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Department of the Interior
Bureau of Safety and Environmental Enforcement
Attention: Regulations and Standards Branch
45600 Woodland Road
Sterling, Virginia 20166

Via – Regulations.gov

Re: *Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control* [Docket No. BSEE-2015–0002; RIN 1014-AA11]

To whom it may concern:

The International Association of Drilling Contractors is a trade association representing the interests of drilling contractors, onshore and offshore, operating worldwide. Our membership includes all drilling contractors currently operating mobile offshore drilling units (MODUs) in the areas subject to the jurisdiction of the United States.

IADC and our members have joined with the American Petroleum Institute (API), the Independent Petroleum Association of America (IPAA), the National Ocean Industries Association (NOIA), the Offshore Operators Committee (OOC), the Petroleum Equipment & Services Association (PESA) and the US Oil and Gas Association (USOGA) in developing a comprehensive response (“Joint Response”) to the proposed rule, which is being separately submitted to the rulemaking docket. IADC fully supports the comments offered therein.

The purpose of this letter is to complement and supplement the Joint Response.

As a trade association, IADC’s purpose is to advance drilling and completion technology; improve industry health, safety, environmental and training practices; and champion sensible regulations and legislation which facilitate safe and efficient drilling. It is in this capacity that IADC provides this response to the 17 April 2015 proposed rule (80 FR 21503 *et seq*) to revise and add new requirements to regulations to, *inter alia*: Implement recommendations resulting from various investigations of the Macondo incident, revise blowout preventer (BOP) requirements, incorporate various industry standards: and revise existing regulations in the areas of well design, well control, casing, cementing, real-time well monitoring, and subsea containment.

The views and comments in this letter are offered without prejudice to comments that may be offered individually by our members.

Five years ago, a tragic blowout engulfed the Macondo well – devastating the Gulf of Mexico, the global drilling industry and, indeed, our colleagues onboard the *Deepwater Horizon*. The magnitude of the blowout and resulting spill brought about a heightened awareness of how one incident, on one well, can have far-reaching consequences – nearly wiping out the industry’s social license to operate. It was a stark reminder of our industry’s responsibility to protect the lives of its people and the environment in which we operate.

Since that disaster, drilling contractors, operators, service companies, and industry organizations like IADC have embarked individually, in keeping with each organization’s respective areas of particular influence and expertise, and jointly, to make sure such events never happen again.

Relevant to this proposed rulemaking, initiatives which have been undertaken by IADC include, *inter alia*:

- An immediate review of IADC’s *Health, Safety and Environment Case Guidelines for Mobile Offshore Drilling Units*, with a revised edition issued in December 2010 to address gaps identified in the immediate aftermath of the incident in the guidance provided for safety and environmental management systems. Two subsequent editions have been issued in the spirit of continuous improvement. The Guidelines are made available, without charge, on the IADC website.
- The launch of the IADC Knowledge, Skills, and Abilities (KSAs) project, with a database comprising core competencies for more than 70 rig-based positions, the IADC KSAs, available without charge on the IADC website, provides a tool for the industry to demonstrate their personnel’s qualifications.
- The establishment of the Well Control Institute (WCI), as an independent subsidiary of IADC, with the goal of establishing itself as the most influential and competent body for dealing with the priorities that are outstanding for improving well control.
- In May of this year, IADC unveiled WellSharp™, the drilling industry’s new well control training and assessment program. WellSharp™ was developed through a collaborative, industry-wide and industry-led effort to redefine well control training. It emphasizes rigorous training for every person with well control responsibilities, whether office-based or rig-based. WellSharp™ is designed to ensure that the industry’s workforce has the training and knowledge needed to both prevent incidents and respond swiftly and appropriately to unforeseen incidents.

A newer joint effort that is still under way is the BOP Reliability and Performance Information Database. IADC and the International Association of Oil and Gas Producers (IOGP) are collaborating on this joint industry project (JIP) – involving contractors, operators and service companies – to develop a BOP performance database to improve subsea BOP systems and related operating procedures. The JIP will be based on a platform established by the Subsea BOP Executive Group, more commonly known as the “Group of 7.” This consortium of offshore drilling

contractors was motivated by the recommendations for reporting of equipment malfunctions and failure contained in API Standard 53, *Blowout Prevention Equipment Systems for Drilling Wells, Fourth Edition (API 53)*, to construct a system that will form the basis of the an ongoing performance database. It will track and report failures of BOP equipment and eventually will be useful for tracking BOP component reliability trends.

More broadly, the *Macondo/Deepwater Horizon* incident provoked the assembly of the largest gathering of well control subject matter experts in history to come together to develop an understanding of the causes of the incident, identify mitigating measures, and develop appropriate standards and guidelines for the general improvement of safety in the drilling industry. A primary focus of these efforts was the API standards program. IADC has consistently and vigorously urged its members to provide subject matter experts to serve on API's standards committees, has directly supported these efforts with IADC staff, and has supported jointly-administered standards work groups.

IADC offers the following comments to complement those provided in the Joint Response:

Proposed imposition of requirements beyond those addressed in API 53

In general, those provisions of the proposed rule that would prescriptively impose requirements which exceed the provisions of API 53 are unnecessary and will not improve safety. Particular concerns include:

- The proposed rule's demand for larger, heavier and more complex BOP stacks:
 - The additional accumulator requirements are confusing. During deliberations to prepare the Joint Response, the industry's subject matter experts could not reach a common understanding of the intended requirements of the proposed rule. There were significantly different views regarding the redesign of the stack needed to achieve compliance. Clearly, BSEE needs to find an avenue for technical discussions on this issue before moving forward with the regulations.
 - An unintended consequence of the demand for greater accumulator volume could be the removal of other BOP components with a concomitant reduction in redundancy and well control options.
 - There are physical and technical constraints on available space for installation of additional or larger capacity equipment.
 - It appears that the intent of the rule with respect to enhanced remotely operated vehicle (ROV) intervention capability could be met without doubling the number of receptacles and associated fittings, as would be required by the prescriptive language of the proposed regulation.
 - The effective dates need to be adjusted to provide sufficient lead times for engineering, installation and testing of equipment in consideration of the industry's capacity to respond.

- The proposed requirement for complete breakdown and detailed physical inspection of the BOP and every associated system and component must be performed every 5 years with no option for this to be performed in phased intervals. (§ 250.739(b)):
 - There is no compelling reason to believe that the proposed rule’s quinquennial inspection scheme will produce a result superior to that which will result from adherence to the periodic maintenance and inspection requirements of API 53.
 - Rather than allowing inspections to be conducted as operations permit, thereby reducing downtime, the rule would require that rigs be taken from service for an extended period for well control equipment tests. This not only incurs significant costs, it could result in a modification of contracting practices.

Undue prescription and the stifling of the introduction of new technologies

The proposed rule is unduly prescriptive. Such prescription can cause confusion and, due to delays inherent in the rulemaking process, such prescription often serves to both memorialize and mandate the use of obsolete technology and imposing burdens on both BSEE and industry to subsequently obtain relief through 30 CFR §§250.141 or 250.142. The Joint Response identifies numerous instances where this is the case. To illustrate:

- Apparently not satisfied with the language in API 53 requiring that all subsea stacks “have fully redundant control pods”, the proposed §250.734(a)(2) prescriptively dictates that a subsea BOP must have a “dual-pod control system” – proscribing systems with more than two pods. Why?
- The proposed § 250.736(d)(1) requires the use, “during all operations,” of “a Kelly valve installed below the swivel” even though Kellys are no longer in widespread use in offshore drilling operations. Is this a drafting oversight, or does BSEE really intend that such equipment be used?
- The proposed § 250.711 works at cross purposes. It (appropriately) requires that well-control drills “familiarize personnel engaged in well operations with their roles and functions so that they can perform their duties promptly and efficiently.” However, it goes on to state: “The same drill may not be repeated consecutively.” Does BSEE really intend to prohibit the repetition of a drill to achieve a satisfactory outcome and reinforce learning objectives when the initial outcome was unsatisfactory?

For several years, IADC and API have been cooperating in the development of standards for managed pressure drilling. The prescriptive nature of both the present and proposed regulations serve to stifle the introduction and employment of this technology in the United States.

The need for further discussion and dialog

The Joint Response provides detailed comments and recommendations regarding the proposed regulatory text. Further discussion and dialog are needed to assure both that regulations are

developed in the most cost-effective manner to achieve the overall regulatory objective, and that there is a common understanding of the specific technical objectives of the rule prior to committing significant resources towards the rule’s ultimate implementation.

Inadequacies in the Initial Regulatory Impact Analysis (RIA)

The Initial RIA accompanying the proposed rule entirely fails to recognize the significant burden that implementation of the proposed rule would place on drilling contractors and significantly under-estimates the costs of implementation.

- The RIA makes no attempt to differentiate among the organizations (*e.g.*, oil companies, service contractors, equipment manufacturers, or others) that will bear the costs of implementation. Significant costs associated with blowout preventer system upgrades, inspections and verifications, and maintenance will be borne by a limited number (± 13) rather than the 130 entities presumed in the RIA.
- The RIA fails to consider the impact of “hard-points” in the regulatory implementation scheme. This becomes particularly acute when significant demands are placed on the engineering and manufacturing capacity of the industry and inspection service providers. Lead times simply render infeasible proposed equipment and training requirements proposed for implementation 90 days after the issuance of the final rule. Implementation tied to submission of APD and APMs compresses implementation timelines for changes proposed with an effective date 5-years after issuance of the final rule, particularly in consideration that such changes will likely need to be affected prior to even offering the rig for a contract after the effective date.
- The RIA fails to consider that the incorporation by reference of ANSI/API Spec. 16A, Specification for Drill-through Equipment, Third Edition, June 2004, ANSI/API Spec. 16C, Specification for Choke and Kill Systems, First Edition, January 1993, and API Spec. 16D, Specification for Control Systems for Drilling Well control Equipment and Control Systems for Diverter Equipment, Second Edition, July 2004, will effectively prohibit use of equipment covered by these specifications manufactured prior to the specifications’ effective dates. No costs have been attributed to the upgrade or replacement of non-conforming equipment.
- The 10-year analysis period employed for the RIA inappropriately minimizes the costs associated with those elements of the rule that impose recurring costs. The change to the net present value of recurring costs diminishes as the analysis period is extended, but a 10-year window is inappropriate.
- The RIA inappropriately adjusts the “baseline” for proposed elements of the regulation which BSEE has imposed without regulatory due process, *e.g.*, Global Positioning System (GPS) for Mobile Offshore Drilling Units, BSEE NTL 2013-G01 imposed by and earlier NTLs.
- While IADC would acknowledge that calculation of costs associated with possible effects on the worldwide employment of mobile offshore drilling units is not feasible, IADC would expect that the RIA at least acknowledge that, because the rule proposes requirements significantly in excess of the industry norms (as established by API 53 and its normative references), there are likely to be disruptions in the market associated with:

- Upgrading of rigs presently operating outside of U.S. jurisdiction in order for them to be offered for contracts on the U.S. OCS;
- Continued commercial acceptability, outside the U.S., of rigs that have been upgraded for compliance with U.S. requirements due to, among other things:
 - The increased mass of the BOP stack and its potential incompatibility with wellhead systems outside the U.S.; and
 - The increased operating, inspection and maintenance costs which would be necessary to retain eligibility to return to the U.S. market.

Proposed use of BSEE-approved Verification Organizations (BAVOs)

If BAVOs are to be institutionalized by the final rule, consideration needs to be given to the following:

- Major aspects of the rule’s implementation are entirely dependent upon the prior approval of a sufficient number of BAVOs, with sufficient resources, to provide the BAVO verifications and certifications required to accompany the submission of APDs and APMs. Implementation dates need to be made contingent upon BSEE’s approval of an adequate number of BAVOs to perform the required services.
- No provisions of the proposed rule expressly address the oversight of BAVOs, or the possible need for withdrawal or revocation of approval. Such provisions should be added.
- There is no requirement for BAVOs to operate under a quality system with either BSEE or independent third-party audits. Such provisions should be added.
- BAVOs will be charged with interpretation of the BSEE regulations, such industry standards as are incorporated by reference, and recognized engineering practices. However, no indication is given as to how BSEE would provide the BAVOs with the guidance and oversight necessary for rendering such interpretations. Just as there is a need for consistency among BSEE Regional and District offices, there will be a need for consistency among BAVOs. A transparent system for provision of interpretations will be needed.
- Neither is there any means articulated for how those who may be adversely affected by a BAVO’s decision deriving from such an interpretation can appeal the BAVO’s decisions to BSEE. An appeals process will be required.

IADC offers the following comments to complement those provided in the Joint Response:

Economic analysis – Industry costs v. impacts on contractors

As noted above, the rule, and the associated economic analysis, fail to acknowledge that individual contractors, not “the industry” and not operators (*i.e.*, oil companies) will bear many of the costs associated with implementation of the rule. Contractors may be able to recoup some of these costs in accordance with the terms of the individual rig contracts, or (over time) through increased rig rates, but this is by no means guaranteed.

Implementation of the rule has the potential to disrupt normal contracting practices. Operators will understandably prefer to not contract for the services of a rig where the rig may need to be taken out of service in order to upgrade equipment as provisions of the rule are phased-in (*e.g.*, as with the proposed upgrades to the BOP system that would be required by §250.734(a)(1)), or during periods when significant compliance costs or operational uncertainties may be incurred (*e.g.*, as with the quinquennial breakdown and inspection of the BOP system and associated components proposed §250.739(b)).

As noted above, the retrospective application of API Spec. 16A, API Spec. 16C, and API Spec. 16D to existing equipment would effectively proscribe the use of such equipment and render it obsolete. If such manufacturing specifications are to be incorporated by reference:

- It must be done in a manner that is tied to the date of manufacture of the equipment subject to the incorporation by reference, similar to the approach that BSEE is taking with respect to its incorporation by reference of API Specification 2C for offshore pedestal-mounted cranes (RIN 1014-AA13), where existing equipment is either “grandfathered” or retrospective application of additional requirements to existing equipment are addressed through the formal rulemaking process.
- To facilitate technically justifiable deviations from the specifications, a means must be provided for equipment manufacturers or owners to obtain direct access to BSEE approval authorities for acceptance of alternatives or departures under 30 CFR §§250.141 and 250.142.

For this rulemaking, these concerns would be obviated if these specifications were not incorporated by reference, but were to remain normative standards within the context of API 53.

In order to assess the cost-effectiveness of the proposed regulations as the economic analyses is further developed, it will be necessary to differentiate between those rigs that employ surface stacks (jack-ups) and those employing subsea stacks (floaters). These are effectively two different markets. Not to minimize the economic effects on floaters or platform rigs, but given already fragile market conditions, the effect of implementing the proposed rule will be acute for the jack-up market. Unlike many international areas, very few jack-ups in the U.S. are under term contracts, and the well-to-well nature of most contracts makes it easy for many rigs to be released very quickly. For example, Rigzone Data Services has reported that:

- On 2 June 2015, there were 20 marketed jack-ups in the U.S. Gulf of Mexico – in contrast to 34 which were marketed in November 2014.
- Of the marketed jack-ups only ten were under contract on 2 June – in contrast to 21 which had been under contract in November 2014.
- The leading edge day rate for a 300-ft, independent-leg cantilever jack-up (IC) was \$130,000 in November 2014 but had fallen to \$85,000 in June 2015.

IADC understands the difficulty in accounting for the diversity of impact on contractors in an economic analysis, but such impacts should at least be acknowledged. IADC has urged its

members to provide relevant cost information directly to BSEE, asking that it be treated as confidential business information.

Lack of privity

In order to be qualified to operate on the U.S. outer continental shelf, contractors are being required to make substantial investments in new and/or upgraded equipment without being afforded access to the agency to obtain departures or acceptance of alternatives. For example:

- Most BOP equipment is purchased by contractors. The proposed §250.730(d)(1) would allow for consideration of an alternative program (to API Spec. Q1) for the manufacture of BOP equipment, but the path for such an approval does not appear to be available to contractors except through the sponsorship of an operator. Even if such approval is obtained, the accepted alternative would not appear to be binding on other District Managers or Regional Supervisors. (The proposed rule refers to approval under § 250.141, which is granted by District Managers and Regional Supervisors, but requires that the request be submitted Chief, Office of Offshore Regulatory Programs.)
- The existing §250.141, and the proposed §250.701, allow for consideration of use of an alternative or updated equipment specification (e.g., API Spec 16D, third edition, when issued) and for departures. The path for such an approval is not available to contractors except through the sponsorship of an operator. Even if so obtained, the accepted alternative would not appear to be binding on other District Managers or Regional Supervisors or, under the proposed §250.701, for subsequent use of the equipment under a new Application for Permit to Drill (APD) or Application for Permit to Modify (APM).
- A similar situation exists with regard to the existing §250.142, and the proposed §250.702, in the process for obtaining departures.

There is limited incentive for an operator to serve as an advocate for an equipment manufacturer or contractor in obtaining BSEE “approval” for departures or acceptance of alternatives. Indeed, the need for such departures or alternatives, even when fully technically justified, could become an issue during commercial negotiations.

Technical Barriers to Trade

The World Trade Association’s Technical Barriers to Trade (TBT) Agreement, to which the U.S. is a party, aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade. The TBT Agreement strongly encourages members to base their measures on international standards as a means to facilitate trade, recognizing the right of WTO members to implement measures to achieve legitimate policy objectives.

The elements of the proposed rule clearly and significantly exceed international standards (e.g., as represented by API 53) in proscribing equipment requirements for blowout prevention

equipment systems. When implemented, the proposed rules would impose substantial costs and significant lead times would be required to upgrade and modify equipment for compliance. Further, such equipment would be subjected to nationally-established conformity assessment procedures administered by BSEE-approved verification organizations. MODUs operate in a global market, and the proposed rules, if implemented, would affect access to U.S. markets by worldwide drilling contractors and equipment manufacturers.

These effects are exacerbated by BSEE's regulatory structure which seemingly limits direct access to BSEE's approval authorities under 30 CFR §§250.141 and 250.142 to "a lessee, the owner or holder of operating rights, a designated operator or agent of the lessee(s), a pipeline right-of-way holder, or a State lessee granted a right-of-use and easement." As noted above, neither an equipment manufacturer nor an equipment owner has access to a binding decision from BSEE regarding the acceptability of equipment as fulfilling regulatory requirements for the U.S. market.

IADC believes that the TBT Notification Procedures for Draft Technical Regulations and Conformity Assessment Procedures should have been followed for this rulemaking proposal.

Inconsistencies regarding "rig" terminology

Various provisions of the existing and proposed rule have the potential to create confusion due to inconsistent use of terminology. For example (not inclusive):

- The proposed §250.712, and the associated Rig Movement Notification Report, refer to "barge", "coiled tubing unit", "drill ship", "jackup", "snubbing unit", "semisubmersible", "submersible", "wire-line unit", "rig", "rig unit", "MODU", "platform rig", and "drilling rig." The use of terminology between the proposed regulation and the associated report does not appear entirely consistent.
- The proposed §250.713 refers to "MODU" and "lift boat", "dynamically positioned rig unit", "moored rigs", and "dynamically positioned MODU." Does a dynamically positioned rig unit differ from a dynamically positioned MODU?
- The proposed §250.715 refers to "MODUs and jack-ups", "jack-up and moored MODUs", "moored MODU or jack-up", and "Rig/facility/platform." The caption for this section implies that a jack-up is not a MODU.
- The proposed §250.723 refers to "rig unit", and "lift boat" and "MODU."

Individually, these differences seem inconsequential; however, they may lead to situations where the exclusion of a term (*e.g.*, lift boat) may lead to the conclusion that the regulation is not intended to apply to operations conducted from lift boats, or that jack-ups are not considered MODUs. IADC suggests that the use of such terminology throughout part 250 be carefully reviewed and consideration be given to adding appropriate definitions where distinctions are necessary, *e.g.* between a lift boat and a self-elevating mobile offshore drilling unit (jack-up).

Uncertainties regarding responsibilities and liabilities in relation to the BSEE's reinterpretation of the provisions of 30 CFR 250.156(c) and promulgation of Interim Policy Document No. 12-07

Finally, and without prejudice to any pending litigation on the issue, IADC would express, once again, concerns about uncertainties regarding contractor and individual responsibilities and liabilities (as persons performing regulated activities) in relation to the agency's reinterpretation of the provisions of 30 CFR 250.146(c) with respect to joint and several responsibilities, and the promulgation and implementation of Interim Policy Document No. 12-07.

Specifically with regard to the provisions of this proposed rule, such concerns and uncertainties include, but are not limited to:

- Proposed §250.107(a)(4), compliance with lease, plan, and permit terms and conditions. Holding contractors and individuals jointly and severally responsible for compliance with all lease, plan, and permit terms and conditions creates an implicit requirement for contractors or individuals to ascertain all lease, plan, and permit terms and conditions. Is this intended?
- Proposed §250.107(e), orders to shut-in operations. Will such orders be issued to both the "lessee, the owner or holder of operating rights, a designated operator or agent of the lessee(s)" and person actually performing the activity?
- Proposed §250.428(d), reports to the District Manager of immediate actions to ensure the safety of the crew or to prevent a well-control event. Does this create an obligation for contractors to provide individual reports or verify such reports have been submitted by the operator?
- Proposed §250.465(b)(3), End of Operations Reports. Is there any expectation by BSEE that a drilling contractor would bear any obligation for submission of this report?
- Proposed §250.703(c), rig floor surveillance. Who is ultimately responsible for the determination that a well has been secured?
- Proposed §250.712, reports of rig movements. Is it BSEE's expectation that any of these reports will be made directly by a drilling contractor or that the drilling contractor will be held responsible for the report in the absence of any action by the operator?
- Proposed §250.715(f), provision of access to rig location data. Is it BSEE's expectation that such access will be provided directly by a drilling contractor or that the drilling contractor will be held responsible for providing such access in the absence of any action by the operator?
- Proposed §250.720, securing of wells. Does a contractor bear a residual responsibility/liability under this proposed requirement for downhole integrity of the well or the effectiveness of the well plugs?
- Proposed §250.724, real time monitoring. Is there an implicit requirement for contractors or individuals to: (1) maintain duplicate records, and (2) ascertain if the required real-time data gathering, monitoring, recordkeeping and transmission are being undertaken by the operator and to suspend operations if they have not?
- Proposed §250.730(c), follow-up on equipment failure. As it is a provision of API 53, IADC would presume that a prudent drilling contractor would conduct such follow-up; however,

this differs distinctly from a regulatory obligation to do so. Is it BSEE's expectation that a drilling contractor will be held responsible for the notification in the absence of any action by the operator? What, if any, regulatory obligations are created for equipment manufacturers?

- Proposed §§250.740, 250.741, and 250.746, records and record retention. While IADC would presume that a prudent drilling contractor would maintain relevant records, this too differs distinctly from a regulatory obligation to do so. Is it BSEE's intention that these provisions create a regulatory requirement for contractors or individuals to maintain records duplicating those to be maintained by the operator?

IADC understands the requirements imposed upon BSEE for the use of "plain language" in its regulations and the resulting adoption of the term "you" for placement of regulatory responsibility. However, IADC believes that the need for clarity in the placement of regulatory responsibility must be given priority over ill-considered drafting of "plain language" regulations, particularly in consideration of BSEE's reinterpretation of the provisions of 30 CFR 250.156(c) and the promulgation and implementation of Interim Policy Document No. 12-07.

If you have questions about any portion of this correspondence, or comments provided in the Joint Industry response relating to drilling equipment or operations, please contact me by phone at (713) 292-1964.

Sincerely,



Alan Spackman
Vice President, Policy, Government and
Regulatory Affairs