



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

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# Regulatory Update: Venting and Flaring

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November, 2020





# Agenda:

- Welcome and Introductions
- Regulatory History
- Review of Royalty-Free Use
- Review of NTL-4A



## Legal Disclaimer:

This presentation is not an official statement of policy by the Bureau of Land Management (BLM).

This summary presentation was prepared for informational purposes only and does not in any way limit or modify the regulations described herein.

Interested parties should not rely on the contents of this presentation and should take care to review the official text of NTL-4A and 43 CFR subpart 3178.



## Purpose:

- The purpose of this presentation is to provide an update on BLM's regulations pertaining to the venting and flaring of gas from BLM-managed oil and gas leases.
- As described herein, the BLM's venting and flaring regulations have been the subject of numerous administrative actions and judicial interventions over the last four years.



# Regulatory History:

Rules governing venting/flaring depends on when the venting/flaring event occurred:

- NTL-4A – fully in effect from 1980 until November 27, 2018
- 43 CFR 3179 (Replacement Rule) – fully in effect from November 27, 2018 through October 13, 2020
- NTL-4A – in effect with respect to venting, flaring, and avoidable/unavoidable losses from Oct. 14, 2020, to present



# Regulatory History:

- Prior to November 2016, the BLM's policy regarding waste prevention was found in NTL-4A (formally, "Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil or Gas Lost" (44 FR 76600 (Dec. 27, 1979)) and the implementation guidance CDM 644.5 (formally, "Geological Survey Conservation Division Manual").
- On November 16, 2016, the BLM published "Waste Prevention, Production Subject to Royalties, and Resource Conservation" (82 FR 83008) ("2016 Rule"). Although effective on January 17, 2017, the majority of requirements were to be phased-in, starting January 17, 2018.



# Regulatory History:

- The 2016 Rule was immediately challenged by industry groups & states of WY, ND, MT, & TX in the U.S. District Court for the District of Wyoming. Court denied request for preliminary injunction.
- On December 8, 2017, the BLM issued the Waste Prevention “Delay” Rule ([82 FR 58050](#)). The rule shifted the effective date for most requirements to January 2019. The Delay Rule was challenged in court and a preliminary injunction was granted on February 22 (meaning, the 2016 Rule was in effect).
- The petitioners challenging the 2016 Rule restarted litigation in WY and obtained a stay of most requirements in the 2016 Rule as well as a stay of the litigation pending the completion of BLM rulemaking to rescind/revise the 2016 Rule.

## Regulatory History:

- On September 28, 2018, the BLM published the Waste Prevention “Replacement” Rule (83 FR 49184). The Replacement Rule rescinded many requirements of the 2016 Rule and revised others. In general, the Replacement Rule returned to the standards of NTL-4A, but with additional deference to state flaring rules.
- Replacement Rule was challenged in U.S. District Court for the Northern District of California. On July 15, 2020, the court vacated the Replacement Rule, but stayed vacatur until Oct. 13, 2020.

## Regulatory History:

- The decision from the N.D. Cal. prompted the Wyoming court to lift the stay of the litigation over the 2016 Rule.
- On October 8, 2020, the Wyoming court issued a ruling vacating the 2016 Rule, except for certain severable provisions.



## 2016 Waste Prevention Rule

## Effect of Wyoming v. DOI Decision

Amended 43 CFR 3103.3-1 – royalty rate on competitive leases “not less than 12 ½ percent”

Remains in Effect

Added “waste minimization plan” requirement for oil-well APDs at 43 CFR 3162.3-1(j)

Vacated

Added 43 CFR subpart 3178, which governs the royalty-free use of production and supplanted NTL-4A with respect to royalty-free “beneficial use”

Remains in Effect

Added 43 CFR subpart 3179, addressing:

- Avoidable/unavoidable losses of oil and gas
- Restrictions on venting
- Quantitative limits on flaring
- Measurement/reporting on vented/flared volumes
- Venting/flaring during drilling, well completion, testing, and emergencies
- Requirements for pneumatic controllers, pneumatic diaphragm pumps, storage vessels (tanks), liquids unloading
- Leak detection and repair (LDAR) requirements

Vacated

(BLM regulation of venting, flaring, and avoidable/unavoidable losses reverts to NTL-4A)



## 43 CFR 3178 Royalty-Free Use of Lease Production:

- In general, royalty is not due on oil/gas produced from a lease and used for operations and production purposes on the same lease. Includes placing the product in marketable condition.
- 3178.4 identifies uses of oil/gas not requiring BLM approval – must be reasonable volumes based on equipment used
- 3178.5 identifies uses of oil/gas **requiring** BLM approval prior to receiving royalty-free use
- 3178.6 identifies uses of oil/gas moved off agreement not requiring BLM approval



## 43 CFR 3178 Royalty-Free Use of Lease Production:

- 3178.7 identifies uses of oil/gas moved off agreement **requiring** BLM approval prior to receiving royalty-free use
- 3178.8 allows for measurement or estimation of volumes oil/gas for royalty-free use
- 3178.9 indicates how to apply for approval of royalty-free use when required
- 3178.10 states operator obligations regardless of the ownership of the equipment using oil/gas royalty-free

## NTL-4A:

- 1980 to January 17, 2017, and October 14, 2020 to present NTL-4A governs venting, flaring, and avoidable/unavoidable losses
  - Implementation guidance CDM 644.5 “Geological Survey Conservation Division Manual”
- NTL-4A governed royalty-free use (“beneficial purposes”) from 1980 to January 2017.
  - Sections in NTL-4A for Royalty-free use are superseded by 43 CFR 3178.

# NTL-4A:

I. General – oil and gas production subject to royalty

## II. Definitions

A. “Avoidably lost” production means the venting or flaring of produced gas without prior authorization when the Authorized Officer determines the loss occurred as a result of

- (1) negligence on the part of the lessee or operator, or
- (2) failure of the lessee/operator to take all reasonable measures to prevent and/or control the loss, or
- (3) failure of the lessee/operator to comply fully with the applicable lease terms and regulations, appropriate provisions of the approved operating plan, or the prior written order of the Authorized Officer (AO), or
- (4) any combination of the foregoing.

# NTL-4A:

## II. Definitions

B. “Beneficial purposes” – no longer in effect, refer to 43 C.F.R. 3178 for

C. “Unavoidably lost” production means

(1) those gas vapors which are released from storage tanks or other low-pressure production vessels unless the AO determines that the recovery of such vapors would be warranted,

(2) oil or gas which is lost because of line failures, equipment malfunctions, blowouts, fires, or otherwise except where the AO determines that said loss resulted from the negligence or the failure of the lessee or operator to take all reasonable measures to prevent and/or control the loss, and (continued...)

# NTL-4A:

## II. Definitions

### C. “Unavoidably lost” production means

(3) the venting or flaring of gas in accordance with Section III hereof.

## III. Authorized Venting and Flaring of Gas

Lessee or operators are hereby authorized to vent or flare gas on a short-term basis without incurring a royalty obligation in the following circumstances:

A. Emergencies – limited to 24 hours per incident and to 144 hours cumulative for the lease during any calendar month, except with prior authorization.

B. Well Purging and Evaluation Tests – not exceeding a period of 24 hours.

## NTL-4A:

### III. Authorized Venting and Flaring of Gas

C. Initial Production Tests – not exceeding a period of 30 days or the production of 50 MMcf of gas, whichever occurs first.

D. Routine or Special Well Tests. During routine or special well tests, other than those cited in III. B and C above, only after approval by the AO.

### IV. Other Venting or Flaring

A. Gas Well Gas. Except as provided in II. C and III above, gas well gas may not be flared or vented.

B. Oil Well Gas. Except as provided in II. C and III above, oil well gas may not be vented or flared unless approved in writing by the AO. AO may approve an application for venting or flaring of oil well gas if justified either by submittal of (continued...)

# NTL-4A:

## IV. Other Venting or Flaring

### B. Oil Well Gas

(1) an evaluation report supported by engineering, geologic, and economic data which demonstrates to the satisfaction of the AO that the expenditures necessary to market or beneficially use such gas are not economically justified and that conservation of the gas, if required, would lead to the premature abandonment of recoverable oil reserves and ultimately to a greater loss of equivalent energy than would be recovered if the venting or flaring of the gas were permitted to continue or

(2) an action plan that will eliminate venting or flaring of the gas within 1 year from the date of the application.

# NTL-4A:

## IV. Other Venting or Flaring

C. Content of Applications. Appropriate engineering, geologic, and economic data in support of the applicant's determination that conservation of the gas is not viable from an economic standpoint and, if approval is not granted to continue the venting or flaring of the gas, that it will result in the premature abandonment of oil production and/or the curtailment of lease development...

When evaluating the feasibility of requiring conservation of the gas, the total leasehold production, including both oil and gas, as well as the economics of a field wide plan shall be considered by the AO in determining whether the lease can be operated successfully if it is required that the gas be conserved.

## NTL-4A:

### V. Reporting and Measurement Responsibilities

Operator obligated to report avoidable/unavoidable losses on OGOR.

Measurement V. 1. or estimation V. 2. of the volumes avoidably or unavoidably lost.

The Supervisor may require the installation of additional measurement equipment whenever it is determined that the present methods are inadequate to meet the purposes of this Notice.

### VI. Value Determinations for Royalty or Compensation Purposes

### VII. Compliance

The failure to comply with the requirements of this Notice will result in compliance being secured by such actions as are provided by law and regulation.

Thank you for your attendance.