

H-3106-1 - TRANSFERS BY ASSIGNMENT, SUBLEASE, OR OTHERWISE

III. Transfer of Operating RightsKeywordsA. Background

Early Federal oil and gas leases that were issued noncompetitively were earned through a prospecting permit. Such permits were obtained by individuals who, after doing the required "prospecting," discovered sufficient oil and gas to earn the leases. Often, the individuals did not have the means to develop their discoveries completely and entered into agreements. Under these agreements, corporations effectively took over the leases in return for overriding royalty (ORR) payments to the original lessees. These early operating agreements, unlike the total assignment of the lease that is involved in a record title assignment, were allowed to be limited to certain formations or encompassed less than all the leased lands without causing segregation of the lease into assigned and retained portions. The operating agreements often conveyed the operating rights in the lands to the operator, i.e., the right or interest in the leased lands to explore, develop, and produce oil and/or gas resources from the Federal mineral estate. As leasing became more common, lessees and operators made transfers of the operating rights carved out of the record title, and the Department of the Interior and the BLM approved such transfers without the segregative effect of record title assignments. Such transfers, as long as they did not convey "record title" interests, were deemed to convey a lesser interest than that lease interest obtained from the Federal Government by the original lessee, and these transfers were not subject to all the effects caused by record title assignments.

OPERATING
RIGHTS
TRANSFERS -
BACKGROUND

Holders of operating agreements and operating rights, or working interests, could not relinquish leases. Such transfers did not have to conform to any specific format. The task of interpreting what specific interests were being transferred became more and more complex as the operating rights transfers proliferated and the BLM adjudicators had to examine lengthy, detailed documents to ascertain exactly what was being transferred. The documents frequently contained numerous provisions that, while important to the parties involved, had no bearing on who held what interest.

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Keywords

In 1980, the Department of the Interior, BLM, promulgated for the first time a BLM-approved form for transferring oil and gas lease operating rights. Use of the form became mandatory effective February 26, 1982, in final rulemaking that revised 43 CFR Subpart 3106. All transfers of operating rights currently filed must be completed using Form 3000-3a, Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources, June 1988 or more recent edition (see Illustration 21). Each transfer of operating rights must be accompanied by a nonrefundable \$25 filing fee for each lease. In accordance with the Mineral Leasing Act (MLA) of 1920, as amended (30 U.S.C. 187a), three copies of the form executed by the transferor must be filed for each transfer in a lease.

OPERATING RIGHTS
TRANSFER FORM
DEVELOPED BY
BLM IN 1980

Various earlier editions of transfer of operating rights forms have been approved for use by the BLM (see Appendix 2). The oil and gas leasing regulations now require that each transfer of operating rights (sublease) shall be filed on the current BLM-approved form. Effective October 1, 1988, all earlier editions of the operating rights transfer form prior to June 1988 were deemed obsolete. Therefore, any transfer of operating rights (sublease) filed since October 1, 1988, on a prior edition of a BLM-approved form must be returned with no action taken by the BLM.

Operating agreements may be entered into where the parties do not attempt to transfer any operating rights. Several co-owners may enter into an agreement specifying that a single party shall control all operations on the lease (this party may or may not be one of the co-owners). The agreement entered into also may specify that upon completion of certain actions, such as the drilling of a well to a certain depth or formation, the co-owners shall transfer a certain portion of the operating rights or record title to the party controlling the operations, normally called the operator. Such operating agreements are no longer accepted or approved by the BLM and cannot be submitted in lieu of Form 3000-3a. If such agreements are filed, they are to be returned to the transferee when the transfer is approved (see Manual Section 3106.41A).

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An operating rights transfer is a sublease that is a private subsidiary arrangement between the lessee of record (sublessor) and sublessee that does not affect the contractual agreement between the lessee of record and the United States (lessor). Abstracting or adjudication of the lease operating rights transfer records for percentages of interests (or depths or formations) as to whether the transferor holds what is transferred and as to what each transferee is receiving is no longer to be performed by the BLM fluid leasing adjudicators, except in cases where a drainage determination has been made for lands within a lease during a specific period of time. In accordance with the BLM policy adopted in late 1985, transfers of operating rights interests (subleases) are reviewed and processed solely for the basic purposes of assuring sufficient bonding and qualifications under the MLA (30 U.S.C. 187a).

OPERATING RIGHTS
TRANSFER - A
PRIVATE SUBLEASE
CONTRACTUAL
AGREEMENT NOT
AFFECTING THE
LESSEE AGREEMENT
WITH THE U.S.

A party owning the operating rights interests in a lease may authorize the actual conduct of operations on its behalf by designating as the operator another party who presently holds no recognized operating rights or other legal or equitable title in the lease. Such a designated operator cannot designate a different party as the operator on the lease. The official designation of such an operator is no longer officially recognized by the BLM.

DESIGNATED
OPERATOR

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B. Processing

Responsible Official	Step	Action	Keywords
Receiving Official	1.	Receive copies of transfer of operating rights that have been filled out. Check that a current BLM-approved Form 3000-3a has been submitted in triplicate (see Illustration 21 for the current edition of Form 3000-3a). Date/time stamp all copies of the form that were received.	OPERATING RIGHTS TRANSFER RECEIVED
		<u>NOTE:</u> The October 1992 Form 3000-3a is presently the current BLM-approved edition. However, the June 1988 and November 1990 Form 3000-3a editions are still acceptable. All versions of the form prior to the June 1988 edition were deemed obsolete effective October 1, 1988 (see Appendix 2). Before the June 1988 or more recent editions of Form 3000-3a can be deemed obsolete, a notice prepared by the Washington Office must be published in the <u>Federal Register</u> and posted in the State Office Public Room to advise the public of the effective date when any such new edition of the transfer form is required to be used.	
Cashier	2.	Validate the nonrefundable \$25 filing fee required for each transfer for each lease. Earn the filing fee for each lease transfer regardless of the number of copies of the form filed. If several transfers are filed at the same time, even though affecting the same lands of the same lease, each transfer requires a separate \$25 filing fee.	VALIDATE FILING FEE
	3.	If insufficient or no filing fee is received with the transfer, mark a large "X" over any date/time stamp markings on all copies of the form.	INSUFFICIENT OR NO FILING FEE

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Responsible Official	Step	Action	Keywords
	3a.	Return forms and/or insufficient fees directly to the first-named transferee or party filing the transfer with a preprinted letter or a completed Form 1370-21, Notice of Return of Remittance (see Illustration 2).	
	4.	Refund to remitter any overpayment of filing fee.	FILING FEE OVERPAYMENT
	5.	If sufficient filing fee is received, prepare an accounting advice for each transfer. Enter the transferee's name as the applicant. In case of multiple transfers, indicate the first-named transferee as the applicant, followed by "et al." Complete the address of the party named. If the filing fee was not tendered by the applicant, complete the name of the party submitting the fee as the remitter. Otherwise, place the word "SAME" in the remitter blank.	ACCOUNTING ADVICE INITIATED
Docket	6.	Pull case file and forward to Adjudication.	
ALMRS Entry	7.	Update case using current data standards to indicate transfer of operating rights was filed:	AUTOMATED NOTATION
	7a.	Enter Action Date (MANDATORY ACTION CODE): Date operating rights transfer filed; DE 1775 Action Code 554/DE 2910 Action Code 932; Action Remarks: Name of transferee (optional).	
	7b.	<u>OPTIONAL</u> : Enter Action Date: Date filing fee received; DE 1775 Action Code 072/DE 2910 Action Code 347; Action Remarks: Amount.	
Adjudication	8.	Review transfer for use of proper form.	

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Responsible Official	Step Action	Keywords
	<p>Check that transfer is on a current BLM-approved Form 3000-3a or a reproduction of the form that has no additions, deletions, or advertisements thereon. If photocopies of the form have been submitted with the reverse side of the form upside down from the format of the BLM-approved form (photocopied head-to-head rather than head-to-toe), the forms are acceptable and do not need to be returned to the transferee. Also, if each copy of the form submitted has been photocopied as two separate sheets of paper, the forms are acceptable and do not need to be returned to the transferee.</p>	<p>CURRENT FORM OR COPY THEREOF SUBMITTED</p>
	<p>8b. If transfer is submitted on an old form that has been deemed obsolete, return transfer to the first-named transferee or party filing the transfer. Do not disapprove at this time, and do not require a new filing fee to be submitted for this type of curable error.</p>	
	<p>If the request for approval on the reverse of the transfer form is not used by the transferee, check that an adequate request for approval, including a transferee certification of qualifications in accordance with 43 CFR 3102.5-1, is submitted. Requests for approval of transfers must be signed and dated by or on behalf of all transferees.</p>	

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Responsible Official	Step Action	Keywords
	8d. Check that the transfer of operating rights is not on the record title assignment Form 3000-3. If on the wrong form, return to the transferee who is receiving the most interest. Do not disapprove at this time, and do not require a new filing fee to be submitted for this type of curable error, provided the transfer is returned corrected within 30 days or other reasonable period of time allowed by the authorized officer.	CORRECT FORM SUBMITTED
	9. Check that three copies of the form have been manually signed and dated by or on behalf of the transferor. If three copies are not manually signed, return the transfers by decision requesting proper execution (see Illustration 22).	THREE COPIES MANUALLY SIGNED BY TRANSFEROR
	<u>NOTE:</u> Transfers are not allowed to be submitted by fax transmission because the signature would be a copy and not an original as required by law and regulation.	
	10. Check that the serial number indicated on the transfer form matches the lease case file.	LEASE SERIAL NUMBER CHECKED
	11. Review any cover letter received with the transfer form for any special requests. If appropriate, make a copy of the correspondence for all affected case files.	SPECIAL REQUESTS
	12. If several transfers are filed at the same time with a single request for approval, check that proper reference is made for all case files.	SINGLE REQUEST FOR MULTIPLE TRANSFERS

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Responsible

Official	Step Action	Keywords
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Options include making a copy of the request for each transfer indicating the location of the original request for approval and attaching it to the case file copy of each transfer, or stamping "Request for approval filed in Serial No. _____."

For operating rights (sublease), a detailed examination of the request for approval is not necessary as long as the request appears to have been signed by all transferees. Disclosure of the signatory relationship is not mandatory.

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| <p>13. If transfer is for a producing lease, check that the lease account is not delinquent with the MMS, i.e., that the lease does not have unpaid liabilities to the MMS, based on the information indicated on the BIS screens. If unpaid liabilities exist, prepare a decision to the transferee and transferor denying approval of the transfer (see Illustration 7). The transferor and transferee may execute and file the transfer after the lease account has been brought into good standing. In denying approval, return the copies of the transfer to the first-named transferee. Keep a copy of the transfer for the case file.</p> | <p>DELINQUENT
ACCOUNT ON
PRODUCING
LEASE</p> <p>MMS LIABILITIES
AND ASSESSMENTS
CHECKED ON
BIS SCREENS</p> |
| <p>14. The transfer can only be withdrawn by both the transferor and transferee.</p> | <p>WITHDRAWAL
OF TRANSFER</p> |
| <p>15. Determine if bond coverage is required for lease and, if so, whether the lessee, operating rights owner, or operator has furnished the bond.</p> | <p>BONDING
REQUIREMENTS</p> |

If no bond is required or if the lessee or a party other than the operator has provided the bond coverage, proceed to Step III.B.16, below.

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Responsible Official	Step	Action	Keywords
		<p>If the only bond coverage is provided by the transferor, approve the transfer only after a bond is provided by the transferee, lessee, or operator on the ground in accordance with 43 CFR 3104.2. A report from the Field Office fluid mineral operations staff is to be obtained as to any special bonding requirements needed. (See Handbook 3104-1.) After bond coverage is determined to be adequate, proceed to next step.</p>	L
	16.	<p>The BLM does not adjudicate transfers of overriding royalty even though this interest may be included on a transfer instrument. The law and regulations require that such transfers be filed in the proper BLM office. Approval of the operating rights transfer by the authorized officer does not constitute approval of the overriding royalty figures indicated on the transfer form.</p>	<p>OVERRIDING ROYALTY FIGURES NOT ADJUDICATED</p>
	17.	<p>Prepare the transfer of operating rights for approval by stamping each copy of the form submitted with the following:</p>	<p>APPROVAL OF TRANSFER</p>
		<p>Effective date, which is the first day of the month following the month in which the transfer was filed, except that if a bond is required, the effective date is the first day of the month after an acceptable bond is filed.</p>	<p>STAMP EFFECTIVE DATE</p>
		<p>Date of approval and the title of the authorized officer.</p>	<p>STAMP DATE SIGNED</p>

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	17c.	If an older form other than the current Form 3000-3a (June 1988 or more current edition) is involved (due to a long-pending transfer), stamp on all copies of the form: "APPROVAL DOES NOT WARRANT THAT EITHER PARTY TO THIS TRANSFER HOLDS LEGAL OR EQUITABLE TITLE TO THIS LEASE." This language is not needed on the current editions of the forms since it is preprinted at the bottom of the front page.	DISCLAIMER
	18.	An accounting advice does not need to be completed unless it is required by internal State Office procedures to track the \$25 filing fee (see Illustration 23).	ACCOUNTING ADVICE COMPLETION
	19.	Assemble case file, surname, and date all other appropriate documents. Forward to the authorized officer for signature.	
	20.	Stamp or mark copies of the transfer form for distribution, with the original placed in the lease case file, the second copy sent to the transferee, the third copy marked for the SMA administering the lands affected, with an additional copy sent to the Field Office fluid mineral operations staff in accordance with individual State Office procedures.	DISTRIBUTION OF OPERATING RIGHTS TRANSFER
	21.	Prepare standard preprinted notice of transfer approval (see Illustration 12). Attach copy of notice to copies of form to be transmitted to transferee/transferor.	ATTACH STANDARD NOTICE TO APPROVED TRANSFER

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	22.	All transfers must be approved within 60 days of receipt of the request for approval in accordance with the Federal Onshore Oil and Gas Leasing Reform Act. The Reform Act states that except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within 60 days of the date of receipt by the authorized officer of a request for such approval.	TRANSFERS MUST BE APPROVED WITHIN 60 DAYS
	23.	Note that operating rights transfers to a bank or other fiduciary institution may be approved as long as all other requirements, including bond coverage, are met.	TRANSFER TO BANK OR OTHER FIDUCIARY INSTITUTION
	24.	Severance occurs when the operating rights interest in a lease has been transferred independently of the record title interest.	SEVERANCE OF OPERATING RIGHTS FROM RECORD TITLE
	24a.	If the operating rights in the lands have never previously been severed from the record title interest, a record title assignment shall convey operating rights interest as well as record title interest. Therefore, it is not necessary to file a record title assignment and an operating rights transfer when conveying all the interest in a lease.	
	24b.	If uncertainty occurs whether the operating rights have been severed in a certain land description, but the intent of a record title assignment is to convey all of the assignor's interest in the land description, including record title interest and operating rights interest, a statement attesting to such needs to be included at the bottom of the land description section of the conveyance form.	

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Responsible	Official	Step	Action	Keywords
		24c.	Both a record title assignment and an operating rights transfer are required to be submitted in the following examples:	EXAMPLES OF SEVERANCE REQUIRING BOTH OPERATING RIGHTS AND RECORD TITLE FORMS TO BE FILED
			<u>EXAMPLE 1: Record Title</u>	
			Company A 50%	
			Company B 50%	
			<u>Operating Rights</u>	
			Company A 50%	
			Company B 25%	
			Company C 25%	
			Company B assigning 25% record title would need a separate operating rights transfer to convey 25% of operating rights.	
			Assignments from Company A would convey operating rights interest since Company A's operating rights have not been severed from record title.	
			<u>EXAMPLE 2: Record Title</u>	
			Company A 50%	
			Company B 50%	
			<u>Operating Rights</u>	
			Company A 75%	
			Company B 25%	
			Assignment of less than 50% record title in Company A or B would require a separate operating rights transfer to convey operating rights interest.	

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Responsible Official	Step	Action	Keywords
ALMRS Entry	25.	Update to show the action taken on the operating rights transfer using the current data standards (see Illustration 24).	AUTOMATED NOTATION
		<p><u>NOTE:</u> See Appendix 3 for a listing of the key action codes from the data standards that are to be used in ALMRS Case Recordation and Record System Release 1.0 in conjunction with the lease transfers/assignments.</p> <p>If the transfer is approved: Enter Action Date (MANDATORY ACTION CODE): Date transfer of operating rights approved; DE 1775 Action Code 555/DE 2910 Action Code 933; Action Remarks: "EFF MM/DD/YY;"</p> <p>It is mandatory to enter the name of the transferee in the proprietor field, with the interest relationship (DE 3136) entered with Action Code 39 - Operating Rights, and a "0%" entered in the interest field (DE 2914).</p> <p><u>OPTIONAL:</u> Enter Action Date: Date transfer effective; DE 1775 Action Code 564/DE 2910 Action Code 898.</p>	

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	25c.	If the transfer is not approved: Enter Action Date (MANDATORY ACTION CODE): Date transfer of operating rights returned unapproved; DE 1775/2910 Action Codes 558; Action Remarks: Reason returned unapproved (or place in General Remarks); <u>OR</u>	AUTOMATED NOTATION
	25d.	Enter Action Date (MANDATORY ACTION CODE): Date transfer of operating rights denied; DE 1775 Action Code 556/DE 2910 Action Code 957; Action Remarks: Reason for disapproval (or place in General Remarks); <u>OR</u>	
	25e.	Enter Action Date (MANDATORY ACTION CODE): Date transfer of operating rights withdrawn; DE 1775/2910 Action Code 557.	