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Offshore Oil and Gas: Biden Administration's "Pause" on New Leasing

On January 27, 2021, President Joe Biden issued Executive Order (E.O.) 14008, directing multiple administrative actions to address climate change. Section 208 of the order directed the Secretary of the Interior to "pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices, ..." to the extent that such actions are "consistent with applicable law." The E.O. stated that the review must evaluate "potential climate and other impacts" associated with oil and gas leasing, as well as whether to adjust royalties paid to the federal government from onshore and offshore oil and gas production to account for "climate costs."

As implemented by the Department of the Interior (DOI), the leasing pause has consisted of a halt on sales of new onshore and offshore oil and gas leases for an undefined period, during which exploration and development of existing leases are allowed to continue. Some stakeholders have asserted that the pause could have significant long-term impacts for oil and gas investment, production, and revenues, while others have asserted that it would have few impacts given that activities on existing leases are continuing.

Status of Leasing Pause and Review

On June 15, 2021, in response to a lawsuit filed by multiple state attorneys general, the U.S. District Court for the Western District of Louisiana issued a preliminary injunction (—F. Supp. 3d—, 2021 WL 2446010 [W.D. La. June 15, 2021]) prohibiting DOI from implementing the leasing pause with respect to both onshore and offshore lease sales that the agency had temporarily halted. The court found, among other things, that DOI had acted in an "arbitrary and capricious" manner, in violation of the Administrative Procedure Act (5 U.S.C. §§551 et seq.), by halting the lease sales solely on the basis of the E.O.

On August 16, 2021, DOI issued a press release announcing an appeal of the preliminary injunction and announced that the department would "proceed with leasing consistent with the district court's injunction during the appeal." DOI did not give specifics as to when paused lease sales might proceed. DOI stated that it would conduct such leasing "in a manner that takes into account the program's many deficiencies."

Although DOI is enjoined from effectuating the leasing pause directed by the E.O., it has initiated the policy review also mandated by the order. With regard to the review, the court decision stated that "there is certainly nothing wrong with performing a comprehensive review," although "there is a problem in ignoring acts of Congress while the review is being completed." On March 25, 2021, the department held an online forum to gather oral feedback to inform the review. DOI also solicited written feedback, and departmental officials stated in May that they had received more than 100,000 written comments. DOI announced that an "interim report" is due to be completed in summer 2021. On August 16, 2021, DOI announced that it was continuing to review the program, including preparing a report.

Offshore Lease Sales Affected by the Pause

Pursuant to the E.O., DOI's Bureau of Ocean Energy Management (BOEM) postponed two lease sales previously scheduled under the agency's five-year oil and gas leasing program for 2017-2022. BOEM indefinitely paused Lease Sale 257 in the Gulf of Mexico, scheduled for March 17, 2021, in response to the order. Lease Sale 258 in Alaska's Cook Inlet, also slated for 2021 under the five-year program, had been in the early stages of planning and was paused indefinitely. Also, BOEM has made no announcements and initiated no planning regarding Lease Sale 259, a second lease sale planned for the Gulf of Mexico later in 2021.

How the E.O.'s required review ultimately may affect any paused lease sales is unknown. For example, the review might or might not lead to changes in lease terms such as rental and royalty rates for these sales going forward. BOEM has discretion to regulate lease terms under the Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. §§1331-1356b) and other authorities. BOEM also has, in the past, cancelled some lease sales that were scheduled in five-year programs based on environmental reviews of those prospective sales under the National Environmental Policy Act (NEPA, 42 U.S.C. §§4321 et seq.).

New Five-Year Leasing Program

BOEM's current five-year offshore oil and gas leasing program ends in June 2022. Typically, preparation of a new program takes two to three years. During the Trump Administration, BOEM released a draft of a new five-year program and sought public comment. The Biden Administration could continue to work from this draft program or could begin a new process.

It is unclear how the E.O. may affect BOEM's work on the next five-year program. Although the E.O. calls for a pause on new oil and gas leases, BOEM is required by the OCSLA to prepare a five-year program. One possibility is that BOEM could undertake some aspects of the E.O.'s required review in the context of the economic and environmental assessments conducted for the five-year program. For example, previous five-year programs considered potential climate and other impacts associated with offshore oil and gas leasing, as is required in the E.O. Some other requirements of the E.O., such as an evaluation of royalty rates, typically have been pursued outside the development of five-year programs.

Offshore Drilling Permits

DOI stated in a February 2021 fact sheet that the E.O.'s "targeted pause does not impact existing operations or permits for valid, existing leases, which are continuing to be reviewed and approved." According to a database maintained by DOI's Bureau of Safety and Environmental Enforcement (BSEE), more than 400 permits to drill on existing offshore leases have been issued since the E.O.'s publication on January 27, 2021. Another BSEE database shows approval of more than 300 exploration and development plans for existing offshore leases during that time. Separate from the leasing pause in E.O. 14008, DOI issued two internal memoranda establishing new approval processes for certain federal oil and gas permitting activities.

Offshore Revenue Considerations

Offshore oil and gas revenues provide most or all of the funding for several federal conservation and restoration programs, including the Land and Water Conservation Fund (54 U.S.C. §§200301 et seq.), the Historic Preservation Fund (54 U.S.C. §§303101-303103), and the newly established National Parks and Public Land Legacy Restoration Fund (54 U.S.C. §200402). Also, under the OCSLA and the Gulf of Mexico Energy Security Act of 2006 (43 U.S.C. §1331 note), a portion of offshore oil and gas revenue is shared with coastal states, with most of the funds going to Alabama, Louisiana, Mississippi, and Texas.

Federal offshore oil and gas revenues fluctuate from year to year based on multiple factors and totaled $3.7 billion in FY2020. More than 90% of this total came from royalties, with the remainder from bonus bids at lease sales and rents paid prior to production. The E.O.'s leasing pause likely would impact some of these revenue types earlier than others. For example, if BOEM held no auctions in 2021, no offshore bonus bids would be collected this year. However, any effect on royalties—which form the high majority of the offshore revenues shared with states and used for federal programs—would take longer to emerge because new offshore oil and gas leases typically take several years to reach a point where production would begin and royalties would be generated.

Separate from the pause itself, the E.O.'s required review of the oil and gas leasing program could affect offshore revenues going forward. The E.O. specifically directed DOI to evaluate royalty rate adjustments as part of its review. The effects of any royalty rate adjustments could be uncertain. For example, if the review led to an increase in royalty rates, federal revenues could increase, resulting in higher amounts available for disbursement to state and federal programs. Alternatively, if such royalty rate increases made leasing unattractive to offshore operators, lower federal revenues and disbursements could result.

Role of Congress

The 117th Congress has addressed the leasing pause in oversight hearings and through legislation. Members have debated the purposes and impacts of halting new oil and gas leasing on federal lands, whether temporarily or permanently. Some Members have introduced bills to support regular, ongoing federal oil and gas leasing—for instance, by explicitly prohibiting DOI from halting leasing without congressional authorization (e.g., H.R. 543, S. 76) or by requiring an economic study before the President could impose a leasing halt or moratorium (e.g., H.R. 4266). Conversely, some legislation would direct DOI not only to pause oil and gas leasing but to end it entirely on some or all federal lands (e.g., H.R. 2519, S. 1115). Some Members also have introduced legislation concerning federal oil and gas royalties and other fiscal aspects of the leasing program that could be addressed in DOI's review (e.g., H.R. 1517, H.R. 2102, S. 1167). Congress may continue to consider issues related to the leasing program review, including the climate impacts of oil and gas leasing on federal lands and the optimal fiscal terms for federal leasing.

Additional Reading

For more information related to the leasing pause called for in E.O. 14008, see CRS Legal Sidebar LSB10627, *Unpaused: District Court Enjoins Biden Administration from "Pausing" Oil and Gas Leasing on Federal Land*, by Adam Vann; and CRS In Focus IF11785, *Potential State Impacts of a Pause on Federal Onshore Oil and Natural Gas Leases*, by Brandon S. Tracy. For more information on offshore oil and gas lease sales and planning, see CRS Report R44504, *Five-Year Program for Offshore Oil and Gas Leasing: History and Program for 2017-2022*, by Laura B. Comay, Marc Humphries, and Adam Vann; and CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program for 2019-2024: Status and Issues in Brief*, by Laura B. Comay.

Laura B. Comay, Specialist in Natural Resources Policy

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