



BLM Releases Proposed Onshore Oil and Gas Order Number 5

By: [Andrew Glenn](#)

On October 13, 2015, the Bureau of Land Management (BLM) released Proposed Onshore Oil and Gas Order No. 5 (Proposed Onshore Order 5) regarding gas measurement and reporting on Federal and Indian lands. The new rules are expected to be extremely expensive and cause a significant increase in compliance and regulatory responsibilities for onshore operators. The BLM estimates Proposed Onshore Order 5 will increase annual operating costs by \$46.05 million and cost operators \$32.91 million in “one-time” costs over a 3-year transition period.

The changes and additions contemplated by Proposed Onshore Order 5 are an attempt to address the purported reporting and measurement deficiencies identified by the Secretary of Interior’s Royalty Policy Committee, Subcommittee on Royalty Management (Subcommittee), the Government Accountability Office (GAO), and the Department of the Interior’s Office of Inspector General (GIO). All 3 groups reached the same conclusions: the current rules were outdated, inconsistently applied throughout the field, and ineffective in accurately measuring gas produced on Federal and Indian lands.

Notably, under Proposed Onshore Order 5, existing equipment will not be grandfathered—all existing equipment, with very limited exceptions, must be brought into compliance. The new rules also include new requirements for Mechanical Recorders, Electronic Gas Measurement systems, heating value and volume reporting, and many others.

Comments on Proposed Onshore Order 5 must be submitted by December 14, 2015. A copy of the proposed rule is available [here](#).

This article summarizes Proposed Onshore Order 5’s most significant updates and changes.

- **Proposed 43 C.F.R. § 3175.30—Establishes New Uncertainty Requirements For FMPs:**
 - The proposed rule reduces the allowable uncertainty for very-high-volume FMPs from 3% to 2%. 43 C.F.R. § 3175.30(a).

- This requirement is estimated by the BLM to affect 50% of very-high-volume FMPS, most of which will require the installation of a small diameter orifice plate.
 - Existing statewide Notice to Lessees (NTLs), which use the 3% requirement for all meters measuring more than 100 Mcf/day, will be superseded by this rule.
 - Proposed § 3175.30(b) introduces new uncertainty limits for the measurement of heating value:
 - For high-volume FMPS and very-high-volume FMPS, the annual average heating value uncertainty must be within 2% and 1% respectively.
 - No statistical significant bias is allowed for all FMPS, with the exception of marginal FMPS. 43 C.F.R. § 3175.30(c).
- **Proposed 43 C.F.R. §§ 3175.43–3175.44—Requires Type Testing of Transducers and Flow Computers:**
 - Proposed §§ 3175.43–3175.44 require that all transducers and flow computers are type tested and approved before it can be used at an FMP. In its economic analysis of the rule, the BLM estimates the one-time total cost (including expenses to test 100 different transducers and 100 different flow computers at \$5,000 per test) to be \$1,000,000.
- **Proposed 43 C.F.R. § 3175.60—Sets Out Compliance Timeframe:**
 - According to proposed § 3175.60(b), the compliance timeframes for equipment existing on the effective date of the final rule are as follows:

FMP TYPE	Compliance Timeframe
Very-high volume FMPS	Must comply within 6 months after effective date of final rule
High-volume FMPS	Must comply within 1 year after effective date of final rule
Low-volume FMPS	Must comply within 2 years after effective date of final rule
Marginal-volume FMPS	Must comply within 3 years after effective date of final rule

- Exception: Very-high-volume FMPS and high-volume FMPS must comply with the gas analysis reporting requirements immediately, beginning on the effective date of the final rule. 43 C.F.R. § 3175.60(b)(1)(ii) and (b)(2)(ii).
- The BLM will not propose to “grandfather” existing equipment. Operators are required to upgrade measurement equipment at FMPS to meet the new standards, except for those FMPS that are specifically exempted in the rule.

- Proposed § 3175.60(d) establishes the dates on which the applicable NTLs, variance approvals, and written orders relating to gas measurement will be rescinded. These dates correspond to the phase-in timeframes given in proposed § 3175.60(b).
 - Existing NTLs, variance approvals, and written orders will be rescinded 6 months for very-high-volume FMPs, 1 year for high-volume FMPs, 2 years for low-volume FMPs, and 3 years for marginal-volume FMPs.
- **Proposed 43 C.F.R. § 3175.80—Adds New and Updated Requirements for Orifice Plates and Meter Tubes Inspections:**
 - Proposed § 3175.80 adopts the current API standards and combines all orifice plate requirements into one section.
 - Proposed §3175.80(d) also changes the frequency for routine orifice plate inspections.
 - Presently, orifice plates are pulled and inspected every 6 months; however, the proposed rule would increase inspections for high-volume and very-high-volume FMPs to 3 months and every 1 month respectively.
 - Bi-weekly orifice plate inspections are now required for FMPs on newly drilled wells. 43 C.F.R. § 3175.80(c).
 - Bi-weekly inspections are required until it is demonstrated that the production of particulate matter from a new well, first coming into production, has subsided. At this point, the inspection frequency would follow the frequency found in proposed § 3175.80(d).
 - Also, the current rules have no requirements for meter tube inspections. However, the proposed rules would require both visual and detailed meter tube inspections. Operators must periodically inspect the insides of meter tubes for pitting, scaling, and buildup of foreign substances. 43 C.F.R. §§ 3175.80(h) and 3175.80(i).
 - Visual meter tube inspections:
 - Low-volume FMPs: every 5 years
 - High-volume FMPs: every 2 years
 - Very-high-volume FMPs: every 1 year
 - Detailed meter tube inspections
 - High-volume FMPs: every 10 years
 - Very-high-volume FMPs: every 5 years
 - Operators must notify the BLM at least 72 hours in advance of a visual or detailed meter-tube inspection or installation of a new meter tube. 43 C.F.R. § 3175.80(n).

- **Proposed 43 C.F.R. §§ 3175.90–3175.9—Adds and Updates Requirements for Mechanical Recorders:**
 - Proposed § 3175.90(a) restricts the use of mechanical recorders to FMPs measuring 100 Mcf/day or less.
 - Proposed § 3175.91 sets new requirements for gauge lines and manifolds such as minimum diameter (ex. the minimum of a gauge line must be .375”), maximum length, slope, and material of construction (ex. gauge lines can only be stainless steel).
 - Currently operators are required to calibrate all meters quarterly, regardless of flow rate. Proposed § 3175.92(b) changes the calibration frequency of marginal volume FMPs to every 6 months.
 - Under proposed § 3175.92(f), operators are required to correct flow-rate errors that are greater than 2 Mcf/day, if they are due to the chart recorder being out of calibration, by submitting amended reports to Office of Natural Resources Revenue (ONRR).
 - Presently, Onshore Order 5 does not require that data be available on-site for BLM inspections. However, under proposed § 3175.92(g), verification equipment must be certified at least every 2 years. Proof of certification must be kept on-site and be available to the BLM.
 - The BLM is proposing to eliminate the use of a contract value for atmospheric pressure because contract provisions are not always in the public interest and do not always dictate the best measurement practice.

- **Proposed at 43 C.F.R. §§ 3175.100–3175.102—New and Updated Requirements for Electronic Gas Measurement (EGM) Systems:**
 - Proposed § 3175.100 adopts many provisions in statewide NTLs and adds requirements relating to on-site information, gauge lines, verification, test equipment, calculations, and information generated and retained by the EGM system. It also sets standards for the installation, operation, and inspection of EGM systems used for FMPs.
 - The same requirements for gauge lines and manifolds found in proposed § 3175.91 for mechanical records is also found in proposed § 3175.101 for EGM systems.
 - Meter calibration frequency is changed for EGM systems. The proposed frequency is as follows: monthly for very-high-volume FMPs, every 3 months for high-volume FMPs, every 6 months for low-volume FMPs, and every 12 months for marginal-volume FMPs. 43 C.F.R. § 3175.102(b).

- **Proposed 43 C.F.R. §§ 3175.110–3175.121—Increases Requirements for Gas Sampling and Analysis:**
 - Currently, Onshore Order 5 requires operators to determine the heating value of gas at each measurement annually. In contrast, the proposed rule increases the frequency of low-volume, high-volume, and very-high-volume FMPs. 43 C.F.R. § 3175.110.
 - For low-volume FMPs, the sample frequency increases to every 6 months; a change from once a year.
 - For high-volume and very-high-volume FMPs, the sampling frequency varies from weekly to semi-annually based on the historic variability of the heating value of gas measured at a particular FMP.
 - Under proposed § 3175.111(a), spot samples at high- and very-high-volume FMPs must be taken at least every 3 months and every month, respectively, unless the BLM determines more frequent analysis is required. 43 C.F.R. § 3175.115(a).
 - The BLM can require a different sampling frequency if analysis of the historic heating value variability at a given FMP results in an uncertainty that exceeds what would be required in proposed § 3175.30(b)(1) and (2). 43 C.F.R. § 3175.115(b).
 - That is, this BLM could require a sampling frequency from weekly to semi-annually until the sample is within acceptable uncertainty levels.
 - If acceptable uncertainty levels cannot be met through spot sampling, the operator will be required to install a composite sampling system or an on-line gas chromatograph. If required, the composite sampling system or an on-line gas chromatograph must be installed and operational no more than 30 days after the due date of the next sample. 43 C.F.R. § 3175.115(d).
 - The proposed rule also establishes requirements for the following:
 - The use of heating trace in sampling systems. 43 C.F.R. § 3175.111.
 - Sample probe design and placement. 43 C.F.R. § 3175.112.
 - Methods to ensure sample cylinders have been cleaned to API and GPA standards. 43 C.F.R. § 3175.113.
 - Verification of gas chromatographs. 43 C.F.R. § 3175.118.
 - The components in a gas sample that must be analyzed. 43 C.F.R. § 3175.119(b).
 - The entry of all gas analyses into a new BLM database, the Gas Analysis Reporting Verification System (GARVS) online computer system. 43 C.F.R. § 3175.120(f).

- **Proposed 43 C.F.R. § 3175.126—Establishes New Requirements for the Reporting of Heating Value and Volume:**
 - Proposed § 3175.126 is a new requirement that defines the conditions under which the heating value and volume would be reported for royalty purposes.
 - Operators are required to report the “dry” heating value, even though gas sales contracts often call for “wet” or saturated values. Samples must contain no water vapor unless the water vapor has been determined through actual on-site measurement and reported on the gas analysis report. 43 C.F.R. § 3175.126(a)(1).
 - The practice of adjusting volumes for assumed water-vapor content is prohibited. 43 C.F.R. § 3175.126(b)(1).
 - The unedited volume on a quantity transaction record (EGM systems) or an integration statement (mechanical recorders) must match the volume reported for royalty purposes, unless edits to the data can be justified and documented by the operator. 43 C.F.R. § 3175.126(b)(2).

- **Proposed 43 C.F.R. §§ 3175.130–3175.144—Establishes New Testing Protocols and Approval Processes for Transducers and Flow-Computer Software:**
 - A new testing protocol for differential-pressure, static-pressure, and temperature transducers used in conjunction with differential-flow meters at FMPs is established in § 3175.130.
 - Testing must be documented and submitted to the PMT. The PMT will use the documentation to determine the uncertainty and influence effects of each make, model, and range of transducer tested. 43 C.F.R. § 3175.134.
 - Under proposed § 3175.140, the BLM will approve a particular version of flow-computer software if the testing is performed under the testing protocol in proposed §§ 3175.141 through 3175.144.
 - After a software version is tested under proposed §§ 3175.141 through 3175.143, the PMT will review the results. If the test is deemed successful, the BLM will approve the use of the software version and flow computer and list the make and model of the flow computer, along with the software version tested, on the BLM website. 43 C.F.R. § 3175.144.

- **Proposed 43 C.F.R. § 3175.150—10 new violations are added to Proposed Onshore Order 5:**
 - 10 new violations are added that will result in an immediate assessment of \$1,000. 43 C.F.R. § 3175.150.
 - New FMP orifice plate inspections not conducted and documented,
 - Routine FMP orifice plate inspections not conducted and documented,
 - Visual meter-tube inspection not conducted and documented,
 - Detailed meter-tube inspections not conducted and documented,

- Initial mechanical-recorder verification not conducted and documented,
 - Routine mechanical-recorder verifications not conducted and documented,
 - Initial EGM-system verification not conducted and documented,
 - Routine EGM-system verification not conducted and documented,
 - Spot samples for low-volume and marginal-volume FMPs not taken at the required frequency, and
 - Spot samples for high-volume and very-high-volume FMPs not taken at the required frequency.
- **Proposed 43 C.F.R. § 3175.10—A Significant Number of Definitions are Added to the Proposed Rules:**
 - 45 new definitions are added to the proposed rules. The full list of definitions can be found in proposed § 3175.10.

Beatty & Wozniak, P.C. is available to assist you in understanding Proposed Onshore Order 5 and in applying its terms to your operations once it becomes a final rule. Any questions related to Proposed Onshore Order 5 can be addressed to [Bret Sumner](#) or [Andrew Glenn](#).

Copyright © 2015 Beatty & Wozniak, P.C. All Rights Reserved.

This newsletter does not constitute legal advice. The views expressed in this newsletter are the views of the authors and not necessarily the views of the firm. Please consult with legal counsel for specific advice and or information.

[Read our complete legal disclaimer](#)