**Summary of DOI’s Interim Guidance on Oil & Gas Royalty Rate Reductions and Lease Suspensions**

On April 21, 2020, the Interior Department (DOI) issued “interim” guidance on expediting both oil and gas royalty rate reductions and lease suspensions. According to DOI, this guidance, which is unsigned and was leaked to the press,[[1]](#footnote-1) stems from the “unprecedented hardships” facing the oil and gas industry, along with the national emergency declared by the President on March 16, 2020. The guidance applies solely to oil and gas leases on public lands under the jurisdiction of the Bureau of Land Management (BLM), and does not cover wells/leases on tribal or non-federal lands.

A brief summary of the guidance is provided below. However, in general, the guidance seems to encourage companies to actively avoid paying royalties or rents while simultaneously extending the life of their leases. The guidance documents also lack mechanisms for public oversight and accountability, do not put appropriate sideboards on granting royalty relief or lease suspensions, and could artificially and unnecessarily extend the life of marginal, unprofitable wells and leases on public lands.

1. **Interim Guidance for Royalty Rate Reduction Requests for Oil and Gas Leases During the COVID-19 National Emergency[[2]](#footnote-2)**

**Source of authority:** The Mineral Leasing Act – DOI may “waive, suspend, or reduce” royalty rates in order to “encourage[e] the greatest ultimate recovery of oil [and] gas” and if necessary to “promote development” or if “the leases cannot be successfully operated under the [applicable] terms. . . .” 30 U.S.C. § 209; 43 C.F.R. § 3103.4-1.

**Process for obtaining royalty rate reductions under the interim guidance:**

* Operators must file royalty rate reduction petitions for a lease/leases with BLM state offices.
* Petitions must include: (1) a statement “with supporting documentation” that the lease could produce oil or gas in “paying quantities” but-for COVID-19; (2) a “simple economic analysis table that shows the lease(s) that are uneconomic at the current royalty rate, but that would be economic with the royalty rate reduction;” and (3) the requested rate reduction – e.g., “a lessee might request BLM to reduce a 12 ½ percent royalty rate to 0.5 percent royalty rate.”
* BLM “must verify the application information within five business days.”
* If approved, BLM will notify the applicant + Office of Natural Resources Revenue.

**Major issues/flaws:**

* **No public oversight/accountability:** There is no requirement for public notice/review of royalty rate reduction petitions. Nor does the guidance require notice to states, which are entitled to roughly half of the revenues from public lands production. Only after the fact, if at all, will the public and states learn of rate reductions. Further, the guidance also permits companies to simply designate information as “confidential/proprietary” so it will not be subject to oversight, even if records are ultimately obtained.
* **Indefinite duration:** The guidance suggests that rate reductions will sunset within one-year of being granted. However, the guidance indicates that BLM may extend rate reductions beyond the one-year period, and there is nothing tying the duration of rate reductions to COVID-19 + the national emergency – the purported basis for the guidance.

1. **Interim Guidance for Lease Suspension Requests During COVID-19 National Emergency[[3]](#footnote-3)**

**Source of authority:** The Mineral Leasing Act (MLA) – “No lease . . . shall expire because operations or production is suspended under any order, or with the consent, of the Secretary [of the Interior].” 30 U.S.C. § 226(i); 43 C.F.R. § 3103.4-4; *see also* 30 U.S.C. § 209 (authorizing suspensions “in the interest of conservation”).

**Process for obtaining lease suspensions under the guidance:**

* The guidance addresses both types of suspensions available under the MLA: (1) *force majeure* suspensions; and (2) suspensions “in the interest of conservation.”
* *Force majeure* suspensions (section 17 of the MLA):
  + Operators must file suspension applications with BLM state offices.
  + Applications “must include a full statement of the circumstances that render such relief necessary to the COVID-19 national emergency.” Examples cited by DOI include “social distancing orders and travel restrictions imposed by the federal, state or local government, or the pandemic otherwise causing the unavailability of personnel, contractors or equipment needed to conduct operations.”
  + BLM “must verify the application information within five business days.”
  + If approved, operators must continue to make rental and minimum royalty payments, but the lease term is suspended; however, there is nothing to prevent operators from simultaneously filing for royalty rate waivers.
* “In the interest of conservation” suspensions (section 39 of the MLA):
  + Operators must file suspension applications with BLM state offices.
  + The guidance does not specify what information is required; however, the guidance appears to limit section 39 suspensions to situations where operators have submitted drilling permit applications (APDs) “and BLM is experiencing unusual or unreasonable processing delays of the APD to complete environmental review, analysis or consultations (caused, e.g., by the COVID-19 emergency and difficulty in meeting with people to conduct NEPA or section 106 or tribal consultations). . . .”
  + BLM “must verify the application information within five business days.”
  + If approved, the lease term + royalty and rental obligations are suspended.

**Major issues/flaws:**

* **No limits on when leases are obtained or how long they’ve been held:** The guidance does not prohibit requesting suspension for leases that were purchased during the pandemic/downturns. Thus, companies that chose to obtain new leases with full knowledge of one or both factors could still benefit from lease suspensions.
* **No public oversight/accountability:** There is no requirement for public notice/review of suspensions applications. Nor does the guidance require notice to states, which are entitled to roughly half of the revenues from public lands leases/production. Only after the fact, if at all, will the public and states learn of suspensions.
* **Indefinite duration:** The guidance suggests that suspensions will sunset within one-year of being granted. However, the guidance indicates that BLM may extend suspensions beyond the one-year period. Further, as [documented in a 2018 GAO report,](https://www.gao.gov/assets/700/692292.pdf) suspensions frequently remain in place long-past their expiration dates because of lax monitoring and enforcement by BLM, and there is nothing tying the duration of suspensions to COVID-19 + the national emergency – the purported basis for the guidance.
* **Extending the life of marginal wells + leases:** The guidance represents a lifeline that will artificially extend the life of marginal wells + leases on public lands. It is difficult to assess the scope of wells + leases that stand to benefit, but it’s worth noting that, for the past several years, industry has [de-emphasized](https://www.gao.gov/assets/700/696906.pdf) federal operations because “most shale plays are not located on federal and Indian lands.”

1. *See* E&E News, BLM to expedite royalty relief during pandemic (Apr. 27, 2020), *available at* <https://www.eenews.net/eenewspm/2020/04/27/stories/1062988129>. [↑](#footnote-ref-1)
2. <https://f.datasrvr.com/fr1/320/75150/BLM_interim_guidance_-_royalty.pdf?cbcachex=362326> [↑](#footnote-ref-2)
3. <https://f.datasrvr.com/fr1/820/96356/BLM_interim_guidance_-_suspension.pdf?cbcachex=299019> [↑](#footnote-ref-3)