



BLM Proposes Revisions to Onshore Order No. 3 with the Potential to Increase Reporting Obligations and to Delay Development

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On July 13, 2015, the Bureau of Land Management (BLM) circulated proposed Onshore Oil and Gas Order No. 3 (Proposed Order), which contains several provisions that will increase the reporting burden imposed on oil and gas operators. The purpose of the Proposed Order is to establish policies and procedures to enable BLM to better monitor and calculate royalties owed on Federal and most Indian oil and gas leases. The Proposed Order, however, consistent with other proposed rules issued under the current Administration, has the potential to increase the reporting burden on operators without providing any operational or administrative efficiency gains for the reporting and measuring of oil and gas royalties.

Comments on the Proposed Order must be submitted to BLM on or before September 11, 2015. A copy of the Proposed Order is available [here](#).

The Proposed Order requires that operators apply for a Facility Measurement Point (FMP)—the point where oil and gas production is measured for royalty calculation purposes—for each well located within the boundaries of a Federal Lease, most Indian Leases, a unit participation area or a communitization area. The revised reporting requirements will obligate the operator to establish separate FMPs for both oil and gas production when those substances are produced from a single well.

Critically, the Proposed Order not only increases the FMP application burden for operators but it also imposes onerous FMP application deadlines. Specifically, operators will be required to apply for FMPs for most existing wells (e.g., wells producing 40 barrels of oil or more per month) within nine months of the Proposed Order becoming effective. The Proposed Order does provide for longer application time frames based upon a well's production rate, but the Proposed Order's current production thresholds will encompass the majority, if not most, of existing wells. The failure to comply with the filing deadlines will subject the operator to civil penalties.

In an apparent effort to address the potential backlog in FMP application review and approval resulting from the flood of new applications for new and existing facilities, the Proposed Order states that the operator will be allowed to continue operating its existing wells pending approval

of the FMP. But for new wells, no product is allowed to leave the site until the operator receives approval for the FMP. Thus, while BLM is attempting to avoid stifling production from existing wells, the Proposed Order presents no clear answer as how BLM intends to efficiently review and process existing and new well FMP applications in a timely manner. Given BLM's current level of responsiveness, the result will likely be further delays in new well development and production.

Furthermore, the Proposed Order increases the level of detail required for site facility diagrams as well as expands the diagram reporting obligation to gas wells that are currently exempt under the existing rule. The site facility diagram will not need to be to scale, but it will need to reflect the relative position of water recovery equipment, piping, and metering systems. It will need to identify all equipment on the site and will need to identify wells by API number. It will also need to clearly identify: the lease, unit participation area, or communitization area to which the diagram applies; all meters and measuring equipment; and, all approved and assigned FMPs. If the operator claims royalty free use of gas, the diagram will need to clearly identify equipment used in connection with that royalty free use.

The Proposed Order continues to recognize the benefits of allowing an operator to commingle production—combining production from multiple sources—for royalty calculation purposes. Under the current rules, there are no standardized guidelines for BLM to follow in considering such commingling applications. The Proposed Order would establish standard regulations for BLM to follow when considering an application to commingle product.

These standardized regulations, however, will actually disallow some commingling previously allowed under the existing rule. As a result, the operator will be required to install new metering systems to measure product from Federal or Indian leases separately from other commingled leases.

Similarly, the Proposed Order establishes new rules governing the approval process for the offsite royalty measuring facilities. While this practice is beneficial in those circumstances, for example, where the lease covers environmentally sensitive lands, the Proposed Order would disallow certain offsite measurement systems previously authorized by BLM. In those cases, the operator will need to move the measuring point to the site of the lease, unit participation area, or the communitization area.

The Proposed Order also specifically discusses water draining operations and hot oiling operations commonly performed on lease sites. The Proposed Order would require operators to record certain information when performing water draining operations, including the amount of hydrocarbons contained in the tank both before and after water is drained. This requirement is intended to enable the monitoring of whether any hydrocarbons are lost during such activities.

In regards to hot oiling operations, the proposed rule would require operators to record when hydrocarbons are removed from tanks to be used onsite for hot oiling, clean-up, and completion

operations. Ideally, this reporting and monitoring requirement will prevent product from being counted twice for royalty purposes. For example, it should reduce the risk that product will be counted both when it is initially produced and later when it is returned to the surface after use in a hot oiling operation.

Finally, the Proposed Order contains provisions aimed at reducing loss resulting from theft or other wrongdoing. In particular, the Proposed Order includes requirements for transporters, purchasers, and operators to report incidents of theft and mishandling of product. BLM believes that applying this rule to transporters and purchasers, in addition to operators, is critical since they are often the first to notice suspicious activities.

Beatty & Wozniak, P.C. is available to assist you in understanding the Proposed Order and in applying its terms to your operations once it becomes a final rule. Any questions related to the proposed order can be addressed to [Bret Sumner](#), [Andrew Glenn](#), or [Art Snyder](#).

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