

Concerns with Proposed BLM HF Rule

Background

In May 2012 the BLM released a proposed rule for hydraulic fracturing (HF) operations on federal land. Currently, the states have strong hydraulic fracturing regulations in place, many of which require the disclosure of fracturing fluids using the FracFocus website. The BLM's stated intent of the proposed rule is to require the public disclosure of the chemicals used in HF operations, and ensure well-bore integrity and safe water management practices. As currently proposed, the rule lacks technical and scientific support, will create additional delays in operations and increase costs which will provide further disincentives to operators to develop federal resources. This will seriously impact domestic energy production, jobs and the nation's energy security. API has formally commented to the BLM on the proposed regulations and requested changes in order to make the final rule workable. The most critical issues of concern are described below.

- **BLM should streamline the approval process by using a single approval, followed by post-activity reporting of information, consistent with state permitting processes.** The proposed rule establishes a multi-step approval process that will impose unreasonable delays and costs on HF operations, including delays and costs resulting from litigation by third parties. The proposed rule creates an intermediate approval step by requiring permitted projects to obtain approval before HF activities take place (potentially while operations are underway after initial permits have been received).
- **The proposed rule should be clarified to apply only to the specific stimulation process of "hydraulic fracturing" and not "well stimulation".** Using the broad term "well stimulation" as done in the currently proposed rule includes routine maintenance activities intended to improve production levels as well as to maintain safe well operations. For these routine activities it is unnecessary to require a 30-day waiting period for the permit review and approval.
- **The disclosure of hydraulic fracturing fluid components should use the FracFocus website and trade secrets must be protected.** The proposed rule includes requirements that exposes proprietary information and imposes huge administrative burdens on BLM without providing any meaningful increase in the transparency already provided by FracFocus. The White House has stated that the use of FracFocus represents the best way to harmonize BLM's regulatory requirements for such disclosure with the regulations of the states. Instead of the currently proposed disclosure framework, the rule should require the use of FracFocus for disclosure, refine the required disclosure to the maximum potential concentrations of intentionally added chemicals, and allow the party owning the trade secret, who may not be the operator, to assert such claims subject to a submission to BLM demonstrating how the information withheld constitutes a legitimate trade secret.
- **BLM should allow operators to submit relevant well integrity information indicating factors, tests, and diagnostics with a post completion report, rather than interrupt drilling or delay stimulation operations to get an additional approval.** The proposed rule's requirement of a submission and approval of a cement bond log (CBL) during the middle of the drilling process creates an additional approval step, thereby delaying HF operations. In addition, CBLs are just one of many tools used to indicate well integrity, and are not necessarily the best or most efficient tool for a given well.

- **BLM should stipulate that surface casing must be at depths that protect usable ground water consistent with the criteria used by state authorities. In addition, BLM must clarify that the requirement for isolation does not apply to usable waters that occur within a hydrocarbon producing formation.** The proposed definition of “usable water” is overly broad and requires companies to isolate formations deep below the surface that may contain water but that have little or no potential for future human use or consumption. This requirement introduces significant cost and uncertainty without providing additional protection to underground sources of drinking water.
- **BLM must remove requirements for operator certification for the compliance obligations of contractors and other entities.** The proposed rule includes a new requirement that operators, under threat of criminal penalty, certify information for which other companies are responsible and that greatly alters the existing enforcement scheme. Companies other than operators that perform well service jobs or that supply products for well servicing are generally responsible for compliance with regulations related to the registration of their products, and related notice and/or permitting. BLM has made no attempt to justify why criminal penalties are necessary to enforce compliance when operators are not responsible for the compliance obligations of others.
- **BLM must clarify that the required information on the source and location(s) of the water used in the hydraulic fracturing fluid is for informational purposes only and that BLM does not intend to interfere with existing state authority over water allocation.** The proposed rule grants BLM new authority over water supply in a way that potentially interferes with state authority. Given the strict legal requirements governing water rights and use in the states, the proposed rule may exceed BLM’s authority by encroaching on state authority to control allocation of water resources.
- **The language allowing the BLM to rescind or modify an approved variance should be removed.** The proposed rule provides BLM the right to rescind or modify an approved variance during the drilling process, which could result in unexpected costs and operational interruptions. The proposed rule removes all accountability from the BLM in granting and revoking variance to permits over time and therefore, with this language, an operator would not be able to rely on a variance obtained. Operators may have made significant investment after obtaining a variance for equipment or other hardware.