

## H-3103-1 - FEES, RENTALS, AND ROYALTY

KeywordsIX. Suspension of Excess Overriding Royalties or  
Payments out of ProductionA. Background

Prior to August 22, 1983, the oil and gas leasing regulations at 43 CFR 3103.3-6 provided that an agreement creating overriding royalties or payments out of production of oil in excess of 17½ percent (when added to the Federal Government royalty) shall be deemed a violation of the lease terms unless the agreement expressly provided that the excess shall be suspended when average production per well per day averaged on a monthly basis is 15 barrels or less. The limitation applied to oil only and specifically excluded gas.

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Effective August 22, 1983, however, the regulations were amended at 43 CFR 3103.3-3 (regulation section was renumbered) to provide that the Secretary of the Interior could suspend an agreement creating overriding royalties or payments out of production of oil and gas in excess of 17½ percent (when added to the Federal Government royalty) upon a determination that such excess constituted a burden on the lease operations to the extent that (1) properly and timely development may be retarded, or (2) continued operation of the lease may be impaired, or (3) premature abandonment of the wells may be caused.

The 1983 regulation change eliminated the 15-barrel guideline, and no longer deemed it a violation of the lease terms if the assignment instrument did not provide for automatic suspension of excess overrides. This 1983 regulation provision took precedence at the time, even though it conflicted with the provision in the assignment Forms 3106-5 and 3106-14 then in use, i.e., the agreement that created the excess could be suspended by the Secretary at any time that the excess was determined to constitute a burden on lease operations. The lease assignment/transfer Forms 3000-3 and 3000-3a, prior to the June 1988 editions, contained this provision. However, no such provision is included in the June 1988 or more current editions of the assignment/transfer forms.

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B. Current Policy

The current BLM policy is that the Secretary of the Interior will no longer become involved in any request to suspend the payment of excess overriding royalties or payments out of production. This policy was implemented by the May 16, 1988, revision of the oil and gas leasing regulations that completely removed the language at 43 CFR 3103.3-3 concerning the limitation of excess overriding royalties.

This policy was adopted in the regulations since such agreements are voluntarily entered into by the lessee with other parties. Further, the United States is not required to approve such agreements. Although the agreements are required to be filed in the proper BLM office, they are simply placed in the lease case file as a matter of record. Accordingly, the Federal Government will not become involved in any request to suspend excess overrides or any dispute between lessees and such interest owners, but must know the total burden of overriding royalties and payments out of production only when a request for a reduction in the Federal rental or royalty rate under 43 CFR 3103.4-1 is filed. When such a rental/royalty reduction request occurs, the effect of all outstanding private payments must then be considered. Prior to the Government granting any rental or royalty reduction, the signatory parties to the documents creating the excess overrides are responsible for accomplishing reduction of the outstanding agreements before the authorized officer will consider approval of any reduction in the Federal rental or royalty rate. (See Section VII, above.)

For leases that are still in effect, the inclusion of the excess overriding royalty provisions on the Federal lease and assignment/transfer forms prior to May 1988 does not mean that the Federal Government still upholds the provision after it has been removed from the regulations. The standard lease form states that the lease is issued subject to the rules and regulations now or hereafter in force, which means that a lease is subject to any future regulations promulgated that affect the terms of the lease. Thus, the removal of the excess overriding royalties limitation requirement from the regulations means that the Federal Government is no longer involved in any attempt to enforce this provision. However, the removal of the provision does not nullify any separate private agreements entered into between parties above and beyond that indicated on the Federal forms. The BLM shall not intervene or be a party to any disputes or negotiations concerning such private agreements.

Keywords

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