



## Regulatory Changes Will Benefit Oil and Gas Producers

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From the interior of the United States to the outer continental shelf, two amendments to existing environmental rules will soon take effect as the Trump administration continues its efforts to scale back regulatory burdens on domestic oil and gas production. The amendments are in response to an Executive Order issued by President Trump in March 2017 which required federal agencies to review and revise existing regulations that burdened the development of domestic energy resources.

### I. Methane Emissions and Flaring on Federal and Tribal Lands

The Bureau of Land Management (BLM), an agency of the Department of the Interior, is charged with managing federal and tribal lands for a variety of uses, including energy production. BLM recently rolled back provisions of a final rule published in the waning days of the Obama administration aimed at curtailing waste and methane emissions from oil and gas production sites. Among other things, the *Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule* promulgated in November 2016 (“Waste Prevention Rule”) set restrictions on the venting and flaring of oil and gas on federal and tribal lands. It also regulated new, modified, and existing sources of methane emissions on land subject to federal and tribal oil and gas leases. The Waste Prevention Rule largely prohibited the venting of natural gas and mandated incremental increases in natural gas capture rates, culminating in a required 98 percent capture rate by 2026.

After reviewing the Waste Prevention Rule, BLM found, in many cases, that the costs of complying with the rule would exceed the value of the oil and gas produced, rendering a large number of “marginal wells” economically impractical for operators. With an estimated 73 percent of wells on federal lands classified as “marginal,” BLM found that the Waste Prevention Rule presented a significant roadblock for development of oil and gas resources. In addition to these economic concerns, BLM determined that the Waste Prevention Rule exceeded BLM’s statutory authority and resulted in impermissible regulatory overlap with EPA’s authority to regulate air emissions under the Clean Air Act. Unlike EPA’s New Source Performance Standards regulating new, reconstructed, and modified sources of emissions, the Waste Prevention Rule imposed emission provisions on both new *and* existing sources on oil and gas production sites.

Finding it unduly burdensome on oil and gas production, BLM revised the Waste Prevention Rule by promulgating a new final rule (“Final Rule”), after notice and comment, that rescinds or revises numerous provisions of the Waste Prevention Rule. The highlights of the Final Rule are as follows:

- Eliminated the requirement for applicants to submit waste-minimization plans when applying to

BLM for a drilling permit;

- Eliminated the gas capture-percentage requirements;
- Eliminated pneumatic controller equipment requirements;
- Eliminated well completion and related operations requirements;
- Modified the requirements for measuring and reporting volumes of gas vented and flared; and
- Increased the allowable quantity of royalty-free gas during initial production testing.

BLM estimates the Final Rule will save oil and gas producers over \$1 billion in compliance costs over the next ten years. Although complete implementation of the Waste Prevention Rule was clouded with uncertainty due to ongoing litigation involving challenges filed by states and industry groups, the Final Rule now gives some sense of relief to oil and gas producers as they evaluate the regulatory landscape. The Final Rule took effect on November 27, 2018. However, just hours after the Final Rule was signed, California and New Mexico filed suit to block its implementation and to reinstate the Waste Prevention Rule.

## II. Offshore Oil and Gas Safety Systems

The Bureau of Safety and Environmental Enforcement (BSEE) is the lead federal agency tasked with regulating offshore oil and gas operations in a manner that balances economic development with environmental protection. To comply with President Trump's Executive Order, BSEE identified what it found to be overly burdensome regulations promulgated under the Obama administration concerning worker safety and environmental protection. Accordingly, after notice and comment, BSEE issued a final rule amending the *Oil and Gas and Sulphur Operations on the Outer Continental Shelf – Oil and Gas Production Safety Systems Rule* ("Safety Rule"). Key changes to the Safety Rule include:

- The addition of gas lift shut down valves to the list of authorized safety and pollution prevention equipment (SPPE);
- Replacement of the requirement for independent third-party certification of SPPE with new requirements for device design testing and operator recordkeeping;
- Clarification of equipment failure reporting requirements;
- Clarification of production safety system design requirements; and
- Clarification of requirement for operators to shut down production and secure wells on any facility that is impacted, or will potentially be impacted, by an emergency situation, such as a hurricane or other natural disaster.

Notably, the Safety Rule does not amend or substantively alter any of the rules promulgated in the wake of the *Deepwater Horizon* disaster, including the Drilling Safety Rule promulgated in October 2010. BSEE estimates the Safety Rule will reduce compliance costs by approximately \$131 million over the next decade. The Safety Rule takes effect on December 27, 2018.

## III. Conclusion

These recent regulatory changes showcase the Trump administration's emphasis on domestic energy production by relaxing federal standards in favor of increased self-policing from industry. However, as is often the case with regulatory changes by executive agencies, forecasting the long-term viability of the new rules is difficult given the cyclical nature of American politics. For the time being, the message is clear to oil and gas producers operating on BLM lands or the outer continental shelf: take advantage of the new rules while you can.

***Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements*** 83 Fed. Reg. 49184–49214 (Sept. 28, 2018); ***Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems*** 83 Fed. Reg. 49216–49263 (Sept. 28, 2018); Exec. Order No. 13783, 82 FR 16093 (March 31,

2017).

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