

November 17, 2016

Energy Update

Department of Interior Issues Regulations on Natural Gas Venting and Flaring

Overview

On November 15, 2016, the Department of Interior’s Bureau of Land Management (BLM) issued the [final rule](#) titled “Waste Prevention, Production Subject to Royalties, and Resource Conservation”. The rule is designed to reduce the venting and flaring of natural gas produced on federal lands. The BLM developed the final rule based on a [Notice of Proposed Rulemaking \(NPRM\)](#), which was published on February 8, 2016.

The rule’s effective date is January 17, 2017, which will make it more difficult for the incoming Trump Administration to rescind the regulations. Congress could potentially seek to repeal the rule using the expedited process available under the Congressional Review Act.

Requirements of the Final Rule

The final rule targets the loss of natural gas from production and operations on federal leases. The rule would impose the following requirements:

- **Venting:** The final rule “prohibits venting of natural gas, except under certain specified conditions, such as in an emergency or when flaring is technically infeasible.”
- **Flaring:** The regulations establish gas capture requirements for operators while also exempting declining amount of, which may be flared.

Year	Capture Requirement	Monthly Flaring Allowable Per Well
1/17/18 – 12/31/18	85% of “adjusted total volume of gas produced each month”	5,400 Mcf gas per well per month
1/1/19 – 12/31/19	85%	3,600 Mcf
1/1/20 – 12/31/20	90%	1,800 Mcf
1/1/21 – 12/31/21	90%	1,500 Mcf
1/1/22 – 12/31/22	90%	1,200 Mcf
1/1/23 – 12/31/23	95%	1,200 Mcf
1/1/24 – 12/31/24	95%	900 Mcf
1/1/25 – 12/31/25	95%	750 Mcf
Beginning 1/1/26	98%	750 Mcf

- **Leaks:** The final rule “requires operators to use an instrument-based approach to leak detection...[but] allows operators to use optical gas imaging equipment, portable analyzers deployed according to the protocol prescribed in EPA’s Method 21, or an alternative leak detection device approved by the BLM.” The rule also requires operators to repair leaks within 30 days of discovery.
- **Reducing Venting from Equipment Practices:**
 - **Pneumatic Pumps and Controllers:** The regulations require operators to: “replace high-bleed pneumatic controllers with low-bleed or no-bleed pneumatic controllers” by January 17, 2018; and “replace pneumatic diaphragm pumps that operate 90 or more days per year with zero-emissions pumps, or route the pump exhaust gas to processing equipment”. The rule “provides that an operator can receive an exemption from the requirements for pneumatic controllers or pumps if the operator demonstrates and the BLM concurs that replacing the pneumatic pump(s) would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease.”
 - **Storage Vessels:** The regulations require operators “to reduce gas losses from existing storage vessels...[including by routing] storage vessel vapor gas to a sales line, if the storage vessel has the potential to emit at least 6 tpy of VOCs.” Operators that determine compliance is “technically infeasible or unduly costly...may instead route the tank vapor gas to a combustor flare.” Also, the rule provides that operators may request an exemption if they demonstrate, “and the BLM concurs, that complying with the requirements would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease.”
 - **Well Maintenance and Liquids Unloading:** The “final rule requires an operator to: (1) minimize gas vented to unload liquids, consistent with safe operations; (2) optimize the operation of the plunger lift or automated well control system, at wells equipped with such a system, to minimize gas losses from the system to the extent possible; (3) consider other methods for liquids unloading and determine that they are technically infeasible or unduly costly, prior to manually purging a well for the first time; and (4) comply with specified procedures and document venting events when unloading liquids by manual well purging.”
- **Royalty Provisions Governing New Competitive Leases:** The final rule specifies that for “competitive leases issued after the [rule’s] effective date...the BLM has the flexibility to set [royalty] rates at or above 12.5 percent.” The rule also “specifies the fixed statutory rate of 12.5 percent for all noncompetitive leases issued after the effective date of the rule...”
- **Unavoidable Versus Avoidable Losses of Gas:** The rule updates existing royalty provisions “to more clearly and specifically define when a loss of gas is considered ‘unavoidable’ and royalty-free, and when it is considered ‘avoidable’ and subject to royalties.” The rule also specifies that “[a] loss of gas is also deemed unavoidable when gas is flared from a well that is not connected to a gas pipeline, provided the BLM has not otherwise determined that the loss of gas is avoidable.”
- **Interaction with EPA and State Regulations:** The final rule deems equipment that is in compliance with certain Environmental Protection Agency (EPA) requirements is also “in compliance with the comparable BLM requirements.”

Congressional and Industry Reaction

House Natural Resources Committee Chairman Rob Bishop (R-UT) issued a [statement](#) denouncing the rule. Bishop declared, “This harmful regulation will be gutted by the courts unless we get to it first.” Bishop’s counterpart, Ranking Member Raul Grijalva issued a [statement](#) defending the regulations, arguing “[t]he American people...[will] save more money and power more homes with stronger methane standards.”

The Independent Petroleum Association of America (IPAA) issued a [press release](#) announcing that it joined the Western Energy Alliance in filing suit challenging the rule in the U.S. District Court of Wyoming. The Western Energy Alliance’s Vice President for Government Affairs, Kathleen Sgamma, declared that “BLM lacks statutory authority for the creation of an air quality regulatory program, which has resided with EPA and the states since the 1970’s”.

The American Petroleum Institute (API) also issued a [press release](#) calling the regulations “unnecessary, redundant, [and] technically flawed...”

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