

statement of “any adverse effects of energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies)” for the action and reasonable alternatives and their effects.

Section 4(b) of Executive Order 13211 defines a “significant energy action” as “any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or 2) That is designated by the Administrator of OIRA as a significant energy action.”

The BLM believes that the additional cost per hydraulic fracturing operation is insignificant when compared with the drilling costs in recent years, the production gains from hydraulically fractured well operations, and the net incomes of entities within the oil and natural gas industries. For the average hydraulic fracturing operation, the compliance costs represent about 0.13 to 0.21 percent of the cost of drilling a well.

Since the estimated compliance costs are not substantial when compared with the total costs of drilling a well, the BLM believes that the rule is unlikely to have an effect on the investment decisions of firms, and the rule is unlikely to affect the supply, distribution, or use of energy. As such, the rule is not a “significant energy action” as defined in Executive Order 13211.

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List of Subjects 43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authorities stated below, the Bureau of Land Management amends 43 CFR part 3160 as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 is revised to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

Subpart 3160—Onshore Oil and Gas Operations: General

§ 3160.0–3 [Amended]

■ 2. In § 3160.0–3 add “the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*),” after “the Mineral Leasing Act for Acquired lands, as amended (30 U.S.C. 351–359),”

■ 3. Amend § 3160.0–5 by adding definitions of “annulus,” “bradenhead,” “Cement Evaluation Log (CEL),” “confining zone,” “hydraulic fracturing,” “hydraulic fracturing fluid,” “isolating or to isolate,” “master hydraulic fracturing plan,” “proppant,” and “usable water,” in alphabetical order and by removing the definition of “fresh water” to read as follows:

§ 3160.0–5 Definitions.

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Annulus means the space around a pipe in a wellbore, the outer wall of which may be the wall of either the borehole or casing; sometimes also called annular space.

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Bradenhead means a heavy, flanged steel fitting connected to the first string of casing that allows the suspension of intermediate and production strings of casing and supplies the means for the annulus to be sealed.

Cement Evaluation Log (CEL) means any one of a class of tools that verify the integrity of annular cement bonding, such as, but not limited to, a cement bond log (CBL), ultrasonic imaging log, variable density logs, CBLs with

directional receiver array, ultrasonic pulse echo log, or isolation scanner.

Confining zone means a geological formation, group of formations, or part of a formation that is capable of preventing fluid movement from any formation that will be hydraulically fractured into a usable water zone.

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Hydraulic fracturing means those operations conducted in an individual wellbore designed to increase the flow of hydrocarbons from the rock formation to the wellbore through modifying the permeability of reservoir rock by applying fluids under pressure to fracture it. Hydraulic fracturing does not include enhanced secondary recovery such as water flooding, tertiary recovery, recovery through steam injection, or other types of well stimulation operations such as acidizing.

Hydraulic fracturing fluid means the liquid or gas, and any associated solids, used in hydraulic fracturing, including constituents such as water, chemicals, and proppants.

Isolating or to isolate means using cement to protect, separate, or segregate usable water and mineral resources.

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Master hydraulic fracturing plan means a plan containing the information required in section 3162.3–3(d) of this part for a group of wells where the geologic characteristics for each well are substantially similar.

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Proppant means a granular substance (most commonly sand, sintered bauxite, or ceramic) that is carried in suspension by the fracturing fluid that serves to keep the cracks in the geologic formation open when fracturing fluid is withdrawn after a hydraulic fracture operation.

* * * * *

Usable water means

(1) Generally those waters containing up to 10,000 parts per million (ppm) of total dissolved solids. Usable water includes, but is not limited to:

(i) Underground water that meets the definition of “underground source of drinking water” as defined at 40 CFR 144.3;

(ii) Underground sources of drinking water under the law of the State (for Federal lands) or tribe (for Indian lands); and

(iii) Water in zones designated by the State (for Federal lands) or tribe (for Indian lands) as requiring isolation or protection from hydraulic fracturing operations.

(2) The following geologic zones are deemed not to contain usable water:

(i) Zones from which the BLM has authorized an operator to produce oil and gas, provided that the operator has obtained all other authorizations required by the Environmental Protection Agency, the State (for Federal lands), or the tribe (for Indian lands) to conduct hydraulic fracturing operations in the specific zone;

(ii) Zones designated as exempted aquifers pursuant to 40 CFR 144.7; and

(iii) Zones that do not meet the definition of underground source of drinking water at 40 CFR 144.3 which the State (for Federal lands) or the tribe (for Indian lands) has designated as exempt from any requirement to be isolated or protected from hydraulic fracturing operations.

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Subpart 3162—Requirements for Operating Rights Owners and Operators

■ 4. Amend § 3162.3–2 by revising the first sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 3162.3–2 Subsequent well operations.

(a) A proposal for further well operations must be submitted by the operator on a Sundry Notice and Report on Wells (Form 3160–5) as a Notice of Intent for approval by the authorized officer prior to commencing operations to redrill, deepen, perform casing repairs, plug-back, alter casing, recomplete in a different interval, perform water shut off, combine production between zones, and/or convert to injection. * * *

(b) Unless additional surface disturbance is involved and if the operations conform to the standard of prudent operating practice, prior approval is not required for acidizing jobs or recompletion in the same interval; however, a subsequent report on these operations must be filed using a Sundry Notice and Report on Wells (Form 3160–5).

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■ 5. Revise § 3162.3–3 to read as follows:

§ 3162.3–3 Subsequent well operations; Hydraulic fracturing.

(a) *Activities to which this section applies.* This section, or portions of this section, apply to hydraulic fracturing as shown in the following table:

If . . .	Then
(1) No APD was submitted as of June 24, 2015	The operator must comply with all paragraphs of this section.
(2) An APD was submitted but not approved as of June 24, 2015.	To conduct hydraulic fracturing within 90 days after the effective date of this rule, the operator must comply with all paragraphs of this section, except (c) and (d).
(3) An APD or APD extension was approved before June 24, 2015, but the authorized drilling operations did not begin until after June 24, 2015.	
(4) Authorized drilling operations began, but were not completed before June 24, 2015	
(5) Authorized drilling operations were completed after September 22, 2015.	The operator must comply with all paragraphs of this section.
(6) Authorized drilling activities were completed before September 22, 2015	

(b) *Isolation of usable water to prevent contamination.* All hydraulic fracturing operations must meet the performance standard in section 3162.5–2(d) of this title.

(c) *How an operator must submit a request for approval of hydraulic fracturing.* A request for approval of hydraulic fracturing must be submitted by the operator and approved by the authorized officer before commencement of operations. The operator may submit the request in one of the following ways:

- (1) With an application for permit to drill; or
- (2) With a Sundry Notice and Report on Wells (Form 3160–5) as a notice of intent (NOI).

(3) For approval of a group of wells submitted under either paragraph (c)(1) or (2) of this section, the operator may submit a master hydraulic fracturing plan. Submission of a master hydraulic fracturing plan does not obviate the need to obtain an approved APD from the BLM for each individual well.

(4) If an operator has received approval from the authorized officer for hydraulic fracturing operations, and the operator has significant new information about the geology of the area, the stimulation operation or technology to be used, or the anticipated

impacts of the hydraulic fracturing operation to any resource, then the operator must submit a new NOI (Form 3160–5). Significant new information includes, but is not limited to, information that changes the proposed drilling or completion of the well, the hydraulic fracturing operation, or indicates increased risk of contamination of zones containing usable water or other minerals.

(d) *What a request for approval of hydraulic fracturing must include.* The request for approval of hydraulic fracturing must include the information in this paragraph. If the information required by this paragraph has been assembled to comply with State law (on Federal lands) or tribal law (on Indian lands), such information may be submitted to the BLM authorized officer as provided to the State or tribal officials as part of the APD or NOI (Form 3160–5).

(1) The following information regarding wellbore geology:

- (i) The geologic names, a geologic description, and the estimated depths (measured and true vertical) to the top and bottom of the formation into which hydraulic fracturing fluids are to be injected;

(ii) The estimated depths (measured and true vertical) to the top and bottom of the confining zone(s); and

(iii) The estimated depths (measured and true vertical) to the top and bottom of all occurrences of usable water based on the best available information.

(2) A map showing the location, orientation, and extent of any known or suspected faults or fractures within one-half mile (horizontal distance) of the wellbore trajectory that may transect the confining zone(s). The map must be of a scale no smaller than 1:24,000.

(3) Information concerning the source and location of water supply, such as reused or recycled water, rivers, creeks, springs, lakes, ponds, and water supply wells, which may be shown by quarter-quarter section on a map or plat, or which may be described in writing. It must also identify the anticipated access route and transportation method for all water planned for use in hydraulically fracturing the well;

(4) A plan for the proposed hydraulic fracturing design that includes, but is not limited to, the following:

- (i) The estimated total volume of fluid to be used;
- (ii) The maximum anticipated surface pressure that will be applied during the hydraulic fracturing process;

(iii) A map at a scale no smaller than 1:24,000 showing:

(A) The trajectory of the wellbore into which hydraulic fracturing fluids are to be injected;

(B) The estimated direction and length of the fractures that will be propagated and a notation indicating the true vertical depth of the top and bottom of the fractures; and

(C) All existing wellbore trajectories, regardless of type, within one-half mile (horizontal distance) of any portion of the wellbore into which hydraulic fracturing fluids are to be injected. The true vertical depth of each wellbore identified on the map must be indicated.

(iv) The estimated minimum vertical distance between the top of the fracture zone and the nearest usable water zone; and

(v) The measured depth of the proposed perforated or open-hole interval.

(5) The following information concerning the handling of fluids recovered between the commencement of hydraulic fracturing operations and the approval of a plan for the disposal of produced fluid under BLM requirements:

(i) The estimated volume of fluid to be recovered;

(ii) The proposed methods of handling the recovered fluids as required under paragraph (h) of this section; and

(iii) The proposed disposal method of the recovered fluids, including, but not limited to, injection, storage, and recycling.

(6) If the operator submits a request for approval of hydraulic fracturing with an NOI (Form 3160-5), the following information must also be submitted:

(i) A surface use plan of operations, if the hydraulic fracturing operation would cause additional surface disturbance; and

(ii) Documentation required in paragraph (e) or other documentation demonstrating to the authorized officer that the casing and cement have isolated usable water zones, if the proposal is to hydraulically fracture a well that was completed without hydraulic fracturing.

(7) The authorized officer may request additional information prior to the approval of the NOI (Form 3160-5) or APD.

(e) *Monitoring and verification of cementing operations prior to hydraulic fracturing.* (1)(i) During cementing operations on any casing used to isolate and protect usable water zones, the operator must monitor and record the flow rate, density, and pump pressure, and submit a cement operation

monitoring report for each casing string used to isolate and protect usable water to the authorized officer prior to commencing hydraulic fracturing operations. The cement operation monitoring report must be provided at least 48 hours prior to commencing hydraulic fracturing operations unless the authorized officer approves a shorter time.

(ii) For any well completed pursuant to an APD that did not authorize hydraulic fracturing operations, the operator must submit documentation to demonstrate that adequate cementing was achieved for all casing strings designed to isolate and protect usable water. The operator must submit the documentation with its request for approval of hydraulic fracturing operations, or no less than 48 hours prior to conducting hydraulic fracturing operations if no prior approval is required, pursuant to paragraph (a) of this section. The authorized officer may approve the hydraulic fracturing of the well only if the documentation provides assurance that the cementing was sufficient to isolate and to protect usable water, and may require such additional tests, verifications, cementing or other protection or isolation operations, as the authorized officer deems necessary.

(2) Prior to starting hydraulic fracturing operations, the operator must determine and document that there is adequate cement for all casing strings used to isolate and protect usable water zones as follows:

(i) *Surface casing.* The operator must observe cement returns to surface and document any indications of inadequate cement (such as, but not limited to, lost returns, cement channeling, gas cut mud, failure of equipment, or fallback from the surface exceeding 10 percent of surface casing setting depth or 200 feet, whichever is less). If there are indications of inadequate cement, then the operator must determine the top of cement with a CEL, temperature log, or other method or device approved in advance by the authorized officer.

(ii) *Intermediate and production casing.* (A) If the casing is not cemented to surface, then the operator must run a CEL to demonstrate that there is at least 200 feet of adequately bonded cement between the zone to be hydraulically fractured and the deepest usable water zone.

(B) If the casing is cemented to surface, then the operator must follow the requirements of paragraph (e)(2)(i) of this section.

(3) For any well, if there is an indication of inadequate cement on any casing used to isolate usable water, then the operator must:

(i) Notify the authorized officer within 24 hours of discovering the inadequate cement;

(ii) Submit an NOI (Form 3160-5) to the authorized officer requesting approval of a plan to perform remedial action to achieve adequate cement. The plan must include the supporting documentation and logs required under paragraph (e)(2) of this section. In emergency situations, an operator may request oral approval from the authorized officer for actions to be undertaken to remediate the cement. However, such requests must be followed by a written notice filed not later than the fifth business day following oral approval;

(iii) Verify that the remedial action was successful with a CEL or other method approved in advance by the authorized officer;

(iv) Submit a Sundry Notice and Report on Wells (Form 3160-5) as a subsequent report for the remedial action including:

(A) A signed certification that the operator corrected the inadequate cement job in accordance with the approved plan; and

(B) The results from the CEL or other method approved by the authorized officer showing that there is adequate cement.

(v) The operator must submit the results from the CEL or other method approved by the authorized officer (see paragraph (e)(3)(iv)(B) of this section) at least 72 hours before starting hydraulic fracturing operations.

(f) *Mechanical integrity testing prior to hydraulic fracturing.* Prior to hydraulic fracturing, the operator must perform a successful mechanical integrity test, as follows:

(1) If hydraulic fracturing through the casing is proposed, the casing must be tested to not less than the maximum anticipated surface pressure that will be applied during the hydraulic fracturing process.

(2) If hydraulic fracturing through a fracturing string is proposed, the fracturing string must be inserted into a liner or run on a packer-set not less than 100 feet below the cement top of the production or intermediate casing. The fracturing string must be tested to not less than the maximum anticipated surface pressure minus the annulus pressure applied between the fracturing string and the production or intermediate casing.

(3) The mechanical integrity test will be considered successful if the pressure applied holds for 30 minutes with no more than a 10 percent pressure loss.

(g) *Monitoring and recording during hydraulic fracturing.*

(1) During any hydraulic fracturing operation, the operator must continuously monitor and record the annulus pressure at the bradenhead. The pressure in the annulus between any intermediate casings and the production casing must also be continuously monitored and recorded. A continuous record of all annuli pressure during the fracturing operation must be submitted with the required Subsequent Report Sundry Notice (Form 3160-5) identified in paragraph (i) of this section.

(2) If during any hydraulic fracturing operation any annulus pressure increases by more than 500 pounds per square inch as compared to the pressure immediately preceding the stimulation, the operator must stop the hydraulic fracturing operation, take immediate corrective action to control the situation, orally notify the authorized officer as soon as practicable, but no later than 24 hours following the incident, and determine the reasons for the pressure increase. Prior to recommencing hydraulic fracturing operations, the operator must perform any remedial action required by the authorized officer, and successfully perform a mechanical integrity test under paragraph (f) of this section. Within 30 days after the hydraulic fracturing operations are completed, the operator must submit a report containing all details pertaining to the incident, including corrective actions taken, as part of a Subsequent Report Sundry Notice (Form 3160-5).

(h) *Management of Recovered Fluids.* Except as provided in paragraphs (h)(1) and (2) of this section, all fluids recovered between the commencement of hydraulic fracturing operations and the authorized officer's approval of a produced water disposal plan under BLM requirements must be stored in rigid enclosed, covered, or netted and screened above-ground tanks. The tanks may be vented, unless Federal law, or State regulations (on Federal lands) or tribal regulations (on Indian lands) require vapor recovery or closed-loop systems. The tanks must not exceed a 500 barrel (bbl) capacity unless approved in advance by the authorized officer.

(1) The authorized officer may approve an application to use lined pits only if the applicant demonstrates that use of a tank as described in this paragraph (h) is infeasible for environmental, public health or safety reasons and only if, at a minimum, all of the following conditions apply:

(i) The distance from the pit to intermittent or ephemeral streams or water sources would be at least 300 feet;

(ii) The distance from the pit to perennial streams, springs, fresh water sources, or wetlands would be at least 500 feet;

(iii) There is no usable groundwater within 50 feet of the surface in the area where the pit would be located;

(iv) The distance from the pit to any occupied residence, school, park, school bus stop, place of business, or other areas where the public could reasonably be expected to frequent would be greater than 300 feet;

(v) The pit would not be constructed in fill or unstable areas;

(vi) The construction of the pit would not adversely impact the hydrologic functions of a 100-year floodplain; and

(vii) Pit use and location complies with applicable local, State (on Federal lands), tribal (on Indian lands) and other Federal statutes and regulations including those that are more stringent than these regulations.

(2) Pits approved by the authorized officer must be:

(i) Lined with a durable, leak-proof synthetic material and equipped with a leak detection system; and

(ii) Routinely inspected and maintained, as required by the authorized officer, to ensure that there is no fluid leakage into the environment. The operator must document all inspections.

(i) *Information that must be provided to the authorized officer after hydraulic fracturing is completed.* The information required in paragraphs (i)(1) through (10) of this section must be submitted to the authorized officer within 30 days after the completion of the last stage of hydraulic fracturing operations for each well. The information is required for each well, even if the authorized officer approved fracturing of a group of wells (see § 3162.3-3(c)). The information required in paragraph (i)(1) of this section must be submitted to the authorized officer through FracFocus or another BLM-designated database, or in a Subsequent Report Sundry Notice (Form 3160-5). If information is submitted through FracFocus or another BLM-designated database, the operator must specify that the information is for a Federal or an Indian well, certify that the information is both timely filed and correct, and certify compliance with applicable law as required by paragraph (i)(8)(ii) or (iii) of this section using FracFocus or another BLM-designated database. The information required in paragraphs (i)(2) through (10) of this section must be submitted to the authorized officer in a Subsequent Report Sundry Notice (Form 3160-5). The operator is responsible for the information submitted by a

contractor or agent, and the information will be considered to have been submitted directly from the operator to the BLM. The operator must submit the following information:

(1) The true vertical depth of the well, total water volume used, and a description of the base fluid and each additive in the hydraulic fracturing fluid, including the trade name, supplier, purpose, ingredients, Chemical Abstract Service Number (CAS), maximum ingredient concentration in additive (percent by mass), and maximum ingredient concentration in hydraulic fracturing fluid (percent by mass).

(2) The actual source(s) and location(s) of the water used in the hydraulic fracturing fluid;

(3) The maximum surface pressure and rate at the end of each stage of the hydraulic fracturing operation and the actual flush volume.

(4) The actual, estimated, or calculated fracture length, height and direction.

(5) The actual measured depth of perforations or the open-hole interval.

(6) The total volume of fluid recovered between the completion of the last stage of hydraulic fracturing operations and when the operator starts to report water produced from the well to the Office of Natural Resources Revenue. If the operator has not begun to report produced water to the Office of Natural Resources Revenue when the Subsequent Report Sundry Notice is submitted, the operator must submit a supplemental Subsequent Report Sundry Notice (Form 3160-5) to the authorized officer documenting the total volume of recovered fluid.

(7) The following information concerning the handling of fluids recovered, covering the period between the commencement of hydraulic fracturing and the implementation of the approved plan for the disposal of produced water under BLM requirements:

(i) The methods of handling the recovered fluids, including, but not limited to, transfer pipes and tankers, holding pond use, re-use for other stimulation activities, or injection; and

(ii) The disposal method of the recovered fluids, including, but not limited to, the percent injected, the percent stored at an off-lease disposal facility, and the percent recycled.

(8) A certification signed by the operator that:

(i) The operator complied with the requirements in paragraphs (b), (e), (f), (g), and (h) of this section;

(ii) For Federal lands, the hydraulic fracturing fluid constituents, once they

arrived on the lease, complied with all applicable permitting and notice requirements as well as all applicable Federal, State, and local laws, rules, and regulations; and

(iii) For Indian lands, the hydraulic fracturing fluid constituents, once they arrived on the lease, complied with all applicable permitting and notice requirements as well as all applicable Federal and tribal laws, rules, and regulations.

(9) The operator must submit the result of the mechanical integrity test as required by paragraph (f) of this section.

(10) The authorized officer may require the operator to provide documentation substantiating any information submitted under paragraph (i) of this section.

(j) *Identifying information claimed to be exempt from public disclosure.*

(1) For the information required in paragraph (i) of this section, the operator and the owner of the information will be deemed to have waived any right to protect from public disclosure information submitted with a Subsequent Report Sundry Notice (Form 3160–5) or through FracFocus or another BLM-designated database. For information required in paragraph (i) of this section that the owner of the information claims to be exempt from public disclosure and is withheld from the BLM, a corporate officer, managing partner, or sole proprietor of the operator must sign and the operator must submit to the authorized officer with the Subsequent Report Sundry Notice (Form 3160–5) required in paragraph (i) of this section an affidavit that:

(i) Identifies the owner of the withheld information and provides the name, address and contact information for a corporate officer, managing partner, or sole proprietor of the owner of the information;

(ii) Identifies the Federal statute or regulation that would prohibit the BLM from publicly disclosing the information if it were in the BLM's possession;

(iii) Affirms that the operator has been provided the withheld information from the owner of the information and is maintaining records of the withheld information, or that the operator has access and will maintain access to the withheld information held by the owner of the information;

(iv) Affirms that the information is not publicly available;

(v) Affirms that the information is not required to be publicly disclosed under any applicable local, State or Federal law (on Federal lands), or tribal or Federal law (on Indian lands);

(vi) Affirms that the owner of the information is in actual competition and identifies competitors or others that could use the withheld information to cause the owner of the information substantial competitive harm;

(vii) Affirms that the release of the information would likely cause substantial competitive harm to the owner of the information and provides the factual basis for that affirmation; and

(viii) Affirms that the information is not readily apparent through reverse engineering with publicly available information.

(2) If the operator relies upon information from third parties, such as the owner of the withheld information, to make the affirmations in paragraphs (j)(1)(vi) through (viii) of this section, the operator must provide a written affidavit from the third party that sets forth the relied-upon information.

(3) The BLM may require any operator to submit to the BLM any withheld information, and any information relevant to a claim that withheld information is exempt from public disclosure.

(4) If the BLM determines that the information submitted under paragraph (j)(3) of this section is not exempt from disclosure, the BLM will make the information available to the public after providing the operator and owner of the information with no fewer than 10 business days' notice of the BLM's determination.

(5) The operator must maintain records of the withheld information until the later of the BLM's approval of a final abandonment notice, or 6 years after completion of hydraulic fracturing operations on Indian lands, or 7 years after completion of hydraulic fracturing operations on Federal lands. Any subsequent operator will be responsible for maintaining access to records required by this paragraph during its operation of the well. The operator will be deemed to be maintaining the records if it can promptly provide the complete and accurate information to BLM, even if the information is in the custody of its owner.

(6) If any of the chemical identity information required in paragraph (i)(1) of this section is withheld, the operator must provide the generic chemical name in the submission required by paragraph (i)(1) of this section. The generic chemical name must be only as nonspecific as is necessary to protect the confidential chemical identity, and should be the same as or no less descriptive than the generic chemical name provided to the Environmental Protection Agency.

(k) *Requesting a variance from the requirements of this section.*

(1) Individual variance: The operator may make a written request to the authorized officer for a variance from the requirements under this section. A request for an individual variance must specifically identify the regulatory provision of this section for which the variance is being requested, explain the reason the variance is needed, and demonstrate how the operator will satisfy the objectives of the regulation for which the variance is being requested.

(2) State or tribal variance: In cooperation with a State (for Federal lands) or a tribe (for Indian lands), the appropriate BLM State Director may issue a variance that would apply to all wells within a State or within Indian lands, or to specific fields or basins within the State or the Indian lands, if the BLM finds that the variance meets the criteria in paragraph (k)(3) of this section. A State or tribal variance request or decision must specifically identify the regulatory provision(s) of this section for which the variance is being requested, explain the reason the variance is needed, and demonstrate how the operator will satisfy the objectives of the regulation for which the variance is being requested. A State or tribal variance may be initiated by the State, tribe, or the BLM.

(3) The authorized officer (for an individual variance), or the State Director (for a State or tribal variance), after considering all relevant factors, may approve the variance, or approve it with one or more conditions of approval, only if the BLM determines that the proposed alternative meets or exceeds the objectives of the regulation for which the variance is being requested. The decision whether to grant or deny the variance request must be in writing and is entirely within the BLM's discretion. The decision on a variance request is not subject to administrative appeals either to the State Director (for an individual variance) or under 43 CFR part 4.

(4) A variance under this section does not constitute a variance to provisions of other regulations, laws, or orders.

(5) Due to changes in Federal law, technology, regulation, BLM policy, field operations, noncompliance, or other reasons, the BLM reserves the right to rescind a variance or modify any conditions of approval. The authorized officer must provide a written justification before a variance is rescinded or a condition of approval is modified.

■ 6. Amend § 3162.5–2 by revising the first sentence of paragraph (d) to read as follows:

§ 3162.5–2 Control of wells.

* * * * *

(d) *Protection of usable water and other minerals.* The operator must isolate all usable water and other

mineral-bearing formations and protect them from contamination. * * *

Janice M. Schneider,
Assistant Secretary, Land and Minerals Management.

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