

ISSUE BRIEF

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Protecting the States' Ability to Regulate Fracking

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The Department of the Interior's Bureau of Land Management (BLM) is working to finalize a rule that would put in place more stringent federal regulations for hydraulic fracturing (or "fracking") on federal and Indian lands. At the same time, the Environmental Protection Agency (EPA) is conducting a study on the potential impacts of fracking on groundwater.

Implementing regulations on federal lands would duplicate the states' long, proven history of effectively regulating fracking, drive up costs for one of the most successful economic stories in America in recent times, and remove flexibility for the state regulators to manage their own resources.

Fracking: Massive Benefits, Minimal Risk. Energy production has been a catalyst for economic revitalization across the country, and fracking, a process used to extract oil and natural gas, has been a critical aspect of new economic opportunity. A 2012 report from the economic consulting firm IHS Global Insight found that unconventional shale oil and gas alone supports more than 1.7 million jobs, which is expected to increase to 3 million jobs as soon as 2020.¹

The fracking process will be essential for the continued development of America's future oil and gas

production. According to the National Petroleum Council, up to 80 percent of new natural gas wells drilled domestically in the next decade will require fracking.²

Increased energy production results in direct lower energy prices and cost savings through cheaper goods and services. Cheaper energy and a decreased cost of doing business means companies can afford to grow or become more competitive by lowering prices for customers. New economic opportunity created by the fracking revolution does not stop in oil and gas industries but ripples throughout the economy. Increased manufacturing employment in the United States is largely taking place because of abundantly cheap fracked natural gas, which has made American companies more competitive and attracted international businesses to expand in the U.S.³

Problems with the BLM Regulation. BLM is proposing new regulations for hydraulically fractured wells on federal lands that would set minimum standards for chemical disclosure, well integrity, and wastewater disposal. However, the technical flaws⁴ in the BLM's proposal indicate why the federal government should not be meddling with an effective state regulatory regime in the first place, and the proposal largely ignores that states have adequately adapted their regulations to address public concerns. The Heritage Foundation has compiled an overview of each state's regulations regarding chemical disclosure, groundwater protection, and wastewater management.⁵

According to the Independent Petroleum Association of America, of the approved applications for permits to drill on federal lands, 98 percent were in seven states.⁶ Six of those seven states have updated

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their fracking regulations, and the seventh (California) issued a regulation addressing operations standards and fluid disclosure in December 2012.⁷

Although the BLM regulation proposes that states that meet or exceed the federal government's minimum standards would allegedly continue to enforce their own regulations, by requiring minimum standards that are more stringent and rigid than industry best practices and state regulations, the regulation would actually remove the state regulators' flexibility and specialized knowledge of their geographic surroundings. Further, it provides no guidance for how states would enforce their own rules yet still be in compliance with the BLM regulation.

BLM's projection that the regulation will add an additional \$3,000–\$5,000 in cost to each well omits or underestimates the new hurdles the industry will have to face. Independent analysis projects that cost will be closer to \$100,000 per well, and that cost will come without any meaningful environmental benefit, since the process has proven to be safe.⁸

Representative Bill Flores (R-TX) introduced legislation (H.R. 2728) that would maintain the responsive state regulatory process that has been so successful and provided the necessary structure to produce energy, create jobs and economic growth, and protect the environment.

Improving the EPA Drinking Water Study: Putting Risk into Context. At the behest of

Congress, the EPA is conducting a study on the effects of hydraulic fracturing on drinking water. The EPA released a progress report in December 2012 and expects to release a draft report for comment in 2014.⁹

Representative Lamar Smith's (R-TX) EPA Hydraulic Fracturing Study Improvement Act (H.R. 2850) would improve the value of the final report in a number of ways. The bill would codify the report as a Highly Influential Scientific Assessment, which would ensure that the report is subject to a rigorous peer review. When it comes to fracking's potential impact on drinking water, the bill would also require "objective estimates of the probability, uncertainty, and consequence of each identified impact, factoring in the risk management practices of states and industry."

Including these stipulations for the report would put the true risks of fracking into context and make the findings more difficult to manipulate for political purposes. Further, the additional guidelines would provide better measures for the EPA to provide an accurate assessment of fracking, which the agency has failed to do in the past. For instance, the EPA had to significantly lower its methane emission estimates from natural gas production, and an independent analysis from IHS CERA found that even those estimates are high, because the EPA's methodology does not reflect current industry practices.¹⁰

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1. IHS, "America's New Energy Future: The Unconventional Oil and Gas Revolution and the US Economy," October 2012, <http://www.ihs.com/images/Americas-New-Energy-Future-National-Main.pdf> (accessed November 18, 2013).
 2. National Petroleum Council, "Prudent Development: Realizing the Potential of North America's Abundant Natural Gas and Oil Resources," September 2011.
 3. Michael Birnbaum, "European Industry Flocks to U.S. to Take Advantage of Cheaper Gas," *The Washington Post*, April 1, 2013, http://articles.washingtonpost.com/2013-04-01/world/38182416_1_natural-gas-shale-gas-basf (accessed November 18, 2013).
 4. For a more detailed analysis of the technical flaws in the BLM's proposal, see Independent Petroleum Association of America, "Comments on BLM's Hydraulic Fracturing Rulemaking Proposal," August 22, 2013, http://www.ipaa.org/wp-content/uploads/downloads/2013/08/Comments_IPAA-WEA-BLM-Fracing-Rule-FINAL-8-22-13.pdf (accessed November 13, 2013).
 5. See Nicolas D. Loris, "Hydraulic Fracturing: Critical for Energy Production, Jobs, and Economic Growth," Heritage Foundation *Backgrounder* No. 2714, August 28, 2012, <http://www.heritage.org/research/reports/2012/08/hydraulic-fracturing-critical-for-energy-production-jobs-and-economic-growth>.
 6. Independent Petroleum Association of America, "Comments on BLM's Hydraulic Fracturing Rulemaking Proposal."
 7. California Department of Conservation, Division of Oil, Gas, and Geothermal Resources, Pre-Rulemaking Discussion Draft, December 18, 2012, http://www.conservation.ca.gov/dog/general_information/Documents/121712DiscussionDraftofHFRegs.pdf (accessed November 18, 2013).
 8. Independent Petroleum Association of America, "Comments on BLM's Hydraulic Fracturing Rulemaking Proposal."
 9. Environmental Protection Agency, "Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources, Progress Report," December 2012, <http://www2.epa.gov/sites/production/files/documents/hf-report20121214.pdf> (accessed November 18, 2013).
 10. Mary Lashley Barcella, Samantha Gross, and Surya Rajan, "Mismeasuring Methane: Estimating Greenhouse Gas Emissions from Upstream Natural Gas Development," IHS CERA, 2011, <http://www.ihs.com/images/Mismeasuring-Methane-feb-2013.pdf> (accessed November 18, 2013).

With the massive economic benefits of fracking and no instances of drinking water contamination as a result of the fracking process, it is critical to improve the value and validity of the EPA's forthcoming report.

Give States More Control. One of the primary reasons shale oil and shale gas production has been so successful economically and environmentally is

state government management. Congress should not only protect states from more unnecessary and duplicative overreach but give states more control over the permitting and environmental review process on federal lands in their respective states.

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