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July 29, 2016

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

The Honorable Rob Bishop  
Chairman  
The Honorable Raúl M. Grijalva  
Ranking Member  
Committee on Natural Resources  
House of Representatives

Subject: *Department of the Interior, Bureau of Safety and Environmental Enforcement, Bureau of Ocean Energy Management: Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic 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 Safety and Environmental Enforcement (BSEE) and the Bureau of Ocean Energy Management (BOEM) entitled “Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf” (RIN: 1082-AA00). We received the rule on July 8, 2016. It was published in the *Federal Register* as a final rule on July 15, 2016. 81 Fed. Reg. 46,478.

The final rule revises and adds new requirements to regulations for exploratory drilling and related operations on the Outer Continental Shelf (OCS) seaward of the State of Alaska. This final rule focuses solely on the OCS within the Beaufort Sea and Chukchi Sea Planning Areas (Arctic OCS). According to BSEE and BOEM, the Arctic region is characterized by extreme environmental conditions, geographic remoteness, and a relative lack of fixed infrastructure and existing operations. They state further that the final rule is designed to help ensure the safe, effective, and responsible exploration of Arctic OCS oil and gas resources, while protecting the marine, coastal, and human environments, and Alaska Natives' cultural traditions and access to subsistence resources.

Enclosed is our assessment of BSEE's and BOEM'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 BSEE and BOEM 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: Janice M. Schneider  
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 SAFETY AND ENVIRONMENTAL ENFORCEMENT,  
BUREAU OF OCEAN ENERGY MANAGEMENT  
ENTITLED  
“OIL AND GAS AND SULFUR OPERATIONS ON THE  
OUTER CONTINENTAL SHELF—REQUIREMENTS FOR  
EXPLORATORY DRILLING ON THE  
ARCTIC OUTER CONTINENTAL SHELF”  
(RIN: 1082-AA00)

(i) Cost-benefit analysis

The Bureau of Safety and Environmental Enforcement (BSEE) and Bureau of Ocean Energy Management (BOEM) (collectively, the Bureaus) included a cost-benefit analysis in the final rule. The Final Regulatory Impact Analysis (RIA) for this final rule estimates that the new requirements could result in compliance costs for the industry of \$2.05 billion under 3 percent discounting and \$1.74 billion under 7 percent discounting over 10 years. The provisions of the rule subsumed within the regulatory baseline are estimated to cost \$1.83 billion under 3 percent discounting and \$1.51 billion under 7 percent discounting over the 10-year analysis period. The baseline includes the estimated costs associated with current regulatory requirements and industry standards. The Bureaus state that the economic and other benefits of the final rule—based primarily on preventing or reducing the severity or duration of catastrophic oil spills—are difficult to quantify.

According to the Bureaus, reducing the risks of Arctic OCS operations is particularly important because of the unique significance to Alaska Natives of the marine mammals, fish, and migratory birds, in the lands and waters around the Arctic Outer Continental Shelf (OCS). They state that ensuring a continuing opportunity to harvest subsistence resources is critical for protecting Alaska Natives' health, livelihood, and culture. Additionally, adequately protecting the health of the Arctic ecosystem, including the sensitive environment and wildlife, is important and highly valued. Further, the impact of a catastrophic oil spill, while a remote possibility, would have extremely high cultural and societal costs, and prevention of such a catastrophe would have correspondingly high cultural and societal benefits. The requirements of the rule, specifically tailored to the Arctic OCS, provide additional specificity regarding the Bureaus' expectations for safe and responsible development of U.S. Arctic resources and outline the particular actions that lessees, owners, and operators must take to meet those expectations. The Bureaus state that they do not anticipate that these requirements, or their associated costs, will prevent lessees and operators from conducting exploratory drilling on their leases, and that the final rule largely reflects clarification and codification of the Bureaus' expectations under existing regulations and industry standards for the relevant operations. The Bureaus state that the additional clarity and specificity provided by the final rule should assist the oil and gas industry to plan better and to more effectively conduct exploratory drilling on the Arctic OCS with lower risk. According to the Bureaus, the positive impact of such production on U.S. energy independence and energy security could be substantial if hydrocarbon resources can be extracted and marketed economically. Thus, this final rule would help achieve the President's National Strategy of the Arctic Region goals of protecting the unique and sensitive Arctic ecosystems, as well as the subsistence-based health and culture of nearby Alaska Native

communities, while reducing reliance on imported oil and strengthening national energy security.

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

The Bureaus concluded that the final rule will not have a significant economic impact on a substantial number of small entities and, therefore, a final regulatory flexibility analysis is not required.

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

According to the Bureaus, the final rule will not impose an unfunded federal mandate on state, local, or tribal governments. This rule will require expenditures exceeding \$100 million in a single year by offshore oil and gas exploration companies operating on the Arctic OCS. The Bureaus have prepared written statements to satisfy the applicable requirements of UMRA, which were addressed in the regulatory impact analysis and in the final rule, including: (1) identifying the provisions of federal law under which this rule is being finalized; (2) including a quantitative assessment of the anticipated costs to the private sector (i.e., expenditures on labor and equipment) of the final rule; and (3) including qualitative and quantitative assessments of the anticipated benefits of the final rule.

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

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

On February 24, 2015, BOEM and BSEE published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* entitled, "Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf" (80 Fed. Reg. 9,916). They received 1,311 letters to the docket, from over 100,000 individual commenters on the NPRM. Additionally, BOEM and BSEE engaged in Government-to-Government Tribal consultations and Government-to-Alaska Native Claims Settlement Act (ANCSA) Corporations consultations prior to and after publication of the NPRM, to discuss the subject matter of the proposed rule and to solicit input on the development of the final rule. In the development of the NPRM and this final rule, the Bureaus state that they undertook extensive environmental and safety reviews of potential oil and gas operations on the Arctic OCS. After considering comments on the NPRM, tribal and other consultations, the environmental analysis, and direct experience from Shell's 2012 and 2015 Arctic operations, the Bureaus state that they concluded that finalizing additional exploratory drilling regulations will enhance existing regulations and is appropriate for establishing a more holistic Arctic OCS oil and gas regulatory framework.

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

This rule contains information collection (IC) requirements for both BOEM and BSEE regulations. Therefore, an IC request for each Bureau was submitted to the Office of Management and Budget (OMB) for review and approval under PRA. The title of the collection of information for the BSEE portion of the final rule is 30 C.F.R. parts 250 and 254, Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf. OMB approved the collection under Control Number 1014-0027, expiration 06/30/2019, 779 hours, \$250,000 non-hour cost burdens. Potential respondents comprise federal OCS oil, gas, and sulfur operators

and lessees on the Arctic OCS. The frequency of response varies depending upon the requirement. Responses to this collection of information are mandatory; they are submitted on occasion, annually, or as a result of situations encountered, depending upon the requirement. BSEE states that this rulemaking also pertains to several regulations. Once this rule becomes effective, the paperwork and non-hour cost burdens will be removed from this collection of information and consolidated with the IC burdens under OMB Control Numbers 30 C.F.R. part 250, subpart A, 1014-0022, expiration 8/3/2017 (84,391 hours, \$1,371,458 non-hour cost burdens); subpart D, 1014-0018, expiration 10/31/2017 (102,512 hours); subpart S, 1014-0017, expiration 11/30/2018 (2,238,164 hours, \$5,220,000 non-hour cost burdens); and 30 C.F.R. part 254, 1014-0007, expiration 11/30/2018 (74,461 hours) respectively.

The title of the collection of information for the BOEM portion of the final rule is 30 C.F.R. part 550, subpart B, Arctic OCS Activities. OMB approved the collection under Control Number 1010-0189, expiration 06/30/2019, 3,930 hours, and no non-hour cost burdens. This final rulemaking adds new requirements for submitting exploration plans (EPs) and other information before conducting oil and gas exploration drilling activities on the Arctic OCS. Respondents for this rulemaking are federal oil, gas, or sulfur lessees and/or operators on the Arctic OCS. Submissions are mandatory. BOEM states that it collects the information to ensure that planned operations will be safe; will not adversely affect the marine, coastal, or human environments; will respond to the special conditions on the Arctic OCS; and will conserve the resources of the Arctic OCS. BOEM states that it uses the information to ensure, through advanced planning, that operators are capable of safely operating in the unique environmental conditions of the Arctic and to make informed decisions on whether to approve EPs as submitted or whether modifications are necessary. The burdens for the current planning requirements under 30 C.F.R. part 550, subpart B, regulations are approved by OMB under Control Number 1010-0151 (432,512 hours, \$3,939,435 non-hour costs; expiration 3/31/2018). When these final regulations become effective, the new IC burdens will be consolidated into the existing collection for subpart B.

#### Statutory authorization for the rule

The Bureau promulgated this rule under the authority from the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331-1356a, specifically, 43 U.S.C. § 1334, and the Clean Water Act (CWA), 33 U.S.C. §§ 1251 et seq., specifically, 33 U.S.C. 1321(j)(1)(C), as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701 et seq.; as well as 30 U.S.C. § 1751, and 31 U.S.C. § 9701.

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

The Bureau determined that the final rule is significant because it may have an effect on the economy of \$100 million. Accordingly, OMB has reviewed this regulation. The legal and policy issues identified by OMB are the requirements for source control and containment equipment, relief rig availability, and the shoulder season to reflect current conditions for Arctic OCS exploration plan and permit approval.

#### Executive Order No. 13,132 (Federalism)

According to the Bureau, the final rule will not have federalism implications. The final rule will not substantially and directly affect the relationship between the federal and state governments. To the extent that state and local governments have a role in OCS activities, this final rule will not affect that role. A federalism assessment is not required.