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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Parts 3160 and 3170**

**[18X.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:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) is promulgating a final rule (2017 final delay rule) to temporarily suspend or delay certain requirements contained in the rule published in the *Federal Register* on November 18, 2016, entitled, “Waste Prevention, Production Subject to Royalties, and Resource Conservation” (2016 final rule) until January 17, 2019. The BLM has concerns regarding the statutory authority, cost, complexity, feasibility, and other implications of the 2016 final rule, and therefore intends to avoid imposing likely considerable and immediate compliance costs on operators for requirements that may be rescinded or significantly revised in the near future. The 2017 final delay rule does not substantively change the 2016 final rule, but simply postpones implementation of the compliance requirements for certain provisions of the 2016 final rule for 1 year.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**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 today's final delay 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. Background
- II. Discussion of the Final Delay Rule
- III. Procedural Matters

**I. 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 the 2016 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 2016 final rule’s provisions are to be phased in over time, and are to become operative 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, on March 29, 2017, Secretary of the Interior Ryan Zinke issued Secretarial Order No. 3349, entitled, “American Energy Independence,” 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 is inconsistent with the policy in section 1 of Executive Order 13783. The BLM found that some provisions of the 2016 final rule add considerable regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. For example, despite the rule’s assertions, many of the 2016 final rule’s requirements would pose a particular compliance burden to operators of marginal or low-producing wells. There is newfound concern that this additional burden would jeopardize the ability of operators to maintain or economically operate these wells.

Reexamination of the 2016 final rule is also needed because the BLM is not confident that all provisions of the 2016 final rule would survive judicial review. Immediately after the 2016 final rule was issued, petitions for judicial review of the rule were filed by industry groups and certain States with significant BLM-managed Federal and Indian minerals. See *Wyoming v. U.S. Dep't of the Interior*, Case No. 2:16-cv-00285-SWS (D. Wyo.). Although the court denied motions for a preliminary injunction, it did express concerns that the BLM may have usurped 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. Moreover, questions have been raised over to what extent Federal regulations should apply to leases in communitization agreements when Federal mineral ownership is very small. The BLM is evaluating these issues as part of its reexamination of the rule.

Reexamination of the 2016 final rule is warranted to reassess the rule's estimated costs and benefits. In the Regulatory Impact Analysis (RIA) for the 2016 final rule (2016 RIA), 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). Certain States, tribes, and many oil and gas companies and trade associations have argued, in comments and in the litigation following the issuance of the 2016 final rule, that the BLM underestimated the compliance costs of the 2016 final rule and that the costs would

inhibit oil and gas development on Federal and Indian lands, thereby reducing royalties and harming State and tribal economies. The BLM is reexamining these issues to determine whether the 2016 RIA may have underestimated costs.

Apart from this concern over costs, the 2016 RIA also may have overestimated benefits by the use of a social cost of methane that attempts to account for global rather than domestic climate change impacts. Section 5 of Executive Order 13783, issued by the President on March 28, 2017, disbanded the earlier Interagency Working Group on Social Cost of Greenhouse Gases (IWG) and withdrew the Technical Support Documents upon which the RIA for the 2016 final rule relied for the valuation of changes in methane emissions. The Executive Order further directed agencies to ensure that estimates of the social cost of greenhouse gases used in regulatory analyses “are based on the best available science and economics” and are consistent with the guidance contained in Office of Management and Budget (OMB) Circular A-4, “including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates” (E.O. 13783, Section 5(c)). The BLM is reassessing its estimates of the rule’s benefits taking into account the Executive Order’s directives.

The BLM also believes that a number of specific assumptions underlying the analysis supporting the 2016 final rule warrant reconsideration. For example, the BLM is reconsidering whether it was appropriate to assume that all marginal wells would receive exemptions from the rule’s requirements and whether this assumption might have masked adverse impacts of the 2016 final rule on production from marginal wells. The BLM is

also reconsidering whether it was appropriate to assume that there would be no delay in the BLM's review of Applications for Permits to Drill (APDs) as a result of reviewing Sundry Notices requesting exemptions from the rule's requirements, and that there would be no impact on production due to operators waiting on the BLM to review and approve such requests for exemptions. The BLM is reconsidering whether it was appropriate to assume that there would be no reservoir damage if an operator uses temporary well shut-ins to comply with the 2016 final rule's capture percentage requirements, and whether it was correct to assume that the capture percentage requirements would not have a disproportionate impact on small operators, who might have fewer wells with which to average volumes of allowable flaring. Finally, the BLM has concerns that its cost-benefit analysis for the leak detection and repair (LDAR) requirements in the 2016 final rule – which used data from the EPA's OOOOa rule (40 CFR part 60, subpart OOOOa) – was not based on the best available information and science. The BLM is reviewing the effectiveness of LDAR requirements to determine whether more accurate data is available.

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. Today's final delay rule temporarily suspends or delays certain requirements contained in the 2016 final rule until January 17, 2019. As noted above, the BLM has concerns regarding the statutory authority, cost,

complexity, feasibility, and other implications of the 2016 final rule, and therefore 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 final delay rule will temporarily postpone the implementation dates until January 17, 2019, or for 1 year. For certain requirements in the 2016 final rule that are currently in effect, this final delay rule will temporarily suspend their effectiveness until January 17, 2019. A detailed discussion of the suspensions and delays is provided below. The BLM has attempted to tailor this final delay rule to target the requirements of the 2016 final rule for which immediate regulatory relief is particularly justified. Although the requirements of the 2016 final rule that are not suspended under this final delay rule may ultimately be revised in the near future, the BLM is not suspending them because it does not, at this time, believe that suspension is necessary, because the cost and other implications do not pose immediate concerns for operators. This final delay rule temporarily suspends or delays all of the requirements in the 2016 final rule that the BLM estimated would pose an immediate compliance burden to operators and generate benefits of gas savings or reductions in methane emissions. The 2017 final delay rule does not suspend or delay the requirements in subpart 3178 related to the royalty-free use of

natural gas, but the only estimated compliance costs associated with those requirements are for minor and rarely occurring administrative burdens. In addition, for the most part, the 2017 final delay rule suspends or delays the administrative burdens associated with subpart 3179. Only four of the 24 information collection activities remain, and the burdens associated with these remaining items are not substantial.

The BLM promulgated the 2016 final rule, and now will 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. 181-287), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351-360), the Federal Oil and Gas Royalty Management Act of 1982 (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). 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.<sup>1</sup>

Today's action temporarily suspending certain requirements of the 2016 final rule does not leave unregulated the venting and flaring of gas from Federal and Indian oil and gas leases. Indeed, regulations from the BLM, the EPA, and the States will operate to address venting and flaring during the period of the suspension. The BLM's venting and

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<sup>1</sup> See, e.g., 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. See also *Clean Air Council v. Pruitt*, 862 F.3d 1, 13 (D.C. Cir. 2017)(recognizing that “[a]gencies obviously have broad discretion to reconsider a regulation at any time” through notice and comment rulemaking)

flaring regulations that will remain in effect during the 1-year suspension period include: Definitions clarifying when lost gas is “avoidably lost,” and therefore subject to royalties (§ 3179.4); restrictions on the practice of venting (§ 3179.6); limitations on royalty-free venting and flaring during initial production testing (§ 3179.103); limitations on royalty-free flaring during subsequent well tests (§ 3179.104); and restrictions on royalty-free venting and flaring during “emergencies” (§ 3179.105). The BLM also notes that States with significant Federal oil and gas production have regulations that restrict flaring and these regulations apply to Federal oil and gas operations in those States. See, e.g., 20 Alaska Admin. Code § 25.235; Mont. Admin. R. 36.22.1220 - .1221; New Mexico Administrative Code section 19.15.18.12; North Dakota Century Code section 38-08-06.4; North Dakota Industrial Commission Order 24665; 055-3 Wyo. Code R. § 39; Utah Administrative Code R649-3-20. Finally, as discussed elsewhere in this document, EPA regulations in 40 CFR 60 subparts OOOO and OOOOa address natural gas emissions from new, modified, and reconstructed equipment on oil and gas leases.

On October 5, 2017, the BLM published its proposed rule and sought comment on whether to suspend the implementation of certain requirements in the 2016 final rule until January 17, 2019 (82 FR 46458). Issues of particular interest to the BLM included 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 final rule were warranted. The BLM was also interested in the appropriate length of the proposed suspension and delays and wanted to know whether the period

should be longer or shorter (e.g., 6 months, 18 months, or 2 years). The BLM allowed a 30-day comment period for the proposed delay rule to afford the public a meaningful opportunity to comment on its narrow proposal, involving a straightforward temporary suspension and delay of certain provisions of the 2016 final rule.

The BLM has engaged in stakeholder outreach in the course of developing this final delay rule. On October 16 and 17, 2017, the BLM sent correspondence to tribal governments to solicit their views to inform the development of this final delay rule. The BLM issued a proposed delay rule on September 28, 2017, which was published on October 5, 2017, and accepted public comments through November 6, 2017. The BLM received over 158,000 public comments on the proposed rule, including approximately 750 unique comments.

## **II. Discussion of the Final Rule**

### **A. 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 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-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 2016 RIA, 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 concerns raised by operators that the requirements of § 3162.3-1(j) may

impose an unnecessary burden and can be reduced. The BLM is also evaluating concerns raised by the operators that § 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 prior to the operator's submission of an APD. The BLM is considering narrowing the required information and is 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). The BLM is therefore suspending the waste minimization plan requirement of § 3162.3-1(j) until January 17, 2019.

This final delay rule revises § 3162.3-1 by adding "Beginning January 17, 2019" to the beginning of paragraph (j). The rest of this paragraph remains the same as in the 2016 final rule and the introductory paragraph is repeated in this final delay 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 2016 RIA, 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 concerns raised by operators that the capture-percentage requirement of § 3179.7 is unnecessarily complex and infeasible in some regions because it may cause wells to be shut-in repeatedly (or otherwise cease production if the lease(s) does not allow for a shut in) until sufficient gas infrastructure is in place. 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.

Since meeting this requirement requires operators to incur significant costs 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 delaying for 1 year the compliance dates for § 3179.7's capture requirements. This final delay rule will allow the BLM sufficient time to more

thoroughly explore through notice-and-comment rulemaking 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 final delay rule revises 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) remain the same as in the 2016 final rule and are repeated in this final delay 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. Under the 2016 final rule, § 3179.9(b) would have required the operator, as of January 17, 2018, if the volume threshold is met, 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 2016 RIA, 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 concerns raised by operators that the additional accuracy associated with the measurement and estimation required by § 3179.9(b) does not justify the burden it would place on operators and that the requirement is infeasible because current technology does not reliably measure low pressure, low volume, fluctuating gas flow. 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 immediate and potentially unnecessary compliance costs on the part of operators, this final delay rule delays the compliance date in § 3179.9 until January 17, 2019.

This final delay rule revises the compliance date in § 3179.9(b)(1). The rest of paragraph (b)(1) remains the same as in the 2016 final rule and is repeated in this final delay 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 impose an immediate cost, be premature and disruptive, and would introduce needless regulatory uncertainty

for operators with existing flaring approvals. The BLM therefore extends the end of the transition period provided for in § 3179.10(a) to January 17, 2019.

This final delay rule also revises the date in paragraph (a) and replaces “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. Aside from these two changes, this final delay rule does not otherwise revise paragraph (a), but the rest of the paragraph remains the same as in the 2016 final rule and is repeated in this final delay 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 concerns raised by operators that § 3179.101 is unnecessary in light of existing BLM requirements, infeasible in the situations where flares may be used on drilling wells because of insufficient gas to burn, and creates a risk to safety. The BLM has existing regulations that require the operator to flare gas during

drilling operations, see Onshore Oil and Gas Order No. 2 - Drilling Operations, Section III.C.7. The requirements state that "All flare systems shall be designed to gather and burn all gas.... The flare system shall have an effective method for ignition. Where noncombustible gas is likely or expected to be vented, the system shall be provided supplemental fuel for ignition and to maintain a continuous flare."

Because § 3179.101 includes the primary method of gas disposition, which is also required by Onshore Oil and Gas Order No. 2 - Drilling Operations, Section III.C.7, 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.

Further, in addition to the existing requirements regulating well drilling operations, the available data suggest that potential gas losses during a well-drilling operation is very small. According to EPA's Greenhouse Gas Inventory, drilling a well generates only small amounts of uncontrolled gas (2016 RIA at 149 and 151). These data indicate either that operators are already operating in a manner consistent with § 3179.101 or that the amount of potential gas losses from these operations is very small.

The BLM is therefore suspending 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 final delay rule adds a new paragraph (c) making it clear that the operator must comply with § 3179.101 beginning January 17, 2019. This action does not impact

the operator's compliance with Onshore Oil and Gas Order No. 2 - Drilling Operations, Section III.C.7.

**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 concerned that § 3179.102 imposes an immediate cost on operators and is currently reviewing it to determine whether it is necessary, in light of current operator practices and the analogous EPA regulations. Operators dispose of gas during well completions and related operations consistent with § 3179.102(a) either to comply with EPA or State regulations.

EPA regulations at 40 CFR part 60, subparts OOOO and OOOOa, address the disposition of gas from oil and gas well completions using hydraulic fracturing, which are the vast majority of well completions occurring on Federal and Indian lands. The BLM believes that over 90 percent of wells on Federal and Indian lands are completed using hydraulic fracturing. Therefore, most of the well completions and related operations that would otherwise be covered by § 3179.102 would actually be exempted under § 3179.102(b).

The EPA regulations also exempt from its coverage a small portion of well completions that, according to EPA's Greenhouse Gas Inventory, generate only small amounts of uncontrolled gas (2016 RIA at 149 and 151). These data indicate either that operators are already operating in a manner consistent with § 3179.102(a) or that the amount of potential gas losses from these operations is very small.

Considering the overlap with EPA regulations (40 CFR part 60, subparts OOOO and OOOOa), the primary effect of § 3179.102 may be to generate confusion about regulatory compliance during well-drilling and related operations. The BLM is therefore suspending 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 final delay rule adds 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 2016 RIA, 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 concerned that § 3179.201 imposes an immediate cost on operators and is currently reviewing it 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 (40 CFR part 60, subparts OOOO or OOOOa) 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 expensive equipment upgrades to comply with § 3179.201 until the BLM has had an opportunity to review its requirements and, if appropriate, revise them through notice-and-comment rulemaking. The BLM is therefore delaying the compliance date stated in § 3179.201 until January 17, 2019.

This final delay rule revises 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 final delay rule also replaces “the effective date of this section” with “January 17, 2017” the two times that it appears in the second sentence of paragraph (d). This final delay rule does not otherwise revise paragraph (d), but the rest of the paragraph remains the same as in the 2016 final rule and is repeated in the final delay 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 2016 RIA, 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 concerned that § 3179.202 imposes an immediate cost on operators and is currently reviewing it 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. See 40 CFR part 60, subpart OOOOa. 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 expensive equipment upgrades to comply with § 3179.202 until the BLM has had an opportunity to review its requirements and, if appropriate, revise them through notice-and-comment rulemaking. The BLM is therefore delaying the compliance date stated in § 3179.202 until January 17, 2019.

This final delay rule revises 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 also replaces “the effective date of this section” with “January 17, 2017” the two times that it appears later in the same sentence. This final delay rule does not otherwise revise paragraph (h); the rest of the paragraph remains the same as in the 2016 final rule and is repeated in the final delay 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 2016 RIA, 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 concerned that § 3179.203 imposes an immediate cost on operators and is currently reviewing it to determine whether it should be rescinded or revised. The BLM is considering whether § 3179.203 is necessary in light of analogous EPA regulations (40 CFR part 60, subparts OOOO or OOOOa) and whether the costs associated with compliance are justified. The BLM does not believe that operators should be required to make expensive upgrades to their storage vessels in order to comply with § 3179.203 until the BLM has had an opportunity to review its requirements and, if appropriate, revise them through notice-and-comment rulemaking. The BLM is therefore delaying the January 17, 2018, compliance date in § 3179.203 until January 17, 2019.

This final delay rule revises 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, 2019” between the words “vessel” and “the

operator.” This final delay rule also revises 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 final delay rule does not otherwise revise paragraphs (b) and (c), and the rest of these paragraphs remain the same as in the 2016 final rule and are repeated in this final delay 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 2016 RIA, 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 concerned that § 3179.204 imposes immediate costs on operators and is currently reviewing it 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 suspending the effectiveness of § 3179.204 until January 17, 2019.

This final delay rule adds 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 LDAR activities and submit an annual report to the BLM. Pursuant to § 3179.301(f), operators must begin to comply with the LDAR 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 2016 RIA, 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 concerned that §§ 3179.301 through 3179.305 impose an immediate cost on operators and is currently reviewing them to determine whether they should be revised or rescinded. The analysis of the 2016 rule may have significantly overestimated the benefits of captured gas and therefore not justified the estimated costs. The BLM is also considering whether these requirements are necessary in light of comparable EPA (40 CFR part 60, subpart OOOOa.) and State LDAR regulations. The 2017 RIA includes a discussion of State regulations (2017 RIA at 17). 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 delaying the effective dates for these sections until January 17, 2019, by revising § 3179.301(f).

This final delay rule revises 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 final delay rule also revises paragraph (f)(2) by adding “new” between the words “for” and “sites” and by replacing the existing date with “January 17, 2019.” Finally, this final delay rule revises 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 final delay rule does not otherwise revise paragraph (f), and the rest of the paragraph remains the same as in the 2016 final rule and is repeated in this final delay rule text only for context.

### **B. Summary of Estimated Economic Impacts**

The BLM reviewed the final delay rule and conducted an RIA and Environmental Assessment (EA) that examine the impacts of the final delay rule’s requirements. The following discussion is a summary of the final delay rule’s economic impacts. The RIA and EA that we prepared have been posted in the docket for the final delay 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 postpones the economic impacts estimated previously to the near-term future. That is to say, impacts that we previously estimated would occur in 2017 will now occur in 2018, impacts that we previously estimated would occur in 2018 will now occur in 2019, and so on. In the RIA for this final delay 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 2016 RIA. Except for some notable changes, the 2017 RIA uses the impacts estimated and underlying assumptions used by the BLM for the 2016 RIA, published in November 2016. The BLM’s final delay rule temporarily suspends or delays 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. This final delay rule temporarily suspends or delays 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, will substantially reduce compliance costs during the period of the suspension or delay (2017 RIA at 29).

Impacts in Year 1:

- A delay 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

This final delay rule temporarily suspends or delays almost all of the requirements in the 2016 final rule that were estimated to generate benefits of gas savings or reductions in methane emissions. We estimate that this final delay rule will result in forgone benefits, since estimated cost savings that would have come from product recovery will be deferred and the emissions reductions will 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 this final delay rule will 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 final delay rule delays the implementation of those requirements, the estimated benefits of the 2016 final rule will 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-CH<sub>4</sub><sup>2</sup> based on a 7 percent discount rate) or \$26 million (using interim domestic SC-CH<sub>4</sub> based on a 3 percent discount rate).

Impacts from 2017-2027:

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<sup>2</sup> Social cost of methane.

- Forgone methane emissions reductions valued at \$1.9 million (NPV<sup>3</sup> and interim domestic SC-CH<sub>4</sub> using a 7 percent discount rate); or
- Forgone methane emissions reductions valued at \$300,000 (NPV and interim domestic SC-CH<sub>4</sub> using a 3 percent discount rate).

### Estimated Net Benefits

This final delay 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-CH<sub>4</sub> based on a 7 percent discount rate) or \$64 – 68 million (using interim domestic SC-CH<sub>4</sub> based on a 3 percent discount rate).

#### Impacts from 2017-2027:

- Total net benefits ranging from \$35 – 52 million (NPV and interim domestic SC-CH<sub>4</sub> using a 7 percent discount rate); or
- Total net benefits ranging from \$19 – 29 million (NPV and interim domestic SC-CH<sub>4</sub> using a 3 percent discount rate).

### Energy Systems

This final delay 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

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<sup>3</sup> Net present value.

in the short-term and on a regional basis. However, since the relative changes in production compared to global levels are expected to be small, we do not expect that this final delay rule will significantly impact the price, supply, or distribution of energy.

Noting that the assumptions in the 2016 RIA are under review and subject to change, we estimate the following incremental changes in production. Also note 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

Based on the assumptions in the 2016 RIA, which are currently under review, in the short-term the final 2017 delay 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 final delay 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 on a suspension or delay for 1 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.

#### Employment Impacts

This final delay rule temporarily suspends or delays certain requirements of the BLM's 2016 final rule on waste prevention and is a temporary deregulatory action. As such, we estimate that it will 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 will be positive.

In the 2016 RIA, 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 2016 final rule would require the one-time installation or replacement of equipment and the ongoing implementation of an LDAR program, both of which would require labor to comply.

As discussed more thoroughly above, the assumptions upon which the determination of the 2016 rule was based upon are under review. Based on the 2016 RIA, this final delay rule will not substantially alter the investment or employment decisions of firms for two reasons. First, the 2016 RIA 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, this final delay rule will 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 this final delay 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 final delay rule. For these 26 small companies, the estimated per-entity reduction in compliance costs will 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

This final delay rule applies to oil and gas operations on both Federal and Indian leases. In the 2017 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. The BLM expects the impacts on Tribal Lands to be between 11 percent and 15 percent of those levels described in sections 4.1 to 4.4.4 of the 2017 RIA. Please reference the 2017 RIA at sections 4.1 to 4.4.5 for a full explanation of the estimated impacts.

#### C. Comments and Responses

The BLM has engaged in stakeholder outreach in the course of developing this 2017 final delay rule to the degree it believes is appropriate given that the final delay rule

extends the compliance dates of the 2016 final rule, but does not change the policies of that rule. The BLM published a proposed rule on October 5, 2017 (82 FR 46458), and accepted public comments through November 6, 2017.

The BLM sent correspondence to tribal governments to solicit their views to inform the development of this 2017 final delay rule on October 16 and 17, 2017, and requested feedback and comment through the respective BLM State Office Directors. In addition, BLM State and Field Offices informed the tribes of the BLM delay rule notification letters via phone, and offered to conduct tribal consultation if the tribes chose to do so. More detailed information is found below in the subsection titled “Consultation and Coordination with Indian Tribal Governments (Executive Order 13175 and Departmental Policy).”

The BLM received over 158,000 comments on the proposed rule, including approximately 750 unique comments, which are available for viewing on the *Federal eRulemaking Portal* (<http://www.regulations.gov>) In the Searchbox, enter "RIN 1004-AE54" and click the "Search" button. Follow the instructions at this website. The BLM has reviewed all public comments, and has made changes, as appropriate, to the final delay rule and supporting documents based on those comments and internal review. Those changes are described in detail below in this final delay rule. In addition, the “comments and responses” discussion in this final delay rule provides a summary of issues raised most frequently in public comments and the BLM’s response. A more comprehensive account of public comments and detailed responses to these comments

are available to the public in a supporting document in the docket for this rulemaking at the *Federal eRulemaking Portal* referenced above. The final delay rule reflects the very extensive input that the BLM gathered from the public comment process.

The comments revolved around several main issues, which are categorized as the following: (1) Industry impacts; (2) Royalty Provisions, (3) Legal authority; (4) Lost gas volumes; (5) Rule net benefits; (6) National impacts, including energy security; (7) Climate change; (8) Air quality and public health; (9) Rule process; and (10) Technical issues, including parts of the rule that were not delayed.

#### Industry Impacts

The BLM received numerous comments on the BLM's analysis of costs and benefits. Many comments addressed the cost to the operators of complying with the 2017 final delay rule. Some commenters stated that the long-term prevention of energy waste outweighs the additional burden that smaller companies may face from the cost of complying with the 2016 final rule, and others asserted that there is continued stability in the oil and gas industry and jobs despite promulgation of the 2016 final rule so that a delay was unnecessary. Another commenter saw compliance as a cost of doing business and another as a cost to access public lands, while another said they would take a reduction in royalties to pay for reductions in methane emissions. One commenter noted the broad negative impacts of the rule on public welfare through "wasted gas, diminished royalties, and harmful impacts for public health and the environment." One commenter asserted a disparity between the alleged broad negative impacts of the proposed 2017

delay rule on public welfare through “wasted gas, diminished royalties, and harmful impacts for public health and the environment” with the BLM’s own conclusion that the 2017 delay rule would not “substantially alter the investment or employment decisions of firms.”

The BLM did not revise the proposed rule in response to these comments. Most of the comments on these cost/benefit issues asserted a policy preference for immediately implementing the rule but did not assert that the BLM had relied on improper data analysis. Operators have raised concerns regarding the cost, complexity, and other implications of the 2016 rule. Moreover, the 2016 final rule analysis is under review and the BLM is concerned that certain assumptions that justified the rule’s costs may be unsupported. The BLM does not believe that operators should be required to make expensive equipment upgrades to comply with the 2016 rule until it has had an opportunity to review the requirements and, if appropriate, revise them through notice-and-comment rulemaking.

Many commenters supported issuing the delay rule and stated that a final delay rule would avoid imposing immediate compliance costs for requirements that might be rescinded or significantly revised in the near future. The BLM agrees. This final rule will also allow the BLM to avoid expending agency resources on implementation of activities for potentially transitory requirements. The BLM acknowledges that some operators have upgraded their equipment in the interim, and delaying the 2016 rule does not preclude operators from upgrading their equipment voluntarily, but the BLM does not

see the delay as penalizing operators who have adopted the 2016 final rule requirements early, as mentioned in one comment. The intent of the delay rule is to prevent the incurrence of compliance costs and potential unnecessary shutting in of wells while the aforementioned provisions are being reviewed due to the concerns raised in this rulemaking.

As mentioned above, the BLM shows in the 2017 RIA that the avoided costs of delaying the rule exceed the forgone benefits. Over the 11-year evaluation period (2017-2027), the BLM estimates total net benefits ranging from \$35-52 million (NPV and interim social cost of methane using a 7 percent discount rate) or \$19-29 million (NPV and interim domestic social cost of methane using a 3 percent discount rate) (2017 RIA at 1). Thus, the RIA for the 2017 final delay rule concludes that the benefits of the 2017 final delay rule (avoided compliance costs) exceed the costs (forgone savings and environmental improvements). In accordance with E.O. 13783, the BLM is committed to furthering the national interest by promoting “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.” Thus, the policy set forth in E.O. 13783 is aimed at ensuring the “clean” and “prudent” (i.e., not wasteful) development of energy resources. As the BLM reconsiders the 2016 final rule in accordance with E.O. 13783, it will continue to analyze the rule’s costs and benefits.

#### Royalty Provisions

Several commenters stated that the 2016 final rule's gas capture provisions would be commercially valuable and economically beneficial to the government through additional royalties. The commenters argued that delaying the 2016 final rule would result in wasted gas and a reduction in the royalties flowing to the States, tribes, and Federal Government.

The BLM did not change its proposal in response to these comments. The BLM's analysis of the delay rule, which is based on potentially tenuous assumptions made in the 2016 final analysis, shows that it might forgo royalties in the short-term, but that there would be a negligible change from the baseline over the entire period of analysis. See Section 4.4 of the 2017 final delay rule RIA. As the BLM reconsiders the final 2016 rule in accordance with E.O. 13783, it will continue to assess impacts on royalty revenues.

Some commenters were concerned that the 2016 rule would impact oil and gas development on tribal reservations and royalties to tribes. Some tribes are located in known shale play areas and contain large amounts of undeveloped or underdeveloped areas. In particular, the commenters suggested that the 2016 final rule could delay drilling on or drive industry away from tribal lands, reducing income flowing to Indian mineral owners and tribal economies. The BLM agrees that this is an important issue and is assessing it in developing a proposal to revise or rescind the 2016 final rule. The BLM evaluated the royalty impacts of the delay rule on Indian lands and determined that these impacts were minimal (2017 RIA at 40). Following its initial review, the BLM is reviewing the 2016 final rule to develop an appropriate proposed revision of the 2016

final rule that is intended to align the 2016 final rule with section 1 of E.O. 13783. The BLM invites the commenters to provide comment on its proposal to revise the 2016 final rule, when that proposal is available.

The BLM received comments on other royalty-related issues. One commenter believes royalties should not be treated as transfer payments in the 2017 RIA. The BLM disagrees with the commenter. Based on widely-accepted economic principles and OMB Circular A-4, royalties are, by definition, transfer payments.

#### Legal Authority

Multiple commenters stated that the BLM lacks either implicit or explicit legal authority to suspend certain requirements of the 2016 final rule for the purpose of reconsidering them. They stated that the 2017 final delay rule is arbitrary and capricious under the Administrative Procedure Act (APA) section 706(2)(A), and the reasoning behind the rule is outside the scope of the Federal Land Policy and Management Act. Commenters stated that promulgation of the 2017 delay rule would put the BLM in violation of both the MLA and FLPMA. Commenters also asserted that, since the 2017 delay rule was proposed shortly after the U.S. District Court for the District of Wyoming denied industry petitioners a preliminary injunction to stay the 2016 final rule until the case was decided on the merits, the BLM is using rulemaking to mirror a judicial function.

The BLM has not modified the rule in light of these comments. The BLM has ample legal authority to modify or otherwise revise the existing regulation in response to

substantive concerns regarding cost and feasibility under the authority granted by the MLA, the MLAAL, FOGRMA, FLPMA, the IMLA, the IMDA, and the Act of March 3, 1909. 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. (See, e.g., 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).

Moreover, neither the MLA nor FLPMA provide statutory "mandates" that the BLM maintain the regulatory provisions that are being suspended for a year in this final rule. Furthermore, the BLM is not acting arbitrarily and capriciously in promulgating today's final rule; the preamble, RIA, responses to comments, and other associated documents collectively and adequately explain the rationales and factual bases for each provision in the rule, the relevant factors that the BLM considered, and the reasons why the BLM did not consider certain other factors.

Commenters addressed the importance of government-to-government consultation and stated that, in contrast to the 2016 rule, the BLM only provided a few opportunities for tribes and individual mineral owners to consult about the 2017 delay rule.

The BLM engaged in stakeholder outreach in the course of developing this 2017 final delay rule, and believes its degree of outreach was appropriate given that the final delay rule extends the compliance dates of the 2016 final rule, but does not change the policies of that rule. The BLM sent correspondence to all tribal governments with major oil and gas interests, as well as individual Indian mineral owners that have expressed to

the BLM in the past that they want to be notified of such actions. Such correspondence solicited their views to inform the development of this 2017 final delay rule and requested feedback and comment through the respective BLM State Office Directors. Several tribal governments have provided feedback on today's action.

Commenters were also concerned about delaying the 2016 final rule, which they viewed as helping the Secretary meet his statutory trust responsibilities with respect to development of Indian oil and gas interests, because it ensured extraction that increased royalties rather than waste of resources.

The BLM believes that the 2017 final rule helps the Secretary fulfill his trust responsibility with respect to the development of Indian oil and gas interests. As detailed in the RIA accompanying today's action, although there is expected a short-term reduction in annual royalties to tribes (and other lessors) from the 1-year delay, overall the economic impact of this final delay rule is positive. The delay also provides the BLM an opportunity to reconsider and ensure appropriate compliance requirements are imposed on tribal lands, which may help to avoid having operators forego development of tribal lands due to burdensome and unnecessary compliance requirements.

Commenters stated that the 2017 delay rule would leave the oil and gas operations on Federal and Indian leases unregulated with respect to the activities governed by the provisions being suspended or delayed.

The BLM believes this is not the case. The development and production of oil and gas are regulated under a framework of Federal and State laws and regulations. Several

Federal agencies implement Federal laws and requirements, while each State in which oil and gas is produced has one or more regulatory agencies that administer State laws and regulations. As discussed more thoroughly above, the requirements of the 2016 final rule that are not being suspended or delayed, various State laws and regulations, and EPA regulations will operate together to limit venting and flaring during the period of the 1-year suspension. See the 2017 final delay rule RIA for a summary of selected Federal and State regulations and policies that have the effect of limiting the waste of gas from production operations in the States where the production of oil and gas from Federal and Indian leases is most prevalent (2017 RIA at 17).

#### Lost Gas Volumes

Many commenters stated that the 2017 final delay rule will result in waste of natural gas through venting, flaring, and leaking of natural gas from oil and gas operators. The commenters stated that the valuable energy resources being wasted could otherwise be productively used, which would subsequently increase revenues for taxpayers in the form of royalty and tax collection. Some commenters also expressed concern that the rule impedes U.S. progress towards energy independence. The BLM acknowledges that delaying implementation of compliance requirements for certain provisions of the 2016 final rule could result in incremental flaring of gas during the 1-year interim period when compared to the baseline. However, over 11 years of implementation (2017-2027), the BLM expects an overall small increase in production (and subsequent royalties) when commodity prices are projected to be higher. In addition, the BLM found positive net

benefits of the 2017 delay rule due to the reduction in compliance costs exceeding the foregone benefits of the 2016 rule. The BLM also notes that the assumptions of the final analysis of the 2016 rule are under review and may be revised.

Some commenters expressed concern about the uncertainty underlying the estimates of lost gas volumes in the final RIA. The BLM acknowledges that there is uncertainty regarding the quantity and value of gas that is vented or flared on Federal or tribal lands. The BLM reviewed data from the Office of Natural Resources Revenue (ONRR) and 2016 greenhouse gas (GHG) Inventory to develop estimates of the average volume of gas vented and flared. See the 2016 RIA for a complete discussion of the methodology and data used to estimate lost gas volumes (2016 RIA at 15).

#### Rule Net Benefits

Multiple commenters took issue with the approach the BLM used to calculate the foregone benefits of methane emissions reductions in terms of the social cost of methane in the 2017 delay rule analysis. In particular, commenters suggested that the RIA for the delay rule: (a) Should rely on estimates of the global value of the social cost of methane and not the “domestic-only” value and; (b) That a 7 percent discount rate is not justifiable for use in discounting these benefits and a 3 percent discount rate would be appropriate and consistent with OMB Circular A-4. Multiple commenters also suggested that the BLM continue to use the analysis conducted by the IWG in regard to these issues. Since publication of the 2016 RIA, several documents upon which the 2016 final rule RIA relied upon have been rescinded. In particular, Section 5 of E.O. 13783, issued by the

President on March 28, 2017, disbanded the earlier IWG and withdrew the Technical Support Documents upon which the 2016 RIA relied for the valuation of changes in methane emissions. It further directed agencies to ensure that estimates of the social cost of greenhouse gases used in regulatory analyses “are based on the best available science and economics” and are consistent with the guidance contained in OMB Circular A-4, “including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates” (E.O. 13783, Section 5(c)). The social cost of methane (SC-CH<sub>4</sub>) estimates used for the 2017 final delay rule analysis are interim values for use in regulatory analyses while estimates of the impacts of climate change to the U.S. are being developed.

Multiple commenters cited specific issues regarding the use of 7 percent discount rate, stating that by applying a 7 percent discount rate, the BLM is ignoring the welfare of future generations of Americans. Commenters further suggested that the use of the 3 percent discount rate is consistent with OMB Circular A-4. The BLM disagrees. The analysis presented in the RIA for the 2017 final delay rule uses both a 3 percent and a 7 percent discount rate in the above analysis. The 7 percent rate is intended to represent the average before-tax rate of return to private capital in the U.S. economy. The 3 percent rate is intended to reflect the rate at which society discounts future consumption. The use of both discount rates is consistent with the guidance contained in OMB Circular A-4.

One commenter opposed the use of the social cost of methane to analyze this rulemaking given the uncertainty and the lack of accuracy surrounding these estimates,

noting that its use goes against the need to produce an analysis that is “based on the best available science and economics.” The commenter requested that the BLM omit benefits related to the social cost of methane. Pursuant to E.O. 12866, and in an effort to provide full transparency to the public regarding the impacts of its actions, the BLM has estimated all of the significant costs and benefits of this 2017 final delay rule to the extent that data and available methodologies permit, consistent with the best science currently available. The SC-CH<sub>4</sub> estimates presented here are interim values for use in regulatory analyses until an improved estimate of the impacts of climate change to the U.S. can be developed.

Several commenters stated the BLM neglected to analyze the loss of public health and safety benefits generated by the implementation of the 2016 final rule, citing OMB Circular A-4 guidance as evidence. Commenters also stated that the BLM neglected to analyze the impacts of the proposed suspension on worker safety, which was one of the purposes of the 2016 final rule. Pursuant to E.O. 12866, and in an effort to provide full transparency to the public regarding the impacts of its actions, the BLM has estimated all of the significant costs and benefits of this 2017 final delay rule to the extent that data and available methodologies permit, consistent with the best science currently available. Commenters incorrectly stated that the BLM failed to analyze non-monetized impacts. The EA, which accompanies today’s action, analyzes the No-Action and Proposed Action effects on climate change, air quality, noise and light impacts, wildlife resources (threatened and endangered species and critical habitat), and socioeconomics. The EA,

where appropriate, incorporates by reference the 2016 final rule EA analysis. Circular A-4 recommends approaches the agencies may take in its NEPA documents, but it does not require them.

One commenter stated that the BLM's description of impacts for the 11-year period (2017-2027) of analysis in the RIA for the 2017 final delay rule is misleading, as the reduction in the estimated compliance costs is solely due to the delay in compliance. Another commenter stated that some operators have begun compliance before the 2017 proposed delay rule will be finalized, and therefore the net cost savings of deferral will be lower than those outlined in the 2017 proposed delay rule RIA. The BLM adjusted the language in the RIA to reflect the first comment. The BLM disagrees with the second comment. For this 2017 final delay rule, the BLM tracks the shift in impacts over the first 10 years of implementation (after the delay) and compares it against the baseline. The original period of analysis in the RIA prepared for the 2016 final rule was 10 years. We note that certain impacts, such as cost savings and royalty, are different when shifted to the future. The BLM also notes that the estimated impacts attributed to a suspension or delay may be imprecise for several reasons (See RIA section 3.4). Also, while compliance with the requirements suspended or delayed by this 2017 final delay rule will not be required until January 17, 2019, BLM anticipates that operators will start undertaking compliance activities in advance of the compliance date. Although the BLM is currently considering revisions to the 2016 final rule, it cannot definitively determine what form those revisions will take until it completes the notice-and-comment

rulemaking process. Therefore, for the purposes of this analysis, the BLM assumes that the 2016 final rule will be fully implemented starting in January 2019 after the suspension period ends.

Some commenters called the decision to limit the analysis timespan to 10 years arbitrary and too short and expressed concerns that other aspects of the net benefit analysis, such as the definition of the baseline and the benefits of the delay rule, result in undercounting of forgone benefits. The comment specifically stated that the BLM counted beneficial effects in year 2027 as benefits of its proposed delay even though these benefits would have occurred under the 2016 rule as methane reductions would continue. The BLM disagrees. The 10-year timeframe was not arbitrarily chosen. The BLM originally used a 10-year period of analysis in the 2016 final rule to reflect the limited life of the equipment that the rule was requiring and that the additional installations would be covered by the overlapping EPA regulations (see 40 CFR part 60, subparts OOOO or OOOOa). When comparing the 2017 final delay rule impacts to the 2016 rule, it is necessary to look at the equivalent 10 year estimated lifespan of the equipment in addition to the 1-year delay. If, instead, the impacts of the delay rule were constrained to the 10-year span used in the 2016 rule, the rule would be undervalued. If companies are still incurring costs for the delay rule in year 2027, then it is appropriate to count the social benefits that result from those costs. The omission of baseline impacts in the final year of the delay rule analysis is a result of the EPA rule taking effect (see 40

CFR part 60, subparts OOOO or OOOOa). Ascribing emission reduction benefits from the EPA rule to the BLM's 2016 final rule would be inappropriate.

Multiple commenters stated in a joint comment letter that the BLM did not consider information indicating that the costs of the 2016 final rule are actually lower than estimated in the 2016 RIA or that the benefits are actually higher than estimated in the 2016 RIA. The BLM recognizes that, despite the status of the 2016 final rule, operators are taking and will continue to take voluntary action to reduce the waste of natural gas, especially when taking action is in their best financial interest. Relying solely on a voluntary approach may not achieve the same results in a primarily oil-producing area, for oil wells, for marginal oil wells, or for marginal gas wells. The BLM also recognizes that the experiences of "major" operators may not be the same as small operators.

Multiple commenters disagreed with an alternative net-benefit analysis presented in the 2017 proposed-delay-rule RIA that omits monetized estimates of forgone climate benefits. In response to this and other related comments, the BLM removed the referenced alternative in the Appendix to the RIA that omitted monetized benefits.

#### National Impacts, including Energy Security

Commenters stated that while the BLM acknowledges that the delay rule is expected to reduce annual royalties to the Federal Government, tribal governments, States, and private landowners, it fails to address the impacts of reduced royalty revenues to State, local and tribal governments. Another commenter noted that suspension of the

2016 final rule could indirectly impact other industries like those in the outdoor recreation and tourism sectors. Pursuant to Executive Order 12866 and NEPA, and in an effort to provide full transparency to the public regarding the impacts of its actions, the BLM has presented all of the foreseeable impacts that this 2017 final delay rule would have, based on the final analysis of the 2016 rule and to the extent that data and available methodologies permit and consistent with the best science currently available. See Section 4.4.2 of the 2017 RIA for a discussion on royalty impacts. The BLM's EA (at section 4.2.3) discusses the impacts that the 2017 final delay rule would have on recreation.

One commenter stated that the 2016 final rule promotes domestic natural gas production, which in turn supports energy security, national security, and economic productivity. Additionally, commenters stated that the 2016 final rule allows for the creation of cutting-edge technologies and field jobs that would reduce waste and increase income. The 2017 final delay rule does not substantively change the 2016 final rule, it merely postpones implementation of the compliance requirements for certain provisions of the 2016 final rule for 1 year. These comments are therefore outside the scope of this rule.

#### Climate Change

Several commenters cited concerns over climate change in their opposition to the BLM's proposal to delay implementation of the 2016 final rule. The commenters stated that methane is a potent GHG that contributes to global warming and that oil and gas

operators should not allow methane to escape into the atmosphere. The commenters stated that climate change has been linked to negative consequences, like more severe droughts and wildfires. The commenters argued that this rule is an example of the U.S. Government taking actions that cause climate change, and that methane pollution has increased from onshore Federal leases in recent years. The commenters argued that the need to reduce methane emissions is an urgent matter and cannot be delayed.

The BLM did not change its proposal in response to these comments. The BLM estimates that the 2017 final rule will result in additional methane emissions of 175,000 tons in Year 1, but no change from the baseline for the 11-year period following the delay. We also estimate additional VOC emissions of 250,000 tons in Year 1, but no change from the baseline for the 11-year period following the delay. See section 4.2 of the 2017 RIA for a full description of the estimated reduction in benefits. As the BLM develops a proposed revision of the 2016 final rule, it will continue to evaluate and address potential environmental impacts. The BLM notes that the 2017 final delay rule will only temporarily delay the 2016 final rule's requirements. In response to concerns that methane emissions may be higher than those disclosed, the BLM notes that, while there is uncertainty in estimating the volumes of gas vented or flared, it has estimated the impacts of this 2017 final delay rule in a manner that is consistent with statute and executive orders and based on the best available information.

#### Air Quality and Public Health

Many commenters stated that the 2016 final rule will reduce air pollution from oil and gas production, and that subsequently delaying the implementation of the 2016 final rule poses a public health challenge, particularly to the most vulnerable populations and communities, and impacts the environment. Commenters described that the implementation of the 2016 final rule not only results in the capture of methane, but also the capture of VOC emissions, such as benzene, a known carcinogen. The commenters stated that VOC releases degrade our ambient air quality, with long-term health impacts related to the exposure of low levels of VOC emissions. The BLM acknowledges that there will be a short-term increase in the amount of methane and VOCs emitted during the 1-year delay, relative to the baseline, but there will be essentially no increase over the 11-year evaluation period (See EA Section 4.2.1 and 4.2.2 and 2017 RIA Section 4.2). While the BLM did not monetize the forgone benefits from VOC emissions reductions, it notes that the impact is transitory. The BLM will analyze the costs and benefits, which may result from any changes it proposes, in an upcoming rulemaking, to the 2016 final rule in accordance with Executive Order 13783.

One commenter stated that methane release can trigger life-threatening asthma attacks, worsen respiratory conditions, and cause cancer, which disproportionately affects Hispanic communities. The comment cited the EPA as reporting that Hispanics are among those facing the greatest risk of exposure to air pollutants and are three times more likely to die from asthma than any other racial or ethnic group. The BLM notes that the 2017 final delay rule delays or suspends implementation of the compliance

requirements for certain provisions of the 2016 final rule by 1 year and is not expected to materially affect methane emissions as compared to the baseline data analyzed in the 2017 final delay rule RIA. The BLM concluded that the 2016 final rule did not lead to any significant or adverse differential environmental justice impacts (see 2016 final EA section 4.2.7). As the BLM reconsiders the 2016 final rule, in accordance with Executive Order 13783, it will continue to analyze the rule's costs and benefits, including any potential environmental justice impacts.

#### Rule Process

Several commenters raised concerns about lack of sufficient public engagement throughout this rulemaking process. They asked the BLM to extend the 2017 delay rule comment period to 60 days and to hold one or more public hearings, stating that the 30-day comment period was inadequate given the fundamental, highly technical, and extremely controversial changes to the benefits estimates included in the 2017 proposed delay rule.

The BLM did not change its proposal in response to these comments. The BLM believes it provided adequate public engagement throughout the process through outreach to stakeholders and a 30-day comment period. Given the narrow scope of the proposal, short delay, and recent comments on the 2016 final rule, the BLM determined a 30-day comment period to be appropriate and public meetings to be unnecessary. The 2017 final delay rule merely suspends and delays regulatory provisions that were very recently the object of public comment procedures. The public was engaged throughout this

rulemaking process. The BLM received over 158,000 comments, including approximately 750 unique comments. The BLM is not required to hold public meetings for this rulemaking process.

Commenters stated that, given the lengthy 2016 final rule rulemaking process, a 2-year delay is needed to avoid unnecessary compliance costs and creating regulatory uncertainty for industry. The BLM did not change this rule in response to these comments. To reduce uncertainty, the BLM limited this 2017 final delay rule to the minimum necessary to achieve revision to the 2016 final rule, which it determined to be 1 year. The BLM has already made significant progress in developing a proposed revision of the 2016 rule and the BLM therefore fully expects that the revision will be completed and finalized before January 17, 2019.

Commenters stated that the BLM and the Secretary predetermined the outcome of this rulemaking with statements made and documents filed in Federal court. The BLM disagrees. The BLM is conducting the rulemaking process for the delay rule in accordance with the APA, and the BLM will be revising, as appropriate, the 2016 rule in accordance with the APA. Public statements about the BLM's plan to reconsider the 2016 rule and its intentions behind the proposed delay rule do not amount to final decisions made prior to conducting NEPA.

Commenters stated that the 2017 delay rule is a significant action that warrants an environmental impact statement (EIS), instead of an EA. Commenters state that the EA erroneously includes the 2016 rule implementation in the baseline, failed to analyze the

impacts of the proposed action in a meaningful way, and did not include a reasonable range of alternatives. The commenters also believe that the BLM should have published a draft Finding of No Significant Impact (FONSI) for public comment, and that the FONSI does not consider both the context and intensity of the 2017 delay rule, resulting in the failure to take a hard look at localized impacts.

The BLM did not change its proposal in response to these comments. Based upon a review of the EA and the associated documents referenced in the EA, and considering the criteria for significance provided by the Council on Environmental Quality regulations implementing the NEPA and the comments submitted on the EA, the BLM determined and detailed in the FONSI that the Proposed Action (Alternative B in the EA) will not have a significant effect on the quality of the human environment, individually or cumulatively with other actions in the potentially affected areas. Therefore, an EIS is not required. For the detailed analysis of the criteria for significance, see the FONSI accompanying today's action. NEPA and its implementing regulations do not require a public review period for the FONSI.

The fact that the BLM chose to include the expected effects of the 2016 final rule in the "baseline" environment does not mean that the BLM's analysis of the environmental impacts of the proposed action was inadequate. In fact, the incorporation of the 2016 final rule into the baseline environment has exactly the opposite effect. Were the BLM not to include the not-yet effective requirements of the 2016 final rule in the baseline, then the BLM's analysis of the proposed suspension action relative to the

baseline would necessarily find fewer (and possibly no) impacts, as the suspension action would essentially maintain the environmental status quo.

The EA analyzed Alternative A (No Action) and Alternative B (BLM Proposed Action), which are the reasonable alternatives that would meet the purpose and need of today's action. See Section 2 of the EA for a description of each alternative. Section 2.4 of the EA describes the alternatives considered, but eliminated from further analysis. The 2017 RIA analyzed the impacts for a 6-month and 2-year delay, but they were both found to be not technically or financially feasible, therefore they were not carried forward for analysis.

Commenters stated that the 2017 delay rule is a dramatic substantive change from the 2016 final rule, and that the BLM did not follow proper procedures to make the substantive revision to the 2016 final rule prescribed in *FCC v. Fox Television Stations, Inc.* 556 U.S. 502, 514-16 (2009). The BLM disagrees with the commenters' characterization of the legal standard for amending regulations. As stated above, the BLM has a reasoned explanation for reconsidering the 2016 final rule and delaying implementation of certain provisions of the 2016 rule.

Commenters stated the BLM failed to meet its review/consultation requirements under the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA). The BLM disagrees. The BLM has met its review and consultation requirements for both the ESA and NHPA. As stated in section 4.1 of the EA, the BLM informally consulted with the FWS and the FWS concurred with the BLM's

determination that the 2017 delay rule may affect, but is not likely to adversely affect, listed species or their associated designated critical habitat. This rulemaking is not a “Federal undertaking” for which the NHPA requires an analysis of effects on historic property. See 54 U.S.C. 306108 and 300320.

#### Technical Issues

Commenters supported the inclusion of the following provisions of the 2016 final rule in the 2017 delay rule: Section 3162.3, because the requirement is duplicative, conflicting, and/or unnecessary given existing state requirements; Section 3179.6, but the commenter provided no explanation; Section 3179.7, because it is unnecessarily complex and the gas capture percentage requirements could be obviated through other BLM efforts to facilitate pipeline development; Section 3179.9 because the requirement on operators to estimate (using estimation protocols) or measure (using a metering device) all flared and vented gas will impose significant costs; Section 3179.101, because the BLM has failed to consider the technical feasibility of the requirements; Section 3179.102, because it is technically infeasible and duplicative of EPA regulations; Section 3179.204, but the commenter provided no explanation; and Sections 3179.301 – 305 because the BLM overestimated the benefits and underestimated costs.

Other commenters asserted that the following provisions should not be included in the delay rule: Section 3179.102, because the provision would not require any action from most operators and therefore imposes no burden; section 3179.7, because the 2016 RIA found that the direct quantified benefits to operators that would result from capturing

gas that would otherwise have been wasted outweighed the costs of the capture targets in the first 2 years that those targets apply; section 3179.10, because the delay rule provides no information on the effect of such an extension, and specifically, how much royalty revenue would be lost; sections 3179.101 and 3179.102, because the 2017 RIA does not estimate any capital costs to operators associated with these provisions; section 3179.201, because the BLM repeats the 2016 RIA findings that the cost savings to operators from compliance with the pneumatic controller requirements would substantially exceed the costs of compliance so its motives are unclear; section 3179.204, because the BLM's proposal repeats the 2016 RIA findings that the burden on the operators would be small or nonexistent; and section 3179.202 because the BLM's justification for suspension is inaccurate when describing analogous EPA regulations.

The BLM did not revise its proposal in response to these comments. This final delay rule temporarily suspends or delays almost all of the requirements in the 2016 final rule that the BLM estimated would pose a compliance burden to operators and are being reconsidered due to the cost, complexity, and other implications. The BLM has tailored the final delay rule to target the requirements of the 2016 rule for which immediate regulatory relief is particularly justified. The 2017 final delay rule does not suspend or delay the requirements in subpart 3178 related to the royalty-free use of natural gas, but the only estimated compliance costs associated with those requirements are for minor and rarely occurring administrative burdens. In addition, for the most part, the 2017 final delay rule suspends or delays the administrative burdens associated with subpart 3179.

Only four of the 24 information collection activities remain, and the burdens associated with these remaining items are not substantial. See the section-by-section analysis for the BLM's specific justification for delay with regard to each provision.

One commenter stated that the 2017 RIA incorrectly assumes that suspension of the 2016 final rule will result in a return to NTL-4A. The BLM disagrees. The 2017 final rule RIA does not state nor imply an assumption that the suspension of the 2016 final rule will result in a return to NTL-4A. Several States have published regulations and policies that have the effect of limiting the waste of gas from production operations in the States where the production of oil and gas from Federal and Indian leases is most prevalent. See the 2017 RIA at 17 for a summary of these State regulations.

One commenter disagrees with the BLM's description of the requirements at 43 CFR 3179.9 as "imposing a blanket requirement on all operators." The commenter notes that the 2016 final rule differentiates between flares of different volumes by establishing the threshold. The commenter's criticism of terminology does not alter the BLM's underlying point that the requirement applies to all operators, each of whom has the duty to estimate volumes and measure the volumes if the threshold is met. Thus, the BLM disagrees with the commenter's assertion that the measurement requirements of 43 CFR 3179.9 cannot be characterized as a "blanket" requirement. The BLM believes that a 1-year suspension of 43 CFR 3179.9 is justified as the requirements impose immediate costs and the BLM is considering revising or rescinding the requirements of 43 CFR 3179.9. Also, the commenter refers to meters being inexpensive to install, but does not

take into account all the other equipment that would be required under the 2016 final rule. See the 2016 RIA at 2 for an estimate of total costs for the 2016 final rule.

Commenters state that the reference to analogous EPA regulations as the reason for reconsidering requirements at 43 CFR 3179.201 and 43 CFR 3179.203 is inaccurate because the EPA and 2016 final rules regulate different operations. The BLM disagrees. Although 43 CFR 3179.201 and 3179.203 were designed to avoid imposing requirements that conflict with EPA's requirements, this does not mean that overlap with EPA regulations is not important to the BLM's reconsideration of the regulatory necessity of §§ 3179.201 and 3179.203. Because EPA's regulations apply to new, modified, and reconstructed pneumatic controllers and storage vessels, EPA's existing regulations will address the losses of gas from these sources as pneumatic controllers and storage vessels are installed, modified, or replaced over time and become subject to EPA's regulations. In addition, the BLM will reconsider, in an upcoming rulemaking, whether the volumes of gas that would be captured for sale under §§ 3179.201 and 3179.203 actually justify the compliance costs associated with those provisions.

### **III. 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 final delay rule temporarily suspends or delays portions of the BLM's 2016 final rule while the BLM reviews those requirements. We have developed this final delay rule in a manner consistent with the requirements in Executive Order 12866 and Executive Order 13563.

After reviewing the requirements of the final delay rule, the OMB has determined that the final delay rule is not an economically significant action according to the criteria of Executive Order 12866. The BLM reviewed the requirements of this final delay 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 final delay rule. The RIA has been posted in the docket for the final 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 final delay rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the APA (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 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 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, this final delay rule will likely affect a substantial number of small entities.

However, the BLM believes that this final delay rule will not have a significant economic impact on a substantial number of small entities. Although the rule will affect a substantial number of small entities, the BLM does not believe that these effects will be economically significant. This final delay rule temporarily suspends or delays certain

requirements placed on operators by the 2016 final rule. Operators will 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 final delay rule will 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 final delay rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final delay rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Will not have 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 final delay rule will not impose an unfunded mandate on State, local, or tribal governments, or the private sector of \$100 million or more per year. The final delay rule will not have a significant or unique effect on State, local, or tribal governments or

the private sector. This final delay rule contains no requirements that apply to State, local, or tribal governments. It temporarily suspends or delays requirements that 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 this final delay rule. This final delay 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 final delay rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. This final delay rule temporarily suspends or delays many of the requirements placed on operators by the 2016 final rule. Operators will not have to undertake the associated compliance activities, either operational or administrative, that are outlined in the 2016 final rule until January 17, 2019. All such operations are subject to lease terms, which expressly require that subsequent lease activities must be conducted in compliance with subsequently adopted Federal laws and regulations. This final delay 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 this final delay rule will 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 final delay rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism impact statement is not required.

This final delay rule will 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 will not apply to States or local governments or State or local governmental entities. The rule will 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 final delay rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

### **Civil Justice Reform (Executive Order 12988)**

This final delay rule complies with the requirements of Executive Order 12988. More specifically, this final delay 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 final delay 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 final delay rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified direct effects on federally recognized Indian tribes that will result from this final delay rule. Under this final delay rule, oil and gas operations on tribal and allotted lands will not be subject to many of the requirements placed on operators by the 2016 final rule until January 17, 2019.

The BLM has conducted an appropriate degree of tribal outreach in the course of developing this final delay rule given that the rule extends the compliance dates of the 2016 final rule, but does not change the policies of that rule. On October 16 and 17, 2017, the BLM sent out 264 rule notification letters with an enclosure to tribes and tribal organizations with oil and gas interests in Alaska (27), Arizona (38), California (5), Colorado (3), District of Columbia (1), Eastern States (2), Idaho (2), Montana/Dakotas (36), New Mexico/Oklahoma/Texas (139), Nevada (1), Utah (7), and Wyoming (3). The BLM then sent 16 follow-up letters to tribes that the letters were returned with the mark "Return to Sender" or, during consultation, BLM was informed that the tribes had not received letters.

The BLM State Directors, as delegated, personally contacted some of the tribes by phone with significant oil and gas interests, including six tribes in Colorado, two tribes in Wyoming, five tribes in the Montanas/Dakotas and two tribes in Arizona.

Through regulations.gov, the BLM heard from the Ojo Encino Chapter of the Navajo Nation, the Mandan, Hidatsa, and Arakara Nation of the Fort Berthold Reservation, the Muscogee (Creek) Nation, the Navajo Nation, Counselor Chapter House, the Fort Berthold Protectors of Water and Earth, the Turtle Mountain Band of Chippewa Indians, Southwest Native Cultures, and the Thlopphlocco Tribal Town Tribal Historic Preservation Office.

The tribes raised several issues, including: Insufficient consultation; loss of royalties from not implementing the 2016 rule; the DOI Secretary, but not the BLM, has a right to regulate Indian land; and, the environmental effects to the Native populations. The tribal comments were summarized and responded to in the supplemental comments and response document and are also referenced above in the “Comments and Responses” section of this 2017 final delay rule.

## **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. See 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 also requests revisions to the burden estimates as described below.

The information collection activities in this final delay rule are described below along with estimates of the annual burdens. Included in the burden estimates are the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each component of the proposed information collection.

## **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:* 64,200.

*Estimated Total Annual Burden Hours:* 90,170.

*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, with the revised burden estimates described below.

#### **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).

The BLM is revising the estimated burdens to operators. The BLM recently included the following annual burden estimates for APDs in a notice announcing its intention to seek renewal of control number 1004-0137, Onshore Oil and gas Operations and Production (expires January 31, 2018): 3,000 responses, 8 hours per response, and 24,000 total hours. 82 FR 42832, R 42833 (Sept. 12, 2017). The BLM will increase the estimated annual number of responses for waste minimization plans from 2,000 to 3,000, to match the estimates for APDs in control number 1004-0137, and will increase the total burden hours for APDs from 16,000 to 24,000.

**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 delay 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 H<sub>2</sub>S 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 H<sub>2</sub>S 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 hydraulically fractured or refractured wells 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.

**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.

**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 three or more emergencies within the past 30 days, unless the BLM determines that the occurrence of more than three 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 60.5360 through 60.5390, 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 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 (Pneumatic Controller) (43 CFR 3179.201(b)(4) and 3179.201(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 H<sub>2</sub>S 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 60.5360 through 60.5390, but would be subject to those regulations if it were a new or modified source. 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 section 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 (Pneumatic Diaphragm Pump) (43 CFR 3179.202(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 H<sub>2</sub>S 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 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 H<sub>2</sub>S 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 3179.302 specifies the instruments and methods that an operator may use to detect leaks. Section 3179.302(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 the 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 through 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 H<sub>2</sub>S 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 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 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; and
- (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 on operators for the information activities described above. The table thus estimates the hour burdens which will not be incurred in the 1-year period from January 17, 2018, to January 17, 2019.

| <b>A.<br/>Type of Response</b>  | <b>B.<br/>Number of Responses</b> | <b>C.<br/>Hours per Response</b> | <b>D.<br/>Total Hours<br/>(Column B<br/>x Column C)</b> |
|---|-----------------------------------|----------------------------------|---|
| Plan to Minimize Waste of Natural Gas<br>43 CFR 3162.3-1<br>Form 3160-3 | 3,000                             | 8                                | 24,000  |

|  |     |    |      |
|--|-----|----|------|
| Request for Approval for Royalty-Free Uses On-Lease or Off-Lease<br>43 CFR 3178.5, 3178.7, 3178.8, and 3178.9<br>Form 3160-5 | 50  | 4  | 200  |
| Notification of Choice to Comply on County- or State-wide Basis<br>43 CFR 3179.7(c)(3)(iii)                                  | 200 | 1  | 200  |
| Request for Approval of Alternative Capture Requirement<br>43 CFR 3179.8(b)<br>Form 3160-5                                   | 50  | 16 | 800  |
| Request for Exemption from Well Completion Requirements<br>43 CFR 3179.102(c) and (d)<br>Form 3160-5                         | 0   | 0  | 0    |
| Request for Extension of Royalty-Free Flaring During Initial Production Testing<br>43 CFR 3179.103<br>Form 3160-5            | 500 | 2  | 1000 |

|  |     |   |     |
|--|-----|---|-----|
| Request for Extension of Royalty-Free Flaring During Subsequent Well Testing<br>43 CFR 3179.104<br>Form 3160-5   | 5   | 2 | 10  |
| Reporting of Venting or Flaring<br>43 CFR 3179.105<br>Form 3160-5  | 250 | 2 | 500 |
| Notification of Functional Needs for a Pneumatic Controller<br>43 CFR 3179.201(b)(1) – (3)<br>Form 3160-5  | 10  | 2 | 20  |
| Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves<br>43 CFR 3179.201(b)(4) and 3179.201(c) (Pneumatic Controller)<br>Form 3160-5 | 50  | 4 | 200 |
| Showing in Support of Replacement of Pneumatic Controller within 3 Years<br>43 CFR 3179.201(d)<br>Form 3160-5  | 100 | 1 | 100 |

|  |     |   |     |
|--|-----|---|-----|
| <p>Showing that a Pneumatic Diaphragm Pump was Operated on Fewer than 90 Individual Days in the Prior Calendar Year<br/>43 CFR 3179.202(b)(2)<br/>Form 3160-5</p>                    | 100 | 1 | 100 |
| <p>Notification of Functional Needs for a Pneumatic Diaphragm Pump<br/>43 CFR 3179.202(d)<br/>Form 3160-5</p>  | 150 | 1 | 150 |
| <p>Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves (Pneumatic Diaphragm Pump)<br/>43 CFR 3179.202(f) and (g)<br/>Form 3160-5</p> | 10  | 4 | 40  |
| <p>Showing in Support of Replacement of Pneumatic Diaphragm Pump within 3 Years<br/>43 CFR 3179.202(h)<br/>Form 3160-5</p>   | 100 | 1 | 100 |
| <p>Storage Vessels<br/>43 CFR 3179.203(c)<br/>Form 3160-5</p>  | 50  | 4 | 200 |

|  |       |    |       |
|--|-------|----|-------|
| Downhole Well Maintenance and Liquids<br>Unloading Documentation and Reporting<br><br>43 CFR 3179.204(c) and (e)<br><br>Form 3160-5        | 5,000 | 1  | 5,000 |
| Downhole Well Maintenance and Liquids<br>Unloading -- Notification of Excessive<br>Duration or Volume<br>43 CFR 3179.204(f)<br>Form 3160-5 | 250   | 1  | 250   |
| Leak Detection Compliance with EPA<br>Regulations<br>43 CFR 3179.301(j)<br>Form 3160-5   | 50    | 4  | 200   |
| Leak Detection Request to Use an<br>Alternative Monitoring Device and<br>Protocol<br>43 CFR 3179.302(c)<br>Form 3160-5                     | 5     | 40 | 200   |
| Leak Detection Operator Request to Use<br>an Alternative Leak Detection Program<br>43 CFR 3179.303(b)<br>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)<br>Form 3160-5 | 150    | 20  | 3,000  |
| Leak Detection Notification of Delay in Repairing Leaks<br>43 CFR 3179.304(a)<br>Form 3160-5   | 100    | 1   | 100    |
| Leak Detection Inspection Recordkeeping and Reporting<br>43 CFR 3179.305   | 52,000 | .25 | 13,000 |
| Leak Detection Annual Reporting of Inspections<br>43 CFR 3179.305(b)<br>Form 3160-5  | 2,000  | 20  | 40,000 |
| Totals   | 64,200 |     | 90,170 |

**National Environmental Policy Act**

The BLM prepared an environmental assessment (EA) to determine whether this final delay rule will 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.*).

The BLM has determined that this final delay rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because the BLM reached a FONSI.

The EA and FONSI have been placed in the file for the BLM's Administrative Record for the rule. 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.

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

This final delay 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."

This final delay rule temporarily suspends or delays certain requirements in the 2016 final rule and reduces compliance costs in the short-term. The BLM determined that the 2016 final rule will not impact 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 this final delay rule to be a "significant energy action" as defined in Executive Order 13211.

### **Authors**

The principal authors of this final delay rule are: James Tichenor and Erica Pionke of the BLM Washington Office; Adam Stern of the DOI's Office of Policy and Analysis; assisted by Faith Bremner, Jean Sonneman, and Charles Yudson 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: December 4, 2017.

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Katharine S. MacGregor,

Deputy Assistant Secretary – Land and Minerals Management, Exercising the Authority of the Assistant Secretary -- Land and Minerals Management

### **43 CFR Chapter II**

For the reasons set out in the preamble, the Bureau of Land Management amends 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 paragraph (b) and paragraph (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.

\* \* \* \* \*

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