productivity criteria and those committed tracts or portions of the committed tracts that meet the productivity criteria. We did not make this change in the final rule. We believe that the proposed definition, along with sections 3137.80 through 3137.92, make it clear that the PA will include all lands that meet the productivity criteria.

Producible Interval

One commenter suggested that we amend the definition by saying that the pool, deposit, zone or portion thereof ''is capable of meeting the productivity criteria.'' We disagree. There may be producible intervals within the boundaries of the unit agreement area that do not meet the productivity criteria. We did make editorial changes to this definition to clarify its meaning.

Record Title

One commenter suggested that we amend the definition of the term by adding ''or in the records in which such lease is authorized to be recorded under the law of the State of Alaska.'' We did not adopt the commenter's suggestion. We agree that an NPR–A unit may include land in State of Alaska or ASRC oil and gas leases. However, we do not agree that these regulations should be concerned with record title of Alaska or ASRC leases. We are not responsible for insuring that a lessee is granted record title to an Alaska or ASRC lease, nor would we directly administer those leases for any reason outside of the terms of the Federal unit agreement. Therefore, we believe it inappropriate for the definition to include record title of Alaska or ASRC leases.

Unit Agreement, Unit Area

One commenter suggested that we amend the definition of these two terms to deal with leases owned by the State of Alaska or ASRC. We did not adopt the comment. BLM will not address issues having to do with multiple owner units and other fee owners. Those issues may be dealt with in unit operating agreements to which BLM is not a party. We recognize that there may be several different land owners whose lands are committed to an NPR–A unit. However, we do not believe it is necessary to amend these definitions as the commenter suggested.

General

Section 3137.10 explains the benefits to entering into a unitization agreement in NPR–A. One of the major benefits of unitization is that operations or production from one part of the unit meet the development obligations for all Federal 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 Federal 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 Federal 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 ignore those offsets between unitized tracts and drill within the 200-foot limit. Finally, since unit operator(s) are responsible for operations for all unitized tracts, lessees benefit by being able to consolidate operations and reporting requirements. With the exception of minor editorial changes to paragraphs (a) and (b) of the final rule, it remains as proposed.

Application

Section 3137.15 This is a new section that explains that if the Federal lands in a proposed unit agreement constitute less than 10 percent of the lands in the unit:

(A) You may use a unit agreement approved by the State and/or a native corporation;

(B) BLM will authorize commitment of the Federal lands to the unit, if BLM determines that the unit agreement protects the public interest; and

(C) Operators may request that BLM approve and administer the unit. If we agreed, you would be required to follow, and we would administer, this final rule and existing 43 CFR part 3160—Onshore Oil and Gas Operations.

We added this section as a result of a comment on section 3137.21. Also, this section is similar to existing regulations in section 3181.1, that apply to Federal lands outside of NPR–A.

Sections 3137.20 provides that BLM will accept any format of the unit agreement as long as it protects the public interest and includes the mandatory terms required by these regulations.

In the proposed rule we asked for comment on whether or not the model unit agreement in subpart 3186 of existing regulations would be appropriate for use in the NPR–A. We received several comments that said that the model unit agreement form is too inflexible for use in NPR–A. Commenters preferred the proposed rule over the model form since it would allow negotiation of unit terms with BLM, which would result in a unit agreement that would reflect the unique circumstances inherent in the conduct of operations in NPR–A.

Several commenters suggested that we amend this section to require BLM to negotiate unit terms with the unit operator and any other fee owner. We did not adopt these comments. BLM's philosophy in dealing with Federal units has always been that we deal directly with the unit operator. We have been effectively administering units in this manner outside of NPR–A for more than 50 years and we will deal with units in a like manner in the NPR–A as well. We will not be a party to negotiations among or between interest owners other than the unit operator as representative of the unit because we are only concerned with issues that affect the public interest, rather than resolving internal, essentially private, issues among unit participants. We are also concerned about the potential difficulty of BLM attempting to negotiate with multiple potential unit participants. This would take significant resources for BLM and would involve BLM in essentially private party relationships. One of the factors relevant to a successful unit is for the participants to work together and to select and work with the unit operator. Accordingly, other lessees or interest owners should address their private concerns in their leasing instruments or by negotiating unit operating agreements with the unit operator.

One commenter suggested that any regulation that would purport to empower BLM to force the inclusion of ASRC lands in a unit would infringe upon the police powers of the State of Alaska and potentially interfere with constitutionally protected property rights of ASRC. Neither the proposed regulations nor this final rule allow BLM to force unitization of nonfederal lands. BLM has traditionally relied on State procedures for issues addressing control of nonfederal lands and will continue to do so under these regulations.

One commenter suggested that the interest of the unit operator may not be the same interest as a working interest owner, and if the working interest owner is not allowed to participate in unit agreement negotiations with BLM, they believe their interests will not be protected. Issues of concern to working interest owners may be addressed in either unit operating agreements between the working interest owners and the unit operator or in the lease instrument itself.

This final section remains as proposed.

Section 3137.21 introduces the basic terms of a unit agreement. It also cross-references other sections of the regulation whose subject is discussed here. This section contains a provision that allows BLM to request additional supporting documentation after reviewing your initial application.

We amended paragraph (a)(3) of this section to make it clear that the unit agreement should include ''proposed well'' locations. This change recognizes that we are concerned with well locations and not necessarily just PA location and size, and that the final well location may be different from that proposed in the initial unit agreement.

We also made paragraph (a)(5) clearer by stating that you have the choice to

include the optional terms in the unit agreement.

One commenter suggested that we amend paragraph (a)(3) of this section to require a production allocation methodology for each committed tract within the PA. Federal units outside of NPR–A have traditionally allocated production to each committed tract in a PA in the same proportion that such tract's surface acreage in the PA bears to the total acreage in the PA. To be consistent with Federal units outside of NPR–A, this final rule will allocate production in the same manner (*see* section 3137.81(a)). We believe this manner of allocation is reasonable, predictable and protects Federal and other interest owners equally. We suggest you address allocation issues among other interest owners in a unit operating agreement.

One commenter believes that the proposed rule does not allow enough flexibility since the rule deals primarily with four mandatory terms. We believe the rule allows flexibility to address issues outside of the four mandatory terms. Section 3137.50(d) allows other terms in the agreement that will promote the greatest ultimate recovery of oil and gas. Issues that aren't covered under this section may be addressed in third party or unit operating agreements.

One commenter suggested we add the following language to this section:

''Any terms negotiated and agreed upon among you, BLM, any other fee owner, and the applicable owners of oil and gas lease interests (record title and operating rights) with respect to a multiple owner unit dealing with the continuation or termination of oil and gas leases covering land in which the oil and gas is owned by such other fee owner or with exploration, development, production, or operation of such land or allocation of production from a PA including such land, which terms may vary from terms of other sections of this subpart governing NPR–A leases included in the unit.''

We did not adopt this language in the final rule. BLM will only negotiate with the unit operator. We acknowledge that there may be several different land owners in an NPR–A unit. However, as discussed above, interest owners may address issues of nonfederal concern in unit operating agreements.

One commenter suggested that we add language to paragraph (b) stating that BLM may not unilaterally make changes in a proposed agreement without the consent of the other parties to the unit agreement. We agree that BLM will not make unilateral changes to the unit agreement. We will negotiate in good faith the terms of the unit agreement with the unit operator. Issues outside the scope of these regulations may be addressed in a unit operating agreement between interest owners and the operator.

Several commenters suggested that we add a provision addressing situations where the Federal interest in a unit is relatively small (*e.g.,* less than 10 percent). We agree and have added section 3137.15, which is similar to section 3181.1 in existing regulations that apply outside of NPR–A, to address situations where the Federal lands in the unit are less than 10 percent of the lands in the unit.

One commenter asked if the rules were limited to exploratory and primary recovery operations and whether the operator could propose secondary or enhanced recovery operations in the continuing development plan. The proposed rule primarily addresses exploratory or primary recovery operations. However, we amended the final rule in several places (*i.e.,* 3137.81 (b) and (c), and 3137.82(c)) to address secondary recovery issues. BLM would approve a continuing development plan that proposed secondary or enhanced recovery if in support of the plan you had enough geologic or drilling data to show the need for secondary recovery operations.

One commenter asked if they should propose an amendment to the unit agreement or propose a new unit agreement when they plan to perform secondary or enhanced recovery operations. In administering these rules, BLM will deal with unit agreements on a case-by-case basis. You should work with your local BLM office to determine which course of action is most appropriate in your given circumstance.

One commenter suggested that in the final rule we address what happens when there are leases in an NPR–A unit with differing royalty rates. This final rule will not address differing royalty rates. As far as royalty payments are concerned, the Department is primarily concerned with the Federal interest. The rule does not prohibit parties to the agreement from entering into allocation agreements for the nonfederal share.

One commenter suggested that the final rule address NPR–A units that include nonfederal leases. We believe the rule does address units including nonfederal leases. As explained above, Federal unit agreements address different issues than standard State or private unit agreements because our primary concerns are protecting the public interest and conservation of Federal resources. Issues of concern to nonfederal interest owners holders may be addressed in separate unit operating agreements. BLM has historically administered Federal units in this manner outside of NPR–A and will administer units in this manner in NPR–A as well.

One commenter suggested that we allow working interest owners to form voluntary units. We believe that in the absence of a State order forcing nonfederal lessees to join a Federal unit, the units formed under these regulations will be voluntary units.

Section 3137.22 lays 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 can 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 NPR–A lease since these regulations generally do not apply if an NPR–A lease were not in the unit. This section also makes 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 will approve reasonable sizes and shapes as long as they comply with the other provisions of this section.

We made one minor editorial change to paragraph (a) of this section by replacing ''Be composed of'' with ''Consist'' so that final paragraph (a)(1) reads:

''Consist 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''. We believe this wording is clearer than that proposed.

Section 3137.23 describes what you must submit to BLM in your application. This includes 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 must include a discussion of the reasonably foreseeable and significantly adverse effects on the surface resources of the NPR–A. This standard is laid out in paragraph (1) of 42 U.S.C. 6508. This section also requires 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.

BLM may also require you to submit additional documentation such as any agreements you may have with persons who have the right to engage in subsistence activities on lands in the unit area, or additional copies of maps, plats and other such exhibits.

We amended paragraph (b) of this section to make it clear that the map this section requires you to submit is of the proposed unit area. This change also recognizes the fact that the final unit may be different from what you proposed in your application.

We also amended paragraph (c)(3) of this section by replacing ''holding'' with ''owning'' in order to be consistent with BLM terminology.

One commenter asked why a discussion of reasonably foreseeable and significantly adverse effects on surface resources of NPR–A is needed at the time of application. BLM requires this information because it is a statutory requirement (*see* 42 U.S.C. 6508(1)). We require this information at the application stage because we need this information as a condition of approval of the unit and to determine the effects of your operations on NPR–A. We realize that you will not have all of the information necessary for a detailed plan of operations at the application stage, but we expect you to address these issues to the extent you can with the information you have available at the time of application.

One commenter asked what constitutes ''sufficient tracts committed to the unit agreement to reasonably operate and develop the unit area'' and if the rule does not address ''involuntary unitization,'' how will an operator achieve effective control. ''Sufficient tracts'' means the committed area necessary for the unit operator to have reasonable control of the unit area. This is generally considered to mean a significant percentage of tracts in the unit area and is determined on a case-by-case basis. For example, outside of NPR–A ''sufficient tracts'' has meant control of as little as 70 percent of the committed area within the unit area. BLM does not have authority to force the unitization of nonfederal tracts. Outside of NPR–A we have traditionally relied on State procedures to deal with resource conservation issues on nonfederal lands and would do the same in NPR–A. Therefore, if an operator did not believe it had effective control of the unit area, it could ask the State of Alaska to intervene.

One commenter asked if the rules contemplate ''all depths'' units or can a unit agreement and development plan be formation or pool specific. Section 3137.28 addresses this directly and makes it clear that NPR–A unit agreements include all oil and gas resources of committed tracts unless we approve unit agreement terms to the contrary.

One commenter said they believe this section means that BLM expects unit operators to operate the unit area efficiently without participation in unit operations or production from noncommitted parties. We believe the commenter is implying that the final rule should provide for forced unitization. As mentioned above, BLM does not have the authority to force the unitization of nonfederal leases. We rely on State procedures for forced unitization of nonfederal lands.

One commenter suggested that the final rule should ''recognize that the existing Northeast National Petroleum Reserve-Alaska Final Integrated Activity Plan/Environmental Impact Statement (FIAP/EIS) concluded that the application of all lease stipulations prescribed by the FIAP/EIS and any additional stipulations added by the BLM authorizing officer, will be sufficient to comply with existing law.'' Another commenter suggested we amend paragraph 3137.23(d)(1) by adding ''recognizing that existing lease stipulations are sufficient to comply with existing law.'' We did not amend the section as suggested. The FIAP/EIS ''describes the future multiple-use management of 4.6 million acres of the NPR–A, consistent with existing statutory direction for its management.'' *See* Record of Decision, Northeast National Petroleum Reserve, Alaska, Integrated Activity Plan/Environmental Impact Statement, Record of Decision Summary, at page v (October 7, 1998). The FIAP/EIS and any stipulations proposed therein were not written to address regulations of general applicability to the entire NPR–A. Future leasing decisions in other portions of the NPR–A will determine what stipulations would be required in light of available information.

One commenter suggested that we amend paragraph (d)(1) by adding ''other fee owners'' to those entities which the regulation would require you to invite to join the unit. We did not make this change. Other fee owners are already included in this paragraph under ''owners of oil and gas lease rights (leased or unleased)'' and it would be redundant to amend this section.

Section 3137.24 lists the reasons BLM will reject a unit agreement application. BLM will reject unit applications that:

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

(B) Propose 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 units in the NPR–A. 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 will also reject any unit application that proposes an operator who is not qualified, under any statute or regulation, to operate within NPR–A;

(C) Do not conserve natural resources. BLM interprets paragraph (10) of 42 U.S.C. 6508 as establishing this standard. BLM interprets ''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 determine are not in the public interest. BLM will not approve unit applications that do not protect the resources in an oil and gas pool, field, or similar area;

(E) That do not comply with any special conditions in effect for any part of the NPR–A 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) Do not comply with the requirements of subpart 3137.

One commenter asked if all the criteria for unit approval are in section 3137.24 and also if the term of the unit agreement will be specified in the approval. Section 3137.24 contains all the approval criteria, including paragraph (f) which requires the unit application to comply with the requirements of the entire subpart. BLM will specify the unit term either in the unit agreement itself or in the approval document.

With the exception of minor editorial changes to paragraphs (e) and (f) of this section, the final rule remains as proposed.

Sections 3137.25 and 3137.26 explain how parties to the unit will know if

BLM approves or disapproves the unit agreement and when unit agreements are effective. BLM will provide notice to unit operators of the action it takes on the unit application. The unit operator must notify in writing all parties to the unit agreement within 30 calendar days of receiving BLM's decision. One important reason for this notification is to advise lessees of when the unit operator may begin acting on their behalf. A unit agreement is effective the date BLM approves it.

We received no comments on these sections and they remain as proposed.

Section 3137.27 explains the effect of subsequent contracts and agreements on the unit agreement. This section explains 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.

We modified this section in the final rule by replacing ''other agreement'' with ''subsequent contract or obligation'' to make it clear that the unit agreement cannot affect existing agreements and because we believe that the new phrase better describes existing policy. We received no comments on this section, and other than the changes mentioned above, the rule remains as proposed.

Section 3137.28 requires a unit agreement to include all oil and gas resources of committed tracts unless BLM approves agreement terms to the contrary. We received no comments on this section. However, we added a cross reference to section 3137.50, which has to do with optional unit agreement terms.

Development

Section 3137.40 explains that you must define initial development obligations in a unit agreement. You and BLM will 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.

We amended paragraph (a) of this section to make clear that as part of the initial development obligations you must define the number of wells you *anticipate* will be necessary to assess the reservoir adequately. The proposed rule asked you to define ''[t]he number of wells required to assess the reservoir adequately.'' The final rule recognizes that, at the negotiating stages, you may not know with certainty the exact number of wells necessary to assess the reservoir.

One commenter interpreted this section and section 3137.41 to mean that if both parties agree on unit obligations, the obligations will be ''satisfactory to be able to estimate the size and shape of the reservoir within the unit area and to understand its geologic conditions.'' We do not agree.

We don't expect you to drill wells pursuant to unit obligations if new information shows that the reservoir is different than you anticipated. We don't believe one can know everything about an exploratory unit before exploratory work begins and would expect that if subsequent data supports a change in the operating plan, we will consider changes from the originally negotiated plan.

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

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.

We amended our proposal for this section by adding a cross-reference to section 3137.71 to make it clear to which program of exploration and development we are referring.

One commenter suggested that we amend this section to allow for supplemental or additional plans of development. As stated above, we don't believe one can know everything about an exploratory unit before exploratory work begins and we expect that if data supports a change in the operating plan, we will consider changes from the originally negotiated plan.

Optional Terms

Section 3137.50 describes 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 of the unit agreement terms by less than 100 percent of the parties to the unit.

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

We didn't receive any comments on this section. However, we made an editorial change to paragraph (c) of this section to make it clear that you may modify the unit agreement with less than 100 percent agreement of the parties to the unit agreement if the agreement allows it.

Section 3137.51 establishes 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.

One commenter said that multiple unit operators should be allowed only under very unique circumstances. We did not amend this section as a result of this comment. We believe that this section allows you to negotiate with BLM the conditions under which multiple unit operators will be allowed and does not preclude you from negotiating the limited circumstances under which you believe multiple unit operators are appropriate. The same commenter believed that the unit agreement should specifically outline the responsibilities of the different unit operators in a multiple operator unit. We believe paragraph (b) is worded generally enough to allow you to negotiate very detailed responsibilities of the different unit operators in

multiple operator units. The final rule remains as proposed.

Section 3137.52 sets out the requirements to allow you to modify the unit agreement. You may modify the unit agreement if:

(A) All the 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 have certified that all necessary parties, as spelled out in the unit agreement, have agreed to the modification. Modifications are effective retroactive to the date you filed a complete modification application. BLM will reject any modification application that does not comply with BLM regulations or applicable law. For example, you would be required to comply with the requirements of this section before changing your initial or continuing development obligations.

In the final rule we restructured paragraph (b). It requires you to include in the application the items listed. To address changes in the allocation schedule as a result of unit modification, the final rule requires you to submit both:

(A) A description of the new allocation methodology; and

(B) The new allocation schedule.

This change recognizes that there may be situations where modification of the unit agreement might change the allocation schedule. It also accounts for situations where the original exploratory unit agreement is modified so that the unit agreement is a secondary recovery unit agreement and, consequently, the allocation schedule changes.

One commenter suggested that we make uniform the unit modification provisions in sections 3137.50 and 3137.52. While the provisions are consistent in their treatment of the issue of modification, we believe the commenter misread the two provisions since they have a different focus. Section 3137.50 addresses optional terms that you may include in the unit agreement, including modification of the unit agreement, whereas section 3137.52 addresses unit modifications. Uniformity of these regulatory provisions would, therefore, not be appropriate given their different purposes. Therefore, we did not adopt the comment.

One commenter suggested that we amend this section to specify which types of modifications would be permitted according to which voting percentage. We did not adopt the comment. We believe parties to the unit agreement should have the flexibility to determine the types of modifications and voting percentages they will allow and set them as terms in the unit agreement itself.

One commenter suggested that we include a clause to specifically address circumstances which are not otherwise specifically addressed in this section. We did not adopt the comment because we believe that the section allows modification as long as you comply with the requirements of the section, including BLM approval of the modification.

Unitization Agreement Operating Requirements

Section 3137.60 describes 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 rule provides that the amount of acceptable bonding can 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 NPR–A unit.

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

We received no comments on this section and, except for editorial changes, the final rule remains as proposed.

Section 3137.61 describes how BLM will allow a change in the unit operator. If you are the new unit operator of an existing unit, you must file statements that you accept unit obligations and that the required percentage of interest owners as specified in the unit agreement 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 is the date BLM approves it.

One commenter asked that we amend this section by specifically stating that a former approved unit operator be allowed to assign its existing bond to the new operator after BLM approval. We did not adopt this comment because we do not believe it necessary to regulate the common practice of filing bond riders with BLM for change in the covered party on a bond.

The final rule remains as proposed.

Section 3137.62 lays out your liabilities as a former unit operator. Former unit operators are liable for any duties and obligations that accrued before BLM approved a new unit operator. We received no comments on this section and the final rule remains as proposed.

Section 3137.63 describes your liabilities as the new unit operator. Liability is joint and several with the former unit operator. The new unit operator has 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. This liability is joint and several with the former unit operator; and

(C) Liabilities that accrue during the time you are the unit operator. The new unit operator's liability for payment obligations under the lease, such as royalties and other payments, is 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 payor does not thereby become liable to the Government for those payment obligations. A designated payor, such as a unit operator, only has liability to the Government if it is also the owner of the operating rights in a lease or is the record title holder. The statute provides that the operating rights owners are primarily liable to the Government for payment obligations and that holders of record title are secondarily liable if they do not own the operating rights.

Accordingly, the regulation recognizes that a new unit operator's potential liability for the payments due the Government is not automatic, but is

dependent upon whether the operator is an operating rights owner or an holder of record title, in accordance with the limitations contained in Section 102(a) of FOGRMA.

We amended paragraphs (b)(2) and (b)(6) by making it clear that the unit operator's liabilities are for:

(A) Protecting the unit from drainage, not protecting the lease from drainage, as proposed; and

(B) Other requirements related to unit operations, rather than ''operations on the lease,'' as proposed.

We also made a similar change to paragraph (c) by replacing ''lease'' with ''unit.'' The proposed rule did not accurately describe the unit operator's liabilities when it referred to liabilities in terms of ''lease'' liabilities, rather than ''unit'' liabilities.

Section 3137.64 sets 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 unit agreement, you must take such measures as BLM determines are necessary. Permissible means of satisfying this obligation 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 have a reasonable profit above the cost of drilling, completing and producing operations. In the final rule we added a definition of ''economically feasible'' to paragraph (a), using a definition consistent with that in the final drainage rule (see 66 FR 1893);

(B) Paying the Federal Government compensatory royalty for oil or gas lost through drainage from a unit. BLM will determine the amount of compensation that would cover the royalties on 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 will agree to this provision only if we determine that the Federal Government is being fairly compensated for drainage. In the final rule we added language to paragraph (c) to make clear that the share in production does not apply retroactively; or

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

One commenter said that this section was too broad and that drainage protection should be limited to ''such measures as it considers necessary and prudent, based upon available information.'' We did not adopt this comment. We believe that the final rule reflects BLM policy and Federal oil and gas lease terms and conditions and is consistent with the final drainage rule BLM promulgated on January 10, 2001 (66 FR 1883). This final rule is also consistent with how BLM currently addresses drainage in units outside of NPR-A (see paragraph 17(a) of the model unit agreement form in 43 CFR 3186).

One commenter said that the rule failed to address what would happen if an NPR-A unit is drained by development outside NPR-A on either State or ASRC land. We disagree. The rule does address the situation and would require the unit operator to protect the unit from drainage under this section no matter where the offending well is located.

One commenter said we should amend paragraph (a) of this section by defining ''economically feasible'' to mean ''a person's ability to extract a reasonable rate of return on one's investment.'' We did not adopt the comment. As stated in the final drainage rule (66 FR 1893), BLM defines an economically feasible well for drainage purposes as one that produces a sufficient quantity of oil or gas for a reasonable profit above the cost of drilling, completing and operating the protective well. Consistent with existing policy, as stated above, we added this definition of economically feasible to paragraph (a) of this section.

One commenter suggested we amend this section by making clear that it is not feasible to allow tracts committed to a unit agreement to share in production from other tracts on a retroactive basis. We amended paragraph (c) of this section by adding to the end of the paragraph the phrase ''after the effective date of the new or modified agreement.''

One commenter believed that paragraph (c) of this section allows for pooling, but that the language should allow BLM to force pool leases in drainage situations. We did not amend the rule as a result of this comment. BLM does not have the authority to force pool nonfederal leases. We would rely on the other provisions of this section to deal with drainage and in cases where the only remedy would be forced pooling, we would rely on State procedures.

One commenter suggested we delete proposed paragraph (d) and replace it with the following: ''Any additional measures BLM considers reasonably necessary and prudent to prevent uncompensated drainage based on available information.'' The commenter said this change would make it clear that it would ''not be appropriate to require a unit operator to drill an offset well to prevent drainage when all available information indicates that such offset well would not produce in sufficient quantities to enable the unit operator to recover the costs of drilling, completing and operating such well.'' We did not amend paragraph (d) as suggested. However, we believe the changes to paragraph (a), discussed above, address this commenter's concern.

Development Requirements

Sections 3137.70 explains:

(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. You should negotiate this term with BLM before you submit to BLM your complete unitization application;

(2) Drilled at least one well that meets the productivity criteria (see the discussion of section 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 will require you to submit information showing that you have adequately drilled to the primary target defined in the unit and tested the results to prove 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.

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

One commenter suggested that we amend paragraph (a)(2) of this section to allow wells drilled prior to the effective date of the unit agreement that meet the productivity criteria to meet the obligation to drill a well under the unit that meets the productivity criteria. We did not amend this section as suggested. BLM provides incentives (such as lease extensions for all Federal leases in a producing unit) for Federal leases to join units. In exchange for these incentives we expect the unit reservoir to be as fully explored and produced as possible. This obligation includes the

requirement to drill new obligation wells under the unit agreement. Section 9 of the Act says that ''Drilling, production, and well reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the benefit of all lessees that are subject in whole or in part to such unit agreement.'' We interpret this to mean that wells drilled prior to the effective date of the unit are not operations ''performed in accordance with a unit agreement'' and consequently are not performed for the benefit of all lessees. Therefore, wells drilled before the effective date of the unit agreement do not meet the initial development obligations. However, these wells may be included in a unit plan and production from them may subsequently be considered unit production.

One commenter asked if there were not a modification provision (section 3137.52) in the unit agreement, are you precluded from amending the initial or continuing development obligations or the productivity criteria in the unit agreement. Under paragraph 3137.52(a)(1), you may modify the unit agreement without a modification provision in the unit agreement if all current parties to the unit agreement agree to the modification. Under paragraph 3137.52(b) you are required to apply to BLM for approval of any modification to the unit agreement.

One commenter asked if a well is successfully drilled to the primary target depth, but a different formation is encountered than that anticipated, is the initial development obligation still satisfied for the purposes of section 3137.70. BLM would not consider this to be an initial obligation well. However, you would satisfy the requirement under paragraph (a)(3) if you demonstrated to BLM that further drilling to meet the productivity criteria would be unwarranted or impracticable.

This final rule remains as proposed.

Section 3137.71 explains the requirements to meet continuing development obligations and lists what kinds of operations BLM considers to be continuing development (see the discussion of sections 3137.40 and 3137.41). Work you conducted before meeting initial development requirements is not continuing development. You must submit to BLM, within 90 calendar days after meeting initial development obligations, a plan that describes how you will meet continuing development obligations. However, you must submit to BLM updated continuing obligation plans as soon as you determine that, for whatever reason, the plan needs amending. While this is a new provision in the final rule, it merely requires that you update BLM regarding amendment of the plans which you previously submitted. Given that you will have possession of the information necessary to readily comply with this requirement, we believe it is reasonable to require you to provide us updates of your continuing development plans as operating plans change. Finally, we moved proposed paragraph (c) to a new section 3137.74.

One commenter asked that we amend this section to require BLM to ''take action on the continuing development obligation plan within 30 days of receipt, otherwise the plan shall be deemed approved.'' We did not adopt this comment. BLM cannot allow a development plan to be approved without our review, since we must ensure that the public interest is protected. However, in the final rule we added a new section 3137.73 that contains a customer service standard. Please see the discussion of that section for an explanation.

One commenter suggested that we amend this section by adding a sentence to paragraph (c) that would allow extension of the 90 calendar day period for certification of the start of operations due to seasonal work or access limitations. We agree that 90 days may not be enough time to begin continuing development operations in some circumstances. Consequently, we added a new section 3137.72 allowing for an extension of time to meet continuing development obligations if it is necessary for reasons beyond the operator's control.

Section 3137.72 This new section allows for an extension of time to meet the initial or a continuing development obligation if reasons beyond your control keep you from meeting those obligations by the time the unit agreement specifies. In the application for extension you must:

(A) State the obligation for which you are requesting a delay;

(B) List the reasons beyond your control that prevent you from performing the obligation; and

(C) State when you expect the reasons beyond your control to terminate.

BLM will grant an extension of time if we determine that the extension encourages the greatest ultimate recovery of oil or gas or is in the interest of conservation and that reasons beyond your control prevent you from performing the initial or a continuing development obligation. The extension lasts as long as the conditions giving rise to the extension continue to exist.

We added this section because several commenters indicated that in several places in the proposed rule there were obligations that they may not be able to meet timely because of circumstances beyond their control. The language in this section is consistent with existing policy on Federal lands outside of NPR–A.

Section 3137.73 This new section contains a customer service standard that requires BLM, within 30 calendar days of receiving your plan, to notify you in writing that we:

(A) Approved your plan;

(B) Rejected your plan and explain why, including an explanation of how you should correct the plan so that it will be in compliance; or

(C) Have not acted on the plan, explaining the reasons and when you can expect a final response.

We added this section in response to the comment discussed in section 3137.71 above which suggested that BLM's lack of action within 30 days should result in the deemed approval of the plan. We rejected that approach for the reasons discussed above.

Section 3137.74 This new section contains the provisions from previously proposed paragraph 3137.71(c). Under this section, within 90 calendar days after BLM approves your plan, you must certify to BLM in writing that you started operations to fulfill continuing development obligations. BLM may require you to support your certification with documentation and submit periodic reports demonstrating continuing development. Other than renumbering, this section remains as proposed.

Section 3137.75 (proposed section 3137.72) explains that you may conduct additional development within or outside a PA to fulfill continuing development obligations. We received no comments on this section and it remains as proposed.

Section 3137.76 (proposed section 3137.73) explains that a unit contracts if you do not meet a deadline for performing a continuing development obligation. This section also explains contraction and when it is effective. Contraction means that all areas outside any PA will be eliminated from the unit and only established PAs (producing or non-producing, depending on unit terms) remain in the unit. After contraction, any producing wells no longer in the unit 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 PA is established, the unit

terminates. We didn't receive any comments on this section and, except for renumbering, it remains as proposed.

Participating Areas

General

Several commenters suggested that we amend the regulations to allow for corrective adjustments of allocation of production among tracts in a PA. We agree with the commenters to the extent that a PA is found to be larger or smaller than originally anticipated. We amended sections 3137.84 and 3137.85 and added to the final rule a new section 3137.86 to address PA revisions.

Several commenters suggested that we amend the regulations to permit a production allocation methodology for each PA based on something other than surface acreage. We did not adopt this suggestion. As stated above, BLM is primarily concerned with protecting the public interest and resource conservation. We believe that for exploratory and primary production units, production allocation based on surface acreage is reasonable and appropriate and protects the public interest. This method is easily measurable, verifiable and understandable. The rule, however, does not prohibit parties to the agreement from entering into allocation agreements for the nonfederal share.

One commenter suggested that basing allocation on surface acreage could be an unconstitutional taking of property rights of a royalty owner. We disagree. Nothing in these regulations compels royalty owners to commit their interest to the unit agreement. Therefore, under these regulations there is no taking of a royalty owner's property under any circumstance. Allocation based on surface acreage is the only participation parameter that has any degree of certainty with respect to an exploratory unit. Allocation based on reservoir parameters is not possible until the reservoir has been discovered and fully delineated. Using surface acreage as an allocation methodology enables all royalty interest owners to have a common understanding and expectation as to how allocation of royalties will occur. Allocation based on evolving reservoir parameters would subject interest owners to uncertainty and would be unreasonably difficult to administer. Under the final rule, all interest owners, including the Federal Government, share in the risk associated with basing allocations on surface acreage.

One commenter suggested that we amend the regulations to allow revisions of previous allocations and royalty payments. We did not adopt the comment. Similar to the discussion above, reallocation based on evolving reservoir data, or other factors, would be impracticable to administer.

One commenter suggested that the rules should be flexible enough to allow for establishing or expanding PAs based on available geological, geophysical and engineering information. We agree and believe the final rule is flexible enough to allow what the commenter suggests. However, we will not allow establishment of a PA absent a well that meets the productivity criteria.

Sections 3137.80 defines PAs and how they relate to the unit agreement. Whether an area surrounding a well becomes a PA depends on whether the well within the unit area meets the productivity criteria set out in the unit agreement. You must include the proposed PA size in the unit agreement for planning purposes and to aid in the mitigation of reasonably foreseeable and significantly adverse effects on NPR–A surface resources. Since the proposed PA facilitates the analysis of where operations and surface impacts are likely to occur, we believe the size and location of PAs should be anticipated at unit formation to assist BLM to meet the statutory standard ''to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska.'' (*see* paragraph (1) of 42 U.S.C. 6508). This section also requires you to delineate a PA at the time it meets the productivity criteria defined in section 3137.82.

This section remains as proposed.

Section 3137.81 describes the function of a PA and how BLM determines production allocation. The function of a PA is to allocate production to each committed tract that is within or partially within the PA according to that tract's surface acreage within the PA.

The final rule explains that for exploratory and primary recovery operations, we will consider gas cycling and pressure maintenance when establishing PA boundaries. It also explains that for secondary and tertiary recovery operations, we will consider all wells that contribute to production when establishing PA boundaries. BLM will not consider disposal wells when setting PA boundaries since those wells do not contribute to production and therefore should not receive a production allocation. These provisions are new to the final rule. They are consistent with how BLM sets PA boundaries on Federal lands outside of NPR–A.

Also, we distinguished exploratory and primary recovery operations from secondary and tertiary recovery in this section since in the North Slope, it is common practice to have gas cycling and pressure maintenance during primary recovery operations.

Section 3137.82 defines productivity criteria as the characteristics of a well that warrant including a defined area surrounding the well in a PA. You must define the criteria in the unit agreement for each producible interval. Characteristics include things like the depth of the well, the geology surrounding the well that might affect drainage from the oil and gas reservoir, and the area you estimate the well is, or is capable of, draining.

You must be able to determine whether you meet the criteria when you drilled the well and you completed testing, after a reasonable period of time to analyze new data. This means that as soon as you complete testing and analyzing the data, 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.

This section also reiterates that BLM will consider wells that contribute to production when setting PA boundaries. Also see paragraph 3137.81(c).

Several commenters believe that we should amend this section to allow consideration of wells that contribute to unit production when setting PA boundaries. We agree and added paragraph (c) to this section stating that we will consider wells that contribute to unit production (*e.g.*, pressure maintenance and gas cycling) when setting PA boundaries. We also amended section 3137.81 by adding two new paragraphs, as explained above, to address gas cycling and pressure maintenance wells, and other wells that contribute to production, when establishing PA boundaries.

One commenter suggested that we make clear that well testing includes a reasonable period of time to evaluate whether or not the well meets the productivity criteria. We agree and amended paragraph (a) to allow a reasonable period of time to analyze new data.

One commenter said that most wells ''will not be tested and that the productivity criteria of such wells will be evaluated based on other available data such as well logs, core samples, formation sampling, pressure measurements, etc. prior to completing the wells and commencing sustained production.'' Although we recognize that the information gathered by the measurements and sampling the commenter lists may be indicators of a well's capability for production, we disagree that information gathered as suggested is sufficient to establish an initial production rate that we believe is necessary to establish a PA. It is important that we have physical evidence of a well's production and not merely estimates gleaned from logs or bottom whole pressure measurements. We do recognize that there may not immediately be a market for oil and gas and therefore it would be impractical to store the production from extended testing. However, we believe it is reasonable to expect well testing, however limited, to determine whether or not a well meets the productivity criteria.

Section 3137.83 explains that the first well you drill after unitization meeting the productivity criteria establishes the initial PA. If the initial PA contains wells that existed before BLM approved the unit agreement and the wells meet the productivity criteria, the wells will either:

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

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

One commenter suggested that we amend this section to say that ''a participating area should be established not necessarily when you have drilled the first well that meets the productivity criteria, but when you can demonstrate the lands or tracts meet the criteria.'' We disagree that a PA can ever be established absent a well meeting the productivity criteria. As stated in the previous section discussion, we require physical evidence and not mere estimates to establish a PA.

Section 3137.84 describes what you must submit to BLM to establish an initial or new PA or modify (add to or remove land from) an existing PA. 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 PA and acreage. This map should be detailed enough for BLM to determine the PA boundary and the acreage in the PA; and

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

We amended this section by allowing you to ''modify'' a PA. This addresses removing lands from an existing PA. We also added a provision that requires you to explain the reason for adding land to or removing land from an existing PA and information supporting your reason. For example, reasons that we would remove land from a PA could include geologic or reservoir characteristics that were unknown at the time of the PA establishment. Supporting documentation could include things like well logs, well test data, seismic data or core sample data.

One commenter suggested that we amend this section to allow land to be removed from a PA if subsequent information shows that some of the lands in the PA do not meet the productivity criteria. We agree and amended this section to allow for removal of lands from a PA. We also made corresponding changes to section 3137.85 and replaced section 3137.86 with a new section allowing for removal of lands from a PA.

One commenter suggested that we amend paragraph (a) by replacing ''well'' with ''the area proposed to be included meets the productivity criteria.'' We did not make the change. Section 3137.82 defines productivity criteria as ''characteristics of a unit well that warrant including a defined area surrounding the well in a participating area.'' Consistent with that definition, when a well meets the productivity criteria, we then derive the PA, or revise the PA, from the well's characteristics, after well testing and other data gathering, such as production history.

One commenter suggested we amend paragraph (c) of this section to make clear that the requirement for an allocation schedule should not be limited to NPR–A leases or tracts. We did not amend the section as suggested. The definitions provided at section 3137.5 of these regulations for ''NPR–A lease'' and ''Tract'' include, respectively, ''any oil and gas lease within the boundaries of the NPR–A, issued and administered 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' and ''land that may be included in an NPR–A oil and gas unit agreement and that may or may not be in a Federal lease.'' We believe the final rule is broad enough to include all types of land that may be included in an NPR–A unit.

One commenter suggested that we amend paragraph (c) by replacing ''operating rights owners'' with the term ''working interest owners.'' We did not make this change. BLM uses the term ''operating rights owner'' to mean any interest you hold that allows you to explore for, develop, or produce oil and gas. We use this term throughout our regulations to be consistent with our other regulations. Because there is no practical difference in the application of the term ''operating rights owners,'' we will use the term in these regulations as well.

One commenter suggested that this section should address situations ''where the allocation schedule for a participating area may be changed or adjusted pursuant to the agreement.'' We did not amend this section as requested since this section addresses establishing a PA or adding to or removing lands from a PA. However, we did amend section 3137.52(b) to require a new allocation schedule when there are modifications to a unit agreement that affect production allocation.

Section 3137.85 sets the effective date of an initial PA as the first day of the month in which you complete a well meeting 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. Only wells drilled after BLM approves the unit agreement will be considered initial unit wells. This section also sets the date of a modified PA as the earlier of first day of the month in which you:

(A) Complete a new well meeting the productivity criteria; or

(B) Should have known you needed to revise the allocation schedule.

We amended paragraph (a) slightly and we added a new paragraph (b) to this section to allow for removing lands from a PA, something the proposed rule did not do. The new paragraph (b) ties the effective date of a modified PA to the earlier of when you complete a new well meeting the productivity criteria or when you should have known you needed to revise the allocation schedule. We believe this reasonably puts the burden on the operator to

revise allocations timely so that committed tracts receive correct allocations.

One commenter said we should revise this section to set the effective date of a new or revised PA to be the date a new or revised allocation schedule is submitted or such other date as set out in the unit agreement. We adopted the commenter's suggestion in part. We did not tie the effective date of a PA to filing of an allocation schedule because, as we stated earlier, establishment of a PA must be tied to a well meeting the productivity criteria. However, as stated above, we did tie the effective date of a PA revision to when you complete a new well meeting the productivity criteria or when you should have known to revise the allocation schedule.

We amended this section in this manner to address both the situations when a new well revises a PA and the situations where there is no well, but additional information requires that the PA be revised. For the second standard the final rule sets a ''should have known'' standard for the revised PA date so that delayed filings of the allocation schedule do not also delay revision of the PA and the accompanying revised allocations. We did not amend this section to allow for the unit agreement to set the effective date of the PA as the commenter suggested. We believe that for Federal royalty payment purposes, it is reasonable to expect consistency among different unit agreements.

Section 3137.86 We eliminated this proposed section and replaced it with a new section that recognizes:

(A) Participating areas can be larger or smaller than originally established; and

(B) BLM can base PA expansion or contraction on data other than new well data.

Under this new section, if you obtain information demonstrating that a PA should be larger than previously determined, you must submit to BLM information required in section 3137.84. If the expanded PA is outside the unit boundaries, you must invite all owners of the oil and gas in the additional land to join the unit. If the owners agree to join the unit, you must submit to BLM an application to enlarge the unit. The application must include:

(A) A map showing the expanded unit area and for each new tract the information required in paragraph 3137.23(c); and

(B) A revised allocation schedule.

If any new committed tracts meet the productivity criteria, you must comply with section 3137.84 of this final rule.

If you obtain information demonstrating that the PA should be smaller than previously determined, you must comply with 3137.84 of this final rule and request BLM to remove from the PA all lands that do not meet the productivity criteria.

One commenter suggested that we amend this section to allow for creation or expansion of a PA based on information other than well data and to allow removal of land from a PA. We agree to the extent that a PA may be expanded or contracted based on new information demonstrating that the lands either do or do not meet the productivity criteria. However, as stated above, we do not agree that we may approve a PA absent a well that meets the productivity criteria.

Section 3137.87 describes your responsibilities if there are unleased Federal tracts in a PA. You must include any unleased Federal tracts in a PA even though BLM will not share in unit costs. However, you must allocate production to the unleased Federal tracts for royalty purposes as if they were committed to the agreement. The Federal Government receives royalties based on the production allocated to that land in the PA. 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 revised maps, a new list of committed leases and new allocation schedules reflecting introduction of the new lease to the unit.

One commenter said that since the operator assumes all operational risk, we should amend this section by stating that BLM will not subsequently challenge any decision made by the operator, provided the decision was in accordance with the unit plan of operations. We did not adopt the comment. BLM will make every effort to allow the operator to follow the unit plan as approved. However, there may be unforeseen circumstances that may affect Federal lands and resources where it would be necessary for BLM to ensure that the public interest is protected.

One commenter suggested that we amend paragraph (a) to allow the unit operator access to the surface and subsurface of any unleased Federal lands in a unit. We did not amend the regulations as suggested. BLM will make every effort to lease Federal lands within the boundaries of a unit. Any such lease issued after the approval of a Federal unit will contain a requirement for the Federal lessee to join the unit or prove to BLM why they should not. However, we recognize there may be very limited circumstances where there are unleased Federal lands in an NPR–A unit. In such cases, BLM will not grant a unit operator access to the surface without some use authorization such as a special use permit or right-of-way. In no case will BLM allow oil and gas production from Federal lands without an oil and gas lease. Allowing oil and gas production in the absence of a lease is essentially leasing by fiat. That would be contrary to the intent of the statute to conduct an expeditious program of competitive leasing (*see* 42 U.S.C. 6508).

One commenter suggested that we amend paragraph (c) by requiring that subsequent Federal lessees be required to pay for their share of past development costs. We did not amend paragraph (c) as requested. Payments among interest owners are not a Federal concern and should be addressed in separate unit operating agreements to which BLM is not a party.

The final rule remains as proposed.

Section 3137.88 explains that wells on committed tracts outside any existing PA not meeting the productivity criteria are non-unit wells, and operations on those wells are non-unit operations. You must notify BLM within 60 calendar days after you determine that a well does not meet the productivity criteria. This means that you may no longer conduct operations on that well under the unit terms. You must conduct operations for that well under the terms of the lease or any other federally-approved agreements.

We amended this section by revising the second sentence to make it clearer. The proposed language could be misinterpreted to mean that there were no unit operations occurring anywhere in the unit. That was not our intent. We intended this section to say that you should notify BLM that the well did not meet the productivity criteria and, as a result, the well would no longer support unit operations.

One commenter was concerned that under this section wells not meeting the productivity criteria will not be added to the PA and must be produced on a lease basis. The commenter stated that those wells should be treated as unit wells because the production from such wells would result in underpayment or overpayment of the royalty owner in the tract in which the well is situated. The well should be treated as unit wells since the tract will either suffer drainage by reason of production from adjoining PAs or will have unitized substances driven from the PA to another well as a result of pressure maintenance. We did not amend this section as a result of this comment. The comment does not make clear why a well's status as a unit

well would protect it from drainage. Presumably, an operator of a well that is profitable will produce from that well whether it is a unit well or not. The provisions of this section are consistent with existing policy on lands outside of NPR–A.

One commenter stated that due to costs of operations, infrastructure and treatment and transportation facilities necessary to operate in NPR–A, it is unlikely that it would be feasible to operate and produce a single well on a non-unit basis. We agree that operating and producing from a single well in NPR–A is unlikely. However, these regulations do not preclude you from utilizing infrastructure, treatment and transportation facilities for non-unit production. We realize that to do this might require commingling production. Upon application, BLM will allow commingling of lease production and unit production (*see* 43 CFR 3162.7–2 and 3162.7–3).

One commenter suggested we add a paragraph to this section to address expanding a PA when a well drilled in the unit outside of a PA meets the productivity criteria. We did not amend this section as suggested. However, new section 3137.86 addresses expansion of existing PAs.

Section 3137.89 explains how production is allocated from wells that do not meet the productivity criteria. If a well not meeting the productivity criteria was drilled before the unit was formed, or outside the PA but still within the unit, production from that well must be allocated on a lease or other federally-approved oil and gas agreement basis. If a well was drilled after BLM approved the unit and was completed within an existing PA, the production from that well becomes part of the PA production, whether or not the well meets the productivity criteria. BLM may require the PA to be revised under section 3137.84 of this final rule, depending on the new well data.

One commenter suggested that we amend this section to allow wells drilled before the unit agreement was established that do not meet the productivity criteria to be considered unit wells. Section 9 of 42 U.S.C. 6508 says that ''Drilling, production, and well reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the benefit of all lessees that are subject in whole or in part to such unit agreement.'' We interpret this to mean that wells drilled prior to the effective date of the unit are not operations ''performed in accordance with a unit agreement'' and consequently are not performed for the benefit of all lessees. Therefore, wells drilled before the effective date of the unit agreement cannot be unit wells.

Section 3137.90 explains that wells on committed tracts outside an existing PA not meeting 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, and not included in the PA, unless BLM approves a new operator for those wells.

One commenter suggested we add the phrase ''and is not included in a participating area'' in paragraph (a) after the words ''the unit was formed'' and also add the phrase ''and are not included in a participating area'' in paragraph (b) following ''productivity criteria'' to make clear that the lands that don't meet the productivity criteria are not in the PA. We agree that the suggested change to paragraph (a) makes the rule clearer and amended the rule as suggested. However, we did not change paragraph (b) as suggested since that change would be in conflict with paragraph (b) of section 3137.89.

One commenter suggested that we add a paragraph to this section to state that the unit operator must operate wells in a PA not meeting the productivity criteria. We believe that section 3137.90(b) addresses this commenter's concern.

Section 3137.91 explains that a well on a committed tract that BLM previously determined was a non-unit well (it did not meet the productivity criteria) that now meets the productivity criteria may establish or modify a PA. You must notify BLM within 60 calendar days after you determine that the well meets the productivity criteria and demonstrate to us that the well meets the productivity criteria before you modify an existing PA or establish a new one. Operators must submit engineering and geologic and geophysical exploration information to prove to BLM that a well meets the productivity criteria.

One commenter suggested that we revise this section because the exact time a unit operator obtains information sufficient to determine that a well, after having previously been classified as a non-unit well, meets the productivity criteria is imprecise. We agree and amended this section by replacing ''of when this occurs'' with ''after you determine the well meets the productivity criteria.'' The change recognizes that it may take a period of time longer than 60 calendar days after completing the work on the well to determine whether the well meets the productivity criteria. The final rule gives you 60 calendar days after you determine that the well meets the productivity criteria to demonstrate that fact to BLM. We also replaced the word ''revise'' with the word ''modify'' to be consistent with other revisions to the final rule. We also amended the heading of this section to make it clearer.

Section 3137.92 explains that a PA terminates 60 calendar days after BLM notifies you that there is insufficient production to meet the operating costs of that production. The PA will not terminate if you demonstrate to BLM that your operations to restore or establish new production in the PA are:

(A) In progress within 60 calendar days after BLM's notification; and

(B) Being pursued diligently.

BLM will determine whether the production is sufficient to cover operating costs by comparing revenue from a well to production costs related to the actual lifting and producing costs, but not any capitalized or sunk costs related to project development. Capitalized or sunk costs are costs to pay for long term assets and costs already incurred, such as equipment necessary to operate on the lease.

We added a new paragraph (b) that allows an extension of time to meet the requirements of paragraphs (a)(1) and (a)(2), to show BLM that operations to restore or establish new production are in progress and you are diligently pursuing oil and gas production. To qualify for an extension, you must prove to BLM that reasons beyond your control prevent you from meeting those requirements. This change responds to commenter's concerns that seasonal drilling limitations may prevent them from meeting the requirements within 60 days.

One commenter suggested that we amend this section to ''allow for continuous or ongoing drilling to be completed prior to a final decision on termination of the participating area.'' We did not amend this section because we believe the commenter's concern is already addressed in this section. Paragraph (b) allows the PA to remain in effect if you show BLM that reasons beyond your control prevent you from meeting the requirements of the rule.

One commenter said we should amend this section to state how far away a well may be drilled and still be included in an expanded PA. We did not adopt this suggestion. Whether or not a well drilled outside of an existing PA that meets the productivity criteria will expand the PA will depend on geology, engineering and well spacing, and not on an arbitrarily determined distance set out in these rules.

One commenter suggested we amend this section by stating in paragraph (b) that the costs should be ''actual'' and replacing ''diligently'' with ''reasonably'' to remove subjectivity from these provisions. We did not adopt this suggestion. We do not believe the suggested changes would make this section more objective than what we proposed.

Production Allocation

Section 3137.100 explains that you must allocate production when a PA includes unleased Federal lands as if the unleased Federal lands were leased and committed to the unit 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 either the date the committed leases in the PA that includes unleased Federal lands receive a production allocation or 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 a lessee relinquishing its lease.

The royalty rate for production from unleased Federal lands in the unit is the greater of 12½ percent or the highest royalty rate of any lease in the unit.

We added a paragraph (c) to this section to provide a cross-reference to the Minerals Management Service oil and gas product valuation regulations at 30 CFR part 206.

Obligations and Extensions

Section 3137.110 makes it clear that nothing in a unit agreement modifies Federal lease stipulations including lease-specific environmental stipulations. We received no comment on this section and it remains as proposed.

Section 3137.111 explains that BLM will extend the primary term of all leases in 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. We received no comment on this section. Because of the similarity of the subject matter between proposed sections 3137.111 and 3137.112, in the final rule we combined them into a new section 3137.111 and renumbered proposed section 3137.113 as 3137.112.

Section 3137.112 (proposed) contained a chart explaining that:

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

(B) BLM will 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 are 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 meeting the productivity criteria and there is no producing well within the unit that meets the productivity criteria, the unit terminates.

As stated above, we combined this section with section 3137.111.

We also amended proposed paragraphs (b) and (c) of this section (final paragraphs (b)(2) and (b)(3)) to make it clear that the three year extension is for the initial extension. As proposed, this section could have been misinterpreted to mean that the extension period is limited to three years.

One commenter suggested we amend the table by allowing additional successive three year extensions for actual or constructive drilling or reworking operations for as long as those operations occur. We did not amend this section as requested.

NPR–A leases are issued with an initial term of ten years. The final rule allows up to six years of extensions beyond that initial term for actual or constructive drilling or reworking operations. We believe it is reasonable to expect an operator to establish production on an NPR–A lease within 16 years of lease issuance. In addition, the regulations provide for suspension of operations and production (see 3135.2 of this rule), which essentially tolls the clock for the period of the suspension.

Section 3137.112 (proposed section 3137.113) explains that BLM will extend all committed NPR–A leases if, for reasons beyond your control, you were prevented from starting actual or constructive reworking or drilling operations. You are 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 will terminate. After the unit terminates, leases revert to their original lease terms. Any leases whose term has expired will also terminate unless they are otherwise held by production from the lease or they are part of another agreement from which production would hold the lease.

One commenter suggested that we amend this section by replacing ''committed leases'' with ''NPR–A leases'' since ''committed leases'' is not defined. We agree partially with the commenter. We believe the term ''committed leases'' is self explanatory. However, since BLM has authority under these regulations and 42 U.S.C. 6508 to extend only committed NPR–A leases, we amended this section to make this clear.

One commenter suggested that we make it clear that seasonal limitations are not counted as events that would trigger extensions. We did not make the suggested change because we believe this section clearly states those situations that would trigger an extension.

Change in Ownership

Section 3137.120 states that transferees of a unitized lease are subject to the terms and conditions of the unit agreement. This would include grantees and successors in interest. This is standard practice for BLM-approved units and in the oil and gas industry in general. We didn't receive any comment on this section and it remains as proposed.

Unit Termination

Section 3137.130 describes 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 meeting the productivity criteria, or the unit operator certifies that at least 75 percent of the operating rights (working interest) owners on a surface acreage basis agree to the termination. BLM chose 75 percent 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. This section remains as proposed.

Section 3137.131 explains that if the unit terminated before the unit operator met the initial development obligations, BLM's approval of the unit 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 will be terminated unless it qualified for an extension under section 3135.1–5 of this part. BLM will cancel any lease suspension BLM granted as a result of a lease being committed to the unit. This section remains as proposed.

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

One commenter suggested that the effective date of unit termination should be the day after BLM certifies and the operator receives notice of certification that the operator did not meet a continuing development obligation. The commenter said this would ensure that BLM does not prematurely terminate a unit for delay in performance of a continuing development obligation for reasons beyond the control of the operator. We did not amend this section as suggested, but we added a new section 3137.72, allowing you to apply for an extension for meeting the initial or a continuing development obligation. This assures that the operator, who has control of the information, will come forward in a timely manner to seek an extension.

Section 3137.133 explains that a unit terminates when the last PA of a unit terminates. If there are no PAs 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. This section remains as proposed.

Section 3137.134 explains 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 terminates also terminates, unless it qualifies for an extension under current section 3135.1–5. We didn't receive any comments on this section and it remains as proposed.

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

One commenter said that with respect to any multiple owner units, including State of Alaska leases, abandonment and restoration operations should be governed by the unit agreement, State statutes and regulations and the terms and conditions of the lease. We agree in part. Although BLM has authority over production accountability for nonfederal lands in a Federal unit, BLM has no authority over nonfederal well approval or abandonment and restoration operations. On nonfederal lands, for abandonment and restoration operations, operators must comply with terms and conditions of their lease and State statutes and regulations.

Appeals

Section 3137.150 explains that any person who is adversely affected by a BLM decision under this subpart may appeal that decision. The proposed rule cross-referenced State Director Review (SDR) regulations that BLM is developing. Since BLM has not finalized the SDR regulations, this final rule cross-references existing SDR regulations in subpart 3165, instead. The final rule flips proposed paragraphs (a) and (b) since chronologically, State Director Reviews come before appeals and also makes it clear that an adversely affected party may file an SDR or appeal directly under parts 4 and 1840.

One commenter suggested that we include an appeals process for unit decisions that would require BLM to issue a decision within 60 days of the appeal. We did not add a new appeals provision to the final rule since the existing appeals provisions in 43 CFR subpart 3165 already apply to NPR–A.

Another commenter suggested that we add a dispute resolution provision in the final rule. We did not add a dispute resolution provision to the final rule, but you may rely on existing appeal regulations in subpart 3165 for disputes with BLM decisions. Alternative dispute resolution for disputes among working interest owners is outside of the scope of this rulemaking. However, we suggest third party unit operating agreements to which BLM is not a party can address any such dispute resolution procedures.

Subpart 3138—Subsurface Storage Agreements in NPR–A

This final rule adds a new subpart to BLM's NPR-A leasing regulations dealing with subsurface storage agreements.

Section 3138.10 states that BLM will enter into an agreement 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 may store gas produced from Federal or nonfederal lands. This is consistent with existing policy on lands outside of NPR–A.

One commenter suggested that in order to ensure consistency with the State of Alaska's underground storage rules, BLM consider adopting the State rules as our own, but did not explain what provisions of the State rules we should consider. We did not amend the rule as suggested. The final NPR–A subsurface storage rule is consistent with policy and procedure on Federal lands outside of NPR–A. Also, we believe the final rule is flexible enough so that it is not necessarily inconsistent with Alaska rules on subsurface storage (*see* Chapter 83, sections 500–520 of the Alaska Administrative Code). Also, BLM will consider issues of concern to the State before approving subsurface storage agreements on Federal lands.

Section 3138.11 requires you to submit to BLM an application to receive a subsurface storage agreement. In the application you must include the following:

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

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

(C) A description of 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) 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 that we find acceptable;

(E) Any royalty payment for oil and gas that existed in the formation before you injected gas for storage that may be produced when you withdraw the stored oil or gas;

(F) A description of how often and under what circumstances you propose that you and BLM should 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) The proposed effective date and term of the agreement. This should be tied to your justification for the agreement (see A above);

(H) Certification 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) An ownership schedule showing lease or land status. This should include the status of leased and unleased and Federal and nonfederal properties;

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

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

Section 3138.12 describes 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, BLM will usually take into consideration what operators in the same area are paying for similar gas storage arrangements on either Federal or nonfederal land.

In the final rule we amended this section by deleting the last sentence. We realize that commingling of native gas and stored gas will occur and, as a practical matter, it would be impossible to segregate the two when withdrawing the gas from storage.

Part 3160—Onshore Oil and Gas Operations

This final rule amends the existing ''Purpose'' section of BLM's operating regulations. Part 3160 applies to NPR–A lease operations and to unit operations. This section revises part 3160 to make it clear that the suspension and royalty reduction regulations in part 3160 apply to operations on other Federal lands, but not to NPR–A. The proposal incorrectly limited the revision to section 3103.4–4.

III. Procedural Matters

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and was not reviewed 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 NPR–A 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 this rule will not change.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule 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 final rule. BLM does charge user fees for certain activities on Federal lands. However, this rule 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. NPR–A 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 NPR–A more consistent with those on Federal lands outside of NPR–A in that unitization, and lease extensions and suspensions would become available to NPR–A lessees consistent with the provisions of 42 U.S.C. 6508.

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 with in 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 NPR–A. Due to the significant costs associated with oil and gas operations in the NPR–A, we do not anticipate many small operators will lease oil and gas in the NPR–A. Having an NPR–A lease, as that is defined in the final rule, is a condition precedent to unit formation in NPR–A. If small operators did lease in NPR–A, the economic impacts associated with this final rule are positive, but minimal, for operators in general (see the economic analysis) and would also be so for small operators. Therefore, the rule would not have a significant economic impact on a substantial number of small entities under the RFA.

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 rule would not affect costs or prices for consumers since the actions associated with the rule 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 affect them by making it more attractive to lease oil and gas in the NPR–A.

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 final rule 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 UMRA (see the economic analysis). These 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 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 rule does not represent a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required. The rule would not take anyone's property. The rule would not take away or restrict an operator's right to develop an NPR–A 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 rule would make operations in the NPR–A 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 written clearly. 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

This regulation does require information collection under the Paperwork Reduction Act. The Office of Management and Budget has approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB approval number 1004–0196.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 Departmental Manual (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 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 regulations. To the extent that there are any environmental effects incident to these 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 regulations should 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 memorandum issued by the President on 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 these 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 13175 (''E.O. 13175''), ''Consultation and Coordination with Indian Tribal Governments'' (November 6, 2000), (65 FR 67249) supplements the memorandum of April 29, 1994. E.O. 13175 provides that Federal agencies must consult with Indian Tribal Governments before formal promulgation of regulations ''that have Tribal implications.'' E.O. 13175 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. 13175 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* 65 FR 13298 (March 13, 2000). If there is a duty of government-to-government consultation, it would be owed to those listed Tribal governments.

The final regulations are designed to permit consolidated operation of oil and gas leases on Federal lands and thereby promote conservation. None of the recognized Tribal governments have significant oil and gas interests within NPR–A or within the vicinity of NPR–A. Therefore, nothing in these final regulations has ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal

government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' (*See* Section 1(a) of E.O. 13175.) Accordingly, the final regulations do not have Tribal implications 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 NPR–A 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 as a matter of law. The Bureau of Indian Affairs has recently declined to include such corporations on the list of recognized Tribes eligible for government-to-government consultation. *See* 65 FR 13298 (March 13, 2000). The Bureau of Indian Affairs previously 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 these regulations impose no special government-to-government consultation obligation upon the Department, there was ample opportunity for the Tribal governments, along with the public generally, to comment during the comment period, in accordance with the notice and comment requirements of the Administrative Procedure Act.

Therefore, in accordance with E.O. 13175, we have found that this final rule does not include policies that have Tribal implications.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action under Executive Order 13211. It will not have an adverse effect on energy supplies. To the extent that the rule allows more efficient oil and gas operations in NPR–A, the rule should have a minimal, but positive, impact on energy supplies.

Economic Analysis

Unitization

The final rule 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 NPR–A. Unitization could increase the potential value of NPR–A 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 NPR–A will not be substantially affected. As previously noted, there are other non-economic benefits to unitization (*see* discussion of section 3137.10).

Once leasing occurs in NPR–A, the 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 should be positive. Development could only occur if it did not endanger the environment, public health, or safety.

To the extent that the 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 final rule also allows for subsurface storage agreements in the NPR–A. This will have little economic effect. Companies often use existing infrastructures to re-inject oil or gas into existing geologic structures. Companies should 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 will derive a benefit in the form of storage fees. The economic benefits of subsurface storage, however, derived by the companies operating in NPR–A or the Federal government should not be significant. In 2000 BLM had in effect 32 oil and gas storage agreements in the lower 48 states which provided $1,085,605 in revenues. That averages out to about $33,925 in revenue payments to the United States per agreement. We anticipate far fewer agreements in NPR–A 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 should be positive, but minimal.

Waiver, Suspension, or Reduction of Rental or Royalty

The final rule also allows for the waiver, suspension, or reduction of rental or royalty on NPR–A leases. This provision will have minimal economic impact. BLM will not allow any waiver, suspension, or reduction of rental or royalty to take place unless it encouraged the greatest ultimate recovery of oil and gas or it was in the interest of conservation. Operators will 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 will benefit since they will be able to continue to operate their leases. BLM will benefit as well since producible leases would not be shut down and the Federal government will continue to receive revenue, albeit at a reduced rate. State, local, and Tribal governments and communities could potentially be positively affected since leases that would under other circumstances be shut down, will continue to produce, providing jobs and revenues to local areas. Any impacts on the economy, productivity, competition, or jobs should be positive, but minimal.

Suspensions of Operations and Production

This final rule allows for suspension of operations and production for NPR–A 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 will 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 will

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 should, 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 final rule allows 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 provision should have little economic impact on the industry as a whole, but could make unitizing leases in the NPR–A more attractive to individual operators. Operators will 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 will be extended if there is constructive drilling or reworking within the unit.

Any economic impacts associated with this provision should, in the long run, be positive. The alternative to extending leases in the unit would be to cancel a lease and shut 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 will 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 should be positive, but minimal.

Fixing Lease Term at 10 Years

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

Administrative Provision

The provision that clarifies which suspension regulations apply to NPR–A is strictly administrative and has no economic impact.

Authors

The principal authors of this rule are Erick Kaarlela (Washington Office), Chris Gibson (Alaska State Office), Richard Watson (Washington Office Fluid Minerals Group), Harvey Blank (Office of the Solicitor), Ian Senio (Washington Office Regulatory Affairs Group), Peter Ditton (Anchorage Field Office), and Greg Noble (Anchorage Field Office).

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.

Dated: March 25, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

Accordingly, for the reasons stated in the preamble, and under the authorities cited below, amend Title 43, Subtitle B, Chapter II, Subchapter C, Parts 3130 and 3160 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 NPR–A 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 NPR–A lease?

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

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

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

(b) If the subsurface estate is held by a regional corporation, BLM will consult with the regional corporation, in accordance with 43 CFR 2650.4–3, before approving an action under this section. *Regional corporation* is defined in 43 U.S.C. 1602.

§ 3133.4 How do I apply for a waiver, suspension or reduction of rental, royalty or minimum royalty for my NPR–A 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 record title holders of the lease; or

(2) By the operator on behalf of all record title holders.

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

Subpart 3135—Transfers, Extensions, Consolidations, and Suspensions

5. Add §§ 3135.2 through 3135.8 as follows:

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

(a) BLM will require a suspension of operations and production or 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, such as by encouraging 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 operations and production for your lease if it determines that, despite the exercise of due care and diligence, you can't comply with your lease requirements for reasons beyond your control.

(c) If BLM requires a suspension of operations and production or 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. However, you must continue to perform necessary maintenance and safety activities.

§ 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 holders of the lease; or

(2) The operator on behalf of the record title holders 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 BLM requires the suspension; or

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

§ 3135.5 When should I stop paying rental or royalty after BLM requires or approves a suspension of operations and production ?

You should stop paying rental or royalty on the first day of the month that the suspension is effective. However, if there is any production sold or removed during that month, you must pay royalty on that production.

§ 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 with BLM approval; 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 What effect does a suspension of operations and production have on the term of my lease?

(a) *Primary term.* If BLM grants a suspension of operations and production for your lease, the suspension stops the running of the primary term of your lease for the period of the suspension.

(b) *Extended term.* If your lease is in its extended term, a suspension holds your lease in its extended term for the period of the suspension as if it were in production.

§ 3135.8 If BLM requires a suspension or grants my request for a suspension of operations and production for my lease, when must I next pay advance annual rental, royalty, or minimum royalty?

(a) You are not required to submit your next rental or minimum royalty payment until the date the suspension terminates. Therefore, if your suspension begins in month 3 of lease year A and ends in month 2 of lease year B, you must submit your rental payment for lease year B when your suspension ends. BLM will send a written notice to the lessee and operator stating that the suspension is terminated and the date your rental payment for lease year B is due to MMS. BLM's notice also will state when you must pay any minimum royalty due for lease year A. Your minimum royalty for lease year B will be due at the end of that year.

(b) If you remove or sell any production from the lease during the term of the suspension, you must pay royalty on that production.

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

Subpart 3137—Unitization Agreements—National Petroleum Reserve-Alaska

Sec.

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 record title holders and all operating rights owners have agreed to the terms and conditions of a unit agreement, committed their interest to the unit; or

(2) A State lease or private parcel of land where all oil and gas lessees and all operating rights owners or the owners of unleased minerals have agreed to the terms and conditions of a unit agreement.

Constructive drilling means those activities that are necessary to prepare for actual drilling that occur 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.

Drainage means the migration of hydrocarbons, inert gases (other than helium), or associated resources caused by production from other wells.

NPR–A lease means any oil and gas lease within the boundaries of the NPR–A, issued and administered 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, and 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 any pool, deposit, zone, or portion thereof capable of producing oil or 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 NPR–A 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 NPR–A 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 the unit operator(s) conducts on committed tracts.

General

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

(a) Each individual tract committed to the unit 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 the term of all NPR–A leases committed to the unit agreement as provided in § 3137.111 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

§ 3137.15 If the Federal lands constitute less than 10 percent of the lands in the proposed unit area, is the unit agreement subject to Federal regulations or approval?

If the Federal lands constitute less than 10 percent of the lands in the proposed unit area—

(a) You may use a unit agreement approved by the State and/or a native corporation;

(b) BLM will authorize commitment of the Federal lands to the unit if it determines that the unit agreement protects the public interest; or

(c) As unit operator you may ask BLM to approve and administer the unit. If BLM agrees to approve and administer the unit, you must follow, and BLM will administer, the regulations in this subpart and 43 CFR part 3160.

§ 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 NPR–A unit agreement?

(a) Your NPR–A unit agreement must include—

(1) A description of the unit area and any geologic and engineering factors upon which you are basing the area;

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

(3) The proposed participating area size and proposed well 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 which are authorized in § 3137.50 of this subpart you choose to include in the unit agreement.

(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) Consist 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 NPR–A 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 or gas.

§ 3137.23 What must I include in my NPR-A unitization application?

Your unitization application to BLM must include—

(a) The proposed unit agreement;

(b) A map showing the proposed 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 owning 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 NPR–A 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 NPR–A 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 NPR–A that the unit or any lease subject to the unit would affect; or

(f) That does not 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 unit agreement within 30 calendar days after receiving BLM's notice of approval or disapproval.

§ 3137.26 When is a unit agreement effective?

The unit agreement is effective on the date BLM approves it.

§ 3137.27 What effect do subsequent contracts or obligations have on the unit agreement?

No subsequent contract or obligation—

(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 unit agreement terms to the contrary pursuant to § 3137.50 of this subpart.

Development

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

Your unit agreement must define—

(a) The number of wells you anticipate will be necessary 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 (see § 3137.71) 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 for a unit agreement if they promote additional development or enhanced production potential—

(a) Limiting the unit agreement to certain formations and their intervals;

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

(c) Allowing modification of the unit agreement terms if less than 100 percent of the parties to the unit agreement (see § 3137.52 of this subpart) agree to the modification; 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 NPR–A lease in the unit;

(d) The consequences if one or more unit operators defaults. For example, if an operator defaults, the unit 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 How may I modify the unit agreement?

(a) You may modify a unit agreement if—

(1) All current parties to the unit 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. The application must include the following—

(1) The operator must certify that the necessary parties have agreed to the modification; and

(2) If the unit agreement modification alters the current allocation schedule, you must submit to BLM both a—

(i) Description of the new allocation methodology; and

(ii) New allocation schedule.

(c) 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.

(d) BLM will reject 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?

As the unit operator—

(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 to 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 NPR–A leases committed to the unit. You may also meet this requirement if you add the unit operator as a principal to lease bonds to reach the required amount; and

(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) of this section 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 unit 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 unit operations.

(c) Your liability for royalty and other payments on the unit 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 unit agreement. Permissible means of satisfying the obligation include—

(a) Drilling a protective well if it is economically feasible. For this subpart, *economically feasible* means producing a sufficient quantity of oil or gas from a protective well in the unit for a reasonable profit above the cost of drilling, completing and operating the protective well;

(b) Paying compensatory royalty;

(c) Forming other agreements, or modifying existing agreements, that allow the tracts committed to the unit agreement to share in production after the effective date of the new or modified agreement; or

(d) BLM may require additional measures 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. You must submit to BLM updated continuing obligation plans as soon as you determine that, for whatever reason, the plan needs amending.

(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 the further actual or constructive drilling operations you will conduct.

§ 3137.72 What if reasons beyond my control prevent me from meeting the initial or a continuing development obligation by the time the unit agreement specifies?

(a) If reasons beyond your control prevent you from meeting the initial or a continuing development obligation by the time specified in the unit agreement, you may apply to BLM for an extension of time for meeting those obligations. You must submit the request for an extension of time before the date the obligation is due to be met. In the application-

(1) State the obligation for which you are requesting an extension;

(2) List the reasons beyond your control that prevent you from performing the obligation; and

(3) State when you expect the reasons beyond your control to terminate.

(b) BLM will grant an extension of time to meet initial or continuing development obligations if we determine that-

(1) The extension encourages the greatest ultimate recovery of oil or gas or it is in the interest of conservation; and

(2) The reasons beyond your control prevent you from performing the initial or a continuing development obligation.

(c) The extension of time for performing the initial or a continuing development obligation will continue for so long as the conditions giving rise to the extension continue to exist.

§ 3137.73 What will BLM do after I submit a plan to meet continuing development obligations?

Within 30 calendar days after receiving your proposed plan, BLM will notify you in writing that we—

(a) Approved your plan;

(b) Rejected your plan and explain why. This will include an explanation of how you should correct the plan to come into compliance; or

(c) Have not acted on the plan, explaining the reasons and when you can expect a final response.

§ 3137.74 What must I do after BLM approves my continuing development obligations plan?

No later than 90 calendar days after BLM's approval of your plan submitted under

3137.71(b), you must certify to BLM that you started operations to fulfill your continuing development obligations. BLM may require you to—

(a) Supply documentation to support your certification; and

(b) Submit periodic reports that demonstrate continuing development.

§ 3137.75 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.

§ 3137.76 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 are 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 aid in the mitigation of reasonably foreseeable and significantly adverse effects on NPR–A 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?

(a) The function of a participating area is to allocate production to each committed tract within a participating area. For royalty purposes, BLM allocates to each committed tract within the participating area in the same proportion as that tract's surface acreage in the participating area to the total acreage in the participating area.

(b) For exploratory and primary recovery operations, BLM will consider gas cycling and pressure maintenance wells when establishing participating area boundaries.

(c) For secondary and tertiary recovery operations, BLM will consider all wells that contribute to production when establishing participating area boundaries.

§ 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, after a reasonable period of time to analyze new data.

(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.

(c) BLM will consider wells that contribute to unit production (*e.g.*, pressure maintenance, gas cycling) when setting the participating area boundaries as provided in § 3137.81(b) and (c) of this subpart.

§ 3137.83 What establishes a participating area?

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

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

(b) Become a separate participating area, if the well is completed 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 modify an existing participating area?

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

(a) Statement that—

(1) The well meets the productivity criteria (see § 3137.82 of this subpart), necessary to establish a new participating area. You must submit information supporting your statement; or

(2) Explains the reasons for modifying an existing participating area. You must submit information supporting your explanation;

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

(c) Schedule that establishes the production allocation for each NPR-A lease or tract, and each record title holder 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?

(a) The effective date of an initial participating area is the first day of the month in which you complete a well meeting the productivity criteria, but no earlier than the effective date of the unit.

(b) The effective date of a modified participating area is the earlier of the first day of the month in which you—

(1) Complete a new well meeting the productivity criteria; or

(2) Should have known you needed to revise the allocation schedule.

§ 3137.86 What happens to a participating area when I obtain new information demonstrating that the participating area should be larger or smaller than previously determined?

(a) If you obtain new information demonstrating that the participating area should be larger than BLM previously determined, within 60 calendar days of obtaining the information, you must—

(1) File a statement, map and revised production allocation schedule under § 3137.84 of this subpart requesting addition to the participating area of all committed tracts or portions of committed tracts in the unit area that meet the productivity criteria;

(2) If the proposed expanded participating area is outside the existing unit boundaries, invite all owners of oil and gas rights (leased or unleased) and lease interests (record title and operating rights) in such additional land to join the unit. If the owners of oil and gas rights in any tract of such land join the unit, you must submit to BLM—

(i) An application to enlarge the unit to include the expanded area;

(ii) A map showing the expanded area of the unit and the information with respect to each additional committed tract you proposed to add to the unit specified in § 3137.23(c) of this subpart; and

(iii) A revised allocation schedule; and

(3) If any additional committed tract or tracts are added to the unit under paragraph (a)(2) of this section, you must file a statement, map and revised production allocation schedule under § 3137.84 of this subpart requesting addition to the participating area of all such committed tracts or portions of such committed tracts in the unit area meeting the productivity criteria.

(b) If you obtain information demonstrating that the participating area should be smaller than previously determined, within 60 calendar days of obtaining the information, you must file a statement, map and revised production allocation schedule under § 3137.84 of this subpart requesting removal from the participating area of all land that does not meet the productivity criteria.

§ 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 unit agreement under § 3137.100 of this subpart;

(c) Admit Federal tracts leased after the effective date of the unit agreement into the unit 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 will not revise the participating area. You must notify BLM within 60 calendar days after you determine a well

does not meet the productivity criteria. 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 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 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 even if it does not meet the productivity criteria. BLM may require the participating area to be revised under § 3137.84 of this subpart.

(c) If a well not meeting the productivity criteria is outside a participating area, the production is allocated as provided in paragraph (a) of this section.

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

(a) If a well not meeting the productivity criteria was drilled before the unit was formed and is not included in the participating area, 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 not meeting the productivity criteria unless BLM approves a change in the designation of operator for those wells.

§ 3137.91 When will BLM allow a well previously determined to be a non-unit well to be used in establishing or modifying a PA?

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 after you determine that the well meets the productivity criteria. You must then modify an existing participating area or establish a new participating area (see § 3137.84 of this subpart).

§ 3137.92 When does a participating area terminate?

(a) After contraction under § 3137.76 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 calendar days after BLM's notification—

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

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

(b) If you demonstrate to BLM that reasons beyond your control prevent you, despite reasonable diligence, from meeting the requirements in paragraphs (a)(1) and (a)(2) of this section within 60 calendar days after BLM notifies you that there is insufficient production to meet the operating costs of that production, BLM will extend the period of time to start those operations.

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 unit 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 12½ percent or the highest royalty rate for any lease committed to the unit.

(c) The value of the production must be determined under the Minerals Management Service's oil and gas product value regulations at 30 CFR part 206.

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?

(a) If the unit operator requests it, BLM will extend the primary term of all NPR–A leases committed to a unit agreement if, from anywhere in the unit area, there is—

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

(2) Actual or constructive drilling operations; or

(3) Actual or constructive reworking operations.

(b) BLM will extend all NPR–A leases committed to the unit, as provided in the following table, for the following types of operations from any lease committed to the unit—

Type of operations	Length of extension	Additional extension
(1) Actual production	As long as there is production from a well in the unit that meets the productivity criteria.	Does not apply.
(2) Actual or constructive drilling operations.	Up to three years for an initial extension	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.
(3) Actual or constructive reworking operations.	Up to three years for an initial extension	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.

§ 3137.112 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 NPR–A 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 NPR–A lease, am I subject to the terms and conditions of the unit agreement?

As a transferee of an interest in an NPR–A 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 unit 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 unit agreement is revoked. You, as lessee, forfeit all further benefits, including extensions and suspensions, granted any NPR–A 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 you establish any participating area, 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 NPR–A leases return to individual lease status and are subject to their original provisions.

(b) An NPR–A 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 three 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 How do I appeal a decision that BLM issues under this subpart?

(a) You may file for a State Director Review (SDR) of a decision BLM issues under this subpart. Part 3160, subpart 3165 of this title contains regulations on SDR; or

(b) If you are adversely affected by a BLM decision under this subpart you may directly appeal the decision under parts 4 and 1840 of this title.

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

Subpart 3138—Subsurface Storage Agreements in the National Petroleum Reserve–Alaska (NPR–A)

Sec.

§ 3138.10 When will BLM enter into a subsurface storage agreement in NPR–A covering federally-owned lands?

BLM will enter into a subsurface storage agreement in NPR–A covering federally-owned lands to 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) 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).

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, provisions relating to suspension and royalty reductions contained in subpart 3165 of this part do not apply to the NPR–A.

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