

Comparison of New Regulations with Past Regulations and Procedures

New Reg. 43 CFR	Subject	Effect	Past Guidance	Past Procedure/Policy
3106.7-2	Lessee/Operating Rights Owner Liability	Clearly describes lessee liability in cases where an assignment occurs. The transferor remains liable for obligations that accrued prior to lease transfer, including compensatory royalties, <i>whether or not they were identified at the time of the transfer.</i>	3100.2-2 3106.7-2 WO IM 96-06	The current lessee is responsible for all obligations occurring on the lease until a transfer is approved.
3106.7-6	Lessee/Operating Rights Owner Liability	The transferee becomes liable for all actions that occur during his tenure of the lease. This answers our past questions regarding lessee liability.	3100.2-2	The current lessee is responsible for all obligations occurring on the lease until a transfer is approved.
3108.1	Relinquishment of Lease	The lessee remains liable for payment of all rentals and royalties, including compensatory royalty, accruing prior to relinquishment	3108.1	Similar
3160.0-5	Protection Well	Several new or revised definitions. The major change is to the definition of 'Protection Well'. The term is defined to include a well "...drilled or modified to prevent or offset drainage..." <i>This will allow you to require the drilling of a horizontal well, or opening the well to other horizons developed in the draining well.</i>		Undefined
3162.2-2	Steps to avoid uncompensated drainage	BLM may require (a) the lessee to drill and produce; (b) execute agreements with adjacent owners; (c) offer unleased land for sale or enter into a communitization agreement; or (d) approve a unit or CA that allocates production to an unleased tract	3100.2-1	Allows us to enter into agreements to obtain compensation; For unleased minerals, we may lease the minerals and obtain relief from our lessee
3162.2-3	'Lease Account' Drainage	Formalizes our drainage manual description of situations involving drainage from wells completed in federal or Indian minerals where the lessor receives a lesser compensation than from the drained lease.	3100.2-2	Identifies drainage situations based upon royalty rate or percentage allocation.

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3162.2-4	Lessee Options	Describes the options of a lessee to protect a lease from drainage. It is essentially unchanged from existing procedures, except for the addition of the drill 'or modify' requirement.	3100.2 3162.2(a)	The lessee is responsible for drilling all wells necessary to protect the lease from drainage, or for entering into agreements that compensate the lessor
3162.2-5	Economics	States that compensation is not required if, <u>at the time of actual or constructive notice</u> , a paying protective well could not be drilled. <i>This begs the question of a potential protection well becoming economic at a later date.</i>	Manual section .16B	A lessee/operator is not required to take any action if he can prove that he could not drill a paying protective well
3162.2-6	Constructive Notice	Constructive notice occurs (a) when well completion or first production reports are filed with a regulatory agency; or (b), if the lessee/operator has an interest in the draining well, notice occurs after completion of drill stem; production; pressure analysis; or flow tests of the well. This regulation is the most significant change from past procedures. We no longer are required to send out notification letters.	Atlantic Richfield (105 IBLA 218) Amoco (xxx IBLA xxx)	We sent initial notification letters to all lessees, to inform them of the potentially offending well, and provided them with an opportunity to prepare a response. We required the lessee/operator to perform some analysis of the well's production capability, and the economics of a protection well. The ARCO decision introduced the concept of constructive notice. Late, the Amoco decision effectively eliminated the use of constructive notice.
3162.2-7	Drainage Liability	Clarifies the situations wherein more than one person holds undivided record title or operating rights interest in the portion of the lease that is subject to drainage. The term, "jointly and severally" means that the interest owners are collectively responsible for their proportional share of compensatory royalty, and, if the other parties are unable to pay, the full compensatory royalty.	.15 of Manual	We have always served the drainage demand letter upon the lessee first.

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3162.2-8	Period of Drainage Responsibility	Reinforces the requirement that a transferor is responsible for payment of compensatory royalty for the period in which he held the lease. It answers our past questions concerning lessee liability.	WO IM 96-06	This is one area where states treat drainage differently. Some assert that a lessee is only liable for drainage during his tenure of the lease. Others assess compensatory royalty against the past lessee, for drainage that may have occurred during the tenure of a past lessee (thinking the assignee acquired the assignor's responsibilities as well as his authorities).
3162.2-9	Lessee Duties	<p>Lessee must monitor drilling of wells in the same or adjacent spacing units, and gather information to determine whether or not drainage is occurring. The lessee/operator has <u>60 days</u> from the date of actual or constructive notice to notify you about his analysis.</p> <p>He must inform you of his plans to either protect his lease from drainage, or demonstrate that a protective well would not be economic. If the lessee does not have sufficient information to comply with this section, he must indicate when the information will be available.</p> <p>If you request the analysis from the lessee, he must provide it to you within 60 days</p>	Drainage Manual Section .16B	<p>Responsibility generally was with the BLM to determine whether or not drainage was occurring, and actually notifying the lessee of the drainage situation. The lessee was not required to take action until a reasonable time after notice from the BLM.</p> <p>Otherwise, the data collection needed to perform an analysis are unchanged.</p>
3162.2-10	BLM Notification	You may notify the lessee of the drainage situation, but it does not constitute the effective date of notice, <i>if the date of constructive notice preceded the date of actual notice.</i>	Drainage Manual Sections .11D and .15	BLM must send out an initial notification letter, and later, a demand letter assessing compensatory royalties
3162.2-11	Reasonable Time after Notice	Establishes 'reasonable time' factors. The reasonable time is measured from the earlier of the: 1) date of constructive notice; or 2) date of an actual demand letter from your office.	Atlantic Richfield (105 IBLA 218)	This decision established the 'reasonable time' frame, which is dependent upon factors such as rig availability, etc.

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3162.2-12	Liability Periods	Compensatory royalties will be assessed from the first day of the month following the 'reasonable' time after notice, and will continue until protective action is taken.	Drainage Manual Section .16A	No change from past procedures
3162.2-13	Liability of Transferee	Similar to 3106.7-6, above, this regulation clarifies the fact that the transferee becomes liable for all drainage obligations accruing after the effective date of the transfer.	3100.2-2 3106.7-2 WO IM 96-06	No change from past procedures
3162.2-14	Appeal Rights	Provides the lessee/operator's appeal rights. Note that it permits an appeal directly to the IBLA.	3165.3; Part 4	We required State Director Review before decision may be appealed to the IBLA
3162.2-15	Burden of Proof	<p>Clearly establishes the sequence of events in a drainage case. The BLM must establish a <i>prima facie</i> case for drainage, then the burden shifts to the lessee/operator to refute the BLM determination.</p> <p>This regulation appears to give us an advantage over the lessee—he has to refute our determination, not just present an equally logical interpretation.</p>	Unclear	<p>BLM established drainage case; informed lessee of drainage; demanded compensation for drainage.</p> <p>We would then review lessee narratives and data, and make a final determination.</p> <p>Lessee could request a State Director Review, then appeal any adverse decision of the State Director, to the IBLA.</p>