

September 10, 2012

Mike Pool
Acting Director
Bureau of Land Management
1849 C Street NW, Rm. 5665
Washington, DC 20240

Re: Oil and Gas: Well Stimulation, Including Hydraulic Fracturing on Federal Indian Lands

The Office of Advocacy (Advocacy) submits these comments on the Bureau of Land Management's (BLM) proposed rule *Oil and Gas: Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands*¹ and the economic analysis therein.

Advocacy is providing the following comments to assist BLM in its compliance with the Regulatory Flexibility Act. Advocacy encourages BLM to revise its economic analysis and to publish an Initial Regulatory Flexibility Analysis (IRFA) for this rule. On August 13, 2012, Advocacy held a roundtable with industry and BLM to discuss the impact the rule will have. Businesses have commented that the proposed rule imposes costs that BLM has not considered in its economic analysis and that BLM has based its analysis of costs on several questionable assumptions. Completion of an IRFA will allow BLM to address industry concerns and allow the public to submit alternatives and comment upon alternatives proposed by BLM.

The Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less

¹ *Oil and Gas: Well Stimulation, Including Hydraulic Fraction, on Federal and Indian Lands*, 77 Fed. Reg. 27691 (May 11, 2012).

² 5 U.S.C. § 601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

burdensome alternatives.⁴ The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁵

Background

Well stimulation techniques, including hydraulic fracturing, are used to increase the volume of oil and natural gas that can be extracted from wells. Hydraulic fracturing involves injecting fluid into a well to increase output. In recent years the practice of hydraulic fracturing has grown. Increased use of this method has raised concerns about underground water contamination, the chemicals used in the process, and management of waters that flow back out of the well during the process. Current regulations concerning well stimulation activities on public lands are more than thirty years old.

BLM proposes to require detailed plans for managing flowback water from hydraulic fracturing operations, public disclosure of chemicals used in hydraulic fracturing operations, and confirmation that wells used in fracturing meet certain construction standards including requiring cement bond logs on surface casings.

Advocacy Encourages BLM to Revise its Economic Analysis and Draft an Initial Regulatory Flexibility Analysis

Advocacy commends BLM for seeking to avoid redundant regulatory requirements. Much of the information that the proposed rule is seeking to require is already being collected by states that currently regulate well stimulation on state, federal, and Indian lands. For example, the proposed rule contemplates the use of the FracFocus Chemical Disclosure Registry⁶ as an alternative to multiple submissions of similar information. Advocacy encourages BLM to finalize the rule with this arrangement to minimize the costs of requiring submission of information to both state regulators and BLM.

Advocacy has heard concerns that BLM has not accounted for all of the costs that the proposed rule will impose on small businesses. BLM should also consider other costs that will be imposed upon small businesses if this rule moves forward. For example, the proposed rule requires the operator to submit its plan for well stimulation prior to each well stimulation. Current regulations allow routine well stimulations without BLM approval. The economic analysis does not consider the costs of delay while BLM considers each submission or the costs that will be incurred if BLM seeks consultation with the business before approval of the stimulation plan.

⁴ 5 U.S.C. § 603, 605.

⁵ Small Business Jobs Act of 2010 (PL 111-240) § 1601. The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.

⁶ FracFocus is a hydraulic fracturing chemical registry where businesses can report and the public can see the chemicals used for hydraulic fracturing in a specific geographical area.

Additionally, the proposed rule requires operators to run cement bond logs but does not account for the extra rig time associated with running the cement bond log. Several small businesses have indicated that costs could be substantial to run cement bond logs on surface casings. BLM also should account for the costs of delay in drilling while they interpret the cement bond logs.

Several small businesses that have spoken with Advocacy believe that BLM's assumptions regarding the processes of well stimulation and hydraulic fracturing underestimates the costs that will be incurred by businesses under this rule. In certain instances the proposed rule assumes that there is a single method for performing a particular operational function when this is not the case. For example, the proposed rule seeks to have operators put a detailed plan in place for dealing with flowback waters from hydraulic fracturing operations based upon the assumption that operators handle flowback waters. However, some small businesses have indicated that they contract with water recycling and disposal companies to remove fracturing flowback waters and do not themselves deal with the disposal or recycling of flowback water. Another example is the cement bond log requirement. One small business that Advocacy spoke with has indicated that they use isolation packers for insuring the integrity of their wells because they believe that this process is environmentally safer than using cement. In this case cement is not used so the requirement for cement bond logs before a permit will be issued effectively mandates that the company make significant and costly changes to their methods.

Advocacy has heard from small businesses that BLM should consider less costly and less prescriptive alternatives to the proposed rule. In addition to the alternatives discussed above, businesses have commented that the proposed rule's requirement that approval be sought for each instance of well stimulation should be reconsidered. In most cases, an operator stimulates multiple wells in substantially the same manner based upon a master plan. Authorization of the master plan, rather than each stimulation activity, would allow BLM to meet its goals while greatly reducing the costs imposed upon businesses. A revised economic analysis and IRFA would allow BLM to address these concerns.

Conclusion

Advocacy commends BLM for its outreach to the industry and encourages BLM to continue to engage the industry with regards to this proposed rule. If BLM chooses to move forward with this rule, Advocacy encourages BLM to publish an IRFA for this rule addressing the comments it has received from small businesses regarding the costs that will be imposed by this rule.

Sincerely,

/s/

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/s/

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Cc: The Honorable Boris Bershteyn, Administrator, Office of Information and
Regulatory Affairs