

Bureau of Land Management Releases Proposed Fracking Chemical Disclosure Rule

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On May 4, 2012, the Bureau of Land Management (BLM) announced a proposed rule that would require public disclosure of chemicals used in hydraulic fracking operations at oil and gas wells on Federal and Indian lands. As proposed, the rule would require companies to disclose the chemicals used in the fracking process *after* the fracking operation is completed. Specifically, the proposal would require companies to provide a table that includes the trade name of each chemical as well as the purpose of each chemical in the fracking fluid. Companies must also disclose the volume of fracking fluid used. In order to protect companies' proprietary information, the proposed rule would allow companies to identify confidential information that is exempt from public disclosure under the Trade Secrets Act or other Federal law. However, if BLM determines that the asserted confidential information is not prohibited from disclosure by Federal law, BLM may make that information available to the public after 10 business days notice to the company.

The proposed rule would also require new and current well operators to obtain BLM approval of all fracking activity through the submission of a Notice of Intent Sundry, which must contain information about the proposed fracking operation, such as the depth of injection and the estimated volume of fluid to be used. In addition, the proposed rule would require that all wells be integrity tested before fracking operations begin and that operators continuously monitor certain parameters during fracking operations. And operators would be required to submit information regarding the handling and hauling of flow-back fluids and produced water after fracking operations are completed.

A 60-day public comment period will begin when the proposed rule is published in the *Federal Register*. If finalized, the rule will impact the future of hydraulic fracturing on Federal and Indian lands, as approximately 90% of the 3,400 oil and gas wells drilled on Federal and Indian lands each year use fracking techniques to enhance production. The proposed rule would not apply to fracking activities on private land, where the majority of fracking operations occur. Environmental groups have criticized the proposal because it would not require disclosure of fracking chemicals before fracking operations begin, unlike a prior draft of the proposal that was leaked to the media in February. Industry groups are concerned about the additional regulatory burden the proposed rule would add on top of the disclosure requirements already imposed by some states, such as Wyoming, Colorado, and Texas. BLM has indicated the rule will be finalized by the end of the year.

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