

Offshore Royalty Relief: Status During the COVID-19 Pandemic

May 7, 2020

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.

Congressional Research Service

<https://crsreports.congress.gov>

IN11380

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 [reported](#) a total of 13 special-case applications, 9 of which were approved. In anticipation of potential new applications in this current period, 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 April 2020 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 COVID-19 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 others in [Congress](#) and the [oil and gas industry](#) oppose the idea of blanket royalty relief for offshore or onshore oil and gas operators, whether through new or existing procedures. They question whether such actions will provide meaningful help in mitigating price declines or preserving jobs, and they contend that the federal government needs energy royalties to fund key state and federal programs. In the case of [offshore oil and gas](#) (link requires login to

access), programs funded with these royalties include 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.

Author Information

Laura B. Comay
Specialist in Natural Resources Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.