

Onshore Oil and Gas Order No. 4

BUREAU OF LAND MANAGEMENT 43 CFR 3160

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I. Introduction.

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior under various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations, and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter, be issued.

Specific authority for the provisions contained in this Order is found at section 3162.7-1, Disposition of Production; section 3162.7-2, Measurement of Oil; and Subpart 3163, Noncompliance and Assessment.

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the measurement of oil, and to provide standard operating practices for lease oil storage and handling facilities, by the methods authorized in 43 CFR 3162.7-2, i.e., measurement by tank gauging, positive displacement metering, or other methods acceptable to the authorized officer. Proper oil measurement ensures that the Federal Government and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected. This Order also serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided that the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to all wells and facilities on State or privately owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests,

notwithstanding any provision of a unit or communitization agreement to the contrary.

II. Definitions.

A. Authorized Officer means any employee of the Bureau of Land Management authorized to perform the duties described in Groups 3000 and 3100 (see 43 CFR 3000.0-5).

B. Barrel(bbl) means 42 standard United States gallons of 231 cubic inches each.

C. Business Day means any day Monday through Friday excluding Federal holidays.

D. Cpl. means the correction factor for the effect of pressure on liquid.

E. Cps. means the correction factor for the effect of pressure on steel.

F. Ctl. means the correction factor for the effect of temperature on liquid.

G. Cts. The correction factor for the effect of temperature on steel.

H. INC means incident of noncompliance, which serves as a Notice of Violation under 43 CFR Subpart 3163.

I. Lessee means a person or entity holding record title in a lease issued by the United States (see 43 CFR 3160.0-5).

J. Major violation means noncompliance which causes or threatens immediate, substantial, and adverse impact on public health and safety, the environment, production accountability, or royalty income(43 CFR 3160.0-5).

K. Minor violation means noncompliance which does not rise to the level of a major violation (43 CFR 3160.0-5).

L. Operating rights owner means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been served from the record title(43 CFR 3160.0-5).

M. Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the terms and conditions of the lease for the operations conducted on the leased lands or portion thereof(43 CFR 3160.0-5).

N. Oil, for the purposes of this Order, shall mean all liquid hydrocarbons produced from or for the benefit of jurisdictional leases, including condensate and oil from tar sands that is measured as a liquid.

N.1. Clean Oil/Pipeline Oil means crude oil or condensate that is of such quality that it is acceptable to normal purchasers.

N.2. Slop oil means crude oil that is of such quality that it is not acceptable to normal purchasers and which requires special treatment other than that which can economically be provided at the existing or modified facilities or portable equipment and is usually sold to oil reclaimers.

N.3. Waste oil means lease crude oil that has been determined by the authorized officer to be of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment and cannot be sold to reclaimers and also has been determined by the authorized officer to have no economic value and for which royalty is not due.

III. Requirements

A. Required Recordkeeping

The operator shall keep all test data, meter reports, charts/recordings, or other similar records for 6 years from the date they were generated, or if involved in an audit or investigation, the records shall be maintained until the record holder is released by the Secretary from the obligation to maintain them. The authorized officer may request these records any time within this period. Records submitted shall include all additional information used to compute volumes so that computations may be verified.

B. General

1. The regulations at 43 CFR 3162.7-2 authorize oil measurement methods for communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1. The authorized oil measurement methods are tank gauging, positive displacement metering systems, and other methods acceptable to the authorized officer. The requirements and minimum standards for each of these methods are set forth below.

2. These requirements and minimum standards and practices recommended by the American Petroleum Institute (API). The API standards and recommended practices are considered by both the Department of the Interior and the oil and gas industry to be appropriate for proper oil measurement. The requirements and minimum standards set out herein are those necessary to promote conservation of natural

resources and to ensure that oil production, except for waste oil, is properly measured for sales and allocation purposes, in order that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases. When an infraction of the minimum standards in this Order is discovered it will be considered noncompliance and an incident of noncompliance (INC) will be issued. Operators who discover noncompliance with these minimum standards and take immediate corrective action will not be issued an INC. If the authorized officer or his representative is present when an operator discovers a malfunction or does not use correct procedures as specified in this Order, an INC will be issued unless immediate corrective action is taken.

A major violation as defined in this Order will generally require an immediate shut-in of the metering device. However, where the non-recoupable loss is not significant or where damage to the resource is likely to occur if a shut-in is required, an abatement period of 24 hours may be given.

The intent of these minimum standards is to ensure that when equipment malfunctions that could result in inaccurate measurement occur, that proper corrective action are taken, the authorized officer is notified, and an amended production report is submitted.

Equipment failure that is discovered by the operator and promptly corrected will not be considered a violation. However, the incidents of noncompliance that may result from equipment failure are considered violations, and a partial list is as follows:

- Failure to install equipment properly.
- Failure to repair or correct equipment malfunction properly or in a timely manner.
- Failure to submit report of alternate method of measurement for sales.
- Failure to submit amended production reports in a timely manner.
- Failure to adhere to the minimum standards procedures specified in this Order.

The use of improper equipment, when discovered, will be considered a violation, and an INC will be issued.

The use of improper procedures will be considered a violation and, when witnessed by the authorized officer or his representative, immediate corrective action will be required. In the event that proper procedures are then used as required by this Order, and prior to completing the operations, calibration, or proving, the violation will be considered as properly corrected. In this case although the violation will be documented in the agency files, no formal INC will be issued.

All future sales and allocation facilities and sales or allocation facilities in existence on the effective date of this Order, unless covered by a valid variance, shall meet the minimum standards prescribed in this Order.

Meter installations constructed in accordance with the API standards in effect at that time shall not automatically be required to retrofit to meet revised API standards, and when deemed necessary will the Order accordingly through the rulemaking process.

Any variances from these requirements and minimum standards shall be in accordance with section IV of this Order.

3. A violation of a minimum standard established by this Order shall be abated within the time period specified. Where abatement is required "prior to sales or removal", this means that necessary actions shall be taken so that no oil may be removed beyond the measurement point until properly measured.

If any such violation is not abated within the required period, action shall be initiated in accordance with 43 CFR Subpart 3163.

C. Oil Measurement by Tank Gauging

Oil measurement by tank gauging shall accurately compute the volume of oil withdrawn from a properly calibrated sales tank by measuring the height of the oil level in the tank before delivery (opening gauge) and then measuring the height of the oil level in the tank after delivery (closing gauge). The opening and closing gauges are then used with the tank calibration charts (tank tables) to compute accurately the volume of oil withdrawn. Gauging may be accomplished by measuring the height of the oil level from the tank bottom or a fixed datum plate upward to the surface of the oil in the tank (innage gauging) or by measuring from a fixed reference point at the top of the tank downward to the surface of the oil in the tank (outage gauging). Samples shall be taken from the oil before gauging to determine API oil gravity and sediment and water content. Prior to gauging, the temperature of the oil shall be determined from measurements made in the tank. The measured oil volume shall then be corrected for sediment and water content, and to the standard sales temperature of 60°F.

The following requirements and minimum standards shall be accomplished in accordance with API Standard 2545 (ANSI/ASTM D 1085) "Method of Gauging Petroleum and Petroleum Products," 1985, reaffirmed in 1987, and (ANSI/ASTM D-1250), Tables 5A and 6A.

1. *Sales Tank Equipment.* Each oil storage tank to be used for oil sales by tank gauging, using the "API Recommended Practice for Setting,

Connecting, Maintenance, and Operation of Lease Tanks, API RP 12 R1," 1986. Tanks shall also be connected, maintained, and operated so as to comply with the Site Security Regulations, 43 CFR 3162.7-5, and Onshore Order No. 3, and sales tanks shall meet the following requirements:

a. Each sales tank shall be equipped with a pressure-vacuum thief hatch and/ or vent-line valve.

Violation: Major.

Corrective Action: Install proper the if hatch and/or vent line valve or drain.

Abatement Period: 30 days.

b. Each sales tank shall be set and maintained level and free of distortion in accordance with the above-referenced API recommended practice.

Violation: Major.

Corrective Action: Level tank.

Abatement Period: Prior to sales.

c. Pursuant to API Standard 2545 (ANSI/ASTM D 1085), "Method of Gauging Petroleum and Petroleum Products," October 1965 (reaffirmed August 1987), each tank shall be equipped with a gauging reference point, with a the height of the reference point stamped on a fixed bench-mark plate or stenciled on the tank near the gauging hatch.

Violation: Minor.

Corrective Action: Affix a gauging reference point in gauging hatch and stamp on bench-mark plate or stencil on tank near gauging hatch.

Abatement Period:30 days.

2.Sales Tank Calibrations. Each oil storage tank to be used for oil sales by tank gauging shall be accurately calibrated for such gauging, using the API Standard 2550 (ANSI/ASTM D-1220), "Method for Measurement and Calibration of Upright Cylindrical Tanks," 1965, reaffirmed August 1987, and API RP 2556, "Correcting Gauge Tables for Incrustation," August 1968. The following minimum standards shall be satisfied:

a. Sales tank capacities shall be determined by actual tank measurements by the method know as "tank calibration" and in accordance with the above-referenced API Standards.

Violation: Minor.

Corrective Action: Make capacity determination and develop appropriate capacity table.

Abatement Period:60 days.

b. A sales tank shall be recalibrated if it is relocated or repaired or the capacity is changed through denting, damage, or installation or removal of interior components, or otherwise.

Violation: Minor.

Corrective Action: Recalibrate tank and develop new (revised) capacity table.

Abatement Period:60 days.

c. Calibration charts (tank tables) shall be submitted to the authorized officer on request.

Violation: Minor.

Corrective Action: Submit tables to authorized officer.

Abatement Period:30 days.

3. Oil Sampling. Sampling of oil to be sold from sales tank is required and shall be conducted in such fashion as to yield a representative sample of the oil for purposes of determining the physical properties of the oil, following the "API Manual of Petroleum Measurement Standards, Chapter 8.1 - Manual Sampling" (ASTM D-4057), October 1981 (Reaffirmed August 1987), or Chapter 8.2 - Automatic Sampling of Petroleum and Petroleum Products, April 1983 (Reaffirmed August 1987), and shall meet the following minimum standard. All samples shall be taken from the contents of the sales tank prior to gauging, after allowing the tank contents to settle for at least 30 minutes following isolation of the tank, in accordance with the procedures specified in the above-referenced API Standard.

Violation: Major.

Corrective Action: Repeat sampling procedure.

Abatement Period: Prior to sales or removal.

4. Sales Tank Gauging. Gauging of oil sales tanks is required and shall be accomplished in such fashion as to measure the contents of the tank accurately, following API Standard 2545 (ANSI/ASTM D-1085), "Method of Gauging Petroleum and Petroleum Products" 1965 (Reaffirmed August 1987), and shall meet the following minimum standards.

a. Gauging shall be accomplished using gauging tapes made of steel or corrosion-resistant material with graduation clearly legible, not kinked or spliced, and traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or an independent testing facility. Working tapes, when checked against a tape certified to NBS standards, will be allowed as NBS traceable.

Violation: Major.
Corrective Action: Replace tape.
Abatement Period: Prior to sales or removal.

b. Acceptable gauging requires 2 identical gauges to the nearest 1/4-inch for tanks with a capacity of less than 1,000 barrels, and 2 identical gauges the nearest 1/2-inch for tanks with a capacity of 1,000 barrels or more.

Violation: Major.
Corrective Action: Repeat gauging until 2 identical readings are obtained.
Abatement Period: Prior to sales or removal.

c. The proper bob for innage gauging or outage gauging shall be used in accordance with the above-reference API standard.

Violation: Major.
Corrective Action: Repeat gauging using proper bob.
Abatement Period: Prior to sales or removal.

5. Oil Gravity. Tests for oil gravity are required, following the "API Manual of Petroleum Measurement Standards Chapter 9 - Density Determination" (ASTM D-1298-80) 1981, and (ASTM D-287-82) "Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products" (Hydrometer Method), and shall be performed on a representative sales tank oil sample obtained following "API Manual of Petroleum Measurement Standards, Chapter 8.1, "Manual Sampling of Petroleum and Petroleum Products" (ASTM D-4057) October 1981 (Reaffirmed 1987). Gravity tests shall meet the following minimum standards.

a. All gravity determinations shall be completed before oil sales are made.

Violation: Major.
Corrective Action: Obtain sample from sales tank and determine oil gravity.
Abatement Period: Prior to sales or removal.

b. Accuracy of all instruments used to determine oil gravity for oil sales purposes shall be traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or independent testing facility.

Violation: Major.
Corrective Action: Replace instruments.
Abatement Period: Prior to sales or removal.

c. The instrument used to obtain the oil gravity shall be clean, with no loose shot weights or detached gravity scale.

Violation: Major.

Corrective Action: Clean and/or replace hydrometer.

Abatement Period :Prior to sales or removal.

d. The instrument used to obtain the oil gravity shall be calibrated for a gravity range that includes the observed gravity of the oil sample being tested.

Violation: Major.

Corrective Action: Repeat gravity tests using hydrometer with proper scale.

Abatement Period: Prior to sales or removal.

e. Temperatures shall be measured and recorded to the nearest 1.0 F.

Violation: Major.

Corrective Action: Repeat test, measuring and recording temperature to nearest 1.0 F.

Abatement Period: Prior to sales or removal.

f. Liquid density (gravity) will be measured and recorded to the nearest 0.1 API gravity, making any necessary meniscus correction. The observed gravity shall be corrected to 60 F. using Table 5A, "Table 5A - Generalized Crude Oils" and JP-4, Correction of Observed Gravity to API Gravity at 60 F.

Violation: Major.

Corrective Action: Repeat test, measuring and recording gravity to nearest 0.1 API gravity after making necessary correction for fluid meniscus.

Abatement Period: Prior to sales or removal.

6. Tank Temperature. Determination of the temperature of oil contained in a sales tank is required following the "API Standard 2543, Method of Measuring the Temperature of Petroleum and Petroleum Products" (ANSI/ASTM D - 1086) October 1965 (Reaffirmed August 1987), and shall meet the following minimum standards:

a. Accuracy of all thermometers used for oil sales purposes shall be traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or independent testing facility. Working thermometers shall be checked against a thermometer certified accurate to NBS standards and their use shall be permitted.

Violation: Major.
Corrective Action: Replace thermometer.
Abatement Period: Prior to sales or removal.

b. Thermometers shall be kept clean and free of mercury separation. The temperature measurements shall be taken by immersing the thermometer to the approximate vertical center of the fluid column, not less than 12 inches from the shell of the tank, for a minimum of 5 minutes and then read and recorded to the nearest 1 F.

Violation: Major.
Corrective Action: Replace thermometer or repeat measurement as prescribed.
Abatement Period: Prior to sales or removal.

7. Sediment and Water (S&W). Determinations of the sediment and water content of oil contained in sales tanks is required following the "API Manual of Petroleum Measurement Standards, Chapter 10 - Sediment and Water and Section 4 - Determination of Sediment and Water in Crude Oils by the Centrifuge Method (Field Procedure), Second Edition, May 1988 (ASTM 96-88), and shall meet the following minimum standards:

a. A thoroughly mixed oil sample-solvent combination, prepared in accordance with the procedure described in the above-referenced API Manual, shall be heated to at least 140 F. prior to centrifuging.

Violation: Major.
Corrective Action: Repeat procedures using the defined standards.
Abatement Period: Prior to sales or removal.

b. The heated sample shall be whirled in the centrifuge for not less than 5 minutes, and at the conclusion of centrifuging, the temperature shall be a minimum of 115 F. without water-saturated diluent, and 125 F. with water-saturated diluent.

Violation: Major.
Corrective Action: Repeat test as prescribed.
Abatement Period: Prior to sales or removal.

c. The combined volume of water and sediment at the bottom of the 100 ml. centrifuge tube shall be read:

- (1) To the nearest 0.05 ml. in the range from 0.1 to 1 ml.
- (2) To the nearest 0.1 ml. if above the 1 ml. graduation.
- (3) Estimated to the nearest 0.025 ml. if the volume is less than 0.1 ml.

The water and sediment volume in the centrifuge tube thus determined shall be multiplied by the appropriate factor for the centrifuge tube size and oil sample-solvent ratio, as specified in the above-referenced API Manual, and the product recorded as the percentage of water and sediment.

Violation: Major.

Corrective Action: Repeat test as specified or repeat procedures using specified factors.

Abatement Period: Prior to sales or removal.

D. Oil Measurement by Positive Displacement Metering System

Oil measurement by a positive displacement metering system, for purposes of oil sales, shall be accomplished by a Lease Automatic Custody Transfer (LACT) unit designed to provide for the unattended transfer of liquid hydrocarbons from a production facility to the transporting carrier while providing proper and accurate means for the determination of net standard volume and quality, while also providing for fail-safe and tamper proof operations in accordance with the regulations at 43 CFR 3162.7-5 and Onshore Oil and Gas Order No. 3.

[54 FR 39527, Sept.27, 1989]

A positive displacement meter is one which registers the volume passing through said meter by a system which constantly and mechanically isolates the flowing liquid into segments of known volume.

LACT unit design shall follow API Spec. 11N "API Specifications for Lease Automatic Custody Transfer (LACT) Equipment," 1979, and API Manual of Petroleum Measurement Standards, Chapter 6 -Metering Assemblies, Section 1, LACT Systems, February 1981 (Reaffirmed August 1987). LACT units shall be constructed and operated so as to satisfy the following requirements and minimum standards:

1. LACT Unit Components and General Operating Requirements.

a. Each LACT unit shall include all of the following listed components as a minimum:

- (1) Charging pump and motor.
- (2) Sampler, composite sample container and mixing system.
- (3) Stainer.
- (4) Positive displacement meter.
- (5) Meter proving connections.
- (6) Meter backpressure valve and check valve.

- (7) Air eliminator.
- (8) Diverter valve or shut-off valve.
- (9) Sediment and Water Monitor.
- (10) Automatic Temperature/Gravity Compensator.

Violation: Major: a.1.,2.,4., 5., 6., and 10.
Corrective Action: Install component.
Abatement Period: Prior to sales or removal.

Violation: Minor: a.3., 7., 8., and 9.
Corrective Action: Install component.
Abatement Period:30 days.

b. All components of LACT unit shall be accessible for reasonable inspection by the authorized officer.

Violation: Minor.
Corrective Action: Provide authorized officer with means of access to LACT.
Abatement Period:30 days.

c. The authorized officer shall be notified of any LACT unit failure, such as electrical, meter, or other failure that results in use of an alternate method of measurement.

Violation: Minor.
Corrective Action: Notify authorized officer of alternate method used.
Abatement Period: By 5th business day following use of alternate method.

d. Any and all tests conducted on oil samples extracted from LACT samplers for determination of oil gravity and S & W content shall meet the same requirements and minimum standards specified in this Order with respect to oil measurement by tank gauging for all measurements taken of temperature, gravity, and S & W content (Section III.C.5., 6., and 7.)

Violation: Major.
Corrective Action: Report tests for gravity, temperature, and/or S & W content per Section III.C.5., 6., and 7. minimum standards.
Abatement Period: Prior to sales or removal.

2. Operating Requirements for LACT Unit Components. All required LACT unit components shall be operated to satisfy the following minimum standards:

a. Charging pump and motor. The LACT unit shall include an electrically driven pump rated for a discharge pressure and rate that are compatible with the rating for the meter used and sized to assure turbulent flow in the LACT main stream piping.

Violation: Major.

Corrective Action: Install properly designed pump and motor.

Abatement Period: Prior to sales or removal.

b. Sampler. The sampler probe shall extend into the center one-third of the flow piping in a vertical run, at least 3 pipe diameters downstream of any pipe fitting. The probe shall always be in a horizontal position.

Violation: Major.

Corrective Action: Install component properly.

Abatement Period: Prior to sales or removal.

c. Composite Sample Container. The composite sample container shall be capable of holding sample under pressure and shall be equipped with a vapor proof top closure and operated to prevent the unnecessary escape of vapor, and the container shall be emptied upon completion of sample withdrawal.

Violation: Major.

Corrective Action: Install component properly, and empty after each sample withdrawal.

Abatement Period: Prior to sales or removal.

d. Mixing System. The mixing system shall completely blend the sample into a homogeneous mixture before and during the withdrawal of a portion of sample for testing.

Violation: Major.

Corrective Action: Repair mixing system.

Abatement Period: Prior to sales or removal.

e. Strainer. The strainer shall be constructed so that it may be depressurized, opened, and cleaned, be located upstream of the meter, and be made of corrosion resistant material of a mesh size no larger than ¼-inch.

Violation: Minor.

Corrective Action: Replace with properly designed strainer, and install properly.

Abatement Period: 30 days.

f. Positive Displacement Meter. The meter shall register volumes of oil passing through said meter determined by a system which constantly and mechanically isolates the flowing oil into segments of known volume, and be equipped with a non-resettable totalizer.

Violation: Major.

Corrective Action: Replace or repair meter or the non-resettable totalizer.

Abatement Period: Prior to sales or removal.

g. Meter Proving Connections. All meter proving connections shall be installed downstream from the LACT meter, with the line valve(s) between the inlet and outlet of the prover loop having a double block and bleed design feature to provide for leak testing during proving operations.

Violation: Major.

Corrective Action: Relocate prover loops downstream from LACT meter, and install block and bleed valve as specified.

Abatement Period: Prior to proving LACT.

h. Back Pressure and Check Valves. The back pressure valve and check valve shall be installed downstream from the LACT meter.

Violation: Major.

Corrective Action: Install back pressure valve and check valve downstream from LACT meter.

Abatement Period: Prior to sales or removal.

i. Air Eliminator. The air eliminator shall be installed and prevent air/gas from entering the meter.

Violation: Minor.

Corrective Action: Install air eliminator.

Abatement Period: 30 days.

j. Diverter Valve/Shut-off Valve. The diverter valve/shut-off valve shall be activated by the Sediment and Water Monitor so that the valve moves to divert flow to the clean oil discharge only when it receives a positive signal, or provide a shut-off valve configured to shut off oil delivery upon failure to receive a positive signal from the Sediment and Water Monitor.

Violation: Minor.

Corrective Action: Install diverter valve/shut-off valve.

Abatement Period:30 days.

k. Sediment and Water (S and W) Monitor. The Sediment and Water Monitor shall be an internally plastic coated capacitance probe, no smaller in diameter than the skid piping, and shall be mounted in a vertical pipe located upstream from the diverter valve/shut-off valve and the meter.

Violation: Minor.

Corrective Action: Install S and W Monitor.

Abatement Period:30 days.

l. Automatic Temperature/Gravity Compensator. The automatic temperature/gravity compensator shall be sized according to the fluid characteristics being measured.

Violation: Major.

Corrective Action: Install automatic temperature/gravity compensator.

Abatement Period: Prior to sales or removal.

3. Sales Meter Proving Requirements. LACT positive displacement meters shall be proved periodically. Meter provings shall follow "API Manual of Petroleum Measurement Standards, Chapter 4 - Proving Systems," 1978, and shall meet the following minimum standards.

a. The types of meter provers to be used, and the calibration requirements are as follows:

(1) The acceptable types of meter provers are pipe provers, tank provers, master meters, or other API recognized meter provers.

Violation: Minor.

Corrective Action: Prove again with acceptable meter prover.

Abatement Period:30 days.

(2) The prover shall have available at the site for review by the authorized officer, evidence that the prover has been calibrated, with the certified calibration date identified by some unique number, i.e., serial number assigned to and inscribed on the prover. The calibration evidence for a pipe or tank

prover shall show the certified volume as determined by the water draw method.

If a master meter is used, the most recent calibration report for said master meter shall be available. Said calibration report shall show that the master meter has been calibrated in accordance with API requirements, has an operating factor within the range from 0.9900 to 1.0100, and that 5 consecutive runs have been matched within a tolerance of 0.0002.

Violation: Minor.

Corrective Action: Provide calibration certification.

Abatement Period: Prior to proving.

b. Minimum Proving Frequency. For all sales and allocation meters, the accuracy of the measuring equipment at the point of delivery or allocation shall be tested following initial meter installation or following repair, and if proven adequate, at least quarterly thereafter unless a longer period is approved in writing by the authorized officer.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled proving and prove meter.

Abatement Period: 10 business days.

(1) In the event that the total throughput exceeds 100,000 bbls per month, then proving shall be accomplished monthly.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled proving.

Abatement Period: By the 10th business day after discovery of the violation.

c. In Establishing the Operating Meter Factor:

(1) At least 6 runs shall be made. Of these 6 runs, 5 consecutive runs shall match within a tolerance of 0.0005 (0.05 percent) between the highest and the lowest reading.

Violation: Major.

Corrective Action: Notify authorized officer

and reprove meter.

Abatement Period: 10 business days.

(2) The arithmetic average of these 5 consecutive runs shall be used for computation of the meter factor.

Violation: Minor.

Corrective Action: Compute meter factor using arithmetic average of the 5 consecutive runs.

Abatement Period: Prior to completion of proving.

(3) Meter factor computations shall also include the correction for the effect of pressure on steel (Cps) for provers; and the correction for the effect of temperature on steel (Cts) for provers; and the correction for the effect of temperature on liquid (Ctl), and the correction for the effect of pressure on liquid (Cpl). The Cps and Cts correction factors shall be determined using the "API Manual of Petroleum Measurement Standards, Chapter 12, Section 2," 1981, or latest revised standard, and the Ctl correction factor shall be obtained from the "API Standard 2540, Chapter 11.1, Volume I (ASTM D-1250-80), Table 6A," 1980, or latest revised standard, and the Cpl correction factor shall be obtained from the "API Manual of Petroleum Measurement Standards, Chapter 11.2.1."

Violation: Minor.

Corrective Action: Include proper correction factors.

Abatement Period: Prior to completion of meter proving.

(4) The initial meter factor for a new or repaired meter shall be within the range from 0.9950 to 1.0050, unless the deviation can be justified to the satisfaction of the authorized officer.

Violation: Minor.

Corrective Action: Replace/repair/reprove meter or justify deviation from the brackets 0.9950 to 1.0050 to the authorized officer.

Abatement Period: Prior to completion of proving.

4. Excessive Meter Factor Deviation. Excessive meter factor deviation may be evidence of meter malfunction, and corrective action shall be taken upon discovery of meter malfunction. However, if the operator determines that the meter did not, in fact, malfunction, the lessee/operator shall submit, for approval by the authorized officer, a report as to the findings and reasons for the excessive meter factor deviation and the determination of no meter malfunction. In the event a malfunction occurred, the meter shall be immediately removed from service, checked for damage or wear, adjusted and/or repaired, and reproven prior to return to service. The arithmetic average of the malfunction factor and the previous factor shall be applied to the production measured through the meter between the date of the previous factor and the date of the malfunction factor. Malfunction meter factors shall be clearly indicated on the proving report, which shall also contain all appropriate remarks regarding subsequent repairs and/or adjustments.

The minimum standards for evidence meter malfunction, and corrective action required, are as follows:

Meter Factor Deviation.

(1) Deviation in a meter factor not exceed ± 0.0025 since the last proving of the meter unless explained by changing conditions, i.e., temperature or gravity or flow-rate.

Violation: Minor.

Corrective Action: Repair or replace meter, or submit report to authorized officer for approval of the findings and reasons for the determination that there is no meter malfunction.

Abatement Period: Prior to completion of meter proving.

(2) A meter factor shall not exceed 1 percent above or below unity, i.e., outside of the range from 0.9900 to 1.0100.

Violation: Minor.

Corrective Action: Same as (1) above.

Abatement Period: Prior to completion of meter proving.

5. Meter Reporting Require Requirements. All meter provings, meter failures, and volume adjustments following meter malfunction shall be reported to the authorized officer, as follows:

Meter Proving Reports. The meter proving report shall be filed on one of the forms set out in "API Manual of Petroleum Measurement Standards, Chapter 12-Calculation of Petroleum Quantities, Section 2-Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meter," 1981 (Reaffirmed August 1987). Any similar format is acceptable provided all required data are included and proper calculation sequence is maintained.

Each meter proving report shall be identified by lease number, communitization agreement number, or unit participating area name, and the location of the facility.

Each meter proving report shall be filed with the authorized officer no later than 10 business days following the meter proving.

[54 FR 39527, Sept. 27, 1989]

Violation: Minor.

Corrective Action: Submit proper proving report to authorized officer.

Abatement Period: File the report with authorized officer no later than 10th business day following the proving.

E. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer.

Any method of oil measurement, other than tank gauging or positive displacement metering system, requires prior approval, based on applicable API Standards, by the authorized officer. Other measurement methods include, but are not limited to: Turbine metering systems, Measurement by calibrated tank truck, Measurement by weight, and Net oil computer.

The requirements and minimum standards for oil measurement on the lease, unit, unit participating area, or communitized area by an alternate method, or at a location off the lease, unit, unit participating area, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. Measurement on the Lease, Unit, Unit Participating Area, Communitized Area.

An application for approval of an alternate oil measurement method shall be submitted to the authorized officer and written approval obtained before any such alternate oil measurement method is operated. Any operator requesting approval of any alternate oil sales measurement system shall submit performance

data, actual field test results, or any other supporting data or evidence acceptable to the authorized officer, that will demonstrate that the proposed alternate oil sales measurement system will meet or exceed the objectives of the applicable minimum standard or does not adversely affect royalty income or production accountability.

[54 FR 39527, Sept. 27, 1989]

Violation: Major.

Corrective Action: Shut in operations. Submit application for approval of desired method of oil measurement.

Abatement Period: Prior to sales or removal.

2. Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area.

A. An application for off-lease measurement shall be submitted to the authorized officer and written approval obtained before any such off-lease oil measurement facilities are installed or operated. The application for written approval of off-lease measurement shall justify location of the measurement facilities at the off-lease location desired before approval will be granted, but no additional approval as to the oil measurement method is required, provided measurement is to be accomplished by tank gauging or positive displacement metering system, pursuant to the requirements and minimum standards of this Order.

Violation: Minor.

Corrective Action: Submit application for written approval of off-lease measurement.

Abatement Period: 20 days.

B. If oil measurement is to be accomplished at a location off the lease, unit, unit participating area, or communitized area by any alternate measurement method (any method other than tank gauging or positive displacement metering system), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate measurement method, pursuant to Section III.E.1.

Violation: Major.

Corrective Action: Submit application for approval of off-lease measurement and approval of desired

method of measurement.

Abatement Period: Prior to sales or removal.

F. Determination of Oil Volumes by Methods Other Than Measurement.

Pursuant to 43 CFR 3162.7-2, when production cannot be measured due to spillage or leakage, the amount of production shall be determined in accordance with the methods approved or prescribed by the authorized officer. This category of production includes, but is not limited to, oil which is classified as slop oil or waste oil.

The minimum standards for determining the volume of oil that cannot be measured are as follows:

1. No oil located in an open pit or sump, in a stock tank, in a production vessel or elsewhere, may be classified or disposed of as waste oil unless it can be shown, to the satisfaction of the authorized officer, that it is not economically feasible to put the oil into marketable condition.

Violation: Major.

Corrective Action: Put oil into marketable condition.

Abatement Period:24 hours.

2. No slop oil may be sold or otherwise disposed of without prior approval from the authorized officer. Following the sale or disposal, the authorized officer shall be notified as to the volume sold or disposed of, and the method used to compute the volume. Shall be notified as to the volume sold or disposed of, and the method used to compute the volume.

Violation: Major.

Corrective Action: Submit complete report of sale or disposal.

Abatement Period:24 hours.

IV. Variances From Minimum Standards

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in Section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances warranting approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) if it is determined that the

proposed alternative(s) meets or exceeds the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability.

In addition, approval may be given orally by the authorized officer before the operator initiates actions which require a variance from minimum standards. The oral request, if granted, shall be followed by a written request not later than the fifth business day following oral approval, and written approval will then be appropriate.

The authorized officer may also issue NTLs that establish modified standards and requirements for specific geographic areas of operations.

After notice to the operator the authorized officer may also require compliance with standards that exceed those contained in this Order whenever such additional requirements are necessary to achieve protection of royalty income or production accountability. The rationale for any such additional requirements shall be documented in writing to the operator.

Attachment

I. Sections from 43 CFR Subparts 3163 and 3165.

SUBPART 3163 - NONCOMPLIANCE, ASSESSMENT, AND PENALTIES

§3163.1, Remedies for Acts of Noncompliance

(a) Whenever an operating rights owner or operator fails or refuses to comply with the regulations in this part, the terms of any lease or permit, or the requirements of any notice or order, the authorized officer shall notify the operating rights owner or operator, as appropriate, in writing of the violation or default. Such a notice shall also set forth a reasonable abatement period:

(1) If the violation or default is not corrected within the time allowed, the authorized officer may subject the operating rights owner or operator, as appropriate, to an assessment of not more than \$500 per day for each day non-abatement continues where the violation or default is deemed a major violation;

(2) Where noncompliance involves a minor violation, the authorized officer may subject the operating rights owner or operator, as appropriate, to an assessment of \$250 for failure to abate the violation or correct the default within the time allowed;

(3) When necessary for compliance, or where operations have been commenced without approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income, the authorized officer may shut down operations. Immediate shut-in action may be taken where operations are initiated and conducted without prior approval, or where operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. Shut-in actions for other situations may be taken only after due notice, in writing, has been given;

(4) When necessary for compliance, the authorized officer may enter upon a lease and perform, or have performed, at the sole risk and expense of the operator, operations that the operator fails to perform when directed to in writing by the authorized officer. Appropriate charges shall include

the actual cost of performance, plus an additional 25 percent of such amount to compensate the United States for administrative costs. The operator shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be entered;

(5) Continued noncompliance may subject the lease to cancellation and forfeiture under the bond. The operator shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be recommended for cancellation;

(6) Where actual loss or damage has occurred as a result of the operator's noncompliance, the actual amount of such loss or damage shall be charged to the operator.

(b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, \$500 per day for each day that the violation existed, including the days the violation existed prior to discovery, not to exceed \$5,000;

(2) For drilling without approval or for causing surface disturbance on Federal or Indian Surface preliminary to drilling without approval, \$500 per day for each day that the violation existed, including days the violation existed prior to discovery, not exceed \$5,000;

(3) For failure to obtain approval of a plan for well abandonment prior to commencement of such operations, \$500.

(c) Assessments under paragraph (a)(1) of this section shall not exceed \$1,000 per day, per operating rights owner or operator, per lease. Assessments under paragraph (a)(2) of this section shall not exceed a total of \$500 per operating rights owner or operator, per lease, per inspection.

(d) Continued noncompliance shall subject the operating rights owner or operator, as appropriate, to penalties described in 3163.2 of this title.

(e) On a case-by-case basis, the State Director may compromise or reduce assessments under this section. In compromising or reducing the amount of the assessment, the State Director shall state in the record the reasons for such determination.

§3163.2, Civil Penalties

(a) Whenever an operating rights owner or operator, as appropriate, fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation there under, or the terms of any lease or permit issued there under, the authorized officer shall notify the operating rights owner or operator, as appropriate, in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice was previously issued under 3163.1 of this title. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the operating rights owner or operator, as appropriate, shall be liable for a civil penalty of up to \$500 per violation for each day such violation continues, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of 3163.1 (a)(1) of this title shall be deducted from penalties under this section.

(b) If the violation specified in paragraph (a) of this section is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the operating rights owner or operator, as appropriate, shall be liable for a civil penalty of up to \$5,000 per violation for each day the violation continues, not exceed a maximum of 60 days, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of 3163.1 (a)(1) of this title shall be deducted from penalties under this section.

(c) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(d) Whenever a transporter fails to permit inspection for proper documentation by any authorized representative, as provided in 3162.7-1(c) of this title, the transporter shall be liable for a civil penalty of up to \$500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

(e) Any person shall be liable for a civil penalty of up to \$10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by 3162.1(b) of this title; or

(2) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, Form 3160-5 or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a civil penalty of up to \$25,000 per violation for each violation continues, not to exceed a maximum of 20 days if he/she;

(1) Knowingly or willfully prepares, maintains or submits false, in accurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal or Indian lease site without having valid legal authority to do so; or

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site.

(g) Determinations of Penalty Amounts for this section are as follows:

(1) For major violations, all initial proposed penalties shall be at the maximum rate provided in paragraphs (a), (b), and (d) through (f) of this section, i.e., in paragraph (a) of this section, the initial proposed penalty for a major violation shall be at the rate of \$500 per day through the 40th day of a noncompliance beginning after service of notice, and in paragraph (b) of this section \$5,000 per day for each day the violation remains uncorrected after the date of notice or report of the violation. Such penalties shall not exceed a rate of \$1,000 per day, per operating rights owner or operator, per lease under paragraph (a) of this section or

\$10,000 per day, per operating rights owner or operator, per lease under paragraph (b) of this section. For paragraph (d) through (f) of this section, the rate shall be \$500, \$10,000, and \$25,000, respectively.

(2) For minor violations, no penalty under paragraph (a) of this section shall be assessed unless:

(i) The operating rights owner or operator, as appropriate, has been notified of the violation in writing and did not correct the violation within the time allowed; and

(ii) The operating rights owner or operator, as appropriate, has been assessed \$250 under 3163.1 of this title and a second notice has been issued giving an abatement period of not less than 20 days; and

(iii) The noncompliance was not abated within the time allowed by the second notice. The initial proposed penalty for a minor violation under paragraph (a) of this section shall be at the rate of \$50 per day beginning with the date of the second notice. Under paragraph (b) of this section, the penalty shall be at a daily rate of \$500. Such penalties shall not exceed a rate of \$100 per day, per operating rights owner or operator, per lease under paragraph (a) of this section, of \$1,000 per day, per operating rights owner or operator, per lease under paragraph (b) of this section.

(h) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under this section. In compromising or reducing the amount of a civil penalty, the Secretary shall state on the record the reasons for such determination.

(i) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of the law, except as provided in paragraphs (a) and (b) of this section.

(j) If the violation continues beyond the 60-day maximum specified in paragraph (b) of this section or beyond the 20 day maximum specified in paragraphs (e) and (f) of this section, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(k) If the violation continues, beyond the 20-day maximum specified in paragraph (d) of this section, the authorized officer shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that authorized officer or to remove any crude oil or liquid hydrocarbons allocation to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and related penalty paid.

§3163.3, Criminal Penalties

Any person who commits an act for which a civil penalty is provided in 3163.2 of this title shall, upon conviction, be punished by a fine of not more than \$50,000 or by imprisonment for not more than two years or both.

§3163.4, Failure to Pay

If any person fails to pay an assessment or a civil penalty under 3163.1 or 3163.2 of this title after the order making the assessment or penalty becomes a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by 3165.4(e) of this title. The Federal Oil and Gas Royalty Management Act requires that any judgment by the court shall include an order to pay.

§3163.5, Assessments and Civil Penalties

(a) Assessments made under 3163.1 of this title are due upon issuance and shall be paid within 30 days of receipt of certified mail written notice or personal service, as directed by the authorized officer in the notice. Failure to pay assessed damages timely will be subject to late payment charges as prescribed under Title 30 CFR Group 202.

(b) Civil penalties under 3163.2 of this title shall be paid within 30 days of completion of any final order of the Secretary or the final order of the Court.

(c) Payments made pursuant to this section shall not relieve the responsible party of compliance with the regulations in this part or from liability for waste or any other damage. A waiver of any particular assessment shall not be construed as precluding an assessment pursuant to 3163.1 of this title for any other act of noncompliance occurring at the same time or at any other time. The amount of any civil penalty under 3163.2 of this title, as

finally determined, may be deducted from any sums owing by the United States to person charged.

§3163.6, Injunction and Specific Performance

(a) In addition to any other remedy under this part or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States to:

(1) Restrain any violation of the Federal Oil and Gas Royalty and Management Act or any mineral leasing law of the United States; or

(2) Compel the taking of any action required by or under the Act or any mineral leasing law of the United States.

(b) A civil action described in paragraph (a) may be brought only in the United States district court of the judicial district wherein the act, omission or transaction constituting a violation under the Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

SUBPART 3165 - RELIEF, CONFLICTS, AND APPEALS

§3165.1, Relief, From Operating and Producing Requirements

(a) Applications for relief from either the operating or the producing requirements of a lease, or both, shall include a full statement of the circumstances that render such relief necessary.

(b) The authorized officer shall act on applications submitted for a suspension of operations or production, or both, filed pursuant to 3103.4-2 of this title. The application for suspension shall be filed with the authorized officer prior to the expiration date of the lease; shall be executed by all operating rights owners or, in the case of a Federal unit approved under Part 3180 of this title, by the unit operator on behalf of the committed tracts or by all operating rights owners of such tracts; and shall include a full statement of the circumstances that makes such relief necessary.

(c) If approved, a suspension of operations and production will be effective on the first of the month in which the completed application was filed or the date specified by the authorized officer. Suspensions will terminate when they are no longer justified in the interest of the lessor, or as otherwise stated by the authorized officer in the approval letter.

§3165.1-1, Relief From Royalty and Rental Requirements

Applications for any modification authorized by law of the royalty or rental requirements of a lease for lands of the United States shall be filed in the office of the authorized officer having jurisdiction of the lands. (For other regulations relating to royalty and rental relief, and suspension of operations and production, see Part 3103 of this title.)

§3165.2 Conflicts Between Regulations

In the event of any conflict between the regulations in this part and the regulations in Title 25 CFR concerning oil and gas operations on Federal and Indian leaseholds, the regulations in this part shall govern with respect to obligations in conduct of oil and gas operations, acts of noncompliance, and the jurisdiction and authority of the authorized officer.

§3165.3 Notice, State Director Review, and Hearing on the Record

(a) *Notice.* Whenever an operating rights owner or operator, as appropriate, fails to comply with any provisions of the lease, the regulations in this part, applicable orders of the authorized officer, written notice shall be given the appropriate party to remedy any defaults or violations. Written orders or a notice of violation, assessment, or proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 7 business days after the date it is mailed, whichever is mailed, whichever is earlier. Any person may designate a representative to receive any notice of violation, assessment, or proposed penalty on his/her behalf. In the case of a major violation, the authorized officer shall make a good faith effort to contact such designated representative by telephone to be followed by a written notice. Receipt of notice shall be deemed to occur at the time of such verbal communication, and the time of notice and the name of the receiving party shall be confirmed in the file. If the good faith effort to contact the designated representative is unsuccessful, notice of the major violation may be given to any person conducting or supervising operations subject to the regulations in this part. In the case of a minor violation, written notice shall be provided as described above. A copy of all orders, notices, or instructions served on any contractor or field employee or field employee or designated representative shall also be mailed to the operator. Any notice involving a civil penalty shall be mailed to the operating rights owner.

(b) *State Director Review.* Any adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in

this part may request an administrative review, before the State Director, either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received and shall be filed with the appropriate State Director. Upon request and showing of good cause, an extension for submitting supporting data may be granted by the State Director. Such review shall include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals (IBLA) as provided in 3165.4 of this part.

(c) *Review of Proposed Penalties.* Any adversely affected party wishing to contest a notice of proposed penalty shall request an administrative review before the State Director under the procedures set out in paragraph (b) of this section. However, no civil penalties shall be assessed under this part until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Therefore, any party adversely affected by the State Director's decision on the proposed penalty may request a hearing on the record before an Administrative Law Judge or, in lieu of a hearing, may appeal that decision directly to the Interior Board of Land Appeals as provided in 3165.4(b)(2) of this part. If such party elects to request a hearing on the record, such request shall be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the State Director's decision on the notice of proposed penalty. Where a hearing on the record is requested, the State Director shall refer the complete case file to the Office of Hearing and Appeals for a hearing before an Administrative Law Judge in accordance with part 4 of this title. A decision shall be issued following completion of the hearing and shall be served on the parties. Any party, including the United States, adversely affected by the decision of the Administrative Law Judge may appeal to the Interior Board of Land Appeals as provided in 3163.4 of this title.

(d) *Action on the Request for State Director Review.* Action on request for administrative review. The State Director shall issue a final decision within 10 business days of the receipt of a complete request for administrative review or, where oral presentation has been made, within 10 business days there from. Such decision shall represent the final Bureau decision from which further review may

be obtained as provided in paragraph (c) of this section for proposed penalties, and in 3165.4 of this title for all decisions.

(e) Effect of Request for State Director Review or for Hearing on the Record.

(1) Any request for review by the State Director under this section shall not result in a suspension of the requirement for compliance with the notice of violation or proposed penalty, or stop the daily accumulation of assessments or penalties, or stop the daily accumulation of assessments or penalties, unless the State Director to whom the request is made so determines.

(2) Any request for a hearing on the record before an administrative law judge under this section shall not result in a suspension of the requirement for compliance with the decision, unless the administrative law judge so determines. Any request for hearing on the record shall stop the accumulation of additional daily penalties until such time as a final decision is rendered, except that within 10 days of receipt of a request for a hearing on the record, the State Director may, after review of such request, recommend that the Director reinstate the accumulation of daily civil penalties until the violation is abated. Within 45 days of the filing of the request for a hearing on the record, the Director may reinstate the accumulation of civil penalties if he/she determines that the public interest requires a reinstatement of the accumulation and that the violation is causing or threatening immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not reinstate the daily accumulation within 45 days of the filing of the request for a hearing on the record, the suspension shall continue.

§3165.4, Appeals

(a) Appeal of a Decision of State Director. Any party adversely affected by the decision of the State Director after the State Director review, under 3165.3(b) of this title, of a notice of violation or assessment or of an instruction, order, or decision, may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations set out in Part 4 of this title.

(b) Appeal From Decision on a Proposed Penalty After a Hearing on the Record.

(1) Any party adversely affected by the decision of an Administrative Law Judge on a proposed penalty after a hearing on the record under 3165.3(c) of this title may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations in Part 4 of this title.

(2) In lieu of a hearing on the record under 3165.3(c) of this title, any party adversely affected by the decision of the decision of the State Director on a proposed penalty may waive the opportunity for such a hearing on the record by appealing directly to the Interior Board of Land Appeals under Part 4 of this title. However, if the right to a hearing on the record is waived, further appeal to the District Court under Section 109(j) of the Federal Oil and Gas Royalty Management Act is precluded.

(c) Effect of Appeal on Compliance Requirements. Except as provided in paragraph (d) of this section, any appeal filed pursuant to paragraphs (a) and (b) of this section shall not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken unless the Interior Board of Land Appeals determines that suspension of the requirements of the order or decision will not be detrimental to the interests of the lessor or upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

(d) *Effect of Appeal on Assessments and Penalties.*

(1) Except as provided in paragraph (d)(3) of this section, an appeal filed pursuant to paragraph (a) of this section shall suspend the accumulation of additional daily assessments. However, the pendency of an appeal shall not bar the authorized officer from assessing civil penalties under 3163.2 of this title in the event the operator has failed to abate the violation which resulted in the assessment. The Board of Land Appeals may issue appropriate orders to coordinate the pending appeal and the pending civil penalty proceeding.

(2) Except as provided in paragraph (d)(3) of this section, an appeal filed pursuant to paragraph (b) of this section shall suspend the accumulation of additional daily civil penalties.

(3) When an appeal is filed under paragraph (a) or (b) of this section, the State Director may, within 10 days of receipt of the notice of appeal, recommend that the Director reinstate the accumulation of assessments and daily civil

penalties until such time as a final decision is rendered or until the violation is abated. The Director may, if he/she determines that the public interest requires it, reinstate such accumulation(s) upon a finding that the violation is causing or threatening immediate substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not act on the recommendation to reinstate the accumulation(s) within 45 days of the filing of the notice of appeal, the suspension shall continue.

(e) *Judicial Review.* Any person who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of civil penalty determinations only where a person has requested a hearing precludes further review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after issuance of final decision as provided in - §4.21 of this title.