Feature Story

BLM Proposes Significant Rule on Fracking on Federal and Indian Lands with No Monetized Benefits

The Bureau of Land Management published a $20 million proposed rule setting standards for the 90 percent of wells on Federal and Indian lands that are subject to hydraulic fracturing, or ‘fracking’. “The BLM has analyzed the costs and the benefits of this proposed action in an accompanying Regulatory Impact Analysis available in the rulemaking docket. The estimated costs range from $12 million to $20 million per year. The range reflects uncertainty about the generalization of costs across all hydraulic fracturing operations. The potential benefits of the rule are more challenging to monetize than the costs, but that does not mean that the rule is without benefits. The rule creates a consistent, predictable regulatory framework, in accordance with the BLM's stewardship responsibilities under the Federal Land Policy and Management Act and other statutes, for hydraulic fracturing involving BLM-administered lands. The rule is designed to reduce the environmental and health risk that can be posed by hydraulic fracturing operations, particularly in the way the rule addresses flowback fluids, well construction, and hydraulic fracture design.” Although the rule will not have an annual effect of $100 million or greater on the economy, OMB has determined that this proposed rule is significant because it “may raise novel policy issues because of the requirement that operators provide to the BLM information regarding hydraulic fracturing operations that they are not currently providing to the BLM.”

Comments are due on June 24th.

In the News

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- After 37 years, U.S. chemical-safety laws may finally get an overhaul, Washington Post
- Environmental Defense Fund scolded by other green organizations on ‘fracking’, Washington Post
- Richard Cordray fights financial ‘scams and frauds’, Washington Post
- Volcker: Multiple Bank Regulators Is ‘Recipe for Getting Nothing Done’, Wall Street Journal

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- U.S. revises meat-labeling rules to satisfy WTO ruling, Reuters
- Eleventh-hour ‘slaughtered in the U.S.A.’ rule seeks to avert painful sanctions, The Hill
- Wall Street Seeks Dodd-Frank Changes Through Trade Talks, Bloomberg
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**Rulemaking**

**Securities and Exchange Commission**

**SEC Proposes 315-page Rule and Interpretive Guidance on Cross-Border Security-Based Swaps**

The Securities and Exchange Commission published a 315-page proposed rule and interpretive guidance addressing cross-border security-based swap activities. “Our proposed rules and interpretive guidance address the application of Subtitle B of Title VII of the Dodd-Frank Act with respect to each of the major registration categories covered by Title VII relating to market intermediaries, participants, and infrastructures for security-
based swaps, and certain transaction-related requirements under Title VII in connection with reporting and dissemination, clearing, and trade execution for security-based swaps. In this connection, we are re-proposing Regulation SBSR and certain rules and forms relating to the registration of security-based swap dealers and major security-based swap participants. The proposal also contains a proposed rule providing an exception from the aggregation requirement, in the context of the security-based swap dealer definition, for affiliated groups with a registered security-based swap dealer. Moreover, the proposal addresses the sharing of information and preservation of confidentiality with respect to data collected and maintained by SDRs. In addition, the Commission is proposing rules and interpretive guidance addressing the policy and procedural framework under which the Commission would consider permitting compliance with comparable regulatory requirements in a foreign jurisdiction to substitute for compliance with requirements of the Exchange Act, and the rules and regulations thereunder, relating to security-based swaps (i.e., “substituted compliance”). “Comments are due on August 21st.

SEC Extends Comment Period for 11 Proposed Rules & Policy Statements on Security-Based Swaps
The Securities and Exchange Commission announced the extension of comment periods for eleven different outstanding rulemaking releases and statements of general policy pursuant to security-based (SB) swaps. “The reopening of these comment periods is intended to allow interested persons additional time to analyze and comment upon the Proposed Rules and the Policy Statement in light of the Commission's proposal of substantially all of the rules required to be adopted by Title VII of the Dodd-Frank Act, its proposal of rules and interpretations addressing the application of the SB swap provisions of Title VII of the Dodd-Frank Act to cross-border SB swap transactions and non-U.S. persons that act in capacities regulated under the Dodd-Frank Act (the “Cross-Border Proposed Rules”), and the Commodity Futures Trading Commission's (the “CFTC”) adoption of substantially all of the rulemakings establishing the new regulatory framework for swaps. All comments received to date on the Proposed Rules and the Policy Statement will be considered and need not be resubmitted.” Comments are now due on July 21st.

SEC Extends Comment Period for Proposed Rule Setting Standards for Automated Trading Systems
The Securities and Exchange Commission extended the deadline for comments submitted on its proposed rule, Regulation Systems Compliance and Integrity (Regulation SCI). The proposed rule would codify regulatory systems compliance and integrity for self-regulatory organizations (including registered clearing agencies), alternative trading systems, and plan processors. These standards are intended to address issues resulting from automated systems for conducting trades, which were previously addressed by the Commission’s ARP inspections program. “In the Commission's view, the convergence of several developments—the evolution of the markets to become significantly more dependent upon sophisticated automated systems, the limitations of the existing ARP Inspection Program, and the lessons of recent events—highlight the need to consider an updated and formalized regulatory framework for ensuring that the U.S. securities trading markets develop and maintain systems with adequate capacity, integrity, resiliency, availability, and security, and reinforce the requirement that such systems operate in compliance with the Exchange Act. The Commission is proposing new Regulation SCI because the Commission preliminarily believes that it would further the goals of the national market system and reinforce Exchange Act obligations to require entities important to the functioning of the U.S. securities markets to carefully design, develop, test, maintain, and surveil systems integral to their operations.” Comments are due on July 8th.

Department of Agriculture
AMS Finalizes Country-of-Origin Labeling Regulation for Meat, Seafood, Nuts
The Agricultural Marketing Service published a final rule amending the country-of-origin labeling (COOL) requirements for beef, pork, lamb, chicken, goat meat, wild and farm-raised fish and shellfish, and other food items. “Under this final rule, origin designations for muscle cut covered commodities derived from animals slaughtered in the United States are required to specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation. In addition, this rule eliminates the allowance for commingling of muscle cut covered commodities of different origins. These changes will provide consumers with more specific information about the origin of muscle cut covered commodities... The costs of implementing these requirements will be incurred by intermediaries (primarily packers and processors of muscle cut covered commodities) and retailers subject to requirements of mandatory COOL. The Agency considers that the total cost of the rule is driven by the cost to firms of changing the labels and the cost some firms will incur to adjust to the loss of the flexibility afforded by commingling.”
National Credit Union Administration
NCUA Proposes to Allow Credit Unions to Engage in Derivatives Activities to Hedge Interest Rate Risk
The National Credit Union Administration published a proposed rule that would allow credit unions to “engage in limited derivatives activities for the purpose of mitigating interest rate risk.” NCUA is proposing this rule to allow credit unions to appropriately manage interest rate risk (IRR); currently, derivatives activities are specifically prohibited by NCUA rules because of the potential for risk posed to credit unions. “This proposed authority does not, however, allow credit unions to offer derivatives. This proposed rule applies to all federal credit unions (FCUs) and all federally insured state-chartered credit unions (FISCUs) that are expressly permitted by applicable state law to engage in derivatives transactions. The Board believes this proposed rule allows eligible credit unions to utilize an additional tool to mitigate IRR, while also reducing risk to the National Credit Union Share Insurance Fund (NCUSIF). The rule requires eligible credit unions to apply to NCUA or, in the case of a FISCU, NCUA and the applicable state supervisory authority (SSA), for either Level I or Level II derivatives authority. As discussed in greater detail below, Level I and Level II authority differ on the permissible levels of transactions as well as the application, expertise, and systems requirements.” Comments are due on July 29th.

Federal Housing Finance Agency
FHFA Proposes Rule Removing References to Credit Ratings Agencies in Existing Rules
The Federal Housing Finance Agency published a proposed rule removing references to credit ratings agencies in its existing rules. “Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires Federal agencies to review regulations that require the use of an assessment of the credit-worthiness of a security or money market instrument and any references to, or requirements in, such regulations regarding credit ratings issued by credit rating organizations registered with the Securities and Exchange Commission (SEC) as nationally recognized statistical rating organizations (NRSROs), and to remove such references or requirements. To implement this provision, the Federal Housing Finance Agency (FHFA) is proposing to remove a number of references and requirements in certain safety and soundness regulations affecting the Federal Home Loan Banks (Banks) and to adopt new provisions that would require the Banks to apply internal analytic standards and criteria to determine the credit quality of a security or obligation, subject to FHFA oversight and review through the examination and supervisory process. FHFA will undertake separate rulemakings to remove NRSRO references and requirements contained in the capital regulations applicable to the Banks and in the regulations governing the Banks' acquired member asset (AMA) programs.” Comments are due on July 22nd.

Federal Communications Commission
FCC Rule Requires Bounce-Back Messages for Emergency Texts to 911 Where Service Not Available
The Federal Communications Commission published a final rule requiring providers of interconnected text messaging services to provide automated bounce-back messages for emergency texts to the number 911 in areas where text-to-911 is not available. “The rules are adopted with the goal of reducing the risk of individuals sending text messages to 911 during an emergency and mistakenly believing that 911 authorities had received it, particularly during the transition to Next Generation 911 (NG911), when text-to-911 will be available in some areas sooner than others and may be supported by certain service providers but not by others.”

Department of Health and Human Services
CMS Finalizes Rule Implementing New Medical Loss Ratio Requirements for Medicare Part C and D
The Centers for Medicare and Medicaid Services (CMS) published a final rule implementing the new medical loss ratio (MLR) requirements for two Medicare programs: the Medicare Advantage (MA) Program, and the Medicare Prescription Drug Benefit Program, which was enacted pursuant to the Patient Protection and Affordable Care Act (the “Act”). “The new minimum MLR requirement in section 1857(e)(4) of the Act is intended to create incentives for MA organizations and Part D sponsors to reduce administrative costs such as marketing costs, profits, and other uses of the funds earned by MA organizations and Part D sponsors and to help ensure that taxpayers and enrolled beneficiaries receive value from Medicare health plans. Under this final rule, an MLR will be determined based on the percentage of Medicare contract revenue spent on clinical services, prescription drugs, quality improving activities, and direct benefits to beneficiaries in the form of reduced Part B premiums. The higher the MLR, the more the MA organization or Part D sponsor is spending on claims and quality improving activities and the less they are spending on other things… If an MA organization or Part D sponsor fails to meet MLR requirements for
more than 3 consecutive years, they will also be subject to enrollment sanctions and, after 5 consecutive years, to contract termination.”

**Agencies**

**Federal Trade Commission**

**FTC Announces Availability of Modified Ten-Year Regulatory Review Schedule**

The Federal Trade Commission published a [proposed rule](https://www.ftc.gov/news-events/press-releases/2023/05/ftc-announces-availability-modified-ten-year-regulatory-review) announcing the availability of the Commission’s modified [ten-year regulatory review schedule](https://www.ftc.gov/about-us/ten-year-regulatory-review-schedule). “To ensure that its rules and industry guides remain relevant and are not unduly burdensome, the Commission reviews them on a ten-year schedule. Each year the Commission publishes its review schedule, with adjustments made in response to public input, changes in the marketplace, and resource demands… The Commission is currently reviewing 22 of the 65 rules and guides within its jurisdiction.”

**Council on Environmental Quality**

**CEQ Extends Comment Period for Guidelines and Principles for Water and Related Land Resources**

The Council on Environmental Quality published a [notice](https://www.whitehouse.gov/ceq/news/ceq-extends-comment-period-guidelines-principles-water-related-land-resources) announcing the CEQ is extending the comment period for the Council’s revised *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*. “The revised Principles and Guidelines consist of three key components: (1) The Principles and Requirements (formerly called Principles and Standards), setting out broad policy and principles that guide investments; (2) the Interagency Guidelines, providing guidance to Federal agencies for determining the applicability of the Principles and Guidelines and for developing agency-specific implementing procedures for formulating, evaluating, and comparing water resources projects, programs, activities, and related actions; and (3) the Agency Specific Procedures, outlining agency-specific procedures for incorporating the Principles and Requirements into agency missions and programs.” [Comments](https://www.whitehouse.gov/ceq/2023/05/ceq-extends-comment-period-guidelines-principles-water-related-land-resources) are due on June 27th.

**Export-Import Bank**

**Ex-Im Bank Receives Application for $650 Million to Support Export of Mining Equipment to Australia**

The Export-Import Bank published a [notice](https://www.exim.gov/news/2023/05/ex-im-bank-receives-application-support-export-mining-equipment-australia) announcing the receipt of an application for a long-term financial guarantee or direct loan for $650 million to support the export of $522 million worth of mining equipment to Australia. “The repayment term of the guarantee or direct loan is 8.5 years. The U.S. exports will enable the Australian mining company to establish a maximum production capacity of 55 million metric tons of iron ore per year. Available information indicates that the iron ore will be consumed in Asian Markets including: China, Japan, Korea, and Taiwan.” [Comments](https://www.exim.gov/2023/05/ex-im-bank-receives-application-support-export-mining-equipment-australia) are due on June 6th.

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