

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

STATE OF WYOMING and STATE OF MONTANA	)	
	)	
Petitioners,	)	No. 16-cv-00285-SWS
	)	
and	)	[Consolidated with 16-cv-00280-SWS]
	)	
STATE OF NORTH DAKOTA,	)	
	)	
Petitioner-Intervenor	)	
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF THE INTERIOR, <i>et al.</i> ,	)	
	)	
Respondents.	)	
	)	
and	)	
	)	
WYOMING OUTDOOR COUNCIL, <i>et al.</i>	)	
	)	
Respondent-Intervenors.	)	
	)	
	)	
	)	

---

**DECLARATION OF JAMES TICHENOR**

I, James Tichenor, declare as follows:

1. I am employed as an economist by the Energy, Minerals, and Realty Management Directorate of the Bureau of Land Management (BLM), within the U.S. Department of the Interior (Department). I have held that position since December 2010. The


directorates provide policy development and oversight to the BLM's minerals programs and its reclamation programs. Prior to that date, I worked as an economist for the Office of Surface Mining Reclamation and Enforcement with the Department. I earned a Bachelor of Arts degree in Economics from Emory University in 2001. I earned a Masters in Public Policy from Georgetown University in 2012.

2. I was actively involved in the development of the BLM's Waste Prevention, Production Subject to Royalties, and Resource Conservation rule (81 Fed. Reg. 83008 (Nov. 18, 2016)) ("Waste Prevention Rule"). I was one of the principal authors of the Regulatory Impact Analysis for the Waste Prevention Rule.
3. Since late January 2017, President Trump issued Executive Order (E.O.) 13783, entitled, "Promoting Energy Independence and Economic Growth," which directs the Secretary of the Interior to review four specific rules, including the Waste Prevention Rule, for consistency with the policy articulated in section 1 of E.O. 13783 and, "if appropriate" to publish proposed rules suspending, revising or rescinding those rules. Among other things, section 1 of E.O. 13783 states that "[i]t is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation." To implement E.O. 13783, on March 29, 2017, Secretary Zinke issued Secretarial Order 3349, entitled "American Energy Independence," which, among other things, directs the BLM to review the Waste Prevention Rule to determine whether it is fully consistent with the policy set forth in section 1 of E.O. 13783.

4. After reviewing the Waste Prevention Rule, the BLM found that it was not consistent with the policy in Section 1 of E.O. 13783 because some provisions of the Waste Prevention Rule appear to add regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.
5. The BLM is actively developing a proposed rule (proposed "Revision Rule") intended to align the Waste Prevention Rule with section 1 of E.O. 13783. I serve as the project lead for BLM on the development of the proposed Revision Rule.
6. The BLM has completed a draft of the proposed Revision Rule and the draft is currently before the Office of Information and Regulatory Affairs where it is undergoing an interagency review process pursuant to E.O. 12866. BLM has prepared a draft environmental assessment and regulatory impact analysis for the proposed rule. The BLM anticipates that the proposed Revision Rule will be published in the Federal Register in the early first quarter of 2018.
7. The BLM has also published a rule suspending or delaying many of the provisions of the Waste Prevention Rule: Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements (82 Fed. Reg. 58050 (Dec. 8, 2017)) ("Suspension Rule"). The attached chart summarizes each provision in the Waste Prevention Rule, states the estimated annualized capital costs of compliance with those requirements (as estimated in the RIA for the Waste Prevention Rule), and summarizes the impact of the Suspension Rule on each of the provisions of the Waste Prevention Rule.
8. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could testify competently to those facts.

9. I declare that the foregoing is true and correct.

Executed on December 11, 2017

  
James C. Tichenor

**Summary of Waste Prevention Rule Requirements and Impact of Suspension Rule**

<b>2016 Rule Provision (43 C.F.R.)</b>	<b>Summary of Requirement</b>	<b>2018 Annual Compliance Costs<sup>1</sup> (2016 RIA)</b>	<b>Impact of Suspension Rule</b>
3103.3-1 Royalty on production	Set royalty rate for competitive leases as “not less than 12 ½ percent,” thereby aligning the regulation with the Mineral Leasing Act.	N/A	None
3160.0-5 Definitions	Removed definition of “Avoidably lost.”	N/A	None
3162.3-1 Drilling applications and plans	Requires an operator to submit a “waste minimization plan” with an Application for Permit to Drill.	N/A	Suspended until January 17, 2019.
3178.1-.10 Royalty-free use of lease production	Regulates when oil and gas may be used royalty-free for operations and production purposes.	N/A	None
3179.1 Purpose	Explains the purpose of 43 C.F.R. subpart 3179.	N/A	None
3179.2 Scope	Identifies the leases, agreements, tracts, and facilities to which 43 C.F.R. subpart 3179 applies.	N/A	None
3179.3 Definitions and acronyms	Contains definitions for 43 C.F.R. subpart 3179.	N/A	None
3179.4 Determining when the loss of oil or gas is avoidable or unavoidable	Defines when lost oil or gas is “unavoidably lost” (not royalty-bearing) and when it is “avoidably lost” (royalty-bearing).	N/A	None

<sup>1</sup> Annualized capital costs using a 7% discount rate. See VF\_0000552. This table does not include the costs to industry of the “administrative burden” (i.e., paperwork) associated with the various requirements of the Waste Prevention Rule. Estimates of these costs are summarized in Section 7.13 of the 2016 RIA and total approximately \$5.5 million per year. See VF\_0000542-545. However, all but approximately \$110,000 of these estimated costs flow from provisions of the Waste Prevention Rule that have been suspended or delayed until January 17, 2019. *Id.*

3179.5 When lost production is subject to royalty	States that royalty is due on all “avoidably lost” oil or gas, and that royalty is not due on any “unavoidably lost” oil or gas.	N/A	None
3179.6 Venting prohibition	Prohibits venting or flaring of gas well gas, except where “unavoidably lost.” Requires lost gas to be flared, rather than vented, except in certain circumstances, including emergencies and where flaring is technically infeasible. Requires flares to be equipped with an automatic ignition system.	N/A	None
3179.7 Gas capture requirement	Requires operators to capture a certain percentage of the gas they produce from development oil wells. This percentage may be calculated on a lease, unit, CA, county, or state-wide basis. Required capture percentages increase over time, plateauing in 2026. Gas flared in excess of the capture percentage limits is royalty-bearing.	\$4 – 20 million	Capture percentage requirements suspended until January 17, 2019. Each capture percentage date is delayed by one-year.
3179.8 Alternative capture requirement	Allows for BLM to approve a lower capture percentage than that required by 3179.7 where the operator demonstrates that compliance with 3179.7 would cause the operator to cease production and abandon significant recoverable oil reserves.	N/A	None
3179.9 Measuring and reporting volumes of gas vented and flared	Requires operators to estimate or measure vented and flared volumes. After January 17, 2018, 3179.9(b)(1) requires operators to measure or calculate flared volumes when such volumes are estimated to exceed 50 Mcf/day.	\$4 million	3179.9(b)(1) measurement/calculation requirements suspended until January 17, 2019.
3179.10 Determinations regarding royalty-free flaring	Approvals to flare royalty-free in effect as of January 17, 2017, will continue in effect until January 17, 2018.	N/A	Approvals to flare royalty-free in effect as of January 17, 2017, will continue in effect until January 17, 2019.

3179.11 Other waste prevention measures	States that BLM may exercise its authority under applicable laws, regulations, permits, orders, leases, and unitization and communitization agreements, to limit production to avoid waste. This provision does not establish an independent source of authority to limit production.	N/A	None
3179.12 Coordination with State regulatory authority	States that, where BLM enforcement of subpart 3179 may adversely affect non-Federal, non-Indian mineral interests, the BLM will coordinate with the State regulatory authority with jurisdiction over those mineral interests.	N/A	None
3179.101 Well drilling	Requires gas that reaches the surface during well drilling to be captured and sold, directed to a flare, used on the lease/unit/CA, or injected.	N/A	Suspended until January 17, 2019.
3179.102 Well completion and related operations	Requires gas that reaches the surface during well completion, post-completion, and fluid-recovery operations to be captured and sold, directed to a flare (subject to volume limitations), used on the lease/unit/CA, or injected.	N/A	Suspended until January 17, 2019.
3179.103 Initial production testing	Places time and volume limitations on royalty-free flaring during initial production testing.	N/A	None
3179.104 Subsequent well tests	Places time limits on royalty-free flaring during subsequent well tests.	N/A	None
3179.105 Emergencies	Places limitations on royalty-free venting and flaring during emergencies.	N/A	None
3179.201 Equipment requirements for pneumatic controllers	Requires operators to replace high-bleed pneumatic controllers with low-bleed pneumatic controllers (subject to exceptions).	\$2 million	Suspended until January 17, 2019.

3179.202 Requirements for pneumatic diaphragm pumps	Requires operators to replace a pneumatic diaphragm pump with a zero-emissions pump, or route the pump's exhaust gas to processing equipment for capture and sale.	\$4 million	Suspended until January 17, 2019.
3179.203 Storage vessels	For storage vessels expected to emit VOCs greater than 6 tons per year, the operator must route all vapors from the storage vessel to a sales line, route all vapors to a flare (if routing to sales is technically infeasible or unduly costly), or submit an economic analysis showing that routing vapors to sales or flare would cause the operator to cease production and abandon significant recoverable oil reserves.	\$8 million	Suspended until January 17, 2019.
3179.204 Downhole well maintenance and liquids unloading	Requires the operator to minimize venting associated with downhole well maintenance and liquids unloading. Requires the person conducting manual well purging to remain onsite during the event. Requires the operator to notify BLM of well purging events in certain circumstances.	\$6 million	Suspended until January 17, 2019.
3179.301-.305 Leak Detection and Repair (LDAR)	Requires operators to undertake a leak detection and repair program, employing approved equipment and methods. Requires semi-annual inspections of "sites" and quarterly inspections of compressor stations. Requires operators to maintain records on inspections and repairs and submit an annual report to BLM.	\$84 million	Suspended until January 17, 2019.
3179.401 State or tribal requests for variances from the requirements of this subpart	Upon application of a State or tribe, BLM may apply State, local, or tribal regulations in the place of the regulations in 43 C.F.R. subpart 3179.	N/A	None