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PROPOSED REVISION OF BLM OIL AND GAS LEASING REGULATIONS

BLM, on July 24, 2023 (88 F.R. 47562), published a proposed comprehensive revision of the **oil and gas leasing regulations** in CFR Title 43. Portions of the proposed rule merely acknowledge the increases in *royalty rates, rentals,* and *minimum bids,* and the *expression-of-interest* fees, that already have been imposed (at the Interior Department's behest) by the Inflation Reduction Act of 2022. In addition, however, the proposed rule would raise minimum *bonding amounts* to exorbitant levels – a provision that (also at Interior's behest) was included in the original bill that led to the Inflation Reduction Act, but that was *rejected* from the bill in the Senate's final deliberations. And the proposed rule would make a number of other significant changes – some of them also very concerning – as well.

Certain of the proposed revisions would be genuine improvements to BLM's oil and gas leasing regulations. But many of them must instead be viewed as the current administration's latest action in its ongoing campaign to destroy the federal oil and gas leasing program through a strategy of death by a thousand cuts. Prior steps in that campaign, to mention just a few, have included (1) the Executive Order that was issued when the administration first took office, imposing a "pause" on new oil and gas leases "pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices," which resulted in a two-and-a-half year interruption in BLM's conduct of the quarterly lease sales that are required by law, with only sporadic lease sales being held after that (and those few, small sales being held only in response to court and Congressional mandates); (2) the changes in leasing law that Interior prevailed upon Congress to make through the Inflation Reduction Act; (3) the series of Instruction Memoranda issued by BLM last November, designed to greatly restrict the types of lands that BLM may offer in quarterly lease sales, and to impose new burdens on lease suspensions and reinstatements; and (4) BLM's recent proposed rule that would reinterpret its mandate for multiple-use management of the public lands, by elevating conservation, in its own right, to a "use" that may justify the closure of the lands to other uses.

The justification offered by BLM for the proposed revisions, in the preamble to the proposed rule, is the same litany that has pervaded a series of proclamations by the administration, from the Executive Order, through Interior's resulting November 2021 report on its "comprehensive review" of the leasing program (with its foreordained conclusions), and beyond:

> many of the program's regulatory requirements are outdated, do not adequately protect the fiscal interests of the American public, and do not promote leasing practices that are consistent with diligent development requirements and multiple-use and sustained-yield principles.

This characterization of the federal leasing program is manifestly false.

Implicitly underlying the administration's campaign against the federal oil and gas leasing program is the prospect of slowing climate change by reducing fossil fuel production. But targeting federal oil and gas leasing as the means toward this end is misguided at best. Federal leasing may be the one source of fossil fuel production that is within the federal government's direct control; and minimizing if not eliminating it undoubtedly would humor the "keep-it-in-the-ground" crowd. But no rational person can believe that some amount of oil and gas will not continue to be needed as a part of our energy mix for some years to come. And not only do our federal oil and gas resources make an important contribution to this country's economy and national security; they also are among the best of the best in the environmental standards under which they are produced. Thus they, along with other domestic resources that may be governed by similar standards, should be the last – not the first – oil and gas resources that our government should target.

Here's a summary of substantive proposed revisions (with BLM's renumbering of the sections to conform to current governmental editorial standards):

Part 3000 – Minerals Management: General:

- *3000.5* (currently 3000.0-5) – The preamble to the proposed rulemaking represents that no significant changes are being made to the *definitions* for Part 3000 (Minerals Management: General), as well as Part 3100 (Oil and Gas Leasing); but in fact, besides alphabetizing the definitions, several new definitions are being added, and changes in wording are being made to some of the existing destinations, which bear careful scrutiny.

- *3000.60* (currently 3000.6) – This regulation would be amended to expressly authorize the filing of documents with BLM through *electronic filing.*

- *3000.120* (currently 3000.12), and *3100.130* – The annual adjustment of fixed fees, for Fiscal Year 2024, would raise some existing fees so drastically that the changes plainly are designed as a deterrent to federal oil and gas leasing activities – e.g., an increase in the filing fee for a *competitive lease offer* from $185 to $3100; and an increase in the fee for a *Class I lease reinstatement* (where a rental payment was late, but was paid within 20 days of the due date, and the late payment was either justified or not due to a lack of reasonable diligence) from $90 to $1260. The proposed schedule would also impose some new fees – e.g., $1200 for an *application for a unit agreement or expansion or for subsurface gas storage;* and $120 for a *designation of successor operator* for federal agreements. Increases in *lease rentals* that were mandated in the Inflation Reduction Act – not less than $3/acre for the first two years; $5/acre for the next six years; and not less than $15/acre for the remainder of the primary term – would be set out in new proposed sec. 3100.130. Also highly concerning, as to both of these sections, is that the proposed amendments would enable BLM to make future fee adjustments merely by *posting them*

to BLM's website, with no further obligation to publish changes to these regulations in the *Federal Register.*

Subpart 3100 – Oil and Gas Leasing: General:

- *3100.5* (currently 3100.0-5) – The preamble notes that, in addition to alphabetizing this section's additional *definitions* for Part 3100, several new definitions are being added. Again, the wording of all of the definitions in the proposed rule should be carefully scrutinized.

Subpart 3101 – Issuance of Leases:

- *3101.12* (currently 3101.1-2) – The preamble claims that no significant changes are being proposed to the section on *surface use rights.* In fact, however, the "reasonable measures" that this section empowers BLM to impose on a lessee's surface use, above and beyond the lease stipulations and statutory requirements, would be enlarged to include "specification of rates of development and production in the public interest." Moreover, the BLM-imposed modifications that are deemed to be consistent with lease rights would be revised to include "requiring relocation of proposed operations by more than 800 meters" (probably intended to say "*not* more than 800 meters;" but that's not how it reads; and in any event, this would be an *increase* from the current regulation's provision that a relocation of not more than *200* meters would be deemed consistent with lease rights); and the list of acceptable BLM-imposed modifications would also include "prohibiting new surface disturbing operations for a period of up to 90 days in any lease year" (vs. 60 days currently).

- *3101.14* (currently 3101.1-4) – The proposed rule would change the provision on *modification or waiver of, or exception from, lease stipulations,* to also cover a possible determination by BLM, *after* a lease sale, that an additional stipulation should be added, or an existing stipulation should be modified. If BLM makes this determination before the lease has issued (i.e., before it's been signed by BLM), the successful bidder may decline to accept the lease, in which case BLM may offer the lands again in the next lease sale (nothing new, since BLM always has been able to withhold lands up until a lease is signed). More concerning is a provision that would allow BLM to add or modify a stipulation *after* lease issuance. In that case, the additional or modified stipulation would not be binding without the lessee's acceptance – except where such a stipulation "is required by the relevant Resource Management Plan, or surface management agency land management plan, and was inadvertently omitted," which may make the lease subject to cancellation. *Comment:* The proposed regulation needs to be modified to state unequivocally that, in order for a lease to be subject to cancellation in that situation, the land management plan's requirement must already have been effect at the time of lease issuance.

- *3101.21 and 3101.22* (currently 3101.2-1 and 3101.2-2) – The current rule sets out the *acreage limitation* for the maximum acreage of public domain lands that a person may hold in any one State, and then says that a separate but equal acreage of acquired lands may be held. The proposed rule, under the headings of "public domain lands" and "acquired lands," however, merely sets out the acreage limitation for "Federal oil and gas leases" in each State, without specifying that the acquired lands limitation is separate from, and in addition to, the limitation for public domain lands.

- *3101.40* (currently 3108.2-2(d) and 3108.2-3(c)) – The proposed rules would move the regulations prohibiting issuance of a new lease within 90 days of *termination* of a prior lease, and issuance of a new lease while a petition for *reinstatement* of a terminated lease is pending, from the Subpart governing termination and reinstatement to this Subpart. It should be noted that, in the proposed rules as published, both this section and the preceding section – *3101.30,* regarding *joinder of unit agreements* – erroneously appear under the heading of "Acreage Limitations."

- *3101.51* (currently 3101.7-1) – While the leasing of acquired lands, as well as any National Forest System lands, requires *surface managing agency consent,* the current regulations acknowledge that the leasing of public domain lands only requires *consultation* with the surface managing agency, except where consent is required by statute. The proposed regulations, however, would declare that public domain as well as acquired lands may only be leased with surface managing agency consent.

Subpart 3102 – Qualifications of Lessees:

- *3102.40* (currently 3102.4) – The current regulation sets out the *signature* requirements for lease offers, bids, and conveyances of record title or operating rights. With the elimination of noncompetitive leasing under the Inflation Reduction Act, there would no longer be an occasion for signing a lease offer (the signature on the bid form is deemed to be the signature for the lease), so the proposed rule would only address bids and conveyances, for which *electronic* signatures may now be acceptable. In the proposed rule, the provision requiring *three* signed copies of lease conveyances would be dropped; but in fact, that requirement *cannot* be eliminated by regulation, because it was enshrined in *statute* (30 U.S.C. 187a), at Interior's behest, decades ago (a case study in Congressional micromanagement).

- *3102.51* (currently 3102.5-1) – Qualification to hold an interest in a lease includes compliance with *reclamation* requirements. Under the current rule, noncompliance with those requirements would begin on the effective date of a civil penalty or the date of attachment of a bond; but under the proposed rule, noncompliance would begin at the conclusion of the time specified in a BLM notice.

Subpart 3103 – Fees, Rentals and Royalty Payments:

- *3103.22* (currently 3103.2-2) – The proposed rule on *annual rental payments,* unlike the current rule, *does not set out the actual required rental amounts.* Rather, the proposed rule merely declares, "The annual rental for all leases is as stated in the lease." While this declaration implicitly incorporates the changes that were mandated by the Inflation Reduction Act (as summarized in proposed sec. 3000.130 above), BLM's failure to specify the rental amounts, within the context of the regulation on annual rental payments itself, would be a disservice, detracting from the regulations' value as an orderly source for basic information.

Subpart 3104 – Bonds:

The proposed rule, as noted above, would raise bonding requirements to prohibitive levels, notwithstanding the Senate's rejection of a similar proposal during last year's deliberations on the Inflation Reduction Act, and notwithstanding BLM's highly-contrived justification for the bonding changes that it is proposing. These proposed changes are plainly BLM's attempt to use the bonding requirements as a way of making operations on federal oil and gas leases unacceptably expensive. Their probable effect, if adopted, would be to drive all operators other than the major oil and gas companies off of federal lands, and to give second thoughts even to the majors on continuing to operate there.

- *3104.10* (currently 3104.1) – Either a *surety bond* or a *personal bond* will continue to be required for lease operations. However, the proposed rule would eliminate a certificate of deposit or an irrevocable letter of credit as an acceptable basis for a personal bond, leaving only a cashier's check; a certified check; or a negotiable Treasury security.

- *3104.20* (currently 3104.2) – The minimum amount for a *lease bond* would be increased from the current $10,000 to *$150,000.* ($150,000 was the lease bond amount that was proposed in the original bill, but that was dropped during final deliberations for the Inflation Reduction Act.) Moreover, the current regulation states that an operator may be covered *either* by a bond in its own name, *or* by a bond in the name of the lessee or operating rights owner under which the surety or obligor consents to cover the operator; while the proposed rule would provide that the bond *must* be in the name of the operator, and that *additional* bonding may be posted by the lessee or operating rights owner.

- *3104.30* (currently 3104.3) – The minimum amount for a *Statewide bond* would be increased from the current $25,000 to *$500,000.* (The proposed Statewide bond amount in the original bill leading to the Inflation Reduction Act was similarly $500,000.) The proposed rule would *abolish nationwide bonds,* for which the current minimum amount is

$150,000. (The bill that led to the Inflation Reduction Act originally would have raised the nationwide bond amount to $2,000,000.)

- *3104.40* – The proposed rule would add a *new requirement* for a *surface owner protection bond* in a minimum amount of $1,000, to indemnify the surface owner for reasonable and foreseeable damages to crops and tangible improvements, in the event that no agreement for payment of compensatory damages has been reached with the surface owner. (*Note:* The existing regulation providing for a *unit operator's bond,* sec. 3104.4, would be *eliminated.*)

- *3104.50* (currently 3104.5) – The proposed rule would continue BLM's authority to require an *increased amount of bonds* in certain circumstances. This continuing authority to increase bond amounts *where warranted* detracts from any possible justification for the proposed drastic *across-the-board* increases in minimum bond amounts.

- *3104.70* (currently 3104.7) – Upon failure to comply timely with all requirements upon *default* on a bond, the current rule provides that all leases covered by the bond may become subject to cancellation. *The proposed rule, in addition, would provide that the bond obligor or principal may be prevented from acquiring any additional federal leases; and that the bond obligor or principal may be considered for suspension or debarment from doing business with the federal government.*

- *3104.90* – The proposed rule would require (1) all *existing unit operator bonds* to be replaced with Statewide bonds within two years; (2) all *existing lease bonds* to be increased to the new minimum amount ($150,000) within one year; (3) all *existing Statewide bonds* to be increased to the new minimum amount ($500,000) within two years; and (4) all *existing nationwide bonds* to be converted to Statewide bonds within three years.

Subpart 3105 – Cooperative Conservation Provisions:

- *3105.21* (currently 3105.2-1) – The proposed rule would list certain required components of *communitization agreements,* which are now found in BLM's model form for CA's; and it would also require a CA to state whether it deviates from the model form. (*Note:* The model form can be found in guidance that BLM has issued, but is not set out anywhere in the regulations.) The proposed rule would provide that "a CA should be submitted at least 90 calendar days prior to first production," in order to "ensure accurate reporting to ONRR" – which disregards the fact that CA's (as contemplated in the model form) commonly are submitted only *after* production has been obtained, effective *retroactively* to the date of first production. The current regulation's requirement for filing multiple copies of a CA would be dropped by the proposed rule.

- *3105.24* – This new provision would include, in the regulations, an express statement that the primary term of a CA is "for a period of 2 years from the effective date or approval date, whichever is later."

- *3105.31* (currently 3105.3-1) – The proposed rule would drop the current regulation's requirement for filing multiple copies of *operating, drilling, or development contracts.*

- The proposed rules would eliminate the current regulations' provisions on *combination for joint operations or for transportation of oil* (secs. 3105.4 et seq.), as they are "not used by the BLM or operators."

- *3105.41* (currently 3105.5-1) – The proposed rule would drop the current regulation's requirement for filing multiple copies of an application for *subsurface storage of oil and gas.*

- *3105.42* (currently 3105.5-2) – The proposed rule would specify that a *bond* is required for operations in connection with a subsurface storage agreement.

- *3105.50* (currently 3105.6) – The provisions governing *consolidation of leases,* under the proposed rule, would be more detailed, and somewhat more restrictive, than those in the current regulations.

Subpart 3106 – Transfers by Assignment, Sublease, or Otherwise:

- *3106.10* (currently 3106.1) – The proposed rule would specify that ownership of *operating rights* interests "may only be divided with respect to legal subdivisions, depth ranges, and formations." This implicitly would *preclude* transfers of operating rights as to *parts* of legal subdivisions (even though only partial legal subdivisions may sometimes be included in the drilling units on which CA's ordinarily are based), or as to *specific wells.*

- *3106.41* (currently 3106.4-1) – The proposed rule would provide for the filing of *record title* or *operating rights* transfer forms *in duplicate,* except when the transfer is submitted electronically. This would be a change from the current rule's requirement for the filing of *three* originally-executed forms. But as noted above, BLM does not have the authority to make this change, because the required number of originally-executed transfer forms is fixed by statute.

- *3106.42* (currently 3106.4-2) – Under the current rule, *overriding royalty* transfers may, but need not be, filed on an official BLM form, so long as the transfer document includes a statement of the transferee's qualifications. The proposed rule would *require* the use of an official form for all such transfers.

- *3106.73* (currently 3106.7-3) – The proposed rule would continue the current rule's provision that a lease transfer will not be approved if the *lease account is delinquent* (i.e., not in good standing) – although this provision would be extended to nonproducing, as well as producing, leases. BLM, however, should take this opportunity to remedy a recurring problem by directing that, if a lease account is found to be delinquent, the lessee will be allowed a certain period (e.g., 60 days) to bring the lease account back into good standing before the transfer may be rejected.

- *3106.81 - 3106.84* (currently 3106.8-1 - 3106.8-3) – The proposed rules would expand the scope of the regulations on *other types of transfers,* to expressly cover not only heirs and devisees, name changes, and corporate mergers, but also the dissolution of corporations and partnerships and trusts, as well as sheriff's sales. Some of the proposed wording used by BLM in seeking to do so, though, is likely to result in confusion: First, the section on *heirs and devisees* would be revised to state that the deceased party's rights will be *assigned* or transferred to the appropriate successors, which implies an affirmative act – whereas such a transfer in fact takes place by operation of law, and so the term "assignment" is misused in this context. And second, in the section on *corporate mergers and dissolution of corporations, partnerships, and trusts,* the requirement for a filing fee is noted *only* as to corporate mergers – whereas the fee schedule in the proposed rules (sec. 3000.120) lists a fee that covers corporate merger *and corporate dissolution* (as well as name change, sheriff's deed, and transfer to heir/devisee) – with *no reference anywhere* to a fee (if any) for the *dissolution of partnerships or trusts.*

Subpart 3107 – Continuation and Extension:

- *3107.10* (currently 3107.1) – The proposed rule would add a useful clarification regarding a two-year *lease extension by drilling over the end of the primary term:* when the well is being drilled from an off-lease location, the commencement of drilling at that location will be considered to be the commencement of drilling on the lease.

Subpart 3108 – Relinquishment, Termination, Cancellation:

- *3108.21* (currently 3108.2-1) – Another useful clarification would be added in the section on *automatic termination,* providing that a lease will not terminate for failure to pay annual rental by the anniversary date where, "due to other contingencies," BLM notifies the lessee that the rental is due on a different date.

- *3108.22 and 3108.23* (currently 3108.2-2 and 3108.2-3) – For *Class I reinstatements* (reinstatements at existing rental and royalty rates, where the rental is paid within 20 days of the due date, and the failure to pay timely was either justified or not due to a lack of reasonable diligence), the proposed rule would narrow the definition of "reasonable

diligence" only to include rental payments through ONRR's online system on or before the lease anniversary date. This disregards ONRR's continuing practice of accepting non-electronic rental payments in some circumstances, and would effectively *eliminate* reasonable diligence as a grounds for Class I reinstatement (particularly since, if an online rental payment is made on or before the anniversary date, the lease would not terminate in the first place). As noted above, the proposed rules would also, randomly and disproportionately, increase the current fee for Class I reinstatements from $90 to $1260 – whereas the administrative fee for *Class II reinstatements* (reinstatements with increased rental and royalty rates, where the failure to pay timely was inadvertent, or where – even though the lateness was justified or not due to lack of reasonable diligence – the rental was not paid within 20 days of the due date) would remain at $500. It should be noted that, in accordance with arbitrary wording that was written into the Inflation Reduction Act, Class II reinstatement no longer would be available for leases that were issued *noncompetitively* – evidently including those leases that are *already in effect.*

Subpart 3109 – Leasing under Special Acts:

- *3109.15* (currently 3109.1-5) – For *right-of-way leases* under the Act of May 21, 1930, the proposed rule would set a primary term of 10 years; whereas the current regulation provides for a term of not more than 20 years. (The proposed rule also would provide for right-of-way leases to be subject to all of Subparts 3101 through 3108 of the regulations, "except sec. 3101.20;" but sec. 3101.20 does not exist.)

Pursuant to the Inflation Reduction Act, *Part 3110,* covering *noncompetitive leases,* would be *removed from the regulations.*

Part 3120 – Competitive Leases:

- *3120.12* (currently 3120.1-2) – The current regulation, on the *requirements for lease sales,* states that each BLM State Office is to hold a sale at least quarterly "if lands are available for competitive leasing." The proposed rule would state that a sale is to be held "if *eligible* lands are available." (The governing statute, 30 U.S.C. 226(b), provides, "Lease sales shall be held for each State where eligible lands are available at least quarterly.") The proposed rule also would address the consequences for a successful bidder's failure to pay the minimum amount due on the day of a lease sale, by providing that such a bidder may be referred to the Inspector General's office "for appropriate action, including potential suspension and debarment." And the proposed rule, unlike the current rule, would not set out the minimum acceptable bid amount in this regulation, but would instead merely refer to an amount (currently $10/acre, in accordance with the Inflation Reduction Act) that is to be *posted annually on BLM's website* .

Comment: "Available lands," as used in the statute and regulations, always has been understood to mean lands in which the minerals (a) are federally-owned, (b) are not currently under lease, and (c) have not been excluded from leasing by statute or administrative action. In its recent decision in *State of North Dakota v. U.S. Department of Interior,* which granted a preliminary injunction against the Biden administration's pause on quarterly lease sales as to lands in North Dakota, the U.S. District Court for the District of North Dakota cited somewhat-different definitions that BLM previously had employed for "eligible" and "available:" lands are "eligible" when they have not been "excluded from leasing by a statutory or regulatory prohibition;" and lands are "available" when they are "open to leasing in the applicable Resource Management Plan and when all statutory requirements and reviews have been met, including compliance with [NEPA]." Regardless, however, the court determined that, commensurate with BLM's responsibility to include in quarterly lease sales only those lands that were "eligible" and "available," BLM was under an obligation to plan ahead to ensure the *timely completion of "the statutory analyses for determining which lands are 'eligible' and 'available' for leasing"* (emphasis added), in order *to maintain a quarterly lease sale schedule.*

- *3120.41 - 3120.42* – These sections would be added to the regulations to address *expressions of interest.* EOI's would continue to be filed through BLM's website, as they have been for the last few years; but pursuant to the Inflation Reduction Act, they would now require the payment of a filing fee, currently set at $5/acre. Most concerning, the Interior Department's current policy, which is designed to limit the lands that may be offered in competitive lease sales, would now be embodied in the regulations. Under that policy, BLM – rather than taking into account either industry's assessment of the lands' development prospects or BLM's ability to address any conflicting resource values through appropriate lease stipulations – is to defer the consideration of lands that fail to satisfy any one of five criteria: (1) proximity to existing oil and gas development; (2) absence of important fish and wildlife habitats or connectivity areas; (3) absence of historic properties, sacred sites, and other high value leasing lands; (4) absence of recreation and other important uses or resources; and (5) potential for oil and gas development. That policy is irreconcilable with BLM's obligation, under the Mineral Leasing Act, to allow the development of the available federal oil and gas resources that will continue to be crucial to meeting this nation's energy needs for many years to come. (Federal onshore oil and gas, as acknowledged in the preamble to the proposed rule, accounts for fully 10% of all domestic oil production, and 8% of all domestic natural gas production.) Enshrining the current administration's policy in the regulations, rather than leaving it in the form of policy guidance, would be an abuse of the regulatory process, as it would require a future administration to once again go through that formal process of regulatory amendment – typically consuming a year or two (not counting the inevitable litigation) – before it could implement any differing policy.

- *3120.52* (currently 3120.4-2) – The current rule simply restates the statutory requirement for *posting of a lease sale notice* at least 45 days prior to the sale. The proposed rule, by contrast, would increase the period between the sale notice and the sale to *60 days;* and it would also enshrine, in the regulations, the current *policy guidance* that establishes a timetable for additional steps that are to be taken prior to the lease sale: (a) after identifying a preliminary list of lands that are under consideration for inclusion in a sale notice, BLM will set a scoping period of not less than 30 days for public comment on the parcels in the list (this is the stage at which BLM would eliminate parcels for failure to meet any of the five criteria in the preceding section of the proposed rule); (b) after drafting environmental assessments for any parcels that survive the first step, BLM will hold a comment period of not less that 30 days on the EA's; and (c) after posting the sale notice, BLM will hold a protest period of not less than 30 days for the lands in that notice. Rather than directing BLM to issue final EA's for the parcels prior to holding the lease sale, the proposed rule would only require the final EA's to be made available prior to lease *issuance* (creating the potential for a separate round of protests based on the inability to address the EA's during the initial protest period).

- *3120.63* (currently 3120.5-3) – The proposed rule would add two significant provisions to the regulation on the *award of leases.* First, it would state that BLM will not issue a lease *until all protests have been resolved.* (At least, though, lease issuance implicitly would be authorized once a protest has been denied, even if the denial of the protest is appealed to the Interior Board of Land Appeals – subject, of course, to the possibility of the Board granting a stay of lease issuance pending resolution of the appeal.) Second, while the proposed rule would state – in accordance with the governing statute – that a lease is to be issued within 60 days of the successful bidder's payment of all amounts due, it would further provide that, if BLM (for any reason) cannot issue the lease within the 60 days, BLM *may reject the offer.* This latter provision is *extremely* objectionable: rather than requiring BLM to determine whether the successful bidder wishes to receive the lease in spite of the delay, it would leave the rejection of the offer to BLM's discretion (discounting the months or years of effort that led to the lands being offered for leasing, and possibly *incentivizing* delays by BLM in order to minimize the issuance of new federal leases).

Part 3130 – Oil and Gas Leasing: National Petroleum Reserve, Alaska:

This part of the regulations would remain unchanged, except to take note of the new NPR-A *processing fee requirements* for unitization applications (*sec. 3137.23*), changes in unit operators (*sec. 3137.61*), and applications for subsurface storage agreements (*sec. 3138.11*).

Part 3140 – Leasing in Special Tar Sand Areas:

- *3140.14* (currently 3140.1-4) – The proposed rule would state, for *combined hydrocarbon leases* that are converted from existing oil and gas leases and valid claims based on mineral locations, that annual rentals are "as stated in the lease" (rather than specifying $2/acre as in the current regulation); and for a combined hydrocarbon lease that is converted from a valid claim, it would set a royalty rate of 16.67% (rather than 12.5%). In addition, the proposed rule would specify that a royalty reduction that may be granted for the tar sand resource will not apply to the oil and gas resource, and vice versa.

Part 3150 – Onshore Oil and Gas Geophysical Exploration:

- *3151.10* (currently 3151.1) – The proposed rule, for *exploration outside of Alaska,* would take note of the required filing fee for a Notice of Intent to Conduct Oil and Gas Exploration Operations – which previously pertained only to geophysical exploration *in* Alaska, and would now be increased, for *all* States, from $30 to *$1150.*

- *3151.30* – This new section would add a requirement for a geophysical permittee outside of Alaska to *submit all data to BLM* that is obtained in carrying out the exploration plan.

Part 3160 – Onshore Oil and Gas Operations:

- *3160.0-5* – The proposed rule would add two new *definitions* that are applicable to this part of the regulations, for a *shut-in well* and a *temporarily abandoned well.* The wording of these definitions should be carefully scrutinized.

- *3162.3-4* – The requirements pertaining to *well abandonment* would be expanded by the proposed rule: For a *temporary* abandonment for more than 30 days (which would continue to require the authorized officer's approval), the rule would now set out certain criteria that the operator must satisfy. The authorized officer's authority to allow delays in *permanent* abandonment would be capped at four years, "except in extraordinary circumstances." The proposed rule also would set out certain requirements that must be met by the operator while a well is shut in.

- *3165.1* – The rule pertaining to *suspensions of operations or production, or both,* would be revised to *incorporate, into the regulations,* BLM's current *policy guidance* providing that a suspension cannot be based on a delay by BLM in approving an *application for permit to drill,* if the APD was filed less than 90 days before a lease's expiration date. The rule also would be revised to state that, with the exception of suspensions directed by BLM, suspensions may not be approved for longer than one year, although suspensions may be extended beyond that "if the circumstances warrant."

Part 3170 – Onshore Oil and Gas Production:

Note: This part of the regulations contains provisions that formerly were included in Onshore Orders Nos. 1, 2, 6, and 7, and were codified as of June 16, 2023.

- *3171.14* – The current regulation regarding the *term of an application for permit to drill* states that an APD approval is valid for two years, subject to extension for up to two additional years. The proposed rule would set a term for APD approval of *three* years, with *no* provision for extension – although the approval would remain valid beyond the APD's expiration if the operator has met certain drilling requirements.

Part 3180 – Onshore Oil and Gas Unit Agreements: Unproven Areas:

- In conjunction with the proposed elimination of the current regulations' provision for a unit operator's bond (sec. 3104.4), the proposed rule would remove *sec. 3186.2,* the model collective bond form.

Comments are being accepted by BLM through September 22.