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Submitted via Electronic Mail (blm_hq_ntl5@blm.gov)

David Rosenkrance
Assistant Director for Energy, Minerals, and Realty Management.
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW, Room 5646
Washington DC 20240

Re: Proposed Notice to Lessees No. 5: "Clarifying the Implementation of Certain BLM Oil and Gas Measurement Regulations," 89 Fed. Reg. 90,037 (Nov. 14, 2024)

Dear Assistant Director Rosenkrance:

GPA Midstream Association ("GPA Midstream" or "GPA") hereby submits the following comments in response to the Bureau of Land Management's (BLM's) Proposed Notice to Lessees No. 5 ("NTL-5") entitled, "Compliance with the Site Security, Measurement of Oil, and Measurement of Gas, 43 CFR part 3170." GPA respectfully requests that BLM consider these comments in resolving the various technical feasibility and enforcement fairness concerns associated with the proposal.

GPA Midstream has served the U.S. energy industry since 1921 and represents over 50 domestic corporate members that directly employ 57,000 employees that are engaged in the gathering, transportation, processing, treating, storage, and marketing of natural gas, natural gas liquids, crude oil and refined products, commonly referred to as "midstream activities." The work of our members indirectly creates or impacts an additional 400,000 jobs across the U.S. economy. In 2023, GPA Midstream members operated over 250,000 miles of gas gathering pipelines, gathered over 91 billion cubic feet per day of natural gas, and operated over 365 natural gas processing facilities that delivered pipeline quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems.[1]

Many GPA Midstream members operate on federal lands, including onshore areas managed by BLM. For several years, GPA has worked collaboratively with the Department of the Interior ("DOI") and its agencies, including BLM, to help provide for the continued safety of industry workers, protection of the environment, and proper economic development of resources in fulfillment of federal law. While GPA appreciates the collaboration with BLM, there are concerns with the proposed NTL-5, principally as they relate to BLM's proposed enforcement of the provisions in Subparts 3174 and

[1] For more information, reference www.gpamidstream.org.

3175 concerning the use of approved equipment and software for the measurement of oil and gas. GPA Midstream believes that the most appropriate course for BLM would be to withdraw proposed NTL-5 and engage in further discussions with the industry regarding the practical realities of the oil and gas measurement regime adopted by the Bureau in 2016 and the difficult position BLM would put the industry in if it proceeds with its proposed enforcement approach.

A. GPA Midstream's Concerns with NTL-5's Oil and Gas Measurement Enforcement

i. The equipment approval program is not working

Under proposed NTL-5, operators will need to comply with this mandate within one year after the testing procedures are posted by the BLM Production Measurement Team ("PMT") for each device. Compliance with this requirement means:

1. For each make and model of measuring equipment, the PMT must issue test procedures that manufacturers or other third parties are required to follow in order to generate data the PMT can use to determine whether to approve the use of the equipment. This data is generated at an independent, qualified test facility before it is submitted to the PMT.
2. With the data in hand, the PMT must evaluate whether the particular make and model of equipment tested warrants approval for use in the field and make a recommendation to BLM, after which the Bureau must make a final decision regarding approval.
3. Approved makes and models of equipment are to be added to the lists of approved equipment maintained on BLM's website.

With the requirement for approval applying to every make, model, size, and software/firmware version of every piece of equipment, as well as the software systems utilized for data management, there are hundreds, if not thousands, of approvals required.

The process of getting equipment approvals is not working as intended. In the seven plus years since the regulations were issued, list of approved equipment has been populated. There are several reasons why no equipment has yet to be approved:

1. The sheer size of the task.
2. The limited number of facilities, outside of the manufacturers, available to perform the required testing.
3. The PMT's lack of resources to devote to the task. The PMT has an average of only four to five members at any given time. Moreover, the PMT's responsibilities are not limited to implementing the equipment approval program. Among other things, PMT members have spent a significant amount of their time over the past two years working on the Waste Prevention Rule. The PMT is also responsible for training Authorized Officials on the Measurement and Site Security Rules, providing technical guidance for questions and disputes with operators, etc. With all its responsibilities, it will likely take the PMT many years to approve all equipment, by which time manufacturers will have developed new makes and models that will need to be tested and approved.

ii. Two Examples of problems experienced

Two examples of unsuccessful efforts to get test procedures in place and equipment approved illustrate the difficulties BLM and the industry face in developing a functional system for approving measuring equipment.

a. Flow Conditioners

BLM chose to start with approval of Flow Conditioners because data were available, and it was assumed that these approvals would be relatively easy to process. BLM first requested data on flow conditioners approximately 4½ years ago with the testing protocol issued approximately two years ago. Upon review, BLM determined that the flow conditioner data did not meet the requirements of §3175.46 which states: "The operator or manufacturer must test the flow conditioner under API 14.3.2 / AGA 3.2, Annex D.[2]"

The three primary manufacturers have been in discussions with BLM regarding the testing data required. White papers for testing have been provided, but no supporting data. Each manufacturer is required to submit their own data for approval. However, GPA is not aware of any data being submitted, reportedly due to concerns regarding proprietary and confidential data. As a result, even though the testing procedure has been available for two years, no flow conditioners have been approved for use.

This leaves operators in the difficult position of utilizing flow conditioners that have not been approved. If flow conditioners are not approved, GPA members will be required to replace meter tubes with those that are significantly longer (up to 144 upstream diameters as opposed to the current 13). This presents significant challenges, including:

- The cost of replacing meter tubes;
- The space required to install the longer tubes (which can increase the length from 13 pipe diameters to as much as 145 pipe diameters); and
- The availability of sufficient meter tubes (which are custom-made and require significant machining) and personnel to install the meter tubes.

b. Coriolis Meters

A testing protocol for Coriolis meters was released approximately two years ago. Coriolis manufacturers submitted initial data to the PMT in 2022. Additional data requested by the PMT was submitted in 2023. The PMT did not respond until 2024, when it requested that the data be provided in a singular file in xls, csv, or text format (per the testing protocol). It is unclear if the PMT wants the data simply pasted into the singular file or if the PMT wants the data in raw form in individual cells. Moreover, the manufacturers have the results from the testing, but they do not have the raw data from the testing facilities. If raw data is required, recreating these tests would cost millions of dollars and take significant time. In the meantime, no Coriolis meters have been approved for use even though the test procedure has been available for two years.

[2] 43 C.F.R. § 3175.46. (https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-C/part-3170/subpart-3175/section-3175.46).

The data submitted to the PMT was from testing performed in accordance with OIML (International Organization of Legal Metrology) standards and has been relied on by two different international regulatory agencies as the basis for allowing the use of these meters for royalty and custody transfer measurement. The manufacture of these devices is International Organization for Standardization (ISO) 9001 certified, and the calibration labs are ISO 17025 certified. Therefore, BLM should accept these test data as satisfying its requirements.

Also, when considering the requirement for approval of every make, model, size and software version (which affects calculations) one major Coriolis manufacturer has 230 versions, whereas another has 408 versions. It seems unlikely the PMT would be able to evaluate that many devices and provide recommendations for approval to the BLM, which would in turn have to add them to the approved equipment list during a one-year period.

iii. Enforcement under these circumstances would be inequitable

Under these circumstances, BLM's approach to enforcement would create uncertainty and impose unnecessary risks and costs on operators, who would suffer the consequences of BLM's inability to provide an approved list of equipment in a timely manner. As set forth in proposed NTL-5, operators would be subject to enforcement within one year after testing procedures are posted, or in the case of flow conditioners and Coriolis meters (test procedures for which were posted some time ago) within one year of the effective date of NTL-5.

BLM's proposed enforcement position would potentially create a host of issues for GPA members. First, based on experience to date, operators cannot have any confidence that BLM will approve any equipment in a timely manner to allow for compliance within a year of the publication of test methods. As discussed above, the PMT has issued two test procedures to date and BLM is 0 for 2 in issuing any approvals within a year of the publication of those test procedures. If history repeats itself and BLM continues to be unable to issue approvals for any makes or models of equipment within a year of test procedure publication, what are operators to do?

Moreover, switching equipment is not a "flip the switch" proposition. Once a need (i.e., equipment switch) is identified, most companies go through the following process:

1. Engineering is performed to determine the scope and estimated cost of the equipment switch.
2. A funding request is generated for approval. This would be considered an unbudgeted project, which some companies might need to add to their next budget cycle.
3. Once approved, detailed engineering is performed and equipment ordered.

Another problem is "What equipment to order?" There is the potential that after a year, only a partial approved list for a specific device will be available, forcing GPA members to change equipment to be in compliance only to see their original equipment on the approved list at a later date. In addition, the current plan may force operators to perform multiple retrofits on a single location, increasing costs exponentially. Further, as the year progresses during the approval process, the time to comply may shrink to days if an approval is actually issued.

At that point, two additional problems may arise:

1. Manufacturers may not be able to produce enough equipment to satisfy the demand in a timely manner. In addition, some equipment may require special design and manufacture (e.g., large Coriolis meters).
2. Adequate personnel must be available to perform the field work as multiple companies may be competing for the same contractors to perform work in a given location.

There are almost 100,000 producible and service completions on federal lands.[3] If only a fraction require replacement of equipment due to lack of approvals, the supply chain strain would be unmanageable.

BLM's proposed enforcement approach would also add complexity and cost to upgrades. With regard to electronic devices in particular, it is common for manufacturers to provide regular updates to the firmware and software versions within a given unit (much like a Windows update to a personal computer). These updates often address operational issues, errors, and security issues. Some of the updates are designed to improve efficiency. The BLM approval requirement negates the possibility of implementing these upgrades because the upgrades will have to go into the queue for testing and approval. This can hamper critical upgrades necessary to ensure the most accurate, efficient, and safe operations. This would result in at least two significant issues for GPA members: (1) an operator may have to choose between security/safety and BLM compliance; and (2) an operator will have an undue burden as it will be forced to manage electronic equipment measuring operations on BLM lands differently than the same manufacturer/model on non-BLM lands.

GPA's members using older versions of equipment may face another set of issues even if the older equipment is still functioning adequately and meeting BLM standards. Operators typically would replace such equipment when it reaches the end of its useful life. However, under the regulations such equipment must be tested if the operator wants to continue using it. Testing of such equipment may pose challenges given that operators and manufacturers may not have spare devices in stock which can be used for testing. GPA members, therefore, could be forced to shut in locations in order to pull equipment offsite to perform the testing. The operator's other option will be to replace fully functioning equipment simply to satisfy BLM's mandate, resulting in significant and wholly unnecessary costs.

One of the most problematic aspects of the BLM approval program is the piecemeal approach it will force operators to take with respect to replacement of equipment. Rather than being able to address oil and gas measurement systems as a unit, operators may be put in the position of having to replace one component in order to remain in compliance with the approval mandate and then having to replace other components months later due to lack of equipment approvals. This approach would be costly for operators and would lead to serious inefficiencies.

In light of all these issues, BLM's determination to proceed with enforcement of an approval program which to date is non-functional would run counter to basic principles of administrative law requiring the regulated community to have fair notice of what is required of them. As the U.S. Supreme Court stated in *FCC v. Fox Television Stations, Inc.,* regulated 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."[4] In order to provide GPA members with the

[3] "Oil and Gas Statistics." (https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics).
[4] Fed. Commc'n Comm'n v. Fox Television Stations, Inc., 567 U.S. 239 (2012).

necessary guidance, BLM should refrain from enforcing compliance with the approval program until it can demonstrate that the program is actually working.

B. GPA Midstream's Concerns with Gas Analysis Reporting

GPA Midstream is also concerned about BLM's proposed enforcement policy with respect to gas analysis reporting. As set forth in proposed NTL-5, BLM acknowledges that the GARVS remains unavailable and that it has no timeline for its development. Nevertheless, BLM states that operators will be required to report through GARVS beginning three months after BLM publicly announces the availability of the system on its website.

This proposed three-month period is wholly inadequate. As BLM undoubtedly recognizes, moving to submitting reports through GARVS is not simply a matter of "throwing a switch" or a few "clicks of a mouse." Once GARVS is available, GPA's members will need to make software changes to accommodate the new reporting system, which may take some time. Reporting is also part of the accounting system for operators; for larger operators, it may take as long as two years to modify their accounting systems to ensure compliance with royalty obligations. There may well be bugs in GARVS that will need to be worked out, which would also take time. Given that BLM has apparently not even begun to develop GARVS, it cannot readily anticipate the issues that its rollout may present.

GPA believes that the better course for BLM would be to wait until GARVS is actually developed and is ready (or close to being ready) for rollout before determining how much time after publication is appropriate before reporting through GARVS is required. If BLM elects to include a phase-in period in NTL-5, a longer period is needed to allow BLM and operators to ensure that the new reporting system is working properly before reporting through GARVS is required.

C. BLM Should Withdraw Proposed NTL-5

GPA Midstream believes that the most appropriate course for BLM would be to withdraw proposed NTL-5 and engage in further discussions with the industry regarding the practical realities of the oil and gas measurement regime adopted by the Bureau in 2016 and the difficult position BLM would put the industry in if it proceeds with its proposed enforcement approach. Such discussions would allow BLM to minimize unnecessary costs it might otherwise impose on GPA members. A withdrawal of the proposal would also give BLM time to better assess the demands on the PMT and the resources available to it and to develop a more realistic approach to implementing the oil and gas measurement provisions of Subparts 3174/3175.

GPA believes that the requirement for all equipment to be approved by BLM is unnecessary, particularly in its current form with BLM having to approve each of the hundreds (if not thousands) of individual makes and models of numerous components of an oil or gas measurement system. As BLM well knows, the oil and gas industry, through various consensus-based organizations, has developed standards by which equipment should be tested. BLM attends these meetings and is aware of the standards and any changes thereto. GPA believes that rather than develop its own standards, BLM should comply with Circular A-119 which "directs agencies to use standards developed or adopted by voluntary consensus standards bodies rather than government-unique

standards, except where inconsistent with applicable law or otherwise impractical.[5]" As discussed earlier, BLM has neither the personnel nor the expertise to approve equipment in a timely manner, leaving a high degree of ambiguity for those operating on federal and Indian lands.

D. Considerations to Improve Proposed NTL-5

GPA does believe the proposed NTL-5 should be withdrawn to allow for more discussion with industry, allowing for conversations on how BLM can improve NTL-5, such as by considering the following:

i. BLM Should Not Finalize NTL-5 Without Reassessing the Presumption of Acceptability of Measurement Equipment and Including Significant Grandfathering Provisions

BLM could also consider flipping the presumption regarding the acceptability of measurement equipment. Under this alternative approach, manufacturers would still be required to submit test data to the PMT but operators would be free to use any piece of equipment the operator has a reasonable basis for believing meets BLM's measurement standards unless and until BLM concludes that the equipment does not meet the necessary standards, at which point the operator would be given a certain amount of time to replace the equipment determined to be non-compliant.

ii. If It Does Not Remove the BLM-Approval Requirement, the Bureau Should Take Other Corrective Actions Before Allowing Enforcement

If the Bureau does not remove the requirement that each make and model of equipment be approved by BLM, it should consider the following:

- First, BLM should limit the approval to "type" only. For example, BLM could determine Coriolis meters are approved for the measurement of natural gas/hydrocarbon liquids.

- Second, BLM should identify third party providers which can approve equipment rather than requiring all approvals to be processed through the PMT. This approach will reduce the workload on the overburdened PMT and speed up the time for approval. This approach has been adopted by other countries. For instance, Directive Article 24, Para 3 of 2014/32/EU provides a vehicle to adopt third party assessments: "Where the notifying authority delegates or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, that body shall be a legal entity and shall comply mutatis mutandis with the requirements laid down in Article 25. In addition, it shall have arrangements to cover liabilities arising out of its activities.[6]"

[5] "OMB Circular A-119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities." (https://www.whitehouse.gov/wp-content/uploads/2020/07/revised_circular_a-119_as_of_1_22.pdf).
[6] "Directive 2014/32/EU of the European Parliament and of the Council." (https://www.legislation.gov.uk/eudr/2014/32/contents).

- Third, the requirement to use only equipment approved by BLM should only go into effect after *all* types of equipment have gone through the approval process and a complete list of approved equipment is posted on the BLM website.

iii. BLM Should Substantially Modify Proposed NTL-5 to Account for Technical Realities Involving Lack of BLM-Approved Equipment and Systems.

BLM should modify its proposed enforcement position in order to better reflect the fact that its approach to implementing the BLM equipment approval requirement is not working. BLM's proposed position would not provide GPA members with the "reasonable opportunity to comply" they were promised in IM 2018-077.[7] For example, BLM should withhold any enforcement action at least until it can demonstrate that it is able to effectively implement the regulatory requirements it chose to impose on operators, i.e., until it is able to populate its lists with a meaningful range of approved equipment and demonstrate that the approval process is functioning effectively.

iv. BLM Should Clarify the Compliance Status of Existing Equipment Installed in the Field

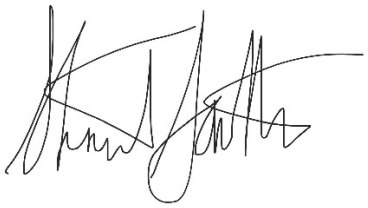
BLM should clarify the status of existing measurement equipment currently being used at tens of thousands of well sites in various regions of the country. As noted above, requiring operators to test all such equipment as a prerequisite to continued use in the field could impose significant burdens on operators, particularly in the case of older models that may no longer be offered by manufacturers but that still function effectively and meet BLM measurement uncertainty requirements.

E. Conclusion

GPA Midstream would also commend the comments submitted by the American Petroleum Institute (API), as there are valid concerns raised in their input.

Thank you for your consideration of GPA's comments and our request that BLM withdraw and substantially modify NTL-5 to address the significant concerns raised.

Respectfully Submitted,



Stuart Saulters
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[7] "Implementation of 43 CFR subparts 3174 and 3175 and Gas Analysis Reporting and Verification System." (https://www.blm.gov/policy/im-2018-077-0).