

Excerpts of text from the Energy Policy Act of 2005 (EPAc 2005) and from Onshore Oil and Gas Order Number 1 that pertain to APD processing timeframes

EPAc 2005 states the following regarding required timeframes for processing APDs:

SEC. 366. DEADLINE FOR CONSIDERATION OF APPLICATIONS FOR PERMITS.

Section 17 of the Mineral Leasing Act (30 U.S.C. 226) is amended by adding at the end the following:

(p) **DEADLINES FOR CONSIDERATION OF APPLICATIONS FOR PERMITS.—**

(1) **IN GENERAL.—**Not later than 10 days after the date on which the Secretary receives an application for any permit to drill, the Secretary shall—

(A) Notify the applicant that the application is complete; or

(B) Notify the applicant that information is missing and specify any information that is required to be submitted for the application to be complete.

(2) **ISSUANCE OR DEFERRAL.—**Not later than 30 days after the applicant for a permit has submitted a complete application, the Secretary shall—

(A) Issue the permit, if the requirements under the National Environmental Policy Act of 1969 and other applicable law have been completed within such timeframe; or

(B) Defer the decision on the permit and provide to the applicant a notice—

(i) That specifies any steps that the applicant could take for the permit to be issued; and

(ii) A list of actions that need to be taken by the agency to complete compliance with applicable law together with timelines and deadlines for completing such actions.

(3) **REQUIREMENTS FOR DEFERRED APPLICATIONS.—**

(A) **IN GENERAL.—**If the Secretary provides notice under paragraph (2)(B), the applicant shall have a period of 2 years from the date of receipt of the notice in which to complete all requirements specified by the Secretary, including providing information needed for compliance with the National Environmental Policy Act of 1969.

(B) **ISSUANCE OF DECISION ON PERMIT.—**If the applicant completes the requirements within the period specified in subparagraph (A), the Secretary shall issue a decision on the permit not later than 10 days after the date of completion of the requirements described in subparagraph (A), unless compliance with the National Environmental Policy Act of 1969 and other applicable law has not been completed within such timeframe.

(C) **DENIAL OF PERMIT.—**If the applicant does not complete the requirements within the period specified in subparagraph (A) or if the applicant does not comply with applicable law, the Secretary shall deny the permit.

Onshore Oil and Gas Order Number 1, issued under 43 CFR 3160, largely takes the language from Sec. 366 of the EPOA 2005 (above) and further clarifies by stating the following under section III.E. *APD Posting and Processing*:

2. Processing

The timeframes established in this subsection apply to both individual APDs and to the multiple APDs included in Master Development Plans and to leases of Indian minerals as well as leases of Federal minerals. If there is enough information to begin processing the application, the BLM (and the FS if applicable) will process it up to the point that missing information or uncorrected deficiencies render further processing impractical or impossible.

- a. Within 10 days of receiving an application, the BLM (in consultation with the FS if the application concerns NFS lands) will notify the operator as to whether or not the application is complete. The BLM will request additional information and correction of any material submitted, if necessary, in the 10-day notification. If an onsite inspection has not been performed, the applicant will be notified that the application is not complete. Within 10 days of receiving the application, the BLM, in coordination with the operator and Surface Managing Agency, including the private surface owner in the case of split estate minerals, will schedule a date for the onsite inspection (unless the onsite inspection has already been conducted as part of a Notice of Staking). The onsite inspection will be held as soon as practicable based on participants' schedules and weather conditions. The operator will be notified at the onsite inspection of any additional deficiencies that are discovered during the inspection. The operator has 45 days after receiving notice from the BLM to provide any additional information necessary to complete the APD, or the APD may be returned to the operator.
- b. Within 30 days after the operator has submitted a complete application, including incorporating any changes that resulted from the onsite inspection, the BLM will:
 1. Approve the application, subject to reasonable Conditions of Approval, if the appropriate requirements of the NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable law have been met and, if on NFS lands, the FS has approved the Surface Use Plan of Operations;
 2. Notify the operator that it is deferring action on the permit; or
 3. Deny the permit if it cannot be approved and the BLM cannot identify any actions that the operator could take that would enable the BLM to issue the permit or the FS to approve the Surface Use Plan of Operations, if applicable.
- c. The notice of deferral in paragraph (b)(2) of this section must specify:
 1. Any action the operator could take that would enable the BLM (in consultation with the FS if applicable) to issue a final decision on the application. The FS will notify the applicant of any action the applicant could take that would enable the FS to issue

a final decision on the Surface Use Plan of Operations on NFS lands. Actions may include, but are not limited to, assistance with:

(A) Data gathering; and

(B) Preparing analyses and documents.

2. If applicable, a list of actions that the BLM or the FS need to take before making a final decision on the application, including appropriate analysis under NEPA or other applicable law and a schedule for completing these actions.
- d. The operator has 2 years from the date of the notice under paragraph (c)(1) of this section to take the action specified in the notice. If the appropriate analyses required by NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable laws have been completed, the BLM (and the FS if applicable), will make a decision on the permit and the Surface Use Plan of Operations within 10 days of receiving a report from the operator addressing all of the issues or actions specified in the notice under paragraph (c)(1) of this section and certifying that all required actions have been taken. If the operator has not completed the actions specified in the notice within 2 years from the operator's receipt of the paragraph (c)(1) notice, the BLM will deny the permit.
 - e. For APDs on NFS lands, the decision to approve a Surface Use Plan of Operations or Master Development Plan may be subject to FS appeal procedures. The BLM cannot approve an APD until the appeal of the Surface Use Plan of Operations is resolved.