

April 21, 2020

Bureau of Land Management (BLM)

Interim guidance for lease suspension requests during the COVID-19 national emergency.

Purpose:

The Department of the Interior (DOI) recognizes the unprecedented hardships currently being experienced by federal oil and gas lessees and operators as a result of the coronavirus 2019 (COVID-19) pandemic. On March 16, 2020, the President declared a COVID-19 national emergency and many state governors have supported the effort to curb the spread of COVID-19 by imposing shelter in-place mandates, curtailing travel, promoting social distancing, and similar measures. The national emergency is impacting many oil and gas companies in their field operations by causing a significant reduction of necessary contractor and employee services as operators are unable to access and operate well sites. As a result of the COVID-19 pandemic, many operators cannot safely operate or produce from oil and gas wells on Federal leases. If operators shut-in wells on a massive scale, then there is a high likelihood that many leases will terminate due to lack of production. In addition, the COVID-19 national emergency has resulted in BLM needing more time to conduct some analysis and consultations to approve Applications for Permit to Drill (APDs).

Interim Policy and Guidance:

Due to the COVID-19 national emergency, Federal oil and gas leases may qualify for a suspension of operations only, or of production only, due to *force majeure* in accordance with Section 17 of the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. § 226(i), if they meet the conditions described below. The regulations define “*force majeure*” as matters beyond the reasonable control of the lessee at 43 C.F.R. §§ 3103.4-4(a).

There are two types of lease suspensions that lessees can qualify for under “*force majeure*”:

1. Suspension of Operations. Suspension of operations under Section 17 of the MLA suspends the operational obligation of the lessee on a lease where operations have begun. A suspension of operations may be consented to by the Authorized Officer (AO) in cases where a lessee is prevented from operating on the lease, despite the exercise of due care and diligence, by reason of *force majeure*, i.e. COVID-19 pandemic 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. A suspension of operations halts the running of the lease term, but does not suspend the payment of rental or minimum royalty. A suspension of operations extends the term of the lease by the duration of the suspension and prevents the lease from expiring during the suspension.

2. Suspension of Production. Suspension of production under Section 17 of the MLA suspends the production obligation of the lessee on a lease where production has been established. A suspension of production may be consented to by the AO in cases where a lessee is prevented from producing from the lease, despite the exercise of due care and diligence, by reason of *force majeure*, i.e., COVID-19 pandemic social distancing orders and travel restrictions. A lessee may conduct operations during a suspension of production, but the lease must be producible before a suspension of production may be granted. A Suspension of Production does not suspend the payment of rental or minimum royalty, but it does extend the term of the lease for the duration of the suspension and prevents the lease from expiring during the suspension.

While Section 39 of the MLA provides for suspension of both operations and production in the interest of conservation of natural resources, section 39 does not have a “*force majeure*” provision. 30 U.S.C. § 209. For suspension requests based on “*force majeure*,” only suspensions under MLA section 17 apply.

However, if an operator has submitted an APD, 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), then BLM may direct or consent to a suspension of operations and production in the interest of conservation under section 39 of the MLA. A suspension of operations and production tolls the running of the lease term, prevents the lease from expiring during the suspension, and tolls payment of rentals, but it prevents both operations and production. 30 U.S.C. 209; 43 CFR 3103.4-4(a), (b), (d).

Steps for Lessees to Apply for Suspensions under “*force majeure*” due to COVID-19

- The application for suspension must be executed by all operating rights owners or, in the case of an approved Federal unit, by the unit operator on behalf of committed tracts (or by all operating rights holders of the unitized tracts) (hereinafter, “lessees”). When granting a suspension of unit obligations in accordance with the conditions and terms of the unit agreement, please remind the operators that suspension of the unit obligations does not suspend the individual federal leases committed to the unit. Those lessees must separately request a suspension of the committed leases. 43 CFR 3103.4-4(f).
- Lessees must submit applications to the appropriate BLM State Office (SO). Applications must include a full statement of the circumstances that render such relief necessary relative to the COVID-19 national emergency, despite the lessee’s due care and diligence.
- Minimum Application Requirements:
 - Lease number(s) and applicable Federal unit or communitization agreement;
 - Expiration date of lease(s) and/or Held by Production Date (HBP);
 - Current lessee(s) and operating rights owners; and
 - Supporting evidence of COVID-19 impact (i.e., efforts to get personnel or service providers to the lease to conduct operations, and their unavailability).

- Lessees must file an application for a suspension of operations prior to the lease expiration date. Lessees must file an application for a suspension of production prior to [expiration of the time to place the lease back into production as provided in 43 CFR 3107.2-3]. Only if filed timely may the BLM SO AO grant a suspension after lease expiration.
- Operators may apply for suspensions of operations (if they have commenced operations,¹ including having obtained an approved APD) or of production (if they have begun producing) for reasons of *force majeure*. An approved suspension does not suspend the filing requirements of form 3160-6, “Monthly Report of Operations.” In addition, the 5-day reporting requirements in 43 CFR 3162.4-1(c) must be complied with.
- Neither a suspension of operations nor a suspension of production suspends a lessee’s rental or minimum royalty obligations.

Termination of Suspension. Lease suspensions granted due to the COVID-19 national emergency will sunset one year from the date BLM approves the suspension, or earlier if the operator resumes operations prior to the one-year date. The suspension may be extended or, with appropriate notice, rescinded, if conditions warrant it. For example, if a suspension of operations or suspension of production is granted on May 1, 2020, then the suspension will terminate on May 1, 2021. If COVID-19 conditions persist, the suspensions may be extended. The applicant may also submit a written request at any time asking BLM to terminate a suspension to allow resumed operations or production.

Steps for BLM Approval

- For those complete applications timely filed, the BLM SO AO will review and evaluate the documentation in the suspension request and verify the application information within five business days. The five-day review time for BLM applies to all suspension requests—those under section 17 or section 39 of the MLA.
- If the application is approved, then the BLM SO AO will notify the operator in writing when a suspension is effective, the type of suspension, and the sunset date of the suspension.
- Copies of the approval letter will be sent to the Office of Natural Resources Revenue (ONRR), within five (5) business days and the local office of the Surface Managing Agency, where applicable.
- If an application is not approved, then the applicant has the right to request a review and appeal, in accordance with 43 CFR subpart 3165.

Effective Date. Once approved, a suspension of operations or production will be effective on the first day of the month in which the completed application was filed or the date specified by the AO. (43 CFR 3103.4-4(c) and 3165.1(c)). All SOs should follow the data standards for all

¹ Note that BLM Manual 3160-10 (1987) defines “operations” in its glossary as “all beneficial use of the lease, including construction of access roads on the leased land, site preparation, well repair, drilling or similar activity.” Operations would thus include all activities that are approved, or should be approved, in a permit to drill.

existing oil and gas leases. When using action code 677 - Suspension of Operations or Production/Payment, the SO must enter the reason for the suspension in BLM's Legacy Rehost System (LR2000) as "COVID-19." In addition, action code 247 - Future Action Suspense should be entered to flag the suspension termination date.

Monitoring of Oil and Gas Lease Suspensions.

The BLM Headquarters office of Fluid Minerals will run monthly reports of leases that are suspended due to the COVID-19 pandemic. As stated in the data entry standards, the reason for the suspension will be noted in the appropriate LR2000 action remarks field, and offices should use "COVID-19" as noted above.

Other.

This interim guidance will remain in effect until instructed otherwise. In general, lease suspensions granted due to the COVID-19 national emergency will sunset one-year from the granting of the suspension.

During a suspension, the company will be denied beneficial use of the lease, that is, either the ability to conduct operations or the ability to produce. The running of the lease term resumes when the suspension is lifted. Thus, a lease cannot expire while it is suspended.

The BLM will coordinate with ONRR as needed.

These suspensions are not applicable to Indian leases on trust or restricted Indian lands, which fall under the auspices of the Bureau of Indian Affairs (BIA) and its existing policies and procedures. If requested by BIA, the BLM AO will timely review the technical aspects of a suspension involving Indian leases and provide BLM evaluation or recommendation to BIA.