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Federal Onshore Oil and Gas Leasing Rule

In April 2024, the Department of the Interior’s Bureau of Land Management (BLM) released a final rule to codify fiscal reforms to the federal onshore oil and gas leasing system passed by Congress in 2022, update bonding policies, and implement other needed reforms. The final rule takes effect in June 2024.

A summary of the final “Fluid Mineral Lease and Leasing Process” rule is included below:



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Important Updates to Fiscal Rates

For more than a century, the federal royalty rate was set at 12.5%, even as states and private landowners had increased their rates. Rental rates and the minimum bid had similarly not been updated for decades. If oil and gas production on federal lands over the last decade had been updated to the new federal royalty rate of 16.7%, taxpayers would have received more than \$10 billion in additional revenue from FY2013-2022. The 2024 oil and gas leasing rule updates these rates:

Royalty Rate: The final rule codifies a royalty rate of 16.67% — increased from the previous rate of 12.5% — for the ten-year period after the enactment of the Inflation Reduction Act (IRA, until August 16, 2032), after which the minimum royalty rate is set at 16.67%. The new royalty rate only applies to leases issued after August 16, 2022.

Minimum Bid: The final rule codifies a minimum bid of \$10/acre — increased from the previous rate of \$2/acre — for the ten-year period after the enactment of the IRA (until August 16, 2032), after which \$10/acre will become the statutory minimum and will be adjusted for inflation every 4 years. New minimum bids only apply to lease sales held after August 16, 2022.

Rental Rates: The final rule codifies a rental rate of \$3/acre for years 1-2, \$5/acre for years 3-8 years, and \$15/acre for years 9-10 — increased from the previous rate \$1.50/acre for years 1-5 and \$2/acre for years 6-10 — for the ten-year period after the enactment of the IRA (until August 16, 2032), after which the new rental rates will become the statutory minimum and will be adjusted for inflation every 4 years. New rates only apply to leases issued after August 16, 2022.

Expressions of Interest Fee: The final rule codifies a new expressions of interest fee established in the IRA for nominating parcels, which is set at \$5/acre and will be adjusted for inflation every 4 years.

Processing Fees: The final rule increases other BLM processing fees, like raising the competitive lease application fee from \$185 to \$3,100. Fees are adjusted regularly for inflation.

Necessary Changes to Bonding Requirements

Oil and gas producers on federal land must post a bond before drilling begins. The bond is to address reclamation costs should well operators abandon them or go bankrupt. The Department of the Interior estimates reclamation costs at approximately \$71,000 per well, yet the Government Accountability Office reported an average bond value of only \$2,122 per well in 2019. This gap leaves taxpayers footing the bill for millions in reclamation costs. Bond minimums were set in the 1950s and 1960s and had remained unchanged despite the growing financial gap between cleanup costs and bond rates. The oil and gas leasing rule updates bonding requirements as follows:

Minimum Bonding Requirements: The final rule increases the minimum bonding requirements for individual lease bonds from \$10,000 to \$150,000 and for statewide bonds from \$25,000 to \$500,000. BLM may require a higher bond value due to risk factors such as a history of previous violations, uncollected royalties due, or high plugging and reclamation costs.

The final rule also disallows nationwide bonds, which were previously set at an \$150,000 minimum, and unit operator bonds. Unit operator bonds were a seldomly used type of coverage that could be posted in lieu of individual lease bonds and included all operations conducted on leases within a specific unit agreement.

These requirements will be implemented immediately for new leases and will phase in for existing leases; existing nationwide and unit bonds must be converted into statewide or individual bonds within one year (previously three years in the proposed rule), statewide bonds must be increased to the new minimum within two years, and individual bonds must be increased to the new minimum within three years (previously one year in the proposed rule). New bond minimums will be updated for inflation every 10 years.

Acceptable Forms of Security: The final rule does not change the acceptable forms of security for personal bonds. While the proposed rule originally removed Certificates of Deposit and Letters of Credit as acceptable forms of security, the final rule reinstated this provision. Other acceptable forms of security are cashier's checks, certified checks, and negotiable Treasury securities.

Bond Adequacy Reviews: The final rule does not codify current BLM policies surrounding bond adequacy reviews, which are still guided by BLM internal instruction memorandums. Although the BLM requested comments in the proposed rule on whether to require a bond adequacy review when a well is temporarily abandoned, the final rule does not implement this requirement.

Surface Owner Protection Bonds: The final rule creates an additional type of acceptable bond that can be submitted when the operator is unable to reach a surface access agreement with the surface owner, as surface rights are separate from mineral rights and can often have different owners. This bond does not cover reclamation, but other damages – for example, damage to crops.

Needed Reforms to Other Leasing Policies and Terms

Over the last several decades, millions of acres of federal land with low oil and gas development potential had been leased for development but sat idle. Noncompetitive leasing led speculators, looking to acquire lands for cheap, to lease great swaths of federal land without pursuing development. Insufficient rules also allowed companies to leave their wells instead of cleaning them up in a timely manner. The new rule addresses these concerns by establishing:

Preference Criteria: The final rule requires the BLM consider certain preference criteria in determining what parcels to offer for oil and gas leasing: proximity to oil and gas development; presence of important fish and wildlife habitats or connectivity areas; presence of historic properties, sacred sites, and other high value cultural resources; presence of recreation and other important uses or resources; and potential for oil and gas development.

Ending Noncompetitive leasing: Pursuant to the IRA, the final rule eliminates noncompetitive leasing – a process by which entities could secure federal leases the day after a competitive auction without paying the minimum bid.

Requiring Reporting Requirements for Shut-In and Temporarily Abandoned Wells: The final rule permits wells to be shut-in or temporarily abandoned for up to 4 years, after which operators must resume production, permanently abandon, or provide the BLM with a detailed timeline of future use. Operators must verify the mechanical integrity of temporarily abandoned wells every year and shut-in wells every 3 years. This update is consistent with the definition of idled wells set in the Infrastructure, Investment, and Jobs Act and an improvement compared to BLM’s previous requirement of 7 years for a well to be considered abandoned.

Updating the Application for Permit to Drill: The final rule changes the term of an approved APD from 2 years with an optional 2-year extension to a 3-year term without extensions. The BLM may adjust an APD’s term when the lease is suspended.