



Submitted via Federal e-Rulemaking Portal

March 31, 2026

U.S. Department of the Interior,
Director Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attention: 1004-AF38

RE: Docket No. BLM-2025-0070 - Comments on the Bureau of Land Management's Proposed Rule on Requirements for Site Security and Production Handling; Applying for Commingling and Allocation Approval

Dear Acting Director Groffy and Ms. Fox:

The American Exploration & Production Council (AXPC) appreciates the opportunity to comment on the Bureau of Land Management's (BLM's) proposed rule, "Requirements for Site Security and Production Handling; Applying for Commingling and Allocation Approval," published in the Federal Register on January 30, 2026.

The proposed rule marks a pivotal advance for American energy policy, directly supporting President Trump's energy dominance agenda by cutting unnecessary regulatory barriers to responsible oil and gas development on federal lands. By expanding the use of commingling, the final rule can enable producers to consolidate infrastructure, reduce capital costs, and minimize the surface footprint of operations—all while responsibly accounting for production and protecting the environment. This common-sense reform not only unlocks previously uneconomic federal mineral acreage but also delivers tangible benefits to taxpayers and the environment by making resource development more efficient and sustainable. Critically, realizing these benefits depends not just on authorizing commingling in concept, but on implementing a framework that is clear, objective, and consistently applied in the field. Where regulatory requirements introduce ambiguity or discretionary hurdles, the practical effect is to undermine the very efficiencies Congress sought to achieve.

AXPC commends Secretary Burgum and the Trump administration for their swift action under the One Big Beautiful Bill Act (OBBBA) and stands ready to partner with the Department of the Interior to see this important rule through to final adoption. At the same time, we have significant concerns that the Proposed Rule, as currently drafted, introduces new technical and procedural requirements that risk re-creating the very barriers Congress intended to remove. In several key

respects, the proposal replaces clear statutory direction with discretionary or ambiguous standards that will be difficult for operators and BLM Field Offices to interpret and apply consistently. As a result, the rule could lead to delayed approvals, inconsistent outcomes across jurisdictions, and reduced utilization of commingling—contrary to the objectives of the OBBBA.

Our accompanying detailed comments highlight specific areas where the Proposed Rule could be improved to better align with Congressional intent and industry practices. We believe that targeted revisions will help BLM achieve its goals while offering operators clear, workable standards. This clarity is especially important as operators make near-term capital allocation decisions across federal, state, and private lands. AXPC looks forward to continued dialogue with BLM to resolve these concerns and ensure that the final rule supports both responsible resource development and the efficient management of federal lands.

AXPC's Interests

AXPC is a national trade association representing leading independent oil and natural gas exploration and production companies across the United States. Our members provide millions of high-paying jobs, invest significant resources in communities nationwide, and are dedicated to safety, stewardship, and technological advancement. They work to deliver affordable, reliable energy while supporting the economy and the communities in which they operate.

We regularly engage with regulators and policymakers to foster understanding of our operations and to inform sound, fact-based public policy for the safe and responsible development of America's oil and natural gas resources. As a result, AXPC is a trusted source of technical and regulatory expertise.

Our members have extensive experience operating on federal lands and working closely with BLM, particularly in implementing operations-related activities relevant to the Proposed Rule. With this hands-on perspective, AXPC has long supported efforts to improve the efficiency and consistency of regulations that govern exploration and development on public lands, as intended by Congress. Over the years, AXPC and its members have actively participated in numerous major rulemakings by BLM and other Department of the Interior offices, providing detailed feedback and constructive input.

Our motivation is straightforward: AXPC members are uniquely positioned to comment on how regulations affecting the exploration and development of public lands impact the nation's energy supply. We remain committed to contributing our expertise to ensure federal permitting and public lands rulemakings result in practical, effective policies.

Comments on the Proposed Rulemaking

As you are aware, Congress passed the OBBBA to address longstanding inefficiencies in federal mineral management, directing BLM to make approvals of commingling from diverse sources routine whenever operators utilize one of three clear, objective allocation methodologies. The statute's framework is straightforward and intentionally prescriptive. It requires that BLM "shall approve" commingling applications when the operator installs measurement devices for each source, utilizes an allocation method that achieves volume measurement uncertainty levels within

plus or minus 2 percent during the production phase reported on a monthly basis, or uses an approved periodic well testing method.

Importantly, this structure leaves no room for additional discretionary screening criteria or procedural prerequisites beyond those identified in the statute. Congress deliberately replaced BLM's prior case-by-case approach with objective, administrable standards designed to ensure predictable and timely approvals. Congress designed this framework to increase the production of U.S. oil and gas by creating greater efficiencies for development on federal and tribal lands.

These efficiencies do not simply reduce costs—they directly translate into additional development and improved environmental performance. Lower facility and infrastructure costs enable operators to drill more wells within the same capital program and to produce longer from wells that would otherwise be uneconomic, increasing total production and, in turn, royalty revenues to the federal government. At the same time, consolidating production into shared facilities reduces the number of pads, tanks, and associated equipment, resulting in a smaller surface footprint, fewer truck trips, and fewer potential emission sources. In this way, expanded commingling achieves a true “win-win”: increasing resource recovery and public revenues while simultaneously reducing environmental disturbance and operational impacts.

Unfortunately, the proposed rule (as currently drafted) departs from this statutory framework and introduces new technical and procedural hurdles that conflict with both the letter and spirit of the OBBBA. Notably, the draft rule fails to expressly provide for the use of all three of the OBBBA allocation methods. Additionally, BLM seeks to impose onerous notice and consent requirements for commingling applications which threaten to make the commingling of diverse federal interests more difficult than Congress intended. In practice, these additional requirements will place greater interpretive burden on BLM Field Offices, increasing the likelihood of inconsistent application across regions and prolonging review timelines. The result would be fewer approvals, more duplicative equipment, and lower royalty-generating production.

Our technical review highlights several core areas for improvement. First, the final rule text should ensure that the three statutory pathways for approval remain separate and independently available to operators. Second, the final rule should focus refining the defined terms, including making edits to terms like “acceptable methodology” and creating definitions for terms like “approved periodic well testing methodology,” and these definitions should be developed in consultation with industry to ensure clarity and consistency. Third, we urge BLM to remove or significantly modify the proposed notice and consent requirements, which are both statutorily unsupported and operationally unworkable. The OBBBA does not require universal consent or duplicative notification to state and fee mineral owners, nor does the Mineral Leasing Act or FOGRMA. State conservation agencies already handle notice and due process for state and fee minerals, and federal courts have confirmed that BLM's jurisdiction is limited to federal mineral interests.

In practice, clear regulations are essential for efficiency, predictability, and maximizing public benefit. When BLM's review process is easy to understand and objective, operators can consolidate facilities, reduce redundant filings, and accelerate development—yielding significant capital savings that can help accelerate increased development of federal and Indian minerals. Flexible commingling pathways especially benefit independent operators, who are more sensitive

to capital-intensive measurement infrastructure and are instrumental in keeping marginal wells producing longer. Moreover, by reducing surface equipment, truck trips, and facility footprints, streamlined commingling approvals deliver significant environmental benefits, lower emissions, and reduce surface disturbances.

In conclusion, we respectfully request that BLM revise the proposed rule to better align with OBBBA's clear intent to increase the commingling federal and Indian minerals. Thank you for considering these comments. We stand ready to work with BLM to ensure the final rule is practical, effective, and consistent with law and the realities of modern oil and gas operations.

Sincerely,

A handwritten signature in cursive script that reads "Wendy Kirchoff".

Wendy Kirchoff
Senior Vice President of Policy
American Exploration & Production Council (AXPC)

**AXPC DETAILED COMMENTS ON BLM PROPOSED RULE
 REQUIREMENTS FOR SITE SECURITY AND PRODUCTION HANDLING; APPLYING FOR
 COMMINGLING AND ALLOCATION APPROVAL
 DOCKET NO. BLM-2025-0070**

The Proposed Rule presents an important opportunity to implement Congress’s directive under the One Big Beautiful Bill Act (OBBBA) to expand and normalize commingling of production from diverse sources. As discussed in the sections that follow, these comments focus on several core issues critical to successful implementation of the statute, including the need to fully reflect the OBBBA’s mandatory approval framework, ensure regulatory requirements are clear and consistent, and avoid introducing new procedural or technical barriers that could undermine the rule’s objectives. Addressing these issues will help ensure that the final rule can be implemented predictably and effectively in the field, consistent with Congressional intent.

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General Comments

I. The OBBBA requires BLM to approve applications for the commingling of production if the applicant agrees to approved allocation methods to ensure reliable royalty accounting.

As an initial matter, the Proposed Rule must be evaluated against the statutory framework established by Congress in the OBBBA, which governs when commingling approvals are required. The OBBBA establishes a mandatory approval framework for commingling applications based on specified allocation methodologies. This framework requires BLM to approve applications that meet the statutory criteria, rather than relying on case-by-case discretion. This provision establishes a mandatory approval framework.

Once an applicant demonstrates compliance with one of the allocation methodologies specified in the statute, BLM is required to approve the commingling application. In enacting this requirement, Congress directly addressed BLM’s prior practice of limiting commingling approvals—particularly in cases involving differing ownership interests or royalty rates—and replaced that approach with clear, objective criteria intended to make approvals routine rather than exceptional. This directive reflects a broader policy shift toward facilitating more efficient and predictable development on federal lands, ultimately increasing resource recovery, and delivering greater value to taxpayers.

Indeed, on July 22, 2025, the Department of Interior issued a press release entitled “Interior advances energy dominance through the One Big Beautiful Bill Act.”¹ Secretary Burgum explains in the press release that “[t]he One Big Beautiful Bill Act is a historic piece of legislation that will restore energy independence and make life more affordable for American families by reversing

¹ U.S. Dept. Interior, Press Release, [Interior advances energy dominance through the One Big Beautiful Bill Act | Bureau of Land Management](#) (July 22, 2025).

disastrous Biden-era policies that constricted domestic energy production[.]”² He further expressed that the Act “marks a significant shift in how we manage our public lands, support energy development and work with local communities.”³ The intent of the OBBBA is clear. Congress directed BLM to support U.S. energy production by taking actions that that promote the efficient, responsible development and management of federal lands and mineral assets.⁴

The OBBBA amended Section 17 of the Mineral Leasing Act (MLA) to state:

[C]ommingling of Production.—The Secretary of the Interior shall approve applications allowing for the commingling of production from 2 or more sources (including the area of an oil and gas lease, the area included in a drilling spacing unit, a unit participating area, a communitized area, or non-Federal property) before production reaches the point of royalty measurement regardless of ownership, the royalty rates, and the number or percentage of acres for each source...^{5,6}

This language evidences Congress’s clear intent to require the approval of commingling applications in diverse federal mineral interest/royalty rate scenarios, ensuring that differences in ownership, royalty rates, or acreage do not serve as barriers to approval.

This is important because before the OBBBA, BLM would typically only authorize commingling if every source involved federal leases with the same royalty rate and nearly identical federal mineral percentages—an approach that overlooked both the realities of modern resource development and the use of allocation methods commonly used to commingle production on state and private lands. State regulators have demonstrated, for decades, that credible and auditable allocation formulas can fairly distribute commingled production among multiple parties, regardless of differences in ownership or royalty rates.

The OBBBA addressed this historic BLM practice by unequivocally requiring BLM to approve commingling applications, despite diversity in royalty rates or the number of mineral acres, on the condition that one of the allocation methods expressly set forth in the statute is met. The OBBBA lists three different allocation method options:

- (i) “install[ing] measurement devices for each source”

² *Id.*

³ *Id.*

⁴ One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, 139 Stat. 72 (codified as amended at 30 U.S.C. §226(q); *see also* Cong. Res. Svc. Bill Summary for H.R. 1, (July 1, 2025).

⁵ The BLM defines commingling as the combining of production from two or more sources, e.g., multiple leases, unit PAs, or CAs, or non-Federal or non-Indian properties, before the point of royalty measurement at an FMP. 43 CFR § 3173.1(a). BLM currently allows commingling of the following types of sources: federal leases, unit participating areas, and communitized areas. *See* 43 C.F.R. § 3173.14. However, commingling is most often approved when the federal mineral interests in the sources are identical.

⁶ One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, § 17, 139 Stat. 72, 139 (2025) (*emphasis added*).

- (ii) “utilize[ing] an allocation method that achieves volume measurement uncertainty levels within plus or minus 2 percent during the production phase reported on a monthly basis, or”
- (iii) “utilize[ing] an approved periodic well testing methodology.”⁷

The OBBBA further provides that “[n]othing in this subsection shall prevent the Secretary of the Interior from continuing the current practice of exercising discretion to authorize higher percentage volume measurement uncertainty levels if appropriate technical and economic justifications have been provided.”

Following the passage of the OBBBA, BLM acted swiftly to issue Instructional Memorandum (IM) 2025-034 to guide Field Offices (FOs) in implementing the Act’s provisions to expand commingling approvals for fluid minerals operations. This IM directs Field Offices to process commingling applications not only under existing regulations, but also in accordance with the broader intent clarified by the OBBBA, including cases involving mixed ownership, different royalty rates, and production from state or private lands. Recognizing the intent of Congress to expand commingling approvals, the IM instructs FOs to err on the side of approval, provided applicants agree to key requirements such as installing appropriate measurement devices, maintaining volume measurement uncertainty within ± 2 percent, **or** utilizing approved periodic well testing methodologies.⁸ Again, indicating that there are several allocation methods made available under the OBBBA.

Collectively, the statutory text of the OBBBA and BLM’s recent IM both clearly allow the commingling of diverse interest, using several different allocation methods. The final rule adopted by BLM must likewise follow this approach.

II. Increasing the Use of Commingling is a Smart Policy Choice Because It Increases Federal Revenues.

Permitting the commingling of diverse federal interests is not merely a statutory requirement, it is a prudent policy decision that directly increases federal revenues. Congress’ passage of the OBBBA marked a decisive commitment to strengthening federal revenues by unlocking the full potential of mineral development on public and Indian lands. By enabling greater commingling of federal oil and gas production, Congress opened the door to significant federal revenue gains. The OBBBA’s reforms reflect a clear understanding: when operators can combine production from multiple leases into shared facilities, development on federal lands accelerates, costs drop, and federal royalties rise.

Consider the economics: a single shared facility capable of handling production from roughly 16 wells costs about \$8 million to construct. In contrast, building two separate facilities—each serving a single well pad of 8 wells—would cost around \$7 million a pad, for a total of \$14 million. By consolidating facilities, operators could save approximately \$6 million on 16-well pad. In active

⁷ 30 U.S.C. §226(q) (emphasis added).

⁸ BLM, Commingling of Oil and Gas Production – IM 2025-34, (Aug. 11, 2025); <https://www.blm.gov/policy/im-2025-034>.

regions like the Permian Basin, where operators routinely drill dozens of wells each year, these savings scale up quickly. An operator developing 40 pads annually (8 wells each) could save more than \$120 million per year by utilizing shared facilities of half as many pads (16 wells each). These savings are then reinvested to drill additional wells more quickly.

At an estimated \$10 million per well, these savings could support approximately 10–12 additional wells each year. Based on typical development assumptions (e.g., ~10,000-foot laterals and approximately 50–70 barrels per foot of production in high-performing basins such as the Permian, with somewhat lower averages—often in the ~40–60 barrels per foot range—across a broader mix of U.S. and federal acreage), each well could generate on the order of \$30–\$50 million in production value at \$70 per barrel, or roughly \$300–\$600 million across 10–12 wells over their productive life. This range is consistent with publicly available data from the U.S. Energy Information Administration, which shows that continued production growth is driven in part by strong and improving well productivity, particularly in leading basins.

This additional production directly translates into increased royalty revenues from federal minerals. By embracing policies that facilitate responsible commingling, Congress is not only advancing operational efficiency but also unlocking additional investment in U.S. production that benefits the public and strengthens the nation’s fiscal foundation.

III. Commingling Reduces Environmental Impacts and Creates Operating Efficiencies.

Many of the same efficiencies that reduce development costs also deliver significant environmental and operational benefits. Because diverse ownership scenarios are more common across the landscape, commingling production streams in these contexts offer significant environmental benefits, including but not limited to reduced surface disturbance through consolidation of facilities and potential elimination of facility pads, less emissions due to efficiency improvements and smaller numbers of facility sources, and safety improvements associated with less equipment, fewer truck trips, and smaller road networks. These same efficiencies also improve operations by simplifying facility design and reducing maintenance and inspection burdens – making development on federal lands more attractive and competitive.

In a practical sense, many of these benefits are driven by the elimination of duplicative equipment and infrastructure that would otherwise be required for separate facilities. As a baseline to place into context, for facilities required under the current measurement and commingling regulations, four non-commingled wells from different leases could require:

- 2 more separators
- 2 more heater treaters
- 3 vapor recovery towers
- 4 more oil tanks
- 3 new LACTs
- 4 FMP meters

The commingling of diverse ownership interests allows for the elimination of duplicative equipment, including:

- Tanks
- Compressors
- Pipelines
- Separators
- Heater/Treaters
- Vapory Recovery Units
- Combustors

In aggregate, these reductions significantly decrease both the physical footprint of development and the number of potential emission sources. Commingling generally allows operators to service wells with half to one quarter of the number of facilities. The reduction in required equipment results in a significant reduction of surface impacts through a reduction in the footprint of the pad itself, as well as a reduction in the number of access roads to the facilities. Surface disturbance can be reduced by 5 to 20 acres per facility with reduced tank count and possible reduction in compression facilities. This reduced footprint minimizes potential impacts to habitat, sensitive resources, species, and cultural areas.

Similarly, air emissions can be reduced significantly for permitted VOC emissions, and reductions in methane, NO_x, and CO₂ emissions. Fewer facilities also reduce the number of potential leak points and simplify emissions control and monitoring. Additionally, a reduction in emissions occurs as a result of fewer trucks and other traffic to sites (e.g., fewer pads, fewer inspections, less maintenance, and repair). These benefits depend on a regulatory framework that allows commingling approvals to be obtained predictably and without unnecessary delay.

IV. Despite the OBBBA Clear Statutory Mandate and the Clear Policy Benefits, the Proposed Rule Fails to Broadly Allow Commingling.

Important sections of the proposed rule's preamble, section-by-section discussion, and proposed rule text misinterpret both the intent and the clear statutory mandate of the OBBBA. These sections indicate that the commingling of diverse federal interests is permissible only if a narrow set of conditions are met, such as when measurement used by a meter that qualifies as an FMP under subparts 3174 and 3175 used, or when allocation meters with specific measurement uncertainty values are used. These constraints, however, are not included in the OBBBA.

This misalignment is further evident in the proposal to require applicants to notify all interest owners and secure their consent for inclusion in a commingling agreement. Neither the OBBBA nor its legislative history require these additional notice and consent conditions. By layering on procedural hurdles and new standards not explicitly enumerated in OBBBA, the proposed rule subverts Congress's intent, transforming what was intended as a streamlined approval process into a more technically restrictive regime than what was intended. Such changes risk making commingling approvals more difficult to obtain than before OBBBA's passage—contrary to the very purpose of the law.

Congress’s directive was unmistakable: BLM “shall approve” commingling applications that meet one of several allocation methods expressly set forth in OBBBA. Any implementing regulation that reintroduces barriers, increases uncertainty, or imposes new procedural obstacles runs counter to the statute’s plain language, undermines Congressional intent, and could be found arbitrary and capricious or otherwise not in accordance with law.⁹

To faithfully implement OBBBA, BLM’s final rule must operationalize the statute’s mandate to approve the commingling of diverse federal mineral interests when certain allocation methods are utilized—closely aligning with Congressional intent.¹⁰ The draft rule is flawed in several critical respects: it departs from the OBBBA’s statutory text and intent, conflicts with BLM’s IM 2025-34, disregards the benefits of increased commingling, increases administrative and technical burdens, and replaces longstanding objective standards with vague, and in some instances impractical requirements.

Despite its stated aims, the proposed rule would impede operational efficiency and responsible resource development by introducing new uncertainties and unnecessary barriers.

V. There are Inconsistencies Between the Proposed Rule’s Definitions, Substantive Rule Provisions, and Preamble Justifications that Need to be Addressed in the Final Rule.

Throughout the proposed rule, there are multiple inconsistencies between the definitions provided, the substantive requirements of the proposed rule text, and the explanations offered in the preamble. These inconsistencies create uncertainty regarding how the rule is intended to function in practice and make it difficult for both operators and BLM FOs to apply the requirements consistently. Key terms such as “acceptable methodology,” “access,” and “commingling and allocation approval” are defined broadly, yet the operative provisions often impose narrower or contradictory requirements, creating confusion about what standards actually apply. For example, while the proposed rule’s definition for “acceptable methodologies” includes a range of measurement methods (and up to 5% volume measurement uncertainty with justification), proposed section 3174.14(a)(4) disregards these flexibilities and fails to include allocation methods like periodic well testing. The proposed rule requires various forms of owner and surface access consent beyond what the definition of “access” would suggest, raising the possibility that non-federal owners could effectively veto federal approvals. Other core terms like “approved periodic well testing methodology” and “interest owner” remain undefined, leaving operators uncertain about proposed compliance obligations and exposing them to inconsistent interpretations by different FOs.

⁹ The Administrative Procedure Act provides the fundamental framework governing agency authority and establishes clear boundaries for rulemaking. APA Section 706(2)(C) requires courts to “hold unlawful and set aside agency action, findings, and conclusions found to be-- ... (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706.

¹⁰ The Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), fundamentally reshaped agency rulemaking by overturning Chevron deference a shift that removes the presumption of deference to agencies and makes it easier to challenge regulatory actions that exceed clear statutory authority.

Further, discrepancies between the statutory basis outlined in the preamble and the procedural demands in the regulatory text—such as requiring proof of compliance for non-federal equipment or insisting on certified mail notice to all interest owners—introduce additional confusion and roadblocks. Finally, although the preamble claims that proof of production in paying quantities is no longer necessary, the proposed rule still appears to require this documentation, suggesting incomplete alignment between the stated intent and the actual requirements. These inconsistencies risk undermining the clarity, predictability, and effectiveness of the new commingling framework. AXPC recommends resolving these inconsistencies in the final rule to ensure that definitions, regulatory requirements, and preamble explanations align and can be implemented clearly and consistently. Detailed recommendations are provided in the sections that follow.

VI. AXPC Members Want to Ensure that There Has Been Engagement with Tribal Nations.

Many AXPC members operate in Indian Country and regularly engage with Tribal Nations and Native American stakeholders in the development of oil and gas resources. Given the role of commingling in facilitating development on Tribal lands, it is important that Tribal Nations and Native American stakeholders have had meaningful opportunities to provide input on the proposed rule where it could impact or improve mineral development on Tribal lands. Meaningful engagement can help ensure that the final rule supports responsible development of Tribal resources while reflecting the operational and regulatory realities unique to Tribal lands.

Specific Comments

The following comments and recommendations provide recommended revisions to bring the rule into alignment with Congressional intent, BLM policy, and the realities of modern oil and gas operations, ensuring that commingling approvals are granted as intended under the OBBBA.

1. Adopt Mandatory Approval of Commingling Applications as Required by Statute

The final rule should clearly codify the statutory requirement that BLM “shall approve” commingling applications whenever an applicant meets one or more of the three allocation methodologies provided in the OBBBA.

Recommendation: The rule should eliminate any discretionary language, additional requirements, or ambiguities that are not included in the statute. OBBBA’s use of “shall approve” leaves no room for agency discretion, and BLM’s own IM 2025-34 instructs field offices to favor approval. To faithfully implement Congressional intent, the final rule should avoid regulatory language that reintroduces unnecessary hurdles or misapplies the statute’s clear standards.

2. Align Measurement Requirements with the Definition and Structure of a CAA

The final rule must faithfully reflect the OBBBA by requiring BLM to approve commingling applications whenever an applicant satisfies any of the three statutory pathways, regardless of the royalty rates or diversity in the number of mineral acres:

- (i) installation of an allocation measurement device for each source;

- (ii) use of an allocation method that achieves volumetric measurement uncertainty within $\pm 2\%$ on a monthly basis; or
- (iii) implementation of an approved periodic well testing methodology.

Each pathway must function as an independent basis for approval and should not be conditioned on additional requirements or combined use of other methodologies.

Recommendation: The OBBBA is clear—these three pathways are independently sufficient for approval. The final rule should not impose additional procedural, technical, or substantive requirements beyond those set forth in the statute. Introducing new hurdles, such as extra notice obligations or heightened technical standards, would directly contradict Congress’s intent to streamline and expand commingling opportunities by removing unnecessary barriers.

3. Allow Use of All Acceptable Allocation Methodologies Consistent with the OBBBA

The proposed term “acceptable methodology” is defined to include three alternatives: installing a measurement device for each commingled source; using an allocation method that achieves measurement uncertainty within 2 percent—or up to 5 percent if technical or economic justification is provided; or employing an approved periodic well testing methodology. While Section 3173.14(a)(1) of the proposed rule applies this definition correctly and appears to broadly allow commingling, Section 3173.14(a)(4)(ii) (which applies to commingling applications for diverse interests) then limits acceptable approaches to only those measurement devices or methods that achieve ± 2 percent uncertainty or that use the allocation methods and reporting requirements provided in subparts 3174 and 3175 based on a twelve-month average. Thus, the additional restriction in Section 3173.14(a)(4)(ii) creates extra hurdles for approval based the royalty rates in the underlying leases or disproportionate numbers of mineral acres included in the sources being commingled – exactly the situation the OBBBA sought to avoid.

This creates several substantive issues. First, Section 3173.14(a)(4)(ii) fails to apply all three of the allocation methods provided in the OBBBA. Critically, it does not appear to allow the use of periodic well testing, as specifically contemplated in the statute. Instead, the proposed rule creates an overly strict standard, limiting commingling approvals to only two scenarios. This language is much stricter than what was included in the OBBBA and differs from the rule’s own definition for “acceptable methodology.”

Second, Section 3173.14(a)(4)(ii) incorrectly states one of the OBBBA allocation methods by providing that applicants “must demonstrate that they can install a measurement device that achieves a measurement uncertainty level of plus or minus 2%.” This is not what the OBBBA provides. The OBBBA allows applicants to use “**allocation method** that achieves volumetric measurement uncertainty within **$\pm 2\%$ on a monthly basis.**” (Emphasis added). Whereas BLM’s interpretation of the $\pm 2\%$ standard in this section reflects a misunderstanding of how the statutory standard is intended to operate.

The $\pm 2\%$ standard is a volume differential that provides for the minor variation that can naturally occur as oil and gas move through a wellbore and production system. Differences in pressure, temperature, and fluid composition can cause slight fluctuations in measured volumes. The reason

for this is that same hydrocarbons can take up different spatial volumes depending on pressure, temperature, and whether they are in gas or liquid form. While the volume can fluctuate slightly, but the hydrocarbon content and value are still accounted for. These variations are a routine and well-understood part of production operations and do not reflect lost production or inaccurate reporting, but rather normal operational variation that is already accounted for in standard measurement and reporting practices. Because these effects can cause volumes to move slightly up or down over short periods, the statute appropriately evaluates the standard against volumes “reported on a monthly basis.” This frequency reflects stable operating conditions and ensures that these minor variations are appropriately reflected over a full reporting period. In this way, the $\pm 2\%$ standard supports consistent, auditable allocation for royalty purposes without requiring unnecessary or duplicative measurement infrastructure.

The statutory reference to “volume measurement uncertainty levels within $\pm 2\%$ ” **does not refer to uncertainty in the accuracy of individual meters. Rather, it refers to the difference between volumes determined at the point of allocation and volumes measured at the facility measurement point.** As described above, this differential reflects the minor variation that occurs as production moves through the system and is already captured in standard measurement and reporting practices. The $\pm 2\%$ standard establishes a reasonable boundary on the relationship between these two points under normal operating conditions, without requiring duplicative measurement at multiple locations in the system. Importantly, this approach preserves full accountability for all produced hydrocarbons, and these routine variations do not result in unaccounted-for production. Royalty calculations therefore remain based on complete and auditable production volumes.

Third, Section 3173.14(a)(4)(ii) contains a new/different allocation requirement that isn’t included in the OBBBA. It provides that the commingling of diverse federal interests can alternatively be done if the applicant “uses allocation methods and reporting requirements provided in subpart 3174 and subpart 3175 as reported on a monthly basis using a twelve-month average.” This language is found nowhere in the OBBBA, and it is unclear what the statutory authorization for this language is.

Fourth, the definition of “acceptable methodology” does not exactly match the language in the OBBBA. It omits part of the following: “use of an allocation method that achieves volumetric measurement uncertainty within $\pm 2\%$ on a monthly basis[.]” The definition should match that statutory text.

Finally, BLM should clarify that it will approve all commingling applications that meet the statutory prerequisites, including in cases involving diverse ownership interests, without imposing additional limitations not found in the OBBBA. This could be achieved by clearly stating this intent and complemented by BLM establishing a reasonable timeframe for issuing such approvals.

Recommendation: To resolve the inconsistencies between the definition of “acceptable methodology” and its application in the rule, the definition should be revised to more explicitly require that all three alternatives, as stated in the OBBBA, are viable options for demonstrating compliance, each serving as an independent basis for approval. The definition should also clarify that BLM will consider and approve periodic well testing methodologies on the same basis as

allocation methods and measurement devices, without automatically preferring one approach over the others. This will ensure that the flexibility intended by the OBBBA is preserved and that operators have clear, consistent pathways for approval regardless of the specific measurement or allocation method they select. BLM should then strike 3173.14(a)(4)(ii) and apply 3173.14(a) to all commingling applications. BLM should also revise 3173.14(a) to confirm that it applies to the commingling of diverse interests and provide a 60-day deadline for issuing such approvals.

These issues are addressed in the proposed revisions to Section 3173.14(a) in redline provided after Comment 4.

4. Ensure FMP Requirements Do Not Undermine the Structure and Purpose of a CAA

The definition of Commingling and Allocation Approval (CAA) describes it as a formal allocation agreement that allows production from two or more sources to be combined *before* reaching a Facility Measurement Point (FMP). An FMP is the BLM-approved measurement point where production is measured for royalty purposes—typically at or near the point of sale. In other words, FMPs are used for royalty determination, not operational tracking. By contrast, allocation meters are used upstream to track how commingled production is attributed among different sources but do not determine royalty volumes. In a typical CAA, production from multiple sources is tracked using allocation methods prior to commingling, and the combined production is then measured for royalty purposes at a single FMP. This distinction is fundamental to how commingling operates under existing regulations.

Section 3173.14(a)(4)(i), however, appears to require that production from each lease, unit PA, or CA be separately measured by an FMP. This approach is inconsistent with the existing definition and structure of a CAA, which is premised on production being commingled prior to measurement at a single FMP. Imposing source-specific FMP measurements effectively collapses this distinction. It would result in duplicative metering and increased regulatory and operational burden, and uncertainty regarding whether additional metering is required beyond what is necessary to measure the commingled production. This issue reflects a broader misalignment between the proposed rule's measurement requirements and the structure of a CAA, which should be addressed to ensure the rule functions as intended.

Recommendation: Section 3173.14(a)(4)(i) should be removed or amended to clarify that, consistent with the definition of a CAA, production from multiple sources may be combined prior to measurement and that a single FMP is sufficient for measuring the commingled stream. Additional source-specific metering should not be required as a condition of approval under a CAA, except in rare circumstances where royalty measurement cannot be achieved through approved allocation methodologies. This change would align the substantive provision with the intended meaning of the CAA definition, reduce unnecessary costs and complexity for operators, and support efficient, consistent implementation by BLM FOs.

Proposed redlines are as follows:

The following proposed revisions to Section 3173.14(a) address the issues identified in Specific Comments III and IV above.

Acceptable Methodology:

Acceptable methodology means, consistent with 30 U.S.C. 226(q), **any of the following individually or in combination** (1) use of ~~an~~ **an allocation** measurement device for each commingled source, (2) ~~a description of how the applicant will use of an allocation method that achieves volume measurement uncertainty levels within~~ **plus or minus 2 percent during the production phase reported on a monthly basis, or up to five percent on a monthly basis if there are appropriate technical and economic justifications, or (3) use of an approved periodic well testing methodology.**

§ 3173.14(a)(1)-(4):

~~(a) Subject to the exceptions provided in paragraph (b) of this section, the BLM will grant a CAA for all leases, unit PAs, or CAs if the following criteria are met~~ **The BLM shall grant a CAA within 60 days of submission of the CAA, for all leases, unit PAs, or CAs including in instances where the proposed commingling of production involves production from federal, state, tribal, or private leases, unit PAs, or CAs, even if the interests at issue are disproportionate to one another, including interests that are subject to varying royalty rates, dissimilar fixed royalty rates, or revenue distributions if the following criteria are met:**

- (1) The operator or operators provides an acceptable methodology to the BLM ~~for accurate~~ **the allocation of production** among the properties from which production is to be commingled ~~(including a method for allocating produced water)~~, as provided in 30 U.S.C. 226(q). with an agreement signed by all operators if there is more than one operator;
- (2) The FMP(s) for the proposed CAA measure production originating only from the leases, unit PAs, or CAs in the CAA; **and**
- (3) If production from an Indian lease is to be included in the CAA, Bureau of Indian Affairs, **or when appropriate Tribe, approves** of the inclusion of that production in the proposed CAA; **and**
- (4) ~~Subject to paragraph (c), the BLM will approve a CAA in instances where the proposed commingling of production involves production from leases, unit PAs, or CAs, even if the Federal interests at issue are disproportionate to one another, including Federal interests that are subject to varying royalty rates, dissimilar fixed royalty rates, or revenue distributions, but only if the following conditions are met:~~ **The BLM receives a complete CAA from the applicant pursuant to 43 CFR 3173.15 that includes a statement by the applicant confirming that the applicant will comply with state legal requirements, if any, for the proposed commingling if private or state interests are included in the CAA.**
- (5) **When ownership and royalty rates are identical for all sources in a CAA, then BLM shall approve the commingling application regardless of the allocation methodology being proposed.**

- ~~(i) Production from each lease, unit PA, or CA is measured by an FMP that satisfies the requirements under subpart 3174 for oil measurement or subpart 3175 for gas measurement; or~~
- ~~(ii) The proposed commingling allocation methodology demonstrates the installation of measurement devices for oil and gas sources that: (1) can reasonably achieve volume measurement uncertainty levels with plus or minus (+2 percent), between the allocation point and FMP (including offlease measurement FMPs, where applicable), during the production phase of the well or (2) uses the allocation methods and reporting requirements provided in subpart 3174 and subpart 3175 as reported on a monthly basis using a twelve-month average.~~

5. Define and Recognize Approved Periodic Well Testing as a Valid Allocation Method

The proposed rule references “approved periodic well testing methodology” but does not define the term or establish criteria for how such methodologies will be evaluated or approved. This lack of clarity creates uncertainty regarding whether and how periodic well testing may be used as an acceptable methodology and increases the risk of inconsistent application across BLM FOs. As discussed above, periodic well testing is one of the allocation methodologies expressly contemplated in the OBBBA.

Periodic well testing is a specific and different type of allocation that does not require the use of measurement devices nor would it require meters at every source. State oil and gas regulators have long approved and overseen periodic well testing methodologies for production allocation and reporting. By recognizing state-approved testing methods, BLM can promote consistency between federal and state regulation and prevent duplicative or conflicting technical requirements. Where state-approved methodologies are unavailable, referencing generally accepted industry standards as an alternative ensures that well testing practices remain rooted in widely recognized engineering and measurement principles. This dual approach upholds production accountability while allowing operators to utilize proven industry frameworks, enhancing both regulatory clarity and operational efficiency.

Some AXPC members rely heavily on periodic well testing for allocation. BLM should adopt a periodic well testing procedure similar to those used by states. To accomplish this, BLM could consider deferring to state orders that allow periodic well testing if the operator is able to obtain such an order from the state regulator.

For example, North Dakota’s NDIC allows periodic well testing if the operator provides:

- (1) “A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.”
- (2) “A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.”

- (3) “The name of the manufacturer, size, and type of meters to be used. The meters must be proved at least once every three months and the results reported to the director within thirty days following the completion of the test.”
- (4) “An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed monthly.”
- (5) “List of all allocation meters to be used and the meter type.”

A copy of all tests are to be filed with the director on a central tank battery well test form within thirty days after the tests are completed.¹¹

Another example, New Mexico’s rules similarly provide that:

“If all wells or units to be commingled are marginal and are physically incapable of producing the top proration unit allowable for their respective pools, or if all affected pools are unprorated, the division shall permit commingling without separately measuring the production from each pool or lease. Instead, the operator may determine the production from each well and from each pool or lease from well tests conducted periodically, but no less than annually. The well test method shall not apply to wells or units that can produce an amount of oil equal to the top proration unit allowable for the pool but are restricted because of high gas-oil ratios.”¹²

Under NMOCD Order R-14299, the NMOCD even allows the periodic well test method to be used for wells capable of producing at the top allowable for the field provided that:

The operator of a marginal commingling installation shall notify the division any time a well or unit commingled under 19.15.12.10 NMAC becomes capable of producing the top proration unit allowable for its pool, at which time the division shall require separate measurement. Any such proposed application should include ‘type curves’ showing expected oil production versus time behavior, the expected completion schedule of all wells to be serviced by the test separator, the maximum number of wells to be serviced at any time by each test separator, the maximum expected daily production from any well, the size and type of the test separator and specifics of the test meters.

New Mexico requires that applicants propose a well testing frequency which is acceptable based on these parameters, varying by the stages of oil production and following guidance in the American Petroleum Institute Manual of Petroleum Measurement Standards, Chapter 20. The Well Test Method is now commonly approved with testing in phases such as: (1) the period from peak production to two months; (2) months 3–12; and (3) month 12 through the well’s life.

¹¹ NDAC 43-02-03-48.1.

¹² 19.15.12.10(B)(1)(a) NMAC.

Both states provide credible and approved periodic well testing allocation methods and provide reasonable certainty regarding the allocation of production and serve as good examples that BLM can defer to periodic well testing methodologies approved by a State Conservation Commission, or similar body. Additionally, API has an established Measurement Standard Section, which applies to periodic well testing set forth in API Manual of Petroleum Measurement Standards Section 20.5.

Recommendation: Adopt a definition for the term “Approved Periodic Well Testing Methodology,” which incorporates applicable state regulatory standards and/or recognized industry standards, such as the API Manual of Petroleum Measurement Standards Section 20.5. Consistent with the OBBBA, periodic well testing should be recognized as a viable allocation methodology and treated on equal footing with measurement devices and other allocation methods. Establishing a clear definition grounded in these standards will provide operators with certainty regarding acceptable methodologies and support consistent implementation across BLM Field Offices.

Proposed redline as follows:

Approved Periodic Well Testing Methodology:

Approved periodic well testing methodology means either of the following:

- (1) a methodology that has been approved by a State Conservation Commission or similar body for use of periodic well testing in the State where the commingling occurs; or*
- (2) a generally accepted industry standard periodic well testing methodology, for example but without limitation, a method set forth in API Manual of Petroleum Measurement Standards Section 20.5 (as amended) utilizing, at a minimum, monthly well tests of at least twelve hours in cumulative duration for each well.*

6. Revise “Overriding Considerations” to Reflect Public Interest, Waste Prevention, and Enhanced Recovery

The proposed rule appropriately recognizes that commingling decisions may be based on a broader set of considerations, including public interest, waste prevention, and increased ultimate recovery. However, the definition of “overriding considerations” does not reflect this broader framework, creating inconsistency between the definition and the operative provisions in Section 3173.14(b)(4).

The term “overriding considerations” is defined as any condition that makes non-commingled measurement *physically* impractical or results in unnecessary or undue impacts. By contrast, Section 3173.14(b)(4) allows BLM to approve commingling not only in cases of physical impracticality or undue impacts, but also on a broader set of considerations, including when approval is in the public interest or necessary to prevent waste or increase ultimate recovery. This creates a disconnect: the definition is narrow and focused on physical limitations or burdens, while the substantive rule in 3173.14(b)(4) is much broader, encompassing discretionary factors like public interest, waste prevention, and enhanced recovery. Because the definition of “overriding considerations” does not capture these additional factors, it does not fully reflect how the concept

is applied in the rule. As a result, operators are left uncertain about the actual criteria BLM will use, and it increases the likelihood of inconsistent or discretionary application across similar commingling requests.

These broader considerations are critical in practice. Commingling is often necessary to support continued production from wells that would otherwise be uneconomic to operate independently due to the cost of duplicative facilities. In these cases, commingling enables operators to share infrastructure, maintain production from economically marginal wells, and ultimately support increased recovery of federal resources.

These practical considerations further underscore the importance of ensuring that the definition of “overriding considerations” fully reflects the broader framework set forth in Section 3173.14(b)(4).

Recommendation: The definition of “overriding considerations” should be amended to reflect the broader set of considerations recognized in Section 3173.14(b)(4), including cases where approval is in the public interest, necessary to prevent waste, or to increase ultimate recovery. This change will align the definition with the operative provisions of the rule, provide clarity to operators about the full scope of circumstances under which BLM may grant commingling approvals, and help ensure the rule is applied consistently and transparently across different cases. These considerations are critical in practice, as commingling is often necessary to support continued production from wells that would otherwise be uneconomic to operate independently due to the cost of duplicative facilities.

Proposed redlines are as follows:

Overriding considerations:

Overriding considerations means any condition that ~~makes non-commingled measurement physically impractical or that results in unnecessary or undue impacts~~ is in the public interest including, but not limited to, reduced surface impacts, potentially reduced emissions or intensity, enabling additional production, or other such considerations that make non-commingled measurement physically, economically, environmentally, or technically impractical.

7. Clarify and Expand Discretionary Approval Pathways to Support Practical Operational Scenarios

Section 3173.14(b) is distinct from subsection (a) in that it grants BLM discretionary authority, rather than establishing a mandatory approval process. The use of the term “may” in subsection (b)—as opposed to the mandatory “shall” or “will”—makes clear that BLM has the option to approve, request further information, or deny a commingling and allocation agreement (CAA), even when certain conditions are not met. This discretionary framework applies only in situations where the objective criteria of subsection (a) are not satisfied. Subsection (b) states that:

The BLM *may also approve* a CAA in instances where the proposed commingling of production involves production from leases, unit PAs, or CAs that do not meet the criteria of paragraph (a) of this section. In order to be approved under this paragraph, a CAA must meet at least one of the following conditions... (iii) under either (i) or (ii), the BLM *may approve* a CAA if the Indian mineral owner consents to the CAA....

91 Fed. Reg. 4053. (emphasis added).

Several conditions listed in subsection (b) require BLM to exercise judgment, such as assessing “overriding considerations,” determining whether “potential benefits outweigh potential measurement error,” or whether approval serves the “public interest.” Such subjective determinations confirm that paragraph (b) functions as a case-by-case exception, rather than an automatic approval pathway.

In effect, the proposed rule creates two distinct approval tracks:

- § 3173.14(a) mandates approval when objective statutory criteria are met;
- § 3173.14(b) provides a discretionary alternative for exceptional circumstances where those criteria are not satisfied.

Thus, subsection (b) serves as a “safety valve” or flexibility provision, enabling BLM to consider commingling applications outside the standard approval framework, but only at its discretion and subject to open-ended policy considerations. In practice, this discretionary pathway is critical to ensuring that commingling can occur in circumstances where strict application of subsection (a) is not feasible, but where commingling would still advance the objectives of the OBBBA.

Many operational scenarios—particularly those involving marginal production, complex reservoir conditions, or facility constraints—may not fit neatly within the prescriptive criteria of subsection (a) yet still warrant approval to support continued production and increased ultimate recovery. Expanding and clarifying these discretionary pathways will help ensure that subsection (b) functions as an effective and predictable complement to the mandatory approval framework.

Where commingling involves Indian mineral interests, additional considerations appropriately apply given the federal government’s trust responsibilities and the role of Tribal Nations and the Bureau of Indian Affairs (BIA) in approving development affecting tribal and allotted minerals. The rule should clearly reflect how these approval frameworks are incorporated into discretionary commingling decisions and how such approvals are demonstrated in a commingling application. These considerations underscore the importance of ensuring that subsection (b) functions as a clear and workable pathway for commingling approval where subsection (a) is not met, consistent with the intent of the OBBBA to facilitate efficient and predictable approvals. This includes situations involving marginal properties, technical constraints, and proposals involving Indian mineral interests. The rule should clearly reflect how these factors, including any required Tribal or Bureau of Indian Affairs approvals, are incorporated to support consistent and administrable implementation.

Recommendation: AXPC recommends expanding the discretionary pathways for commingling approval under § 3173.14(b) to ensure that the provision can effectively accommodate operational scenarios that fall outside the prescriptive criteria of subsection (a), but nonetheless support the objectives of the OBBBA, including preventing waste and increasing ultimate recovery.

Proposed redline as follows:

§ 3173.14(b):

(b) The BLM may also approve a CAA in instances where the proposed commingling of production involves production from leases, unit PAs, or CAs, even if the interests within the CAA are disproportionate to one another, including interests that are subject to varying royalty rates, dissimilar fixed royalty rates, or revenue distributions that do not meet the criteria of paragraph (a) of this section. In order to be approved under this paragraph, a CAA must meet ~~at least~~ one of the following conditions:

- (1) At least one lease or leases (Federal, Fee, State, or Indian), unit PA, or CA, or any combination thereof, meets the definition of an economically marginal property in this section;
- (2) The average monthly production over the preceding 12 months for each lease, unit PA, or CA proposed for the CAA on an individual basis is less than 1,000 Mcf of gas per month, or 100 bbl of oil per month;
- (3) ~~The CAA, which includes Indian leases, unit PAs, or CAs, has been authorized under tribal law or otherwise approved by a tribe or the allottees of the allotted lease.~~ For written approval under this Section (b), written approval from the BIA for allotted mineral interests and proper approval documentation for tribal mineral interests is required, if applicable;
- (4) The CAA covers the downhole commingling of production from multiple formations that are covered by separate leases, unit PAs, or CAs, where the BLM has determined that the proposed commingling from those formations is an acceptable practice for the purpose of increasing ultimate economic recovery and resource conservation; ~~or~~
- (5) There are overriding considerations that indicate the BLM should approve a commingling application: in the public interest notwithstanding potential negative royalty impacts from the allocation method, unless Indian leases or mineral interests are to be included, in which case the CAA cannot be approved; or (ii) if the operator reasonably demonstrates that approval is necessary to prevent waste or increase ultimate recovery, but only to the extent that such considerations outweigh the possibility of incremental error in measurement of the quantity or quality of production, unless Indian leases or mineral interests are to be included, in which case the CAA cannot be approved; (iii) under either

(i) or (ii), the BLM may approve a CAA if ~~the Indian mineral owner consents to the CAA and has been made aware of the potential negative royalty impact~~ written approval from the BIA for allotted mineral interests and proper approval documentation for tribal mineral interests, if applicable, are provided and describe potential monthly royalty variance(s).

(7) To the extent an applicant is not able to meet the definition of “Acceptable methodology” under 3173.1, but can demonstrate mitigating technical or economic justifications, the BLM may approve a CAA allocation method that deviates from the “Acceptable methodology” definition under 3173.1, for example, by authorizing higher volume measurement uncertainty levels than outlined under Option 2 of the “Acceptable methodology” definition or by authorizing a periodic well testing methodology that deviates from “Approved periodic well testing methodology” as defined under 3173.1.

8. Retain Consideration of Economically Marginal Properties

The broad use of commingling can potentially unlock the development of federal mineral acreage that might otherwise be uneconomic or cost-prohibitive to develop. The previously defined term “economically marginal property” is removed from the proposed rule due to BLM’s efforts to remove economics and production in paying quantities as a factor considered in a commingling application analysis. Current 43 C.F.R. § 3173.1 allows a lease unit PA, or CA to be considered economically marginal where expected revenue is insufficient to justify non-commingled measurement.

The proposed change shifts commingling approval away from consideration of whether shared infrastructure is necessary to sustain continued production and instead focuses solely on measurement methodology. While subsection (a) appropriately establishes objective criteria for mandatory approval, subsection (b) is intended to provide flexibility to account for practical and operational realities, including economic marginality. These considerations are not intended to modify or limit the mandatory approval framework in subsection (a), but rather to inform BLM’s exercise of discretion under subsection (b).

In practice, there are cases where the commingling may be necessary to support continued production from wells that would otherwise be uneconomic to operate independently due to the cost of duplicative facilities. Without the ability to consider economic marginality, these wells may be shut in prematurely, reducing overall recovery of federal and Indian mineral resources.

Recognizing economically marginal properties within the rule is consistent with the objectives of the OBBBA, which are to increase efficiency, support continued development, and maximize ultimate recovery.

Recommendation: The definition of “economically marginal property” should be incorporated into the proposed rule. This change will provide operators with the ability to include marginal wells that can still produce rather than be rendered uneconomic, and likely shut in. Allowing for

consideration of economically marginal wells will ensure BLM is faithful to its requirement to maximize the ultimate recovery of minerals from federal leases. Proposed redlines are as follows:

Proposed redline as follows:

Economically Marginal Property means:

Economically marginal property means a lease, unit PA, or CA that does not generate sufficient revenue above operating costs, such that a prudent operator would opt to plug a well or shut-in the lease, unit PA, or CA instead of making the investments needed to achieve non-commingled measurement of production from that lease, unit PA, or CA. A lease, unit PA, or CA may be regarded as economically marginal if the operator demonstrates that the expected revenue (net any associated operating costs) generated from crude oil or natural gas production volumes on that property is not sufficient to cover the nominal cost of the capital expenditures required to achieve measurement of non-commingled production of oil or gas from that property over a payout period of 18 months. A lease, unit PA, or CA can also be considered economically marginal if the operator demonstrates that its royalty net present value (RNPV), or the discounted value of the Federal or Indian royalties collected on revenue earned from crude oil or natural gas production on the lease, unit PA, or CA, over the expected life of the equipment that would need to be installed to achieve non-commingled measurement volumes, is less than the capital cost of purchasing and installing this equipment. Both the payout period and the RNPV are determined separately for each lease, unit PA, or CA oil or gas FMP. Additionally, oil FMPs are evaluated using estimated revenue (net of taxes and operating costs) from crude oil production only, while gas FMPs are evaluated using estimated revenue (net of taxes and operating costs) from natural gas production only.

9. Fully Remove the Requirement to Demonstrate Production in Paying Quantities

Although the preamble states that the proposed rule has removed the requirement to demonstrate that wells are capable of producing in paying quantities, the actual documentation required for a Commingling and Allocation Approval application still asks operators to provide proof that all wells meet this standard. This inconsistency suggests that the proposed revisions may have overlooked the removal of this requirement, leading to confusion about whether proof of production in paying quantities is still necessary for approval. Retaining this requirement would reintroduce a threshold screening criterion that the proposed rule otherwise seeks to remove. Clarifying this point in the final rule would help ensure that the documentation requirements are consistent with the stated policy intent.

Recommendation: Strike Section 3173.15(j), which requires applicants to submit proof that wells are capable of production in paying quantities in the CAA submission materials.

10. Clarify Access Requirements to Eliminate Barriers and Align with Existing BLM Practices

The term “access” is defined in the proposed rule to include, among other things, a written agreement allowing BLM officials to enter private or state lands for inspection and enforcement actions. While this definition suggests that a single, comprehensive access agreement between the operator and BLM could satisfy the rule’s requirements, Sections 3173.15(l) and (m) introduce additional obligations. These sections require operators to provide documentation showing that all other interest owners have consented to both the Commingling and Allocation Approval (CAA) and BLM inspections, as well as proof that all necessary access rights have been secured from surface owners.

This creates a disconnect between the broad, flexible definition of access and the more rigid, substantive requirements in the proposed rule text. Operators are left uncertain whether a single access agreement with BLM is sufficient or if they must obtain individual consents and access agreements from every mineral and surface owner involved. This ambiguity complicates the approval process and could result in delays or inconsistent application of the rule across different projects and Fos. Concerningly, this effectively allows non-federal parties to delay or prevent federal approvals based on procedural requirements not grounded in statute and unrelated to the technical merits of the application, rather than addressed through operator certification consistent with existing BLM practices. Clarification is needed to ensure that access requirements are both practical and consistent with the rule’s intent.

Under long-established law, the federal mineral estate is the dominant estate when severed from private surface ownership, and the BLM has broad authority to inspect surface equipment on oil and gas leases involving federal and Indian minerals.¹³ As a result, oil and gas operating rights owners have the ability to reasonably use the surface for the development of the underlying minerals – regardless of who the surface owner is. 30 U.S.C. § 1718(c) provides that “for the purpose of making any inspection or investigation under this chapter, the Secretary shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.” Federal regulations in 43 C.F.R. § 3162.1(b) establish comprehensive inspection requirements for oil and gas operators.

The regulation mandates that “the operator shall permit properly identified authorized representatives to enter upon, travel across and inspect lease sites and records normally kept on the lease pertinent thereto without advance notice.”¹⁴ This authority specifically includes “access to secured facilities on such lease sites for the purpose of making any inspection or investigation for determining whether there is compliance with the mineral leasing laws, the regulations in this part, and any applicable orders, notices or directives.”¹⁵ As a result, BLM already has procedures in place when operators apply for certain approvals (such as APDs or off-lease measurement

¹³ 2 Law of Federal Oil and Gas Leases § 22.10[1], Rocky Mountain Mineral Law Foundation (2008); *see also Onshore Oil and Gas Order No. 1, 72 Fed. Reg. 10308, 10324 (Mar. 7, 2007)*.

¹⁴ 43 CFR § 3162.1.

¹⁵ *Id.*

approvals) to confirm that the operator has secured proper surface access permissions from the surface owner.

In practice, BLM typically relies on operator representations or certifications that appropriate surface access has been obtained, rather than requiring separate consent or documentation from all underlying interest owners. Consistent with this approach, the rule should allow operators to provide a certification or affidavit confirming that necessary access has been secured, as reflected in the proposed revisions below. BLM does not need different or additional procedures for commingling; it just needs to extend its current practices to equipment covered by a CAA.

Recommendation: To resolve the inconsistencies between the definition of “access” and its application to the rule, the definition should be removed or revised to allow an operator to file a certification or affidavit with BLM, confirming that the operator has obtained permission for BLM to access the surface. The definition and substantive provisions in 3173.15(l) and (m) should also be stricken or revised to clarify that unanimous consent of all surface owners is not a threshold requirement to allow for surface access. This will ensure the flexibility intended by the OBBBA is preserved and that any surface owner, regardless of its interest, will not have a de facto veto right to an operator's commingling application.

Proposed redlines are as follows:

Access means:

- ~~(i) The ability to add liquids to or remove liquids from any tank or piping system, through a valve or combination of valves or by moving liquids from one tank to another tank; or~~
- ~~(ii) The ability to enter any component in a measuring system affecting the accuracy of the measurement of the quality or quantity of the liquid being measured; or~~
- ~~(iii) A written agreement that BLM officials can enter onto private or State lands for inspection and enforcement actions conducted by the BLM.~~

3173.15 (l), (m):

- ~~(l) Documentation demonstrating that all other interest owners, such as private, State, or Indian, consent to both the CAA and the BLM's inspection of the equipment to ensure compliance with §§ 3173, 3174, and 3175.~~
- (m) If the measurement facilities are located outside of the boundaries of the lease, unit PAs, or CAs from which production would be commingled, operator will submit self-certification verifying that the operator has secured all necessary access rights from the surface owner(s), whether private, State, or Indian, to ensure that BLM staff may access the measurement facilities within the CAA for conducting and verifying production, measurement and royalty.

11. Remove Inconsistent and Overly Burdensome Notice and Consent Requirements

The proposed rule imposes notice and consent requirements that are not grounded in statute and extend beyond BLM’s authority over federal mineral interests. Although the preamble cites the OBBBA as the basis for BLM’s authority to approve or deny commingling applications based on technical criteria such as methodology, measurement, and allocation, the rule text adds layers of procedural hurdles.

For example, Section 3173.15(l) requires operators to secure consent from all interest owners—including private, state, and Indian parties—for both the CAA and BLM equipment inspections, despite the statute not mandating such broad consent. This effectively gives non-federal owners veto power over federal authorizations and increases the risk of third-party holdouts. Similar holdout concerns have been addressed in other regulatory contexts – such as force pooling or compulsory pooling. Moreover, BLM lacks the practical ability to enforce or resolve disputes related to such notice or consent requirements for non-federal interests, further underscoring that these matters fall outside its jurisdiction.

Long ago, before states enacted compulsory pooling statutes, oil and gas operators were required to obtain consent from every working interest owner prior to commencing development. When one owner could not be located or refused to consent, the minerals could not be developed. This caused delays and stranded minerals. In response to these issues, states began enacting compulsory pooling statutes, which allow states to approve the development of oil and gas minerals upon the issuance of a compulsory pooling order. Here too, a consent requirement from every interest owner in the mineral estate could function as a prohibition to commingling. The OBBBA did not enact language enabling this sort of regulatory barrier to commingling approvals, and BLM has not historically required consent from all interest owners in the mineral estate to perform operations – particularly when a state process exists creating due process rights for fee and state mineral owners.

BLM simply does not have jurisdiction over state and fee mineral owners and should not be requiring onerous notices to be sent.¹⁶ In fact, commingling of fee and state minerals is governed by the State conservation agencies and those agencies have notice processes in place to these owners.¹⁷ There is no need for duplicative and overlapping federal regulation. This jurisdictional interpretation has been consistently followed by federal courts, establishing that the MLA applies only to mineral deposits “owned by the United States” and does not extend to state or privately-owned fee mineral interests.¹⁸ In addition, federal courts have rejected attempts to expand BLM authority beyond federal mineral interests, indicating federal ownership is a condition precedent to regulation under the Act.¹⁹ Therefore BLM does not have the capability to enforce the notice requirements.

¹⁶ 30 USCA § 181.

¹⁷ NMST § 70-2-17.

¹⁸ See *Maralex Resources, Inc. v. Barnhardt*, 913 F.3d 1189 (2019); *Wyoming v. U.S. Dept. of the Interior*, 136 F. Supp. 3d 1317 (D. Wyo. 2016); *Zavanna, LLC, GFS (O&G) 1*(2019) (Mar. 29, 2019).

¹⁹ *Id.*

There is no need for BLM to try to step into the states' role by requiring notice and consent to fee and state mineral owners. And adding a separate federal notice requirement within the proposed rule would duplicate these existing mechanisms, offering no additional regulatory benefit. Unlike state agencies, which have established procedures and expertise for holding regulatory hearings to protect correlative rights, BLM lacks both the necessary systems and jurisdiction to effectively fulfill this role.

Neither the OBBBA, MLA, nor FOGRMA grants BLM the authority to require notice or consent from mineral interest owners as a condition for approving a commingling and allocation agreement (CAA). Throughout the MLA, Congress clearly specifies when notice or consent is required;^{20,21} the absence of such language in the commingling provisions means BLM lacks authority to impose it through rulemaking. The OBBBA was enacted to expand and streamline commingling approvals, not to introduce new procedural hurdles that frustrate this legislative mandate.

Regarding consent requirements in the MLA, consent is required only from lessees in situations where drainage is occurring by adjacent operations, when the Secretary of the Interior uses discretion to modify a cooperative or unit plan, or when the BLM is seeking consent from the head of the executive department for leasing of acquired lands.²² Diverse commingling approvals do not fall within any of the aforementioned scenarios outlined by the MLA, and as such, are not subject to consent requirements.

Similarly, FOGRMA does not contain notice and consent requirements that must be satisfied when applicants are pursuing commingling approval.²³ The statute's stated purpose is to "clarify, reaffirm, expand, and define the responsibilities and obligations of lessees, operators, and other persons involved in transportation or sale of oil and gas from federal and Indian lands."²⁴ FOGRMA's notice requirements are limited to communications between the federal government and lessee operators regarding audits, inspections, and recordkeeping obligations.²⁵ Consent requirements are absent altogether. FOGRMA's implementing regulations also fail to impose this notice requirement.²⁶ Accordingly, neither FOGRMA nor its implementing regulations provide any statutory or regulatory basis for imposing a notice or consent requirement on applicants seeking commingling approval.

There are also other notification and consent requirements in the proposed rule that cause concerns. Section 3173.14(a)(5)(i) ties approval to notice requirements but alternatively allows the applicant to satisfy this requirement with a signed operator agreement that includes information about the commingling allocation method intended to be used, which can cause applications to be denied for procedural defects rather than substantive shortcomings. Operators are not required by federal regulation to use certified mail when submitting APDs, communitization agreements, unit agreements, or sundry notices to BLM, as standard mail delivery appears sufficient for regulatory

²⁰ 30 U.S.C. § 226(O)(2).

²¹ 30 U.S.C. §226(f).

²² 30 U.S.C. § 226(J), (M); *see also* U.S.C. § 352.

²³ 30 U.S.C. § 1701 *et Seq.*

²⁴ 30 U.S.C. § 1701(b)(1).

²⁵ 30 U.S.C. § 1717(a).

²⁶ 30 C.F.R. § 1217.50.

compliance.²⁷ Rather the submissions to BLM focus on timing, content, and completeness.²⁸ Requiring notices to be sent via certified mail for commingling and allocation applications is beyond BLM's longstanding practices and imposes a heightened procedural burden not found elsewhere. Additionally, operators typically do not put commingling allocation method information into their joint operating agreements, and it is unclear what jurisdiction (if any) BLM has to require that information be placed in an operating agreement between private parties.

Finally, as discussed above, Section 3173.15(m) requires proof that the operator has secured access rights from surface owners. It is unclear why some provisions require notices and others require consent. This creates an inconsistent patchwork of procedural requirements. Together, all of these notice and consent provisions risk stalling or blocking federal commingling approvals for reasons unrelated to the technical merits of an application, creating unnecessary barriers, regulatory uncertainty, and inconsistent outcomes.

Recommendation: To resolve these issues, BLM should align the CAA approval process with established procedures for Applications for Permit to Drill (APDs) where private surface access is required. Specifically, Approval of a CAA should not be conditioned on notice to or consent from private, state, or other non-federal parties, as these matters are already governed by applicable state processes and fall outside BLM's jurisdiction. BLM's approval should instead focus on the technical adequacy of the commingling methodology and allocation, as contemplated by the OBBBA, while allowing operators to comply with any applicable state or other non-federal requirements independently. This approach would restore clarity, limit unnecessary procedural barriers, and ensure that CAA approvals are determined by the merits of the application and statutory authority, not by third-party holdouts.

Proposed redlines as follows: We recommend removing Section 3173.15(l), (m) above.

3173.14(a)(5)(i), (ii):

- ~~§ 3173.14(a)(5) The BLM will approve a CAA under this section only after:~~
- ~~(i) The applicant provides notice to all interest owners of the production to be commingled or, in lieu of notice, the applicant provides to the BLM a signed operator agreement that includes a methodology that is acceptable to the BLM for accurate allocation of production among the properties from which production is to be commingled (including a method for allocating produced water); and~~
 - ~~(ii) The BLM receives a complete CAA from the applicant pursuant to 43 CFR 3173.15 that includes a statement by the applicant attesting that, on or before the date the applicant submitted the CAA, the applicant notified each interest owner by sending a copy of the application and the attachments to the CAA, by certified mail, return receipt requested to each interest owner.~~

12. Replace the Term “Interest Owner” with a BLM Defined Term

²⁷ 43 CFR § 3162.3-1 (APDs); 43 CFR § 3105.22 (communitization agreements); 43 CFR § 3183.3 (unit agreements); 43 CFR § 3162.3-2 (sundry notices).

²⁸ *Id.*

The term “interest owner” is not defined in the proposed rule, yet it is used repeatedly to trigger important notice and consent requirements. This lack of clear definitions creates significant ambiguity for operators, as these terms determine the scope of who must receive notice, whose consent must be obtained, and under what circumstances a CAA may be granted. For example, Section 3173.14(a)(5)(i) requires notice to all interest owners, and Section 3173.15(l) requires documentation of their consent to the CAA and BLM inspections, but without a clear definition, operators cannot know who exactly qualifies as an “interest owner,” especially given the rule’s application to Federal, Indian, State, and private interests. The absence of these definitions’ leaves room for inconsistent interpretations by BLM Field Offices and increases the risk of defective notice, consent, or approval processes, ultimately undermining regulatory certainty and fairness.

Recommendation: As discussed throughout these comments, we recommend removing the certified mailing notice requirement to state and fee mineral interest owners. If this is not removed, the type of interest owner should be clearly identified.

Proposed redlines are as follows:

When referring to interest owner of the mineral interest, strike the term “~~interest owner~~” and replace with “**operating rights owner**,” which is a term defined in 43 C.F.R. § 3160.05. When referring an owner of the surface estate, strike the term “~~interest owner~~” and replace with the term “**surface owner**.”

13. Revise Application Requirements to Support Efficient Review

Subsection 3173.15 establishes the requirements for submitting a CAA application, including the information necessary for BLM to evaluate proposed allocation methodologies. As currently structured, these requirements risk creating overly burdensome application requirements. The provisions in 3173.15 (a) and (b) should make clear that BLM will approve commingling applications that comply with the OBBBA and should not implicitly exclude the use of the allocation methods provided in the OBBBA. Additionally, 3173.15 should be streamlined to not require proof of overly burdensome notice and consent in application submissions.

Subsection 3173.15(c) requires applicants to submit a proposed allocation agreement that includes a calculated uncertainty percentage, a detailed allocation methodology (including allocation of produced water), and an example demonstrating how the methodology is applied. This agreement must be signed by each operator of the leases, unit PAs, or CAs included in the CAA. While many of these elements are essential for transparency and regulatory oversight, the language likely needs revision to address broader concerns related to acceptable allocation methods and the inclusion of periodic well testing. Specifically, the final rule should align with the allocation requirements and options allowed under the OBBBA.

Subsection 3173.15(d) should not require specific references to lease numbers. Many private leases do not have lease numbers, which causes delays and numerous inquiries with BLM staff.

Similarly, subsection 3173.15(k) imposes several requirements that may be overly restrictive and extend beyond what the statute contemplates:

- **Gas Analysis and Oil Gravity Data:** Applicants must provide the most recent gas analysis including BTU content (for gas) and oil gravity data (for oil) from each lease, unit PA, or CA proposed for commingling. Alternatively, if such data is unavailable, operators may submit analogous data from nearby wells. While concerns have been raised about these data requirements, they may be reasonable and manageable if the process for submission is straightforward and user-friendly.
- **Consent for Equipment Inspection:** The proposed rule requires actual consent from all other interest owners for BLM inspection of equipment. This is unnecessary where an operator has been designated, as the operator can consent on behalf of the interest owners. Furthermore, as noted elsewhere, BLM lacks jurisdiction over fee and state mineral owners, many of whom may be unlocatable, making universal consent unattainable and potentially blocking commingling approvals.

And as mentioned above, 3173.15(j) needs to alienate the requirement to show production in paying quantities. Further edits can be made to subsection 3173.15 to help consolidate filings, eliminate redundant paperwork, easing compliance for operators and reducing BLM's administrative workload.

Under the proposed revisions, BLM retains full oversight of CAAs while allowing operators to certify that access rights have been secured, rather than mandating formal documentation for every case. This self-certification approach maintains BLM's authority to verify compliance, when necessary, but avoids imposing documentation requirements that add little regulatory value.

Recommendation: BLM should revise Subsection 3173.15 to provide clearer, more flexible guidance that aligns with statutory intent and established regulatory practices. Section 3173.15(a) and (b) should make clear that the submission requirements explicitly accommodate all of the OBBBA allocation methodologies, including periodic well testing, with clear instructions on documentation. Data submission procedures should be streamlined to minimize operator burden while ensuring accuracy. As discussed above, consent for equipment inspection should be limited, recognizing BLM's jurisdictional limits. Surface access documentation requirements must be clarified, with BLM adopting a practical certification or affidavit process for off-lease access consistent with existing APD protocols. BLM should remove the requirement to list lease numbers because not all private leases have numbers assigned to them; so, it would be better to simply request a list of leases, units PAs, and CAs. These changes will reduce unnecessary procedural hurdles, enhance regulatory clarity, and support efficient, responsible development on federal lands.

Proposed redline as follows:

§ 3173.15:

~~(e)~~ A proposed allocation agreement with a calculated uncertainty percentage, including an allocation methodology (including allocation of produced water), with an example of how the methodology is applied, signed by each operator of each of the leases, unit PAs, or CAs from which production would be included in the CAA;

~~(d)~~ ~~(c)~~ A list of all Federal, Indian, State, or private leases, unit PAs, or CAs numbers in the proposed CAA, specifying the type of production (i.e., oil, gas, or both) for which commingling is requested;

~~(e)~~ ~~(d)~~ A topographic map or maps of appropriate scale showing the following:

(1) The boundaries of all the leases, units, unit PAs, or communitized areas whose production is proposed to be commingled; and

~~(2)~~ To the extent known or anticipated, the location of existing or planned facilities and the relative location of all wellheads (including the API number) and piping included in the CAA, and existing FMPs or FMPs proposed to be installed ~~to the extent known or anticipated~~;

(f) A surface use plan of operations (which may be included in the same Sundry Notice as the request for approval of commingling and allocation) if new surface disturbance is proposed for the FMP and its associated facilities are located within the boundaries of the Federal or Indian lease, units, or CA from which production would be commingled;

(g) A right-of-way grant application (Standard Form 299), filed under 43 CFR part 2880, if the proposed FMP is on a pipeline, or under 43 CFR part 2800, if the proposed FMP is a meter or storage tank. This requirement applies only when new surface disturbance is proposed for the FMP, and its associated facilities are located on BLM-managed land outside any of the leases, units, or communitized areas whose production would be commingled;

(h) Written approval from the appropriate surface-management agency, if new surface disturbance is proposed for the FMP and its associated facilities are located on Federal land managed by an agency other than the BLM;

(i) A right-of-way grant application for the proposed FMP, filed under 25 CFR part 169, with the appropriate BIA office, if any of the proposed surface facilities are on Indian land outside the lease, unit, or communitized area from which the production would be commingled;

~~(j)~~ Documentation demonstrating that each of the leases, unit PAs, or CAs proposed for inclusion in the CAA is producing in paying quantities (or, in the case of Federal leases, is capable of production in paying quantities) pending approval of the CAA; and

~~(k)~~ ~~(j)~~ Documentation demonstrating that the production from each of the leases, unit PAs, or CAs is compatible with each other by providing the following:

- (1) The most recent gas analysis performed, including BTU content (if the CAA request includes gas), and the most recent oil gravity data (if the CAA request includes oil) from each of the leases, units, unit PAs, or CAs proposed for inclusion in the CAA, **or**
- (2) In lieu of the requirements in paragraph (1), the operator or operators may instead:
 - i.** **Submit a CAA for BLM consideration using analogous BTU content and/or oil gravity data from nearby wells for instances where BTU content and/or oil gravity are not explicitly known for the given leases, unit PAs or CAs, or;**
 - ii. if no data exists at the time of application for either the leases, unit PAs or CAs covered by the application or nearby wells, the operator will submit gas analysis data with the completion reports for either the leases, unit PAs or CAs covered by the application.**

~~(l) Documentation demonstrating that all other interest owners, such as private, State, or Indian, consent to both the CAA and the BLM's inspection of the equipment to ensure compliance with §§ 3173, 3174, and 3175.~~

~~(m) (k) Documentation demonstrating that the operator has secured all necessary access rights from the surface owner(s), whether private, State, or Indian, to ensure that BLM staff may access the measurement facilities within the CAA for conducting and verifying production, measurement and royalty. **If the measurement facilities are located outside of the boundaries of the lease, unit PAs, or CAs from which production would be commingled, operator will submit self-certification verifying that the operator has secured all necessary access rights from the surface owner(s), whether private, State, or Indian, to ensure that BLM staff may access the measurement facilities within the CAA for conducting and verifying production, measurement and royalty.**~~

~~(n) (l) Documentation, limited to operator self-certification, that the operator maintains and operates the measurement equipment in accordance with §§ 3174 and 3175 for production equipment that is not allocated within a Federal or Indian lease, unit PA, or CA. **any FMP(s) in a CAA are operated in compliance with oil FMP standards in § 3174 or natural gas FMP standards in § 3175.**~~

14. Preserve Existing Approvals and Provide an Efficient Process for Operational Updates

The final rule should ensure that existing CAAs and associated approvals remain valid and are not subject to reapproval solely due to the adoption of new regulatory requirements. Separately, the rule should provide an efficient and streamlined process for incorporating additional wells and other routine operational updates—such as those drilled on an existing pad—into an approved

CAA without requiring full reapplication. Together, these changes will ensure continuity for existing operations while allowing efficient integration of new production.

While BLM may regulate prospectively, it cannot typically unwind approvals already granted.²⁹ BLM's planning documents recognize that when an oil and gas lease is issued, it constitutes a valid existing right; therefore, BLM cannot unilaterally change the terms and conditions of the lease.³⁰ Also, federal court precedents have consistently held that agencies lack the power to use new regulations as a basis for canceling or fundamentally altering existing lease rights.³¹ While operational aspects of development remain subject to modification through new regulations and conditions of approval at the APD stage, courts generally prohibit applying regulations to conduct completed before their enactment absent clear congressional authorization, particularly where the regulation would impose new duties with respect to transactions already completed.³²

BLM's own adoption of 43 C.F.R. Part 3170 confirms this prospective approach: the regulations include express transition provisions preserving pre-existing, approved operational arrangements while requiring compliance with new standards only upon the occurrence of defined future triggering events, rather than by retroactive invalidation of existing approvals.³³ Applying new regulatory requirements to require reapproval of existing CAAs would effectively operate as a retroactive application of the rule, contrary to these principles. Accordingly, § 3173.16 should be implemented to facilitate updates to existing CAAs without reopening or reapproving the underlying authorization where the core allocation and royalty framework remains unchanged.

Existing commingling and allocation approvals are authorizations issued under the regulatory framework in effect at the time of approval. While adding or removing wells may trigger mandatory modification requirements under § 3173.16, those requirements are procedural. Nothing in that provision contemplates vacating, rescinding, or re-issuing prior approvals where regulatory standards have changed but allocation and royalty frameworks are unchanged.³⁴ The structure of Part 3170 reinforces this limitation: the regulations carefully distinguish between new approvals under § 3173.15 and modification of existing approvals under § 3173.16, reflecting an intent to preserve existing approved arrangements unless a specified operational change occurs. As such, mere changes in operator ownership do not trigger CAA modification requirements, distinguishing BLM's longstanding distinction between operational changes requiring approval and ownership transfers that do not.³⁵ Treating routine updates or regulatory transitions as grounds

²⁹ *MediNatura, Inc. v. Food & Drug Administration*, 998 F.3d 931 (2021) (requiring that an agency changing policies must “be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account,” and failure to do so renders the agency action arbitrary and capricious.).

³⁰ *See Barlow & Haun, Inc. v. United States*, 118 Fed.Cl. 597 (2014).

³¹ *See Bowen v. Georgetown University Hosp.*, 488 U.S. 204 (1988) (holding a general grant of authority to promulgate rules does not inherently include the power to enact retroactive regulations); *See Solenex, LLC v. Haaland*, 626 F.Supp.3d 110 (2022) (Secretary of Interior cannot unilaterally cancel validly issued lease.)

³² *See Sweet v. Sheahan*, 235 F.3d 80 (2000) (The court in this case emphasized a strong presumption against the retroactive application of regulations, noting that retroactive legislation can cause unfairness by depriving parties of legitimate expectations and upsetting settled transactions)

³³ 43 C.F.R. § 3174.2.

³⁴ 43 C.F.R. § 3173.18; 43 CFR § 3174.2.

³⁵ 43 CFR § 3173.18.

to invalidate existing commingling and allocation approvals would collapse that distinction and effectively convert prospective regulation into retroactive approval withdrawal.

The principle of valid existing rights is foundational to regulatory fairness and stability. Operators who obtained commingling and allocation approvals under prior BLM rules did so based on clear expectations about regulatory obligations. Retroactively subjecting these commingled facilities to new, more onerous requirements would disrupt ongoing production, undermine investment-backed expectations.

BLM's recent rulemakings have recognized the importance of grandfathering, providing a useful precedent for ensuring that existing approvals remain valid unless there is a compelling site-specific reason to impose changes.³⁶ Minor operational adjustments, such as adding or removing wells from a commingled facility, typically do not alter the fundamental allocation or royalty framework and should not trigger full re-approval processes. These types of updates fall squarely within the procedural modification framework of § 3173.16 and should be accommodated without requiring reapproval of the underlying CAA.

Routine operational updates, including the addition or removal of wells from a commingled facility, do not alter the underlying allocation or royalty framework and therefore should not require submission of a new CAA application. Requiring full reapplication in these circumstances would effectively reopen existing approvals without any change to the underlying regulatory considerations that formed the basis of BLM's original approval. This would create unnecessary delay and administrative burden while providing no corresponding benefit to allocation accuracy or royalty accountability. It is more efficient for both BLM and industry to find a way to grandfather legacy approvals versus requiring new submissions.

Recommendation: BLM should explicitly affirm that new regulatory requirements apply prospectively and do not disrupt or invalidate existing commingling and allocation approvals granted under prior rules, consistent with the principle of valid existing rights. The agency should incorporate clear transition and grandfathering provisions that preserve approved operational arrangements. Routine operational changes, including adding or removing wells from a commingled facility, should be treated as procedural updates that do not necessitate full re-approval or new applications. Similarly, changes in operator ownership should not trigger modification requirements, maintaining the established distinction between operational and ownership changes.

Proposed redline as follows:

§ 3173.16:

All existing CAAs **and previously approved associated off-lease measurement** in effect on [EFFECTIVE DATE OF FINAL RULE] will remain in effect. **If unless the operator adds or removes wells or modifies the facility layout, in which case existing leases, unit PAs, or CAs in an approved CAA before or after the effective date of the Final Rule, a**

³⁶ *Id.*

Sundry Notice Form 3160–5 notice will be required. ~~Otherwise, modifications to~~ Additions to the contributing leases, unit PAs, or CAs, or modifications to the allocation methodology used within ~~the~~ an approved CAA will require the operator to reapply for commingling approval prior to implementing the proposed changes in accordance with the ~~existing regulations prior to implementing the proposed changes~~ the regulations in effect at the time of reapplication.

15. Establish Clear and Predictable Timelines for CAA Approvals

The effectiveness of the final rule will depend on predictable and timely implementation of the approval process. The final rule should adopt clear, enforceable timelines for BLM review and communication on CAAs. Defined deadlines would give operators the predictability they need to plan development schedules, facility construction, and capital investments with confidence. Requiring BLM to identify any deficiencies within a set timeframe will foster early, constructive dialogue, enabling issues to be resolved quickly and minimizing unnecessary delays or repeated submissions.

By contrast, the absence of explicit review deadlines leaves operators in limbo, with applications potentially pending for months or even years. This uncertainty stifles investment and disrupts development planning. To fulfill OBBBA’s directive—mandating approval of commingling applications that meet statutory criteria—the rule must ensure that regulatory processing is both efficient and timely. Establishing firm review periods will prevent indefinite administrative delays, streamline approvals, and support responsible and predictable development of federal oil and gas resources. Providing a predictable and efficient approval process is essential to achieving the rule’s objectives of supporting continued development and ensuring accurate allocation and royalty determination.

Recommendation: AXPC recommends establishing clear timelines for CAA review and approval under § 3173.14(c). In most cases, BLM is evaluating allocation methodology, measurement, and supporting data rather than undertaking a broader environmental or land use review. Therefore, establishing a 30-day timeframe for completeness determinations and a 60-day timeframe for final action provides sufficient time for review while ensuring that approvals are not subject to unnecessary delay that could disrupt ongoing operations and development planning. The proposed timelines are appropriate given the nature of CAA reviews, which are based on discrete technical criteria and information already provided in the application.

Proposed redline as follows:

§ 3173.14(c):

(c) **The BLM shall issue a notice if the application is incomplete within 30 days, noting deficiencies.** If the applicant meets the requirements for a CAA in ~~this~~ subpart **(b) of this section**, the BLM ~~will issue~~ **shall approve** the CAA within 60 days of submission of a complete CAA, ~~unless an additional 30 days is necessary to complete any required environmental analysis.~~ A complete CAA

includes all applicable requirements from ~~(a) and~~ (b) of this section, **as applicable** and § 3173.15.

Conclusion

AXPC genuinely appreciates BLM's efforts to modernize and clarify regulations around commingling and allocation. Refining the Proposed Rule, as outlined above, will support responsible development, regulatory clarity, and efficient management of federal resources. We welcome further dialogue to ensure the final rule achieves these shared goals.