

MEMORANDUM OF UNDERSTANDING
BETWEEN
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF SAFETY AND ENVIRONMENTAL
ENFORCEMENT
AND
U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF TRANSPORTATION
STATISTICS

Effective this 18 day of August, 2016, the U.S. Department of the Interior, the Bureau of Safety and Environmental Enforcement (BSEE) and the U.S. Department of Transportation, the Bureau of Transportation Statistics (BTS) (together the Parties) hereby enter into this Memorandum of Understanding (MOU) and provide as follows:

WHEREAS, in accordance with the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. § 1331 *et seq.*), BSEE exercises safety and environmental enforcement functions related to oil and gas facilities engaged in operations on the Outer Continental Shelf (OCS);

WHEREAS, BSEE prescribes rules and regulations necessary to carry out the provisions of OCSLA;

WHEREAS, the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling recommended that the Department of the Interior develop more detailed requirements for incident reporting and data concerning offshore incidents and “near misses” to allow for better tracking of incidents and stronger risk assessments and analysis applicable to all offshore activities;

WHEREAS, 30 C.F.R. § 250.730(c) requires that companies engaged in oil and gas operations on the OCS follow certain procedures to submit reports of failures of a blowout preventer (BOP) system or BOP system component (BOP failure reports);

WHEREAS, 30 C.F.R. § 250.730(c)(4) states that companies must submit BOP failure reports to BSEE’s Chief of the Office of Offshore Regulatory Programs;

WHEREAS, 30 C.F.R. § 803(a), as proposed,¹ would require that companies provide notices of safety and pollution prevention equipment (SPPE) failures to BSEE’s Chief of the Office of Offshore Regulatory Programs or the Chief’s designee;

WHEREAS, 30 C.F.R. § 803(b),² as proposed, would require that companies submit SPPE failure analysis reports in certain circumstances to BSEE’s Chief of the Office of Offshore Regulatory Programs or the Chief’s designee;

WHEREAS, 30 C.F.R. § 803(c),³ as proposed, would require that companies submit reports of

¹ 78 Fed. Reg. 52240 (August 22, 2013); BSEE Proposed Rule: “Oil and Gas and Sulphur Operations on the Outer Continental Shelf — Oil and Gas Production Safety Systems.”

² Id.

³ Id.

specified SPPE design changes and procedure changes (*i.e.*, changes to operating and repair procedures) to BSEE's Chief of the Office of Offshore Regulatory Programs or the Chief's designee;

WHEREAS, BTS compiles, analyzes, and disseminates information on the Nation's transportation systems, including the extent, use, condition, performance, and consequences of those systems;

WHEREAS, 49 U.S.C. § 6302 provides that BTS shall establish a program to effectively integrate safety data across modes; to address gaps in existing safety data programs of the Department of Transportation; to collect, compile, analyze, and publish a comprehensive set of transportation statistics on the performance and impacts of the national transportation system, including statistics on transportation safety across all modes and intermodally; consequences of transportation for the human and natural environment; and the state of good repair of United States transportation infrastructure;

WHEREAS, Section 6017 of the FAST Act (49 U.S.C. § 6302(d)) provides that the Director of BTS, shall not be required to obtain the approval of any other officer or employee of the Department of Transportation with respect to the collection or analysis of any information;

WHEREAS, 49 U.S.C. § 6306 authorizes BTS to enter into agreements with other agencies, with or without reimbursement, to use the services, equipment, records, personnel, information, and facilities of other agencies, subject to the conditions that the agency consents to;

WHEREAS, the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (44 U.S.C. § 3501 note), can provide strong confidentiality protection for commercial information acquired for statistical purposes under a pledge of confidentiality;

WHEREAS, BSEE and BTS have determined that it is in the public interest to collect and process the BOP failure reports required by 30 CFR 250.730(c) under a pledge of confidentiality for statistical purposes only;

WHEREAS, BSEE and BTS have determined that if BSEE promulgates a final rule that contains SPPE reporting and notice requirements (SPPE reports) that are substantially similar to those in the proposed rule at 30 C.F.R. § 803(a), (b), and (c),⁴ it will be in the public interest to collect and process these reports and notices under a pledge of confidentiality for statistical purposes only;

WHEREAS, BSEE and BTS have determined that BOP failure reports and SPEE reports fit the definition of near-miss safety data and may be used to develop statistical models of leading indicators, predictive of more serious safety events on the OCS;

WHEREAS, BTS has determined that the BOP failure reports required by 30 CFR 250.730(c) can be acquired under CIPSEA when provided directly to BTS;

⁴ Id.

WHEREAS, BTS has determined that the SPPE reports that would be required by proposed 30 CFR 250.803(a), (b), and (c) could be acquired under CIPSEA when provided directly to BTS

WHEREAS, under CIPSEA, BTS is a statistical agency and BSEE is a nonstatistical agency or unit;

WHEREAS, as a statistical agency or unit, BTS may directly acquire information from respondents; protect the confidentiality of that information under a pledge of confidentiality; and, designate agents (including contractors) to acquire information and perform statistical activities with CIPSEA protected information;

WHEREAS, only statistical agencies or units, such as BTS, may protect statistical information under CIPSEA if that information is acquired by contractors;

WHEREAS, BSEE as a nonstatistical agency may not invoke CIPSEA to acquire information under a pledge of confidentiality for statistical purposes by using contractors; and

WHEREAS, CIPSEA Guidance from the Office of Management and Budget⁵ advises that a nonstatistical agency or unit that wishes to acquire information with CIPSEA protection using agents or contractors may consider entering into an agreement with a Federal statistical agency or unit;

NOW, THEREFORE, the Parties agree as follows:

1. On behalf of BSEE, BTS will acquire the BOP failure reports required by 30 CFR 250.730(c) and perform statistical activities on that information subject to CIPSEA limitations and penalties.
2. If BSEE promulgates a final rule that contains regulations concerning SPPE reports that are substantially similar to those in the proposed rule at 30 C.F.R. § 803(a), (b), and (c),⁶ on behalf of BSEE, BTS will acquire the SPPE reports that would be required by 30 CFR 250.803(a), (b), and (c) and perform statistical activities on that information subject to CIPSEA limitations and penalties.
3. Upon acquisition of the BOP failure reports and the SPPE reports, BTS will be responsible for the control of any confidential information contained therein.
4. With respect to the acquisition and treatment of the information in the BOP failure reports and the SPPE reports, BTS will comply with all relevant requirements and guidelines applicable to statistical agencies or organizational units that acquire or access confidential statistical information protected under CIPSEA, including, but not limited to:
 - a. The Paperwork Reduction Act (44 U.S.C. §§ 3501 – 3521);
 - b. CIPSEA; and

⁵ "Implementation Guidance for Title V of the E-Government Act, [CIPSEA]" 72 Fed. Reg. 33362, 33375 (June 15, 2007).

⁶ n. 1 (*supra*).

c. OMB's Implementation Guidance for Title V of the E-Government Act, CIPSEA.⁷

5. Termination:

- a. This MOU will remain in force until terminated by either Party.
- b. Either party may terminate this MOU by giving notice of termination in writing. Such termination will become effective no later than 120 days from the date of receipt of notice of termination by the other party.

6. Notices:

- a. Notices and correspondence concerning the implementation of this MOU may be transmitted to Michael Pittman (Michael.Pittman@bsee.gov) for BSEE and Demetra Collia (Demetra.Collia@dot.gov) for BTS.
- b. Notices concerning this MOU may be transmitted electronically.

7. Modification: This MOU may be modified in writing upon the agreement of both Parties to the proposed modification.

8. No obligation of funds: The Parties acknowledge and agree that nothing in this MOU constitutes an obligation of funds.

9. Other laws: The Parties agree to implement this MOU consistent with applicable Federal statutes and subject to the availability of appropriations.

10. Third party rights: This MOU does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

[Signature Page Follows]

⁷ n. 5 (*supra*).

Signatures:

For the Bureau of Safety and Environmental
Enforcement:



Douglas Morris
Chief, Office of Offshore Regulatory
Programs

For the Bureau of Transportation Statistics:



Patricia Hu
Director, Bureau of Transportation
Statistics
