

Comments by the Center for Regulatory Effectiveness (“CRE”) on Bureau of Safety and Environmental Enforcement (“BSEE”) Agency Information Collection Activity: Subpart B, Plans and Information; [Docket ID BSEE–2012–0014; OMB Control Number 1014–NEW]; <http://www.gpo.gov/fdsys/pkg/FR-2012-09-24/pdf/2012-23386.pdf>. Comments Submitted on October 24, 2012, to [OIRA DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–NEW), and to BSEE by <http://www.regulations.gov>, BSEE–2012–0014.

Executive Summary

BSEE has made factually incorrect statements about new ICR BSEE-2012-0014 which make it impossible to determine whether this new ICR authorizes any information collections relating to offshore seismic operations.

To summarize a confused and confusing situation:

- BSEE states that this new ICR BSEE-2012-0014 “does not change the burden hours or make any other modifications to what was previously approved [under ICR 1010–0151], other than to remove the collections under the purview of BOEM” in order to accommodate the split of regulations from the Bureau of Ocean Energy Management, Regulation and Enforcement (“BOEMRE”) to BOEM and BSEE.
- Before it split into BOEM and BSEE, BOEMRE responded to CRE’s comments on ICR 1010–0151 by stating that BOEMRE would require and request a new ICR if it ever intends to regulate offshore seismic activities in a manner more burdensome than required at the time it responded to CRE’s comments. This BOEMRE response to CRE defined the burden and scope of seismic information collection authorized by ICR 1010–0151.
- In support of new ICR BSEE-2012-0014, BSEE now states that BOEMRE’s response to CRE pertains only to BOEM requirements and is not relevant to BSEE regulations.
- This BSEE statement is impossible to reconcile with the fact that both BOEM and BSEE regulate offshore seismic activity, and CRE’s comments pertain to their regulation of offshore seismic.
- Any regulation of offshore seismic depends on information collection.
- There is no ICR record that supports any regulation of offshore seismic in a manner more burdensome than required under BOEM/BSEE’s JOINT NTL No. 2012-G02,

which is the current statement of the seismic regulation in effect at the time BOEMRE responded to CRE's seismic comments on ICR 1010-0151.

- Both BOEM and BSEE need ICRs to regulate offshore seismic. Apparently OMB/OIRA approval of ICR BSEE-2012-0014 would mean that ICR 1010-0151 is no longer in effect. Consequently, BOEM would have no ICR information collection authority for offshore seismic.
- BSEE has not provided any comment period to BSEE on new ICR BSEE-2012-0014.
- In order to clarify the current confusion, OMB/OIRA should approve ICR BSEE-2012-0014 but only with the following Terms of Clearance:

This ICR does not authorize anything more stringent and burdensome than in current 30 CFR part 250, subpart B regulations; and in current NTL 2012-Joint-G02: Notice to Lessees and Operators of Federal Oil, Gas, and Sulphur Leases in the OCS, Gulf of Mexico Region, Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program. If there are any changes to the current NTL and/or DOI regulations, a new ICR and OMB approval will occur before any NTL is reissued or regulations are promulgated.

This requested Term of Clearance is essentially the same as BOEMRE's response to CRE's comments on ICR 1010-0151. It is necessary to clarify that BSEE does have ICR authority over offshore seismic. It is necessary to define the scope and burden of that authority.

If BSEE disclaims BOEMRE's response to CRE, then the PRA rules require that BSEE allow a 60-day comment period to BSEE before asking OMB/OIRA's approval of new ICR BSEE-2012-0014. BOEMRE's response to CRE is necessary to determine the scope and burden authorized by ICR 1010-0151 with regard to offshore seismic. Consequently, any such disclaimer would demonstrate that BSEE's new ICR is different from ICR 1010-0151 in scope and burden. Different ICRs require new comment periods.

IF BSEE does not seek Information Collection authority over offshore seismic, then the new ICR's public record should clearly state that lack of authority in order to avoid considerable, wasteful confusion and conflict.

Finally, approval of new ICR BSEE-2012-0014 would create difficult questions about BOEM's continuing authority to regulate offshore seismic.

Discussion

CRE previously commented on this ICR when it was ICR 1010-0151. CRE incorporates by reference its previous comments to BOEMRE on ICR 1010-0151.¹ These previous CRE ICR comments are now part of CRE's comments on new ICR BSEE-2012-0014.

BSEE is apparently relying on the prior public comment to BOEMRE on ICR 1010-0151, including CRE's previous comments, to satisfy the Paperwork Reduction Act's requirement of an opportunity for public comment to BSEE before BSEE submits new ICR BSEE-2012-0014 to OMB/OIRA.² BSEE's Federal Register notice for this new ICR states:

“To comply with the public consultation process, on July 6, 2011, we published a **Federal Register** notice (76 FR 39419) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, the § 250.199 regulation informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received two comments in response to these efforts. While the first comment, from the Marine Mammal Commission, supported our request to OMB, the second comment pertained to BOEM requirements and was therefore

¹ CRE's previous comments are available online at OMB/OIRA's website for 014-NEW-SS-12-subpart B.doc, http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201202-1014-004. These CRE comments are incorporated herein by reference.

² 5 CFR 1320.8(d)(1) requires, that “Before an agency submits a collection of information to OMB for approval, and except as provided in paragraphs (d)(3) and (d)(4) of this section, the agency shall provide 60-day notice in the FEDERAL REGISTER, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.”

The (d)(3) and (d)(4) exceptions do not apply to this ICR.

not relevant to BSEE regulations. BOEM responded to both comments in the **Federal Register** on September 30, 2011(76 FR 60856).”³

The “second comment” mentioned above is CRE’s comments on ICR 1010-0151. BOEMRE, not “BOEM,” responded to these CRE comments by stating:

“We received two comments in response to the **Federal Register** notice. The first comment, from the Marine Mammal Commission, supported our request to OMB. The second comment, from the Center for Regulatory Effectiveness, requested that we should state that we are not submitting any ICRs for seismic regulations that are more stringent than current regulations, including NTL 2007–G02. Response: For the renewal of this ICR, we are not requesting anything more stringent than in current NTL 2007–G02 and 30 CFR part 250, subpart B regulations, which are covered under OMB Control Number 1010–0151. We have no plans, at this time, to change the content of or the resultant burdens imposed by NTL 2007–G02. Therefore, BOEMRE should move forward with the required information collection to ensure compliance with OMB deadlines. If the lawsuit settlement or resulting decree requires changes to the NTL and/or DOI regulations, information collection coordination and OMB approval will occur before any NTL is reissued or regulations are promulgated.”⁴

This response to CRE’s comments is included in BOEMRE’s supporting statement to OMB for ICR 1010-0151. This response to CRE’s comments is part of the record on which OMB/OIRA based its approval of ICR 1010-0151.⁵

NTL No. 2007-G02, which is referenced in BOEMRE’s response to CRE’s comments, is entitled “Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program.” Since the above-quoted Federal Register notices, and since the split up of BOEMRE, BOEM and BSEE have replaced this 2007 seismic NTL with a Joint 2012 NTL: *Notice to Lessees and Operators of Federal Oil, Gas, and Sulphur Leases in the OCS, Gulf of Mexico Region, Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program*. This Joint 2012 NTL is substantially the same as the 2007 NTL. The 2012 NTL states that it

“supersedes and replaces NTL No. 2007-G02. It does not introduce any new types of

³ BOEMRE’s Federal Register notice is available online at <http://www.gpo.gov/fdsys/pkg/FR-2012-09-24/pdf/2012-23386.pdf> .

⁴ BOEMRE’s response to CRE’s comments is available online at 76 FR 60845, 60861 (Sept. 30, 2011), <http://www.gpo.gov/fdsys/pkg/FR-2011-09-30/pdf/2011-25262.pdf> .

⁵ Supporting Statement for BOEMRE ICR 1010-0151, page 6, available online at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201108-1010-003 .

mitigation measures; however, it clarifies how you should implement seismic survey mitigation measures, including ramp-up procedures, the use of a minimum sound source, airgun testing and protected species observation and reporting. The measures contained herein apply to all onlease/ancillary activity surveys you conduct under 30 CFR 550 and all off-lease surveys you conduct under 30 CFR 551.”⁶

This Joint BOEM/BSEE 2012 NTL further states:

“The OMB has approved all of the information collection requirements in these regulations and assigned OMB Control Number 1010-0151. BSEE and BOEM issue NTLs as guidance documents in accordance with 30 CFR 250.103 and 30 CFR 550.103 to clarify, supplement, and provide more detail about certain BOEM and BSEE regulatory requirements and to outline the information you provide in your various submittals. Under that authority, this NTL sets forth a policy on and an interpretation of a regulatory requirement that provides a clear and consistent approach to complying with that requirement.”⁷

The BOEM/BSEE 2012 seismic NTL is not significantly different in burden or scope than the 2007 seismic NTL, and it is substantially the same as the 2007 NTL. Consequently, it did not and does not need a new ICR.

At the time BOEMRE published its above-quoted response to CRE’s comments on ICR1010-0151, BOEMRE spoke on behalf of the entire agency, including that part which subsequently split off and became BSEE. Consequently, if BSEE wants to perform an offshore seismic information collection that is different in scope or burden than current NTL and ICR, then BSEE will have to file a new ICR with a record supporting and justifying the different burden and scope. There is no such record for this new ICR BSEE-2012-0014, or for any other ICR.

In this regard, BSEE’s Federal Register notice for new ICR BSEE–2012–0014 states that BSEE does not intend to change the “the burden hours or make any other modifications to what was previously approved [under BOEMRE ICR 1010-01512], other than to remove the collections under the purview of BOEM”:

“To accommodate the split of regulations from the Bureau of Ocean Energy Management, Regulation and Enforcement to BSEE (76 FR 64432), BSEE is requesting OMB approval of the already approved information collections that were previously under 1010–0151 to reflect BSEE’s new 1014 numbering system. This ICR does not change the burden hours or make any other modifications to what was previously approved, other than to

⁶ NTL 2012-Joint-G02 is available online at BSEE’s website for BSEE “Regulations & Guidance”, <http://www.bsee.gov/Regulations-and-Guidance/Notices-to-Lessees-and-Operators.aspx> .

⁷ *Id.*

remove the collections under the purview of BOEM.”⁸

Given this BSEE representation, we would ordinarily assume that BSEE shares and continues BOEMRE’s prior response to CRE’s comments, which was made on behalf of the entire agency, including that part which is now BSEE.

However, we are concerned and confused by the following BSEE statement in its Federal Register notice for new ICR BSEE–2012–0014:

“[T]he second comment pertained to BOEM requirements and was therefore not relevant to BSEE regulations. BOEM responded to both comments in the **Federal Register** on September 30, 2011(76 FR 60856)”⁹

Once again, this “second comment” is CRE’s seismic comment on BOEMRE ICR 1010-0151. Our concern and confusion stems in part from the fact that it was not “BOEM” who responded to CRE’s comments, but BOEMRE which at the time comprised both of what is now BOEM and BSEE.

Our concern and confusion also stems in part from the fact that our comments are relevant to BSEE current regulation of seismic under new ICR BSEE-2012-0014, and under BOEM/BSEE’s JOINT NTL No. 2012-G02. This title of this Joint NTL, which regulates seismic, states that it is issued by both BOEM and BSEE:

**“UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT (BOEM)
BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT (BSEE)
GULF OF MEXICO OUTER CONTINENTAL SHELF (OCS) REGION”**¹⁰

Consequently, BSEE is factually incorrect when it state s that CRE’s seismic comments seismic “comment pertained to BOEM requirements and was therefore not relevant to BSEE regulations.”

⁸ 77 FR 58858, available online at <http://www.gpo.gov/fdsys/pkg/FR-2012-09-24/pdf/2012-23386.pdf> .

⁹ 77 FR 58858, 58859, available online at <http://www.gpo.gov/fdsys/pkg/FR-2012-09-24/pdf/2012-23386.pdf>

¹⁰ NTL 2012-Joint-G02, available online at BSEE’s website for BSEE “Regulations & Guidance”, <http://www.bsee.gov/Regulations-and-Guidance/Notices-to-Lessees-and-Operators.aspx> .

Requested Action

In order to correct the record and clarify the current confusion, OMB/OIRA should approve new ICR BSEE-2012-0014 but only with the following Terms of Clearance:

This ICR does not authorize anything more stringent and burdensome than in current 30 CFR part 250, subpart B regulations; and in current NTL 2012-Joint-G02: Notice to Lessees and Operators of Federal Oil, Gas, and Sulphur Leases in the OCS, Gulf of Mexico Region, Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program. If there are any changes to the current NTL and/or DOI regulations, a new ICR and OMB approval will occur before any NTL is reissued or regulations are promulgated.

This language parrots BOEMRE's response to CRE's comments on BOEMRE ICR 1010-0151. That response was part of the record on which OMB approved ICR 1010-0151. There is no basis or justification for BSEE's not agreeing to that response in Terms of Clearance for new ICR BSEE-2012-0014, if BSEE wants to continue regulating offshore seismic.

If BSEE nevertheless disclaims BOEMRE's response to CRE, then the PRA rules require that BSEE allow a 60-day comment period to BSEE before asking OMB/OIRA's approval of new ICR BSEE-2012-0014. Any such disclaimer would demonstrate that BSEE's new ICR is different from ICR 1010-0151 because BOEMRE's response to CRE is necessary to determine the scope and burden authorized by ICR 1010-0151 with regard to offshore seismic. Different ICRs require new comment periods.

IF BSEE does not seek Information Collection authority over offshore seismic, then the new ICR's public record should clearly state that lack of authority in order to avoid considerable, wasteful confusion and conflict.

We thank you for the opportunity to submit these comments.

The Center for Regulatory Effectiveness