



4310-84

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3170

[17X.LLWO310000.L13100000.PP0000]

RIN 1004-AE14

**Waste Prevention, Production Subject to Royalties, and Resource Conservation;
Postponement of Certain Compliance Dates**

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification; postponement of compliance dates.

SUMMARY: On November 18, 2016, the Bureau of Land Management (BLM) issued a final rule entitled, “Waste Prevention, Production Subject to Royalties, and Resource Conservation” (the “Waste Prevention Rule” or “Rule”). Immediately after the Waste Prevention Rule was issued, petitions for judicial review of the Rule were filed by industry groups and States with significant BLM-managed Federal and Indian minerals. This litigation has been consolidated and is now pending in the U.S. District Court for the District of Wyoming. In light of the existence and potential consequences of the pending litigation, the BLM has concluded that justice requires it to postpone the compliance dates for certain sections of the Rule pursuant to the Administrative Procedure Act, pending judicial review.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Timothy Spisak at the BLM Washington Office, 20 M Street SE, Room 2134 LM, Washington, D.C. 20003, or by

telephone at 202-912-7311. For questions relating to regulatory process issues, contact Faith Bremner at 202-912-7441.

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SUPPLEMENTARY INFORMATION:

I. Background

On November 18, 2016, the BLM published the Waste Prevention Rule. (81 FR 83008) The Rule addresses, among other things, the loss of natural gas through venting, flaring, and leaks during the production of Federal and Indian oil and gas. The Rule replaced Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (1980) (“NTL-4A”), which governed the venting and flaring of Federal and Indian gas for more than three decades. In addition to updating and revising the requirements of NTL-4A, the Rule contained new requirements that operators capture a certain percentage of the gas they produce (43 CFR 3179.7), measure flared volumes (43 CFR 3179.9), upgrade or replace pneumatic equipment (43 CFR 3179.201 – 3179.202), capture or combust storage tank vapors (43 CFR 3179.203), and implement leak detection and repair (LDAR) programs (43 CFR 3179.301 – .305). The Rule did not obligate operators to comply with these new requirements until January 17, 2018. Compliance with certain other provisions of the Rule is already mandatory, including the requirement that operators submit a “waste

minimization plan” with applications for permits to drill (43 CFR 3162.3-1), new regulations for the royalty-free use of production (43 CFR subpart 3178), new regulatory definitions of “unavoidably lost” and “avoidably lost” oil and gas (43 CFR 3179.4), limits on venting and flaring during drilling and production operations (43 CFR 3179.101 – 3179.105), and requirements for downhole well maintenance and liquids unloading (43 CFR 3179.204).

Immediately after the Rule was issued, petitions for judicial review of the Rule were filed by industry groups and States with significant BLM-managed Federal and Indian minerals. The petitioners in this litigation are the Western Energy Alliance (WEA), the Independent Petroleum Association of America, the State of Wyoming, the State of Montana, the State of North Dakota, and the State of Texas. This litigation has been consolidated and is now pending in the U.S. District Court for the District of Wyoming. *Wyoming v. U.S. Dep’t of the Interior*, Case No. 2:16-cv-00285-SWS (D. Wyo.). Petitioners assert that the BLM was arbitrary and capricious in promulgating the Rule and that the Rule exceeds the BLM’s statutory authority.

On March 28, 2017, the President issued Executive Order No. 13783 (EO 13783) entitled, “Promoting Energy Independence and Economic Growth.” EO 13783 directed the Secretary of the Interior (Secretary) to review the Rule for consistency with the policies set forth in Section 1 of EO 13783 and, if appropriate, publish for notice and comment a proposed rule suspending, revising, or rescinding the Rule. EO 13783 Sec. 7(b). On March 29, 2017, the Secretary issued Secretarial Order 3349 implementing EO 13783. The Department’s review of the Rule is ongoing.

The Secretary has received written requests from WEA and the American Petroleum Institute (API) that the BLM suspend the Rule or postpone its compliance dates in light of the regulatory uncertainty created by the pending litigation and the ongoing administrative review of the Rule. Letter from Kathleen M. Sgamma to Secretary Zinke (April 4, 2017); letter from Jack N. Gerard to Secretary Zinke (May 16, 2017). Both API and WEA stated that operators face the prospect of significant expenditures to comply with provisions of the Rule that will become operative in January 2018. WEA specifically noted that the LDAR, storage tank, and pneumatic device provisions will require operators to begin purchasing and installing tens of thousands of replacement parts in the near future.

Section 705 of the Administrative Procedure Act (APA), 5 U.S.C. 705, provides that, “[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.” The Rule obligates operators to comply with its “capture percentage,” flaring measurement, pneumatic equipment, storage tank, and LDAR provisions beginning on January 17, 2018. This compliance date has not yet passed and is within the meaning of the term “effective date” as that term is used in Section 705 of the APA. Considering the substantial cost that complying with these requirements poses to operators (see U.S. Bureau of Land Management, Regulatory Impact Analysis for: Revisions to 43 CFR subpart 3100 (Onshore Oil and Gas Leasing) and 43 CFR subpart 3600 (sic) (Onshore Oil and Gas Operations), Additions of 43 CFR subpart 3178 (Royalty-Free Use of Lease Production) and 43 CFR subpart 3179 (Waste Prevention and Resource Conservation) (November 10, 2016)), and the uncertain future these requirements face in light of the pending litigation and administrative review of the

Rule, the BLM finds that justice requires it to postpone the future compliance dates for the following sections of the Rule: 43 CFR 3179.7, 3179.9, 3179.201, 3179.202, 3179.203, and 3179.301–3179.305.

While the BLM believes the Waste Prevention Rule was properly promulgated, the petitioners have raised serious questions concerning the validity of certain provisions of the Rule. Given this legal uncertainty, operators should not be required to expend substantial time and resources to comply with regulatory requirements that may prove short-lived as a result of pending litigation or the administrative review that is already under way. Postponing these compliance dates will help preserve the regulatory status quo while the litigation is pending and the Department reviews and reconsiders the Rule.

The provisions with compliance dates that have passed and are therefore unaffected by this document include: the requirement that operators submit a “waste minimization plan” with applications for permits to drill (43 CFR 3162.3-1), new regulations for the royalty-free use of production (43 CFR subpart 3178), new regulatory definitions of “unavoidably lost” and “avoidably lost” oil and gas (43 CFR 3179.4), limits on venting and flaring during drilling and production operations (43 CFR 3179.101 – 3179.105), and requirements for downhole well maintenance and liquids unloading (43 CFR 3179.204).

Separately, the BLM intends to conduct notice-and-comment rulemaking to suspend or extend the compliance dates of those sections affected by the Rule.

II. Postponement of Compliance Dates

Pursuant to Section 705 of the APA, the BLM hereby postpones the future compliance dates for the following sections affected by the final rule entitled, “Waste

Prevention, Production Subject to Royalties, and Resource Conservation”, pending
judicial review: 43 CFR 3179.7, 3179.9, 3179.201, 3179.202, 3179.203, and 3179.301–
3179.305. BLM will publish a document announcing the outcome of that review.

____ June 9, 2017 _____

Date

Katharine S. MacGregor
Delegated the Authority of the
Assistant Secretary for Land and Minerals
Management

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