

INSIGHTS

Regulatory Rollbacks Continue for Energy Industry

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By: [Catherine D. Little](#), [Annie Cook](#) and [Mandi Moroz](#)

In the past few weeks, the Trump Administration's Department of Interior (DOI) has taken significant steps to roll back several environmental policies and/or rules affecting the energy industry. On December 22, DOI issued a [memorandum](#) interpreting the scope of the criminal liability under the Migratory Bird Treaty Act (MBTA) not to extend to incidental takes of migratory birds associated with development, construction or operation of energy and infrastructure projects. The following week, DOI formally [rescinded](#) a 2015 final rule issued by the Bureau of Land Management (BLM) for oil and gas operators engaged in hydraulic fracking on Federal and Indian public lands because it "imposes administrative burdens and compliance costs that are not justified." That same day, DOI's Bureau of Safety and Environmental Enforcement (BSEE) issued a [proposed rule](#) to revise or eliminate regulations on offshore drilling safety equipment, including the production systems safety rule which was prompted by the 2010 Deepwater Horizon spill in the Gulf of Mexico. More recently, DOI has announced a [draft proposed plan](#) to reopen nearly all offshore waters to oil and gas drilling.

With these steps, the Trump Administration continues its regulatory reform efforts and intends to reverse three significant environmental and public safety rules/policies from the prior Administration. Notably, the MBTA memorandum in and of itself does not establish legal precedent and does not impact any federal case law that holds differently (for additional analysis see Troutman's [Environmental Law & Policy Monitor](#)). As to the rescission of BLM's hydraulic fracking rule (which had not gone into effect pending the outcome of legal challenges in the 10th Circuit), the recent *final* rule rescinds the 2015 rule explaining that it "is needed to prevent the unnecessarily burdensome and unjustified administrative requirements and compliance costs of the 2015 rule from encumbering oil and gas development on Federal and Indian lands" and makes reference to doubts about BLM's statutory authority to regulate hydraulic fracturing operations on Federal and Indian lands. At BSEE, an agency with an environmental compliance and enforcement function that was created in response to the Deepwater Horizon spill, the regulations that are proposed to be revised, relaxed and/or eliminated had just become effective in 2016. The proposed rule explains that it is intended to "fortify the Administration's objective of facilitating energy dominance through encouraging increased domestic oil and gas production, by reducing unnecessary burdens on stakeholders while maintaining or advancing the level of safety and environmental protection." Challenges regarding a perceived lowering of safety standards have already been raised by various parties.

Streamlining regulations to be more effective and not unduly burdensome will benefit both the government and the industry. Uncertainty in applicability of regulations or the manner in which they are implemented, however, can lead to public safety and consistency concerns.

During the current political climate, scrutiny of pipeline, LNG, and other projects by citizen groups and state and local governments is at an all-time high. Even if federal rules are frozen or rolled back, other standards of liability remain. For that reason, industry should continue to focus on best management practices that ensure protection of the environment and public safety.