



## **New Mexico State Land Office Overview of Proposed Amendments to the Oil and Gas Financial Assurance Rule**

The New Mexico State Land Office's (NMSLO) draft bonding rule (amending 19.2.100.23 NMAC) increases minimum financial assurance requirements for oil and gas leases and makes other improvements to the existing rule. These changes are primarily intended to: (1) ensure adequate financial assurances are in place to mitigate the risks associated with actual and potential damage to state trust land (e.g., failure to plug inactive wells, unmediated spills, removal of related infrastructure); and (2) establish an annual reporting framework to enable the agency to better understand the potential liabilities and risks on each lease and inform adjustments to financial assurance levels.

### **Minimum Financial Assurance Requirements (19.2.100.23(A))**

- Replaces the existing rule structure, which currently provides insufficient bond minimums for different categories: \$10,000 (single lease bond); \$20,000 (multi-lease blanket bond); \$25,000 (multi-lease "megabond" covering oil and gas operations and other types of activities).
- Sets the new minimum per lease financial assurance requirement at \$150,000 (\$100,000 for mineral-only estate leases).

### **Heightened Financial Assurance Requirements (19.2.100.23(B))**

- Provides heightened bond requirements based on various risk categories, including the number of inactive wells, extremely marginal wells and unremediated spills on a lease, a history of bond claims and other compliance-related factors.
- Caps the total bond amount at the estimated plugging, remediation and reclamation costs.
- Allows for a deferral of the heightened bond requirement if a lessee demonstrates that the conditions triggering the heightened requirement are being diligently addressed in a manner that is acceptable to the NMSLO.
- Leases subject to heightened bond requirements may be subject to additional reporting requirements and the leases will be posted on the NMSLO's public website.

### **Bulk Financial Assurance (19.2.100.23(C))**

- Allows lessees to bundle financial assurance for multiple leases, with a modest discount available for leases in full compliance with NMSLO requirements.
- Caps the total financial assurance required of any single lessee at \$40 million for compliant leases (that is, leases not subject to heightened financial assurance requirements).

### **Annual Reporting (19.2.100.23(D))**

- Establishes an annual report requirement so that lessees are in regular communication with the NMSLO about lease infrastructure, status of operations (e.g., inactive wells, plugged wells, spills) and other conditions that may affect financial assurance requirements.
- Sets an annual reporting deadline of July 1 of each year to report on activities occurring within the previous calendar year (January 1 – December 31).

### **Periodic Adjustment and Review of Financial Assurance Levels (19.2.100.23(E))**

- Provides for inflationary adjustments to financial assurance levels every five years.
- Specifies that the adequacy of a financial assurance for each lease shall be reviewed no less frequently than every five years and provides that the NMSLO may adjust the required amount based on changes to compliance profile or other circumstances; lessees would be provided with the reason(s) for any proposed adjustment and given an opportunity to respond to the issues raised.
- Offers downward adjustments to financial assurance requirements in the event the NMSLO gains access to Oil Conservation Division plugging bonds in the future.

#### **Forms of Financial Assurance (19.2.100.23(F))**

- Specifies alternative forms of financial assurance that may be permitted in lieu of a surety bond, including irrevocable letter of credit, cash deposit, or other forms of financial assurance determined to be appropriate on a case-by-case basis.

#### **Waivers (19.2.100.23(G))**

- Allows a lessee to request a waiver of financial assurance if the lessee does not intend to conduct or allow development on the lease acreage, with the caveat that the lessee must secure a financial assurance within 30 days of commencement of operations.

#### **Riders Limited (19.2.100.23(H))**

- Provides that the NMSLO will not accept riders or amendments to financial assurance instruments that change the name of the lessee or scope of coverage, or that add multiple leases to the same instrument without specific written approval from the NMSLO.

#### **Claims on Financial Assurance (19.2.100.23(I))**

- Details the manner by which the NMSLO files claims against bonds, including notice to the lessee and the ability of the lessee to cure by providing an alternative instrument if the financial assurance is claimed or if the surety fails to honor or respond to a claim.
- Allows the NMSLO to accept a financial assurance from an operator, in lieu of from the lessee, of a well subject to a communitization agreement to prevent cancelation of an affected lease.

#### **Notification (19.2.100.23(J))**

- Specifies that a lease cancelation notification for failing to secure an adequate financial assurance will be made by certified mail; notifications related to heightened bonding requirements, adjustments to financial assurance levels, the phase-in schedule or claims against a financial assurance shall be made by certified mail or courier.
- All other notifications or communications by the agency may be made certified mail or courier, regular mail, or email.

#### **Release of Financial Assurance (19.2.100.23(K))**

- States that financial assurances shall only be released upon a substitute instrument being approved or if the lessee no longer holds state oil and gas leases and there are no outstanding compliance issues.

#### **Phase-in Schedule (19.2.100.23(L))**

- Provides a phased-in schedule for adhering to the applicable financial assurance requirements: 90 days for leases subject to heightened financial assurance requirements; December 1, 2026 for lessees holding 50 or more leases; and May 1, 2027 for all other lessees.