

Beware of the Fine Print: Pitfalls of BLM's Leases and Leasing Process Rule

By: Theresa Sauer

As has been highly reported and talked about, the Bureau of Land Management's (BLM) [final rule](#) on leases and the leasing process, known as the Leasing Rule,¹ raises minimum bonding requirements from \$10,000 to \$150,000 for a lease bond and from \$25,000 to \$500,000 for a statewide bond, effective June 22, 2024 for new federal leases or assignments. Less discussed are the wholesale changes to BLM's approach to surface use and lease preservation. Beware of the fine print as the Leasing Rule's regulations are beginning to take effect.

Increased Rental Rates

In an effort to encourage leaseholders to develop a lease early in its primary term, lease rentals are now \$3.00 per acre for the first 2 years of the lease term; \$5.00 per acre for the next 6 years, and \$15.00 for years 9 and beyond.²

New Restrictions on Surface Use

At the planning stage, companies often rely on BLM's regulation allowing a leaseholder the right to use *as much of the leased lands as necessary* for exploration and development.³ Under the Leasing Rule, a company is now limited to "only so much of the leased lands as is necessary . . . subject to such reasonable measures as may be required . . . to mitigate adverse impacts to other resource values . . ."⁴ Additionally, under the Leasing Rule, BLM can now require a company to move a well pad up to 800 meters from the proposed location.⁵ While the regulation states that any restrictions on surface use will be "reasonable," the term is otherwise undefined and provides great opportunity for interpretation and dispute.

As companies propose surface locations, it remains best practice to identify multiple factors in support of the location, and to be prepared to provide significant justification for why a location up to 800 meters away is inappropriate or unworkable.

APD Term Extended but Not Renewable

All newly issued applications for permit to drill (APDs) will be valid for a period of 3 years or until lease expiration, whichever comes first, and cannot be renewed.⁶ Historically, APDs were issued for a term of 2 years with the option for an additional 2-year renewal.

If an operator is drilling a well but will not bring the well into production prior to the expiration of the APD, the operator should communicate with BLM early to provide information on the drilling plan and

¹ Fluid Mineral Leases and Leasing Process, 89 Fed. Reg. 30916 (April 23, 2024) (to be codified at 43 C.F.R. Parts 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180).

² 43 C.F.R. § 3103.1 (June 22, 2024).

³ 43 C.F.R. § 3101.1-2 (June 21, 2024).

⁴ 43 C.F.R. § 3101.12 (June 22, 2024).

⁵ *Id.*

⁶ 43 C.F.R. § 3171.14 (June 22, 2024).

whether the APD can be extended to allow for active drilling at the time of expiration, or drilling within a certain approved timeframe beyond APD expiration.⁷

Shut-In and Temporarily Abandoned Wells

Where an operator has a well that has been shut-in for 90 days or more, it must file a sundry to notify BLM of the well's shut-in status.⁸ A mechanical integrity test (MIT) must be performed within 3 years of the shut-in, and the operator must provide BLM with a detailed plan and timeline for future beneficial use of the well within 4 years of shut-in, after which time the well must be producing or permanently abandoned. If BLM determines that there is, indeed, future beneficial use of the well, it may authorize delay in permanent abandonment in 1-year increments.

In order for a well to be temporarily abandoned for more than 30 days, an operator must request and receive authorization for such temporary abandonment, which can be granted in 1-year increments.⁹ Such well will need an MIT and the completed intervals must be isolated prior to temporary abandonment. Within 4 years of temporary abandonment, the well must be permanently abandoned, brought back into production, or the operator must provide BLM a plan and timeline for future beneficial use. If approved, BLM can authorize delays in additional 1-year increments.

Limitations on Suspensions of Operations and/or Production

Under the Leasing Rule, BLM will only grant a lease suspension request "in the interest of conservation of natural resources."¹⁰ Further, where BLM directs a suspension, for example related to a court order, the suspension term may be for a year or longer.¹¹ However, where a leaseholder requests the suspension, BLM can now only authorize a 1-year suspension.¹² Be sure to review your suspension authorization and request renewal of the suspension prior to it lifting if circumstances justify the suspension remaining in place, such as where there is a pending application for permit to drill (APDs). Additionally, where the justification for the suspension request is related to a pending APD, ensure that the APD and suspension request are filed 90 days or more before lease expiration.¹³

For more information on BLM's Leasing Rule and how the regulatory changes may impact your operations and plans for development, please contact Theresa Sauer, Bret Sumner or Jacob Everhart.

⁷ See 43 C.F.R. § 3171.14(b) for additional details on how to extend an APD briefly beyond its term.

⁸ 43 C.F.R. § 3162.3-4(e) (June 22, 2024).

⁹ 43 C.F.R. § 3162.3-4 (June 22, 2024).

¹⁰ 43 C.F.R. § 3103.42 (June 22, 2024).

¹¹ 43 C.F.R. § 3165.1(e) (June 22, 2024).

¹² 43 C.F.R. § 3165.1(d) (June 22, 2024).

¹³ 43 C.F.R. § 3165.1(c) (June 22, 2024).