



Reflections on the BLM's Proposed Methane and Waste Reduction Rule

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On January 22, 2016, Secretary of the Interior Sally Jewell unveiled a [proposed rule](#) to reduce the waste of natural gas that results from venting, flaring and leaks by oil and gas production on public and tribal lands. The "Methane and Waste Reduction Rule"—which was published in the Federal Register on February 8, 2016, setting off a 60-day comment period—would update existing provisions of the Bureau of Land Management (BLM's) onshore oil and gas leasing and operations regulations and introduce new requirements aimed at curbing waste and minimizing royalty-free use of production.

The Methane and Waste Reduction Rule, if finalized, will affect different segments of the oil and gas industry differently. This alert provides a summary of key regulatory and policy changes reflected in the proposed Methane and Waste Reduction Rule, discusses how the proposed rule fits into the Obama Administration's broader climate change and methane regulation strategy, and outlines how the proposed rule could impact entities with a nexus to oil and gas operations on federal lands and Indian country.

Comments on the proposed rule are due by April 8, 2016.

Key Legal and Policy Changes in the Proposed Methane and Waste Reduction Rule

In announcing the BLM's proposed rule, Secretary Jewell framed the need for the rule in the context of "moderniz[ing] decades-old standards to reflect existing technologies so that we can cut down on harmful methane emissions and use this captured natural gas to generate power and provide a return to taxpayers, tribes and states for this public resource." To achieve these underlying goals, the Methane and Waste Reduction Rule proposes substantial changes to BLM regulations and policy. Some of the more significant regulatory and policy amendments that would result from the proposed rule are described below.

Venting Requirements

The proposed rule would prohibit operators from venting gas except in limited circumstances. These limited circumstances include: temporary, short-term, infrequent emergency situations (such as equipment failure, relief of abnormal system pressures, or other anticipated conditions); when the loss of gas is uncontrollable; when venting is necessary for safety; or when gas flaring is technically infeasible or the gas is not readily combustible.

Additionally, the proposed rule would mandate new technical requirements aimed at reducing venting from equipment and operations, including a provision requiring operators to replace all "high bleed" pneumatic controllers with "low bleed" controllers within one year from the effective date a final rule. An operator could retain a high-bleed pneumatic controller for up to 3 years, if the well or facility served by the controller had an estimated remaining productive life of 3 years or less.

Flaring Requirements

The proposed rule would prescribe limits on gas flaring during normal production operations from development oil wells. Over the course of three years, BLM would phase in monthly per-well limits on the amount of gas that an operator could flare. In year one of rule implementation, operators could flare 7,200 Mcf/month per well; in year two, 3,600 Mcf/month per well; and from year three onward, 1,800 Mcf/month per well. BLM also would require metering in instances in which an operator flares 50 Mcf/day or more.

With these flaring limits in place, operators would need to expand gas-capture infrastructure or adopt alternative on-site capture technologies, such as natural gas compressors. Moreover, any gas flared from wells connected to this capture infrastructure would be subject to the payment of royalties. However, the proposed rule also would allow BLM to grant exceptions to these monthly flaring limits if the operator can establish to BLM's satisfaction that meeting these limits "would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease."

Leak Detection and Repair

The proposed rule also would mandate that operators implement an instrument-based leak detection and repair (LDAR) program for existing, modified, and new facilities on public and tribal lands. Among the options available to operators are infrared cameras and portable analyzers. The proposed rule would mandate twice-yearly inspections. Over time, if an operator discovered fewer leaks, BLM would permit annual inspection. Conversely, where an operator discovered more leaks, BLM would order quarterly inspections.

Waste Minimization Plan

The proposed rule would require an operator seeking to drill a new development well to submit a Waste Minimization Plan (Plan) contemporaneous with the submittal of its Application for Permit to Drill (APD). The Plan would identify how the operator intends to comply with the rule requirements and minimize natural gas waste through gas capture. Other required components of a Plan submission include: anticipated well completion timing; estimated gas production rates, including durations and declines; identification of nearby gas pipelines, processing facilities, proposed routes, and tie-in points; and identification of alternative on-site capture strategies in instances where pipeline infrastructure is unavailable.

The Plan would not be incorporated in the APD or otherwise enforceable, but the operator would need to certify that it had shared its Plan with one or more midstream processing companies, which BLM hopes would facilitate timely pipeline development and would thereby minimize flaring and venting.

Royalty Rate Revisions

The proposed rule would amend BLM's existing royalty rate provisions to specify a royalty rate at or above 12.5 percent for new competitive leases. Although historically the Mineral Leasing Act (MLA) has provided BLM with authority to adjust the royalty rate for competitive leases at any time, BLM's regulations fixed the rate at 12.5 percent and did not give the agency discretion to raise the rate, absent promulgation of a new rule. Although the proposed rule would now give BLM the discretion to raise the royalty rate, it has stated that it has no intention of doing so for competitive leases at this time.

Understanding the Proposed Rule in the Context of the Administration's Broader Climate Priorities

BLM's proposed Methane and Waste Reduction Rule is intended, at least in part, to fulfill a direction by the White House for BLM to "lead by example on public lands" as part of the Obama Administration's [comprehensive strategy](#) to reduce methane emissions (White House Methane Strategy). Under that strategy—which itself is an element of the Administration's broader Climate Action Plan—the Administration directed certain federal agencies, with a particular emphasis on BLM and EPA, to use existing authorities to reduce oil and gas sector methane emissions 40-45 percent from 2012 levels by 2025.

The proposed BLM rule is consistent in many respects with the package of methane policies proposed by EPA in August 2015 (for more information on EPA's action, see VNF's [Alert](#)). For example, for those existing pneumatic controllers on federal land, the proposed rule would effectively require implementation of the otherwise voluntary Natural Gas STAR Methane Challenge Program's Best Management Practice to replace high bleed controllers with low bleed controllers. Likewise, the proposed rule would establish an LDAR program for new, modified *and existing* oil and gas infrastructure on federal land similar to the program EPA has proposed to require for new and modified infrastructure on federal, tribal, state and private land. That is, while the BLM's proposed rule and EPA's methane

reduction program are in many respects similar in the *types* of requirements they would impose, there are critical differences in *scope*. Whereas the EPA rules for the oil and gas sector generally limit regulatory obligations to new, modified, and reconstructed sources and encourage voluntary actions at existing sources, the proposed BLM rule would require methane reductions at existing facilities. At the same time, unlike the EPA rules which apply to federal, tribal, state, and private lands, the BLM proposed rule would be limited to federal and tribal lands.

It is possible that the Obama Administration is relying on BLM rather than EPA to address methane emissions at certain existing wells because BLM's authorities are specific to wells and rely on a less complicated set of findings than EPA would have to make under the Clean Air Act. However, unlike EPA, as the country's largest land manager, BLM has a statutorily-mandated duty under the MLA to facilitate oil and gas leasing and development on federal and tribal lands and to protect the royalty interest of the federal government and the American public. Accordingly, the agency frames the proposed rule as a policy to minimize waste of a public trust resource and to preserve the federal royalty interest rather than in strictly environmental terms.

In any event, BLM's proposed rule could presage what EPA may ultimately require of all existing wells in future regulations for existing methane sources in the oil and gas sector.

Potential Impacts to Entities with a Nexus to Oil and Gas Operations on Federal Lands and Indian Country

BLM's proposed rule could adversely impact existing lessees and operators on federal and tribal leases by increasing the underlying cost of doing business to a point that certain existing operations become uneconomic. BLM's [regulatory impact analysis](#) (RIA) estimates that the total cost of compliance with proposed rule requirements could total between \$130 and \$174 million dollars annually in the years 2017-2026. With respect to flaring, lessees and operators would face the need to install or update gas capture infrastructure; BLM estimates that these measures would cost industry between \$27 and \$69 million per year. Likewise, implementing a LDAR program is estimated to cost industry between \$70 and 71 million annually. BLM asserts that the total costs attributable to the proposed rule would be marginally lower—between \$117 and \$161 million per year—if EPA finalized its subpart OOOOa regulations limiting methane and volatile organic compound (VOC) emissions from new and modified sources in the oil and natural gas sector. However, industry would still incur these costs.

BLM's RIA also estimates that BLM's proposed rule could yield benefits of between \$270 and \$354 million per year for the years 2017-2026. BLM estimates that these costs would stem from industry-wide cost savings from the recovery and sale of natural gas, and from the global environmental benefits of reduced greenhouse gases (GHG) and other air emissions. It should be noted, however, that the BLM RIA's estimates of costs and benefits are not based on the same assumptions. While the costs analysis is mostly focused on industry-specific compliance requirements, such as implementation of LDAR and enhanced gas capture technology, the benefits analysis takes a more global approach, accounting, e.g., for "public benefits to society from reductions in methane emissions" such as the "environmental benefits [of] reducing the amount of greenhouse gas released into the atmosphere." An analysis that accounted for both costs and benefits on a global scale may show a different cost-benefit outcome.

Ultimately, some companies may ultimately decide that the costs of compliance—coupled with the low price of gas in today's markets—do not warrant continued operations at certain sites on federal or tribal lands. While it is true that BLM's proposed rule does allow the agency to grant exceptions where an operator can show that flaring limits will cause it to shut in a well and abandon significant recoverable oil reserves, the procedure that BLM outlines for granting an exception requires an operator to make significant factual showings and leaves the final approval to BLM discretion.

Over the past decade, most new onshore oil and gas activity has occurred on state and private lands, largely because those lands provided a less burdensome regulatory environment as compared to federal and tribal lands. According to the American Petroleum Institute, from 2009 to 2014, crude oil production on federal lands remained flat and natural gas production declined by 35 percent, while crude oil production increased 88 percent and natural gas production increased 43 percent on state and private lands. Notably, growth on state and private lands continued to outpace federal and tribal lands, even as

states such as North Dakota, Colorado, and Montana began implementing venting and flaring requirements of their own. While the current low price environment certainly has tempered domestic onshore oil and gas activities on a widespread basis, it is safe to assume that these lands will remain more attractive than federal and tribal lands for future investment once prices rebound. The imposition of new federal requirements related to venting and flaring is likely to further discourage future oil and gas investment on federal and tribal lands to the extent that companies perceive the proposed rule as increasing operational or compliance costs.

Federally-recognized Indian tribes might benefit from additional royalties resulting from the proposed rule's requirement to minimize waste of gas; however, the overall net benefit would likely be incremental (projected at \$1.5 to \$2.0 million annually for all eligible tribes in the proposed rule RIA). To the extent companies shutter existing operations and/or reduce investments in future operations in Indian country, the proposed rule's costs may outweigh the benefits there. Moreover, while other recent regulations have sought to foster tribal sovereignty and economic development, the proposed rule's proscriptive requirements limit tribal sovereignty and may be an impediment to investment in oil and gas production on tribal lands.

On the other hand, the Methane and Waste Control Rule could be a boon to pipeline companies and to companies marketing alternative gas-capture technologies, as many producers would need to make significant infrastructure investments to comply with proposed rule requirements. In particular, well-site technologies that either capture wasted gas or strip natural gas liquids (NGLs) could prove attractive to newer production operations that would otherwise flare large amounts of gas.

For more information

Van Ness Feldman LLP is available to provide counsel to companies, tribes, and others as they assess the implications of BLM's Methane and Waste Reduction Rule for their operations and prepare to submit comments to BLM. For further information and analysis on the proposed rule, please contact [Kyle Danish](#), [Jonathan Simon](#), [R. Scott Nuzum](#), or [Avi Zevin](#).

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