



U.S. Department of the Interior
Bureau of Land Management

Tribal Consultation - Waste Prevention, Production Subject to Royalties, and Resource Conservation; 43 CFR Parts 3160 and 3179

August 2021





Agenda:

- Welcome and Introductions
- Rulemaking Process Overview
- Purpose of Proposed Rule
- Need for Proposed Rule
- Timeline and Feedback



Government-to-Government Consultation:

- The BLM takes its consultation responsibilities seriously and we believe it is vital that Native American governments be afforded opportunities for ongoing, meaningful dialogue on the proposed rule changes as required by law.
- We recognize that rule changes may have potential impacts and opportunities to sovereign tribes, and as such, your input on this proposed rule is valuable.
- BLM welcomes Tribal input and comment on the proposed rule throughout the process.



BLM Rulemaking Process

1. Initiate process
2. Stakeholder engagement
3. Draft a Proposed Rule
4. Office of Management and Budget (OMB) review
5. Publication of Proposed Rule
6. Receive, analyze, and respond to stakeholder comments
7. Draft Final Rule – *explains the provisions and reasoning, discuss and respond to public comments, update analyses, and set effective date*
8. OMB review
9. Final Rule Federal Register publication



Purpose of Waste Prevention Rule:

- Requires waste minimization plans be submitted with oil-well Applications for Permit to Drill (APDs). The BLM may delay/deny an APD in order to avoid excessive flaring of associated gas.
- Clarifies the circumstances under which gas may be flared royalty-free (“unavoidably lost”). Places time and volume limits on royalty-free flaring.
- Introduces safety provisions, including requirement that gas be flared (rather than vented) in most circumstances.
- Requires measurement/estimation of all vented or flared volumes and reporting of those volumes to Office of Natural Resources Revenue (ONRR).



Effect on Tribes or Tribal Lands:

The BLM is considering whether to include a State/Tribal variance provision in the draft proposed rule.

- In essence, this provision would allow States and tribes to submit a request to BLM to have analogous State or tribal regulations apply in place of BLM's.
- In order to approve the variance, BLM would have to find that the State/Tribal rules “would perform at least equally well in terms of reducing waste of oil and gas, reducing environmental impacts from venting and or flaring of gas, and ensuring the safe and responsible production of oil and gas, compared to the particular provision(s) from which the State or tribe is requesting the variance.”



Need for Waste Prevention Rule:

The draft proposed rule improves upon the current rules in Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases: Royalty or Compensation for Oil and Gas Lost (NTL-4A) by:

- Requiring waste minimization plans with oil-well APDs,
- Clarifying/limiting the circumstances under which flaring is royalty-free,
- Adding safety provisions, including prohibition on venting,
- Clarifying measurement and reporting obligations,
- Limiting the use of pneumatic equipment that bleeds gas.
- Requiring vapor recovery for oil-storage tanks, and
- Requiring operators to maintain a Leak Detection and Repair (LDAR) program.



Regulatory History:

- In 2016, the BLM issued a rule addressing the waste of Federal/Indian gas through venting, flaring and leaks.
 - Waste minimization plan required for APDs; clarified when flaring is royalty free; gas capture percentage.
 - Emissions-standards for oil storage tanks; Leak Detection and Repair (LDAR).
- 2016 rule vacated by U.S. District Court (*Wyoming v. DOI*).
 - Holding: The BLM exceeded its authority and was arbitrary and capricious.
- Proposed rule is designed to reduce wasteful venting and flaring within existing statutory authority.



Timeline and Feedback:

- The BLM is targeting publication of the proposed rule in the Federal Register during the fall of 2022; however, the exact date is dependent upon final review and approval from the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA)
- Opportunities for Feedback:
 - Ongoing Government-to-Government consultation will be coordinated upon request



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