

THE NEW ERA OF EXECUTIVE ACTION

REGULATING OIL AND GAS FRACKING ON FEDERAL LANDS

May 5, 2015

Background

The American energy landscape has been remade in the past half-dozen years, thanks to newer methods of reaching oil and gas reserves that older, more traditional technologies could not reach. Chief among those is hydraulic fracturing (“fracking”), the use of chemicals and high-pressure water to break through rock to access oil and natural gas.

With the proliferation of fracked wells throughout the United States, there has been concern about the use and disposal of chemicals involved, and their potential impact on the water table near the wells. Many states have regulated how fracking companies can operate, but to date there is no federal standard that applies to fracked wells.

Action

On March 26, 2015, the Department of the Interior, Bureau of Land Management (BLM), issued a Final Rule: Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands.

What It Does

The final rule requires companies that operate fracking wells on federal and Native American-owned lands to meet minimum health and environmental standards, including safer storage of post-drilling wastewater, and requires some disclosure of chemicals used.

By statute, the BLM, through the 1975 Federal Land Policy and Management Act, is responsible for managing the multiple uses of federal land, and can issue regulations in support of that objective. The BLM recognized that the expanded technologies used in today’s drilling necessitate an update of outdated oil and gas drilling regulations that were last revised thirty years ago.

This brief is part of The Century Foundation initiative, The New Era of Executive Action, which is available online at <https://tcfdotorg.atavist.com/executive-action>.

The rule focuses on three broad categories:

1. proper well construction,
2. responsible management of flowback fluid, and
3. public disclosure of chemicals used in the fracking process.

The rule requires operators to:

- submit to the BLM relevant information about fracking proposals, including proposed locations of fractures and location of wells relative to water sources;
- ensure cement encasements are built according to the highest standards;
- perform integrity tests on wells prior to drilling, rather than after as current regulations allow;
- store any recovered fluids in enclosed or covered storage (that is, no open air storage, which previous regulations allowed);
- disclose chemicals used in the fracking process, except where application through affidavit a company declares them to be trade secret; and
- ensure these standards are met for all wells, not just selected sample wells.

The rules also strive to publicly identify areas where fracking has occurred and works with states and tribal authorities to “coordinate standards and processes” in order to maximize efficiency of effort and resources.

Status

The rules go into effect ninety days from the publication of the rule in the Federal Register (March 26, 2015). The BLM plans to reassess the rule’s adequacy after seven years of implementation.

Impact

By the BLM’s own analysis, the rule applies to the nearly 36 million acres of federal land under lease of oil and gas development, containing 95,000 active oil and gas wells.

The rule has not yet made an impact on the drilling itself, though companies behind the scenes may be preparing to update their internal procedures to match the federal standards, where applicable. While federal lands only represent a small portion of overall oil and natural gas extraction, federal rules could set the standard for states that choose to issue their own rules, if they have not done so already.

Response

Members of the oil and gas industry as well as many Republicans in Congress reacted strongly against the rule, threatening both legal challenges and legislation, respectively, to roll them back.

As soon as the rule was published, reports the *Washington Examiner*, the Independent Petroleum Association of America and the Western Energy Alliance filed a lawsuit in federal court, saying that concerns about the health and environmental consequences of fracking were “unsubstantiated.” The same Examiner story quoted committee staffers as saying they had received feedback from Native American tribes concerned that the new regulations would starve them of revenue from oil and gas development on their land.

The U.S. Chamber of Commerce was also critical of the rule, saying that the administration wanted “to add another layer of bureaucracy on energy producers” and that the new regulations would make companies spend twice as much time on compliance (since they would need to harmonize their operations with both state and federal regulations).

A coalition of environmental groups were also critical of the rule—for not going far enough. Friends of the Earth, Greenpeace, the Center for Biological Diversity, and Environmental Action released a joint statement blasting the rule, arguing that fracking cannot be done safely on public lands at all and that the rule only advances the Obama administration’s wrong-footed “all-of-the-above energy strategy.” Analysts at the Natural Resources Defense Council, while lauding the ban on open-air storage and requiring pre-drilling demonstration of well integrity (cement evaluation), said the rule was too pro-industry and was not as strict as some state standards that already exist. They said further that it only covers one kind of “well stimulation”—hydraulic fracturing—but not other, similarly dangerous methods, such as acid stimulation.

In support of the rule, Center for American Progress senior fellow David Hayes called the standards “common sense” and a “big step forward toward safer drilling practices” that will provide a good baseline for states to use nationwide.

The *New Republic*’s Rebecca Leber took a balanced view, saying that some parts of the rule were pro-industry (allowing companies to determine which of their chemical combinations are trade secrets), while some are victories for stewardship of public lands (tighter storage of wastewater).