

This is an amendment to 19.2.100 NMAC, Section 23, effective 6/1/2026.

19.2.100.23 ~~[SURETY TO PROTECT SURFACE PURCHASER AND LESSEE—WAIVERS:~~

~~_____ A. _____ Before any lessee shall commence development or operations, including any and all prospecting activities upon the lands, such lessee or operator shall execute and file with the commissioner a good and sufficient bond or other surety, in an amount to be fixed by the commissioner but not less than ten thousand dollars (\$10,000) in favor of the state of New Mexico for the benefit of the appropriate trust beneficiary and the state's contract purchasers, patentees and surface lessees, to secure payment to the extent allowed by law for such damage to their interests and tangible improvements upon such lands as may be suffered by reason of development, use and occupation of the lands by the oil and gas lessee.~~

~~_____ B. _____ A bond or other surety in the minimum amount of ten thousand dollars (\$10,000) for each lease shall be deemed sufficient unless and until the commissioner determines, or one or more surface lessees or purchasers show the commissioner, that such an amount is not adequate in a given case. Provided, however, that if a lessee holds more than one oil and gas lease, a blanket bond or other surety in the amount of twenty thousand dollars (\$20,000) will be acceptable unless and until the commissioner determines, or one or more surface lessees or purchasers show the commissioner, that such an amount is not adequate in a given case. Provided further, that if any purchaser, patentees or surface lessees shall file with the commissioner a waiver duly executed and acknowledged by the purchaser, patentee or surface lessee of the purchaser's, patentee's or surface lessee's right to require such bond or other surety pursuant to Section 19-10-26 NMSA 1978 the development, occupation and use of the lands by the oil and gas lessee may in the discretion of the commissioner be permitted without said surety.~~

~~_____ C. _____ With the approval of the commissioner, in lieu of the single and blanket bonds for oil and gas lessees, a twenty five thousand dollar (\$25,000) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources or as holder under one or more state rights of way or easements which the lessee has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal or geothermal resources and of all state rights of way and easements executed with the commissioner, including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.]~~

FINANCIAL ASSURANCE:

A. Minimum financial assurance requirements.

(1) Prior to the development, use, or occupation of the lease area, an oil and gas lessee shall execute and file with the commissioner good and sufficient bond or acceptable alternative form of financial assurance ("financial assurance") in an amount to be fixed by the commissioner but not less than \$150,000, in favor of the commissioner and state land office for the benefit of the applicable trust beneficiary, and contract purchasers and surface lessees of the affected acreage and their respective grantees or successors in interest, to protect the commissioner and state land office against damage to state trust land, and to ensure the lessee's compliance with all lease obligations. Damage to state trust land includes, but is not limited to, the failure to plug inactive wells located on the lease acreage, remediate spills and associated contamination, and reclaim surface disturbance and damage to mineral resources and reservoirs.

(2) A lessee of a mineral-only lease may execute and file with the commissioner minimum financial assurance in an amount to be fixed by the commissioner but not less than \$100,000.

B. Heightened financial assurance requirements.

(1) If a lease includes on its premises any of the following conditions, the commissioner may require the lessee to file an additional financial assurance, in an amount to be determined by the commissioner (not to exceed one-hundred percent of estimated applicable plugging, remediation, and reclamation costs).

(a) An inactive well (a well for which no production or injection has been reported for a continuous period of one year or more), except for a well:

(i) that has been in approved temporary abandonment status with the New Mexico oil conservation division for a period of five years or less, but this exception shall not apply to any lessee or well operator which has ten percent or more of all wells it operates on state trust lands in approved temporary abandonment status;

(ii) that has received an approved shut-in from the commissioner; or

(iii) that is on a lease and the lease has received an approved shut in from the commissioner.

(b) a well that has produced 250 barrels of oil or less in the past year or the equivalent volume of gas; or

(c) a release, whether or not reported to the oil conservation division, that has not been completely remediated pursuant to state land office rules and requirements within the latter of one year of occurrence or discovery, or one year from the effective date of this rule.

(2) If any of the following conditions have occurred in the past ten years, the commissioner may require the lessee to file an additional financial assurance, in an amount to be determined by the commissioner (not to exceed one-hundred percent of estimated applicable plugging, remediation, and reclamation costs):

(a) the commissioner or another government agency has claimed the lessee's financial assurance filed with the commissioner or such other government agency to redress the lessee's compliance deficiencies related to operations in New Mexico;

(b) the commissioner has filed suit against the lessee for failing to remedy damage to state trust land caused by oil and gas operations on a lease held by the lessee; or

(c) the lessee is out of compliance with an agreed compliance order, stipulated final order, or other final order of the oil conservation division, or a final order of another agency of the state that pertains to the lessee's oil and gas operations in New Mexico.

(3) A lessee may submit written documentation showing that the conditions that trigger the heightened financial assurance requirement are being diligently addressed. In the commissioner's sole discretion, the commissioner may defer the heightened financial assurance requirement for a period of up to 180 days upon determining that there are sufficient efforts being taken to plug wells, remediate releases, or address other conditions that trigger the heightened financial assurance requirement by a date agreeable to the commissioner. The deferment may be extended in the commissioner's sole discretion based on the lessee's progress addressing the compliance deficiencies, provide that any subsequent deferment period shall not exceed 90 days.

(4) In addition to the heightened financial assurance factors identified in (1) and (2), the commissioner may require a higher level of financial assurance on an individual lease basis, based on the commissioner's assessment of other factors pertinent to the lessee's oil and gas operations in New Mexico, the environmental condition or compliance status of the lease premises or other state leases held by the lessee, or significant changes in compliance costs.

(5) In the event a higher level of financial assurance is required under any provision of this rule, the commissioner will provide written notice by certified mail or courier to the lessee of the required amount and the reasons for the higher financial assurance requirement and the lessee shall have 90 days from the date of the mailing to update its financial assurance; except that in instances where the commissioner requires a higher level of financial assurance because the commissioner has been paid on a claim against the lessee's prior financial assurance, or because the commissioner has filed a claim against the lessee's prior financial assurance and the surety, bank, or other third party issuing the financial assurance has been unresponsive to the commissioner's claim, the lessee shall have 30 days.

(6) Leases subject to heightened financial assurance requirements may be subject to additional reporting requirements, including, but not limited to, an estimation of asset retirement obligations for wells and associated infrastructure located on such leases.

(7) A list of leases subject to heightened financial assurance requirements shall be made public on the agency's website.

C. Bulk financial assurance.

(1) Lessees holding ten or more leases that are required under this rule to be secured by bulk financial assurance may, with the commissioner's written approval, submit a single bond or other financial assurance instrument to cover multiple leases, according to the following schedule:

<u>between 2 and 9 leases: \$150,000 per lease;</u>
<u>between 10 and 19 leases: \$130,000 per lease;</u>
<u>between 20 and 49 leases: \$110,000 per lease;</u>
<u>50 or more leases: \$100,000 per lease.</u>

(2) In the event the commissioner accepts one or more bulk financial assurance instruments from a particular lessee, the lessee shall provide a schedule listing all leases subject to the bulk financial assurance instrument, and the wells (regardless of operator) located on each lease. No lease that is subject to heightened financial assurance requirements is eligible for inclusion in, or coverage under, a bulk financial assurance instrument.

(3) The commissioner shall require the lessee to update such schedules annually, or upon any lease assignment, expiration or termination as the commissioner may require.

(4) Excluding any lease subject to a heightened financial assurance requirement, the total amount required of a single lessee shall not exceed \$40,000,000.

D. Reporting and notification requirements.

(1) Each lessee shall file an annual report on or before July 1 of each year, certified under penalty of perjury by a person with authority to bind the lessee. The report shall cover activities for the previous calendar year (January 1 – December 31) and include the following for each lease held by that lessee:

(a) inventory of active and inactive wells on the lease, with reference to well name, API number, operator, date of last production, total reported oil production (in BBLs) and gas production (in BOE) reported during the previous calendar year, and whether the well is part of an oil and gas unit;

(b) inventory of other fixed infrastructure on the lease acreage that is related to oil and gas lease operations, including but not limited to tank batteries, ponds, separators, but not including transient equipment such as vehicles;

(c) list of any hydrocarbon or produced water releases on lease premises, whether or not reported to the oil conservation division, by reference to location (latitude/longitude coordinates), substance released, estimated quantity, responsible party, and status of remediation, to the extent known by the lessee;

(d) identification of any wells plugged in the previous twelve months and a summary and cost of remediation and reclamation performed for associated areas of operations;

(e) identification of any warning letters, notices of violation, fines, penalties, civil actions, criminal actions, or judgments issued or initiated by any governmental entity with respect to oil and gas operations on the lease premises, by reference to date, nature of the alleged violation or action, and issuing or initiating entity; and

(f) identification of any civil litigation not initiated by a governmental entity concerning or arising out of oil and gas operations on the lease premises.

(2) For a lease for which the lessee holds the record title and is not the operator of wells on the lease, the lessee shall include information to the extent known by the lessee after performing reasonable due diligence and inquiry of operator(s) on the lease.

(3) The commissioner may prescribe a form and submission format (e.g., web portal and template) for the annual report. To the extent there is no change from a prior year's report in any particular category or overall and the lessee has performed reasonable due diligence, the lessee may so certify in writing, under penalty of perjury, in lieu of filing a full report.

(4) In the event that any errors or omissions are identified, the lessee shall have 30 days from notification to amend and resubmit the annual report. Reporting errors or omissions that are corrected within the 30-day period shall not provide a basis for lease cancellation.

(5) Lessees shall notify the state land office within 30 days of any change of name or change of address of a surety or financial institution issuing a letter of credit or in the event lessee is informed of any change to or non-renewal of the financial assurance or the insolvency of the surety or other entity issuing the financial assurance.

(6) Lessees shall reasonably cooperate with the commissioner's inquiries regarding all matters pertaining to state land office financial assurance requirements or to the related reporting requirements of this rule. Based on compliance issues related to a particular lease or lessee, the commissioner may request, and the lessee shall provide, additional information to be submitted in a lessee's annual reporting.

E. Periodic adjustment and review of financial assurance levels.

(1) The monetary amounts of all financial assurances shall be adjusted every five years for inflation based on the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The effective date of the adjustment shall be January 1 of the sixth year (the first day following each five-year review cycle).

(2) The commissioner will periodically, but no less than every five years, review the sufficiency of each lessee's financial assurance. Factors the commissioner may consider include the status of the lease (e.g., number of active and inactive wells, lease acreage, number of operators on the lease), the compliance history of lessee with respect to the specific lease in question and other state land office instruments, and changes to actual or estimated costs of plugging, remediation, reclamation, and other compliance activities. In the event the commissioner determines a given financial assurance is inadequate financial assurance to protect the state land office and applicable beneficiary, the commissioner shall send written notice by certified mail or courier to the lessee of the change and lessee shall have 90 days from the date of mailing to update its financial assurance. Failure

of the commissioner to engage in financial assurance sufficiency review of any particular lease or lessee in accordance with this paragraph shall not be evidence or an admission of the commissioner's acceptance of the lessee's current financial assurance as adequate and shall not prevent any subsequent financial assurance sufficiency review.

(3) In the event that a well bond or other financial assurance on file with the New Mexico oil conservation division covers operations on a particular lease and provides the commissioner access to such financial assurance, the commissioner may adjust downward the monetary value of the financial assurance required under this rule by up to the amount of the bond or other financial assurance on file with the New Mexico oil conservation division that is applicable to wells on state trust land.

F. Forms of financial assurance.

(1) A surety bond shall be written on a form prescribed or approved by the commissioner. The surety must be certified by the United States department of the treasury to issue surety bonds and must be authorized to do business in New Mexico. The bond shall be non-cancellable.

(2) In lieu of a surety bond, but in the same amounts and subject to the same substantive requirements set forth in this rule, with commissioner approval a lessee may post:

(a) an irrevocable letter of credit, on a form prescribed or approved by the commissioner, issued by a federally-insured financial institution either doing business in New Mexico or that has agreed in writing to submit itself to the jurisdiction of New Mexico courts. Irrevocable letters of credit shall require the issuing bank to notify the commissioner in writing of any decision to not renew the letter of credit at least 120 days in advance, and shall provide the commissioner the right to redeem the letter of credit prior to non-renewal;

(b) a cash deposit submitted to the commissioner, which shall be held in suspense unless and until the financial assurance is eligible for release or the commissioner makes a claim against the deposit. Any interest on a cash deposit shall incur to the benefit of the commissioner; or

(c) other alternative forms of financial assurance, which may be considered on a case-by-case basis, at the commissioner's sole discretion.

G. Waivers. A lessee may request a waiver of the financial assurance requirement if the lessee does not intend to conduct or allow any development of oil and gas on the lease acreage, which is at the commissioner's sole discretion. Any request for a waiver must be made within 30 days of lease issuance or assignment. Waivers are not available for leases whose acreage contains producing or inactive wells, unremediated spills, or infrastructure related to oil and gas development from the lease acreage. In the event a lessee obtains a waiver, but then proceeds, or allows another to proceed, with oil and gas development on the lease, the lessee must so notify the state land office and post the required financial assurance 30 days prior to commencement of such development. In the event a lessee obtains a waiver of the financial assurance requirement, proceeds with oil and gas development on the lease, but fails to notify the state land office and post the required financial assurance, the lessee shall be ineligible for any financial assurance waiver for a period of five years.

H. "Riders" limited. The commissioner will not accept riders or amendments to financial assurance instruments that change the name of the guarantor (the lessee), that change the scope of coverage, or that add multiple lessees to the same financial assurance instrument without specific written approval of the same. Lessees who under the pre-existing version of this rule are sharing the same financial assurance instrument via rider shall obtain their own separate financial assurance in conformity with the phase-in schedule listed in Subsection K.

I. Claims on financial assurance.

(1) The commissioner shall provide written notice to a lessee by certified mail or courier of any claim made against a financial assurance instrument on file with the commissioner, at the lessee's last address of record on file with the state land office's oil, gas, and minerals division. The commissioner may, but has no obligation to, notify any party other than the surety or issuing financial institution, and lessee of record, regarding any financial assurance claim.

(2) In the event financial assurance is paid out to the commissioner, the affected lease will be canceled unless, after the commissioner provides 30 days written notice by certified mail to the lessee, the lessee cures the default by posting replacement financial assurance in conformity with this rule. The commissioner may require a higher or different form of financial assurance based on payment of the financial assurance claim or other compliance deficiencies of the lessee.

(3) In the event a surety (for a surety bond) or issuing bank (for a letter of credit) fails to respond to a claim against the bond or letter of credit, or fails to honor a substantiated claim, the commissioner may reject the bond or letter of credit and require the lessee to obtain within 30 days a new form of financial assurance that is in conformity with this rule.

(4) The commissioner's claim against financial assurance for any particular lease does not affect the status of financial assurance instruments the same lessee may have submitted for the coverage of other leases.

(5) In the event a lease lacks adequate financial assurance and the lease acreage is included in a communitization agreement, at the commissioner's discretion the commissioner may accept financial assurance posted by an operator of a well subject to the communitization agreement in lieu of the lessee, provided the financial assurance is written to cover the entire affected lease and is not limited to the communitized well or the communitized well operator. An operator providing a financial assurance in lieu of a lessee shall not transfer the operatorship of the communitized well(s) without the prior consent of the commissioner.

J. Notifications. A notification by the agency under this rule section (Section I) that a lease will be canceled for failure to file adequate financial assurance shall be made by certified mail. A notification under this rule section that heightened financial assurance is required (Section B, E, or L), or that a claim is made against a financial assurance instrument (Section I) shall be made by certified mail or courier. Proof of receipt is not required. All other notifications or communications by the agency may be made certified mail or courier, regular mail, or electronic mail.

K. Release of financial assurance. Financial assurance may only be released upon one of the following events: (1) the lessee first submits a substitute form of financial assurance in compliance with this rule and the commissioner approves the substitution; or (2) the lessee no longer holds any state oil and gas leases and the commissioner has confirmed there are no outstanding compliance or performance issues with respect to lessee's lease(s). No financial assurance shall be released unless all plugging, remediation, reclamation and other lease obligations have been completed to the commissioner's satisfaction, unless the commissioner, in the commissioner's sole discretion, authorizes the release of the financial assurance for the specific purpose of meeting such obligations.

L. Phase-in schedule. The requirements of this rule section shall apply to all new oil and gas leases, or existing leases for which no financial assurance acceptable to the commissioner has been filed (but which is required to be filed), immediately upon the effective date of the rule section. The requirements of this rule section shall become applicable to all oil and gas leases pre-existing the effective date of the rule section, and for which financial assurance acceptable to the commissioner has been filed, according to the following schedule (the "Phase-in Schedule"):

(1) any lease subject to any heightened financial assurance requirements shall be in compliance within 90 days of written notice of the commissioner by certified mail or courier that heightened financial assurance is required (subject to any authorized deferral by the commissioner); except that in instances where the commissioner requires a heightened level of financial assurance because the commissioner has been paid on a claim against the lessee's prior financial assurance, or because the commissioner has filed a claim against the lessee's prior financial assurance and the surety, bank, or other third party issuing the financial assurance has been unresponsive to the commissioner's claim, the lessee shall have 30 days;

(2) lessees holding 50 or more oil and gas leases shall bring all their leases into compliance with this rule by December 1, 2026;

(3) all other lessees shall bring their leases into compliance with this rule May 1, 2027.
[19.2.100.23 NMAC - Rp, 19.2.100.23 NMAC, 6/30/2016; A, 6/11/2019; A, 6/1/2026]