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## Federal Onshore Oil and Gas Leasing Process 101



The Bureau of Land Management (BLM), within the Department of the Interior (DOI), is responsible for leasing oil and gas for development throughout the federal onshore mineral estate. These leases may be issued on BLM lands, but also U.S. Forest Service lands, other federally owned lands, and tens of millions of acres of private lands where the federal government holds the subsurface mineral estate. At the end of fiscal year 2022, the BLM was managing around 23.8 million acres leased for oil and gas development.

Section 17 of the Mineral Leasing Act (MLA), 30 U.S.C. § 226, sets out the process for selling and managing leases for this publicly owned oil and gas. Not all public lands may be leased, however. The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 et seq., requires the Secretary of the Interior and the Secretary of Agriculture to prepare land use plans balancing multiple uses of federal lands, and allows the withdrawal of specified lands from specified uses, including oil and gas leasing. In addition, some other lands are withdrawn under different land conservation programs, like the Wilderness Act.

### Lease Sales

Under the MLA, the Secretary of the Interior is required to hold leases sales at least quarterly in every state where unleased lands are available. For ordinary oil and gas leases, the area to be offered in each lease tract is to be no more than 2,560 acres (leases in Alaska or in “tar sands”

may be up to 5,760 acres), and the lands to be included in each lease are to be as compact as possible. For decades, sales were required to be held through in-person auctions, but a statutory change in 2014 allowed them to be conducted on the Internet. They are now held through a commercial on-line website called EnergyNet.

The lease sale process begins with public nominations of available lands to be included in a sale. The BLM state office considers these nominations and conducts an environmental review – typically an Environmental Assessment rather than a full Environmental Impact Statement. Based on that review, the state office then issues a notice of what tracts will be available for sale, with a period for public comments or formal protests on the proposed leases. After the comment period, the state office publishes the final list of tracts available for lease and opens the on-line bidding.

## **Bid Process**

The MLA requires that leases go to the highest bidder who offers at least a “national minimum acceptable bid” per acre. The Inflation Reduction Act (IRA) recently increased statutory minimum bid from \$2 per acre to \$10 per acre, the first update since 1987. These “bonus bids” are an amount per acre that the potential lessee pays to receive the lease, in addition to other payments that will be required under the lease – annual per-acre rental charges and royalties on any oil or gas produced from the lease. Following the receipt of bonus bids, the state office goes through a bidder qualification review before awarding the lease to the highest qualified bidder.

## **Lease Terms**

The leases issued by BLM have a “primary term” of ten years. This is the period of time during which the lessee may explore for oil and gas deposits and attempt to bring them into production. If the lessee has begun drilling by the end of the ten-year term, the lease term may be extended by two years. If the lessee has begun to produce oil or gas “in paying quantities” by the end of the primary or extended term, then the lease is extended so long as the lessee continues to produce oil or gas.

During the period of the lease, the lessee must pay either rent on the land, or royalties on the oil and gas produced. The IRA increased rental rate to \$3 per acre for the first two years; \$5 per acre for years 3-8; and then no less than \$15 per acre for years 9-10. The royalty rate was raised from 12.5 percent to 16.67 percent of the value of the oil and gas produced, the first update in over a century.

Actual drilling for oil and gas under a federal lease is also regulated by BLM. BLM must approve a plan of operations for any surface disturbing activities and issue a permit to drill each well.

## Bonding

The MLA also requires that BLM mandate a bond or other financial assurance before drilling starts, to assure that the lease tract will be restored when operations cease. The bond must cover reclamation of all affected lands and waters. However, current bonding rates were set in the 1950s and 1960s and have not been updated ever since. The Bureau of Land Management accepts three types of bonds, and their minimum values are as follows:

- \$10,000 for an operator's wells on an individual lease;
- \$25,000 for all wells owned by an operator in one state; and
- \$150,000 for all wells owned by an operator nationwide.

Operators can secure either a surety bond or a personal bond. A surety bond is when operators enter a legally binding contract with a third-party surety company who will assume the responsibility of the debt if the operator defaults or is unable to make the bond payments. In the event an operating company dissolves or goes bankrupt, the Bureau of Land Management uses the company's bond to cover the costs of necessary reclamation work. If the amount of the bond is insufficient, taxpayers will have to shoulder the costs of reclamation.

