

## Conversation Contents

### VF Memo

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### "Tichenor, James" <jtichenor@blm.gov>

---

**From:** "Tichenor, James" <jtichenor@blm.gov>  
**Sent:** Thu May 11 2017 13:45:14 GMT-0600 (MDT)  
**To:** "Spisak, Timothy" <tspisak@blm.gov>, Lonny Bagley <lbagley@blm.gov>, Christopher Rhymes <christopher.rhymes@sol.doi.gov>  
**Subject:** VF Memo  
**Attachments:** 2017 05 11 VF Briefing Memo CLEAN.docx

Hi Tim,  
Please see attached VF memo.

--

James Tichenor  
Economist  
Energy, Minerals, and Realty Management Directorate WO-300  
Bureau of Land Management  
[jtichenor@blm.gov](mailto:jtichenor@blm.gov)  
202-573-0536

### Timothy Spisak <tspisak@blm.gov>

---

**From:** Timothy Spisak <tspisak@blm.gov>  
**Sent:** Thu May 11 2017 13:47:24 GMT-0600 (MDT)  
**To:** James Tichenor <jtichenor@blm.gov>, Lonny Bagley <lbagley@blm.gov>, Christopher Rhymes <christopher.rhymes@sol.doi.gov>  
**Subject:** RE: VF Memo

Will do...thanks all!!!

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

\*\*\*\*\*

**From:** Tichenor, James [mailto:[jtichenor@blm.gov](mailto:jtichenor@blm.gov)]  
**Sent:** Thursday, May 11, 2017 3:45 PM  
**To:** Spisak, Timothy; Lonny Bagley; Christopher Rhymes  
**Subject:** VF Memo

Hi Tim,  
Please see attached VF memo.

--

James Tichenor  
Economist  
Energy, Minerals, and Realty Management Directorate WO-300  
Bureau of Land Management  
[jtichenor@blm.gov](mailto:jtichenor@blm.gov)  
202-573-0536

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

---

**From:** Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>  
**Sent:** Thu May 11 2017 13:55:42 GMT-0600 (MDT)  
**To:** "Nedd, Michael D" <[mnedd@blm.gov](mailto:mnedd@blm.gov)>  
**CC:** Shelley McGinnis <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>, "Bagley, Lonny R" <[lbagley@blm.gov](mailto:lbagley@blm.gov)>, Peter Mali <[pmali@blm.gov](mailto:pmali@blm.gov)>  
**Subject:** VF Memo  
**Attachments:** 2017 05 11 VF Briefing Memo CLEAN.docx

Mike: as requested, here is the requested subject memo update (2 pages) and includes attachments for rule effective dates (1 page), proposed rule timeline (1 page) and team recommendations/options for modification (5 pages). While this had SOL staff review, it is not a SOL Office surname.

Thanks  
Tim

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

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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

\*\*\*\*\*

**Michael Nedd <mnedd@blm.gov>**

---

**From:** Michael Nedd <mnedd@blm.gov>  
**Sent:** Thu May 11 2017 16:52:10 GMT-0600 (MDT)  
**To:** Timothy Spisak <tspisak@blm.gov>  
**CC:** Shelley McGinnis <smcginnis@blm.gov>, "Bagley, Lonny R" <lbagley@blm.gov>, Peter Mali <pmali@blm.gov>  
**Subject:** Re: VF Memo

Tim,

Looks good and I had some changes primarily to fix the attachments so they flow with where they are identified in the paper. I gave a hard copy to Shelley and hopefully we can get it by mid-morning. I know the paper has not been surnamed beyond the staff level in SOL and I'll forward to Karen.

Take care and have wonderful day! :-)))

MDN 202-208-3801

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!"

Sent from my mobile device, please excuse any typos.

On May 11, 2017, at 3:55 PM, Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)> wrote:

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Thanks  
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Timothy 'Tim' R. Spisak  
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(202) 251-3079 cell  
\*\*\*\*\*

<2017 05 11 VF Briefing Memo CLEAN.docx>

**Michael Nedd <mnedd@blm.gov>**

---

**From:** Michael Nedd <mnedd@blm.gov>  
**Sent:** Thu May 11 2017 16:59:31 GMT-0600 (MDT)  
**To:** Karen Hawbecker <KAREN.HAWBECKER@sol.doi.gov>  
**CC:** Tim Spisak <tspisak@blm.gov>, Shelley McGinnis <smcginnis@blm.gov>, Peter Mali <pmali@blm.gov>  
**Subject:** Fwd: VF Memo  
**Attachments:** 2017 05 11 VF Briefing Memo CLEAN.docx

Tim and his team took the paper we (including ASLM) all saw and edited back in late March and dropped the reference to CRA and also made some small adjustments.

I asked them to fix the attachments on this version so they flow with the order of the paper.

The goal is for them to have another version to me/Peter by mid-morning so we can get it to ASLM around noon. I apologize for the short turn around, but wanted you to see it.

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Begin forwarded message:

**From:** Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>  
**Date:** May 11, 2017 at 3:55:42 PM EDT  
**To:** "Nedd, Michael D" <[mnedd@blm.gov](mailto:mnedd@blm.gov)>  
**Cc:** Shelley McGinnis <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>, "Bagley, Lonny R" <[lbagley@blm.gov](mailto:lbagley@blm.gov)>, Peter Mali <[pmali@blm.gov](mailto:pmali@blm.gov)>  
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Acting Assistant Director,  
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[tspisak@blm.gov](mailto:tspisak@blm.gov)  
(202) 208-4201 office  
(202) 251-3079 cell

\*\*\*\*\*

**"McGinnis, Shelley" <smcginnis@blm.gov>**

---

**From:** "McGinnis, Shelley" <smcginnis@blm.gov>  
**Sent:** Fri May 12 2017 08:16:00 GMT-0600 (MDT)  
**To:** Michael Nedd <mnedd@blm.gov>  
**CC:** Tim Spisak <tspisak@blm.gov>, Peter Mali <pmali@blm.gov>  
**Subject:** Re: VF Memo  
**Attachments:** 2017 05 11 VF Briefing Memo\_cleanv2.docx 2017 05 11 VF Briefing Memo\_trackchanges.docx

Mike and Peter,

Attached is the revised version of the memo with the requested changes. I included both a clean and track changes version. Thanks, Shelley

On Thu, May 11, 2017 at 6:59 PM, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)> wrote:

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\*\*\*\*\*

--

Shelley McGinnis, Ph.D.  
Resource Advisor  
Bureau of Land Management  
Energy, Minerals, and Realty Management  
1849 C Street NW, Room 5625  
Washington, DC 20240  
Office: 202-208-6551  
Cell: 202-578-3010  
Email: [smcginnis@blm.gov](mailto:smcginnis@blm.gov)

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Fri May 12 2017 08:35:28 GMT-0600 (MDT)  
**To:** Michael Nedd <mnedd@blm.gov>  
**CC:** Tim Spisak <tspisak@blm.gov>, Shelley McGinnis <smcginnis@blm.gov>, Peter Mali <pmali@blm.gov>  
**Subject:** Re: VF Memo

Mike, I'll send you our proposed edits shortly. --Karen

On Thu, May 11, 2017 at 6:59 PM, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)> wrote:

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(202) 251-3079 cell

\*\*\*\*\*

---

## "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

**From:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Fri May 12 2017 09:04:37 GMT-0600 (MDT)  
**To:** Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>  
Tim Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>, Shelley McGinnis <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>, Peter Mali <[pmali@blm.gov](mailto:pmali@blm.gov)>, Richard McNeer <[Richard.McNeer@sol.doi.gov](mailto:Richard.McNeer@sol.doi.gov)>, Christopher Rhymes <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)>  
**CC:**  
**Subject:** Re: VF Memo  
**Attachments:** 2017.05.12 VF Briefing Memo CLEAN (1) w. DMR edits.docx

Mike, Here are DMR's proposed edits to the briefing paper. Let us know if you have any questions. –Karen

On Thu, May 11, 2017 at 6:59 PM, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)> wrote:

Tim and his team took the paper we (including ASLM) all saw and edited back in late March and dropped the reference to CRA and also made some small adjustments.

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**To:** "Nedd, Michael D" <[mnedd@blm.gov](mailto:mnedd@blm.gov)>  
**Cc:** Shelley McGinnis <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>, "Bagley, Lonny R" <[lbagley@blm.gov](mailto:lbagley@blm.gov)>, Peter Mali <[pmali@blm.gov](mailto:pmali@blm.gov)>  
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(202) 208-4201 office  
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\*\*\*\*\*

**"Mali, Peter" <[pmali@blm.gov](mailto:pmali@blm.gov)>**

---

**From:** "Mali, Peter" <[pmali@blm.gov](mailto:pmali@blm.gov)>  
**Sent:** Fri May 12 2017 09:05:43 GMT-0600 (MDT)  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Tim Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>, Shelley McGinnis <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>, Richard McNeer <[Richard.McNeer@sol.doi.gov](mailto:Richard.McNeer@sol.doi.gov)>, Christopher Rhymes <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)>  
**CC:**  
**Subject:** Re: VF Memo

Thanks, Karen.

Peter Mali  
Acting Deputy Division Chief, National Conservation Lands  
National Wilderness Program Lead  
Bureau of Land Management  
Office: (202) 912-7179  
Mobile: (202) 503-7460

On Fri, May 12, 2017 at 11:04 AM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
Mike, Here are DMR's proposed edits to the briefing paper. Let us know if you have any questions. --Karen

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(202) 251-3079 cell

\*\*\*\*\*

**Timothy Spisak <tspisak@blm.gov>**

---

**From:** Timothy Spisak <tspisak@blm.gov>  
**Sent:** Fri May 12 2017 10:29:44 GMT-0600 (MDT)  
**To:** Shelley McGinnis <smcginnis@blm.gov>  
**Subject:** RE: VF Memo

“For example if there are large volumes of flared gas that might be royalty bearing.”

Thanks  
Tim

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\*\*\*\*\*

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(202) 208-4201 office  
(202) 251-3079 cell

\*\*\*\*\*

**From:** McGinnis, Shelley [mailto:[smcginnis@blm.gov](mailto:smcginnis@blm.gov)]  
**Sent:** Friday, May 12, 2017 10:16 AM  
**To:** Michael Nedd  
**Cc:** Tim Spisak; Peter Mali  
**Subject:** Re: VF Memo

Mike and Peter,

Attached is the revised version of the memo with the requested changes. I included both a clean and track changes version. Thanks, Shelley

On Thu, May 11, 2017 at 6:59 PM, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)> wrote:  
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Shelley McGinnis, Ph.D.  
Resource Advisor  
Bureau of Land Management  
Energy, Minerals, and Realty Management  
1849 C Street NW, Room 5625  
Washington, DC 20240  
Office: 202-208-6551  
Cell: 202-578-3010  
Email: [smcginnis@blm.gov](mailto:smcginnis@blm.gov)

**"McGinnis, Shelley" <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>**

---

**From:** "McGinnis, Shelley" <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>  
**Sent:** Fri May 12 2017 10:50:42 GMT-0600 (MDT)  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Tim Spisak  
<[tspisak@blm.gov](mailto:tspisak@blm.gov)>, Peter Mali <[pmali@blm.gov](mailto:pmali@blm.gov)>, Richard  
**CC:** McNeer <[Richard.McNeer@sol.doi.gov](mailto:Richard.McNeer@sol.doi.gov)>, Christopher Rhymes  
<[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)>

**Subject:** Re: VF Memo  
**Attachments:** 2017 05 11 VF Briefing Memo\_clean\_v3.docx

All,

Attached is the revised memo that incorporates the changes sent by Karen and additional changes from Mike Nedd (mostly to the ordering of the attachments).

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**From:** Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>  
**Date:** May 11, 2017 at 3:55:42 PM EDT  
**To:** "Nedd, Michael D" <[mnedd@blm.gov](mailto:mnedd@blm.gov)>  
**Cc:** Shelley McGinnis <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>, "Bagley, Lonny R" <[lbagley@blm.gov](mailto:lbagley@blm.gov)>, Peter Mali <[pmali@blm.gov](mailto:pmali@blm.gov)>  
**Subject:** VF Memo

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Timothy 'Tim' R. Spisak  
Acting Assistant Director,  
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## "Spisak, Timothy" <[tspisak@blm.gov](mailto:tspisak@blm.gov)>

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**From:** "Spisak, Timothy" <[tspisak@blm.gov](mailto:tspisak@blm.gov)>  
**Sent:** Fri May 12 2017 10:51:59 GMT-0600 (MDT)  
**To:** Lonny Bagley <[lbagley@blm.gov](mailto:lbagley@blm.gov)>, James Tichenor <[jtichenor@blm.gov](mailto:jtichenor@blm.gov)>  
**Subject:** Fwd: VF Memo  
**Attachments:** 2017 05 11 VF Briefing Memo\_clean\_v3.docx

FYI

----- Forwarded message -----

**From:** McGinnis, Shelley <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>  
**Date:** Fri, May 12, 2017 at 12:50 PM  
**Subject:** Re: VF Memo  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Cc:** Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Tim Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>, Peter Mali <[pmali@blm.gov](mailto:pmali@blm.gov)>, Richard McNeer <[Richard.McNeer@sol.doi.gov](mailto:Richard.McNeer@sol.doi.gov)>, Christopher Rhymes <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)>

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**"Mali, Peter" <pmali@blm.gov>**

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**From:** "Mali, Peter" <pmali@blm.gov>  
**Sent:** Fri May 12 2017 10:51:26 GMT-0600 (MDT)  
**To:** "McGinnis, Shelley" <smcginnis@blm.gov>  
**CC:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>, Michael Nedd <mnedd@blm.gov>, Tim Spisak <tspisak@blm.gov>, Richard McNeer <Richard.McNeer@sol.doi.gov>, Christopher Rhymes <christopher.rhymes@sol.doi.gov>  
**Subject:** Re: VF Memo

Thanks, Shelly, for your fast turnaround!

Peter Mali  
Acting Deputy Division Chief, National Conservation Lands  
National Wilderness Program Lead  
Bureau of Land Management  
Office: (202) 912-7179  
Mobile: (202) 503-7460

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## INFORMATION/BRIEFING MEMORANDUM

**DATE:** May 11, 2017

**FROM:** Timothy R. Spisak, Acting Assistant Director, Energy, Minerals and Realty Management

**SUBJECT:** Venting & Flaring Rule – Suspending Compliance Dates and Revising the Requirements

The purpose of this memo is to outline the next steps and timeline for revising the Venting & Flaring Rule before many of the burdensome requirements become operative in January 2018.

### BACKGROUND

*Summary of the Final Rule:* The “Venting & Flaring Rule” (the 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). Recently, 12 percent of operators have reported flared gas from oil well production. The Rule is 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.

Before promulgation of the Rule, the Bureau of Land Management (BLM) regulated the venting, flaring, and beneficial 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 Rule included many regulatory changes, including emissions-focused requirements that did not appear in NTL-4A. Many states and industry groups have asserted that these requirements are actually within the jurisdiction of the Administrator of the Environmental Protection Agency and the states under the Clean Air Act (CAA).

### DISCUSSION

On May 10, the Senate voted against overturning the Rule using the Congressional Review Act. As such, the Rule will continue in effect unless/until the BLM rescinds or replaces it through the rulemaking process outlined below, or until it is overturned in pending litigation. Any new rule that the BLM promulgates would likely be challenged in court with an estimated litigation cost of \$100,000. If the new rulemaking is overturned in litigation, the existing Rule would come back into effect.

Although the Rule went into effect in January 2017, many of its more onerous requirements are not yet operative. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources to prepare for compliance dates. Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs), imposes restrictions on venting, and clarifies when lost gas is “avoidably lost” and therefore subject to royalties. Operators must comply with the Rule’s flaring (or “gas capture”) requirements, equipment upgrade/replacement requirements, and leak detection and repair (LDAR) requirements beginning on January 17, 2018 (see Attachment).

The BLM expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million, with first year compliance costs estimated to be \$113 million, with \$84 million of that cost being LDAR.

## **NEXT STEPS**

The BLM proposes a dual-faceted approach, which would limit the compliance costs posed to Industry while the BLM revises the Rule:

1. **Suspend compliance deadlines for 1 year while the BLM revises the Rule.** The BLM is concerned that it will not be able to finalize a revised Rule before the Industry will assume burdensome compliance costs. Although the compliance deadline for most of the requirements is January 2018, operators will likely assume costs in advance of that deadline. The BLM may postpone the compliance dates through the notice-and-comment rulemaking process which would take about 6 months to publish (tentative estimate).
2. **Revise/Replace the current Rule.** The BLM would move forward with policy actions (see Attachment for detail) to curb waste to address the following. The BLM estimates that it could publish a proposed rule by October 31, 2017 and a final rule by May 31, 2018 (see Attachment). Publishing an Advanced Notice of Proposed Rulemaking is optional and would add 3 months to this process.
  - Encouraging beneficial use of oil or gas on lease;
  - Regulating flaring of unmarketable gas from oil wells;
  - Conserving unsold gas by reinjection;
  - Improving ROW timelines and removing obstacles to timely approval for pipeline infrastructure; and
  - Recognizing existing State/tribal policy/rules, such as those in North Dakota, Wyoming, Utah, New Mexico, Colorado, and Montana.

## **ATTACHMENTS**

**Attachment 1: Rulemaking Schedules for Concurrent Efforts**

Activity	Description	Timing (Tentative) – Rulemaking to Suspend Rule Implementation	Timing – Rulemaking to Revise/Replace Rule
Advanced Notice of Proposed Rulemaking (ANPR)	OPTIONAL. The BLM would solicit input from the public on whether, and how, NTL-4A should be revised.	N/A	1 month to publish 2 months for public comment
Notice of Proposed Rulemaking (NPR)	The BLM would develop a NPR based on previous rule experiences or comments received from ANPR process. The Office of Management and Budget (OMB) needs to review and clear the proposal.	2 month to draft NPR ~1 month OMB review	3 months to draft NPR 3 months for OMB review
NPR comment period	The NPR is published in the Federal Register for notice-and-comment period.	1 month	2 months
Comment review/ Drafting final rule	The BLM reviews the comments and revises the rule in light of those comments. The BLM sends the revised/final rule to OMB for review.	1 month review/drafting 1 month OMB review	2 months review/drafting 3 months OMB review
Final rule is published	The BLM publishes the final rule in the Federal Register	After publishing, 1 month until effective	After publishing, 2 months until effective
Total time to publish		~6 months	13 months (for NPR) 16 months (including ANPR)
Total cost		~\$0.75 million	\$1.2 – 2.1 million

## Attachment 2: Compliance Dates of the Rule

The following table summarizes the compliance dates for the requirements of the Rule.

Citation	Summary	Compliance Date
3162.3-1(j)	Operators must submit a waste minimization plan with their an Application for Permit to Drill	January 17, 2017
Subpart 3178	Royalty-free use requirements	January 17, 2017
3179.4, 3179.5	Determines when the loss of oil or gas is “avoidable” and therefore royalty bearing	January 17, 2017
3179.6	Requires operators to flare gas that is not captured rather than vent it, except in certain circumstances	January 17, 2017
3179.7	Requires operators to capture a certain percentage of the gas they produce	<b>January 17, 2018</b>
3179.9	Measurement requirements for flared gas	<b>January 17, 2018</b>
3179.101 – 3179.105	Limits on, and requirements for disposal of, gas lost during well drilling, well completion and related operations, initial production testing, subsequent well tests, and emergencies	January 17, 2017
3179.201, 3179.202	Operators must upgrade to lower-emission pneumatic equipment	<b>January 17, 2018</b>
3179.203	Operators must route tank vapors from covered storage vessels to sales line or to flare	<b>January 17, 2018</b>
3179.204	Requirements for minimizing gas losses from downhole well maintenance and liquids unloading	January 17, 2017
3179.301 – 3179.305	Leak detection and repair requirements	<p><b>January 17, 2018</b> for sites that have begun production prior to January 17, 2017</p> <p><b>60 days after beginning production</b> for sites that begin production after January 17, 2017</p> <p><b>60 days after</b> an out-of-service site is brought back into service and re-pressurized</p>

## Attachment 3: Options for Revising the Waste Prevention Rule

### Background

Executive Order 13783, “Promoting Energy Independence and Economic Growth” (March 28, 2017), directs the Secretary of the Interior to review the Bureau of Land Management’s (BLM) final rule entitled “Waste Prevention, Production Subject to Royalties, and Resource Conservation” (effective January 17, 2017) for consistency with the policy set forth in the order: “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.” Secretarial Order No. 3349 (March 29, 2017) directed the BLM Director to conduct the review required per Executive Order 13783 by April 19, 2017.

The BLM assembled the team that developed the original Waste Prevention Rule. The team reviewed the BLM’s Waste Prevention Rule-related requirements and identified potential policy alternatives that might achieve the goals of waste prevention while reducing the regulatory burdens imposed by the rule.

### Summary of Policy Options

The BLM review team has identified overarching policies that would alleviate the regulatory burden posed by the Waste Prevention Rule. In addition, we list specific policy alternatives to the rule’s requirements in the table that follows.

Approaches to reduce general regulatory burden:

1. Rescind BLM requirements that create regulatory overlap with or duplicate EPA regulations and state regulations. Although the BLM carefully crafted the Waste Prevention Rule’s requirements to avoid regulatory overlap and offer opportunities to sync regulations with states, one approach would be to defer to the existing EPA and state regulations.
2. Replace direct regulation with market-oriented strategies. Many provisions in the Waste Prevention Rule require operators to make investments in order to reduce the loss of gas. An alternative approach would be to evaluate those gas losses and assess royalty when the losses are avoidable, but stop short of requiring further operator action, equipment replacement, or installations.
3. Reduce administrative and compliance burdens by:
  - a. Identifying categories of operations to be exempt from requirements, thereby reducing the administrative burden of requesting and reviewing exemption applications for operations that are likely to receive approval (e.g. marginal wells).
  - b. Removing and/or streamlining reporting requirements.

**Table of Waste Prevention Rule Requirements and Alternatives**

Section	Summary of Current Requirements (Waste Prevention Rule, Jan 2017)	Alternative Policies/ Rationale
Royalty Provisions 3103.3-1	Allows BLM to specify a royalty rate higher than 12.5% for new competitive leases. Although the MLA sets 12.5% as a floor for competitive lease royalties, the prior regulation had set 12.5% as the ceiling. (This provision allows the BLM to increase royalty rates and is not specific to leases that vent or flare gas).	No identified alternatives. This provision is important programmatic, because it allows BLM to close 2 GAO recommendations. Ultimately, the Administration’s policy direction may dictate whether to retain or rescind.
Waste Management Plan 3162.3-1	BLM requires the operator to submit with its APD a Waste Management Plan containing information about expected completion dates, production rates, gas composition, and decline curves. Requires a certification of contact with midstream company and information about the capacity of the pipeline to which it plans to connect or extensive detail about pipelines within a 20 mile radius if it has not identified a pipeline to connect.	(1) Retain the operator certification that it contacted a midstream company, but rescind the rest. The certification demonstrates the operator’s due diligence in seeking a market for gas.  (2) Potential to add a checklist of items that the operator should consider, including commingling with other leases to avoid flaring.
Royalty Free Use 3178.1 to 3178.10	This section updated the beneficial purposes provisions of NTL-4A..	No identified alternatives. This section, with the use of “royalty free” terminology, clarifies issues that have arisen during litigation and implementation of NTL-4A.
Purpose, Scope, Definitions 3179.1 to 3179.3	Among other things, defines the new concepts addressed by the rule.	Expect to make conforming changes.
Avoidable Loss, Production Subject to Royalty 3179.4 to 3179.5	Defines “avoidably lost” and “unavoidably lost” gas (and oil) and circumstances under which royalty is due.	Expect to make conforming changes.
Venting Prohibition 3179.6	Prohibits the venting or flaring of gas-well gas except when unavoidably lost. Requires the operator to flare, rather than vent, any gas not captured except when flaring is technically infeasible, under emergency conditions, or when the gas comes from specified equipment or circumstances. Requires all flares or combustion devices to have auto-ignition systems.	No identified alternatives. This section is consistent with past policy and CDM implementation guidance. Expect to make conforming changes regarding the specified equipment or circumstances outlined in (b).
Gas Capture (Associated Gas) 3179.7 to 3179.8	The operator must capture specified percentage targets which increase over time. They are allowed to flare a certain volume of gas per well (“flaring allowable” decreasing over time) which they can average across wells in a lease, county, or state. Flaring in excess of the specified capture targets is considered avoidably lost and royalty bearing. Failing to meet capture target also comes with consequences greater than royalty assessment (outside of 3179.7, operators could be subject to assessments, penalties, shut-in or lease cancellation). The operator may apply for alternative capture targets if meeting the target would require cessation of production and abandonment of	Team expressed concern that the current regulations are overly complex while allowing operators to flare large amounts of associated gas royalty free.  (1) Maintain current framework, but lessen the increase in capture percentages over time and decrease the flaring allowable. Issues: difficult to justify with record and data; legal concern that change would be arbitrary and capricious; and does not address deficiencies above.  (2) Change the conceptual framework. Reset [royalty-free] flaring limits to lower levels, but limit the punishment to royalty only. Meaning, gas flared above XX Mcfd per well would be considered avoidably

Section	Summary of Current Requirements (Waste Prevention Rule, Jan 2017)	Alternative Policies/ Rationale
	significant oil reserves under the lease (application quite extensive).	<p>lost, but the operator would not be compelled to capture. Could tailor limits to state thresholds for royalty-free flaring considerations. Issues: setting appropriate thresholds - must be supported by record and data; and potential for non-enforcement by state regulatory authority</p> <p>(3) NTL-4A framework with revisions: change action plan duration to 6 months; make all flaring from wells connected to sales royalty bearing (not subject to royalty-free flaring requests). Would allow for local flexibility and case-by-case assessment. Addresses royalty assessment - in ND ~85% of well connected to sales. Relies on economic evaluation for unconnected wells, which we could clarify in the regulation or policy.</p> <p>(4) Gas flared is royalty free while the operator has a pending (and complete) application with the BLM for a ROW that is required in order to capture/transport gas from the well. Can be done in conjunction with the above options, but not a stand-alone. Considerations with this option: there are only a handful of outstanding ROW applications; and BLM setting the precedent that any holdup is royalty free.</p>
Measurement of gas vented and flared 3179.9	Operators must estimate or measure all gas vented or flared from the well and report to ONRR. Must measure if gas flared from a high-pressure flare exceeds 50 Mcfd.	(1) Revise so that BLM <i>may</i> require measurement of vented and flared gas. Rescind the rest. There is value to having the ability in certain instances to require measurement.
Regarding Existing Royalty Free Approvals 3179.10	Determinations made prior to Jan 17, 2017 not affected. Existing approvals as of Jan 17, 2017 remain in effect until Jan 17, 2018.	Expect to make conforming changes based on other policy decisions.
Other Waste Prevention Measures 3179.11	The BLM may exercise authority to (1) limit production from a new well if it is expected to force other producing well off of a pipeline or (2) delay action on an APD or add conditions of approval if gas capture capacity is not available.	<p>(1) Retain (2) Rescind</p> <p>The section is a restatement of existing authority, so retaining or rescinding would have no practical effect (except maybe reducing confusion).</p>
Coordination with State Regulatory Authority 3179.12	The BLM will coordinate with State RA, on a case-by-case basis, if any requirement in 3179 would adversely impact production from non-Federal and non-Indian interests. (pertains to all 3179, but more directed towards gas flaring)	Retain because: (1) it does not place any substantive requirement upon the BLM, (2) coordination with states in the circumstances considered is generally a good practice, and (3) keeping this section shows BLM's good faith to be a "good neighbor."
Well Drilling 3179.101	Unless technically infeasible, gas that reaches the surface must be captured and sold, flared, used in operations on lease, or injected.	(1) Rescind if desired. It aides in the continuity of timeline, but operators should be complying regardless. Any venting is expected to be very rare and is a well control issue.
Well Completion and Related Operations	Unless technically infeasible, gas that reaches the surface must be captured and sold, flared, used in operations on lease, or injected.	(1) Retain, but group with Initial Production Testing (below). Team thinks it is important for both HF and conventional completions and maintain the volumetric limit for royalty purposes. Potentially remove the exploratory well limit due to potential lack of infrastructure to deliver to market.

Section	Summary of Current Requirements (Waste Prevention Rule, Jan 2017)	Alternative Policies/ Rationale
3179.102		(2) Rescind, but retain duration and volume limits (as relates to royalty on flared). Team does not favor but recognizes argument in support of that option: duplicates EPA (at present); some states; generally flaring is practice; and the sections of this rule (venting prohibition).
Initial Production Testing 3179.103	Royalty free flaring up to 20 MMcf (or 30 MMcf for exploratory wells). Includes volume during well completions.	See above.
Subsequent Well Tests 3179.104	Operator may flare gas for no more than 24 hours royalty free, unless the BLM approves or requires a longer period	No identified alternatives.
Emergencies 3179.105	Defines emergencies and when operator can flare royalty free.	(1) Remove reporting burden: "(c) 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 timeframes specified in paragraph (b) of this section."
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Storage Vessels 3179.203	If potential VOC emissions exceed 6 tpy per vessel, then route to sales. If technically infeasible or unduly costly, then route to continuous combustion. Exempt if this would cause the operator to cease production and abandon significant recoverable oil reserves under the lease. Lengthy exemption request materials.	(1) Rescind, due to overlap with EPA (at present) and some states (note ND has new requirements, Dec 2016).  (2) Require an evaluation of VRU's economics and feasibility if throughput threshold is above XX amount. Determination would indicate if gas is avoidably lost, but BLM would not require operator to make investment. Need to be mindful of mitigation measures that they have already completed pursuant to EPA or states.  (3) Retain, but remove mention of EPA. Route to sales (VRU) unless unduly costly, and then route to flare

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State or Tribal Variances 3179.401	State or Tribe may request variance if its requirements meet or exceed BLM's.	<p>(1) Remove the "state and tribal variance" concept/terminology. Typically, an operator requests a variance to meet the requirements using an alternative method or technology, not a state to opt out of a BLM requirement.</p> <p>(2) Replace with concept of state/tribe requirements apply if equivalent or more stringent than Federal requirements. Coordination to determine cases where not as evident.</p> <p>(3) Replace with concept that state/tribe requirements apply if it has one (regardless of relative stringency). Team is concerned with difficulty in implementing, e.g. training PETs on state regulations, keeping up to date with state regulations, and what if state regulations are not consistent with federal royalty policy and policy goals..</p>

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** May 12, 2017

**FROM:** Michael D. Nedd, Acting Director – Bureau of Land Management (BLM)

**SUBJECT:** Venting & Flaring Rule – Suspending Compliance Dates and Revising the Requirements

The purpose of this memo is to outline the next steps and timeline for revising the Venting & Flaring Rule before many of the burdensome requirements become operative in January 2018.

**BACKGROUND**

*Summary of the Final Rule:* The “Venting & Flaring Rule” (the 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). Recently, 12 percent of operators have reported flared gas from oil well production. The Rule is 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.

Before promulgation of the Rule, the Bureau of Land Management (BLM) regulated the venting, flaring, and beneficial 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 Rule included many regulatory changes, including emissions-focused requirements that did not appear in NTL-4A. Many states and industry groups have asserted that these requirements are actually within the jurisdiction of the Administrator of the Environmental Protection Agency and the states under the Clean Air Act (CAA).

## DISCUSSION

On May 10, the Senate voted against overturning the Rule using the Congressional Review Act. As such, the Rule will continue in effect unless/until the BLM rescinds or replaces it through the rulemaking process outlined below, or until it is overturned in pending litigation. Any new rule that the BLM promulgates would likely be challenged in court with an estimated litigation cost of \$100,000. If the new rulemaking is overturned in litigation, the existing Rule would come back into effect.

Although the Rule went into effect in January 2017, many of its more onerous requirements are not yet operative. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources to prepare for compliance dates (Attachment 1). Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs), imposes restrictions on venting, and clarifies when lost gas is “avoidably lost” and therefore subject to royalties. Operators must comply with the Rule’s flaring (or “gas capture”) requirements, equipment upgrade/replacement requirements, and leak detection and repair (LDAR) requirements beginning on January 17, 2018 (see Attachment 1).

The BLM expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million, with first year compliance costs estimated to be \$113 million, with \$84 million of that cost being LDAR.

## NEXT STEPS

The BLM proposes a dual-faceted approach, which would limit the compliance costs posed to Industry while the BLM revises the Rule:

1. **Suspend compliance deadlines for 1 year while the BLM revises the Rule.** The BLM is concerned that it will not be able to finalize a revised Rule before the Industry will assume burdensome compliance costs. Although the compliance deadline for most of the requirements is January 2018, operators will likely assume costs in advance of that deadline. The BLM may postpone the compliance dates through the notice-and-comment rulemaking process which would take about 6 months to publish (tentative estimate).
2. **Revise/Replace the current Rule.** The BLM would move forward with policy actions (see Attachment 2 for detail) to curb waste to address the following. The BLM estimates that it could publish a proposed rule by October 31, 2017 and a final rule by May 31, 2018 (see Attachment 3). Publishing an Advanced Notice of Proposed Rulemaking is optional and would add 3 months to this process.
  - Encouraging beneficial use of oil or gas on lease;
  - Regulating flaring of unmarketable gas from oil wells;
  - Conserving unsold gas by reinjection;
  - Improving ROW timelines and removing obstacles to timely approval for pipeline infrastructure; and
  - Recognizing existing State/tribal policy/rules, such as those in North Dakota, Wyoming, Utah, New Mexico, Colorado, and Montana.

## **ATTACHMENTS**

1. Compliance Dates for the Waste Prevention Rule
2. Options for Revising the Waste Prevention Rule
3. Rulemaking Schedules for Concurrent Efforts
4. Table 1: Waste Prevention Rule Requirements and Alternatives

## Attachment 1: Compliance Dates for the Waste Prevention Rule

The following table summarizes the compliance dates for the requirements of the Rule.

<b>Citation</b>	<b>Summary</b>	<b>Compliance Date</b>
3162.3-1(j)	Operators must submit a waste minimization plan with their an Application for Permit to Drill	January 17, 2017
Subpart 3178	Royalty-free use requirements	January 17, 2017
3179.4, 3179.5	Determines when the loss of oil or gas is “avoidable” and therefore royalty bearing	January 17, 2017
3179.6	Requires operators to flare gas that is not captured rather than vent it, except in certain circumstances	January 17, 2017
3179.7	Requires operators to capture a certain percentage of the gas they produce	<b>January 17, 2018</b>
3179.9	Measurement requirements for flared gas	<b>January 17, 2018</b>
3179.101 – 3179.105	Limits on, and requirements for disposal of, gas lost during well drilling, well completion and related operations, initial production testing, subsequent well tests, and emergencies	January 17, 2017
3179.201, 3179.202	Operators must upgrade to lower-emission pneumatic equipment	<b>January 17, 2018</b>
3179.203	Operators must route tank vapors from covered storage vessels to sales line or to flare	<b>January 17, 2018</b>
3179.204	Requirements for minimizing gas losses from downhole well maintenance and liquids unloading	January 17, 2017
3179.301 – 3179.305	Leak detection and repair requirements	<p><b>January 17, 2018</b> for sites that have begun production prior to January 17, 2017</p> <p><b>60 days after beginning production</b> for sites that begin production after January 17, 2017</p> <p><b>60 days after</b> an out-of-service site is brought back into service and re-pressurized</p>

## Attachment 2: Options for Revising the Waste Prevention Rule

### Background

Executive Order 13783, “Promoting Energy Independence and Economic Growth” (March 28, 2017), directs the Secretary of the Interior to review the Bureau of Land Management’s (BLM) final rule entitled “Waste Prevention, Production Subject to Royalties, and Resource Conservation” (effective January 17, 2017) for consistency with the policy set forth in the order: “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.” Secretarial Order No. 3349 (March 29, 2017) directed the BLM Director to conduct the review required per Executive Order 13783 by April 19, 2017.

The BLM assembled the team that developed the original Waste Prevention Rule. The team reviewed the BLM’s Waste Prevention Rule-related requirements and identified potential policy alternatives that might achieve the goals of waste prevention while reducing the regulatory burdens imposed by the rule.

### Summary of Policy Options

The BLM review team has identified overarching policies that would alleviate the regulatory burden posed by the Waste Prevention Rule. In addition, we list specific policy alternatives to the rule’s requirements in Table 1 (pages 7-10).

Approaches to reduce general regulatory burden:

1. Rescind BLM requirements that create regulatory overlap with or duplicate EPA regulations and state regulations. Although the BLM carefully crafted the Waste Prevention Rule’s requirements to avoid regulatory overlap and offer opportunities to sync regulations with states, one approach would be to defer to the existing EPA and state regulations.
2. Replace direct regulation with market-oriented strategies. Many provisions in the Waste Prevention Rule require operators to make investments in order to reduce the loss of gas. An alternative approach would be to evaluate those gas losses and assess royalty when the losses are avoidable, but stop short of requiring further operator action, equipment replacement, or installations.
3. Reduce administrative and compliance burdens by:
  - a. Identifying categories of operations to be exempt from requirements, thereby reducing the administrative burden of requesting and reviewing exemption applications for operations that are likely to receive approval (e.g. marginal wells).
  - b. Removing and/or streamlining reporting requirements.

**Attachment 3: Rulemaking Schedules for Concurrent Efforts**

<b>Activity</b>	<b>Description</b>	<b>Timing (Tentative) – Rulemaking to Suspend Rule Implementation</b>	<b>Timing – Rulemaking to Revise/Replace Rule</b>
Advanced Notice of Proposed Rulemaking (ANPR)	OPTIONAL. The BLM would solicit input from the public on whether, and how, NTL-4A should be revised.	N/A	1 month to publish 2 months for public comment
Notice of Proposed Rulemaking (NPR)	The BLM would develop a NPR based on previous rule experiences or comments received from ANPR process. The Office of Management and Budget (OMB) needs to review and clear the proposal.	2 month to draft NPR ~1 month OMB review	3 months to draft NPR 3 months for OMB review
NPR comment period	The NPR is published in the Federal Register for notice-and-comment period.	1 month	2 months
Comment review/ Drafting final rule	The BLM reviews the comments and revises the rule in light of those comments. The BLM sends the revised/final rule to OMB for review.	1 month review/drafting 1 month OMB review	2 months review/drafting 3 months OMB review
Final rule is published	The BLM publishes the final rule in the Federal Register	After publishing, 1 month until effective	After publishing, 2 months until effective
Total time to publish		~6 months	13 months (for NPR) 16 months (including ANPR)
Total cost		~\$0.75 million	\$1.2 – 2.1 million

**Table 1: Waste Prevention Rule Requirements and Alternatives**

Section	Summary of Current Requirements (Waste Prevention Rule, Jan 2017)	Alternative Policies/ Rationale
Royalty Provisions 3103.3-1	Allows BLM to specify a royalty rate higher than 12.5% for new competitive leases. Although the MLA sets 12.5% as a floor for competitive lease royalties, the prior regulation had set 12.5% as the ceiling. (This provision allows the BLM to increase royalty rates and is not specific to leases that vent or flare gas).	No identified alternatives. This provision is important programmatically, because it allows BLM to close 2 GAO recommendations. Ultimately, the Administration’s policy direction may dictate whether to retain or rescind.
Waste Management Plan 3162.3-1	BLM requires the operator to submit with its APD a Waste Management Plan containing information about expected completion dates, production rates, gas composition, and decline curves. Requires a certification of contact with midstream company and information about the capacity of the pipeline to which it plans to connect or extensive detail about pipelines within a 20 mile radius if it has not identified a pipeline to connect.	(1) Retain the operator certification that it contacted a midstream company, but rescind the rest. The certification demonstrates the operator’s due diligence in seeking a market for gas.  (2) Potential to add a checklist of items that the operator should consider, including commingling with other leases to avoid flaring.
Royalty Free Use 3178.1 to 3178.10	This section updated the beneficial purposes provisions of NTL-4A..	No identified alternatives. This section, with the use of “royalty free” terminology, clarifies issues that have arisen during litigation and implementation of NTL-4A.
Purpose, Scope, Definitions 3179.1 to 3179.3	Among other things, defines the new concepts addressed by the rule.	Expect to make conforming changes.
Avoidable Loss, Production Subject to Royalty 3179.4 to 3179.5	Defines “avoidably lost” and “unavoidably lost” gas (and oil) and circumstances under which royalty is due.	Expect to make conforming changes.
Venting Prohibition 3179.6	Prohibits the venting or flaring of gas-well gas except when unavoidably lost. Requires the operator to flare, rather than vent, any gas not captured except when flaring is technically infeasible, under emergency conditions, or when the gas comes from specified equipment or circumstances. Requires all flares or combustion devices to have auto-ignition systems.	No identified alternatives. This section is consistent with past policy and CDM implementation guidance. Expect to make conforming changes regarding the specified equipment or circumstances outlined in (b).
Gas Capture (Associated Gas) 3179.7 to 3179.8	The operator must capture specified percentage targets which increase over time. They are allowed to flare a certain volume of gas per well (“flaring allowable” decreasing over time) which they can average across wells in a lease, county, or state. Flaring in excess of the specified capture targets is considered avoidably lost and royalty bearing. Failing to meet capture target also comes with consequences greater than royalty assessment (outside of 3179.7, operators could be subject to assessments, penalties, shut-in or lease cancellation). The operator may apply for alternative capture targets if meeting the target would require cessation of production and abandonment of	Team expressed concern that the current regulations are overly complex while allowing operators to flare large amounts of associated gas royalty free.  (1) Maintain current framework, but lessen the increase in capture percentages over time and decrease the flaring allowable. Issues: difficult to justify with record and data; legal concern that change would be arbitrary and capricious; and does not address deficiencies above.  (2) Change the conceptual framework. Reset [royalty-free] flaring limits to lower levels, but limit the punishment to royalty only. Meaning, gas flared above XX Mcfd per well would be considered avoidably

Section	Summary of Current Requirements (Waste Prevention Rule, Jan 2017)	Alternative Policies/ Rationale
	significant oil reserves under the lease (application quite extensive).	<p>lost, but the operator would not be compelled to capture. Could tailor limits to state thresholds for royalty-free flaring considerations. Issues: setting appropriate thresholds - must be supported by record and data; and potential for non-enforcement by state regulatory authority</p> <p>(3) NTL-4A framework with revisions: change action plan duration to 6 months; make all flaring from wells connected to sales royalty bearing (not subject to royalty-free flaring requests). Would allow for local flexibility and case-by-case assessment. Addresses royalty assessment - in ND ~85% of well connected to sales. Relies on economic evaluation for unconnected wells, which we could clarify in the regulation or policy.</p> <p>(4) Gas flared is royalty free while the operator has a pending (and complete) application with the BLM for a ROW that is required in order to capture/transport gas from the well. Can be done in conjunction with the above options, but not a stand-alone. Considerations with this option: there are only a handful of outstanding ROW applications; and BLM setting the precedent that any holdup is royalty free.</p>
Measurement of gas vented and flared 3179.9	Operators must estimate or measure all gas vented or flared from the well and report to ONRR. Must measure if gas flared from a high-pressure flare exceeds 50 Mcfd.	(1) Revise so that BLM <i>may</i> require measurement of vented and flared gas. Rescind the rest. There is value to having the ability in certain instances to require measurement.
Regarding Existing Royalty Free Approvals 3179.10	Determinations made prior to Jan 17, 2017 not affected. Existing approvals as of Jan 17, 2017 remain in effect until Jan 17, 2018.	Expect to make conforming changes based on other policy decisions.
Other Waste Prevention Measures 3179.11	The BLM may exercise authority to (1) limit production from a new well if it is expected to force other producing well off of a pipeline or (2) delay action on an APD or add conditions of approval if gas capture capacity is not available.	<p>(1) Retain (2) Rescind</p> <p>The section is a restatement of existing authority, so retaining or rescinding would have no practical effect (except maybe reducing confusion).</p>
Coordination with State Regulatory Authority 3179.12	The BLM will coordinate with State RA, on a case-by-case basis, if any requirement in 3179 would adversely impact production from non-Federal and non-Indian interests. (pertains to all 3179, but more directed towards gas flaring)	Retain because: (1) it does not place any substantive requirement upon the BLM, (2) coordination with states in the circumstances considered is generally a good practice, and (3) keeping this section shows BLM's good faith to be a "good neighbor."
Well Drilling 3179.101	Unless technically infeasible, gas that reaches the surface must be captured and sold, flared, used in operations on lease, or injected.	(1) Rescind if desired. It aides in the continuity of timeline, but operators should be complying regardless. Any venting is expected to be very rare and is a well control issue.
Well Completion and Related Operations	Unless technically infeasible, gas that reaches the surface must be captured and sold, flared, used in operations on lease, or injected.	(1) Retain, but group with Initial Production Testing (below). Team thinks it is important for both HF and conventional completions and maintain the volumetric limit for royalty purposes. Potentially remove the exploratory well limit due to potential lack of infrastructure to deliver to market.

Section	Summary of Current Requirements (Waste Prevention Rule, Jan 2017)	Alternative Policies/ Rationale
3179.102		(2) Rescind, but retain duration and volume limits (as relates to royalty on flared). Team does not favor but recognizes argument in support of that option: duplicates EPA (at present); some states; generally flaring is practice; and the sections of this rule (venting prohibition).
Initial Production Testing 3179.103	Royalty free flaring up to 20 MMcf (or 30 MMcf for exploratory wells). Includes volume during well completions.	See above.
Subsequent Well Tests 3179.104	Operator may flare gas for no more than 24 hours royalty free, unless the BLM approves or requires a longer period	No identified alternatives.
Emergencies 3179.105	Defines emergencies and when operator can flare royalty free.	(1) Remove reporting burden: "(c) 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 timeframes specified in paragraph (b) of this section."
Pneumatic Controllers 3179.201	Requires continuous bleed controllers to be low bleed, except when needed functionally, routed to combustion, or replacement would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease. Lengthy exemption request materials.	(1) Rescind, due to overlap with EPA (at present), some states, and general practice. We generally think this is self-correcting. And it is very difficult for PET to determine whether a device is high or low bleed.  (2) Make distinction between operations that are selling gas, but objectives are conceptually covered under the beneficial use and general prohibition against venting sections. If the operator is selling the gas, we want it to use a device that minimizes the amount of gas used for beneficial use (maximizes efficiency). If the operator is not selling the gas, it would minimize the amount vented.
Pneumatic Chemical Injection Pumps and Diaphragm Pumps 3179.202	Requires zero emissions pump or routing emissions for capture and sale except when pump is temporary, needed functionally, routing is technically infeasible or unduly costly, or routes to combustor (not required if this would cause the operator to cease production and abandon significant recoverable oil reserves under the lease). Lengthy exemption request materials.	(1) Rescind, due to overlap with EPA (at present) and some states. Concern with requiring zero emissions pumps which are only as energy efficient as their power source, and therefore, may be no more efficient than the devices they would replace. Same situation as pneumatic controllers, may or may not be on connected sites. Some mitigation, i.e. routing to flare, are unproven.  (2) Could refer to beneficial use provisions, i.e. operators should minimize the use of gas (maximize efficiency).
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State or Tribal Variances 3179.401	State or Tribe may request variance if its requirements meet or exceed BLM's.	<p>(1) Remove the "state and tribal variance" concept/terminology. Typically, an operator requests a variance to meet the requirements using an alternative method or technology, not a state to opt out of a BLM requirement.</p> <p>(2) Replace with concept of state/tribe requirements apply if equivalent or more stringent than Federal requirements. Coordination to determine cases where not as evident.</p> <p>(3) Replace with concept that state/tribe requirements apply if it has one (regardless of relative stringency). Team is concerned with difficulty in implementing, e.g. training PETs on state regulations, keeping up to date with state regulations, and what if state regulations are not consistent with federal royalty policy and policy goals..</p>

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