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, 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.

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 petroleum to more than 5,300 retail outlets and owns interests in three refineries in the United States.

'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 42 billion barrels for year-end 2017, driven by a new record for proved crude oil reserves. According to the CIA World Factbook, in January 2018, the United States ranked 10th among nations in proved oil reserves.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Oil and natural gas provided an estimated 67 per cent of US energy needs (37 per cent oil and 30 per cent natural gas). Comparatively, coal provided 13 per cent and nuclear provided 8 per cent. Renewables provided 11 per cent. Regarding non-conventional sources, the EIA projects renewables consumption to continue to grow through to 2050.

In 2017, the United States consumed an average of 19.96bbl/d of oil. The transport sector accounted for 71 per cent of oil consumption, primarily in the form of petrol. The industrial sector consumed another 24 per cent for heating, diesel engines and as petrochemical feedstock. Less than 1 per cent of US electric power generation is fuelled by oil.

US oil production has grown rapidly in recent years. In 2018, the United States consistently produced record breaking amounts exceeding 10Mmbbl/d in every month except January and has produced more than 11Mmbbl/d over several months. According to the EIA, US crude oil net imports experienced sharp declines in 2017 and 2018 (decreases of approximately 21 per cent and 36 per cent year to year). The EIA projects that the United States will become a net energy exporter after 2020. In 2018, approximately 29 per cent of US crude oil and petroleum product imports came from members of the Organization of the Petroleum Exporting Countries and 71 per cent came from non-members.

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. 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 emissions regulation 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 exhaust 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. The US Constitution gives specific delegated powers to the federal government, with all power not delegated reserved for the states. Each of the 50 states has its own constitution, and all but one (Louisiana) operate on a common-law system. At each level of government (federal, state and local), there are forms of legislation and comprehensive systems of administrative regulation and rule-making.

Contract and property rights may be enforced through lawsuits brought in state or federal courts, or by agreement in court-administered or private arbitration. Federal courts have jurisdiction only with respect to certain types of cases. State courts have jurisdiction to hear the majority of cases that involve private oil and gas rights. In the federal court system, the trial courts are called district courts and the 13 appellate courts are called circuit courts. The highest federal court is the Supreme Court, which is the final arbiter of federal constitutional questions. State judiciary systems typically have a similar structure beginning with lower trial courts, followed by one or more appellate courts. Only certain cases heard and decided in state courts are eligible for review by the US Supreme Court.

The United States also has federal courts that handle specific matters, such as bankruptcy, government contract claims and international trade. The United States is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and other conventions for recognition of foreign judgments, subject to specified exceptions.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil and gas 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 principal laws that regulate onshore oil and gas activities on federal lands are the Mineral Leasing Act of 1920 (as revised by the Federal Onshore Oil and Gas Leasing Reform Act of 1987), the Mineral Leasing Act for Acquired Lands of 1947, and the Federal Land Policy and Management Act of 1976. For offshore activities on federal property, the primary governing law is the Outer Continental Shelf Lands Act (OCSLA). In addition, oil and gas activities on federal property are generally subject to the National Environmental Policy Act (NEPA), which requires preparation of environmental impact statements prior to leasing actions, as well as several environmental regulations such as the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act (see question 35). Additional industry-specific federal statutes include the Federal Oil and Gas Royalty Management Act of 1982 (as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996), which governs lease and royalty agreements (see question 15).

State laws, such as the Texas Natural Resources Code and the California Public Resources Code, govern exploration, production and transportation 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 May the government revoke or amend a licensee's interest?

All leases issued by the government on federal public lands are subject to specific lease terms, including terms that provide for the forfeiture of the lease if certain violations occur. Some specific violations that may result in the forfeiture of a federal oil and gas lease pursuant to its own terms include failing to prevent waste of oil or gas, destruction or injury of the oil deposits and serious threat of harm to humans, the environment, or national security.

In addition, leaseholders of producing leases have a general obligation to comply with all applicable laws, regulations and lease terms. Failure to do so can result in judicial forfeiture and cancellation of the lease through an appropriate proceeding in a US district court. Leaseholders of non-producing leases may have their leases cancelled through an administrative process if the default continues for 30 days after notice of non-compliance.

9 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

Within the DOI, the following bodies regulate exploration and production activities:

- 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). Sanctions for non-compliance with applicable laws or lease terms can range from revocation of contractual entitlements to fines and penalties (see question 8). In egregious circumstances, non-compliance may result in criminal prosecution and liability.

10 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

11 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 United States, 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 a 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.

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

In 2018, seven states and federal offshore waters supplied 91 per cent (10Mmbbl/d) of US crude oil production. Oil production was predominantly concentrated in Texas (40 per cent), federal offshore waters (16 per cent), North Dakota (11.5 per cent), New Mexico (6.2 per cent), Oklahoma (5 per cent), Alaska (4.4 per cent), California (4.3 per cent) and Colorado (4.2 per cent). Total US crude oil production increased approximately 16 per cent in 2018. Texas had a significant growth in production with a 1,297,000bbl/d increase. In 2018, New Mexico continued to produce more crude oil than California and Alaska, thanks in large part to growth in the Permian region.

Almost all existing offshore leasing is in the Gulf of Mexico. Included in the Outer Continental Shelf Oil and Gas Leasing Program for 2017–22 were 11 potential lease sales in four outer continental shelf planning areas:

- the Central Gulf of Mexico;
- the Western Gulf of Mexico;
- the portion of the Eastern Gulf of Mexico not under congressional moratorium; and
- the Cook Inlet planning area offshore Alaska.

However, in 2017, President Trump issued an executive order requiring the DOI to revise the 2017–22 five-year offshore oil and gas leasing programme to include lease sales in additional planning areas, such as the Mid- and South Atlantic and the Pacific region, and to increase the number of scheduled sales under the programme. BOEM is currently taking the administrative steps necessary to implement a new leasing programme, which, upon completion, will replace the current programme and cover the years 2019–24.

Onshore, the BLM is charged with managing and conserving federally owned land, including oil and gas resources. Unless they are specifically carved out of the leasing programme, all BLM-managed lands and national forests are open to leasing. Leasing is generally not permitted in the national park system, in national wildlife refuges, in the wild and scenic river systems or in wilderness areas. Leasing in national forests requires permission from the US Forest Service of the Department of Agriculture. The BLM reviews and approves permits and licences for companies to explore, develop and produce oil on federal lands. Once projects are approved, the BLM enforces regulatory compliance. Federal and state agencies can also impose drilling restrictions on particular lands on environmental, military or other grounds.

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

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. 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. Comparable state agencies award leases for state-owned land.

The terms of the lease and applicable law limit leaseholder activities. Aside from the bid amount, which is determined by the bidder, most government leases are non-negotiable. 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.

14 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.

15 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are 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 until the 1970s, although now rates such as three-sixteenths 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 depending on how deep the waters are and 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. In 2017, the BLM amended the federal oil shale regulations to give the DOI more flexibility in setting rates lease-by-lease. The DOI sets the minimum royalty rates for federal commercial oil shale leases, and the amended rule gives the DOI authority to set rates based on consideration of all relevant factors. In 2018, the DOI rejected a recommendation to lower the minimum royalty rate to be more consistent with the private market.

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 (hence, no royalties). There are no standard stabilisation provisions in the most common leases for new taxes or other impositions.

16 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.

17 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 Florida and Texas 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 Outer Continental Shelf (OCS)).

18 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 15, 19, 27, 31 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.

Several state 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.

19 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.

20 What controls does the regulatory body have over operators? Can operatorship be revoked?

While the government does not have the authority to select or remove operators, it can impose penalties and pursue injunctive relief in a civil action against the operation and operator (including temporary restraining orders) if necessary to enforce lease terms and applicable law. In effect, by shutting down the operation itself, the government can incentivise leaseholders to remove and replace poorly performing operators. Further, the government can cancel federal leases in the event laws and lease terms are violated (see question 28).

21 What is the legal regime for joint ventures?

The United States 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 or American Association of Professional Landmen forms. The accounting procedure under a joint operating agreement is often that specified by the Council of Petroleum Accountants Societies. 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 United States.

22 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.

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

While there are limits under some statutes and contract provisions 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 of 2010, 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.

24 Are parental guarantees or other forms of economic support common practice or a regulatory requirement? 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. The 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

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

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 World Trade Organization (WTO) agreements and free trade agreements. In January 2019, an Executive Order was issued mandating federal departments and agencies to encourage 'buy American' practices for private recipients of federal financial support.

State and local laws encourage local hiring. As to preference for local personnel procurement, see question 36.

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

Where an oil development project in the United States 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

27 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 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.

28 Is government consent required for a change of operator?

The new operator on a lease must notify and obtain approval from BOEM or the 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 (see question 20 for more on regulatory controls over operators).

29 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 federal 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 applicable taxes.

Title to facilities and equipment

30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Because oil industry activities in the United States 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 and abandonment

31 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 wells, structures and pipelines on terminated leases and decommissioning pipelines on terminated pipeline rights-of-way.

The BLM regulations govern abandonment of oil and gas facilities on federal lands. A plan for plugging and abandoning of wells must be approved by the 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 the BLM. As an alternative, the BLM may allow certain facilities to remain if harm will be caused by removal. Failure to remove facilities may result in the BLM claiming the equipment for the United States or charging the operator for any removal and restoration conducted by the agency.

On federal OCS lands, decommissioning is governed by the 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. The 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. By mid-2018, approximately 530 platforms had been reefed in the Gulf of Mexico under this programme.

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. Between 2015 and the end of 2018, approximately 167 US oil and gas companies (onshore and offshore) filed for bankruptcy, with only 23 companies filing in 2017 and 29 companies filing in 2018. This rate of insolvency among exploration and production companies prompted BOEM to re-evaluate its bonding requirements for lessees to secure future decommissioning costs (see question 32).

32 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, the 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. The agency solicited public comment on a potential increase in minimum bonding amounts to reflect inflation and higher decommissioning costs, but the agency withdrew the proposed rule. 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. In late 2018, BLM issued an instruction memorandum updating its policy on bond adequacy reviews, and requiring its field offices to review existing oil and gas bonds to determine whether the bond amount appropriately reflects the level of potential risk posed by the 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 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 2017, BOEM temporarily suspended implementation of the NTL and is currently reviewing the policy. As of the time of this writing, the agency has not reissued the NTL or implemented any other change of the bonding regulations and is said to be re-evaluating whether a one-size-fits-all approach is appropriate.

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

33 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 through 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 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.

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 35). With the increasing use of rail for shipping crude oil, the DOT has focused on the safety of oil shipments by rail. Persons who ship crude oil by rail are required to ensure that the material is properly tested with respect to flash point and boiling point. The DOT also has regulations designed to prevent accidents, mitigate consequences in the event of an accident and support an emergency response. In addition, the Fixing America's Surface Transportation Act includes numerous provisions related to rail safety such as enhanced tank wagon standards and a mandatory phase-out schedule for older tank wagons.

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 upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

Upstream oil-related facility operations are subject to many environmental laws and regulations, including federal, state, and local requirements. New or modified exploration or development operations usually need local land use development permits as well as drilling and operating permits. Many projects must undergo a thorough environmental impact review under NEPA or a comparable state law. Such reviews can be done on a project-level, which focuses on the environmental impacts of the specific project itself, and/or through a programmatic review. Programmatic reviews look more broadly at the impacts of a general development plan for a region, can apply to numerous proposed projects over long timeframes, and may establish a framework for future project-level environmental documents to be prepared in accordance with the overall programme. 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.

Facilities are also subject to many federal laws that regulate emissions and discharges, such as:

- the Resource Conservation and Recovery Act (RCRA), which regulates the management of solid and hazardous waste;
- the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), which governs the clean-up of contaminated sites;
- the Clean Air Act (CAA), which regulates air emissions from mobile and stationary sources;
- the Clean Water Act (CWA) and Safe Drinking Water Act, which protect surface water and underground sources of drinking water; and
- the Oil Pollution Act (OPA), which addresses clean up and damage assessments relating to oil spills.

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, CWA and RCRA. 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. State regulatory agencies have jurisdiction over 'state waters', which are usually intrastate bodies of water and groundwater.

In the event of a spill or unauthorised discharge, parties can be required to undertake clean-up activities and pay for damages under CERCLA and OPA and may also be assessed for natural resource damages. In particular, 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.

Regulations and permit conditions can place limits on emissions and discharges from facilities and may also include detailed record-keeping and reporting requirements. Each statute and agency has considerable penalty, injunction and criminal law remedies for non-compliance and, in some cases, private parties may also recover damages or enforce public interests through citizen suits.

In addition to pollution control laws and regulations, facilities and exploration activities may also have to comply with ecological laws, such as:

- the Endangered Species Act (ESA), which prohibits or strictly regulates activities that might materially impair the habitats of threatened and endangered species;

- the Migratory Bird Treaty Act (MBTA), which prohibits the taking or injuring of migratory birds; and
- the Marine Mammal Protection Act (MMPA), which prohibits the hunting, harassing, or killing of marine mammals in US waters.

Additionally, oil-related activities must observe several cultural resource laws, which impose mandates on projects that may disturb or uncover property of cultural significance, such as:
- the National Historic Preservation Act (NHPA);
- the American Antiquities Act;
- the Archaeological Resources Protection Act; and
- the Abandoned Shipwreck Act.

For example, the ESA might prevent a new facility from being built 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. The prohibitions in the MBTA have been applied to oil and gas production pits and other facilities, which can present a threat to migratory birds, and offshore seismic exploration activities often require a permit under the MMPA before proceeding. Regulations applicable to underground injection well permits require the issuing agency to consider the NHPA before granting the permit. Several federal agencies have enforcement authority under the various ecological and cultural resources laws, including EPA, the National Oceanic and Atmospheric Administration and the Fish and Wildlife Service, and sanctions for violating the laws can range from administrative civil penalties to criminal liability, including imprisonment.

Health and safety laws and regulations are also key compliance issues for upstream oil activities. 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 questions 12 and 13). The OCSLA permitting scheme involves extensive health and safety requirements. The BSEE and US Coast Guard regulate and enforce safety rules at offshore facilities such as drilling rigs and oil platforms. Both agencies have authority under the OCSLA and the implementing regulations to require corrective action for deficiencies, to issue civil penalties for non-compliance and to seek criminal sanctions, including imprisonment, for knowing and wilful violations. Onshore, the Occupational Safety and Health Administration (OSHA) and state and local governments all enforce rules protecting employees and contractors from workplace injuries. OSHA has the authority to order corrective actions, issue fines and seek criminal sanctions through judicial proceedings. Record-keeping requirements can be very significant; for example, employee medical records relating to occupational injury must be kept for the duration of the employee's service, plus 30 years.

Labour

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Local labour requirement

There is no federal local hiring policy. However, certain cities and counties have local hiring policies for specific industries. For example, San Francisco requires that local residents are utilised in locally sponsored construction projects. On the other hand, some municipalities have prohibited local workforce requirements or goals on public projects.

Foreign workers

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, the Fair Labor Standards Act, the Family and Medical Leave Act and OSHA. State and local laws and agencies supplement the federal workplace rules.

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 first step required by the Department of Labour is for employers to apply for certification through the Office of Foreign Labour Certification. If approval is granted, the employees must then apply for a visa under the Immigration Reform and Control Act (IRCA).

Form I-9 (Employment Eligibility Verification) 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. An employer's failure to properly complete the appropriate employment verification paperwork can result in fines. These fines can quickly escalate if an employer knowingly hires a worker who is not authorised to accept employment or engages in a pattern or practice of wilful disregard of the I-9 rules.

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 granting of the visa following 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 and Chile (H-1B1) and Australia (E-3) with similar standards to the H-1B classification;
- the E classification (treaty investor or 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 United States maintains specialised treaties; and
- the TN classification North American Free Trade Agreement (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.

Anti-discrimination

Many federal, state and local laws prohibit discrimination in employment on the basis of a 'protected classification' such as age, race or colour, sex, religion, national origin, disability (mental or physical, including pregnancy), veteran status, sexual orientation, or genetic information. There may be additional protected categories under state or local law. IRCA makes it illegal to discriminate based on an individual's citizenship or immigration status when hiring, firing and making other employment decisions. IRCA applies equally to US citizens and lawful permanent residents (ie, 'green-card' holders) as well as foreign national personnel. The Department of Justice's (DOJ) Civil Rights Division's Immigrant and Employee Rights Section enforces IRCA's non-discrimination requirements. The Equal Employment Opportunity Commission generally enforces other federal non-discrimination laws, including:
- 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 Act.

Even an ostensibly neutral policy that results in a 'disparate impact' on race, national origin 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'. 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 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, 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

37 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 United States.

The principal tax agency at the federal level is the Internal Revenue Service within the Department of the Treasury. Customs duties are administered by US Customs and Border Protection within the Department of Homeland Security. State taxes are administered by a variety of revenue-collecting and regulatory agencies.

Commodity price controls

38 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

39 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 United States): 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);
- the Energy Independence and Security Act of 2007, which prohibits market manipulation of petroleum; 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.

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

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 (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.

Update and trends

Renewable fuels play roles as both competitor and supplier of petroleum companies. The broad renewable category can be broken down into biomass-based diesel, cellulosic biofuel, and advanced biofuel. A complicated regulatory regime creates regulatory pitfalls and opportunities for petroleum refiners and distributors.

One of the key regulatory institutions is the Renewable Fuel Standard (RFS) programme established under the Energy Policy Act of 2005. RFS requires that oil refineries and importers acquire a set amount of Renewable Identification Numbers (RINs) – intangible products created by the production of renewable fuels. Oil refineries and importers can acquire RINs from renewable fuel manufacturers, either by purchasing renewable fuel that is blended into their fossil fuel product, or by buying RINs as a separately marketed product. The mandated renewable fuel volumes range depending on the subcategory of renewable fuel, but the 2019 total renewable fuel volume percentage is set at nearly 11 per cent of petrol produced or imported. In addition to the RFS programme, the federal government offers tax credits for the use of renewable fuels such as the US$1 per gallon credit for the production or blending of biodiesel and renewable diesel.

In mid-2018, the Trump Administration indefinitely delayed proposed changes to the RFS programme (which included permitting exported biofuels to generate RINs and setting a price cap on RINs). Shortly after, the Administration requested a new rule proceeding to expand the permitted sale period of petrol with 15 per cent ethanol to span the entire year. Several lawsuits challenging the implementation of the RFS programme are making their way through the courts, including challenges based the cost and potential economic harm of the RFS programme to local economies, the exclusion of downstream blenders from RFS requirements, and the use of hardship waivers that exempt some refineries from RFS requirements.

States also regulate and incentivise the use of renewable fuels. For example, the Low Carbon Fuel Standard implemented by California (the second largest consumer of petrol in the United States) operates like the RFS programme as a cap-and-trade programme, where renewable fuel producers generate credits and market them to regulated parties such as oil refineries.

Future political and legal developments will impact the evolving relationship between oil companies and renewable fuel producers. Irrespective of the legal challenges, fuel producers will continue to need renewable fuels as blendstock and they will need to continuously evaluate their compliance with regulations and the market opportunities associated with recoverable fuels.

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.

Penalties for a proposed action deemed to violate federal competition laws are up to US$100 million for a corporation and US$1 million for an individual along with prison time. If either the amount gained by the conspirators from the illegal acts or the amount lost by the victims is more than US$100 million, then the fine may be twice the amount. There can also be additional penalties under state law.

Data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

Ownership of seismic data generally depends on the agreements between the parties. There is often a seismic use licence agreement. If there is no use agreement, the seismic data may be viewed as a proprietary trade secret.

For seismic surveys conducted in the OCS, a permit must first be obtained from BOEM. The permit allows BOEM to acquire any and all of the data collected.

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 1982, 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 International Convention for the Prevention of Pollution from Ships 1973 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 United States is a member of the 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 NAFTA, which created a zero-duty regime for imports and exports of products among Canada, the United States and Mexico. The United States has free-trade agreements with a number of other countries.

In 2018, President Trump issued a series of Presidential Proclamations entitled Adjusting Imports of Steel into the United States, which override the US tariff commitments under the WTO and free trade agreements. The proclamations imposed a 25 per cent tariff on steel articles imported from all countries, except Argentina, Australia, Brazil, and South Korea, and a 50 per cent tariff on steel articles originating from Turkey. Imports from Argentina, Brazil and South Korea are subject to quotas. Oil companies rely on steel for their business, including for drilling and pipelines. As a result, the US oil and gas industry has expressed concern that the new tariffs will raise costs by millions of dollars and result in layoffs.

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 United States 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. CFIUS review has become more stringent under the Trump Administration.

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

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 2015, the United States passed legislation repealing a decades-old ban on exports of crude oil produced in the United States. 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 and sanctions

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 United States.

Embargoes also apply to entities and individuals on the List of Specially Designated Nationals (SDN), even when they are not operating from an embargoed country. OFAC recently designated Petroleos de Venezuela (PdVSA) as an SDN. This designation in effect prohibits US persons from engaging in transactions with PdVSA except pursuant to certain general licences. The current general licences allow oil imports and dealings with Citgo and PdVSA for limited times and parties.

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