April 23, 2018

Department of the Interior
Director (630), Bureau of Land Management
Mail Stop 2134LM
1849 C St. NW
Washington, DC 20240

RE: Bureau of Land Management Proposed Rule, "Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements"

83 Federal Register 7924 (February 22, 2018)
RIN: 1004-AE53
Docket ID: BLM-2018-0001

Dear Acting Director Brian Steed,

Taxpayers for Common Sense (TCS) appreciates the opportunity to provide comments to the Bureau of Land Management on the proposed rule, "Rescission or Revision of Certain Requirements of the Waste Prevention, Production Subject to Royalties, and Resource Conservation." TCS is a non-partisan budget watchdog serving as an independent voice for American taxpayers. For more than two decades, TCS has advocated for responsible natural resource development on federal lands and waters that ensures taxpayers receive a fair return for the resources they own.

TCS is disappointed to see the Bureau of Land Management taking steps that will degrade taxpayer protections in the policies guiding oil and gas development on federal lands. The outdated rules that governed development prior to 2017 cost taxpayers billions of dollars in lost revenue. Reverting to them would only lead to further losses. Therefore, we urge you to change course, or issue an entirely different proposed rule, before proceeding with this rulemaking.

In regards to the proposed rulemaking, Taxpayers for Common Sense offers the following comments for the record.

I. Justification for the Rule

The Bureau of Land Management (BLM) within the Department of the Interior (DOI) administers mineral leasing on 245 million acres of public lands, including onshore federal oil and gas leasing. In February of 2018, the BLM published the proposed rule, "Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements." The proposed rule would amend and replace the rule, "Waste Prevention, Production Subject to Royalties, and Resource Conservation," which the BLM finalized in November 2016 [herein referred to as the "2016 rule"] to limit the practice of venting and flaring natural gas from oil and gas wells on federal lands.

In its justification for amending the 2016 rule and issuing the proposed rule, the BLM cites Executive Order 13783 titled "Promoting Energy Independence and Economic Growth," which states "It is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production…"[1] The BLM adds that pursuant to the Executive Order, it was necessary to amend the 2016 rule because it,

"…contains numerous administrative and reporting burdens that are unnecessary and likely to constrain development."[2]

This rationale provides the basis of BLM's justification for revising and rescinding parts of the 2016 rule. However, according to the BLM, the proposed rule would actually decrease total energy production on federal lands. Although the 2016 rule would have led to the deferred production of an estimated 18.4 million barrels of oil, and 22.7 billion cubic feet (bcf) of natural gas from 2019 to 2028, it would have also caused 299 bcf more natural gas to be brought to market.[3] This estimated net overall increase in natural gas produced on federal lands because of the 2016 rule was primarily due to the projected capture and sale of natural gas that would have otherwise been wasted. The BLM's proposed rule, as discussed below, removes or undermines many of the requirements of the 2016 rule. As a result, this net overall increase in natural gas production would not be realized. This uncontested fact contradicts the BLM's stated justification for the proposed rule and throws into question the agency's seriousness in issuing it.

In comments provided below, TCS objects to the structure of the proposed rule as well as many of its components. Those objections are premised on the very real consequences to taxpayers of the ongoing and unmitigated waste of public resources on federal lands. The BLM would not only fail to address that problem through its proposed rule, but by not achieving its stated goal of increasing domestic energy production, the BLM also fails to prove the proposed rule's legitimacy as an earnest act of stewardship of our public resources.

II. Background

The November 2016 rule was written to improve upon and correct the pre-existing guidance provided by the, "Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost," (NTL-4A). The NTL-4A was written by the U.S. Geological Service in 1979. In the 38 years since NTL-4A was issued, technologies and practices for oil and gas production, such as hydraulic fracturing and horizontal drilling techniques, have advanced considerably.

Issues with the NTL-4A regulations, which governed venting, flaring, and royalty-free uses of oil and natural gas on federal lands, are well documented. In 2010, the DOI Inspector General recommended that the BLM clarify its requirements for royalty-free use of gas.[4] The same year, the Government Accountability Office (GAO) found that around 40 percent of natural gas being vented and flared from onshore federal leases could have been captured economically with the use of available control technologies, and that Interior's oversight of the oil and gas program had significant limitations—specifically, that its regulations did not address significant sources of lost gas.[5]

In 2011, the GAO added Management of Federal Oil and Gas Resources to its list of government programs considered to be at high risk—defined as having "greater vulnerabilities to fraud, waste, abuse, and mismanagement." The GAO found that, "Interior did not have reasonable assurance that it was collecting its share of revenue from oil and gas produced on federal lands."[6]

In 2016, the GAO reported considerable ambiguity regarding what properly constitutes royalty-free venting and flaring and consequently, "substantial variation in how the BLM has interpreted and applied the standard" for approval of flaring. The GAO also determined that the NTL-4A's ambiguity has been compounded by the BLM's inconsistent adherence to the protocol established to enforce it. Their audit estimated that 90 percent of the 1,281 venting and flaring requests received by BLM field offices in fiscal year 2014 did not contain the appropriate documentation, yet the BLM approved 70 percent of those requests anyway. Due to insufficient guidance regarding recordkeeping for lost gas, the GAO also concluded that the DOI "may not have a clear accounting of natural gas emissions, which could limit [its] ability to ensure that lessees pay royalties in the proper amounts and minimize waste of natural gas." [7]

As a predicate for its 2016 rulemaking, the BLM acknowledged many of the shortcomings of the NTL-4A, as well as the large increase in lost gas from federal lands the NTL-4A had not constrained. According to the BLM, the amount of gas flared from federal and Indian lands more than doubled from 2009 to 2013.[8] The BLM also estimated that 462 billion cubic feet of natural gas had been vented or flared from federal and Indian lands between 2009 and 2015, which was "enough gas to supply about 6.2 million households for a year." [9]

TCS analysis of data provided by the Office of Natural Resources Revenue (ONRR), an agency within DOI responsible for royalty collections on federal lands, also revealed gross amounts of waste during oil and gas production. We found that in the decade 2007-2016, 210 bcf of natural gas, worth an estimated $1.07 trillion, was lost by oil and gas companies operating on federal lands. Of that total, only 11 percent was charged a royalty. In 2016 alone, 25 bcf was lost, and royalties were charged on just 16.3 percent of it, down from 29.6 percent in 2015. These small fractions of lost gas charged a royalty represent the failures of NTL-4A to ensure taxpayers get a fair return for federal resources.[10]

In its 2016 final rule, the BLM appropriately cited a number of the "oversight reviews" mentioned above and discussed how the rule would implement many of the reviews' recommendations. In contrast, the BLM does not mention any of the findings of the DOI Inspector General, the GAO, or others about the weaknesses of the NTL-4A in the new proposed rule. We believe this is emblematic of the BLM's problematic overall approach to the current rulemaking: by ignoring the proliferation of natural gas waste under the NTL-4A while reinstating much of the old policy, the BLM is abdicating its responsibility to remedy the current situation and manage public oil and gas resources in the public interest.

A summary of Taxpayers for Common Sense's concerns on selected provisions of the proposed rule are provided below.

III. Legal Authority

The BLM holds considerable authority to promulgate new or revised rules in its role managing oil and gas activities on federal and Native American lands. The statutes which provide that authority, delegated to the BLM by the Secretary of the Interior, not only allow the BLM to issue regulations to prevent the waste of public natural resources, they require it.

In 1976, Congress declared it official policy that "the United States receive fair market value of the use of the public lands and their resources ..."[11] Fair market value for federal oil and gas resources is attained, in part, through the collection of royalties on the sales value of the resources developed from leases on federal lands. The Mineral Leasing Act (MLA) states, "A lease shall be conditioned upon the payment of a royalty at a rate of not less than 12.5 percent in amount or value of the production removed or sold from the lease."[12] The BLM is the agency responsible for setting royalty rates and determining which production is subject to royalties on federal leases.[13]

The MLA also stipulates that as a condition of leasing federal land for oil and gas development, a developer must "…use all reasonable precautions to prevent waste of oil or gas developed in the land."[14] If waste occurs, however, it is clear in separate statute that the operator is liable for, "…royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with **any rule or regulation**, order or citation issued under this Act or any mineral leasing law," [emphasis added].[15]

Congress vested BLM with the authority to issue such rules or regulations regarding the waste of oil and gas with which federal oil and gas lessees must comply, as well as any other rules necessary to carry out the purposes of the underlying statutes.[16] Congress also expressly stated that federal oil and gas lessees must observe any provision issued from the DOI, "for the prevention of undue waste."[17]

Taken together, these authorities confer on the BLM the ability, *and the mandate*, to issue rules to minimize the waste of federal oil and gas resources. They also affirm that operators are liable for royalty payments on wasted resources if they fail to comply with those rules. In the new proposed rule, the BLM requests specific comment on whether its issuance of the 2016 rule was "consistent with its statutory authority."[18] From all of the above, it is abundantly clear the answer is yes. TCS also asserts that to the extent the proposed rule fails to reduce the amount of gas losses on federal lands, it is *inconsistent* with the BLM's statutory obligations to manage federal resources in the public interest.

IV. Policy Determination on 'Waste'

In the proposed rule, the BLM introduces a definition for "waste of oil or gas" that reflects a new "policy determination" by the agency about when federal resources should be considered wasted.[19] By conditioning the definition of waste on a narrow economic evaluation, TCS believes the BLM would be subverting the interest of taxpayers, as the owners of public natural resources, to the interests of private industry. We recommend, furthermore, that the BLM immediately withdraw the new definition and exclude short-term costs to private industry as a factor when determining whether public resources have been wasted.

In its discussion of the proposed rule, the BLM states it has "made the policy determination that it is not appropriate for 'waste prevention' regulations to impose compliance costs greater than the value of the resources they are expected to conserve."[20] No rationale is provided for this new determination. The approach, however, mirrors comments to the 2016 rule, which the BLM references in the proposed rule's introduction, without comment:

> *Commenters also asserted that the [2016] proposed rule exceeded the BLM's waste prevention authority by requiring conservation without regard to economic feasibility, a key factor in determining whether a loss of oil or gas is prohibited ''waste'' under the Mineral Leasing Act.* (83 FR 2927)

The BLM clarifies that "commenters" refers to "the regulated industry and some States." Specifically, at the time of the 2016 proposed rule, this position was asserted by the American Petroleum Institute – the leading oil and gas industry association.[21] The merits of the new policy determination aside, the BLM's decision to endorse the position of a private interest without divulging its rationale is troubling.

The decision is also notable because the BLM engaged with the cited comments during the 2016 rulemaking and expressly refuted the industry's argument at the time, stating:

> *For several reasons, the BLM did not change the final rule based on these comments. As an initial matter, there is no statutory or jurisprudential basis for the commenters' position that the BLM must conduct an inquiry into a lessee's economic circumstances before determining a loss of oil or gas to be ''avoidable.'' Although the BLM's practice under NTL–4A has generally been to engage in case-by-case economic assessments before making avoidable/ unavoidable loss determinations, the BLM has not always done so and is not legally required to do so.* (81 FR 83038)

Given the functional equivalence of the terms "avoidable loss" and "waste" in the arguments – in that both indicate which lost gas is royalty-bearing – the BLM's comments can be taken to mean it did not consider it necessary to take operators' specific economic circumstances into account when determining which gas is wasted and should incur royalties. Instead, in its 2016 rulemaking, the BLM endorsed a

broader view that operators could be expected to bear the costs of waste prevention measures so long as those costs did not lead to the premature abandonment of a particular well or reserve.[22]

TCS believes the BLM's 2016 position more securely protects the taxpayer interest for the sake of managing oil and gas resource development. We recognize the importance of domestic energy production, as stated in statute (43 U.S.C. 1701(a)(12)) and the President's Executive Order (E.O 13783). However, nothing in statute compels DOI to consider the value of increased energy production on federal lands *above* the demonstrated imperative for DOI to ensure taxpayers get a fair return for federal resources.

TCS strongly urges the BLM to immediately withdraw its suggested language for the definition of "waste of oil or gas" (in § 3179.3) and present any rationale it had for its new policy determination to the public before implementing it into future rulemakings.

V. Provisions Regarding the Waste of Gas from Oil Wells

a. Proposed § 3179.201 - Other Venting or Flaring

In the current rulemaking, the BLM is proposing to rescind the gas capture requirements (43 CFR 3179.7) established by the 2016 rule entirely and replace them with the proposed section 3179.201, "Other Venting or Flaring" to address associated gas losses. The primary component of the proposed section states that, outside of specific circumstances, "…vented or flared oil-well gas is royalty free if it is vented or flared pursuant to applicable rules, regulations, or orders of the appropriate State regulatory agency or tribe."[23]

The proposed approach is an abdication of the BLM's responsibility to set consistent guidance for when venting or flaring publicly owned natural gas should incur a royalty, and would not result in a meaningful reduction in royalty-free flaring of associated gas on federal lands.

<u>*Background*</u>

The BLM is right to specifically address the royalty treatment of associated gas. The large increase in natural gas losses on federal lands over the last decade was driven by the proliferation of flaring gas associated with oil wells, or "associated gas." According to ONRR data, the amount of non-avoidably lost gas flared from oil wells on federal lands in 2015 was eight times greater than the amount flared in 2007. These figures, however, might be understating the spike in flaring losses. As the BLM notes, "the GAO identified consistency issues with the data reported to ONRR, so the reported volume of flared gas is likely to underrepresent the actual volume flared."[24]

Over the last decade, flaring of associated gas also made up an increasingly larger share of all lost gas on federal lands. In 2007, oil-well flaring composed just 17 percent of total lost gas, compared to 75 percent in 2016, the highest level yet recorded. According to the BLM, the dramatic increase in flared oil-well gas since 2008 is due to, "[I]ncreased oil production from tight oil and other unconventional formations without commensurate increases to the gas transportation and processing infrastructure."[25]

The 2016 rule sought to limit the flaring of associated gas by setting target percentages for how much gas operators would be required to capture above a certain allowable amount.[26] Both the target percentage and "flaring allowable" volume could be calculated on a per lease/unit/communitized area basis, or averaged over a county or state in which an operator is producing oil.[27] Gas flared in excess of the applicable target percentage for a given year, or "excess flared gas," is considered "avoidably lost" and therefore royalty-bearing under the 2016 rule.[28] When the rule became final in November 2016, the BLM estimated that once the capture percentages were fully phased in, the rule would "reduce the flaring of

associated gas by 49%," compared to 2014 estimates.[29] As a result of the capture requirements, the BLM estimated natural gas production would increase 176 Bcf between 2018 and 2026."[30]

Proposed section 3179.201 is irresponsible because the BLM fails to set a minimum threshold for gas captured or establish necessary component criteria for the state or tribal regulations to which it is deferring. The BLM requested comment on whether the section achieves the agency's goal of deferring to state and tribal regulations that "…provide a reasonable assurance to the BLM that operators will not be permitted to engage in the flaring of associated gas without limitation and that the waste of associated gas will be controlled."[31] TCS asserts that the provision, as written, does not achieve that goal because there is no language in the provision that sets standards for qualifying state and tribal regulations. Without some minimum requirements, it's impossible for the BLM to have "a reasonable assurance" about any effect of state or tribal regulations.

Deferring to state and tribal authorities to determine when federal gas resources are royalty-bearing, without setting some parameters for when the named authorities should allow for flaring of associated gas, is also entirely inappropriate. The BLM is vested with the authority and obligation to ensure federal resources are developed in the taxpayer interest.[32] State and tribal regulatory authorities do not share that obligation. Deferring to state and tribal regulations to establish what return federal taxpayers get for federal resources, without precondition, is an unjustified abdication of the BLM's unique responsibility.

The proposed section 3179.201 would also harm federal taxpayers by failing to change the status quo. By the BLM's admission, the amount of associated gas losses has "increased dramatically" in recent years. The BLM, under the guidance of the NTL-4A, deemed only a fraction of that gas as royalty–bearing. According to ONRR data, only 16.3 percent of all gas lost in 2016 was deemed "avoidably lost" and incurred a royalty. In light of the BLM's statutory obligation to limit the amount of waste on federal oil and gas leases (see Section I of these comments), the current state of affairs requires the BLM to somehow improve or reform its current practices.

Instead, by deferring to state and tribal regulations already in effect, proposed section 3179.201 does not provide for any reasonable expectation that oil and gas operators will deviate from current practice. Oil and gas operators already comply with state and tribal regulations where they are more stringent than federal requirements. Removing federal standards for when venting and flaring is authorized will therefore not change the incentives operators already have to capture or flare natural gas. If anything, the proposed abdication of authority to state and tribal entities will allow oil and gas operators to operate with less accountability where federal regulations previously set the prevailing standard.

The result of the proposed section 3179.201, including its reversion to NTL-4A guidance where state or tribal regulations do not exist, will be to perpetuate the waste of federal natural gas resources and increase foregone revenues for taxpayers. See the section below on proposed § 3179.4 for further comments.

b. Proposed § 3179.4 - Determining When the Loss of Oil or Gas Is Avoidable or Unavoidable

The NTL-4A has been ineffective at constraining the royalty-free loss of natural gas in large part because of confusion about when lost gas should be considered *avoidably lost* or *unavoidably lost* under its guidance. This confusion, particularly surrounding the treatment of gas flared from oil wells, increasingly led operators to submit requests to the BLM to approve flaring to determine its royalty status. The result of this practice was that operators were almost entirely unrestricted in their ability to flare gas royalty-free in every state except New Mexico, where royalties were charged on a fraction of the gas. According to ONRR data, of all reported gas losses from 2007-2016 on federal land outside of New Mexico, only 1.3 percent was deemed avoidable and charged a royalty. Over the same decade, 26.6 percent of losses in New Mexico were deemed avoidable.

The 2016 rule attempted to clear up the confusion by enumerating the circumstances in which gas would be considered *unavoidably lost* and thereby avoid a royalty.[33] At the same time, the BLM asserted that gas lost by operators who rely on extensively flaring from certain wells as standard practice should not be considered unavoidable without limit:

> *…given the BLM's statutory obligation to reduce waste of gas, the clear technical capability of operators to capture gas, the economic value of the gas, and the environmental impacts of not capturing it, the BLM has determined that it is not reasonable to allow operators to dispose of large quantities of associated gas from development oil wells using routine flaring.* (81 FR 83050)

In keeping with this determination, the BLM introduced the concept of "excess flared gas" into its definition of avoidably lost gas.[34] As noted above, "excess flared gas" consists of gas that is flared above the applicable capture target and flaring allowable volume, both of which could be calculated on a per lease/unit/communitized area basis, or averaged over a county or state in which an operator is producing oil.[35] The BLM modeled its approach on existing regulations in North Dakota and expressly attempted to ease the burden the capture targets would impose on operators by implementing them over time, outlining exceptions to them, and creating alternative capture requirements for certain cases.

The BLM estimated at the time that the inclusion of "excess flared gas" in the definition of *avoidably lost*, in conjunction with the established capture targets, would lead to a substantial decrease in flaring from the baseline,[36] and increased royalty collection of $70-$91 million over 10 years.[37]

In the proposed rule, the BLM takes a different approach. For *avoidably lost*, the proposed rule effectively reverts to the definition provided by the NTL-4A. The definition of *unavoidably lost* also borrows from the NTL-4A, but the listed operations or sources of gas in proposed subsection 3179.4(b)(2) are carried over from the 2016 rule, with some variations. The proposed rule deviates from the 2016 rule's definition of *unavoidably lost* primarily in what it omits.

Elsewhere in the rule, the BLM proposes rescinding sections instituted by the 2016 rule that require operators to replace certain types of equipment with high emissions rates (§ 3179.201, § 3179.202), and fix leaks identified after implementing a leak detection and repair (LDAR) program (§ 3179.301-305). In conjunction with those rescissions, the BLM is proposing to remove parts of the 2016 *unavoidably lost* definition that pertain to gas lost from the specified equipment, it the operator had otherwise acted responsibly.

More notably, the BLM also proposes to remove the subpart of the 2016 rule's definition that allowed gas vented or flared from wells not connected to a gas pipeline to be considered *unavoidably lost*. Without the capture requirements of the 2016 rule, this would have allowed for unmitigated royalty-free venting and flaring from certain wells.

In removing the relevant subpart of the 2016 rule's *unavoidably lost* definition, the BLM is demonstrating a tacit intent not to sanction "unrestricted flaring from wells not connected to gas pipelines."[38] Yet by deferring to state and tribal regulations, without condition, there is no way for the BLM to ensure that such flaring is in fact restricted to a desired extent, or at all. Under the proposed § 3179.201, it would be entirely permissible for state or tribal authorities to authorize flaring from oil wells if operators simply give advance notice. In which case, operators would have no incentive to restrict their flaring.

In proposed § 3179.201, the BLM proposes that where venting and flaring from oil wells is not covered by state or tribal regulations, operators would have to submit a request to the BLM to flare in much the same way as the NTL-4A directed. While the proposed § 3179.4(b)(3) clarifies that all approved flaring would be deemed *unavoidably lost*, a source of confusion under the NTL-4A, enshrining the system of case-by-case evaluation for venting or flaring is an unjustified reversion to a defunct system. The GAO amply demonstrated in its 2016 report that the BLM's processing of flaring requests has been inconsistent and unworkable.[39] Deferring to state and tribal regulations would reduce the amount of requests to flare

from oil wells. But the inclusion of § 3179.4(b)(3) will likely lead to *increased* requests to vent or flare from gas wells if operators see an opportunity in the subsection's inclusivity to avoid paying royalties on certain gas-well losses. Moreover, because gas-well losses are not covered by § 3179.201, the BLM does not specify any requirements, such as the inclusion of justifying engineering and economic data, for foreseeable requests to vent or flare from gas wells.

The BLM is obligated to minimize the waste of public resources on federal lands and ensure taxpayers get a fair return for them. The BLM's management of oil and gas development on federal lands, and the treatment of lost gas during that development under the NTL-4A, did not satisfy the agency's obligations. Instead of proposing changes to the regulatory framework of the NTL-4A that would reduce gas waste from oil wells or increase the assessment of royalties on it, the BLM has simply proposed to: redefine "waste" so that the problem doesn't exist (§ 3179.3); defer to other authorities to deal with it where it persists (§ 3179.201); and, resort to the old basis for royalty determinations (§ 3179.4).

TCS urges the BLM to set minimum expectations for responsible development of oil wells, and issue rules that guarantee operators will meet those expectations, regardless of the state in which they operate. The 2016 rule sought to do that by giving operators a flexible target to hit for capturing emissions. If the BLM continues to believe that structure was "overly complex" or too "prescriptive,"[40] it is incumbent on the agency to develop an approach to minimize unreasonable waste that is less complex and more flexible, rather than abdicate its responsibility outright.

TCS recommends that the BLM withdraw its proposed definition of "waste of oil or gas" and incorporate some new mechanism in its definition of *avoidably lost* gas that includes gas vented or flared from oil wells beyond necessary or reasonable amounts. Whether the standard of reasonable venting or flaring is constructed through the enumeration of allowable or prohibited practices in specified circumstances, or as quantitative upper bounds for gas losses, we leave to the agency's discretion. Regardless of its structure, the resulting standard must provide for a reduction in both the amount of natural gas lost on federal lands, and the royalty-free proportion of that gas.

VI. Other Provisions

a. Proposed § 3179.301 - Measuring and Reporting Volumes of Gas Vented and Flared

Much of proposed § 3179.301 "measuring and reporting volumes of gas vented and flared" is a holdover from § 3179.9 instituted by the 2016 rule, but with important changes that will harm taxpayers' interest if finalized. Both the 2016 rule and the proposed rule require operators to estimate or measure all volumes of gas vented or flared, and report those volumes under applicable ONRR reporting requirements. The BLM is soliciting comment on the most efficient and least burdensome means to make appropriate data available to the public. But, the proposed rule does not place a limit on the amount of gas that is allowed to be estimated. Under the 2016 rule, operators are required to measure or calculate total emissions from a gas flare if the operator estimates it has flared more than 50 thousand cubic feet (Mcf) per day, on average, over the previous year or the life of the flare. The proposed rule eliminates this requirement.

The proposed rule also defers to state and tribal regulations to set standards for when and how operators must measure or estimate volumes of lost oil and gas. As noted above, deferring to state or tribal authorities without condition is bad practice that cannot assure the BLM that desired operator behavior is achieved.

TCS recommends the BLM place an upper bound on the volumes of gas operators can report venting or flaring without being required to measure the source of gas losses. Placing restrictions on self-reporting by operators can ensure abuse of the system is kept to a minimum, provide greater accountability for the gas that is lost, and ensure taxpayers receive the royalties they are due from energy production on federal lands.

b. § 3103.3–1 - royalty rate provisions

The proposed rule would not amend the existing §3103.3–1 instituted by the 2016 rule, which governs royalty rates applicable to onshore oil and gas leases. Prior to 2016, the BLM's regulations set a flat rate of 12.5 percent for both competitive and noncompetitive onshore leases. The updated provision kept the rate at 12.5 for standard noncompetitive leases, but for competitive leases, brought the regulatory language in line with the Mineral Leasing Act for, which states: "A lease shall be conditioned upon the payment of a royalty at a rate of **not less than** 12.5 percent in amount or value of the production removed or sold from the lease.'' [emphasis added] (30 U.S.C. 226(b)(1)(A)). That is, the 2016 provision made it possible for the BLM to raise the royalty rate above 12.5 percent for certain leases.

TCS strongly agrees with the BLM's decision to keep the current royalty rate provision in its proposed rule. The BLM's previous failures to raise onshore royalty rates, or to amend the regulations to allow further increases of royalty rate above the minimum by administrative action, represented a significant loss to taxpayers for resources developed on federal lands. As BLM has noted, state and private lessors charge royalty rates higher than 12.5 percent. The standard royalty rate for offshore oil and gas leases, meanwhile, was raised to 18.75 percent years ago. By making it clear that the BLM has the flexibility to set rates at or above 12.5 percent, the provision provides the agency with the authority necessary to ensure it can collect equitable royalties from energy production on the federal lands it manages.

VII. Conclusion

Thank you for the opportunity to comment on the proposed rule to address lost natural gas from energy production on federal lands. The outdated rules that governed oil and gas development for nearly four decades have cost taxpayers billions of dollars in lost revenue. TCS recommends the BLM move away from the NTL-4A and move toward a system that ensures a fair return for federal taxpayers on the oil and gas resources we all own. For more information on lost gas and natural resource royalties see our attached report, *Gas Giveaways* and visit www.taxpayer.net/energy

[1] Office of the President of the United States, "Presidential Executive Order on Promoting Energy Independence and Economic Growth" March 28, 2017. https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-energy-independence-economic-growth/
[2] 83 FR 7924 (Feb. 22, 2018)
[3] Bureau of Land Management (BLM), Regulatory Impact Analysis for the 2018 proposed rule. Document ID: BLM-2018-0001-0002, p.49
[4] Office of the Inspector General, U.S. Department of Interior, "Inspection Report: BLM and MMS Beneficial Use Deductions," March 2010.
[5] United States Government Accountability Office (GAO), Report to Congressional Requesters, "FEDERAL OIL AND GAS LEASES: Opportunities Exist to Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases," October 2010. GAO-11-34
[6] GAO, Report to Congressional Committees, "HIGH-RISK SERIES, An Update," February 2015. GAO-15-290
[7] Ibid.
[8] Bureau of Land Management (BLM), Regulatory Impact Analysis for the 2016 proposed rule, https://www.regulations.gov/document?D=BLM-2016-0001-0002 , p. 19
[9] U.S. Department of the Interior, "FACT SHEET ON METHANE AND WASTE PREVENTION RULE." P. 1. https://www.doi.gov/sites/doi.gov/files/uploads/methane_waste_prevention_rule_factsheet.pdf
[10] Taxpayers for Commons Sense, Report "Gas Giveaways: Methane Losses Are a Bad Deal for Taxpayers," April, 4 2018. https://www.taxpayer.net/energy-natural-resources/gas-giveaways-methane-losses-and-lost-royalties/
[11] 43 U.S.C. 1701(a)(9)
[12] 30 U.S.C. 226(b)(1)(A).
[13] BLM, 2016 Final Rule, 81 FR 83020 (Nov. 18, 2016).
[14] 30 U.S.C. 225
[15] 30 U.S.C. 1756
[16] 30 U.S.C. 189
[17] 30 U.S.C. 187
[18] 83 FR 7927 (Feb. 22, 2018)
[19] In the proposed 43 CFR 3179.3, 83 FR 7946 (Feb. 22, 2018)
[20] 83 FR 7928 (Feb. 22, 2018)
[21] American Petroleum Institute, comments to "Waste Prevention, Production Subject to Royalties, and Resource Conservation" Proposed Rule at 81 FR 6616 (February 8, 2016). RIN: 1004-AE14, Docket ID: BLM-2016-0001, Document ID: BLM-2016-0001-9073, available at: https://www.regulations.gov/document?D=BLM-2016-0001-9073
[22] See provisions of the 2016 final rule concerning LDAR (43 CFR 3179.303); storage vessels (3179.203(c)(3)); pneumatic diaphragm pumps (3179.202(f)); pneumatic controllers (3179.201(b)(4)); flaring during well completion and related operations (3179.102(c)); gas capture requirements and alternative capture requirements (3179.7-8); etc.
[23] 83 FR 7947 (Feb. 22, 2018)
[24] BLM-2018-0001-0002, RIA, p. 20
[25] Id. p. 21
[26] 43 C.F.R. 3179.7 created by the 2016 final rule, 81 FR 83023
[27] 43 C.F.R. 3179.7(c)(3)
[28] 43 C.F.R. 3179.4
[29] BLM, Regulatory Impact Analysis BLM-2016-0001-9127, p.5
[30] Id. p. 49
[31] Ibid.
[32] 43 U.S.C. 1701(a)(9)
[33] 43 C.F.R. 3179.4
[34] Ibid.
[35] 43 C.F.R. 3179.7(c)(3)
[36] BLM, Regulatory Impact Analysis BLM-2016-0001-9127, p.116
[37] BLM, Regulatory Impact Analysis BLM-2016-0001-9127, p.118
[38] Ibid.
[39] GAO report "Interior Could Do More to Account for and Manage Natural Gas Emissions." GAO-16-607: Published: July 7, 2016. Publicly Released: July 21, 2016. https://www.gao.gov/products/GAO-16-607
[39] 83 FR 7930 (Feb. 22, 2018)
[40] 83 FR 7930 (Feb. 22, 2018)