

**Attorneys General of Maryland, Connecticut, Maine, Massachusetts,
New Jersey, New York, North Carolina, Oregon, Virginia, and Washington**

August 6, 2018

Via Electronic Transmission

Scott A. Angelle
Director, Bureau of Safety and Environmental Enforcement
Attention: Regulations Development Branch
45600 Woodland Road, VAE-ORP
Sterling, VA 20166

**Re: Docket ID Nos. BSEE-2018-0002; 189E1700D2 ET1SF0000.PSB000 EEEE500000
RIN 1014-AA39
Oil and Gas and Sulfur Operations in the Outer Continental Shelf—
Blowout Preventer Systems and Well Control Revisions**

Dear Director Angelle:

The Attorneys General of Maryland, Connecticut, Maine, Massachusetts, New Jersey, New York, North Carolina, Oregon, Virginia, and Washington appreciate this opportunity to comment on the Bureau of Safety and Environmental Enforcement’s (“BSEE”) proposed revisions to the Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Blowout Preventer Systems and Well Control regulations (the “WCR” or the “2016 WCR”) proposed in the above-mentioned docket.¹ We strongly oppose any revisions that would weaken or undermine the WCR. Indeed, the WCR was finalized just two years ago, following a lengthy and comprehensive rulemaking process, in the wake of the catastrophic *Deepwater Horizon* explosion and spill in the Gulf of Mexico.² Weakening key WCR provisions necessary to prevent future well-control incidents would be arbitrary and capricious or otherwise unlawful—particularly in light of the Department of the Interior’s ongoing consideration of plans to radically expand the scope of offshore drilling. We therefore urge BSEE to adhere to its duty to enhance the safety of offshore oil and gas exploration, and to ensure that those operations are protective of the environment, by abandoning any weakening of the WCR.

As BSEE is well aware, the April 20, 2010 *Deepwater Horizon* disaster led to the loss of 11 lives and a release of 134 million gallons of oil, covering over 43,300 square miles of the Gulf of Mexico and oiling 1,300 miles of shoreline across the Gulf Coast states. The spill had an oil plume up to 650 feet thick and over a mile wide that drifted across the bottom of the ocean floor.

¹ Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control Revisions, 83 Fed. Reg. 22,128 (May 11, 2018) (“WCR Rollback”).

² Oil and Gas Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control, 81 Fed. Reg. 25,888 (Apr. 29, 2016) (“Final 2016 WCR”).

The environmental and socioeconomic harms were staggering—with widespread and severe effects on the entire Gulf economy, including the drilling, commercial fishing, recreation, and tourism industries, not to mention wildlife, wetlands, and other facets of the Gulf’s ecology. This single spill from a single well caused natural resource damages valued at \$17.2 billion, with costs for BP alone estimated at \$61.6 billion.³ Its environmental consequences are expected to persist for decades.

Governmental investigations of the spill and its causes spurred a variety of regulatory changes aimed at reducing the environmental and safety risks attendant to offshore drilling.⁴ One set of those changes—the WCR—consisted of the consolidation, revision, and augmentation of various provisions designed to prevent and contain well-control incidents akin to the *Deepwater Horizon* explosion. The WCR represented the culmination of a multi-year process in which BSEE engaged a broad array of stakeholders, including “industry groups, operators, equipment manufacturers, academics and environmental organizations.”⁵ Its final version included design and oper-

³ See Nathan Bomey, *BP’s Deepwater Horizon Costs Total \$62B*, USA Today (July 14, 2016), available at <https://www.usatoday.com/story/money/2016/07/14/bp-deepwater-horizon-costs/87087056/> (last visited Aug. 5, 2018); Richard C. Bishop et al., *Putting a Value on Injuries to Natural Assets: The BP Oil Spill*, Science 253 (Apr. 21, 2017).

⁴ See Final 2016 WCR, 81 Fed. Reg. at 25,890 (explaining that the “primary purpose” of the 2016 WCR was to “prevent future well-control incidents, including major incidents like the 2010 *Deepwater Horizon* catastrophe,” and although improvements in safety have occurred since that event, “loss of well control (LWC) incidents are happening at about the same rate five years after that incident as they were before”); *id.* (“Ensuring the integrity of the wellbore and maintaining control over the pressure and fluids during well operations are critical aspects of protecting worker safety and the environment. The investigations that followed the *Deepwater Horizon* incident, in particular, documented gaps or deficiencies in the OCS regulatory programs and made numerous recommendations for improvements.”); *see id.* at 25,889 (noting investigations from entities such as the National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling, the National Academy of Engineering, and a Department of the Interior/Department of Homeland Security Joint Investigation Team).

⁵ Final 2016 WCR, 81 Fed. Reg. at 25,903 (describing multiple settings in which stakeholders provided BSEE with knowledge and recommendations); *see* BSEE Press Release, Interior Department Releases Final Well Control Regulations to Ensure Safe and Responsible Offshore Oil and Gas Development (Apr. 14, 2016), available at <https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/interior-department-releases-final-well> ((last visited Aug. 5, 2018) (describing extensive outreach to academia, industry, federal policy makers, environmental organizations, and others to develop the final rule, which was aimed at improving equipment reliability and systems “to protect workers’ lives and the environment from the potentially devastating effects of blowouts and offshore oil spills”).

ational requirements for various equipment used in offshore drilling, as well as more robust inspection, verification, and reporting requirements.⁶ The WCR became effective on July 28, 2016, although the compliance dates for certain provisions were deferred to address industry concerns—in some cases, for multiple years.⁷

Already, though, BSEE proposes to reduce or eliminate critical well control and safety protections because, in BSEE's view, they "unnecessarily burden the development of domestic energy resources" and "are not needed to ensure safe and responsible development of our OCS resources."⁸ BSEE bases these determinations on the agency's "reexamin[ation]" of the WCR and its "experiences with the implementation process."⁹ But the WCR resulted from a four-year process of investigations, studies, and stakeholder input, with detailed identification of and responses to public comments.¹⁰ Input on the proposed rollback, by contrast, has come from a single public forum held in September 2017, along with various unidentified "discussions" and "questions from operators."¹¹ BSEE's purported reliance on its "experiences with the implementation process," meanwhile, is belied by the fact that, for some provisions that it proposes to roll back, the compliance date has not yet even arrived.

Under these circumstances, BSEE's proposed reductions in safety would be arbitrary and capricious even if the pace of offshore oil and gas activities were to stay the same. But our concerns are only heightened by the Bureau of Ocean Energy Management's ("BOEM") stated intentions with respect to offshore oil and gas leasing during the period from 2019 to 2024. As BSEE is aware, BOEM is proposing to vastly expand the scope of offshore oil and gas leasing.¹² Those plans underscore the indefensibility of rolling back aspects of the WCR, in two respects. First, BOEM plans to issue new leases at a pace far exceeding that of its recent leasing activities, purportedly in service of American "energy dominance."¹³ By dramatically increasing the volume of oil and gas leasing, BOEM would dramatically increase the number of locations at risk of spills, blowouts, and their accompanying consequences for environmental and human health. Easing

⁶ See Final 2016 WCR, 81 Fed. Reg. at 25,889 (summarizing WCR's major provisions).

⁷ See *id.* at 25,893.

⁸ *E.g.*, WCR Rollback, 83 Fed. Reg. at 22,128-29, 22,131.

⁹ *Id.* at 22,129.

¹⁰ Final 2016 WCR, 81 Fed. Reg. at 25,903.

¹¹ *Id.* at 22,132, 22,139-40, 22,142.

¹² Bureau of Ocean Energy Management, 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program (Jan. 2018) ("2019-2024 DPP"). Alongside Attorneys General from two other states, the undersigned Attorneys General have submitted comments strongly opposing BOEM's proposal to issue new oil and gas leases in areas off the coasts of our states.

¹³ *Id.* at 8, 4-6 to -7, 4-9 to -10.

safety precautions now is analogous to taping over the mirrors and unbuckling one's seatbelt just before getting on the highway.

Second, as part of its vast expansion of offshore oil and gas leasing, BOEM intends to issue leases in areas where little or no oil or gas production has ever taken place, and where no new leases have been issued in decades. The Draft Proposed Plan for 2019-2024 includes ocean areas abutting our states where there are no oil and gas activities today—specifically, the North Atlantic, Mid-Atlantic, South Atlantic, and Washington/Oregon Planning Areas. The plan also includes the Northern California and Central California Planning Areas, where there are likewise no oil and gas activities today, as well as the Southern California Planning Area, where oil and gas activities today are limited to a small geographic region.¹⁴ Because these Planning Areas have largely been free of oil and gas production, the areas adjacent (including our states) generally lack the infrastructure to respond to a significant offshore oil spill or similar event. Thus, BSEE's proposal to weaken precautions meant to *prevent* spills comes at the same time as it proposes to bring offshore drilling to the areas least equipped to *respond* to those spills.

BSEE's proposal, moreover, improperly fails to take account of forgone benefits alongside avoided costs. BSEE states that the WCR Rollback “would have a positive annual effect on the economy of \$100 million or more,” making it subject to cost-benefit analysis requirements under Executive Orders 12866 and 13563, as well as OMB Circular A-4.¹⁵ BSEE claims that it has conducted the required analysis.¹⁶ Not so: BSEE's analysis quantifies only industry's anticipated reduction in compliance costs, and not the forgone benefits of protections that address the types of spills that have cost billions of dollars to remediate. Instead of quantifying these forgone benefits, BSEE simply asserts that “[t]he proposed amendments would not negatively impact worker safety or the environment.”¹⁷ By contrast, the analysis conducted as part of the 2016 WCR “quantified and monetized the potential benefits of the rule, including time savings, reductions in oil spills, and reductions in fatalities.”¹⁸ As the Northern District of California recently reminded the Bureau

¹⁴ *Id.* at 4-9.

¹⁵ WCR Rollback, 83 Fed. Reg. at 22,143.

¹⁶ *Id.* at 22,144.

¹⁷ Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Blowout Preventer and Well Control Revisions—Initial Regulatory Analysis at 40 (March 2018).

¹⁸ 2016 WCR, 81 Fed. Reg. at 25,986. Particularly in light of these forgone benefits, the undersigned Attorneys General respectfully submit that the proposed revisions to the WCR warrant preparation of a full Environmental Impact Statement (EIS), rather than merely an Environmental Assessment (EA). The draft EA concedes that “[a] catastrophic oil spill resulting from a loss of well control and BOP failure can affect a variety of biological, socioeconomic, and sociocultural resources over extensive coastal and offshore areas.” Draft EA at 23. Still, the draft EA claims that the proposed revisions “could not result in a material reduction to safety or environmental protection,” *id.* at 4, and even that they “would likely *reduce* risks associated with the loss of well control and accidental spills,” *id.* at 8 (emphasis added). This comment letter underscores

of Land Management, “[m]erely to look at only one side of the scales, whether solely the costs or solely the benefits,” is arbitrary and capricious.¹⁹ That is no less true here.

Apart from our general opposition to weakening the WCR, we are especially troubled by several of BSEE’s particular proposals to weaken provisions governing well control, design, monitoring, and safety, as set forth more fully below.

1. *BSEE’s Proposed Return to Pre-2016 Blowout Preventer Design Requirements Would Endanger Public Safety and the Environment.*

The 2016 WCR included multiple requirements related to the design of blowout preventers, which “can be the last defense against a release of hydrocarbons into the environment, when all other forms of well control have failed.”²⁰ As the draft 2016 WCR explained, investigations into the root causes of the *Deepwater Horizon* explosion consistently identified the need for more stringent regulatory requirements for blowout preventers and related equipment, including the need to push the industry to develop improved technologies.²¹

In particular, investigations recommended that BSEE consider “requiring a blind-shear ram design that incorporates improved pipe-centering in the shear ram,” and that BSEE “require improvement of the design capabilities of the BOP systems so that they can shear and seal all combinations of pipe.”²² Consistent with these recommendations, the 2016 WCR required that blowout preventers be outfitted with double shear rams designed to allow the drill pipe to be centered during shearing operations. BSEE explained that “[t]he use of double shear rams in the BOP stack increases the likelihood that the drill pipe can be sheared in an emergency,” and that the centering

the implausibility of these statements—particularly in light of the *Deepwater Horizon* disaster, the extensive rulemaking process underlying the WCR, and BOEM’s plans to dramatically expand the scope of offshore drilling. Under these circumstances, BSEE must conduct a full EIS in connection with its proposed revisions to the WCR, and we reserve all rights in connection with BSEE’s decision to limit itself to an EA instead.

¹⁹ *California v. Bureau of Land Mgmt.*, 277 F. Supp. 3d 1106, 1122 (N.D. Cal. 2017) (citing *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983)).

²⁰ Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control, 80 Fed. Reg. 21,504, 21,506 (Apr. 17, 2015) (“Draft 2016 WCR”) (explaining the blowout preventer system’s function in potentially needing to sever the drill pipe with shear rams in the event of an uncontrolled release of hydrocarbons).

²¹ *See id.* at 21,507-08 (“One consistent element in each of the investigations was the recognition that additional requirements related to BOPs and well-control equipment are needed.”)

²² *Id.* at 21,508.

requirement responded to the *Deepwater Horizon* blowout preventer's failure to completely sever the drill pipe.²³

Now, however, BSEE has proposed to remove pipe-centering and the ability to mitigate compression of the pipe between the shear rams as a design requirement, in light of purported technological improvements and the agency's "experience with the implementation of the original WCR."²⁴ It also has proposed to eliminate the requirement that *each* shear ram be able to shear enumerated components under maximum anticipated surface pressure.²⁵ BSEE's claimed reliance on implementation experience is implausible, for operators need not comply with the centering requirement until 2023.²⁶ BSEE's reliance on technological improvements is likewise insufficient: it merely states that "many" (but clearly not all) of the shear ram designs have been improved, and that operators supposedly "will continue to substitute new components for old ones."²⁷ BSEE also fails to square its proposals with the 2016 WCR's detailed explanation and analysis—including the fact that the *Deepwater Horizon* investigations specifically identified the failure to center the drilling pipe as a reason the blowout preventer could not shear it.²⁸ And as for the requirement that *each* shear ram have full shearing capacity, BSEE's explanation that "certain" shears have difficulty shearing certain components²⁹ fails to explain why operators should not be required to select shears that do not have these deficiencies. Nor does BSEE attempt to explain why it is sensible to abandon the added layer of protection associated with the requirement that *each* shear ram have the listed capabilities, in the event that one shear ram fails.

²³ See BSEE Fact Sheet, Proposed Well Control Rule at 1-2, available at <https://www.bsee.gov/sites/bsee.gov/files/fact-sheet/bsee/fact-sheet-proposed-well-control-rule.pdf> (last visited Aug. 5, 2018).

²⁴ WCR Rollback, 83 Fed. Reg. at 22,141.

²⁵ *Id.* at 22,139 (proposing to require only that a "combination of the" shear rams be able to shear the listed items).

²⁶ See Final 2016 WCR, 81 Fed. Reg. at 25,893 (compliance date for installation of shear rams that center drill pipe during shearing operations is seven years after publication of the Final 2016 WCR).

²⁷ WCR Rollback, 83 Fed. Reg. at 22,140.

²⁸ See, e.g., Bureau of Ocean Energy Management, *Report Regarding the Causes of the April 20, 2010 Macondo Well Blowout* 155 (Sept. 14, 2011); Joel Achenbach & Steven Mufson, *Initial Loss of Well Control Doomed Deepwater Horizon*, Washington Post (Mar. 23, 2011); Final 2016 WCR, 81 Fed. Reg. at 25,962 (explaining that while BSEE "understands that some rams may be capable of shearing on the rams' cutting edges, without centralizing the pipe . . . it is safer to have the pipe centered while shearing in order to optimize shearing capabilities and reduce risk by ensuring that the pipe to be sheared is across the shearing surfaces").

²⁹ WCR Rollback, 83 Fed. Reg. at 22,139.

Equally deficient is BSEE's rationale for proposing to eliminate the requirement that a blowout preventer include a subsea accumulator.³⁰ The 2016 WCR instituted this requirement "to provide fast closure of the BOP components and to operate all critical functions in case of a loss of the power fluid connection to the surface."³¹ BSEE now maintains that "implementation of the original WCR" has allowed it "to better evaluate the effects of the original WCR accumulator requirements impacting subsea BOP space and weight limitations."³² Once again, BSEE's purported reliance on experience implementing the WCR is dubious absent further explanation, for the subsea accumulator requirement does not come into force until 2021.³³ BSEE further fails to mention that the 2016 WCR *already* responded to concerns about these space and weight limitations by harmonizing proposed requirements with the existing industry standard.³⁴ In all events, BSEE fails to explain why removing the requirement to locate a piece of critical equipment below the surface—where the most catastrophic events can originate—would do anything other than undermine safety and increase the risk of devastating blowouts.

2. *No Data Exist to Justify Weakening Testing Requirements for Blowout Preventers.*

In the 2016 WCR, BSEE established a uniform 14-day interval for testing blowout preventers used in workovers and decommissioning, as well as those used in drilling and completion operations.³⁵ For the first category of blowout preventers, the 14-day interval represented an *increase* from the 7-day interval that previously had governed. In setting a 14-day interval across the board, BSEE considered comments suggesting intervals from 7 to 21 days, but carefully explained why it was rejecting a 21-day interval.³⁶ It stressed that it had received no post-*Deepwater Horizon* data supporting an increase to that length—even though BSEE had invited commenters to provide such data.³⁷

Now, BSEE is again contemplating a potential increase in the testing interval to 21 days for all types of operations, including drilling, completions, workovers, and decommissioning.³⁸ Yet BSEE apparently still lacks the sort of data it was missing just two years ago. Indeed, BSEE does not even discuss its analysis from 2016, or its observation that that no post-*Deepwater Horizon* data existed to justify a further increase. BSEE merely notes, generically, that "industry has raised concerns related to the benefits of pressure and functional testing of subsea BOPs when

³⁰ *Id.* at 22,157.

³¹ Draft 2016 WCR, 80 Fed. Reg. at 21,578; *see* Final 2016 WCR, 81 Fed. Reg. at 25,896.

³² WCR Rollback, 83 Fed. Reg. at 22,140.

³³ Final 2016 WCR, 81 Fed. Reg. at 25,893.

³⁴ *Id.* at 25,895.

³⁵ *Id.* at 25,898.

³⁶ *Id.*

³⁷ *Id.* at 25,898-99.

³⁸ WCR Rollback, 83 Fed. Reg. at 22,143.

compared to the costs and potential operational issues.”³⁹ That is an insufficient basis on which to weaken such critical safety regulations.

3. *BSEE’s Proposed Elimination of Default Safe Drilling Margins Is Unsupported.*

One recommendation resulting from the *Deepwater Horizon* investigations was the establishment of a default margin for safe drilling; such a margin is viewed as a “critical factor” to ensuring that a well is successfully drilled.⁴⁰ The 2016 WCR established that default margin: the static downhole mud weight should be at least 0.5 pound per gallon (“ppg”) below the lesser of the casing shoe pressure integrity test or the lowest estimated fracture gradient.⁴¹ The 2016 WCR acknowledged industry concerns that this margin could make it harder for operators to reach target depths. Those concerns, however, did not warrant abandoning a default margin as an important safety measure. As BSEE explained in the WCR, numerous prior drilling permit applications had set 0.5 ppg drilling margins (so that this figure was far from unrealistic), and operators could still obtain variances from the 0.5 ppg default figure if they provided sufficient justification.⁴²

BSEE now proposes taking what amounts to the opposite approach—allowing operators to set drilling margins on a case-by-case basis, instead of requiring them to justify deviating from a default margin.⁴³ BSEE’s justification for this proposed about-face appears to be the fact that, for 32 of 305 wells, it has approved drilling margins less than 0.5 ppg.⁴⁴ But that is little more than 10 percent of wells—and the fact that nearly 90 percent apparently *were* capable of meeting the 0.5 ppg figure only underscores the lack of support for BSEE’s proposed reversal. Further, BSEE has provided no evidence suggesting that industry operators’ safety culture has improved so much that they should effectively be allowed to self-regulate in the first instance. Indeed, multiple investigations found that lax regulatory oversight and an over-reliance on industry promises about what constitutes safe practices contributed to the *Deepwater Horizon* disaster.⁴⁵ And BSEE’s proposal appears to have failed to consider, much less quantify, the increased resources that the agency would require if it were to review each individually proposed drilling margin.

³⁹ *Id.*

⁴⁰ Final 2016 WCR, 81 Fed. Reg. at 25,894; see Fred Brink, Safe Drilling Margins (Nov. 20, 2015), at <https://www.bsee.gov/blog-post/11202015> (last visited Aug. 5, 2018).

⁴¹ Final 2016 WCR, 81 Fed. Reg. at 25,894.

⁴² *Id.* at 25,895.

⁴³ WCR Rollback, 83 Fed. Reg. at 22,133 (suggesting that a case-by-case approach may be appropriate because deviations are being approved).

⁴⁴ *Id.*

⁴⁵ See, e.g., National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Report to the President* vii, 122-125 (Jan. 2011) (“BP Commission Report”) (explaining that the *Deepwater Horizon* disaster was “rooted in systemic failures by industry management” and the contractors serving them, including a general lack of safety culture and lack of commitment

4. *Weakening Real-Time Monitoring Requirements Would Jeopardize Well Safety.*

The *Deepwater Horizon* investigations recommended real-time monitoring of well operations as a means to help rig crews identify and evaluate unusual conditions that might warrant attention.⁴⁶ BSEE, for its part, observed that real-time monitoring could serve as “a tool (i.e., as an ‘additional pair of eyes’) to improve safety and environmental protection during ongoing well operations.”⁴⁷

Accordingly, the 2016 WCR instituted a series of real-time monitoring requirements. Specifically, it required operators to use real-time monitoring so that onshore personnel can monitor the blowout preventer system, the fluid handling system of the rig, and downhole conditions.⁴⁸ Operators must retain real-time monitoring data onshore and must provide BSEE with access upon request.⁴⁹ Responding to industry comments, however, BSEE gave operators considerable flexibility in how they chose to comply, ultimately opting for an approach that was more performance-based and less prescriptive than what it initially had proposed.⁵⁰

BSEE’s current proposal would significantly dilute the real-time monitoring requirements beyond recognition by removing “prescriptive real-time monitoring requirements and moving towards a more performance-based approach.”⁵¹ BSEE insists that none of its proposed revisions would impact safety or contradict the conclusions of any investigation—yet it fails to even acknowledge that investigations identified the lack of “extra sets of eyes” reviewing drilling-related actions as a root cause of the *Deepwater Horizon* explosion.⁵² Nor does it provide any reason

to risk analysis or internal expert review); *see also id.* at 127 (leading up to the *Deepwater Horizon* disaster, government officials relied “too much on industry’s assertions of the safety of their operations”); Donald Boesch, *Trump’s Offshore Oil Drilling Plans Ignore the Lessons of BP Deepwater Horizon*, *The Conversation* (Jan. 5, 2018) (“Boesch”), at <https://theconversation.com/trumps-offshore-oil-drilling-plans-ignore-the-lessons-of-bp-deepwater-horizon-89570> (last visited Aug. 5, 2018) (noting that BSEE “had ceded control over many crucial aspects of drilling operations to industry”).

⁴⁶ Draft 2016 WCR, 80 Fed. Reg. at 21,508.

⁴⁷ *Id.* at 21,520.

⁴⁸ Final 2016 WCR, 81 Fed. Reg. at 25,897, 26,025-26.

⁴⁹ *Id.*

⁵⁰ *See id.* at 25,897 (“The final rule removes or replaces several provisions that were perceived by commenters as overly prescriptive with more flexible, performance-based measures that better reflect BSEE’s intention that operators use [real-time monitoring] as a tool to improve their own ability to prevent well control incidents while providing BSEE with sufficient access to [real-time monitoring] information to evaluate system improvements.”).

⁵¹ WCR Rollback, 83 Fed. Reg. 22,129, 22,137.

⁵² *See, e.g.*, BP Commission Report at 101-02.

to think that the offshore drilling industry has demonstrated improvements in monitoring, data retention, or overall safety culture since *Deepwater Horizon*. Further, any claim that the real-time monitoring requirements are unduly burdensome is hypothetical, as operators need not comply with those requirements until 2019.⁵³

5. *The BSEE-Approved Verification Organization System Is Necessary to Ensure Effective Oversight of Drilling Operations.*

To ensure independent oversight and monitoring of drilling operations, the 2016 WCR established a system of BSEE-approved verification organizations (“BAVOs”). BAVOs must witness and/or verify the performance of various tests and inspections, to confirm that various equipment critical to well safety is adequately designed and properly maintained.⁵⁴ Activities that a BAVO must review or certify include blowout preventer shearing performance testing,⁵⁵ as well as the five-year breakdown and full inspection of blowout preventers.⁵⁶ The BAVO system, BSEE emphasized, would provide more robust safety and regulatory oversight than that performed by unapproved third parties whose independence may be subject to question. The WCR explained: “[A]pproval of verification organizations by BSEE will ensure that the BAVOs are independent of the parties whose crucial equipment and processes BAVO will review and evaluate.”⁵⁷

⁵³ See Final 2016 WCR, 81 Fed. Reg. at 25,893. Indeed, BSEE has deliberately *forgone* an opportunity to develop additional data and analysis that might bear on the continued need for requirements such as real-time monitoring. In December 2017, BSEE ordered the National Academies to stop work on an agency-commissioned study that “was to include recommendations on the appropriate role of independent third parties and remote monitoring.” Boesch; see National Academies, Project Information: Review and Update of Bureau of Safety and Environmental Enforcement Offshore Oil and Gas Operations Inspection Program, at <http://www8.nationalacademies.org/cp/projectview.aspx?key=49890> (last visited Aug. 5, 2018); see also National Academies Press Release, Statement on Stop-Work Order for National Academies Study on the Department of the Interior’s Offshore Oil and Gas Operations Inspection Program (Dec. 21, 2017), at <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=12212017> (last visited Aug. 5, 2018).

⁵⁴ Final 2016 WCR, 81 Fed. Reg. at 25,893.

⁵⁵ *Id.* at 25,894.

⁵⁶ *Id.* at 25,896. The problem of improper testing is far from hypothetical. In 2016, for instance, Energy Resource Technology was fined \$4 million for, among other things, failing to adequately pressure-test a blowout preventer. See *Oil Company Ordered to Pay \$4 Million for Offshore Violations*, Offshore Energy Today (Apr. 7, 2016), at <https://www.offshoreenergytoday.com/usa-oil-company-ordered-to-pay-4-million-for-offshore-violations/> (last visited Aug. 5, 2018).

⁵⁷ Final 2016 WCR, 81 Fed. Reg. at 25,948; see *id.* (explaining that while “BSEE appreciates the value of operators’ existing quality control programs,” it “cannot rely on such voluntary

Even though the BAVO requirement has not yet come into force,⁵⁸ BSEE now proposes to eliminate the BAVO system altogether.⁵⁹ That course of action cannot be justified. BSEE's proposal contains no detailed analysis of, or reference to, the post-*Deepwater Horizon* findings that such a system is necessary.⁶⁰ Nor does it directly rebut the agency's own 2016 response to industry objections to the BAVO system, which stated that while "BSEE appreciates the value of operators' existing quality control programs," it "cannot rely on such voluntary programs to provide the information or assurances that BSEE needs."⁶¹ Rather, BSEE's proposal asserts that elimination of the BAVO system will not impact safety because independent third parties have long been used to carry out certifications and verifications, and because BSEE expected most of them to apply to become BAVOs in any event.⁶² But the fact that "independent" third parties have long been used for these purposes says nothing about whether it is unduly risky for them to continue doing so without a guarantee that they truly are independent and qualified. And the fact that most such organizations will *apply* to become BAVOs says nothing about whether, as currently constituted, they are sufficiently independent and qualified.

* * *

The undersigned Attorneys General, alongside those of two other states, have submitted comments vigorously opposing BOEM's proposal to issue new oil and gas leases off of the coasts of our states, and we believe our opposition ultimately will carry the day. Regardless, the potential expansion of offshore drilling underscores the imperative to maintain robust precautions aimed at preventing and containing blowouts and other spills. Indeed, BOEM itself has sought to justify the expansion of offshore drilling by relying on the very WCR that it now proposes to revisit and roll back.⁶³ Weakening the WCR just two years after its promulgation, and before some of its

programs to provide the information or assurances that BSEE needs); *see also id.* at 25,925 (discussing the need for a BAVO to witness BOP pressure testing, especially when BSEE is unable to be present, "so that BSEE can be assured that the test is performed correctly").

⁵⁸ BSEE provided that regulated parties would not have to begin using BAVOs until one year after it published the BAVO list, *see id.* at 25,893, but does not appear to have published that list.

⁵⁹ WCR Rollback, 83 Fed. Reg. at 22,138-39.

⁶⁰ Draft 2016 WCR, 80 Fed. Reg. at 21,508.

⁶¹ Final 2016 WCR, 81 Fed. Reg. at 25,948.

⁶² WCR Rollback, 83 Fed. Reg. at 22,138.

⁶³ *See* 2019-2024 DPP at 2 (noting that "since the 2010 Deepwater Horizon blowout and oil spill, the U.S. Department of the Interior (USDO) has made, and is continuing to make, substantial reforms to improve the safety and reduce the possible adverse environmental impacts of OCS oil and gas activity"); *id.* at 7-35 (asserting that "recently implemented safeguards, including increased requirements for the design, manufacture, repair, testing, and maintenance of blowout

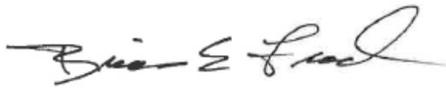
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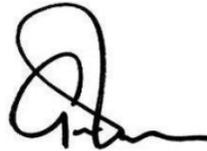
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provisions have even come into force, would increase the likelihood of another *Deepwater Horizon* disaster—exactly the scenario that the WCR was designed to prevent. Such an action would epitomize an arbitrary and capricious reversal of position.⁶⁴ Accordingly, we strongly oppose any weakening of the WCR’s protections, and we reserve all rights in connection with BSEE’s disposition of this matter.

Respectfully,



Brian E. Frosh
Attorney General of Maryland



George Jepsen
Attorney General of Connecticut



Janet T. Mills
Attorney General of Maine



Maura Healey
Attorney General of Massachusetts



Gurbir Grewal
Attorney General of New Jersey



Barbara D. Underwood
Attorney General of New York



Joshua H. Stein
Attorney General of North Carolina

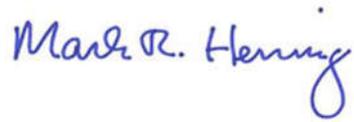


Ellen F. Rosenblum
Attorney General of Oregon

preventers, required downhole mechanical barriers, increased well design and testing requirements, and additional regulatory oversight make [a catastrophic spill] even less likely than in the past”).

⁶⁴ See, e.g., *FCC v. Fox Television Stas., Inc.*, 556 U.S. 502 (2009); *Ala. Educ. Ass’n v. Chao*, 455 F.3d 386 (D.C. Cir. 2006).

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Mark R. Herring
Attorney General of Virginia



Bob Ferguson
Attorney General of Washington