

## OORP Operational Program Documents

**Program Area:** Regulatory Development

**Document Type:** Inter-agency Protocol

**Title:** “Rule Sharing Protocol between the Bureau of Safety and Environmental Enforcement – U.S. Department of the Interior and the U.S. Coast Guard – U.S. Department of Homeland Security”

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**Purpose:** The purpose of this Protocol is to help with identification and implementation of the regulatory development responsibilities of BSEE and USCG related to Outer Continental Shelf (OCS) energy development when there is a shared interest in the regulated subject. Consistent with the BSEE-USCG Memorandum of Understanding (MOU) of November 2012 (the 2012 MOU), this Protocol will help foster a collaborative environment in which BSEE and USCG can develop compatible regulations that promote safety and the protection of the environment on the OCS. Under the Protocol, BSEE and USCG will share with each other copies of draft proposed and final rules (and any supporting analyses) on subjects of common interest prior to signature of the rule or submission to OMB for formal interagency review. If practicable, each agency will provide a draft rule notice to the other agency at least 30 days before it is signed. If BSEE or the USCG determines that a draft rule is particularly sensitive, it may condition providing the draft for review upon the other agency’s agreement to share the draft regulation only with specific offices in that agency that have a direct interest in the rulemaking.

**History:** Under the 2012 MOU, BSEE and the USCG agreed to promote interagency consistency in the regulation of OCS activities under the respective jurisdictions of BSEE and the USCG, minimize duplication of effort, and aid in the successful completion of the assigned missions and responsibilities. With regard to regulatory development, BSEE and the USCG agreed to provide each other relevant information for review and comment early and throughout the regulatory development process.

Drafts of this document were reviewed by the Chief of OORP and BSEE Leadership in late 2014 - early 2015 and the final draft addressed comments made by leadership.

**Current Status:** Signed by the Chief of OORP and USCG, Director of Commercial Regulations and Standards (5PS) and effective May 29, 2015.

**Identification of Gaps in Policies and Procedures:** N/A

**Signed/Approved Documents That Need Updates:** N/A

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**RULE SHARING PROTOCOL  
BETWEEN THE  
BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT –  
U.S. DEPARTMENT OF THE INTERIOR  
AND THE  
U.S. COAST GUARD -  
U.S. DEPARTMENT OF HOMELAND SECURITY**

**A. PURPOSE**

The parties to this Rule Sharing Protocol are the United States Coast Guard (USCG) and the Bureau of Safety and Environmental Enforcement (BSEE) (together the Participating Agencies). The purpose of this Protocol is to identify the regulatory development responsibilities of BSEE and the USCG related to Outer Continental Shelf (OCS) energy and mineral development when there is a shared interest in the regulated subject. The intent of this Protocol is to establish a successful collaborative environment for the Participating Agencies to develop common, compatible regulations to promote the safety of life and property and the protection of the environment.

Implementation of this Protocol will be in accordance with the Memorandum of Understanding (MOU) between the BSEE and the USCG, signed on 27 November 2012 (the 2012 MOU). The Participating Agencies will review their internal procedures and, where appropriate, revise them to accommodate the provisions of this Protocol.

**B. AGENCY RESPONSIBILITIES**

Under the 2012 MOU, the Participating Agencies agreed to promote interagency consistency in the regulation of the OCS activities under the respective jurisdiction of the Participating Agencies, minimize duplication of effort, and aid in the successful completion of the assigned missions and responsibilities. Specific to regulatory development, the Participating Agencies agreed to provide each other relevant information for review and comment early and throughout the regulatory development process.

Consistent with the Administrative Procedure Act, the Participating Agencies may share with each other draft rules and supporting analyses on subjects of common interest. It is understood that some regulations may have high political sensitivity and public interest. If a Participating Agency determines that a draft regulation at issue is particularly sensitive, it may condition providing the draft for review upon the other Participating Agency's agreement to share the draft regulation only with specific offices that have a direct interest in the rulemaking.

### **C. PROTOCOL**

This document is intended to provide a working protocol to facilitate the regulatory development goals of the 2012 USCG/BSEE MOU and related MOAs. Specifically, this Protocol establishes:

- Participating Agency Liaisons to facilitate rulemaking coordination for proposed and final rules
- Specific procedures, for inclusion in the Participating Agencies' internal rulemaking processes, regarding coordination communications
- A process for dispute resolution.

#### **Participating Agency Liaison**

For the purposes of this Protocol, the designated Participating Agency Liaisons are:

**USCG: Chief, Office of Regulations and Administrative Law (CG-0943)**

**BSEE: Chief, Office of Regulations and Standards Branch (RSB), Office of Offshore Regulatory Programs**

The Participating Agencies agree that each liaison may, when appropriate, direct inquiries from the other Participating Agency to an appropriate subject matter expert (SME). If requested by the Participating Agency Liaison, the SME of that Participating Agency may act as the primary point of contact (POC) for the details of that specific rulemaking.

#### **Coordination Communications**

Each Participating Agency will follow its own internal regulatory development and clearance process. For proposed and final rulemakings where the Participating Agencies have a shared interest, this Protocol establishes a coordination structure and specific communication points in the rulemaking process.

A Coordination Communication table is provided in Attachment 1. The communication points between the Participating Agencies include:

- **Initial Contact and Supporting Documents for Specific Rulemakings**
  - The Participating Agency initiating the rulemaking project determines whether coordination is needed. If coordination is needed, the liaison for that Participating

Agency promptly notifies the liaison for the other Participating Agency of the project. Such notification may include sharing of any relevant scoping documents and providing SME contact information.

- The Participating Agencies will routinely reassess if coordination is necessary through the different phases of the rulemaking. Notification may be made at any time during the rulemaking process if new information provided during the drafting of the proposed or final rule leads to the determination that coordination is needed.
- **Development of Rulemaking Documents**
  - If requested by the Participating Agency Liaison, a designated SME may coordinate directly with designated counterparts in the other Participating Agency to ensure inter-agency alignment. For example, this may include sharing drafts of relevant documents throughout the rulemaking development or directing questions on specific issues or requests for technical expertise. The SME must keep the Agency Liaison or a designated representative informed of the substance of communications with the other agency's SME, and must promptly inform the Agency Liaison or a designated representative any time the other agency is unresponsive.
- **Final Review of Rulemaking Documents**
  - The liaison for the Participating Agency that initiated the rulemaking shares a final draft of the regulation with the liaison for the other Participating Agency for review and any final feedback. In all cases, the Agency Liaisons agree in advance on a deadline for completion of review, and the initiating agency should work to provide the reviewing agency with a minimum of 30 days to review. If the rulemaking has an expedited schedule, or other urgent circumstances exist, the time period for review may be less than 30 days if agreed upon by the Agency Liaisons.
- **Ongoing Coordination of Rulemaking Projects**
  - Participating Agencies will share, on a quarterly basis, a current list of ongoing rulemaking projects in order to identify any emerging issues that may be of interest to the other Participating Agency. The Participating Agency Liaisons will communicate with each other as soon as possible if an open rulemaking may implicate the other Participating Agency interests.
  - The USCG/BSEE Prevention Workgroup created under the 2012 MOU will have a standing agenda item at the USCG/BSEE Principles Meeting to highlight the progress and status of any rulemakings where the Participating Agencies are coordinating with each other. The quarterly list of rulemaking projects should be provided to the Prevention Workgroup approximately two weeks before each workgroup quarterly meeting.

## Dispute Resolution

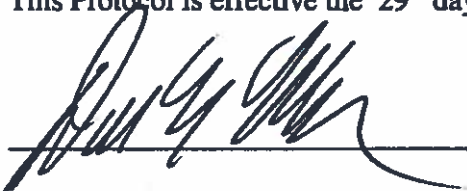
Each Participating Agency will attempt to resolve any disputes at the lowest possible level. When necessary, the Participating Agency Liaisons will be the POCs for any disagreements between the Participating Agencies in the rulemaking development process. Agency Liaisons endeavor to expeditiously resolve disputes, provide each other reasonable advance notice of the existence of disputes, and agree in advance on the time within which each dispute should be resolved. If no resolution is reached by the Participating Agency liaisons, each or both will elevate the issue to their appropriate decision maker(s). The other Participating Agency will be notified of such elevation to facilitate open communications between each participating Agency's leadership.

## **D. General Provision**

This Protocol is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. This Protocol neither expands nor is in derogation of those powers and authorities vested in the participating agencies by applicable law. Nothing in this Protocol is intended to conflict with current law or regulation or the directives of the USCG or BSEE. If a term of this Protocol is inconsistent with such authority, that term is invalid, but the remaining terms and conditions of this Protocol will remain in full force and effect.

**References:** Memorandum of Understanding (MOU) between the BSEE and the USCG, signed on 27 November 2012.

This Protocol is effective the 29<sup>th</sup> day of May, 2015.






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**USCG/BSEE Regulatory Coordination Process**

USCG	Coordination Communications	BSEE
Sponsoring Program Office prepares the Request for Project Initiation (RPI).		Sponsoring Program Office or Office of Offshore Regulatory Programs (OORP) prepares Concept Paper.
Regulatory Agenda Planning Team (RAPT) determines the need for USCG/BSEE coordination based on agreed criteria.		Management Operations and Policy (MOP) Group approves Concept paper, including BSEE coordination.
USCG Liaison notifies BSEE Liaison through e-mail, provides copy of RPI, and confirms rulemaking strategy, and asks whether a BSEE Subject Matter Expert (SME) will be provided.	Initial contact and supporting documents 	BSEE Liaison notifies USCG Liaison through e-mail, provides copy of Concept Paper, confirms rulemaking strategy, and asks whether a USCG Subject Matter Expert (SME) will be provided.
Rulemaking team prepares the Rulemaking Project Proposal (RPP) including the BSEE SME if one has been identified.		Regulations and Standards Branch (RSB) prepares Regulatory Scoping Document including the USCG SME if one has been identified.
Marine Safety and Security Council (MSSC) approves project and BSEE coordination. Rulemaking added to priority list.		Senior BSEE Management approves Regulatory Scoping Document, including USCG coordination.
If authorized by the USCG Liaison, SME coordinates directly with BSEE SME during rulemaking document development to gain alignment.  Disagreement referred to Agency Liaison for resolution.	Development of Rulemaking document 	If authorized by the BSEE Liaison, SME coordinates directly with USCG SME during rulemaking document development to ensure alignment.  Disagreement referred to Agency Liaison for resolution.
USCG Liaison shares final draft with BSEE Liaison for last feedback using agreed response time.	Final Review 	BSEE Liaison shares final draft with USCG Liaison for last feedback using agreed response time.
Rulemaking team manages internal and external clearance according to internal process.		OORP manages internal and external clearance according to internal process.
Publication in the Federal Register.		Publication in the Federal Register.

***Ongoing Coordination***

- **USCG and BSEE will share current list of open rulemaking projects (USCG) 3-6-9 List of Regulatory Actions (BSEE) Quarterly list of Regulatory Actions**
- **Rulemaking Coordination as ongoing agenda item for Prevention Workgroup meeting**

