United States

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The US oil industry is divided into three sectors: upstream (exploration and production), midstream (processing, storage and transportation) and downstream (refining, distribution and marketing).

Industry participants are categorised as 'supermajors', 'majors' and 'independents'. 'Supermajors' are the handful of very large companies that account for most of the US oil industry revenues. US-based supermajors include ExxonMobil, Chevron and ConocoPhillips, whereas the overseas-based supermajors, BP and Shell, have substantial US operations. Smaller-scale integrated firms include Marathon, Hess and Murphy Oil.

A larger number of companies specialise in particular sectors. The 'independents' engage predominantly in upstream activities and include Occidental, Devon, Anadarko and Apache. Midstream specialists include Kinder Morgan. Refining operations are conducted by Phillips 66, Valero, Sunoco, Tesoro, Western and PBF Energy. The industry is supported by oil service companies led by Schlumberger, Halliburton and Baker Hughes, and by a variety of trade associations including the American Petroleum Institute (API).

US subsidiaries of national oil companies owned or controlled by foreign governments are important participants in the US oil industry. For example, Venezuelan-based Petróleos de Venezuela SA (PDVSA) owns Citgo, which supplies gasoline to nearly 6,000 retail outlets and owns interests in three refineries in the US.

'Proved reserves' are estimates of the amount of oil that is reasonably certain to be recoverable from known reservoirs under present economic and operating conditions. The US Energy Information Administration (EIA) estimated US-proved reserves of crude oil and lease condensate at 35.2 billion barrels for December 2015, a decrease of 4.7 billion barrels (11.8 per cent) from 2014. According to the *CIA World Factbook*, in January 2016 the United States ranked 11th among nations in proved oil reserves. About 12 per cent of US-proved reserves are located offshore.

In 2009, the Securities and Exchange Commission changed its reporting guidelines to permit companies to report probable and possible reserves, as well as proved reserves.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

In 2015, oil provided an estimated 36 per cent of US energy needs, along with coal (16 per cent), natural gas (29 per cent), nuclear (9 per cent) and renewables (10 per cent). The transport sector accounted for 72 per cent of oil consumption, primarily in the form of gasoline. The industrial sector consumed another 23 per cent for heating, diesel engines and as petrochemical feedstock. Less than 1 per cent of US electric power generation is fuelled by oil. Regarding non-conventional sources, EIA projects renewables consumption to grow by approximately 6.5 per cent in 2017, and electricity generation from renewable sources to grow 10 per cent.

US oil production has grown rapidly in recent years. EIA data show a rise from 5.6 million barrels per day (bbl/d) in 2011 to 7.5 million bbl/d in 2013, a record increase to 9.4 million bbl/d in 2015, and a decrease to 8.9 bbl/d in 2016. EIA's latest projections show an increase in domestic crude oil production from an average of 9.2 bbl/d in 2017 and 9.9 bbl/d in 2018. According to the EIA, US crude oil net imports are expected to decrease from 7.36 million bbl/d in 2016, to 6.71 million bbl/d in 2017, and 5.98 million bbl/d in 2018. In 2016, 65 per cent of US crude oil and petroleum products imports came from non-OPEC countries, while 35 per cent of imports originated from OPEC.

In 2016, the US consumed an average of 19.6 million bbl/d of oil. The EIA predicts US consumption of petroleum and other liquids to continue to increase to 2020, and then to begin declining for the next 20 years to 2040.

Although total US energy consumption is projected by the EIA to continue to increase over the next 24 years, crude oil as a share of overall energy is projected to decrease, while demand for renewables is likely to increase.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

There is no single source of law that can be considered a US energy policy. At the federal level, Congress has enacted a series of acts whose titles include 'energy policy', and the President has issued executive orders of a similar nature. The Department of the Interior (DOI), the Department of Transportation (DOT), the Department of Energy (DOE) and the Environmental Protection Agency (EPA) play important roles in the development and maintenance of a national energy policy. At the state level, their counterpart agencies, which are often delegated authority by federal legislation, play a similar role, building on energy-related laws and orders of the state legislatures and governors.

There are several separate principles running through enactments of these bodies. First, since the 1970s there has been a stated focus on increasing the energy independence of the United States. Most recently, the Trump administration issued an executive order calling for the 'clean and safe development' of domestic energy resources, including (in the context of electricity production) coal, natural gas, nuclear material, hydropower and other domestic sources including renewables. But energy independence has been advocated during administrations of both political parties. Economic and technological developments, such as responses to market prices and the emergence of hydraulic fracturing, have had more impact on energy imports than have the statutes and regulations. Over the same time period there has been a focus on energy efficiency, such as the increase of the fuel economy standards for motor vehicles. The record on encouraging renewable sources and clean technology is mixed, with large but not always consistently maintained government investment and subsidy programmes in targeted fields such as nuclear, biofuels, wind, solar and geothermal energy.

Overlaying policies regarding energy sources are the regulation of environmental aspects of oil and gas production and consumption. Traditional regulation of emissions has been supplemented by policies at the federal and state levels addressing climate change and the emission of greenhouse gases. While the Trump administration has overturned a number of administrative rules in this field, others remain, such as the endangerment finding that led to regulation of automobile

tailpipe emissions. It is in this arena that the regulatory powers of the individual states, particularly in the west and north-east, will play an important role.

4 Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

Oil and gas leases on public property are generally on record with the relevant federal and state agencies, and in many cases are available for review on public websites. There is no consolidated ownership or operatorship register for properties. Depending on local regulations, leases on public lands may also be filed locally. Oil and gas leases on private property are typically found or summarised in the public land records (generally at a local level such as a county or parish), but other agreements affecting the lease and interests under the lease may not be filed in public records. Generally, access to public records is without cost, however, there is usually a charge for obtaining copies of the documents.

5 Describe the general legal system in your country.

The United States is a common law jurisdiction, organised on a federal system with a federal government and state and local government entities. There are constitutions at each of the federal and state levels allocating powers among executive, legislative and judicial branches and reserving civil and governmental rights, and at federal, state and local levels there are extensive forms of legislation and comprehensive systems of administrative regulation and rule-making. Subject to these sources of law, judges apply common law reasoning and precedents including respect for the rule of law. Contract and property rights are enforced by causes of action in state or federal courts or by agreement in court-administered or private arbitration. The US is party to the New York Convention on recognition of arbitral awards and other conventions for recognitions of foreign judgments, subject to specified exceptions.

Improper payments to officials and private parties within the United States are strictly prohibited. Federal and state law criminalise both corrupt payments to government officials and commercial bribery, and regulate expenditures on political campaigns and other aspects of participation by oil companies, as well as other entities, in the political process. Such anti-corruption and political laws generally apply to foreign as well as domestic entities.

The United States has comprehensive laws governing improper payments made to foreign officials. The US's principal international anti-bribery statute, the Foreign Corrupt Practices Act (FCPA), prohibits both domestic and foreign companies that are 'issuers' (ie, that are listed on a US stock exchange or are required to file periodic reports with the US Securities and Exchange Commission (SEC)), as well as their officers, directors, employees or agents, among others, from bribing a foreign official, a foreign political party or official, or any candidate for foreign political office in order to influence an official act or decision, or to secure an improper business advantage. In addition, the FCPA requires issuers to keep books and records that accurately reflect their transactions and dispositions of assets. It also requires issuers to maintain internal accounting controls sufficient to provide reasonable assurances that transactions are properly authorised and properly recorded, such that their financial statements may be prepared in conformity with generally accepted accounting principles.

The FCPA is enforced by the US Department of Justice (DOJ) and the SEC.

Issuers that violate the FCPA may face steep criminal fines or civil penalties. For example, in 2013, certain subsidiaries of Weatherford International Limited (Weatherford), a Swiss oil services company that was an issuer in the US, pleaded guilty to bribery under the FCPA, and Weatherford was required to pay a US$87 million criminal penalty to the DOJ and US$65 million in disgorgement, interest and civil penalties to the SEC – making it one of the largest corporate FCPA settlements ever. In addition, individuals who violate the FCPA could serve prison time. For example, in 2014, two former chief executives of PetroTiger Ltd, a British Virgin Islands oil and gas company, were charged for their alleged participation in a scheme to bribe foreign government officials; and in its press release announcing the charges, the DOJ noted the maximum prison sentences allowed for FCPA violations.

Typically, where an FCPA violation has occurred, there is a risk of other criminal exposure, including mail or wire fraud and money laundering. Under the US Travel Act, so-called 'commercial bribery' or 'private-sector bribery' is illegal in most circumstances.

Given the global nature of the oil and gas industry, and the necessity of interactions with government officials, companies and executives in this field should make establishing and maintaining an effective anti-corruption compliance programme a top priority.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The determination of which laws apply to oil activities at a given surface location depends on whether the underlying resources and location are owned by a federal or state government or by private parties, and whether the location is onshore or offshore.

The Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands of 1947 govern upstream activities on federal onshore property, while the Outer Continental Shelf Lands Act (OCSLA) governs development of federal offshore property. Additional industry-specific federal statutes include the Oil and Gas Royalty Management Act, which governs lease and royalty agreements, and the Petroleum Marketing Practices Act, which regulates supply agreements and leases held by retailers and wholesalers of trademarked motor fuels. Other state laws relating to regulatory agency authority and state contract law pertain to oil activities on both public and private lands.

State laws, such as the Texas Natural Resources Code and the California Public Resources Code, govern exploration and production on state-owned land, including state offshore property and privately owned land.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

While there are no express legislative provisions for expropriation, there are provisions in the federal and state constitutions and codes that allow governments to 'condemn' or take property for public use upon payment of just compensation. However, condemnation of properties involved in oil activities is rare because of the requirement of providing just compensation for the property taken. Private parties may also bring actions for 'inverse condemnation' where they believe a public entity has taken such property without providing just compensation or otherwise complying with the relevant law.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

Within the DOI, the Bureau of Land Management (BLM) regulates oil exploration and production on federal onshore property; the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) manage federal offshore oil production activities; the Office of Natural Resources Revenue collects royalties for both onshore and offshore oil production; and the Bureau of Indian Affairs (BIA) regulates American Indian land development along with the BLM. The Federal Energy Regulatory Commission (FERC) has jurisdiction over interstate oil pipelines. The DOE administers the Strategic Petroleum Reserve, collects industry data and funds and conducts other energy research and production programmes.

Each of the major oil-producing states has an agency tasked with regulating certain upstream activities, such as the issuance of drilling permits and intrastate pipeline transportation. These agencies include the Railroad Commission of Texas; the California Department of Conservation's division of oil, gas and geothermal resources; the Louisiana Office of Conservation; and the Alaska Department of Natural Resources' division of oil and gas. Some state public utility commissions oversee aspects of intra-state oil pipelines.

Many other agencies enforce police power laws and regulations regarding environmental, health, safety and work conditions (see question 35).

9 What government body maintains oil production, export and import statistics?

Official statistics on oil production, imports and exports are collected by the EIA of the DOE. The EIA also provides forecasts and analysis of oil consumption, production, reserves, refining and trade. State agencies maintain data on local oil production.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

In the US, title to oil, gas and minerals is generally held by the owner of the surface until and unless that right is severed and granted to others. This title to the mineral estate may be separated from the surface estate by a grant or a reservation. When the mineral estate has been severed from the surface estate, the mineral estate owner holds what is referred to as the 'dominant estate', and the surface estate owner holds the 'servient estate'. In general terms, this means that the mineral estate owner has the right of reasonable access to and use of the surface estate in order to exploit the minerals.

In Louisiana, the only civil law state in the US, mineral rights do not exist as a separate, perpetual estate in land, but rather can only be held separately from the surface in the form of a 'mineral servitude'. The servitude gives its holder the right to enter the property and extract the minerals, but it may expire, or prescribe, after 10 years of non-use.

Both the federal government and many states own oil, gas and mineral rights both onshore and offshore.

Government and private transfers frequently reserve to the grantor all or a portion of the mineral rights, so the land title records must be carefully reviewed.

The stage at which title is transferred depends on state law and is generally split between 'ownership-in-place' states such as Texas, and 'non-ownership' states such as California and Louisiana, where ownership does not transfer until extracted.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

In 2016, six states and federal offshore waters supplied 86 per cent (7.7 million barrels per day) of US crude oil production. Oil production was predominantly concentrated in Texas (36 per cent), federal offshore waters (18 per cent), North Dakota (12 per cent), Alaska (5 per cent), California (6 per cent), Oklahoma (5 per cent) and New Mexico (4 per cent). Total US crude oil production decreased by 5 per cent in 2016, but total production remained above the five-year average. Texas experienced its first decrease in crude oil outputs since 2009 (decreasing 7 per cent from 2015), while North Dakota experienced its first decrease in outputs since 2003 (decreasing 12 per cent from 2015).

Almost all existing offshore leasing is in the Gulf of Mexico. Included in the Outer Continental Shelf Oil and Gas Leasing Program for 2017–2022 are 11 potential lease sales in four outer continental shelf planning areas: the Central and Western Gulf of Mexico, the portion of the Eastern Gulf of Mexico not under Congressional moratorium, and the Cook Inlet planning area offshore Alaska.

The 2017–2022 Leasing Program provides for 10 region-wide lease sales in the Gulf of Mexico, and one lease sale in the Cook Inlet. In addition, there is one additional special-interest lease sale left over from the prior 2012–2017 Leasing Program that is to occur in June of 2017 for the Cook Inlet.

Portions of the central and eastern Gulf of Mexico are under a Congressional moratorium until 2022 as part of the Gulf of Mexico Energy Security Act of 2006. In addition, the Atlantic region sales were eliminated in the 2017–2022 Leasing Program, and the Pacific region has not been subject to sale in over 10 years pursuant to the 2006 West Coast Governors Agreement on Ocean Health.

Onshore, the Arctic National Wildlife Refuge in Alaska remains off limits to drilling despite many years of intense debate in Congress. Apart from national parks and wilderness areas, federal lands outside Alaska are largely available for exploration and production. However, federal and state agencies can also impose drilling restrictions on particular lands on environmental, military or other grounds.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

US practices do not feature concessions or production-sharing agreements typically associated with a state oil company. The right to conduct exploration and production on the lands of another is obtained through an oil and gas lease. Depending on state law, such a lease may grant ownership of oil and gas in place, or may grant only the right to explore for and extract oil and gas and the ownership of hydrocarbons actually produced. The terms of the lease and applicable law limit leaseholder activities.

Processes established by the BLM (onshore), BOEM (offshore) and BIA (American Indian land) govern the awarding of leases for land subject to federal jurisdiction. These processes set forth the administrative costs and timing for submitting bids for leases on federal lands. The bid amount itself is determined by the bidder. Analogous state agencies award leases for state-owned land. Private owners of subsurface mineral rights negotiate or invite tenders for leases, which may follow trade association formats or contain terms and conditions specific to the particular lease.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The federal and state governments do not have a general right to participate in working interests or operatorship, or other rights beyond the royalty interests reserved to them. Various states and local governments do, however, collect fees and taxes associated with exploration and production activities pursuant to local law.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Federal leases impose a fixed royalty of a defined fraction of the amount or value of the oil or gas removed or sold from each lease. A royalty rate of one-eighth was common up until the 1970s, although now rates such as three-16ths or one-sixth are more common. For onshore operations, the federal rate must be no less than one-eighth, whereas offshore rates tend to be higher subject to the various statutory requirements.

Statutes fix most federal royalty rates, but both the DOI and special legislation (such as the Deep Water Royalty Relief Act) can modify standard terms, usually by reducing the stated royalty rate or suspending payment of royalties, to make frontier development more attractive. On 10 January 2017, the United States Bureau of Land Management announced final amendments to federal oil shale regulations that give the DOI more flexibility in setting rates lease-by-lease. It sets the minimum royalty rates for federal commercial oil shale leases, and the amended rule gives the DOI authority to set higher rates based on consideration of all relevant factors. State and private leases have more variability in their royalty terms and rates, and may include a basis for payment other than proceeds or market value. States reap varying portions of the royalty for federal leases of land within or adjacent to their borders.

Payments to the government are generally in the form of royalties. Bonuses paid to secure a lease either through the bidding or negotiation process are a significant part of the cost of obtaining exploration and production rights. Where the royalty is set by statute, the amount of the bonus will determine the winning bidder. In recent years the amount of the bonus has been increasingly significant in private leasing activities. There may be rentals due in certain situations, but generally they are not collected in the absence of particular triggering events. For example, there may be provisions for delay rentals to be paid to the government in the event that production is shut down and there are no proceeds or market value (and hence, no royalties). There are no standard stabilisation provisions in the most common leases for new taxes or other impositions.

15 What is the customary duration of oil leases, concessions or licences?

Private and public oil and gas leases usually feature a fixed primary term and a conditional secondary term. The number of years in the primary term ranges from one year in mature fields to 10 years for frontier regions; private and American Indian leases tend to have short primary terms. Primary terms for shale leases tend to be shorter, at about five years. Even though no production may be required during the primary term, the lease may be subject to termination if the leaseholder fails to drill test wells or undertake specified actions or, in lieu thereof, pay an additional rental fee. In private leases the primary term may be extended by agreement of the parties, while leases with governmental entities are subject to processes that generally do not provide for extension by agreement.

The secondary term continues indefinitely beyond the primary term so long as either the leased area produces oil or gas in paying quantities or the lessee performs other specified activities on the leased premises. The lease often excuses brief interruptions in production and longer interruptions because of force majeure.

16 For offshore production, how far seaward does the regulatory regime extend?

The Federal Submerged Lands Act establishes state jurisdiction over submerged lands extending three nautical miles – 3.5 statutory miles, or 5.6km offshore (except Texas and Florida on the Gulf of Mexico, whose jurisdiction extends three leagues (approximately 10 statutory miles, or 16km)). The OCSLA establishes federal jurisdiction beyond the state limit, and a 1983 presidential proclamation declared that jurisdiction to extend to the boundary of the US Exclusive Economic Zone, 200 nautical miles (about 230 statutory miles, or 370km) from the coastline (in practice, oil development is active only to the edge of the OCS).

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

Upstream activities on onshore federal property are governed by the Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands of 1947, while the OCSLA governs development of federal offshore property; see question 6. There are a variety of differences and similarities between the two regimes; see questions 14, 18, 26, 30 and 35.

Generally, there is no difference in regimes governing the rights to explore for or produce different types of hydrocarbons. On the state level, however, regulations will occasionally specifically apply to exploration and production activities at specific geologic intervals, usually aimed at shale formations. Various states have passed regulations governing oil and gas drilling as a result of hydraulic fracturing, a widely used technique in shale oil and gas drilling. In addition, a few states and localities have prohibited hydraulic fracturing altogether. This is in contrast to the federal government's reported plans to relax federal rules regarding energy exploration and production.

In 2015, rules came into effect aimed at reducing air pollutants that may result from hydraulic fracturing. One such rule requires operators to notify the EPA by email two days before a well is completed using hydraulic fracturing. However, with the recent change in the federal administration, these rules are now under review.

In 2015, the BLM issued a final rule, now under review, on hydraulic fracturing on federal and Indian lands. The rule includes standards for interim storage of recovered waste fluids and wellbore integrity requirements, and requires disclosure of chemicals used in hydraulic fracturing operations (which can be made on the FracFocus website, www.fracfocus.org). The rule imposes interim storage requirements for waste water generated by these operations in above-ground covered tanks and new documentation requirements. The rule is limited to operations conducted on federal land and thus will not apply to hydraulic fracturing operations conducted on private land and state land, which are usually subject to a form of state regulation. The rule has been challenged in court.

In 2014, through a notice of proposed rulemaking, the EPA requested input regarding the information that should be obtained from hydraulic fracturing operators regarding the chemicals they use, how such information should be obtained and disclosed, the best management practices for collecting and reporting such information, ways to avoid duplicating burdens that may be imposed by other agencies and how to incentivise the use of safe chemicals in hydraulic fracturing. A final report was issued in December 2016.

Several other state and federal regulatory agencies are considering issuing new rules regulating oil and gas drilling, mainly as a result of shale oil and gas drilling. A topic of recent concern relates to increased seismic activity experienced in areas of hydraulic fracking operations and caused by the injection of waste water and other chemicals.

18 Which entities may perform exploration and production activities? Describe any registration requirements. What criteria and procedures apply in selecting such entities?

Pursuant to the OCSLA and in accordance with a five-year plan, BOEM grants offshore oil leases on the OCS to the highest qualified responsible bidder on the basis of sealed competitive bids. Auctions are based not on variable royalty rates but rather on the 'signature bonus' offered.

Pursuant to the Mineral Leasing Act, the BLM has responsibility for oil leasing on federal lands onshore, as well as state and private surface lands where mineral rights have been retained by the federal government. Lands cannot be leased until they are first offered competitively at an auction, which is conducted by oral bidding; no sealed or mailed bids are accepted. Leases are awarded to the highest qualified responsible bidder. Lands that have been offered competitively and received no bids are then made available non-competitively for leasing for two years.

On privately held lands, any person or entity capable of legally contracting with the lessor can do so, subject to state regulatory requirements.

See question 43 regarding restrictions on foreign holdings.

19 What is the legal regime for joint ventures?

The US does not specify a particular kind of agreement for collaborative development of an oil production project owned by multiple parties. Collaborative development or joint ownership is not considered a 'joint venture' under some applicable laws and often the agreement for collaborative operations negates the existence of a 'joint venture'. Operations by one or more parties come in two main categories. The first is a contract to share costs and benefits from a joint undertaking, often conducted by one mineral rights owner or lessee on behalf of others with interests in the same land or in lands embracing a particular reservoir. An example is the joint operating agreement, often entered into on Association of International Petroleum Negotiators (AIPN) or American Association of Professional Landmen (AAPL) forms. The accounting procedure under a joint operating agreement is often that specified by the Council of Petroleum Accountants Societies (COPAS). The second category consists of separate legal entities, which are typically encountered in processing, midstream and downstream applications. These entities include general or limited partnerships, corporations and limited liability companies. The particular terms of both types of agreements may substantially differ from those for a joint venture outside the US.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Unitisation is the consolidation of exploration and production activities affecting several parcels of land, or several interest holders in a given parcel. The consolidated activities are usually conducted by a unit operator. The goal is the efficient development of a common reservoir and equitable distribution of the costs, risks and benefits of production. Unitisation of federal lands requires DOI approval. 'Pooling' sometimes refers to the conduct of drilling for resources under multiple parcels to comply with well spacing or other permit conditions. Both pooling and unitisation can be voluntary or compulsory under certain state statutes.

21 Is there any limit on a party's liability under a licence, contract or concession?

While there are limits under some statutes for certain categories of liability, there is no overall external law limiting liability of a party involved in oil and gas operations. To the extent multiple parties engage in such operations, such parties' liabilities are generally joint and several, subject to any contractual indemnities that may allocate such liabilities.

As part of consolidated legal proceedings in the Deepwater Horizon oil spill, a federal court had the opportunity to consider whether private contractual indemnities covering gross negligence were enforceable. The court found that such indemnities were enforceable, except when applied to punitive damages or federal civil penalties.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

BOEM typically requires surety bonds from the operator of offshore operations, and may also require supplemental surety bonds from other present or former owners or operators. BLM regulations for onshore operations require surety or personal bonds to ensure compliance with requirements (see question 31). Private parties may require a variety of surety bonds, standby letters of credit or other forms of collateral to secure performance of operation, abandonment and decommissioning obligations. State regulations also require security for various types of oil operations. While parental guarantees are not required by external law, they may be required under contractual terms between parties.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

The United States maintains several different 'buy American' type laws, which apply in different contexts and are normally limited in application to procurements by governmental entities, but which include subcontracts of prime contractors on such projects. If a country imposed local content requirements as a condition of investment, that could conflict with obligations under the World Trade Organization (WTO) agreements and free trade agreements.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

As noted above, there a number of different 'buy American' type laws. Although none apply specifically to oil and gas projects, purchases by the DOE may be subject to the Trade Agreements Act, which restricts federal government agencies from purchasing from countries that are not party to an international agreement (the WTO Government Procurement Agreement or a free trade agreement) that requires national treatment for government procurements. State and local governments that have received federal government funding under certain programmes (eg, involving some transportation-related projects) can be subject to requirements to use US-origin steel and other products made in the United States.

The current administration has proposed to impose requirements for the use of domestic steel in new pipeline projects, but has not yet indicated how such requirements would be implemented.

25 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

Where an oil development project in the US is being undertaken with assistance from a federal or state entity, there may be incentives or requirements for the operator to participate in regional hiring or job training programmes.

Transfers to third parties

26 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The transfer process differs for federal, state and private agreements, and also differs between onshore and offshore for federal properties. For example, assignments of record title interests and operating rights interests in federal OCS oil and gas leases, as well as offshore pipeline right-of-way grants, require the approval of BOEM. The time frame for BOEM processing of assignment applications is not specified. The assignment application requires payment of a nominal fee.

For onshore leasing and operational activities on federal lands, similar assignments are approved by the BLM. The BLM charges a nominal fee for assignment applications, and, likewise, does not specify a time frame for approval. Approval of state or local agencies, or both, may also be required for transfers of interests in assets under their jurisdiction. Transfer or assignment does not generally give rise to pre-emptive rights reserved to the government.

27 Is government consent required for a change of operator?

The new operator on a lease must notify and obtain approval from the BOEM or BLM of the change in operator. Approval is contingent on the new operator's furnishing of any relevant bonding or equivalent financial collateral to secure performance of its operations and cover liabilities. Leases of state onshore and offshore lands contain notification provisions and may also contain consent provisions.

28 Are there any specific fees or taxes levied by the government on a transfer or change of control?

When there is a change in control, such as an assignment or transfer, the BLM (for onshore leases and rights-of-way), BSEE (for assignments of pipeline rights-of-way) or BOEM (for offshore leases) will subject the relevant application to a processing fee, similar to an initial application for a lease or grant.

BLM, BSEE and BOEM regulations relating to assignments and transfers do not contain provisions regarding any applicable taxes.

Title to facilities and equipment

29 Who holds title to facilities and equipment used for oil exploration, development and transportation activities?

Because oil industry activities in the US are generally conducted by private entities, title to the associated facilities and equipment is determined by private contracts among the vendors, operators and co-owners.

Decommissioning

30 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Regulations, conditions of approval and lease terms establish the applicable requirements, procedure and time frames for decommissioning of wells, structures and pipelines on terminated leases and decommissioning of pipelines on terminated pipeline rights-of-way.

BLM regulations govern abandonment of oil and gas facilities on federal lands. A plan for plugging and abandoning of wells must be approved by BLM in advance. In addition, any pipelines or other facilities must be removed within a reasonable time after the expiration of lease or right-of-way grant and the area must be remediated and restored as determined by BLM. As an alternative, BLM may allow certain facilities to remain if harm will be caused by removal. Failure to remove facilities may result in BLM claiming the equipment for the United States or charging the operator for any removal and restoration conducted by the agency.

On federal outer continental shelf lands, decommissioning is governed by BSEE regulations. When facilities cease to be useful for production or a lease or grant terminates, the lessee must obtain BSEE approval to decommission wells and pipelines, platforms and other facilities, permanently plug wells, remove platforms and other facilities (with specified exceptions), and decommission pipelines and remove obstructions on the seafloor created by the lease and pipeline right-of-way operations. Post-production removal of oil and gas facilities may be deferred if they are converted to renewable energy generation or alternate use pursuant to a programme permitted by the Energy Policy Act of 2005. Lessees or operators of a right-of-use and easement for renewable energy or alternate use generally must also meet the decommissioning obligations when their projects cease operation. BSEE may also approve conversion of a platform to an artificial reef under the federal Rigs-to Reefs programme, if a state agency accepts title and liability for the structure.

Lessees, owners of operating rights and holders of a right-of-way are jointly and severally liable for decommissioning obligations. In recent years with the decline of oil prices and advanced ageing of

certain fields, the looming cost of decommissioning has become a concern for operators and the government. Since 2009, at least 15 companies qualified to operate in the Gulf of Mexico have filed for bankruptcy, prompting the BOEM to re-evaluate its bonding requirements for lessees to secure future decommissioning costs (see also question 31).

31 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

For onshore leases on federal lands, BLM regulations require lessees or operators to submit a surety or personal bond in an amount sufficient to ensure compliance with applicable requirements including plugging of wells, reclamation of the lease area and the restoration of land and surface waters adversely affected by lease operations upon abandonment or cessation of oil and gas operations. In 2015, the agency solicited public comment on a potential increase in minimum bonding amounts to reflect inflation and higher decommissioning costs, but the final published regulation omitted any change to the bonding requirements. Bond coverage is required prior to BLM approval of any lease development activities, and the requirement may be satisfied by a surety or personal bond posted by the lessee, sublessee or operator.

For offshore leases of federal outer continental shelf lands, BOEM requires general bonding and supplemental bonding that varies based on an annual review conducted by the BSEE of the lessee's decommissioning liability and an assessment by BOEM of the lessee's financial resources. In order to create better estimates of decommissioning costs, the BSEE issued a final rule in December 2015 requiring lessees to submit certified summaries of the actual cost of decommissioning activities such as well plugging, platform removal, and site clearance within 120 days of completion. In 2016, BOEM issued a Notice to Lessees (NTL) overhauling how it would interpret its supplemental bonding regulations and discontinuing to a significant extent the amount of self-insurance lessees could use to secure obligations under the lease. In early 2017, BOEM temporarily suspended implementation of the NTL and is currently reviewing the policy.

States and private lessors generally address offshore and onshore decommissioning through lease terms. Typical provisions require the lessee to maintain a bond in favour of the state and to either surrender or remove all improvements, at the option of the state, upon lease termination. The lessee may retain the right to remove equipment with reuse or salvage value.

Transportation

32 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Rates and other terms for oil transportation via interstate pipelines are regulated by FERC, and pipeline operators must file tariffs with FERC. FERC generally allows interstate pipelines to charge market-based rates up to a ceiling. FERC regulations also require interstate pipelines to provide non-discriminatory service to all shippers. The Pipeline and Hazardous Materials Safety Administration (PHMSA) of the US Department of Transportation regulates the safety of interstate oil pipelines. States regulate intrastate oil pipelines, and may regulate gathering lines and other transportation activities. Some states have adopted variations of FERC's market-based rates policy. In addition, pipelines face a number of federal, state, and local permitting requirements. If the pipeline passes through tribal lands, separate permitting rules will apply (see also 'Update and trends').

At present, trucking and marine vessel transportation prices are not regulated, although safety, health and environmental regulations apply generally to pipelines, vessels and trucks (see question 33). With the increasing use of rail for shipping crude oil, the US DOT has focused on the safety of oil shipments by rail. In 2014, the US DOT issued an emergency order requiring persons who ship crude oil by rail in rail tank wagons to ensure that the material is properly tested with respect to flash point and boiling point to ensure it meets the standards to be transported by rail safely. A final rule, issued in 2015, focused on safety improvements designed to prevent accidents, mitigate consequences in the event of an accident, and support emergency response. In 2015, Congress passed Fixing America's Surface Transportation (FAST) Act, which includes numerous provisions related to rail safety generally. Among these were enhanced tank car standards and a mandatory phase-out schedule for older tank wagons.

33 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Construction of a new interstate oil pipeline does not require approval from the federal government unless the pipeline will cross federal lands, but the operator must file a tariff with FERC. Pipeline construction projects require permits from state or local agencies, although some states no longer require public utility approval to construct new pipelines. Other forms of transportation are not generally subject to public utility regulation, but are subject to the Federal Motor Carrier Safety Act and other health, safety and environmental law. Rail transport of crude oil is subject to regulation by US DOT.

Pipelines across national boundaries require a presidential permit for construction. Pursuant to Executive Order 13337, this authority has been delegated to the State Department. The State Department must determine whether the proposed pipeline is in the 'national interest,' taking into account the project's potential effects on the environment, economy, energy security, foreign policy and other factors, and must consult with relevant state and federal agencies and solicit public comments.

In March 2017, the State Department issued a permit for the controversial cross-border Keystone XL Pipeline, finding it to be in the national interest. The 875-mile pipeline would transport crude from Alberta, Canada to a connection in Nebraska, destined to the US Gulf Coast for refining.

In 2015, Congress reversed a decades-old crude oil export limitation – a holdover from the oil embargo in the 1970s. US producers are now free to export crude without obtaining a licence from the Department of Commerce, except to embargoed or sanctioned countries.

Cost recovery

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Unlike countries in which all mineral resources are owned by the state, in the United States the federal government only owns production by virtue of private development of its interests in the continental shelf and on federal lands. These interests are generally auctioned and leases are awarded to the highest qualified responsible bidder. As such, there is not a general programme with the cost recovery features of a production sharing contract.

Health, safety and environment

35 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The legal regime for energy production and development

A new or modified exploration or development operation will usually need a local land use development permit as well as drilling and operating permits. Many projects must undergo a thorough environmental impact review under the federal National Environmental Policy Act or a state analogue. The process includes substantial public involvement and can be quite contentious. Failure to complete the process or comply with permits can lead to significant delays, penalties and injunctions.

Discharge restrictions

The federal laws applicable to the discharge of pollutants into the environment are generally not industry-specific. They are instead based on a particular impact. The Resource Conservation and Recovery Act (RCRA) regulates the management of solid and hazardous waste; the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) governs the clean-up of contaminated sites; the Clean Air Act (CAA) regulates air emissions from mobile and stationary sources; and the Clean Water Act (CWA) and Safe Drinking Water Act protect surface water and underground sources of drinking

water. The principal federal enforcement agency is the EPA, but state agencies enforce similar state laws and can also be delegated authority by EPA to implement and enforce certain federal statutes such as the CAA, the CWA and RCRA.

While the foregoing environmental laws are applicable throughout the economy, there are some statutes that are focused on the oil and gas sector. For example, under the CWA, the EPA has issued effluent guidelines specific to both upstream and downstream oil operations, as well as rules applicable to the discharge of oil into navigable waters. The Oil Pollution Act of 1990 (OPA) addresses clean-up and damage assessments relating to oil spills into the navigable waters of the US, the adjoining shorelines or the exclusive economic zone. Another example is the Pipeline Safety Improvement Act of 2002, which governs the way in which the natural gas industry ensures the safety and integrity of its pipelines. By way of contrast, state regulatory agencies protect 'state waters', which are usually intrastate bodies of water and groundwater. Virtually all oil and gas facilities are subject to the requirements of the CWA, which generally protects the waters of the US from sources of pollution by prohibiting the discharge of pollutants without a permit. The CWA establishes and protects water quality standards, prohibits the oil pollution of these waters and exacts stringent penalties if such pollution takes place, establishes a comprehensive system of water discharge permits and authorises the US Army Corps of Engineers to issue permits for the discharge of dredged and fill material into waters of the United States. The scope of the federal government's jurisdiction over these waters is often controversial, and the EPA and the Corps of Engineers issued a new rule in 2015 to define the scope of this authority. However, the rule is currently being challenged in court and the President has recently directed both EPA and the Corps of Engineers to review this rule. As is the case with most federal environmental statutes, many CWA powers have been delegated to state environmental agencies, subject to EPA oversight.

OPA is a 1990 amendment to the CWA, which increased the federal government's authority to respond to large spills of oil into the waters of the United States. It applies to the owners and operators of onshore and offshore oil handling facilities, including oil cargo vessels, and imposes a CERCLA-like regime of joint and several and strict liability for these spills.

In 1980, CERCLA gave funding and enforcement authority to the EPA for the clean-up of sites contaminated by the spill or release of hazardous substances into the environment. Those persons or business entities determined to be 'responsible parties' can be held jointly and severally liable for the payment of clean-up costs on a strict liability basis; negligence need not be proven. CERCLA contains a 'petroleum exclusion', which excludes petroleum, crude oil and many petroleum products from the list of hazardous substances.

In addition to penalties and enforcement, CERCLA and OPA provide for the assessment of natural resource damages resulting from such spills or releases. Specific to the oil industry, OPA provides that responsible parties under the Act are liable for certain damages caused by an oil spill, which include damages to natural resources, real or personal property, subsistence use, lost government revenues, lost profits and earning capacity, and lost public services.

Both CERCLA and OPA designate state and federal governments and Indian tribes as trustees over the natural resources with the obligation to act on behalf of the public to recover damages. Therefore, when natural resources are damaged because of a discharge or release, one or more trustees will be responsible for ensuring that the resources are restored to their baseline condition and that the public is compensated for the interim loss of use. For example, the National Oceanic and Atmospheric Administration has primary responsibility to ensure that coastal resources are restored to their original condition and use.

Air pollution discharge or emission limits that are enforced under the CAA may apply to all sources of a particular type (eg, refinery heaters and boilers), or may be facility-specific. The CAA utilises permits to control the emission of air pollutants into the environment from industry and commercial activities. The oil and gas sector is subject to stringent regulations in the exploration and production, transportation, petroleum refining and distribution phases of operations. Federal and state environmental laws regulate both new and existing sources of air pollution. New sources, including existing sources undergoing major modifications, must often comply with more stringent emissions or technology standards.

Regulations and permit conditions may include detailed record-keeping and reporting requirements. Each statute and agency has considerable penalty, injunction and criminal law remedies for non-compliance (eg, maximum of $37,500 per day fines and imprisonment for CAA violations), and in some cases private parties may also recover damages or enforce public interests via citizen suits.

Following the Supreme Court's decision in *Massachusetts v EPA*, the mandates of the CAA are being extended to the generation of greenhouse gases, principally carbon dioxide. Recently, the EPA has enacted regulations under the CAA requiring certain facilities to monitor and record greenhouse gas emissions pursuant to the Mandatory Reporting Rule. Depending on the facility, the monitoring and record-keeping requirements can be substantial. Facilities covered by the rules include both upstream and downstream oil and gas operations.

Waste management

The federal Solid Waste Disposal Act and its 1976 amendment known as RCRA regulate the management and disposal of solid waste and especially hazardous waste. With respect to oil and gas operations, a number of production wastes are specifically excluded from hazardous waste regulation, and states also generally consider these wastes to be non-hazardous solid wastes. On the other hand, several petroleum refinery wastes are listed as hazardous wastes, and are subject to much more extensive regulation. The RCRA waste management system has been described as a 'cradle to grave system', requiring the observance of comprehensive permitting, record-keeping and reporting obligations. Under RCRA, many regulatory powers have been delegated to state agencies for permitting and enforcement.

Navigation

Activities affecting the waters of the United States are regulated by the EPA, the Army Corps of Engineers, the US Coast Guard and various other agencies such as port authorities, each of which enforce laws such as the CWA and the River and Harbors Act.

Ecology

The Endangered Species Act can prohibit or strictly regulate activities that might materially impair the habitats of threatened and endangered species. For example, a new facility might be prohibited in an area with an endangered plant species, or particular mitigation measures (such as habitat replacement or augmentation) might be required to minimise adverse impacts to an animal species. For offshore exploration, the Fishery Conservation and Management Act governs the effects on the fishing industry, and the Marine Mammal Protection Act does the same for affected mammals. In addition, the Migratory Bird Treaty Act (MBTA) prohibits the taking or injuring of migratory birds, including nests and eggs, and the National Marine Sanctuaries Act authorises the secretary of commerce to designate and protect areas of the marine environment having special national significance. The prohibitions enforced by the MBTA have been applied to oil and gas production pits and other facilities, which can present a threat to migratory birds.

Cultural resources

A number of mandates deal with projects that may disturb or uncover property of cultural significance, including the National Historic Preservation Act of 1966, the American Antiquities Act of 1906, the Archaeological Resources Protection Act of 1979 and the Abandoned Shipwreck Act of 1987.

Health and safety

The OCSLA authorises the DOI to lease offshore tracts for oil and gas exploration and development, and to regulate that development through permitting, inspections and enforcement actions (see question 12). The OCSLA permitting scheme involves extensive health and safety requirements.

The Occupational Safety and Health Administration (OSHA) and state and local governments all enforce rules protecting employees and contractors from workplace injuries. BSEE regulates and enforces safety rules at offshore facilities such as drilling rigs and oil platforms. Record-keeping requirements can be very significant; for example, records of occupational injury must be kept for the duration of the employee's service plus 30 years.

In addition to record-keeping requirements, OSHA imposes certain inspection and safety programme requirements involving mechanical integrity of equipment, hazards analysis and process safety. OSHA has recently revised and strengthened the Hazard Communication Rule, which requires that workers be advised of the presence and threats of chemical products in the workplace. OSHA inspects facilities and has the power to issue citations for violations. See question 37 for additional information on OSHA.

The Chemical Safety Board (CSB), an independent federal agency, has authority under the CAA to investigate accidental releases resulting in a fatality, serious injury or substantial property damages. This authority includes releases occurring at oil-related facilities such as refineries. Although the CSB does not possess enforcement powers under its enabling statute, the board does issue public recommendations and reports that can influence other agency decisions. See question 37 for additional information on the CSB.

The DOT regulates oil and natural gas pipelines and the transportation of petroleum and petroleum products by rail. The DOT issued significant new safety rules in 2015 affecting pipelines and rail transport to improve accident prevention, mitigation and emergency response.

Homeland security

The Department of Homeland Security implements requirements relating to safety and security under the Maritime Transportation Security Act of 2002 (MTSA) and the Chemical Facility Anti-Terrorism Standards (CFATS). The MTSA requirements include development of site security plans, designation and management of certain information as sensitive security information and security clearances for personnel. The CFATS interim final rule issued in 2007 requires covered chemical facilities to prepare security vulnerability assessments, which identify facility security vulnerabilities, and to develop and implement site security plans, which include measures that satisfy the identified risk-based performance standards.

36 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The EPA regulates the composition of mobile source fuels and fuel additives at the federal level, although substantial additional regulation of oil and oil products occurs at the state level. Sales of imported oil products that do not comply with EPA standards are prohibited. Uniquely, federal law authorises California to set its own fuel standards, which may then be adopted verbatim by other states. California's regulations specify many required elements of fuel composition, such as volatility and aromatics, oxygenate and sulphur content.

Recently, there have been several major federal fuel specification changes. Among these changes are the 'Tier 3' motor vehicle emission and fuel standards (which require a further reduction in the sulphur content of gasoline and include an averaging, banking and trading (ABT) programme to provide further flexibility), the elimination of the 2 per cent oxygen content requirement under the CAA for reformulated gasoline and the 2012 revisions to the renewable fuels standard programme (RFS2) under the Energy Independence and Security Act of 2007 (EISA) (see question 3). Under the CAA section 211(o), as amended by the EISA, the EPA is required to annually establish specific annual volume standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel that must be used in transportation fuel for the following year based on projections from the EIA. In 2015, EPA adopted a direct final rule making a number of minor amendments to the light-duty Tier 3 vehicle and fuel standards and other various non-road and fuel provisions, including references to the updated MARPOL Annex VI provisions, updating of the test procedure specifications for measuring permeation emissions and diurnal emissions from land-based and marine fuel tanks, and removal of the expiration date for the regulatory provision allowing manufacturers to use the ethanol-based test fuel (E10) specified for certifying engines in California.

At the state level, California regulators adopted the Low Carbon Fuel Standard (LCFS) in 2009, which regulates the carbon intensity of transportation fuels sold in California in order to reduce the amount of greenhouse gas emissions. In fact, the LCFS is expected to contribute 20 per cent of the greenhouse gas emissions reductions achieved pursuant to California's Assembly Bill 32, the Global Warming Solutions Act of 2006. In 2011, the US District Court for the Eastern District of California held that the LCFS regulations discriminated against non-California fuels by assigning them a higher 'carbon intensity' (because of the need to transport such fuels into California) and thus were an unconstitutional restriction on commerce between California and other states. However, in 2013, the Ninth Circuit Court of Appeals reversed that decision and upheld the LCFS as not discriminatory against out-of-state fuels on the face of it. In 2014, the US Supreme Court declined to review the Ninth Circuit ruling, and in 2015, the California Air Resources Board readopted the LCFS. In 2009, the governors of 11 north-east and mid-Atlantic states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont) signed a memorandum of understanding to work towards adopting a regional low carbon fuel standard. In addition, the Oregon legislature authorised a full implementation of an analogous clean fuels programme in 2015. Washington has also taken steps towards developing a low carbon fuel standard based on the California model.

In most cases, fuel composition must be certified by the EPA or the state air authority. These agencies may impose substantial penalties for sale of non-complying fuels and for failure to maintain accurate composition and manufacturing records. The EPA incentivises self-evaluation, self-disclosure and correction of violations by not recommending civil or criminal penalties for entities that promptly address their non-compliance.

Other oil-based products, such as lubricants and solvents, are regulated by the EPA pursuant to the Toxic Substances Control Act (TSCA). The TSCA authorises the EPA to require pre-manufacture notifications (PMNs) for any new chemical substance prior to its being imported to, or manufactured in, the US, subject to certain exemptions. In most cases, PMNs must be supported by adequate health and safety data, and TSCA imposes reporting and record-keeping obligations on manufacturers and distributors of subject chemical substances. Violations of TSCA can result in civil and criminal penalties, as well as seizure of products manufactured or distributed in violation of TSCA.

At the time of writing, the future of fuel regulation in the United States faces several uncertainties. In March 2017, President Trump directed the EPA to withdraw new fuel efficiency standards. The EPA is also considering revoking the federal waiver that grants California the ability to set more stringent fuel efficiency standards, which other states can adopt.

Labour

37 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Foreign workers

All employers in the United States, including oil companies, must verify the identity and legal authorisation to accept employment of each newly hired employee. The federal laws requiring this action were established as part of the Immigration Reform and Control Act (IRCA) and apply equally to US citizen and lawful permanent residents (ie, 'green card holders') as well as foreign national personnel. Form I-9, Employment Eligibility Verification Form, is the form created by the federal government in order for US employees to satisfy this employment verification paperwork requirement for all new employees. Additionally, employers who have federal contracts with US government agencies must participate in E-Verify, an otherwise optional federal internet-based system that requires an employer to sign a memorandum of understanding with the government, and run all new hires through E-Verify. Further, certain states require mandatory participation in E-Verify. Penalties for I-9 violations include substantial fines ($1,000 or more per violation). An employer's failure to properly complete the appropriate employment verification paperwork can result in fines between $110 and $1,100 per violation. However, these fines can quickly escalate if an employer knowingly hires a worker who is not authorised to accept employment (as much as $16,000 per worker), or engages in a pattern

of practice of wilful disregard of the I-9 rules. Employers should be mindful of anti-discrimination rules (eg, not requesting specific documentation rather than a menu of acceptable documents).

Categories of non-immigrant visas, which are temporary in nature for work periods covering a few months to several years, include business visitors, students, trainees and employment-based professional classifications. The adjudication process may require several weeks or months to obtain most employment-based temporary (known as non-immigrant) work authorisations. Many visas will require acquisition of the visa through an interview at a US consulate abroad.

Commonly used employment-based non-immigrant visas include:

- the L-1 classification (intracompany transferee) used for executive, managerial or personnel with specialised knowledge who are transferred within a corporate group from a location abroad to a related US subsidiary, affiliate or branch;
- the H-1B classification (specialty occupation) used for 'specialty occupation or professional' positions, which normally require college-level degrees in a specific field of study to perform the duties and responsibilities of the position;
- the specialised visas created by treaty for citizens of Canada (TN-1), Mexico (TN-2), Singapore/Chile (H-1B1) and Australia (E-3) with similar standards to the H-1B classification;
- the E classification (treaty investor/trader) for executive, managerial or personnel with essential skills and knowledge who are of the same nationality as the intended employer and are nationals of one of 83 countries with whom the US maintains specialised treaties; and
- the TN classification (NAFTA) for professionals who are Canadian or Mexican citizens transferred from any country of residence as long as their profession is listed on the NAFTA Appendix D list of eligible professionals.

In some limited cases, a foreign national who lacks employment authorisation in the United States can enter in the B-1 (business visitor classification) to represent the interests of a foreign employer to further the goals of the foreign company, such as attending board or high-level strategic planning meetings, pre-sales or post-sales meetings, or participating in internal training. Further, the 'B-1 in lieu of H-1B' sub-classification under the B-1 visa, which some consulates acknowledge, allows B-1 in lieu of H-1B holders to perform productive employment of a professional nature for up to six months, as long as they are professionals and continue to be employed by the foreign entity.

The immigration landscape in 2017

Employers should expect enhanced immigration compliance in 2017. Noteworthy is the Trump administration's calls for agencies to investigate the H-1B programme. An April 2017 executive order called for agencies to review potential H-1B programme abuse in the US and possibly to increase the required US salary wage floors for H-1B workers. H-1B reform in 2017 may be targeted at limiting eligibility for large third-party contractors.

Immigration corporate compliance is also critical for the use of contracted personnel. Although much of the risks and liabilities associated with contract workers are maintained by the company assigning the worker, in recent years the government has increased the responsibilities, notice requirements and many of the liabilities of the company accepting the contract personnel as well.

Labour relations

Employers in oil, as well as other sectors, must comply with a wide range of federal statutes and regulations, including the National Labor Relations Act (NLRA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA) and the Occupational Safety and Health Act (OSH Act). State and local laws and agencies supplement the federal workplace rules.

The NLRA confers on private sector employees a variety of rights to form unions; to engage in union organisation campaigns; to bargain collectively; and to strike and take other concerted activity. The NLRA also imposes limitations on those rights, and empowers employers to conduct labour relations alone or in concert with similarly situated firms, and is enforced by the National Labor Relations Board. Important labour unions in the US oil industry include the Oil, Chemical and Atomic Workers Union.

The FLSA imposes overtime and minimum wage requirements for certain employees, unless the employee falls within a category of workers who are 'exempt' from these requirements, such as employees that perform certain executive, administrative or professional duties and are paid a designated minimum salary. Specific wage or overtime rules are provided for some particular oil industry employers, such as certain wholesale distributors of refined products. The FLSA is enforced by the Department of Labor (DOL). Many states have their own specific wage and hour requirements, and employers must comply with the requirements that are most protective of the employee.

The FMLA requires larger employers to provide up to 12 weeks of unpaid annual leave for certain employees who have serious health conditions or who desire to care for dependants. An employee who exercises the FMLA right enjoys certain assurances of post-leave employment and protection from retaliation. This statute is also enforced by the DOL.

In addition to federal laws, some states have also passed laws regulating workforce issues. For example, a California law effective in 2014 (Senate Bill 54) requires oil refineries generally to use contractor workforces that are paid union-level wages and that include large proportions of graduates of apprenticeship or equivalent programmes.

The OSH Act created OSHA to set and enforce workplace health and safety standards. OSHA and state OSH agencies (with only a handful of exceptions, occupational safety and health is enforced by state agencies) remain committed to rigorous enforcement of process safety in the aftermath of high-profile refinery accidents, including a 2015 explosion at the ExxonMobil refinery in Torrance, California that injured two workers as well as earlier fires at Chevron's two refineries in California. These events, and others, prompted California to pursue specific amendments of the state's Process Safety Management and Accidental Release Program refinery regulations.

Another federal agency, the CSB, focuses on safety within the energy industry and champions what the agency considers inherently safer technologies and the use of 'leading' and 'lagging' process safety indicators to measure operators' safety performance. The agency emphasises the importance of safety culture and oversight in upstream oil and gas exploration and production activities, as well as in downstream operations. As part of its investigation and final report into the Deepwater Horizon incident, the CSB made recommendations to the BSEE to augment current offshore safety regulations to require operators and other responsible parties to effectively manage all safety-critical elements (SCEs) through independent audits and verification processes, documented performance standards and greater accountability to the regulators. The CSB also made recommendations to the American Petroleum Institute to publish offshore exploration and production safety standards for the identification and management of SCEs.

Additional federal and state agencies enforce risk management programmes under the CAA and state law that frequently parallel the issues germane to OSHA and CSB. However, these regulatory activities concentrate on manufacturing processes involving certain hazardous substances and are not necessarily tied to workplace protection per se.

Anti-discrimination

Many federal, state and local laws prohibit discrimination in employment on the basis of a 'protected classification' such as race, colour, sex, religion, national origin, disability (mental or physical, including pregnancy), age, Vietnam-era veteran status, sexual orientation, medical condition or genetic information. There may be additional protected categories under state or local law. Even an ostensibly neutral policy that results in a 'disparate impact' on a race, sex or other protected classification can be the basis for a claim, unless the employer can demonstrate the policy is justified by 'bona fide occupational qualifications'. Disparate impact claims can be asserted under federal laws prohibiting age discrimination unless the employee can show that the challenged policy or practice was based on reasonable factors other than age. Statutes prohibiting discrimination based on religion and disability require employers to provide reasonable accommodations so that a qualified employee who falls within the protection of these statutes is able to work. The federal laws include Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, 42 USC section 1981 (prohibiting racial discrimination in employment), the Equal Pay Act, the Rehabilitation Act and the Americans with Disabilities

Update and trends

New challenges for pipeline development
The development of new crude oil pipelines is important to the United States industry, in part because the new plays in the Permian Basin, the Bakken and elsewhere are underserved by logistical assets. Recent experience confirms that permitting and construction of new lines will face a changing set of difficulties. Novel forms of pressure are being applied to pipeline development from several discrete directions, including environmental, financial and property rights concerns.

Non-governmental organisations (NGOs) regularly object to the siting or permitting of pipelines on the basis that any additional infrastructure will prevent fossil fuel resources from being 'kept in the ground'. The Obama administration had required the White House Council on Economic Quality to weigh in on climate change concerns in federal decision-making. While the Trump administration rescinded that order, some state agencies and many private intervenors can be expected to raise similar arguments. The NGOs have signalled that they will respond to being shut out of federal policymaking by redoubling their state-level efforts to frustrate pipeline and other infrastructure projects.

From a different angle, public entities expressing their opposition to a pipeline have sought to induce banks to avoid lending to the projects. For example, in February 2017, the city councils of Seattle, Washington and Davis, California voted to suspend their banking relationships from Wells Fargo, a lender to the Dakota Access Pipeline (DAPL).

Pipelines continue to face land use and routing controversies when any permit or other agency consent is required. For example, when the Iowa Utilities Board employed eminent domain for 200 parcels of land for the DAPL, several of the landowners sued and engaged in the regulatory process. Numerous protests along the DAPL route sprung up given the need for Army Corps of Engineers permits and other approvals, with the most widely reported and largest protest occurring at the Standing Rock Reservation in North Dakota.

Act. These statutes are generally enforced by the Equal Employment Opportunity Commission.

The remedies for a discrimination claim can be significant. They can include orders of reinstatement, back and front pay, compensatory damages such as pecuniary losses and emotional distress, and punitive or exemplary damages. Only a few of the anti-discrimination laws have maximum penalties, such as the $300,000 per employee limitation under Title VII for compensatory and punitive damages, and applicable state statutes may have no such limitation. Oil industry employers have faced significant claims, both by individuals and by collections of similarly situated employees bringing class actions.

Taxation

38 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The income tax regime for exploration and production has numerous special features, whereas transportation, marketing and distribution are generally subject to the same rules facing other industrial businesses. A host of industry-specific deductions apply to upstream expenditures, including pre-drilling exploration costs, intangible drilling costs, accelerated depreciation of oilfield equipment and depletion of subsurface resources. Tax planning is required for optimal acquisition and divestiture of leases and other production interests, such as production payments and farm-ins. State income tax laws supplement these provisions and incentives (though not all states impose an income tax). Some states also impose severance taxes on production.

Federal and state excise taxes are collected on the retail sale of motor fuels. Oil companies are subject to state property tax on holdings of real property and certain personal property; state sales and use tax on certain acquisitions of personal property, and in some cases, services; withholding requirements on distributions to certain foreign shareholders, partners and other payees; and transfer taxes on sales of real property.

The Oil Spill Liability Trust Fund, authorised under OPA, is funded in part through a tax levied on oil companies for barrels of oil produced in or imported into the US.

The principal tax agency is the Internal Revenue Service at the federal level, with customs duties being handled by the US Customs Service, both part of the Department of the Treasury, and state taxes being administered by a variety of agencies.

Commodity price controls

39 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Crude oil is an international commodity, and as such, its price is determined by international supply and demand factors. Neither the US federal government nor the states regulate the price of crude oil or refined products. More than half of the states have laws or regulations that seek to regulate 'price gouging', particularly during times of declared emergency.

Competition, trade and merger control

40 What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

Two agencies have principal responsibility for enforcing federal competition laws (called 'antitrust laws' in the US): the Federal Trade Commission (FTC) and the Antitrust Division of the DOJ. Each agency has civil authority to enforce statutes of general application, including the Sherman Act's prohibition against a wide array of restraints of trade, and monopolisation, attempts and conspiracies to monopolise; the Clayton Act's prohibition against mergers and acquisitions that are likely to substantially lessen competition, as well as exclusive dealing and tying arrangements that unreasonably restrain trade (also prohibited by the Sherman Act); and the Robinson-Patman Act, which prohibits price discrimination and related practices resulting in competitive injury. Traditionally, however, only the FTC has enforced the Robinson-Patman Act, and in recent years only on rare occasions. Only the DOJ has authority to pursue criminal investigations for cartel behaviour. The FTC also enforces the Federal Trade Commission Act, which prohibits 'unfair methods of competition' and similar offences, and has the option of challenging anticompetitive behaviour before either an administrative tribunal or a federal court.

Many states and some subdivisions also have antitrust and unfair competition acts or a common law antitrust jurisprudence. Under federal antitrust laws (except the Federal Trade Commission Act) and some state regimes, private parties may bring civil lawsuits seeking relief for antitrust violations. Prevailing plaintiffs under federal law may obtain, in appropriate cases, both injunctive relief and compensatory damages, which are automatically trebled, as well as attorneys' fees and costs.

Regulations on concentration of oil lease holdings include BOEM's List of Restricted Joint Bidders, which limits joint bids by two or more companies with high daily average production and the review of winning OCS lease bids by the FTC and DOJ before any bid is formally accepted.

41 What is the process for procuring a government determination that a proposed action does not violate any anticompetitive standards? How long does the process generally take?

The DOJ's business review letter programme and the FTC's advisory opinion programmes are sometimes used for comfort on proposed joint ventures, information exchanges and similar concerted activities. The review period can extend many weeks, months, or even longer, from the submission of all supporting data, and the agencies only describe their present enforcement intentions without definitively approving the conduct.

Certain joint ventures, mergers and business purchases are subject to mandatory reporting under the Hart-Scott-Rodino Antitrust Improvements Act (the HSR Act). Reports are made to both the DOJ and the FTC, but the FTC usually takes the more active role for oil industry matters. The parties are prohibited from closing the transaction until expiration of a waiting period for the government to decide whether to seek an injunction. The waiting period is usually 30 days after filing, or 15 days in the case of a cash tender offer, but is extended significantly when an agency issues a request for additional information, commonly known as a 'second request', for data, documents and interrogatory answers. The issuance of such a request suspends the HSR waiting period until 30 days after the parties substantially comply with the request for additional information (10 days in the case of a cash tender offer), although it has become common practice for the agencies to negotiate a 'timing agreement' with the parties providing the government with additional time to review the submission. Unlike in many other jurisdictions, however, neither the DOJ nor the FTC has the ability itself to block a proposed merger at the expiration of the HSR waiting period. Rather, it is necessary for the agencies to seek a preliminary injunction from a federal court pending a trial on the merits of the deal. When the DOJ acts, that trial is typically held in the same federal court as the preliminary injunction challenge. When the FTC acts, however, the trial on the merits is held before a hearing officer, typically an FTC administrative law judge (ALJ), and the ALJ's initial decision is thereafter reviewed by the Commissioners themselves. Companies may appeal against adverse decisions of the Commission to a US court of appeals.

The FTC and DOJ may also challenge transactions that are not required to be notified under the HSR Act or that are reported but that, for one reason or another, the agencies permit to be consummated without challenge in the first instance. While these challenges are rare, the agencies have shown an increasing interest in such post-consummation challenges in recent years.

International

42 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Although the United States is not a signatory to the Law of the Sea Treaty, federal laws and executive orders have established US offshore territorial zones and economic exclusion zones that are comparable to those under the treaty.

The 1978 protocol to the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL) has resulted in several US statutes pertaining to oil tankers, including OPA, the Port and Tanker Safety Act and the Act to Prevent Pollution from Ships.

The US is a member of the World Trade Organization (WTO) agreements. These instruments generally prevent member states from discriminating against imported products and services or between products and services of different member states. There is an exception for free trade agreements such as the North American Free Trade Agreement, which created a zero-duty regime for imports and exports of products among Canada, the US and Mexico. The US has free trade agreements with a number of other countries.

43 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence?

The presence of BP, Shell and PDVSA/Citgo demonstrates that foreign investment in oil resources has been welcomed and successful. However, some restrictions exist or may emerge.

Under the Mineral Leasing Act, aliens may hold interests in federal onshore leases only by stock ownership in US corporations holding leases and only if the laws of their country of citizenship do not deny similar privileges to US citizens. Aliens may not hold a lease interest through units in a publicly traded limited partnership. Foreign-owned and foreign-flagged oil tankers may call at US ports en route to and from foreign destinations. The combination of statutes known as the Jones Act requires that 'coastwise' trade between US ports generally must be conducted by vessels built and flagged in the US and staffed with US crews.

The OCSLA limits foreign staffing of many OCS facilities. Foreign investors must comply with record-keeping requirements of the International Investment and Trade in Services Survey Act.

Section 721 of the Defense Production Act of 1950 empowers a committee of executive branch agencies (collectively known as the Committee on Foreign Investment in the United States (CFIUS)) to investigate whether proposed foreign acquisitions of US businesses pose a risk to the national security of the United States. Such risks are defined to include the effects of the proposed transaction on national requirements for energy sources and physically critical infrastructure 'such as major energy assets'. Upon receiving a recommendation from CFIUS, the president is authorised to determine whether to block the proposed transaction or require divestment if the transaction has already occurred.

There is a procedure under which parties to a transaction involving a foreign acquisition submit information about the transaction to CFIUS. The CFIUS review is fact-specific depending on the characteristics of the proposed acquisition, and CFIUS may impose conditions on its approval that require the acquiring party to submit to continuing obligations.

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44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Imports

Imports of crude oil generally are subject to the regulations and standards of the FTC, Customs and Border Protection, the DOE and the Federal Energy Regulatory Commission. Further, if the import is a consumer product or a hazardous material, the import is subject to regulations and standards of the Consumer Product Safety Commission in the first instance and regulations and standards of the DOT in the second. While in a few limited instances the DOE must authorise importation of petroleum products, generally, licences are no longer required to import petroleum products.

Exports

In December 2015, the US passed legislation repealing a decades-old ban on exports of crude oil produced in the US. The legislation prohibits imposing or enforcing 'any restriction on the export of crude oil'. However, the President can restrict crude oil exports under certain limited circumstances such as in response to a national emergency, to enforce trade sanctions, or to comply with the US's obligations under international energy programmes.

Embargoes

The United States maintains economic embargoes on certain countries, including Cuba, Iran, North Korea and Syria, pursuant to regulations administered by the Treasury Department's Office of Foreign Assets Control. There are also sanctions that are targeted at discrete parts of an economy, such as Russia's energy sector. These embargoes can prohibit US persons and foreign persons from engaging in transactions involving the embargoed countries or their companies or nationals, even when nothing will be imported into or exported from the US. Embargoes also apply to entities and individuals on the List of Specially Designated Nationals, even when they are not operating from an embargoed country.

* *The authors would like to thank Alexandra Brandt and William Hotze for general assistance with updating this year's chapter, and Laura Mazel, Stephan Becker, Mark Elliott, Anthony Cavender, Andrew Weissman, Robert Ross, and Reza Zarghamee for their specific contributions.*