



Submitted via [Federal eRulemaking Portal](#)

December 14, 2015

The Honorable Neil Kornze  
Director, Bureau of Land Management  
Mail Stop 2134 LM  
1849 C Street, NW  
Washington, DC 20240

**Re: Proposed Revisions to Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil and Measurement of Gas, RIN 1004-AE16**

Dear Director Kornze:

BLM's proposed revisions to Onshore Orders No. 4 and No. 5 regarding measurement of oil and natural gas, respectively, create new and complex measurement and reporting requirements for oil and natural gas operations that will further discourage development on federal and tribal lands. The proposed changes to these rules will especially disadvantage smaller operators in the West, where federal ownership of land is extensive and regulatory delays abound. BLM should reconsider its approach to revising these regulations.

Western Energy Alliance represents over 450 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fifteen employees. The following oil and natural gas trade associations representing western states also sign in support of these comments:

American Exploration & Production Council  
Idaho Petroleum Council  
Independent Petroleum Association of New Mexico  
La Plata County Energy Council  
Montana Petroleum Association  
New Mexico Oil and Gas Association  
North Dakota Petroleum Council  
Oklahoma Independent Petroleum Association  
Utah Petroleum Association

We incorporate by reference the detailed technical comments API is submitting in conjunction with other trade associations. As western oil and natural gas trade associations, we are submitting this comment letter regarding the specific impact of these

onshore orders on the West, where federal lands predominate and the proposed changes will have a corresponding disproportionate impact.

### **Technical Obsolescence**

The associations share BLM's goal of accurately measuring oil and natural gas and ensuring full, equitable royalty payments, but the changes to these rules misguidedly focus on process and monitoring requirements, rather than on ensuring that measurement catches up to and stays current with the latest, most accurate technology.

The proposed rules prescribe cumbersome equipment standards and procedures, rather than performance standards, that will likely be outdated relatively soon as technology changes. By not allowing flexibility for technological advances, it will likely lock in place obsolescence. The compliance costs associated with the equipment standards and procedures will be substantial, and these standards ignore the possibility that greater measurement accuracy could be achieved through other methods or means.

### **Retroactivity**

The retroactive nature of the rules, together with the general bureaucratic delays associated with public lands and the additional existing and upcoming regulations, will disproportionately affect the public lands states of the West, suppressing economic growth and job creation more than in other regions of the country. We urge BLM not to apply these rules retroactively to the tens of thousands of existing facilities on federal lands, but rather just to new wells going forward. Retroactive application of the rules will impose significant costs on operators and will cause production to be shut in. Smaller operators would be especially burdened by the costs of applying these rules retroactively.

Furthermore, BLM lacks the staff and expertise necessary to implement the proposed rules, particularly retroactively, which will lead to additional backlogs on federal lands. Currently, the average delay in obtaining BLM approval for an application for permit to drill is well over 200 days, and this period will likely be lengthened as petroleum engineering and other related staff will be tasked to implement these rules.

As an example, facility measurement point equipment would be subject to BLM's verification of the accuracy and validity of all inputs, factors, and equations used to determine the quality or quantity of oil measured, placing a huge burden on BLM to administer thousands of different devices currently in use and proposed to be used. Many existing wells could be shut in while awaiting approval of equipment, site diagrams, measuring points, communitization agreements and other bureaucratic approvals, resulting in less, rather than more royalty revenue.

### Environmental Assessments

BLM has prepared three separate and standalone environmental assessments (EA) for onshore orders number 3, 4 and 5. These three rules are fully interrelated, thus providing a classic example of NEPA “segmentation” consistently overturned by federal courts. BLM’s own NEPA handbook addresses this in 6.5.2.1 “Connected Actions” which states: *“If the connected action is also a proposed BLM action, we recommend that you include both actions as aspects of a broader “proposal” (40 CFR 1508.23), analyzed in a single NEPA document.”*

The Council on Environmental Quality (CEQ) requires agencies to examine connected actions, cumulative impacts and similar actions in NEPA documents. Specifically, CEQ at 40 CFR 1502. 4(a) states *“Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.”* Clearly BLM has failed in its obligations to conduct a comprehensive EA for the three interrelated rules.

### Economic Analysis

This same segmentation attempt is found in the “Economic and Threshold Analysis” supplemental material. BLM has completed a separate Threshold Analysis for each order rather than conduct a comprehensive economic analysis for the cumulative effect of the totality of the three interrelated orders. A single, comprehensive analysis must be done to fully assess the overall impacts of these significant regulatory proposals of BLM. BLM would be negligent in not completing a new, comprehensive economic analysis with additional input from the affected industries that now extends regulatory impacts beyond just oil and natural gas producers to the transportation industry as well.

By separating out the costs for these three highly interrelated rules, BLM keeps the individual cost analyses below the \$100 million major rule threshold that carries additional obligations under the following: (i) Executive Order 13563; (ii) Executive Order 12866 (Regulatory Planning and Review); (iii) the Regulatory Flexibility Act of 1980; (iv) the Small Business Regulatory Enforcement Fairness Act; and (v) the Unfunded Mandates Reform Act.

Although BLM’s three assessments by their separate nature and other deficiencies underestimate the true costs of the rules, taken together they exceed the \$100 million threshold as follows:

- Onshore Order 3
  - Industry costs: \$13.5 million/year; \$121.5 million one-time costs, spread over three years or \$40.5 million/year
  - BLM costs: \$3.4 million/year; \$29.5 million one-time costs, spread over three years

- Onshore Order 4
  - Industry costs: \$258,000/year; \$1 million/year in new compliance costs for information collection; \$1.38 million one-time retrofitting cost
  - BLM costs: none identified
- Onshore Order 5
  - Industry costs: \$45.5 million/year in new expenses; \$10.2 million/year in new royalty payments; \$33 million one-time retrofitting cost, spread over one to three years
  - BLM costs: none identified

Leaving aside the fact that it strains credulity that BLM will incur no costs for implementing two of these three highly complex rules retroactively, the costs taken together exceed the \$100 million threshold, at \$136.6 million in the first year alone. We believe these total costs should result in a full cost assessment per the statutes and executive orders cited above.

Furthermore, the Economic and Threshold Analysis used data from fiscal year 2014 when oil was near \$100 per barrel. Oil is now at or below \$40 per barrel with no price support in the near future. The oil and natural gas industry is currently in serious economic stress with substantial layoffs and in some cases, budgetary shortfalls. The associated equity markets are stressed as well. As a result, any increase in regulatory costs will be substantially more significant to the industry than would have been in FY2014. Therefore and without question, the BLM's economic analyses must be redone to reflect economic realities. These analyses must also be conducted as a single analysis to reflect cumulative impacts and connectivity of the BLM regulatory proposal(s).

BLM should only move forward with sensible, performance based rules and should not apply them retroactively. BLM should also conduct the full economic and environmental analyses as required for connected actions. We respectfully request that BLM reconsider the proposed revisions to Onshore Orders No. 4 and No. 5. Thank you for your consideration of these comments.

Sincerely,



Kathleen M. Sgamma  
Vice President of Government & Public Affairs