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Overview of ongoing BLM oil and gas regulatory review

The Bureau of Land Management is in the process of updating its regulations governing leasing and development of oil and gas on public lands, which apply to development on 700 million acres of public lands. There are 2 separate rulemakings underway and comments on both are due on *August 24, 2026 at regulations.gov* (*Docket Numbers: BLM–2025–0037* and *BLM–2025–0235*). The BLM has indicated its intent to combine these into one rule, but for now they are addressing them separately because the rulemakings were previously completed separately.

These changes in management of oil and gas are of concern because of how they:
- Deprive Tribes and the public of oversight of these high stakes activities while increasing the speed at which public lands are turned over to oil and gas companies for a minimum of 10-years, with opportunities to extend even longer;
- Risk natural and cultural resources on public lands, along with the health of nearby communities;
- Permit more irresponsible companies to operate on public lands; and
- Further reduce the financial return to the American taxpayer and Indian lessors, who actually own these oil and gas resources, while focusing on making it easier and less expensive for oil and gas companies to pay even less to turn more profits.

1. The BLM's **proposed oil and gas leasing rule** can be viewed here

Background: This rule governs the manner in which the quarterly onshore lease sales are handled, as well as other key aspects of how leases will be managed once they are awarded. Some aspects of the leasing process were already changed by Congress through the One Big Beautiful Bill Act in 2025, but others are now being addressed in these regulations to focus on approving leasing with less opportunities for Tribal and public oversight and less responsibility for oil and gas companies who are holding leases to protect public lands and resources. The most significant changes and issues of concern and for commenting are highlighted below:

- ***Returns statewide and individual lease bond minimums to $25,000 for statewide bonds and $10,000 for individual lease bonds, which is too low and risks cleanup of wells once companies walk away.***
    - These are the levels that had been in place since the 1950s and 60s, and which numerous independent government agency reports concluded were drastically insufficient to clean up an orphaned well. BLM acknowledges and takes no issues with these reports but claims it can address this on a case-by-case basis,

if it feels operators might be at risk, which is obviously unworkable. In the proposed rule, the BLM admits this would add years to the time to clean up a well and harm natural and cultural resources in the interim.

  - The BLM is also seeking input on whether it should reinstate a $150,000 nationwide bond that allows a company to put that in place for all leases in the country, which again is obviously inadequate.
  - The 2024 rule eliminated nationwide bonds, increased statewide bonds to a minimum of $500,000 and individual lease bonds to a minimum of $150,000. If BLM reauthorizes nationwide bonding, it would do so using the previous minimum for nationwide bonds ($150,000)

- ***Limits formal public participation to one 10-day protest period at the end of the leasing process – eliminates scoping and comment periods for proposed lease sales, charging for longer administrative protest submissions, and calling into question when or if environmental analysis and consultation might occur.***
  - The public no longer has a chance to weigh in on the lands proposed for inclusion in a lease sale until a 10-day administrative protest after the final sale list is posted. The previous 30-day scoping period on a preliminary parcel list, and 30-day comment period on a draft NEPA document would be eliminated. This approach to cutting the public out of leasing was proposed in a previous administration and was struck down by courts as violating the BLM's obligation under the Federal Land Policy & Management Act to involve the public in decision-making on the management of public lands.
  - If the protest document, including any exhibits or attachments, exceeds 50 pages, then the BLM would penalize the commenter $1 dollar per page, even though this is the only time that the public can submit documents to create a record on their concerns. The BLM is further asking for comment on whether it should expand this penalty to include pages in documents that are cited by hyperlink to a website.
  - Since it appears that the BLM does not intend to continue to conduct a NEPA analysis of any kind, it is also unclear when or how there would be time or any effort made for government-to-government consultation with Tribes under the National Historic Preservation Act, calling the agency's ability to meet its obligations under these laws into question, as well.

- ***Eliminates the oil and gas leasing preference criteria that previously required the BLM to evaluate proximity to existing oil and gas development; conflicts with important fish and wildlife habitat, historic properties, sacred sites, and other high***

value cultural resources, recreation, and other important resources; and potential for oil and gas development.

- The BLM's current guidance had already directed the agency not to rely on the preference criteria to eliminate areas identified in older document as having less potential for development. The regulations would now eliminate both the evaluation of conflicts and the application of a preference to avoid the preference in leasing – claiming that these steps are unnecessary delays and drilling can simply avoid impacts.

- This approach ignores the fact that the vast majority of public lands are available for leasing with BLM land use plans explicitly deferring to site-specific evaluation, public input, and Tribal consultation at the leasing stage for more in-depth consideration and decision-making on whether lands should actually be included in lease sales. Although the BLM has taken the position that language in the OBBBA directs it to include all nominated leases in sales, courts have already confirmed the agency retains discretion.

- As noted above, removing these steps from analysis, also indicates that the BLM may not be complying with its obligations under NEPA and the NHPA.

- ***Eliminates the requirements to notify surface owners of potential lease sales.***
  - Since federal minerals may underly surface owned by Tribes, states, or private parties, the 2024 regulation confirmed that agency's obligation to notify surface owners of potential sales. The proposed rule eliminates the requirement to notify so-called "split-estate" surface owners of proposed leases on their lands because it would impose "undue burdens on the oil and gas industry."

- ***Reduces lease application fee from $3,100 to $155.***
  - Despite proposing to charge the public for participating in the only public process available, the BLM proposes to drastically reduce the filing fee for applying for a lease. The agency claims that it no longer needs to cover costs for conducting environmental review or complying with NEPA on a regular basis. However, in other parts of the proposed rule, the BLM is asking companies to provide title information to assist with processing applications, so apparently it does need time and data.

- ***Increases opportunities to put leases on hold, including when the company has waited 9 ¾ years to act while holding public lands.***
  - The proposed rule would make it easier for operators to have their leases suspended (so that the 10-year term does not run out) by removing restrictions that had been put in place in the 2024 rule. One of the most egregious examples

would remove a bar on receiving a suspension by submitting an application for a permit to drill in the last 90 days of a 10-year lease, which did not show good faith. Similarly, the proposed rule would remove a limitation on operator-requested suspensions to 1-year without further justification, again to ensure good cause for holding leases on public lands.

- ***Does not recognize any impacts to Tribes, but offers consultation upon request.***
    - Despite removing the opportunity for analysis of impacts to "historic properties, sacred sites, and other high value cultural resources" and the preference for deferring those parcels from sale by removing the preference criteria in the proposed rule, the BLM states: "Since the proposed changes to leasing only apply to Federal lands, the proposed rule will not impact the leasing of Indian minerals" and so concludes there are no specific impacts to Tribes. However, the agency goes on to state that it is "providing an opportunity for Tribal consultation" and "Tribes may request individual government-to-government consultation regarding the proposed rule throughout the rulemaking process" (although there is no contact provided).
- ***Overall, these changes to the leasing rules would transform the process to cut out the public, preclude meaningful analysis and consideration of whether lands should even be leased, and then turn them over to potentially irresponsible companies.***

2. The BLM's **proposed rule on lost royalties**, formerly referred to as the waste prevention rule, can be found here

Background: This rule applies to oil and gas "lost" from both onshore Federal and Indian leases. When oil wells are being drilled or operated, the natural gas that is produced as part of the process can be released into the air (known as "venting") or burned off (known as "flaring") before there is a way to capture it. This loss can happen intentionally, because companies don't have a way to capture it or don't want to spend the money to do so, or accidentally, because there is a leak; but either way there are health risks from what is released into the air and there are arguments over when there are lost royalties that should be paid on that natural gas.

Generally, the overarching concept in the federal laws governing oil and gas development is that there should be compensation to the owners of the mineral interests and those ultimately due the payments (the American taxpayers or Tribal interests) unless the oil and gas is unavoidably lost. Although there is broad agreement around the need to update the much older "Notice to Lessees 4A" (referred to as NTL-4A, issued in 1980) that has governed regulation of what that unavoidable loss or waste means, there has been many years of litigation over what that definition means. Currently, a number of states are operating under the rule finalized in 2024 and others, who challenged that rule, are back to using NTL-4A.

Overview and consequences of proposed changes: The proposed changes would remove requirements designed to track and prevent leaks of natural gas and further reduce the situations in which operators would have to pay royalties on that lost gas by broadening the definition of what type of loss is “unavoidable.” The main changes proposed from the 2024 rule are to:

- ***Change the overall purpose of the rule***: The proposed rule deletes references to preventing waste, protecting worker safety, conserving surface uses, and managing for multiple use. The purpose now includes only compensation, efficient development, reducing regulatory burden for operators, and streamlining BLM’s operation. These purposes are actually at odds with one another and the obligation of the BLM to all Americans, including the owners of the mineral interests. These themes are reflected throughout the changes in the proposed rule and undermine the agency’s obligations to Indian lease holders, as well.
- ***Remove requirements for a waste minimization plan or certification to prevent waste*** of gas to be submitted as part of an application for a permit to drill an oil well, claiming this is an unfair burden on the industry and instead industry’s own interest in making a profit on royalties should be sufficient.
- ***Remove requirements to put in place a leak detection and repair (LDAR) program***, claiming it is unfair to burden the industry in this way and instead their interest in making a profit should be sufficient to incentivize avoiding leaks.
- ***Increase situations that operators can intentionally vent or flare gas and still count that as unavoidable loss*** by including low quality gas that would be hard to sell (so just supporting the operators’ investment) and increasing the time or volume limits for which operators can claim there are pipeline capacity constraints (which was intended to incentivize operators to find additional avenues at some point) and related to leaks, maintenance and new well completion or re-completion, instead just generally requiring companies to “operate in a workmanlike manner,” even though there is no longer a requirement for a LDAR program or waste minimization plan.
- ***Overall, these changes will make it easier to waste gas and deprive taxpayers and Tribal mineral owners of royalty payments, but also to risk harm to people and other resources by reducing requirements, incentives and oversight to avoid unintentional and intentional leaking and combustion that harm resources on the ground, air quality and the climate (through ongoing release of methane).***