



441 G St. N.W.
Washington, DC 20548

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May 14, 2024

The Honorable Joe Manchin
Chairman
The Honorable John Barrasso
Ranking Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Bruce Westerman
Chairman
The Honorable Raúl Grijalva
Ranking Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Bureau of Ocean Energy Management: Risk Management and Financial Assurance for OCS Lease and Grant Obligations*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Bureau of Ocean Energy Management (BOEM) entitled “Risk Management and Financial Assurance for OCS Lease and Grant Obligations” (RIN: 1010-AE14). We received the rule on April 29, 2024. It was published in the *Federal Register* as a final rule on April 24, 2024. 89 Fed. Reg. 31544. The effective date is June 24, 2024.

According to BOEM, the final rule amends its risk management and financial assurance regulations. This final rule revises criteria for determining whether oil, gas, and sulfur lessees, right-of-use and easement (RUE) grant holders, and pipeline right-of-way (ROW) grant holders are required to provide financial assurance above the current minimum bonding levels to ensure compliance with their Outer Continental Shelf Lands Act (OCSLA) obligations. The rule streamlines the criteria for evaluating the financial health of lessees and grantees, codifies the use of the Bureau of Safety and Environmental Enforcement’s (BSEE’s) probabilistic estimates of decommissioning costs in setting the level of demands for supplemental financial assurance, removes restrictive provisions for third-party guarantees and decommissioning accounts, adds new criteria for cancelling supplemental financial assurance, and clarifies bonding requirements for RUEs serving federal leases. BOEM estimates that a total of \$6.9 billion in new supplemental financial assurance will be required from lessees and grant holders under the rule to cover potential costs of decommissioning activities. The rule significantly increases the amount of financial assurance available to the U.S. Government in the case of a lessee default and meaningfully reduces the risk to the government and consequently to the U.S. taxpayer. This final rulemaking does not apply to renewable energy activities.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). In its submission to us, BOEM provided documentation this final rule was received by both Houses of Congress on April 29, 2024. Email from Program Analyst, BOEM, to CRA Rules, GAO, *Subject: RE: Department of the Interior Final Rule - GAO CRA Form: Risk Management and Financial Assurance for OCS Lease and Grant Obligations (RIN 1010-AE14) (Apr. 30, 2024)*. The final rule was published in the *Federal Register* on April 24, 2024. 89 Fed. Reg. 31544. The final rule has a stated effective date of June 24, 2024. Therefore, the stated effective date is less than 60 days from the date of receipt by Congress.

Enclosed is our assessment of BOEM's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Karen Thundiyil
Director, Office of Regulations
Bureau of Ocean Energy Management
Department of the Interior

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE INTERIOR,
BUREAU OF OCEAN ENERGY MANAGEMENT
ENTITLED
“RISK MANAGEMENT AND FINANCIAL ASSURANCE
FOR OCS LEASE AND GRANT OBLIGATIONS”
(RIN: 1010-AE14)

(i) Cost-benefit analysis

The Department of the Interior, Bureau of Ocean Energy Management (BOEM) estimated this final rule would lead to annualized monetized costs of \$573 million at the three percent discount rate and \$559 million at the seven percent discount rate.

Additionally, BOEM did not provide quantified benefits, but it did estimate unquantifiable benefits. According to BOEM, the rule will provide clarity on how the financial assurance program will be administered. BOEM also estimated the rule would lead to decreased risk to the taxpayer of assuming financial responsibility for defaulted decommissioning liabilities while providing industry flexibility to avoid financial assurance if an entity can demonstrate it poses minimal risk. Also, BOEM estimated the rule would reduce environmental damage.

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

BOEM stated that it had conducted a Final Regulatory Flexibility Analysis, included a full version in a separate Regulatory Impact Analysis (RIA), and provided a summary in the final rule.

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

BOEM stated it prepared an analysis under the Act, included the full analysis as part of the RIA, and summarized it in the final rule.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive*

Departments and Agencies, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

BOEM did not discuss the Act in this final rule. In its submission to us, BOEM stated that the Act is not applicable.

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

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

On June 29, 2023, BOEM published a proposed rule. 88 Fed. Reg. 42136. BOEM received comments and addressed them in the final rule.

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

BOEM determined this final rule contained information collection requirements (ICRs) subject to PRA. The ICRs are entitled “Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf (30 C.F.R. parts 550, 556, and 560)” associated with OMB Control Number 1010-0006, and “30 C.F.R. part 550, subpart A, General, and Subpart K, Oil and Gas Production Requirements” associated with OMB Control Number 1010-0114. For 1010-0006, BOEM estimated the ICR to have a burden of 22,012 hours at a cost of \$766,053. For 1010-0114, BOEM estimated the ICR to have a burden of 27,849 hours at a cost of \$165,492.

Statutory authorization for the rule

BOEM promulgated the final rule pursuant to section 301 *et seq.* of title 5; section 1751 of title 30; section 9701 of title 31; section 6213 of title 42; and section 1334 of title 43, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB determined that this final rule is a significant action under the Order.

Executive Order No. 13132 (Federalism)

BOEM determined this final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.