

BLOWOUT PREVENTION ACT OF 2010

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JULY 29, 2010.—Ordered to be printed
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Mr. WAXMAN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5626) to protect public health and safety and the environment by requiring the use of safe well control technologies and practices for the drilling of high-risk oil and gas wells in the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Blowout Prevention Act of 2010”.

SEC. 2. NO DRILLING OF COVERED WELLS WITHOUT DEMONSTRATED ABILITY TO PREVENT AND CONTAIN LEAKS.

(a) **FEDERALLY PERMITTED COVERED WELLS.**—Effective one year after the date of enactment of this Act, the appropriate Federal official shall not issue a permit to drill for a covered well unless the applicant for such permit demonstrates, the Chief Executive Officer of the applicant attests in writing, and the appropriate Federal official determines that—

(1) the well design is safe;

(2) the blowout preventer has redundant systems to prevent or stop a blowout for all foreseeable blowout scenarios and failure modes;

(3) the applicant has an oil spill response plan that ensures that the applicant has the capacity to promptly control and stop a blowout in the event the blowout preventer and other well control measures fail; and

(4) the applicant has the capability to begin drilling of a relief well promptly, and complete such drilling of a relief well to stop a blowout expeditiously.

(b) **OTHER COVERED WELLS.**—Effective one year after the date of enactment of this Act, any operator who intends to drill a covered well for which a permit to drill is not otherwise required to be issued by a Federal official shall notify the appropriate Federal official of the operator's intent to drill such covered well, and shall not commence drilling such well without approval of the appropriate Federal official. The appropriate Federal official shall approve the commencement of drilling of such well only if the operator has made a demonstration and attestation, and the appropriate Federal official has made a determination, equivalent to those required under subsection (a). The appropriate Federal official may delegate the duties associated with this subsection to a State if the appropriate Federal official determines that such State is capable of faithfully executing such duties.

(c) **MATERIAL MODIFICATIONS.**—A permit or approval for a covered well issued under this section shall require the operator to seek a revision of such permit or approval in the event of a material modification to the well design, blowout preventer, plan to promptly stop a blowout, or capability to begin or complete drilling of a relief well for such covered well.

SEC. 3. BLOWOUT PREVENTER REQUIREMENTS.

(a) **BLOWOUT PREVENTER ADEQUACY STANDARDS.**—

(1) **STANDARDS.**—The regulations issued under section 7(a) shall require the use of blowout preventers in all covered well drilling operations and prescribe safety standards for such blowout preventers. Such standards shall require that a blowout preventer will operate effectively at the location where it will be deployed to prevent a blowout. At a minimum, such standards shall include the following requirements:

(A) Two sets of blind shear rams appropriately spaced to prevent blowout preventer failure if a drill pipe joint or drill tool is across one set of blind shear rams during a situation that threatens loss of well control.

(B) Redundant emergency backup control systems capable of activating the relevant components of a blowout preventer, including when the communications link or other critical links between the drilling rig and the blowout preventer are destroyed or inoperable.

(C) Regular testing of the emergency backup control systems, including testing during deployment of the blowout preventer.

(D) As appropriate, ROV intervention capabilities for secondary control of all blowout preventer functions, including adequate hydraulic capacity to activate blind shear rams, casing shear rams, and other critical blowout preventer components.

(2) **ADVISORY COMMITTEE RECOMMENDATIONS.**—In accordance with section 6 of this Act, the appropriate Federal official shall request that the Advisory Committee provide the appropriate Federal official with each of the following:

(A) A recommendation as to whether requiring up to two sets of appropriately-spaced casing shear rams in blowout preventers for all covered wells, or at certain classes of covered wells, would significantly improve the safety of blowout preventer systems at such wells.

(B) An evaluation of the risks associated with the failure of hydraulic and activation systems for the blind shear rams and other critical components of blowout preventers at covered wells and, as appropriate, a recommendation on how to best achieve an appropriate level of redundancy to address such risks.

(C) An evaluation of the risks associated with blowout preventers other than subsea blowout preventers at offshore covered wells in the event the drilling rig for such covered well is damaged or destroyed, the riser or other well component between the wellbore and the blowout preventer is damaged or destroyed, or the blowout preventer at such covered well is ren-

dered inoperative, by a blowout, explosion, or other cause, and, as appropriate, a recommendation on how to best mitigate such risks.

If, based on any recommendation of the Advisory Committee under this paragraph, the appropriate Federal official determines that safety would be significantly improved by requiring additional measures to mitigate risks identified under this paragraph, the appropriate Federal official shall include such a requirement in regulations issued under section 7(a). Nothing in this paragraph shall prevent the appropriate Federal official from adopting any requirement relating to the issues addressed under this paragraph prior to the submission by the Advisory Committee of an evaluation or recommendation under this paragraph.

(3) REGULATORY FLEXIBILITY.—If, after notice and an opportunity for public comment, the appropriate Federal official determines that a minimum requirement prescribed under this section would be less effective than an available alternative technology or practice in preventing a blowout at all covered wells, or at one or more classes of covered wells, the appropriate Federal official may include in initial or revised regulations issued under section 7(a) a requirement for such alternative technology or practice at all covered wells, or at such class or classes of covered wells, as appropriate, in lieu of the less effective requirement.

(b) INDEPENDENT THIRD-PARTY CERTIFICATION OF BLOWOUT PREVENTER READINESS.—The regulations issued under section 7(a) shall require the following:

(1) Prior to the commencement of drilling through a blowout preventer at any covered well, the operator shall obtain a written and signed certification from an independent third party approved and assigned by the appropriate Federal official pursuant to section 6(b) that the third party—

(A) conducted or oversaw a detailed physical inspection, design review, system integration test, and function and pressure testing of the blowout preventer; and

(B) in the third-party certifier's best professional judgment, determined that—

(i) the blowout preventer is designed for the specific drilling conditions, equipment, and location where it will be installed and for the specific well design;

(ii) the blowout preventer and all of its components and control systems will operate effectively and as designed when installed;

(iii) each blind shear ram or casing shear ram will function effectively under likely emergency scenarios and is capable of shearing the drill pipe or casing, as applicable, that will be used when installed;

(iv) emergency control systems will function under the conditions in which they will be installed; and

(v) the blowout preventer has not been compromised or damaged from any previous service.

(2) Not less than once every 180 days after commencement of drilling through a blowout preventer at any covered well, or upon implementation of any material modification to the blowout preventer or well design at such a well, the operator shall obtain a written and signed recertification from an independent third party approved and assigned by the appropriate Federal official pursuant to section 6(b) that the requirements in subparagraph (B) of paragraph (1) continue to be met with the systems as deployed. Such recertification determinations shall consider the results of tests required by the appropriate Federal official, including testing of the emergency control systems of a blowout preventer.

(3) Certifications under paragraph (1), recertifications under paragraph (2), and results of and data from all tests conducted pursuant to this subsection shall be promptly submitted to the appropriate Federal official and made publicly available.

(c) ADDITIONAL BLOWOUT PREVENTER TESTING.—The regulations issued under section 7(a) shall require, after a significant well control event at a covered well, prompt function and pressure testing of any blowout preventer component used in such well control event to ensure the full operability of all functions of such component. The results of and data from such testing shall be promptly submitted to the appropriate Federal official.

(d) DOCUMENTATION AND REPORTING.—The regulations issued under section 7(a) shall require—

(1) submission to the appropriate Federal official of documentation of blowout preventer maintenance and repair within 24 hours of such maintenance and repair;

(2) prompt and real-time transmission of the electronic log from a blowout preventer control system to a secure location where it shall be continuously monitored and available for inspection by the appropriate Federal official;

(3) maintenance, at a secure location off the drilling site, of up-to-date design specifications of any blowout preventer in service;

(4) submission to the appropriate Federal official of any changes to the design specifications of a blowout preventer in service within 24 hours of such change; and

(5) prompt reporting to the appropriate Federal official of a failure of any blowout preventer or any component of a blowout preventer when used during a well control event.

SEC. 4. ENSURING SAFE WELLS AND CEMENTING.

(a) ENSURING SAFE WELL DESIGN.—The regulations issued under section 7(a) shall require the appropriate and safe design of covered wells. At a minimum, such regulations shall require—

(1) in connection with the installation of the final casing string, the installation of at least two independent, tested mechanical barriers, in addition to a cement barrier, across each flow path between hydrocarbon bearing formations and the blowout preventer;

(2) that wells shall be designed so that a failure of one barrier does not significantly increase the likelihood of another barrier's failure;

(3) that the casing design is appropriate for the purpose for which it is intended under reasonably expected wellbore conditions; and

(4) the installation and verification with a pressure test of a lockdown device at the time the casing is installed in the wellhead.

(b) ENSURING SAFE CEMENTING.—The regulations issued under section 7(a) shall require cementing programs and procedures for a covered well to ensure that well control will be maintained and that there will be no unintended flow path between any hydrocarbon-bearing formation zone and the wellhead. Such regulations shall, at a minimum, require—

(1) adequate centralization of the casing to ensure proper distribution of cement;

(2) a full circulation of drilling fluids prior to cementing;

(3) the use of an adequate volume of cement to prevent any unintended flow of hydrocarbons between any hydrocarbon-bearing formation zone and the wellhead;

(4) cement bond logs for all cementing jobs intended to provide a barrier to hydrocarbon flow; and

(5) cement bond logs or such other integrity tests as the appropriate Federal official may prescribe for cement jobs other than those identified in paragraph (4).

(c) ENSURING SAFE DECISIONMAKING.—The regulations issued under section 7(a) shall require the well operator to maintain a team of experienced and highly qualified engineers and other appropriate experts to advise the operator on the safety of decisions made during the drilling of the well that create a risk of loss of well control.

(d) PREVENTING IGNITION AND EXPLOSION.—The regulations issued under section 7(a) shall establish procedures and technologies to be used during drilling at any covered well to minimize the risk of ignition and explosion of hydrocarbons or any other material discharged from the well during a blowout or well control event. Such regulations shall address the diversion of oil, gas, well fluids, and other materials and shall include standards for drilling equipment and engines on such equipment.

(e) REGULATORY FLEXIBILITY.—If, after notice and an opportunity for public comment, the appropriate Federal official determines that a minimum requirement prescribed under this section would be less effective than an available alternative technology or practice in preventing a blowout at all covered wells, or at one or more classes of covered wells, in a situation that threatens loss of well control, the appropriate Federal official may include in initial or revised regulations issued under section 7(a) a requirement for such alternative technology or practice at all covered wells, or at such class or classes of covered wells, as appropriate, in lieu of the less effective requirement.

(f) THIRD-PARTY CERTIFICATION.—

(1) CERTIFICATION.—The regulations issued under section 7(a) shall require that, prior to the commencement of drilling at any covered well, the operator shall obtain a written and signed certification from an independent third party approved and assigned by the appropriate Federal official pursuant to section 6(b) that the well meets the requirements established by the appropriate Federal official under this section and, that, in the best professional judgment of

the independent third party, the operator's well casing designs and cementing programs and procedures ensure that well control will be maintained and that there will be no unintended flow path between hydrocarbon-bearing formation zones or between any hydrocarbon-bearing zones and the wellhead.

(2) **RECERTIFICATION.**—Upon implementation of any material modification to the well design of such a well, the operator shall obtain a written and signed recertification from an independent third party approved and assigned by the appropriate Federal official pursuant to section 6(b) that the well design continues to meet the requirements established by the appropriate Federal official under this section.

SEC. 5. STOP-WORK REQUIREMENTS.

(a) **REQUIREMENTS.**—The regulations issued under section 7(a) shall establish stop-work requirements for oil and gas exploration and production activities at covered wells, including requirements that—

(1) the operator, or the operator's employees or contractors, immediately stop all work at the covered well, other than the work required to ensure safety, in the event of specified well conditions or other factors indicating that there is an immediate risk of a blowout;

(2) the operator adopt policies and procedures to promote a safety culture and ensure that the operator, or the operator's employees or contractors, immediately stop all work at the covered well, other than the work required to ensure safety, when the operator, or the operator's employees or contractors, whether on the drilling site or off the drilling site, have identified well conditions, well design, drilling procedures, drilling equipment, or any other factor indicating that there is an immediate risk of a blowout;

(3) the operator, or the operator's employees or contractors, take appropriate action to mitigate risks identified pursuant to paragraph (1) or (2), and obtain the concurrence of the appropriate Federal official that such action is sufficient, prior to resumption of work;

(4) the appropriate Federal official act in a timely manner to provide the concurrence identified in paragraph (3) or to identify further actions by the operator necessary to obtain such concurrence; and

(5) the operator inform its employees and contractors that it is illegal to retaliate against such employee or contractor for raising safety concerns, including in connection with stop work policies and procedures adopted pursuant to this section.

(b) **RECORDS OF EVENTS.**—The appropriate Federal official shall maintain records of all such events, their duration, the reason for such events, and the actions taken prior to the resumption of activities.

SEC. 6. INDEPENDENT TECHNICAL ADVICE AND CERTIFICATION.

(a) **WELL CONTROL TECHNICAL ADVISORY COMMITTEE.**—

(1) **ESTABLISHMENT.**—Not later than 60 days after the date of enactment of this Act, the appropriate Federal official shall appoint an independent technical advisory committee to be known as the Well Control Technical Advisory Committee.

(2) **MEMBERSHIP.**—

(A) **COMPOSITION.**—The Advisory Committee shall be composed of 7 members. Members shall be qualified by education, training, and experience to provide scientific and technical advice with regard to blowout preventers and other well control equipment and operations. The membership of the Advisory Committee shall be balanced fairly in terms of the points of view represented. At least 3 of the members of the Advisory Committee shall be members of the National Academy of Engineering. No more than 3 of the members of the Advisory Committee shall be current employees of entities subject to regulation under this Act or of entities that are contractors of any entity subject to regulation under this Act.

(B) **APPOINTMENT AND TERMS.**—The appropriate Federal official shall appoint Advisory Committee members, including a chair and vice-chair to the Advisory Committee. Each term of a member's service on the Advisory Committee shall be 3 years, except for initial terms, which may be up to 5 years in length to allow staggering. Members may be reappointed only once for an additional 3-year term.

(C) **NO PAY; RECEIPT OF TRAVEL EXPENSES.**—Members of the Advisory Committee shall not receive any pay for service on the Advisory Committee but may receive travel expenses, including a per diem, from the appropriate Federal official.

(D) **STAFF AND FACILITIES.**—The appropriate Federal official shall make available to the Advisory Committee such staff and facilities as the chair

of the Advisory Committee and the appropriate Federal official determine are necessary to carry out the duties of the Advisory Committee.

(3) PERIODIC REPORTS.—Not later than 180 days after the date of enactment of this Act, and every 5 years thereafter, the Advisory Committee shall submit to the appropriate Federal official and Congress a report that—

(A) assesses available blowout preventer and well control technologies, practices, voluntary standards, and regulations in the United States and elsewhere;

(B) assesses whether existing regulations issued by the appropriate Federal official for blowout preventers and well control for covered wells for oil and gas exploration or production in the United States adequately protect public health and safety and the environment; and

(C) as appropriate, recommends modifications to the regulations identified under subparagraph (B) to ensure adequate protection of public health and safety and the environment.

(4) IMPLEMENTATION ASSESSMENT REPORTS.—Not later than March 31 of 2012, and as needed thereafter, but not less frequently than every two calendar years thereafter, the Advisory Committee shall submit to the appropriate Federal official and to Congress a report that—

(A) assesses the appropriate Federal official's implementation of the requirements of this Act during the preceding year, including well-specific regulatory determinations and oversight, administration of inspections, and third-party certification requirements;

(B) recommends any improvements to the implementation referred to in subparagraph (A) that, in the Advisory Committee's judgment, would enhance the safety of drilling operations subject to the requirements of this Act; and

(C) reviews the safety record during the preceding year of any equipment, designs, or practices subject to the requirements of this Act.

(5) OTHER DUTIES.—In addition to the responsibilities set forth under this section, the Advisory Committee shall—

(A) review and comment on proposed regulations as required under section 7;

(B) respond to requests for advice from the appropriate Federal official on matters within the Advisory Committee's expertise; and

(C) as appropriate, consult with third-party certifiers and with employees of the agency conducting inspections pursuant to this Act, and review reports or other documents submitted to the appropriate Federal official pursuant to this Act, to obtain information on blowout preventer and well control safety issues.

(6) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (other than section 14 of such Act) shall apply to the Advisory Committee to the extent that the provisions of such Act do not conflict with the requirements of this subsection.

(b) INDEPENDENT THIRD-PARTY CERTIFIERS.—

(1) APPROVAL.—The appropriate Federal official shall establish appropriate standards for the approval of independent third parties capable of exercising the certification functions prescribed under sections 3 and 4, including standards to ensure technical competence and an absence of, or a mechanism for adequately mitigating, any actual or apparent conflicts of interest.

(2) ASSIGNMENT.—The appropriate Federal official shall require that the reviews, inspections, tests, certifications, and recertifications required under sections 3 and 4 are performed or overseen by independent third-party certifiers that have contracted directly with the appropriate Federal official rather than the operator and are assigned by the appropriate Federal official to individual certifications and recertifications, including the reviews, inspections, and tests required for such individual certifications and recertifications. The appropriate Federal official shall ensure that—

(A) a third-party certifier is appropriately qualified for each certification or recertification to which it is assigned; and

(B) such reviews, inspections, and tests are timely performed.

(3) CONTRACTING AND FEES.—The appropriate Federal official shall contract with independent third-party certifiers to perform the reviews, inspections, tests, certifications, and recertifications required by the regulations issued under this Act and shall assess fees upon operators to cover the reasonable costs of such activities.

(4) ENFORCEMENT.—It shall be a violation of this Act for any third-party certifier approved under this section to make any false statement, knowingly or with reckless disregard for the truth of such statement, in any document sub-

mitted to the appropriate Federal official in connection with a certification or recertification under this Act.

(c) **EXPERT REVIEW PANELS.**—The appropriate Federal official may establish a panel of technical experts to provide technical advice with regard to any well-specific regulatory decision under this Act, including permitting determinations under section 2 and agency actions described in section 4. The appropriate Federal official shall—

(1) identify a pool of qualified experts in relevant areas, including but not limited to those drawn from academia, national laboratories, and industry, for this purpose; and

(2) establish standards for including and maintaining individuals in such pool, including standards to ensure technical competence and an absence of, or a mechanism for adequately mitigating, any actual or apparent conflicts of interest.

SEC. 7. REGULATIONS AND ORDERS.

(a) **ISSUANCE, REVIEW, AND REVISION OF REGULATIONS.**—

(1) **ISSUANCE OF REGULATIONS.**—Not later than 1 year after the date of enactment of this Act, the appropriate Federal official shall issue the regulations required under this Act.

(2) **PERIODIC REVIEW AND REVISION OF RULES.**—At least once every 5 years, the appropriate Federal official shall review and, based on new or updated information and taking into consideration the recommendations of the Advisory Committee, shall—

(A) revise the regulations issued under this Act to ensure that such regulations adequately protect public health and safety and the environment; or

(B) issue a written determination that revision of such regulations would not materially enhance protection of public health and safety or the environment.

(3) **ADVISORY COMMITTEE REVIEW.**—Upon issuance of any proposed regulation under this Act, the appropriate Federal official shall promptly submit such proposed regulation to the Advisory Committee for its review. The Advisory Committee shall, within 90 days, submit comments advising the appropriate Federal official whether the proposed regulation ensures adequate protection of public health and safety and the environment and, if not, proposing modifications to ensure such adequate protection. Before issuance of a final regulation under this Act, the appropriate Federal official shall consider and respond in writing to comments and proposed modification submitted by the Advisory Committee. If the appropriate Federal official declines to adopt such proposed modifications, the appropriate Federal official shall clearly and specifically state the reasons for such decision in the final regulation.

(4) **RULEMAKING DOCKETS.**—

(A) **ESTABLISHMENT.**—Not later than the date of proposal of any regulation under this Act, the appropriate Federal official shall establish a publicly available rulemaking docket for such regulation.

(B) **DOCUMENTS INCLUDED.**—Promptly upon receipt by the appropriate Federal official, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the appropriate Federal official determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(C) **DOCUMENTS SUBMITTED TO THE OFFICE OF MANAGEMENT AND BUDGET.**—The drafts of proposed rules submitted by the appropriate Federal official to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the appropriate Federal official shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to issuance and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of issuance.

(b) **INTERIM ORDERS.**—Prior to the issuance and effective date of initial regulations required pursuant to subsection (a)(1), the appropriate Federal official may

issue an order applicable to one or more operators to ensure that such operator or operators—

- (1) have the capacity to prevent and respond to a blowout;
- (2) utilize safe and effective blowout preventers;
- (3) use safe casing designs and cementing programs and procedures;
- (4) use appropriate and safe designs of wells;
- (5) use appropriate procedures and technologies to minimize the risk of ignition or explosion of hydrocarbons or any other material discharged from the well during a blowout or well control event; and
- (6) take any other appropriate measure to maintain well control and prevent blowouts.

SEC. 8. WELL CONTROL AND BLOWOUT PREVENTION INSPECTORS.

The appropriate Federal official shall provide for periodic unannounced inspections by agency inspectors of drilling operations of covered wells to ensure that such operations comply with the regulations issued pursuant to this Act. The appropriate Federal official shall also provide for periodic in-person observation by agency inspectors of tests undertaken for recertification under section 3. The appropriate Federal official may conduct inspections under this section at any time. The appropriate Federal official shall charge and collect fees from operators in amounts the appropriate Federal official determines are sufficient to cover reasonable costs of inspections under this section.

SEC. 9. JUDICIAL REVIEW OF REGULATIONS.

Any person aggrieved by any regulation issued by the appropriate Federal official under this Act may seek judicial review of such regulation exclusively in the United States Court of Appeals for the District of Columbia Circuit. Any petition for review under this section shall be filed within 60 days from the date notice of the issuance of such regulation appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any such petition for review shall be filed within 60 days after such grounds arise.

SEC. 10. INVESTIGATIONS AND INFORMATION REQUESTS.

(a) **INVESTIGATIONS.**—The appropriate Federal official is authorized to conduct investigations of violations or alleged or suspected violations of this Act or of any regulation or order issued under this Act. In any investigation conducted under this section, the appropriate Federal official shall have the authority to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process as in the district courts of the United States.

(b) **INFORMATION REQUESTS.**—The appropriate Federal official may require an operator or third-party certifier, or an employee or contractor thereof, to provide, on a one-time, periodic, or continuous basis, such information as the appropriate Federal official may reasonably require for the purpose of—

- (1) making any permitting or other regulatory determination, issuing any order, or developing any regulation under this Act;
- (2) determining whether any person is in violation of this Act or of any regulation or order issued under this Act; or
- (3) carrying out any other provision of this Act.

SEC. 11. CITIZEN SUITS.

(a) **IN GENERAL.**—Any person having a valid legal interest which is or may be adversely affected may commence a civil action in a Federal district court of appropriate jurisdiction on such person's own behalf to compel compliance with this Act, or any regulation or order issued under this Act, against any person, including the United States, and any other government instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution) for any alleged violation of any provision of this Act or any regulation or order issued under this Act.

(b) **NOTICE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), no action may be commenced under subsection (a)—

(A) prior to 60 days after the plaintiff has given notice of the alleged violation, in writing under oath, to the appropriate Federal official, to the State in which the violation allegedly occurred or is occurring, and to any alleged violator; or

(B) if the Attorney General of the United States has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action in a court of the United States any person having a legal interest which is or may be adversely affected may intervene as a matter of right.

(2) EXCEPTION.—An action may be brought under this subsection immediately after notification of the alleged violation in any case in which the alleged violation constitutes an imminent threat to the public health or safety or the environment or would immediately affect a legal interest of the plaintiff.

(c) INTERVENTION.—In any action commenced pursuant to this section, the Attorney General of the United States, upon the request of the appropriate Federal official, may intervene as a matter of right.

(d) COSTS; SECURITY.—A court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in a sufficient amount to compensate for any loss or damage suffered, in accordance with the Federal Rules of Civil Procedure.

(e) SAVINGS.—Nothing in this section shall restrict any right which any person or class of persons may have under any other Federal or State law or common law to seek appropriate relief.

SEC. 12. REMEDIES AND PENALTIES.

(a) INJUNCTIONS AND RESTRAINING ORDERS.—At the request of the appropriate Federal official, the Attorney General of the United States or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act or any regulation, order, approval under section 2(b), or permit issued under this Act.

(b) CIVIL PENALTIES; HEARING.—

(1) IN GENERAL.—Except as provided in paragraph (2), if any person fails to comply with any provision of this Act or any regulation, order, approval under section 2(b), or permit issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$75,000 for each day of the continuance of such failure. The appropriate Federal official may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing. The appropriate Federal official shall, by regulation at least every 3 years, adjust the penalty specified in this paragraph to reflect any increases in the Consumer Price Index for all urban consumers.

(2) THREAT OF SERIOUS IRREPARABLE OR IMMEDIATE HARM.—If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty of not more than \$150,000 shall be assessed for each day of the continuance of the failure.

(c) CRIMINAL PENALTIES.—Any person who knowingly and willfully—

(1) violates any provision of this Act, or any regulation, order, approval under section 2(b), or permit issued under the authority of this Act, designed to protect the public health and safety or the environment;

(2) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act; or

(3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act,

shall, upon conviction, be punished by a fine of not more than \$10,000,000, or by imprisonment for not more than 10 years, or both. Each day that a violation of paragraph (1) continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in paragraph (3), shall constitute a separate violation.

(d) LIABILITY OF CORPORATE OFFICERS AND AGENTS FOR VIOLATIONS BY CORPORATION.—Whenever a corporation or other entity is subject to prosecution under subsection (c), any officer or agent of such corporation or entity who knowingly and willfully, or with willful disregard, authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c).

(e) CONCURRENT AND CUMULATIVE NATURE OF PENALTIES.—The remedies and penalties prescribed in this Act shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this Act shall be in addition to any other remedies and penalties afforded by any other law or regulation.

SEC. 13. RETALIATION PROHIBITED.

(a) PROHIBITION.—No person or employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or other privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) notified the appropriate Federal official, a Federal or State law enforcement or regulatory agency, or the employee's employer of an alleged violation of this Act, or any regulation, order, section 2(b) approval, or permit under this Act, including notification of such an alleged violation through communications related to carrying out the employee's job duties;

(2) refused to participate in any conduct that the employee reasonably believes is in noncompliance with a requirement of this Act, or any regulation, order, section 2(b) approval, or permit under this Act, if the employee has identified the alleged noncompliance to the employer;

(3) testified before or otherwise provided information relevant for Congress or for any Federal or State proceeding regarding any provision (or proposed provision) of this Act;

(4) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act;

(5) testified or is about to testify in any such proceeding; or

(6) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act.

(b) ENFORCEMENT ACTION.—Any employee covered by this section who alleges discrimination by an employer in violation of subsection (a) may bring an action governed by the rules and procedures, legal burdens of proof, and remedies applicable under subsections (d) through (h) of section 20109 of title 49, United States Code. A party may seek district court review as set forth in subsection (d)(3) of such section not later than 90 days after receiving a written final determination by the Secretary of Labor.

SEC. 14. CHEMICAL SAFETY BOARD INVESTIGATION.

Section 112(r)(6) of the Clean Air Act (42 U.S.C. 7412(r)(6)) is amended by adding at the end the following:

“(T) AGREEMENT.—Not later than 30 days after the date of enactment of this subparagraph, the Chemical Safety and Hazard Investigation Board, the Coast Guard, and the Department of the Interior shall enter into an agreement in order to facilitate the Board's investigation of the facts, circumstances, and causes of an accidental fire, explosion, or release involving an offshore oil or gas exploration or production facility (regardless of whether there is a resulting marine oil spill). Such agreement shall provide the Board with the following:

“(i) Unrestricted access to any personnel, records, witness statements, recorded witness interviews, and physical or documentary evidence related to an offshore oil or gas exploration or production facility under investigation collected or possessed by the Coast Guard or the Department of the Interior.

“(ii) The ability to conduct recorded interviews of all agency personnel and contractors and the right to obtain records related to Federal regulatory, inspection, enforcement, and safety programs for offshore oil or gas exploration and production.

“(iii) The right to participate equally in planning and executing any testing of relevant items of physical evidence related to the cause of the accident.

“(iv) Such support and facilities as may be necessary for the Board's investigation, including transportation to the accident site, coastal waters and affected areas, and other offshore oil or gas exploration and production facilities without cost to the Board.

“(U) RECOMMENDATIONS.—Based on an investigation of an accidental fire, explosion, or release involving an offshore oil or gas exploration or production facility, the Board shall make recommendations with respect to preventing subsequent accidental fires, explosions, or releases to the Secretary of the Interior and the Commandant of the Coast Guard. The Secretary of the Interior and the Commandant of the Coast Guard shall respond formally and in writing to any recommendation of the Board within 90 days of the receipt of such recommendations.”.

SEC. 15. STATE AND FEDERAL REGULATION.

(a) STATE PLANS.—Any State may submit to the appropriate Federal official a plan demonstrating that the State's regulatory regime meets the applicable stand-

ard under subsection (b) for effective regulation of oil or gas exploration or production wells located in such State.

(b) DETERMINATION.—Upon receipt of a plan submitted by a State under subsection (a), and after notice and an opportunity for public comment, the appropriate Federal official shall promptly determine whether such State’s regulatory regime—

(1) in the case of offshore wells, establishes requirements comparable to those applicable to covered wells under this Act, or alternative requirements providing an equal or greater level of safety as those applicable to covered wells under this Act; and

(2) in the case of onshore wells, effectively protects public health and safety and the environment.

(c) OPPORTUNITY TO REMEDY DEFICIENCIES.—If the appropriate Federal official determines that the State regulatory regime does not meet the applicable standard under subsection (b), the appropriate Federal official shall identify the deficiencies that are the basis for such determination and provide a reasonable period of time for the State to remedy the deficiencies.

(d) INEFFECTIVE REGULATION.—If a State does not submit a plan pursuant to subsection (a), or if the appropriate Federal official determines that a State’s regulatory regime does not meet the applicable requirements under subsection (b) and the State does not remedy the deficiencies, then such State shall be considered incapable of effectively regulating such wells for purposes of section 17(10)(C)(iv).

(e) LACK OF STATE CONCURRENCE.—(1) In the event a State does not concur in a determination under section 17(10)(C)(v) and the appropriate Federal official disagrees with the failure of the State to concur, the appropriate Federal official may decide to regulate wells as covered wells under this Act notwithstanding section 17(10)(C)(v) if the Federal official determines that the State’s regulatory regime does not effectively protect public health and safety and the environment. If the State files a legal action under paragraph (2), the authority of the appropriate Federal official to regulate wells as covered wells under this subsection shall be stayed until the conclusion of the litigation, including any appeals.

(2) A State may file an action in a Federal district court of appropriate jurisdiction challenging a decision by the appropriate Federal official to regulate wells as covered wells under this subsection. The standard of review of the decision of the appropriate Federal official shall be clear and convincing evidence.

(f) WELLS ON FEDERAL OR TRIBAL LANDS.—In the case of a well on Federal or tribal land, the appropriate Federal official shall determine whether the combination of the Federal, State, and tribal regulation applicable to such well effectively protects public health and safety and the environment. If the appropriate Federal official determines that the combination of Federal, State, and tribal regulation does not effectively protect public health and safety and the environment, then such well shall be considered not subject to effective regulation for purposes of section 17(10)(D)(iv).

SEC. 16. SAVINGS CLAUSE.

Nothing in this Act shall be construed to preempt regulation by any State or local government of oil and gas exploration and production wells drilled in State waters, on State lands, or on private lands within that State pursuant to the laws of that State or local government.

SEC. 17. DEFINITIONS.

In this Act:

(1) ADVISORY COMMITTEE.—The term “Advisory Committee” means the Well Control Technical Advisory Committee established pursuant to section 6(a).

(2) APPROPRIATE FEDERAL OFFICIAL.—The term “appropriate Federal official” means the Secretary of Energy or Secretary of the Interior, as designated for specific responsibilities provided in this Act by the President of the United States.

(3) BLIND SHEAR RAM.—The term “blind shear ram” means a device capable of cutting through a drill pipe and sealing a well.

(4) BLOWOUT.—The term “blowout” means the uncontrolled release of hydrocarbons or other materials from a well.

(5) BLOWOUT PREVENTER.—The term “blowout preventer” means a wellhead device or combination of devices designed and intended to prevent a blowout.

(6) CASING.—The term “casing” means any pipe permanently installed, or intended to be permanently installed, in a well.

(7) CASING SHEAR RAM.—The term “casing shear ram” means a device capable of cutting through casing.

(8) CEMENTING.—The term “cementing” means the practice of forcing cement into the annular space between the casing and the bore-hole or between any two pipes within the bore-hole to prevent fluids or gases from finding a flow path through that space.

(9) CEMENT BOND LOG.—The term “cement bond log” means a test conducted, using acoustic signals or such other technology as the appropriate Federal official may designate that provides results of equal or better quality, to determine the integrity and completeness of a cementing job for a given well or segment of a well by determining the extent to which the cement has filled annular spaces and bonded to pipes and surrounding formations.

(10) COVERED WELL.—The term “covered well” means—

(A) an oil or gas exploration or production well that is located on the outer Continental Shelf; or

(B) an offshore oil or gas exploration or production well that—

(i) is not located on Federal or tribal land;

(ii) is not a marginal well;

(iii) based on criteria established by rule by the appropriate Federal official, could, in the event of a blowout, lead to extensive and widespread harm to public health and safety or the environment; and

(iv) is located in a State that the appropriate Federal official determines under section 15(d) cannot effectively regulate the well; or

(C) an onshore oil or gas exploration or production well—

(i) that is not located on Federal land;

(ii) that is not a marginal well;

(iii) that, based on criteria established by rule by the appropriate Federal official, could, in the event of a blowout, lead to extensive and widespread harm to public health and safety or the environment;

(iv) that is located in a State that the appropriate Federal official determines under section 15 cannot effectively regulate the well; and

(v) with respect to which the State concurs in the determination referred to in clause (iv); or

(D) an oil or gas exploration or production well that—

(i) is located on Federal or tribal land;

(ii) is not a marginal well;

(iii) based on criteria established by rule by the appropriate Federal official, could, in the event of a blowout, lead to extensive and widespread harm to public health and safety or the environment; and

(iv) is determined by the appropriate Federal official under section 15(f) to be not subject to effective regulation.

(11) EXPLORATION WELL.—The term “exploration well” means a well intended to determine whether economically recoverable oil, natural gas, natural gas liquids, or other hydrocarbons exist in the geological deposits or strata to or through which the well is drilled.

(12) FLOW PATH.—The term “flow path” means a potential route by which hydrocarbons or other materials could migrate within a well.

(13) LOCKDOWN DEVICE.—The term “lockdown device” means a device at the top of the wellbore designed to prevent upward movement of casing after installation.

(14) MARGINAL WELL.—The term “marginal well” means a production well that produces no more than 10 barrels of oil and no more than 60,000 cubic feet of natural gas per day.

(15) OPERATOR.—The term “operator” means, with respect to a covered well, the owner or lessee of the rights to explore for, or produce oil or gas through such well.

(16) OUTER CONTINENTAL SHELF.—The term “outer Continental Shelf” means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(17) PRESSURE TESTING.—The term “pressure testing” means testing under conditions of elevated hydrostatic pressure generated by natural or artificial means to determine well integrity, the effectiveness of cementing, or the effectiveness of equipment used in the well or to drill the well.

(18) PRODUCTION WELL.—The term “production well” means a well which is being drilled to allow the production of oil, natural gas, natural gas liquids, or other hydrocarbons.

(19) ROV.—The term “ROV” is an acronym for Remotely Operated Vehicle, and means an unmanned, remotely operated, submersible device that is capable of relaying images or information, manipulating or operating various elements of a blowout preventer or other equipment on the seabed, or performing other subsea functions.

(20) **SUBSEA BLOWOUT PREVENTER.**—The term “subsea blowout preventer” means a blowout preventer installed on an offshore well below the surface of the water.

(21) **SYSTEM INTEGRATION TEST.**—The term “system integration test” means a test of the various elements of a blowout preventer, equipment associated with the use of such preventer, and the controls of the blowout preventer, as combined and configured for operation.

(22) **WELL CONTROL EVENT.**—The term “well control event” means a blowout or any event that threatens, if not controlled, to result in a blowout.

SEC. 18. STUDY ON RELIEF WELLS.

Not later than 60 days after the date of enactment of this Act, the appropriate Federal official shall enter into an arrangement with the National Academy of Engineering under which the Academy shall, not later than 1 year after such arrangement is entered into, submit to the appropriate Federal official and to Congress a report that assesses the economic, safety, and environmental impacts of requiring that 1 or more relief wells be drilled in tandem with the drilling of some or all covered wells subject to the requirements of this Act.

SEC. 19. REPORT ON PENDING FEDERAL DRILLING APPLICATIONS.

Within 30 days after the date of enactment of this Act, the appropriate Federal official shall report to Congress on the status of all pending Federal drilling and drilling-related applications and permits, the amount of time that these applications and permits have been pending, and any reasons for delay in approval.

PURPOSE AND SUMMARY

H.R. 5626, the “Blowout Prevention Act of 2010”, was introduced by Reps. Henry A. Waxman (D–CA), Edward J. Markey (D–MA), and Bart Stupak (D–MI) on June 29, 2010. The purpose of H.R. 5626 is to protect public health and safety and the environment by requiring the use of safe well control technologies and drilling practices for covered oil and gas exploration and production wells.

BACKGROUND AND NEED FOR LEGISLATION

On April 20, 2010, at about 10 p.m., an explosion occurred on the Deepwater Horizon oil drilling rig, which was drilling a well in BP’s Macondo Prospect, approximately 40 miles south of the Louisiana coast in the Gulf of Mexico. There were 126 people on the rig at the time of the explosion. Fifteen of those were injured and 11 died. The Coast Guard responded to the explosion and fire, which caused the rig to sink and resulted in the ongoing blowout.

In the wake of this tragedy, serious questions have been raised about the causes of the explosion and the adequacy of industry practices and regulatory standards relating to oil and gas drilling. Ongoing investigations are being conducted by a Marine Board of Investigation (a joint effort under the Coast Guard and the Department of the Interior (DOI)), a Presidential Commission, the U.S. Chemical Safety and Hazard Investigation Board, and several congressional committees, including the Committee on Energy and Commerce.

The Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce held three hearings on the explosion and blowout.¹ The Subcommittee’s investigation revealed that BP appears to have made numerous key decisions that increased the risk of a well control problem and may have contributed to the

¹ Subcommittee on Oversight and Investigations, *Hearing on Inquiry into the Gulf Coast Oil Spill* (May 12, 2010); *Hearing on Local Impact of the Deepwater Horizon Oil Spill* (June 7, 2010); *Hearing on the Role of BP in the Deepwater Horizon Explosion and Oil Spill* (June 17, 2010).

Deepwater Horizon disaster.² Based on that investigation, it appears that the following occurred: BP chose a well design that had only two barriers to prevent flow of dangerous gases instead of using a design that had multiple barriers; BP ignored the advice of its contractor, Halliburton, and chose a cement sealing approach for the well that was predicted to fail; BP failed to conduct a key test to evaluate the sufficiency of the cementing job; BP failed to fully circulate well fluids to facilitate better cementing; and BP did not install a key piece of equipment at the wellhead prior to the explosion. Several of these steps, though considered to be industry best practices, are not mandated under current law. All of these decisions appear to have saved time and money for BP, but increased risks.

Well Control Issues

Perhaps the most critical safety issue with regard to oil and gas drilling is the maintenance of “well control”—i.e. control over conditions in the well bore, where high pressures threaten to drive oil and gas toward the surface from subsurface formations. If these pressurized hydrocarbons cannot be controlled, they may reach the surface and cause a fire or explosion. On the Deepwater Horizon, an uncontrolled influx of gas into the well is believed to have caused an uncontrolled “blowout” and the ensuing explosion.

Current drilling technology uses a number of lines of defense to prevent the loss of well control: (1) the circulation of heavy drilling “mud” through the well, which helps to equalize pressure and prevent uncontrolled upward flow of hydrocarbons; (2) the use of cement and mechanical barriers in and around steel casing (which lines the well and forms the conduit between the hydrocarbon reservoir and the surface) preventing unintentional upward flow of oil and gas. During drilling operations, wells are equipped with a blowout preventer, which includes a series of devices for use to assist in regaining control of the well during a well control event threatening a blowout and to shut in the wellbore in a blowout or in other emergencies.

Blowout Preventers

A blowout preventer is a piece of equipment installed at the wellhead and designed to prevent an uncontrolled release of hydrocarbons from a well. It consists of several independent systems that may be used to ensure well control, which may include:

- Annular Preventers*, which seal the wellbore with a variable-width rubber aperture that can close on itself or around any pipe that may be strung through the wellbore;

- Variable Bore Rams*, which seal around drill pipe with rubber-tipped steel blocks;

- Blind Shear Rams*, the well-control mechanism of last resort, designed to cut through drill pipe and seal the well during an emergency; and

- “Casing” or “Super” Shear Rams*, which are designed to cut through casing or other obstructions that may be present

²Letter from Reps. Henry A. Waxman and Bart Stupak to Tony Hayward, Chief Executive Officer of BP (June 14, 2010).

in the wellbore, allowing blind shear rams to close and seal the well during an emergency.

Because the blowout preventer is intended to provide a failsafe last-resort well control and shut in capability that must function in an emergency, blowout preventers are often designed with redundant equipment and control systems, to ensure that at least one set of emergency systems is always functional. In numerous cases, however, blowout preventers have failed to operate. The blowout preventer installed on the Macondo well failed to control the blowout.

The Committee identified several potential problems that might have resulted in this failure. According to a 2004 report commissioned by the Minerals Management Service, blind shear rams are not designed to cut through drill pipe tool joints, the thick-walled connections between sections of pipe.³ Casing shear rams also may not cut through tool joints. These tool joints may take up as much as 10% of a pipe's length. The use of redundant shear rams could eliminate this risk, ensuring that there is always one shear ram that is not opposite a tool joint. But DOI regulations currently do not require redundant blind shear rams and casing shear rams. The Deepwater Horizon included only one of each of these rams.

Blowout preventers usually include one or more emergency backup (or secondary control) systems, including a system commonly called a "deadman switch," to close the blind shear rams and seal the well in case of a loss of communication with the drilling rig. In order for the deadman switch on the Deepwater Horizon to be activated, three separate lines from the rig to the blowout preventer had to be severed: power, communication, and hydraulics. If any one of those lines remained active, the deadman switch would not have been triggered even though the blind shear rams could not be activated from the surface. The Deepwater Horizon also did not have an acoustic backup switch, which might have been able to activate the blowout preventer remotely from the surface.

Offshore drilling operators rely on remote-operated vehicles (ROV) to activate blowout preventers as a last resort. These unmanned, submersible vehicles travel to the bottom of the ocean and can directly trigger blowout preventers via an interface on the blowout preventer. The Deepwater Horizon's blowout preventer, however, never sealed the well even after many days of ROV intervention.

The Committee also learned that there were several issues with the Deepwater Horizon's maintenance of its blowout preventer system. There are no DOI regulations requiring testing of emergency systems, and BP did not conduct such tests. ROVs discovered several leaks in the hydraulic lines that provide pressure for blowout preventer functions, and found unexpected modifications to the original design of the blowout preventer. These problems resulted in wasted time in the critical days following the accident and might have contributed to the initial failure of the blowout preventer.

³ West Engineering Services, Shear Ram Capabilities Study (Sept. 2004) (online at <http://www.mms.gov/tarprojects/463/%28463%29%20West%20Engineering%20Final%20Report.pdf>).

Well Design, Fluid Circulation and Displacement, and Cementing Practices

The Committee's investigation also uncovered several issues concerning decisions BP made in regard to the design and execution of the Macondo well plan.

The Macondo well was designed with a "long string" production casing that extended from the sea floor down to the reservoir from which oil was to be produced. This well design left only two barriers along one flow path through which hydrocarbons could flow between the reservoir and the blowout preventer: a layer of cement at the bottom of the well, and a mechanical seal at the wellhead itself. Another design, a "liner-tieback" approach, would have made a blowout less likely by incorporating four barriers between the reservoir and the blowout preventer: two mechanical seals and two layers of cement.

Installing a "lockdown sleeve" on the mechanical seal at the wellhead would have reinforced the wellhead against pressure from below as well as pressure from above. This lockdown sleeve was never installed on the Macondo well, even though drillers on the Deepwater Horizon began procedures that would have put upward pressure on the wellhead seal.

Because the Macondo well was designed with a long string casing, it was critically important that the cement job at the bottom of the well successfully seal off the reservoir. But there were several issues concerning BP's final cement job: BP ran casing with fewer "centralizers" than its cementing contractor predicted would be sufficient to ensure an even seal around the entire casing; it failed to circulate drilling mud throughout the well before cementing, in accordance with industry best practices; and it failed to run a cement bond log test, which could have uncovered failures or imperfections in the bonded cement.

DOI Actions

In addition to the investigations referenced above, the President ordered the Secretary of the Interior to review the accident and propose additional precautions and technologies that should be required to improve the safety of offshore oil and gas drilling. The findings of this review were published on May 27, 2010, in a document commonly referred to as the Department of Interior's "30-day Report."⁴

The 30-day report offered recommendations for improving offshore drilling safety. DOI implements many of the recommendations in a Notice to Lessees issued on June 8, 2010.⁵ The Notice to Lessees contained several new safety requirements, including:

- Certification by the operator's chief executive officers that the operator is in compliance with applicable regulations;
- Independent third-party inspection and certification of blowout preventers;

⁴Department of the Interior, *Increased Safety Measures for Energy Development on the Outer Continental Shelf* (May 27, 2010) (online at <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=33598>).

⁵Department of the Interior, *National Notice to Lessees and Operators of Federal Oil and Gas Leases, Outer Continental Shelf* (June 8, 2010) (NTL No. 2010-N05) (online at <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=34536>).

- Requirements for emergency blowout preventer emergency shut-in systems;
- Requirements that blowout preventers must be capable of being operated by Remotely Operated Vehicles;
- Blowout preventer inspection and testing after use during a well control event;
- Verification that blowout preventer blind shear rams can shear the drill pipe;
- Requirements for a casing hanger lockdown mechanism; and
- Requirements for dual mechanical barriers in addition to a cement barrier to prevent well flow during installation of the final casing string.

Some of the longer-term recommendations of the 30-day report were not included in the Notice to Lessees, including:

- Mandatory redundant blind shear rams to prevent failure if a drill pipe joint is across one ram;
- Requirements for documentation of blowout preventer maintenance and repair;
- Blowout preventer testing to ensure full operability of all functions; and
- Federal inspection of drilling rigs, including in-person observation of tests on blowout prevention equipment.

LEGISLATIVE HISTORY

H.R. 5626, the Blowout Prevention Act of 2010, was introduced by Representatives Waxman, Markey, and Stupak on June 29, 2010, and referred to the Committee on Natural Resources, and in addition to the Committee on Energy and Commerce. On June 30, 2010, H.R. 5626 was referred to the Subcommittee on Energy and Environment, which held a legislative hearing on the bill the same day. H.R. 5626 was subsequently considered by the full Committee without markup in Subcommittee.

COMMITTEE CONSIDERATION

On July 15, 2010, the Committee on Energy and Commerce met in open markup session to consider H.R. 5626. A manager's amendment in the form of an amendment in the nature of a substitute was offered by Mr. Waxman. The Committee adopted several amendments to the manager's amendment by voice vote, and then agreed to the amendment in the nature of a substitute, as amended, by a voice vote. Subsequently, the Committee ordered H.R. 5626 favorably reported to the House, amended, by a record vote of 48–0 (1 member voting “present”).

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. A motion by Mr. Waxman ordering H.R. 5652 reported to the House, amended, was approved by a record vote of 48 yeas and 0 nays (1 member voting “present”). The following is the record vote taken during Committee consideration, including the names of those members voting for and against:

**COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 177**

BILL: H.R. 5626, the "Blowout Prevention Act of 2010".

MOTION: A motion by Mr. Waxman to order H.R. 5626 favorably reported to the House, amended.
(Final Passage)

DISPOSITION: **AGREED TO** by a roll call vote of 48 yeas to 0 nays, 1 voting present.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman	X			Mr. Barton	X		
Mr. Dingell	X			Mr. Hall			
Mr. Markey	X			Mr. Upton	X		
Mr. Boucher	X			Mr. Stearns	X		
Mr. Pallone	X			Mr. Whitfield			
Mr. Gordon	X			Mr. Shimkus	X		
Mr. Rush	X			Mr. Shadegg			X
Ms. Eshoo	X			Mr. Blunt			
Mr. Stupak	X			Mr. Buyer			
Mr. Enget	X			Mr. Radanovich	X		
Mr. Green	X			Mr. Pitts	X		
Ms. DeGette	X			Ms. Bono Mack			
Mrs. Capps	X			Mr. Terry	X		
Mr. Doyle	X			Mr. Rogers			
Ms. Harman	X			Mrs. Myrick			
Ms. Schakowsky	X			Mr. Sullivan			
Mr. Gonzalez	X			Mr. Murphy of PA	X		
Mr. Inslee	X			Mr. Burgess	X		
Ms. Baldwin	X			Ms. Blackburn	X		
Mr. Ross	X			Mr. Gingrey	X		
Mr. Weiner	X			Mr. Scalise	X		
Mr. Matheson	X			Mr. Griffith	X		
Mr. Butterfield	X			Mr. Latta	X		
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill							
Ms. Matsui	X						
Mrs. Christensen	X						
Ms. Castor	X						
Mr. Sarbanes	X						
Mr. Murphy of CT							
Mr. Space	X						
Mr. McNerney	X						
Ms. Sutton	X						
Mr. Braley	X						
Mr. Welch	X						

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee will rely on the estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974, which at the time of the filing of this report had not been completed.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply to H.R. 5626 as the bill does not authorize funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the constitutional authority for H.R. 5626 is provided in Article I, section 8, clauses 3 and 18.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 5626 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

FEDERAL ADVISORY COMMITTEE STATEMENT

The Committee finds that the legislation establishes or authorizes the establishment of an advisory committee within the meaning of section 5 U.S.C. App., 5(b) of the Federal Advisory Committee Act. Section 6 of H.R. 5626 as ordered reported by the Committee provides for the creation of a Well Control Technical Advisory Committee. The Committee finds that this advisory committee is needed to assess blowout preventer and well control technologies, practices, voluntary standards, and regulations in the United States and elsewhere, to assess whether existing standards adequately protect public health and safety and the environment, and, as appropriate, to recommend modifications to existing regulations.

APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

The Committee finds that H.R. 5626 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1985.

FEDERAL MANDATES STATEMENT

Regarding the requirements of section 423 of the Congressional Budget and Impoundment Control Act of 1974 (as amended by sec-

tion 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4), the Committee will rely on the analysis prepared by the Director of the Congressional Budget Office, which at the time of the filing of this report had not been completed.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee will adopt as its own the cost estimate on H.R. 5626 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act. At the time of the filing of this report, this estimate had not been completed.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has not yet received a cost estimate for H.R. 5626 from the Director of the Congressional Budget Office.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that the Act may be cited as the “Blowout Prevention Act of 2010”.

Section 2. No drilling of covered wells without demonstrated ability to prevent and contain leaks

Subsection (a) provides that, effective one year after the date of enactment, a federal permit to drill a covered well shall not be issued unless the applicant demonstrates, the CEO of applicant attests, and the appropriate federal official (the Secretary of the Interior or Secretary of Energy, as determined by the President) determines that (1) the well design is safe; (2) the blowout preventer has redundant systems to prevent or stop a blowout for all foreseeable blowout scenarios and failure modes; (3) the applicant has an oil spill response plan that ensures the applicant has the capacity to promptly control and stop a blowout if the blowout preventer and other well control measures fail, and (4) the applicant has the capacity to begin drilling a relief well promptly and complete drilling of a relief well expeditiously.

Subsection (b) requires an operator to meet the same requirements as those in subsection (a) in order to obtain federal approval to drill a covered well that does not currently require a federal permit. This approval function can be delegated to states.

Subsection (c) provides that a permit or approval issued under this section shall require the operator to seek a revision of such permit or approval in the event of a material modification to the well design, blowout preventer, plan to promptly stop a blowout, or capability to begin or complete drilling of a relief well for such covered well.

Section 3. Blowout preventer requirements

Subsection (a) requires the appropriate federal official to issue regulations to require the use of a blowout preventer for a covered well and to prescribe safety standards that require that the blowout preventer will operate effectively at the location it will be deployed. At a minimum, the regulations must include the following requirements: (1) two sets of blind shear rams appropriately spaced to prevent blowout preventer failure if a drill pipe joint or drill tool is across one set of blind shear rams during a situation that threatens loss of well control; (2) redundant emergency backup control systems capable of activating the blowout preventer when the rig, or critical links between the rig and the blowout preventer, are destroyed or inoperable; (3) regular testing of the emergency backup control systems, including testing during deployment; and (4) as appropriate, remotely operated vehicle intervention capabilities for secondary control, including adequate hydraulic capacity to activate blind shear rams, casing shear rams, and other critical blowout preventer components.

This section also requires studies and recommendations by the Well Control Technical Advisory Committee (established under section 6) regarding (1) whether the use of up to two sets of casing shear rams would improve the safety of blowout preventer systems at covered wells; (2) the risks associated with the failure of hydraulic and activation systems for the blind shear rams and other critical blowout preventer components and the need for redundancy in blowout preventer components; and (3) the risk associated with non-subsea blowout preventers at offshore wells in the event the drilling rig for such well is damaged or destroyed, the riser or other well component between the wellbore and the blowout preventer is damaged or destroyed, or the blowout preventer is rendered inoperative. If, based on any recommendation of the Advisory Committee resulting from these studies, the appropriate federal official determines that safety would be significantly improved by requiring additional measures to mitigate risks, the appropriate federal official shall include such requirements in the regulations issued under the Act.

If the appropriate federal official determines that one of the minimum requirements under this section would be less effective than an alternative technology or practice for all covered wells, or for one or more classes of covered wells, the alternative technology or practice may instead be required.

Subsection (b) requires independent third-party certification of a blowout preventer prior to drilling a covered well. The certification is based on a detailed physical inspection, design review, system integration test, and function and pressure testing. The certification ensures, based on the third-party certifier's best professional judgment, that (1) the blowout preventer is properly designed for and will operate effectively for the drilling conditions, and with the equipment, well design, and location where it will be installed; (2) blind shear rams and casing shear rams will function effectively and cut the drill pipe or casing; (3) emergency control systems will function effectively; and (4) the blowout preventer has not been compromised or damaged from prior service. Recertification is required every 180 days or after any material modification to the blowout preventer or design of the well.

Subsection (c) requires prompt function and pressure testing of a blowout preventer at a covered well after a significant well control event to ensure full operability of all blowout preventer functions.

Subsection (d) includes reporting requirements for blowout preventer maintenance and repair, electronic logs, design specifications, changes to design specifications, and failure during a well control event.

Section 4. Ensuring safe wells and cementing

Subsection (a) requires regulations to ensure the appropriate and safe design of covered wells. The regulations shall (1) in connection with installation of the final casing string, require the installation of at least two independent, tested mechanical barriers, in addition to a cement barrier, across each flow path between hydrocarbon bearing formations and the blowout preventer; (2) require that wells be designed so that a failure of one barrier does not significantly increase the likelihood of failure of another barrier; (3) require that the casing design is appropriate for the intended purpose under reasonably expected wellbore conditions; and (4) require the installation and pressure testing of a lockdown device at the time casing is installed in the wellhead.

Subsection (b) requires regulations for cementing programs of covered wells to ensure that well control will be maintained and there will be no unintended flow of hydrocarbons. At a minimum, the regulations shall require adequate centralization of the casing, a full circulation of drilling fluids prior to cementing, the use of adequate cement volume, and cement bond logs for all cementing programs intended to provide a barrier to hydrocarbon flow.

Subsection (c) requires the well operator to maintain a team of experienced and highly qualified engineers and other appropriate experts to advise the operator on the safety of decisions made during drilling of the well.

Subsection (d) requires regulations to establish procedures and technologies to be used to minimize the risk of ignition and explosion of hydrocarbons or other materials discharged from the well during a blowout or well control event.

Under subsection (e), if the appropriate federal official determines that one of the minimum requirements under this section would be less effective than an alternative technology or practice for all covered wells, or for one or more classes of covered wells, the alternative technology or practice may instead be required.

Subsection (f) requires independent third-party certification, prior to the commencement of drilling, that the covered well meets the requirements of this section, and that, in the independent third party's best professional judgment, the operator's casing designs and cementing programs and procedures ensure that well control will be maintained. Recertification is required after any material modification of the well design.

Section 5. Stop-work requirements

This section requires regulations to establish requirements (1) for operators and contractors to stop non-safety-related work when there are conditions indicating an immediate risk of a blowout at a covered well and (2) that operators adopt policies and procedures

to promote a safety culture and to ensure that non-safety-related work stops in circumstances that present an immediate risk of a blowout.

Section 6. Independent technical advice and certification

Subsection (a) provides for the establishment of an independent Well Control Technical Advisory Committee to review and comment on proposed regulations, respond to requests for advice from the appropriate federal official, provide reports assessing implementation of this Act, and provide periodic reports at least once every five years (1) assessing available blowout preventer and well control technologies, practices, voluntary standards, and regulations in the United States and elsewhere, (2) assessing whether existing regulations are adequate, and (3) recommending modifications to the regulations. The Federal Advisory Committee Act (other than section 14 of the Act) shall apply to the Advisory Committee.

Subsection (b) requires the appropriate federal official to establish standards for the approval of independent third-party certifiers. The appropriate federal official will contract directly with the third-party certifiers and assign third-party certifiers to individual certifications and recertifications. The appropriate federal official shall ensure that a third-party certifier is appropriately qualified for each certification or recertification to which it is assigned and that reviews, inspections, and tests are timely performed. Operators shall pay fees to cover the costs of these activities. It shall be a violation of this Act for any third-party certifier to knowingly or recklessly make any false statement in any document submitted in connection with a certification or recertification.

Subsection (c) allows for the establishment of a panel of independent technical experts to provide technical advice to the appropriate federal official with regard to any well-specific regulatory decision under this Act. Such experts may be drawn from academia, national laboratories, industry, or other sources.

Section 7. Regulations and orders

Subsection (a) requires the appropriate federal official to issue the regulations required by this Act not later than 1 year after the date of enactment. At least once every 5 years, the appropriate federal official shall review the regulations and the recommendations of the Advisory Committee and revise the regulations if they do not adequately protect public health and safety and the environment.

Subsection (b) authorizes the appropriate federal official, prior to the effective date of the initial regulations required by this Act, to issue interim orders applicable to one or more operators to require the operator to have the capacity to prevent and respond to a blowout; use safe and effective blowout preventers, casing designs, cementing programs and procedures, and well designs; and use appropriate procedures and technologies to minimize the risk of ignition or explosion in the event of a blowout or well control event.

Section 8. Well control and blowout prevention inspectors

This section requires periodic unannounced inspections and in-person observation of tests by federal inspectors, as well as the charging of fees from operators to cover the associated costs.

Section 9. Judicial review of regulations

This section provides for judicial review of regulations issued by the appropriate federal official under this Act exclusively in the U.S. Court of Appeals for the District of Columbia Circuit. Any such petition for review shall be filed within 60 days from the date notice of the issuance of the regulation appears in the Federal Register, except that if the petition is based solely on grounds arising after such sixtieth day, then any such petition for review shall be filed within 60 days after such grounds arise.

Section 10. Investigations and information requests

This section provides for the investigation of alleged or suspected violations of this Act and for the gathering of information needed to implement this Act.

Section 11. Citizen suits

The section provides for citizen suits to compel compliance with this Act.

Section 12. Remedies and penalties

This section provides for enforcements of the provisions of this Act and regulations, orders, approvals under section 2(b), and permits issued under this Act through (1) civil actions for temporary restraining orders or injunctions, (2) civil penalties for noncompliance, and (3) criminal penalties for knowing and willful violations.

Section 13. Retaliation prohibited

This section prohibits retaliation against whistleblower employees, including those who report violations of this Act or refuse to participate in conduct that is not in compliance with this Act.

Section 14. Chemical Safety Board investigation

This section amends the Clean Air Act to facilitate the investigation of the Chemical Safety and Hazard Investigation Board into the facts, circumstances, and causes of marine oil spills resulting from accidental fire, explosion, or release involving an offshore oil or gas exploration or production facility.

Section 15. State and Federal regulation

This section relates to the determination of which wells are covered wells subject to the requirements of this Act. It allows any state to submit to the appropriate federal official a plan demonstrating that the state's regulatory regime provides effective regulation of oil or gas exploration or production wells located in such state. In order to meet such standard for offshore wells not located on the outer Continental Shelf, the state must show that it has established requirements comparable to those applicable to covered wells under this Act, or alternative requirements providing an equal or greater level of safety. In order to meet such standard for onshore wells not located on federal or tribal land, the state must show that it has established regulations applicable to such wells to effectively protect public health and safety and the environment. In the case of wells on federal or tribal land, the appropriate federal official shall determine whether the combination of the federal,

state, and tribal regulation applicable to such wells effectively protects public health and safety and the environment.

If the appropriate federal official determines that a state regulatory regime does not meet the applicable standard, the appropriate federal official shall identify the deficiencies that are the basis for such determination and provide a reasonable period of time for the state to remedy the deficiencies. In the event a state does not concur in the appropriate federal official's finding that the state cannot effectively regulate an onshore well not located on federal or tribal land, the appropriate federal official may decide to regulate such well as a covered well under this Act. The state may file a legal action challenging such a decision. If the state files such a legal action, the authority of the appropriate federal official to regulate such wells as covered wells shall be stayed until the conclusion of the litigation, including any appeals. The judicial standard of review of the decision of the appropriate federal official shall be a clear and convincing evidence standard.

Section 16. Savings clause

This section provides that nothing in this Act shall be construed to preempt state or local regulation of oil and gas exploration and production wells drilled in state waters, on state lands, or on private lands.

Section 17. Definitions

This section provides definitions of key terms in the Act.

A "covered well" is defined as: (A) an oil or gas exploration or production well that is located on the Outer Continental Shelf; or (B) an offshore oil or gas exploration or production well that (1) is not located on federal or tribal land; (2) is not a marginal well; (3) based on criteria established by rule by the appropriate federal official, could, in the event of a blowout, lead to extensive and widespread harm to public health and safety or the environment; and (4) is located in a state that the appropriate federal official determines under section 15 cannot effectively regulate the well; or (C) an onshore oil or gas exploration or production well that (1) is not located on federal or tribal land; (2) is not a marginal well; (3) based on criteria established by rule by the appropriate federal official, could, in the event of a blowout lead to extensive and widespread harm to public health and safety or the environment; (4) is located in a state that the appropriate federal official determines under section 15 cannot effectively regulate the well; and (5) with respect to which the state concurs in the appropriate federal official's finding that the state cannot effectively regulate the well; or (D) an oil or gas exploration or production well that (1) is located on federal or tribal land; (2) is not a marginal well; (3) based on criteria established by rule by the appropriate federal official, could, in the event of a blowout lead to extensive and widespread harm to public health and safety or the environment; and (4) is determined by the appropriate federal official under section 15 to be not subject to effective regulation.

The Committee intends that "extensive and widespread harm" means large-scale and geographically widespread ecological and economic harm of the magnitude caused by the Santa Barbara, Exxon Valdez, Ixtoc, Montara, or Deepwater Horizon spills. The

Committee intends that “tribal lands” means land belonging to a federally recognized Indian tribe or a member thereof that is held in trust by the United States, or land held in fee by a federally recognized Indian tribe or a member thereof, that is subject to the regulatory jurisdiction of a federally recognized Indian tribe or of the federal government with regard to oil or gas drilling operations.

A marginal well is defined as a production well that produces no more than 10 barrels of oil and no more than 60,000 cubic feet of natural gas per day.

Section 18. Study on relief wells

Under this section, within 60 days of the date of enactment of this Act, the appropriate federal official shall enter in an arrangement with the National Academy of Engineering under which the Academy shall, not later than 1 year after such arrangement is entered into, submit to the appropriate federal official and Congress a report that assesses the economic, safety, and environmental impacts of requiring 1 or more relief wells to be drilled in tandem with some or all covered wells. It is the intent of the Committee that such study would include an examination of the experience of other countries with comparable requirements.

Section 19. Report on pending federal drilling applications

Under this section, within 30 days of enactment of this Act, the appropriate federal official shall report to Congress on the status of all pending federal drilling and drilling-related applications and permits, the amount of time that these applications and permits have been pending, and any reasons for delay in approval.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

CLEAN AIR ACT

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TITLE I—AIR POLLUTION PREVENTION AND CONTROL

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PART A—AIR QUALITY AND EMISSION LIMITATIONS

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SEC. 112. HAZARDOUS AIR POLLUTANTS.

(a) * * *

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(r) PREVENTION OF ACCIDENTAL RELEASES.—

(1) * * *

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(6) CHEMICAL SAFETY BOARD.—

(A) * * *

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(T) AGREEMENT.—Not later than 30 days after the date of enactment of this subparagraph, the Chemical Safety and Hazard Investigation Board, the Coast Guard, and the Department of the Interior shall enter into an agreement in order to facilitate the Board's investigation of the facts, circumstances, and causes of an accidental fire, explosion, or release involving an offshore oil or gas exploration or production facility (regardless of whether there is a resulting marine oil spill). Such agreement shall provide the Board with the following:

(i) Unrestricted access to any personnel, records, witness statements, recorded witness interviews, and physical or documentary evidence related to an offshore oil or gas exploration or production facility under investigation collected or possessed by the Coast Guard or the Department of the Interior.

(ii) The ability to conduct recorded interviews of all agency personnel and contractors and the right to obtain records related to Federal regulatory, inspection, enforcement, and safety programs for offshore oil or gas exploration and production.

(iii) The right to participate equally in planning and executing any testing of relevant items of physical evidence related to the cause of the accident.

(iv) Such support and facilities as may be necessary for the Board's investigation, including transportation to the accident site, coastal waters and affected areas, and other offshore oil or gas exploration and production facilities without cost to the Board.

(U) RECOMMENDATIONS.—Based on an investigation of an accidental fire, explosion, or release involving an offshore oil or gas exploration or production facility, the Board shall make recommendations with respect to preventing subsequent accidental fires, explosions, or releases to the Secretary of the Interior and the Commandant of the Coast Guard. The Secretary of the Interior and the Commandant of the Coast Guard shall respond formally and in writing to any recommendation of the Board within 90 days of the receipt of such recommendations.

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