

Questions in Advanced Notice of Proposed Rulemaking

Please file your responses to <http://federalregister.gov/a/2015-09033>

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Onshore Royalty Rates and Periodic Assessments of the Onshore Fiscal System

The BLM is interested in receiving feedback on the following questions related to potential revisions to the royalty rate regulations governing competitively-issued onshore oil and gas leases:

1. The various reports and assessments of the Federal oil and gas fiscal system that the BLM has received, prepared, or reviewed, create potentially inconsistent inferences as to the adequacy existing royalty rates. What information should the BLM consider that would help it resolve those inconsistencies?
2. In evaluating whether or not existing royalty rates are providing a fair return to the public for leased oil and gas resources, what should the BLM consider, and on what factors should the BLM place the most weight?
 - a. Given the uncertainties associated with comparing current information on government take among countries and at different commodity prices, should the BLM primarily rely on comparisons to State and private land royalty rates?
 - b. To what extent should the BLM factor in the effects on production in assessing the appropriateness of applying a given royalty rate?
3. Should the BLM consider other factors in determining what royalty level might provide a fair return, such as life cycle costs, externalities, or the social costs associated with the extraction and use of the oil and gas resources? If the BLM should consider such factors, please explain how it should do so. The BLM currently offers all new competitive Federal oil and gas leases at a fixed royalty rate of 12.5 percent. Should the BLM:
 - a. Increase the royalty rate on oil and gas production above 12.5 percent to a different fixed royalty rate? If so, what should that rate be? For example, should the rate be increased to 18.75 percent consistent with the rate set for recent offshore lease sales? If not, why not?
 - b. Consider a sliding-scale royalty-rate structure based on an established index of oil and gas prices during a given period of time, as suggested by GAO? If so, how many price tiers would be optimal to balance administrative complexity with the opportunity to distinguish between meaningful price swings? What price thresholds would be appropriate for each tier? Should the thresholds be fixed (in real dollar terms), or should they float relative to a published index?
4. Whether the BLM keeps royalty rates fixed or adopts a sliding-scale rate structure, should it:
 - a. Maintain a national or uniform rate or rate schedule for all new competitive leases?

- b. Establish potentially different royalty rates or rate schedules for new leases by region, State, lease sale, formation, resource type (e.g., crude oil, crude oil from tight formations, natural gas, and natural gas from shale formations) or other category? In each case, how should the BLM determine what the royalty rates should be? For instance, if by region, how would the various rates for different regions be determined?
5. What other royalty rate structures (not listed previously) should the BLM consider?
6. Instead of amending the regulations to set a new fixed rate or impose an adjustable rate structure as part of a new formal regulation, should the BLM revise its regulations so that the Secretary (through the BLM) has the authority to set the royalty rate terms for new leases outside of a formal rulemaking process?
 - a. One option would be to set the rate terms in individual Notice of Lease Sale documents in a manner similar to the existing offshore authorities, but this raises other potential complications (e.g., loss of transparency, greater challenges in revenue tracking and estimation) given the frequency and processes used for BLM lease sales compared to offshore sales. If the terms are set on a lease sale-by-sale basis, what market conditions or factors should be considered in setting the royalty rates for a particular sale? What weight should be given to individual factors?
 - b. Is there another approach that should be considered to strike a balance between the competing objectives of flexibility, transparency, and simplicity? Should the BLM (or the Secretary) maintain a set national rate schedule that would be updated periodically on a fixed schedule (e.g., annually) or as circumstances warrant (e.g., when certain price triggers are hit)?
7. How should the BLM undertake assessments of the oil and gas fiscal system?
 - a. What methodologies, information, and resources should it consider as part of such assessments? In responding, please consider whether any factor should be given more weight than another.
 - b. How often should such assessments occur? Every year? Every five years? Every 10 years? As necessary based on some trigger? If you recommend a trigger-based approach, please identify the trigger.

Annual Rental Payments

The BLM is interested in receiving feedback on the following questions related to potential changes to its annual rental payment requirements:

1. Should the BLM increase the annual rental payments set forth in 43 CFR subpart 3103? If so, by how much? If not, why are current payment levels sufficient to ensure the diligent development of an oil and gas lease?
2. If the BLM were to increase annual rental payments, what factors should it consider in proposing an increase?
 - a. Should rental payments simply be adjusted to reflect inflation?

- b. Are there other factors the BLM should consider?
- 3. If the BLM were to increase the annual rental payments:
 - a. How should the BLM implement those changes – e.g., should it consider a phase-in?
 - b. Is there another way to have annual rentals escalate over time besides the current category of years 1 through 5 and then a higher rental for years 6 – 10?
- 4. Are there any other changes or refinements that the BLM should consider to its current annual rental payment requirements?
- 5. What are the comparable State practices with respect to annual rental payments?

Minimum Acceptable Bid

The BLM is interested in receiving feedback on the following questions related to potential changes to its regulations to increase the minimum acceptable bid required for oil and gas leases offered competitively:

- 1. Should the BLM increase the current minimum acceptable bid of \$2 per acre? If so, by how much?
- 2. If the BLM were to increase the minimum bid:
 - a. What factors should it consider in proposing an increase? For any factors, please explain how they relate to: (1) enhancing financial returns to the United States; and (2) promoting more efficient management of oil and gas resources on Federal lands.
 - b. What are the potential impacts of any such increase? Does it vary by the magnitude of the increase?
 - c. Should the BLM amend its regulations to give the Authorized Officer discretion to adjust the minimum bid based upon market conditions?
 - d. Should the BLM raise the rental rates for leases acquired non-competitively to compensate for not receiving even minimum bids for such leases? If so, what would a reasonable rental rate be for non-competitively issued leases?
- 3. What are the comparable State practices with respect to minimum bids for leases acquired competitively?

Bonding

The BLM is interested in receiving feedback on the following questions related to potential changes to its bonding requirements:

- 1. Should the BLM increase the minimum bond amounts set forth in 43 CFR subpart 3104? If so, by how much? If not, why are current bonding levels sufficient?
- 2. If the BLM were to increase minimum bonds amounts, what factors should it consider?
 - a. Should bond minimums simply be adjusted to reflect inflation?

- b. Should they be adjusted to reflect an estimate of best case, average, or worst case reclamation and restoration costs? In connection with this question, the BLM would be interested in receiving estimates of such reclamation and restoration costs.
 - c. Are there other factors the BLM should consider? Are there best practices at the State level that the BLM should consider adopting?
3. If the BLM were to increase the minimum bond amounts:
- a. Should it provide a way for those amounts to automatically rise, such as if they were to track inflation?
 - b. How should it implement those changes – e.g., should it consider a phase-in?
 - c. Existing authorities permit the BLM to adjust bond amounts up and down, but no lower than the minimum amount. In light of those authorities, if the BLM were to increase bond minimums, should it consider provisions to allow a party to request, on a case-by-case basis, a decrease in its bond amount to below the minimum if, for example, the BLM were to determine that the potential liabilities on a particular lease are less than the applicable minimum bond amounts? Please identify any standards the BLM should use to determine whether to approve such a request.
4. Are there any other activities for which the BLM should consider requiring a bond?
- a. In the past the BLM has considered adding a new bond for inactive wells; should the BLM revisit such a proposal?
 - b. Similarly should the BLM consider adding a royalty bond to address issues related to unpaid royalties? Adding a royalty bond would mean that funds available under the other, general bonds would not need to be used for anything other than reclamation. Currently, the bonds can address reclamation and royalty issues, among other things.
 - c. For any new bond types that you think the BLM should consider, please explain how the bond amounts should be set and what the scope of coverage should be.
5. Are there any other changes or refinements that the BLM should consider to its current oil and gas bonding, surety and financial arrangement requirements?

Civil Penalty Assessments

The BLM is interested in receiving feedback on the following questions related to changes to the current caps on civil penalty assessments:

1. Should the current regulatory caps on the amount of civil penalties that may be assessed be removed?
2. If regulatory caps on the maximum amount of civil penalty assessments should remain, at what level should they be set to adequately deter improper action—in particular, drilling without an approved APD or drilling into Federal leases in knowing or willful trespass?

Non-Penalty Assessments and Trespass

1. In addition to the caps on civil penalties set forth at 43 CFR 3163.2, should the BLM consider revising any of the assessments set forth in 43 CFR 3163.1? If so, what changes should be made and on what basis?
2. Should the BLM consider revising its oil trespass regulations set forth at 43 CFR 9239.5-2? If so, what changes should be made and on what basis?

In addition to the specific information requests identified above, the BLM is also interested in receiving any other comments you may have regarding royalty rates, annual rental payments, minimum acceptable bids, bonding requirements, or the current regulatory caps on civil penalty assessments for BLM-managed oil and gas leases.