

Follow-up on media coverage of “waivers” and “exemptions” granted for 2016 Well Control Rule.

“Interior hands out nearly 1,700 waivers to offshore drilling safety rules.”

Politico Pro, 2/25/2019

Trump administration issued 1,700 exemptions to offshore drilling rules.”

West Side Story, online outlet

“Report: BSEE Issued Hundreds of Waivers for Well Safety Rules.”

The Maritime Executive

OBVIOUS MISSREPRESENTATION

- BSEE **does not waive requirements** for Applications for Permit to Drill **nor grant exemptions** to regulations. Waivers can be issued for compliance with best available and safest technology (BAST).
- Media misused the terms, waiver and exemptions.

2016 WELL CONTROL RULE and USE OF (A) ALTERNATE COMPLIANCES and (B) DEPARTURES

- Well Control Rule went into effect July 28, 2016 (during the previous administration) for all but a few provisions that had a delayed effective date.

From the Preamble of the Final Rule, Blowout Preventer Systems and Well Control,

“BSEE and the operators need enough flexibility under these rules to reasonably accommodate a wide range of potential alternative compliance methods and departures. Requests to use alternate procedures or equipment must provide sufficient justification for BSEE to make a determination that the proposed alternatives provide a level of safety and environmental protection that equals or surpasses current requirements. With respect to requests for departures from operating requirements, BSEE does not specify the type of justification required because doing so could unnecessarily limit the submission of supporting documentation that could be pertinent under the various circumstances that might arise. Moreover, even though existing § 250.409 and proposed § 250.702 do not expressly require an operator seeking a departure to demonstrate that the operator can still achieve the same level of safety and environmental protection required by the rules, BSEE expects that any request for departure will include appropriate measures to ensure safety and environmental protection.”

The above paragraph was the Bureau’s attempt to communicate to the public that this rule contemplated the consideration of alternate compliances and departures.

(A) ALTERNATE COMPLIANCES

- Alternate procedures or equipment (alternate compliance) became a provision in the regulations in 1988.
- ***Specific to the 2016 Well Control Rule, the practice for granting alternate compliances was established under the previous administration.***
 - Inclusion in the Final Rule's Preamble of a discussion of the need for accommodation of alternate compliances.
 - The first alternate compliance approval was granted as early as August 15, 2016, under the previous administration, and less than 30 days following the effective date of the Well Control Rule.
- Definition – Alternate procedures or equipment

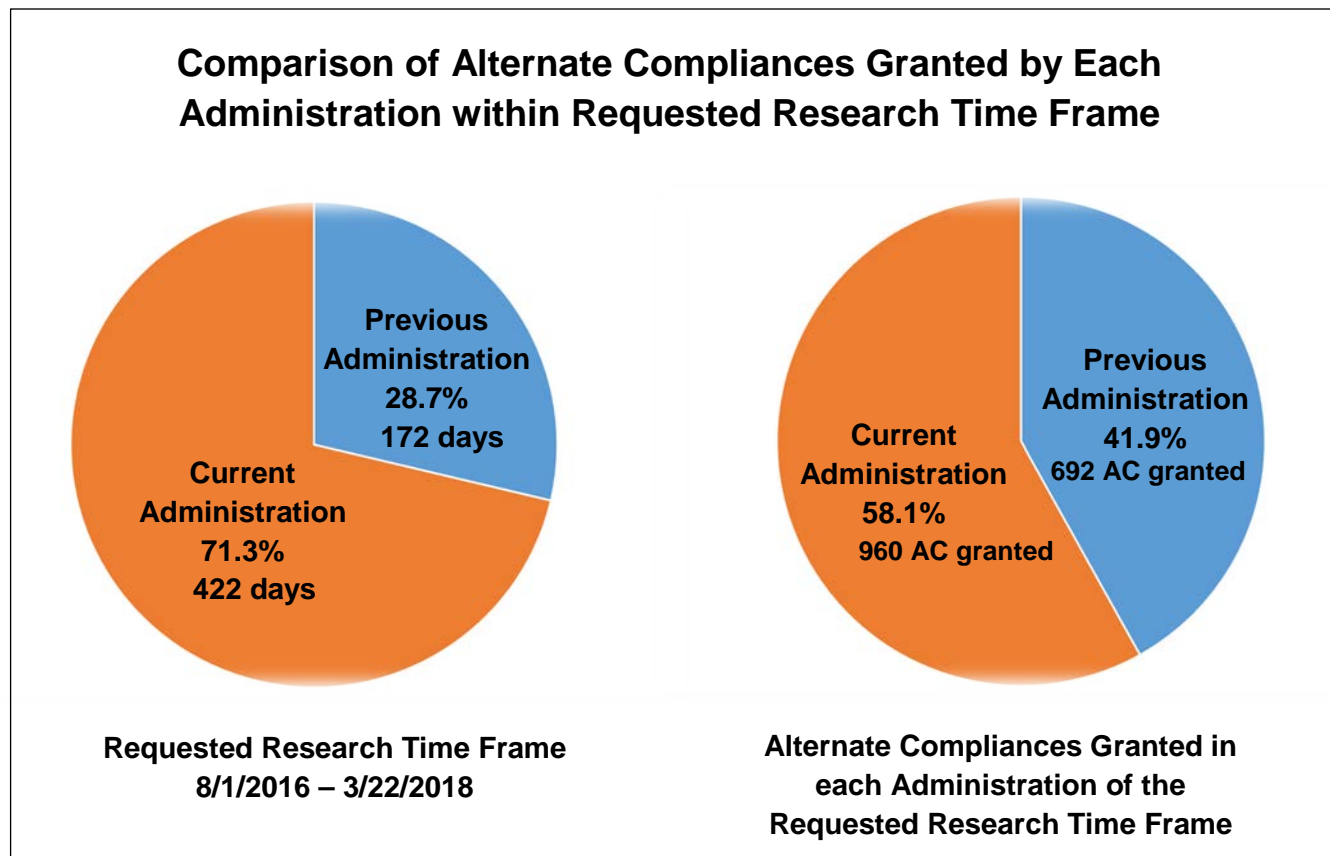
As found in 30 CFR §250.141, *"You may use alternate procedures or equipment after receiving approval as described in this section.*

(a) Any alternate procedures or equipment that you propose to use must provide a level of safety and environmental protection that equals or surpasses current BSEE requirements.

(b) You must receive the District Manager's or Regional Supervisor's written approval before you can use alternate procedures or equipment.

(c) To receive approval, you must either submit information or give an oral presentation to the appropriate Regional Supervisor. Your presentation must describe the site-specific application(s), performance characteristics, and safety features of the proposed procedure or equipment."

- **Under the previous administration**, (requested research time period: Aug. 1, 2016 – Jan. 19, 2017) **692 alternate compliance approvals were granted**. This represents 41.9% of the total Alternate Compliances granted during the requested research time period.
- **Under the current administration**, (requested research time period: Jan. 20, 2017 – Mar. 22, 2018) **960 alternate compliance approvals were granted**. This represents 58.1% of the total Alternate Compliances granted during the requested research time period.



When comparing the charts above, the previous administration was on the clock for 28.7% of the requested research time frame, yet under the previous administration 41.9% of the alternate compliances were granted. Conversely, the current administration was on the clock for 71.3% of the requested research time frame, yet under the current administration only 58.1% of the alternate compliances were granted.

(B) DEPARTURES

- Departures have been provided for in the regulations as early as 1969.
- ***Specific to the 2016 Well Control Rule, the practice for granting departures was established under the previous administration.***
 - Inclusion in the Final Rule's Preamble of a discussion of the need for accommodation of departures.
 - **On the same exact day that the Well Control Rule went into effect, July 28, 2016, (with an exception of a few provisions whose**

implementation were delayed) a Memo was issued to the Gulf of Mexico Regional Director from Chief, BSEE Office of Offshore Regulatory Programs, instructing the granting of departures for specific citations within the 2016 Well Control Rule by the authority of then BSEE Director, Brian Salerno..

*“...provide a list of provisions within the new well control regulations and incorporated standards for which a departure request **should be granted** to avoid unreasonable disruptions or unintended safety consequences.”*

As found in 30 CFR §250.105, “Departures mean approvals granted by the appropriate BSEE or BOEM 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.”

- **Under the previous administration**, (requested research time period: Aug. 1, 2016 – Jan. 19, 2017) **zero departures were granted**.
- **Under the current administration**, (requested research time period: Jan. 20, 2017 – Mar. 22, 2018) **zero departures were granted**.

REINFORCING INFORMATION

- **All guidance** provided for granting departures and alternate compliances for the Well Control Rule regulations **was provided during the previous administration**. This guidance consisted of a Bureau Interim Directive and an Instructional Memo specific identifying those regulatory citations and industry standards for which the field should grant departures. See attachments.
- The current BSEE Director under the current administration **has not provided any additional or expanded guidance** for granting departures and alternate compliances for the Well Control Rule regulations.

Attachments:

1. Bureau Interim Document titled *Implementation of Well Control Rule*, signed by BSEE Director Brian M. Salerno, July 25, 2016 (during previous administration)
2. BSEE Memorandum with subject, *Well Control Rule: Guidance for Granting of Departures*, citing instructions by then BSEE Director Brian M. Salerno, July 25, 2016 (during previous administration)
3. Alternate Compliance Request and Approval Process



United States Department of the Interior
BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT
WASHINGTON, DC 20240-0001

Bureau Interim Directive

BID No: 2016-022N

Series: Program Series

To: All BSEE Employees

Approving Official: Director, Bureau of Safety and Environmental Enforcement (BSEE)

Office(s) of Primary Responsibility: Office of Offshore Regulatory Programs

Effective Date: July 25, 2016

Title: Implementation of Well Control Rule

Purpose and Background

The Blowout Preventer Systems and Well Control Rule (Well Control Rule, or Rule), which was published April 29, 2016, contains requirements that focus on blowout prevention and well control, including incorporation of industry standards and revision of existing regulations. The rule also adopts reforms in the areas of well design, casing, cementing, real-time monitoring, and subsea containment. These requirements are phased in over a period of years beginning July 28, 2016.

Due to the comprehensive nature of this rule, BSEE has been issuing guidance and interpretations related to compliance and verification issues. Nevertheless, we can reasonably expect that departures or other relief to operators may be needed to address issues that are lease specific or which were not clearly addressed in the final rulemaking.

This BID defines the general principles that should be applied by BSEE staff when discretionary decisions related to the implementation of the Well Control Rule are required. This includes reviews of permit applications, departure and alternate compliance requests, and requests for interpretations of the regulations. The BID provides internal guidance and direction to BSEE staff and defines the overall goals of the Bureau in ensuring the timely and effective implementation of the rule during the initial period of the rule being in effect.

Policy

Implementation of the Well Control Rule should be guided by the following:

- Interpretations and application of regulations should be done in a manner that provides consistency across the Bureau and reflects input from the appropriate program and regional/district personnel. Decisions and guidance provided to external sources should be documented to ensure that the rationale for the decision is preserved.
- The overall objective during the implementation period is to ensure that new requirements are phased-in in a safe and timely manner without unreasonable disruptions or unintended safety consequences.
- Where regulatory discretion is available, decisions involving permits, departures, and alternate compliance should be based on a reasonable assessment of the risk to safety or the environment. For example, if existing equipment is in substantial conformance with new requirements, the granting of a departure for a limited period of time to bring the equipment into full compliance should be granted unless there are obvious safety concerns. To assist in this process, the Chief of the Office of Offshore Regulatory Programs will be responsible for issuing to the regional offices an initial list of provisions within the regulations and incorporated standards for which a departure request should be granted for a short period of time.
- BSEE personnel are expected to exercise their best professional judgment when reviewing plans, permits and departure/alternate compliance requests to determine whether the operator has submitted sufficient documentation to reasonably demonstrate that the activity can be performed safely and is consistent with the overall regulatory objectives. The resources in the Engineering Technology Assessment Center in Houston can be used to provide additional support to address unique technical issues if needed.
- The Well Control Rule consists of both prescriptive and performance based provisions. These requirements range from general duty obligations related to operating safely and minimizing risks to detailed equipment specifications. It is the operators' and contractors' responsibility to comply with all regulatory requirements and permit conditions and to have proper documentation available to demonstrate that all criteria are satisfied. BSEE retains the authority to request evidence of compliance with specific provisions at any time. However, it is not the expectation of the Bureau that permit reviewers or inspectors affirmatively verify during a permit or field inspection review that the proposed activity is in complete compliance with every potential regulatory obligation, especially those involving performance requirements or technical standards. Compliance with these obligations remains the responsibility of the operator. Specific examples related to the Well Control Rule implementation include:

- Section 250.730(a), which requires that a BOP system be capable of closing and sealing a well under anticipated flowing conditions. BSEE engineers or field inspectors will not be responsible for verifying the anticipated flowing conditions of the well,
- Section 250.107(a)(3), which imposes the general obligations on the industry to reduce risks to the lowest practicable level using recognized engineering practices, and
- Section 250.198 and other related sections that require equipment and practices to meet specific industry standards.

Specific guidance related to the application of these provisions will be issued at a later time.

Responsibilities

1. **Bureau Director:** The Bureau Director is responsible for approving significant policy actions involving implementation and enforcement of the Well Control Rule.
2. **Chief, Office of Offshore Regulatory Programs (OORP):** The Chief of OORP is responsible for issuing national interpretations and guidance in collaboration with the Regional Directors, Solicitor's Office, and Director when appropriate.
3. **Regional Directors:** The Regional Directors are responsible for executing and administering the implementation and enforcement of the Well Control Rule within the Region in accordance with the content of this document and national policy.
4. **Solicitor's Office:** The Solicitor's Office is responsible for providing legal support and review on issues involving implementation, interpretation, and enforcement.

Authority

Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §1331 *et seq.*

References

Oil and Gas and Sulphur Operations in the Outer Continental Shelf, 30 CFR 250 *et seq.*

Definitions

n/a

Supersession and Expiration

This interim directive will remain in effect for one year, at which time it may be extended for up to two years, or when superseded, rescinded, or incorporated in a manual chapter or handbook, whichever is sooner.

Contact

Douglas Morris, Chief, OORP, (202) 208-3974

Type of BID:

☒ National ☐ Regional ☐ Emergency (not to Exceed 60 days)
☐ Guidance ☐ Procedure ☒ Policy

Distribution Designation

☒ Public ☒ Internal *(redesignated Feb 2017)*

Attachment(s)

n/a



Brian M. Salerno
Director
Bureau of Safety and Environmental Enforcement

25 July 2016
Date



United States Department of the Interior

BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT
WASHINGTON, DC 20240-0001

MEMORANDUM

DATE: July 25, 2016

TO: Lars Herbst, Regional Director, Gulf of Mexico

FROM: Douglas Morris, Chief, Office of Offshore Regulatory Programs

SUBJECT: Well Control Rule: Guidance for Granting of Departures

I have been instructed by the Director pursuant to the Bureau Interim Directive 2016-0222N (BID) to provide a list of provisions within the new well control regulations and incorporated standards for which a departure request should be granted to avoid unreasonable disruptions or unintended safety consequences.

Based on the application of best professional judgment, the following guidance is provided:

Incorporated Standards

API Standard 53 contains a significant number of requirements for blowout prevention equipment systems and related components. Given the wide range of requirements in this document, it is possible that some operators may need additional time to make the necessary changes to existing equipment to ensure conformance with every aspect of the standard. Specific sections of the standard that have been identified as potential issues for departure requests include:

- Section 6.5.3.6.2
- Section 7.2.3.1.1
- Section 7.2.3.2.9
- Section 7.3.1.2
- Section 7.3.13.2.5
- Section 7.4.8.2.5
- Section 7.4.9.10
- Section 7.4.9.11
- Section 7.6.5.1.5

If equipment meets all of the requirements of API Standard 53 except for one or more of the provisions listed above, a departure request can be granted without creating significant safety or environmental concerns. The approval of these departure requests is consistent with objective of BID which is to “ensure that new requirements are phased-in in a safe and timely manner without unreasonable disruptions or unintended safety consequences.” Departures should only be granted for the time necessary for a reasonably diligent operator to be in full compliance with the standard.

Regulatory requirements:

Based on the guidance provided in the BID, departures should be issued for the following provisions to allow operators with existing operations an opportunity to obtain and safely install equipment in a timely manner:

- Section 250.730(b)- A number of BOP manufacturers (OEM) have recently issued new bolting specifications that are applicable to existing equipment. The granting of a departure request that provides an operator with a reasonable amount of time to comply with these OEM requirements is consistent with the objective of the BID.
- Section 250.734 (a)(3)(i) and (a)(3)(ii)- These provisions relate to installation of subsea equipment that provide accumulator capacity.
- Section 250.734(a)(4)- This provisions involves the installation of a ROV panel with the open functions. BSEE addressed the implementation of this provision in the June 6, 2016 response to the industry.

As noted in the BID, all decisions related to departure requests should be fully documented.

Alternate Compliance Request and Approval Process:

Permit is submitted and put in review:

API:
Lease: G33170 Area/Block: Well: 001 ST: 00 BP: 00
Permit Type: New Well Operator: District: GOMR New Orleans District
Payment Status: null Agency Tracking ID: n/a Pay.gov Tracking ID: n/a

Status	Comments to Operator
Pending	User Generated
Submitted	
In-review	

Engineer will review the permit and all attachments including the Alternate Compliance/Departure List:

PDF Alternate Compliance / Departure List

PDF file attached (size: 97.9 kb)☐☒☒

View

Engineer will review the permit and based off the permit type and work scope will determine if the Alternate Compliance is acceptable or denied. If the Alternate Compliance is denied it is removed from this list:

	Request for approval for alternate compliance
250.423(a) (2)	Eliminate testing of conductor casings when riserless drilling operations are to be conducted below conductor string. There is no riser to surface and thus no threat to safety of personnel when drilling riserless.
250.461 (b)	Request alternate compliance to perform directional surveys at each connection when steering the well to match the quad stands of drill pipe (~126' in length) on the Deepwater Thalassa. To meet the 100' requirement, a survey will need to be taken mid-stand while drilling. During angle-changing portions of the hole, intervals between survey stations will not exceed 150'. This alternate practice affords an equal degree of safety and will not affect directional uncertainty appreciably.

Once the engineer accepts this Alternate Compliance request and all other items, the permit is approved

Approved		Please adhere to the conditions of approval (COAs) attached to this permit under agency attachments.
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