

EPA's and BLM's Methane Rules

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Related Author

- [Richard K. Lattanzio](#)
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Richard K. Lattanzio, Specialist in Environmental Policy (rlattanzio@crs.loc.gov, 7-1754)

In 2016, the U.S. Environmental Protection Agency (EPA) and the Bureau of Land Management (BLM) promulgated separate regulations intended to control "methane emissions" at crude oil and natural gas production facilities. [Some stakeholders have argued](#) that the EPA and BLM rules are duplicative and outside of the agencies' statutory authorities. On January 30, 2017, a joint resolution of disapproval under the [Congressional Review Act](#) was introduced to overturn the BLM rule. [H.J.Res. 36](#) would vacate the rule and preempt the agency from promulgating similar proposals in the future. The measure passed the House by a 221 to 191 vote and now moves to the Senate.

Below is a brief discussion of the two rules, their similarities, and their differences.

- EPA's "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, Final Rule" ([81 Federal Register 35824, June 3, 2016](#)) was promulgated under the authority of the Clean Air Act, as amended (CAA; [42 U.S.C. §7401 et seq.](#)). CAA Section 111 requires EPA to establish a list of source categories to be regulated and emission standards for those source categories. Specifically, CAA Section 111(b)(1)(A) requires that a source category be included on the list if, "in [the EPA Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." Once a source category is listed, CAA Section 111(b)(1)(B) requires that the EPA propose and then promulgate "standards of performance" for new sources in the source category. CAA Section 111(a)(1) defines "a standard of performance" as "a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirement) the Administrator determines has been adequately demonstrated."
- BLM's "Waste Prevention, Production Subject to Royalties, and Resource Conservation, Final Rule" ([81 Federal Register 83008, November 18, 2016](#)) was promulgated under the authority of the Mineral Leasing Act of 1920, as amended (MLA; [30 U.S.C. §181 et seq.](#)). Section 225 of the MLA requires BLM to ensure that lessees "use all reasonable precautions to prevent waste of oil or gas developed in the land," and, under Section 187, that leases include "a provision that such rules ... for the prevention of undue waste as may be prescribed by [the] Secretary shall be observed."

Since natural gas that is vented, flared, or leaked from crude oil and natural gas production, processing, and transmission activities can be defined as both "air pollution which may reasonably be anticipated to endanger public

health or welfare" and "undue waste," EPA and BLM have promulgated rules to control for it under their respective statutory authorities.

EPA's rule targets natural gas emissions for the control of [methane pollution \(the primary component of natural gas and a potent greenhouse gas\)](#). EPA's rule sets standards of performance for methane emissions from several types of new, reconstructed, or modified facilities in the oil and gas production sector. [EPA estimates](#) that the rule would reduce methane emissions by 510,000 tons in 2025 and yield climate benefits of \$690 million in 2025 (in 2012 dollars), outweighing the estimated costs of \$530 million.

BLM's rule targets natural gas emissions as a potential waste of public resources and loss of royalty revenue. BLM's rule requires operators of crude oil and natural gas facilities on federal and Indian lands to take various actions to reduce the waste of gas, establishes clear criteria for when flared gas will qualify as waste and therefore be subject to royalties, and clarifies which on-site uses of gas are exempt from royalties. [BLM estimates](#) that the rule would avoid an estimated 175,000-180,000 tons of methane emissions per year and yield total benefits from \$209 million to \$403 million per year, outweighing the estimated costs of \$110-\$275 million per year. BLM estimates annual royalties to the federal government, tribal governments, states, and private landowners to increase by \$3-\$10 million per year.

Some stakeholders have argued that EPA's and BLM's rules are duplicative. Several similarities exist between the two, including the following:

- Many emission sources are covered under both rules (e.g., well completions, compressors, pneumatic controllers and pumps, storage tanks, and equipment leaks).
- BLM's rule sets controls for these sources to align with the EPA's final requirements.
- BLM's rule states that "this final rule seeks to minimize regulatory overlap. Thus, if EPA and/or States or tribes have adopted requirements that are at least as effective as and would potentially overlap with the provisions of this rule, the final rule provides a means for operators to comply with the EPA, State, local or tribal requirements in lieu of the BLM requirements."

Others point to differences between the two rules, including the following:

- EPA's rule covers facilities constructed, modified, or reconstructed after September 18, 2015; BLM's rule covers all facilities, both new and existing.
- EPA's rule covers selected facilities in the "crude oil and natural gas production" and "natural gas transmission and storage" sectors on all lands, both public and private; BLM's rule covers all oil and gas facilities on federal or tribal lands.
- EPA's rule provides for "combustion control devices" (i.e., flaring) as the best system of emission reduction in specific cases; BLM's rule requires operators to reduce flaring by capturing it for sale or use during production. The required capture percentage increases over time, and the base level of "allowable" flaring ramps down over time.
- EPA's rule does not have controls for well maintenance and liquids unloading activities; BLM's rule does.
- EPA's rule does not speak to royalty payments; BLM's rule revises [43 C.F.R. §3103.3](#), which governs royalty rates applicable to onshore oil and gas leases and updates the preexisting royalty provisions in BLM's 1980 Notice to Lessees, [NTL-4A](#), 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.