

**Planning,
Analysis, &
Competitiveness
Recommendations**

DRAFT 20180817

Subcommittee Proposing Recommendation:

Planning, Analysis, & Competitiveness

RECOMMENDATION:

RPC recommends that the Secretary of the Interior pursue rulemaking to adopt the timetable and accountability requirements of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) and the Federal Oil and Gas Royalty Simplification Act of 1996 to include Federal coal by the provisions of each statute. The Secretary should also propose Federal coal be included in the statute in his legislative proposals to Congress.

Nature of change:

This change would require rulemaking and an inclusion in the Department's legislative proposals.

Background:

In 1983 Congress enacted the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) 30 U.S.C. §§ 1701 et seq. The primary purpose was to give the Secretary of the Interior expanded authority to audit and enforce royalty payment obligations related to Federal and Indian oil and gas leases. In addition to addressing issues to allow effective administration of royalty obligations and collections, FOGMRA established timetables and accountability requirements.

Analysis:

This recommendation is to provide the same burdens and benefits of FOGRMA (as amended) for coal lessees that are provided to oil and gas lessees. Providing the same fiscal and administrative framework for all energy lessees on Federal land will ensure, among other outcomes: timely enforcement of coal royalty filings; and an agreed upon framework for dealing with credits, overpayments and underpayments of royalties.

The recommendation is for Federal coal only; however, the committee is open to a consistent application with FOGRMA on Tribal lands as well.

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Subcommittee Proposing Recommendation:

Planning, Analysis, & Competitiveness

Recommendation:

RPC recommends that BLM conduct a pilot project for an active resource area to implement a Notification of Permit to Drill (NPD) program in lieu of obtaining an Application for Permit to Drill (APD) on eligible Federal Lands. Upon receiving an operator or lessee's NPD submittal, the BLM would have 15 days to notify the operator in writing if the NPD is incomplete. Not later than 45 days after receipt of a complete NPD, the BLM shall either: (1) notify the operator of any objections; or (2) take no action. If no action is taken, the operator may conduct the drilling and production activities for which the notification of permit to drill was submitted. If the BLM notifies the operator of an objection, the operator may resubmit a revised NPD or resubmit application as an APD.

Nature of change:

This pilot project may be conducted through rulemaking or by inclusion in the Department's legislative proposals to Congress.

Background:

The NPD in lieu of an APD is a permit which authorizes certain actions in specific situations where the proposed action occurs in developed areas where environmental analyses have previously been conducted. This NPD authorizes drilling and production activities on exploratory, development, and service wells which take place on Federal oil and gas leases based on a standard set of requirements that apply to multiple wells with similar drilling characteristics. The process for an operator or lessee to obtain a NPD by the proposed pilot project is streamlined compared to issuance of APDs under existing Onshore Order No. 1.

For purposes of this proposal, the NPD is a permit streamlining approach that reduces the time permitting authorities must devote to reviewing applications and issuing approvals for drilling areas that pose low environmental concerns. Many of the approved actions will fall within categorical exclusions established by Congress under Section 390 of the Energy Policy Act of 2005. In addition, the rule will apply to address industry changes in drilling operations that pose low environmental concerns, such as operations occurring on 10-acre well pads used for multi-well operations, which are becoming more common-place in the industry. Under the rule, operators and lessees will be able to obtain environmental surveys from inspectors approved by BLM, which confirm that the proposed operations will not have significant impacts on the environment. Such information may be submitted to BLM as a term and condition of the

approval, unless the operator otherwise qualifies for a categorical exclusion under NEPA or is performing operations on a previously authorized location or well pad site and the new proposal does not increase the surface disturbance of that location or well pad. In addition, the proposed terms and conditions for the rule would allow operators or lessees to work with third-party contractors to obtain archeological and cultural resources surveys. Such contractors may directly obtain the concurrence from the State Historic Preservation Officer, without direct involvement by BLM. Any such surveys and requests for concurrence must be submitted to BLM as part of the notification process.

For an operator to obtain approval under such a pilot project, a complete NPD must be submitted. To be considered a complete NPD, the applicant would be required to submit detailed information, which would include but not be limited to surface use plan of operations, drilling plan, and an operator certification, evidence of bond coverage, a well plat, and NPD fees. Federal Lands eligible for the NPD pilot project must be a developed field, with oil and gas operations within a five-mile radius and an approved land use plan or other environmental document that was prepared within the last ten years pursuant to NEPA that analyzed such drilling as a reasonably foreseeable activity. The developed field would include oil and natural gas drilling that has occurred within the last ten years and would not increase the surface disturbance on an existing well pad. Additionally the action would conform to size restrictions, other approvals by communitization or unit agreements approved by a state regulatory agency, or where a categorical exclusion to NEPA compliance applies for oil and gas drilling or re-entry activities.

The NPD could also be granted if the operator or lessee obtains an environmental survey and archaeological survey from a third-party contractor approved by BLM or pursuant to a memorandum of understanding entered into by the BLM to perform such inspections.

The NPD proposal is a cost-effective means of issuing permits, and provide a more efficient, streamlined alternative mechanism for approving operations which do not have a significant effect on the human environment. Other agencies, such as the Environmental Protection Agency and the United States Army Corps of Engineers have utilized similar 'permits by rule' to streamline their approvals processes.

The simplified process will authorize certain oil and gas wells proposed on Federal oil and gas leases. The Authorized Officer needs to take no action upon receipt of a qualifying NPD because approval is granted through the agency's regulations. Under a permit by rule, operations would be subject to the operational, monitoring and recordkeeping requirements and terms and conditions specified in the rule.

Analysis:

In administering 700 million acres of Federal mineral resources, BLM has a responsibility to make Federal oil and gas resources available for the benefit of the citizens of the United States. Under applicable law, BLM manages approval of all

proposed exploratory, development, and service wells, and all required approvals of subsequent well operations and other lease operations. See 43 CFR §§ 3162.3-1, 3162.3-2, 3162.3-3, 3162.3-4 and 3162.5-1. All applications for approvals are submitted to the appropriate Authorized Officer of the BLM. "Authorized Officer" means any person authorized to perform the duties prescribed.

A significant number of applications for approvals are currently pending before BLM. Due to current backlogs, the Carlsbad, NM, and Buffalo, WY, field offices would make ideal locations for this pilot project. Industry has reported that it can take between 139 – 1000 days to obtain application approvals. Industry members believe that over \$1.5 million in federal royalty and more than \$800,000 in state severance receipts are deferred per day in the state of New Mexico alone due to approval delays. Given the magnitude of deferred payments and the BLM's statutory and management obligations, it is important for BLM to create greater efficiencies in its permit approval processes for the development of Federal oil and gas resources.

On July 5, 2017, the Secretary of the Interior released Secretarial Order No. 3354 with the aim of promoting the exploration and development of Federal onshore oil and gas resources. Order 3354 contains a directive which requires BLM to identify options to "enhance exploration and development of Federal onshore oil and gas resources;" and, "to develop an effective strategy to address permitting applications efficiently and effectively as well as develop clear actionable goals for reducing the permit processing time."

The BLM is proposing updates to Onshore Order No. 1's requirements because they are necessary to create regulatory efficiency in the approval process. Specifically, this proposed rule is designed to create a permit by rule which ensures that operations can be timely initiated and effectively performed on Federal oil and gas leases. Efficient approval of regulatory permits is essential to ensure that significant royalties are not being deferred, that federal resources are being timely and appropriately developed, and to ensure that the American public receive the royalties to which they are entitled on oil and gas produced from Federal leases.

Onshore Order No.1 is one of seven Onshore Oil and Gas Orders that the BLM issued under its regulations at 43 CFR Part 3160. Onshore Order No.1 primarily supplements the regulations at 43 CFR 3162. See also 43 CFR § 3162.3-1 (discussing the requirements for Applications for Permits to Drill (APD)).

Until recently, the BLM's Onshore Orders have been published in the Federal Register, both for public comment and in final form, but they had not been codified in the CFR. In 2016 and 2017, Onshore Oil and Gas Orders 3, 4, and 5 were replaced by regulations contained within the CFR. On January 10, 2017, BLM also codified revisions to Onshore Order No. 1 concerning the filing of APDs. With this rule, the BLM is now proposing to supplement and replace portions of Onshore Order No. 1 to codify a permit by rule for the approval of proposed exploratory, development, and service wells.

Many of the provisions in this proposed rule are developed in response to Secretarial Order 3354 and are based on BLM's experience and recommendations received by Industry members. In aggregate, these provisions will help ensure that the production of Federal oil and gas is adequately accounted for. By replacing the patchwork of guidance developed by BLM state and field offices, this proposed rule would also provide operators with more consistent requirements applicable to their operations on Federal lands nationwide.