

CENTER FOR REGULATORY EFFECTIVENESS’ (“CRE”) COMMENTS ON REQUESTED INFORMATION COLLECTION REQUESTS (“ICRs”) 201404-1014-004 and 201311-1010-003 ; FEDERAL REGISTER NOTICE AT <http://www.gpo.gov/fdsys/pkg/FR-2015-02-24/pdf/2015-03609.pdf> .
COMMENTS FILED MARCH 25, 2015,
WITH THE INTERIOR DESK OFFICER 1082-AA00, OFFICE OF MANAGEMENT AND BUDGET (“OMB”), BY EMAIL OIRA_Submission@omb.eop.gov; AND
WITH THE BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT (“BSEE”) AT <http://www.regulations.gov>, DOCUMENT ID # BSEE–2013–0011.

I. Executive Summary

OMB should not approve the requested Arctic ICRs because BSEE has not produced a record showing that the ICRs comply with the Information Quality Act (“IQA”).¹ For example, there is no record demonstrating that BSEE performed pre-dissemination review to determine and demonstrate that the proposed Arctic Rules, their draft Environmental Assessment (“EA”), and their Cost Benefit Analysis comply with the IQA.² Therefore, these ICRs violate the Department of Interior’s IQA Guidelines and OMB’s Government-wide IQA Guidelines, both of which apply to BSEE.³ BSEE’s Cost Benefit Analysis violates IQA requirements for several other reasons, including its lack of sensitivity analysis; and its lack of cost-effectiveness analysis for proven alternatives to some unproven technologies and measures that were selected by BSEE. These unproven technologies and measures include Same Season Relief Rigs (“SSRR”).

¹ The requested ICRs are available at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201311-1010-003 (ICR 201311-1010-003); and at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201404-1014-004 (ICR 201404-1014-004). The U.S. Bureau of Ocean Energy Management (“BOEM”) filed ICR 201311-1010-003. BSEE filed ICR 201404-1014-004. BOEM and BSEE have jointly proposed the Arctic Rules. BOEM and BSEE will be referred to jointly herein as BSEE, unless otherwise noted.

² The proposed Arctic Rules are available at <http://www.gpo.gov/fdsys/pkg/FR-2015-02-24/pdf/2015-03609.pdf> . The draft EA is available at <http://www.boem.gov/About-BOEM/BOEM-Regions/Alaska-Region/Environment/Environmental-Analysis/Environmental-Impact-Statements-and--Major-Environmental-Assessments.aspx> . The draft Cost Benefit Analysis is available at <http://www.regulations.gov/#!documentDetail;D=BSEE-2013-0011-0002>.

³ Interior’s IQA Guidelines are available at <https://www.doioig.gov/docs/InformationQualityGuidelines.pdf> . OMB’s government-wide IQA Guidelines are available at <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/reproducible2.pdf>.

These ICRs also violate OMB’s Peer Review Bulletin, which is published under the IQA, because BSEE did not perform peer review of the proposed Arctic Rules and their EA and Cost Benefit Analysis.⁴

BSEE states that there are many uncertainties regarding the costs and benefits of the Arctic Rules, and

“Due to these uncertainties, BOEM and BSEE could not perform a standard cost-benefit analysis to estimate the net benefits of the proposed rule.”⁵

Under OMB Circular A-4, BSEE should defer these regulations and ICRs until and unless BSEE can develop sufficient data to perform “a standard cost-benefit analysis” for them.

BSEE has not identified a public record showing the effectiveness of its selected technologies and other measures. This omission violates both the IQA and the Administrative Procedure Act.

For the above and other reasons, BSEE has not demonstrated that the requested ICRs have practical utility.

OMB should not approve these ICRs. OMB should advise BSEE that OMB would review new ICRs if and when BSEE submits ICRs that remedy the failings and flaws discussed in CRE’s comments and in other comments submitted during the public comment period.

The failings and flaws of these ICRs indicate an agency-wide misunderstanding of and/or lack of concern for IQA Requirements. Consequently, OMB should advise BSEE and BOEM to come into compliance with the IQA requirements by, *e.g.*, publishing BSEE and BOEM’s own IQA guidelines, publishing their own Peer Review Agendas, and routinely performing IQA pre-dissemination review.

II. BSEE Has Not Demonstrated that the Requested ICRs, the Proposed Arctic Rules, the Draft EA, and their Cost Benefit Analysis Comply with IQA Guidelines

There follows the only reference to the IQA that CRE has found in the requested ICRs, the proposed Arctic Rules, the draft EA, the Cost Benefit Analysis, or their records:

⁴ OMB’s Peer Review Bulletin is available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf>.

⁵ BSEE Cost Benefit Analysis, pages 61-62, at <http://www.regulations.gov/#!documentDetail;D=BSEE-2013-0011-0002>.

“M. Data Quality Act. In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, app. C § 515, 114 Stat. 2763, 2763A-153- 154).”⁶

As discussed below, this statement is incorrect with regard to the requirements of OMB’s Peer Review Bulletin. This statement also doesn’t satisfy other IQA requirements for the ICRs, the proposed Arctic Rules, the draft EA, and the Cost Benefit Analysis.

Neither BOEM nor BSEE have its own IQA Guidelines.⁷ However, BSEE and BOEM have to comply with both the Interior and OMB IQA Guidelines.

The Interior IQA Guidelines include BOEM and BSEE within the definition of “Department” and state that information disseminated by the “Department” is subject to Interior’s IQA Guidelines.⁸

OMB’s Government-wide IQA Guidelines state that they apply to information disseminated by federal agencies, including BSEE and BOEM. The OMB Guidelines further state that federal agencies must establish “administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency” that does not comply with the OMB Guidelines.⁹

BSEE and BOEM violate the Interior and OMB Guidelines’ requirement of a record demonstrating compliance with IQA Guidelines for the proposed rules, the ICRs, the draft EA, and the Cost Benefit Analysis.

With regard to a record of IQA compliance review for the proposed Arctic Rules and draft EA, the Interior IQA Guidelines state:

“Before disseminating information to members of the public, the originating office within the Department must ensure that the information is consistent with the OMB, Departmental, and bureau or office guidelines and must determine that the information is of adequate quality for dissemination and maintain an administrative record of review procedures. If the information is influential, the Department will provide for more rigorous review of the conclusions than the review performed by the originating office. Each Department component must identify for the Department’s Assistant Secretary-Policy, Management and Budget a designated official who is accountable for information quality. The information quality definitions published by OMB as set forth in Section IV

⁶ 80 FR 9964, at <http://www.gpo.gov/fdsys/pkg/FR-2015-02-24/pdf/2015-03609.pdf>. The IQA is also known as the “Data Quality Act.”

⁷ See http://www.doi.gov/ocio/information_management/iq.cfm.

⁸ Section I, at <https://www.doioig.gov/docs/InformationQualityGuidelines.pdf>.

⁹ 67 FR 84562, at

<http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/reproducible2.pdf>.

below are adopted by the Department as its performance standard for Information Quality.”¹⁰

With regard to the ICRs’ compliance with IQA Guidelines, the Interior Guidelines state:

“VI. Paperwork Reduction Act. Departmental components will make use of OMB’s Paperwork Reduction Act (PRA) clearance process to help improve the quality of information that DOI collects and disseminates to the public. All proposed collections of information that are disseminated to the public should demonstrate in their PRA clearance submissions to OMB that the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with Departmental and OMB Information Quality Guidelines.”¹¹

OMB’s IQA Guidelines also require that the ICRs demonstrate IQA compliance before OMB will approve them:

“...we [OMB] note that each agency is already required to demonstrate the 'practical utility' of a proposed collection of information in its PRA submission, i.e., for draft information collections designed to gather information that the agency plans to disseminate. Thus, we think it important that each agency should declare in its guidelines that it will demonstrate in its PRA clearance packages that each such draft information collection will result in information that will be collected, maintained, and used in a way consistent with the OMB and agency information quality standards. It is important that we make use of the PRA clearance process to help improve the quality of information that agencies collect and disseminate. Thus, OMB will approve only those information collections that are likely to obtain data that will comply with the OMB and agency information quality guidelines.”¹²

There is no record for the proposed Arctic Rules, the ICRs, the draft EA, or the Cost Benefit analysis that demonstrates compliance with IQA Guidelines. Consequently, they all violate the Interior and OMB IQA Guidelines.

¹⁰ Section II.5, at <https://www.doioig.gov/docs/InformationQualityGuidelines.pdf>.

¹¹ Section VI, at <https://www.doioig.gov/docs/InformationQualityGuidelines.pdf>.

¹² Page 12 of OMB IQA Guidance at http://www.whitehouse.gov/sites/default/files/omb/inforeg/iqg_comments.pdf.

III. BSEE Violates OMB's Peer Review Bulletin Because BSEE Did Not Perform Peer Review of the Proposed Arctic Rules, the Draft EA, and their Cost Benefit Analysis.¹³

As noted above, the proposed Arctic Rules state:

“M. Data Quality Act. In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, app. C § 515, 114 Stat. 2763, 2763A-153-154).”¹⁴

This statement is incorrect because the proposed Arctic rules, the draft EA, and their Cost Benefit analysis are “influential scientific information.” Consequently, the OMB Peer Review Bulletin does require that they be peer reviewed.

The OMB Peer Review Bulletin is issued in part under the IQA.¹⁵ Consequently, the ICRs have to demonstrate compliance with the Peer Review Bulletin before OMB can approve the ICRs.

The Peer Review Bulletin states:

“Section II: Peer Review of Influential Scientific Information

Section II requires each agency to subject ‘influential’ scientific information to peer review prior to dissemination.”¹⁶

The OMB Peer Review Bulletin defines “Influential Scientific Information” in a way that encompasses the proposed Arctic Rules, the EA, and their Cost Benefit Analysis:

“For the purposes of the peer review Bulletin, the term ‘scientific information’ means factual inputs, data, models, analyses, technical information, or scientific assessments related to such disciplines as the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, or physical sciences. This includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks on a web page to information that others

¹³ OMB's Peer Review Bulletin is available at

<http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf>.

¹⁴ 80 FR 9964, at <http://www.gpo.gov/fdsys/pkg/FR-2015-02-24/pdf/2015-03609.pdf>.

¹⁵ Page 7, at

<http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf>.

¹⁶ Pages 10-12, at

<http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf>.

disseminate. This definition excludes opinions, where the agency's presentation makes clear that an individual's opinion, rather than a statement of fact or of the agency's findings and conclusions, is being offered.

The term 'influential scientific information' means scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. In the term 'influential scientific information,' the term 'influential' should be interpreted consistently with OMB's government-wide information quality guidelines and the information quality guidelines of the agency. Information dissemination can have a significant economic impact even if it is not part of a rulemaking."¹⁷

The proposed Arctic Rules, the draft EA, and their Cost Benefit Analysis are "scientific information" because they are based on, and in fact are: "factual inputs, data, models, analyses, technical information, or scientific assessments related to such disciplines as the... life and earth sciences, engineering, or physical sciences."

The proposed Arctic Rules, the draft EA, and their Cost Benefit Analysis are "influential scientific information" because BSEE "reasonably can determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions."

These rules govern Arctic offshore oil and gas exploratory drilling. They are expensive, and they are controversial.

OMB has already determined that the proposed Arctic Rules are significant under Executive Order 12866 because they would cost more than \$100 million per year.¹⁸

Consequently, BSEE's Federal Register statement is incorrect. OMB's Peer Review Bulletin requires that the Arctic Rules, the EA and their Cost Benefit Analysis be peer reviewed. They have not been, and the requested ICRs for them should not be approved.

IV. Specific IQA Concerns about the Cost Benefit Analysis

The Cost Benefit Analysis required for the proposed Arctic Rules and draft EA must meet IQA Guidelines. OMB explains:

"Information Quality Guidelines. Under the Information Quality Law, agency guidelines, in conformance with the OMB government-wide guidelines (67 FR 8452, February 22, 2002), have established basic quality performance goals for all information disseminated by agencies, including information disseminated in

¹⁷ Pages 10-11, at

<http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf>.

¹⁸ 80 FR 9947, at <http://www.gpo.gov/fdsys/pkg/FR-2015-02-24/pdf/2015-03609.pdf>.

support of proposed and final rules. The data and analysis that you use to support your rule must meet these agency and OMB quality standards.”¹⁹

The Cost Benefit Analysis does not meet these quality standards for the following reasons.

A) No Sensitivity Analysis

OMB’s cost benefit quality standards include those set forth in OMB Circular A-94, which states:

“9. Treatment of Uncertainty. Estimates of benefits and costs are typically uncertain because of imprecision in both underlying data and modeling assumptions. Because such uncertainty is basic to many analyses, its effects should be analyzed and reported. Useful information in such a report would include the key sources of uncertainty; expected value estimates of outcomes; the sensitivity of results to important sources of uncertainty; and where possible, the probability distributions of benefits, costs, and net benefits.”²⁰

The Cost Benefit Analysis does not contain a Sensitivity Analysis.

B. No Cost-Effectiveness Analysis for Proven Alternatives

OMB’s “Regulatory Impact Analysis: A Primer” states

“Cost-effectiveness analysis. Cost-effectiveness analysis (CEA) can provide a helpful way to identify options that achieve the most effective use of the available resources (without requiring monetization of all of the relevant benefits and costs). Generally, cost-effectiveness analysis is designed to compare a set of regulatory actions with the same primary outcome (e.g., an increase in the acres of wetlands protected) or multiple outcomes that can be integrated into a single numerical index (e.g., units of health improvement). This approach provides useful information about relative performance of regulatory alternatives (i.e., best ‘bang for the buck’). At the same time, a comparison of monetized benefits and costs is necessary to determine which alternative maximizes net benefits.”²¹

Similarly, OMB’s Circular A-4 states:

¹⁹ OMB Circular A-4, at http://www.whitehouse.gov/omb/circulars_a004_a-4.

²⁰ http://www.whitehouse.gov/omb/circulars_a094/.

²¹ Pages 13-14, at

http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4_regulatory-impact-analysis-a-primer.pdf.

“Cost-effectiveness analysis can provide a rigorous way to identify options that achieve the most effective use of the resources available without requiring monetization of all of relevant benefits or costs. Generally, cost-effectiveness analysis is designed to compare a set of regulatory actions with the same primary outcome (e.g., an increase in the acres of wetlands protected) or multiple outcomes that can be integrated into a single numerical index (e.g., units of health improvement).

“When you have identified a range of alternatives (e.g., different levels of stringency), you should determine the cost-effectiveness of each option compared with the baseline as well as its incremental cost-effectiveness compared with successively more stringent requirements. Ideally, your CEA would present an array of cost-effectiveness estimates that would allow comparison across different alternatives. However, analyzing all possible combinations is not practical when there are many options (including possible interaction effects). In these cases, you should use your judgment to choose reasonable alternatives for careful consideration.”²²

The Cost Benefit Analysis does not analyze the cost effectiveness of alternatives to Same Season Relief Rigs (“SSRR”) in responding to blowouts. This omission is remarkable because CRE does not know of any drilling blowouts that have ever been controlled by an SSRR or other type of relief well, while other technologies such as capping stacks and containment have been used successfully in the past. The available record seems to support these other technologies as best available technology, and they should be considered as an alternative, subjected to a cost effectiveness analysis, and compared to SSRR, for which there is no apparent supporting record.

C) BOEM Says There Are Too Many Uncertainties To Perform A Cost Benefit Analysis, So BOEM Should Withdraw these Proposed Rules, Gather More Data, And Regulate Later If Supported By The New Data

OMB Circular A-4 has a lengthy and detailed discussion of the required standards for uncertainty analysis. This discussion includes the following requirement:

“When uncertainty has significant effects on the final conclusion about net benefits, your agency should consider additional research prior to rulemaking. The costs of being wrong may outweigh the benefits of a faster decision. This is true especially for cases with irreversible or large upfront investments. If your agency decides to proceed with rulemaking, you should explain why the costs of developing additional information—including any harm from delay in public protection—exceed the value of that information.

²² OMB Circular A-4, at http://www.whitehouse.gov/omb/circulars_a004_a-4.

For example, when the uncertainty is due to a lack of data, you might consider deferring the decision, as an explicit regulatory alternative, pending further study to obtain sufficient data. Delaying a decision will also have costs, as will further efforts at data gathering and analysis. You will need to weigh the benefits of delay against these costs in making your decision. Formal tools for assessing the value of additional information are now well developed in the applied decision sciences and can be used to help resolve this type of complex regulatory question.”²³

BSEE frequently states that there are many uncertainties regarding the Arctic Rules. There are uncertainties in both costs and benefits.²⁴ BSEE explains that these uncertainties preclude “a standard cost-benefit analysis”:

“Due to these uncertainties, BOEM and BSEE could not perform a standard cost-benefit analysis to estimate the net benefits of the proposed rule.”²⁵

Given uncertainties so great that they preclude a “standard cost-benefit analysis,” BSEE “should consider additional research prior to rulemaking.”²⁶

The Rules, the EA, their Cost Benefit analysis, and the ICRs should be withdrawn until such time as BSEE has data adequate to perform a cost-benefit analysis for them.

V. No Administrative Record Supports BSEE’s Chosen Technologies and Practices.

We can’t find any administrative record demonstrating the effectiveness of BSEE’s chosen technologies and practices. The absence of such a record violates several administrative law requirements. It also violates the quality standards set forth in OMB’s “Regulatory Impact Analysis: A Primer,” which states:

“The agency’s analysis should be based on the best available scientific, technical, and economic information. To achieve this goal, the agency should generally rely on peer-reviewed literature, where available, and provide the source for all original information. In cases of particular complexity or novelty, the agency should consider subjecting its analytic models to peer review. In cases in which there is no reliable data or research on relevant issues, the agency should consider developing the necessary data and research. In addition, the agency should comply with the Information Quality Guidelines for the agency and with OMB’s

²³ OMB Circular A-4, at http://www.whitehouse.gov/omb/circulars_a004_a-4.

²⁴ *E.g.*, BSEE Cost Benefit Analysis, pages 13, 15, 16, 46, 61, 68, and 69, at <http://www.regulations.gov#!documentDetail;D=BSEE-2013-0011-0002>.

²⁵ BSEE Cost Benefit Analysis, pages 61-62, at <http://www.regulations.gov#!documentDetail;D=BSEE-2013-0011-0002>.

²⁶ OMB Circular A-4, at http://www.whitehouse.gov/omb/circulars_a004_a-4.

‘Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies.’ Executive Order 13563 also provides that ‘[c]onsistent with the President’s Memorandum for the Heads of Executive Departments and Agencies, ‘Scientific Integrity’ (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency’s regulatory actions.’”²⁷

A publicly available record showing the effectiveness of BSEE’s chosen technologies, practices, and measures is necessary to satisfy the utility and objectivity requirements of the IQA Guidelines.²⁸

If BSEE does have a record showing that SSRR and the other BSEE-selected technologies are the best available for the Arctic, then BSEE should publicly identify that record. If BSEE does not do this, then BSEE should withdraw its proposed Arctic Rules, its EA, Cost Benefit Analysis and requested ICRs, and propose new ones if and when BSEE does produce a public record supporting them.

VI. For the Reasons Stated Above, BSEE Has Not Demonstrated that the ICRs have Practical Utility

Under the Paperwork Reduction Act, BSEE has to demonstrate that this requested ICR has “practical utility” before OMB can approve it.²⁹ OMB’s rules define “practical utility” in part as follows:

“the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion.”³⁰

BSEE has not provided a record of this ICR that demonstrates “its accuracy, validity, adequacy, and reliability.”

Consequently, BSEE has not demonstrated that this requested ICR has practical utility, and OMB should not approve it.

²⁷ Page 3, at http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4_regulatory-impact-analysis-a-primer.pdf .

²⁸ *E.g.*, OMB IQA Guidelines, Sections 5.2 and 5.3, at http://www.whitehouse.gov/omb/fedreg_reproducible.

²⁹ Paperwork Reduction Act, 35 CFR 3508, available at <http://www.gpo.gov/fdsys/pkg/PLAW-104publ13/html/PLAW-104publ13.htm>.

³⁰ 5 CFR 1320.3(l), available at <https://www.law.cornell.edu/cfr/text/5/1320.3>.

VII. BSEE's IQA Failings Indicate Agency-Wide Misunderstanding and/or Lack of Concern about IQA Requirements

As discussed above, BSEE's Arctic Rules, the EA, their Cost Benefit Analysis, and the ICRs violate the IQA because

- there is no record demonstrating IQA compliance, or even BSEE's consideration of this crucial requirement;
- BSEE did not perform peer review in accordance with OMB's Peer Review Bulletin, or at all; and
- there is no record supporting BSEE's selection of technologies and measures such as SSRR as the most cost effective, or as effective at all.

In addition to these IQA violations, BSEE violates the OMB Peer Review Bulletin because neither BSEE nor BOEM have published Peer Review Agendas.³¹

And neither BOEM nor BSEE have developed and published its own IQA Guidelines.³²

BSEE's sole, incorrect reference to the IQA—that the OMB Peer Review Bulletin requirements don't apply—indicates a basic lack of understanding, or a basic lack of concern, about the IQA peer review and other requirements.

VIII. Recommended Actions

For the reasons discussed above, OMB should not approve this ICR. OMB should advise BSEE that OMB would review new ICRs if and when BSEE submits ICRs that remedy the failings and flaws discussed in CRE's comments and in other comments submitted during the public comment period.

In addition, OMB should advise BSEE and BOEM to come into compliance with the IQA requirements by, *e.g.*, publishing their own IQA guidelines, publishing their own Peer Review Agendas, and routinely performing IQA pre-dissemination review.

We think you for the opportunity to submit these comments.

Jim J. Tozzi
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³¹ Compare <http://www.boem.gov/Environmental-Stewardship/Environmental-Studies/Quality.aspx> (BOEM Agenda “under development”) with http://www.doi.gov/ocio/information_management/iq.cfm (BSEE “under construction”).

³² See http://www.doi.gov/ocio/information_management/iq.cfm.