

State of Montana

Department of Natural Resources and Conservation



Statutes and Rules
Governing the Leasing and Issuance
of
Oil and Gas Leases on State Land
(Includes Gas Storage Statutes)

2019

Montana Code Annotated 2019

TITLE 77. STATE LANDS

CHAPTER 3

Part 4. Oil and Gas

77-3-401. Oil and gas leases authorized. (1) The board is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with The Enabling Act and the constitution, any state lands to which the title has vested in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing, and removing the same upon the terms and conditions herein prescribed to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state.

(2) This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and streams and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state; but in such cases and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

77-3-402. Rules. (1) The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development. The board shall formulate rules not inconsistent with law governing the leasing of state lands for oil and gas exploration and development which shall be compiled and printed periodically.

(2) Copies of the rules and notices of changes therein shall be made available to any person desiring a copy thereof at a reasonable cost to be fixed by a rule of the board.

History: En. Sec. 7, Ch. 108, L. 1927; re-en. Sec. 1882.7, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1961; R.C.M. 1947, 81-1707.

77-3-403. Hearings on questions related to leases. The board is hereby granted full power and authority to order and hold hearings on any matter or question involving oil and gas leases under such rules as it may adopt.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

77-3-404. Limitation on area under single lease. An oil or gas lease issued on state lands may not embrace more than 640 acres, except that any section surveyed by the United States which contains more than 640 acres may be included under one lease.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-405. Leased lands to be generally compact and contiguous. (1) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit.

(2) No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than 1 square mile.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(3).

77-3-406. Number of leases which one person may hold. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the board or take through assignment or succession, will, judgment, decree, or otherwise through the operation of law more than one oil and gas lease to state lands, subject to such regulations and limitations as the board prescribes.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-407. New leases on lands leased prior to February 28, 1953. (1) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is being produced, the board shall at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction on the terms then existing for such leasing. Any person, association, firm, or corporation who held such lease at the expiration thereof shall have the privilege of re-leasing the same at such highest responsible bid offered therefor upon such terms and conditions as may be prescribed by the board or the legislature.

(2) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is not being produced, the board may at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction if in the judgment of the board such advertising and public auction will result in leasing of the land on terms advantageous to the state.

History: En. Sec. 15, Ch. 108, L. 1927; amd. Sec. 3, Ch. 171, L. 1933; re-en. Sec. 1882.15, R.C.M. 1935; amd. Sec. 1, Ch. 104, L. 1965; R.C.M. 1947, 81-1715.

77-3-408. Certain state officers not to be interested in leases. It is unlawful for any officer or employee of any agency of the executive branch of state government who is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof to lease or to become interested in any manner in any oil or gas lease on state lands.

History: En. Sec. 20, Ch. 108, L. 1927; amd. Sec. 4, Ch. 171, L. 1933; re-en. Sec. 1882.20, R.C.M. 1935; amd. Sec. 93, Ch. 428, L. 1973; R.C.M. 1947, 81-1720.

77-3-409. Misconduct of officers in relation to oil and gas leases. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except the officer's, employee's, or representative's regular and lawful compensation, for performing or not performing an official act under the provisions of this part or for modifying the performance of an official act is guilty of a felony.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes

any false classification or appraisal of any state land or interest of the state in the land or of any oil and gas deposits in which the state is interested or who knowingly and willfully makes any false report of any classification or appraisal is guilty of a felony.

History: En. Sec. 21, Ch. 108, L. 1927; re-en. Sec. 1882.21, R.C.M. 1935; R.C.M. 1947, 81-1721; amd. Sec. 2558, Ch. 56, L. 2009.

77-3-410. False statements relating to oil and gas leases. Any person who shall knowingly make and file in any department, bureau, or office of the state any application, statement, or report in writing required by regulation promulgated pursuant to the provisions of this part containing any false statement of a material fact shall be guilty of a felony.

History: En. Sec. 22, Ch. 108, L. 1927; re-en. Sec. 1882.22, R.C.M. 1935; R.C.M. 1947, 81-1722.

77-3-411. Notice of lease sale required. (1) Within 15 days of the previous oil and gas lease sale, the department shall publish the date and place of the upcoming sale in a publication of general circulation in Montana and on the department's website.

(2) (a) The department shall accept nominations of tracts for an upcoming sale until 77 days prior to the date of the sale.

(b) Upon receipt of a nomination by the department, the location of the tracts is public information.

(3) At least twice, the department shall publish a notice containing the time and place of the sale, a statement that all sales will be by competitive bidding, and the number of tracts in each county offered for sale at the time of the notice on the department's website and in a publication of general circulation in Montana:

(a) not less than 63 days before the date of an upcoming sale; and

(b) between 21 days and 35 days before the date of the sale.

(4) In a publication of general circulation in each county where a tract is nominated for sale, the department shall publish a notice in compliance with subsection (3), except that each notice needs to contain only the number of tracts nominated for sale in that county and notice that a description and maps of tracts nominated are available on the department's website.

(5) The department shall publish on its website a description and maps of all tracts to be offered for sale.

(6) (a) Except as provided in subsection (6)(b), the department shall provide notice by first-class mail to surface owners of a tract being offered for sale using the most current known property owners of record as shown in the records of the county clerk and recorder of the county where the tract is located.

(b) The notice in subsection (6)(a) is not required if the surface is managed by the department pursuant to Title 77, chapter 1.

(7) The notice required by subsection (6) must contain the time and place of the sale, a statement that all sales will be by competitive bidding, and a description and area map of each tract offered for sale.

History: En. Sec. 1, Ch. 432, L. 2009; amd. Sec. 1, Ch. 206, L. 2019.

77-3-412 through 77-3-420 reserved.

77-3-421. Duration of lease. (1) All state oil and gas leases entered by the board shall be granted for a primary term of not more than 10 years or less than 5 years and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental, and other

obligations are fully kept and performed by the lessee. However, leases for a period of less than 5 years may be issued if the board determines that such shorter term is necessary to ensure full compensation for the oil and gas resource.

(2) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement are considered to be produced from the state lands therein within the meaning of this part.

(3) The board may grant reasonable extensions of the primary term of a state oil or gas lease upon a showing that the lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating the lease or is threatened with substantial economic loss, due to litigation regarding the lease or another lease in the immediate area held by the same lessee, state compliance with the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, rules adopted under Title 75, chapter 1, or adverse conditions caused by natural occurrences.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part); amd. Sec. 1, Ch. 165, L. 1983; amd. Sec. 1, Ch. 272, L. 1989.

77-3-422. Lease extension clause. If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for oil or gas, then the lease continues in force so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease continues in force so long as oil or gas in paying quantities is produced from the leased premises.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-423. Annual rental. (1) The annual money rentals to be paid to the state for oil and gas leases must be set by the board but may not be less than \$1.50 for each acre of land leased.

(2) In addition to the sum of \$1.50 per acre, the rental for the first year of the lease must also include any sum in excess of \$1.50 per acre offered and accepted for the first year's rental.

(3) The annual rental under this section may not be less than \$100 a year.

(4) The first year's rental must be paid before the issuance of the lease. The rentals for each subsequent year of the lease are due and payable before the beginning of the subsequent lease year. Upon failure to make the rental payment, the lease terminates unless there is a well currently being drilled, a producing well, or a shut-in well approved by the department on the lease. Rental paid for any year must be credited against any royalty that accrues during that year.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(1), (2); amd. Sec. 1, Ch. 163, L. 1989; amd. Sec. 1, Ch. 34, L. 1997.

77-3-424. Power to terminate lease in absence of commencement of drilling or payment of delay drilling penalty. (1) In every oil and gas lease granted after March 3, 1955, under this part there must be reserved to the board full power to declare termination of the lease at the end of the fifth year or any subsequent year of the primary term of the lease upon failure of the lessee to either:

(a) commence the drilling of a well for oil and gas upon the leased premises; or

(b) pay a delay drilling penalty as follows:
(i) for the sixth year of the lease \$1.25 per acre per year; and
(ii) for the remainder of the primary term of the lease an amount per acre per year as the board may in its discretion determine.

(2) Notice of that determination must be given to the lessee, and if the lessee applies for a hearing thereon within 10 days after receipt of the notice, the determination becomes final only after the hearing has been held.

(3) This annual delay drilling penalty must be paid each year in advance. The board shall refund delay drilling penalties paid on a lease for any year in which the lessee commences drilling on that lease.

(4) If a well for oil and gas is commenced, the drilling of the well must be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part); amd. Sec. 9, Ch. 15, L. 1979; amd. Sec. 5, Ch. 163, L. 1989.

77-3-425. Dry hole clause. If the first well drilled is a dry hole and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following the completion of the well, the lease may be terminated by the board unless the lessee, on or before such anniversary, resumes payment of any delay drilling penalties imposed by the board. Upon the resumption of payment of any required delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling penalty payments.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part); amd. Sec. 2, Ch. 163, L. 1989.

77-3-426. Lessee to prevent waste. Oil and gas leases issued under the provisions of this part must all be subject to the conditions that the lessee in conducting explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by the lessee to the oil or gas sands or oil-bearing or gas-bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions constitutes grounds for the forfeiture of the lease after a hearing on the violations before the board.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part); amd. Sec. 2559, Ch. 56, L. 2009.

77-3-427. Provision for offset wells -- compensatory royalties. (1) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to drill offset wells wherever and whenever necessary to prevent waste and damage to the property of the state.

(2) The board may allow the lessee the following options in lieu of drilling an offset well:

(a) releasing the lands in question; or

(b) paying a compensatory royalty on a nonproducing lease if the board determines that such compensatory royalty will fully compensate the state for waste and damage to the property of the state. The compensatory royalty shall be based upon the estimated drainage, as determined by the board, and shall be paid on a monthly basis unless circumstances require otherwise.

(3) If the board or the lessee terminates the lease, that termination does not impair any implied covenant against drainage or the right of the board to seek damages from the lessee for the

lessee's failure to protect the lease from drainage of oil or gas by a well adjacent to the state lease.

History: En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; R.C.M. 1947, 81-1719(part); amd. Sec. 1, Ch. 81, L. 1981; amd. Sec. 3, Ch. 163, L. 1989.

77-3-428. Additional development following completion of productive well. (1) The lessee shall be required, upon completing a commercially productive oil or gas well upon the leased premises, to proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive or to such depth as may be necessary to economically test, develop, and operate the deposits discovered.

(2) No lessee shall, however, be required to drill to completion more than one well under any one lease during any one calendar year or a total number of wells under any one lease in excess of the total number of 40-acre subdivisions of land held under such lease. As to lands found valuable for gas production only, the drilling obligation of the lessee shall be confined to a total number of wells equal to the total number of tracts comprising 160 acres of land included in the lease, except as the drilling of offset oil or gas wells necessary to protect the leased premises and deposits from loss or depletion due to wells drilled on contiguous lands shall require greater diligence in drilling and a greater number of wells to be drilled.

(3) The performance of said well drilling operations may be suspended only by and with the consent of the board during the time oil or gas previously discovered cannot be marketed at a profit or for other good cause shown.

History: En. Sec. 11, Ch. 108, L. 1927; re-en. Sec. 1882.11, R.C.M. 1935; R.C.M. 1947, 81-1711.

77-3-429. Operating agreements. Owners of state oil and gas leases may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on the state lands under their leases. No such operating agreements are in any way binding upon the state until filed with the board and approved by it. No such drilling or operating agreement in any way affects the obligations of each individual leaseholder to the state.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(3).

77-3-430. (Temporary) Pooling agreements and unit operations. Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and the apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation. However, such agreements may not change the percentage of royalties to be paid to the state from the percentages as fixed in its leases. The board may modify existing pooling and unit agreements so as to commit the state lands included therein for as long as the unitized substance or substances for which the state lands are committed is produced from any lands in the unit.

77-3-430. (Effective on occurrence of contingency) . Pooling agreements and unit operations. Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the storage of carbon dioxide in a geologic storage reservoir or the production of oil or gas or both and the

apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with pooling agreements and unit plans of operation. However, agreements may not change the percentage of royalties paid to the state from the percentages fixed in its leases. The board may modify existing pooling and unit agreements to commit the state lands included in the pooling or unit agreements for as long as the unitized substance or substances for which the state lands are committed are produced from any lands in the unit.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(4); amd. Sec. 10, Ch. 474, L. 2009.

77-3-431. Report of lessees. (1) On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the department for the preceding calendar month on a form the department prescribes. The report shall show the amount of oil or gas produced and saved during the preceding month, the price obtained, the total amount of all sales, and any additional information as may be required, and it shall be signed by the lessee or some responsible person having knowledge thereof.

(2) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to make such report of operation, production, and sales in the manner, at the time, and to such representative of the state as may be required by the board.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M. 1947; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part).

77-3-432. Royalty. In each oil and gas lease granted by the state under this part, there must be reserved to the state as consideration for the lease a royalty in all oil and gas produced and saved from all lands covered by the lease and not used for light, fuel, and operation purposes on the leased premises, which must be equivalent to the full market value, as ascertained by the board at the date of the lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under the lease. The royalty reservation must be set by the board but may not be less than 12 1/2% on gas and not less than 12 1/2% on oil or casinghead gasoline for each producing well for the calendar month. The state may share the expense of transporting the oil to the nearest market on a basis proportional to the state's royalty interest in the oil and at a rate per mile acceptable to the department.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part); amd. Sec. 1, Ch. 136, L. 1987; amd. Sec. 4, Ch. 163, L. 1989; amd. Sec. 2, Ch. 34, L. 1997.

77-3-433. Shut-in gas royalty. The royalty on gas, including casinghead gas and all gaseous substances not sold or used off the premises, must be at the rate of \$400 per lease each year or the amount of the annual rental provided in the lease, whichever is the greater, payable on or before the annual anniversary date of the lease. As long as the leased lands contain a well capable of production in paying quantities and the requisite payment is made, the lease must be considered as a producing lease under the lease terms.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part); amd. Sec. 3, Ch. 34, L. 1997.

77-3-434. Manner of making royalty payment. Such lease shall provide for the rendering of payment of such royalty on all oil and gas produced and saved and sold or used off the premises in the following manner and upon the following terms:

(1) the lessee shall pay to the state in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run into any pipeline or storage tank to the credit of the lessee, plus any bonus actually paid or agreed to be paid to the lessee for such oil or gas; or

(2) at the option of the state exercised in writing by the board not oftener than every 30 days, the lessee shall deliver the state's royalty oil or gas free of cost or deductions into the pipeline to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part).

77-3-435. Payments due to state -- audit -- notice -- action. (1) The report under 77-3-431 must be accompanied by payment of the amount due the state as royalty for the month covered by the report unless the state's royalty is being or has been paid directly by the purchaser. However, when the amount of royalty due from a lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually.

(2) Oil and gas leases granted by the state must contain suitable provisions imposing upon all lessees the obligation to make payments due the state in the manner, at the time, and to the representative of the state that may be required by the board.

(3) Except as provided in subsection (4), the department may, within 7 years of the filing of a report pursuant to 77-3-431, commence an audit of a lessee's or a former lessee's operation to determine whether the report is complete and accurate and whether all royalties owed have been paid. The department shall notify the lessee in writing of the audit. The notice must describe the period for which the audit is being conducted. Upon conclusion of the audit, the department shall notify the lessee of the department's conclusions and, if the department has determined that additional royalties are owed, the basis for that determination. An action to compel payment of royalties due must be commenced within 2 years of the date of mailing the notice.

(4) If a lessee or former lessee, with intent to evade payment of royalties, purposely or knowingly files a false report or purposely or knowingly fails to pay royalties owed, the department may conduct an audit and file an action to collect royalties at any time after the royalty is due.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M.; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part); amd. Sec. 4, Ch. 34, L. 1997.

77-3-436. Disposition of royalties and other money. All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows:

(1) All fees and penalties shall be credited to the state general fund.

(2) All rentals shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and

forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income, the same as all other receipts from such lands.

(4) All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state or for any state institution shall be credited to the state general fund unless other disposition is provided by law.

History: En. Sec. 12, Ch. 108, L. 1927; re-en. Sec. 1882.12, R.C.M. 1935; amd. Sec. 44, Ch. 100, L. 1973; amd. Sec. 89, Ch. 428, L. 1973; R.C.M. 1947, 81-1712; amd. Sec. 1, Ch. 353, L. 1985.

77-3-437. Amendment of existing leases. The owner or owners of any existing state oil and gas lease shall have the right to exchange it for an amended lease containing the same provisions as to the term of said lease as are then provided by law for state oil and gas leases upon filing a written application therefor and upon payment of a sum which is the full market value of the exchange, as determined by the board. The amended lease shall be subject to all other provisions, including rents and royalties, contained in the original lease and shall bear the same commencement date as the original lease.

History: En. Sec. 8, Ch. 108, L. 1927; re-en. Sec. 1882.8, R.C.M. 1935; amd. Sec. 3, Ch. 122, L. 1953; R.C.M. 1947, 81-1708.

77-3-438. Assignments of leases. (1) The assignment of any oil and gas lease issued under this part, either in whole or as to subdivisions of land embracing not less than 40 acres covered thereby, made to an assignee qualified as provided herein is permitted. Such assignment is not, however, binding upon the state until filed with the department and accompanied by the required fees, together with such proof of qualifications required by the board, and approved by the board or its lawful representative. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases is subject to appeal upon proper court proceedings.

(2) All other assignments of oil and gas leases issued under this part or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

History: En. Sec. 16, Ch. 108, L. 1927; re-en. Sec. 1882.16, R.C.M. 1935; amd. Sec. 90, Ch. 428, L. 1973; R.C.M. 1947, 81-1716.

77-3-439. Surrender of leases. The lessee under any oil and gas lease granted by the state may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish the lease to the state in whole or as to any legal subdivision of the lands covered thereby and be discharged from any obligation not yet accrued as to lands so surrendered and relinquished without prejudice to the continuance of the lease as to lands not surrendered or relinquished.

History: En. Sec. 18, Ch. 108, L. 1927; re-en. Sec. 1882.18, R.C.M. 1935; amd. Sec. 92, Ch. 428, L. 1973; R.C.M. 1947, 81-1718.

77-3-440. Forfeiture and cancellation of leases. (1) All oil and gas leases granted by the state pursuant to the terms of this part shall provide for forfeiture and cancellation thereof upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the state and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

(2) Any lessee, upon application therefor, shall be granted a hearing on any notice or demand of the board before any lease is declared forfeited or canceled by the board.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

77-3-441. Restriction on new lease following termination of old lease. In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within 30 days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(4).

77-3-442. Disposition of property of lessee upon termination of lease. (1) Upon the termination for any cause of a lease issued under this part, the former lessee has 6 months after the date of the termination to remove from the premises all machinery, fixtures, improvements, buildings, and equipment belonging to the lessee, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells and the structures described in 77-1-134. As to the casing, equipment, and apparatus, any succeeding lessee or, in the event there is no succeeding lessee, the state wishing to have the property left upon the premises shall pay a reasonable value for the property to the former lessee.

(2) If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of the casing, equipment, and apparatus, the succeeding lessee or, if there is no succeeding lessee, the state shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three appraisers, one of whom must be chosen by the successful bidder, one by the former lessee, and the third by the two appraisers chosen. If a person refuses to appoint an appraiser within 15 days of a request to do so by the department, the department may appoint an appraiser for that person. The appraisal must be reported to the respective parties in writing and is final and conclusive.

(3) Except as provided in 77-1-134, unless the department gives written authorization, the former lessee may not remain in possession or manage the land and property formerly covered by the lease. During the time the former lessee remains in authorized possession, the lessee may retain the same share of the products of the premises as inured to the lessee during the term of the lease. Except as provided in 77-1-134, if the state or other bidder does not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of the lessee's property from the premises.

History: En. Sec. 17, Ch. 108, L. 1927; re-en. Sec. 1882.17, R.C.M. 1935; amd. Sec. 91, Ch. 428, L. 1973; R.C.M. 1947, 81-1717; amd. Sec. 5, Ch. 34, L. 1997; amd. Sec. 11, Ch. 472, L. 2009.

77-3-443. Reservation in lease for disposition of surface. In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

77-3-444. Limitation on overriding royalties and payments out of production. (1) A person, partnership, or association may not enter into an agreement that in the aggregate creates overriding royalties or payments out of the production of oil and gas in excess of 5% above the landowner's royalty payable to the state of Montana unless that agreement expressly provides that the obligation to pay overriding royalties or payments out of production may be suspended by the director of the department at any time upon a determination that the excess overriding royalties or payments out of production constitute a burden on lease operations to the extent that:

- (a) proper and timely development may be retarded;
- (b) continued operation of the lease may be impaired; or
- (c) premature abandonment of the wells may occur.

(2) This section applies separately to any zone or portion of a lease segregated for computing a royalty due to the state of Montana.

(3) All agreements of any kind creating overriding royalties or payments out of production of oil and gas must be filed with the department within 30 days of their creation by the lessee.

History: En. Sec. 1, Ch. 157, L. 1985; amd. Sec. 287, Ch. 42, L. 1997.

77-3-445 through 77-3-450 reserved.

77-3-451. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from an oil or gas lessee under this part if the information, including drill logs, seismic data, and lithographic descriptions, relates to the geology of the oil or gas lease. The withholding is effective for as long as the department considers it necessary either to protect the lessee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 4, Ch. 105, L. 1989.

< END >

ADMINISTRATIVE RULES OF MONTANA

Title 36, Chapter 25, Sub-Chapter 2

STATE LAND LEASING

Rules Governing the Issuance of Oil and Gas Leases on State Lands

January 2019

36.25.201 DEFINITIONS

When used herein, unless a different meaning clearly appears from the context:

- (1) "Board" means the board of land commissioners of the state of Montana;
- (2) "Department" means department of natural resources and conservation;
- (3) "Director" means director of natural resources and conservation, chief administrative officer of the department of natural resources and conservation;
- (4) "Lessee" means the person in whose name an oil and gas lease appears of record in the offices of the department, whether such person be the original lessee or a subsequent assignee. The term "lessee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder for an oil and gas lease but with whom a formal oil and gas lease agreement has not been completed and finalized;
- (5) "Oil and gas" means all hydrocarbons and other substances and elements which are present in the earth in a gaseous or liquid form and produced therefrom. It shall not include coal, lignite, oil shale or similar solid hydrocarbons. Nor shall it include minerals, waters, steam or any geothermal resource produced pursuant to a geothermal resources lease issued by the state;
- (6) "Person" means any individual, person, firm, association or corporation or other legal entity;
- (7) "Qualified applicant" means any person who may become a qualified lessee as set forth under ARM 36.25.204;
- (8) "State" means the state of Montana;
- (9) "State lands" means all lands the leasing of which for oil and gas is under the jurisdiction of the board;
- (10) "Standard lease form" means the lease then currently in use and approved by the board.

History: 77-3-402, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

35.25.202 RESERVED

36.25.203 LANDS AVAILABLE FOR LEASING

(1) State lands available for leasing under these rules including any state lands in which the oil and gas rights are not reserved by the United States or other grantor or predecessor in title. Such state lands include those which have been sold but in which oil and gas rights have been reserved, in whole or in part, by the state of Montana, but in such cases where the lands are under lease for grazing, agriculture or similar purposes, care will be taken in issuing the oil and gas lease to protect the rights of the purchaser or surface lessee. Such lands include all lands owned by the state under

navigable lakes or streams. Unsurveyed lands, including those under navigable lakes and streams, are available for leasing, provided that any applicant for a lease on such lands shall supply the department with as accurate an estimate of the number of acres to be included under such lease as can be derived from the latest survey, and/or aerial photograph and other information available to the applicant. Further provided, that if and when such lands are leased and oil and/or gas in commercial quantities is produced from the lands, the lessee shall supply the department with a legal description of the lands by courses and distances (metes and bounds) . The department will assume no liability or responsibility for the correctness, completeness or validity of such description.

(2) No lease may embrace more than 640 acres, except that any section surveyed by the United States which contains more than 640 acres may be included under one lease.

(3) The land shall be leased in as compact bodies as the form and areas of the tract held by the state and offered for lease will permit. No lease may embrace noncontiguous subdivisions of lands unless such subdivisions are within an area comprising not more than 1 square mile.

(4) Any person qualified to hold an oil and gas lease on state lands may acquire, receive and hold more than one lease.

History: 77-3-402, MCA; IMP, 77-3-401, 77-3-404, 77-3-405, and 77-3-407, MCA; NEW, Eff. 12/5/75; AMD, Eff. 11/5/76; TRANS, 1996 MAR p. 2384.

36.25.204 WHO MAY LEASE FOR OIL AND GAS -- QUALIFIED LESSEES

(1) Any person, association, partnership, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state of Montana may lease state lands for oil and gas purposes; however, all corporations not incorporated in Montana must obtain a certificate of authority to transact business in this state from the secretary of state. Also, no officer or employee or any agency of the executive department of state government who is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof, may take or hold such lease, nor shall any such person become interested in any manner in any oil or gas lease on state lands.

History: 77-3-402, MCA; IMP, 77-3-401 and 77-3-408, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

36.25.205 PROCEDURES FOR ISSUE OF LEASE

(1) A sale of oil and gas leases on state lands normally will be held once each quarter, on the first or second Tuesday of March, June, and December, and on a day in September that will not conflict with the Labor Day holiday. It will be in the department's discretion to waive a sale on any of these dates if insufficient applications have been received or to postpone if circumstances warrant. In such event a notice of "no sale" will be published in a publication of general circulation in Montana.

(2) Sale of each lease will be by competitive, oral bidding.

(a) Sale will be made and a lease executed to the qualified bidder who makes the highest bid.

(b) In the absence of any bid at such sale on a particular tract, a lease will be issued to the person who first made application therefore in accordance with these rules.

(c) The department reserves the right to reject any and all bids on any tract offered for lease.

(3) Any person who wishes to nominate any tract of state land for an oil and gas lease shall make application for oil and gas leasing on the form currently in use by the department. Blank forms for such applications may be secured from the department at no cost.

(a) A \$15.00 application fee shall be submitted with the application, and is the only payment required to be submitted with the application.

(b) Each application shall be an offer and constitute an undertaking to pay the required first year's rental for the lease within ten days following the lease sale if the applicant is the successful bidder, or if no one bids at the lease sale. The application shall contain an adequate and sufficient description of the land sought to be leased.

(i) If the successful bidder at the lease sale is a person other than the first applicant, that person shall submit the required first year's rental within ten days following the sale.

(c) The department shall accept applications until 77 days prior to the date fixed for sale, as provided for in 77-3-411(2), MCA.

(d) Any application made may be withdrawn by the applicant if request for such withdrawal is received by the department prior to the withdrawal date indicated in the letter that is sent to the applicant by the department. However, the \$15.00 application fee will not be refunded.

(e) If more than one application is filed on any one tract, the department shall notify each person submitting an application subsequent to receipt of the first qualified application, that there is a prior application for that tract. The department will return the application fee(s) to those subsequent applicants.

(f) If the first applicant for a tract withdraws the application as provided in (d), and subsequent applications for that tract have been received, the tract shall be offered for lease regardless of the withdrawal. In such cases, the opening bid must not be less than the minimum rental required by ARM 36.25.208. If no bids are made, the tract will not be leased.

(4) The department will comply with 77-3-411(3), (4), and (5), MCA, to provide notification of the oil and gas lease sale.

(5) The department will maintain an interested parties mailing list of prospective oil and gas lessees who request that their names be placed on the list. At least two weeks before each sale, the department will send a copy of the sale notice to each interested party.

(6) The department shall notify the surface owners as provided for in 77-3-411(6) and (7), MCA.

History: 77-1-302, 77-3-402, 77-3-411, MCA; IMP, 77-1-302, 77-3-411; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384; AMD, 2010 MAR p. 1617, Eff. 7/16/10.

36.25.206 TERM OF LEASE, EXTENSION BY DRILLING OPERATIONS AT END OF TENTH YEAR

(1) The oil and gas lease which shall be issued to the successful bidder therefor shall be granted for a primary term or period of 10 years, and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental and other obligations are fully kept and performed by the lessee.

(2) If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease or his designee is then engaged in drilling on the premises for oil or gas, then the lease continues in force so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease continues in force so long as oil or gas in paying quantities is produced from the leased premises. The board reserves the right to decide whether such drilling operations, which may continue a lease beyond the primary term, are being diligently prosecuted.

History: 77-3-402, MCA; IMP, 77-3-421 and 77-3-422, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

36.25.207 FORM AND PROVISIONS OF LEASE

(1) The oil and gas lease which will be issued to the successful bidder therefor shall be upon the form currently in use and approved by the board. Such form shall contain all terms, provisions, and conditions as may be reasonable and proper which are not inconsistent with the Enabling Act, the Constitution, and the laws of the state and these rules.

History: 77-3-402 MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

36.25.208 RENTALS

(1) An annual money rental shall be paid to the state for each oil and gas lease at the rate of \$1.50 for each acre of land leased; however, such rental shall in no case be less than \$100.00 per annum. Rental for the first year of the lease shall include any sums, in excess of \$1.50 per acre offered and accepted for such first year's rental. The first year rental shall be paid before the issuance of the lease. Rental for each subsequent year of the lease shall be due and payable before the beginning of each subsequent year upon failure to make such payments, the lease terminates. The annual money rental is not in lieu of drilling operations, but continues throughout the life of the lease. The annual money rental is in addition to any nondrilling penalty and any royalty payment. No credit against royalty payment is allowed by reason of the annual money rental payment. No partial rental payment will be accepted, and the entire rental shall be considered unpaid until the full rental payment has been received.

History: 77-3-402, MCA; IMP, 77-3-423, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

36.25.209 DELAY DRILLING PENALTIES

(1) The lessee shall commence the drilling of a well for oil or gas upon the leased premises within 5 years of the date of approval of the lease or pay in advance a delay drilling penalty as follows:

(a) Prior to February 10, 1984, for all leases regardless of date of issuance, \$1.25 per acre for the 6th year through the 10th year of the lease.

(b) After February 10, 1984, for all leases regardless of the date of issuance, \$1.25 per acre for the 6th year and \$2.50 per acre for the 7th through the 10th year.

(2) Failure to commence drilling a well or to pay the required delay drilling penalty shall be grounds for cancellation of the lease. Cancellation shall not occur until after

notice and opportunity for an informal hearing to determine whether a well was commenced or delay drilling penalties were paid as required.

(3) If a well drilled on the leased premises is a dry hole, and if another well is not commenced on the land covered by lease before the 7th year or second anniversary of the lease following the completion of the well, whichever comes later, the leases may be terminated by the board, unless the lessee, on or before such anniversary date, pays the penalties in the amounts provided in this section. Upon the payment of such delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling payments. In case of any commencement of drilling in lieu of payment of a delay drilling penalty as above provided, the drilling of such well shall be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas. Failure of the lessee to do so shall subject the lease to termination by the board as though the lessee has neither commenced the drilling of the well nor paid the required delay drilling penalty. The lessee shall within five days of spudding in, notify the department of the commencement of drilling of any well.

History: 77-3-402, MCA; IMP, 77-3-424 and 77-3-425, MCA; NEW, Eff. 12/5/75; AMD, 1983 MAR p. 129, Eff. 2/11/83; TRANS, 1996 MAR p. 2384.

36.25.210 ROYALTIES

(1) The lessee shall pay in cash or deliver in kind to the lessor at its option, on all oil and gas produced and saved from the leased premises and not used for light, fuel and operation purposes on the leased premises, a royalty. The royalty shall be at the following rates unless, in regard to a particular lease, the department advertises in its lease sale notices that the royalty will be at a higher rate:

(a) On gas at the rate of 16.67%;

(b) On oil at the rate of 16.67%; and

(c) The royalty on gas, including casing-head gas and all gaseous substances, while the same is not sold or used off the premises shall be at the rate of \$400 per well each year or the amount of the annual rental provided in the lease, in lieu of the per well rate, whichever is the greater, payable on or before the annual anniversary date of the lease. As long as the leased lands contain a well capable of such production and such payment is made, the lease shall be considered a producing lease under the lease terms.

(2) The lessee shall pay royalties reserved to the state, in cash:

(a) on the reserved fraction of oil, the posted field price, or in lieu thereof, if no field price is posted, the fair market value in the field where produced on the day it is run into the pipeline or storage tanks; and

(b) on the reserved fraction of gas, the posted field price, or in lieu thereof, if no field price is posted, the fair market value at the well. In addition, the lessee shall pay to the state on the reserved fraction any bonus actually paid or agreed to be paid to the lessee for such oil or gas.

(3) All royalties, whether in money or in kind, shall be delivered to the state free of cost and deductions.

History: 77-3-402, MCA; IMP, 77-1-202, 77-1-301, 77-3-401, 77-3-432, 77-3-433, and 77-3-434, MCA; NEW, Eff. 23/5/75; AMD, 1983 MAR p. 129, Eff. 2/11/83; TRANS, 1996 MAR p. 2384; MCA; AMD, 2005 MAR p. 2255, Eff. 11/11/05.

36.25.211 SHUT-IN OIL ROYALTIES

(1) An operator of an oil well producing upon state lands pursuant to a state oil and gas lease, may apply to the director of the department of natural resources and conservation to temporarily shut-in an oil well for a one year period of time. If the director of the department has shown the three elements as listed below, the director may allow the operator to temporarily shut-in the oil well for one year period of time upon the operator's payment of shut-in oil royalties. The operator must show that:

(a) the oil well is incapable of producing in paying quantities at current market values for the oil produced;

(b) a significant amount of oil production can be recovered in the future from the producing formation through the use of equipment presently used at the well head of the oil well;

(c) the well is currently capable of producing in paying quantities should the market value of the oil produced be equal to \$25.00 per barrel.

(2) Production in paying quantities for the purposes of this rule is defined as production in quantities sufficient to yield a return in excess of operating costs, even though drilling and equipment costs may never be repaid and the undertaking as a whole may ultimately result in a loss.

(3) All direct costs incurred in the prudent operation of a lease whether paid or accrued may be considered as proper expenditures in the calculation of operating costs. These direct costs include, but are not limited to: labor, trucking, supervision, office maintenance, bookkeeping and accounting, treating oil to make it marketable, and maintenance and repair of roads, entrances, fences, and gates. The bonus paid for the lease, drilling costs, and costs of lease equipment shall not be considered to be direct costs of operation.

(4) In determining whether to allow the extension of the lease by payment of shut-in royalties, the director may also consider whether the temporary shut-in of the oil well would adversely affect correlative rights or the operator's implied covenant to offset drainage occurring on the lease.

(5) Shut-in oil royalties shall be in the amount of \$100.00 per lease per year or the amount of the annual lease rentals, whichever is greater. Shut-in royalties must be paid within 30 days of the director's decision to allow extension of the lease by payment of shut-in oil royalties. As long as such leased lands contain an oil well capable of production as described by the three elements listed above, and shut-in royalty payments are made, the lease shall be considered a producing lease under the lease terms. The lease will be held by the payment of shut-in oil royalties for 1 year effective on the 1st day of the month following the month in which shut-in oil royalties are received by the department.

(6) No equipment shall be removed from the lease while the lease has been extended by the payment of shut-in oil royalties, so as to render the well incapable of production. Nothing in this rule shall be construed to prevent repair or replacement of

equipment necessary for production. Each oil well temporarily shut-in by operation of this rule shall be maintained so as to be immediately operable.

History: 77-3-402, MCA; IMP, 77-1-202, MCA; NEW, 1986 MAR p. 2010, Eff. 12/12/86; TRANS, 1996 MAR p. 2384.

36.25.212 ASSIGNMENTS AND TRANSFERS

(1) The assignment of any lease, either in whole or as to subdivision of land embracing not less than 40 acres covered thereby, made to an assignee qualified as provided under the law and these regulations is permitted. Such assignment is not, however, binding upon the state until filed with the department, accompanied by the required fees, together with proof of qualifications of the assignee as a lessee, and until the assignment is approved by the department. For the purposes of this rule, any lot, according to the governmental survey, shall be deemed to be a legal subdivision of land embracing not less than 40 acres. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interests of the state in the premises assigned will not, in the judgment of the department, be prejudiced thereby. Until such an assignment is approved, the lessee of record shall continue fully liable and responsible for all of the requirements and obligations of the lease. In the case of a partial assignment, i.e., assignment of a full interest in only a portion of the leased premises, a new lease is issued for the assigned acreage, with the same expiration date as the original lease. A new ledger sheet is written and the original lease is adjusted accordingly. The original lessee and the assignee assume full liability for their respective leases.

(2) The assignment of any oil and gas lease, either in whole or in part, to more than one assignee will be permitted if the proposed assignment is otherwise in compliance with the foregoing requirements; however, any such assignment will not be approved until one of the assignees is designated to act as agent for the purpose of receiving any and all notices from the department given in connection with the lease and meeting all requirements and obligations under the lease.

(3) Assignment of undivided, fractional interests in any lease, either as to the whole of the leased premises, or as to any portion thereof, is arranged by having the lessee assign title to the acreage in question to himself and the assignee. The assignment may show the respective shares of interest but the transaction is approved as a transfer of title only and without recognition of the respective interests.

(4) All other assignments of oil and gas leases or interests therein are subject to the approval by the department, and are binding upon the state in the discretion of the department.

(5) Assignments involving overriding royalties or containing certain reservations by the assignee are approved as transfers of title only and without recognition of such overriding royalties or special terms and conditions.

(6) An assignment or transfer on the form currently approved by the board will be acceptable. Evidence of transfers by operation of law should be in the form of a certified copy of the appropriate court order or decree or similar document, such as letters of administration to executor or administrator, decree of distribution, executor's deed or sheriff's deed.

(7) Any transfer, by operation of law, to an unqualified lessee will be recognized by the department for a period of time in no event longer than one year, and only for the purpose of the further transfer of the interest to a qualified lessee.

(8) The department shall notify the parties to any assignment or other transfer submitted for approval of the approval or non-approval thereof.

(9) As to development and production, the lease is regarded as indivisible so that drilling or securing production on any part of the severally assigned tract will inure to the benefit of all segregated parts of the original lease.

History: 77-3-402, MCA; IMP, 77-3-438, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

36.25.213 SURRENDER OF LEASE

(1) The lessee under any oil and gas lease granted by the state may at the termination of any rental year, by giving to the department 30 days of previous notice in writing, surrender and relinquish to the state any legal subdivision of the lands leased, and be discharged from any obligation not yet accrued as to the lands so surrendered and relinquished, without prejudice to the continuance of the lease as to lands not surrendered or relinquished.

(2) Although no particular form of surrender is required, such surrender must be in writing, must sufficiently identify the lease sought to be surrendered, and must specifically describe the lands to be surrendered, whether all of the lease premises or a portion only.

(3) Such written instrument of surrender and relinquishment must be signed by the owner of the lease as shown by the records of the department. If more than one person owns the working interest in a lease, either all such owners must join in a joint surrender of the lease or each must submit a separate, written surrender.

(4) If operations have been conducted on lands which lessee desires to surrender, the lessee shall also submit with his written instrument of surrender evidence of the proper plugging and abandonment of any hole drilled on the lands, together with evidence that he has restored the premises in accordance with ARM 36.25.217.

(5) If timely notice is given by the lessee of an intent to surrender lands, but the instrument of surrender is inadequate under the rules herein set forth, or if any additional required information is not timely supplied by the lessee, such informal notice of intent to surrender shall be effective to relieve the lessee of any obligation to pay further rental on the acreage to be surrendered, provided that an instrument of surrender and any additional required information is supplied to the department within 60 days after the surrender date as intended and sought by the lessee.

History: 77-3-402, MCA; IMP, 77-3-439, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

36.25.214 FORFEITURE, CANCELLATION, AND TERMINATION OF LEASES

(1) Every oil and gas lease granted by the state is subject to forfeiture and cancellation thereof upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the department and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default. Before any lease is declared forfeited or

canceled, the department shall issue written notice to the lessee of the proposed forfeiture or cancellation and if, within 10 days after receipt of the notice, the lessee makes written application for a hearing on the matter, the lessee shall be granted a hearing before the department and no forfeiture or cancellation shall become effective until after such hearing and until the department confirms the original decision and intent to forfeit or cancel the lease, based upon the hearing. Following such hearing, notice of the decision shall be given to the lessee. Such decision may be for immediate cancellation of the lease without further opportunity of the lessee to correct any default, but the department may also grant the lessee a further extension of time within which to perform certain specified required acts in order to continue the lease, failing which the lease will automatically terminate without further notice or hearing.

(2) Promptly upon receipt of such notice that a lease is to be canceled or forfeited, if the lessee does not within the permitted 10 days period apply for hearing on such notice, and promptly after receipt of the final decision to cancel or forfeit the lease, following hearing on the matter, if the lessee does not appeal, the lessee shall furnish the department with written instrument of surrender of the lease as required under the provisions of ARM 36.25.213.

History: 77-3-402, MCA; IMP, 77-3-403 and 77-3-440, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

36.25.215 POOLING AGREEMENTS AND UNIT AGREEMENTS

(1) The board is authorized to enter into pooling agreements and unit agreements for the purpose of pooling and unitizing state lands held under oil and gas leases with other lands. In connection with such agreements the board is authorized to modify any state lease with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation; however, no such agreement may change the percentage of royalties to be paid to the state from the percentage as fixed in the lease computed on the production of oil and gas allocated to the state lands within such pooled or unitized areas. Oil and gas produced from any part of a unit in which state lands are included by virtue of a pooling or unit agreement are considered to be produced from the state lands therein for purposes of these rules and regulations.

(2) No particular form of pooling agreement or unit agreement is prescribed or required by the board. However, if the unit agreement is in form as prescribed by the United States geological survey for unitized operations affecting federal lands, the commitment of state lands to such unit agreement will normally be effected by means of the execution by the board of an approval and certification on the form adopted by the board on June 12, 1968. In all cases it is recommended, although not required, that the proposed form of pooling agreement or unit agreement be submitted to the board for preliminary approval prior to execution by the other participants.

History: 77-3-402, MCA; IMP, 77-3-430, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

36.25.216 OPERATING AGREEMENTS

(1) Any lessee may enter into agreements with another person for drilling and other operations for oil and gas on state lands under his lease or leases. However, no such

operating agreements are in any way binding upon the state until filed with and approved by the department.

History: 77-3-402, MCA; IMP, 77-3-429 MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

36.25.217 OPERATIONS ON STATE LEASES

(1) The lessee shall conduct all operations subject to such inspections as the department shall decide to make and shall carry out at the lessee's expense all reasonable orders and requirements of the department relative to the prevention of waste and preservation of property. On the failure of the lessee to do so, the department shall have the right, together with other recourse herein provided, to enter on the property to repair damages or prevent waste at the lessee's expense.

(2) In all operations on lands leased pursuant to these rules and regulations, the lessee shall use the highest degree of care and all proper safeguards to prevent pollution of earth, air or water by hydrocarbons or other pollutants, excepting that pollution which is allowed, if any, by these rules and regulations and the rules and regulations relating to oil and gas published by the oil and gas conservation division of the department. In the event of pollution, directly or indirectly caused by lessees operations on lands leased pursuant to these rules, lessee shall use all means at its disposal to recapture escaped hydrocarbons and other pollutants and shall be responsible for all damage to public and private properties, including bodies of water of any sort, whether above or below the surface of the earth.

(3) To minimize conflicts with the owner or lessee of the surface of the land leased, lessee hereunder shall:

(a) provide the surface owner or lessee with a plan for location of all facilities;

(b) consult with the surface owner or lessee regarding a reasonable location of access roads. The access roads must be located along section lines and existing roads to the fullest extent possible and they must disturb as little acreage as possible unless the surface owner agrees otherwise. In locating the roads, priority shall be given to minimizing interference with the surface owners or lessees operations. The lessee shall make just payment to the surface owner for all damage done by reason of his entry upon, and use and occupancy of, the surface of the land.

(4) When any oil or gas well drilling operation is commenced on land leased pursuant to these rules, any topsoil on affected lands shall be removed and stockpiled on the site. The lessee shall take all reasonable, necessary steps to insure the preservation of the stockpiled topsoil including a temporary vegetation cover to prevent erosion. At the completion of oil or gas recovery operations, and upon the final abandonment and completion of the plugging of any well, the lessee shall, unless the owner of the surface requests otherwise and executes a release to that effect, restore the surface of the location to its original contours as far as reasonably possible, redistribute the topsoil, and reseed the land with native grasses and/or native plants as prescribed by the department.

(5) Each lessee, in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the lands and to prevent the entrance of water through wells drilled by him to the oil and gas sands or oil or as bearing strata to the destruction or injury of the oil or gas deposits.

(6) On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the department for the preceding calendar month on a form the department prescribes. The report shall show the amount of oil or gas produced and saved during the preceding month, the amount of oil and gas sold, the price obtained, the total amount of all sales, and additional information as required on the form. The reports shall be signed by the lessee or some responsible person having knowledge of the facts reported, and shall be accompanied by payment of the amount due the state as royalty for the month covered by the report, unless the state's royalty is being or has been paid direct by the purchaser of the production. When the lessee is required by the oil and gas conservation board to file a completion report (form 4) with that board, he shall also file one copy of the completion report with the department of natural resources and conservation.

(7) A lessee is required, upon completing a commercially productive oil or gas well upon the lease premises, to proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive, or to such depth as may be necessary to economically test, develop and operate the deposits discovered. As to lands found valuable for oil production, no lessee will be required to drill to completion more than one well under any one lease during any one calendar year, or a total number of wells under any one lease in excess of the total number of 40 acre subdivisions of land held under such lease. As to lands found valuable for gas production only, the drilling obligation of the lessee shall be confined to a total number of wells equal to the total number of tracts comprising 160 acres of land included in the lease, of which total number of wells the drilling on not more than one will be required in any one calendar year. However, notwithstanding the foregoing general rules, if wells drilled on land contiguous to the state lands require, in the discretion of the department, greater diligence in drilling and a greater number of wells to be drilled on the state lands to protect the lease premises and deposits from loss, depletion or uncompensated drainage due to the wells on the contiguous lands, such greater diligence and greater number of wells may be required. All such requirements, however, shall be subject to, and shall not be inconsistent with, applicable rules, regulations and orders of the oil and gas conservation division of the department.

(8) Performance of well drilling operations as required by the foregoing rule may be suspended only by and with the consent of the board during the time oil or gas previously discovered cannot be marketed at a profit, or for other good cause shown. When such suspension of drilling operations is deemed necessary and desirable by the lessee, the lessee shall submit a written statement of reasons therefor to the board. If the requested suspension of drilling operations is approved by the board, it shall issue to the lessee a statement or certificate authorizing the suspension for a time certain and require the lessee, within such time certain, to make written application to the board for any further extension of the time in which such drilling operations may be suspended.

(9) Upon the termination for any cause of any lease, the lessee has 6 months after the date of the termination to remove all machinery, fixtures, improvements, buildings and equipment belonging to him on the premises, except casing in any well capable of producing oil or gas and other equipment or apparatus necessary for the preservation of any well capable of producing oil or gas in quantities sufficient to pay for the operation of such well. With respect to any well which has not been completely plugged and

abandoned by the lessee prior to the termination date, the lessee shall not remove casing or equipment from the well nor plug and abandon it without written approval from the department for such action.

(10) If upon the termination of any lease there is located on the lease a well capable of producing oil or gas and if the succeeding lessee, or in the event there is no succeeding lessee, the state, wishes to have the casing, equipment and apparatus necessary for preservation of the well left upon the premises, that party shall pay to the lessee under the terminated lease the reasonable value of such property. If the succeeding lessee or the department is unable to agree with the former lessee upon the reasonable cash value of such casing, equipment and apparatus, the succeeding lessee or the state, as the case may be, shall pay in cash, to the former lessee a sum fixed as a reasonable price by a board of 3 appraisers, one of whom shall be chosen by the succeeding lessee or the state, one by the former lessee, and the third by the two so chosen. Its appraisal shall be reported to the respective parties in writing, and is final and conclusive. Each party will pay the cost of the appraiser which it selects, and the parties will bear equally the cost of the third appraiser. The former lessee may remain in possession and manage the land and property formerly covered by his lease until the value of the casing, equipment and apparatus which the succeeding lessee or the state desires to have left upon the premises is fixed in the manner provided in this rule and has been paid to him in cash. During the time the former lessee remains in such possession, he may retain the same share of the products of the premises as inured to him during the term of his lease. Should the state or the succeeding lessee not desire any of the lessee's property as provided in these rules, the lessee shall properly plug all wells and remove all of his property from the lands.

(11) Any casing, machinery, fixtures, improvements, buildings and equipment belonging to any lessee and not removed within 6 months after the date of termination of the lease shall, upon the expiration of the 6 months' period become the property of the state. However, the claiming of such property from the lands, or any of such actions, shall not relieve the lessee of his obligation to properly plug and abandon all wells, to remove all debris and equipment from the lands, and to restore the premises to their condition prior to drilling operations as far as reasonably possible.

History: 77-3-402, MCA; IMP, 77-3-426, 77-3-428, 77-3-431, and 77-3-442, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

35.25.218 RESERVED

36.25.219 HEARINGS AND APPEALS

(1) It is the desire and intent of the board that any lessee or prospective lessee be given full and adequate opportunity to be heard with respect to any matter affecting the interests of the lessee in any particular lease. Any hearing will be conducted informally, without adherence to the strict rules of evidence of a court of law.

(2) A verbatim, written record of any hearing or rehearing will be made if any party in interest so requests not less than 5 days prior to the day set for hearing, and provided the requesting party agrees to pay the cost thereof, including the cost of the original copy of the transcript which shall become a part of the case record and remain on file with the department. The party requesting such verbatim record may be required to

deposit in advance the anticipated cost of the record. If such written record is made, it shall be certified as true, correct and complete.

History: 77-3-402, MCA; IMP, 77-3-403, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

36.25.220 RECORDS

(1) A separate file and record shall be kept on each hearing held on application of a lessee or prospective lessee. Such separate file shall contain the written application for the hearing, a copy of the notice given which gives rise to the hearing, evidence of the mailing thereof, and the transcript of the hearing, if prepared.

(2) The department shall maintain a record of the publication of notices of all lease sales. Such record shall consist of published copies of such notices or affidavits of publication as provided in 26-1-1011, MCA.

History: 77-3-402, MCA; NEW, Eff. 12/5/75; TRANS, 1996 MAR p. 2384.

35.25.221 and 35.25.222 RESERVED

36.25.223 MINIMUM RESTRICTIONS ON SURFACE ACTIVITY

(1) The lessee shall not conduct any seismic surface activity which will disturb the surface or move the earth within 300 feet of any water source including but not limited to wells, springs, streams, lakes, or reservoirs unless permission is received in writing from the director.

(2) The lessee shall not conduct any seismic drilling or blasting activity within 1320 feet of any building or similar structure, water well or spring or within 660 feet of any reservoir dam unless permission is received in writing from the director.

(3) The lessee shall not be allowed to occupy, utilize or conduct any activity on the surface of any river or lake bed or island unless permission is received in writing from the director.

(4) The written permission specified in this rule shall not be unreasonably withheld; however, the director shall not grant such permission unless he determines that the proposed activity will not cause significant adverse environmental effects. The director shall make his decision within 30 days of receipt of written request for such permission.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1981 MAR p. 1105, Eff. 10/1/81; TRANS, 1996 MAR p. 2384.

36.25.224 ADDITIONAL RESTRICTIONS - STIPULATIONS

(1) The department may place stipulations on leases, at the time of issuance when necessary to protect the land and its resources. Written notice of all proposed stipulations shall be given prior to sale of the lease.

(2) The department may restrict surface activity on any lease at any time when adverse or unusual weather conditions require such restrictions to prevent accelerated erosion, fires or disruption of seasonal wildlife use. The department shall consult with the lessee prior to restricting surface activity and may allow limited activity or activity with mitigating measures.

(3) The department may restrict surface activity on any lease at any time that historical or archaeological resources of significance, as determined by the state historical preservation office, are discovered on the land under lease.

(4) If restrictions pursuant to (2) and (3) prevent the lessee from complying with drilling provisions or production requirements the lease shall be extended to allow a reasonable time to comply with such requirements. This provision shall be liberally construed to prevent forfeiture or cancellation of the lease because of restrictions.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1981 MAR p. 1105, Eff. 10/1/81; TRANS, 1996 MAR p. 2384.

36.25.225 COMPLIANCE WITH LEASE STIPULATIONS AND RESTRICTIONS

(1) The lessee shall comply with all restrictions and stipulations placed upon the lease by the board or the department. If a violation of a restriction, stipulation or other resource conservation requirement contained in these rules is discovered, the lessee will be notified and given an opportunity to correct the violation and repair any damage. If the damage is not repairable the lessee shall mitigate the damage to the greatest extent possible. If the violation is not corrected, repaired or mitigated within the time specified by the department, the lease shall be canceled as provided in ARM 36.25.214.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1981 MAR p. 1105, Eff. 10/1/81; TRANS, 1996 MAR p. 2384.

35.25.226 through 35.25.229 RESERVED

36.25.230 APPLICATION FOR SEISMOGRAPHIC PERMIT

(1) A person wishing to prospect for oil and gas by geophysical methods on state lands for which it does not hold an oil and gas lease is required to sign and submit two executed copies of a seismographic exploration permit application, on forms provided by the department, with a \$10.00 fee, to the mineral leasing bureau of the department.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1980 MAR p. 3122, Eff. 12/27/80; TRANS, 1996 MAR p. 2384.

36.25.231 PROCEDURE FOR ISSUANCE OF SEISMOGRAPHIC PERMIT

(1) In order to obtain a permit the applicant shall:

(a) be qualified to do business in the state as shown by records of the secretary of state;

(b) file a surety bond, as required, with the secretary of state;

(c) furnish proof (such as copies of letters) that it has notified the surface owner or lessee of the approximate time schedule of activities on the land;

(d) provide the name and permanent address of the geophysical exploration firm which will be doing the actual work on the land, and the name and address of any designated agent of the geophysical exploration firm;

(e) provide a legal description of the surface areas where geophysical activity will take place; and

(f) provide written or oral notification from the oil and gas lessee of permission to conduct exploration on lands covered by an oil and gas lease.

(2) A permit is valid for one calendar year from the date it is granted.

(3) The permit does not grant any rights to an oil and gas lease on or any interests of any kind in the land covered by the permit.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1980 MAR p. 3122, Eff. 12/27/80; TRANS, 1996 MAR p. 2384.

36.25.232 SURFACE LIMITATIONS FOR SEISMOGRAPHIC PERMIT

(1) The permittee shall confine all surface activity to improved roads during periods when the land surface is wet or is in such a condition that it may be damaged from travel by heavy vehicles or trucks. During all other periods, the permittee shall confine all activity which may disturb the surface to existing trails and terrain which is easily accessible to normal four-wheel drive travel without winching or other artificial means. The permittee shall not conduct any type of road construction activity, including but not limited to, blading and dozing existing roads and trails, constructing stream crossings, or removal of brush and trees, without the written permission of the department. The department may grant such permission only after the permittee has submitted evidence of conditions which require such road construction and a plan for the road construction which protects the land surface as much as practicable. The department may impose requirements on such construction in order to protect the land surface from erosion or other damage.

(2) The permittee shall not conduct any type of geophysical testing or measuring which will disturb the surface or move the earth within 300 feet of any springs, streams, lakes, water wells, or water storage reservoir facilities. The permittee shall not conduct any drilling or blasting activities within 1320 feet of any building, structure, water well, or spring or within 660 feet of any reservoir dam without the written consent of the department. The department may impose further restrictions when the particular situation warrants other precautions.

(3) In all operations on the lands covered by the permit, the permittee shall interfere as little as practical with the use of the premises for any other purpose to which the same may have been leased or sold by the state. All necessary precautions shall be taken to avoid any damage other than normal wear and tear to gates, bridges, roads, cattle guards, fences, dams, and other improvements.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1980 MAR p. 3122, Eff. 12/27/80; TRANS, 1996 MAR p. 2384.

36.25.233 OPERATIONS PURSUANT TO A SEISMOGRAPHIC PERMIT

(1) Exploration operations shall be conducted in compliance with all federal, state, and local laws, and all ordinances, rules and regulations which are applicable to such operations. Particularly, permittee shall comply with the oil and gas rules on state lands, oil and gas lease stipulations, if any, on those lands, and the bonding requirements before commencing operations.

(2) The permittee shall take such measures for the prevention and suppression of fire on the permit area and other adjacent lands used or traversed by the permittee as are required by applicable laws and regulations. When in the opinion of the department weather and other conditions affecting fire incidence and control make special precautions necessary to protect the area, the permittee shall take such additional or other fire prevention and control measures as may be required by the department.

(3) The permittee shall obtain appropriate permission to use water necessary for the exploration activities. This normally will require a permit from the owner of the water right.

(4) The permittee shall make satisfactory adjustment of any damages sustained by the owner to the surface of the lands or sustained by the surface lessee to his leasehold interest in connection with operations by the permittee. The surface lessee should not receive damages over and above his annual rental unless special circumstances are demonstrated.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1980 MAR p. 3122, Eff. 12/27/80; TRANS, 1996 MAR p. 2384.

36.25.234 SEISMOGRAPH PLUGGING AND ABANDONMENT

(1) Except as hereinafter provided, all seismic holes shall be plugged as soon after being utilized as reasonably practicable; however, in no event shall they remain unplugged for a period of more than 120 days after being drilled and shot.

(2) The permittee shall notify the department, in writing, of its intent to plug and abandon, including the date such activities are expected to commence, the location by section, township, and range of the holes to be plugged and the name and telephone number of the person in charge of the plugging operations.

(3) All seismic shot holes shall be plugged in accordance with the board of oil and gas conservation rules. All cuttings not placed in the hole shall be spread out over the surrounding area at a depth not to exceed 1 inch.

(4) If an artesian water flow is encountered in any of the drill holes located on state land, the permittee shall immediately notify the department so that a decision can be made by the department as to whether the well will be developed. The department shall make a decision within 24 hours of notification. If the well is not developed, or if damage is occurring or is imminent, it is the permittee's responsibility to plug the hole with cement of sufficient density to contain the waters to their native strata as required by the board of oil and gas conservation rules. If a nonflowing aquifer is encountered in any of the drill holes on state land, the permittee shall notify the department in writing of the location and depth.

(5) The permittee shall leave the land covered by the permit in as nearly the same condition as it was prior to the effective date of the permit as is practically possible. All refuse, including, but not limited to, oil cans, shot wire, powder boxes, flagging, cement or mud sacks, stakes, and primacord shall be removed from the lands and shall be properly disposed of by the permittee.

(6) A seismic shot hole may be left unplugged at the request of the surface lessee or owner for conversion to a fresh water well provided the surface lessee or owner executes a release on a form provided by the department relieving the permittee from any liability for damages that may thereafter result from the hole remaining unplugged.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1980 MAR p. 3122, Eff. 12/27/80; TRANS, 1996 MAR p. 2384.

36.25.235 CANCELLATION OF SEISMOGRAPHIC PERMIT

(1) If the department determines that any person has violated any of the provisions of these rules or the permit, the department shall take the necessary action to assure

compliance, including cancellation of the permit. Such cancellation is not a waiver of other remedies available to the state.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1980 MAR p. 3122, Eff. 12/27/80; TRANS, 1996 MAR p. 2384.

36.25.236 SEISMOGRAPHIC PERMIT CHARGES

(1) Charges for exploration purposes on state lands on which the state owns the surface shall be paid to the department at the rate of at least \$50.00 per hole or \$100.00 per mile for vibroseis, surface charges or other surface activity, depending on the exploration procedures used.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1980 MAR p. 3122, Eff. 12/27/80; TRANS, 1996 MAR p. 2384.

36.25.237 REPORT UPON TERMINATION OF SEISMOGRAPHIC PERMIT

(1) Within 6 months after termination of a permit, the permittee shall submit to the department an affidavit setting forth the following:

- (a) the nature of the tests conducted;
- (b) a narrative description of or a map showing the number and location of sites where tests were conducted; and
- (c) the location and depth of any geologic formations which may be capable of producing water in usable quantities that are discovered in testing. The submission of a driller's log shall satisfy this requirement.

(2) The permittee shall maintain records (including receipts and/or check or draft numbers) of amounts paid, if any, to surface owners or lessees in settlement of damages. The permittee shall make the records available for the department's review upon requests of the department.

History: 77-3-402, MCA; IMP, 77-3-401, MCA; NEW, 1980 MAR p. 3122, Eff. 12/27/80; TRANS, 1996 MAR p. 2384.

[END]

Montana Code Annotated 2019

TITLE 77. STATE LANDS

CHAPTER 3

Part 5. Underground Storage of Natural Gas

77-3-501. Lease for underground storage of natural gas authorized. (1) The board is hereby authorized and empowered to lease in such manner and upon such terms as it may determine, not inconsistent with The Enabling Act and the constitution, state lands to which the title has vested in the state, subject to existing rights, for use for the underground storage of natural gas upon the terms and conditions herein prescribed, to any natural gas public utility authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within, or through this state for ultimate public use.

(2) State lands which may be leased shall include lands in which the deposit of native gas shall have been depleted, provided the lessee pays to the state the amount specified by the board for the native gas then remaining in the lands to be leased.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(1).

77-3-502. Rules. The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for the underground storage of natural gas and the sale of the gas remaining in state lands in a gas field wherein native gas deposits have been depleted.

History: En. Sec. 3, Ch. 213, L. 1955; R.C.M. 1947, 81-1727.

77-3-503. Hearings on questions related to leases. The board may order and hold hearings on any matter or question involving leases issued under [77-3-501](#) under such rules as it adopts.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-504. Lessee's right to hearing. Any lessee, upon application, is entitled to a hearing on any notice or demand of the department before any lease is granted, forfeited, or canceled by the board.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-505. Bond of lessees. A lessee under [77-3-501](#) shall furnish bond to the state in a form prescribed by the board and in an amount adequate to indemnify the state against loss, damage, or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease. No bond in excess of \$20,000 is required under any one lease.

History: En. Sec. 4, Ch. 213, L. 1955; amd. Sec. 95, Ch. 428, L. 1973; R.C.M. 1947, 81-1728.

77-3-506. Disposition of leased land. In every lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under a lease provided for by this part.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(2).

77-3-507. Lessee to prevent waste. (1) Leases issued under the provisions of this part shall all be subject to the conditions that the lessee in conducting the underground storage of natural gas shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled to store natural gas to the oil or gas sands or oil or gas bearing strata to the destruction or injury of oil or gas deposits.

(2) Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the board.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(3).

77-3-508. Duration of lease. All leases issued under [77-3-501](#) may be granted for a period not exceeding 20 years, and the lessee has a preferential right to renew the lease for an additional period not exceeding 20 years, subject to any terms and conditions the board imposes.

History: En. Sec. 2, Ch. 213, L. 1955; amd. Sec. 94, Ch. 428, L. 1973; R.C.M. 1947, 81-1726.

77-3-509. Disposition of funds. All rentals collected for or under leases issued under [77-3-501](#) shall be paid to the department and credited in the same manner as rentals from oil and gas leases.

History: En. Sec. 6, Ch. 213, L. 1955; amd. Sec. 97, Ch. 428, L. 1973; R.C.M. 1947, 81-1730.

77-3-510. Cancellation and forfeiture of lease. All leases granted under [77-3-501](#) shall provide for their forfeiture and cancellation upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the department and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-511. Termination and surrender of lease. The lessee may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish such lease to the state and be thereupon discharged from any obligation not yet accrued.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(1).

77-3-512. Disposition of lessee's property upon termination of lease. Upon the termination for any cause of any lease issued under [77-3-501](#), the lessee has 6 months after the date of the termination within which to remove all machinery, fixtures, improvements, buildings, and equipment belonging to it upon the premises.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(2).

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