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Office of the Solicitor | United States Department of the Interior  
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<2017 03 31 VF CRA Briefing Memo\_KM comments MDN 4-4-17.jt.cmr.docx>

**Michael Nedd** <[mnedd@blm.gov](mailto:mnedd@blm.gov)>

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**From:** Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>  
**Sent:** Tue Apr 04 2017 15:39:26 GMT-0600 (MDT)  
**To:** Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>, Lonny Bagley <[lbagley@blm.gov](mailto:lbagley@blm.gov)>, Christopher Rhymes <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)>  
**CC:** tshannon@blm.gov, Shannon Stewart <[scstewar@blm.gov](mailto:scstewar@blm.gov)>  
**Subject:** RE: V&F Paper

Team,

I'm getting pinged from upstairs on the ? and comments in the paper... Do you have an ETA for when we'll get a response?

**Take care and have a wonderful day! : )**

Michael D. Nedd  
202-208-3801 Office  
202-208-5242 Fax  
[mnedd@blm.gov](mailto:mnedd@blm.gov)

**A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"**

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**From:** Michael Nedd [<mailto:mnedd@blm.gov>]  
**Sent:** Tuesday, April 04, 2017 12:36 PM  
**To:** Timothy Spisak; Lonny Bagley; Christopher Rhymes  
**Cc:** [tshannon@blm.gov](mailto:tshannon@blm.gov); Shannon Stewart  
**Subject:** V&F Paper

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**From:** Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>

**Sent:** Tue Apr 04 2017 15:40:07 GMT-0600 (MDT)  
**To:** Michael Nedd <mnedd@blm.gov>  
**CC:** Lonny Bagley <lbagley@blm.gov>, Christopher Rhymes <christopher.rhymes@sol.doi.gov>, "tshannon@blm.gov" <tshannon@blm.gov>, Shannon Stewart <scstewar@blm.gov>  
**Subject:** Re: V&F Paper

First thing tomorrow morning.

Sent from my iPhone

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**Cc:** Lonny Bagley; Christopher Rhymes; [tshannon@blm.gov](mailto:tshannon@blm.gov); Shannon Stewart  
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**From:** Timothy Spisak <tspisak@blm.gov>  
**Sent:** Wed Apr 05 2017 06:11:57 GMT-0600 (MDT)  
**To:** Michael Nedd <mnedd@blm.gov>  
Lonny Bagley <lbagley@blm.gov>, Christopher Rhymes <christopher.rhymes@sol.doi.gov>, Timothy Shannon <tshannon@blm.gov>, Shannon Stewart <scstewar@blm.gov>, "Tichenor, James C" <jtichenor@blm.gov>, Shelley McGinnis <smcginnis@blm.gov>  
**CC:**  
**Subject:** RE: V&F Paper  
**Attachments:** 2017 04 05 VF CRA Briefing Memo.docx

Mike, as requested, attached is the updated subject paper.

Thanks  
Tim

'Serenity Now!' – Frank Costanza, *Seinfeld*, 1997  
'Serenity now, insanity later' – Lloyd Braun, *Seinfeld*, 1997

\*\*\*\*\*

Timothy 'Tim' R. Spisak  
Acting Assistant Director,  
Energy, Minerals & Realty Management, WO-300  
DOI-Bureau of Land Management  
[tspisak@blm.gov](mailto:tspisak@blm.gov)  
(202) 208-4201 office  
(202) 251-3079 cell  
\*\*\*\*\*

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**From:** Michael Nedd [mailto:[mnedd@blm.gov](mailto:mnedd@blm.gov)]  
**Sent:** Tuesday, April 04, 2017 5:41 PM  
**To:** Timothy Spisak  
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**Subject:** RE: V&F Paper

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**A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"**

Summary of the Final Rule

The “Venting & Flaring Rule” is formally the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). These regulations are codified at new 43 CFR subparts 3178 and 3179 and became effective on January 17, 2017.

Statutory Authority and Regulatory History

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. §§ 188–287) subjects federal oil and gas leases to the condition that lessees will “use all reasonable precautions to prevent waste of oil and gas developed in the land . . . .” 30 U.S.C. § 225. Further, the MLA requires lessees to exercise “reasonable diligence, skill, and care” in their operations and requires lessees to observe “such rules for the health and safety of the miners and for the prevention of undue waste as may be prescribed by [the] Secretary [of the Interior].” 30 U.S.C. § 187. The Federal Oil and Gas Royalty Management Act (FOGRMA) makes lessees liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence or the failure to comply with applicable rules or regulations. 30 U.S.C. § 1756. Both the MLA and FOGRMA authorize the Secretary of the Interior to prescribe rules and regulations necessary to carry out the purposes of those statutes. 30 U.S.C. § 189; 30 U.S.C. § 1751.

From 1979 until this January, the Department regulated the venting, flaring, and royalty-free use of gas pursuant to NTL-4A, which placed limits on the venting and flaring of gas and defined when gas was “unavoidably lost” and therefore not subject to royalties. The BLM’s Venting & Flaring Rule updated NTL-4A’s royalty-free use provisions as well as its restrictions on venting and flaring. The Venting & Flaring Rule also imposed leak detection and repair (LDAR) requirements and requirements for pneumatic equipment and storage tanks that were designed to reduce methane emissions. Such emissions-focused requirements did not appear in NTL-4A and some states and industry groups have asserted that these requirements are actually within the jurisdiction of the Environmental Protection Agency and the states under the Clean Air Act.

Compliance Timeline

Although the Venting & Flaring Rule went into effect in January 2017, many of the Rule’s more onerous requirements are not yet operative. Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs) and imposes restrictions on venting. Operators do not have to comply with the Rule’s gas capture requirements, equipment upgrade/replacement requirements, or LDAR requirements until January 17, 2018. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources to prepare to comply at the appropriate time.

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Estimated Costs of Compliance

The Bureau of Land Management (BLM) expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million. Average per-entity compliance costs are expected to range from about \$44,600 to \$65,800 per entity, per year. First year compliance costs are estimated to be \$113 million, with \$84 million of that cost being for LDAR.

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The Rule's waste minimization plans are expected to require about 16,000 hours of paperwork effort in the first year, resulting in about \$1 million in costs to approximately 1,800 operators. The Rule's venting, flaring, and leaks requirements are expected to require about 7,200 hours of paperwork effort in the first year, resulting in about \$500,000 in operator costs (these paperwork burdens eventually triple as annual LDAR components commence).

The expected benefits of the Rule are \$3 to \$13 million per year (or \$65 million over 10 years) in increased royalty revenues. Relative to 2014 levels, the venting of methane is expected to be reduced by 35% and the flaring of associated gas is expected to be reduced by 49% when the capture requirements are fully phased-in.

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If the Rule is *not* overturned under the Congressional Review Act . . .

- The Rule will continue in effect, unless overturned in pending litigation. Industry would continue to incur compliance costs.
- Within three months, the BLM could develop a proposed revision of the Rule, based on its recent rulemaking experience. The OMB would then need up to three months to review and clear the proposal.
- Once cleared by the Department of the Interior, the proposed rule would be published in the Federal Register and undergo a 60-day notice-and-comment period.
- After about two months of reviewing the comments and revising the proposed rule in light of those comments, the BLM would send the revised rule to OMB for up to three months of review.
- Finally, the BLM would publish the final rule in the Federal Register to become effective in 60 days.
- The total estimated time for this rulemaking is 13 months and the estimated cost to the BLM is \$1.2 to \$2 million. This new rulemaking is not expected to be complete before January 17, 2018, when the more onerous requirements of the Rule go into effect.

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### Estimated Costs of Compliance

The Bureau of Land Management (BLM) expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million [\(or about \\$50 and \\$176 million when we factor in estimated product recovery\)](#). Average per-entity compliance costs are expected to range from about \$44,600 to \$65,800 per entity, per year. First year compliance costs are estimated to be \$113 million, with \$84 million of that cost being for LDAR.

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If the Rule is *not* overturned under the Congressional Review Act . . .

- The Rule will continue in effect, unless overturned in pending litigation. Industry would continue to incur compliance costs.
- The BLM could finalize a rule within 13 months for \$1.2 – 2 million. Adding an ANPR would take slightly longer. This new rulemaking is not expected to be complete before January 17, 2018, when the more onerous requirements of the Rule go into effect.
- The litigation risk is [Redacted]. The potential cost of litigation is \$100,000.

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- Within three months, the BLM could develop a proposed revision of NTL 4A, based on its recent rulemaking experience and the comments received in response to the ANPR. The Office of Management and Budget (OMB) would then need up to three months to review and clear the proposal.
- Once cleared by the Department of the Interior, the proposed rule would be published in the Federal Register and undergo a 60-day notice and comment period.
- After about two months of reviewing the comments and revising the proposed rule in light of those comments, BLM would send the revised rule to OMB for up to three months of review.
- Finally, the BLM would publish the final rule in the Federal Register to become effective in 60 days.
- The total estimated time for this rulemaking is 15 months and the estimated cost to the BLM is \$1.2 to \$2 million.

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likely be challenged in court with an estimated litigation cost of \$100,000. If a court overturns the new rule, the Venting & Flaring Rule comes back into effect.

- NTL-4A would come back into effect.
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  - The total estimated time for this rulemaking is 15 months and the estimated cost to the BLM is \$1.2 to \$2 million.

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If the Rule is not overturned under the Congressional Review Act ...

- The Rule will continue in effect, unless overturned in pending litigation. Industry would continue to incur compliance costs.
- Within three months, the BLM could develop a proposed revision of the Rule, based on its recent rulemaking experience. The OMB would then need up to three months to review and clear the proposal.
- Once cleared by the Department of the Interior, the proposed rule would be published in the Federal Register and undergo a 60-day notice and comment period.
- After about two months of reviewing the comments and revising the proposed rule in light of those comments, the BLM would send the revised rule to OMB for up to three months of review.
- Finally, the BLM would publish the final rule in the Federal Register to become effective in 60 days.
- The total estimated time for this rulemaking is 13 months and the estimated cost to the BLM is \$1.2 to \$2 million. This new rulemaking is not expected to be complete before January 17, 2018, when the more onerous requirements of the Rule go into effect.

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Summary of the Final Rule

The “Venting & Flaring Rule” is formally the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). These regulations are codified at new 43 CFR subparts 3178 and 3179 and became effective on January 17, 2017.

Statutory Authority and Regulatory History

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. §§ 188–287) subjects federal oil and gas leases to the condition that lessees will “use all reasonable precautions to prevent waste of oil and gas developed in the land . . . .” 30 U.S.C. § 225. Further, the MLA requires lessees to exercise “reasonable diligence, skill, and care” in their operations and requires lessees to observe “such rules for the health and safety of the miners and for the prevention of undue waste as may be prescribed by [the] Secretary [of the Interior].” 30 U.S.C. § 187. The Federal Oil and Gas Royalty Management Act (FOGRMA) makes lessees liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence or the failure to comply with applicable rules or regulations. 30 U.S.C. § 1756. Both the MLA and FOGRMA authorize the Secretary of the Interior to prescribe rules and regulations necessary to carry out the purposes of those statutes. 30 U.S.C. § 189; 30 U.S.C. § 1751.

From 1979 until this January, the Department regulated the venting, flaring, and royalty-free use of gas pursuant to NTL-4A, which placed limits on the venting and flaring of gas and defined when gas was “unavoidably lost” and therefore not subject to royalties. The BLM’s Venting & Flaring Rule updated NTL-4A’s royalty-free use provisions as well as its restrictions on venting and flaring. The Venting & Flaring Rule also imposed leak detection and repair (LDAR) requirements and requirements for pneumatic equipment and storage tanks that were designed to reduce methane emissions. Such emissions-focused requirements did not appear in NTL-4A and some states and industry groups have asserted that these requirements are actually within the jurisdiction of the Environmental Protection Agency and the states under the Clean Air Act.

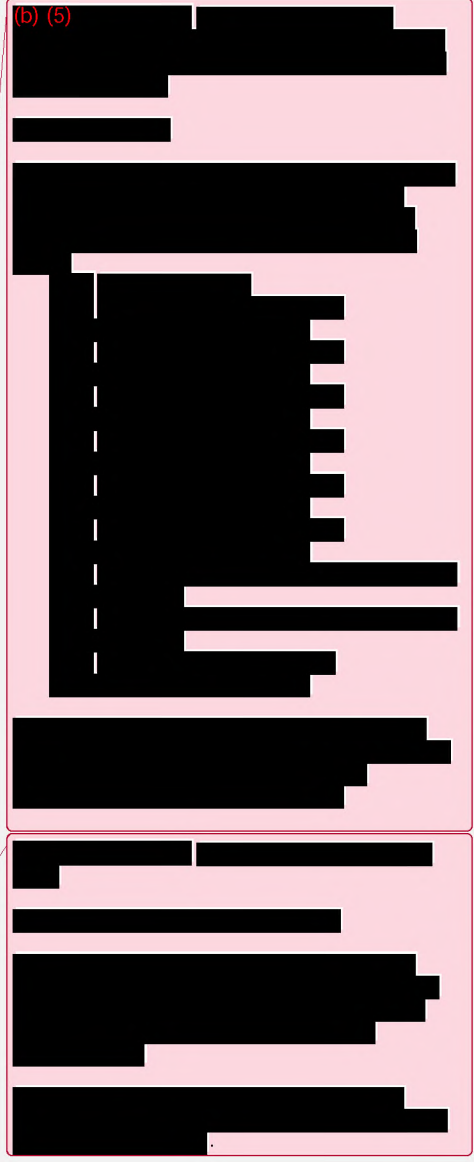
Compliance Timeline

Although the Venting & Flaring Rule went into effect in January 2017, many of the Rule’s more onerous requirements are not yet operative. Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs), ~~and~~ imposes restrictions on venting, [and clarifies when lost gas is “avoidably lost” and therefore subject to royalties.](#) Operators do not have to comply with the Rule’s [flaring \(or “gas capture”\)](#) requirements, equipment upgrade/replacement requirements, or LDAR requirements until January 17, 2018. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources to prepare to comply at the appropriate time.

Estimated Costs of Compliance

The Bureau of Land Management (BLM) expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million [\(or about \\$50 and \\$176 million when we factor in estimated product recovery\).](#) Average per-entity compliance costs are expected to range from about \$44,600 to \$65,800 per entity, per year. First year compliance costs are estimated to be \$113 million, with \$84 million of that cost being for LDAR.

The Rule’s waste minimization plans are expected to require about 16,000 hours of paperwork effort in the first year, resulting in about \$1 million in costs to approximately 1,800 operators. The Rule’s



venting, flaring, and leaks requirements are expected to require about 7,200 hours of paperwork effort in the first year, resulting in about \$500,000 in operator costs (these paperwork burdens eventually triple as annual LDAR components commence).

The expected benefits of the Rule are \$3 to \$13 million per year (or \$65 million over 10 years) in increased royalty revenues. Relative to 2014 levels, the venting of methane is expected to be reduced by 35% and the flaring of associated gas is expected to be reduced by 49% when the capture requirements are fully phased-in.

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If the Rule is *not* overturned under the Congressional Review Act . . .

- The Rule will continue in effect, unless overturned in pending litigation. Industry would continue to incur compliance costs.
- Within three months, the BLM could develop a proposed revision of the Rule, based on its recent rulemaking experience. The OMB would then need up to three months to review and clear the proposal.
- Once cleared by the Department of the Interior, the proposed rule would be published in the Federal Register and undergo a 60-day notice-and-comment period.
- After about two months of reviewing the comments and revising the proposed rule in light of those comments, BLM would send the revised rule to OMB for up to three months of review.
- Finally, BLM would publish the final rule in the Federal Register to become effective in 60 days.
- The total estimated time most expedient timeframe for this rulemaking is 13 months and the estimated cost to the BLM is \$1.2 to \$2 million. This new rulemaking is not expected to be complete before January 17, 2018, when the more onerous requirements of the Rule go into effect.
- This new rule would likely be challenged in court with an estimated litigation cost of \$100,000. If a court overturns the new rule, the Venting & Flaring Rule comes back into effect.

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