

[DISCUSSION DRAFT]113TH CONGRESS
2^D SESSION**H. R.** _____

To promote a greater domestic helium supply, establish a Federal helium leasing program for public lands, and secure a helium supply for national defense and Federal researchers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LAMBORN (for himself and Mr. HASTINGS of Washington) introduced the following bill; which was referred to the Committee on

A BILL

To promote a greater domestic helium supply, establish a Federal helium leasing program for public lands, and secure a helium supply for national defense and Federal researchers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Helium Se-
5 curity Act of 2014”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is the following:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—HELIUM LEASING PROGRAM

- Sec. 101. Creation of a helium-leasing program.
- Sec. 102. Incentives to bring more helium production online quickly.
- Sec. 103. Programmatic environmental impact statement.

TITLE II—HELIUM FOR FEDERAL USERS AND NATIONAL SECURITY

- Sec. 201. Securing helium for Federal users.

TITLE III—JUDICIAL REVIEW

- Sec. 301. Definitions.
- Sec. 302. Exclusive venue for certain civil actions relating to covered helium projects.
- Sec. 303. Timely filing.
- Sec. 304. Expedition in hearing and determining the action.
- Sec. 305. Standard of review.
- Sec. 306. Limitation on injunction and prospective relief.
- Sec. 307. Limitation on attorneys’ fees.
- Sec. 308. Legal standing.

TITLE IV—CAPTURING HELIUM BEFORE LNG EXPORT

- Sec. 401. Report on capture or venting of helium.

1 **TITLE I—HELIUM LEASING**
 2 **PROGRAM**

3 **SEC. 101. CREATION OF A HELIUM-LEASING PROGRAM.**

4 (a) CREATION OF PROGRAM.—The Mineral Leasing
 5 Act is amended—

6 (1) in the first section (30 U.S.C. 181), in the
 7 first and second sentences, by inserting “helium or
 8 other” before “gas” each place it appears; and

9 (2) by inserting after section 37 the following:

10 **“SEC. 38. HELIUM LEASING PROGRAM.**

11 **“(a) IN GENERAL.—**Except as otherwise provided in
 12 this section, the Secretary of the Interior may conduct a
 13 program of leasing Federal lands for helium exploration,

1 development, and production, in substantially the same
2 manner, and under substantially the same terms and con-
3 ditions, as the Secretary is authorized to lease Federal
4 lands under this Act for oil and gas exploration, develop-
5 ment, and production under this Act.

6 “(b) RIGHTS TO HELIUM.—Any lease issued under
7 this Act that authorizes exploration for, or development
8 or production of, gas shall be considered to grant to the
9 lessee a right of first refusal to engage in exploration for,
10 and development and production of, helium on lands that
11 are subject to the lease in accordance with regulations
12 issued by the Secretary.

13 “(c) STREAMLINED PROCESS FOR APPLICATIONS
14 FOR PERMIT TO DRILL.—

15 “(1) TIMELINE.—Notwithstanding section
16 17(p), the Secretary shall decide whether to issue a
17 permit to drill under a helium lease under this sec-
18 tion within 30 days after receiving an application for
19 the permit. The Secretary may extend such period
20 for up to 2 periods of 15 days each, if the Secretary
21 has given written notice of the delay to the appli-
22 cant. The notice shall be in the form of a letter from
23 the Secretary or a designee of the Secretary, and
24 shall include the names and titles of the persons
25 processing the application, the specific reasons for

1 the delay, and a specific date a final decision on the
2 application is expected.

3 “(2) NOTICE OF REASONS FOR DENIAL.—If the
4 application is denied, the Secretary shall provide the
5 applicant—

6 “(A) in writing, clear and comprehensive
7 reasons why the application was not accepted
8 and detailed information concerning any defi-
9 ciencies; and

10 “(B) an opportunity to remedy any defi-
11 ciencies.

12 “(3) PERMIT TO DRILL DEEMED APPROVED.—
13 If the Secretary has not made a decision on the ap-
14 plication by the end of the 60-day period beginning
15 on the date the application is received by the Sec-
16 retary, the permit is deemed approved, except in
17 cases in which existing reviews under the National
18 Environmental Policy Act of 1969 (42 U.S.C. 4321
19 et seq.) or the Endangered Species Act of 1973 (16
20 U.S.C. 1531 et seq.) are incomplete.

21 “(4) DENIAL OF PERMIT.—If the Secretary de-
22 nies an application for a permit to drill in accord-
23 ance with paragraph (1), the Secretary shall—

24 “(A) provide to the applicant a description
25 of the reasons for the denial of the permit;

1 “(B) allow the applicant to resubmit an
2 application for a permit to drill during the 10-
3 day period beginning on the date the applicant
4 receives the description of the denial from the
5 Secretary; and

6 “(C) approve or deny any resubmitted ap-
7 plication not later than 10 days after the date
8 the application is submitted to the Secretary.

9 “(5) FEE.—

10 “(A) IN GENERAL.—Notwithstanding any
11 other law, the Secretary shall collect a single
12 \$6,500 permit processing fee per application
13 from each applicant at the time the final deci-
14 sion is made whether to issue a permit under
15 paragraph (1). Such fee shall not apply to any
16 resubmitted application.

17 “(B) TREATMENT OF PERMIT PROCESSING
18 FEE.—Of all fees collected under this para-
19 graph, 50 percent shall be transferred to the
20 field office where they are collected and used to
21 process protests, leases, and permits under this
22 Act, subject to appropriations.”.

23 (b) RIGHTS TO HELIUM UNDER LEASES UNDER
24 MINERAL LEASING FOR ACQUIRED LANDS ACT.—The

1 Mineral Leasing for Acquired Lands Act (30 U.S.C. 351
2 et seq.) is amended by adding at the end the following:

3 **“SEC. 12. RIGHTS TO HELIUM.**

4 “Any lease issued under this Act that authorizes ex-
5 ploration for, or development or production of, gas shall
6 be considered to grant to the lessee a right of first refusal
7 to engage in exploration for, and development and produc-
8 tion of, helium on lands that are subject to the lease in
9 accordance with regulations issued by the Secretary.”.

10 (c) APPLICATION OF PROVISIONS GRANTING RIGHTS
11 TO HELIUM UNDER GAS LEASES.—Subsection (b) of sec-
12 tion 38 of the Mineral Leasing Act, as amended by this
13 section, and section 12 of the Mineral Leasing for Ac-
14 quired Lands Act, as amended by this section, shall apply
15 with respect to any gas lease issued under either such Act
16 before, on, or after the date of the enactment of this Act.

17 **SEC. 102. INCENTIVES TO BRING MORE HELIUM PRODUC-**
18 **TION ONLINE QUICKLY.**

19 (a) IN GENERAL.—The Secretary of the Interior shall
20 reduce the royalty rate required to be paid to the United
21 States for helium produced by any helium project started
22 before January 1, 2027, under any lease issued under sec-
23 tion 38 of the Mineral Leasing Act, as amended by this
24 Act, to the applicable reduced rate described in subsection
25 (b).

1 (b) REDUCED RATES.—The reduced rate referred to
2 in subsection (a) is the following:

3 (1) For any project that begins production of
4 helium within 1 year after the date of the enactment
5 of this Act, and before December 31, 2018—

6 (A) 3 percent royalty for the first 10 years
7 of production;

8 (B) 6 percent royalty for the second 10
9 years of production; and

10 (C) 12.5 percent royalty for each year
11 after the second 10 years of production.

12 (2) For any project that begins production of
13 helium after January 1, 2019, and before December
14 31, 2022—

15 (A) 4 percent royalty for the first 10 years
16 of production;

17 (B) 8 percent royalty for the second 10
18 years of production; and

19 (C) 12.5 percent royalty for each year
20 after the second 10 years of production.

21 (3) For any project that begins production of
22 helium after January 1, 2023, and before December
23 31, 2026—

24 (A) 5 percent royalty for the first 10 years
25 of production;

1 (B) 10 percent royalty for the second 10
2 years of production; and

3 (C) 12.5 percent royalty for each year
4 after the second 10 years of production.

5 **SEC. 103. PROGRAMMATIC ENVIRONMENTAL IMPACT**
6 **STATEMENT.**

7 (a) IN GENERAL.—The Secretary of the Interior, act-
8 ing through the Bureau of Land Management, shall pre-
9 pare a programmatic environmental impact statement (in
10 this section referred to as the “PEIS”) under the National
11 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
12 seq.; in this section referred to as “NEPA”) for an agen-
13 cywide helium exploration and development program
14 under the Mineral Leasing Act (30 U.S.C. 191 et seq.),
15 as amended by this Act.

16 (b) PROCESS.—In developing the PEIS, the Sec-
17 retary take into consideration the Helium Act (50 U.S.C.
18 167 et seq.).

19 **TITLE II—HELIUM FOR FEDERAL**
20 **USERS AND NATIONAL SECUR-**
21 **ITY**

22 **SEC. 201. SECURING HELIUM FOR FEDERAL USERS.**

23 (a) APPLICABILITY OF SECTION.—Notwithstanding
24 any other provision of law, this section applies to all roy-

1 alty-in-kind helium taken by the Secretary of the Interior
2 on or after the date of enactment of this Act under any—

3 (1) Federal helium lease;

4 (2) Federal oil or gas lease under which helium
5 is produced;

6 (3) permit under section 27 of the Outer Conti-
7 nental Shelf Lands Act (43 U.S.C. 1353) under
8 which helium is produced; or

9 (4) other Federal law governing resource pro-
10 duction of helium.

11 (b) TERMS AND CONDITIONS.—All royalty accruing
12 to the United States shall, on the demand of the Sec-
13 retary, be paid in kind. If the Secretary makes such a de-
14 mand, the following provisions apply to the payment:

15 (1) SATISFACTION OF ROYALTY OBLIGATION.—

16 Delivery by, or on behalf of, a lessee of the royalty
17 amount and quality due under a lease satisfies roy-
18 alty obligation of the lessee for the amount delivered,
19 except that transportation and processing reimburse-
20 ments paid to, or deductions claimed by, the lessee
21 shall be subject to review and audit.

22 (2) DISPOSITION BY THE SECRETARY.—The
23 Secretary may—

24 (A) sell to a Federal user any royalty pro-
25 duction taken in kind at a price determined by

1 the Secretary to be not less than the royalty
2 value of the helium;

3 (B) transfer to other Federal agencies any
4 royalty production taken in kind at a price de-
5 termined by the Secretary to be not less than
6 the royalty value of the helium; and

7 (C) sell to the public any royalty produc-
8 tion taken in kind for not less than the fair
9 market price determined by the Secretary based
10 on the best evidence, recent auctions, or other
11 price surveys.

12 (3) RETENTION BY THE SECRETARY.—The Sec-
13 retary may retain and use a portion of the revenues
14 from the sale of helium taken in kind that otherwise
15 would be deposited to miscellaneous receipts, without
16 regard to fiscal year limitation, or may use helium
17 as royalty taken in kind (referred to in this para-
18 graph as “royalty production”) to pay the cost of—

19 (A) transporting the royalty production;

20 (B) processing the royalty production;

21 (C) disposing of the royalty production; or

22 (D) any combination of transporting, proc-
23 essing, and disposing of the royalty production.

24 (4) LIMITATION.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), the Secretary may not use
3 revenues from the sale of helium taken in kind
4 to pay for personnel, travel, or other adminis-
5 trative costs of the Federal Government.

6 (B) EXCEPTION.—Notwithstanding sub-
7 paragraph (A), the Secretary may use a portion
8 of the revenues from royalty-in-kind sales, with-
9 out fiscal year limitation, to pay salaries and
10 other administrative costs directly related to the
11 royalty-in-kind program.

12 (c) REIMBURSEMENT OF COST.—If a lessee, pursu-
13 ant to an agreement with the United States or as provided
14 in lease, processes the royalty helium or delivers the roy-
15 alty helium at a point not on or adjacent to the lease area,
16 the Secretary may—

17 (1) reimburse the lessee for the reasonable costs
18 of transportation (not including gathering) from the
19 lease to the point of delivery or for processing costs;
20 or

21 (2) allow the lessee to deduct the transportation
22 or processing costs in reporting and paying royalties
23 in-value for other Federal helium leases.

24 (d) DEDUCTION OF EXPENSES.—If the Secretary al-
25 lows the lessee to deduct transportation or processing

1 costs under subsection (c), the Secretary may not reduce
2 any payments to recipients of revenues derived from any
3 other Federal helium lease as a consequence of that deduc-
4 tion.

5 (e) REPORTS.—

6 (1) IN GENERAL.—Not later than 1 year after
7 the date of the enactment of this Act, the Secretary
8 shall submit to Congress a report that addresses—

9 (A) actions taken by the Secretary to de-
10 velop business processes and automated systems
11 to fully support the royalty-in-kind capability to
12 be used in tandem with the royalty-in-value ap-
13 proach in managing Federal helium revenue;
14 and

15 (B) future royalty-in-kind businesses oper-
16 ation plans and objectives.

17 (2) REPORTS ON HELIUM IN-KIND ROYALTIES
18 TAKEN.—For each fiscal year in which the United
19 States takes helium in-kind royalties, the Secretary
20 shall submit to Congress an annual report that de-
21 scribes—

22 (A) actual amounts received by the United
23 States derived from taking royalties in kind and
24 costs and savings realized by the United States
25 associated with taking royalties in kind, includ-

1 ing administrative savings and any new or in-
2 creased administrative costs;

3 (B) a list of Federal users and agencies re-
4 ceiving helium from the Secretary; and

5 (C) an evaluation of other relevant public
6 benefits or detriments associated with taking
7 royalties in kind.

8 (f) CONSULTATION WITH STATES.—The Secretary—

9 (1) shall consult with a State before conducting
10 a royalty-in-kind program under this section within
11 the State;

12 (2) shall consider and approve a list of State
13 users submitted by the State who shall have priority
14 access to any helium taken in kind in such State;
15 and

16 (3) shall consult annually with any State from
17 which Federal helium royalty is being taken in kind
18 to ensure, to the maximum extent practicable, that
19 the royalty-in-kind program provides revenues to the
20 State greater than or equal to the revenues likely to
21 have been received had royalties been taken in value.

22 (g) DEFINITIONS.—In this section:

23 (1) FEDERAL USER.—The term “Federal user”
24 means a Federal agency or extramural holder of one
25 or more Federal research grants using helium.

1 (2) STATE USER.—The term “State user”
2 means a State agency or extramural holder of one
3 more research grants using helium as submitted by
4 the State to the Secretary.

5 **TITLE III—JUDICIAL REVIEW**

6 **SEC. 301. DEFINITIONS.**

7 In this title:

8 (1) COVERED CIVIL ACTION.—the term “cov-
9 ered civil action” means a civil action containing a
10 claim under section 702 of title 5, United States
11 Code, regarding agency action (as defined for the
12 purposes of that section) affecting a covered helium
13 project on Federal lands of the United States.

14 (2) COVERED HELIUM PROJECT.—The term
15 “covered helium project” means the leasing of Fed-
16 eral lands of the United States for the exploration,
17 development, production, processing, or transmission
18 of helium, and any action under such a lease, except
19 that the term does not include any disputes between
20 the parties to a lease regarding the obligations under
21 such lease, including regarding any alleged breach of
22 the lease.

1 **SEC. 302. EXCLUSIVE VENUE FOR CERTAIN CIVIL ACTIONS**
2 **RELATING TO COVERED HELIUM PROJECTS.**

3 Venue for any covered civil action shall lie in the dis-
4 trict court where the covered helium project exists or is
5 proposed.

6 **SEC. 303. TIMELY FILING.**

7 To ensure timely redress by the courts, a covered civil
8 action must be filed no later than the end of the 90-day
9 period beginning on the date of the final agency action
10 to which it relates.

11 **SEC. 304. EXPEDITION IN HEARING AND DETERMINING THE**
12 **ACTION.**

13 The court shall endeavor to hear and determine any
14 covered civil action as expeditiously as possible.

15 **SEC. 305. STANDARD OF REVIEW.**

16 In any judicial review of a covered civil action, admin-
17 istrative findings and conclusions relating to the chal-
18 lenged Federal action or decision shall be presumed to be
19 correct, and the presumption may be rebutted only by the
20 preponderance of the evidence contained in the adminis-
21 trative record.

22 **SEC. 306. LIMITATION ON INJUNCTION AND PROSPECTIVE**
23 **RELIEF.**

24 In a covered civil action, the court shall not grant
25 or approve any prospective relief unless the court finds
26 that such relief is narrowly drawn, extends no further than

1 necessary to correct the violation of a legal requirement,
2 and is the least intrusive means necessary to correct that
3 violation. In addition, courts shall limit the duration of
4 preliminary injunctions to halt covered helium projects to
5 no more than 60 days, unless the court finds clear reasons
6 to extend the injunction. In such cases of extensions, such
7 extensions shall only be in 30-day increments and shall
8 require action by the court to renew the injunction.

9 **SEC. 307. LIMITATION ON ATTORNEYS' FEES.**

10 Sections 504 of title 5, United States Code, and sec-
11 tion 2412 of title 28, United States Code, (together com-
12 monly called the Equal Access to Justice Act) do not apply
13 to a covered civil action, nor shall any party in such a
14 covered civil action receive payment from the Federal Gov-
15 ernment for attorneys' fees, expenses, and other court
16 costs.

17 **SEC. 308. LEGAL STANDING.**

18 Challengers filing appeals of decisions by the Depart-
19 ment of the Interior regarding issuance of leases under
20 section 38 of the Mineral Leasing Act, as amended by this
21 Act, and production of helium on Federal land with the
22 Department of the Interior Board of Land Appeals shall
23 meet the same standing requirements as challengers of
24 such decisions before a United States district court.

1 **TITLE IV—CAPTURING HELIUM**
2 **BEFORE LNG EXPORT**

3 **SEC. 401. REPORT ON CAPTURE OR VENTING OF HELIUM.**

4 Before exporting natural gas from an LNG facility,
5 an operator of an LNG export facility shall—

6 (1) conduct an analysis of the economic viability
7 of recovering helium from natural gas to be exported
8 from the facility; and

9 (2) report to the Secretary of the Interior their
10 decision regarding whether to engage in such recov-
11 ery and the reasons for their decision.