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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Helium Security Act of 2014”.

SEC. 2. TABLE OF CONTENTS.

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 PROGRAM

2 SEC. 101. CREATION OF A HELIUM-LEASING PROGRAM.

3 (a) CREATION OF PROGRAM.—The Mineral Leasing
4 Act is amended—
5
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
10 (2) by inserting after section 37 the following:
11
12 “SEC. 38. HELIUM LEASING PROGRAM.
13 “(a) IN GENERAL.—Except as otherwise provided in
14 this section, the Secretary of the Interior may conduct a
15 program of leasing Federal lands for helium exploration,
development, and production, in substantially the same manner, and under substantially the same terms and conditions, as the Secretary is authorized to lease Federal lands under this Act for oil and gas exploration, development, and production under this Act.

“(b) Rights to Helium.—Any lease issued under this Act that authorizes exploration for, or development or production of, gas shall be considered to grant to the lessee a right of first refusal to engage in exploration for, and development and production of, helium on lands that are subject to the lease in accordance with regulations issued by the Secretary.

“(c) Streamlined Process for Applications for Permit to Drill.—

“(1) Timeline.—Notwithstanding section 17(p), the Secretary shall decide whether to issue a permit to drill under a helium lease under this section within 30 days after receiving an application for the permit. The Secretary may extend such period for up to 2 periods of 15 days each, if the Secretary has given written notice of the delay to the applicant. The notice shall be in the form of a letter from the Secretary or a designee of the Secretary, and shall include the names and titles of the persons processing the application, the specific reasons for
the delay, and a specific date a final decision on the
application is expected.

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

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

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

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

“(4) DENIAL OF PERMIT.—If the Secretary de-

ies an application for a permit to drill in accord-
ance with paragraph (1), the Secretary shall—

“(A) provide to the applicant a description

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

“(C) approve or deny any resubmitted application not later than 10 days after the date the application is submitted to the Secretary.

“(5) Fee.—

“(A) In general.—Notwithstanding any other law, the Secretary shall collect a single $6,500 permit processing fee per application from each applicant at the time the final decision is made whether to issue a permit under paragraph (1). Such fee shall not apply to any resubmitted application.

“(B) Treatment of permit processing fee.—Of all fees collected under this paragraph, 50 percent shall be transferred to the field office where they are collected and used to process protests, leases, and permits under this Act, subject to appropriations.”.

(b) Rights to Helium Under Leases Under Mineral Leasing for Acquired Lands Act.—The
Mineral Leasing for Acquired Lands Act (30 U.S.C. 351 et seq.) is amended by adding at the end the following:

“SEC. 12. RIGHTS TO HELIUM.

“Any lease issued under this Act that authorizes exploration for, or development or production of, gas shall be considered to grant to the lessee a right of first refusal to engage in exploration for, and development and production of, helium on lands that are subject to the lease in accordance with regulations issued by the Secretary.”.

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

SEC. 102. INCENTIVES TO BRING MORE HELIUM PRODUCTION ONLINE QUICKLY.

(a) IN GENERAL.—The Secretary of the Interior shall reduce the royalty rate required to be paid to the United States for helium produced by any helium project started before January 1, 2027, under any lease issued under section 38 of the Mineral Leasing Act, as amended by this Act, to the applicable reduced rate described in subsection (b).
(b) REDUCED RATES.—The reduced rate referred to in subsection (a) is the following:

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

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

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

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

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

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

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

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

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

(A) 5 percent royalty for the first 10 years of production;
(B) 10 percent royalty for the second 10 years of production; and

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

SEC. 103. PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT.

(a) IN GENERAL.—The Secretary of the Interior, acting through the Bureau of Land Management, shall prepare a programmatic environmental impact statement (in this section referred to as the “PEIS”) under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.; in this section referred to as “NEPA”) for an agencywide helium exploration and development program under the Mineral Leasing Act (30 U.S.C. 191 et seq.), as amended by this Act.

(b) PROCESS.—In developing the PEIS, the Secretary take into consideration the Helium Act (50 U.S.C. 167 et seq.).

TITLE II—HELIUM FOR FEDERAL USERS AND NATIONAL SECURITY

SEC. 201. SECURING HELIUM FOR FEDERAL USERS.

(a) APPLICABILITY OF SECTION.—Notwithstanding any other provision of law, this section applies to all roy-
alty-in-kind helium taken by the Secretary of the Interior
on or after the date of enactment of this Act under any—

(1) Federal helium lease;

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

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

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

(b) Terms and Conditions.—All royalty accruing
to the United States shall, on the demand of the Sec-
retary, be paid in kind. If the Secretary makes such a de-
mand, the following provisions apply to the payment:

(1) Satisfaction of Royalty Obligation.—
Delivery by, or on behalf of, a lessee of the royalty
amount and quality due under a lease satisfies roy-
alty obligation of the lessee for the amount delivered,
except that transportation and processing reimburse-
ments paid to, or deductions claimed by, the lessee
shall be subject to review and audit.

(2) Disposition by the Secretary.—The
Secretary may—

(A) sell to a Federal user any royalty pro-
duction taken in kind at a price determined by
the Secretary to be not less than the royalty value of the helium;

(B) transfer to other Federal agencies any royalty production taken in kind at a price determined by the Secretary to be not less than the royalty value of the helium; and

(C) sell to the public any royalty production taken in kind for not less than the fair market price determined by the Secretary based on the best evidence, recent auctions, or other price surveys.

(3) RETENTION BY THE SECRETARY.—The Secretary may retain and use a portion of the revenues from the sale of helium taken in kind that otherwise would be deposited to miscellaneous receipts, without regard to fiscal year limitation, or may use helium as royalty taken in kind (referred to in this paragraph as “royalty production”) to pay the cost of—

(A) transporting the royalty production;

(B) processing the royalty production;

(C) disposing of the royalty production; or

(D) any combination of transporting, processing, and disposing of the royalty production.

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

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Secretary may use a portion of the revenues from royalty-in-kind sales, without fiscal year limitation, to pay salaries and other administrative costs directly related to the royalty-in-kind program.

(c) REIMBURSEMENT OF COST.—If a lessee, pursuant to an agreement with the United States or as provided in lease, processes the royalty helium or delivers the royalty helium at a point not on or adjacent to the lease area, the Secretary may—

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

or

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

(d) DEDUCTION OF EXPENSES.—If the Secretary allows the lessee to deduct transportation or processing
costs under subsection (c), the Secretary may not reduce any payments to recipients of revenues derived from any other Federal helium lease as a consequence of that deduction.

(e) REPORTS.—

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

(A) actions taken by the Secretary to develop business processes and automated systems to fully support the royalty-in-kind capability to be used in tandem with the royalty-in-value approach in managing Federal helium revenue; and

(B) future royalty-in-kind businesses operation plans and objectives.

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

(A) actual amounts received by the United States derived from taking royalties in kind and costs and savings realized by the United States associated with taking royalties in kind, includ-
ing administrative savings and any new or increased administrative costs;

(B) a list of Federal users and agencies receiving helium from the Secretary; and

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

(f) CONSULTATION WITH STATES.—The Secretary—

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

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

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

(g) DEFINITIONS.—In this section:

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

**TITLE III—JUDICIAL REVIEW**

**SEC. 301. DEFINITIONS.**

In this title:

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

2. **COVERED HELIUM PROJECT.**—The term “covered helium project” means the leasing of Federal lands of the United States for the exploration, development, production, processing, or transmission of helium, and any action under such a lease, except that the term does not include any disputes between the parties to a lease regarding the obligations under such lease, including regarding any alleged breach of the lease.
15

SEC. 302. EXCLUSIVE VENUE FOR CERTAIN CIVIL ACTIONS

RELATING TO COVERED HELIUM PROJECTS.

Venue for any covered civil action shall lie in the dis-

trict court where the covered helium project exists or is

proposed.

SEC. 303. TIMELY FILING.

To ensure timely redress by the courts, a covered civil

action must be filed no later than the end of the 90-day

period beginning on the date of the final agency action

to which it relates.

SEC. 304. EXPEDIENCE IN HEARING AND DETERMINING THE

ACTION.

The court shall endeavor to hear and determine any

covered civil action as expeditiously as possible.

SEC. 305. STANDARD OF REVIEW.

In any judicial review of a covered civil action, admin-

istrative findings and conclusions relating to the chal-

lenged Federal action or decision shall be presumed to be

correct, and the presumption may be rebutted only by the

preponderance of the evidence contained in the adminis-

trative record.

SEC. 306. LIMITATION ON INJUNCTION AND PROSPECTIVE

RELIEF.

In a covered civil action, the court shall not grant

or approve any prospective relief unless the court finds

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

SEC. 307. LIMITATION ON ATTORNEYS’ FEES.

Sections 504 of title 5, United States Code, and section 2412 of title 28, United States Code, (together commonly called the Equal Access to Justice Act) do not apply to a covered civil action, nor shall any party in such a covered civil action receive payment from the Federal Government for attorneys’ fees, expenses, and other court costs.

SEC. 308. LEGAL STANDING.

Challengers filing appeals of decisions by the Department of the Interior regarding issuance of leases under section 38 of the Mineral Leasing Act, as amended by this Act, and production of helium on Federal land with the Department of the Interior Board of Land Appeals shall meet the same standing requirements as challengers of such decisions before a United States district court.
TITLE IV—CAPTURING HELIUM BEFORE LNG EXPORT

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

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

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

(2) report to the Secretary of the Interior their decision regarding whether to engage in such recovery and the reasons for their decision.