December 14, 2015

Neil Kornze, Director
Bureau of Land Management
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Re: RIN: 1004-AE16, Comments re Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil, 80 Fed. Reg. 58,952 (Sep. 30, 2015)

Dear Mr. Kornze:

On September 30, 2015, the Bureau of Land Management ("BLM") issued a proposed rule entitled "Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil" (80 Fed. Reg. 58,952, the "Proposed Rule" or "proposal"). This Proposed Rule would replace Onshore Oil and Gas Order No. 4, Measurement of Oil ("Onshore Order No. 4"), which prescribes standards for the measurement of oil produced from federal and Indian onshore oil and gas leases, with new, more expansive regulations that would be codified in Title 43 of the Code of Federal Regulations.

The American Petroleum Institute ("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. API appreciates the opportunity to submit comments on this Proposed Rule.

The Independent Petroleum Association of America represents thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts. Independent producers drill roughly 95 percent of American oil and natural gas wells, and produce about 54 percent of American oil and more than 85 percent of American natural gas.

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

While we support robust oil measurement regulations and codification of those requirements in the Code of Federal Regulations, BLM's Proposed Rule creates serious implications for operators that are legal, procedural, economic, and technical in nature as described below and in the attached technical comments in Appendix A. Despite the fact that BLM for no stated reason has asked commenters to confine their comments only to those issues specifically identified by the agency as ripe for comment,[1] we are providing comments on all aspects of the proposal that are important to our members. Chief among these are:

1. BLM's inappropriately trifurcated rulemaking process, i.e., proposing revisions to the site security regulations,[2] oil measurement regulations, and gas measurement regulations[3] separately instead of in a single and straightforward rulemaking action, which underrepresents the true economic and regulatory impact of the interrelated proposals;
2. the prescriptive nature of the proposal's requirements, which repeats the error of the original Onshore Order No. 4 and will preclude implementation of newly-developed measurement practices and technologies as they become available; BLM's failure to provide a rational basis for prescribing many of the technologies, methodologies, and standards required by the Proposed Rule;
3. BLM's reluctance to recognize its obligation to adopt properly established industry standards;
4. the removal of critical standard-setting and adjudicatory functions from the notice-and-comment rulemaking process, placing them instead in the hands of a BLM-appointed "Production Measurement Team" ("PMT") or leaving standard-setting to future BLM discretion;
5. timelines that ignore the practical difficulties – both for industry and the agency – associated with compliance; and
6. removal of the enforcement regime from the regulations and placing it in as-yet unseen "guidance documents," presumably beyond the purview of the public notice and comment process.

In light of these issues, BLM should withdraw the Proposed Rule, and simultaneously re-propose the entire amended suite of regulations – including proposed revisions to the site security and gas measurement regulations – for comment at the appropriate time.

As with BLM's proposal to revise the site security and gas measurement regulations, other than citing the age of existing oil measurement rules, the Proposed Rule does not adequately explain, or present any evidence or data of, the putative benefits of more stringent regulation of oil production measurement and the associated additional regulatory burden. Unlike other regulatory contexts where the interests of the government and the regulated community may be in tension, here those interests are aligned. Our members are every bit as interested as BLM in

[1] See 80 Fed. Reg. at 58,953 ("[p]lease make your comments as specific as possible by confining them to issues for which comments are sought in this notice"). BLM cannot insulate parts of its proposed rule from public comment.
[2] 80 Fed. Reg. 40,768 (Jul. 7, 2015).
[3] 80 Fed. Reg. 61,646 (Oct. 13, 2015).

accurately measuring all oil production because production is the basis on which our members are compensated for their efforts. In fact, our members are seven times more interested than the agency in accounting for all oil produced from their leases, since they generally tend to receive 7/8ths interest in the oil produced from federal and Indian leases, while the government and Indian lessors generally receive 1/8 through the royalty payment. This proposal does not deal with allocating revenues or calculating royalties. It simply addresses oil measurement, and from the perspective of both the industry and the government, accurately measured production means greater revenue.[4]

We and our members welcome continued dialogue with BLM to devise a more balanced and appropriate approach to the topics BLM proposes to cover in this proposed rule and the contemplated regulations that will supersede the site security and gas measurement rules. We share BLM's goals of improving production and royalty accountability and will continue to work with BLM to better achieve them.

I. The comment period is inappropriately brief, limiting the opportunity to develop needed analysis and frustrating the purpose of public notice and comment.

As previously explained in API's October 6, 2015, request for extension of the comment period, our review of the Proposed Rule is frustrated by an inordinately brief comment period. Although we appreciate BLM's agreement to some extension of the comment period for this proposal and the proposed revisions to the site security regulations,[5] BLM's failure to likewise extend the comment period for the related proposal to revise the gas measurement rules seriously diminishes our ability to consider the interplay between the three sets of regulations and the cumulative effect the entire suite of regulations will have on our members' operations. Our members have not yet been able to identify an effective path to timely comply with all three.

Although the Government Accountability Office ("GAO") has urged the Secretary of the Interior to direct the BLM to "meet its established timeframe for oil measurement,"[6] meeting this directive should not come at the expense of our opportunity to meaningfully comment on the suite of site security and production measurement regulations that would govern all federal and Indian onshore operations. The Proposed Rule is the first major revision to the oil measurement rules in over 25 years, and occupies 30 Federal Register pages. Like its companion proposals, it would apply to thousands of federal and Indian leases and facilities, both existing and future, spread out in often remote locations across the country. Also like its companions, this proposal addresses a multitude of complex technical production measurement issues, provides for the immediate assessment of violations, identifies new mandatory reporting requirements,

[4] BLM's apparent justification for the Proposed Rule is a perception of systematic underreporting of oil production. Even if the proposed changes to the oil measurement rules were to improve measurement accuracy, the result would be to reduce the potential for both overreporting as well as underreporting of oil production.

[5] 80 Fed. Reg. 72,943 (Nov. 23, 2015).

[6] Report to Congressional Requesters, Oil and Gas Resources, Interior's Production Verification Efforts: Data Have Improved but Further Actions Needed, GAO 15-39 (Apr. 7, 2015).

establishes a new system for approved variances, empowers a Production Measurement Team ("PMT") with quasi-adjudicatory authority to review and approve new measurement technologies, and prescribes technological standards and procedures that, once finalized, will likely remain for many years.

There is little, if anything, to be gained in adopting a piecemeal approach to such an interrelated, important, and far-reaching series of proposed changes to oil and gas operations, or by cutting corners on a public comment process that would remain extraordinarily brief given the context and the 25-year interval between revisions. The three sets of regulations are clearly three parts of a whole, and BLM may not underrepresent their impact by proposing them separately. Accordingly, BLM should withdraw all three proposals, consider the compliance and economic issues raised by the suite of proposed regulations, and re-propose a single rule for full public consideration and comment at the appropriate time.

II. In treating the revisions to the site security, oil measurement, and gas measurement rules as three independent proposals, BLM fails to consider paths to compliance and the cumulative impact to operators.

The resources of BLM, operators, and equipment and service vendors are likely to be seriously constrained if they are required to contemporaneously implement all three final rules. Cumulative expense and delay will result as operators request extensions and apply for variances from the PMT as they struggle to redesign their oil and gas site security, measurement, accounting, and reporting systems in extremely short order. Each of BLM's three proposals presumes, without any basis, that electronic databases meeting all the new requirements will be immediately available to operators and readily integrated into existing systems. They also assume that the PMT will be able to quickly review and approve potentially thousands of applications, and that specialty service contractors and measurement equipment manufacturers and vendors will have the capacity to meet the demand to supply, install, and operate all the new equipment, software, and accounting and reporting methods required by all three new rules simultaneously. None of BLM's regulatory proposals provides support for such assumptions.[7]

From an implementation standpoint, our members are striving to understand the sequencing of the regulatory trifecta and how timely compliance with all three regulations is possible. For example, it is uncertain that an operator can achieve compliance certainty under the two measurement rules to file for the facility measurement point ("FMP") approvals under the

[7] BLM provides virtually no supporting documentation for the assumptions underlying the Proposed Rule. In the preamble to the Proposed Rule, BLM requests public comments "supported by quantitative information or studies," but doing so in this case is difficult for two reasons. First, BLM provides little detail in support of the Proposed Rule, limiting our ability to respond. Second, BLM has provided only 75 days for comment, which is insufficient time to assemble quantitative information or conduct industry-wide studies addressing technical, economic, and "best practices" issues. In the attached technical comments, we provide as much detailed information as possible given the circumstances.

proposed site security rule. It is also unclear whether operators must first obtain FMP approvals, revise facility diagrams, or revisit existing commingling agreements and off-lease measurement agreements (required by the proposed site security regulations), and, once receiving BLM approval, reconfigure and upgrade oil and gas measurement equipment and restrap tanks. The problem is exacerbated because many oil producing operations also produce gas, and therefore the implementation timelines for gas under the proposed gas measurement rules may render such an approach infeasible. The implementation timeframe for very-high-volume natural gas FMPs under BLM's proposed revisions to the gas measurement regulations is only six months,[8] and applying for and obtaining FMPs and facility diagram approvals under proposed revisions to the site security regulations very likely will take more than six months. This virtually ensures that the facility will be shut-in for noncompliance under the Proposed Rule while the operator is midway through the approval process under proposed changes to the site security rules. Facility shut-in is especially problematic because both gas and oil production would be suspended. Once the facility is shut-in for noncompliance with the instant proposal, any compliance required for the proposed gas measurement regulations becomes moot.

At a minimum, BLM must propose for comment regulations with which operators can reasonably comply. Providing anything less is simply arbitrary and capricious. See FCC v. Fox Television Stations, Inc., 132 S. Ct. 2307, 2309 (2012) ("[r]egulated parties should know what is required of them so they may act accordingly; and precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way"). It is not clear from the language of the regulations how compliance with all three proposals reasonably can be achieved.

BLM must also recognize that operators will require time after the rules are finalized to digest the specific requirements and their applicability; identify changes needed to existing procedures, programs, and systems in order to accommodate the new requirements; develop a plan to address these changes and upgrade equipment; assign tasks and train employees and contractors/vendors in meeting all of the new requirements, and obtain any necessary state approvals. In setting the effective dates for the rules, BLM also must consider the level of effort required on the part of both BLM staff and operators to plan and prepare for implementation of such a sweeping and simultaneous overhaul of the site security, oil measurement, and gas measurement rules.

BLM should consider proposing implementation guidance with the proposed regulatory revisions that identifies the logical sequence of events for complying with the entire set of new rules and outlines the beginning-to-end implementation process that the agency will support. See id., at 2309-2310. The compliance process for new wells and facilities will be very different from the compliance process for existing wells and facilities as proposed. The guidance should provide direction to BLM staff, operators, and vendors to allow for efficient and directed use of their respective resources to avoid inconsistency, duplication, and inadequate submittals. The required new BLM databases and applications, and agency-preferred reporting forms, all must exist before operators can be expected to utilize them, and each should be supported by guidance that operators can incorporate into their training programs.

[8] 80 Fed. Reg. at 61,657 (Oct. 13, 2015).

In sum, BLM should rescind the Proposed Rule and the other two proposals and re-propose a single integrated set of rules that provides a clear and realistic implementation strategy.

III. By proposing piecemeal regulations, BLM underestimates the regulatory and economic impact of the proposal, undermining the objectives of the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act.

As with the proposed site security and gas measurement rules, BLM has determined that the Proposed Rule "would not have a significant impact on a substantial number of small entities," obviating the need for a final regulatory flexibility analysis under the Regulatory Flexibility Act ("RFA"), 5 U.S.C. § 601 et seq. Similarly, based on the assumption that the Proposed Rule would increase costs to industry of "about $558,000 annually" or $150 per regulated entity per year, BLM declined to perform a detailed economic analysis of the proposal's impacts under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), 5 U.S.C. § 804(2), and Executive Order No. 12,866, Regulatory Planning and Review. Neither conclusion is supportable.

In each of its three proposals, BLM has significantly underestimated total compliance costs. These costs include expenses associated with upgrading or replacing equipment, increased sampling and inspection, re-strapping thousands of tanks, modifying thousands of tanks to make them vapor-tight and developing safety protocols for gauging now-vapor-filled tanks, changing computer programs and tools, designing company-wide implementation programs, training staff and contractors, and meeting increased documentation and reporting requirements.

Indeed, the very act of separately proposing revisions to the site security, oil measurement, and gas measurement rules, and estimating their economic impact individually rather than cumulatively, improperly minimizes the appearance of regulatory and economic impact. This "segmentation" of the economic analysis serves only to avoid confronting the true collective impact of BLM's regulatory initiatives to revise the oil and gas production measurement and verification regulations, and helps the agency sidestep the more onerous analytical requirements of the RFA, SBREFA, and E.O. 12,866 that apply to "significant" regulatory actions such as these. Were these regulations proposed together – as BLM originally contemplated and as presented to the public in 2013 – the regulatory and economic impact of the consolidated proposal would certainly be far greater than any of the individual proposals represents, and would more likely require serious consideration of economic impacts under the RFA and SBREFA before implementation.

Segmenting a regulatory proposal to sidestep the administrative burden of conducting the appropriate level of economic analysis is akin to segmenting a project proposal to avoid the Environmental Impact Statement requirements of the National Environmental Policy Act ("NEPA"). See Save Barton Creek Ass'n v. Fed. Highway Admin., 950 F.2d 1129, 1140 (5th Cir. 1992). Neither scheme is permissible, and agencies in good faith should seek to avoid, rather than exploit, statutory ambiguity to frustrate public involvement in the regulatory process and hamper due consideration of economic impacts. Like NEPA, an agency's compliance with the requirements of the RFA and SBREFA are judicially reviewable. See Montanans for Multiple Use v. Barbouletos, 542 F. Supp. 2d 9 (D.D.C. 2008) (RFA compliance reviewable);

Thompson v. Clark, 741 F.2d 401 (D.C. Cir. 1984) (SBREFA compliance reviewable). Accordingly, BLM should withdraw this Proposed Rule and conduct an economic evaluation of the impact of all three proposals and then re-propose them as a single regulatory action.

IV. The Proposed Rule is arbitrarily prescriptive, and will not readily accommodate future changes in technology or improved measurement methodologies.

Although BLM's primary purpose in updating the oil measurement regulations is "to reflect advancements in technology, industry standards, and changes in applicable legal standards," the agency appears to presume that all advancement has already occurred. BLM proposes to create a new set of prescriptive requirements that likely will become outdated as advancements in technology overtake them. 80 Fed. Reg. at 58,952, 58,954 (quoting the 2015 GAO report asserting that "Interior's measurement regulations do not reflect current measurement technologies"). In its attempt to so finely prescribe new measurement standards, BLM has created inflexible layers of prescriptive requirements that neither reflect current industry practice nor accommodate the swift evolution in measurement technologies and techniques currently taking place. The recent downturn in oil and gas production and revenue is spurring extensive industry efforts to improve operational efficiencies and all industry technologies, including measurement technologies. In proposing such prescriptive, inflexible requirements, BLM is simply re-creating the very problem it seeks to remedy with the Proposed Rule.

In the attached set of technical comments, we identify those places in the proposal where flexible performance-based standards should be used instead of prescriptive requirements specifying permissible technologies or methodologies. For example, proposed §§ 3174.9 and 3174.10 would require the generation of a list of Coriolis meter system ("CMS") components approved for use. Instead, we recommend a pure performance standard whereby BLM simply sets the allowable uncertainty level for operators to meet. In this way, newer, more efficient technologies can be permissible under the rule if they meet the rule's criteria and objectives. Similarly, while proposed § 3174.3 would set performance standards for individual Lease Automatic Custody Transfer ("LACT") meters and CMSs, those performance standards strictly prescribe mechanical component performance rather than overall measurement performance, and would only "accommodate the range of meters and related equipment [currently] available to operators." This would leave little room for accommodating new technologies absent a written variance from the PMT. Adopting industry's more flexible performance-based standards is all the more advisable in this context since BLM's proposal does not appear to contemplate incorporating new or updated component standards after the rule is finalized.

BLM's proposed rule underutilizes the extensive, industry-supported performance standards with which operators and regulators are familiar. Industry standards are vetted thoroughly and transparently and are typically performance-based rather than prescriptive. Complete adoption of these standards would serve to enhance the Proposed Rule, lend credibility to BLM's technical requirements, and provide industry with the certainty it requires. In the attached set of technical comments, we identify numerous current industry performance standards that were either consciously or inadvertently omitted from the Proposed Rule, resulting in a less than robust update of BLM measurement regulations. We additionally recommend that BLM

establish a regular process for periodically revising its regulations to incorporate the most current accepted industry practices.

V. BLM must explain why it chose certain industry standards while rejecting others.

As described in further detail in the attached technical comments, it appears that BLM selectively adopted certain industry standards while ignoring others without adequate explanation. For example, the only methodology the rule permits for determining gravity is Ch. 9.3 API Gravity by Thermohydrometer. However, as explained in the technical comments, there are a number of alternate, potentially more accurate methods available for determining gravity that do not appear to be permitted. Yet BLM offers no rationale to support its adoption of the gravity by Thermohydrometer standard or its rejection of all other means of determining gravity. This is not only inconsistent with the stated purpose of the regulation to ensure that "advancements…in industry standards" are accommodated, but also at odds with the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq., which requires agencies to provide rational bases for their regulatory determinations.

Additionally, BLM's proposal relies on obsolete API standards. This appears to be unintentional because adopting obsolete standards undermines the stated purpose of the Proposed Rule. However, BLM may not simply substitute the proper current versions of the standards for the first time in the final rule. Incorporating by reference a standard in a rulemaking is the same as promulgating a new substantive regulatory provision with identical language. See PPG Industries, Inc. v. Costle, 659 F.2d 1239 (D.C. Cir. 1981). Accordingly, BLM must first identify, and seek public comment on, precisely those standards it proposes to incorporate into its regulations before finalizing them. Before it can finalize its proposed revisions to the oil measurement regulations, BLM must re-publish a proposed rulemaking that identifies the updated standards BLM proposes to incorporate by reference. See Fertilizer Inst. v. EPA, 935 F.2d 1303 (D.C. Cir. 1991).

Furthermore, BLM is statutorily prohibited from cherry-picking industry standards for inclusion in the Proposed Rule, and may not create new standards from whole cloth. Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), 15 U.S.C. § 272(d), which codified the policies of OMB Circular A-119, requires "all Federal agencies and departments [to] use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Agencies and departments also "shall consult" with those bodies and "shall ... participate" with them in developing voluntary consensus standards "when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources." BLM may disregard existing technical standards developed by voluntary consensus standards bodies only where using them would be "inconsistent with applicable law or otherwise impractical." Even then, before using any standard other than a voluntary consensus standard, the head of the agency or department must send the Office of Management and Budget ("OMB") "an explanation of the reasons for using such standards." OMB transmits to Congress and its committees an annual report summarizing all explanations received that year.

There is no doubt that API practices for oil measurement are "technical standards …developed by [a] voluntary consensus standards body." API practices are painstakingly and transparently developed by its members with the input of industry experts from around the world, including BLM employees. API standards and practices are generally regarded as the "industry standard" for oil and gas measurement, and represent accepted practice at operations across the U.S. Pursuant to § 12(d) of the NTTAA, BLM must use these standards in the Proposed Rule. At a minimum, it may not pick and choose which standards to apply and which to ignore without explaining its decisions to OMB. Accordingly, BLM should first engage in a meaningful dialogue with API regarding the latest industry standards, and then incorporate by reference all relevant API practices and standards into its Proposed Rule rather than adopt is own prescriptive standards.

We further recommend that BLM establish a system for periodically revising the rule to incorporate new industry standards and practices as they emerge. Other federal agencies, such as the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), have adopted this approach. PHMSA has chartered an advisory group, which includes API, under the Federal Advisory Committee Act, 5 U.S.C. §§ 1-16, for the purpose of incorporating the most current industry standards and practices into its regulations. We recommend that BLM do the same here (as well as in its proposals to revise the site security and gas measurement rules). BLM also should make variances from the incorporated practices available to small operators that may have difficulty implementing the most current industry practice for good cause shown.

VI. BLM failed to consider the reasonably foreseeable environmental consequences of the proposal in its Environmental Assessment ("EA").

Under NEPA, BLM is required to consider the reasonably foreseeable environmental consequences of implementing the Proposed Rule prior to finalization. 42 U.S.C. 4332(C); Balt. Gas and Elec. Co. v. NRDC, 462 U.S.87 (1983). Just as BLM underestimates the magnitude of the regulatory and economic effects of the Proposed Rule, so too it underestimates the environmental consequences associated with implementing its provisions. As described above and in the attached technical comments, BLM consistently and erroneously assumes that the Proposed Rule generally reflects current industry practice, and as such, represents a minimal deviation from the status-quo. For example, Proposed § 3174.2 assumes that tank strapping to 1/8" gauging accuracy "would match the current industry standard,"[9] and therefore tacitly assumes that requiring operators to adopt 1/8" gauging accuracy would have negligible, if any, environmental effect. However, the industry standard is in fact 1/4" (as required by the current Onshore Order No. 4). Changing the standard to 1/8" would require re-strapping thousands of tanks all over the country, with associated economic and environmental impacts, none of which BLM considered. As explained further in the attached technical comments, the Proposed Rule is replete with failures to acknowledge the operational consequences of the proposed standards, each of which incrementally contributes to BLM's underestimation of the environmental effects associated with the Proposed Rule.

[9] 80 Fed. Reg. 58,959.

Additionally, due to BLM's improper "segmentation" of this regulatory initiative into three independent regulatory proposals, the EA grossly underestimates the cumulative impact of the proposed changes to the oil measurement rules when added to the environmental consequences associated with the simultaneously-proposed site security and gas measurement rules. See 40 C.F.R. §§ 1508.7 – 1508.9.

Accordingly, BLM should withdraw the proposal and circulate a new EA for public review that fully considers the environmental consequences of BLM's proposed changes from the status-quo and the environmental consequences of all three proposals, and also considers an alternative that accurately reflects current industry practice. See 40 C.F.R. § 1508.9(b).

VII. The process of adjudicating variances should be prescribed by regulation, and the variance decisions of the PMT should be administratively reviewable.

The only flexibility in the Proposed Rule with respect to selection of a measurement methodology is at the discretion of the PMT, a quasi-adjudicatory body that would review and approve "new measurement technologies that are demonstrated to be reliable and accurate." 80 Fed. Reg. at 58,953. Under Proposed § 3174.15, only manual tank gauging, a LACT system, or CMS will be permitted without a written variance from the PMT. Thus, the function of the PMT is both adjudicatory and legislative in nature. On the one hand, it would adjudicate applications and grant permission to operators allowing the use of alternate technologies. On the other hand, the methods approved would become permissible under the rule, while those methods that fail to obtain variances will not. But the agency legally must treat like cases alike, and the PMT determinations would effectively become regulatory requirements without the benefit of public notice and comment procedures. Accordingly, the means by which the PMT makes its determinations, and the criteria for BLM concurrence or rejection of PMT recommendations should be published for public notice and comment. See FCC v. Fox Television Stations, Inc., 132 S. Ct. 2307, 2310-18 (2012); Chrysler Corp. v. Brown, 441 U.S. 281, 303 (1979).

At a minimum, the proposed regulations should include provisions governing the procedure and conduct of the PMT and expressly provide for any party adversely affected by a variance denial to seek administrative review. Such amendments to the proposal may also have the benefit of reducing litigation in the federal courts.

VIII. BLM may not promulgate new binding regulations in internal "guidance" documents.

The proposed regulations would completely eliminate the enforcement system prescribed in Onshore Order No. 4, including major and minor violations, corrective actions, and abatement periods. Instead, BLM summarily proposes to "address" these issues in "internal guidance documents, (handbooks, manuals or instruction memoranda (IMs))." 80 Fed. Reg. 58,955. Removing these provisions from the realm of transparent, publicly reviewable regulations that were promulgated with public notice and comment, and concealing them in non-public policy documents that can be altered without notice and in the absence of public input, is inconsistent with the requirements of the APA. If BLM intends to make these enforcement provisions binding on the regulated community, it must duly promulgate them as legislative rules.

IX. BLM continues to underestimate the extensive burden the current suite of proposals and other BLM regulatory initiatives would place on agency resources.

BLM fails to recognize that the Proposed Rule will place an extensive and ongoing implementation burden on BLM personnel and resources. For example, the proposal only would allow FMP equipment that is susceptible to independent verification by BLM of the accuracy and validity of all inputs, factors, and equations that are used to determine the quality or quantity of oil to be measured. Verification of such equipment is a lengthy process (we estimate six months per device at a cost of hundreds of thousands of dollars per device). BLM entirely ignores the burden that would be placed on the agency to contract and administer such work for the thousands of different devices currently and proposed to be used.

Implementing the painstaking review, approval, verification, accounting, testing, and inspection regimes established in the Proposed Rule would create a formidable workload for existing BLM staff – which have already been subject to Congressional criticism for the inability to meet the demands of their current obligations,[10] much less the increased demands of other recent regulatory initiatives such as the recently-issued (and now stayed) hydraulic fracturing rule (80 Fed. Reg. 16,128 (Mar. 26, 2015)) and the proposed revisions to the site security and gas measurement rules. The Proposed Rule cites no corresponding increase in funding from the Department of the Interior for more staff to discharge these new duties while maintaining the current level of mandatory agency inspections. Site inspections and calibration witnessing are two recurring concerns of the recent GAO reports, but the Proposed Rule would only reduce the likelihood of BLM field offices addressing these concerns by requiring additional approvals from BLM for thousands of ongoing oil and gas operations nationwide. Adding unnecessary compliance reporting to the process does very little to improve accuracy, ensure compliance, or prevent noncompliance. Consequently, BLM should issue regulations that reduce, rather than increase, the number of administrative actions and approvals necessary to conduct business on federal and Indian oil and gas leases.

X. BLM's proposal is impermissibly retroactive.

Similar to the proposed revisions to the site security and gas measurement rules, the requirements of the Proposed Rule are effectively retroactive, giving existing operations 180 days to bring their oil measurement equipment into compliance. We strongly urge BLM to reconsider this position and properly apply the new requirements only to new and significantly modified operations. Retroactive application of the proposed regulations will have profound effects both legally and practically for thousands of existing operations across the country. Retroactive application of the Proposed Rule, with the attendant costs and potential for delay, may lead to temporary or permanent cessation of existing production, raising breach of

[10] See GAO, Oil and Gas Development: BLM Needs Better Data to Track Permit Processing Times and Prioritize Inspections, GAO-13-572, (Aug. 23, 2013), available at http://www.gao.gov/products/GAO-13-572 (identifying significant and still unresolved administrative issues related to timely permit processing and adequate inspections).

contract, due process, and takings issues. Retroactive application of these regulations also poses significant economic consequences for existing operations that far exceed those estimated in BLM's regulatory impact analysis. This is not only unfair to those who have reasonably relied on prior agency standards to design and operate their facilities, but also threatens the very viability of such operations, particularly those that are currently marginally economic.

BLM also fails to acknowledge that the costs of retrofitting measurement devices and associated equipment for separate measurement of individual lease production is by nature more expensive than new facility costs due to siting and related constraints and lost production and royalties while the retrofit work takes place. Though it purports to include exceptions and variances from these new requirements, the Proposed Rule makes clear that exceptions and variances are to be seldom used. Operators have no advance assurance that they and local BLM staff will view situations in the same way, that BLM can act expeditiously on variance requests given its expanded workload, or that any appeal of an unfavorable variance determination will be adjudicated expeditiously. In an era of rising economic challenges and increasingly important domestic energy security, BLM should not add unnecessary costs on oil and gas development.

Administrative convenience is not a justifiable basis for imposing a one-size-fits-all standard for all operations, disregarding the governing standards when operations were approved and to which those operations conformed. It is not unusual in federal regulations for different requirements to apply to existing and new facilities and equipment. Similarly, numerous regulations with varying trigger dates exist at the local, state, and Tribal levels, and in all sectors. Operators are subject to hundreds of requirements, which vary between jurisdictions and regions. Having different sets of requirements in place for existing operations or equipment on the one hand, and new operations or equipment on the other, does not appreciably add to the complexity of the numerous requirements already in place.

We recommend exempting all existing equipment from the purview of the new rule. Where new installations or repairs of a measurement facility would cost more than 50 percent of the cost of a new, installed measuring station, the new regulations would apply.

XI. The timeframes for compliance should be extended.

As explained further in our attached technical analysis in Appendix A, the proposed timeframes to implement broad-scale changes across thousands of federal and Indian lease operations are impracticably and unreasonably short. The Proposed Rule contains many unrealistic deadlines to undertake multiple actions and submissions that would require operator compilation of complex information from several sources, visits to thousands of leases and operations sites across the country, and other extensive efforts, some of which cannot even begin until approvals are obtained from BLM. Some requirements imposed by the regulations, e.g., notifying the authorized officer within 24 hours of any LACT system failure or equipment malfunction that "may have resulted in a measurement error," requires the reporting of information that may not even be known by the operator within the specified reporting period. Proposed § 3174.6(e).

In any case, the proposed 180-day time period to bring all existing equipment into compliance is unreasonable given the practical realities of many oil and gas operations and likely supply disruptions that will result from the implementation of the Proposed Rule.

As discussed further in the attached technical comments, the timeframes for compliance should be expanded based on reasonably achievable schedules in a variety of environments, or depend on a prudent operator standard. In any case, BLM should expressly preserve the opportunity for any entity to seek and obtain extensions of time for good cause shown. In particular, BLM should expressly allow a waiver of the 180-day compliance period for an operator that submits a proposed alternative measurement method for PMT review during the first 180 days after the rule is finalized.

At a minimum, the ambiguity of critical compliance-related timeframes should be clarified. With respect to the example above, it would be more reasonable to require notification within 24 hours after the operator *has knowledge* of a LACT system failure. Also, the threshold for reporting should be made more realistic, such that reporting would be required only in situations where the operator *has reason to know* that the equipment malfunctions at issue *could reasonably have* resulted in measurement error. The agency should revise the proposal such that any prudent operator would be able to clearly identify its compliance obligations.

Similarly, suspensions of the compliance-related timeframes should be available to accommodate practical difficulties beyond the control of the operator. For example, depending on times of year, access to certain FMPs may be severely limited. During spring mud conditions, travel on county roads or BLM roads is discouraged because of safety and avoidable rutting and road erosion issues. Winter storms may make access unsafe or impossible. In many cases, BLM may restrict access. Leases and permits often contain seasonal stipulations to minimize surface disturbance and noise, or to protect wildlife during calving, nesting, or brooding seasons. The compliance timelines for field activities such as reconfiguring, upgrading, or inspecting equipment, measuring or sampling production, or re-strapping tanks should account for these ubiquitous access issues.

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For the reasons stated above and the technical comments attached as Appendix A, we respectfully request that BLM withdraw the current regulatory proposal and re-propose it simultaneously with the proposed revisions to the site security and gas measurement rules, as well as with any companion materials such as manuals or guidance.

Should you have any questions, please contact Richard Ranger at 202.682.8057 or rangerr@api.org, Dan Naatz at 202.857.4722 or dnaatz@ipaa.org, or Kathleen Sgamma at 303.623.0897 or ksgamma@westernenergyalliance.org.

Very truly yours,

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