

# U.S. House of Representatives

## Committee on Natural Resources

Washington, DC 20515

January 19, 2018

The Honorable Ryan Zinke  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Dear Secretary Zinke:

On December 29, 2017, the Bureau of Safety and Environmental Enforcement (BSEE) published a proposed rule in the Federal Register that, if adopted, would significantly modify the September 2016 Production Safety Systems rule.<sup>1</sup> News reports indicate BSEE is developing another proposed rule that would revise the April 2016 Well Control Rule.<sup>2</sup> Both 2016 rules regulate offshore oil and gas activities on the Outer Continental Shelf (OCS) and were developed by the Interior Department – in collaboration with industry – in response to the 2010 *Deepwater Horizon* disaster, which caused the deaths of 11 platform workers and resulted in the largest oil spill in U.S. history.

Before the finalization of the 2016 BSEE rules, regulations for offshore oil and gas production safety systems had not undergone major revisions since their first publication in 1988. Over the past few decades, advances in technology have enabled offshore energy development to take place in deeper water and for more equipment to be permanently positioned on the sea floor. As industry and technology have progressed, the need for robust federal offshore safety and environmental regulations has increased as well.

While the Interior Department under the previous Administration responded to the *Deepwater Horizon* with carefully crafted rules developed with a safety-first mindset and input from all stakeholders, BSEE's recent actions would be a significant step backwards from efforts to improve the safety culture of offshore operators. Additionally, there appear to be few, if any, good reasons for making the proposed changes, which would undermine the current offshore safety rules.

According to BSEE, the 2016 Production Safety Systems rule was “intended to improve worker safety and protection of marine and coastal ecosystems by helping to reduce the number of production-related incidents resulting from oil spills, injuries, and fatalities.”<sup>3</sup> A component of the 2016 Rule requires the operator of safety and pollution prevention equipment (SPPE) to “have

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<sup>1</sup> 82 FR 61703

<sup>2</sup> Mann, Ted. “Regulators Propose Rollbacks to Offshore Drilling Safety Measures.” *The Wall Street Journal*, Dec. 25, 2017.  
[https://www.wsj.com/articles/regulators-propose-rollbacks-to-offshore-drilling-safety-measures-1514206800#comments\\_sector](https://www.wsj.com/articles/regulators-propose-rollbacks-to-offshore-drilling-safety-measures-1514206800#comments_sector)

<sup>3</sup> 81 FR 61833

a qualified independent third-party review and certify that each device will function as designed under the conditions to which it may be exposed,” and that “each device be designed to function and to close in the most extreme conditions to which it may be exposed.”<sup>4</sup> This provision was recommended by the bipartisan presidential commission that was established after the *Deepwater Horizon* disaster.<sup>5</sup>

However, BSEE’s 2017 proposed rule would, “remove the requirement for operators to certify through an independent third party that each [SPPE] device is designed to function in the most extreme conditions to which it will be exposed and that the device will function as designed.”<sup>6</sup> Returning to an over-reliance on industry self-policing of safety issues would be an unfortunate step back towards the situation that existed prior to the *Deepwater Horizon*.

One of the most important components of the Production Safety Systems Rule is the change in the definition of Best Available and Safest Technology (BAST) to more closely align with the Outer Continental Shelf Lands Act. This requirement goes beyond simply production safety systems, improving safety across the full spectrum of offshore operations. BSEE’s request for comments on the BAST definition in the proposed rule raises the possibility that BSEE may attempt to change the definition in the final rule without fully opening it to public review and comment.

Although the proposed revisions to the Well Control Rule have not been published in the Federal Register yet, the text available through media reports raises a number of questions. The failure of *Deepwater Horizon*’s blowout preventer (BOP) allowed over one hundred million gallons of oil to spill into the Gulf of Mexico, killing thousands of marine animals and causing billions of dollars in damage to the fishing and tourism industries. After numerous investigations, analyses of the events, and a review of recommendations, BSEE published the Well Control Rule in April 2016 in order to “prevent future well-control incidents, including major incidents like the 2010 *Deepwater Horizon* catastrophe.”<sup>7</sup>

According to BSEE’s analysis, the 2016 Well Control Rule incorporated “the latest industry standards that establish minimum baseline requirements for the design, manufacture, repair, and maintenance of blowout preventers.”<sup>8</sup> At the time, BSEE stated, “adoption of these [standards] will ensure that BSEE’s regulations match the performance requirements recommended by the industry in the time since the *Deepwater Horizon* tragedy.”<sup>9</sup> The potential proposal, however, would weaken a number of provisions related to BOP capability, inspection, reporting, and testing.

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<sup>4</sup> Id.

<sup>5</sup> Eilperin, Juliet and Dino Grandoni. “Trump administration to overhaul safety-monitoring rules for offshore drilling.” *The Washington Post*, Dec. 28, 2017. [https://www.washingtonpost.com/national/health-science/trump-administration-to-overhaul-safety-monitoring-rules-for-offshore-drilling/2017/12/28/37cb40bc-cc20-11e7-9f92-10a2203f6c8d\\_story.html?utm\\_term=.72ba1b223670](https://www.washingtonpost.com/national/health-science/trump-administration-to-overhaul-safety-monitoring-rules-for-offshore-drilling/2017/12/28/37cb40bc-cc20-11e7-9f92-10a2203f6c8d_story.html?utm_term=.72ba1b223670)

<sup>6</sup> 82 FR 61703 at 61704

<sup>7</sup> 81 FR 25887

<sup>8</sup> “Well Control Rule,” *Bureau of Safety and Environmental Enforcement*. <https://www.bsee.gov/guidance-and-regulations/regulations/well-control-rule>

<sup>9</sup> “Proposed Well Control Rule Fact Sheet,” *Bureau of Safety and Environmental Enforcement*.

[https://www.bsee.gov/sites/bsee\\_prod.opengov.ibmcloud.com/files/fact-sheet/bsee/fact-sheet-proposed-well-control-rule.pdf](https://www.bsee.gov/sites/bsee_prod.opengov.ibmcloud.com/files/fact-sheet/bsee/fact-sheet-proposed-well-control-rule.pdf)

One example of this, which appears in the Production Safety Systems Proposed Rule as well, is the proposal to formalize in regulation the ability for companies to report equipment and BOP failures to SafeOCS instead of BSEE. SafeOCS was originally designed to be an optional reporting system for near-misses, not an alternative and anonymous repository for information that should be submitted directly to BSEE. Companies are currently required by regulation to submit SPPE and BOP failure reports to BSEE. Although BSEE has a memorandum of understanding with the Bureau of Transportation Statistics (BTS) allowing companies to submit those failure reports directly through SafeOCS, the existing regulation appears to provide more authority to BSEE to obtain the full reports on its own. Effectively writing SafeOCS into regulation for the expressly stated purpose of shielding companies from unwanted public disclosure, reduces BSEE's authority, eliminates transparency, and, by hiding which companies may have inadequate maintenance or operational procedures, harms BSEE's efforts to develop a risk-based inspection system.

As part of our oversight responsibilities as Ranking Members of the House Natural Resources Committee and the Energy and Mineral Resources Subcommittee, we ask you to answer the following questions at the earliest opportunity:

- 1) Please provide all correspondence between personnel in the Immediate Office of the Secretary and the Bureau of Safety and Environmental Enforcement between January 20, 2017, and December 29, 2017, regarding the decision to propose changes to the Production Safety Systems Rule and the Well Control Rule.
- 2) Please provide all correspondence between personnel in the office of the Assistant Secretary for Land and Minerals Management and the Bureau of Safety and Environmental Enforcement between January 20, 2017, and December 29, 2017, regarding the decision to propose changes to the Production Safety Systems Rule and the Well Control Rule.
- 3) Please provide all correspondence between the Bureau of Safety and Environmental Enforcement, the office of the Assistant Secretary of Land and Minerals Management, and the Immediate Office of the Secretary with the American Petroleum Institute and the National Ocean Industries Association between January 20, 2017, and December 29, 2017 regarding the decision to propose changes to the Production Safety Systems Rule and the Well Control Rule.
- 4) Please provide all correspondence between the Bureau of Safety and Environmental Enforcement, the office of the Assistant Secretary of Land and Minerals Management, and the Immediate Office of the Secretary with the American Petroleum Institute and the National Ocean Industries Association between January 20, 2017, and December 29, 2017, regarding the definition of Best Available and Safest Technology and any proposed modifications of that definition.
- 5) Please provide all correspondence between the Bureau of Safety and Environmental Enforcement, the office of the Assistant Secretary of Land and Minerals Management, and the Immediate Office of the Secretary with the American Petroleum Institute and the

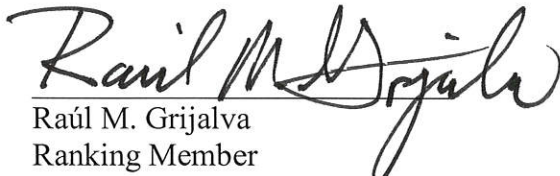
National Ocean Industries Association between January 20, 2017, and December 29, 2017, regarding SafeOCS.


6) Please provide all instances since publication of the 2016 Well Control rule where an operator was required to complete a blowout prevention failure investigation and analysis within 120 days and was not able to complete the review in the required time, and how BSEE accommodated those circumstances.

7) All non-correspondence documents related to the decision to propose changes to the Production Safety Systems Rule and the Well Control Rule, including but not limited to schedules, meeting minutes, and phone logs.

Thank you for your attention to this request.

Sincerely,

  
Raúl M. Grijalva  
Ranking Member  
House Committee on Natural Resources

  
Alan Lowenthal  
Ranking Member  
House Subcommittee on  
Energy and Mineral Resources