

BLM's Revised Draft Hydraulic Fracturing Rule Released

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by Tyler Garrett

On May 16, 2013, the Department of the Interior released a revised draft rule governing hydraulic fracturing on public and Indian lands. The revised draft follows an initial proposal released on May 11, 2012, which received over 177,000 comments. The revised draft rule will undergo another 30-day comment period before the Bureau of Land Management (BLM) likely issues a final rule.

Like the initial proposal, the revised draft rule has three central components:

1. required disclosure of chemicals used in fracking operations on public lands;
2. improved assurances of well-bore integrity to verify that fluids used during fracking operations are not contaminating groundwater; and
3. preparation of a water management plan for handling fluids that flow back to the surface.

The revised draft, however, provides somewhat more flexibility in ways to comply and allows states to seek variances from these requirements if they can demonstrate that their regulations meet or exceed those proposed by the revised rule.

Regarding required disclosures of chemicals, one of the notable amendments to the new rule concerns trade secrets. Modeled after Colorado's requirements on disclosure of chemicals, operators will have to offer additional proof of the need to withhold the details of certain fracking chemicals. The revised rule requires operators to submit to BLM an affidavit asserting exemption from disclosure of certain information related to the hydraulic fracturing fluid and gives BLM the ability to demand the specific chemical details of any materials being proposed for trade secret exemption. Unchanged, however, is the way BLM intends to track fracking chemicals, as the revised draft rule still intends to utilize FracFocus.org, an online disclosure database also used by several states.

As to certification of wellbore integrity, BLM states that the revised draft rule "is generally consistent with the American Petroleum Institute's (API) guidelines for well construction and well integrity." API's guidelines provide that a casing and a cementing program should be implemented to ensure wellbore integrity, recommend pressure tests after cementing casing strings, and describe circumstances where cement bond logs are used to

verify adequate cementing. API's Guidance Document can be found [here](#).

The revised rule amends the requirement for cement bond logs and now permits the use of cement evaluation logs, which is intended to allow a variety of logging methods to be used to demonstrate cement adequacy. These logging methods include technologies such as ultrasonic logs, variable density logs, micro-seismograms, standard cement bond logs, cement bond logs with directional receiver array, ultrasonic pulse echo technique, and isolation scanners.

With respect to the handling of flowback, the revised rule requires operators to submit their proposed methods of managing the recovered fluids, which must include an estimate of the volume of fluid to be recovered during flowback, swabbing, and recovery from production facility vessels. BLM contends such a requirement will ensure that the facilities needed to process or contain the estimated volume of fluid will be available on location. The revised rule also requires a description of the proposed disposal method of the recovered fluids, which appears to be consistent with existing BLM regulations for produced waters (i.e., Onshore Oil and Gas Order Number 7, Disposal of Produced Water, 58 Fed. Reg. 47354 (Sept. 8, 1993)).

Also of note is that, like the initial rule, the revised draft rule would allow fracking flowback fluids to be stored in tanks or lined pits. However, in announcing the revised rule, BLM indicated it is seeking comments on "the costs and benefits of requiring flowback fluids to only be stored in closed tanks." This specific request for comments appears to be in response to comments on the initial draft rule that questioned the safety and environmental impacts of using pits for storage of flowback fluids.

The revised draft rule can be found [here](#) and the Department of the Interior's press release can be found [here](#). Comments will be due 30 days after the revised draft rule is published in the Federal Register.

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