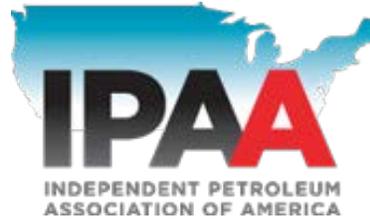




1775 Sherman Street, Suite 2700
Denver, CO 80203
Phone: (303) 623-0987 | F: (303) 893-0709



1201 15th Street NW, Suite 300
Washington, DC 20005
Phone: (202) 857-4722 | Fax: (202) 857-4799

December 14, 2015

Submitted via [Federal eRulemaking Portal](#)

U.S. Department of the Interior
Director (630), Bureau of Land Management
20 M Street SE
Room 2134LM
Washington, DC 20003

Re: Proposed Revisions to Onshore Order No. 3, Site Security RIN 1004-AE15

Dear Director Kornze:

Western Energy Alliance and the Independent Petroleum Association of America (IPAA) (together, the Associations), appreciate that the Bureau of Land Management (BLM) has reopened the comment period for Onshore Order No. 3. Onshore Order No. 3 is highly complex, technical, and closely interrelated with Onshore Orders No. 4 and 5, and we appreciate this opportunity to reflect on No. 3 now that we have had some time to review 4 and 5. However, we are concerned that the timeframe to review these three proposed rules remains inadequate at just 21 days of overlap, given the fact that they run to a combined total of 591 pages in length.

Joining Western Energy Alliance and IPAA in these comments are the following oil and natural gas trade associations:

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

Since we submitted comprehensive comments to Onshore Order No. 3 on October 9, 2015, we will not repeat them here, but are only commenting on the overlap with Onshore Orders No. 4 and 5. From our assessment of the three rules, we believe the proposed rules would result in substantial changes to the way domestic onshore oil and gas operations are conducted in such a way that leads to a unwarranted increases in the costs and burdens to responsible oil and natural gas development on federal and tribal lands. These costs would be incurred largely without a concomitant benefit to the federal government, tribes or the public at large and create further disincentives for oil and natural gas producers to invest in development on public and tribal lands. Moreover, some of these revisions would require physical changes with impacts to the environment and socio-economic impacts that have not been adequately analyzed in the Environmental Assessment for the proposed rule.

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 cost analysis 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:

Page 3 of 4

- 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).

Commingling

We were disappointed to learn during the public outreach sessions on the three onshore orders that BLM does indeed plan to cancel many existing commingling agreements. As we discussed in our comments dated October 9, 2015, we object to the proposed changes to commingling and allocation approvals (CCA). Retroactive application will create a substantial and unjustified workload for operators and BLM staff, result in the invalidation of numerous existing commingling approvals, create environmental impacts that have not been contemplated or analyzed, and undermine the utility of federal units, the purpose of which is to maximize production yield in the most efficient, cost effective and environmentally sensitive manner. For the existing CAAs that would be invalidated, many operators would have to completely revise their gathering and metering procedures and facilities, resulting in substantial new surface disturbance and significant cost. Learning directly at the sessions that indeed BLM's intention is to cancel many of these commingling agreements is very concerning.

BLM's proposal to prohibit off-lease measurement and require single facility measurement points for all leases, both new and existing, would result in significant costs for operators and require new environmental disturbance without a demonstrable benefit to the public. This is completely contrary to BLM and the public's demand for industry to minimize its footprint. We urge BLM to reconsider its

Page 4 of 4

approach to commingling, but particularly as it relates retroactively. Rather than stalling production on hundreds of federal units while new agreements are approved and/or new equipment installed, we urge BLM not to apply these rules retroactively.

Another area in which we remain concerned is the overly prescriptive nature of the three rules taken together and the unnecessary record keeping that they entail. 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.

BLM should only move forward with sensible, performance based rules and should not apply them retroactively. We respectfully request that BLM reconsider the proposed approach to Onshore Orders No. 3, 4 and 5. Thank you for your consideration of these comments.

Sincerely,



Kathleen M. Sgamma
Vice President of Government and
Public Affairs
Western Energy Alliance



Daniel T. Naatz
Senior Vice President of Government Relations
and Political Affairs
Independent Petroleum Association of America