

SIGNIFICANT CHANGES TO OIL AND GAS LEASING REGULATIONS  
UNDER THE NEW BLM RULE

*Part 3000 – Minerals Management: General:*

- 3000.60 – The regulation now expressly authorizes the filing of documents with BLM through *electronic filing*.
- 3000.120 – Rather than show the amounts of fixed fees in the regulation, the regulation now merely lists the actions for which fixed fees are charged, with the amounts to be found on BLM’s website; and a notice of annual adjustments of the fees for inflation to be published in the *Federal Register* before October 1 each year. New items have been added to the list of actions for which fixed fees are charged. (*Note:* BLM unquestionably has authority to increase fees for inflation. However, the fees that now appear on BLM’s website include some drastic increases that have *nothing* to do with inflation, but instead adopt the arbitrary amounts from BLM’s proposed rulemaking of July 2023 – e.g., an increase in the filing fee for a *competitive lease offer* from \$185 to \$3100; an increase in the fee for a *Class I lease reinstatement* from \$90 to \$1260; and an increase in the filing fee for a *notice of intent to conduct onshore oil and gas geophysical exploration operations* from \$30 to \$1150. Fee increases of this magnitude, unrelated to inflation, may be subject to challenge.)

*Part 3100 – Oil and Gas Leasing:*

*Subpart 3101 – Issuance of Leases:*

- 3101.12 – This regulation enlarges the “reasonable measures” that BLM is empowered to impose on a lessee’s *surface use rights*, above and beyond the lease stipulations and statutory requirements, to include “specification of rates of development and production in the public interest.” Moreover, the regulation revises the BLM-imposed modifications that are deemed to be consistent with lease rights to include requiring relocation of proposed operations by up to 800 meters (vs. 200 meters in the current regulation); and prohibiting new surface disturbing operations for a period of up to 90 days in any lease year (vs. 60 days currently).
- 3101.14 – This regulation makes changes to the provision on *modification or waiver of, or exception from, lease stipulations*, to shift the focus to determinations by BLM, *after* a lease sale, that an additional stipulation should be added, or an existing stipulation should be modified. In particular, BLM would be allowed to add or modify a stipulation *after lease issuance*; and while the additional or modified stipulation would not be binding without the lessee’s acceptance, the lessee’s failure to accept a stipulation that “is required by the relevant Resource Management Plan, or surface management agency land management plan, and was inadvertently omitted,”

may make the lease subject to cancellation. And even *before* lease issuance, not only may BLM reject a bid if the successful bidder does not accept the additional or modified stipulation (which is nothing new); but if the changed stipulation increases the value of the parcel, BLM *will* reject the bid even if the successful bidder accepts the change.

*Subpart 3102 – Qualifications of Lessees:*

- (No significant changes.)

*Subpart 3103 – Fees, Rentals and Royalty Payments:*

- (No significant changes, except to incorporate the increased fee, rental, and royalty amounts mandated by the IRA.)

*Subpart 3104 – Bonds:*

- *3104.1* – The minimum amount for a *lease bond* is increased from the current \$10,000 to \$150,000; and the minimum amount for a *Statewide bond* is increased from the current \$25,000 to \$500,000. *Nationwide bonds* are abolished. (Comment: These increases in the bonding requirements were *rejected* by the Senate during its deliberations on the IRA; and BLM’s justification for the magnitude of these increases is unpersuasive.) Existing lease bonds must be increased to the new minimum amount within three years; and existing Statewide bonds must be increased within two years.
- *3104.10* – Either a *surety bond* or a *personal bond* continues to be required for lease operations. (Note: BLM’s proposed rule had sought to eliminate a certificate of deposit or an irrevocable letter of credit as an acceptable basis for a personal bond; but the final rule retains both of those, along with a cashier’s check, a certified check, or a negotiable Treasury security.)
- *3104.40* – This regulation adds a *new requirement* for a *surface owner protection bond* in a minimum amount of \$1,000, to indemnify a non-federal surface owner for reasonable and foreseeable damages to crops and tangible improvements, in the event that no compensation agreement has been reached with the surface owner.
- *3104.90* – All existing *nationwide bonds*, and all existing *unit operator bonds* (which also are being abolished), must be replaced with lease or Statewide bonds within one year.

*Subpart 3105 – Cooperative Conservation Provisions:*

- 3105.21 – This regulation states, with regard to *communitization agreements*, that they “should be submitted at least 90 calendar days prior to first production.” The preamble to the rule acknowledges, however, that the use of the word “should” takes into account the common practice of submitting CA’s only *after* production has been obtained, effective *retroactively* to the date of first production.
- 3105.24 – This regulation expressly sets the primary term of a CA as “2 years from the effective date or approval date, whichever is later.”
- 3105.42 – A *bond* is required, under this regulation, for operations in connection with a *subsurface storage agreement*.

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

- 3106.10 – This regulation includes a statement that ownership of *operating rights* interests “may only be divided with respect to legal subdivisions, depth ranges, and formations.” That wording could be read to preclude transfers of operating rights as to *parts* of legal subdivisions; but according to the preamble, that is not the case.
- 3106.41 – This regulation continues the requirement for *record title* or *operating rights* transfer forms to be filed in triplicate – except when the transfer is submitted electronically.
- 3106.42 – The new regulation requires the use of an official assignment or transfer form for all transfers of *overriding royalty* or similar interests. Previously, such transfers could, but did not need to, be filed on an official BLM form.
- 3106.83 - 3106.84 – The scope of the regulations on *other types of transfers* is expanded to include the dissolution of corporations and partnerships and trusts, as well as sheriff’s sales (in addition to heirs and devisees, name changes, and corporate mergers).

*Subpart 3107 – Continuation and Extension:*

- 3107.10 – This regulation adds a useful clarification regarding a two-year *lease extension by drilling over the end of the primary term*: that 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 – With regard to *automatic termination*, this regulation clarifies that a lease will not terminate for failure to pay annual rental by the anniversary date where, “due to other contingencies, additional rental is due on a date other than the lease anniversary date and where the lessee did not receive notice that the obligation had accrued.”
- 3108.23 – This regulation provides for *Class II reinstatements* of *competitive* leases. (*Comment:* The IRA eliminated the authority for Class II reinstatement of noncompetitive *public-domain* leases, but not noncompetitive *acquired-land* leases. BLM’s authority to deny Class II reinstatement for noncompetitive acquired-land leases, without any statutory basis, may be subject to challenge.)

*Subpart 3109 – Leasing under Special Acts:*

- 3109.15 – This regulation aligns the terms of *right-of-way leases*, under the Act of May 21, 1930, to the terms of leases issued under the Mineral Leasing Act.

*Part 3120 – Competitive Leases:*

- 3120.31 - 3120.33 – These sections are added to the regulations to address *expressions of interest*. The regulations’ summary of the expression-of-interest process takes note of the filing fee (currently \$5 per acre) that is required under the IRA. Additionally, BLM’s recent policy guidance, under which BLM is to defer the consideration of lands in an expression of interest that fail to satisfy any one of five criteria, is now embodied into regulation.
- 3120.42 – This regulation increases the period between the *posting of a notice of competitive lease sale* and the sale itself, from the statutorily-required 45 days to *60 days*; and it also embodies, in the regulations, BLM’s current policy guidance establishing a timetable for additional steps that are to be taken by it prior to the lease sale.

*Part 3160 – Onshore Oil and Gas Operations:*

- 3162.3-4 – This regulation, addressing *well abandonment*, now enumerates certain criteria that an operator must satisfy in connection with *shut-in wells* and *temporarily abandoned wells*.
- 3165.1 – This regulation, pertaining to *suspensions of operations or production, or both*, is revised to incorporate BLM’s current policy guidance, under which a suspension request that is based solely on a delay by BLM in approving an *application for permit to*

*drill* may only be approved if the APD was filed at least 90 days before a lease's expiration date.

*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 *term of an approved application for permit to drill* is now set at three years (with no provision for an extension). (Formerly, an approved APD was valid for two years, subject to an extension for up to two additional years.) The regulation makes clear that, if a lease is suspended, the term of an APD will be adjusted accordingly.

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

- (No significant changes.)