INSTITUTE FOR 21ST CENTURY ENERGY
U.S. CHAMBER OF COMMERCE

Karen Alderman Harbert
President and CEO

1615 H Street, NW | Washington, DC 20062
(202) 463-5558 | (202) 887-3457 Fax
www.energyxxi.org

September 10, 2012

Mike Pool
Director, Bureau of Land Management
U.S. Department of the Interior,
Mail Stop 2134 LM,
1849 C St. NW.,
Washington, DC 20240

RE: RIN 1004-AE26
Oil and Gas; Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands.

Dear Mr. Pool:

The Institute for 21st Century Energy (Institute), an affiliate of the U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector and region, is pleased to submit written comments on the Bureau of Land Management's (BLM) proposed rule regarding well stimulation on public and Indian lands (proposed rule).

The mission of the Institute is to unify policymakers, regulators, business leaders, and the American public behind common sense energy strategy to help keep America secure, prosperous, and clean. The Institute believes that domestically produced oil and natural gas is, and will remain, essential to America's economy and global competiveness. We support the environmentally-sound production of the nation's resources and realize that effective, transparent, and predictable regulation is a key part of maximizing the value of our extensive resources.

It is critical that our state and federal regulations protect the environment while also allowing the economic recovery of resources. Redundant or inefficient regulations not only do not add to public safety or environmental protection, they act to reduce the economic value of our nation's resources through the loss of jobs, government revenue, and economic growth, all of which are especially critical to our nation right now.

The proposed rule is deficient in several ways. BLM fails to clearly explain why it is proposing this rule. More specifically, BLM does not point to any deficiencies in the current framework regulating well stimulation. BLM has not established a record demonstrating sufficient effort to ascertain gaps the agency perceives in the existing structure(s) regulating oil and natural gas development, nor has it shown sufficient interaction with its regulatory counterparts in the relevant states. This underlying work is the minimum one would expect from the agency before proposing regulations, and without such a minimal foundation, it is premature to propose this rule.

Additionally, the proposed rule lacks clear compliance standards in critical areas. A hallmark of sound regulation is its transparency and predictability. The proposed rule lacks both. The proposed rule frequently requires submission of data and information from industry without specifying any clear compliance requirements. The Institute is concerned that this allows for the prospect of standards being crafted retroactively, after industry has supplied the necessary information. This creates tremendous uncertainty for the regulated entities and will severely reduce industry's investment in oil and natural gas exploration and production on public and Indian lands.

Additional energy production on federal lands will increase energy security, economic opportunity, and added revenues to the federal government. This benefit will only happen if investment is not inhibited by ineffective and unnecessary regulation. The Institute urges BLM to withdraw the proposed rule and begin meaningful collaboration with the respective state oil and gas regulatory programs and multi-state organizations to determine whether potential regulatory gaps exist. If

BLM does propose a new rule, it must clearly describe and assess those gaps and explain why BLM is the appropriate regulatory body to remedy any such gaps. BLM must also craft compliance requirements that provide industry with predictability and certainty.

Importance of Shale Oil and Natural Gas Production

The shale oil and natural gas revolution has been critical to our economy over the past five years. The U.S. is the world's largest natural gas producer and the third largest oil producer. In 2011, natural gas production in the U.S. was 23.0 TCF (trillion cubic feet), 20% of global production. The Energy Information Administration's (EIA) 2012 Annual Energy Outlook projects that by 2022 the U.S. will be a net exporter of natural gas. This is a complete change in outlook from just a few years ago. In 2007, for example, EIA projected that the U.S. would import about 20% of our natural gas supply by 2030. This change is directly attributable to the significant increase in natural gas production from shale. EIA projects that from 2010 to 2035, natural gas production from shale formations will rise from 23% to 49% of the U.S. gas supply. The nation's natural gas resource base, which includes proved and unproved reserves, is now estimated at 2203 TCF, or almost 90 years of supply.

For the past three years U.S. oil production has increased, reversing a 25 year decline. Perhaps the best example is North Dakota, which has a significant portion of the Bakken shale formation within its borders. In six years, North Dakota's oil production has increased 380% from 40 million barrels/year in 2006 to 153 million barrels/year in 2011, making it the second largest oil producing state in the country.

The increase in energy production nationwide has been tremendously important to the nation's economy, creating an estimated 600,000 jobs at a critical time when our economy desperately needs new jobs. In 2011, the oil and natural gas industry created 9% of all new jobs in the U.S. These energy developments have occurred on private property and under state regulation with effective stewardship of the environment and protection of public health and safety. The country cannot

afford to limit the opportunities for new jobs by making development of the energy resources available on federal lands unattractive or uneconomic. Federal regulation should follow the example of state regulation to avoid limiting the benefits of energy production on federal lands.

Key Factors in Shale Oil and Natural Gas Success

Shale oil and natural gas development is both similar and different from conventional oil and gas. It is similar in that it uses advanced petroleum engineering and information technology to access difficult to reach resources. The oil and gas industry is one of the most proficient in the world at developing and harnessing advanced technologies. It takes a combination of advanced materials, supercomputing, and sophisticated communications to drill two miles deep and turn and drill horizontally another mile or more and stay on target in a vertical interval of just a few feet.

The oil and gas industry has made these developments look easy. However, shale oil and natural gas production is a high cost exploration and development activity. Where shale oil and gas development is different from conventional production is that success is critically tied to managing costs and maximizing productivity. Managing productivity is absolutely critical to continued investment. A key element of managing costs is effective planning of not just one well, but the entire development of an area. An industry measure of the effectiveness for a company is monitoring drilling rig utilization in terms of "days per well drilled". The industry has dramatically reduced drilling time through technology advances and improved management. Regulations that cause delays or uncertainty will result in decreasing drilling-rig efficiency. This is especially troublesome when regulatory delays do not contribute to environmental protection or public health and safety. Any reduction in drilling-rig efficiency will directly impact the number of wells drilled and will also have an impact on long term investment decisions.

One of the most serious concerns the Institute has regarding BLM's proposed rule is that the success factors outlined above will be compromised because of unintended consequences of several provisions. Under the proposed rule, companies could be forced to delay operations either to complete additional tests or to wait for BLM to review information. BLM has not made a case that these additional tests or reviews will result in more effective environmental, public health, and safety protection. Increasing the cost of well construction and potentially delaying that process, and perhaps even more importantly, creating uncertainty in drilling costs has the potential to significantly retard investment. The economic impact of reducing the number of wells drilled is a very real concern and has not been addressed in BLM's Economic Analysis.

Role of Regulation

One area of responsibility for most regulators is to ensure the protection of health, safety, and the environment. In oil and gas development, regulators also have a key role to ensure the conservation of the resource. States began regulating the oil and gas industry long before the federal government. One of the earliest laws regulating oil and gas development was Indiana's 1893 statute, which was affirmed by the U.S. Supreme Court in 1898. The great advantage of the state regulatory model for on-shore oil and gas development is that states can tailor regulatory programs to fit regional geology, topography, other scientific factors, as well as social and community differences. A one-size-fits-all approach of federal regulation does not provide for these key differences between areas of the country.

In addition, regulation is intended to set a common denominator and common requirements for companies. Effective regulations should establish the required minimum level of acceptable performance. Being performance driven rather than proscriptive allows for innovation and the development of best practices that may go beyond the minimum requirements. Clearly articulating the minimum performance standards and expectations is essential for effective regulations. Without clear standards, the regulated companies are not sure where to set their own standards,

which makes it difficult, if not impossible to predict compliance costs, and therefore, operating costs.

The proposed rule fails to provide clear standards. The rule focuses on information which needs to be submitted by the applicant or permit holder, rather than the underlying performance requirement or standard which needs to be met. Providing a clear standard and allowing companies to find the most efficient method to meet that standard is essential for innovation and development of new technologies that improve processes. It is these evolving technologies that offer the opportunity to further reduce environmental impact and improve operating efficiency.

Unique Role of BLM as land manager

BLM has a unique role in overseeing oil and gas development on federal lands. As noted in the BLM mission statement: "It is the mission of the BLM to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations". While there is a clear environmental and health mandate in this mission, there is also a clear focus on "productivity". Whether grazing, recreation, or mineral extraction, BLM has articulated the need to maximize value for the American people on land which has been designated for oil and gas exploration. Further, BLM notes that the vast majority of the revenue collected by the agency is in the form of oil and gas royalty payments to the federal government. Regulations that inhibit investments on federal lands with requirements that do not improve environmental or other public benefits run counter to BLM's mission of maximizing the value of oil and gas royalties to the American people.

The most effective way that BLM could maximize the value of resources while also protecting the environment would be to rely on state oil and gas regulatory programs for the primary oversight of oil and gas development on federal lands, particularly subsurface issues such as well construction and hydraulic fracturing. States are regulating oil and gas development on adjacent private lands with expertise and requirements that have been developed specifically for that region. This would

allow BLM to focus resources on issues that are specific to their mission which include managing the surface impact of oil and gas development, coordination with other land uses, and maximizing the value of the resource for the American people.

An important beginning to coordination with states would be for the Secretary of Interior to appoint a representative to the Interstate Oil and Gas Compact Commission (IOGCC). The IOGCC is a governmental organization and one of the few Compacts specifically chartered by Congress. This organization of Governors of oil and natural gas producing states has been the leader for oil and gas regulation since its formation in 1935, at the prompting of President Franklin Roosevelt. Historically, the Department of Interior (Department) has appointed the Assistant Secretary of Land and Minerals to be the Secretary's official representative. The Secretary of Interior has yet to appoint a representative to the IOGCC. This would be an important first step in coordinating oil and gas regulation with the states as well as better understanding the scope and effectiveness of the various state regulatory regimes and mechanisms.

The scope of the proposed rule addresses issues that are nearly all duplicative of state oil and gas regulatory requirements. This redundancy of the proposed rule raises serious questions about BLM's familiarity with existing regulatory structures. This is all the more disconcerting because the Department has chosen not to be represented on the IOGCC, a venue where perspectives on regulatory management are shared, best practices are developed, and cross-jurisdictional cooperation is fostered. The proposed rule poses a high cost to businesses by mandating federal compliance and reporting that is duplicative of state regulations that have already proven to be effective. This comment specifically applies to well construction, well integrity monitoring, waste water management and disposal, and hydraulic fracturing, all areas contemplated by the proposed rule.

Key Concerns with Proposed Rule

The Institute is very concerned that the rule establishes many requirements for information and reporting, without establishing the performance requirements that the BLM desires. For example, BLM proposes requiring the submission of a cement bond log for demonstration of cement seal. However, BLM offers no compliance standard for what constitutes an adequate cement job. This would indicate that BLM will make a subjective determination. This presents a likely scenario where companies will incur costs either waiting for a decision or subsequently learning from BLM of a perceived deficiency at a point that is impossible or very costly to remediate. In the case of well construction, it would be more effective and predictable to define a casing and cementing performance standard. That is what state regulatory programs accomplish. The requirements, such as cement bond logs, are then just one method of demonstrating compliance with the standard.

Key Concerns with Economic Analysis

The economic analysis for the proposed rule greatly underestimates the economic impact of significantly increasing regulations on hydraulic fracturing and well construction. The economic analysis only looks at the discreet well construction, testing, and additional reporting requirements. The most significant costs will be in likely delays in permitting, disruption of well drilling and construction processes, or uncertainty in the final review and approval processes. These additional costs will have a chilling impact on oil and natural gas investment on federal lands. In 2009, a study by IHS Global Insight found that significantly increasing regulations on hydraulic fracturing for the oil and gas industry had the potential to reduce the number of wells drilled by 20%. BLM's proposed rule is likely to reduce investment. Even a small reduction in development as a result of this rule would be larger than the $100 million threshold to find that the rule will have a significant economic impact, supporting a more detailed economic impact analysis.

In addition to the underestimation of the costs, it is unclear that BLM has made a case to show the benefits of this rule. BLM assumes that the benefits come from improvements to well construction and disclosure of fracturing fluid content,

however, there is no information presented to show that well construction is currently inadequate or that fracturing fluids are not already being disclosed through the state regulatory process or by voluntary industry action.

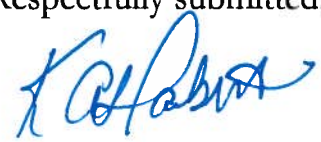
Because of the importance of oil and natural gas exploration and development on public and Indian lands to the nation's economy, it is essential that the full economic impact of new rules be considered. The economic impact of the proposed rule must be fully explored through an independent analysis that fully looks at the impact to new and existing wells, as well as potential impact restricting investment.

Conclusions

The proposed rule contains serious flaws. The Institute believes the proposed rule should be withdrawn. The Institute recommends that the Secretary first appoint a representative to IOGCC and begin discussions with the states to determine and quantify which areas are not currently addressed by state regulations and work through the IOGCC to remedy any perceived gaps. Not only would this avoid duplication with state regulations, but would provide a real foundation for any areas or regions which warrant further regulatory development, in concert with states. This would also provide a forum to engage industry and other interested parties.

The U.S. has a rare opportunity to secure its energy future while spurring significant economic growth. Energy development on public and Indian lands must occur while protecting the environment and ensuring public health and safety. It is also imperative that government avoid actions that inhibit development through unnecessary or duplicative regulations causing adverse unintended consequences.

Respectfully submitted,



Karen A. Harbert