

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3160 and 3170

[17X.LLWO310000.L13100000.PP0000]

RIN 1004-AE54

**Waste Prevention, Production Subject to Royalties, and Resource Conservation;
Delay and Suspension of Certain Requirements**

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: On November 18, 2016, the Bureau of Land Management (BLM) published in the *Federal Register* a final rule entitled, “Waste Prevention, Production Subject to Royalties, and Resource Conservation” (2016 final rule). The BLM is now proposing to temporarily suspend or delay certain requirements contained in the 2016 final rule until January 17, 2019. The BLM is currently reviewing the 2016 final rule and wants to avoid imposing temporary or permanent compliance costs on operators for requirements that may be rescinded or significantly revised in the near future.

DATES: Send your comments on this proposed rule to the BLM on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

As explained later, the BLM is also requesting that the Office of Management and Budget (OMB) extend the control number (1004-0211) for the 24 information collection activities that would continue in this proposed rule. If you wish to comment on this request, please note that such comments should be sent directly to the OMB, and that the

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the *Federal Register*. Therefore, a comment to the OMB on the proposed information collection revisions is best assured of being given full consideration if the OMB receives it by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134LM, 1849 C St., N.W., Washington, D.C. 20240, Attention: 1004-AE52.

Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street, S.E., Room 2134 LM, Washington, D.C. 20003, Attention: Regulatory Affairs.

Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE54" and click the "Search" button. Follow the instructions at this website.

Comments on the information collection burdens: *Fax:* Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax 202-395-5806.

Electronic mail: OIRA_Submission@omb.eop.gov. Please indicate "Attention: OMB Control Number 1004-0211," regardless of the method used to submit comments on the information collection burdens. If you submit comments on the information collection burdens, you should provide the BLM with a copy, at one of the addresses shown earlier in this section, so that we can summarize all written comments and address them in the final rule preamble.

FOR FURTHER INFORMATION CONTACT: Catherine Cook, Acting Division Chief, Fluid Minerals Division, 202-912-7145, or ccook@blm.gov, for information regarding the substance of this proposed rule or information about the BLM’s Fluid Minerals program. For questions relating to regulatory process issues, contact Faith Bremner, Regulatory Analyst, at 202-912-7441, or fbremner@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of the Proposed Rule
- IV. Procedural Matters

I. Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments by any of the methods described in the “ADDRESSES” section.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see “DATES”) or comments delivered to an address other than those listed above (see “ADDRESSES”).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under “ADDRESSES: Personal or messenger delivery” during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment--including your personal identifying information--may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

II. Background

The BLM’s onshore oil and gas management program is a major contributor to our nation’s oil and gas production. The BLM manages more than 245 million acres of Federal land and 700 million acres of subsurface estate, making up nearly a third of the nation’s mineral estate. In fiscal year (FY) 2016, sales volumes from Federal onshore production lands accounted for 9 percent of domestic natural gas production, and 5 percent of total U.S. oil production. Over \$1.9 billion in royalties were collected from all oil, natural gas, and natural gas liquids transactions in FY 2016 on Federal and Indian Lands. Royalties from Federal lands are shared with States. Royalties from Indian lands are collected for the benefit of the Indian owners.

In response to oversight reviews and a recognition of increased flaring from Federal and Indian leases, the BLM developed a final rule entitled, “Waste Prevention, Production Subject to Royalties, and Resource Conservation,” which was published in the *Federal Register* on November 18, 2016. See 81 FR 83008 (Nov. 18, 2016). The rule replaced the BLM’s existing policy at that time, Notice to Lessees and Operators of

Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). The 2016 final rule was intended to: Reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal and Indian leases; clarify when produced gas lost through venting, flaring, or leaks is subject to royalties; and clarify when oil and gas production may be used royalty-free on-site. The 2016 final rule became effective on January 17, 2017. Many of the final rule's provisions are to be phased in over time, and are to become operative on January 17, 2018.

Immediately after the 2016 final rule was issued, industry groups and States with significant BLM-managed Federal and Indian minerals filed petitions for judicial review. The petitioners in this litigation are the Western Energy Alliance (WEA), the Independent Petroleum Association of America, the State of Wyoming, the State of Montana, the State of North Dakota, and the State of Texas. This litigation has been consolidated and is now pending in the U.S. District Court for the District of Wyoming. *Wyoming v. U.S. Dep't of the Interior*, Case No. 2:16-cv-00285-SWS (D. Wyo.); *W. Energy All. v. Zinke*, Case No. 16-cv-280-SWS (D. Wyo.). Petitioners assert that the BLM was arbitrary and capricious in promulgating the 2016 final rule and that the rule exceeds the BLM's statutory authority. Shortly after filing petitions for judicial review, petitioners filed motions for a preliminary injunction, seeking a stay of the rule pending the outcome of the litigation. These motions were denied by the court on January 16, 2017, and the rule went into effect the following day. Although the court denied the motions for a preliminary injunction, it did express concerns that the BLM may have "usurp[ed]" the authority of the Environmental Protection Agency (EPA) and the States

under the Clean Air Act, and questioned whether it was appropriate for the 2016 final rule to be justified based on its environmental and societal benefits, rather than on its resource conservation benefits alone. The next stage in the litigation will be the court's consideration of the merits of the petitioner's claims. It is possible that the court's decision on these claims could result in the 2016 final rule being overturned. On June 15, 2017, the Department of the Interior (Department) issued a Federal Register notice, pursuant to 5 U.S.C. 705, postponing the January 2018 compliance dates of the 2016 final rule pending judicial review. 82 FR 27430 (June 15, 2017).

In the Regulatory Impact Analysis (RIA) for the 2016 final rule, the BLM estimated that the requirements of the 2016 final rule would impose compliance costs, not including potential cost savings for product recovery, of approximately \$114 million to \$279 million per year (2016 RIA at 4). The BLM had concluded that, while many of the requirements were consistent with EPA regulations for new sources, current industry practice, or similar to the requirements found in some existing State regulations, the 2016 final rule would be an economically significant rule with estimated costs and benefits exceeding \$100 million per year (2016 RIA at 138). Comments received by many oil and gas companies and trade associations representing members of the oil and gas industry suggested that the BLM's proposed and final rules were unnecessary and would cause substantial harm to the industry. During the litigation following the issuance of the 2016 final rule, the petitioners argued that the BLM underestimated the compliance costs of the final rule and that the costs would drive the industry away from Federal and Indian lands, thereby reducing royalties and harming State and tribal economies. The petitioners also argued that the final rule would cause marginal wells to be shut-in, thereby ceasing

production and reducing economic benefits to local, State, tribal, and Federal governments. The BLM is concerned that the RIA for the 2016 final rule may have underestimated costs and overestimated benefits, and is therefore presently reviewing that analysis for potential inaccuracies. In any event, the RIA for the 2016 rule indicates that the rule poses a substantial burden on industry, particularly those requirements that are set to become effective on January 17, 2018.

Since late January 2017, the President has issued several Executive Orders that necessitate a review of the 2016 final rule by the Department. On January 30, 2017, the President issued Executive Order 13771, entitled, “Reducing Regulation and Controlling Regulatory Costs,” which requires Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations. In addition, on March 28, 2017, the President issued Executive Order 13783, entitled, “Promoting Energy Independence and Economic Growth.” Section 7(b) of Executive Order 13783 directs the Secretary of the Interior to review four specific rules, including the 2016 final rule, for consistency with the policy articulated in section 1 of the Order and, “if appropriate,” to publish proposed rules suspending, revising, or rescinding those rules. Among other things, section 1 of Executive Order 13783 states that “[i]t is in the national interest to promote clean and safe development of our Nation’s vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.”

To implement Executive Order 13783, Secretary of the Interior Ryan Zinke issued Secretarial Order No. 3349, entitled, “American Energy Independence” on March 29, 2017, which, among other things, directs the BLM to review the 2016 final rule to

determine whether it is fully consistent with the policy set forth in section 1 of Executive Order 13783. The BLM conducted an initial review of the 2016 final rule and found that it appears to be inconsistent with the policy in section 1 of Executive Order 13783. The BLM found that some provisions of the rule appear to add regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Following up on its initial review, the BLM is currently reviewing the 2016 final rule to develop an appropriate proposed revision—to be promulgated through notice-and-comment rulemaking—that would propose to align the 2016 final rule with the policies set forth in section 1 of Executive Order 13783.

III. Discussion of the Proposed Rule

A. Summary and Request for Comment

Today, the BLM is proposing to temporarily suspend or delay certain requirements contained in the 2016 final rule until January 17, 2019. The BLM is currently reviewing the 2016 final rule, as directed by the aforementioned Executive Orders and by Secretarial Order No. 3349. The BLM wants to avoid imposing temporary or permanent compliance costs on operators for requirements that might be rescinded or significantly revised in the near future. The BLM also wishes to avoid expending scarce agency resources on implementation activities (internal training, operator outreach/education, developing clarifying guidance, etc.) for such potentially transitory requirements.

For certain requirements in the 2016 final rule that have yet to be implemented, this proposed rule would temporarily postpone the implementation dates until January 17, 2019, or for one year. For certain requirements in the 2016 final rule that are currently in

effect, this proposed rule would temporarily suspend their effectiveness until January 17, 2019. A detailed discussion of the proposed suspensions and delays is provided below. The BLM has attempted to tailor the proposed rule so as to target the requirements of the 2016 final rule for which immediate regulatory relief appears to be particularly justified. Although the requirements of the 2016 final rule that would not be suspended under the proposed rule may ultimately be revised in the near future, the BLM is not proposing to suspend them because it does not, at this time, believe that suspension is necessary.

The BLM promulgated the 2016 final rule, and now proposes to suspend and delay certain provisions of that rule, pursuant to its authority under the following statutes: The Mineral Leasing Act of 1920 (30 U.S.C. 188-287), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-360), the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701-1758), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-1785), the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a-g), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101-2108), and the Act of March 3, 1909 (25 U.S.C. 396). See 81 FR 83008 and 83019-83021 (Nov. 18, 2016). These statutes authorize the Secretary of the Interior to promulgate such rules and regulations as may be necessary to carry out the statutes' various purposes.¹ The Federal and Indian mineral leasing statutes share a common purpose of promoting the development of Federal and Indian oil and gas resources for the financial benefit of the public and Indian mineral owners.² In order to ensure that the development of Federal and Indian oil and gas resources will not be unnecessarily hindered by regulatory burdens, the BLM is

¹ 30 U.S.C. 189 (MLA); 30 U.S.C. 359 (MLAAL); 30 U.S.C. 1751(a) (FOGRMA); 43 U.S.C. 1740 (FLPMA); 25 U.S.C. 396d (IMLA); 25 U.S.C. 2107 (IMDA); 25 U.S.C. 396.

² See, e.g., *California Co. v. Udall*, 296 F.2d 384, 388 (D.C. Cir. 1961) (noting that the MLA was intended to promote wise development of . . . natural resources and to obtain for the public a reasonable financial return on assets that 'belong' to the public.”).

exercising its inherent authority³ to reconsider the 2016 final rule. The suspension of requirements proposed today is a part of the BLM's reconsideration process.

The BLM seeks comment on this proposed rule. Issues of particular interest to the BLM include the necessity of the proposed suspensions and delays, the costs and benefits associated with the proposed suspensions and delays, and whether suspension of other requirements of the 2016 rule is warranted. The BLM is also interested in the appropriate length of the proposed suspension and delays and would like to know whether the period should be longer or shorter (e.g., six months, 18 months, or 2 years). The BLM has allowed a 30-day comment period for this proposed rule, which the BLM believes will afford the public a meaningful opportunity to comment. This proposed rule is a straightforward suspension and delay of regulatory provisions that were (in a proposed form) themselves recently the object of public comment procedures. Because this proposal is a narrow one, involving a simple and temporary suspension and delay of regulatory provisions with which interested parties are likely already familiar, the BLM believes that the 30-day comment period is appropriate.

B. Section-by-Section Discussion

43 CFR 3162.3-1(j) - Drilling applications and plans.

In the 2016 final rule, the BLM added a paragraph (j) to 43 CFR 3162.3-1, which presently requires that when submitting an Application for Permit to Drill (APD) for an oil well, an operator must also submit a waste-minimization plan. Submission of the plan is required for approval of the APD, but the plan is not itself part of the APD, and the terms of the plan are not enforceable against the operator. The purpose of the waste-

³ See *Ivy Sports Med., LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014) (noting “oft-repeated” principle that the “power to reconsider is inherent in the power to decide”).

minimization plan is for the operator to set forth a strategy for how the operator will comply with the requirements of 43 CFR subpart 3179 regarding the control of waste from venting and flaring from oil wells.

The waste-minimization plan must include information regarding: The anticipated completion date(s) of the proposed oil well(s); a description of anticipated production from the well(s); certification that the operator has provided one or more midstream processing companies with information about the operator's production plans, including the anticipated completion dates and gas production rates of the proposed well or wells; and identification of a gas pipeline to which the operator plans to connect. Additional information is required when an operator cannot identify a gas pipeline with sufficient capacity to accommodate the anticipated production from the proposed well, including: A gas pipeline system location map showing the proposed well(s); the name and location of the gas processing plant(s) closest to the proposed well(s); all existing gas trunklines within 20 miles of the well, and proposed routes for connection to a trunkline; the total volume of produced gas, and percentage of total produced gas, that the operator is currently venting or flaring from wells in the same field and any wells within a 20-mile radius of that field; and a detailed evaluation, including estimates of costs and returns, of potential on-site capture approaches.

In the RIA for the 2016 final rule, the BLM estimated that the administrative burden of the waste-minimization plan requirements would be roughly \$1 million per year for the industry and \$180,000 per year for the BLM (2016 RIA at 96 and 100). The BLM is currently reviewing the requirements of § 3162.3-1(j) in order to determine whether the burden it imposes on operators is necessary and whether this burden can be

reduced. The BLM is also evaluating whether there are circumstances in which compliance with § 3162.3-1(j) is infeasible because some of the required information is in the possession of a midstream company that is not in a position to share it with the operator. The BLM is considering narrowing the required information and is also considering whether submission of a State waste-minimization plan, such as those required by New Mexico and North Dakota, would serve the purpose of § 3162.3-1(j). While the BLM conducts this review and considers revising § 3162.3-1, the BLM does not believe that generating and reviewing lengthy, unenforceable waste-minimization plans is a prudent use of operator or BLM resources. The BLM is therefore proposing to suspend the waste minimization plan requirement of § 3162.3-1(j) until January 17, 2019.

This proposed rule would revise § 3162.3-1 by adding “Beginning January 17, 2019” to the beginning of paragraph (j). The rest of this paragraph would remain the same as in the 2016 final rule and the introductory paragraph is repeated in the proposed rule text only for context.

43 CFR 3179.7 – Gas capture requirement.

In the 2016 final rule, the BLM sought to constrain routine flaring through the imposition of a “capture percentage” requirement, requiring operators to capture a certain percentage of the gas they produce, after allowing for a certain volume of flaring per well. The capture-percentage requirement would become more stringent over a period of years, beginning with an 85 percent capture requirement (5,400 Mcf per well flaring allowable) in January 2018, and eventually reaching a 98 percent capture requirement (750 Mcf per well flaring allowable) in January 2026. An operator would choose

whether to comply with the capture targets on each of the operator's leases, units or communitized areas, or on a county-wide or state-wide basis.

In the RIA for the 2016 final rule, the BLM estimated that this requirement would impose costs of up to \$162 million per year and generate cost savings from product recovery of up to \$124 million per year, with both costs and cost savings increasing as the requirements increased in stringency (2016 RIA at 49).

The BLM is currently considering whether the capture-percentage requirement of § 3179.7 is unnecessarily complex and whether it will, in fact, be a significant improvement on the requirements of NTL-4A. The BLM is considering whether the NTL-4A framework can be applied in a manner that addresses any inappropriate levels of flaring, and whether market-based incentives (i.e., royalty obligations) could improve capture in a more straightforward and efficient manner. Finally, the BLM is considering whether the need for a complex capture-percentage requirement could be obviated through other BLM efforts to facilitate pipeline development. Rather than require operators to institute new processes and adjust their plans for development to meet a capture-percentage requirement that may be rescinded or revised as a result of the BLM's review, the BLM is proposing to delay for one year the compliance dates for § 3179.7's capture requirements. This delay would allow the BLM sufficient time to conduct notice-and-comment rulemaking to determine whether the capture percentage requirements should be rescinded or revised and would prevent operators from being unnecessarily burdened by regulatory requirements that are subject to change.

This proposed rule would revise the compliance dates in paragraphs (b), (b)(1) through (b)(4), and (c)(2)(i) through (vii) of § 3179.7 to begin January 17, 2019.

Paragraphs (c), (c)(1), and the introductory text of (c)(2) would remain the same as in the 2016 final rule and are repeated in the proposed rule text only for context.

43 CFR 3179.9 - Measuring and reporting volumes of gas vented and flared from wells.

Section 3179.9 requires operators to estimate (using estimation protocols) or measure (using a metering device) all flared and vented gas, whether royalty-bearing or royalty-free. This section further provides that specific requirements apply when the operator is flaring 50 Mcf or more of gas per day from a high-pressure flare stack or manifold, based on estimated volumes from the previous 12 months, or based on estimated volumes over the life of the flare, whichever is shorter. Beginning on January 17, 2018, if this volume threshold is met, § 3179.9(b) would require the operator to measure the volume of the flared gas, or calculate the volume of the flared gas based on the results of a regularly performed gas-to-oil ratio test, so as to allow the BLM to independently verify the volume, rate, and heating value of the flared gas.

In the RIA for the 2016 final rule, the BLM estimated that this requirement would impose costs of about \$4 million to \$7 million per year (2016 RIA at 52).

The BLM is presently reviewing § 3179.9 to determine whether the additional accuracy associated with the measurement and estimation required by § 3179.9(b) justifies the burden it would place on operators. The BLM is considering whether it would make more sense to allow the BLM to require measurement or estimation on a case-by-case basis, rather than imposing a blanket requirement on all operators. In order to avoid unnecessary compliance costs on the part of operators, the BLM is proposing to delay the compliance date in § 3179.9 until January 17, 2019.

This proposed rule would revise the compliance date in § 3179.9(b)(1). The rest of paragraph (b)(1) would remain the same as in the 2016 final rule and is repeated in the proposed rule text only for context.

43 CFR 3179.10 - Determinations regarding royalty-free flaring.

Section 3179.10(a) provides that approvals to flare royalty free that were in effect as of January 17, 2017, will continue in effect until January 17, 2018. The purpose of this provision was to provide a transition period for operators who were operating under existing approvals for royalty-free flaring. Because the BLM’s review of the 2016 final rule could result in rescission or substantial revision of the rule, the BLM believes that terminating pre-existing flaring approvals in January 2018 would be premature and disruptive and would introduce needless regulatory uncertainty for operators with existing flaring approvals. The BLM is therefore proposing to extend the end of the transition period provided for in § 3179.10(a) to January 17, 2019.

This proposed rule would revise the date in paragraph (a) and replace “as of the effective date of this rule” with “as of January 17, 2017,” which is the effective date of the 2016 final rule, for clarity. This proposed rule would not otherwise revise paragraph (a), but the rest of the paragraph would remain the same as in the 2016 final rule and is repeated in the proposed rule text only for context.

43 CFR 3179.101 - Well drilling.

Section 3179.101(a) requires that gas reaching the surface as a normal part of drilling operations be used or disposed of in one of four ways: (1) Captured and sold; (2) Directed to a flare pit or flare stack; (3) Used in the operations on the lease, unit, or communitized area; or (4) Injected. Section 3179.101(a) also specifies that gas may not

be vented, except under the circumstances specified in § 3179.6(b) or when it is technically infeasible to use or dispose of the gas in one of the ways specified above. Section 3179.101(b) states that gas lost as a result of a loss of well control will be classified as avoidably lost if the BLM determines that the loss of well control was due to operator negligence.

The BLM is currently reviewing § 3179.101 to determine whether it is necessary in light of current operator practices. The experience of BLM field office personnel indicates that operators would typically dispose of gas during well drilling consistent with § 3179.101(a). The primary effect of § 3179.101, therefore, may be to impose a regulatory constraint on operators in exceptional circumstances where the operator must make a case-specific judgment about how to safely and effectively dispose of the gas. The BLM is therefore proposing to suspend the effectiveness of § 3179.101 until January 17, 2019, while the BLM completes its review of § 3179.101 and decides whether to propose permanently revising or rescinding it through notice-and-comment rulemaking.

This proposed rule would add a new paragraph (c) making it clear that the operator must comply with § 3179.101 beginning January 17, 2019.

43 CFR 3179.102 - Well completion and related operations.

Section 3179.102 addresses gas that reaches the surface during well-completion, post-completion, and fluid-recovery operations after a well has been hydraulically fractured or refractured. It requires the gas to be used or disposed of in one of four ways: (1) Captured and sold; (2) Directed to a flare pit or stack, subject to a volumetric limitation in § 3179.103; (3) Used in the lease operations; or (4) Injected. Section 3179.102 specifies that gas may not be vented, except under the narrow circumstances

specified in § 3179.6(b) or when it is technically infeasible to use or dispose of the gas in one of the four ways specified above. Section 3179.102(b) provides that an operator will be deemed to be in compliance with its gas capture and disposition requirements if the operator is in compliance with the requirements for control of gas from well completions established under Environmental Protection Agency (EPA) regulations 40 CFR part 60, subparts OOOO or OOOOa regulations, or if the well is not a “well affected facility” under those regulations.

The BLM is currently reviewing § 3179.102 to determine whether it is necessary in light of current operator practices and the analogous EPA regulations in 40 CFR part 60, subparts OOOO and OOOOa. The experience of BLM field office personnel indicates that operators would typically dispose of gas during well completions and related operations consistent with § 3179.102(a). The BLM also suspects that most of the well completions and related operations that would otherwise be covered by § 3179.102 are actually exempted under § 3179.102(b). Considering current industry practice and the overlap with EPA regulations, the primary effect of § 3179.102 may be to generate confusion about regulatory compliance during well-drilling and related operations. The BLM is therefore proposing to suspend the effectiveness of § 3179.102 until January 17, 2019, while the BLM completes its review of § 3179.102 and decides whether to permanently revise or rescind it through notice-and-comment rulemaking.

This proposed rule would add a new paragraph (e) making it clear that operators must comply with § 3179.102 beginning January 17, 2019.

43 CFR 3179.201 - Equipment requirements for pneumatic controllers.

Section 3179.201 addresses pneumatic controllers that use natural gas produced

from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease. Section 3179.201 applies to such controllers if the controllers: (1) Have a continuous bleed rate greater than 6 standard cubic feet per hour (scf/hour) (“high-bleed” controllers); and (2) Are not covered by EPA regulations that prohibit the new use of high-bleed pneumatic controllers (40 CFR part 60, subparts OOOO or OOOOa), but would be subject to those regulations if the controllers were new, modified, or reconstructed sources. Section 3179.201(b) requires the applicable pneumatic controllers to be replaced with controllers (including, but not limited to, continuous or intermittent pneumatic controllers) having a bleed rate of no more than 6 scf/hour, subject to certain exceptions. Section 3179.201(d) requires that this replacement occur no later than January 17, 2018, or within 3 years from the effective date of the rule if the well or facility served by the controller has an estimated remaining productive life of 3 years or less.

In the RIA for the 2016 final rule, the BLM estimated that this requirement would impose costs of about \$2 million per year and generate cost savings from product recovery of \$3 million to \$4 million per year (2016 RIA at 56).

The BLM is currently reviewing § 3179.201 to determine whether it should be revised or rescinded. The BLM is considering whether § 3179.201 is necessary in light of the analogous EPA regulations and the fact that operators are likely to adopt more efficient equipment in cases where it makes economic sense for them to do so. The BLM does not believe that operators should be required to make equipment upgrades to comply with § 3179.201 until the BLM has had an opportunity to review its requirements and revise them through notice-and-comment rulemaking. The BLM is therefore proposing

to delay the compliance date stated in § 3179.201 until January 17, 2019.

This proposed rule would revise the first sentence of paragraph (d) by replacing “no later than 1 year after the effective date of this section” with “by January 17, 2019.” This proposed rule would also replace “the effective date of this section” with “January 17, 2017” the two times that it appears in the second sentence of paragraph (d). This proposed rule would not otherwise revise paragraph (d), but the rest of the paragraph would remain the same as in the 2016 final rule and is repeated in the proposed rule text only for context.

43 CFR 3179.202 - Requirements for pneumatic diaphragm pumps.

Section 3179.202 establishes requirements for operators with pneumatic diaphragm pumps that use natural gas produced from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease. It applies to such pumps if they are not covered under EPA regulations at 40 CFR part 60, subpart OOOOa, but would be subject to that subpart if they were a new, modified, or reconstructed source. For covered pneumatic pumps, § 3179.202 requires that the operator either replace the pump with a zero-emissions pump or route the pump exhaust to processing equipment for capture and sale. Alternatively, an operator may route the exhaust to a flare or low-pressure combustion device if the operator makes a determination (and notifies the BLM through a Sundry Notice) that replacing the pneumatic diaphragm pump with a zero-emissions pump or capturing the pump exhaust is not viable because: (1) A pneumatic pump is necessary to perform the function required; and (2) Capturing the exhaust is technically infeasible or unduly costly. If an operator makes this determination and has no flare or low-pressure combustor on-site, or routing to such a device would be

technically infeasible, the operator is not required to route the exhaust to a flare or low-pressure combustion device. Under § 3179.202(h), an operator must replace its covered pneumatic diaphragm pump or route the exhaust gas to capture or flare beginning no later than January 17, 2018.

In the RIA for the 2016 final rule, the BLM estimated that this requirement would impose costs of about \$4 million per year and generate cost savings from product recovery of \$2 million to \$3 million per year (2016 RIA at 61).

The BLM is currently reviewing § 3179.202 to determine whether it should be rescinded or revised. Analogous EPA regulations apply to new, modified, and reconstructed sources, therefore limiting the applicability of § 3179.202. In addition, the BLM is concerned that requiring zero-emissions pumps may not conserve gas in some cases. The volume of royalty-free gas used to generate electricity to provide the power necessary to operate a zero-emission pump could exceed the volume of gas necessary to operate the pneumatic pump that the zero-emission pump would replace. The BLM does not believe that operators should be required to make equipment upgrades to comply with § 3179.202 until the BLM has had an opportunity to review its requirements and revise them through notice-and-comment rulemaking. The BLM is therefore proposing to delay the compliance date stated in § 3179.202 until January 17, 2019.

This proposed rule would revise paragraph (h) by replacing “no later than 1 year after the effective date of this section” in the first sentence with “by January 17, 2019” and would also replace “the effective date of this section” with “January 17, 2017” the two times that it appears later in the same sentence. This proposed rule would not otherwise revise paragraph (h); the rest of the paragraph would remain the same as in the

2016 final rule and is repeated in the proposed rule text only for context.

43 CFR 3179.203 - Storage vessels.

Section 3179.203 applies to crude oil, condensate, intermediate hydrocarbon liquid, or produced-water storage vessels that contain production from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease, and that are not subject to 40 CFR part 60, subparts OOOO or OOOOa, but would be if they were new, modified, or reconstructed sources. If such storage vessels have the potential for volatile organic compound (VOC) emissions equal to or greater than 6 tons per year (tpy), § 3179.203 requires operators to route all gas vapor from the vessels to a sales line. Alternatively, the operator may route the vapor to a combustion device if it determines that routing the vapor to a sales line is technically infeasible or unduly costly. The operator also may submit a Sundry Notice to the BLM that demonstrates that compliance with the above options would cause the operator to cease production and abandon significant recoverable oil reserves under the lease due to the cost of compliance. Pursuant to § 3179.203(c), operators must meet these requirements for covered storage vessels by January 17, 2018 (unless the operator will replace the storage vessel in order to comply, in which case it has a longer time to comply).

In the RIA for the 2016 final rule, the BLM estimated that this requirement would impose costs of about \$7 million to \$8 million per year and generate cost savings from product recovery of up to \$200,000 per year (2016 RIA at 74).

The BLM is currently reviewing § 3179.203 to determine whether it should be rescinded or revised. The BLM is considering whether § 3179.203 is necessary in light of analogous EPA regulations and whether the costs associated with compliance are

justified. The BLM does not believe that operators should be required to make upgrades to their storage vessels in order to comply with § 3179.203 until the BLM has had an opportunity to review its requirements and revise them through notice-and-comment rulemaking. The BLM is therefore proposing to delay the January 17, 2018, compliance date in § 3179.203 until January 17, 2019.

This proposed rule would revise the first sentence of paragraph (b) by replacing “Within 60 days after the effective date of this section” with “Beginning January 17, 2019” and by adding “after January 17, 201” between the words “vessel” and “the operator.” This proposed rule would also revise the introductory text of paragraph (c) by replacing “no later than one year after the effective date of this section” with “by January 17, 2019” and by changing “or three years if” to “or by January 17, 2020, if ” to account for removing the reference to “the effective date of this section.” This proposed rule would not otherwise revise paragraphs (b) and (c), and the rest of these paragraphs would remain the same as in the 2016 final rule and are repeated in the proposed rule text only for context.

43 CFR 3179.204 - Downhole well maintenance and liquids unloading.

Section 3179.204 establishes requirements for venting and flaring during downhole well maintenance and liquids unloading. It requires the operator to use practices for such operations that minimize vented gas and the need for well venting, unless the practices are necessary for safety. Section 3179.204 also requires that for wells equipped with a plunger lift system or an automated well-control system, the operator must optimize the operation of the system to minimize gas losses. Under § 3179.204, before an operator manually purges a well for the first time, the operator must document

in a Sundry Notice that other methods for liquids unloading are technically infeasible or unduly costly. In addition, during any liquids unloading by manual well purging, the person conducting the well purging is required to be present on-site to minimize to the maximum extent practicable any venting to the atmosphere. This section also requires the operator to maintain records of the cause, date, time, duration and estimated volume of each venting event associated with manual well purging, and to make those records available to the BLM upon request. Additionally, operators are required to notify the BLM by Sundry Notice within 30 days after the following conditions are met: (1) The cumulative duration of manual well-purging events for a well exceeds 24 hours during any production month; or (2) The estimated volume of gas vented in the process of conducting liquids unloading by manual well purging for a well exceeds 75 Mcf during any production month. In the RIA for the 2016 final rule, the BLM estimated that these requirements would impose costs of about \$6 million per year and generate cost savings from product recovery of about \$5 million to \$9 million per year (2016 RIA at 66). In addition, there would be estimated administrative burdens associated with these requirements of \$323,000 per year for the industry and \$37,000 per year for the BLM (2016 RIA at 98 and 101).

The BLM is currently reviewing § 3179.204 to determine whether it should be rescinded or revised. The BLM does not believe that operators should be burdened with the operational and reporting requirements imposed by § 3179.204 until the BLM has had an opportunity to review them and, if appropriate, revise them through notice-and-comment rulemaking. In addition, as part of this review, the BLM would want to review how these data could be reported in a consistent manner among operators. The BLM is

therefore proposing to suspend the effectiveness of § 3179.204 until January 17, 2019.

This proposed rule would add a new paragraph (i), making it clear that operators must comply with § 3179.204 beginning January 17, 2019.

43 CFR 3179.301 - Operator responsibility.

Sections 3179.301 through 3179.305 establish leak detection, repair, and reporting requirements for: (1) Sites and equipment used to produce, process, treat, store, or measure natural gas from or allocable to a Federal or Indian lease, unit, or communitization agreement; and (2) Sites and equipment used to store, measure, or dispose of produced water on a Federal or Indian lease. Section 3179.302 prescribes the instruments and methods that may be used for leak detection. Section 3179.303 prescribes the frequency for inspections and § 3179.304 prescribes the time frames for repairing leaks found during inspections. Finally, § 3179.305 requires operators to maintain records of their leak detection and repair activities and submit an annual report to the BLM. Pursuant to § 3179.301(f), operators must begin to comply with the leak detection and repair requirements of §§ 3179.301 through 3179.305 before: (1) January 17, 2018, for sites in production prior to January 17, 2017; (2) 60 days after beginning production for sites that began production after January 17, 2017; and (3) 60 days after a site that was out of service is brought back into service and re-pressurized.

In the RIA for the 2016 final rule, the BLM estimated that these requirements would impose costs of about \$83 million to \$84 million per year and generate cost savings from product recovery of about \$12 million to \$21 million per year (2016 RIA at 91). In addition, there would be estimated administrative burdens associated with these

requirements of \$3.9 million per year for the industry and over \$1 million per year for the BLM (2016 RIA at 98 and 102).

The BLM is currently reviewing § 3179.301 through § 3179.305 to determine whether they should be revised or rescinded. The BLM is considering whether these requirements are necessary in light of comparable EPA and State leak detection and repair regulations. The BLM is considering whether the reporting burdens imposed by these sections are justified and whether the substantial compliance costs could be mitigated by allowing for less frequent and/or non-instrument-based inspections or by exempting wells that have low potential to leak natural gas. The BLM does not believe that operators should be burdened with the significant compliance costs imposed by these sections until the BLM has had an opportunity to review them and, if appropriate, revise them through notice-and-comment rulemaking. The BLM is therefore proposing to delay the effective dates for these sections until January 17, 2019, by revising § 3179.301(f).

This proposed rule would revise paragraph (f)(1) by replacing “Within one year of January 17, 2017 for sites that have begun production prior to January 17, 2017;” with “By January 17, 2019, for all existing sites.” This proposed rule would also revise paragraph (f)(2) by adding “new” between the words “for” and “sites” and by replacing the existing date with “January 17, 2019.” Finally, this proposed rule would revise paragraph (f)(3) by adding “an existing” between the words “when” and “site” and by adding “after January 17, 2019” to the end of the sentence. This proposed rule would not otherwise revise paragraph (f), and the rest of the paragraph would remain the same as in the 2016 final rule and is repeated in the proposed rule text only for context.

C. Summary of Estimated Impacts

The BLM reviewed the proposed rule and conducted an RIA and Environmental Assessment (EA) that examine the impacts of the proposed requirements. The following discussion is a summary of the proposed rule's economic impacts. The RIA and draft EA that we prepared have been posted in the docket for the proposed rule on the *Federal eRulemaking Portal*: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE54" and click the "Search" button. Follow the instructions at this website.

The suspension or delay in the implementation of certain requirements in the 2016 final rule would postpone the impacts estimated previously to the near-term future. That is to say, impacts that we previously estimated would occur in 2017 are now estimated to occur in 2018, impacts that we previously estimated would occur in 2018 are now estimated to occur in 2019, and so on. In the RIA for this proposed rule, we track this shift in impacts over the 10-year period following the delay. A 10-year period of analysis was also used in the RIA prepared for the 2016 final rule. Except for some notable changes, the 2017 RIA uses the impacts estimated and underlying assumptions used by the BLM for the RIA prepared for the 2016 final rule, published in November 2016. The BLM's proposed rule would temporarily suspend or delay almost all of the requirements in the 2016 final rule that we estimated would pose a compliance burden to operators and generate benefits of gas savings or reductions in methane emissions.

Estimated Reductions in Compliance Costs (Excluding Cost Savings)

First, we examine the reductions in compliance costs excluding the savings that would have been realized from product recovery. The BLM's proposed rule would temporarily suspend or delay almost all of the requirements in the 2016 final rule that we estimated would pose a compliance burden to operators. We estimate that suspending or

delaying the targeted requirements of the 2016 final rule until January 17, 2019, would substantially reduce compliance costs during the period of the suspension or delay (2017 RIA at 29).

Impacts in year 1:

- A reduction in compliance costs of \$114 million (using a 7 percent discount rate to annualize capital costs) or \$110 million (using a 3 percent discount rate to annualize capital costs).

Impacts from 2017-2027:

- Total reduction in compliance costs ranging from \$73 million to \$91 million (net present value (NPV) using a 7 percent discount rate) or \$40 million to \$50 million (NPV using a 3 percent discount rate).

Estimated Reduction in Benefits

The BLM's proposed rule would temporarily suspend or delay almost all of the requirements in the 2016 final rule that we estimated would generate benefits of gas savings or reductions in methane emissions. We estimate that the proposed rule would result in forgone benefits, since estimated cost savings that would have come from product recovery would be deferred and the emissions reductions would also be deferred (2017 RIA at 32).

Impacts in year 1:

- A reduction in cost savings of \$19 million.

Impacts from 2017-2027:

- Total reduction in cost savings of \$36 million (NPV using a 7 percent discount rate) or \$21 million (NPV using a 3 percent discount rate).

We estimate that the proposed rule would also result in additional methane and VOC emissions of 175,000 and 250,000 tons, respectively, in year 1 (2017 RIA at 32).

These estimated emissions are measured as the change from the baseline environment, which is the 2016 final rule's requirements being implemented per the 2016 final rule schedule. Since the proposed rule would delay the implementation of those requirements, the estimated benefits of the 2016 final rule would be forgone during the temporary suspension or delay.

The BLM used interim domestic values of the carbon dioxide and methane to value the forgone emissions reductions resulting from the delay (see the discussion of social cost of greenhouse gases in the 2017 RIA at Section 3.2 and Appendix).

Impact in Year 1:

- Forgone methane emissions reductions valued at \$8 million (using interim domestic SC-CH₄ based on a 7 percent discount rate) or \$26 million (using interim domestic SC-CH₄ based on a 3 percent discount rate).

Impacts from 2017-2027:

- Forgone methane emissions reductions valued at \$1.9 million (NPV and interim domestic SC-CH₄ using a 7 percent discount rate); or
- Forgone methane emissions reductions valued at \$300,000 (NPV and interim domestic SC-CH₄ using a 3 percent discount rate).

Estimated Net Benefits

The proposed rule is estimated to result in positive net benefits, meaning that the reduction of compliance costs would exceed the reduction in cost savings and the cost of emissions additions (2017 RIA at 36).

Impact in year 1:

- Net benefits of \$83 – 86 million (using interim domestic SC-CH₄ based on a 7 percent discount rate) or \$64 – 68 million (using interim domestic SC-CH₄ based on a 3 percent discount rate).

Impacts from 2017-2027:

- Total net benefits ranging from \$35 – 52 million (NPV and interim domestic SC-CH₄ using a 7 percent discount rate); or
- Total net benefits ranging from \$19 – 29 million (NPV and interim domestic SC-CH₄ using a 3 percent discount rate).

Energy Systems

The proposed rule is expected to influence the production of natural gas, natural gas liquids, and crude oil from onshore Federal and Indian oil and gas leases, particularly in the short-term. However, since the relative changes in production are expected to be small, we do not expect that the proposed rule would significantly impact the price, supply, or distribution of energy.

We estimate the following incremental changes in production, noting the representative share of the total U.S. production in 2015 for context (2017 RIA at 41).

Annual Impacts:

- A decrease in natural gas production of 9.0 billion cubic feet (Bcf) in year 1 (0.03 percent of the total U.S. production).
- An increase in crude oil production of 91,000 barrels in year 2 (0.003 percent of the total U.S. production). There is no estimated change in crude oil production in year 1.

Royalty Impacts

In the short-term, the rule is expected to decrease natural gas production from Federal and Indian leases, and likewise, is expected to reduce annual royalties to the Federal Government, tribal governments, States, and private landowners. From 2017-2027, however, we expect a small increase in total royalties, likely due to production slightly shifting into the future where commodity prices are expected to be higher.

Royalty payments are recurring income to Federal or tribal governments and costs to the operator or lessee. As such, they are transfer payments that do not affect the total resources available to society. An important but sometimes difficult problem in cost estimation is to distinguish between real costs and transfer payments. While transfers should not be included in the economic analysis estimates of the benefits and costs of a regulation, they may be important for describing the distributional effects of a regulation.

We estimate a reduction in royalties of \$2.6 million in year 1 (2017 RIA at 43). This amount represents about 0.2 percent of the total royalties received from oil and gas production on Federal lands in FY 2016. However, from 2017-2027, we estimate an increase in total royalties of \$1.26 million (NPV using a 7 percent discount rate) or \$380,000 (NPV using a 3 percent discount rate).

Consideration of Alternative Approaches

In developing this proposed rule, the BLM considered alternative timeframes for which it could suspend or delay the requirements (e.g., 6 months and 2 years).

Ultimately, the BLM decided to propose a suspension or delay for one year, which it believes to be the minimum length of time practicable within which to review the 2016 final rule and complete a notice-and-comment rulemaking to revise that regulation. We

note that, based on the progress of the review during this rulemaking process, the BLM may revise the length of the suspension or delay for the final rule.

A shorter suspension or delay of the same 2016 final rule requirements would result in a smaller reduction in compliance costs, smaller reduction in cost savings, and a smaller amount of forgone emissions reductions, relative to the proposal (2017 RIA at 49-50). Meanwhile, a longer suspension or delay of the same 2016 final rule requirements would result in a larger reduction in compliance costs, larger reduction in cost savings, and larger amount of forgone emissions reductions, relative to the proposal (2017 RIA at 50).

Employment Impacts

The proposed rule would temporarily suspend or delay certain requirements of the BLM's 2016 final rule on waste prevention and is a temporary deregulatory action. As such, we estimate that it would result in a reduction of compliance costs for operators of oil and gas leases on Federal and Indian lands. Therefore, it is likely that the impact, if any, on the employment would be positive.

In the RIA for the 2016 final rule, the BLM concluded that the requirements were not expected to impact the employment within the oil and gas extraction, drilling oil and gas wells, and support activities industries, in any material way. This determination was based on several reasons. First, the estimated incremental gas production represented only a small fraction of the U.S. natural gas production volumes. Second, the estimated compliance costs represented only a small fraction of the annual net incomes of companies likely to be impacted. Third, for those operations that would have been impacted to the extent that the compliance costs would force the operator to shut in

production, the 2016 final rule had provisions that would exempt these operations from compliance. Based on these factors, the BLM determined that the 2016 final rule would not alter the investment or employment decisions of firms or significantly adversely impact employment. The RIA also noted that the requirements would require the one-time installation or replacement of equipment and the ongoing implementation of a leak detection and repair program, both of which would require labor to comply.

We do not believe that the proposed rule would substantially alter the investment or employment decisions of firms for two reasons. First, the RIA for the 2016 final rule determined that that rule would not substantially alter the investment or employment decisions of firms, and so therefore delaying the 2016 final rule would likewise not be expected to impact those decisions. We also recognize that while there might be a small positive impact on investment and employment due to the reduction in compliance burdens, the magnitude of the reductions are relatively small.

Small Business Impacts

The BLM reviewed the Small Business Administration (SBA) size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau. We conclude that small entities represent the overwhelming majority of entities operating in the onshore crude oil and natural gas extraction industry and, therefore, the proposed rule would impact a significant number of small entities.

To examine the economic impact of the rule on small entities, the BLM performed a screening analysis on a sample of potentially affected small entities, comparing the reduction of compliance costs to entity profit margins.

The BLM identified up to 1,828 entities that operate on Federal and Indian leases and recognizes that the overwhelming majority of these entities are small business, as defined by the SBA. We estimated the potential reduction in compliance costs to be about \$60,000 per entity during the initial year when the requirements would be suspended or delayed. This represents the average maximum amount by which the operators would be positively impacted by the proposed rule.

We used existing BLM information and research concerning firms that have recently completed Federal and Indian wells and the financial and employment information on a sample of these firms, as available in company annual report filings with the Securities and Exchange Commission (SEC). From the original list of companies, we identified 55 company filings. Of those companies, 33 were small businesses.

From data in the companies' 10-K filings to the SEC, the BLM was able to calculate the companies' profit margins for the years 2012, 2013, and 2014. We then calculated a profit margin figure for each company when subject to the average annual reduction in compliance costs associated with this proposed rule. For these 26 small companies, the estimated per-entity reduction in compliance costs would result in an average increase in profit margin of 0.17 percentage points (based on the 2014 company data) (2017 RIA at 46).

Impacts Associated with Oil and Gas Operations on Tribal Lands

The proposed rule would apply to oil and gas operations on both Federal and Indian leases. In the RIA, the BLM estimates the impacts associated with operations on Indian leases, as well as royalty implications for tribal governments. We estimate these

impacts by scaling down the total impacts by the share of oil wells on Indian lands and the share of gas wells on Indian Lands. Please reference the RIA at section 4.4.5 for a full explanation about the estimate impacts.

IV. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) will review all significant rules.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas.

This proposed rule would temporarily suspend or delay portions of the BLM's 2016 final rule while the BLM reviews those requirements. We have developed this proposed rule in a manner consistent with the requirements in Executive Order 12866 and Executive Order 13563.

After reviewing the requirements of the proposed rule, the OMB has determined that it is an economically significant action according to the criteria of Executive Order

12866. The BLM reviewed the requirements of the proposed rule and determined that it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For more detailed information, see the RIA prepared for this proposed rule. The RIA has been posted in the docket for the proposed rule on the *Federal eRulemaking Portal*: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE54" and click the "Search" button. Follow the instructions at this website.

Regulatory Flexibility Act

This proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Regulatory Flexibility Act (RFA) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601 – 612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the SBA size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the Economic Census. The BLM concludes that the vast majority of entities operating in the

relevant sectors are small businesses as defined by the SBA. As such, the proposed rule would likely affect a substantial number of small entities.

However, the BLM believes that the proposed rule would not have a significant economic impact on a substantial number of small entities. Although the rule would affect a substantial number of small entities, the BLM does not believe that these effects would be economically significant. The proposed rule would temporarily suspend or delay certain requirements placed on operators by the 2016 final rule. Operators would not have to undertake the associated compliance activities, either operational or administrative, that are outlined in the 2016 final rule until January 17, 2019, except to the extent the activities are required by State or tribal law, or by other pre-existing BLM regulations. The screening analysis conducted by the BLM estimates that the average reduction in compliance costs associated with this proposed rule would be a small fraction of a percent of the profit margin for small companies, which is not a large enough impact to be considered significant.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- (a) Would have an annual effect on the economy of \$100 million or more.
- (b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Would not have a significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments, or the private sector of \$100 million or more per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed rule contains no requirements that would apply to State, local, or tribal governments. It would temporarily suspend or delay requirements that would otherwise apply to the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*) is not required for the proposed rule. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations upon them.

Governmental Actions and Interference with Constitutionally Protected Property Right - Takings (Executive Order 12630)

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. The proposed rule would temporarily suspend or delay many of the requirements placed on operators by the 2016 final rule. Operators would not have to undertake the associated compliance activities, either operational or administrative, that are outlined in the 2016 final rule until January 17, 2019, and therefore would impact some operational and administrative requirements on Federal and Indian lands. All such operations are subject to lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and

regulations. This proposed rule conforms to the terms of those leases and applicable statutes and, as such, the rule is not a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the rule would not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism impact statement is not required.

The proposed rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. It would not apply to States or local governments or State or local governmental entities. The rule would affect the relationship between operators, lessees, and the BLM, but it does not directly impact the States. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. More specifically, this proposed rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This proposed rule also meets the criteria of section

3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

Consultation and Coordination with Indian Tribal Governments (Executive Order 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian tribes that would result from this proposed rule. Under this proposed rule, oil and gas operations on tribal and allotted lands would not be subject to many of the requirements placed on operators by the 2016 final rule until January 17, 2019.

The BLM believes that temporarily suspending or delaying these requirements would assist in preventing Indian lands from being viewed by oil and gas operators as less attractive than non-Indian lands due to unnecessary and burdensome compliance costs, thereby preventing economic harm to tribes and allottees.

The BLM is conducting tribal outreach which it believes is appropriate given that the proposed rule would extend the compliance dates of the 2016 final rule, but would not change the policies of that rule. The BLM notified tribes of the action and requested feedback and comment through the respective BLM State Office Directors. Future tribal consultation may occur on an ongoing basis.

Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. 44 U.S.C. 3512. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

OMB has approved the 24 information collection activities in the 2016 final rule and has assigned control number 1004-0211 to those activities. In the Notice of Action approving the 24 information collection activities in the 2016 final rule, OMB announced that the control number will expire on January 31, 2018. The Notice of Action also included terms of clearance.

The BLM requests the extension of control number 1004-0021 until January 31, 2019. The BLM requests no other changes to the control number.

In accordance with the PRA, the BLM is inviting public comment on the proposed extension of control no. 1004-0211. Descriptions of the information collection activities in this proposed rule, along with estimates of the annual burdens, are shown below. Included in the burden estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each component of the proposed information collection requirements.

The BLM has submitted the information collection request for this proposed rule to OMB for review in accordance with the PRA. You may obtain a copy of the request from the BLM by electronic mail request to James Tichenor at jtichenor@blm.gov or by

telephone request to 202–573–0536. You may also review the information collection request online at: <http://www.reginfo.gov/public/do/> .

The BLM requests comments on the following subjects:

- Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
- The accuracy of the BLM’s estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

If you want to comment on the information collection requirements of this proposed rule, please send your comments directly to OMB, with a copy to the BLM, as directed in the ADDRESSES section of this preamble. Please identify your comments with “OMB Control Number 1004–0211.” OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 to 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

2. Summary of Information Collection Activities

Title: Waste Prevention, Production Subject to Royalties, and Resource Conservation (43 CFR parts 3160 and 3170).Form 3160–5, Sundry Notices and Reports on Wells.

OMB Control Number: 1004–0211.

Forms: Form 3160-3, Application for Permit to Drill or Re-enter; and Form 3160-5, Sundry Notices and Reports on Wells.

Description of Respondents: Holders of Federal and Indian (except Osage Tribe) oil and gas leases, those who belong to Federally approved units or communitized areas, and those who are parties to oil and gas agreements under the Indian Mineral Development Act, 25 U.S.C. 2101-2108.

Respondents' Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Abstract: The BLM requests the extension of control number 1004-0021 until January 31, 2019. The BLM requests no changes to the control number except this extension.

Estimated Number of Responses: 63,200.

Estimated Total Annual Burden Hours: 82,170.

Estimated Total Non-Hour Cost: None.

3. Information Collection Request

The BLM requests extension of OMB control number 1004-0211 until January 31, 2019. This extension would continue OMB's approval of the following information collection activities.

Plan to Minimize Waste of Natural Gas (43 CFR 3162.3-1)

The 2016 final rule added a new provision to 43 CFR 3162.3-1 that requires a plan to minimize waste of natural gas when submitting an Application for Permit to Drill or Re-enter (APD) for a development oil well. This information is in addition to the APD information that the BLM already collects under OMB Control Number 1004-0137. The

required elements of the waste minimization plan are listed at paragraphs (j)(1) through (j)(7).

Request for Approval for Royalty-Free Uses On-Lease or Off-Lease (43 CFR 3178.5, 3178.7, 3178.8, and 3178.9)

Section 3178.5 requires submission of a Sundry Notice (Form 3160-5) to request prior written BLM approval for use of gas royalty-free for the following operations and production purposes on the lease, unit or communitized area:

- Using oil or gas that an operator removes from the pipeline at a location downstream of the facility measurement point (FMP);
- Removal of gas initially from a lease, unit PA, or communitized area for treatment or processing because of particular physical characteristics of the gas, prior to use on the lease, unit PA or communitized area; and
- Any other type of use of produced oil or gas for operations and production purposes pursuant to § 3178.3 that is not identified in § 3178.4.

Section 3178.7 requires submission of a Sundry Notice (Form 3160-5) to request prior written BLM approval for off-lease royalty-free uses in the following circumstances:

- The equipment or facility in which the operation is conducted is located off the lease, unit, or communitized area for engineering, economic, resource-protection, or physical-accessibility reasons; and
- The operations are conducted upstream of the FMP.

Section 3178.8 requires that an operator measure or estimate the volume of royalty-free gas used in operations upstream of the FMP. In general, the operator is free

to choose whether to measure or estimate, with the exception that the operator must in all cases measure the following volumes:

- Royalty-free gas removed downstream of the FMP and used pursuant to §§ 3178.4 through 3178.7; and
- Royalty-free oil used pursuant to §§ 3178.4 through 3178.7.

If oil is used on the lease, unit or communitized area, it is most likely to be removed from a storage tank on the lease, unit or communitized area. Thus, this regulation also requires the operator to document the removal of the oil from the tank or pipeline.

Section 3178.8(e) requires that operators use best available information to estimate gas volumes, where estimation is allowed. For both oil and gas, the operator must report the volumes measured or estimated, as applicable, under ONRR reporting requirements. As revisions to Onshore Oil and Gas Orders No. 4 and 5 have now been finalized as 43 CFR subparts 3174 and 3175, respectively, the final rule text now references § 3173.12, as well as §§ 3178.4 through § 3178.7 to clarify that royalty-free use must adhere to the provisions in those sections.

Section 3178.9 requires the following additional information in a request for prior approval of royalty-free use under § 3178.5, or for prior approval of off-lease royalty-free use under § 3178.7:

- A complete description of the operation to be conducted, including the location of all facilities and equipment involved in the operation and the location of the FMP;
- The volume of oil or gas that the operator expects will be used in the operation and the method of measuring or estimating that volume;

- If the volume expected to be used will be estimated, the basis for the estimate (e.g., equipment manufacturer’s published consumption or usage rates); and
- The proposed disposition of the oil or gas used (e.g., whether gas used would be consumed as fuel, vented through use of a gas-activated pneumatic controller, returned to the reservoir, or disposed by some other method).

Request for Approval of Alternative Capture Requirement (43 CFR 3179.8)

Section 3179.8 applies only to leases issued before the effective date of the 2016 final rule and to operators choosing to comply with the capture requirement in § 3179.7 on a lease-by-lease, unit-by-unit, or communitized area-by-communitized area basis. The regulation provides that operators who meet those parameters may seek BLM approval of a capture percentage other than that which is applicable under 43 CFR 3179.7. The operator must submit a Sundry Notice (Form 3160-5) that includes the following information:

- The name, number, and location of each of the operator’s wells, and the number of the lease, unit, or communitized area with which it is associated; and
- The oil and gas production levels of each of the operator’s wells on the lease, unit, or communitized area for the most recent production month for which information is available and the volumes being vented and flared from each well.

In addition, the request must include map(s) showing:

- The entire lease, unit, or communitized area, and the surrounding lands to a distance and on a scale that shows the field in which the well is or will be located (if applicable), and all pipelines that could transport the gas from the well;

- All of the operator's producing oil and gas wells, which are producing from Federal or Indian leases, (both on Federal or Indian leases and on other properties) within the map area;
- Identification of all of the operator's wells within the lease from which gas is flared or vented, and the location and distance of the nearest gas pipeline(s) to each such well, with an identification of those pipelines that are or could be available for connection and use; and
- Identification of all of the operator's wells within the lease from which gas is captured;

The following information is also required:

- Data that show pipeline capacity and the operator's projections of the cost associated with installation and operation of gas capture infrastructure, to the extent that the operator is able to obtain this information, as well as cost projections for alternative methods of transportation that do not require pipelines; and
- Projected costs of and the combined stream of revenues from both gas and oil production, including: (1) The operator's projections of gas prices, gas production volumes, gas quality (i.e., heating value and H₂S content), revenues derived from gas production, and royalty payments on gas production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less; and (2) The operator's projections of oil prices, oil production volumes, costs, revenues, and royalty payments from the operator's oil and gas

operations within the lease over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less.

Notification of Choice to Comply on County- or State-wide Basis (43 CFR 3179.7(c)(3)

(ii))

Section 3179.7 requires operators flaring gas from development oil wells to capture a specified percentage of the operator's adjusted volume of gas produced over the relevant area. The "relevant area" is each of the operator's leases, units, or communitized areas, unless the operator chooses to comply on a county- or State-wide basis and the operator notifies the BLM of its choice by Sundry Notice (Form 3160-5) by January 1 of the relevant year.

Request for Exemption from Well Completion Requirements (43 CFR 3179.102(c) and

(d))

Section 3179.102 lists several requirements pertaining to gas that reaches the surface during well completion and related operations. An operator may seek an exemption from these requirements by submitting a Sundry Notice (Form 3160-5) that includes the following information:

(1) The name, number, and location of each of the operator's wells, and the number of the lease, unit, or communitized area with which it is associated;

(2) The oil and gas production levels of each of the operator's wells on the lease, unit or communitized area for the most recent production month for which information is available;

(3) Data that show the costs of compliance; and

(4) Projected costs of and the combined stream of revenues from both gas and oil production, including: the operator's projections of oil and gas prices, production volumes, quality (i.e., heating value and H₂S content), revenues derived from production, and royalty payments on production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less.

The rule also provides that an operator that is in compliance with the EPA regulations for well completions under 40 CFR part 60, subpart OOOO or subpart OOOOa is deemed in compliance with the requirements of this section. As a practical matter, all new, reconstructed, and modified hydraulically fracturing or refracturing events are now subject to the EPA requirements, so the BLM does not believe that the requirements of this section would have any independent effect, or that any operator would request an exemption from the requirements of this section, as long as the EPA requirements remain in effect. For this reason, the BLM is not estimating any PRA burdens for § 3179.102.⁴

Request for Extension of Royalty-Free Flaring During Initial Production Testing (43 CFR 3179.103)

Section 3179.103 allows gas to be flared royalty-free during initial production testing. The regulation lists specific volume and time limits for such testing. An operator may seek an extension of those limits on royalty-free flaring by submitting a Sundry Notice (Form 3160-5) to the BLM.

⁴ The EPA has convened a proceeding for reconsidering the final OOOOa rule, see 82 FR 25730 (June 5, 2017). If EPA's requirements are altered in any way in the future, then PRA burdens estimated for BLM's rule could increase by up to \$130/event if the operator files for an exemption.

Request for Extension of Royalty-Free Flaring During Subsequent Well Testing (43 CFR 3179.104)

Section 3179.104 allows gas to be flared royalty-free for no more than 24 hours during well tests subsequent to the initial production test. The operator may seek authorization to flare royalty-free for a longer period by submitting a Sundry Notice (Form 3160-5) to the BLM.

Reporting of Venting or Flaring (43 CFR 3179.105)

Section 3179.105 allows an operator to flare gas royalty-free during a temporary, short-term, infrequent, and unavoidable emergency. Venting gas is permissible if flaring is not feasible during an emergency. The regulation defines limited circumstances that constitute an emergency, and other circumstances that do not constitute an emergency.

The operator must estimate and report to the BLM on a Sundry Notice (Form 3160-5) volumes flared or vented in circumstances that, as provided by 43 CFR 3179.105, do not constitute emergencies for the purposes of royalty assessment:

- (1) More than 3 failures of the same component within a single piece of equipment within any 365-day period;
- (2) The operator's failure to install appropriate equipment of a sufficient capacity to accommodate the production conditions;
- (3) Failure to limit production when the production rate exceeds the capacity of the related equipment, pipeline, or gas plant, or exceeds sales contract volumes of oil or gas;
- (4) Scheduled maintenance;
- (5) A situation caused by operator negligence; or

(6) A situation on a lease, unit, or communitized area that has already experienced 3 or more emergencies within the past 30 days, unless the BLM determines that the occurrence of more than 3 emergencies within the 30 day period could not have been anticipated and was beyond the operator's control.

Pneumatic Controllers – Introduction

Section 3179.201 pertains to any pneumatic controller that: (1) is not subject to EPA regulations at 40 CFR 60.5360a through 60.5390a, but would be subject to those regulations if it were a new or modified source; and (2) has a continuous bleed rate greater than 6 standard cubic feet (scf) per hour. Section 3179.201(b) requires operators to replace each high-bleed pneumatic controller with a controller with a bleed rate lower than 6 scf per hour, with the following exceptions: (1) the pneumatic controller exhaust is routed to processing equipment; (2) the pneumatic controller exhaust was and continues to be routed to a flare device or low pressure combustor; (3) The pneumatic controller exhaust is routed to processing equipment; or (4) The operator notifies the BLM through a Sundry Notice and demonstrates, and the BLM agrees, that such would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease.

Notification of Functional Needs for a Pneumatic Controller (43 CFR 3179.201(b)(1) – (3))

An operator may invoke one of the first three exceptions described above by notifying the BLM through a Sundry Notice (Form 3160-5) that use of the pneumatic controller is required based on functional needs that may include, but are not limited to,

response time, safety, and positive actuation, and the Sundry Notice (Form 3160-5) describes those functional needs.

Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves (43 CFR 3175.201(b)(4) and 3175.201(c))

An operator may invoke the fourth exception described above by demonstrating to the BLM through a Sundry Notice (Form 3160-5), and by obtaining the BLM's agreement, that replacement of a pneumatic controller would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease. The Sundry Notice (Form 3160-5) must include the following information:

- (1) The name, number, and location of each of the operator's wells, and the number of the lease, unit, or communitized area with which it is associated;
- (2) The oil and gas production levels of each of the operator's wells on the lease, unit or communitized area for the most recent production month for which information is available;
- (3) Data that show the costs of compliance;
- (4) Projected costs of and the combined stream of revenues from both gas and oil production, including: the operator's projections of gas prices, gas production volumes, gas quality (i.e., heating value and H₂S content), revenues derived from gas production, and royalty payments on gas production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less; and the operator's projections of oil prices, oil production volumes, costs, revenues, and royalty payments

from the operator's oil and gas operations within the lease over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less.

Showing in Support of Replacement of Pneumatic Controller within 3 Years (43 CFR 3179.201(d))

The operator may replace a high-bleed pneumatic controller if the operator notifies the BLM through a Sundry Notice (Form 3160-5) that the well or facility that the pneumatic controller serves has an estimated remaining productive life of 3 years or less.

Pneumatic Diaphragm Pumps – Introduction

With some exceptions, § 3179.202 pertains to any pneumatic diaphragm pump that: (1) Uses natural gas produced from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease; and (2) Is not subject to EPA regulations at 40 CFR 60.5360a through 60.5390a, but would be subject to those regulations if it were a new, reconstructed, or modified source as defined in 40 CFR part 60 subpart OOOOa. This regulation generally requires replacement of such a pump with a zero-emissions pump or routing of the pump's exhaust gas to processing equipment for capture and sale.

This requirement does not apply to pneumatic diaphragm pumps that do not vent exhaust gas to the atmosphere. In addition, this requirement does not apply if the operator submits a Sundry Notice to the BLM documenting that the pump(s) operated on less than 90 individual days in the prior calendar year.

Showing that a Pneumatic Diaphragm Pump was Operated on Fewer than 90 Individual Days in the Prior Calendar Year (43 CFR 3179.202(b)(2))

A pneumatic diaphragm pump is not subject to § 3179.202 if the operator documents in a Sundry Notice (Form 3160-5) that the pump was operated fewer than 90 days in the prior calendar year.

Notification of Functional Needs for a Pneumatic Diaphragm Pump (43 CFR 3179.202(d))

In lieu of replacing a pneumatic diaphragm pump or routing the pump exhaust gas to processing equipment, an operator may submit a Sundry Notice (Form 3160-5) to the BLM showing that replacing the pump with a zero emissions pump is not viable because a pneumatic pump is necessary to perform the function required, and that routing the pump exhaust gas to processing equipment for capture and sale is technically infeasible or unduly costly.

Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves (43 CFR 3175.202(f) and (g))

An operator may seek an exemption from the replacement requirement by submitting a Sundry Notice (Form 3160-5) to the BLM that provides an economic analysis that demonstrates that compliance with these requirements would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease. The Sundry Notice (Form 3160-5) must include the following information:

- (1) Well information that must include: (i) The name, number, and location of each well, and the number of the lease, unit, or communitized area with which it is associated; and (ii) The oil and gas production levels of each of the operator's wells on the lease, unit or

communitized area for the most recent production month for which information is available;

(2) Data that show the costs of compliance with paragraphs (c) through (e) of § 3179.202;

and

(3) The operator's estimate of the costs and revenues of the combined stream of revenues from both the gas and oil components, including: (i) The operator's projections of gas prices, gas production volumes, gas quality (i.e., heating value and H₂S content), revenues derived from gas production, and royalty payments on gas production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less; and (ii) The operator's projections of oil prices, oil production volumes, costs, revenues, and royalty payments from the operator's oil and gas operations within the lease over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less.

Showing in Support of Replacement of Pneumatic Diaphragm Pump within 3 Years (43 CFR 3179.202(h))

The operator may replace a pneumatic diaphragm pump if the operator notifies the BLM through a Sundry Notice (Form 3160-5) that the well or facility that the pneumatic controller serves has an estimated remaining productive life of 3 years or less. Storage Vessels (43 CFR 3179.203(c) and (d)).

A storage vessel is subject to 43 CFR 3179.203(c) if the vessel: (1) contains production from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease; and (2) Is not subject to any of the requirements of

EPA regulations at 40 CFR part 60, subpart OOOO, but would be subject to that subpart if it were a new, reconstructed, or modified source.

The operator must determine, record, and make available to the BLM upon request, whether the storage vessel has the potential for VOC emissions equal to or greater than 6 tpy based on the maximum average daily throughput for a 30-day period of production. The determination may take into account requirements under a legally and practically enforceable limit in an operating permit or other requirement established under a Federal, State, local or tribal authority that limit the VOC emissions to less than 6 tpy.

If a storage vessel has the potential for VOC emissions equal to or greater than 6 tpy, the operator must replace the storage vessel at issue in order to comply with the requirements of this section, and the operator must

- (1) Route all tank vapor gas from the storage vessel to a sales line;
- (2) If the operator determines that compliance with paragraph (c)(1) of this section is technically infeasible or unduly costly, route all tank vapor gas from the storage vessel to a device or method that ensures continuous combustion of the tank vapor gas; or
- (3) Submit an economic analysis to the BLM through a Sundry Notice (Form 3160-5) that demonstrates, and the BLM agrees, based on the information identified in paragraph (d) of this section, that compliance with paragraph (c)(2) of this section would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease.

To support the demonstration described above, the operator must submit a Sundry Notice (Form 3160-5) that includes the following information:

- (1) The name, number, and location of each well, and the number of the lease, unit, or communitized area with which it is associated;
 - (2) The oil and gas production levels of each of the operator's wells on the lease, unit or communitized area for the most recent production month for which information is available;
 - (3) Data that show the costs of compliance with paragraph (c)(1) or (c)(2) of this section on the lease; and
 - (4) The operator must consider the costs and revenues of the combined stream of revenues from both the gas and oil components, including: the operator's projections of oil and gas prices, production volumes, quality (i.e., heating value and H₂S content), revenues derived from production, and royalty payments on production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less.
- Downhole Well Maintenance and Liquids Unloading – Documentation and Reporting
(43 CFR 3179.204(c) and (e))

The operator must minimize vented gas and the need for well venting associated with downhole well maintenance and liquids unloading, consistent with safe operations. Before the operator manually purges a well for liquids unloading for the first time after the effective date of this section, the operator must consider other methods for liquids unloading and determine that they are technically infeasible or unduly costly. The operator must provide information supporting that determination as part of a Sundry Notice (Form 3160-5). This requirement applies to each well the operator operates.

For any liquids unloading by manual well purging, the operator must:

- 1) Ensure that the person conducting the well purging remains present on-site throughout the event to minimize to the maximum extent practicable any venting to the atmosphere;
 - (2) Record the cause, date, time, duration, and estimated volume of each venting event;
- and
- (3) Maintain the records for the period required under § 3162.4-1 and make them available to the BLM, upon request.

Downhole Well Maintenance and Liquids Unloading – Notification of Excessive Duration or Volume (43 CFR 3179.204(f))

The operator must notify the BLM by Sundry Notice (Form 3160-5), within 30 calendar days, if:

- (1) The cumulative duration of manual well purging events for a well exceeds 24 hours during any production month; or
- (2) The estimated volume of gas vented in liquids unloading by manual well purging operations for a well exceeds 75 Mcf during any production month.

Leak Detection – Compliance with EPA Regulations (43 CFR 3179.301(j))

Sections 3179.301 through 3179.305 include information collection activities pertaining to the detection and repair of gas leaks during production operations. These regulations require operators to inspect all equipment covered under § 3179.301(a) for gas leaks.

Section 3179.301(j) allows an operator to satisfy the requirements of §§ 3179.301 through 3179.305 for some or all of the equipment or facilities on a given lease by notifying the BLM in a Sundry Notice (Form 3160-5) that the operator is complying with

EPA requirements established pursuant to 40 CFR part 60 with respect to such equipment or facilities.

Leak Detection – Request to Use an Alternative Monitoring Device and Protocol (43 CFR 3179.302(c))

Section 3175.302 specifies the instruments and methods that an operator may use to detect leaks. Section 3175.302(d) allows the BLM to approve an alternative monitoring device and associated inspection protocol if the BLM finds that the alternative would achieve equal or greater reduction of gas lost through leaks compared with the approach specified in §3179.302(a)(1) when used according to § 3179.303(a).

Any person may request approval of an alternative monitoring device and protocol by submitting a Sundry Notice (Form 3160-5) to BLM that includes the following information: (1) Specifications of the proposed monitoring device, including a detection limit capable of supporting the desired function; (2) The proposed monitoring protocol using the proposed monitoring device, including how results will be recorded; (3) Records and data from laboratory and field testing, including but not limited to performance testing; (4) A demonstration that the proposed monitoring device and protocol will achieve equal or greater reduction of gas lost through leaks compared with the approach specified in the regulations; (5) Tracking and documentation procedures; and (6) Proposed limitations on the types of sites or other conditions on deploying the device and the protocol to achieve the demonstrated results.

Leak Detection – Operator Request to Use an Alternative Leak Detection Program (43 CFR 3179.303(b))

Section 3179.303(b) allows an operator to submit a Sundry Notice (Form 3160-5) requesting authorization to detect gas leaks using an alternative instrument-based leak detection program, different from the specified requirement to inspect each site semi-annually using an approved monitoring device.

To obtain approval for an alternative leak detection program, the operator must submit a Sundry Notice (Form 3160-5) that includes the following information:

- (1) A detailed description of the alternative leak detection program, including how it will use one or more of the instruments specified in or approved under § 3179.302(a) and an identification of the specific instruments, methods and/or practices that would substitute for specific elements of the approach specified in §§ 3179.302(a) and 3179.303(a);
- (2) The proposed monitoring protocol;
- (3) Records and data from laboratory and field testing, including, but not limited to, performance testing, to the extent relevant;
- (4) A demonstration that the proposed alternative leak detection program will achieve equal or greater reduction of gas lost through leaks compared to compliance with the requirements specified in §§ 3179.302(a) and 3179.303(a);
- (5) A detailed description of how the operator will track and document its procedures, leaks found, and leaks repaired; and
- (6) Proposed limitations on types of sites or other conditions on deployment of the alternative leak detection program.

Leak Detection – Operator Request for Exemption Allowing Use of an Alternative Leak-Detection Program that Does Not Meet Specified Criteria (43 CFR 3179.303(d))

An operator may seek authorization for an alternative leak detection program that does not achieve equal or greater reduction of gas lost through leaks compared to the required approach, if the operator demonstrates that compliance with the leak-detection regulations (including the option for an alternative program under 43 CFR 3179.303(b)) would impose such costs as to cause the operator to cease production and abandon significant recoverable oil or gas reserves under the lease. The BLM may approve an alternative leak detection program that does not achieve equal or greater reduction of gas lost through leaks, but is as effective as possible consistent with not causing the operator to cease production and abandon significant recoverable oil or gas reserves under the lease.

To obtain approval for an alternative program under this provision, the operator must submit a Sundry Notice (Form 3160-5) that includes the following information:

- (1) The name, number, and location of each well, and the number of the lease, unit, or communitized area with which it is associated;
- (2) The oil and gas production levels of each of the operator's wells on the lease, unit or communitized area for the most recent production month for which information is available;
- (3) Data that show the costs of compliance on the lease with the requirements of §§ 3179.301-305 and with an alternative leak detection program that meets the requirements of §3179.303(b);
- (4) The operator must consider the costs and revenues of the combined stream of revenues from both the gas and oil components and provide the operator's projections of oil and gas prices, production volumes, quality (i.e., heating value and H₂S content),

revenues derived from production, and royalty payments on production over the next 15 years or the life of the operator's lease, unit, or communitized area, whichever is less;

(5) The information required to obtain approval of an alternative program under §3179.303(b), except that the estimated volume of gas that will be lost through leaks under the alternative program must be compared to the volume of gas lost under the required program, but does not have to be shown to be at least equivalent.

Leak Detection – Notification of Delay in Repairing Leaks (43 CFR 3179.304(b))

Section 3179.304(a) requires an operator to repair any leak no later than 30 calendar days after discovery of the leak, unless there is good cause for delay in repair. If there is good cause for a delay beyond 30 calendar days, § 3179.304(b) requires the operator to submit a Sundry Notice (Form 3160-5) notifying the BLM of the cause.

Leak Detection – Inspection Recordkeeping and Reporting (43 CFR 3179.305)

Section 3179.305 requires operators to maintain the following records and make them available to the BLM upon request: (1) For each inspection required under § 3179.303, documentation of the date of the inspection and the site where the inspection was conducted; (2) The monitoring method(s) used to determine the presence of leaks; (3) A list of leak components on which leaks were found; (4) The date each leak was repaired; and (5) The date and result of the follow-up inspection(s) required under § 3179.304. By March 31 each calendar year, the operator must provide to the BLM an annual summary report on the previous year's inspection activities that includes: (1) The number of sites inspected; (2) The total number of leaks identified, categorized by the type of component; (3) The total number of leaks repaired; (4) The total number of leaks that were not repaired as of December 31 of the previous calendar year due to good

cause and an estimated date of repair for each leak; and (5) A certification by a responsible officer that the information in the report is true and accurate.

Leak Detection – Annual Reporting of Inspections (43 CFR 3179.305(b))

By March 31 of each calendar year, the operator must provide to the BLM an annual summary report on the previous year’s inspection activities that includes:

- (1) The number of sites inspected;
- (2) The total number of leaks identified, categorized by the type of component;
- (3) The total number of leaks repaired;
- (4) The total number leaks that were not repaired as of December 31 of the previous calendar year due to good cause and an estimated date of repair for each leak.
- (5) A certification by a responsible officer that the information in the report is true and accurate to the best of the officer’s knowledge.

4. Burden Estimates

The following table details the annual estimated hour burdens for the information activities described above.

A. Type of Response	B. Number of Responses	C. Hours per Response	D. Total Hours (Column B x Column C)
Plan to Minimize Waste of Natural Gas 43 CFR 3162.3-1 Form 3160-3	2,000	8	16,000
Request for Approval for Royalty-Free Uses On-Lease or Off-Lease 43 CFR 3178.5, 3178.7, 3178.8, and 3178.9 Form 3160-5	50	4	200

Notification of Choice to Comply on County- or State-wide Basis 43 CFR 3179.7(c)(3)(iii) Form 3160-5	200	1	200
Request for Approval of Alternative Capture Requirement 43 CFR 3179.8(b) Form 3160-5	50	16	800
Request for Exemption from Well Completion Requirements 43 CFR 3179.102(c) and (d) Form 3160-5	0	0	0
Request for Extension of Royalty-Free Flaring During Initial Production Testing 43 CFR 3179.103 Form 3160-5	500	2	1000
Request for Extension of Royalty-Free Flaring During Subsequent Well Testing 43 CFR 3179.104 Form 3160-5	5	2	10
Reporting of Venting or Flaring 43 CFR 3179.105 Form 3160-5	250	2	500
Notification of Functional Needs for a Pneumatic Controller 43 CFR 3179.201(b)(1) – (3) Form 3160-5	10	2	20
Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves 43 CFR 3175.201(b)(4) and 3175.201(c) Form 3160-5	50	4	200
Showing in Support of Replacement of Pneumatic Controller within 3 Years 43 CFR 3179.201(d) Form 3160-5	100	1	100

Showing that a Pneumatic Diaphragm Pump was Operated on Fewer than 90 Individual Days in the Prior Calendar Year 43 CFR 3179.202(b)(2) Form 3160-5	100	1	100
Notification of Functional Needs for a Pneumatic Diaphragm Pump 43 CFR 3179.202(d) Form 3160-5	150	1	150
Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves 43 CFR 3175.202(f) and (g) Form 3160-5	10	4	40
Showing in Support of Replacement of Pneumatic Diaphragm Pump within 3 Years 43 CFR 3179.202(h) Form 3160-5	100	1	100
Storage Vessels 43 CFR 3179.203(c) Form 3160-5	50	4	200
Downhole Well Maintenance and Liquids Unloading – Documentation and Reporting 43 CFR 3179.204(c) and (e) Form 3160-5	5,000	1	5,000
Downhole Well Maintenance and Liquids Unloading – Notification of Excessive Duration or Volume 43 CFR 3179.204(f) Form 3160-5	250	1	250
Leak Detection – Compliance with EPA Regulations 43 CFR 3179.301(j) Form 3160-5	50	4	200

Leak Detection – Request to Use an Alternative Monitoring Device and Protocol 43 CFR 3179.302(c) Form 3160-5	5	40	200
Leak Detection – Operator Request to Use an Alternative Leak Detection Program 43 CFR 3179.303(b) Form 3160-5	20	40	800
Leak Detection – Operator Request for Exemption Allowing Use of an Alternative Leak-Detection Program that Does Not Meet Specified 43 CFR 3179.303(d) Form 3160-5	150	20	3,000
Leak Detection – Notification of Delay in Repairing Leaks 43 CFR 3179.304(a) Form 3160-5	100	1	100
Leak Detection – Inspection Recordkeeping and Reporting 43 CFR 3179.305	52,000	.25	13,000
Leak Detection – Annual Reporting of Inspections 43 CFR 3179.305(b) Form 3160-5	2,000	20	40,000
Totals	63,200	–	82,170

National Environmental Policy Act

The BLM has prepared a draft environmental assessment (EA) to determine whether this proposed rule would have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). If the final EA supports the issuance of a Finding of No Significant Impact (FONSI) for the rule, the preparation of an environmental impact statement pursuant to the NEPA would not be required.

The draft EA and FONSI have been placed in the file for the BLM's Administrative Record for the rule at the address specified in the "ADDRESSES" section. The EA and FONSI have also been posted in the docket for the rule on the *Federal eRulemaking Portal*: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE54" and click the "Search" button. Follow the instructions at this website. The BLM invites the public to review these documents and suggests that anyone wishing to submit comments on the EA and FONSI should do so in accordance with the instructions contained in the "Public Comment Procedures" section above.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Section 4(b) of Executive Order 13211 defines a "significant energy action" as "any action by an agency (normally published in the *Federal Register*) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of rulemaking, and notices of rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) Is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) That is designated by the Administrator of [OIRA] as a significant energy action."

The rule temporarily suspends or delays certain requirements in the 2016 final rule and would reduce compliance costs in the short-term. The BLM determined that the 2016 final rule would not have impacted the supply, distribution, or use of energy and so

the suspension or delay of many of the 2016 final rule’s requirements until January 17, 2019, will likewise not have an impact on the supply, distribution, or use of energy. As such, we do not consider the proposed rule to be a “significant energy action” as defined in Executive Order 13211.

Clarity of this Regulation (Executive Orders 12866)

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the “ADDRESSES” section. To better help the BLM revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Authors

The principal authors of this proposed rule are: James Tichenor and Michael Riches of the BLM Washington Office; Sheila Mallory of the BLM New Mexico State Office, Eric Jones of the BLM Moab, Utah Field Office; David Mankiewicz of the BLM Farmington, New Mexico Field Office; and Beth Poindexter of the BLM Dickinson, North Dakota

Field Office; assisted by Faith Bremner of the BLM's Division of Regulatory Affairs and by the Department of the Interior's Office of the Solicitor.

List of Subjects

43 CFR part 3160

Administrative practice and procedure; Government contracts; Indians-lands; Mineral royalties; Oil and gas exploration; Penalties; Public lands--mineral resources; Reporting and recordkeeping requirements.

43 CFR part 3170

Administrative practice and procedure; Flaring; Government contracts; Incorporation by reference; Indians-lands; Mineral royalties; Immediate assessments; Oil and gas exploration; Oil and gas measurement; Public lands--mineral resources; Reporting and record keeping requirements; Royalty-free use; Venting.

Dated: _____

Katharine S. MacGregor

Acting Assistant Secretary for Land and Minerals Management

43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR parts 3160 and 3170 as follows:

PART 3160 – ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for part 3160 continues to read as follows:

AUTHORITY: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

2. Amend § 3162.3-1 by revising paragraph (j) introductory text to read as follows:

§ 3162.3-1 Drilling applications and plans.

* * * * *

(j) Beginning January 17, 2019, when submitting an Application for Permit to Drill an oil well, the operator must also submit a plan to minimize waste of natural gas from that well. The waste minimization plan must accompany, but would not be part of, the Application for Permit to Drill. The waste minimization plan must set forth a strategy for how the operator will comply with the requirements of 43 CFR subpart 3179 regarding control of waste from venting and flaring, and must explain how the operator plans to capture associated gas upon the start of oil production, or as soon thereafter as reasonably possible, including an explanation of why any delay in capture of the associated gas would be required. Failure to submit a complete and adequate waste minimization plan is

grounds for denying or disapproving an Application for Permit to Drill. The waste minimization plan must include the following information:

* * * * *

PART 3170—ONSHORE OIL AND GAS PRODUCTION

3. The authority citation for part 3170 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

4. Amend § 3179.7 by revising paragraphs (b) and (c) to read as follows:

§ 3179.7 Gas capture requirement.

* * * * *

(b) Beginning January 17, 2019, the operator's capture percentage must equal:

(1) For each month during the period from January 17, 2019, to December 31, 2020: 85 percent;

(2) For each month during the period from January 1, 2021, to December 31, 2023: 90 percent;

(3) For each month during the period from January 1, 2024, to December 31, 2026: 95 percent; and

(4) For each month beginning January 1, 2027: 98 percent.

(c) The term “capture percentage” in this section means the “total volume of gas captured” over the “relevant area” divided by the “adjusted total volume of gas produced” over the “relevant area.”

(1) The term “total volume of gas captured” in this section means: for each month, the volume of gas sold from all of the operator's development oil wells in the relevant area

plus the volume of gas from such wells used on lease, unit, or communitized area in the relevant area.

(2) The term “adjusted total volume of gas produced” in this section means: the total volume of gas captured over the month *plus* the total volume of gas flared over the month from high pressure flares from all of the operator's development oil wells that are in production in the relevant area, *minus*:

(i) For each month from January 17, 2019, to December 31, 2019: 5,400 Mcf times the total number of development oil wells “in production” in the relevant area;

(ii) For each month from January 1, 2020, to December 31, 2020: 3,600 Mcf times the total number of development oil wells in production in the relevant area;

(iii) For each month from January 1, 2021, to December 31, 2021: 1,800 Mcf times the total number of development oil wells in production in the relevant area; and

(iv) For each month from January 1, 2022, to December 31, 2022: 1,500 Mcf times the total number of development oil wells in production in the relevant area;

(v) For each month from January 1, 2023, to December 31, 2024: 1,200 Mcf times the total number of development oil wells in production in the relevant area;

(vi) For each month from January 1, 2025, to December 31, 2025: 900 Mcf times the total number of development oil wells in production in the relevant area; and

(vii) For each month after January 1, 2026: 750 Mcf times the total number of development.

* * * * *

5. Amend § 3179.9 by revising paragraph (b)(1) introductory text to read as follows:

§ 3179.9 Measuring and reporting volumes of gas vented and flared.

* * * * *

(b) * * *

(1) If the operator estimates that the volume of gas flared from a high pressure flare stack or manifold equals or exceeds an average of 50 Mcf per day for the life of the flare, or the previous 12 months, whichever is shorter, then, beginning January 17, 2019, the operator must either:

* * * * *

6. Amend § 3179.10 by revising paragraph (a) to read as follows:

§ 3179.10 Determinations regarding royalty-free flaring.

(a) Approvals to flare royalty free, which are in effect as of January 17, 2017, will continue in effect until January 17, 2019.

* * * * *

7. Amend § 3179.101 by adding paragraph (c) to read as follows:

§ 3179.101 Well drilling.

* * * * *

(c) The operator must comply with this section beginning January 17, 2019.

8. Amend § 3179.102 by adding paragraph (e) to read as follows:

§ 3179.102 Well completion and related operations.

* * * * *

(e) The operator must comply with this section beginning January 17, 2019.

9. Amend § 3179.201 by revising paragraph (d) to read as follows:

§3179.201 Equipment requirements for pneumatic controllers.

* * * * *

(d) The operator must replace the pneumatic controller(s) by January 17, 2019, as required under paragraph (b) of this section. If, however, the well or facility that the pneumatic controller serves has an estimated remaining productive life of 3 years or less from January 17, 2017, then the operator may notify the BLM through a Sundry Notice and replace the pneumatic controller no later than 3 years from January 17, 2017.

* * * * *

10. Amend § 3179.202 by revising paragraph (h) to read as follows:

§ 3179.202 Requirements for pneumatic diaphragm pumps.

* * * * *

(h) The operator must replace the pneumatic diaphragm pump(s) or route the exhaust gas to capture or to a flare or combustion device by January 17, 2019, except that if the operator will comply with paragraph (c) of this section by replacing the pneumatic diaphragm pump with a zero-emission pump and the well or facility that the pneumatic diaphragm pump serves has an estimated remaining productive life of 3 years or less from January 17, 2017, the operator must notify the BLM through a Sundry Notice and replace the pneumatic diaphragm pump no later than 3 years from January 17, 2017.

* * * * *

11. Amend § 3179.203 by revising paragraphs (b) and (c) introductory text to read as follows:

§ 3179.203 Storage vessels.

* * * * *

(b) Beginning January 17, 2019, and within 30 days after any new source of production is added to the storage vessel after January 17, 2019, the operator must determine, record,

and make available to the BLM upon request, whether the storage vessel has the potential for VOC emissions equal to or greater than 6 tpy based on the maximum average daily throughput for a 30-day period of production. The determination may take into account requirements under a legally and practically enforceable limit in an operating permit or other requirement established under a Federal, State, local or tribal authority that limit the VOC emissions to less than 6 tpy.

(c) If a storage vessel has the potential for VOC emissions equal to or greater than 6 tpy under paragraph (b) of this section, by January 17, 2019, or by January 17, 2020, if the operator must and will replace the storage vessel at issue in order to comply with the requirements of this section, the operator must:

* * * * *

12. Amend § 3179.204 by adding paragraph (i) to read as follows:

§ 3179.204 Downhole well maintenance and liquids unloading.

* * * * *

(i) The operator must comply with this section beginning January 17, 2019.

13. Amend § 3179.301 by revising paragraph (f) to read as follows:

§ 3179.301 Operator responsibility.

* * * * *

(f) The operator must make the first inspection of each site:

(1) By January 17, 2019, for all existing sites;

(2) Within 60 days of beginning production for new sites that begin production after January 17, 2019; and

(3) Within 60 days of the date when an existing site that was out of service is brought back into service and re-pressurized after January 17, 2019.

* * * * *