INITIAL REGULATORY FLEXIBILITY ANALYSIS, RIN 1010–AD68, SAFETY MEASURES INTERIM FINAL RULE

Agency: Department of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE).

Regulatory Citations: The Safety Measures Rule is amending the drilling regulations at 30 CFR 250, subparts D, E, F, O, and Q. The rule is titled RIN 1010–AD68, Interim Final Rule, Increased Safety Measures for Energy Development on the Outer Continental Shelf and was published as an Interim Final Rule (IFR). It was published in the Federal Register on October 14, 2010 (75 FR 63346), and comments are being accepted on the rule until December 13, 2010.

Regulations.gov Docket ID: BOEM-2010-0034

Summary: BOEMRE is publishing this Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting upon the small business impact of its Safety Measures Rule which implemented drilling safety measures for the Outer Continental Shelf (OCS). The Bureau's publication of the rule did not include a full IRFA pursuant to the Regulatory Flexibility Act (5 U.S.C. 603). The Regulatory Flexibility Act section of the Procedural Matters in the Safety Measures Rule stated that BOEMRE intends to publish a Supplementary Initial Regulatory Flexibility Analysis examining the impact of this regulation on small entities in greater detail than provided in the preamble. This is the analysis referenced in the Safety Measures Rule preamble (75 FR 63365).

Comment Dates:

- The comment period on this IRFA is open for 30 days after the date of publication of the Notice of Availability in the Federal Register.
- Comments on this IRFA will be considered and any changes to the regulation because of these comments will be included in the RIN 1010–AD68, Increased Safety Measures for Energy Development on the Outer Continental Shelf when the final regulation is published.
- The Safety Measures Rule published in the Federal Register on October 14, 2010 (75 FR 63346), and comments are being accepted on the rule until December 13, 2010.

Addresses: You may submit comments on the IRFA by any of the following methods. Please use the Regulation Identifier Number (RIN) "1010–AD68, IRFA" as an identifier in your message.

- Federal eRulemaking Portal: http://www.regulations.gov. In the entry titled "Enter Keyword or ID," enter BOEM-2010-0034 then click search. Follow the instructions to submit public comments and view other supporting and related materials available for this rulemaking. BOEMRE will post all comments for this IRFA.
- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Regulations and

Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference "Increased Safety Measures for Energy Development on the Outer Continental Shelf, 1010–AD68, IRFA" in your comments and include your name and return address.

For Further Information Contact: Amy C. White, Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Regulatory Programs, Regulations and Standards Branch, 703–787–1665, amy.white@boemre.gov.

Supplementary Information

BOEMRE has updated the estimated compliance costs and small business impacts from the projections reported in the Regulatory Flexibility Analysis of the Safety Measures Rule. These changes are minor and mostly result from updated categorization of companies operating on the OCS and analysis of the number of wells drilled by small and large companies rather than only by lease ownership. Over the last few years there have been some notable trends in the Gulf of Mexico. First, several of the new companies entering the Gulf of Mexico (GOM) are large foreign companies and not small businesses. Second, the number of deepwater wells drilled by small companies has increased as capital and technology has become more accessible to small entities. Third, a few of the smaller companies with meaningful OCS acreage have either sold their OCS assets to larger companies, become wholly owned subsidiaries, or merged with larger companies. Cumulatively, these trends result in a greater share of acreage, drilling, and production attributed to large companies.

Our updated analysis shows there are currently about 140 Operators of Federal oil and gas OCS leases. Small entities that operate under the requirements of the Safety Measures Rule are coded under the Small Business 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 this criterion applied to the NAICS codes, approximately 90 (64 percent) of the companies operating on the OCS are considered small companies and 50 (36 percent) are considered large companies.

Much of the information in this Supplemental IRFA is covered and discussed in the preamble of the Safety Measures Rule and the Benefit-Cost Analysis for the Safety Measures Rule. These documents can be found at http://www.regulations.gov under the Docket ID: BOEM-2010-0034. This document is not intended to duplicate all the explanations and analysis in those documents, but rather meet the requirement and intent of the Regulatory Flexibility Act. This IRFA analyzes and considers the impact of the Safety Measures Rule on small entities and seeks public comments on those impacts.

Summary of Small Business Impacts

We estimate the Safety Measures Rule will impose a recurring operational cost of $183 million each year on operators drilling OCS wells. The rule will affect every new well

drilled after October 14, 2010; some requirements also apply to wells undergoing completion, workover, or abandonment operations on the OCS. Every operator both large and small must meet the same criteria for these operations regardless of company size. However, the overwhelming share of the cost imposed by these regulations will fall on the operating companies drilling deepwater wells, which are predominately the larger companies. We estimate that about 90 percent of the total costs will be imposed on deepwater lessees and operators where small businesses only hold 8 percent of the leases and drill 12 percent of the wells. About 10 percent of the total costs will apply to shallow water leases where small companies hold 45 percent of OCS leases and also drill 45 percent of the wells.

Nonetheless, small companies as both operators and lease-holders will bear meaningful costs under these regulations. Of the annual $183 million in annual cost imposed by the rule, we estimate that $19.5 million will apply to small businesses in deepwater and $7.4 million in shallow water. In total we estimate that $27 million or 14.7 percent of the regulations' cost will be borne by small businesses.

The GOM represents 98 to 99 percent of annual OCS oil and gas drilling activity. Fiscal year 2009 aggregate annual GOM OCS oil and gas revenues were $31.3 billion. Using the lease ownership profiles of GOM producing wells, we estimate that 87 percent ($27.2 billion) of the OCS revenues are ultimately received by large companies and 13 percent ($4.1 billion) by small companies. As a share of fiscal year 2009 revenues, the interim final rule will cost approximately 0.57 ($0.156/$27.2) percent of OCS revenue for large companies and 0.66 ($0.027/$4.1) percent for small companies. Although the difference in these ratios is not significant, small companies may experience a somewhat greater economic impact than large companies from the regulation primarily because they have a lower production share in deepwater relative to the number of deepwater wells they drill. The likely reason for this difference is the migration of smaller companies into deepwater as they have accessed the technology and capital required for exploration and development. It can take a decade for an economic discovery in deepwater to reach production. Additional data on lease ownership, wells drilled, and production can be found in Table 1, Table 2, Table 3, and Table 4.

Description of the Reasons that Action by the Agency is Being Considered

The interim final rule establishes regulations based on certain recommendations in the May 27, 2010, report from the Secretary of the Interior to the President entitled, "Increased Safety Measures for Energy Development on the Outer Continental Shelf" (Safety Measures Report). The President directed that the Department of the Interior (DOI) develop this report as a result of the Deepwater Horizon event on April 20, 2010. This event, which involved a blowout of the BP Macondo well and an explosion on the Transocean Deepwater Horizon mobile offshore drilling unit (MODU), resulted in the deaths of 11 workers, an oil spill of National significance, and the sinking of the Deepwater Horizon MODU. On June 2, 2010, the Secretary of the Interior directed

BOEMRE (formerly the Minerals Management Service) to adopt the recommendations contained in the Safety Measures Report and to implement them as soon as possible.

The selected measures from the Safety Measures Report being implemented initially are those in the Interim Final Rule, AD–68 Safety Measures Rule. This IRFA is for the estimated impacts on small entities from this rulemaking. Some recommendations in the Safety Measures Report require additional review by the DOI, and yet other measures will be addressed through notice and comment rulemaking, as appropriate.

The Safety Measures Rule (75 FR 63347) provides a table summarizing the rulemaking provisions.

Description of, and Where Feasible, an Estimate of the Number of Small Entities to Which the Rule will Apply

In order to understand the entities that will be impacted by the Safety Measures Rule, the role both *operators* and *lessees* play within the OCS oil and gas regulatory structure must be understood. While there may be multiple lessees holding an ownership interest, there can only be a single OCS operator for drilling or production operations on a lease.

The designated *operator* is the responsible party for complying with all regulations and ensuring the safety of drilling operations on a lease or unit. The regulations at 30 CFR 250.105 define "operator" as:

> ***Operator*** *means the person the lessee(s) designates as having control or management of operations on the leased area or a portion thereof. An operator may be a lessee, the MMS-approved designated agent of the lessee(s), or the holder of operating rights under an MMS-approved operating rights assignment (30 CFR 250.105).*

If there are violations of laws or regulations, the *operator* will receive the citation or civil/criminal penalty. Consistent with the court's interpretation that the RFA applies to entities directly affected by the rulemaking[1], the designated operator is the entity directly regulated by BOEMRE and impacted by this rulemaking.

The regulations at 30 CFR 250.105 defines "lessee" as:

> ***Lessee*** *means a person who has entered into a lease with the United States to explore for, develop, and produce the leased minerals. The term lessee also includes the MMS-approved assignee of the lease, and the owner or the MMS-approved assignee of operating rights for the lease.*

While the requirements in this rulemaking apply to drilling operations under control of the operator, lessees are the project owners and will bear the compliance costs for the increased safety measures in this rulemaking. This analysis considers impacts on small and large entities based upon the lease ownership profiles for OCS activities because the lease owners will bear the cost of these regulations. The three OCS activities analyzed are (1) lease ownership, (2) wells drilled, and (3) production.

[1] Mid-Tex Electric Cooperative, Inc., v. FERC (Mid-Tex), 773 F.2d 327 (D.C. Cir. 1985).

Additionally, this rulemaking requires drilling contractors to preserve certain maintenance and testing records. BOEMRE has only identified two active shallow water or platform drilling rigs operated by a small company on the GOM OCS among the approximately 50+ usually working there. This increased cost incurred by owners of drilling rigs is expected to be negligible compared to the added expense incurred by the Operators and Lessee owners due to the lengthened time to drill wells and additional permitting paperwork requirements.

Our updated analysis shows there are currently about 140 Operators of Federal oil and gas OCS leases, all of which will be impacted by the new regulations. This is an increase of 10 Operators from the 130 identified in the RFA section of the Safety Measures Rule preamble. Approximately 90 (64 percent) of the companies operating on the OCS are considered small companies and 50 (36 percent) are considered large companies

Breakout of Small and Large Companies Operating on the OCS

There are many arrangements for sharing project risks and expenses for OCS exploration and development projects. These include original and revised ownership agreements where the risk, equity, and other interests may be complex. When there is an assignment of lease rights among different parties, BOEMRE records the OCS lease assignments in a manner similar to county court property records. A snapshot of the OCS lease ownership profile and wells drilled on those leases for small and large companies' form the basis for the Safety Measure Rule's estimated impact on small entities.

Using the updated categorization of small and large operators/lessees combined with the current lease ownership profile, BOEMRE found that the current results differ only slightly from the estimates published in the Safety Measure Rule's Regulatory Flexibility Analysis. In the Regulatory Flexibility Analysis, BOEMRE states:

> *The ownership share of deepwater leases for small entities is estimated to only be 12 percent. While a larger percentage of the oil service industry supporting the deepwater operators are small businesses, the lessees that hire and direct these support businesses will bear the burden of this rule. Small companies hold 55 percent of shallow water leases but a smaller portion of the costs of these regulations will affect drilling operations in shallow water.*

The primary differences between the estimates reported in the Safety Measures Rule and those reported in this analysis are the result of a more rigorous analysis of the companies that are truly small entities. The categorization of some companies as small entities in our original analysis was incorrect. Several companies originally identified as small were subsidiaries of larger companies, or had been merged with a larger company.

We analyzed OCS activity for both deepwater and shallow water by company size. Operating in the shallower water depths is generally less expensive and the concentration of smaller companies is greater in shallow water. The most costly requirements in the Safety Measures Rule only apply to operations with subsea blowout preventer (BOP) stacks which are predominately used in deepwater drilling. The following results for

lease ownership, wells drilled, and production reflects leases with sole or fractional ownership as recorded by BOEMRE.

Deepwater

The updated categorization of company lessees shows that large companies (greater than 500 employees) hold 92 percent of deepwater leases (greater than 500 feet) and small companies hold 8 percent. Cobalt International Energy is the only small company (less than 500 employees) among the top 30 companies holding deepwater acreage since earlier this year when Mariner merged with Apache.

When we consider deepwater drilling activity the results are similar; of the wells spudded in deepwater during the last 3 years (2007-2009), 88 percent of deepwater wells were attributed to large company lessees and only 12 percent to small company lessees. These results include the factional ownership by some small entities that are only equity investors in projects including some venture capital funds.

An even greater share of OCS deepwater hydrocarbon production and corresponding revenues accrued to large companies in calendar year 2009. While deepwater drilling activity attributed to small companies is increasing, economic projects cannot be brought to production for several more years. We use the most recent year for which complete data are available (2009) as a long-term proxy for the production split between small and large companies. Large companies produced 97.5 percent of oil and 92.1 percent of gas production in deepwater. Only 2.5 percent of deepwater oil production and 7.9 percent of deepwater gas production is from leases owned by small companies.

Shallow water

We find that small companies hold a much greater share of acreage in shallow water (less than 500 feet) than in deepwater. The top two acreage-holding lease owners, Apache and Chevron, are not small companies, but the next four lessees in rank order are small entities: McMoRan, W & T Offshore, Stone Energy, and LLOG Exploration. In shallow water, small companies hold 45 percent of the leases while large companies hold 55 percent.

The drilling activity over the past 3 years matches the small and large companies lease ownership profile. Of the wells spudded during 2007-2009, 45 percent of the wells were spudded by small companies and 55 percent by large companies.

Hydrocarbon production in the shallow water depths shows that larger companies hold the most productive leases. Slightly less than two-thirds of both oil and gas production accrues to large companies and slightly more than one-third is produced by small entities.

Summary of Large and Small Company OCS Activity

The following tables[2] summarize the small and large company percentage breakouts of leases, wells drilled (2007-2009), production of oil and gas and value of OCS production. The results reflect lease fractional ownership shares among different companies.

Table 1 Lease Ownership among Small and Large Companies (11/1/2010)

Leases 11/01/2010	**Shallow Water Leases**	**Deepwater Leases**	**All Leases**
Large Co.	55%	92%	80%
Small Co.	45%	8%	20%
	100%	**100%**	**100%**

Table 2 Wells Spudded among Small and Large Companies (2007-2009)

(2007-2009)	**Shallow Water Wells Spudded**	**Deepwater Wells Spudded**	**All Wells Spudded**
Large Co.	55%	88%	65%
Small Co.	45%	12%	35%
	100%	**100%**	**100%**

Table 3 Production based on Recorded Lease Share for Small and Large Companies (2009)

2009 Production	**Shallow Water Oil Production**	**Deepwater Oil Production**	**Shallow Water Gas Production**	**Deepwater Gas Production**	**All BOE Production**
Large Co.	64.6%	97.5%	63.2%	92.1%	85%
Small Co.	35.4%	2.5%	36.8%	7.9%	15%
	100%	**100%**	**100%**	**100%**	**100%**

Table 4 Estimated Production Value* ($millions) for Small and Large Companies (2009)

Est. 2009 Production Value ($million)	**Shallow Water Oil Production**	**Deepwater Oil Production**	**Shallow Water Gas Production**	**Deepwater Gas Production**	**All BOE Production**
Large Co.	2,581	17,284	3,271	4,079	27,215
Small Co.	1,415	442	1,905	351	4,113
TOTAL:	**3,996**	**17,726**	**5,176**	**4,430**	**31,328**

*Office of Natural Resource Revenue, http://www.mrm.boemre.gov/MRMWebStats/default.aspx

Recurring Regulatory Costs Imposed by the Regulation

Table 5 summarizes the estimated recurring operational costs categories for three subgroups of wells affected by the new regulations. Those categories are (1) deepwater wells drilled by a MODU, (2) deepwater wells drilled from a platform and (3) all shallow water wells.

[2] The categorization of companies as small or large is based upon publically available data as measured by number of employees as of October 2010. BOEMRE collects data on lease ownership, wells drilled and operator production in our Technical Management System Database (TIMS).

Table 5 – Estimated Recurring Cost Summary

Regulation	Recurring Costs:	MODU Wells (112/yr)	Fixed Platforms (48/yr)	Shallow Wells (186/yr)	Cost Shares
		Total ($MM)	Total ($MM)	Total ($MM)	
250.416(e)	Independent third party shear certification	0.4	0.2	0.6	***1%***
250.420(a)(6)	PE certification for well design	1.3	0.5	4.2	***3%***
250.420(b)(3)	Installation of dual mechanical barriers	4.4	1.4	4.5	***6%***
250.423(c)	Test casing strings for proper installation	32.1	6.0	7.0	***25%***
250.449(j), (k)	Subsea ROV function testing (drilling)	102.7	n/a	n/a	***56%***
250.451(i)	Emergency cost of activated shear rams or LMRP disconnect	2.6	n/a	n/a	***1%***
250.516(d)(8), 250.616(h)(1)	Subsea ROV function testing (workover/completions)	15.5	n/a	n/a	***8%***
	Estimated Cost per year:	**158.8**	**8.1**	**16.3**	**$ 183.2**
	Estimated Cost per well:	**1.42**	**0.17**	**0.09**	

**Numbers may not add due to rounding.*

The regulations impacts well costs differently depending on the type of drilling rig and category of well being drilled. As can be observed in Table 5, deepwater wells drilled by platform rigs and shallow wells drilled by jackups or platforms will incur lower incremental costs than deepwater wells drilled by MODUs, primarily because they use surface BOPs; while wells drilled by deepwater MODUs (drillships and semisubmersibles) will incur the greater incremental cost due to the new subsea BOP requirements. Additional explanation about these costs is provided in the Benefit-Cost Analysis for the Safety Measures Rule.

For this analysis, BOEMRE estimates that 160 deepwater wells will be drilled each year, split between MODU wells (112/yr) and platform wells (48/yr). An estimated 186 wells will be drilled each year in the shallow water depths. Using the recent drilling profiles for small and large company lessees in Table 2, the following table estimates the number of wells to be drilled each year by large and small entities.

Table 6 – Estimate of Future Wells Drilled (annually)

	MODU Deepwater Wells (112/yr)	Fixed Platforms Deepwater Wells (48/yr)	Shallow Wells (186/yr)
Large Co.	99 (88%)	42 (88%)	102 (55%)
Small Co.	13 (12%)	6 (12%)	84 (45%)
TOTAL	**112**	**48**	**186**

The estimated increased costs for each well drilled are taken from Table 5 to estimate the annual compliance costs for large and small companies by type of well. The calculations are shown in parentheses. Of the $183 million in annual cost imposed by the rule, we

estimate that the $19.5 million will apply to small businesses in deepwater and $7.4 million in shallow water. In total, we estimate that $26.9 million or 14.7 percent of the regulation's costs will be borne by small businesses. The following table shows the calculations for these estimates.

Table 7 – Large/Small Company Estimated Additional Drilling Costs

$millions	Additional MODU Deepwater Well Cost (112/yr)	Fixed Platforms Deepwater Wells (48/yr)	Shallow Wells (186/yr)	Total Estimated Cost
Large Co.	**$140.3** (99*$1.42)	**$7.1** (42*$0.17)	**$8.9** (102*$0.09)	**$156.3**
Small Co.	**$18.5** (13*$1.42)	**$1.0** (6*$0.17)	**$7.4** (84*$0.09)	**$26.9**
TOTAL	**$158.8**	**$8.1**	**$16.3**	**$183.2**

**Numbers may not add due to rounding.*

Determining a precise number of small entities that will be "regulated" is complicated by the fact that the actual number fluctuates as OCS properties are bought, sold, and the designated operator changes. The same difficulty follows for the lease ownership profile of small and large entities. However, our best estimate of the impact on small entities when we consider how project and drilling costs are shared among lease owners is that small entities will bear 12 percent of increased regulatory costs in deepwater, and 45 percent in shallow water. The annual small entity regulatory compliance cost imposed by this rulemaking is estimated to be $26.9 million or 14.7 percent of the total.

BOEMRE seeks additional information and comment on our estimate of the Safety Measure Rule's impact on small entities.

Description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The benefit-cost analysis for the Safety Measures Rule identifies $183.2 million in annual operational costs; these costs are summarized in Table 5 and discussed in the previous section. Greater detail is provided in the benefit-cost analysis and rule preamble. This section primarily discusses the paperwork burden on drilling contractors.

The Paperwork Reduction Act (PRA) section of the Safety Measures Rule preamble identifies 44,731 hours of paperwork, reporting, and recordkeeping required annually by the regulation. Using the Bureau of Labor Statistics estimated loaded hourly rate of $87/hr, the paperwork cost of this rulemaking is $3.9 million. The table of the estimated paperwork cost of this rulemaking is included in the PRA section of the rule preamble (75 FR 63368). A portion of it is reprinted below.

Reporting and recordkeeping falls primarily on the OCS lessees and operators, although drilling rig operators do have some additional recordkeeping requirements. The frequency of response varies depending upon the requirement but is primarily based on

drilling activity. Responses and recordkeeping by the drilling companies fall primarily on the Deepwater MODUs where all the deepwater MODU operators in the GOM are large companies. Some additional recordkeeping requirements will fall on all OCS drilling rig operators. As of early November (11/4/2010 Rigzone), there are two shallow water rigs operating in the GOM OCS owned by a small company. They are both owned by Blake International and are under contract to Apache. The estimated additional recordkeeping cost for jack-up rig surface BOP stacks is about $5,000 annually for each rig. The direct estimated paperwork burden on the single small drilling operator currently active in the GOM is about $10,000 per year. The paperwork costs impacting this small entity are found in Table 8.

Table 8 – Selected Paperwork Burden Requirements from AD68 PRA*

Citation 30 CFR 250	Reporting & Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
Subpart E				
516(g)(l)	Document the procedures used for BOP inspections; record results; maintain records for 2 years; make available to BOEMRE upon request.	7 days x 12 hrs/ day = 84	105 rigs / once every 3 years = 35 per year	2,940
516(h)	Document the procedures used for BOP maintenance; record results; maintain records for 2 years; make available to BOEMRE upon request.	1	105 rigs	105
Subpart F				
617(a)(l)	Document the procedures used for BOP inspections; record results; maintain records for 2 years; make available to BOEMRE upon request.	7 days x 12 hrs/ day = 84	105 rigs / once every 3 years = 35 per year	2,940
617(b)	Document the procedures used for BOP maintenance; record results; maintain records for 2 years; make available to BOEMRE upon request.	1	105 rigs	105

*Full table can be found at 75 FR 63368

In the Benefit-Cost Analysis for the Interim Final Rule, paperwork burden costs were not included in the compliance cost estimate because most of the paperwork (including the recordation and documentation costs of drilling rig actions on the rig) will not add a meaningful amount of actual costs. Much of the paperwork is recording the results of tests and maintenance procedures and is expected to be completed by workers concurrently with the tests or in between other drilling tasks. Accordingly, the paperwork costs are judged to be inconsequential when compared to the added costs imposed by this rule and much more so in comparison to the cost of drilling an OCS well. Nevertheless, we plan to revisit the issue of paperwork costs for all entities in the Final Benefit-Cost Analysis and will include our findings in the Final Regulatory Flexibility Analysis.

BOEMRE seeks additional information and comment on our estimate of the paperwork burden's impact on small entities either through comments on the Safety Measures Rule or this IRFA.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the rule

The only regulations from other Federal agencies that may closely relate to the scope of BOEMRE regulations in this rulemaking are from the U.S. Coast Guard. However, for the Safety Measures Rule there is no overlap, conflict, or duplication with Coast Guard regulations. Under BOEMRE/USCG Memorandum of Understanding (MOU), BOEMRE has authority over spill abatement - which includes well control. All of the regulatory provisions in the rulemaking are focused on well control. Additionally and consistent with the MOU, BOEMRE has regulatory authority for drilling operations of MODUs on station while conducting drilling operations.

There are several MOUs between the agencies that outline the division of duties and shared responsibilities. BOEMRE has authority over drilling and oil and gas operations on the OCS while the Coast Guard has authority over the integrity and safety of floating vessels conducting OCS operations. The MOUs can be found at:

- http://www.uscg.mil/hq/cg5/cg522/cg5222/docs/mou/PURPOSE.pdf
- http://www.uscg.mil/hq/cg5/cg522/cg5222/docs/mou/FLOATING_OFFSHORE_FACILITIES.pdf
- http://uscg.mil/hq/cg5/cg522/cg5222/docs/mou/CIVIL_PENALTIES.pdf

Even though we have not identified any provisions of the Safety Measures Rule that overlap or conflict with other agencies, we welcome comments on this topic.

Description of any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities, including alternatives considered, such as:

1. **Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities.**
2. **Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities.**
3. **Use of performance rather than design standards.**
4. **Any exemption from coverage of the rule, or any part thereof, for such small entities.**

Under the published Safety Measures Rule, the requirements are prescriptive and lease operators submitting permits to BOEMRE or conducting drilling operations must comply with the requirements. Even though this rule may not have a significant economic impact

on small businesses, BOEMRE has analyzed several alternatives for the provisions included the Safety Measures Rule.

Alternative 1, Different Compliance Requirements for Small Entities

During the drafting of the Safety Measures Rule, BOEMRE considered lengthening the compliance deadline for both large and small companies. The primary reason for not including additional compliance time or different requirements is the overriding need to reduce the chance of a catastrophic blowout event. The risk is not lower for small entities and BOEMRE cannot compromise the safety of offshore personnel and the environment for any entity including small businesses. Offshore drilling is highly technical and can be hazardous; any delay in the implementation of Safety Measures Rule may increase the risk of OCS drilling operations.

The regulatory provisions do not require significant equipment or capital upgrades and can be met in short order. The rulemaking is an interim final rule and companies drilling on the OCS are required to conform with the regulatory provisions immediately. The compliance costs are mostly the increased time to conduct drilling operations. Thus, any additional time provided to comply with the rule would not result in cost savings in the form of reduced short-term cash flow expenditures that might be expected if the rule required the installation of capital equipment.

BOEMRE is continuing to review other safety measures that may be appropriate for rulemaking in the near future, as well as measures that will require further study, whether through DOI-led strike teams, inter-agency workgroups, or other means. BOEMRE determined that there is good cause for publishing the interim final rule without prior notice and comment 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.

Alternative 2, Testing Requirements

BOEMRE considered if the required testing for the two most expensive items (subsea ROV intervention and negative pressure test) could be performed in an alternative manner. Because of the failings and lessons learned from the BP Deepwater Horizon event, BOEMRE does not believe that alternative testing is a viable option. No alternative testing methods have been identified that will provide the same assurance of reliability.

The subsea ROV intervention test upon installation of the BOP stack is required to demonstrate that the rams can be closed as required under realistic subsea conditions. The BOP ROV function test occurs upon installation on the sea floor and is in addition to the “stump” tests conducted prior to subsea installation. The only alternative to the subsea tests would be to only conduct the “stump test.” BOEMRE does not believe that

the stump test provides the same reliability as the subsea test which is under the actual conditions required if the BOP rams needed to be employed.

The new requirement to perform a negative pressure test after the intermediate and production casing strings are installed is necessary to verify that no fluids are entering the well and the cement is sealing the wellbore. The test is only required upon cementing each intermediate or production casing; BOEMRE is not aware of other testing methods that can provide the same level of assurance as this test.

Alternative 3, Paperwork Consolidation

BOEMRE did not identify any provisions of the rule that could provide efficiencies through consolidation or other streamlining. Some of the regulatory provisions apply to different Subparts and are necessarily duplicated. Most reporting requirements are dependent on drilling activity and closely related to the number of wells drilled or Application for Permit to Drill/Application for Permit to Modify (APDs/APMs) submitted. No efficiencies would be expected through further simplification or consolidation.

Alternative 4, Use Performance Rather than Design Standards

The provisions in the interim final rule are generally prescriptive design standards for well design (cementing and casing), testing drilling equipment, and certifying the well's integrity. BOEMRE has not identified equivalent performance standards that can provide the same level of reliability and well integrity and that can be implemented as quickly as the provisions in this rule.

At the same time, the regulatory provision for dual mechanical barriers to prevent flow in the event of a failure in the casing cement does provide some flexibility to the prescriptive regulatory approach employed here. In effect, BOEMRE provides a design *choice* to use dual float valves, or one float valve and a mechanical barrier.

The BOEMRE is carefully evaluating how to integrate performance based systems into our regulatory regime. This includes the SEMS (Safety Environmental Management Systems) and the Safety Case. The SEMS rule was published on October 15, 2010 (75 FR 63610) and BOEMRE is considering improvements to that regulation. The Safety Case approach to risk management championed by the International Association of Drilling Contractors (IADC) is also receiving careful consideration and study by BOEMRE.

Implementation of a performance based solution requires long lead times and careful strategic and tactical implementation. Because of the immediate need to address well design, testing and reliability issues, BOEMRE is relying on prescriptive standards in the Safety Measures Rule.

Departures to the provisions in the Safety Measures Rule can be approved under the current regulations if the alternative procedures afford an equal or greater degree of protection, safety, or performance. *Departures* are discussed in the next section.

Alternative 5, Exemptions from Rule Requirements

One alternative is to exempt small businesses from the requirements of this interim final rule. The "exemption" or "no action" alternative was not adopted by BOEMRE for the interim final rule because of the overriding need to reduce the chance of a catastrophic blowout event. The risk is not lower for small entities and BOEMRE cannot compromise the safety of offshore personnel and the environment for any entity including small businesses. Offshore drilling is highly technical and can be hazardous; any delay may increase the risk of OCS drilling operations.

BOEMRE can approve departures to existing regulations when the departure would assure the continued safety of drilling operations. In 30 CFR 250.105 Departures means:

> *Approvals granted by the appropriate MMS representative for operating requirements/procedures other than those specified in the regulations found in this part. These requirements/procedures may be necessary to control a well; properly develop a lease; conserve natural resources; or protect life, property, or the marine, coastal, or human environment.*

There are several general and drilling specific regulatory provisions that identify the availability of departures. Those regulatory citations are:

> **30 CRR Subpart A, General Information, Special Approvals**
> **§ 250.142 How do I receive approval for departures?** We may approve departures to the operating requirements. You may apply for a departure by writing to the District Manager or Regional Supervisor.
>
> **30 CFR Subpart D, Oil and Gas Drilling Operations, General Requirements**
> **§ 250.409 May I obtain departures from these drilling requirements?** The District Manager may approve departures from the drilling requirements specified in this subpart. You may apply for a departure from drilling requirements by writing to the District Manager. You should identify and discuss the departure you are requesting in your APD see §250.414(h)).
>
> **§ 250.414 What must my drilling prognosis include?**
> (h) A list and description of all requests for using alternative procedures or departures from the requirements of this subpart in one place in the APD. You must explain how the alternative procedures afford an equal or greater degree of protection, safety, or performance, or why you need the departures;

Although not a specific provision of the Safety Measures Rule, departures to the requirements in this rulemaking will be considered and may be approved if the alternative

proposed method does not compromise safety and environmental protection. These provisions are available to both large and small companies.

Questions for Comment to Inform the Regulatory Flexibility Analysis

1. Please provide comment on any or all of the provisions in the interim final rule as they impact small entities with regard to

- The impact of the provision(s) including any benefits and costs.
- What other alternatives, if any, BOEMRE should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the rule on small entities in light of the above analysis.
- Magnitudes and types of costs needed to "implement and comply" with the rule including expenditures of time and money for equipment upgrades, employee training, rig time, information collection and recordkeeping.

2. Please describe ways in which the rule could be modified to reduce any costs or burdens for small entities consistent with the recommendations in the Drilling Safety Measures Report or other industry working group recommendations in response to the BP Deepwater Horizon event.

3. Please identify all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Instructions for offering comments are provided at the beginning section of this IRFA.