



**Richard Ranger**  
Senior Policy Advisor  
**Upstream**  
1220 L Street, NW  
Washington, DC 20005-4070  
USA  
Telephone 202-682-8057  
Fax 202-682-8426  
Email rangerr@api.org  
www.api.org

November 17, 2017

Mr. David Bernhardt  
Deputy Secretary  
United States Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Re: BLM Regulatory Reform for 43 CFR §§ 3173, 3174, & 3175 in response to “Regulatory Reform,” 82 Fed. Reg. 28,429 (June 22, 2017)

Submitted via Regulations.gov

Dear Mr. Bernhardt:

With this letter, the American Petroleum Institute (“API”) respectfully identifies potential regulatory reform with respect to the three rules that govern site security and measurement of oil and natural gas production from leases operated on land managed by the Bureau of Land Management (“BLM”):

- 43 CFR 3173 BLM Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security
- 43 CFR 3174 BLM Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil
- 43 CFR 3175 BLM Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Gas

These rules became effective January 17, 2017. As we will explain in this letter and an earlier letter on the subject of these three rules which is attached hereto and made a part hereof by reference, we are again making specific recommendations to change or to remove requirements that impose unnecessary burdens of complexity of compliance and cost for companies engaging in the development and production of oil and natural gas resources on federal lands. We continue to believe that these requirements do not provide value for the BLM in its management of these federal energy resources. Some of these burdens have been identified in the October 24, 2017 report “Review of the Department of the Interior Actions that Potentially Burden Domestic Energy” (“October 24 Report”).

API is a national trade association representing over 640 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API member companies are leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

As noted, on January 17, 2017, these replacement rules for the Bureau of Land Management (BLM) Onshore Orders 3, 4, & 5 (43 CFR 3173, 3174, & 3175) became effective. For the most part, operators within the oil and gas industry agree with the intent of the new regulations. However, as we previously discussed with BLM staff in a meeting June 8, 2017, we continue to believe that there are several regulatory provisions in these rules that provide little or no benefit to the American people, environment, or regulated community. Certain provisions are scientifically unsound and can cause detrimental effects to the accuracy and reliability of production measurement. The rules place undue burden on both the industry and the agency. BLM needs to acknowledge that the number of federal, onshore wells have already declined from 5,044 wells drilled in 2008 to only 1,621 in 2015<sup>1</sup>, partially due to the difficulty of obtaining permits. As written, these measurement rules are likely to make federal lands even less attractive for development.

We have previously sought postponement and suspension of certain requirements arising from these rules. We have discussed our concerns with BLM in detail in what we believe to have been constructive meetings. We recognize that BLM staff responsible for developing and implementing these rules have been committed to other tasks which have been identified as priorities for the agency. As the rules are currently written, there are several changes which would be technically feasible, beneficial, and equitable to all parties. We are taking advantage of the opportunity provided by the October 24 Report to bring our concerns and recommendations to the attention of leadership in the Department of the Interior (DOI) in the hope that doing so will lead to an opportunity to resolve some of these concerns or to a process of further discussions with BLM that will lead to their resolution. The recommended changes are as follows:

## **1. Recommended Overall Policy and Approach**

The simplest and most equitable means of modifying the regulations would be to adopt the American Petroleum Institute (API) and GPA Midstream (GPA) standards in their entirety. The API and GPA standards are based on proven measurement technologies and constitute the consensus of industry's foremost experts in oil and gas measurement. Participation by government agency representatives in the API standards program allows for input by these representatives on the standards referenced by BLM.

---

<sup>1</sup>(U.S. Department of the Interior, Bureau of Land Management, 2009)  
(U.S. Department of the Interior, Bureau of Land Management, 2016)

Rather than requiring BLM review and approval of each measurement device proposed for installation, we recommend that BLM should adopt the approach followed by state and private working interest and royalty owners by stating that measurement devices that meet applicable API standards along with flow measurement calculations determined by use of these devices are accepted by BLM. In the course of making this change, BLM could reserve the right to document the uncertainly calculations by means of production audits.

Furthermore, with respect to the evaluation and performance of oil and gas production measurement and the equipment used or proposed for use for production measurement, we continue to believe that BLM should follow the PHMSA model and develop a technical advisory group of BLM representatives and industry experts. This advisory group would meet from time to time to review proposals for modified and new measurement equipment or systems to assure the technical feasibility, reasonableness and practicability of each proposal.

## **2. Tiering Structure; § 3173.12 – Applying for a Facility Measurement Point, § 3174 – Liquid Meter Compliance Obligations**

The regulated community still believes that the tiering structure contemplated in the rules as written heavily weights the requirements to apply for an FMP approval toward the first year following the originally extended deadline of January 17, 2017. We again recommend that the BLM implement the phase-in of tier volumes described in our June 13, 2017 letter:

- 3173 FMP applications for existing wells/facilities
  - >5,000 MCFD/>500 BOPD – 1 year,
  - 1,000-5,000 MCFD/100-500 BOPD – 2 years,
  - <1,000/<100 BOPD – 3 years.
- 3174 liquid measurement effective dates for existing wells/facilities
  - >500 BOPD – 1 year,
  - 100-500 BOPD – 2 years,
  - < 100 BOPD – 3 years.

## **3. Cancellation of all Variances, Commingling Agreements, and Off-Site Measurement Agreements**

Each operator, in good faith, worked with the BLM to achieve variances and agreements which met the requirements at the time of implementation. Cancellation of these variances and agreements has the potential to cost the regulated community a significant amount of capital expenditures to alter operations to meet newly established rules. The increased operational and capital expenses from this rule, and the others listed, have the potential to dramatically impact the economic viability of the affected drilling and production operations, causing them to be shut in earlier than originally planned, reducing the royalties paid to the U.S. Treasury.

We recommend that BLM should continue to honor all variances, commingling agreements, and off-site measurement agreements approved prior to the effective dates of the new rules and the new rules should only be applied to applications submitted after the effective date of the new rules.

#### **4. § 3173.11(c)(4) & (c)(6) – Site Facility Diagram**

As we earlier recommended to BLM, we continue to believe that operators should not be responsible for submitting any information on other operators' facilities. Each operator is responsible for compliance with the requirements of the Rules and the BLM should not hold one operator responsible for information that is the duty of another operator to provide the agency. We urge removal of the requirement to submit information on non-operated facilities, and clarification that the obligation arising under these subsections of the rules does not require a regulated party to submit information on a facility that it does not operate.

#### **5. § 3173.14(a)(2) – Conditions for Commingling and Allocation (Surface and Downhole)**

Because of our concern that the BLM may be requiring produced water volumes to be reported in an attempt to account for skim oil, presumably to seek royalty on relatively small volumes of skim oil being sold from salt water disposal (SWD) facilities, we wish to clarify that operators using these SWD facilities are not compensated for any skim oil. We recommend that the BLM clarify that an operator is not required to report minor liquids volumes found in combination with produced water recovered from a well or lease for which the operator receives no compensation, and removal of the requirement to allocate produced water and all associated requirements within Section 3173.

#### **6. § 3173.15(f) & (g) – Applying for a Commingling and Allocation Approval**

We continue to believe that the Right of Way (ROW) and Surface Use Plan of Operation (SUPO) requirements found in this section are outside the scope of regulation of surface commingling. The surface commingling application is already extensive and approvals can take six months to two years. Surface disturbance and the mitigation of the effects of surface disturbance are already considered in the approval process for ROW and SUPO, whether for commingling, new well pads, facilities, etc. No additional environmental benefit is generated by further burdening the approval process for commingling with this redundant requirement. Accordingly, we recommend that the ROW and SUPO requirements in this section be removed from the rule.

#### **7. § 3173.16(a)(2)(i) & (a)(2)(ii) – Existing Commingling and Allocation Approval**

BLM must acknowledge that operators have drilled existing wells under prior regulations and rules, at a set capital expenditure with a reasonable expectation of profit from both objectives planned for and encountered in one or more given wells. Consistent with prior API-submitted comments to BLM, the practice of commingling offers a number of operational benefits. Adding unnecessary operational barriers and/or costs to commingling would result in otherwise recoverable oil and gas reserves being left in the ground, a matter of physical and economic waste for both operators and the federal government as the steward of public lands and collector of royalty and other revenues therefrom on behalf of the nation. We urge the BLM to incorporate into the rule a definition of "economically marginal" that would establish when commingling of production is always allowed from a property meeting that definition. In addition, all existing commingling permits should be honored without additional review. If they

are not honored, at minimum the volumes should be per day as outlined in the different production tiers as opposed to per month (i.e. Less than 1,000 Mcf per day for gas; or Less than 100 bbl per day for oil).

#### **8. § 3173.21(a)(1) – Combined Production Downhole in Certain Circumstances**

The wording of this section should reflect operating practice and standard oilfield terminology. Production does not occur when a well is drilled. Production begins after completion. Therefore, the wording of the rule should be changed to state “completed” into different hydrocarbon pools and not “drilled” into different hydrocarbon pools.

#### **9. § 3173.23(e) – Applying for Off-Lease Measurement**

As written, this section requires that if any of the proposed off-lease measurement facilities are located on non-federally owned surface, an operator must obtain a written concurrence signed by the owner(s) of the surface and the owner(s) of the measurement facilities, including each owner’s name, address, and telephone number, granting the BLM unrestricted access to the off-lease measurement facility and the surface on which it is located. This surface ownership information is difficult to obtain when there are multiple owners. It is ultimately the responsibility of the operator to ensure BLM access to facilities not on Federal land, and BLM staff should make the request for access to the operator in order that the operator arrange for such access. We reiterate our recommendation that the requirement to provide surface owner information be changed to a requirement that operators shall self-certify that BLM has access to facilities, and provide BLM representatives access to such facilities upon request.

#### **10. § 3173.23(f) – Applying for Off-Lease Measurement**

The off-lease measurement application is already extensive and approvals can take six months to two years. Surface disturbance and the mitigation of the effects of surface disturbance are already considered in the approval process for ROW and SUPO, whether for commingling, new well pads, facilities, etc. No additional environmental benefit is generated by this requirement of the new rule, which adds unnecessary burden to the off-lease measurement approval process, we recommend that the ROW and SUPO requirements of this section be removed.

#### **11. § 3174.11(c)(1) – Meter Proving Requirements**

Multipoint provings in the field are difficult and impractical. Flow rates and pressures can be altered during provings as long as there is enough fluid available and it does not adversely affect upstream and downstream operations. However, no practical way exists to alter the temperature or the API gravity of the product in order to perform the minimum three point proving. At a recent meeting with operators, BLM representatives stated they agreed that the requirements are impractical and they are working on a policy which will clarify compliance requirements.

We continue to recommend that the acceptable deviation parameters for temperature and API gravity should be removed and that routine multipoint provings should not be required. If the resultant values from provings performed over the flow rate and pressure ranges at a given

location are linear, and within acceptable deviation criteria, routine provings should only be required to be performed at the current operating conditions.

## **12. § 3175.80(h)(2) – Flange-Tapped Orifice Plates**

As described at a recent meeting of operators, at which BLM representatives provided a regulatory update, the rule requires the cleaning of low volume meter tubes when pitting is seen during the inspection, however cleaning of a meter tube will not fix pitting. BLM representatives have told API member company representatives at a recent meeting of the API Committee on Petroleum Measurement that the revised policy will not require cleaning on low volume meters when only pitting is found. This change will not relieve operators of the burdens of time and cost to perform the initial meter tube inspections. With the thousands of tubes involved, this has a significant financial impact to the regulated community. Meter tube inspections pose a safety hazard by introducing a potential arc source to a potentially combustible atmosphere.

Accordingly, we again recommend that initial meter tube inspections be performed according to the following schedule, where Very High Volume, High Volume, Low Volume, and Very Low Volume FMPs are as defined in 43 CFR § 3175.10:

- Very High Volume – Within 2 Year of Effective Date or Installation
- High Volume – Within 3 Years of Effective Date or Installation
- Low Volume – Not Applicable or only at the request of the Authorized Officer (AO).
- Very Low Volume – Not Applicable

If obstructions, pitting, and buildup of foreign substances are found, perform a detailed meter tube inspection in accordance with 3175.80(h)(6). Subsequent inspections should be performed according to the following schedule:

- Very High Volume – Every 5 Years
- High Volume – Every 10 Years
- Low Volume – Only at the request of the AO.
- Very Low Volume – Not Applicable

## **13. § 3175.104(a)(2) – Logs and Records**

At a recent meeting with industry, BLM representatives acknowledged that under the new rule all data is required to be reported to 5 decimal places, except temperature data, which is required to be reported to 3 decimal places. BLM representatives described a process for granting certain exceptions to these requirements, which we believe to be vague and to leave too much to interpretation. We continue to recommend that the practical alternative is that the average differential pressure, average static pressure, average temperature, volume, flow time, and integral value or average extension must be reported to the maximum decimal places which the equipment producing the values is capable of measuring.

## **14. § 3175.112(c)(4) – Sample Probe and Tubing**

Although discussions with BLM staff have led to a clarification that the rule prohibiting the use of membranes, screens, or filters at any point in the sample probe applies only to the probe itself, we continue to believe that greater clarity for the agency and the regulated community will occur

if our recommendation is implemented, that gaseous samples should be collected in accordance with API MPMS Ch. 14.1 – “Collecting and Handling of Natural Gas Samples for Custody Transfer” and GPA 2166 – “Obtaining Natural Gas Samples for Analysis by Gas Chromatography”.

#### **15. § 3175.115 – Spot Sample - Frequency**

API’s concern arose from the statement made by BLM that increasing sample frequency will aid in achieving uncertainty requirements. However, operating experience shows that high heating value samples will vary greatly as atmospheric conditions change. These high heating value samples will be forced into high frequency sampling due to the inherent variability of the product, which is not the same as uncertainty. This will greatly increase the operating expenses of each of these locations with no true decrease in the uncertainty of the analytical results.

We continue to recommend that section (b) and the associated language in section (d) should be removed from the rule, because the techniques utilized are already stipulated to meet the uncertainty requirements stated in § 3175.30 and the variability of the gas stream has no impact on that uncertainty. Sample frequency should remain as stated in Table 1 of § 3175.110.

#### **16. § 3175.119(b) – Components of Analysis**

We continue to be concerned that this section of the rule calling for analysis of several gas components when the concentration of C6+ exceeds 0.5 mole percent will require significant changes in operations, replacement of equipment, and increased expense of analysis with no benefit to the heating value calculation. The data set from evaluation of the latest models of gas chromatographs shows that the difference between heating values calculated using Nonanes Plus analyses and those calculated using Hexanes Plus analyses is well within the analytical deviation of the instrumentation. Therefore, the rule provides no benefit and should be removed and compositions should continue to be reported to Hexanes Plus for all samples. The Hexanes Plus fractional percentages (i.e. Hexanes, Heptanes, and Octanes Plus) should be determined through either the use of a 60/30/10 split ratio (60% Hexanes, 30% Heptanes, and 10% Octanes Plus) or characterized by the application of component breakouts determined through annual periodic extended analyses.

#### **17. §§ 43 CFR 3173.29, 43 CFR 3174.15, 43 CFR 3175.150 – Immediate Assessment**

Sections 3173, 3174, and 3175 contain a form of penalties for specific instances of non-compliance called “immediate assessments.” These result in a \$1,000 fine per violation. Immediate assessments do not require BLM to provide notice of noncompliance to operators before fines are imposed and do not substitute for additional enforcement actions. BLM’s ability to impose fines on operators without prior and fair notice is excessively punitive in nature, especially given the complexity and infancy of these regulations. Immediate assessments allow BLM to fine operators without providing prior notice of specific incidents of noncompliance and a reasonable amount of time to correct noncompliance. Customarily, during an incident of noncompliance, BLM provides notice to operators of such noncompliance and allows a period of time to remedy the noncompliance before fines are assessed. Inherent in most new rules of a

technical nature, such as these, is ambiguity, lack of clarity, and room for interpretation. This often leads to confusion on the part of the regulating agency and on the regulated community about what constitutes compliance and non-compliance. Further, both BLM and operators have a vested interest in ensuring site security and accurate measurement. Thus, BLM's approach in enforcing these rules should be made more reasonable and less punitive. Without immediate assessments, BLM would still have the ability to enforce these rules through customary and effective means, such as imposition of civil penalties for noncompliance. We recommend removing all immediate assessments from 3173, 3174, and 3175.

Again, as stated, we look forward to an opportunity to discuss these recommendations, and ways in which they might be implemented to reduce the burdens arising from the rules as currently written, and to provide clarity and effectiveness for the BLM's oversight of oil and natural gas production from federal leases.

Should you have any questions, please contact the undersigned at 202.682.8057, or via e-mail at [rangerr@api.org](mailto:rangerr@api.org). Thank you for considering this request.

Very truly yours,



Richard Ranger  
Upstream and Industry Operations  
American Petroleum Institute

Cc: Mike Nedd  
Assistant Director - Energy,  
Minerals, and Realty Management  
Bureau of Land Management  
U.S. Department of the Interior  
1849 C Street NW, Room 5625  
Washington, DC 20240

Timothy Spisak  
Acting Deputy Director  
Bureau of Land Management  
U.S. Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Att: API letter of June 13, 2017, to Acting Deputy Director Timothy Spisak re: 43 CFR 3173, 3174, & 3175