



**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Parts 3100, 3110, and 3120**

**[16X.LLWO310000.L13100000.PP0000]**

**RIN: 1004-AE48**

**BLM Internet-Based Auctions**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This procedural rule amends certain provisions of the oil and gas regulations administered by the Bureau of Land Management (BLM) to recognize that the BLM is authorized to use either oral or internet-based auction procedures to conduct oil and gas lease sales under the Mineral Leasing Act of 1920, as amended (MLA). The changes made by this rule update the BLM's regulations to be consistent with the National Defense Authorization Act for Fiscal Year (FY) 2015 (NDAA), which specifically granted the BLM the authority to use internet-based bidding for its competitive oil and gas lease sales.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** For questions on technical issues, contact July McQuilliams, Senior Mineral Leasing Specialist, by telephone at 202-912-7156, or by email to [jmcquilliams@blm.gov](mailto:jmcquilliams@blm.gov). For regulatory questions, contact Jennifer Noe, Division of Regulatory Affairs, by telephone at 202-912-7442, or by email to [jnoe@blm.gov](mailto:jnoe@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339 to contact the above individuals during normal business hours.

FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individuals. You will receive a reply during normal business hours.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

This rule makes minor amendments to the BLM regulations governing onshore oil and gas lease sales to make them consistent with existing statutory authority that allows the BLM to use either oral or internet-based auction procedures.

The MLA authorizes the Secretary of the Interior to lease federally owned deposits of oil and gas and the lands containing those deposits in the manner provided for in the Act. 30 U.S.C. 181-287. The Secretary has delegated responsibility for implementing that authority to the BLM. Prior to 2015, the BLM was authorized to conduct oil and gas lease sales using only oral auction methods. *See* 30 U.S.C. 226(b)(1) (“Lease sales shall be conducted by oral bidding.”). As a result, the BLM’s implementing regulations governing lease sales in 43 CFR parts 3100, 3110, and 3120, reference only oral auctions or oral bidding. *See e.g.*, 43 CFR 3120.1-2, 3120.5-1. Under these regulations, parties interested in obtaining a Federal oil or gas lease were required to travel to the physical location of a BLM auction (normally the BLM State Office where the parcels being offered were located) in order to participate in person in the oral auction for the parcels being offered. Generally speaking, those sales were conducted by a BLM-contracted auctioneer who facilitated the auction in an escalating bid sequential manner. The lease sale would start with the auctioneer stating the minimum bid. Interested bidders would increase their bids until the highest bidder for each parcel prevailed and was ultimately awarded the parcel. *See* 30 U.S.C. 226(b)(1)(A); 43 CFR 3120.5-3(b).

Recognizing the costs associated with holding in-person oil and gas lease sales and the opportunities for increased efficiency provided by an internet-based system, Congress, in 2008,

directed the Secretary of the Interior, through the BLM, to conduct an oil and gas leasing internet pilot program. Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Sec. 117, 121 Stat. 2120 (2007). Accordingly, the BLM conducted an internet-based auction pilot in 2009, offering parcels located on BLM-managed lands in Colorado to test the feasibility of internet-based lease sales. The purpose of the pilot was to evaluate the potential costs and benefits to the Federal Government and lease sale participants from using such a system. For this pilot, the BLM relied on a system that had been developed by a private entity.

As outlined in a subsequent report to Congress submitted in February 2012, which presented the results of the 2009 internet-based auction pilot, the BLM found that transitioning to internet-based lease sales would have immediate cost savings and other benefits. Report to Congress, Results of the Internet Oil and Gas Auction Pilot and Recommendation on How to Implement the Program in Fiscal Year 2011 (Dep't of the Interior, Feb. 21, 2012) (Internet Leasing Report). The BLM prepared the report in response to a congressional request. See Senate Report 111-38, Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2010 (July 7, 2009). Almost double the number of bidders participated in the internet-based pilot sale as compared to the number that typically participate at an in-person lease sale hosted by the BLM Colorado State Office. In the Internet Leasing Report, the BLM estimated that greater competition among bidders has the potential to increase competitive bonuses by about one percent (approximately \$2 million per year in aggregate), (Internet Leasing Report). However, it should be noted that, in addition to the number of bidders, bonus bids are also affected by broader market conditions, and therefore the transition to internet-based leasing could have an even larger impact on auction proceeds. In addition to increased revenues, a shift to internet-based sales would also help reduce the BLM's administrative costs associated with holding a lease sale, and reduce the risk of weather-related or other logistical disruptions in lease sales.

As a result of this auction pilot, the Secretary recommended in his report that Congress amend the MLA to allow the BLM maximum discretion to use either in-person or internet-based procedures to conduct competitive lease sales for BLM-managed onshore oil and gas resources. *Id.* Notably, since the 2009 BLM internet-based auction pilot, many state governments' oil and gas lease sales have moved entirely to online sales, including states with significant oil and gas resources, such as Colorado, North Dakota, Texas, Utah, and Wyoming.

Consistent with the Secretary's recommendations, in the NDAA, Congress amended the MLA at 30 U.S.C. 226(b)(1) to authorize the Secretary of the Interior to "conduct onshore lease sales through Internet-based bidding methods." *See* Pub. L. No. 113-291, Sec. 3022(a), 128 Stat. 3762 (2014). The NDAA adds a new paragraph to section 226(b)(1), which provides: "In order to diversify and expand the Nation's onshore leasing program to ensure the best return to the Federal taxpayer, reduce fraud, and secure the leasing process, the Secretary may conduct onshore lease sales through Internet-based bidding methods. Each individual Internet-based lease sale shall conclude within 7 days."

The NDAA does not modify parcel selection, bidder eligibility, auction style, or payment requirements, which will continue to apply regardless of the method selected by the BLM to conduct a particular oil and gas lease sale. The BLM will also continue to award leases to the highest responsible qualified bidder at its competitive auctions, pursuant to the MLA. Consistent with existing regulations at 43 CFR subpart 3110, if a parcel offered for sale does not sell at a competitive auction, it will be available on a noncompetitive basis in the BLM State Offices with jurisdiction over the areas where the parcels are located for the period of time set forth in the regulations.

## **II. Explanation of Amendments**

The BLM has determined that this procedural rule is necessary because the BLM's existing regulations refer only to oral auction or oral bidding, even though the BLM is statutorily authorized to use either oral or internet-based auction procedures to conduct its oil and gas lease sales. To implement the new authority provided by the NDAA, this rule amends 43 CFR subparts 3100, 3110, and 3120 to add the phrase "or internet-based" after every reference to "oral" auctions or bidding. Specific changes are made to the following provisions: 43 CFR 3103.3-2, 3110.1, 3110.2, 3120.1-2, 3120.3-7, 3120.5-1, 3120.5-2, 3120.5-3, and 3120.6.

This rule does not make any other changes to the regulations in 43 CFR chapter II. It does not change the parcel selection, bidder eligibility, auction style, or payment requirements for the BLM's competitive oil and gas lease sales. This rule merely makes minor technical amendments that give the BLM the option to conduct lease sales either in person or over the internet consistent with applicable statutory authority.

### **III. Procedural Matters**

#### **A. Administrative Procedure Act**

As explained in the Background Section of this Preamble, this rule makes minor, non-substantive, technical amendments to the BLM's rules governing oil and gas lease sales. These changes involve agency organization, procedure or practice, and do not create rights or impose obligations on members of the public. As a result, under section 553(b)(3)(A) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A), this rule may be published without notice and comment procedures. Because the rule relates solely to agency procedure and practice and merely restates the terms of the statute it implements, it is not substantive, and therefore is also not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the APA. 5 U.S.C. 553(d). This rule is therefore effective immediately upon publication in the *Federal Register*.

The U.S. Court of Appeals for the District of Columbia has emphasized that the “critical feature” of a rule that satisfies the so-called procedural exception to the APA’s notice-and-comment requirements is that the rule “covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.” *James V. Hurson Assoc. v. Glickman*, 229 F.3d 277, 280 (D.C. Cir. 2000) (quoting *JEM Broad Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994)). The court held in *Hurson* that a U.S. Department of Agriculture rule eliminating face-to-face meetings to approve food labels was within the APA’s procedural exception because the rule did not alter the substantive standards by which the agency would approve or deny proposed labels; it simply changed the procedures the agency would follow in applying those standards. Similarly, this BLM rule adding a reference to internet-based auctions merely alters the manner in which parties may present themselves to the BLM; nothing in this rule alters either the substantive criteria by which a party is eligible to participate in a BLM oil and gas lease sale or the requirements for obtaining a Federal oil and gas lease. Therefore, the rule fits squarely within the procedural rule exemption. *See also Nat’l Whistleblower Ctr. v. Nuclear Regulatory Comm’n*, 208 F.3d 256, 262 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 1070 (2001).

Moreover, when a rule merely restates the statute it implements, APA notice-and-comment procedures are unnecessary. *See Komjathy v. Nat’l Transp. Safety Bd.*, 832 F.2d 1294 (D.C. Cir. 1987), *cert. denied*, 486 U.S. 1057 (1988). Here, the BLM’s amendments to 43 CFR parts 3100, 3110 and 3120 do no more than restate the relevant language of the MLA in 30 U.S.C. 226(b)(1), as amended, authorizing BLM to conduct onshore lease sales through internet-based bidding methods.

## **B. Regulatory Planning and Review (Executive Orders 12866 and 13563)**

While Executive Order (E.O.) 12866 does not apply to “(r)egulations or rules that are limited to agency organization, management, or personnel matters,” it does not exempt those rules that describe the procedure or practice requirements of an agency. E.O. 12866, Sec. 3(d). The E.O. provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. Because this rule does not meet any of the standards for a significant regulatory action in E.O. 12866, this rule is not significant for purposes of the E.O. *See* E.O. 12866, Sec. 3(f).

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory objectives. This E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas, where appropriate. The BLM developed this rule in a manner consistent with these requirements.

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). Because no notice of proposed rulemaking is required, the RFA does not require an initial or final regulatory flexibility analysis of this rule.

### **D. Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, Indian, or local government agencies or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

This rule merely makes procedural changes involving agency organization, procedure, or practice, by adding the option, consistent with applicable statutory authority, for the BLM to use internet-based bidding in addition to oral auctions for its competitive oil and gas lease sales.

#### **E. Unfunded Mandates Reform Act**

Under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, agencies must prepare a written statement about benefits and costs prior to issuing a proposed or final rule that may result in aggregate expenditures by State, local, and tribal governments or by the private sector of \$100 million or more in any one year. This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Since this rule is not an unfunded mandate, the BLM is not required to provide a statement containing the information that the Unfunded Mandates Reform Act requires.

#### **F. Takings (E.O. 12630)**

Under the criteria in section 2 of E.O. 12630, this rule does not have any significant takings implications. This rule will not impose conditions or limitations on the use of any private property. Therefore, this rule does not require a Takings Implication Assessment.

### **G. Federalism (E.O. 13132)**

Under the criteria in section 1 of E.O. 13132, this rule does not have Federalism implications that warrant the preparation of a Federalism summary impact statement. The management of Federal mineral leases is the responsibility of the Secretary of the Interior. This rule does not impose administrative costs on States or local governments. This rule also does not substantially and directly affect the relationship between the Federal and State governments. Because this rule does not alter that relationship, this rule does not require a Federalism summary impact statement.

### **H. Civil Justice Reform (E.O. 12988)**

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of section 3(a), which requires that agencies review all regulations to eliminate errors and ambiguity and write them to minimize litigation.

b. Meets the criteria of section 3(b)(2), which requires that agencies write all regulations in clear language using clear legal standards.

### **I. Consultation with Indian Tribal Governments (E.O. 13175)**

Under E.O. 13175, the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951, May 4, 1994), the Department of the Interior (DOI) Policy on Consultation with Indian Tribes (Dec. 1, 2011), and the DOI Departmental Manual, part 512, section 2, the BLM evaluated possible effects of the rule on Federally recognized Indian tribes. The DOI strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The BLM determined that this rule has no tribal implications because the BLM does not conduct oil and

gas lease sales for Indian tribal, corporate, or allotted lands. Thus, Indian tribal governments are not impacted by the changes made by this rule, and consultation is not required.

#### **J. Paperwork Reduction Act of 1995**

This rule will modify 43 CFR 3103.3-2, 3110.1, 3110.2, 3120.1-2, 3120.3-7, 3120.5-1, 3120.5-2, 3120.5-3, and 3120.6 to recognize that the BLM is statutorily authorized to use either oral or internet-based auctions to conduct its oil and gas lease sales. None of these regulations has required an Office of Management and Budget (OMB) control number in the past, nor do they require an OMB control number as revised. They are within 5 CFR 1320.3(h)(1), which provides an exception from Paperwork Reduction Act requirements for affirmations, certifications, or acknowledgements as long as they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument. This rule does not contain any new information collection requirements, and therefore, does not require a submission to the OMB under the Paperwork Reduction Act.

#### **K. National Environmental Policy Act**

This rule is procedural in nature; therefore, it qualifies for categorical exclusion under 43 CFR 46.210(i). As a result, a detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required. The BLM has also determined that this rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA, even though a categorical exclusion exists. Moreover, this rule does not constitute a major Federal action significantly affecting the quality of the human environment, as the procedural changes resulting from these amendments will have no effect on the physical environment. The rule only expands the methods the BLM may use to conduct an oil and gas leases sale; it does not modify the standards or requirements the BLM applies when deciding to offer a particular parcel for lease.

## **L. Effects on the Nation’s Energy Supply (E.O. 13211)**

Under E.O. 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This Statement must include a detailed statement of “any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies)” for the action, and reasonable alternatives and their effects. Section 4(b) of E.O. 13211 defines a “significant energy action” as “any action by an agency (normally published in the *Federal Register*) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of OIRA as a significant energy action.” This rule will not have any adverse effects on energy supply, distribution, or use and is therefore not a significant energy action under the definition in E.O. 13211, and, therefore, a Statement of Energy Effects is not required.

### **List of Subjects**

#### *43 CFR Part 3100*

Government contracts, Mineral royalties, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

#### *43 CFR Part 3110*

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

#### *43 CFR Part 3120*

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the BLM amends 43 CFR parts 3100, 3110, and 3120 as follows:

**PART 3100—OIL AND GAS LEASING**

1. The authority citation for part 3100 is revised to read as follows:

AUTHORITY: 30 U.S.C. 189 and 359; 43 U.S.C. 1732(b), 1733, and 1740; the Energy Policy Act of 2005 (Pub. L. 109-58); and the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291, 128 Stat. 3762).

**Subpart 3103—Fees, Rentals and Royalty**

2. In § 3103.3-2, revise paragraph (a)(2) to read as follows:

**§ 3103.3-2 Minimum royalties.**

(a) \* \* \*

(2) On leases issued from offers filed after December 22, 1987, and on competitive leases issued from successful bids placed at oral or internet-based auctions conducted after December 22, 1987, a minimum royalty in lieu of rental of not less than the amount of rental which otherwise would be required for that lease year.

\* \* \* \* \*

**PART 3110—NONCOMPETITIVE LEASES**

3. The authority citation for part 3110 is revised to read as follows:

AUTHORITY: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351-359; 31 U.S.C. 9701; 43 U.S.C. 1701 *et seq.*; Pub. L. 97-35 Stat. 357; and the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291, 128 Stat. 3762).

**Subpart 3110—Noncompetitive Leases**

4. In § 3110.1, revise the second sentence of paragraph (b) to read as follows:

**§ 3110.1 Lands available for noncompetitive offer and lease.**

\* \* \* \* \*

(b) \* \* \* Such lands shall become available for a period of 2 years beginning on the first business day following the last day of the competitive oral or internet-based auction, or when formal nominations have been requested as specified in § 3120.3-1 of this title, or the first business day following the posting of the Notice of Competitive Lease Sale, and ending on that same day 2 years later. \* \* \*

5. In § 3110.2, revise the first sentence of paragraph (a) to read as follows:

**§ 3110.2 Priority.**

(a) Offers filed for lands available for noncompetitive offer or lease, as specified in §§ 3110.1(a)(1) and 3110.1(b) of this title, shall receive priority as of the date and time of filing as specified in § 1821.2-3(a) of this title, except that all noncompetitive offers shall be considered simultaneously filed if received in the proper BLM office any time during the first business day following the last day of the competitive oral or internet-based auction, or when formal nominations have been requested as specified in § 3120.3-1 of this title, on the first business day following the posting of the Notice of Competitive Lease Sale. \* \* \*

\* \* \* \* \*

**PART 3120—COMPETITIVE LEASES**

6. The authority citation for part 3120 is revised to read as follows:

AUTHORITY: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351-359; 40 U.S.C. 471 *et seq.*; 43 U.S.C. 1701 *et seq.*; the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); and the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291, 128 Stat. 3762).

**Subpart 3120—Competitive Leases**

7. In § 3120.1-2, revise paragraph (b) to read as follows:

**§ 3120.1-2 Requirements.**

\* \* \* \* \*

(b) Lease sales shall be conducted by a competitive oral or internet-based bidding process.

\* \* \* \* \*

8. Revise § 3120.3-7 to read as follows:

**§ 3120.3-7 Refund.**

The minimum bid, first year’s rental and administrative fee shall be refunded to all nominators who are unsuccessful at the oral or internet-based auction.

9. Amend § 3120.5-1 by revising the section heading;, the first sentence of paragraph (a), the first sentence of paragraph (b), and paragraph (c) to read as follows:

**§ 3120.5-1 Oral or Internet-based auction.**

(a) Parcels shall be offered by oral or internet-based bidding. \* \* \*

(b) A winning bid shall be the highest oral or internet-based bid by a qualified bidder, equal to or exceeding the national minimum acceptable bid. \* \* \*

(c) Two or more nominations on the same parcel when the bids are equal to the national minimum acceptable bid, with no higher oral or internet-based bid being made, shall be returned with all moneys refunded. If the Bureau reoffers the parcel, it shall be reoffered only competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received at an oral or internet-based auction.

10. In § 3120.5-2, revise paragraph (c) to read as follows:

**§ 3120.5-2 Payments required.**

\* \* \* \* \*

(c) The winning bidder shall submit the balance of the bonus bid to the proper BLM office within 10 working days after the last day of the oral or internet-based auction.

11. In § 3120.5-3, revise paragraph (c) to read as follows:

**§ 3120.5-3 Award of lease.**

\* \* \* \* \*

(c) If a bid is rejected, the land shall be reoffered competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received in an oral or internet-based auction.

\* \* \* \* \*

12. Revise § 3120.6 to read as follows:

**§ 3120.6 Parcels not bid on at auction.**

Lands offered at the oral or internet-based auction that received no bids shall be available for filing for noncompetitive lease for a 2-year period beginning the first business day following the auction at a time specified in the Notice of Competitive Lease Sale.

Dated: August 24, 2016.

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Amanda C. Leiter  
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*Land and Minerals Management*  
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