

[Bureau of Land Management's Rescission of 2015 Hydraulic Fracturing Rule](#)

Rescinds Obama administration rule that required hydraulic fracturing ("fracking") operators on Federal and Indian Lands to adhere to certain monitoring and reporting requirements.

Updated last **March 9, 2018**
for the 12/29/2017 final rule.

WHAT IT DOES

The Bureau of Land Management (BLM) [has rescinded](#) an earlier published Final rule covering oil and gas operations. Previously on March 26, 2015, the BLM published in the Federal Register a final rule entitled "[Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule.](#)" The BLM has now rescinded its prior rule, citing its belief that the rule imposes unjustified administrative burdens and compliance costs on oil and gas operators.

The 2015 BLM rule required oil and gas operators to apply to the BLM before conducting [hydraulic fracturing \("fracking"\)](#) operations on lands managed by the Bureau. The application process enacted by the 2015 rule included the disclosure of water sources for fracking operations, description of nearby wells that could be affected by operations, disclosure of chemicals used, and other monitoring and reporting requirements. The 2015 rule was never fully implemented as its legality had been tied up in court. Petitioners in that lawsuit, including several Republican Attorneys General, have [contended](#) that the 2015 rule was arbitrary, not in accordance with law, and in excess of the BLM's statutory jurisdiction and authority. However, environmental groups and their allies have [criticized](#) the BLM's decision to rescind the 2015 rules, arguing that fracking presents serious risks to human and environmental health unless properly regulated.

This final rule furthers President Trump's [directive](#) to reduce or eliminate federal regulations that may hinder economic growth and energy development. The affected sections of the Code of Federal Regulations are now returned to the language that existed immediately before the published effective date of the 2015 rule (June 24, 2015), with some small exceptions.

BACKGROUND

Reason for Review

Interior Secretary Ryan Zinke directed the BLM to review the 2015 rule as part of Secretary's [Order No. 3349](#) ("Promoting Energy Independence and Economic Growth"), which was issued on March 29, 2017. During the review, the BLM [found](#) that all of the 32 states with oil and gas leases on BLM land already had some extent of state-level fracking regulations. The BLM then proposed the rescission of the 2015 rule following the Administration's instruction to reduce the cost of regulatory compliance.

BLM Management of Mineral-rich Land

The [BLM](#) manages 258 million acres of public lands and nearly 700 million acres of subsurface minerals, including oil and natural gas. This accounts for 10% of the land in the United States and approximately 30% of the Nation's minerals. These minerals are found beneath land managed by federal agencies such as the Fish and Wildlife Service, as well as private landowners. The rules for federal land and minerals development were written long before high-volume hydraulic fracturing and other modern technologies were used to produce oil and gas.

Pursuant to the [Mineral Leasing Act](#) (1920), the [Federal Land Policy and Management Act](#) (1976), the [Indian mineral leasing laws](#), and other legal authorities, the BLM has the authority to administer oil and gas operations on Federal and Indian lands in a manner

that allows for resource development [“on the basis of multiple use and sustained yield.”](#)

2015 Oil and Gas Rule

The 2015 rule’s stated intent was to modernize the BLM’s mineral management program. The specific objectives were to (1) ensure that oil and gas wells were properly constructed to protect water supplies, (2) make certain that the fluids that flow back to the surface as a result of hydraulic fracturing operations were managed in an environmentally responsible way, and (3) provide public disclosure of the chemicals used in hydraulic fracturing fluids. The third objective was especially [contentious](#) as many hydraulic fracturing companies view their fluid composition as proprietary and [do not wish to disclose](#) the chemicals used.

RELEVANT SCIENCE

Science Module: [Unconventional Fossil Fuels](#)

Shale Gas

- [Geology](#)
 - Natural gas, primarily methane, found in shale formations
 - Most formations formed 300-400 million years ago during the Devonian period
 - Shale is created by the deposition of fine silt and clay particles on the floor or large, enclosed bodies of water
 - Dead plant matter settles with the silt and clay
 - Methane is released as the organic matter decomposes
 - Some of the gas gets trapped in sandy rock layers
 - The remainder of the gas gets trapped in the harder and less permeable shale rock
 - The gas is in interconnected pore spaces, similar to a kitchen sponge
 - Hydraulic fracturing is needed to break apart the shale formation to access the gas
- [Location](#)
 - Shale gas is present all across the U.S.
 - Largest reservoirs: Appalachian Basin, Antrim Basin (Michigan), New Albany (Ohio), Barnett (Texas), Hillard-Baxter-Mancos (Colorado), Illinois Basin, and Texas-Louisiana-Mississippi Salt Basin

Hydraulic Fracturing

- [Extraction](#)
 - Pressurized fluids are injected into the shale to stimulate or “fracture” shale formations to release natural gas
 - Sand is pumped in with the fluids to keep the fractures open
- [Containment](#)
 - As much as 20% of the fluid used can return to the surface via a well (“flowback”)
 - Flowback fluid can then be treated and reused for subsequent hydraulic fracture treatments
 - Fluids not reused are kept in containment wells

Environmental Harms

- [Water](#): Fluids injected into the ground contain additives, which can leach into underground water supplies.
- [Air](#): Fracking operations can incur the following risks to air quality: (1) dust and engine exhaust from increased truck traffic (2) emissions from diesel-powered pumps (3) intentional flaring (“burning”) of gas (4) unintentional emissions of pollutants
- [Induced seismicity](#): Studies indicate that waste fluid disposal through underground injection can “pose some risk for induced seismicity,” or earthquakes. However, further research is needed to better understand cause and effect
- [Fracture fluids](#): Fracking fluids, or “slickwater,” are ~99% water, but include a number of additives mixed in to increase the effectiveness of fracking. Some additives can contain hazardous chemicals and spills can leak harmful substances into the

ground or surface water

- [Surface impacts](#): Increased traffic or habitat disturbances can affect residents, agriculture, farming, fishing, and hunting

Economics

- [Development](#)
 - “Fracking” has been used by the oil and gas industry since the 1950s to stimulate production from oil and gas wells
 - New hydraulic fracturing, horizontal drilling, and well stimulation technology has allowed increased access to oil and gas resources in tight shale formations
 - Fracking has helped produce more than 600 trillion cubic feet of natural gas and 7 billion barrels of oil
- [Energy markets](#)
 - Advancements in technology have fueled cheaper shale gas extraction
 - Annual shale gas production in the US grew from ~1 trillion cubic feet in 2006 to ~9.7 trillion cubic feet in 2012
 - Production is expected to grow to ~19.8 trillion cubic feet by 2040
 - Shale gas in 2014 comprised more than 40% of total US natural gas production

CONTROVERSIES & IMPLICATIONS

Current Litigation

California and a [coalition of environmental groups](#) sued the BLM over the rescission of the 2015 rule. On January 14, 2018, they filed a [lawsuit](#) against the BLM, claiming that the rescission exposed a rapidly-expanding regulatory gap for public health and environmental safety.

Scientific Uncertainty

Environmentalists and scientists doing research on the negative effects of hydraulic fracturing have linked the hydraulic fracturing and wastewater injection process to [groundwater contamination](#), [surface water pollution](#), and [increased risk of earthquakes](#). Additionally, some researchers have argued that fracking can be dangerous for soil and air. There is also Federal research, including [studies](#) published by the Environmental Protection Agency (EPA), that have found that contamination of groundwater from fracking fluids can occur, but that these are rare incidents.

Changes in Administration

The priorities of the Trump Administration regarding oil and gas [differ](#), at times [dramatically](#), from the priorities of the Obama Administration, under which the BLM finalized the 2015 rule. The dichotomy between the emphasis on commercial use vs. water safety and regulation presents a challenge for managing natural resource extraction on Federal land as administrations change.

ENDORSEMENTS & OPPOSITION

Endorsements

- Oil and Gas Industry: Independent Petroleum Association of America and Western Energy Alliance [comment](#) from September 25, 2017: “The Associations are grateful that BLM now realizes that the one-size-fits-all solution the agency issued in 2015 was not an appropriate mechanism to address unsubstantiated public concern about hydraulic fracturing.”
- The States of Wyoming, Colorado, North Dakota, and Utah, which have all filed suit in Wyoming federal court [challenging the 2015 Rule](#): “[The rescission] removes at least one of the dark clouds that had been hanging over responsible energy development in recent years that had resulted in the flight from public lands counties toward private lands.” – Peter Obermueller, Wyoming County Commissioners Association executive director

- The Ute Indian Tribe: Joined in the Wyoming lawsuit

Oppositions

- The State of California, which is suing the BLM to [oppose rescission](#): “The risks of fracking to our health and our environment are real...President Trump and Interior Secretary Zinke didn’t let the law or facts get in their way in their zeal to repeal.” – Xavier Becerra, California’s Attorney General
- U.S. House of Representatives Committee on Natural Resources members Raul Grijalva (D-AZ-3) and Alan Lowenthal (D-CA-47) sent a [letter](#) to Assistant Land and Minerals Management Secretary Joseph Balash expressing disappointment on this Final Rule: “BLM’s existing operational and hydraulic fracturing regulations, such as they are, are thirty or more years behind the times with respect to industry practice and changes in technology. Neither reflect the combination of horizontal drilling and hydraulic fracturing of tight reservoirs that has become a dominant industry practice in the past decade.”
- Environmental groups: On behalf of the organization and its Tribal Council clients, Earthjustice is [suing](#) the BLM to push for more protection for those who live near fracking operations: “Thanks to BLM’s abrupt reversal of its own fracking laws, tribal land owners are denied the right to assure protection of their ground and surface water in the semi-arid lands of Fort Berthold.”

STATUS

This final rule became effective on December 29, 2017.

RELATED POLICIES

[Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands](#): Bureau of Land Management, Interior Rule – 03/26/2015

POLICY HISTORY

- March 20, 2015 – Six days before the final rule was published, oil and gas industry groups sued the BLM to stop the rule (Independent Petroleum Association of America v. Jewell, [2:15-cv-00041](#) [D. Wy.]).
- March 26, 2015 – The BLM published a [rule](#) to regulate fracking on public lands and into public mineral rights. The rule was scheduled to take effect June 24, 2015.
- May 29, 2015 – Wyoming sued the BLM and asked that court halt the rule until the case decision ([Wyoming v. U.S. Dept of the Interior, No. 2:15-cv-00043](#)).
- June 21, 2016 – The Federal District Court of Wyoming [stuck down the rule](#). Court read the Safe Drink Water Act’s exclusion of hydraulic fracturing to mean that no federal agency can regulate hydraulic fracturing.
- June 24, 2016 – The BLM [appealed the decision](#) to the Tenth Circuit Court of Appeals, claiming it had the proper congressional authority to issue the rule.
- July 13, 2016 – The Tenth Circuit Court of Appeals lifted the lower court’s stay.
- March 15, 2017 – The BLM filed a motion to further delay oral argument and put the case on hold pending agency review of the rule. Motion noted that the rule “does not reflect” the policies of the Trump Administration.
- July 25, 2017 – The BLM [proposed voiding](#) the hydraulic fracturing rule and opened a public comment period through September 25, 2017.
- September 21, 2017 – The Tenth Circuit Court of Appeals [dismissed the lawsuit](#) because the BLM was proposing to void the rule.
- December 29, 2017 – The BLM formally rescinded the 2015 rule.
- January 24, 2018 – The State of California and a [coalition of environmental groups](#) sued the BLM over the rescission.

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ENERGY SUBCATEGORY

[Production, Conversion, Distribution](#)

RECOMMENDED CITATION

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