



## Obama Administration Lays the Groundwork for Regulatory Onslaught in 2015

By: [Jim Martin](#), [Theresa Sauer](#) and [Mike Cross](#)

With this month's release of proposed methane regulations added to proposed controls on methane gas emissions, Clean Air Act permits, recent and expected endangered species listings, and upcoming resource management plan amendments specific to the greater sage-grouse, the Obama Administration's 2015 agenda is set to increase industry operating costs and reduce incentives to drill on public lands.

In November 2014 the Obama Administration released its semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions, listing its agenda for 60 federal agencies. Within this regulatory road map are some 3,415 rulemakings under consideration in the coming months. The Unified Agenda is available [here](#).

Below is a sampling of the Obama Administration's regulatory priorities that will impact the oil and gas industry which we are closely following.

### **EPA and Interior Department Seek Regulations on Methane Gas Emissions**

As oil and gas production in the United States has surged the past six years, the Obama Administration is now proposing regulations on methane gas emissions, an area historically left to the states to regulate. In fact, these proposals come after several states, including Colorado and Wyoming, have already enacted regulations on methane emissions and volatile organic compound (VOC) leaks.

Even as the industry has taken voluntary steps to lower emissions—the Environmental Protection Agency (EPA) has acknowledged that emissions from the oil and gas sector are down 16% since 1990 despite increases in production—the Obama Administration is planning on introducing two key regulations to further cut emissions. On January 14, 2015, the EPA proposed the first federal standard on methane gas emissions. The EPA's proposal seeks to cut emissions by 40 to 45 percent from 2012 levels by 2025. The rules would only target new and modified natural gas wells, but the Obama Administration has left open the possibility of regulating existing wells to meet its reduction goals and expanding programs that seek collaboration with companies to encourage voluntary emission reductions. The Obama Administration has not provided an estimated cost for these regulations.

In addition to the proposed EPA federal standard, the Department of the Interior intends to propose regulations cutting the amount of methane vented or flared from wells when drilling for oil and natural gas. This proposal is scheduled for release in April of 2015.

A copy of the fact sheet outlining the EPA's January 14 proposal is available here: [Methane Gas Emission Reduction Fact Sheet](#).

### **EPA Expected to Issue Aggregation Proposal for Clean Air Act Permits**

The EPA is expected to propose a rule defining "source" terms for Prevention of Significant Deterioration (PSD) Clean Air Act permits in the oil and gas industry by May 2015. The proposal would seek to aggregate emission facilities, or sources, which could require companies to apply for a permit as a "major source" or "major emitting facility," subjecting the company to much stricter permit requirements and therefore greater costs.

Recent federal court decisions have limited the sources subject to "major source" permits and found the EPA's "functional interrelatedness" test for determining whether to aggregate emissions from multiple pollutant-emitting facilities unlawful. However, these decisions have left open the possibility for the EPA to revise regulations that would permit aggregating emissions from multiple facilities.

The EPA believes confusion exists as to what constitutes a "source" in the oil and gas industry. The new proposal would seek to clarify the definition of a "source," so that permit writers can determine whether oil and gas facilities are subject to aggregation and require "major source" permits.

### **Endangered Species Act Rulemakings**

In 2014 the Obama Administration listed the Gunnison sage-grouse as threatened despite unprecedented conservation measures in place for the species. In 2015 the Obama Administration will designate critical habitat for the species, and make listing and critical habitat determinations on a host of other species that will affect drilling for oil and gas on federal, state and private lands.

The U.S. Fish and Wildlife Service (FWS) is considering a number of species for listing as either threatened or endangered pursuant to the Endangered Species Act. Among species that will impact the oil and gas industry if listed are:

- The Northern long-eared bat
- The Greater sage-grouse
- The Sprague's pipit

The FWS is also considering critical habitat designations for the Western distinct population segment of the yellow-billed cuckoo.

Additionally, FWS is in the process of rulemakings to change the criteria for designating critical habitat. The proposal, released in 2014, would make it easier for FWS to designate unoccupied lands as critical habitat. FWS is also in the process of a rulemaking to redefine the term "adverse

modification.” For more information on these rulemakings, see our May newsletter article available [here](#).

### **Resource Management Plan Amendments for Greater Sage-Grouse**

The Bureau of Land Management (BLM) and U.S. Forest Service (Forest Service) continue to work toward finalizing their greater sage-grouse-specific land use management plan amendments through a joint process, largely led by the BLM. The plan amendments will contain conservation measures specific to the greater sage-grouse, and are being considered for all federal lands including greater sage-grouse habitat.

Although the multiple draft plan amendments were released in 2013, final documents are not expected until summer 2015. An overview of the BLM and Forest Service efforts, as well as links to specific plan amendments, is available on the [here](#) on the BLM website.

The planning process was initiated to prevent the listing of the greater sage-grouse as endangered under the ESA. Under a court-ordered settlement, the FWS is required to publish a determination on listing the greater sage-grouse by September 30, 2015.

For further information on the Obama Administration’s 2015 regulatory agenda, please contact [Jim Martin](#), [Bret Sumner](#), [Theresa Sauer](#) or [Mike Cross](#).