

Messages for OMB/OIRA re BLM HF Rule

October 6, 2014

- The Rule as proposed still has not received adequate economic analysis as required under Executive Orders 13563 and 12866.
- It also requires and has not received an adequate cumulative effects analysis under the memorandum of March 20, 2012.
- This rule is unnecessary, and its economic impacts are significant.
- The BLM rule adds an unnecessary and duplicative layer of regulation on top of the already strong and stringent state regulation of hydraulic fracturing. This added layer will increase costs, delay permitting, and will slow domestic energy production all at the expense of the American taxpayer.
- The states have continued to lead the way in regulating drilling and hydraulic fracturing operations while protecting communities and the environment for decades, including on federal lands.
- The states continue to be and historically have been in the best position to regulate oil and natural gas operations, including hydraulic fracturing, because state laws can be tailored to address the specific characteristics of a state's geology and hydrology, and because of the experience state agencies have obtained through regulation and inspection of drilling and production operations in their states.
- Since our February 2013 OMB meeting on the first BLM HF proposed rule, the re-proposed rule has changed and improved and reflects some of our concerns that we expressed here and with the agency over the past several years, but still needs fixing.
- Meanwhile, hydraulic fracturing continues to be a technology that has been used for over sixty years, with more than 1 million oil and natural gas wells having been hydraulically fractured, including about 90% of the wells on Federal and Indian lands, without a single demonstrated instance of the fracturing process affecting groundwater.

Effects of the BLM Rule

- According to BLM's own data, the number of new federal oil and natural gas leases issued by BLM is down 44% from an average of 1,874 leases in 2007-08 to 1,053 in 2009-10. The number of new permits to drill by BLM is down 39%, from an average of 6,444 permits to an average of 3,962. The number of new wells drilled on federal land has declined 39%, from an average of 4,890 wells to 2,973.
- Since almost all western oil and natural gas development requires hydraulic fracturing, the implementation of the proposed rule could, by increasing permitting time periods and regulatory uncertainty, delay or discourage new production on federal lands.
- An April 2014 Congressional Research Service (CRS) report concluded that, from 2009 through 2013 U.S. crude oil production on non-federal lands increased 61% while falling 6% on federal lands. During that same timeframe, U.S. natural gas production on non-federal lands increased 33% yet natural gas production on federal lands fell 28%.

- Smart energy policies will position the U.S. to continue to be the world leader in energy development and realize the economic and energy security benefits of that role.

More Regarding the Rule

- The re-proposed rule (May 2013) has improved since the first proposed rule (May 2012) and several positive changes were made which should be retained in the final rule. They include the use of FracFocus.org as the means for disclosure of hydraulic fracturing chemicals. This database is required in 12 states and being considered in at least 12 other states. Hundreds of companies participate and over 50,000 wells have been disclosed.
- In addition, in the May 2013 re-proposed rule the BLM recognizes that states with federal lands are already effectively regulating oil and natural gas operations including hydraulic fracturing, by its provision for a state-wide variance to be issued where BLM determines state or tribal regulations meet or exceed the effectiveness of the proposed rule.
- However, the proposed definition of “usable water” continues to be vague and overly broad and would require operators to protect water-bearing zones unsuitable for human consumption or agricultural or other uses due to naturally occurring chemical composition. The definition also failed to consider the depth at which usable water may occur, which would also dictate whether such water could ever feasibly be used for any purpose.
 - This requirement introduces significant cost and uncertainty without providing additional protection to underground sources of drinking water.
 - An ARI report analyzed the cost implications of this proposed requirement and concluded that determining whether “usable water” was present in a field could cost up to an additional \$400,000, plus up to an additional \$776,000 per each individual well in cementing and casing to meet the new requirement.
 - These costs are ignored by BLM in its own analysis and calls into question the agency’s entire cost analysis.
- While the re-proposed rule allows for a cement evaluation log (CEL) instead of a cement bond log to ensure the quality of a cement job, there is no litmus test that will assure the integrity of a cement job. Instead, the rule should eliminate the use of prescriptive requirements for one particular type of test and instead allow operators to demonstrate the integrity of a cement job through conformity to performance standards industry best practices.
 - The way in which BLM has defined CEL and related requirements raises significant cost issues that the agency did not properly address in its cost-benefit analysis.
 - To run a CEL on each casing string that isolates “usable water”, ARI found that the cost for each type well or exploratory well logged by an operator could range from \$24,000 to \$109,000. (BLM’s estimate was \$26,000 and is low because it did not consider the associated time delays, which ARI estimated could range from 1 to 5 days depending on the number of casing strings and CELs).