



March 8, 2016

Office of Management and Budget
Office of Information and Regulatory Affairs
Desk Officer for the Department of the Interior
Attention: OMB Control Number 1004-XXXX

Re: Information Collection Requirements for BLM's Proposed Rule on Waste Prevention, Production Subject to Royalties, and Resource Conservation; OMB Control No. 1004-XXXX

To Whom It May Concern:

The Independent Petroleum Association of America ("IPAA"), the Western Energy Alliance ("Alliance"), and the American Exploration and Production Council ("AXPC") (collectively "the Associations") appreciate the opportunity to comment to the Office of Management and Budget ("OMB") in relation to the information collection requirements that would be imposed by the Bureau of Land Management's ("BLM") proposed Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule ("Rule"). The proposed information collection requirements would result, contrary to the requirements of the Paperwork Reduction Act (44 USC §§ 3501-3521), in unnecessary new costs and burdens, without compensating benefits, to domestic oil and natural gas producers, the vast majority of which are small, independent businesses,.

The Associations

The Independent Petroleum Association of America represents the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that will be the most significantly affected by the actions resulting from this proposal. Independent producers drill about 95 percent of American oil and natural gas wells, produce about 54 percent of American oil, and more than 85 percent of American natural gas. The Independent Petroleum Association of America is the leading, national upstream trade association representing thousands of oil and natural gas producers and service companies.

Western Energy Alliance represents over 450 members involved in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. The Alliance represents independents, the majority of which are small businesses with an average of fifteen employees.

The American Exploration & Production Council is a national trade association representing 28 of America's largest and most active independent natural gas and crude oil exploration and production companies. AXPC's members are "independent" in that their operations are limited to the exploration for and production of natural gas and crude oil. Moreover, its members operate autonomously, unlike their fully integrated counterparts, which operate in additional segments of the energy business, such as downstream refining and marketing. AXPC's members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce crude oil and natural gas, and that allow our nation to add reasonably priced domestic energy reserves in environmentally responsible ways.

The member companies of the Associations have valid existing leases, current oil and gas production, and plans that include future leasing, exploration, and production activities on federal and Indian lands. Consequently, these companies will be directly affected by the proposed information collection requirements considered under the proposed rule.

Information Collection Requirements

As will be explained in our substantive comments on the Rule, the Rule is fatally flawed for at least two reasons and must be withdrawn. First, the Mineral Leasing Act at 30 U.S.C. § 225 only gives BLM the authority to regulate the "waste" of gas that is being developed on public lands; it does not give it the authority to regulate the emission of methane from oil and gas operations due to the possible impact such emissions may have on climate change. However, the regulation of methane emissions, rather than the prevention of "waste," is the principal focus of, and justification for, the Rule. Second, the Rule's economic analysis is based on an assumption that captured gas could be sold for \$4, which is more than twice the current rate. As a result, the conclusion that the Rule would produce positive benefits is wrong. However, if BLM decides to promulgate the Rule in spite of its deficiencies, the following comments on the Rule's information collection requirements should be taken into account.

Proposed Revisions of Control No. 1004-0137

Plan to Minimize Waste of Natural Gas (Form 3160-3) (43 CFR 3162.3-1(j))

BLM is proposing to require operators to submit "a plan to minimize waste of natural gas when submitting an [Application for Permit to Drill any new] development oil well." In

the plan, operators will be required to “set forth a strategy for how [they] will comply with the proposed requirements to control waste from venting, flaring, and leaks and ... how [they plan] to capture associated gas upon the start of oil production.” Although the waste minimization plans are to be unenforceable, BLM would not approve an APD until it determines that the associated waste minimization plan is “adequate and complete.” As explained below, the requirement to develop waste minimization plans is unnecessary and should be withdrawn. BLM also significantly underestimates the number of plans that would have to be prepared and the time it would take to prepare them.

BLM is proposing to adopt limits on the amount of associated gas that can be flared from oil wells. The limits are based on an assumption that much of the gas that is currently being flared could be captured and sold for a profit. BLM asserts that “the [waste minimization] plan requirement is intended to assist operators in better preparing to comply with” the flaring limits.¹ BLM “believes that requiring submission of a waste minimization plan would insure that as an operator plans a new well, the operator has the information necessary to evaluate and plan for gas capture.”² In other words, BLM is assuming that unless operators are required to gather certain information that they need to comply with the flaring limits, they will not do so.

The requirement, however, is unnecessary. In order to comply with the flaring limits, an operator will of necessity have to plan how it will do so, even if there is no requirement to develop a plan for submission to BLM. In other words, the existence of the limits themselves will force operators to plan; they do not need to be required to plan by BLM. Moreover, operators are fully capable of identifying what information will be needed to prepare their plans. Thus, having to generate and collect the information required by the Rule and submit it in a prescribed format to BLM for review will serve no useful purpose and deliver no useful benefit. Preparing the plan for BLM will simply be a needless bureaucratic exercise that will waste the time and resources of operators, many of whom are small businesses, in preparing the plan, as well as the time and resources of BLM in reviewing the plans to determine if they are “adequate and complete.” In addition, BLM’s review of the plans will slow down the approval of APDs, which BLM is already incapable of doing in a timely manner. Indeed, in some instances, BLM may be so slow to approve APDs that information contained in a waste minimization plan may be out of date by the time the APD is finally approved. If BLM believes that the operators are not capable of identifying by themselves what information they need to collect to make their plans to comply with the flaring limits, then BLM should simply inform the operators what that information is. It is unnecessary to require them to put that information in a plan that is then submitted to BLM where, after the initial review, it will simply be placed in a file and forgotten.

¹ 81 FR 6642.

² *Id.*

Moreover, much of the information that BLM would require be included in a plan is not necessary to achieve the purpose of the plan, which is to “set forth a strategy for how the operator will comply” with the flaring limits, and explain how the operator “plans to capture associated gas upon the start of oil production,” and, “if pipeline transport is unavailable,” to present an evaluation of “opportunities for alternative on-site capture approaches.” For example, to achieve that purpose, an operator does not need to identify for BLM “all existing gas pipelines within 20 miles of the well,” and “the location and name of the operator of each gas pipeline within 20 miles of the proposed well;” it only needs to identify the pipeline to which it intends to connect. It also does not need to identify for BLM the “maximum current daily capacity of the pipeline,” or its “current throughput,” or the “anticipated daily capacity of the pipeline at the anticipated date of first gas sale from the proposed well.” These are things which the well operator and the pipeline operator may need to take into account in reaching an agreement, but reporting them to BLM serves no useful purpose. Moreover, each plan is required to contain confidential business information, some belonging to the operator and some to the pipelines that the operator may want to use to transport its gas. As the Rule does not obligate pipelines to disclose that information to BLM, gaining access to that information could be a significant obstacle for an operator in preparing a plan.

Additionally, BLM has significantly underestimated the burden that this information collection requirement would impose on operators. BLM’s estimates of the number of waste minimization plans and the hours required to prepare such a plan are significantly understated.

The Rule would require the development of a waste minimization plan for every new APD submitted for a new oil well on public lands. Yet BLM estimates, without citing to any supporting data, that only 2,000 waste minimization plans will have to be developed during the life of the Rule. Given BLM’s own estimate that there are currently 100,000 oil and gas wells on public lands, we believe this estimate substantially understates the number of waste minimization plans that will have to be developed.

Further, BLM estimates that only two hours will be required to prepare each plan. In making that estimate, BLM obviously conceived of the plan as simply an exercise involving the collection of readily-available information. However, some of the information will have to be obtained from the pipeline companies, and coordination with them will take time, particularly as some of the information is confidential business information which they are under no obligation to share with BLM. Moreover, the Rule would require more than simple information-gathering; each plan will have to contain an explanation, based on the information that is collected, of “how the operator plans to capture associated gas upon the start of oil production,” and, “if pipeline transport is unavailable” as a capture strategy, “an evaluation of opportunities for alternative on-site capture approaches.” Developing such an explanation and evaluation will consume

significantly more than two hours, particularly in light of the fact that BLM has not specified what it will accept as an “adequate and complete” explanation and evaluation.

Request for Approval of Alternative Volume Limits (43 CFR 3197.7(b))

Under the Rule, an operator may obtain an alternative flaring limit for all the wells on a lease, provided the necessary demonstration is made to BLM. BLM estimates that only 185 operators will seek such relief. This is unrealistic. In the Bakken, for example, oil wells typically produce in the initial stage an order of magnitude or more of gas than the proposed flaring limit. Thus, nearly every operator of an oil well without access to adequate pipeline capacity will likely need to seek alternative flaring limits.

Pneumatic Controller Report (43 CFR 3179.201(b))

Under the Rule, an operator must replace each of its high-bleed pneumatic controllers with a low-bleed pneumatic controller within one year of the date of the Rule unless, among other things, the operator can demonstrate that “replacement of [the high-bleed] pneumatic controller ... would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease.” To make that demonstration, the operator must submit the information specified in proposed section 3179.7(b), which is the information that must be submitted to justify an alternative flaring limit for all of the wells on a lease.

The problem here is three-fold. First, the Rule sets too high a standard for relief from the replacement requirement for pneumatic controllers and thus requires the operator to submit unnecessary and irrelevant information. When an operator is applying for relief from the flaring limits for all of the wells on a lease, it may be reasonable to require a demonstration that, in the absence of such relief, the operator will cease production from those wells and, in the process, abandon significant oil reserves. But when an operator is applying for relief from the requirement to replace a single pneumatic controller, it is clearly not reasonable to require that same showing. That is a standard that will never be met in the context of the replacement of a pneumatic controller. BLM should require a showing only that the replacement of the pneumatic controller will not be offset by the value of the gas that will be saved by using a low-bleed controller.

Second, BLM underestimates the number of operators who may need to seek relief from the replacement requirement. BLM estimates that there are about 15,600 high-bleed pneumatic controllers that will need to be replaced. However, it estimates, without citation to any supporting data, that in only 200 instances —i.e, with respect to only 0.012% of existing high-bleed controllers--will operators need to seek relief from the replacement requirements.

Third, BLM underestimates the amount of time it will take to prepare a request that satisfies the requirements of proposed section 3179.7(b). BLM estimated that it would take sixteen hours to comply with those requirements in the context of seeking relief from the flaring limits, yet estimates that it would only take two hours to comply with those same requirements in the context of seeking relief from the pneumatic pump replacement requirement.

Pneumatic Pump Report (43 CFR 3179.202(c))

Under the proposed rule, an operator must replace each of its pneumatic chemical injection and pneumatic diaphragm pumps with a zero-emission pump unless the operator can demonstrate, among other things, that “installation of a zero-emissions pump would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease.” To make that demonstration, the operator must submit the information specified in section 3179.7(b), which is the information that must be submitted to justify an alternative flaring limit for all wells on a lease.

The problems here are the same as with pneumatic controllers. First, the Rule sets too high a standard for relief from the replacement requirement for pneumatic pumps and thus requires the operator to submit unnecessary and irrelevant information.

When an operator is applying for relief from the flaring limits for all of the wells on a lease, it may be reasonable to require a demonstration that, in the absence of such relief, the operator will cease production from those wells and, in the process, abandon significant oil reserves. But when an operator is applying for relief from the requirement to replace a certain pneumatic pump with a zero-emission pump, it is unreasonable to require that same showing. That is a standard that will never be met in the context of the replacement of a pneumatic pump. BLM should require a showing only that the replacement of the pump will not be offset by the value of the gas that will be saved by using a zero-emission pump.

Second, BLM underestimates the number of operators who may need to seek relief from the replacement requirement. BLM states that there are 8,775 pneumatic pumps that will need to be replaced. However, it estimates, without citation to any supporting data, that in only 250 instances—i.e., with respect only 0.028% of existing pneumatic pumps--will operators need to seek relief from the replacement requirement.

Third, BLM underestimates the amount of time it will take to prepare a request that satisfies the requirements of proposed section 3179.7(b). BLM estimated that it would take sixteen hours to comply with those requirements in the context of seeking relief from the flaring limits, yet estimates that it would only take eight hours to comply with those same requirements in the context of seeking relief from the pneumatic pump replacement requirement.

Administrative Costs

In general, BLM underestimates the administrative cost of complying with the information collection requirements. Even taking the Agency's lowball estimates that it will take 40,430 hours of professional and 13,112 hours of clerical time to perform the administrative tasks needed to comply with the Rule, the wage rates used by BLM are not reflective of those in the industry. Based on the May 2014, Occupational Wage and Employment Statistics from the US Department of Labor (the latest data available), the hourly cost for a petroleum engineer in Colorado is \$73.06 and for a paralegal it is \$25.11. Colorado is an appropriate geography to use as the bulk of the headquarters operations for companies operating BLM leases are located in and around Denver.

Multiplying the hourly wage rate by 1.3 to account for benefits and payroll taxes, gives a cost of \$94.98 per hour for an engineer and \$32.64 for a paralegal. These are multiplied by the time estimates from BLM to come up with a revised cost estimate to comply with the administrative burden of the rule of about \$4.268 million, which is 53 percent more than estimated by the Agency.

Conclusion

For the reasons explained, the Rule would impose significant and unnecessary information collection requirements, contrary to the goals of the Paperwork Reduction Act. The PRA's purpose is to ensure the minimization of "the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local, and tribal governments, and other persons resulting from the collection of information by or for the Federal Government." Consequently, while the Rule as a whole is deeply flawed and should be withdrawn, we ask, at a minimum, that OMB direct BLM to revise the Rule in order to eliminate the unnecessary burdens that we have identified.

Sincerely,



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