

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting an application in the simultaneous oil and gas leasing program.

Affirmed in part; reversed in part.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications:
Filing

Where an automated simultaneous oil and gas lease application Part B, form 3112-6a (June 1981), does not contain a complete Social Security number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications:
Filing

Filing fees of \$75 will be retained for simultaneous oil and gas lease applications which are rejected. The balance, if any, shall be refunded. 43 CFR 3112.3(b).

APPEARANCES: Ted J. Gengler, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

George Dolezal, Jr., appeals the Wyoming State Office, Bureau of Land Management (BLM), decision of March 7, 1983, which rejected his application for 84 parcels in the January 1983 list of lands available for oil and gas leasing because of an incomplete identification number on Part B of the application. The decision also states that the filing fees were being retained by BLM.

Appellant argues that rejection of his application for failure to have a complete Social Security number is a violation of the Privacy Act, P.L. 93-579 § 7, 5 U.S.C. § 552(a) (1976); that exclusion of the application from the drawing process was a wrongful exclusion which requires BLM to conduct a redrawing for each of the 84 parcels; and that retention of \$6,300 for

filing fees was arbitrary and capricious, being an improper forfeiture at law.

[1] Examination of the application shows that a Social Security number was written, but the circles to facilitate automated processing were not completely filled out for the Social Security number. Having disclosed the Social Security number, appellant may not be heard to complain that the requirement of the Social Security number is a violation of the Privacy Act, *supra*. The application, in bold print, states: "The Paperwork Reduction Act of 1980 (44 U.S.C. § 3501) [Supp. V 1981] requires us to inform you that: This information is being collected to enter the application in an automated drawing. This information will be used to establish priority. The obligation to respond is required to obtain a benefit." Since the instructions for Part A indicate use of the Social Security number is voluntary and the purpose for its use is stated, requiring it does not offend the Privacy Act. Shaw Resources, Inc., 73 IBLA 291, 293 (1983).

Despite the voluntariness of giving the Social Security number, all Part B filings must correspond with a Part A filing on record. Part B instructions direct that the applicant "print in the appropriate squares the number used by the applicant on Part A." That number is the feature which, when processed by machine, will distinguish the application as distinctly that of the applicant. Without using the same number as Part A, Part B cannot be efficiently processed. The rule requiring proper completion of the approved application form promotes the efficient administration of the simultaneous oil and gas leasing program in view of the number of applications submitted. Shaw Resources, Inc., *supra*.

Although failure to correctly state the applicant's identification number, whether Social Security number, Employer Identification number, or a number assigned by BLM, is not expressly included among the defects listed in 43 CFR 3112.5, that omission does not preclude the rejection of the application. 43 CFR 3112.6-1(a) clearly provides that an application will be rejected if not filed in accordance with section 3112.2. 43 CFR 3112.2-1(g) requires that applications be "properly completed." When dealing with the Government, a person is presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 322 U.S. 380 (1947). Appellant was on notice that the approved Form 3112-6a must be properly completed. We cannot condone a departure from an otherwise consistent policy of rejecting applications which do not conform to the Department's regulations. A "qualified applicant" must also have completed and filed a valid application. Shaw Resources, Inc., *supra*; Fen F. Tzeng, 68 IBLA 381, 386 (1982).

Exclusion of the subject application from the drawing process was not a wrongful exclusion and so there is no need for BLM to conduct a redrawing.

[2] Appellant asserts that his filing fees should be returned in the event the rejection of his application is affirmed. In a revision of the oil and gas leasing regulations, effective August 22, 1983, as published in 48 FR 33648, 33679 (July 22, 1983), regulation 43 CFR 3103.2-1(a) was revised by 43 CFR 3112.3(b) to read as follows: "(b) For each Part B application form returned as unacceptable, of the fees remitted, a \$75 processing fee shall

be retained and the balance of the fees, if any, shall be returned to the remitter." Where it benefits the affected party to do so, and where there are no intervening rights which will be affected adversely, an oil and gas leasing regulation which is amended while the matter is pending on appeal may be applied in its amended form. See James E. Strong, 45 IBLA 386 (1980); B. B. Wadleigh, 44 IBLA 11 (1979); Henry Offe, 64 I.D. 52 (1957).

Accordingly, in this case, where appellant submitted filing fees in the amount of \$6,300 for the 84 parcels indicated on his application form B, BLM will retain \$75 and shall refund the remaining \$6,225.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part, and the case is remanded to BLM for further action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

