



Offshore Royalty Relief: Status During the COVID-19 Pandemic

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U.S. oil and gas producers face [financial challenges](#) stemming from [demand reduction](#), [oversupply](#), and [commodity price drops](#) during the COVID-19 pandemic. Some Members of Congress have [asked](#) the Department of the Interior (DOI) to offer *royalty relief* on federal oil and gas leases—a temporary reduction or waiver of the royalties that companies pay the federal government on production from these leases. Some other Members have [opposed](#) a comprehensive royalty relief program for federal oil and gas producers. DOI has [stated](#) that affected producers may apply for royalty relief individually using [existing options](#), clarifying that the Department does not plan to pursue a new program of blanket royalty relief at this time.

Existing Offshore Royalty Relief Options

For offshore oil and gas production, the Outer Continental Shelf Lands Act (OCSLA; [43 U.S.C 1337\(a\)\(3\)](#)) broadly authorizes the Secretary of the Interior to reduce or eliminate royalties in order to “promote increased production on the lease area.” The law also contains provisions ([43 U.S.C 1337\(a\)\(3\)\(C\)](#)) that apply to leases in specified geographic areas (primarily certain deepwater areas of the Gulf of Mexico). Implementing regulations are issued by DOI’s Bureau of Safety and Environmental Enforcement (BSEE; [30 C.F.R. Part 203](#)) and Bureau of Ocean Energy Management (BOEM; [30 C.F.R. Part 560](#)). Both BSEE and BOEM administer different types of royalty relief, as specified in a 2011 [memorandum of agreement](#).

BOEM is responsible for “[automatic](#)” royalty relief, meaning incentive-based relief provisions that are contained in lease agreements issued by BOEM. This includes most deepwater royalty relief, stemming from the Outer Continental Shelf Deepwater Royalty Relief Act of 1995 (DWRRA; P.L. 104-58), which authorized BOEM to provide for specified volumes of royalty-free production—in [some cases](#) subject to price thresholds—on certain leases issued after the act’s passage for tracts in water at least 200 meters deep in most parts of the Gulf of Mexico, in order to promote development of these areas. Under the Energy Policy Act of 2005 (P.L. 109-58), BOEM also implements automatic royalty relief for [shallow-water deep gas](#) leases, applicable to wells drilled beyond certain depths in waters less than 200 meters deep for the purpose of natural gas production.

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BSEE is responsible for administering “**discretionary**” royalty relief programs, which are the need-based programs that may be most relevant to producers affected by COVID-19. BSEE administers several different types of discretionary royalty relief.

- **Discretionary deepwater royalty relief.** Under the DWRRA and related [BSEE regulations](#), producers may apply for need-based royalty relief (separate from the automatic royalty relief administered by BOEM) for deepwater leases issued before the law’s November 1995 enactment in authorized “fields,” and for other defined “expansion” and “development” projects. Producers must demonstrate that the field or project would be uneconomic if royalties were paid, but would become economic with royalty relief.
- **Discretionary relief for ultra-deep and deep gas wells.** Separate from the automatic royalty relief provisions discussed above for shallow-water deep gas wells, producers meeting specified criteria may qualify for discretionary relief where [ultra-deep wells](#) or [deep gas wells](#) are present in water depths of less than 400 meters.
- **End-of-life royalty relief.** BSEE’s [end-of-life](#) royalty relief program applies to producing leases, regardless of water depth, on which resources are nearing depletion and meet certain qualifying criteria. If BSEE determines that relief will result in increased production on the lease, the royalty rate may be reduced by half subject to certain stipulations.
- **Special case royalty relief.** [BSEE regulations](#) also provide an option for producers to request “special case” royalty relief in situations that do not qualify for BSEE’s other established programs. Leases or projects must demonstrate at least two of five qualifying characteristics listed in the regulations, such as that the lessee can recover “significant additional resources” that would not be possible without royalty relief; and/or that the lessee has made recent “major efforts to reduce operating costs.” If BSEE determines that the lease or project is uneconomic, it may grant royalty relief in the amount that would make it economic.

Current Status and Issues

BSEE has received relatively few applications in recent years for special case royalty relief. For example, over the FY2004-FY2019 period, the agency administered a [total](#) of 13 special-case applications, 9 of which were approved. [Reportedly](#), as of May 22, 2020, four companies had begun the application process during the COVID-19 pandemic. On April 30, 2020, BSEE posted new [guidance](#) for producers on special case royalty relief. Applicants are to follow standard application procedures as outlined in [BSEE regulations](#). The guidance states that, “while past special case applications were for leases or projects that included the drilling of a well(s), BSEE envisions applications on a lease or unit basis will be pursued where no drilling will be included.”

Some stakeholders [reportedly](#) have expressed dissatisfaction with BSEE’s guidance and, more generally, with DOI’s reliance on existing procedures for seeking royalty relief during the pandemic. They have sought [more comprehensive royalty relief initiatives](#), or measures to [expedite the individual application process](#), which is complex and involves multiple steps (as shown in a February 2020 [BSEE flowchart](#) [slide 19]). They contend that more rapid royalty relief could help producers avoid having to shut in wells for financial reasons and that royalty relief generally would have [fewer market-distorting effects](#) than some other proposals to aid the sector.

Some other stakeholders [oppose](#) the idea of comprehensive or expedited royalty relief for oil and gas operators. Some [view](#) the statutory goal of royalty relief—to promote increased production—as being at

odds with the current situation of oversupply. Some also question whether royalty relief will provide meaningful help in [mitigating price declines](#) (link requires login) or [preserving jobs](#). They further contend that the federal government needs energy royalties to fund key [state and federal programs](#), such as (for offshore royalties) the [Land and Water Conservation Fund](#), the [Historic Preservation Fund](#), and [conservation programs](#) in the Gulf Coast states. Some recently introduced bills (H.R. 6289, H.R. 6707, S. 3488, S. 3611) would repeal DOI's authority in the OCSLA to grant discretionary royalty relief.

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