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October 26, 2010

The Honorable Jeff Bingaman
Chairman
The Honorable Lisa Murkowski
Ranking Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Nick J. Rahall II
Chairman
The Honorable Doc Hastings
Ranking Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement: Oil and Gas and Sulphur Operations in the Outer Continental Shelf--Increased Safety Measures for Energy Development on the Outer Continental Shelf*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), entitled “Oil and Gas and Sulphur Operations in the Outer Continental Shelf--Increased Safety Measures for Energy Development on the Outer Continental Shelf” (RIN: 1010-AD68). We received the rule on October 12, 2010. It was published in the *Federal Register* as an interim final rule with request for comments on October 14, 2010. 75 Fed. Reg. 63,346.

The interim final rule implements certain safety measures recommended in the report entitled, “Increased Safety Measures for Energy Development on the Outer Continental Shelf” (Safety Measures Report), dated May 27, 2010. The President directed the Department of the Interior to develop the Safety Measures Report to identify measures necessary to improve the safety of oil and gas exploration and development on the Outer Continental Shelf in light of the Deepwater Horizon event on April 20, 2010, and resulting oil spill. To implement the practices recommended in the Safety Measures Report, BOEMRE is amending drilling regulations related to well control, including sub-sea and surface blowout preventers, well casing and

cementing, secondary intervention, unplanned disconnects, recordkeeping, well completion, and well plugging.

The interim final rule is effective on October 14, 2010. The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. Sections 553(d)(3), 808(2). BOEMRE believes good cause exists to impose an immediate effective date because the delay would compromise the safety of offshore oil and gas drilling. While BOEMRE will not solicit comments before the effective date, BOEMRE will accept and consider public comments received by December 13, 2010.

Enclosed is our assessment of BOEMRE's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that BOEMRE complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Wilma Lewis
Assistant Secretary--Land and
Minerals Management
Department of the Interior

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE INTERIOR,
BUREAU OF OCEAN ENERGY MANAGEMENT,
REGULATION AND ENFORCEMENT
ENTITLED
"OIL AND GAS AND SULPHUR OPERATIONS IN THE
OUTER CONTINENTAL SHELF--INCREASED SAFETY MEASURES
FOR ENERGY DEVELOPMENT ON THE OUTER CONTINENTAL SHELF"
(RIN: 1010-AD68)

(i) Cost-benefit analysis

BOEMRE states that the cost-benefit analysis for this rule was conducted using a scenario analysis. BOEMRE explains that the cost-benefit analysis considers a regulation designed to reduce the likelihood of a catastrophic oil spill, while the costs are the compliance costs of imposed regulation. BOEMRE notes that if another catastrophic oil spill is prevented, the benefits are the avoided costs associated with a catastrophic oil spill (*e.g.*, reduction in expected natural resource damages owing to the reduction in likelihood of failure).

Noting that the estimated costs of this rulemaking, as reflected in the compliance costs of the enumerated requirements of approximately \$180 million per year, have a strong foundation and are based on surveys of public and industry sources, BOEMRE states that quantification of the benefits is uncertain. BOEMRE believes the benefits are represented by the avoided costs of a catastrophic spill, which are estimated under the stipulated scenario as being \$16.3 billion per spill avoided. According to BOEMRE, these regulations will reduce the likelihood of another blowout and associated spill, but the risk reduction associated with the specific provisions of this rulemaking cannot be quantified because there are many complex factors that affect the risk of a blowout event.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

Given the emergency nature of these rules, BOEMRE has not yet prepared a detailed Initial Regulatory Flexibility Analysis for this rule; however, BOEMRE intends to publish a supplemental Initial Regulatory Flexibility Analysis in the near future that will examine the impact of this regulation on small entities in greater detail than provided below.

BOEMRE believes that this rulemaking affects lessees, operators of leases and drilling contractors on the Outer Continental Shelf (OCS) and, thus, directly impacts

small entities. This could include about 130 active federal oil and gas lessees and more than a dozen drilling contractors and their suppliers. Small entities that operate under this rule are coded under the Small Business Administration's North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, approximately 70 percent of companies operating on the OCS (91) are considered small companies. Therefore, BOEMRE has determined that this proposed rule will have an impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

BOEMRE states that this interim final rule will not have a significant or unique effect on state, local, or tribal governments or the private sector, but will impose an unfunded mandate of more than \$100 million per year. BOEMRE believes that a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. § 1501 et seq.) is not required.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

BOEMRE notes that under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. § 551 et seq.) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. BOEMRE states that it found good cause to forego the notice and comment procedures and delay in effective date requirements based on its findings, consistent with preliminary information that is available as a result of investigations into the Deepwater Horizon event, that certain equipment, systems, and improved practices are immediately necessary for the safety of offshore oil and gas drilling operations on the OCS, and that these improved drilling practices are either not addressed or not sufficiently detailed by current regulations. Immediate imposition of the requirements contained in this interim final rule is necessary because BOEMRE views strict adherence to improved safety practices set forth herein as necessary to achieving safer conditions that, together with other wild well control and oil spill response capabilities, will allow it to permit future OCS drilling operations.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

BOEMRE states that this interim final rule contains a collection of information that was submitted to and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 et seq.). The rule expands existing requirements, as well as adds new requirements in 30 C.F.R. part 250, subparts D, E, and F. OMB approved these requirements and their respective

burden hours under an emergency request, OMB Control Number 1010–0185, 44,731 hours (expiration 04/30/2011). BOEMRE will be accepting comments on the information collection aspects and burdens of this rulemaking until 60 days after October 14, 2010.

Statutory authorization for the rule

BOEMRE states that this interim final rule is issued pursuant to the authority found in 43 U.S.C. § 1334 and section 2 of Reorganization Plan No. 3 of 1950, 64 Stat. 1262, as amended.

Executive Order No. 12,866 (Regulatory Planning and Review)

BOEMRE states that OMB determined that the interim final rule is significant and will have an annual effect of \$100 million or more on the economy.

Executive Order No. 13,132 (Federalism)

BOEMRE states that this interim final rule will not substantially and directly affect the relationship between the federal and state governments and, therefore, does not have federalism implications. Additionally, BOEMRE states that to the extent that state and local governments have a role in OCS activities, this rule will not affect that role.