DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3190

[WO–300–07–1310–00]

RIN 1004–AD09

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

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is adopting these regulations to streamline and amend its cooperative agreement regulations. The rule will implement section 8(a) of the Federal Oil and Gas Royalty Simplification and Fairness Act that eliminates cooperative agreements on Federal lands and will implement a policy change for funding of cooperative inspection agreements on Indian lands.

DATES: Effective September 22, 1997.

ADDRESSES: Inquiries or suggestions should be sent to the attention of the Fluid Minerals Group at: Director (310), Bureau of Land Management, Rm. 501, LS, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ian Senio, Regulatory Analyst, at BLM's Regulatory Affairs Group at (202) 452–5049 or Sue Stephens, Program Analyst, at BLM's Native American Office at (505) 438–7553.

SUPPLEMENTARY INFORMATION:

Background

In 1987 and 1991, BLM promulgated regulations, found at 43 CFR Part 3190 (52 FR 27182) and 3192 (56 FR 2998), respectively, implementing section 202 of the Federal Oil and Gas Royalty Management Act of 1982, (30 U.S.C. 1732) (FOGRMA). Section 202 of FOGRMA provided for cooperative agreements with States and Tribes to share oil or gas royalty management information, and to carry out inspection, auditing, investigation or enforcement activities on Federal and Indian oil and gas leases. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (Pub. L. 104–185) (FOGRSFA), which in effect amended FOGRMA, eliminated cooperative agreements on Federal lands.

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

This rule amends part 3190 by removing references to cooperative agreements on Federal lands and by increasing funding for cooperative agreements on Indian lands to up to 100 percent. This eliminates discrepancies in funding these types of agreements between bureaus within the Department of the Interior.

On April 9, 1997 (62 FR 17138) BLM published a proposed rule to streamline and amend its cooperative inspection agreement regulations found at 43 CFR part 3192. The purpose of the amendment was to implement Section 8(a) of FOGRSFA which eliminates cooperative agreements on Federal lands and to implement a policy change for funding of cooperative agreements on Indian lands. The 30-day comment period expired on May 9, 1997. The BLM received 4 comments on the proposed rule. Of the 4 comments, 2 were from Tribes and 2 were from government agencies. All of the comments were carefully considered in developing this final rule.

General Comments

The main purpose of the proposed regulations is to implement Section 8(a) of FOGRSFA and to increase funding for the BLM's cooperative inspection agreement program. Most commenters favored the increase in funding.

One commenter stated that the following sentence in the preamble of the proposed rule was confusing: ''States may still enter into a cooperative agreement on Tribal lands with the permission of the Tribe or affected allottee.'' The commenter's concern was that an allottee cannot give permission to the State regarding a cooperative agreement solely impacting Tribal lands. We agree. The sentence should have made reference to Indian lands, which includes allotted lands.

One commenter disagreed with the statement in the preamble that the increase in funding for cooperative agreements with Tribes is purely financial in nature because the Federal government has a fiduciary trust responsibility to protect Indian mineral resources. The statement that the regulatory change was purely financial in nature was intended to indicate that, for the purposes of the National Environmental Policy Act (NEPA), the implementation of this regulation would not have an effect on the environment and was not meant as a statement on BLM's trust responsibilities.

One commenter did not agree that under the Regulatory Flexibility Act the regulatory changes proposed would ''not unnecessarily or disproportionately burden small entities'' since Tribal governments may be considered small entities. This commenter also thought it was unclear whether significant impacts affecting the ''public at large'' pertain to entire state(s) or reservations. The Regulatory Flexibility Act requires an analysis if a rule has significant economic impact on a substantial number of small entities. In this case, the total anticipated effect of the regulations is $250,000 annually. This is not considered to be a significant effect on a substantial number of small entities since the number of Tribes currently participating in the cooperative agreement program is small (5), and individual increases only range from $8,000 to $55,000. This funding will have an insignificant impact on the overall budgets of these Tribes with producing oil and gas leases.

One commenter stated that the protection of Indian mineral resources is a fiduciary responsibility of the Federal government and that the requirement for Tribes to pay 50% of the costs is a breach of fiduciary responsibility. The commenter requested retroactive application of the proposed increase to 100% funding, and reimbursement of the 50% matching funds expended by the Tribes during that period. The Federal Government met its trust responsibility by insuring that Indian oil and gas leases were inspected to the standards of FOGRMA. The BLM expended no less on these functions when they were undertaken by Tribes than it did when it performed them directly and continued to take an active oversight role to assure the trust responsibility was met.

Nor did BLM compel any Tribe to undertake these functions. By agreeing to match the Federal funding, the participating Tribes gave their mineral-owning members a higher level of service than required by the trust responsibility. Neither the trust responsibility, nor FOGRMA, requires BLM to fund 100% of reasonable Tribal costs under a cooperative agreement, but BLM is now willing to do so.

One commenter stated that funding to support Tribal cooperative agreements should be appropriated under a separate allocation in BLM's budget. The commenter believed that otherwise it may be a low priority. The method BLM uses to allocate its funds is beyond the scope of this regulation and is not

addressed in the final rule, however, BLM's internal budget directives require that cooperative agreements be funded.

One commenter said that eliminating the applicability of Section 202 of FOGRMA to Federal lands is not necessary. We disagree. The elimination of cooperative agreements on Federal lands is required by section 8(a) of FOGRSFA. BLM can not undo by regulation what Congress has done by statute. BLM did not adopt this comment.

Specific Comments

Section 3192.1 describes cooperative agreements and when BLM will enter into a cooperative agreement. BLM will enter into cooperative agreements with Tribes or States to conduct inspection, investigation or enforcement activities on producing Indian oil and gas leases. BLM will enter into a cooperative agreement with a State to inspect oil and gas leases on Indian lands only with the permission of the Tribe with jurisdiction over the lands.

Two commenters asked if § 3192.1(b) included allotted lands. One commenter asked if BLM would enter into a cooperative agreement if it only applied to allotted lands, and if so, whether or not BLM would still require permission from the Tribe even though Tribal lands would not be impacted. The definition of Indian lands provided by FOGRMA includes allotted lands, therefore, § 3192.1(b) includes allotted lands and BLM would enter into a cooperative agreement even if it only applied to allotted lands. We added the words ''Indian lands'' to the final rule for clarification. The requirement that Tribal permission be obtained is statutory. Therefore if a State wanted to enter into a cooperative agreement involving allotted lands, BLM would require the State to obtain the permission of the Tribe with jurisdiction over the lands.

Section 3192.2 states that the Tribal chairman or other authorized official of any Tribe with producing oil and gas leases may enter into a cooperative agreement and that Tribes may join together to apply for a multi-tribal cooperative agreement. It also provides for the governor of a State to enter into a cooperative agreement involving Indian lands with the permission of the Tribe having jurisdiction over the lands.

One commenter asked that the word ''chairman'' in § 3192.2(a) be replaced with ''chairperson.'' We agree, and the final rule adopts the comment. Another commenter asked if the Tribe would be required to have producing oil or gas leases, or Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*) (IMDA) agreements, before it can enter into an agreement to inspect oil and gas leases. Section 3192.2(a) only authorizes Tribes with producing oil and gas leases or IMDA agreements on Indian lands under their jurisdiction to apply for a cooperative agreement.

One commenter stated that if individually owned/allotted land is to be included, BLM, the Tribe and the State should advise the individual Indian landowners of the agreement with the State. Section 3192.3(c) already requires the written consent of all individual land owners for such lands to be included in an agreement.

Section 3192.3 requires the applicant to submit completed Standard Forms 424, 424A, and 424B. It requires a description of the type and extent of activities proposed and the dates the proposed agreement takes effect. It also states that allotted lands may be included in an agreement with the allottee's written consent.

Several comments were received relating to the requirement to have the allottee's written consent. One commenter stated that obtaining the permission of the Tribes and allottees is important. One commenter believed that BLM and the Tribe should be required to obtain the written consent of 100% of the individuals owning undivided fractional interests in each allotment/tract. The commenter also said that the number of consents, as well as the written consents, must be verified by the Bureau of Indian Affairs (BIA) prior to individually owned land being included in an agreement. Section 3192.3(c) of the regulations requires the written consent of all individual Indian land owners for their lands to be included in an agreement. Section 3192.3 has been modified to indicate that BLM will ask BIA to verify that the written consents obtained by a Tribe or State include 100% of the owners of record of each individual Indian tract.

One commenter stated that ''there are no allottees living at this time'' and that the regulations are not consistent with *Mustang* v. *Cheyenne-Arapaho,* 2 Okla. Trib. 158 (1991) and *Mustang Production Company* v. *Harrison,* 94 F. 3d 1382 (10 Cir. 1996); certiorari denied 117 S. Ct. 1288 (1997). There are still allottees living in some areas of the country, so BLM did not adopt that part of the comment and the word ''allottee'' has not been deleted. In order to clarify the statement in the case of leases that have passed on to the heirs of the original allottee, we amended the language to include heirs of allottees in § 3192.3(c) and elsewhere, as appropriate. The *Mustang* decision as well as the Federal decision relates to governmental authority. BLM has made a policy decision to give individual land owners a say over who will manage and inspect their property, which is a property management function rather than a governmental function.

Section 3192.4 states that cooperative agreements may be in effect for between 1–5 years, depending upon the agreement. This section remains as proposed since we received no comments on this section.

Section 3192.5 describes the requirements for modifying a cooperative agreement. Both parties must agree to the modification in writing before a modification is effective. For State cooperative agreements involving Indian lands, where the proposed modification would affect the duration or scope of an agreement, the State must obtain the Tribe's written consent.

One commenter asked if an affected allottee would be required to provide written consent to a proposed modification impacting the duration or scope of a cooperative agreement. Any proposed modification to an agreement involving allottees/heirs that affects the duration or scope of an agreement would require written permission of the affected allottee/heirs. In the final rule section 3192.5 the word ''both'' has been changed to ''all.'' The section has also been changed to include a reference to allottees/heirs.

Section 3192.6 cross-references § 3190.1 of this part where the requirements relating to a Tribe or State receiving proprietary data from BLM under a cooperative agreement are located. The requirements for evaluating requests for proprietary data are found at 43 CFR 3190.1. BLM received no comments on this section and it remains as proposed.

Section 3192.7 states the requirements for spending the money a Tribe receives under a cooperative agreement. Such money may only be used for costs incurred which are directly related to the activities carried out under an agreement. BLM received no comments on this section and it remains as proposed.

Section 3192.8 states that activities under a cooperative agreement may be subcontracted with BLM's written approval.

One commenter recommended that an alternative to BLM entering into a cooperative agreement with a State to inspect Indian oil and gas operations would be for BLM to enter into a cooperative agreement with the Tribe, and the Tribe subcontract to the State. Section 3192.8 already provides that

activities may be subcontracted with BLM's written consent.

Section 3192.9 describes the terms that Tribes or States must include in cooperative agreements. The cooperative agreement must state the purpose, objective and authority; contain definitions of terms used in an agreement; describe the lands covered in an agreement; describe the roles and responsibilities of BLM and the Tribe or State; describe the activities that will be carried out under an agreement; and define minimum performance standards. Agreements must include provisions to protect proprietary data; prevent conflict of interest; provide for sharing of civil penalties; and provide for termination of the agreement. Agreements must identify BLM and Tribal or State contacts and provide for the avoidance of duplication of effort. Agreements must list schedules for inspection activities; training; periodic reviews and meetings. Agreements must specify the limit on the dollar amount of Federal funding; describe procedures for payment or reimbursement; and describe allowable costs and plans for BLM oversight.

One commenter referenced § 3192.9(j)(1) and asked if BLM has the capability of thoroughly training Tribal personnel on a continuing basis as positions are vacated and filled with new personnel. The commenter also stated that where individually owned/allotted land is concerned, BLM should absolutely guarantee that inspections be made on that land either by qualified Tribal personnel or BLM personnel. BLM training provides for formal classroom instruction, on-the-job training and certification of inspectors before they are allowed to conduct independent inspections on Federal or Indian lands. Section 3192.14 of this regulation requires that Tribal inspectors go through the same training and certification procedure as BLM inspectors to ensure that only qualified personnel conduct inspections.

Section 3192.10 cross-references the list of allowable costs under cooperative agreements in 43 CFR subpart 12, identifies the level of funding for cooperative agreements and states requirements related to funding cooperative agreements.

One commenter stated that where BLM turns over the program, the recipient Tribe should be allocated sufficient Federal funds to perform the assumed tasks. Currently, and under these regulations, funding for cooperative agreements is based on costs associated with activities carried out under the agreement and is negotiated between the Tribe and BLM.

One commenter requested that the amount of funding provided to a Tribe under a cooperative inspection agreement be equal to the amount of funding they would receive from the Minerals Management Service under its cooperative audit agreement. The commenter also requested that BLM seek input from, and involve Tribes in, BLM's fiscal year budgeting process for the cooperative agreements. By law, BLM can only fund its agreements for those costs directly required to carry out the program. Costs must be based on the activities carried out by the Tribe under the agreement, and cannot be based on what the Tribe is receiving from another agency under a different program. BLM did not adopt that part of the comment. Each year BLM requests input from Tribes participating in the cooperative agreement program on the amount of funding needed for the next year's agreement. Therefore, we believe that Tribes already are involved in BLM's budget process to the extent that is necessary.

Section 3192.11 describes the conditions under which civil penalties are shared between a Tribe and BLM.

One commenter stated that this section is misleading in that the first sentence implies that civil penalties are shared equally, then it goes on to say something different. The commenter recommended that the first sentence be deleted and the last sentence be expanded to include equal sharing of civil penalties after exceeding the amount of Federal funding. We agree that the language may be confusing. This section has been rewritten.

Section 3192.12 identifies the activities that may be carried out under cooperative agreements and the conditions under which they may be carried out. Such activities include inspections, issuing Notices of Non-Compliance, issuing Notices to Shut Down Operations, conducting investigations, and conducting oil transporter inspections.

One commenter asked if Tribes could conduct inspection, investigation or enforcement activities on producing Federal and State oil and gas leases within the Indian Tribe's jurisdiction. Section 8(a) of FOGRSFA eliminates cooperative agreements on Federal lands which effectively eliminates a Tribe's ability to enter into these type of agreements.

One commenter had several questions relating to split-estate lands where the Federal government owns the mineral estate and a Tribe owns the surface. The questions were: whether a State could enter into a cooperative agreement with the permission of the Tribe involved, to conduct inspection and enforcement for Federal oil and gas leases; whether an Indian Tribe could inspect such Federal leases under a cooperative agreement; and whether such lands could be included in a delegation of authority to States under Section 205 of FOGRMA.

Section 8(a) of FOGRSFA eliminates cooperative agreements on Federal lands. Although FOGRSFA does not specifically address split-estate situations, BLM interprets the term ''Federal lands'' as applying to all Federal mineral interests. As such, Federal leases involving split-estate lands of the type to which the commenter refers would not be included in a cooperative agreement. BLM will allow inclusion of Federal leases involving split-estate lands in a delegation of authority to a State.

One commenter stated that § 3192.12(a) should reference Tribal and allotted oil and gas leases if allotted leases are part of the cooperative agreement. We agree; this section has been changed to include allotted lands.

Section 3192.13 identifies those activities that cannot be carried out by a Tribe or State, but which must remain BLM's responsibility. These include issuing Notices of Non-compliance that involve monetary assessments and penalties; collecting assessments and penalties; calculating and distributing shared civil penalties; training and certifying Tribal and State inspectors; and issuing and regulating inspector identification cards and identifying leases to be inspected (taking into account priorities of the Tribe). Section 3192.13(b) reserves BLM's right to enter lease sites to conduct inspections, enforcement, investigations or other activities necessary to supervise lease operations.

One commenter thought that BLM needed to explain what we meant by ''control'' under § 3192.13(5) ''Issue and control inspector identification cards.'' We agree that the word ''control'' in this context is vague and in the final rule ''control'' has been changed to ''regulate.'' By using the term ''regulate'' BLM means that we will control the use and possession of inspector identification cards. For example, if an inspector is decertified or leaves the inspection program, BLM will require that the inspector return the identification card to BLM.

One commenter asked that if allotted leases are included in a cooperative agreement, whether BLM would take into account the allottee's priorities. Due to the large number of allottees and heirs that may be involved, it is impractical for BLM to consult all of the allottees/heirs on an annual basis.

However, BLM will consult with BIA concerning priorities for allotted lands. Section 3192.13(a)(6) has been changed to include consultation with BIA to determine priorities on allotted lands.

Section 3192.14 describes the certification requirements that Tribal or State inspectors must meet before BLM will authorize them to conduct activities under a cooperative agreement. It also describes conflict of interest restrictions for Tribal and State inspectors. BLM received no comments on this section and it remains as proposed.

Section 3192.15 describes the conditions under which a cooperative agreement may be terminated by mutual agreement or unilaterally by BLM. BLM received no comments on this section, however, BLM added language to make it clear that a Tribe may unilaterally terminate a cooperative agreement. Unilateral terminations on the part of the Tribe are effective 60 days after BLM receives written notice that the Tribe is terminating the agreement. The 60 days is to allow BLM time to ensure proper staffing exists to fill the void left by the terminated agreement.

Section 3192.16 describes the notification process BLM will follow where BLM plans to terminate an agreement unilaterally.

One commenter recommended changing § 3192.16(a) to read ''* * * BLM must send a notice to you that lists the reasons why BLM plans to terminate the agreement'' to make it more clear. BLM adopted this recommendation with only minor wording changes.

One commenter asked if there was a time frame within which the impacted Tribe or State must submit its plan for correction under § 3192.16(b). This section has been modified and under the final rule, Tribes and States have 30 days to submit a plan for correction. This time frame may be extended at the request of the Tribe or State.

One commenter asked if under § 3192.16(c) BLM has a time frame within which to make a decision to either approve or disapprove the plan. The commenter also asked that if BLM does not approve the plan, will BLM provide the impacted State or Tribe another opportunity to submit another plan for approval, or is it left up to the appeal process. BLM added a new sentence to § 3192.16(b) that provides for a 30-day BLM review. BLM also changed § 3192.16(d) and (e) to indicate that a second opportunity is available to correct errors in the first submission. Under the final rule, if the State or Tribe does not correct the problem(s) within 60 days of the second notice, the agreement terminates.

Section 3192.17 describes what BLM requires to reinstate a cooperative agreement that was terminated either by mutual consent or unilaterally by BLM. There were no changes to this section in the final rule since we received no comments on this section.

Section 3192.18 states that adversely affected Tribes and States may appeal a BLM decision and describes where in 43 CFR the provision for appealing a BLM decision are found. This section was revised to conform to other appeals provisions in this title.

Effective Date

The Administrative Procedure Act (APA) (5 U.S.C. 553(d)) generally requires that newly promulgated regulations not take effect until 30 days after publication to allow regulated entities time to bring their programs into compliance with the new regulations. However, section 553(d)(3) allows regulations to take effect in less than 30 days for good cause shown. BLM does not believe that the 30 day rule should apply to these regulations and believes that for good cause they should take effect immediately.

The primary change from existing requirements that these regulations implement is an increase in funding from BLM. In order for the regulated community to take full advantage of the increase in funding these regulations provide, they must take effect before the beginning of the next fiscal year. Furthermore, this rule does not contain provisions that require regulated entities to modify their programs to come into compliance with the new regulations. BLM is prepared to immediately increase funding for the cooperative agreement program. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(d)(3) that this rule may take effect upon publication.

Compliance With the National Environmental Policy Act

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(C) is required. It has been determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. This item states that ''Policies, directives, regulations, and guidelines of an administrative financial, legal, technical or procedural nature * * *'' are categorically exempt. Because this rule addresses the financial aspects of the Bureau's cooperative inspection agreement program and implements a statutory modification in the program authority, we believe that it falls into this category, thereby obviating any further review under NEPA. It has also been determined that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, ''categorical exclusions'' are actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Compliance With the Paperwork Reduction Act

This rule does not add new information collection requirements and the existing requirements have been approved by the Office of Management and Budget (OMB) under OMB approval numbers 0348–0040, 0348–0043 and 0348–0044.

Compliance With the Regulatory Flexibility Act

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the final rule will not have a significant economic impact on a substantial number of small entities. The reasons for this determination are that the economic impacts of the rule are not considered significant nor will the rule impact a substantial number of small entities. The effect of this rule will be to increase funding for cooperative inspection agreements from ''up to 50 percent'' to ''up to 100 percent.'' Only 5 Tribes currently participate in the cooperative agreement program, but there are 29 oil and gas Tribes eligible to participate. Potential funding could approach $1 million. However, it would be speculative for BLM to try to estimate how many of the non-participating Tribes may decide to participate as a result of the increase in funding. It is unlikely that all of the non-participating Tribes will elect to enter into this type of agreement with BLM. Current funding is approximately $250,000 so the increase will be approximately $250,000. For the 5 Tribes currently participating in the program, individual increases range from $8,000 to $55,000. We believe that this funding will have an insignificant impact on the overall

budgets of Tribes with producing oil and gas leases that qualify for the program. Therefore, BLM certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Compliance With the Unfunded Mandates Reform Act

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

Compliance With Executive Order 12612

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

Eliminating cooperative agreements with States for inspection and enforcement of oil and gas leases on Federal lands is a requirement of section 8(a) of FOGRSFA. States that are interested in conducting inspections on Federal oil and gas leases may still do so under a Delegation of Authority as provided in section 205 of FOGRMA (30 U.S.C. 1735).

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

Compliance With Executive Order 12630

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. It does not provide for the taking of any property rights or interests. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Compliance With Executive Order 12866

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

Compliance With Executive Order 12988

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

List of Subjects in 43 CFR Part 3192

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

Accordingly, under the authorities cited below, and for the reasons stated in the preamble, part 3190, subchapter C, chapter II, subtitle B, title 43 of the Code of Federal Regulations is amended as follows:

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

1. Revise the authority citation to read as follows:

§ 3190.2–2 [Amended]

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

2. Revise § 3190.2–2(b)(2) to read as follows:

* * * * *

(b) * * *

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

* * * * *

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

Subpart 3192—Cooperative Agreements

Sec.

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

Subpart 3192—Cooperative Agreements

§ 3192.1 What is a cooperative agreement?

(a) A cooperative agreement is a contract between the Bureau of Land Management (BLM) and a Tribe or State to conduct inspection, investigation, or enforcement activities on producing Indian Tribal or allotted oil and gas leases.

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

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

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

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

(c) The Governor of a State having a Tribal resolution from the Tribe with jurisdiction over the Indian lands, permitting the Governor to enter into a cooperative agreement, may apply for a cooperative agreement with BLM.

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

(a) To apply for a cooperative agreement you must complete—

(1) Standard Form 424, Application for Federal Assistance;

(2) Standard Form 424A, Budget Information—Non-Construction Programs; and

(3) Standard Form 424B, Assurances—Non-Construction Programs.

(b) You must describe the type and extent of oil and gas inspection, enforcement, and investigative activities proposed under the agreement and the period of time the proposed agreement will be in effect (See section 11 of Standard Form 424).

(c) You may include allotted lands under an agreement with the written consent of all allottees or their heirs.

BLM will ask the Bureau of Indian Affairs (BIA) to verify that the Tribe or State has obtained all of the necessary signatures to commit 100% of each individual tract of allotted lands to the agreement.

§ 3192.4 What is the term of a cooperative agreement?

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

§ 3192.5 How do I modify a cooperative agreement?

You may modify a cooperative agreement by having all parties to the agreement consent to the change in writing. If the agreement is with a State, and the modification would affect the duration or scope of the agreement, then the State must obtain the written consent of the affected Tribe and/or allottee or heir.

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

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

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

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

§ 3192.8 May I subcontract activities in the agreement?

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

§ 3192.9 What terms must a cooperative agreement contain?

The cooperative agreement must—

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

(b) Define terms used in the agreement;

(c) Describe the Indian lands covered;

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

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

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

(g) Include provisions to—

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

(2) Prevent conflict of interest, as provided in § 3192.14(d);

(3) Share civil penalties, as provided in § 3192.11; and

(4) Terminate the agreement;

(h) List BLM and Tribal or State contacts;

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

(j) List schedules for—

(1) Inspection activities;

(2) Training of Tribal or State inspectors;

(3) Periodic reviews and meetings;

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

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

(m) Describe allowable costs subject to reimbursement; and

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

§ 3192.10 What costs will BLM pay?

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

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

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

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

§ 3192.11 How are civil penalties shared?

(a) Civil penalties that the Federal Government collects resulting from an activity carried out by a Tribe or State under a cooperative agreement are shared equally between the inspecting Tribe or State and BLM.

(b) BLM must deduct the amount of the civil penalty paid to the Tribe or State from the funding paid to the Tribe or State for the cooperative agreement.

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

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

(a) Inspecting Tribal or allotted oil and gas leases for compliance with BLM regulations;

(b) Issuing initial Notices of Incidents of Non-Compliance, Form 3160–9, and Notices to Shut Down Operations, Form 3160–12;

(c) Conducting investigations; or

(d) Conducting oil transporter inspections.

§ 3192.13 What responsibilities must BLM keep?

(a) Under cooperative agreements, BLM continues to—

(1) Issue Notices of Incidents of Noncompliance that impose monetary assessments and penalties;

(2) Collect assessments and penalties;

(3) Calculate and distribute shared civil penalties;

(4) Train and certify Tribal or State inspectors;

(5) Issue and regulate inspector identification cards; and

(6) Identify leases to be inspected, taking into account the priorities of the Tribe. Priorities for allotted lands will be established through consultation with the BIA office with jurisdiction over the lands in the agreement.

(b) If BLM enters into a cooperative agreement, that agreement does not affect BLM's right to enter lease sites to conduct inspections, enforcement, investigations or other activities necessary to supervise lease operations.

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

(a) Tribal or State inspectors must be certified by BLM before they conduct independent inspections on Indian oil and gas leases.

(b) The standards for certifying Tribal or State inspectors must be the same as the standards BLM uses for certifying BLM inspectors.

(c) Tribal and State inspectors must satisfactorily complete on-the-job and classroom training in order to qualify for certification.

(d) Tribal or State inspectors must not—

(1) Inspect the operations of companies in which they, a member of their immediate family, or their immediate supervisor, have a direct financial interest; or

(2) Use for personal gain, or gain by another person, information he or she acquires as a result of his or her participating in the cooperative agreement.

§ 3192.15 May cooperative agreements be terminated?

(a) Cooperative agreements may be terminated at any time if all parties agree to the termination in writing.

(b) BLM may terminate an agreement without Tribal or State agreement if the—

(1) Tribe or State fails to carry out the terms of the agreement; or

(2) Agreement is no longer needed.

(c) A Tribe may unilaterally terminate an agreement after notifying BLM. For a unilateral termination, the agreement terminates 60 days after the Tribe notifies BLM.

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

(a) If BLM intends to terminate your agreement because you did not carry out the terms of the agreement, BLM must send you a notice that lists the reason(s) why BLM intends to terminate the agreement.

(b) Within 30 days after receiving the notice, you must send BLM a plan to correct the problem(s) BLM listed in the notice. BLM has 30 days to approve or disapprove the plan, in writing.

(c) If BLM approves the plan, you have 30 days after you receive notice of the approval to correct the problem(s).

(d) If you have not corrected the problem within 30 days, BLM will send you a second written termination notice that will give you another opportunity to correct the problem.

(e) If the problem is not corrected within 60 days after you receive the second notice, BLM will terminate the agreement.

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

(a) If your cooperative agreement was terminated by consent, you may request that BLM reinstate the agreement at any time.

(b) If BLM terminated an agreement because you did not carry out the terms of the agreement, you must prove that you have corrected the problem(s) and are able to carry out the terms of the agreement.

(c) For any reinstatement request BLM will decide whether or not your cooperative agreement may be reinstated and, if so, whether you must make any changes to the agreement before it can be reinstated.

§ 3192.18 Can I appeal a BLM decision?

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

Dated: September 16, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

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