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Alaska Fracking Regulations Raise Bar for Disclosure Requirements

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Alaska has issued proposed fracking [regulations](#) that would require drillers to disclose the chemical composition of pumping fluids and would offer no trade secret protection for that information.

Disclosure requirements have been a [focal point](#) in the [ongoing struggle](#) between industry and environmental and community groups over fracking. The regulations that have been adopted in [other states](#) have largely given cover to proprietary information – either by not mandating disclosure to regulators or by requiring that regulators who receive such information maintain its confidentiality.

Bloomberg [reported](#) that drillers in Texas invoked the trade secrets exemption there about 19,000 times between January and August 2012. The article quoted [Lon Burnam](#), the Fort Worth state representative who co-authored Texas' fracking legislation, as saying: "This disclosure bill has a hole big enough to drive a Mack truck through... Is it meaningless because there are so many exemptions? I'm afraid it may be."

The Texas legislation has come to be seen as a model for regulations in other states. And if the trade secret exemption is compromising the integrity of the regulatory regime there, the same is probably true elsewhere.

The Alaska disclosure requirements come as somewhat of a surprise, in part because they have been proposed in a state with a [powerful oil lobby](#). The relevant provision would appear in a new section of the Alaska Administrative Code, 20 AAC 25.283(h). It requires that, within 30 days of completing fracking operations, drillers submit:

(A) a description of the hydraulic fracturing fluid pumped identified by additive type (e.g. acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, deemulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant);

(B) the chemical ingredient name and the Chemical Abstracts Service (CAS) Registry number, as published by the Chemical Abstracts Service, a division of the American Chemical Society (www.cas.org), for each ingredient of the additive used. The rate or concentration for each additive shall be provided in appropriate measurement units (pounds per gallon, gallons per thousand gallons, percent by weight or percent by volume, or parts per million);

(C) each chemical ingredient used in the hydraulic fracturing treatment(s) of the well that is subject to the requirements of 29 Code of Federal Regulations §191.0.1200(g)(2), as provided by the chemical supplier or service company or by the operator, if the operator provides its own chemical ingredients; and

(D) a supplemental list of all chemicals and their respective CAS numbers, not subject to the requirements of 29 Code of Federal Regulations §191.0.1200(g)(2), that were intentionally included in and used for the purpose of creating the hydraulic fracturing treatments for the well.

Environmental groups have tended to argue that drillers should have to disclose before commencing – rather than after completing – operations. Still, these disclosure requirements, together with the absence of a confidentiality provision, make the proposed regulations more transparent than their counterparts at the state or federal level.

In Congress, legislation that would return regulatory authority over the chemical composition of fracking fluids to the EPA has been circulating without passage for several years. Last year, the Bureau of Land Management proposed [regulations](#) for fracking on publicly owned lands that included trade secret protections and omitted the sort of medical professional carveouts that states like Texas and Colorado have included in their regulations.

The Alaska regulations have only been proposed and have yet to pass through the comment period. The member of the Alaska Oil and Gas Conservation Commission who primarily drafted the regulations told [Energy Wire](#) that she had deliberately left out trade secret protections but invited drillers to make their case for an exemption.

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