

Memorandum

To: Acting Deputy Secretary

Through: Katharine MacGregor, Acting Assistant Secretary
Land and Minerals Management

From: Michael D. Nedd, Acting Director – Bureau of Land Management

Subject: Bureau of Land Management response to Secretary’s Order 3349, Sections 5(c)(i), (ii), and (v)

BACKGROUND

Secretary’s Order (SO) 3349, which was signed on March 29, 2017, implements the review of agency actions directed by Executive Order 13783 signed by the President on March 28, 2017, entitled “Promoting Energy Independence and Economic Growth” (March 28, 2017 EO). SO 3349 also directs a reexamination of the mitigation policies and practices across the Department of the Interior (DOI) in order to better balance conservation strategies and policies with the need for creating jobs.

DISCUSSION

This memorandum responds to sections 5(c)(i), 5(c)(ii), and 5(c)(v) of S.O. 3349. Section 5(c)(i) states that the Bureau of Land Management (BLM) shall proceed expeditiously with proposing to rescind the final rule entitled, “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,” 80 *Fed. Reg.* 16128 (Mar. 26, 2015). The BLM is proceeding with proposing to rescind the final rule in coordination with the DOI Solicitor’s Office and anticipates having a package ready for internal review by May 3, 2017.

Section 5(c)(ii) states that within 21 days, the BLM shall review the final rule entitled, “Waste Prevention, Production Subject to Royalties, and Resource Conservation,” 81 *Fed. Reg.* 83008 (January 17, 2017), and report to the Assistant Secretary – Land and Minerals Management on whether the rule is fully consistent with the policy set forth in Section 1 of the March 28, 2017 EO. The BLM has reviewed the final rule and determined that it is not fully consistent with the policy in Section 1 of the March 28, 2017 EO. Specifically, some provisions of the rule add regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Portions of the rule also overlap with current Environmental Protection Agency provisions.

Section 5(c)(v) of SO 3349 states: Within 21 days, each bureau and office head shall provide to the Deputy Secretary, through their Assistant Secretary, a report that identifies all existing Department Actions issued by their bureau or office that potentially burden (as that term is defined in the March 28, 2017 EO) the development or utilization of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear resources.” The term “burden” as defined in the March 28, 2017 EO “means to unnecessarily obstruct, delay, curtail, or

otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.” The term “Department Action” from SO 3349 refers to “all existing regulations, orders, guidance documents, policies, instructions, notices, implementing actions, and any other similar actions.” In addition to the Hydraulic Fracturing and Waste Prevention Rules, the following is a preliminary list of the Department Actions that have been identified by the BLM that potentially burden the development or utilization of BLM energy resources. These are in addition to the items that were identified by the BLM in a separate memorandum responding to sections 5(a)(i) and 5(b)(i) of SO 3349, regarding “actions” the BLM has adopted or is in the processes of developing with respect to certain memoranda and orders related to mitigation and climate change.

Fluid Minerals

Title: Instruction Memorandum (IM) 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews

Date: 5/17/2010

Description: The purpose of this IM was to establish a process for ensuring orderly, effective, timely, and environmentally responsible leasing of oil and gas resources on Federal lands. The leasing process established in this IM was intended to create more certainty and predictability, protect multiple-use values when the BLM makes leasing decisions, provide for consideration of natural and cultural resources as well as public involvement with an awareness of the surrounding land ownership. The IM was also intended to reduce the backlog of unissued leases.

Effects: The IM has resulted in longer time frames to provide analysis and responses to protests and appeals, as well as longer lead times for districts to clear parcels for sale. It has also resulted in increased workload and staffing needs to conduct additional upfront environmental analysis.

Title: IM 2013-101, Oil and Gas Leasing Reform – Master Leasing Plans (MLPs)

Date: 4/15/2013

Description: This IM supplements existing BLM policy and guidance for processing Applications for Permit to Drill and outlines the regulatory and statutory requirements of Onshore Oil and Gas Order Number 1 (Order 1) and the Energy Policy Act of 2005.

Effects: The effect of this IM has been extended lead times for leasing while the BLM completes the public scoping and analysis for Master Leasing Plans. In addition, many areas have also been removed from leasing in recent years through the MLP process.

Title: IM 2013-177, National Environmental Policy Act (NEPA) Compliance for Oil and Gas Lease Reinstatement Petitions

Date: 8/13/2013

Description: This IM directs all oil and gas leasing offices to: 1) ensure Resource Management Plan conformance; 2) evaluate the adequacy of existing NEPA analysis and documentation; and 3) complete any necessary new or supplemental NEPA analysis and documentation before approving a Class I or Class II oil and gas lease reinstatement petition.

Effects: This IM has resulted in additional analysis and review time that often involves another Surface Management Agency and, in some instances, has led to adding new lease stipulations prior to lease reinstatement.

Title: IM 2016-140, Implementation of Greater sage-grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization

Date: 9/1/2016

Description: This IM provides guidance on prioritizing implementation decisions for BLM oil and gas leasing and development, to be consistent with Approved Resource Management Plan Amendments for the Rocky Mountain and Great Basin Greater sage-grouse Regions and nine Approved Resource Management Plans in the Rocky Mountain Greater sage-grouse Region (collectively referred to as the Greater sage-grouse Plans). This IM applies to activities in the areas covered by both the Rocky Mountain and Great Basin Regions Records of Decision, issued by the BLM in September 2015. This IM also contains reporting requirements for communication between State Offices and the Washington Office.

Effects: This IM requires additional analysis and staff time to screen parcels and weigh potential impacts to the Greater sage-grouse before the parcels are offered for leasing. It also requires additional analysis and staff time to process drilling permit approvals near Greater sage-grouse areas.

Title: Onshore Orders Nos. 3, 4 and 5

Date: All three final rules were published in the *Federal Register* on 11/17/2016, and became effective on 1/17/2017

Description: These three concurrent rulemakings updated and replaced Onshore Orders for site security, oil measurement, and gas measurement regulations that had been in place since 1989. The recent rulemakings resulted in new site security, oil measurement, and gas measurement regulations for Onshore Federal and Indian oil and gas production and are codified in the Code of Federal Regulations at 43 C.F.R. part 3170. These rulemakings were prompted by external and internal oversight reviews which found many of the BLM's production measurement and accountability policies to be outdated and inconsistently applied. The new rules also address some of the Government Accountability Office concerns for High Risk with regards to the Department's production accountability.

Effects: Combined, the new regulations improve the ability of the BLM to ensure accurate measurement, accountability, and proper reporting of oil and gas produced from Federal and Indian land in order to ensure that taxpayers and Indian tribes receive their fair share of royalty due. The new regulations also provide a process for approving new technology that meets defined performance goals. However, the regulations impose new cost burdens on operators. The cost estimates for each individual rule are as follows:

- Order 3: \$31.2 million in one-time costs, plus a \$11.7 million increase in annual operating costs. The average compliance cost per entity (operator) for this rule is under \$6,000 per year for the first three years after the rule becomes effective, and just over \$3,000 per year thereafter.
- Order 4: \$3.3 million in one-time costs, plus a \$4.6 million increase in annual operating costs. The average compliance cost per entity (operator) for this rule is just over \$1,500 per year for the first three years after the rule becomes effective, and just over \$1,200 per year thereafter.
- Order 5: \$23.3 million one-time cost, plus \$12.1 million increase in annual operating costs. The average compliance cost per entity (operator) for this rule is just over \$5,300 per year for the first three years after the rules becomes effective, and just under \$3,300 per year after that.

Solid Minerals

Title: IM 2014-156, Supplemental Guidance on Processing Royalty Rate Reduction Applications
Date: 9/26/2014

Description: This IM informs State Directors that they must provide the BLM Washington Office with a justification when seeking a royalty rate reduction (RRR). A copy of their draft decision must accompany the justification when requesting Washington Office concurrence. Further, this IM augments and reiterates the existing policy for processing RRR applications.

Effects: This policy has resulted in a delay to the processing of RRR applications as it has imposed an additional level of review of the BLM State Directors' decisions. However, assuring that all RRRs meet the necessary regulatory standards is imperative considering the public and Congressional scrutiny surrounding these actions.

Title: IM 2017-035, Publicly-Accessible Bureau of Land Management Websites for Information Regarding Federal Coal Program Leasing, Exploration Licensing, and Royalty Rate Reductions
Date: 1/19/2017

Description: This IM responds to stakeholder suggestions for improved access to information on the Federal coal program, and replaces the policy and guidance previously provided in WO-IM-2014-159, *Publicly-Accessible Bureau of Land Management Websites for Coal Leasing Information*. This IM directs BLM offices to post and update specified Federal coal program information on BLM publicly-accessible websites, including: (1) information about Federal coal lease applications and leases, lease modification applications, and lease modifications; (2) information about exploration licensing applications and exploration licenses; (3) information about royalty rate reduction applications; and (4) summary information on the Federal coal program.

Effects: Initially, BLM coal specialists will need to devote time to gathering existing coal leasing data for compilation and posting to the web; however, the BLM does not anticipate that the time involved will have a long-term measurable impact on the specialists' regular job functions related to maintenance and processing of coal leases and applications.

Title: IM 2017-037, Waste Mine Methane Policy
Date: 1/20/2017

Description: Establishes national policies and processes for voluntary activities by operators to capture waste mine methane from underground coal or other solid mineral mines. These policies will allow waste mine methane to be put to productive use, including offering it for sale, instead of venting it to the atmosphere.

Effects: All of the activities outlined in the policy are voluntary and will only be implemented if both the BLM and the mine operator agree. If the BLM and operator agree to implement the activities, additional costs could be incurred by the operator. However, it is assumed that the operator would only choose to implement the activities if the benefits outweigh the costs.

Other

Title: IM 2016-140, Process for Assessing, Coordinating, and Implementing Greater sage-grouse Land Use Plan Adaptive Management Hard and Soft Triggers
Date: 9/1/2016

Description: This IM directs the implementation of the land use plan adaptive management process to evaluate and apply hard and soft triggers and responses, as detailed in the Greater sage-grouse Approved Resource Management Plans and Amendments, Great Basin and Rocky Mountain Greater sage-grouse Regional Records of Decision (September 21, 2015).

Effects: This IM requires consistent timelines, state/local coordination, and public outreach for evaluating the triggers and responses required by the plans. Implementation of an adaptive management process may also slow the rate of energy development.

Title: BLM Land Use Planning Handbook, H-1601-1, Appendix C

Date: 3/11/2017

Description: The Land Use Planning Handbook describes the BLM's overall planning process. Appendix C of the Planning Handbook provides a brief summary of each program's decisions, including consideration of restrictions. As such, it provides summary information on what restrictions each program may propose in a planning process.

Effects: Based on the information in Appendix C of the Land Use Planning Handbook, the regulations, manuals, handbooks, and IMs for each program that may put restrictions on uses can be individually assessed. Whether the individual program's restrictions constitute a potential burden, however, is based at least in part on the actual decisions made in each individual Resource Management Plan.

NEXT STEPS

In some cases, the aforementioned Instruction Memoranda and regulatory actions include only certain components that may be unnecessarily burdensome. Based on feedback from the Acting Deputy Secretary on how to proceed, the BLM will coordinate with the DOI Solicitor's Office to determine how best to proceed with appropriate modifications of these Department Actions.