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October 16, 2018

The Honorable Lisa Murkowski
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Rob Bishop
Chairman
The Honorable Raúl Grijalva
Ranking Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Bureau of Land Management: Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Bureau of Land Management (BLM) entitled "Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements" (RIN: 1004-AE53). The Senate received the rule on September 28, 2018. We found no record of receipt for the House of Representatives. It was published in the *Federal Register* as a final rule on September 28, 2018. 83 Fed. Reg. 49,184. The effective date of the final rule is November 27, 2018.

The final rule revises BLM's regulations, as amended by the November 18, 2016, rule entitled, "Waste Prevention, Production Subject to Royalties, and Resource Conservation," in a manner that, according to BLM, reduces unnecessary compliance burdens, is consistent with BLM's existing statutory authorities, and re-establishes longstanding requirements that had been replaced. BLM states that it is rescinding requirements pertaining to waste-minimizing plans, gas-capture percentages, well drilling, well completion and related operations, pneumatic controllers, pneumatic diaphragm pumps, storage vessels, and leak detection and repair. BLM is also revising other provisions related to venting and flaring and is adding provisions regarding deference to appropriate state or tribal regulation in determining when flaring of associated gas from oil wells will be royalty-free.

Enclosed is our assessment of BLM's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about

this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Julia C. Matta
Managing Associate General Counsel

Enclosure

cc: Ian Senio
Division Chief, Regulatory Affairs
Department of the Interior

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT
ENTITLED
“WASTE PREVENTION, PRODUCTION SUBJECT TO ROYALTIES,
AND RESOURCE CONSERVATION; RESCISSION OR
REVISION OF CERTAIN REQUIREMENTS”
(RIN: 1004-AE53)

(i) Cost-benefit analysis

The Department of the Interior, Bureau of Land Management (BLM) evaluated the rule’s economic impacts and provided a summary in this final rule. According to BLM, the final rule removes almost all of the requirements in its November 18, 2016, rule that BLM previously estimated would pose a compliance burden to operators and generate benefits of gas savings or reductions in methane emissions. For this final rule, BLM estimated that, over a 10-year evaluation period, the total reduction in compliance costs are \$1.36 billion or \$1.63 billion (depending on different discount rates). BLM also estimated that this final rule would result in foregone cost savings from natural gas recovery of \$559 million or \$734 million, and foregone methane emissions reductions valued at \$66 million or \$259 million. BLM concluded that the final rule is estimated to result in positive net benefits (that is, the reduction of compliance costs will exceed the forgone cost savings) of \$734 million to \$1.01 billion, or \$720 million to \$1.08 billion.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

For the purposes of carrying out its review pursuant to RFA, BLM believes that the final rule will not have a “significant economic impact on a substantial number of small entities,” as that phrase is used in 5 U.S.C. § 605. BLM concludes that an initial regulatory flexibility analysis is therefore not required. BLM states that, in making a significance determination under RFA, it used an estimated per-entity cost savings to conduct a screening analysis. This analysis showed, according to BLM, that the average reduction in compliance costs associated with this final rule are a small enough percentage of the profit margin for small entities so as not to be considered “significant” under RFA.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. §§ 1532-1535

According to BLM, the final rule will not impose an unfunded mandate on state, local, or tribal governments, or the private sector of \$100 million or more per year. The final rule will not have a significant or unique effect on state, local, or tribal governments or the private sector. The final rule contains no requirements that would apply to state, local, or tribal governments. It will rescind or revise requirements that would otherwise apply to the private sector. A statement containing the information required by UMRA is not required for the final rule. BLM also states that this final rule is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments,

because it contains no requirements that apply to such governments, nor does it impose obligations on them.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551*et seq.*

On February 22, 2018, BLM published a proposed rule that would revise BLM's November 18, 2016, final rule, entitled "Waste Prevention, Production Subject to Royalties, and Resource Conservation." 83 Fed. Reg. 7924. BLM provided for a 60-day comment period, which generated more than 600,000 comments on the proposed rule. BLM summarized and responded to these comments in a separate "Responses to Comments" document, which can be found at www.regulations.gov. In addition, BLM noted the most salient comments in its discussion of the final rule in the preamble to the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Office of Management and Budget (OMB) approved 24 information collection activities in the 2016 rule pertaining to waste prevention and assigned control number 1004-0211 to those activities. BLM has requested that control number 1004-0211 be revised to include the information collection activities in this final rule, include certain information collection activities that were in the 2016 rule, remove certain information collection activities that were in the 2016 rule, and revise certain information collection activities that were in the 2016 rule.

Statutory authorization for the rule

BLM regulates the development of federal and Indian onshore oil and gas resources under the following statutes: the Mineral Leasing Act of 1920, 30 U.S.C. §§ 188-287; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-360; the Federal Oil and Gas Royalty Management Act, 30 U.S.C. §§ 1701-1758; the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1785; the Indian Mineral Leasing Act of 1938, 25 U.S.C. § 396a-g; the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2108; the Act of March 3, 1909, 25 U.S.C. § 396; and the other statutes and authorities listed in 43 C.F.R. §§ 3160.0-3.

BLM promulgated this final rule under the authority of 25 U.S.C. §§ 396d and 2107; 30 U.S.C. §§ 189, 306, 359, and 1751; 43 U.S.C. §§ 1732(b), 1733, and 1740; and section 107, Pub. L. 114-74, 129 Stat. 599.

Executive Order No. 12,866 (Regulatory Planning and Review)

BLM stated that OMB's Office of Information and Regulatory Affairs designated this rule as economically significant.

Executive Order No. 13,132 (Federalism)

BLM states that the final rule will not have a substantial direct effect on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the levels of government. BLM also states that it would not apply to states or local governments or state or local governmental entities. The rule will affect the relationship between operators, lessees, and BLM, but it does not directly impact the states. Therefore, BLM determined that the final rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.