

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Parts 3160 and 3170**

[18X.LLWO310000.L13100000.PP0000]

RIN 1004-AE53

**Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Proposed rule.

**SUMMARY:** On November 18, 2016, the Bureau of Land Management (BLM) published in the **Federal Register** a final rule entitled, “Waste Prevention, Production Subject to Royalties, and Resource Conservation” (“2016 final rule”). After reconsidering the cost, complexity, and other implications of the 2016 final rule, the BLM is now proposing to revise the 2016 final rule in a manner that reduces unnecessary compliance burdens, is consistent with the BLM’s existing statutory authorities, and re-establishes long-standing requirements that the 2016 final rule replaced. In addition to requesting public comment on the proposed rule generally, the BLM is also requesting comment on ways that the BLM can reduce the waste of gas by incentivizing the capture, reinjection, or beneficial use of the gas.

**DATES:** Send your comments on this proposed rule to the BLM on or before April 23, 2018. A comment to the OMB on the proposed information collection revisions is best assured of being given full consideration if the OMB receives it by March 26, 2018.

**ADDRESSES:**

*Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134LM, 1849 C St. NW, Washington, DC 20240, Attention: 1004-AE53.

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

*Federal eRulemaking Portal:* <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004-AE53” and click the “Search” button. Follow the instructions at this website.

**FOR COMMENTS ON INFORMATION-COLLECTION ACTIVITIES**

*Fax:* Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Desk Officer for

the Department of the Interior, fax 202-395-5806.

*Electronic mail:* [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

Please indicate “Attention: OMB Control Number 1004-0211,” regardless of the method used to submit comments on the information collection burdens. If you submit comments on the information-collection burdens, you should provide the BLM with a copy, at one of the street addresses shown earlier in this section, so that we can summarize all written comments and address them in the final rulemaking. Comments not pertaining to the proposed rule’s information-collection burdens should not be submitted to OMB. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments that are improperly directed to OMB.

**FOR FURTHER INFORMATION CONTACT:**

Catherine Cook, Acting Division Chief, Fluid Minerals Division, 202-912-7145 or [ccook@blm.gov](mailto:ccook@blm.gov), for information regarding the substance of this proposed rule or information about the BLM’s Fluid Minerals program. For questions relating to regulatory process issues, contact Faith Bremner at 202-912-7441 or [fbremner@blm.gov](mailto: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. Executive Summary
- II. Public Comment Procedures
- III. Background
- IV. Discussion of the Proposed Rule
- V. Procedural Matters

**I. Executive Summary**

On November 18, 2016, the BLM published in the **Federal Register** a final rule entitled, “Waste Prevention, Production Subject to Royalties, and Resource Conservation” (82 FR 83008) (“2016 final rule”). 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. The 2016 final rule became effective on January 17, 2017, with some requirements taking effect immediately, but the majority of requirements phased-in on January 17, 2018 or later.

On March 28, 2017, President Trump issued Executive Order (E.O.) 13783, “Promoting Energy Independence and Economic Growth,” directing the BLM to review the 2016 final rule and to publish proposed rules suspending, revising, or rescinding it, if appropriate.

The BLM reviewed the 2016 final rule and found that some impacts were under-estimated and many provisions of the rule would add regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. This proposed rule would revise the 2016 final rule so that the remaining requirements would be consistent with the policies set forth in section 1 of E.O. 13783, which 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.”

More specifically, the BLM acknowledges that the 2016 final rule contains requirements that overlap with other Federal and State requirements and regulations. However, unlike the Environmental Protection Agency (EPA) regulations with which the rule overlaps, the 2016 final rule would affect existing wells, including a substantial number that are likely to be marginal or low-producing and therefore less likely to remain economical to operate if subjected to additional compliance costs. The 2016 final rule also contains numerous administrative and reporting burdens that are unnecessary and likely to constrain development. Finally, as explained in the Regulatory Impact Analysis (RIA) prepared for this rule, the BLM reviewed the 2016 final rule and determined that the costs the rule is expected to impose would exceed the benefits it is expected to generate. For these reasons, the BLM is now proposing to revise the 2016 final rule in a manner that reduces unnecessary compliance burdens and, in large part, re-establishes the long-standing requirements that the 2016 final rule replaced.

**II. Public Comment Procedures**

If you wish to comment on this proposed rule, you may submit your comments to the BLM by mail, personal or messenger delivery, or through <https://www.regulations.gov> (see the **ADDRESSES** section).

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason

for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

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

As explained later, this proposed rule would include revisions to information collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the revised information collection requirements in this proposed rule, please note that such comments must be sent directly to the OMB in the manner described in the **ADDRESSES** section. The OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB on the proposed information collection revisions is best assured of being given full consideration if the OMB receives it by March 26, 2018.

### III. Background

The BLM manages more than 245 million acres of public land, known as the National System of Public Lands, primarily located in 12 Western States, including Alaska. The BLM also manages 700 million acres of subsurface mineral estate throughout the nation.

The BLM's onshore oil and gas management program is a major contributor to the nation's oil and gas production. 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.<sup>1</sup> 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.<sup>2</sup> Royalties from Federal lands are shared with States. Royalties from Indian lands are collected for the benefit of the Indian owners.

The venting or flaring of some natural gas is a practically unavoidable consequence of oil and gas development. Whether during well drilling, production testing, well purging, or emergencies, it is not uncommon for gas to reach the surface that cannot be feasibly used or sold. When this occurs, the gas must either be combusted (“flared”) or released to the atmosphere (“vented”). Depending on the circumstances, operators may also flare natural gas on a longer-term basis from production operations, predominantly in situations where an oil well co-produces natural gas (or “associated gas”) in an exploratory area or a field that lacks adequate gas-capture infrastructure to bring the gas to market. Still other venting or flaring of gas from production equipment may occur by design and as a substitute for other power generated facilities at the wellsite.

In response to oversight reviews and a recognition of increased flaring from Federal and Indian leases, the BLM developed a final rule entitled, “Waste Prevention, Production Subject to Royalties, and Resource Conservation,” which was published in the **Federal Register** on November 18, 2016 (81 FR 83008) (“2016 final rule”). The 2016 final 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, with some requirements taking effect immediately,

<sup>1</sup> United States Department of the Interior, “Budget Justifications and Performance Integration Fiscal Year 2018: Bureau of Land Management” at VII-77, available at [https://www.doi.gov/sites/doi.gov/files/uploads/fy2018\\_blm\\_budget\\_justification.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/fy2018_blm_budget_justification.pdf).

<sup>2</sup> Derived from data available on the Office of Natural Resources Revenue website's “Statistical Information” page, accessible at <https://statistics.onrr.gov/>.

but the majority of requirements phased-in over time.

On March 28, 2017, President Trump issued E.O. 13783, entitled, “Promoting Energy Independence and Economic Growth,” requiring the BLM to review the 2016 final rule. Section 7(b) of E.O. 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 to publish proposed rules suspending, revising, or rescinding those rules, if appropriate. Among other things, section 1 of E.O. 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 E.O. 13783, Secretary of the Interior Ryan Zinke issued Secretarial Order No. 3349, entitled, “American Energy Independence” on March 29, 2017, which, among other things, directs the BLM to review the 2016 final rule to determine whether it is fully consistent with the policy set forth in section 1 of E.O. 13783.

The BLM reviewed the 2016 final rule and believes that it is inconsistent with the policy in section 1 of E.O. 13783. The BLM found that the impacts resulting from some provisions of the rule were underestimated and would add regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. This proposed rule would revise the 2016 final rule so that the remaining requirements would be consistent with the policies set forth in section 1 of E.O. 13783.

On October 5, 2017, the BLM published a proposed rule that would suspend the implementation of certain requirements in the 2016 final rule until January 17, 2019 (82 FR 46458). After a public comment period, the BLM finalized this temporary suspension on December 8, 2017 (82 FR 58050) (“Suspension Rule”). The purpose of the Suspension Rule is to avoid imposing temporary or permanent compliance costs on operators for requirements that may be rescinded or significantly revised in the near future. The BLM plans to conclude its revision of the 2016 final rule during the period of the suspension effected by the Suspension Rule.

The BLM has several reasons for modifying the requirements in the 2016 final rule. First, the 2016 final rule is more expensive to implement and generates fewer benefits than initially

estimated. The BLM reviewed the 2016 final rule's requirements and determined that the rule's compliance costs for industry and implementation costs for the BLM would exceed the rule's benefits. For a more detailed explanation, see the analysis of the 2016 final rule's requirements (baseline scenario) in the Regulatory Impact Analysis (RIA) prepared for this rule (RIA at 38). Over the 10-year evaluation period (2019–2028), the total net benefits posed by the 2016 final rule are estimated to be –\$627 to –\$902 million (net present value (NPV) and interim domestic social cost of methane (SC–CH<sub>4</sub>) using a 7 percent discount rate) or –\$581 to –\$945 million (NPV and interim domestic SC–CH<sub>4</sub> using a 3 percent discount rate).

In addition, many of the 2016 final rule's requirements would pose a particular compliance burden to operators of marginal or low-producing wells, and there is concern that those wells would not be economical to operate with the additional compliance costs. Although the characteristics of what is considered to be a marginal well can vary, the percentage of the nation's oil and gas wells classified as marginal is high. The Interstate Oil and Gas Compact Commission (IOGCC) published a report in 2015 detailing the contributions of marginal wells to the nation's oil and gas production and economic activity.<sup>3</sup> According to the IOGCC, about 69.1 and 75.9 percent of the nation's operating oil and gas wells, respectively, are marginal (IOGCC 2015 at 22). The IOGCC defines a marginal well as “a well that produces 10 barrels of oil or 60 Mcf of natural gas per day or less” (IOGCC 2015 at 2).<sup>4</sup> The U.S. Energy Information Administration (EIA) reported that, in 2016, roughly 76.4 percent of oil wells produced less than or equal to 10 barrels of oil equivalent (BOE) per day and 81.3 percent of oil wells produced less than or equal to 15 BOE/day. For gas wells,

EIA reported that roughly 71.6 percent produced less than or equal to 10 BOE/day and 78.2 percent less than or equal to 15 BOE/day. For both oil and gas wells, EIA estimates that 73.3 percent of all wells produce less than 10 BOE/day.<sup>5</sup> On Federal lands, this would equate to 68,972 wells designated as marginal.<sup>6</sup>

The 2016 final rule's requirements that would impose a particular burden on marginal or low-producing wells include leak detection and repair (LDAR), pneumatic equipment, and liquids unloading requirements. The 2016 final rule allows for exemptions from many of the requirements when compliance would impose such costs that the operator would cease production and abandon significant recoverable reserves. Although the 2016 final rule allowed operators to request an alternative LDAR program, there is no full exemption from the requirement. Due to the prevalence of marginal and low-producing wells, we would expect that many exemptions would be warranted, making the burden imposed by the exemption process excessive. It is also possible that some proportion of marginal wells would be prematurely shut-in by their operators due to the costs and uncertainties involved in obtaining an exemption from the BLM or the costs associated with an alternate LDAR program.

There are many other reporting requirements in the 2016 final rule and the cumulative effect of the burden is substantial. Specifically, the BLM estimates that the 2016 final rule would impose administrative costs of about \$14 million per year (\$10.7 million to be borne by the industry and \$3.27 million to be borne by the BLM). The BLM estimates that the proposed revision of the 2016 final rule would alleviate the vast majority of these burdens and would pose administrative burdens of only \$349,000 per year. (See RIA section 3.2.2).

In addition, the 2016 final rule has many requirements that overlap with the EPA's authority under the Clean Air Act, and in particular EPA's New Source Performance Standards at 40 CFR part 60, subparts OOOO (NSPS OOOO) and OOOOa (NSPS OOOOa). For example, the EPA's NSPS OOOO regulates new, reconstructed, and

modified pneumatic controllers, storage tanks, and gas wells completed using hydraulic fracturing, while NSPS OOOOa regulates new, reconstructed, and modified pneumatic pumps, fugitive emissions from well sites and compressor stations, and oil wells completed using hydraulic fracturing, in addition to the requirements in NSPS OOOO.

The BLM's 2016 final rule also regulates these source categories. While the EPA regulates new, modified, and reconstructed sources, the BLM crafted the 2016 final rule to address the remaining existing facilities within these same source categories. However, by forcing operators to upgrade equipment to meet the BLM's standard, operators could need to replace old equipment with new equipment. Thus, the 2016 final rule could compel facilities not intended to fall under the purviews of NSPS OOOO and NSPS OOOOa to become regulated facilities.

In addition, as the BLM acknowledged during the development of the 2016 final rule,<sup>7</sup> some States with significant Federal oil and gas production have similar regulations addressing the loss of gas from these sources. For example, the State of Colorado has regulations that restrict methane emissions during most oil and gas well completions and recompletions, impose requirements for pneumatic controllers and storage vessels, require a comprehensive LDAR program, and set standards for liquids unloading.<sup>8</sup> The Utah Department of Environmental Quality issued a General Approval Order on June 5, 2014, that applies to new and modified oil and gas well sites and tank batteries and requires: Pneumatic controllers to be low bleed or have their emissions routed to capture or flare, pneumatic pumps to route emissions to capture or flare, and operators to inspect for leaks at least annually.<sup>9</sup> Since the promulgation of the 2016 final rule, the State of California has issued new regulations that require quarterly monitoring of methane emissions from oil and gas wells, compressor stations and other equipment involved in the production of oil and gas, impose limitations on venting from natural gas powered pneumatic devices and pumps,

<sup>3</sup> IOGCC, “Marginal Wells: Fuel for Economic Growth. 2015 Report.” Available on the web at <http://iogcc.ok.gov/websites/iogcc/images/MarginalWell/MarginalWell-2015.pdf>.

<sup>4</sup> By other definitions, marginal or stripper wells might include those with production of up to 15 barrels of oil or 90 Mcf of natural gas per day or less. The U.S. Energy Information Administration (EIA) reported that, in 2009, roughly 78.7 percent of oil wells produced less than or equal to 10 barrels of oil equivalent (BOE) per day and 85.4 percent of oil wells produced less than or equal to 15 BOE/day. For gas wells, EIA reported that roughly 64.5 percent produced less than or equal to 10 BOE/day and 73.3 percent less than or equal to 15 BOE/day. EIA, “United States Total 2009: Distribution of Wells by Production Rate Bracket.” December 2010. Available on the web at [https://www.eia.gov/naturalgas/archive/petrosystem/us\\_table.html](https://www.eia.gov/naturalgas/archive/petrosystem/us_table.html).

<sup>5</sup> EIA, “The Distribution of U.S. Oil and Natural Gas Wells by Production Rate.” December 2017. Available on the web at <https://www.eia.gov/petroleum/wells/>.

<sup>6</sup> Estimated percent of marginal wells applied to the number of Federal and Indian wells, provided in the BLM Oil and Gas Statistics, available at <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics>.

<sup>7</sup> 81 FR 6616, 6633–34 (Feb. 8, 2016).

<sup>8</sup> Colorado Air Quality Control Commission, Regulation 7, 5 CCR 1001–9, Sections XII, XVII, and XVIII.

<sup>9</sup> State of Utah, Department of Environmental Quality, Division of Air Quality, Approval Order: General Approval Order for a Crude Oil and Natural Gas Well Site and/or Tank Battery, DAQE–AN1492500001–14 (June 5, 2014).

and require vapor recovery from tanks under certain circumstances.<sup>10</sup>

Furthermore, the BLM is not confident that all provisions of the 2016 final rule would survive judicial review. During the development of the 2016 final rule, the BLM received comments from the regulated industry and some States arguing that the BLM's proposed rule exceeded the BLM's statutory authority. Specifically, these commenters objected that the proposed rule, rather than preventing "waste," was actually intended to regulate air quality, a matter within the regulatory jurisdiction of the EPA and the States under the Clean Air Act. Commenters also asserted that the proposed rule exceeded the BLM's waste prevention authority by requiring conservation without regard to economic feasibility, a key factor in determining whether a loss of oil or gas is prohibited "waste" under the Mineral Leasing Act. Immediately after the 2016 final rule was issued, petitions for judicial review of the rule were filed by industry groups and States with significant BLM-managed Federal and Indian minerals. *Wyoming v. U.S. Dep't of the Interior*, Case No. 2:16-cv-00285-SWS (D. Wyo.). Petitioners in this litigation maintain that the BLM's promulgation of the 2016 final rule was arbitrary and capricious (in violation of the Administrative Procedure Act), and that the 2016 final rule exceeded the BLM's statutory authority by regulating air quality and failing to give due consideration to economic feasibility. Although the court denied petitioners' motions for a preliminary injunction, the court did express concerns that the BLM may have usurped the authority of the EPA and the States under the Clean Air Act, and questioned whether it was appropriate for the 2016 final rule to be justified based on its environmental and societal benefits, rather than on its resource conservation benefits alone. The BLM requests comment on whether the 2016 final rule was consistent with its statutory authority.

The 2016 final rule also has requirements that limit the flaring of associated gas produced from oil wells. The 2016 final rule sought to constrain this 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 requirement would become more stringent over a period of years. The BLM reviewed State regulations, rules, and orders designed to limit the waste of oil and gas resources and the flaring of natural gas,

and determined that states with the most significant BLM-managed oil and gas production place restrictions or limitations on gas flaring from oil wells. For example, the State of North Dakota has requirements that are similar (but not identical) to the 2016 final rule. Other States generally have flaring limits that trigger a review by a governing board to determine whether the gas should be conserved. A memorandum containing a summary of the statutory and regulatory restrictions on venting and flaring in the 10 States responsible for approximately 99 percent of Federal oil and gas production is available on the *Federal eRulemaking Portal*: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE53", click the "Search" button, open the Docket Folder, and look under Supporting Documents.

The BLM regulates the development of Federal and Indian onshore oil and gas resources pursuant to its authority under the following statutes: The Mineral Leasing Act of 1920 (30 U.S.C. 188–287), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–360), the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701–1758), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701–1785), the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a–g), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101–2108), and the Act of March 3, 1909 (25 U.S.C. 396). 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>11</sup> The Federal and Indian mineral leasing statutes share a common purpose of promoting the development of Federal and Indian oil and gas resources for the financial benefit of the public and Indian mineral owners.<sup>12</sup> The Mineral Leasing Act requires lessees to "use all reasonable precautions" <sup>13</sup> to prevent the waste of oil or gas and authorizes the Secretary of the Interior to prescribe rules "for the prevention of undue waste."<sup>14</sup> The Federal Oil and Gas Royalty Management Act establishes royalty liability for "oil or gas lost or wasted . . . when such loss or waste is

<sup>11</sup> 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.

<sup>12</sup> See, e.g., *California Co. v. Udall*, 296 F.2d 384, 388 (DC Cir. 1961) (noting that the MLA "was intended to promote wise development of . . . natural resources and to obtain for the public a reasonable financial return on assets that 'belong' to the public.>").

<sup>13</sup> 30 U.S.C. 225.

<sup>14</sup> 30 U.S.C. 187.

due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under [the mineral leasing laws]."<sup>15</sup> In the Federal Land Policy and Management Act of 1976, Congress declared "that it is the policy of the United States that . . . the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals . . ." <sup>16</sup> In order to make certain that the development of Federal and Indian oil and gas resources will not be unnecessarily hindered by regulatory burdens, the BLM is exercising its inherent authority <sup>17</sup> to reconsider the 2016 final rule. The BLM's reconsideration of the 2016 final rule is intended to ensure that the BLM's waste prevention regulations require "reasonable precautions" on the part of operators, that the BLM's regulations prevent "undue waste," and that the BLM's regulations do not unnecessarily constrain domestic mineral production.

#### IV. Discussion of the Proposed Rule

##### A. Summary and Request for Comment

The 2016 final rule replaced the BLM's existing policy, NTL-4A, which governed venting and flaring from BLM-administered leases for more than 35 years. Because the BLM has found the 2016 final rule to impose excessive costs, and believes that a regulatory framework similar to NTL-4A can be applied in a manner that limits waste without unnecessarily burdening production, the BLM is proposing to replace the requirements contained in the 2016 final rule with requirements similar to, but with notable improvements on, those contained in NTL-4A.

The preamble to the 2016 final rule suggested that NTL-4A was outdated and needed to be overhauled to account for technological advancements and to incorporate "economical, cost-effective, and reasonable measures that operators can take to minimize gas waste."<sup>18</sup> But, as evidenced by the Regulatory Impact Analysis for the 2016 final rule and the RIA prepared for this proposed rule, many of the requirements imposed by the 2016 final rule were not, in fact, cost-effective and actually imposed

<sup>15</sup> 30 U.S.C. 1756.

<sup>16</sup> 43 U.S.C. 1701.

<sup>17</sup> See *Ivy Sports Med., LLC v. Burwell*, 767 F.3d 81, 86 (DC Cir. 2014) (noting the "oft-repeated" principle that the "power to reconsider is inherent in the power to decide").

<sup>18</sup> 81 FR 83008, 83009, 83017 (Nov. 18, 2016).

<sup>10</sup> CAL. CODE REGS. Tit. 17, §§ 95665–95677.

compliance costs well in excess of the value of the resource to be conserved.

The BLM believes that a return to the NTL-4A framework, as explained in more detail in the section-by-section discussion below, is appropriate and will ensure that operators take “reasonable precautions” to prevent “undue waste.” Where the 2016 final rule introduced sensible improvements on NTL-4A—for example, the requirement that a person remain onsite during liquids unloading in order to minimize the loss of gas—the BLM has endeavored to retain them in this proposed rule.

The BLM requests comments on each of the provisions proposed for rescission, modification, or replacement as outlined below and described more fully in the following section-by-section discussions.

The BLM is proposing to rescind the following requirements of the 2016 final rule:

- Waste Minimization Plans;
- Well drilling requirements;
- Well completion and related operations requirements;
- Pneumatic controllers equipment requirements;
- Pneumatic diaphragm pumps equipment requirements;
- Storage vessels equipment requirements; and
- LDAR requirements.

In addition, under this proposal, the following requirements in the 2016 final rule would be modified and/or replaced with requirements that are similar to those that were in NTL-4A:

- Gas capture requirements would be revised to conform with policy similar to that found in NTL-4A;
- Downhole well maintenance and liquids unloading requirements; and
- Measuring and reporting volumes of gas vented and flared.

The remaining requirements in the 2016 final rule would either be retained, modified only slightly, or removed, but the impact of the removal would be small relative to the items listed previously.

The BLM is not proposing to revise the royalty provisions (§ 3103.3-1) or the royalty-free use provisions (subpart 3178) that were part of the 2016 final rule. However, as explained below, the BLM is taking comment on subpart 3178.

Many of the provisions of the 2016 final rule that are proposed for complete rescission are focused on emissions from sources and operations, which are more appropriately regulated by EPA under its Clean Air Act authority, and for which there are analogous EPA

regulations at 40 CFR part 60, subparts OOOO and OOOOa. Specifically, these emissions-targeting provisions of the 2016 final rule are §§ 3179.102, 3179.201, 3179.202, and 3179.203, and §§ 3179.301 through 3179.305. The BLM has chosen to rescind these provisions based on a number of considerations.

First, the BLM believes that these provisions create unnecessary regulatory overlap in light of EPA’s Clean Air Act authority and its analogous EPA regulations that similarly reduce losses of gas.<sup>19</sup> In general, the emissions-targeting provisions of the 2016 final rule were crafted so that compliance with similar provisions within EPA’s regulations would constitute compliance with the BLM’s regulations. Although EPA’s regulations apply to new, reconstructed, and modified sources, while the 2016 final rule’s requirements would also apply to existing sources, the BLM notes that the EPA’s regulations at 40 CFR part 60 subpart OOOO have been in place since 2011 and that over time, as existing well sites are decommissioned and new well sites come online, the EPA’s regulations at 40 CFR part 60 subpart OOOOa will displace the BLM’s regulations, eventually rendering the emissions-targeting provisions of the 2016 final rule entirely duplicative. By removing these duplicative provisions, the proposed rule would fall squarely within the scope of the BLM’s authority to prevent waste and would leave the regulation of air emissions to the EPA, the agency with the experience, expertise, and clear statutory authority to do so.

Second, the BLM has reviewed and revised the impact analysis and reconsidered whether the substantial compliance costs associated with the emissions-targeting provisions are justified by the value of the gas that is expected to be conserved as a result of compliance. The BLM has made the policy determination that it is not appropriate for “waste prevention” regulations to impose compliance costs greater than the value of the resources they are expected to conserve. Although the RIA for the 2016 final rule found that, in total, the benefits of these provisions outweighed their costs, this finding depended on benefits that were likely overestimated and compliance

<sup>19</sup> The BLM is aware that the EPA has proposed a temporary stay of some of the requirements contained in NSPS OOOOa and that the EPA is undertaking a reconsideration of these requirements. See 82 FR 27645 (June 16, 2017). The BLM has coordinated with the EPA during the development of this proposed rule and is committed to continued coordination with the EPA throughout the process of revising the 2016 final rule.

costs that were likely underestimated. The BLM seeks comment on the uncertainties and assumptions in the RIA.

E.O. 13783, at Section 5, disbanded the earlier Interagency Working Group on Social Cost of Greenhouse Gases (IWG) and withdrew the Technical Support Documents<sup>20</sup> upon which the RIA for the 2016 final rule relied for the valuation of changes in methane emissions. The SC-CH<sub>4</sub> estimates presented by the BLM for this rule 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. In accordance with E.O. 13783, they are adjusted to reflect discount rates of 3 percent and 7 percent, and to present domestic rather than global impacts of climate change, consistent with OMB Circular A-4. 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, which is particularly relevant if a regulation is expected to affect private consumption directly. When relying on the assumed domestic impacts of climate change, the benefits of many of the emissions-targeting provisions do not outweigh their costs. And, because the value of the conserved gas would not outweigh the costs, the BLM is not confident that its legal authority to prescribe rules “for the prevention of undue waste”<sup>21</sup> would cover many of the emissions-targeting provisions in the 2016 final rule.

Finally, the BLM recognizes that the oil and gas exploration and production industry continues to pursue reductions in methane emissions on a voluntary basis. For example, XTO Energy, Inc., which operates 2,435 BLM-administered leases, has publicly stated that it is undertaking a 3-year plan to phase out high-bleed pneumatic devices from its operations and will be implementing an enhanced LDAR program. In December 2017, the American Petroleum Institute (API) announced a voluntary program to reduce methane emissions. The API announced that 26 companies, including ExxonMobil, Chevron, Shell, Anadarko and EOG Resources, would take action to implement LDAR programs and replace, or retrofit high-bleed pneumatic controllers with low- or zero-emitting devices.<sup>22</sup>

<sup>20</sup> Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under E.O. 12866 (published August 26, 2016) and its Addendum.

<sup>21</sup> 30 U.S.C. 187.

<sup>22</sup> Osborne, J., “Oil companies clamping down on methane leaks,” *Houston Chronicle* (Dec. 6, 2017);

The BLM seeks comment on this proposed rule. The BLM has allowed a 60-day comment period for this proposed rule, which the BLM believes will afford the public a meaningful opportunity to comment.

The BLM intends that each of the provisions of the proposed rule are severable. It is reasonable to consider the provisions severable as they do not depend on each other. To the extent that two or more provisions inextricably depend on each other, they would not be severable. The BLM requests comment on the severability of the proposed provisions.

The BLM is also seeking comment on the royalty-free use regulations, which were codified at 43 CFR subpart 3178 as part of the 2016 final rule. The royalty-free use provisions in subpart 3178 are viewed as being consistent with applicable Federal law, executive orders, and policies. However, the BLM is still interested in whether the requirements of subpart 3178 can be improved. An issue of particular interest to the BLM is whether the requirement for prior BLM approval for royalty-free treatment in the situations covered under § 3178.5 is appropriate. The BLM would like to know whether the incremental royalty accountability offered by prior BLM approval justifies the requirement in § 3178.5.

Finally, the BLM requests comment on ways that the BLM can reduce the waste of gas by incentivizing the capture, reinjection, or beneficial use of the gas. The BLM is interested to learn of best practices that could be incorporated into the final rule that would encourage operators to capture, use, or reinject gas without imposing excessive compliance burdens that could unnecessarily encumber energy production, constrain economic growth, and prevent job creation.

#### *B. Section-by-Section Discussion*

##### 1. 2016 Final Rule Requirements Proposed for Rescission

With this proposed rule, the BLM would rescind the following provisions of the 2016 final rule:

##### 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 requires that when submitting an Application for Permit to Drill (APD) for

an oil well, an operator must also submit a waste-minimization plan. Submission of the plan is required for approval of the APD, but the plan is not itself part of the APD, and the terms of the plan are not enforceable against the operator. The purpose of the waste-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.

The BLM estimates 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).

This proposed rule would completely rescind the waste minimization plan requirement of § 3162.3–1(j). The BLM believes that the waste minimization plan requirement imposes an unnecessary administrative burden on both operators and the BLM. The BLM believes that there will be sufficient information-based safeguards against undue waste even in the absence of the waste minimization plan requirement for the following reasons. First, the BLM has found that comparable gas capture plan requirements in North Dakota and New Mexico will ensure that operators

in those States take account of the availability of capture infrastructure when seeking permission to drill a well. Second, State regulations in Utah, Wyoming, and Montana require operators to submit production information similar to that required under § 3162.3–1(j)(2) when operators seek approval for routine flaring. Finally, where flaring is not otherwise authorized, an operator would be required to submit one of the following before it could receive approval for royalty-free flaring of associated gas under proposed § 3179.201(c): (1) A report supported by engineering, geologic, and economic data which demonstrates to the BLM's satisfaction that the expenditures necessary to market or use the gas are not economically justified; or (2) An action plan that will eliminate the flaring within a time period approved by the BLM. These requirements would help to meet the purpose of § 3162.3–1(j), which is to ensure that operators do not waste gas without giving due consideration to the possibility of marketing or using the gas.

In addition, the extensive amount of information that an operator must include in the waste minimization plan makes compliance with the requirement cumbersome for operators. Operators have also expressed concern that the waste minimization plan requirement will slow down APD processing as BLM personnel take time to determine whether the waste minimization plan submitted by an operator is "complete and adequate," and whether the operator has provided all required pipeline information to the full extent that the operator can obtain it.

In light of the foregoing, the BLM believes that there is limited (if any) benefit to the waste minimization plan requirement of § 3162.3–1(j) and is therefore proposing to rescind it in its entirety.

##### 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 (as amended by the 2017 Suspension Rule) 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 2019, and eventually reaching a 98 percent capture requirement (750 Mcf per well flaring allowable) in January

American Petroleum Institute, "Natural Gas, Oil Industry Launch Environmental Partnership to Accelerate Reductions in Methane, VOCs," available at <http://www.api.org/news-policy-and-issues/news/2017/12/04/natural-gas-oil-environmental-partnership-accelerate-reductions-methane-vocs>.

2027. An operator could choose 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.

The BLM estimates that this requirement, over 10 years from 2019–2028, would impose costs of \$516 million to \$1.04 billion and generate cost savings from product recovery of \$424 to \$564 million (RIA at 41). The annual costs and cost savings would be expected to increase as the requirements increase in stringency.

This proposed rule would completely rescind the 2016 final rule's capture percentage requirements for a number of reasons. The BLM believes these requirements to be overly complex and ultimately ineffective at reducing flaring. In the early years, when capture percentages are not as high and allowable flaring is high, the 2016 final rule allows for large amounts of royalty-free flaring. In the later years, the BLM believes that the 2016 final rule would introduce complexities that would undermine its effectiveness. Because of the common use of horizontal drilling through multiple leaseholds of different ownership, the 2016 final rule's coordination requirements in § 3179.12 (providing for coordination with States and tribes when any requirement would adversely impact production from non-Federal and non-Indian interests) create a high degree of uncertainty over how the capture requirements would be implemented and what their impact would be. Even if the capture percentage requirements were implemented and effective, the BLM is concerned that the prescriptive nature of the approach would allow for unnecessary flaring in some cases while prohibiting necessary flaring in others. For example, even if an operator could feasibly capture all of the gas it produces from a Federal well, the operator could still flare a certain amount of gas without violating § 3179.7's capture percentage requirements. Thus, in situations where the operator faces transmission or processing plant capacity limitations (*i.e.*, where a pipeline or processing plant does not have the capacity to take all of the gas that is being supplied to it), § 3179.7 would allow the operator to flare gas from a Federal well in order to produce more gas from a nearby non-Federal well for which there are tighter regulatory or contractual constraints on flaring.

In addition, the capture percentage requirement affords less flexibility for smaller operators with fewer operating wells than it does for larger operators with a greater number of operating

wells. A small operator with only a few wells in an area with inadequate gas-capture infrastructure would likely be faced with curtailing production or violating § 3179.7's prescriptive limits. On the other hand, a larger operator with many wells would have greater flexibility to average the flaring allowable over its portfolio and avoid curtailing production or other production constraints.

In place of the 2016 final rule's capture percentage requirements, the proposed rule would address the routine flaring of associated gas by deferring to State or tribal regulations where possible and codifying the familiar NTL-4A standard for royalty-free flaring as a backstop where no applicable State or tribal regulation exists. The proposed rule's approach to the routine flaring of associated gas is explained more fully below (see the discussion of revised § 3179.201).

#### 43 CFR 3179.8—Alternative Capture Requirement

Section 3179.8 allows operators of leases issued before January 17, 2017, to request a lower capture percentage requirement than would otherwise be imposed under § 3179.7. In order to obtain this lower capture requirement, an operator must demonstrate that the applicable capture percentage under § 3179.7 would "impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease." Because the BLM is proposing to rescind the capture requirements of § 3179.7, the BLM is also proposing to rescind the mechanism for obtaining a lower capture requirement. If § 3179.7 is rescinded, there is no need for § 3179.8.

#### 43 CFR 3179.11—Other Waste Prevention Measures

Section 3179.11(a) states that the BLM may exercise its existing authority under applicable laws and regulations, as well as under the terms of applicable permits, orders, leases, and unitization or communitization agreements, to limit production from a new well that is expected to force other wells off of a common pipeline. Section 3179.11(b) states that the BLM may similarly exercise existing authority to delay action on an APD or impose conditions of approval on an APD. Section 3179.11 is not an independent source of authority or obligation on the part of the BLM. Rather, § 3179.11 was intended to clarify how the BLM may exercise existing authorities in addressing the waste of gas. However, the BLM understands that § 3179.11 could easily be misread to indicate that the BLM has

plenary authority to curtail production or delay or condition APDs regardless of the circumstances. Because § 3179.11 is unnecessary and is susceptible to misinterpretation, the BLM is proposing to rescind § 3179.11.

#### 43 CFR 3179.12—Coordination With State Regulatory Authority

Section 3179.12 states that, to the extent an action to enforce 43 CFR subpart 3179 may adversely affect production of oil or gas from non-Federal and non-Indian mineral interests, the BLM will coordinate with the appropriate State regulatory authority. The purpose of this provision is to ensure that due regard is given to the States' interests in regulating the production of non-Federal and non-Indian oil and gas. The BLM is proposing to rescind § 3179.12 because, as explained more fully below, the BLM is proposing to revise subpart 3179 in a manner that defers to State and tribal requirements with respect to the routine flaring of associated gas. In light of this new approach, the BLM believes that there is much less concern that subpart 3179 could be applied in ways that State regulatory agencies find to be inappropriate. The BLM continues to recognize the value of coordinating with State regulatory agencies, but no longer considers it necessary to include a coordination requirement in subpart 3179.

#### 43 CFR 3179.101—Well Drilling

Current § 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 proposing to rescind § 3179.101 because it would be duplicative under revised subpart 3179. In essence, § 3179.101(a) requires an operator to flare gas lost during well drilling rather than vent it (unless technically infeasible). This same requirement would be contained in proposed § 3179.6(b). Current § 3179.101(b) states that where gas is lost during a loss of well control, the

lost gas will be considered “avoidably lost” if the BLM determines that the loss of well control was due to operator negligence. This principle would be contained in proposed § 3179.4(b), which requires an absence of operator negligence in order for lost gas to be considered “unavoidably lost.”

#### 43 CFR 3179.102—Well Completion and Related Operations

Current § 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 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 40 CFR part 60, subparts OOOO or OOOOa, or if the well is not a “well affected facility” under those regulations. Section 3179.102(c) and (d) would allow the BLM to exempt an operator from the requirements of § 3179.102 where the operator demonstrates that compliance would cause the operator to cease production and abandon significant recoverable oil reserves under the lease.

This proposed rule would rescind current § 3179.102 in its entirety. The EPA finalized regulations in 40 CFR part 60, subpart OOOOa, that are applicable to all of the well completions covered by § 3179.102. See 81 FR 35824 (June 3, 2016); 81 FR 83055–56. In light of the complete overlap with EPA regulations, and the fact that compliance with these regulations satisfies an operator’s obligations under § 3179.102, the BLM has concluded that § 3179.102 is duplicative and unnecessary. In the 2016 final rule, the BLM recognized the duplicative nature of § 3179.102, but sought to establish a “backstop” in the “unlikely event” that the analogous EPA regulations ceased to be in effect. See 81 FR 83056. The BLM no longer believes that it is appropriate to insert duplicative regulations into the CFR as insurance against unlikely events. In addition, the BLM questions the appropriateness of issuing regulations

that serve as a backstop to the regulations of other Federal agencies, especially when those regulations are promulgated under different authorities. The BLM continues to believe that applicable EPA regulations adequately address the loss of gas associated with unconventional well completions, and therefore proposes to rescind § 3179.102.

#### 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. 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) (as amended by the 2017 Suspension Rule) requires that this replacement occur no later than January 17, 2019, or within 3 years from the effective date of the 2016 final rule if the well or facility served by the controller has an estimated remaining productive life of 3 years or less. Section 3179.201(b)(4) and (c) would allow the BLM to exempt an operator from the requirements of § 3179.201 where the operator demonstrates that compliance would cause the operator to cease production and abandon significant recoverable oil reserves under the lease.

The BLM estimates that this requirement, over 10 years from 2019–2028, would impose costs of about \$12 million to \$13 million and generate cost savings from product recovery of \$24 million to \$30 million (RIA at 41).

This proposed rule would rescind § 3179.201 in its entirety. Low-bleed continuous pneumatic controllers are already very common, representing about 89 percent of the continuous bleed pneumatic controllers in the petroleum and natural gas production sectors.<sup>23</sup> The EPA has regulations in 40

CFR part 60, subparts OOOO and OOOOa that require new, modified, or reconstructed continuous bleed controllers to be low-bleed.

The BLM believes that these analogous EPA regulations will adequately address the loss of gas from pneumatic controllers on Federal and Indian leases over time, as new facilities come online and more of the existing high-bleed continuous controllers are replaced by low-bleed continuous controllers, pursuant to the EPA regulations. The BLM understands the typical lifespan of a pneumatic controller to be 10 to 15 years.

Furthermore, low-bleed continuous pneumatic controllers are expected to generate revenue for operators when employed at sites from which gas is captured and sold and when the sale price of gas is generally higher than it is now. Thus, we expect many operators to adopt low-bleed pneumatic controllers even in the absence of § 3179.201’s requirements.

Finally, as discussed above, the BLM recognizes that the oil and gas exploration and production industry continues to pursue reductions in methane emissions on a voluntary basis, and the BLM expects these efforts to result in a reduction in the number of high-bleed pneumatic devices employed by the industry. For the foregoing reasons, the BLM finds § 3179.201 to be unnecessary and is therefore proposing to rescind it.

#### 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 Notices and Reports on Wells, Form 3160–5) that replacing the pneumatic diaphragm pump with a zero-emissions

<sup>23</sup> EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2015 (published April

2017). Annex 3. Data are available in Table 3.5–5 and Table 3.6–7.



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) (as amended by the 2017 Suspension Rule), an operator must replace its covered pneumatic diaphragm pump or route the exhaust gas to capture or flare beginning no later than January 17, 2019. Section 3179.202(f) and (g) would allow the BLM to exempt an operator from the requirements of § 3179.202 where the operator demonstrates that compliance would cause the operator to cease production and abandon significant recoverable oil reserves under the lease.

This proposed rule would rescind § 3179.202 in its entirety. The BLM is concerned that the costs of compliance with § 3179.202 outweigh the value of its conservation effects. The BLM estimates that § 3179.202, over 10 years from 2019–2028, would impose costs of about \$29 million to \$30 million, but only generate cost savings from product recovery of \$18 million to \$22 million (RIA at 41). The BLM also believes that the analogous EPA regulations in 40 CFR part 60, subpart OOOOa, will adequately address the loss of gas from pneumatic diaphragm pumps on Federal and Indian leases as more and more of them are covered by the EPA regulations over time.

Finally, as discussed above, industry is reportedly making ongoing efforts to retire old leak-prone equipment, including pneumatic pumps, on a voluntary basis.

For these reasons, the BLM is proposing to rescind § 3179.202 in its entirety.

#### 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 may also 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.

The BLM is proposing to rescind § 3179.203 in its entirety. The BLM is concerned that the costs of compliance with § 3179.203 outweigh the value of its conservation effects. The BLM estimates that § 3179.203, over 10 years from 2019–2028, would impose costs of about \$51 million to \$56 million while only generating cost savings from product recovery of about \$1 million (RIA at 41). The BLM also believes that the analogous EPA regulations in 40 CFR part 60, subparts OOOO and OOOOa, will adequately address the loss of gas from storage vessels on Federal and Indian leases as more and more of them are covered by the EPA regulations over time.

Furthermore, the BLM has always believed that § 3179.203 would have a limited reach, due to the 6 tpy emissions threshold and the carve-out for storage vessels covered by EPA regulations. The BLM estimated in the RIA for the 2016 final rule that § 3179.203 would impact fewer than 300 facilities on Federal and Indian lands.<sup>24</sup> In light of the EPA's requirements for storage vessels, and the limited reach and modest conservation impacts of § 3179.203, the BLM is proposing to rescind § 3179.203 in its entirety. Finally, we note that, even if § 3179.203 is rescinded as proposed, the BLM would retain the authority to impose royalties on vapor losses from storage vessels under proposed § 3179.4(b)(2)(vii) when the BLM determines that recovery of the vapors is warranted.

#### 43 CFR 3179.301 Through 3179.305—Leak Detection and Repair

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) (as amended by the 2017 Suspension Rule), operators must begin to comply with the LDAR requirements of §§ 3179.301 through 3179.305 before: (1) January 17, 2019, for all existing sites; (2) 60 days after beginning production for sites that begin production after January 17, 2019; and (3) 60 days after a site that was out of service is brought back into service and re-pressurized.

The BLM is proposing to rescind §§ 3179.301 to 3179.305 in their entirety. The BLM is concerned that the costs of compliance with §§ 3179.301 to 3179.305 outweigh the value of their conservation effects. The BLM estimates that these requirements, over 10 years from 2019–2028, would impose costs of about \$550 million to \$688 million and generate cost savings from product recovery of about \$116 million to \$148 million (RIA at 41). In addition, the BLM estimates that the administrative burdens associated with the LDAR requirements, at roughly \$5 million, represent the bulk of the administrative burdens of the 2016 final rule.

The BLM believes that the analogous EPA regulations in 40 CFR part 60, subpart OOOOa, will adequately address the loss of fugitive gas on Federal and Indian leases over time, as new facilities come online and more and more existing facilities are reconstructed or modified and become covered by the EPA regulations.

Finally, the BLM is concerned that §§ 3179.301 to 3179.305 apply to all wellsites equally. Wellsites that are not connected to deliver gas to market would not achieve any waste reduction because sales from the recovered gas would not be realized. More importantly, the BLM believes that the LDAR requirements are unnecessarily burdensome to operators of marginal wells, particularly marginal oil wells. The BLM does not believe that the potential fugitive gas losses from marginal oil wells (with production rates fewer than 10 bbl per day or 15 bbl per day) would be substantial enough to warrant the costs of maintaining a LDAR program with semi-annual inspection frequencies. As noted previously, the

<sup>24</sup> U.S. Bureau of Land Management, "Regulatory Impact Analysis for: Revisions to 43 CFR 3100 (Onshore Oil and Gas Leasing) and 43 CFR [3160] (Onshore Oil and Gas Operations), Additions of 43 CFR 3178 (Royalty-Free Use of Lease Production) and 43 CFR 3179 (Waste Prevention and Resource Conservation)," pg. 69 (Nov. 10, 2016).

BLM believes that over 69 percent of oil wells on the public lands are marginal.

#### 43 CFR 3179.401—State or Tribal Requests for Variances From the Requirements of This Subpart

Section 3179.401 would allow a State or tribe to request a variance from any provisions of subpart 3179 by identifying a State, local, or tribal regulation to be applied in place of those provisions and demonstrating that such State, local, or tribal regulation would perform at least equally well as those provisions in terms of reducing waste of oil and gas, reducing environmental impacts from venting and/or flaring of gas, and ensuring the safe and responsible production of oil and gas.

The BLM is proposing to rescind § 3179.401 because it believes that the variance process established by this section will no longer be necessary in light of the BLM's proposal to codify NTL-4A standards and to defer to State and tribal regulations for the routine flaring of associated gas, as explained in the discussion of proposed § 3179.201.

#### 2. Revised Subpart 3179

With this proposed rule, the BLM would revise subpart 3179, as follows:

##### 43 CFR 3179.1 Purpose

Section 3179.1 states that the purpose of 43 CFR subpart 3179 is to implement and carry out the purposes of statutes relating to prevention of waste from Federal and Indian leases, the conservation of surface resources, and management of the public lands for multiple use and sustained yield. The BLM is not proposing any revision to existing § 3179.1 as a part of this rulemaking. Section 3179.1 is presented here for context.

##### 43 CFR 3179.2 Scope

This section specifies which leases, agreements, tracts, and facilities are covered by this subpart. The section also states that subpart 3179 applies to Indian Mineral Development Act (IMDA) agreements, unless specifically excluded in the agreement or unless the relevant provisions of this subpart are inconsistent with the agreement, and to agreements for the development of tribal energy resources under a Tribal Energy Resource Agreement entered into with the Secretary of the Interior, unless specifically excluded in the agreement. Existing § 3179.2 remains largely unchanged. However, the BLM is proposing to revise paragraph (a)(5) by using the more-inclusive words "well facilities" instead of the words "wells, tanks, compressors, and other

equipment" to describe the onshore equipment that would be subject to this proposed rule. The purpose of the phrase "wells, tanks, compressors, and other equipment" has been to specify components subject to LDAR requirements which, as described above, the BLM is proposing to rescind.

##### 43 CFR 3179.3 Definitions and Acronyms

This proposed section would keep, in their entirety, four of the 18 definitions that appear in existing § 3179.3:

"Automatic ignition system," "gas-to-oil ratio," "liquids unloading," and "lost oil or lost gas." The definition for "capture" is retained in this proposed rule, except the word "re injection" has been changed to "injection" in order to be consistent with references to conservation by injection (as opposed to reinjection) elsewhere in subpart 3179.

A definition for "gas well" is also maintained in this proposed rule, however the second and third sentences in the existing definition would be removed. The second-to-last sentence in the existing definition of "gas well" would be removed because, though a well's designation as a "gas" well or "oil" well is appropriately determined by the relative energy values of the well's products, the 6,000 scf/bbl standard in existing § 3179.3 is not a commonly used standard. The last sentence in the existing definition of "gas well," which states generally that an oil well will not be reclassified as a gas well when its gas-to-oil ratio (GOR) exceeds the 6,000 scf/bbl threshold, would be removed and replaced with a simpler qualifier making clear that a well's status as a "gas well" is "determined at the time of completion."

A new definition for "oil well" is proposed to be added that would define an "oil well" as a "well for which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced, as determined at the time of completion." The addition of a definition of "oil well" should help to make clear when proposed § 3179.201's requirements for "oil-well gas" apply.

A definition of "waste of oil or gas" is proposed to be added that would define waste, for the purposes of subpart 3179, to mean any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production, where compliance costs are not greater than the monetary value of the resources they are expected to conserve, and which results in: (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or

(2) avoidable surface loss of oil or gas. This definition incorporates the familiar definition of "waste of oil or gas" from BLM's operating regulations at 43 CFR 3160.0-5, but adds an important limitation: Waste does not occur where the cost of conserving the oil or gas exceeds the monetary value of that oil or gas. This definition is intended to codify the BLM's policy determination that it is not appropriate for "waste prevention" regulations to impose compliance costs greater than the value of the resources they are expected to conserve. The BLM requests comment and data pertinent to this proposed definition of "waste of oil or gas."

This proposed section would remove 12 definitions from the existing regulations because they are no longer needed: "Accessible component," "capture infrastructure," "compressor station," "continuous bleed," "development oil well," "high pressure flare," "leak," "leak component," "liquid hydrocarbon," "pneumatic controller," "storage vessel," and "volatile organic compounds (VOC)." These definitions pertain to requirements in existing subpart 3179 that the BLM is proposing to rescind.

##### 43 CFR 3179.4 Determining When the Loss of Oil or Gas Is Avoidable or Unavoidable

Proposed § 3179.4 describes the circumstances under which lost oil or gas would be classified as "avoidably lost" or "unavoidably lost." Under proposed § 3179.5, royalty would be due on all avoidably lost oil or gas, while royalty is not due on unavoidably lost oil or gas. The proposed revision of § 3179.4 includes concepts from both existing § 3179.4 and NTL-4A, Sections II. and III.

Proposed paragraph (a) defines "avoidably lost" production and mirrors the "avoidably lost" definition in NTL-4A Section II.A. Proposed paragraph (a) would define avoidably lost gas as gas that is vented or flared without BLM approval, and produced oil or gas that is lost due to operator negligence, the operator's failure to take all reasonable measures to prevent or control the loss, or the operator's failure to comply fully with applicable lease terms and regulations, appropriate provisions of the approved operating plan, or prior written BLM orders. This paragraph would replace the "avoidably lost" definition that appears in the last paragraph of existing § 3179.4, which primarily defines "avoidably lost" oil or gas as lost oil gas that is not "unavoidably lost" and also expressly includes "excess flared gas" as defined

in existing § 3179.7, which the BLM is proposing to rescind.

Proposed paragraph (b) defines “unavoidably lost” production. Proposed paragraph (b)(1) follows language from Section II.C(2) of NTL–4A. It states that oil or gas that is lost due to line failures, equipment malfunctions, blowouts, fires, or other similar circumstances is considered to be unavoidably lost production, unless the BLM determines that the loss resulted from operator negligence, the failure to take all reasonable measures to prevent or control the loss, or the failure of the operator to comply fully with applicable lease terms and regulations, appropriate provisions of the approved operating plan, or prior written orders of the BLM.

Proposed paragraph (b)(2) is substantially similar to the definition of “unavoidably lost” oil or gas that appears in existing § 3179.4(a). This paragraph improves upon NTL–4A by providing clarity to operators and the BLM about which losses of oil or gas should be considered “unavoidably lost.” Paragraph (b)(2) introduces a list of operations or sources from which lost oil or gas would be considered “unavoidably lost,” so long as the operator has not been negligent, has taken all reasonable measures to prevent or control the loss, and has complied fully with applicable laws, lease terms, regulations, provisions of a previously approved operating plan, or other written orders of the BLM.

Except for cross references, proposed § 3179.4(b)(2)(i) through (vi) are the same as paragraphs (a)(1)(i) through (vi) in existing § 3179.4. These paragraphs list the following operations or sources from which lost oil or gas would be considered “unavoidably lost”: Well drilling; well completion and related operations; initial production tests; subsequent well tests; exploratory coalbed methane well dewatering; and emergencies.

This proposed rule would remove normal operating losses from pneumatic controllers and pumps (existing § 3179.4(a)(1)(vii)) from the list of unavoidable losses because the use of gas in pneumatic controllers and pumps is already royalty free under existing § 3178.4(a)(3).

Proposed paragraph (b)(2)(vii) is similar to existing § 3179.4(a)(1)(viii), but has been rephrased to reflect the NTL–4A provisions pertaining to storage tank losses (NTL–4A Section II.C(1)). Under proposed § 3179.4(b)(2)(vii), normal gas vapor losses from a storage tank or other low-pressure production vessel would be unavoidably lost, unless the BLM

determines that recovery of the vapors is warranted. Changing the phrase “operating losses” (as used in existing § 3179.4(a)(1)(viii)) to “gas vapor losses” makes clear that this provision applies to low pressure gas losses and that the operator should have separated gas from the oil before placing it in the tank.

Proposed § 3179.4(b)(2)(viii) is the same as existing § 3179.4(a)(1)(ix). It states that well venting in the course of downhole well maintenance and/or liquids unloading performed in compliance with § 3179.104 is an operation from which lost gas is considered “unavoidably lost.”

The proposed revision does not retain existing § 3179.4(a)(1)(x), which classifies leaks as unavoidable losses when the operator has complied with the LDAR requirements in existing §§ 3179.301 through 3179.305. The BLM is proposing to rescind these LDAR requirements and so there is no need to reference these requirements as a limitation on losses through leaks. The BLM requests comment on whether regulatory text should be added to § 3179.4(b) to provide clarity to the BLM’s position that leaks are considered unavoidably lost.

Proposed § 3179.4(b)(2)(ix) is the same as existing § 3179.4(a)(1)(xi), identifying facility and pipeline maintenance, such as when an operator must blow-down and depressurize equipment to perform maintenance or repairs, as an operation from which lost oil or gas would be considered “unavoidably lost,” so long as the operator has not been negligent and has complied with all appropriate requirements.

The proposed rule does not include existing § 3179.4(a)(1)(xii). This paragraph lists the flaring of gas from which at least 50 percent of natural gas liquids have been removed and captured for market as an unavoidable loss. This provision was included in the 2016 final rule as part of the BLM’s effort to adopt a gas capture percentage scheme similar to that of North Dakota. The BLM is proposing to remove this provision because it is proposing to rescind the gas capture percentage requirements contained in the 2016 final rule.

The proposed rule does not include existing § 3179.4(a)(2). Section 3179.4(a)(2) provides that gas that is flared or vented from a well that is not connected to a gas pipeline is unavoidably lost, unless the BLM has determined otherwise. Existing § 3179.4(a)(2) was essentially a blanket approval for royalty-free flaring from wells not connected to a gas pipeline. Flaring from these wells, however,

would no longer be royalty free if the operator failed to meet the gas capture requirements imposed by existing § 3179.7 and the flared gas thus became royalty-bearing “excess flared gas.” Because the BLM is proposing to rescind § 3179.7, maintaining existing § 3179.4(a)(2) would amount to sanctioning unrestricted flaring from wells not connected to gas pipelines. The routine flaring of oil-well gas from wells not connected to a gas pipeline is addressed by proposed § 3179.201, which is discussed in more detail below.

Proposed § 3179.4(b)(3) states that produced gas that is flared or vented with BLM authorization or approval is unavoidably lost. This provision mirrors proposed § 3179.4(a), which states that gas that is flared or vented without BLM authorization or approval is avoidably lost, and provides clarity to operators about royalty obligations with respect to authorized venting and flaring.

#### 43 CFR 3179.5 When Lost Production Is Subject to Royalty

The proposed rule would not change § 3179.5. This section would continue to state that royalty is due on all avoidably lost oil or gas and that royalty is not due on any unavoidably lost oil or gas.

#### 43 CFR 3179.6 Venting Limitations

The title of this section in the proposed rule has been changed from “venting prohibitions” to “venting limitations.” The proposed rule would retain most of the provisions in existing § 3179.6. The purpose of both sections is to prohibit flaring and venting from gas wells, with certain exceptions, and to require operators to flare, rather than vent, any uncaptured gas, whether from oil wells or gas wells, with certain exceptions.

Proposed § 3179.6(a) is the same as the existing § 3179.6(a), except the cross reference has been updated. It states that gas-well gas may not be flared or vented, except where it is unavoidably lost, pursuant to § 3179.4(b). This same restriction on the flaring of gas-well gas was included in NTL–4A.

Both proposed and existing § 3179.6(b) state that operators must flare, rather than vent, any gas that is not captured, with the exceptions listed in subsequent paragraphs. Although the text of NTL–4A did not contain a similar requirement that, in general, lost gas should be flared rather than vented, the implementing guidance for NTL–4A in the United States Geological Survey’s (USGS) Conservation Division Manual did contain a similar preference for flaring over venting. The flaring of gas is generally preferable to the venting of

gas due to safety concerns. Proposed § 3179.6(b) therefore represents an improvement on NTL-4A by making clear in the regulation, rather than in implementation guidance, that lost gas should be flared when possible.

The first three flaring exceptions in both the proposed and existing § 3179.6 are identical: Paragraph (b)(1) allows for venting when flaring is technically infeasible; paragraph (b)(2) allows for venting in the case of an emergency, when the loss of gas is uncontrollable, or when venting is necessary for safety; and, paragraph (b)(3) allows for venting when the gas is vented through normal operation of a natural-gas-activated pump or pneumatic controller.

The fourth flaring exception, listed in proposed § 3179.6(b)(4), would allow gas vapors to be vented from a storage tank or other low-pressure production vessel, except when the BLM determines that gas-vapor recovery is warranted. Although this language is somewhat different than what appears in existing § 3179.6(b)(4), it has the same practical effect. It has been changed in this proposed rule in order to align the language with proposed § 3179.4(b)(vii) and to remove the cross-reference to the storage tank requirements in existing § 3179.203, which the BLM is proposing to rescind.

The fifth flaring exception, listed in proposed § 3179.6(b)(5), would apply to gas that is vented during downhole well maintenance or liquids unloading activities. This is similar to existing § 3179.6(b)(5), except that the proposed rule would remove the cross reference to existing § 3179.204. Although the proposed revision of subpart 3179 would retain limitations on royalty-free losses of gas during well maintenance and liquids unloading in proposed § 3179.104, no cross-reference to those restrictions is necessary in this section, which simply addresses whether the gas may be vented or flared, not whether it is royalty-bearing.

The proposed rule would remove the flaring exception listed in existing § 3179.6(b)(6), which applies when gas is vented through a leak, provided that the operator has complied with the LDAR requirements in §§ 3179.301 through 3179.305. The BLM is proposing to rescind these LDAR requirements so there is no need to reference these requirements as a limitation on venting through leaks.

The sixth flaring exception, listed in proposed § 3179.6(b)(6), is identical to the exception listed in existing § 3179.6(b)(7). This exception would allow gas venting that is necessary to allow non-routine facility and pipeline maintenance to be performed.

The seventh flaring exception, listed in proposed § 3179.6(b)(7), is identical to the exception listed in existing § 3179.6(b)(8). This exception would allow venting when a release of gas is unavoidable under § 3179.4, and Federal, State, local, or tribal law, regulation, or enforceable permit terms prohibit flaring.

Proposed § 3179.6(c) is identical to existing § 3179.6(c). Both sections require all flares or combustion devices to be equipped with automatic ignition systems.

#### Authorized Flaring and Venting of Gas 43 CFR 3179.101 Initial Production Testing

Proposed § 3179.101 would establish volume and duration standards which limit the amount of gas that may be flared royalty free during initial production testing. The gas is no longer royalty free after reaching either limit. Proposed § 3179.101 would establish a volume limit of 50 million cubic feet (MMcf) of gas that may be flared royalty free during the initial production test of each completed interval in a well. Additionally, proposed § 3179.101 would limit royalty-free initial production testing to a 30 day period, unless the BLM approves a longer period.

The 2016 final rule also uses volume and duration thresholds to limit royalty-free initial production testing. Existing § 3179.103 provides for up to 20 MMcf of gas to be flared royalty free during well drilling, well completion, and initial production testing operations combined. Under existing § 3179.103, upon receiving a Sundry Notice request from the operator, the BLM may increase the volume of royalty-free flared gas up to an additional 30 MMcf. Under existing § 3179.103, similar to proposed § 3179.101, the BLM allows royalty-free testing for a period of up to 30 days after the start of initial production testing. The BLM may extend, upon request, the initial production testing period by up to an additional 60 days. Further, existing § 3179.103 provides additional time for dewatering and testing exploratory coalbed methane wells. Under existing § 3179.103, such wells have an initial royalty-free period of 90 days (rather than 30 days for all other well types), and the possibility of the BLM approving, upon request, up to two additional 90-day periods.

Under NTL-4A, gas lost during initial production testing was royalty free for a period not to exceed 30 days or the production of 50 MMcf of gas, whichever occurred first, unless a

longer test period was authorized by the State and accepted by the BLM.

The volume and duration limits in proposed § 3179.101 are similar to those in existing § 3179.103. Both sections allow 30 days from the start of the test, and both allow for extensions of time. However, existing § 3179.103 limits an extension to no more than 60 days, whereas proposed § 3179.101 does not specify an extension limit. Proposed § 3179.101 would allow for up to 50 MMcf of gas to be flared royalty free, with no express opportunity for an extension. By comparison, existing § 3179.103 allows for 20 MMcf to be flared royalty free, with the possibility of an additional 30 MMcf of gas flared with BLM approval, and no opportunity for an extension beyond the cumulative 50 MMcf of gas. The BLM requests comment on whether royalty-free flaring during initial production testing should be limited to 50 MMcf or 30 days (with the possibility of an extension).

The provision for exploratory coalbed methane wells in existing § 3179.103 is the most notable difference between it and this proposed rule with regard to the initial production testing. Existing § 3179.103 provides for up to 270 cumulative royalty-free production testing days for exploratory coalbed methane wells, whereas the proposed rule contains no special provision for such wells. Exploratory coalbed methane wells are expected to be an exceedingly low percentage of future wells drilled, and so the BLM does not believe that a special provision addressing these wells is necessary. In the future, if an exploratory coalbed methane well requires additional time for initial production testing, this can be handled under proposed § 3179.101(b), which allows an operator to request a longer test period without imposing an outside limit on the length of the additional test period the BLM might approve.

#### 43 CFR 3179.102 Subsequent Well Tests

Proposed § 3179.102(a) provides that gas flared during well tests subsequent to the initial production test is royalty free for a period not to exceed 24 hours, unless the BLM approves or requires a longer test period. Proposed § 3179.102(b) provides that the operator may request a longer test period and must submit its request using a Sundry Notice. Proposed § 3179.102 is functionally identical to existing § 3179.104.

NTL-4A included royalty-free provisions for "evaluation tests" and for "routine or special well tests." Because NTL-4A also contained specific

provisions for “initial production tests,” all of the other mentioned tests were presumed to be subsequent to the initial production tests. Under NTL–4A, royalty-free evaluation tests were limited to 24 hours, with no mention of a possibility for extension. Routine or special well tests, which are well tests other than initial production tests and evaluation tests, were royalty free under NTL–4A, but only after approval by the BLM.

The provisions for subsequent well tests in proposed § 3179.102 are essentially the same as those in both the 2016 final rule and in NTL–4A. All three provide for a base test period of 24 hours, and all three have a provision for the BLM to approve a longer test period. Proposed § 3179.102 improves upon NTL–4A by making the requirements for subsequent well tests more clear.

#### 43 CFR 3179.103 Emergencies

Under proposed § 3179.4(b)(2)(vi), royalty is not due on gas that is lost during an emergency. Proposed § 3179.103 describes the conditions that constitute an emergency, and lists circumstances that do not constitute an emergency. As provided in proposed § 3179.103(d), an operator would be required to estimate and report to the BLM on a Sundry Notice the volumes of gas that were flared or vented beyond the timeframe for royalty-free flaring under proposed § 3179.103(a) (*i.e.*, venting or flaring beyond 24 hours, or a longer necessary period as determined by the BLM).

The provisions in proposed § 3179.103 are nearly identical to those in existing § 3179.105. The most notable change from the 2016 final rule is in describing those things that do not constitute an emergency. Where existing § 3179.105(b)(1) specifies that “more than 3 failures of the same component within a single piece of equipment within any 365-day period” is not an emergency, proposed § 3179.103(c)(4) simplifies that concept by including “recurring equipment failures” among the situations caused by operator negligence that do not constitute an emergency. This simplification addresses the practical difficulties involved in tracking the number of times the failure of a specific component of a particular piece of equipment causes emergency venting or flaring, and recognizes that recurring failures of the same equipment, even if involving different “components,” may not constitute a true unavoidable emergency. The BLM requests comment on how to best determine when recurring equipment failures constitute emergencies and whether a certain

number of failures of the same equipment should provide a standard for when losses of gas due to equipment failures are royalty-bearing.

The description of “emergencies” in NTL–4A was brief and was subject to varied interpretations. The purpose behind both existing § 3179.105 and proposed § 3179.103 is to improve upon NTL–4A by narrowing the meaning of “emergency,” such that it is uniformly understood and consistently applied.

#### 43 CFR 3179.104 Downhole Well Maintenance and Liquids Unloading

Under proposed § 3179.4(b)(2)(viii), gas lost in the course of downhole well maintenance and/or liquids unloading performed in compliance with proposed § 3179.104 is royalty free. Proposed § 3179.104(a) states that gas vented or flared during downhole well maintenance and well purging is royalty free for a period not to exceed 24 hours. Proposed § 3179.104(a) also states that gas vented from a plunger lift system and/or an automated well control system is royalty free. Proposed § 3179.104(b) states that the operator must minimize the loss of gas associated with downhole well maintenance and liquids unloading, consistent with safe operations. Proposed § 3179.104(c) states, for wells equipped with a plunger lift system or automated control system, minimizing gas loss under paragraph (b) includes optimizing the operation of the system to minimize gas losses to the extent possible consistent with removing liquids that would inhibit proper function of the well. Proposed § 3179.104(d) provides that the operator must ensure that the person conducting the purging remains present on-site throughout the event in order to end the event as soon as practical, thereby minimizing any venting to the atmosphere. Proposed § 3179.104(e) defines “well purging” as blowing accumulated liquids out of a wellbore by reservoir gas pressure, whether manually or by an automatic control system that relies on real-time pressure or flow, timers, or other well data, where the gas is vented to the atmosphere, and it does not apply to wells equipped with a plunger lift system. Proposed § 3179.104(e) is identical to existing § 3179.204(g).

Existing § 3179.204 requires the operator to “minimize vented gas” in liquids unloading operations, but does not impose volume or duration limits. As with proposed § 3179.104, existing § 3179.204 allows for gas vented or flared during well purging to be royalty free provided that the operator ensures that the person conducting the operation remains on-site throughout

the event. Existing § 3179.204 also requires plunger lift and automated control systems to be optimized to minimize gas loss associated with their effective operation. The main difference between existing § 3179.204 and proposed § 3179.104 is that existing § 3179.204(c) requires the operator to file a Sundry Notice with the BLM the first time that each well is manually purged or purged with an automated control system. That Sundry Notice would need to include documentation showing that the operator evaluated the feasibility of using methods of liquids unloading other than well purging and that the operator determined that such methods were either unduly costly or technically infeasible. Although the administrative burden is apparent, filing this Sundry Notice would require the operator to evaluate and analyze other methods of liquids unloading, which is expected to impose costs on the operator. And, the evaluation may lead the operator to identify a more costly alternative that could not be ignored as “unduly costly.” Additionally, under existing § 3179.204, the operator would file a Sundry Notice with the BLM each time a well purging event exceeded either a duration of 24 hours in a month or an estimated gas loss of 75 Mcf in a month. For each manual purging event, the operator would also need to keep a record of the cause, date, time, duration, and estimate of the volume of gas vented. The operator would maintain these records and make them available to the BLM upon request.

With respect to royalty, gas vented during well purging was addressed in NTL–4A as follows: “. . . operators are authorized to vent or flare gas on a short-term basis without incurring a royalty obligation . . . during the unloading or cleaning up of a well during . . . routine purging . . . not exceeding a period of 24 hours.” As used in NTL–4A, it is unclear whether the “24 hours” limit was intended to be 24 hours per month or 24 hours per purging event. Under the latter interpretation, there would be no practical or enforceable limit to the volume of gas vented, or to the time during which purging could occur, because purging could occur in successive events of 24 hours duration.

In terms of minimizing the loss of gas during well purging events, proposed § 3179.104 and existing § 3179.204 are essentially the same. Differences between the two are found in the reporting and recordkeeping requirements imposed by the 2016 final rule. The intent of these recordkeeping requirements, as explained in the 2016 final rule preamble, was to build a

record of the amount of gas lost through these operations so that information might lead to better future management of liquids unloading operations. The BLM now believes that the reporting and recordkeeping requirements in existing § 3179.204 are unnecessary and unduly burdensome. In particular, the reporting requirement of existing § 3179.204(c) appears to be unnecessary because wells undergoing manual well purging are in decline and any alternative method of liquids unloading is unlikely to be economical for those wells. At this time, the BLM does not believe that it is in a position to develop better waste management techniques based on information collected pursuant to existing § 3179.204.

As mentioned above, proposed § 3179.104(d) would require the person conducting manual well purging to remain present on-site throughout the event to end the event as soon as practical. This provision was not a requirement in NTL-4A, and was first established in the 2016 final rule. The BLM is seeking comment on the operational feasibility of this provision or if another measure would be less burdensome, but achieve the same result.

#### Other Venting or Flaring

##### 43 CFR 3179.201 Oil Well Gas

Proposed § 3179.201 would govern the routine flaring of associated gas from oil wells. The requirements of proposed § 3179.201 would replace the “capture percentage” requirements of the 2016 final rule. Short term flaring, such as that experienced during initial production testing, subsequent well testing, emergencies, and downhole well maintenance and liquids unloading, would be governed by proposed §§ 3179.101 through 3179.104.

Proposed § 3179.201(a) would allow operators to vent or flare oil-well gas royalty free when the venting or flaring is done in compliance with applicable rules, regulations, or orders of the State regulatory agency (for Federal gas) or tribe (for Indian gas). This section establishes State or tribal rules, regulations, and orders as the prevailing regulations for the venting and flaring of oil-well gas on BLM-administered leases, unit participating areas (PAs), or communitization agreements (CAs).

Under the 2016 rule, an operator’s royalty obligations for venting or flaring are determined by the avoidable/ unavoidable loss definitions and the gas capture requirement thresholds. Operator royalty obligations for vented or flared gas from oil wells in NTL-4A was, for the most part, dependent on an

“avoidable loss” determination by the BLM. NTL-4A allowed for the BLM to ratify or accept the venting or flaring rules, regulations, or orders of the appropriate State regulatory agency. The proposed rule implements this concept from NTL-4A by deferring to the rules, regulations, or orders of State regulatory agencies or a tribe. This change both simplifies an operator’s obligations by aligning Federal and State venting and flaring requirements for oil-well gas and allows for region-specific regulation of oil-well gas that accounts for regional differences in production, markets, and infrastructure. An operator would owe royalty on any oil-well gas flared in violation of applicable State or tribal requirements.

The BLM has analyzed the statutory and regulatory restrictions on venting and flaring in the 10 States constituting the top eight producers of Federal oil and the top eight producers of Federal gas, which collectively produce more than 99 percent of Federal oil and more than 98 percent of Federal gas. The BLM found that each of these States have statutory or regulatory restrictions on venting and flaring that are expected to constrain the waste of associated gas from oil wells. Most of these States require an operator to obtain approval from the State regulatory authority (by justifying the need to flare) in order to engage in the flaring of associated gas.<sup>25</sup> North Dakota has a similar requirement, but, in the Bakken, Bakken/Three Forks, and Three Forks pools, restricts flaring through the application of gas-capture goals that function similarly to the capture percentage requirements of the 2016 final rule. Summaries of the State statutory and regulatory restrictions on venting and flaring analyzed by the BLM are contained in a Memorandum that has been published for public review on <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004-AE53”, click the “Search” button, open the Docket Folder, and look under Supporting Documents.

It is the intent of proposed § 3179.201(a) to defer to State and tribal statutes and regulations, like those described in the Memorandum, that provide a reasonable assurance to the BLM that operators will not be permitted to engage in the flaring of associated gas without limitation and that the waste of associated gas will be controlled. The BLM requests comment on whether the language of proposed § 3179.201(a) achieves that intent.

Proposed § 3179.201(b) exclusively addresses oil-well gas production from

an Indian lease. Vented or flared oil-well gas from an Indian lease will be treated as royalty free pursuant to proposed § 3179.201(a) only to the extent it is consistent with the BLM’s trust responsibility.

In the event a State regulatory agency or tribe does not currently have rules, regulations or orders governing venting or flaring of oil-well gas, the BLM is proposing to codify the NTL-4A approach as a backstop, providing a way for operators to obtain BLM approval to vent or flare oil-well gas royalty free by submitting an application with sufficient justification as described in proposed § 3179.201(c). Applications for royalty-free venting or flaring of oil-well gas must include either: (1) An evaluation report supported by engineering, geologic, and economic data demonstrating that capturing or using the gas is not economical; or (2) An action plan showing how the operator will minimize the venting or flaring of the gas within 1 year of the application. If an operator vents or flares oil-well gas in excess of 10 MMcf per well during any month, the BLM may determine the gas to be avoidably lost and subject to royalty assessment. The BLM notes that there was no similar provision in NTL-4A allowing for the BLM to impose royalties where flaring under an action plan exceeds 10 MMcf per well per month. However, this provision is based on guidance in the Conservation Division Manual<sup>26</sup> (at 644.5.3F), which was developed by the USGS and has long been used by the BLM as implementation guidance for NTL-4A. The BLM requests comment on this provision, including whether 10 MMcf per well per month is an appropriate threshold and whether specific criteria for when royalty will be imposed should be included in the regulatory text. The BLM also requests comment on whether a longer or shorter period for minimizing flaring under an action plan is appropriate.

As under NTL-4A, the evaluation report required under proposed § 3179.201(c)(1) would be required to demonstrate to the BLM’s satisfaction that the expenditures necessary to market or beneficially use the gas are not economically justified. Under proposed § 3179.201(d)(1), the evaluation report would be required to include estimates of the volumes of oil and gas that would be produced to the economic limit if the application to vent or flare were approved, and estimates of

<sup>26</sup> Available at <https://www.ntc.blm.gov/krc/uploads/172/NTL-4A%20Royalty%20or%20Compensation%20for%20Oil%20and%20Gas%20Lost.pdf>.

<sup>25</sup> These States are: New Mexico, Wyoming, Colorado, Utah, Montana, Texas, and Oklahoma.

the volumes of oil and gas that would be produced if the applicant was required to market or use the gas.

From the information contained in the evaluation report, the BLM will determine whether the operator can economically operate the lease if it is required to market or use the gas, taking into consideration both oil and gas production, as well as the economics of a field-wide plan. Under proposed § 3179.201(d)(2), the BLM would be able to require operators to provide updated evaluation reports as additional development occurs or economic conditions improve, but no more than once a year. NTL-4A did not contain a similar provision allowing the BLM to require an operator to update its evaluation report based on changing circumstances. Proposed § 3179.201(d)(2) thus represents a change from NTL-4A. The BLM requests comment on methods for determining whether the operator can economically operate the lease. The BLM also requests comment on the once-a-year limitation on the BLM's authority to require an updated report.

An action plan submitted under proposed § 3179.201(c)(2) would be required to show how the operator will minimize the venting or flaring of the oil-well gas within 1 year. An operator may apply for an approval of an extension of the 1-year time limit. In the event the operator fails to implement the action plan, the entire volume of gas vented or flared during the time covered by the action plan would be subject to royalty.

Proposed § 3179.201(e) provides for grandfathering of prior approvals to flare royalty free. These approvals would continue in effect until no longer necessary because the venting or flaring is authorized by the rules, regulations, or orders of an appropriate State regulatory agency or tribe under proposed § 3179.201(a), or the BLM requires an updated evaluation report and determines to amend or revoke its approval. Existing § 3179.10 of the 2016 rule (as amended by the 2017 Suspension Rule) allows approvals to flare royalty free to continue in effect until January 17, 2019. The BLM specifically requests comment on whether the grandfathering scheme outlined in proposed § 3179.201(e) is appropriate and whether any possible improvements can be made in order to ensure a smooth transition for operators, including whether it is appropriate to phase-out or require the BLM to provide affirmative determinations (*i.e.*, allow for negative consent).

#### Measurement and Reporting Responsibilities

##### 43 CFR 3179.301 Measuring and Reporting Volumes of Gas Vented and Flared

Proposed § 3179.301(a) would require operators to estimate or measure all volumes of lost oil and gas, whether avoidably or unavoidably lost, from wells, facilities, and equipment on a lease, unit PA, or CA and report those volumes under applicable Office of Natural Resources Revenue (ONRR) reporting requirements. Under proposed § 3179.301(b), the operator could: (1) Estimate or measure the vented or flared gas in accordance with applicable rules, regulations, or orders of the appropriate State or tribal regulatory agency; (2) Estimate the volume of the vented or flared gas based on the results of a regularly performed GOR test and measured values for the volume of oil production and gas sales, to allow BLM to independently verify the volume, rate, and heating value of the flared gas; or (3) Measure the volume of the flared gas. The BLM requests comment on any other potential means of estimating these volumes that would reduce burden and maintain accuracy.

Under proposed § 3179.301(c), the BLM would be able to require the installation of additional measurement equipment whenever it determines that the existing methods are inadequate to meet the purposes of subpart 3179. NTL-4A contained essentially the same provision. Based on past experience in implementing NTL-4A, the BLM believes that proposed § 3179.301(c) would help to ensure accuracy and accountability in situations in which high volumes of royalty-bearing gas are being flared.

Proposed § 3179.301(d) would allow the operator to combine gas from multiple leases, unit PAs, or CAs for the purpose of flaring or venting at a common point, but the operator would be required to use a BLM-approved method to allocate the quantities of the vented or flared gas to each lease, unit PA, or CA. Commingling to a single flare is allowed because the BLM recognizes that the additional costs of requiring individual flaring measurement and meter facilities for each lease, unit PA, or communitized area are not necessarily justified by the incremental royalty accountability afforded by the separate meters and flares.

Proposed § 3179.301 is essentially the same as existing § 3179.9. The main difference between the two is that existing § 3179.9 requires measurement or calculation under a particular

protocol when the volume of flared gas exceeds 50 Mcf per day.

##### C. Summary of Estimated Impacts

The BLM reviewed the proposed rule and conducted an RIA and Environmental Assessment (EA) that examine the impacts of the proposed requirements. The draft RIA and draft EA that the BLM prepared have been posted in the docket for the proposed rule on the *Federal eRulemaking Portal*: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE53", click the "Search" button, open the Docket Folder, and look under Supporting Documents. The following discussion is a summary of the proposed rule's economic impacts. For a more complete discussion of the expected economic impacts of the proposed rule, please review the draft RIA.

The BLM's proposed rule would remove almost all of the requirements in the 2016 final rule that we previously estimated would pose a compliance burden to operators and generate benefits of gas savings or reductions in methane emissions. The proposed rule would replace the 2016 final rule's requirements with requirements largely similar to those that were in NTL-4A. Also, for the most part, the proposed rule would remove the administrative burdens associated with the 2016 final rule's subpart 3179.

The baseline for the analysis of this proposed rule accounts for the BLM's 2017 Suspension Rule that has suspended or delayed certain requirements of the 2016 final rule until January 17, 2019. 82 FR 58050 (Dec. 8, 2017). The effect of the 2017 Suspension Rule is to shift the impacts of the affected requirements into the near future. The BLM also revisited the underlying assumptions used in the RIA for the 2016 final rule. Specifically, the BLM revisited the underlying assumptions pertaining to LDAR, administrative burdens, and climate benefits (see sections 3.2, 3.3, and 7 of the RIA).

For this proposed rule, we track the impacts over the first 10 years of implementation against the baseline. The period of analysis in the RIA prepared for the 2016 final rule was 10 years and the period of analysis in the RIA prepared for the 2017 Suspension Rule was 10 years after the suspension or delay. Results are provided using the net present value (NPV) of costs and benefits estimated over the evaluation period, calculated using 7 percent and 3 percent discount rates.

### Estimated Reductions in Compliance Costs (Excluding Cost Savings)

First, we examined the reductions in compliance costs, excluding the savings that would have been realized from product recovery. The proposed rule would reduce compliance costs from the baseline. Over the 10-year evaluation period (2019–2028), we estimate a total reduction in compliance costs of \$1.32 billion to 1.60 billion (NPV using a 7 percent discount rate) or \$1.66 billion to 2.03 billion (NPV using a 3 percent discount rate). We expect very few compliance costs associated with the proposed rule, including the remaining administrative burdens.

### Estimated Reduction in Benefits

The proposed rule would reduce benefits from the baseline, since estimated cost savings that would have come from product recovery would be forgone and the emissions reductions would also be forgone. The proposed rule would result in forgone cost savings from natural gas recovery. Over the 10-year evaluation period (2019–2028), we estimate total forgone cost savings from natural gas recovery (from the baseline) of \$629 million (NPV using a 7 percent discount rate) or \$824 million (NPV using a 3 percent discount rate). The proposed rule also expected to result in forgone methane emissions reductions. Over the 10-year evaluation period (2019–2028), we estimate total forgone methane emissions reductions from the baseline valued at \$66 million (NPV and interim domestic SC–CH<sub>4</sub> using a 7 percent discount rate) or \$259 million (NPV and interim domestic SC–CH<sub>4</sub> using a 3 percent discount rate).

### Estimated Net Benefits

The proposed rule is estimated to result in positive net benefits relative to the baseline. More specifically, we estimate that the reduction of compliance costs would exceed the forgone cost savings from recovered natural gas and the value of the forgone methane emissions reductions. Over the 10-year evaluation period (2019–2028), we estimate total net benefits from the baseline of \$625–900 million (NPV and interim domestic SC–CH<sub>4</sub> using a 7 percent discount rate) or \$578–942 million (NPV and interim domestic SC–CH<sub>4</sub> using a 3 percent discount rate).

### Energy Systems

The proposed rule is expected to influence the production of natural gas, natural gas liquids, and crude oil from onshore Federal and Indian oil and gas leases. However, since the relative changes in production are expected to be small, we do not expect that the

proposed rule would significantly impact the price, supply, or distribution of energy.

The proposed rule would reverse the estimated incremental changes in crude oil and natural gas production associated with the 2016 final rule. Over the 10-year evaluation period (2019–2028), we estimate that 18.4 million barrels of crude oil production and 22.7 Bcf of natural gas production would no longer be deferred (as it would have been under the 2016 final rule). However, we also estimate that there would be 299 Bcf of forgone natural gas production (that would have been produced and sold under the 2016 final rule).

For context, we note the share of the total U.S. production in 2015 that the incremental changes in production would represent. The per-year average of the estimated crude oil volume that would no longer be deferred represents 0.058 percent of the total U.S. crude oil production in 2015. The per-year average of the estimated natural gas volume that would no longer be deferred represents 0.008 percent of the total U.S. natural gas production in 2015. The per-year average of the estimated forgone natural gas production represents 0.109 percent of the total U.S. natural gas production in 2015.

### Royalty Impacts

The 2016 final rule, when implemented, would be expected to impact the production of crude oil and natural gas from Federal and Indian oil and gas leases. In the RIA for the 2016 final rule, the BLM estimated that the rule's requirements would generate additional natural gas production, but that substantial volumes of crude oil production would be deferred or shifted to the future. The BLM concluded that the 2016 final rule would generate overall additional royalty, with the royalty gains from the additional natural gas produced outweighing the value of the royalty losses from crude oil production (and some associated gas) being deferred into the future.

The proposed rule, which reverses most of the 2016 final rule's provisions, is expected to reverse the estimated royalty impacts of the 2016 final rule. This formulation does not account for the potential countervailing impacts of the reduction in compliance burdens, which might spur additional production on Federal and Indian lands and therefore have a positive impact on royalties.

We note that royalty impacts are presented separately from the costs, benefits, and net benefits. 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.

The proposed rule is expected to result in forgone royalty payments to the Federal Government, tribal governments, States, and private landowners. Over the 10-year evaluation period (2019–2028), we estimate total forgone royalty payments (from the baseline) of \$26.4 million (NPV using a 7 percent discount rate) or \$32.7 million (NPV using a 3 percent discount rate).

### Consideration of Alternative Approaches

E.O. 13563 reaffirms the principles of E.O. 12866 and requires that agencies, among other things, “identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.”

The 2016 final rule established requirements and direct regulation on operators. If the proposed rule were finalized, then the BLM would remove the requirements of the 2016 final rule that impose the most substantial direct regulatory burdens on operators. Also, with the proposed rule, the BLM would remove the duplicative operational and equipment requirements and paperwork and administrative burdens.

In developing this proposed rule, the BLM considered scenarios for retaining certain requirements currently in subpart 3179. For example, we examined the impacts of retaining subpart 3179 in its entirety (essentially taking no action). We also examined the impacts of retaining the gas capture requirements of the 2016 final rule (§§ 3179.7–3179.8) and the measurement/metering requirements (§ 3179.9) while rescinding the operational and equipment requirements addressing venting from leaks, pneumatic equipment, and storage tanks. The results of these alternative scenarios are presented in Section 4 of the RIA.



### Employment Impacts

E.O. 13563 reaffirms the principles established in E.O. 12866, but calls for additional consideration of the regulatory impact on employment. E.O. 13563 states, "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." An analysis of employment impacts is a standalone analysis and the impacts should not be included in the estimation of benefits and costs.

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

In the RIA for the 2016 final rule, the BLM concluded that the requirements were not expected to impact the employment within the oil and gas extraction, drilling oil and gas wells, and support activities industries, in any material way. This determination was based on several reasons. First, the estimated incremental gas production represented only a small fraction of the U.S. natural gas production volumes. Second, the estimated compliance costs represented only a small fraction of the annual net incomes of companies likely to be impacted. Third, for those operations that would have been impacted, the 2016 final rule had provisions that would exempt these operations from compliance to the extent that the compliance costs would force the operator to shut in production. Based on these factors, the BLM determined that the 2016 final rule would not alter the investment or employment decisions of firms or significantly adversely impact employment. The RIA also noted that the requirements would necessitate the one-time installation or replacement of equipment and the ongoing implementation of an LDAR program, both of which would require labor.

We do not believe that the proposed rule would substantially alter the investment or employment decisions of firms. By removing or revising the requirements of the 2016 final rule, the BLM would alleviate the associated compliance burdens on operators. The investment and labor necessary to comply with the 2016 rule would not be needed. We do not believe that the cost savings in themselves would be substantial enough to substantially alter

the investment or employment decisions of firms. We also recognize that there may be a small positive impact on investment and employment due to the reduction in compliance burdens if the output effects dominate. The magnitude of the reductions would be relatively small but could carry competitiveness impacts, specifically on marginal wells on Federal lands, deterring investment. In sum, the effect on investment and employment of this rule remains unknown.

### 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 majority of entities operating in the onshore crude oil and natural gas extraction industry and, therefore, the proposed rule would impact a substantial 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. This screening analysis showed that the estimated per-entity reduction in compliance costs would result in an average increase in profit margin of 0.19 percentage points (based on the 2014 company data).<sup>27</sup>

The BLM also notes that most of the emissions-based requirements in the 2016 final rule (including LDAR, pneumatic controllers, pneumatic pumps, and liquids unloading requirements) would impose a particular burden on marginal or low-producing wells.<sup>28</sup> There is concern that those wells would not be able to be operated profitably with the additional compliance costs imposed by the 2016 final rule. While the 2016 final rule allows for exemptions when compliance would impose such costs that the operator would cease production and abandon significant recoverable reserves, due to the prevalence of marginal and low-producing wells, the BLM expects that many exemptions would be warranted, making the burdens imposed by the exemption process, in itself, excessive. The

<sup>27</sup> Average commodity price in 2014 was higher than subsequent years; therefore, the result in profit margin may not be representative of the increase in profit margin as a result of the updated rulemaking.

<sup>28</sup> As explained previously, the IOGCC defines a marginal well as one that produces 10 barrels of oil or 60 Mcf of natural gas per day or less and reports that about 69.1 and 75.9 percent of the nation's operating oil and gas wells, respectively, are marginal.

prospect of either shutting-in a marginal well or assuming unwarranted administrative burdens to avoid compliance costs potentially represents a substantial loss of income for companies operating marginal wells. The BLM's proposal would rescind or revise these requirements in the 2016 final rule, thus reducing compliance costs for all wells, including marginal wells, and reducing the potential economic harm to small businesses.

### Impacts Associated With Oil and Gas Operations on Tribal Lands

The proposed rule would apply to oil and gas operations on both Federal and Indian leases. In the RIA, the BLM estimates the impacts associated with operations on Indian leases, as well as royalty implications for tribal governments. We estimate these impacts by scaling down the total impacts by the share of oil wells on Indian lands and the share of gas wells on Indian Lands. Please reference the RIA at section 4.4.5 for a full explanation of the estimated impacts.

### V. Procedural Matters

#### *Regulatory Planning and Review (E.O. 12866, E.O. 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. The Office of Information and Regulatory Affairs has determined that this proposed rule is economically significant. 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. We have developed this rule in a manner consistent with these requirements.

This proposed rule would rescind or revise portions of the BLM's 2016 final rule. We have developed this proposed rule in a manner consistent with the requirements in Executive Order 12866 and Executive Order 13563. The BLM reviewed the requirements of the

proposed rule and determined that it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For more detailed information, see the RIA prepared for this proposed rule. The RIA has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004–AE53”, click the “Search” button, open the Docket Folder, and look under Supporting Documents.

#### *Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)*

This proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule’s RIA.

#### *Regulatory Flexibility Act*

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

The BLM reviewed the SBA size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the Economic Census. The BLM concludes that the vast majority of entities operating in the relevant sectors are small businesses as defined by the SBA. As such, the proposed rule would likely affect a substantial number of small entities.

The BLM reviewed the proposed rule and estimates that it would generate cost savings of about \$69,000 per entity per year. These estimated cost savings would provide relief to small operators which, the BLM notes, represent the overwhelming majority of operators of Federal and Indian leases.

For the purpose of carrying out its review pursuant to the RFA, the BLM believes that the proposed rule would not have a “significant economic impact

on a substantial number of small entities,” as that phrase is used in 5 U.S.C. 605. An initial regulatory flexibility analysis is therefore not required. In making a “significant” determination under the RFA, BLM used an estimated per-entity cost savings to conduct a screening analysis. The analysis shows that the average reduction in compliance costs associated with this proposed rule are a small enough percentage of the profit margin for small entities, so as not to be considered “significant” under the RFA.

Details on this determination can be found in the RIA for the proposed rule.

#### *Small Business Regulatory Enforcement Fairness Act*

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

(a) Would have an annual effect on the economy of \$100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Would not have a significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act (UMRA)*

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

#### *Governmental Actions and Interference With Constitutionally Protected Property Right—Takings (Executive Order 12630)*

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. The proposed rule would rescind or revise many of the requirements placed on operators by the 2016 final rule. Operators would not have to undertake the associated compliance activities, either operational or administrative. Therefore, the proposed rule would impact some operational and administrative requirements on Federal and Indian lands. All such operations are subject to lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and regulations. This proposed rule conforms to the terms of those leases and applicable statutes and, as such, the rule is not a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the rule would not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

#### *Federalism (Executive Order 13132)*

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

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

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

This proposed rule complies with the requirements of Executive Order 12988. More specifically, this proposed rule meets the criteria of section 3(a), which requires agencies to review all

regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This proposed rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

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

The Department strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian tribes that would result from this proposed rule. Under this proposed rule, oil and gas operations on tribal and allotted lands would no longer be subject to many of the requirements placed on operators by the 2016 final rule.

The BLM believes that revising the requirements of subpart 3179 would prevent Indian lands from being viewed as less attractive to oil and gas operators than non-Indian lands due to unnecessary and burdensome compliance costs, thereby preventing economic harm to tribes and allottees. The BLM is conducting tribal outreach which it believes is appropriate given that the proposed rule would remove many of the compliance burdens of the 2016 final rule, defer to tribal laws, regulations, rules, and orders, with respect to oil-well gas flaring from Indian leases, and otherwise revise subpart 3179 in a manner that aligns it with NTL-4A. The BLM notified tribes of the action and requested feedback and comment through the respective BLM State Office Directors. Future tribal consultation may occur on an ongoing basis.

*Paperwork Reduction Act*

1. Overview

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

OMB approved 24 information collection activities in a final rule pertaining to waste prevention and assigned control number 1004–0211 to those activities. See “Waste Prevention, Production Subject to Royalties, and Resource Conservation,” Final Rule, 81 FR 83008 (Nov. 18, 2016). 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.

On October 5, 2017, the BLM proposed a rule that would suspend or delay several regulations in the 2016 final rule. In that proposed rule, the BLM requested the extension of control number 1004–0211 until January 31, 2019, including the 24 information collection activities in the 2016 final rule. The BLM invited public comment on the proposed extension of control no. 1004–0211. The BLM also submitted the information collection request for this proposed rule to OMB for review in accordance with the PRA.

The BLM finalized that rule on December 8, 2017. See 82 FR 58050. OMB approved the information collection activities in the rule with an expiration date of December 31, 2020, and with a Term of Clearance that maintains the effectiveness of the Terms of Clearance associated with the 2016 final rule. That Term of Clearance requires the BLM to submit to the Office of Information and Regulatory Affairs draft guidance to implement the collection of information requirements of the 2016 final rule no later than 3 months after January 17, 2019.

This proposed rule would not modify any regulations in 43 CFR subpart 3178. Accordingly, the BLM requests continuation of the information collection activity at 43 CFR 3178.5, 3178.7, 3178.8, and 3178.9 (“Request for Approval for Royalty-Free Uses On-Lease or Off-Lease”).

The proposed rule would remove the information collection activity at 43 CFR 3162.3–1(j) (“Plan to Minimize Waste of Natural Gas”). The proposed rule also would remove or revise many regulations and information collection activities in 43 CFR subpart 3179. As a result, the BLM now requests revision of control number 1004–0211 to include:

- The information collection activities in this proposed rule; and
- The information collection activity entitled “Request for Approval for Royalty-Free Uses On-Lease or Off-Lease.”

The BLM requests comments on the following subjects:

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

If you want to comment on the information collection requirements of this proposed rule, please send your comments directly to OMB, with a copy to the BLM, as directed in the **ADDRESSES** section of this preamble. Please identify your comments with “OMB Control Number 1004–0211.” OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by March 26, 2018.

2. Summary of Information Collection Activities

*Title:* Waste Prevention, Production Subject to Royalties, and Resource Conservation (43 CFR parts 3160 and 3170).

*OMB Control Number:* 1004–0211.

*Form:* 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 that control number 1004–0211 be revised to include the information collection activities in this proposed rule, as well as the information collection activity in 43 CFR subpart 3178 that was in the 2016 final rule. The BLM also requests the removal of the information collection activity in 43 CFR 3162.3–1(j) that was in the 2016 final rule, and the removal or revision of the information collection activities that were in 43 CFR subpart 3179 of the 2016 final rule.

*Estimated Number of Responses:* 1,075.

*Estimated Total Annual Burden Hours:* 4,010.

*Estimated Total Non-Hour Cost:* None.

### 3. Information Collection Request

A. The BLM requests that OMB control number 1004–0211 continue to include the following information collection activity that was included at 43 CFR subpart 3178 of the 2016 final rule:

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

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

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

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

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

Section 3178.8 requires that an operator measure or estimate the volume of royalty-free gas used in operations upstream of the FMP. In general, the operator is free to choose whether to measure or estimate, with the exception that the operator must in all cases measure the following volumes:

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

- Royalty-free oil used pursuant to §§ 3178.4 through 3178.7.

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

to document the removal of the oil from the tank or pipeline.

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

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

- A complete description of the operation to be conducted, including the location of all facilities and equipment involved in the operation and the location of the FMP;
- The volume of oil or gas that the operator expects will be used in the operation and the method of measuring or estimating that volume;
- If the volume expected to be used will be estimated, the basis for the estimate (e.g., equipment manufacturer's published consumption or usage rates); and
- The proposed disposition of the oil or gas used (e.g., whether gas used would be consumed as fuel, vented through use of a gas-activated pneumatic controller, returned to the reservoir, or disposed by some other method).

B. The BLM requests the revision of the following information collection activities in accordance with this proposed rule:

Request for Extension of Royalty-Free Flaring During Initial Production Testing (43 CFR 3179.101)

A regulation in the 2016 final rule, 43 CFR 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.

A regulation in this proposed rule, 43 CFR 3179.101, would be similar to the 2016 final rule in addressing the royalty-free treatment of gas volumes flared during initial production testing. 43 CFR 3179.101 in this proposed rule would provide that gas flared during the initial production test of each completed interval in a well is royalty free until one of the following occurs:

- The operator determines that it has obtained adequate reservoir information;
- 30 days have passed since the beginning of the production test, unless the BLM approves a longer test period; or
- The operator has flared 50 MMcf of gas.

Section 3179.101 of this proposed rule would also provide that an operator may request a longer test period by submitting a Sundry Notice.

Request for Extension of Royalty-Free Flaring During Subsequent Well Testing (43 CFR 3179.102)

A regulation in the 2016 final rule, 43 CFR 3179.104, allows gas to be flared royalty free for no more than 24 hours during well tests subsequent to the initial production test. That regulation allows an operator to seek authorization to flare royalty free for a longer period by submitting a Sundry Notice (Form 3160–5) to the BLM.

A regulation in this proposed rule, 43 CFR 3179.102, is substantively identical to 43 CFR 3179.104 in the 2016 final rule. Accordingly, the BLM requests that the information collection activity at 43 CFR 3179.102 of this proposed rule replace the activity at 43 CFR 3179.104 of the 2016 final rule.

Emergencies (43 CFR 3179.103)

A regulation in the 2016 final rule, 43 CFR 3179.105, allows an operator to flare gas royalty free during a temporary, short-term, infrequent, and unavoidable emergency. A regulation in this proposed rule, at 43 CFR 3179.103, is almost identical to 43 CFR 3179.105 of the 2016 final rule. The BLM thus requests that the information collection activity entitled, "Reporting of Venting or Flaring (43 CFR 3179.105)" be re-named "Emergencies (43 CFR 3179.103)."

As provided at 43 CFR 3179.103(a) of this proposed rule, gas flared or vented during an emergency would be royalty free for a period not to exceed 24 hours, unless the BLM determines that emergency conditions exist necessitating venting or flaring for a longer period. Section 3179.103(d) of this proposed rule would require the operator to report to the BLM on a Sundry Notice, within 45 days of the start of an emergency, the estimated volumes flared or vented beyond the timeframe specified in paragraph (a).

As defined at 43 CFR 3179.103(b) of this proposed rule, an "emergency" for purposes of 43 CFR subpart 3179 would be a temporary, infrequent and unavoidable situation in which the loss of gas or oil is uncontrollable or necessary to avoid risk of an immediate

and substantial adverse impact on safety, public health, or the environment, and is not due to operator negligence.

As provided at 43 CFR 3179.103(c) of this proposed rule, the following events would not constitute emergencies for the purposes of royalty assessment:

- The operator’s failure to install appropriate equipment of a sufficient capacity to accommodate the production conditions;
- 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;
- Scheduled maintenance;
- A situation caused by operator negligence, including recurring equipment failures; or
- A situation on a lease, unit, or communitized area that has already experienced 3 or more emergencies within the past 30 days, unless the BLM determines that the occurrence of more than 3 emergencies within the 30 day period could not have been anticipated and was beyond the operator’s control.

C. The BLM requests the removal of the following information collection activities in accordance with this proposed rule:

1. “Plan to Minimize Waste of Natural Gas”;
2. “Notification of Choice to Comply on County- or State-wide Basis”;
3. “Request for Approval of Alternative Capture Requirement”;
4. “Request for Exemption from Well Completion Requirements”;
5. “Notification of Functional Needs for a Pneumatic Controller”;
6. “Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves (Pneumatic Controller)”;
7. “Showing in Support of Replacement of Pneumatic Controller within 3 Years”;
8. “Showing that a Pneumatic Diaphragm Pump was Operated on Fewer than 90 Individual Days in the Prior Calendar Year”;
9. “Notification of Functional Needs for a Pneumatic Diaphragm Pump”;
10. “Showing that Cost of Compliance Would Cause Cessation of Production

and Abandonment of Oil Reserves (Pneumatic Diaphragm Pump)”;

11. “Showing in Support of Replacement of Pneumatic Diaphragm Pump within 3 Years”;
12. “Storage Vessels”;
13. “Downhole Well Maintenance and Liquids Unloading—Documentation and Reporting”;
14. “Downhole Well Maintenance and Liquids Unloading—Notification of Excessive Duration or Volume”;
15. “Leak Detection—Compliance with EPA Regulations”;
16. “Leak Detection—Request to Use an Alternative Monitoring Device and Protocol”;
17. “Leak Detection—Operator Request to Use an Alternative Leak Detection Program”;
18. “Leak Detection—Operator Request for Exemption Allowing Use of an Alternative Leak-Detection Program that Does Not Meet Specified Criteria”;
19. “Leak Detection—Notification of Delay in Repairing Leaks”;
20. “Leak Detection—Inspection Recordkeeping and Reporting”;
21. “Leak Detection—Annual Reporting of Inspections.”

D. The BLM requests the addition of following information collection activity, in accordance with this proposed rule:  
Oil-Well Gas (43 CFR 3179.201)

A regulation in this proposed rule, 43 CFR 3179.201, would provide that, except as otherwise provided in 43 CFR subpart 3179, oil-well gas may not be vented or flared royalty free unless BLM approves such action in writing. The BLM would be authorized to approve an application for royalty-free venting or flaring of oil-well gas upon determining that royalty-free venting or flaring is justified by the operator’s submission of either:

- (1) An evaluation report supported by engineering, geologic, and economic data that demonstrates to the BLM’s satisfaction that the expenditures necessary to market or beneficially use such gas are not economically justified; or
- (2) An action plan showing how the operator will minimize the venting or flaring of the gas within 1 year or within

a greater amount of time if the operator justifies an extended deadline. If the operator fails to implement the action plan, the gas vented or flared during the time covered by the action plan would be subject to royalty.

The data in the evaluation report that is mentioned above would need to include:

- The applicant’s estimates of the volumes of oil and gas that would be produced to the economic limit if the application to vent or flare were approved; and
- The volumes of the oil and gas that would be produced if the applicant were required to market or use the gas.

The BLM would be authorized to require the operator to provide an updated evaluation report as additional development occurs or economic conditions improve. In addition, the BLM would be authorized to determine that gas is avoidably lost and therefore subject to royalty if flaring exceeds 10 MMcf per well during any month.

4. Burden Estimates

This proposed rule would result in the following adjustments in hour or cost burden that result from the review of the proposed rule under Executive Order 12866:

1. The hours per response for Request for Approval for Royalty-Free Uses On-Lease or Off-Lease would be increased from 4 to 8.
2. The number of responses for “Request for Extension of Royalty-Free Flaring During Initial Well Testing” would be increased from 500 to 750.

Program changes in this proposed rule would result in 62,125 fewer responses than in the 2016 final rule (1,075 responses minus 63,200 responses) and 78,160 fewer burden hours than in the 2016 final rule (4,010 responses minus 82,170 responses). The program changes and their reasons are itemized in Tables 15–1 and 15–2 of the supporting statement.

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

Type of response	Number of responses	Hours per response	Total hours (column B × column C)
A	B	C	D
Request for Approval for Royalty-Free Uses On-Lease or Off-Lease, 43 CFR 3178.5, 3178.7, 3178.8, and 3178.9, Form 3160–5 .....	50	8	400
Request for Extension of Royalty-Free Flaring During Initial Production Testing, 43 CFR 3179.101, Form 3160–5 .....	750	2	1,500
Request for Extension of Royalty-Free Flaring During Subsequent Well Testing, 43 CFR 3179.102, Form 3160–5 .....	5	2	10

Type of response	Number of responses	Hours per response	Total hours (column B × column C)
A	B	C	D
Emergencies, 43 CFR 3179.103, Form 3160–5 .....	250	2	500
Oil-Well Gas, 43 CFR 3179.201 .....	20	80	1,600
Totals .....	1,075	.....	4,010

*National Environmental Policy Act*

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

The draft EA has been placed in the file for the BLM’s Administrative Record for the rule at the address specified in the **ADDRESSES** section. The EA has also been posted in the docket for the rule on the *Federal eRulemaking Portal*: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004–AE53”, click the “Search” button, open the Docket Folder, and look under Supporting Documents. The BLM invites the public to review the draft EA and suggests that anyone wishing to submit comments on the EA should do so in accordance with the instructions contained in the “Public Comment Procedures” section above.

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

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

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

The rule would rescind or revise certain requirements in the 2016 final rule and would reduce compliance burdens. The BLM determined that the 2016 final rule would not have impacted the supply, distribution, or use of energy. It stands to reason that a revision in a manner that conforms 43 CFR subpart 3179 with the policies governing venting and flaring prior to the 2016 final rule will likewise not have an impact on the supply, distribution, or use of energy. As such, we do not consider the proposed rule to be a “significant energy action” as defined in Executive Order 13211.

*Clarity of This Regulation (Executive Orders 12866)*

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

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

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

*Authors*

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

Bremner of the BLM’s Division of Regulatory Affairs and by the Department of the Interior’s Office of the Solicitor.

**List of Subjects**

*43 CFR Part 3160*

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

*43 CFR Part 3170*

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

Dated: February 8, 2018.

**Joseph R. Balash,**

*Assistant Secretary for Land and Minerals Management.*

**43 CFR Chapter II**

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR parts 3160 and 3179 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; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

**§ 3162.3–1 [Amended]**

- 2. Amend § 3162.3–1 by removing paragraph (j).

**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. Revise subpart 3179 to read as follows:

**Subpart 3179—Waste Prevention and Resource Conservation**

Secs.

3179.1 Purpose.

3179.2 Scope.

3179.3 Definitions and acronyms.

3179.4 Determining when the loss of oil or gas is avoidable or unavoidable.

3179.5 When lost production is subject to royalty.

3179.6 Venting limitations.

Authorized Flaring and Venting of Gas

3179.101 Initial production testing.

3179.102 Subsequent well tests.

3179.103 Emergencies.

3179.104 Downhole well maintenance and liquids unloading.

Other Venting or Flaring

3179.201 Oil-well gas.

Measurement and Reporting Responsibilities

3179.301 Measuring and reporting volumes of gas vented and flared.

**Subpart 3179—Waste Prevention and Resource Conservation**

**§ 3179.1 Purpose.**

The purpose of this subpart is to implement and carry out the purposes of statutes relating to prevention of waste from Federal and Indian (other than Osage Tribe) leases, conservation of surface resources, and management of the public lands for multiple use and sustained yield. This subpart supersedes those portions of Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A), pertaining to, among other things, flaring and venting of produced gas, unavoidably and avoidably lost gas, and waste prevention.

**§ 3179.2 Scope.**

(a) This subpart applies to:

(1) All onshore Federal and Indian (other than Osage Tribe) oil and gas leases, units, and communitized areas, except as otherwise provided in this subpart;

(2) IMDA oil and gas agreements, unless specifically excluded in the agreement or unless the relevant provisions of this subpart are inconsistent with the agreement;

(3) Leases and other business agreements and contracts for the development of tribal energy resources under a Tribal Energy Resource Agreement entered into with the Secretary, unless specifically excluded in the lease, other business agreement, or Tribal Energy Resource Agreement;

(4) Committed State or private tracts in a federally approved unit or communitization agreement defined by

or established under 43 CFR subpart 3105 or 43 CFR part 3180; and

(5) All onshore well facilities located on a Federal or Indian lease or a federally approved unit or communitized area.

(b) For purposes of this subpart, the term “lease” also includes IMDA agreements.

**§ 3179.3 Definitions and acronyms.**

As used in this subpart, the term:

*Automatic ignition system* means an automatic ignitor and, where needed to ensure continuous combustion, a continuous pilot flame.

*Capture* means the physical containment of natural gas for transportation to market or productive use of natural gas, and includes injection and royalty-free on-site uses pursuant to subpart 3178.

*Gas-to-oil ratio (GOR)* means the ratio of gas to oil in the production stream expressed in standard cubic feet of gas per barrel of oil.

*Gas well* means a well for which the energy equivalent of the gas produced, including its entrained liquefiable hydrocarbons, exceeds the energy equivalent of the oil produced, as determined at the time of well completion.

*Liquids unloading* means the removal of an accumulation of liquid hydrocarbons or water from the wellbore of a completed gas well.

*Lost oil or lost gas* means produced oil or gas that escapes containment, either intentionally or unintentionally, or is flared before being removed from the lease, unit, or communitized area, and cannot be recovered.

*Oil well* means a well for which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced, as determined at the time of well completion.

*Waste of oil or gas* means any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production, where compliance costs are not greater than the monetary value of the resources they are expected to conserve, and which results in: (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or (2) avoidable surface loss of oil or gas.

**§ 3179.4 Determining when the loss of oil or gas is avoidable or unavoidable.**

For purposes of this subpart:

(a) *Avoidably lost* production means:

(1) Gas that is vented or flared without the authorization or approval of the BLM; or

(2) Produced oil or gas that is lost when the BLM determines that such loss occurred as a result of:

(i) Negligence on the part of the operator;

(ii) The failure of the operator to take all reasonable measures to prevent or control the loss; or

(iii) The failure of the operator to comply fully with the applicable lease terms and regulations, appropriate provisions of the approved operating plan, or prior written orders of the BLM.

(b) *Unavoidably lost* production means:

(1) Oil or gas that is lost because of line failures, equipment malfunctions, blowouts, fires, or other similar circumstances, except where the BLM determines that the loss was avoidable pursuant to § 3179.4(a)(2);

(2) Oil or gas that is lost from the following operations or sources, except where the BLM determines that the loss was avoidable pursuant to § 3179.4(a)(2):

(i) Well drilling;

(ii) Well completion and related operations;

(iii) Initial production tests, subject to the limitations in § 3179.101;

(iv) Subsequent well tests, subject to the limitations in § 3179.102;

(v) Exploratory coalbed methane well dewatering;

(vi) Emergencies, subject to the limitations in § 3179.103;

(vii) Normal gas vapor losses from a storage tank or other low pressure production vessel, unless the BLM determines that recovery of the gas vapors is warranted;

(viii) Well venting in the course of downhole well maintenance and/or liquids unloading performed in compliance with § 3179.104; or

(ix) Facility and pipeline maintenance, such as when an operator must blow-down and depressurize equipment to perform maintenance or repairs; or

(3) Produced gas that is flared or vented with BLM authorization or approval.

**§ 3179.5 When lost production is subject to royalty.**

(a) Royalty is due on all avoidably lost oil or gas.

(b) Royalty is not due on any unavoidably lost oil or gas.

**§ 3179.6 Venting limitations.**

(a) Gas well gas may not be flared or vented, except where it is unavoidably lost pursuant to § 3179.4(b).

(b) The operator must flare, rather than vent, any gas that is not captured, except:

(1) When flaring the gas is technically infeasible, such as when the gas is not readily combustible or the volumes are too small to flare;

(2) Under emergency conditions, as defined in § 3179.105, when the loss of gas is uncontrollable or venting is necessary for safety;

(3) When the gas is vented through normal operation of a natural gas-activated pneumatic controller or pump;

(4) When gas vapor is vented from a storage tank or other low pressure production vessel, unless the BLM determines that recovery of the gas vapors is warranted;

(5) When the gas is vented during downhole well maintenance or liquids unloading activities;

(6) When the gas venting is necessary to allow non-routine facility and pipeline maintenance to be performed, such as when an operator must, upon occasion, blow-down and depressurize equipment to perform maintenance or repairs; or

(7) When a release of gas is unavoidable under § 3179.4 and flaring is prohibited by Federal, State, local or tribal law, regulation, or enforceable permit term.

(c) For purposes of this subpart, all flares or combustion devices must be equipped with an automatic ignition system.

#### Authorized Flaring and Venting of Gas

##### § 3179.101 Initial production testing.

(a) Gas flared during the initial production test of each completed interval in a well is royalty free until one of the following occurs:

(1) The operator determines that it has obtained adequate reservoir information;

(2) 30 days have passed since the beginning of the production test, unless the BLM approves a longer test period; or

(3) The operator has flared 50 million cubic feet (MMcf) of gas.

(b) The operator may request a longer test period and must submit its request using a Sundry Notice.

##### § 3179.102 Subsequent well tests.

(a) Gas flared during well tests subsequent to the initial production test is royalty free for a period not to exceed 24 hours, unless the BLM approves or requires a longer test period.

(b) The operator may request a longer test period and must submit its request using a Sundry Notice.

##### § 3179.103 Emergencies.

(a) Gas flared or vented during an emergency is royalty free for a period not to exceed 24 hours, unless the BLM

determines that emergency conditions exist necessitating venting or flaring for a longer period.

(b) For purposes of this subpart, an “emergency” is a temporary, infrequent and unavoidable situation in which the loss of gas or oil is uncontrollable or necessary to avoid risk of an immediate and substantial adverse impact on safety, public health, or the environment, and is not due to operator negligence.

(c) The following do not constitute emergencies for the purposes of royalty assessment:

(1) The operator’s failure to install appropriate equipment of a sufficient capacity to accommodate the production conditions;

(2) 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;

(3) Scheduled maintenance;

(4) A situation caused by operator negligence, including recurring equipment failures; or

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

(d) Within 45 days of the start of the emergency, the operator must estimate and report to the BLM on a Sundry Notice the volumes flared or vented beyond the timeframe specified in paragraph (a) of this section.

##### § 3179.104 Downhole well maintenance and liquids unloading.

(a) Gas vented or flared during downhole well maintenance and well purging is royalty free for a period not to exceed 24 hours, provided that the requirements of paragraphs (b) through (d) of this section are met. Gas vented or flared from a plunger lift system and/or an automated well control system is royalty free, provided the requirements of paragraphs (b) and (c) of this section are met.

(b) The operator must minimize the loss of gas associated with downhole well maintenance and liquids unloading, consistent with safe operations.

(c) For wells equipped with a plunger lift system and/or an automated well control system, minimizing gas loss under paragraph (b) of this section includes optimizing the operation of the system to minimize gas losses to the extent possible consistent with

removing liquids that would inhibit proper function of the well.

(d) For any liquids unloading by manual well purging, the operator must ensure that the person conducting the well purging remains present on-site throughout the event to end the event as soon as practical, thereby minimizing to the maximum extent practicable any venting to the atmosphere;

(e) For purposes of this section, “well purging” means blowing accumulated liquids out of a wellbore by reservoir gas pressure, whether manually or by an automatic control system that relies on real-time pressure or flow, timers, or other well data, where the gas is vented to the atmosphere, and it does not apply to wells equipped with a plunger lift system.

#### Other Venting or Flaring

##### § 3179.201 Oil-well gas.

(a) Except as provided in §§ 3179.101, 3179.102, 3179.103, and 3179.104 of this subpart, vented or flared oil-well gas is royalty free if it is vented or flared pursuant to applicable rules, regulations, or orders of the appropriate State regulatory agency or tribe.

(b) With respect to production from Indian leases, vented or flared oil-well gas will be treated as royalty free pursuant to paragraph (a) of this section only to the extent it is consistent with the BLM’s trust responsibility.

(c) Except as otherwise provided in this subpart, oil-well gas may not be vented or flared royalty free unless BLM approves it in writing. The BLM may approve an application for royalty-free venting or flaring of oil-well gas if it determines that it is justified by the operator’s submission of either:

(1) An evaluation report supported by engineering, geologic, and economic data that demonstrates to the BLM’s satisfaction that the expenditures necessary to market or beneficially use such gas are not economically justified. If flaring exceeds 10 MMcf per well during any month, the BLM may determine that the gas is avoidably lost and therefore subject to royalty; or

(2) An action plan showing how the operator will minimize the venting or flaring of the oil-well gas within 1 year. An operator may apply for approval of an extension of the 1-year time limit, if justified. If the operator fails to implement the action plan, the gas vented or flared during the time covered by the action plan will be subject to royalty. If flaring exceeds 10 MMcf per well during any month, the BLM may determine that the gas is avoidably lost and therefore subject to royalty.

(d) The evaluation report in paragraph (c)(1) of this section:



(1) Must include all appropriate engineering, geologic, and economic data to support the applicant's determination that marketing or using the gas is not economically viable. The information provided must include the applicant's estimates of the volumes of oil and gas that would be produced to the economic limit if the application to vent or flare were approved and the volumes of the oil and gas that would be produced if the applicant was required to market or use the gas. When evaluating the feasibility of marketing or using of the gas, the BLM will determine whether the operator can economically operate the lease if it is required to market or use the gas, considering the total leasehold production, including both oil and gas, as well as the economics of a field-wide plan; and

(2) The BLM may require the operator to provide an updated evaluation report as additional development occurs or economic conditions improve, but no more than once a year.

(e) An approval to flare royalty free, which is in effect as of the effective date

of this rule, will continue in effect unless:

(1) The approval is no longer necessary because the venting or flaring is authorized by the applicable rules, regulations, or orders of an appropriate State regulatory agency or tribe, as provided in paragraph (a) of this section; or

(2) The BLM requires an updated evaluation report under paragraph (d)(2) of this section and determines to amend or revoke its approval.

#### **Measurement and Reporting Responsibilities**

##### **§ 3179.301 Measuring and reporting volumes of gas vented and flared.**

(a) The operator must estimate or measure all volumes of lost oil and gas, whether avoidably or unavoidably lost, from wells, facilities and equipment on a lease, unit PA, or communitized area and report those volumes under applicable ONRR reporting requirements.

(b) The operator may:

(1) Estimate or measure vented or flared gas in accordance with applicable

rules, regulations, or orders of the appropriate State or tribal regulatory agency;

(2) Estimate the volume of the vented or flared gas based on the results of a regularly performed GOR test and measured values for the volumes of oil production and gas sales, to allow BLM to independently verify the volume, rate, and heating value of the flared gas; or

(3) Measure the volume of the flared gas.

(c) The BLM may require the installation of additional measurement equipment whenever it is determined that the existing methods are inadequate to meet the purposes of this subpart.

(d) The operator may combine gas from multiple leases, unit PAs, or communitized areas for the purpose of flaring or venting at a common point, but must use a method approved by the BLM to allocate the quantities of the vented or flared gas to each lease, unit PA, or communitized area.

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