NATIONAL ASSOCIATION OF Manufacturers

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U.S. Department of the Interior
Director (630), Bureau of Land Management
Mail Stop 2134 LM
1849 C St., NW
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Attention: 1004-AE26

Re: RIN 1004-AE26. *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, supplemental notice of proposed rulemaking and request for comment.*

The National Association of Manufacturers (NAM), the largest industrial trade association in the United States representing over 12,000 small, medium and large manufacturers in all 50 states, submits the following comments on the Bureau of Land Management's (BLM) proposed rule, Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, 78 Fed. Reg. 31.636 (May 24, 2013) ("Proposed Rule"). The NAM continues to recommend that the BLM withdraw the Proposed Rule in favor of allowing states to continue their respective regulatory programs. However, because the BLM appears poised to move forward with this regulation, these comments identify areas in the Proposed Rule that should be improved to protect against undue harm to manufacturers.

States have long been the primary regulators of hydraulic fracturing and have done so safely for decades. States are also continually improving their regulations: the BLM itself recognizes in the Proposed Rule that several states (including major oil and gas producing states of Texas, Colorado, Arkansas and Wyoming) have substantially revised their State regulations related to hydraulic fracturing. The NAM believes the responsibility to regulate hydraulic fracturing should remain with states, and is concerned that duplicative hydraulic fracturing regulation would harm any potential gains resulting from increased exploration, development, and production of shale oil and gas.

Manufacturers are disappointed that the BLM is moving forward with the Proposed Rule absent the existence of any facts that would warrant federal regulation. Much like the flawed 2012 rule that the BLM withdrew, the current Proposed Rule is justified only by a statement that "[t]he rapid expansion of [hydraulic fracturing] has caused public concern" over a variety of issues. Manufacturers are concerned that such reactionary regulation only contributes to the public's misunderstanding of the hydraulic

fracturing process and provides unnecessary opportunities for opponents of fossil fuel development to demonize this technically sound practice.

The BLM appears to be confusing other lifecycle phases of well operations with the discrete and relatively short well stimulation component; the other phases of the lifecycle are common to all oil and gas wells and do not deserve a new, special round of regulation. The NAM also is still concerned with the potential costs of this regulation on manufacturers. However, if the BLM is determined to move forward with this rule there are a number of changes that must be made in order for it to be workable.

I. Introduction: Manufacturers Support Greater Access to Unconventional Oil and Gas Resources

As the NAM stated in comments on the withdrawn 2012 rule, there are abundant oil and natural gas resources in the United States and the NAM supports policies that promote the leasing, exploration and development of the nation's oil and natural gas resources in an environmentally sound manner. Major advances in hydraulic fracturing and horizontal drilling technologies have made the extraction of shale gas and oil more cost-effective and technically feasible. Development of these massive new deposits of oil and gas has made a tremendous difference on the current and future outlook for energy in the U.S. and has made the nation more energy secure.

Equally important, shale oil and gas development through hydraulic fracturing has unlocked tremendous benefits for manufacturers and the millions of Americans who work in the U.S. manufacturing sector. Manufacturers consume one-third of the nation's energy and depend on oil and gas for feedstock and energy needs; for these reasons, the unconventional oil and gas renaissance is making manufacturers more competitive. A recent PwC/NAM analysis found that new shale gas development could reduce natural gas expenses for manufacturers by as much as $11.6 billion annually through 2025.[1] PwC further estimated that the benefits of affordable gas and the demand for more manufactured products could lead to the creation of approximately one million new manufacturing jobs by 2025. This makes unconventional oil and gas development extraordinarily important to American manufacturers who are subject to an ever increasingly competitive global marketplace. Very simply, hydraulic fracturing is driving demand for more chemical, metal, and industrial products to be manufactured in the United States—a trend manufacturers do not want to see thwarted by new regulatory costs or burdens.

II. Comments on BLM's Proposed Rule.

While manufacturers prefer that the BLM withdraw the Proposed Rule until and unless it can prove that states are incapable of regulating the practice on their own, we

[1] PwC, Shale Gas: A Renaissance In US Manufacturing? (Dec. 2011), *available at* http://www.nam.org/~/media/01A2FACA40ED41F3A20FA08FBD6522C0/Shale_Gas_A_renaissance_in_Manufacturing.pdf (last visited June 28, 2012).

recognize that the BLM plans to move forward with this regulation. Nevertheless, the NAM still has a number of serious concerns with the Proposed Rule as currently drafted, which must be corrected by the BLM before it considers finalizing the rule.

The NAM appreciates the BLM's withdrawal and reconsideration of the flawed 2012 rule it proposed, and is pleased to see improvement in several areas.

A. Improvements in the Proposed Rule.

1. **Changing of Scope**. The BLM's decision to narrow the scope of these regulations to apply only to "hydraulic fracturing operations, and fracturing operations," and not to all oil and gas operations. This is a more targeted approach than the 2012 rule, and recognizes existing regulations that govern oil and gas operations.

2. **Using FracFocus**. The BLM's decision to use FracFocus as the means of disclosing the chemical constituents of fracturing fluids is a step in the right direction. However, manufacturers are still concerned that the BLM maintains the authority to use other databases in the future.

3. **Improving Trade Secrets and Confidential Business Information (CBI) requirements.** The BLM improved this aspect by no longer requiring companies to automatically disclose trade secrets and CBI to the BLM. Manufacturers still have concerns with treatment of CBI and trade secrets in the Proposed Rule, which are discussed later in these comments.

4. **Reduced regulator burden on drilling activities.** The BLM changed the rule to allow for the use of a single notice for one "type" of well by providing some additional flexibility in method of showing well integrity. For example, not requiring a cement bond log approval significantly reduced a new potential burden on drillers. This was a significant improvement upon the 2012 rule.

5. **Dropping the Requirement to Certify State and Local Laws.** The BLM removed the requirement for operators to certify to the BLM that the company had complied with all applicable laws at the state, county and local levels. This is a sensible change from the 2012 rule that reduces potential duplication with state and local regulations.

B. Concerns with the Proposed Rule.

Despite the improvements discussed above, several very important flaws remain in the Proposed Rule which must be corrected. It is of paramount importance that federal regulation not slow the pace of oil and gas exploration or restrict the scope of these activities. Manufacturers are becoming increasingly

dependent on unconventional oil and gas and the BLM must ensure that producers are able to deliver the resources manufacturers and consumers need in an affordable, reliable, secure and rapid fashion. The NAM's concerns with the Proposed Rule are presented in further detail below.

1. **BLM Has Provided No Scientific Justification for the Proposed Rule.** The BLM states that the Proposed Rule is necessary because its current regulations applicable to well stimulation activities have not been revised in many years, and because of vague "public concern" relating to well stimulation. However, the BLM still fails to explain whether any of these concerns are warranted due to actual instances of stimulation activities affecting health or the environment, or why it has proposed to expand the regulations so dramatically.

   The President has demanded that regulations be based on the best available science.[2] His administration has demanded that "[r]egulation must be justified; the arguments on its behalf must be based on careful evidence, not on dogmas, intuitions, hopes, or fiat."[3] At present, the EPA is studying the effects of hydraulic fracturing on U.S. waters and water usage. The BLM should not even consider taking action until the EPA's study of "Hydraulic Fracturing and Its Potential Impact on Drinking Water Resources" (http://www2.epa.gov/hfstudy) has been completed and peer reviewed, which will be sometime in 2014. The Proposed Rule is premature and will continue to be premature until the EPA's study and analysis is completed and peer reviewed. Until there is evidence that the significant expansion of federal authority embodied in the Proposed Rule is warranted, the Proposed Rule should be withdrawn or significantly pared down.

2. **The Proposed Rule Duplicates Existing State and Federal Regulations.** The BLM acknowledges that Colorado, Wyoming, Arkansas Texas and other states have updated their regulations to address chemical disclosure, well integrity and oversight for hydraulic fracturing and related operations. BLM admits it has even tried to model its own regulations after these states. It is clear that states are capable of regulating shale development effectively. Poorly-crafted new federal regulations could create confusion, uncertainty and ultimately delays.

   States are the appropriate regulatory authorities for hydraulic fracturing operations because they are able to tailor their regulations to state-specific factors, whereas a federal one-size-fits-all approach is often ill-

[2] Executive Order 13563, "Improving Regulation and Regulatory Review," Jan. 18, 2011.

[3] Remarks of Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, March 15, 2011, *available at* http://www.whitehouse.gov/sites/default/files/omb/inforeg/speeches/economic-growth-public-protection-03152011.pdf.

suited to address local issues. State regulators, not BLM staff, have the technical expertise to appropriately evaluate stimulation activity within a given state, and state-specific knowledge which makes regulation at the state level more efficient. The Proposed Rule ignores significant regional differences in geology and hydrology. In fact, the Wyoming Congressional Delegation sent a letter on August 19 to Secretary Jewell asking to exempt Wyoming and all other states that are currently regulating hydraulic fracturing from the final rule. The BLM is not equipped—particularly in this age of shrinking federal budgets—to provide the level of service that is necessary to enforce the new responsibilities required by the Proposed Rule, and it must recognize its shortcomings both in terms of staff resources and site-specific expertise.

One area is obviously duplicative and must be remedied: the agency appears to be confusing other well life-cycle phases of operations with the discrete and relatively short well stimulation component. This fact is illustrated in the agency's statement to modernize hydraulic fracturing operations with additive disclosure, well integrity, and produced water (i.e., all water produced form the wellbore including during the flowback process) management revisions - only additive disclosure is specific to the hydraulic fracturing operation. Realizing this fact, BLM would have considered its existing Onshore Order 2 and Onshore Order 7 requirements for well integrity and produced water management, respectively, for all oil and gas well on federal lands. Instead, the agency is attempting to promulgate rules that do not appear to be necessary in lieu of existing federal and state requirement.

The BLM series of Onshore Oil and Gas Orders are binding on operating rights owners and operators of Federal and Indian oil and gas leases, and cover a wide range of topics, such as drilling, site security, measurement of oil and gas, and disposal of produced waters. Submitting the same information for the same well to the federal government multiple times is the definition of overregulation, and the NAM does not support such burdensome and unnecessary requirements.

3. **Clarity of Proposed Rule.** The NAM recognizes the importance of clarity in any regulation and is concerned with the lack of clarity on several items such as: "useable" water, type wells and logs, and plan deviation documentation.

    a. *Useable water*: The BLM Proposed Rule lacks clarity with regard to the efforts an operator must accomplish to identify all locations of "useable water" in order to comply with the rule's intent to protect all "useable water." The states have been responsible for defining the

definition of “usable water” historically and the NAM recommends this delegation of responsibility continue.

b. *Type well:* Some field offices may interpret the type well concept in a way that will result in far more type wells that the estimated 8 percent suggested in the Proposed Rule. The BLM does not consistently use the words “similar” and “same” in the type well definition and throughout the rule when comparing type well cementing and hydraulic fracturing designs with the group of wells represented by the type well. The BLM has made some progress in this area but can further improve the rule clarity by being consistent in the use of these words.

c. *Document Deviations between Actual Operations and Approved Plan (Subpart 3162 (i)(6)):* This part of the Proposed Rule fails to adequately clarify expectation (scope) around reporting deviations between the actual operations and approved plan. The BLM can improve this area by rewording the Proposed Rule to require the operator to provide a general qualitative statement describing the significant deviation from the approved plan.

d. *Use of jargon or technical language*: There are instances in the Proposed Rule where jargon or technical language may reduce clarity as a result of words having multiple meanings within the industry. The BLM should seek additional input from individual companies in order to ensure clarity and avoid unnecessary costs. For example, BLM’s use of mechanical integrity test (MIT) and the term “drill log”; terms which can have multiple meaning to the Industry. MIT has a different meaning when complying with EPA’s and State’s underground injection control (UIC) rules or BLM’s and State’s temporarily abandoned wells. In the proposed revised rule the BLM appears to mean to pressure test the casing; yet uses mechanical integrity test. BLM should simply state pressure test instead of MIT. “Drill log” can mean an open- or cased-hole log, mud log, or depth record during drilling. BLM should be clear in their intent for the purpose and meaning of a “drill log”.

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4. **Concern with potential disclosure of Trade Secrets or Confidential Business Information (CBI).** With respect to trade secrets and confidential business information (CBI), the BLM failed to recognize that suppliers and service companies often hold the rights to fluid trade secrets. Instead the BLM is still proposing to require the operator of the well to make the claim for protection of the confidentiality of fluid information; yet they often do not possess this

information. The BLM should deal directly with the holder of trade secrets or confidential business information and not necessarily just the operators.

5. **The Proposed Rule's Costs Outweighs its Benefits.** The BLM understates the true economic costs and regulatory impact of the Proposed Rule. Its economic assessments assume the total cost of this rule would be between only $12 and $20 million. In contrast, a recent economic analysis performed by John Dunham Associates for the Independent Petroleum Associations of American and the Western Energy Alliance finds that the Proposed Rule would cost $345.6 million per year and impact an estimated 5,058 wells waiting to be permitted or drilled.[4] This would substantially exceed the $100 million threshold that requires an economic assessment—an analysis that the BLM has not performed.

6. **Cost of Administering New Rules.** Given limited federal budgets and the difficulties the BLM has had retaining qualified petroleum engineers and other technical staff, the agency should consider ways to delegate more to the states rather than proposing an entirely new regulatory regime for which it does not have the budget, the staff, or the technical expertise.

7. **The Proposed Rule Will Lead to Delays.** Whenever there are multiple or overlapping regulations at the state and federal there will be unnecessary delay, expense, and confusion as operators must comply with various regulatory schemes, personnel and cultures. Delays in permitting often means that key assets and resources are sidelined and idled for periods of time. In some cases delays in permitting may mean the difference between getting a well drilled and having to wait for another season to complete the well. Delays also translate into higher costs, and fewer jobs, as the lack of drilling activity has a ripple effect downstream. The recent Dunham analysis estimates that the cost of delay for one week would cost an average of $1,580 per well.[5] This would translate into over $5.632 million in additional costs[6]. If the BLM took an extra month to process application for permit to drill (APD) the cost per well could be as high as $6,770 or a total of nearly $23 million a year.[7]

[4] John Dunham and Associates analysis of the "Business Impact of Revised Completion Regulations" on the revised proposed rule by the BLM for hydraulic fracturing on federal lands. This was analysis done at the request of the Independent Petroleum Association of American and the Western Energy Alliance, July 22, 2013. *Available at* http://www.ipaa.org/press-releases/blm-fracing-rule-imposes-345-million-cost-to-society/.
[5] John Dunham and Associates calculations for the Western Energy Alliance, 2012. Based on an interest rate of 7 percent to match the discount rate used in the BLM analysis.
[6] Ibid.
[7] John Dunham and Associates analysis of the "Business Impact of Revised Completion Regulations", July 22, 2013.

The NAM is continues to be concerned that the discretion authorized in the Proposed Rule will allow different offices within the BLM to require entirely different tests or paperwork for approval and that no two offices will be the same. Add these open-ended federal permitting requirements to state permitting requirements operators must obtain, and it makes the burden overwhelming.

III. Conclusion

The NAM strongly recommends the BLM withdraw the Proposed Rule and allow the states to regulate hydraulic fracturing in the same safe and secure manner they have done for several decades. The BLM's Proposed Rule, which seeks to make significant changes to hydraulic fracturing activities on federal and Indian lands, not only duplicates state regulations but federal regulations. The Proposed Rule also lacks the factual basis to justify the agency's undertaking of such a broad and burdensome federal regulatory effort. The Proposed Rule appears to have been drafted without consideration of the information that is already submitted to the federal government via Onshore Oil and Gas Orders. It is disconcerting that the agency appears to be confusing other well life-cycle phases of operations with the discrete and relatively short well stimulation component. The Proposed Rule is impractical, redundant, costly and overly burdensome. Should the BLM choose to move forward with the rule, it must at a minimum make the changes set forth in these comments with respect to duplication of state and federal regulations, lack of clarity, protecting trade secrets/CBI, reducing costs and burden on operators, reducing administrative costs, minimize delays in issuing permits and providing further clarity on a number of issues previously outlined. In sum, the reasons not to implement the Proposed Rule outnumber and outweigh the reasons to adopt a set of new, broad federal requirements. The NAM strongly encourages the BLM to withdraw the Proposed Rule.

Sincerely,

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