**This is an amendment to 19.2.100 NMAC, Section 23, effective 9/28/2026.**

**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~~.]

<u>**FINANCIAL ASSURANCE:**</u>

<u>**A.** Minimum financial assurance requirements.</u>

<u>**(1)** Prior to the development, use, or occupation of any lease acreage that is state-owned surface, 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 per lease, except as otherwise set forth under this part, in favor of the commissioner and state land office for the benefit of the applicable trust beneficiary 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 releases of hydrocarbons, produced water, or other contaminants; and reclaim surface disturbance.</u>

<u>**(2)** A lessee of a mineral-only lease (a lease where the surface is owned by another party) 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 per lease.</u>

<u>**(3)** In the event the commissioner executes a deed or contract for the sale of state trust land whose acreage is encompassed by one or more active oil and gas leases, each oil and gas lessee or well operator shall file a good and sufficient bond, in an amount to be fixed by the commissioner, but not less than $2,000 per lease, on behalf of the purchaser to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be caused by operations under the oil and gas lease; provided that if the purchaser shall file with the commissioner a duly executed and acknowledged waiver of the purchaser's right to require such a bond, the development, occupation, and use of the lands by the oil and gas lessee may be permitted without the deed/purchaser bond.</u>

<u>**B.** Heightened financial assurance requirements.</u>

**(1)** The commissioner may require the lessee to file heightened 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, if a lease includes on its premises any of the following conditions:

**(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 is in approved temporary abandonment status and has been in such 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; or

**(ii)** that has received an approved shut-in or extension from the commissioner or that is located on a lease which has received an approved shut-in from the commissioner.

**(b)** a production well that has produced less than 1,000 barrels of oil or the equivalent volume of gas, or a disposal well that has injected less than 5,000 barrels in the preceding 12 months;

**(c)** a spill or release of hydrocarbons, produced water, or other contaminants whether or not reported to the oil conservation division, that has not been completely remediated pursuant to both state land office and oil conservation division rules and requirements within the latter of one year of occurrence or discovery, or one year from the effective date of this part;

**(d)** a pattern of repeated spills or releases of hydrocarbons, produced water, or other contaminants on the lease premises or on the lessee's other state oil and gas lease; or

**(e)** the lessee has failed to file an annual report or certification of no change for the prior year or other prior years.

**(2)** If any of the following conditions have occurred in the past 10 years, the commissioner may require the lessee to file a heightened 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, other final order of the oil conservation division, a final order of another agency of the state or the United States or a court order or settlement agreement from a legal proceeding involving the state land office, oil conservation division, or another state or united states agency, that pertains to environmental damage caused by 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 spills or releases of hydrocarbons, produced water, or other contaminants, or to 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, provided that any subsequent deferment period shall not exceed 90 days.

**(4)** In addition to the heightened financial assurance factors identified in Paragraphs (1) and (2) of Subsection B, the commissioner may require a heightened 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, including the number of wells on a given lease, the environmental condition or compliance status of the lease premises or other oil and gas operations in the state, or significant changes in compliance costs.

**(5)** In the event a heightened level of financial assurance is required under any provision of this part, the commissioner will provide written notice to the address, associated with the oil and gas lease on file with the oil, gas, and mineral division of the state land office, by certified mail or courier to the lessee of the required amount and the reasons for the heightened financial assurance requirement. 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 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 refused to honor 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 state land office's website.

**C.** Bulk financial assurance.

**(1)** Lessees holding 10 or more leases 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, except that no lease that is subject to heightened financial assurance requirements is eligible for inclusion in, or coverage under, a bulk financial assurance instrument:

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

**(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 located on each lease. The commissioner shall require the lessee to update such schedules annually, or upon any lease assignment, expiration or cancellation as the commissioner may require.

**(3)** 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 requirements.

**(1)** Each lessee shall file an annual report on or before July 1 of each year, beginning on July 1, 2027, certified by a person with authority to bind the lessee. Operators of communitized wells subject to communitization agreements approved by the commissioner may in lieu of the lessee, and upon written approval by the commissioner, submit the annual report upon which the communitized well(s) has a location, provided that (a) the lessee in writing agrees to be bound by the operator's report and (b) the operator-submitted report encompasses the entire lease and is not limited to only the communitized well(s) located on the lease(s).

**(2)** 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, for each well 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 for production wells and total reported injection (in BBLs) for injection or disposal wells, and whether the well is part of an oil and gas unit, a communitization agreement, or both;

**(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 spills or releases of hydrocarbons, produced water, or other contaminants on lease premises, whether or not the incident was reported to the oil conservation division, with reference to latitude/longitude coordinates, substance(s) 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 12 months and a summary and cost of plugging, 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.

**(3)** 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.

**(4)** 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, a lessee or communitized well operator (if applicable) may so certify in writing, in lieu of filing a full report.

**(5)** In the event that any errors or omissions are identified, the lessee shall amend and resubmit the annual report within 30 days.

**(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 Part. 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.

**(7)** Information contained in annual reports will be available for public inspection.

**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 to protect the state land office and applicable trust 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 part 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 Part, 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 and state land office, for the benefit of the applicable trust beneficiary; or

**(c)** other alternative forms of financial assurance, which may be considered on a case-by-case basis, at the commissioner's sole discretion, except that self-insurance is categorically prohibited.

**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 waiver 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 releases of hydrocarbons, produced water, or other contaminants, 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 lessee, that change the scope of coverage, or that add multiple lessees, including subsidiaries or affiliates, to the same financial assurance instrument without specific written approval of the same. Lessees who under the pre-existing version of this part 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)** The commissioner may require heightened financial assurance, or a different form of financial assurance, based on payment of the financial assurance claim.

**(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 part.

**(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 sole 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 written consent of the commissioner.

**J.** Notifications.

**(1)** A notification by the state land office that a lease will be canceled for failure to file adequate financial assurance shall be made by certified mail. A notification that heightened financial assurance is required or that a claim is made against a financial assurance instrument shall be made by certified mail or courier. All other notifications or communications by the state land office may be made by certified mail or courier, regular mail, or electronic mail. No proof of receipt is required for any of the notices referenced in this paragraph. The agency has no obligation to mail any correspondence to an address other than the address of record on file with the oil, gas, and minerals division of the state land office.

**(2)** 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.

**K.** Release of financial assurance. Financial assurance may only be released upon one of the following events: (1) the lessee submits a substitute form of financial assurance in compliance with this part and the commissioner approves the substitution; or (2) the lessee no longer holds any state oil and gas leases and the commissioner has confirmed in writing there are no outstanding compliance or performance issues with respect to lessee's lease(s), and 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 for financial assurances. The requirements of this 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 this section. The requirements of this section shall become applicable to all oil and gas leases pre-existing the effective date of this section, and for which financial assurance acceptable to the commissioner has been filed, according to the following schedule:

**(1)** any lease subject to any heightened financial assurance requirements shall be in compliance within 90 days of written notice by 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 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 part by March 1, 2027; and

**(3)** all other lessees shall bring their leases into compliance with this part by June 1, 2027.

[19.2.100.23 NMAC - Rp, 19.2.100.23 NMAC, 6/30/2016; A, 6/11/2019; A, 9/28/2026]