

FIRST NATIONS REGULATORY MEMORANDUM

TO: Indian Resource Council Member First Nations

FROM: JTC-1 First Nations

RE: JTC-1 First Nations Recommendations and Comments on Second Draft of Indian Oil and Gas Regulations

Date: April 14, 2015

The table below sets out the JTC-1 First Nations comments on the second draft Indian Oil and Gas Regulations, dated February 18, 2015 (the “**Second Draft**”).

In preparing this memorandum, we made the following assumptions and utilized the following abbreviations:

- 1) The “Existing Regulations” refers to *Indian Oil and Gas Regulations*, SOR/94-753.
- 2) The “First Draft” refers to the first draft of new Indian Oil and Gas Regulations, dated February 25, 2014 (the “**First Draft**”).

The table below also identifies some, but not all, of the differences between the First Draft and the Second Draft.

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
s. 1 - Definitions	s. 1 - Definitions	s. 2	<i>JTC1FN Comment:</i> There are some discrepancies between the French and English definitions. While some terms have yet to be defined in both languages, others have conflicting definitions. For example, “ <i>offset period</i> ” in French states that where a well that is subject to an offset notice issued after a provincial authority has lifted the requirement for information to be kept confidential under the	Agreed. We have asked the drafters to ensure the definition of “offset period is the same in French and English. The jurilinguists will ensure definitions are consistent in both English and French.	<i>JTC1FN Recommendations:</i> the definition for “productive” changed. In particular, it does not explicitly separate the case of a well pre-completion and the case of a well post-completion. The First Draft made that separation and it is worthwhile to avoid ambiguity. In particular, it should be clear that the criteria of “incurring the costs of completing” should be restricted to

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
			Act, the offset period ends 90 days after the offset notice was issued. This portion of the definition does not exist in the English version.		<p>uncompleted wells. The Existing Regs and the First Draft make that clear.</p> <p>The definition for “well” was removed. The term “vertical well” is used but it is not defined. “Vertical well” should be defined in a way that the definitions of “vertical well” and “horizontal well” capture all wells. This is important with respect to the definition of “triggering well”, which only covers horizontal wells and “vertical wells”. To clear up any ambiguity, vertical wells could be defined as “a well that is used in the exploitation of oil or gas other than a horizontal well”.</p> <p>The definition for “pool” was removed. This may create ambiguity with respect to s. 57(1)(f). This is the key provision for continuance related to mapping. IOGC and the First Nations’ interpretation of that provision may be open to challenge if that subsection does not refer to a pool. We note that the First Draft’s s. 52(1)(d) specifically refers to a “pool”. Please see our comments later in this memorandum on s. 57(1)(f). It must refer to a pool and pool should be defined.</p> <p>The definition for “enhanced oil recovery project” was removed. The Second Draft</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
					<p>refers to “bitumen recovery project” and it should be defined.</p> <p>The definition for “producing” was removed. This may cause confusion with respect to the continuance provisions and the definition for “triggering well”, which uses the word “producing”. The definition for “producing” should remain.</p> <p>The definition for “triggering well” needs to add the word “from” in the phrase “producing an”.</p>
GENERAL RULES					
s. 2 – Notices	s. 1(2)				<p><i>JTC1FN Recommendation:</i> the provisions for notice being effective by electronic method should be limited to business days and require a receipt from the recipient. Such terms on receipt line up with other regulations, such as Alberta’s Rules of Court. It would be unfortunate if notices are sent on the Friday afternoon before a long weekend and the First Nation has only 72 hours to respond, such as is the case following the close of tenders. Please see our later recommendation on the unrealistic timing required to reject a winner tender bid (s. 37 of the Second Draft).</p>
s. 5(1)(c) – Eligible	s. 2(1)(c)				<p><i>JTC1FN Recommendations:</i> contract holders cannot have been convicted of an offence</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
Contract Holders					under s. 18(2) of the Act. However, that section covers officers, not the actual corporation. s. 5(1)(c) should also apply to offences under s. 17 of the Act. It should also restrict a corporation’s eligibility if any of the corporation’s officers have been convicted of an offence under s. 18(2) of the Act. As it stands, only those officers are restricted under s. 5(1)(c) of the Second Draft.
Insurance - Removed from Second Draft	s. 5 – 7				<i>JTC1FN Recommendation:</i> The Second Draft removes the insurance requirements from the First Draft. Insurance requirements are important safeguards and should remain in the Regulations. We understand from our discussion with IOGC at the February 25, 2015 JTC-1 meeting that the insurance provisions will remain at our request. That is our request.
s. 11 – Unforeseen Incident	s. 8	No equivalent in Existing Regulations	<p>A contract holder must notify the Minister and council of any unforeseen incident that damages lands or a member of the first nation.</p> <p><i>JTC1FN Comment:</i> This section could be improved by adding the requirement that where an unforeseen incident occurs that damages or <i>has the potential to damage</i> to First Nation lands, the Minister and council are notified</p>	<p>No change at this time.</p> <p>Physical damages will be dealt with in greater detail in the environment module.</p> <p>‘Has the potential to damage’ is too subjective.</p>	<p><i>JTC1FN Recommendation:</i> Damage is also subjective. Notice requirements should be broad and include potential damage or adverse effects. This would align with other regulatory notice provisions, such as Alberta’s Environmental Protection and Enhancement Act (“EPEA”). Under s. 110 of EPEA, persons must report the release of substances that <u>may cause</u>, is causing or has caused an adverse effect.</p> <p>The Second Draft uses the words “contract”,</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
					<p>“operation” and “operator”. None of these are defined. They should be defined in the broadest way possible so that the wording does <u>not</u> limit the circumstances in which notification of property damage must occur. Further, the Second Draft contemplates a “prescribed form”.</p> <p>The notice of an unforeseen incident should be in the fastest and easiest way possible. A prescribed form may delay notice to the Council and the Minister. The requirement for a prescribed form should be removed.</p>
INSPECTIONS					
Removed from Second Draft	s. 11 – Inspection of facilities and operations	s. 47	<p>This section remains largely unchanged with the exception that s. 47(2) of the Existing Regulations was not carried forward into the Draft Regulations. That subsection required a contract holder to make reasonable efforts to ensure that council and the Minister had access to facilities that are located outside of the contract area and are operated by a person other than the contract holder for inspection purposes.</p> <p>JTC1FN Comment: We see no reason for the removal of s. 47(2) of the Existing Regulations. Please provide a rationale.</p>	<p>Section 4.1(1)(q) of the amended Act only allows the Governor in Council to make regulations"</p> <p><i>"respecting inspections, by persons authorized by a written resolution of a First Nation council, of facilities and operations on First Nation lands that are related to exploration for or exploitation of oil or gas, in order to monitor compliance with this Act and the regulations;"</i></p> <p>Note regulation making power is limited to facilities and operations on First Nation lands. The new regulations will have to comply with the authorities in the new Act.</p> <p>That said we will remove all references to</p>	<p>JTC1FN Request: the First Draft provided for greater First Nation involvement by allowing persons approved by the Council to enter a contract area to examine and observe operations and records. The Second Draft removes this provision. IOGC rightly notes that Act has provisions that may allow Council members to attend on site, however, we would request IOGC’s position on how permissive the Minister intends to be under s. 9 of the Act. It is important for Council members to have opportunities to access land in the contract area with minimal restriction.</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
				<p>First Nation Inspections.</p> <p>There are concerns regarding, health and safety, personal protective equipment, qualifications, training (e.g. H2S Alive, First Aid, etc.), etc.</p> <p>Section 8 of the Act allows the Minister to appoint anyone as an inspector.</p> <p>Section 9 of the Act has provisions for person to accompany an inspector both on and outside of First Nation lands.</p> <p>We believe these provisions can be utilized to address First Nation presence at inspections when required.</p>	
INFORMATION					
s. 15 – Well data	s. 50		<p>The Draft Regulations require that significant information on drilling plans, drilling results, well data, recompletion data and abandonment reports be sent to the Minister.</p> <p>The Existing Regulations require substantial information sharing with the First Nation. It includes a weekly operations report for a contract holder engaged in drilling, workover or recompletion.</p> <p>The Existing Regulations (s. 14(5)) also allows the Minister to request any further, non-listed, information that is relevant to the operation.</p>	<p>Section 50 deals with technical well data. Most of this data is not in Petrinex it is submitted to IOGC and the provincial regulator. (i.e. AER) If FN wants the data, it is publicly available from the provincial regulator and they can access it.</p> <p>A requirement allowing the Minister to request additional technical information will be included in the next draft. We will ask the drafters to include a provision similar to section 14(5) of the current regulations in the next draft.</p>	<p><i>JTC1FN Recommendations:</i> the First Draft provided for digital copies of wireline logs. Digital copies satisfy IOGC’s objective of efficiency and we recommend the option for digital copies be retained.</p> <p>IOGC’s commitment to allow the Minister to request additional technical information in the Second Draft does not appear to have been included. It should be included in the Regulations.</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			<p>JTC1FN Comment: We believe that all of the information required under s. 50 may be entered into the Petrinex database. The regulations should make this clear. Otherwise, copies of the information required under s. 50 should also be sent to the First Nation.</p> <p>We also recommend that weekly operations plans be shared with the Minister and the Council during drilling, workover or recompletion.</p> <p>Last, the regulations should include s. 14(5) from the Existing Regulations.</p>	<p>Note all drilling and coring plans are required prior to spudding. We see no need for a weekly operations plan.</p>	
s. 17– Information in reports	s. 12	s. 48	<p>This section remains largely unchanged. The wording of the section is amended to account for changes to the types of subsurface contracts. Rather than confidential seismic information becoming public at the expiration of a permit (where permit is not converted to lease), the information is made public when an initial term of a permit expires and an intermediate term is not granted.</p> <p>JTC1FN Comment: S. 48(3)(b) of the Existing Regulations was not carried forward into the Draft Regulations. That subsection stated that seismic information would become public 5 years after the completion of seismic field work</p>	<p>The Steering Committee agreed to retain 48(3)(b).</p> <p>The Steering Committee also agreed to retain the provision in the current regulations to submit interpreted and un-interpreted seismic data.</p>	<p>JTC1FN Recommendations: S. 17(2) should be restricted to seismic information submitted to the Minister or a Council <u>pursuant to a requirement in the Act, these Regulations or a contract</u>. First Nations may have rights, independent of a contract, to use and disclose a contract holder’s seismic information.</p> <p>The Second Draft removes the requirement to release information, at the latest, one year after expiry/cancellation/surrender of the contract (s. 12(2) of the First Draft and s. 48(2)(a) of the Existing Regs). This requirement should remain in the Regulations.</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			if it had not already been made public due to the expiry of a permit or lease. We see no reason for the removal of s. 48(3)(b) of the Existing Regulations. Please provide a rationale.		
<i>CONTRACT ASSIGNMENT OR AMENDMENT</i>					
s. 19 – Approval of assignment	s. 13-15 – Delayed operation of assignments	s. 49	<p>The Draft Regulations have a new provision that states that an assignment of rights of a contract does not operate until approved by the Minister.</p> <p>The conditions for assigning a contract remain the same with the following changes:</p> <ul style="list-style-type: none"> - The Existing Regulations do not allow an assignment where the assigned interest was less than 5%. This has been lowered to 1%. - The Draft Regulations allow an assignment where the contract holder is in breach of the contract if it is within the 30 day notice period to the holder to remedy the breach. - The Draft Regulations do not allow an assignment where the assignee or an employee of the assignee has been convicted under 18(2) of the Act - The Existing Regulations required the assignee to provide the Minister with evidence it has the financial ability to fulfill its obligations under the contract, where requested by the Minister. This was not carried forward into the Draft Regulations. (s. 49(2)(g)) 	<p>IOGC will not accept conditional assignments. Other jurisdictions do not accept conditional assignments as doing so would be a huge administrative challenge. It is up the companies to do their due diligence.</p> <p>Leave the maximum number of contract holders as is at 5. This provision has not been a problem in the past. We could revisit this provision in the future as part of the continuous change process if need be.</p> <p>We will discuss the issues respecting transfer and assignment with the drafters and will ensure that the concept of transfer is included in the definition of assignment.</p> <p>We will remove 13(3)(d)(i) the provision that royalty must be fully paid as royalty is subject to reassessment due to a number of issues. (We currently rely on industry self reporting so there is not billing. Companies self assess and reassess. GCA is recalculated due to volume allocations or price) Such a provision could unnecessarily hold up assignments. Note: The assignee takes over any financial</p>	<p>JTC1FN Recommendations: the Second Draft only requires the Minister to give notice to Council after approving the assignment. S. 13(4) of the First Draft required notice to Council prior to approving the assignment. This process should be retained as it maintains First Nations involvement on their lands. Assignments should not be surprises to First Nations after the fact. If they are, the relationship between the producer and the First Nation may be negatively impacted.</p> <p>Payment of outstanding royalties at an assignment is an ideal time. If it is required, both assignor and assignee are motivated to clear off outstanding royalties and can do so out of the purchase price. It may save on IOGC’s requirements to collect from delinquent payors. We recommend that payment of outstanding royalties, subject to re-assessment, be a condition of assignments.</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
			<p>The Draft Regulations state (in the English version only) that the Minister must provide council with a copy of the assignment and application for approval. This is new.</p> <p>S. 14 of the Draft Regulations is poorly worded. It states that the Minister must approve the assignment if it meets the criteria for an assignment. This is inconsistent with the council’s ability to approve the application under s. 13(3).</p> <p>JTC1FN Comment: The requirements in s. 13(2)(a) (that assignments be unconditional and (b) (assignments cannot be made if more than 5 persons would have interest in an undivided contract) are only beneficial to the Minister as they reduce administrative burden. They do not present any advantage to First Nations.</p> <p>IOGC committed to including “transfer” in the definition of assignment. Assignment is not defined in the Draft Regulations. We anticipate this will be changed in the next draft.</p>	<p>obligations.</p> <p>We will remove 13(3)(d)(ii) because we want to be able to approve the assignment of a contract that is in default especially if the new company is aware of the default and able to remedy the default. We would not want to be prohibited from approving the assignment in such a case.</p>	
s. 10 – Annual Meeting					<p>JTC1FN Recommendation: We understand that IOGC agreed with JTC1FN’s recommendations that an assignment would trigger a Council’s right to a meeting. However, if there is an assignment, there will not necessarily be a meeting triggered. There will only be a meeting triggered if there is a</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
					change in the designated representative. Single contract holders may not have a designated representative as the appointment of a designated representative for a single contract holder is discretionary (s. 9(1)). S. 10(2) should be expanded to include the case of assignments, not just a change in designated representative.
s. 21(1) – Compliance with laws					<i>JTC1FN Recommendation:</i> S. 21(1)(c) should refer to “any regulations made under the Act” rather than “these Regulations”. We understand that the environment module is forthcoming. It and other regulations under the Act should be paramount.
EXPLORATION					
s. 23-28 – Exploratory licence	s. 21 – 27	s. 6(2) -6(4); 7(2), 8	Under the Draft Regulations, the Minister must consult with council regarding an exploration application and provide a copy of the application, the proposed licence and any additional terms proposed by the Minister. The council may approve the proposed licence with or without modification in which case the Minister must send the applicant (note that the French version requires the applicant to sign the licence, but the English version does not). If the applicant signs the licence within 60 days and pays the licence fee, the Minister must grant the licence. This process is largely unchanged from the	We will ensure wording is clear to indicate that exploration cannot occur without approval of the Band Council Resolution.	<i>JTC1FN Comments:</i> IOGC addressed JTC1FN’s concerns. S. 23(5) of the Second Draft requires a written resolution from Council approving the Licence. <i>JTC1FN Recommendation:</i> We note that the Second Draft removes the requirement for compensation for surface and crop damage (s. 25(b) of the First Draft) and see no reason for this. It should be retained.

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			<p>Existing Regulations</p> <p><i>JTC1FN Comment:</i> A First Nation should have the ability to refuse an exploratory licence. Although this may be the intent of the section, it is not sufficiently clear.</p>		
SUBSURFACE RIGHTS – Disposition of Subsurface Rights					
Provision removed	s. 27(5)	No equivalent in existing regulations	<p>The Draft Regulations limit permit areas to 16 sections.</p> <p><i>JTC1FN Comment:</i> this reduces competitiveness and flexibility for First Nations. There should be no limit on permit areas.</p>	The next draft will be revised to address the proposed change.	<i>JTC1FN Comments:</i> IOGC delivered on this promise. The provision limiting permit area was removed.
SUBSURFACE RIGHTS – Public Tender Process					
s. 34 – Public tender	s. 32 – reserve bid and notice of sale	s. 10(3)	<p>Under the Draft Regulations, Band Council must request that the Minister sell oil and gas rights by public tender. The Minister then sets a reserve bid and is only required to consult with the First Nation. The Minister then prepares a notice of sale.</p> <p>Under s. 32(3), before posting the notice of sale,</p>	<p>The concept of reserve bid has been deleted.</p> <p>This section will be rewritten in the next draft.</p>	<i>JTC1FN Comments:</i> IOGC delivered on its commitment to rewrite the tender process. S. 34 requires Council’s consent or approval for a tender.

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
			<p>the Minister must submit it to Band Council. Despite s. 32(4), which speaks to Council’s approval for posting the notice in certain places, it is unclear if Council’s approval of the notice of sale is required.</p> <p>Under the Existing Regulations, the Minister and Council jointly made a call for tenders.</p> <p><i>JTC1FN Comments:</i></p> <ul style="list-style-type: none"> • The Draft Regulations depart from the joint process in the existing regulations. • S. 32(1) should speak to a joint process between the Minister and the Band Council, rather than consultation on the reserve bid and notice of sale. • S. 32(3) of the Draft Regulations should require Council’s approval before posting the notice of sale. 		
s. 37 – Opening of bids	s. 34 – Winning bidder	s. 10(4)	<p>A representative of Council may be present when bids are opened.</p> <p>The Draft Regulations also provide that “the Minister must accept the highest bid that exceeds the reserve bid”.</p> <p>If there is a tie, the lands must be reposted. The Minister ultimately gives notice to the Band Council of the winning bidder or notice that no bid was accepted.</p>	<p>The Tender process will be rewritten.</p> <p>Council will have the ability to reject all bids.</p> <p>We have previously discussed the prospect of a tied bid with the JTC-1 and suggested that the lands would be reposted. This event does not happen often but it provides the ability for companies to better their original offer.</p>	<p><i>JTC1FN Recommendations:</i> There was no timeline for a Council to accept or reject a tender under s. 10(4) of the Existing Regulations. Now, s. 37(3) requires Council to convene a quorum within 72 hours of the close of tenders to reject the bid with the highest bonus, by way of BCR. The timing is not feasible. Each Council has their own protocols for convening Band Council Meetings. The Regulations should not conflict with First Nation governance. We strongly recommend that the Regulations</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			<p>The Existing Regulations provide that the Minister and the Band Council jointly accept the highest bid or reject all bidders.</p> <p><i>JTCIFN Comments:</i> Again, the Draft Regulations depart from a joint tender process. First Nations require the ability to reject all bids.</p> <p>In addition, the Regulations should provide that in the event of a tie for the winning bid, the First Nation may accept any of the tied bidders.</p>		<p>allow Council to accept or reject a bid, without a time limit as allowed under the Existing Regulations. If IOGC cannot agree to same, there should be at least 45 days to reject a tender by BCR. The goal is to make tenders a viable option for First Nations. Tight time limits on rejection will not accomplish that objective.</p> <p>There is no provision that addresses a tied bid. IOGC’s suggestion for a reposting of the land in a tied bid is a good one and should be included in the Regulations.</p>
SUBSURFACE RIGHTS – Application Process					
SUBSURFACE RIGHTS – Subsurface Contract Rights					
s. 43 – Initial term of permit	s. 42 – Term of permit	ss.16 and 24(1)	<p>The Draft Regulations impose a three year term on both initial and intermediate term permits.</p> <p>The Existing Regulations provide flexibility on the permit length. For permits that convert to leases, the default term is five years but can be a different term as specified in the permit.</p> <p><i>JTCIFN Comment:</i> the fixed initial permit term of three years is problematic for First Nations. It reduces flexibility and competitiveness, particularly in Northern areas where the winter work period is only 4-5 months and practically closer to 4 months. Fixed initial term permits have similar impacts in the Foothills region which comes with high costs and risk. The fixed three year term opens</p>	See Tenure Compromise.	<i>JTCIFN Comment:</i> IOGC delivered on the tenure compromise. Rather than fixed three year initial permit terms, the Second Draft sets permit length based on the provinces’ permit length for the geographic area at issue.

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
			<p>the door to a ‘First Nations discount’.</p> <p>The intermediate term permit length is a reduction from the default term length of leases that converted from permits. This reduction may have competitive impacts and reduce the fair value of First Nation lands. First Nations should retain the ability to tailor intermediate term permit length to their unique geographical and economic factors, as well as factors specific to the proposed contract holder. An intermediate term permit length of three years may be desirable to some First Nations but the inflexibility of the term opens the door to a ‘First Nations discount’.</p>		
SUBSURFACE RIGHTS – Selection of Lands for Intermediate Term of Permit					
s. 39(2)(e) and s. 47 – Lands earned for intermediate term permit	s. 43(1)	s. 20(1)	<p>Under the Draft Regulations, for a permit holder to select lands for an intermediate permit, they must either:</p> <ul style="list-style-type: none"> a) Drill an oil or gas well in the permit area; b) Re-enter a well in the permit area and drill at least 150 m beyond its original depth; or c) Re-enter a well, whipstocked from a point in the well bore and drilled at least 150 m beyond that point. <p>All before the end of the <u>second year</u> of the permit.</p> <p>The Existing Regulations provide for</p>	<p>See Tenure Compromise.</p> <p>Retain re-entry and recompletion earning provisions in 43(1) (b)(c).</p>	<p><i>JTC1FN Comments and Recommendations:</i> IOGC delivered on its commitment to remove the 50%/100% formula. However, ss. 35(2)(b)(iii) and 39(2)(e) of the Second Draft use the terms “drilling commitment” and “deadline”. There may be multiple drilling commitments, each with a different deadline in the initial term of a permit. ss. 35(2)(b)(iii) and 39(2)(e) should refer to “drilling commitments” and “deadlines”.</p> <p>We note that drilling commitments are not subject to renegotiation under s. 49(1), in accordance with the Tenure Compromise (extensions are allowed in limited</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
			<p>conversion to a lease if the permit holder complies with the conditions of the permit, the Regulations and direction given under the Regulations. The conditions of the permit typically include contract depth, earning provisions and drilling commitments.</p> <p>JTC1FN Comment: S. 19(3) of the Drafting Instructions provided that minimum depth would be 150m or more. Because of the 50%/100% earning provision, a minimum depth may be important. However, even a minimum depth creates issues. The earning provisions may be overly generous where two wells are drilled under a permit, one of which targets a shallow resource such as coalbed methane. Permits should instead stipulate contract depth rather than an artificial number in the regulations.</p> <p>S. 43(1)(b) may be too restrictive to industry. Industry participants may see an opportunity to re-enter a shut-in well to the original depth if the economics or technology make it worthwhile. The regulations should provide for such re-entry.</p> <p>Last, the restriction that the drilling occur before the end of the second year of the permit overly restricts First Nations. It may render First Nations land in Northern and foothills areas uncompetitive relative to provincial areas. It</p>		<p>circumstances under s. 56 when drilling or re-entry has begun). The Minister also has discretion to extend in circumstances where delay is “unavoidable” and no prejudice results (s. 5(1)(d) of the revised Act). Please confirm that the Minister’s authority under s. 5(1)(d) will be delegated to IOGCs Executive Director. If not and a Ministerial decision is required, First Nations will face issues in addressing unavoidable circumstances. The Minister’s authority under the Regulations, including under this section, should be delegated to IOGC.</p> <p>IOGC delivered on its commitment to provide for re-entered and completed wells to earn lands, even if they do not drill 150 m beyond the original depth. The earning is only for one spacing unit in these circumstances (s. 47(4)).</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
			will likely justify a ‘First Nations discount’ for bonus payments and royalty rates under permits. First Nations should have flexibility to tailor permit length to their unique geographical and economic factors, as well as industry conditions.		
s. 39(2)(e) – Negotiated permit terms	s. 43(2)	s.20(2)	<p>The Draft Regulations provide that up to 50% of the permit lands may be selected for an intermediate term permit if a well has been drilled or re-entered in accordance with s.43(1) and up to 100% if two wells have been drilled or re-entered.</p> <p>The Existing Regulations provide for land selection that as set out in the call for tenders or permit. If the land selection is not set out in the permit, S.20(2)(b) provides a default earning rate of 50% of the permit area.</p> <p><i>JTC1FN Comment:</i> the 50%/100% earning formula is over-simplified. The regulations should allow flexibility for First Nations to establish earning provisions in a contract. Those provisions will better reflect geography and economics. To the extent that the contract does not specify earning provisions, it may be useful to have a default provision as in the Existing Regulations. That default provision could mirror the 50%/100% earning proposal.</p> <p>On a final note, the 50%/100% earning proposal raises issues of fairness if one of the two wells</p>	See Tenure Compromise.	<i>JTC1FN Comment:</i> IOGC delivered on its commitment as set out above.

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			<p>is drilled to a shallow depth or merely re-entered or whipstocked. If the other well is a deep well, we understand that 100% of the permit area and all zones from surface to the depth of the deeper well would qualify for an intermediate term permit. This would be the case even though only one of the two wells was drilled to the deeper zone. The Draft Regulations do not distinguish between a two well drilling program to a target zone and a one-well drilling program, combined with one well that is re-entered/whipstocked by 150 m.</p> <p>The fixed earning formula may create artificial distinctions between diverse drilling plans. Preserving First Nations’ ability to negotiate earning, among its many advantages, can address such artificial distinctions.</p>		
ss. 43 and 49(2) – Initial term of permit and failure to meet drilling commitment	s. 44 – Expiry of permit	No equivalent in existing regulations	<p>Unless there are extensions, the permit expires after the second year if the permit holder has not drilled or re-entered a well.</p> <p>JTC1FN Comment: S.44 is a blunt instrument to address First Nation complaints regarding companies sitting on the lands. It will apply to all Nations, even those Nations in geographically challenging areas such as the North and the foothills. Those Nations may have an appetite to provide permit holders a longer time frame to drill, as is done in Alberta and Saskatchewan. S.44 opens the door to</p>	See Tenure Compromise.	JTC1FN Comment: IOGC delivered on its commitment as set above. In addition, it delivered on its commitment that the failure to meet a drilling commitment will bring an end to the initial term of the permit. Any earned lands from previous wells would enter the intermediate term.

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
			<p>‘First Nations discount’ in geographically challenging areas.</p> <p>A flexible approach with negotiated drilling commitments and permit term allows First Nations to tailor permits to their geography and time preferences. It protects against ‘First Nations discount’. It also enhances capacity among First Nations.</p>		
ss. 47(2)-(3) – Section of zones and constraints on selection	s. 46 – Approval of land selection	No equivalent in existing regulations	<p>If the permit holder has met the requirements of the permit and the Regulations, the Minister must grant an additional permit term of three years for the selected lands ‘<u>to the base of the deepest zone penetrated by a well in those lands</u>’.</p> <p>JTC1FN Comment: We refer to our comments above on s.43(2) of the Draft Regulations. By earning to the base of the deepest zone penetrated by one well, the second well depth is not taken into consideration.</p> <p>In addition, this section should refer to “intermediate term” rather than “additional term”.</p>	See Tenure Compromise.	<p>JTC1FN Recommendations: It appears that s. 47(4) was intended to apply to s. 47(1)(a) and <u>not</u> s. 47(1)(b). This should be the case. If that is not the case, the Second Draft does not include IOGC’s commitment that failure to reach contract depth would result in the well only earning the applicable spacing unit, and should be amended accordingly. Failure to reach contract depth should only result in earning the applicable spacing unit, at best.</p> <p>The Second Draft does not include IOGC’s commitment in the Tenure Compromise that “the contract holder must identify and notify the Minister of the lands to be earned within 90 days of rig release of the commitment well and before drilling another well”. This should be included.</p>
SUBSURFACE RIGHTS – Operations Under Subsurface Contracts					
	s. 47 – Testing	s. 13	The Draft Regulations require the contract holder to test all prospective and penetrated oil and gas zones that have wireline log evidence of	Again we have health and safety concerns regarding having council attend testing. It was decided to remove this section.	

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1		Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			<p>hydrocarbons in significant quantities.</p> <p>The Existing Regulations also require advance notice to Council and the Minister and allowing them to be present at the testing.</p> <p>JTCIFN Comment: We recommend that the provisions for advance notice to Council be retained. A time element for the advance notice may add clarity.</p>			
SUBSURFACE RIGHTS – Continuation - Not Part of an Enhanced Oil Recovery Project						
			Draft Regulations	Existing Regulations		
s. 57(1)(a) - Continuance	s. 52(1)(a)	s. 24(2)(a)	<p>A spacing unit that contains a producing or productive (capable of producing in paying quantity) well</p> <p>JTCIFN Comment: producing spacing units should also be in “paying quantity”.</p>	<p>Is within a spacing unit with a well that is producing, or capable of producing, in paying quantity</p>	<p>Amend the definition of productive.</p> <p>Suggested wording.</p> <p>“productive” in relation to a well or zone means producing or capable of producing oil or gas in paying quantities.</p> <p>Eliminate the definition of “producing”.</p>	<p>JTCIFN Recommendation: “Producing” should be defined and retained in this subsection.</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1		Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
s.57(1)(b) - Continuance	s.52(1)(c)	s.24(2)(a)	<p>A spacing unit subject to a unit agreement or gas storage agreement.</p> <p>JTC1FN Comment: the spacing unit covered by the unit agreement or gas storage agreement should be producing or productive. This is closer to the Existing Regulations.</p>	<p>Is within a part of a unit operation with a well that is producing, or capable of producing, in paying quantity</p>	<p>Add a stipulation that the unit must be producing .</p> <p>52(c) - take out words ‘spacing unit that is in whole or in part’</p> <p>“productive” in relation to a well or zone means producing or capable of producing oil or gas in paying quantities.</p> <p>Eliminate the definition of “producing”.</p>	<p>JTC1FN Recommendations: IOGC’s commitment to add a stipulation that the spacing unit be producing should be included.</p> <p>Storage agreement should be defined.</p>
s. 52(1)(f) – Continuance by mapping	s. 52(1)(d)	s. 24(2)(b)	<p>A non-producing spacing unit mapped to contain part of a pool from which an adjoining spacing unit</p>	<p>Is determined by the Minister to be within the limits of an oil or gas pool</p>	<p>Changes have been made to address this concern.</p> <p>“productive” in relation to a well or zone means producing or capable of producing oil or gas in paying quantities.</p> <p>Eliminate the definition of “producing”.</p>	<p>JTC1FN Recommendation: The Second Draft’s version of this sub-section removes the word “pool”. This sub-section <u>must</u> refer to a pool and not just a zone. Otherwise, a literal reading of it results in adjacent spacing units being continued with no well and not necessarily a pool connected to the adjoining spacing unit (where there is a well). Such ambiguity may ultimately require litigation to</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1		Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			<p>is producing or productive.</p> <p>JTCIFN Comment: Again, producing spacing units should also be in “paying quantity”.</p>			<p>resolve.</p>
s. 57(1)(c) - Continuance	s. 52(1)(e)	s. 24(2)(a)	<p>A project area</p> <p>JTCIFN Comment: the spacing unit covered by the project area should be producing or productive. This is closer to the Existing Regulations.</p>	<p>Is within a project with a well that is producing, or capable of producing, in paying quantity</p>	<p>Agreed it would appear that if the project is producing or productive those lands would already qualify for continuance. This provision is not needed.</p> <p>Take out reference to project in 52(1)e because as you pointed out the project must be producing or capable of producing in paying quantities. This is already captured in other areas of section 52(1). It should be noted that projects are approved by the provincial regulator not IOGC and therefore should not affect continuance. This would be of particular concern if the project was not producing or productive.</p>	<p>JTCIFN Recommendation: This subsection was not removed. If it remains, it should include a provision that a well in the project be productive.</p>
s. 57(2) – Horizontal wells	s. 52(2) – Multiple spacing units	No equivalent in existing regulations	<p>Under the Draft Regulations, if a well is producing or productive form more than one spacing unit, each of the spacing units is deemed to contain the producing or productive</p>		<p>This section is meant to deal with horizontal wells.</p> <p>Change heading to “Horizontal well</p>	<p>JTCIFN Recommendation: The addition of the word “horizontal” adds some clarity; however, this subsection could lead to confusion. It could either be further clarified</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			<p>well.</p> <p><i>JTC1FN Comment:</i> this provision appears to address a horizontal well situation. Clarity should be provided in the Regulations that this applies to a horizontal well situation. The regulations should <u>not</u> deem spacing units to contain a producing or productive well unless they actually contain a horizontal well. Otherwise, the continuation concept under s. 52(1)(d) could be broadly interpreted under this provision beyond adjacent spacing units.</p>	<p>productive from multiple spacing units”</p> <p>Also add a word to 52(2) For the purposes of subsection (1), if a horizontal well is . . .</p>	<p>or removed as it is superfluous.</p> <p>The uncertainty arises if a contract holder argues that its horizontal well is productive from multiple spacing units due to a pool. Such spacing units could be beyond spacing units adjacent to the horizontal well, thus defeating the provisions in s. 57(1)(f).</p> <p>To remove the uncertainty, the section could read: “For the purposes of subsection (1), each spacing unit that contains a productive horizontal well <u>is deemed to contain a productive well</u>.” However, the second part of the statement is superfluous.</p> <p>We believe that the concept the drafters are attempting to capture is covered by s. 57(1)(a). Under that subsection, where a spacing unit contains a productive horizontal well, it will be continued, even if the wellhead is on the surface of another spacing unit. There is no need for s. 57(2) and it may lead to disagreements, uncertainty and ultimately litigation.</p> <p>However, if IOGC disagrees with the above, it could clarify that the spacing units deemed to be productive under s. 57(2) must be penetrated by the horizontal well at issue.</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
s. 59 – Content of application	s. 53 – Content of application	s. 24(7)	<p>The Draft Regulations require the application for continuation to include a description of lands, the basis for continuation, evidence for that basis and the first year’s rent. The Minister gives 30 days’ notice if information is incomplete.</p> <p>The Existing Regulations are not as clear except for very specific criteria in continuation by mapping that includes “information that, on the date on which the term of the lease was to end, is contained in the Minister’s records.</p> <p>JTCIFN Comment: First Nations should be able to submit information with respect to the basis for continuation.</p>	The Steering Committee has revisited this request and has decided not to provide for a First Nation to provide information respecting continuance. Providing evidence supporting continuance is the responsibility of the contract holder. Having the First Nation submit data would be superfluous.	<p>JTCIFN Recommendation: First Nations’ submission of information would only be superfluous to the extent that the First Nation is content with the contract holder’s submissions to the Minister. If the First Nation disagrees with that information, some of which may include technical and economic interpretation, a First Nation’s involvement could provide valuable information. Further, increased First Nation participation in the management of on-reserve oil and gas assets builds capacity and enhances the working relationship between First Nations and IOGC.</p> <p>The Regulations should allow First Nations to submit information with respect to the basis for continuation.</p>
s. 63(2) – Non-productivity – conventional oil and gas	s. 57(1)	No equivalent in existing regulations	<p>The contract expires one year after the notice (s. 57(1)). A contract holder may apply for a continuation at least 60 days before the contract expires. (s. 57(2)).</p> <p>JTCIFN Comment: s. 57(1) should clarify that it refers to a notice of non-productivity.</p>	<p>Agreed</p> <p>We will clarify section 57(1) to clearly stipulate the section refers to a notice of non-productivity.</p>	JTCIFN Comment: This was clarified.
SUBSURFACE RIGHTS – Contracts that are Part of an Enhanced Oil Recovery Project					
s. 52 - s. 55 – Content of Application and Additional	s. 61 – Additional wells or facilities	No equivalent in existing regulations	<p>Before adding a new well or facility, the holder must obtain the approval of council.</p> <p>JTCIFN Comment: We agree with this requirement, however, First Nations also want</p>	Note this provision applies to adding wells and facilities to a royalty project. It is not in the proper place in the regulation. This clause deals with adding wells or facilities to an approved royalty project. Since this effects	JTCIFN Recommendation: once a First Nation approves a bitumen recovery project by BCR under s. 53(b), the First Nation will effectively have approved the general plans of construction (s. 52(1)(g)) and of storage and

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
wells or facilities			to approve all planned wells and facilities prior to all wells being drilled and facilities being added. It is not clear in the Draft Regulations whether (and when) First Nations will be able to review and approve an enhanced oil recovery project.	royalty and payout the councils consent is needed. In any case the First Nation still approves all surface dispositions. The subsurface contract does not grant surface access. Provision will be reordered and reworded to reflect the intent.	transportation facilities (s. 52(1)(j)), which can be very substantial. SS. 52(1)(g) and (j) should require greater detail of planned wells and facilities so that First Nations can fully assess the expected land disturbance. Even with the requirement for Council’s approval of surface dispositions, general plans at the outset cannot result in a fully informed approval.
s. 54 – Minimum level of production	s. 63 – Application for continuation	No equivalent in existing regulations	An enhanced oil recovery project will be initially continued for a period of 10 years if the minimum evaluation requirements are met. After 10 years, the contract is continued automatically on application by industry. If the lands are not producing the minimum requirements (2400m ³ /section), a 25% royalty is payable on the shortfall. <i>JTCIFN Comment:</i> There is no way to have the lands returned to the First Nation if they are not adequately producing. This is a shortcoming of the Draft Regulations.	The concept is that paying a 25% royalty on any shortfall below the minimum level of production will provide an incentive for the company to surrender lands if they are not productive. No change required.	<i>JTCIFN Recommendation:</i> the wording in s. 54(2) should be clarified to state “...equal to 25% of the difference between the <u>values</u> of the minimum and actual levels of production.”, with the word “compensation” in s. 54(3) replaced with “values”. We note that the Second Draft provides for notices of non-productivity if the bitumen recovery project fails to meet minimum levels of production in any three years under s. 64(1). The reference therein to s. 56(1)(d) should be s. 57(1)(d).
SURFACE RIGHTS					
s. 71 – Term	S .66 – Term	s. 27(3)	The surface contract term extends until it is no longer required by the contract holder for the land use.	Concept is consistent with current practice. Reclamation certificates will be dealt with in a future phase when the environment provisions	<i>JTCIFN Comment:</i> this is an improvement. The surrender now must be approved by the Minister.

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			<i>JTC1FN Comment:</i> Surface rental payments should be paid until a reclamation certificate is issued.	will be fully developed Section 66 Provide that the surface contract term extends until the surface lease surrender has been executed by IOGC.	
ROYALTIES					
s. 77 – Payment of royalty	s. 72 – Royalty to be paid	s. 33	The way in which the royalty is determined remains the same. <i>JTC1FN Comment:</i> Why does s. 72(4) refer to a lease and not a subsurface contract? Is a royalty not payable for a permit as well as a lease?	Agreed to recommendation. Changes will be made in the next draft. We will refer to a subsurface contract. We will need to address existing contracts in a transition clause.	<i>JTC1FN Comment:</i> This change was made.
EXAMINATIONS AND AUDITS					
ss. 79-80 – First Nation Audits and Application	ss. 74-75 – First Nation Audits and Application	No equivalent in existing regulations	A First Nations audit requires Ministerial approval and an agreement between the First Nation and the Minister. The First Nation must apply to the Minister with a list of items. This list includes names of persons who will assist or observe the audit and onerous qualification requirements. <i>JTC1FN Comment:</i> <ul style="list-style-type: none"> • The Minister’s ability to reject an audit request should be limited. • There should be no need to disclose the names of any persons who will assist or accompany the proposed auditor. This is 	IOGC only has the capacity to oversee a finite number of audits in any year. We need to be able to have the ability to limit the number of audits conducted. For security reasons it is necessary to name all persons who will assist in an audit. Section 10 of the Act requires these persons be authorized by the Minister. Section 74 Wording	<i>JTC1FN Recommendation:</i> the Second Draft removed the requirement for the Minister to post a list of the examinations and audits to be conducted during the following 12 months (s. 73 of the First Draft). We are unclear as to why this was removed and are concerned that IOGC will not be allocated sufficient resources to undertake audits. Please provide a rationale for removing s. 73 of the First Draft. We believe keeping it in the Regulations may ensure that the Minister turns its mind to audits it intends to undertake in a year.

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			<p>overly onerous as audit employees may change from time-to-time. The persons who will assist or accompany the proposed auditor would be from the firm conducting the audit. The Minister’s authorization under s.10 of the Act should cover any members of the auditing firm.</p>	<p>The council of a First Nation may conduct an audit or examination</p> <p>Using or may be better because an audit and an examination are different.</p> <p>“Or” should be used throughout this section.</p>	
s. 81 - Qualifications	s. 76 – Requirements – Financial Audit	No equivalent in existing regulations	<p>The financial auditor must be an accountant in good standing, have five years of relevant experience and have sufficient insurance. It also imposes a five year relevant experience requirement on all members of the audit team.</p> <p>JTC1FN Comment:</p> <ul style="list-style-type: none"> The audit team requirements are not feasible. Firms will utilize teams of auditors with varying levels of experience. The experience of the supervising auditor should be sufficient. The proposed team requirement may significantly increase cost. 	<p>Suggested wording for qualifications.</p> <p>Section 76.</p> <p>A qualified person in relation to an audit or examination means an individual, partnership or corporation that has the credentials and experience recognized as necessary in the oil and gas industry to carry out their proposed role in the audit or examination.</p> <p>Use term “Audit or Examination” (throughout document)</p>	<p>JTC1FN Comment: this change was made and is a major improvement.</p>
s. 81 - Qualifications	s. 77 – Requirements – Volumetric	No equivalent in existing regulations	<p>The volumetric auditor and team members all have five years of relevant experience.</p> <p>JTC1FN Comment:</p> <ul style="list-style-type: none"> Again, the audit team requirements are not feasible. The experience of the supervising auditor should be sufficient. The proposed team requirement may significantly increase cost. 	<p>Suggested wording for qualifications.</p> <p>Section 77</p> <p>A qualified person in relation to an audit or examination means an individual, partnership or corporation that has the credentials and experience recognized as necessary in the oil</p>	<p>JTC1FN Comment: this change was made and is a major improvement.</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
				and gas industry to carry out their proposed role in the audit or examination.	
s. 82 - Approval	s. 78 – Authorization	No equivalent in existing regulations	<p>The Minister can reject the audit application if:</p> <ul style="list-style-type: none"> a) Auditor requirements are not met; b) The proposed audit is not on the Minister’s audit plan and the Minister lacks resources and capacity; or c) There has been a previous audit of the same documents and information. <p>JTCIFN Comment:</p> <ul style="list-style-type: none"> • The audit should not have to be on the Minister’s Audit Plan. This is overly restrictive. • The Minister’s capacity should not bar audits – resources should be allocated accordingly based on audit applications. 	<p>IOGC only has the capacity to oversee a finite number of audits in any year. We need to be able to have the ability to limit the number of audits conducted.</p> <p>Note the acceptance will be based on risk, our ability to oversee and support such audit, whether the lands were subject to a previous audit and Acceptance will be based on IOGC’s overall audit requirements.</p> <p>Concept is correct. No change required.</p>	<p>JTCIFN Recommendation: s. 82(1)(b) in and of itself may be a breach of the Crown’s fiduciary duties. It should be removed. To the extent that a First Nation is willing to pay for the audit and the Crown cannot find the resources to review or enforce the audit, the Crown would not likely be meeting its fiduciary duties, let alone other legal duties.</p> <p>Requirements to audit in the Second Draft include:</p> <ol style="list-style-type: none"> 1. Application (s.80); 2. Agreement on who will pay (s. 82(1)(d)); and 3. Ministerial resources to review and enforce (please see comments above).
EQUITABLE PRODUCTION OF OIL AND GAS – Offset Notice					
			<p>JTCIFN General Comment:</p> <p>The Discussion Document Relating to the Process to Amend <i>Indian Oil and Gas Regulations, 1995: Drainage and Compensatory Royalty</i> (the “Drainage Discussion Document”) defines “adjoining” as two spacing units touching at one or more points without considering road allowances and includes “diagonally” adjoining having one common corner and “laterally” adjoining having one</p>	<p>We will ask the drafters to review the definition of adjoining.</p> <p>We will also ask drafters to review the wording in this section to ensure the obligation to pay compensatory royalty applies to the lands described in each offset notice.</p>	<p>JTCIFN Comment: the definition for “adjoining” is improved in the Second Draft by accounting for road allowances.</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
			<p>common side.</p> <p>This definition is preferable to the definition in the Draft Regulations, which is not clear as to whether or not “adjoining” includes diagonally.</p> <p>Similarly, the Drainage Discussion Document contained the following provision: (9) If a spacing unit in a permit or lease Adjoins (a) more than one non-First Nation spacing unit, each of which contains a well producing oil or gas from the same zone, or (b) a non-First Nation spacing unit which contains more than one draining well producing oil or gas from the same zone, the liability of a permittee or lessee to pay compensatory royalty applies in respect of each of those draining wells and, for that purpose, a reference in this Section or Section 6 to a draining well shall, in relation to the spacing unit in that permit or lease, be read as referring to each of those draining wells.</p> <p>That proposed section provided needed clarity that the obligation to pay the compensatory royalty applies to all offset wells.</p>	.	
s. 86 – Offset Notice	s. 82 – Offset Notice	s. 34(1)	<p>Under the Draft Regulations, the Minister <u>must</u> send an offset notice to a holder if he becomes aware of a triggering well.</p> <p>Under the Draft Regulations (not in Existing</p>	<p>We have previously suggested that we to reduce the offset period from 180 days to 90 days if the well was confidential.</p> <p>(Note Saskatchewan uses 1 year and Alberta</p>	<p><i>JTC1FN Recommendations:</i> The JTC1FN comment on the First Draft regarding confidential information was ignored. Offset notice provisions are formulaic based on well proximity – confidentiality of information</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN Recommendations and Comments on the Second Draft</i>
			<p>Regulations) the Minister cannot send an offset notice if the information he holds regarding the triggering well is confidential.</p> <p>JTCIFN Comment: The offset notice provisions are formulaic based on well proximity. The fact of confidential information should not factor into the issuance of offset notices. The provisions on confidential may be very problematic for First Nations. Otherwise, First Nations readily acknowledge the improvements to the drainage provisions under the Draft Regulations.</p>	<p>uses 6 months)</p> <p>No change required.</p>	<p>should not come into play. S. 86(2) should be removed.</p> <p>To address concerns over calculating compensatory royalty, we suggest that it can be calculated and paid retroactively once the information about the triggering well becomes public.</p> <p>The Second Draft divides s. 82(3)(b) of the First Draft into two scenarios – one for permits and one for leases. There should be no one year lag for permits under s.86(3). If there is a triggering well, the offset notice should be sent as soon as a person becomes a permit holder.</p>
s. 88 – Lifting of obligations	s. 84 – Lifting of obligations	s. 34(1)(b)	<p>In the Draft Regulations, the holder has the burden of proving that one of the circumstances described in the regulations is applicable. The circumstances are the same as those in the Existing Regulations, with the following additions:</p> <ul style="list-style-type: none"> - An offset well is producing from the offset zone and there are more offset wells than triggering wells - The offset zone in the First Nation spacing unit is subject to a unit or pooling agreement or a gas storage agreement. <p>Under both the Existing and Draft Regulations, a holder is not obliged to pay if it surrenders the</p>	Changes will be made to clarify intent in the next draft.	JTCIFN Request: We did not identify a clarification for the case of s. 88(1)(c) in the Second Draft, where there are multiple triggering and offset wells on a spacing unit. It may be that such a situation will be rare, however, we would appreciate IOGC’s clarification on this point.

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	JTC-1 FN Recommendations and Comments on the Second Draft
			<p>subsurface contract during the offset period.</p> <p>Under the Existing Regulations, the Minister may direct a subcontract holder to submit a development and production plan to the Minister which would allow the holder to avoid paying the royalty for 90 days after the plan is approved while it carries out the plan. (s. 34(2) – (4)). This was not carried forward in the Draft Regulations.</p> <p>JTC1FN Comment: The Draft Regulations are not sufficiently clear as to whether the royalty is payable on the number of triggering wells that exceed offset wells or whether it is payable on all triggering wells when the amount of triggering wells is greater than the amount of offset wells. If it is the former, there needs to be a mechanism in place to determine which offset wells offset which triggering well.</p>		
POOLING, PROJECTS AND UNIT AGREEMENTS					
SURRENDER AND CANCELLATION					
s. 104 – Non-compliance notice	s. 99 – Non-compliance notice	s. 46	<p>These provisions are substantially the same, with the addition in the Draft Regulations that a breach for non-payment of a compensatory royalty only allows the Minister to cancel the contract to the base of the offset zone and not with respect to any well that is producing or subject to a unit agreement or gas storage agreement.</p>	<p>Agreed</p> <p>We should add that in addition to lands that are part of a unit or a gas storage agreement --- -- lands pooled with an off reserve well and lands subject to a royalty project approved by the Minister are not cancelled.</p>	<p>JTC1FN Recommendations The proposed Steering Committee addition should be made.</p>

DRAFT – FOR DISCUSSION PURPOSES

Topic and Sections of Second Draft Regulations	Topic and Sections of First Draft Regulations	Cross-Reference to Existing Regulations	Explanation of Changes Proposed by JTC-1	Steering Committee Decision	<i>JTC-1 FN</i> Recommendations and Comments on the Second Draft
			<i>JTC1FN Comment:</i> Why does the exception only apply to a unit agreement and not a pooling agreement or project?		

DRAFT