

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5626
OFFERED BY MR. WAXMAN OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

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

**4 SEC. 2. NO DRILLING OF COVERED WELLS WITHOUT DEM-
5 ONSTRATED ABILITY TO PREVENT AND CON-
6 TAIN LEAKS.**

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

14 (1) the well design is safe;

15 (2) the blowout preventer has redundant sys-
16 tems to prevent or stop a blowout for all foreseeable
17 blowout scenarios and failure modes;

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

6 (4) the applicant has the capability to begin
7 drilling of a relief well promptly, and complete such
8 drilling of a relief well to stop a blowout expedi-
9 tiously.

10 (b) OTHER COVERED WELLS.—Effective one year
11 after the date of enactment of this Act, any operator who
12 intends to drill a covered well for which a permit to drill
13 is not otherwise required to be issued by a Federal official
14 shall notify the appropriate Federal official of the opera-
15 tor's intent to drill such covered well, and shall not com-
16 mence drilling such well without approval of the appro-
17 priate Federal official. The appropriate Federal official
18 shall approve the commencement of drilling of such well
19 only if the operator has made a demonstration and attes-
20 tation, and the appropriate Federal official has made a
21 determination, equivalent to those required under sub-
22 section (a). The appropriate Federal official may delegate
23 the duties associated with this subsection to a State if the
24 appropriate Federal official determines that such State is
25 capable of faithfully executing such duties.

1 (c) MATERIAL MODIFICATIONS.—A permit or ap-
2 proval for a covered well issued under this section shall
3 require the operator to seek a revision of such permit or
4 approval in the event of a material modification to the well
5 design, blowout preventer, plan to promptly stop a blow-
6 out, or capability to begin or complete drilling of a relief
7 well for such covered well.

8 **SEC. 3. BLOWOUT PREVENTER REQUIREMENTS.**

9 (a) BLOWOUT PREVENTER ADEQUACY STAND-
10 ARDS.—

11 (1) STANDARDS.—The regulations issued under
12 section 7(a) shall require the use of blowout pre-
13 venters in all covered well drilling operations and
14 prescribe safety standards for such blowout pre-
15 venters. Such standards shall require that a blowout
16 preventer will operate effectively at the location
17 where it will be deployed to prevent a blowout. At
18 a minimum, such standards shall include the fol-
19 lowing requirements:

20 (A) Two sets of blind shear rams appro-
21 priately spaced to prevent blowout preventer
22 failure if a drill pipe joint or drill tool is across
23 one set of blind shear rams during a situation
24 that threatens loss of well control.

1 (B) Redundant emergency backup control
2 systems capable of activating the relevant com-
3 ponents of a blowout preventer, including when
4 the communications link or other critical links
5 between the drilling rig and the blowout pre-
6 venter are destroyed or inoperable.

7 (C) Regular testing of the emergency
8 backup control systems, including testing dur-
9 ing deployment of the blowout preventer.

10 (D) As appropriate, ROV intervention ca-
11 pabilities for secondary control of all blowout
12 preventer functions, including adequate hydrau-
13 lic capacity to activate blind shear rams, casing
14 shear rams, and other critical blowout preventer
15 components.

16 (2) ADVISORY COMMITTEE RECOMMENDA-
17 TIONS.—In accordance with section 6 of this Act,
18 the appropriate Federal official shall request that
19 the Advisory Committee provide the appropriate
20 Federal official with each of the following:

21 (A) A recommendation as to whether re-
22 quiring up to two sets of appropriately-spaced
23 casing shear rams in blowout preventers for all
24 covered wells, or at certain classes of covered

1 wells, would significantly improve the safety of
2 blowout preventer systems at such wells.

3 (B) An evaluation of the risks associated
4 with the failure of hydraulic and activation sys-
5 tems for the blind shear rams and other critical
6 components of blowout preventers at covered
7 wells and, as appropriate, a recommendation on
8 how to best achieve an appropriate level of re-
9 dundancy to address such risks.

10 (C) An evaluation of the risks associated
11 with blowout preventers other than subsea
12 blowout preventers at offshore covered wells in
13 the event the drilling rig for such covered well
14 is damaged or destroyed, the riser or other well
15 component between the wellbore and the blow-
16 out preventer is damaged or destroyed, or the
17 blowout preventer at such covered well is ren-
18 dered inoperative, by a blowout, explosion, or
19 other cause, and, as appropriate, a rec-
20 ommendation on how to best mitigate such
21 risks.

22 If, based on any recommendation of the Advisory
23 Committee under this paragraph, the appropriate
24 Federal official determines that safety would be sig-
25 nificantly improved by requiring additional measures

1 to mitigate risks identified under this paragraph, the
2 appropriate Federal official shall include such a re-
3 quirement in regulations issued under section 7(a).
4 Nothing in this paragraph shall prevent the appro-
5 priate Federal official from adopting any require-
6 ment relating to the issues addressed under this
7 paragraph prior to the submission by the Advisory
8 Committee of an evaluation or recommendation
9 under this paragraph.

10 (3) REGULATORY FLEXIBILITY.—If, after no-
11 tice and an opportunity for public comment, the ap-
12 propriate Federal official determines that a min-
13 imum requirement prescribed under this section
14 would be less effective than an available alternative
15 technology or practice in preventing a blowout at all
16 covered wells, or at one or more classes of covered
17 wells, the appropriate Federal official may include in
18 initial or revised regulations issued under section
19 7(a) a requirement for such alternative technology
20 or practice at all covered wells, or at such class or
21 classes of covered wells, as appropriate, in lieu of the
22 less effective requirement.

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

1 (1) Prior to the commencement of drilling
2 through a blowout preventer at any covered well, the
3 operator shall obtain a written and signed certifi-
4 cation from an independent third party approved
5 and assigned by the appropriate Federal official pur-
6 suant to section 6(b) that the third party—

7 (A) conducted or oversaw a detailed phys-
8 ical inspection, design review, system integra-
9 tion test, and function and pressure testing of
10 the blowout preventer; and

11 (B) in the third-party certifier's best pro-
12 fessional judgment, determined that—

13 (i) the blowout preventer is designed
14 for the specific drilling conditions, equip-
15 ment, and location where it will be in-
16 stalled and for the specific well design;

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

21 (iii) each blind shear ram or casing
22 shear ram will function effectively under
23 likely emergency scenarios and is capable
24 of shearing the drill pipe or casing, as ap-
25 plicable, that will be used when installed;

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

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

7 (2) Not less than once every 180 days after
8 commencement of drilling through a blowout pre-
9 venter at any covered well, or upon implementation
10 of any material modification to the blowout pre-
11 venter or well design at such a well, the operator
12 shall obtain a written and signed recertification from
13 an independent third party approved and assigned
14 by the appropriate Federal official pursuant to sec-
15 tion 6(b) that the requirements in subparagraph (B)
16 of paragraph (1) continue to be met with the sys-
17 tems as deployed. Such recertification determina-
18 tions shall consider the results of tests required by
19 the appropriate Federal official, including testing of
20 the emergency control systems of a blowout pre-
21 venter.

22 (3) Certifications under paragraph (1), recer-
23 tifications under paragraph (2), and results of and
24 data from all tests conducted pursuant to this sub-

1 section shall be promptly submitted to the appro-
2 priate Federal official and made publicly available.

3 (c) ADDITIONAL BLOWOUT PREVENTER TESTING.—

4 The regulations issued under section 7(a) shall require,
5 after a significant well control event at a covered well,
6 prompt function and pressure testing of any blowout pre-
7 venter component used in such well control event to ensure
8 the full operability of all functions of such component. The
9 results of and data from such testing shall be promptly
10 submitted to the appropriate Federal official.

11 (d) DOCUMENTATION AND REPORTING.—The regula-
12 tions issued under section 7(a) shall require—

13 (1) submission to the appropriate Federal offi-
14 cial of documentation of blowout preventer mainte-
15 nance and repair within 24 hours of such mainte-
16 nance and repair;

17 (2) prompt and real-time transmission of the
18 electronic log from a blowout preventer control sys-
19 tem to a secure location where it shall be continu-
20 ously monitored and available for inspection by the
21 appropriate Federal official;

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

1 (4) submission to the appropriate Federal offi-
2 cial of any changes to the design specifications of a
3 blowout preventer in service within 24 hours of such
4 change; and

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

9 **SEC. 4. ENSURING SAFE WELLS AND CEMENTING.**

10 (a) **ENSURING SAFE WELL DESIGN.**—The regula-
11 tions issued under section 7(a) shall require the appro-
12 priate and safe design of covered wells. At a minimum,
13 such regulations shall require—

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

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

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

1 (4) the installation and verification with a pres-
2 sure test of a lockdown device at the time the casing
3 is installed in the wellhead.

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

11 (1) adequate centralization of the casing to en-
12 sure proper distribution of cement;

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

15 (3) the use of an adequate volume of cement to
16 prevent any unintended flow of hydrocarbons be-
17 tween any hydrocarbon-bearing formation zone and
18 the wellhead;

19 (4) cement bond logs for all cementing jobs in-
20 tended to provide a barrier to hydrocarbon flow; and

21 (5) cement bond logs or such other integrity
22 tests as the appropriate Federal official may pre-
23 scribe for cement jobs other than those identified in
24 paragraph (4).

1 (c) ENSURING SAFE DECISIONMAKING.—The regula-
2 tions issued under section 7(a) shall require the well oper-
3 ator to maintain a team of experienced and highly quali-
4 fied engineers and other appropriate experts to advise the
5 operator on the safety of decisions made during the drill-
6 ing of the well that create a risk of loss of well control.

7 (d) PREVENTING IGNITION AND EXPLOSION.—The
8 regulations issued under section 7(a) shall establish proce-
9 dures and technologies to be used during drilling at any
10 covered well to minimize the risk of ignition and explosion
11 of hydrocarbons or any other material discharged from the
12 well during a blowout or well control event. Such regula-
13 tions shall address the diversion of oil, gas, well fluids,
14 and other materials and shall include standards for drill-
15 ing equipment and engines on such equipment.

16 (e) REGULATORY FLEXIBILITY.—If, after notice and
17 an opportunity for public comment, the appropriate Fed-
18 eral official determines that a minimum requirement pre-
19 scribed under this section would be less effective than an
20 available alternative technology or practice in preventing
21 a blowout at all covered wells, or at one or more classes
22 of covered wells, in a situation that threatens loss of well
23 control, the appropriate Federal official may include in ini-
24 tial or revised regulations issued under section 7(a) a re-
25 quirement for such alternative technology or practice at

1 all covered wells, or at such class or classes of covered
2 wells, as appropriate, in lieu of the less effective require-
3 ment.

4 (f) THIRD-PARTY CERTIFICATION.—

5 (1) CERTIFICATION.—The regulations issued
6 under section 7(a) shall require that, prior to the
7 commencement of drilling at any covered well, the
8 operator shall obtain a written and signed certifi-
9 cation from an independent third party approved
10 and assigned by the appropriate Federal official pur-
11 suant to section 6(b) that the well meets the require-
12 ments established by the appropriate Federal official
13 under this section and, that, in the best professional
14 judgment of the independent third party, the opera-
15 tor's well casing designs and cementing programs
16 and procedures ensure that well control will be main-
17 tained and that there will be no unintended flow
18 path between hydrocarbon-bearing formation zones
19 or between any hydrocarbon-bearing zones and the
20 wellhead.

21 (2) RECERTIFICATION.—Upon implementation
22 of any material modification to the well design of
23 such a well, the operator shall obtain a written and
24 signed recertification from an independent third
25 party approved and assigned by the appropriate

1 Federal official pursuant to section 6(b) that the
2 well design continues to meet the requirements es-
3 tablished by the appropriate Federal official under
4 this section.

5 **SEC. 5. STOP-WORK REQUIREMENTS.**

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

10 (1) the operator, or the operator's employees or
11 contractors, immediately stop all work at the covered
12 well, other than the work required to ensure safety,
13 in the event of specified well conditions or other fac-
14 tors indicating that there is an immediate risk of a
15 blowout;

16 (2) the operator adopt policies and procedures
17 to promote a safety culture and ensure that the op-
18 erator, or the operator's employees or contractors,
19 immediately stop all work at the covered well, other
20 than the work required to ensure safety, when the
21 operator, or the operator's employees or contractors,
22 whether on the drilling site or off the drilling site,
23 have identified well conditions, well design, drilling
24 procedures, drilling equipment, or any other factor

1 indicating that there is an immediate risk of a blow-
2 out;

3 (3) the operator, or the operator's employees or
4 contractors, take appropriate action to mitigate risks
5 identified pursuant to paragraph (1) or (2), and ob-
6 tain the concurrence of the appropriate Federal offi-
7 cial that such action is sufficient, prior to resump-
8 tion of work;

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

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

18 (b) RECORDS OF EVENTS.—The appropriate Federal
19 official shall maintain records of all such events, their du-
20 ration, the reason for such events, and the actions taken
21 prior to the resumption of activities.

22 **SEC. 6. INDEPENDENT TECHNICAL ADVICE AND CERTIFI-**
23 **CATION.**

24 (a) WELL CONTROL TECHNICAL ADVISORY COM-
25 MITTEE.—

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

6 (2) MEMBERSHIP.—

7 (A) COMPOSITION.—The Advisory Com-
8 mittee shall be composed of 7 members. Mem-
9 bers shall be qualified by education, training,
10 and experience to provide scientific and tech-
11 nical advice with regard to blowout preventers
12 and other well control equipment and oper-
13 ations. The membership of the Advisory Com-
14 mittee shall be balanced fairly in terms of the
15 points of view represented. At least 3 of the
16 members of the Advisory Committee shall be
17 members of the National Academy of Engineer-
18 ing. No more than 3 of the members of the Ad-
19 visory Committee shall be current employees of
20 entities subject to regulation under this Act or
21 of entities that are contractors of any entity
22 subject to regulation under this Act.

23 (B) APPOINTMENT AND TERMS.—The ap-
24 propriate Federal official shall appoint Advisory
25 Committee members, including a chair and vice-

1 chair to the Advisory Committee. Each term of
2 a member's service on the Advisory Committee
3 shall be 3 years, except for initial terms, which
4 may be up to 5 years in length to allow stag-
5 gering. Members may be reappointed only once
6 for an additional 3-year term.

7 (C) NO PAY; RECEIPT OF TRAVEL EX-
8 PENSES.—Members of the Advisory Committee
9 shall not receive any pay for service on the Ad-
10 visory Committee but may receive travel ex-
11 penses, including a per diem, from the appro-
12 priate Federal official.

13 (D) STAFF AND FACILITIES.—The appro-
14 priate Federal official shall make available to
15 the Advisory Committee such staff and facilities
16 as the chair of the Advisory Committee and the
17 appropriate Federal official determine are nec-
18 essary to carry out the duties of the Advisory
19 Committee.

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

1 (A) assesses available blowout preventer
2 and well control technologies, practices, vol-
3 untary standards, and regulations in the United
4 States and elsewhere;

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

11 (C) as appropriate, recommends modifica-
12 tions to the regulations identified under sub-
13 paragraph (B) to ensure adequate protection of
14 public health and safety and the environment.

15 (4) IMPLEMENTATION ASSESSMENT RE-
16 PORTS.—Not later than March 31 of 2012, and as
17 needed thereafter, but not less frequently than every
18 two calendar years thereafter, the Advisory Com-
19 mittee shall submit to the appropriate Federal offi-
20 cial and to Congress a report that—

21 (A) assesses the appropriate Federal offi-
22 cial's implementation of the requirements of
23 this Act during the preceding year, including
24 well-specific regulatory determinations and

1 oversight, administration of inspections, and
2 third-party certification requirements;

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

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

12 (5) OTHER DUTIES.—In addition to the respon-
13 sibilities set forth under this section, the Advisory
14 Committee shall—

15 (A) review and comment on proposed regu-
16 lations as required under section 7;

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

20 (C) as appropriate, consult with third-
21 party certifiers and with employees of the agen-
22 cy conducting inspections pursuant to this Act,
23 and review reports or other documents sub-
24 mitted to the appropriate Federal official pur-

1 suant to this Act, to obtain information on
2 blowout preventer and well control safety issues.

3 (6) APPLICATION OF FEDERAL ADVISORY COM-
4 MITTEE ACT.—The Federal Advisory Committee Act
5 (other than section 14 of such Act) shall apply to
6 the Advisory Committee to the extent that the provi-
7 sions of such Act do not conflict with the require-
8 ments of this subsection.

9 (b) INDEPENDENT THIRD-PARTY CERTIFIERS.—

10 (1) APPROVAL.—The appropriate Federal offi-
11 cial shall establish appropriate standards for the ap-
12 proval of independent third parties capable of exer-
13 cising the certification functions prescribed under
14 sections 3 and 4, including standards to ensure tech-
15 nical competence and an absence of, or a mechanism
16 for adequately mitigating, any actual or apparent
17 conflicts of interest.

18 (2) ASSIGNMENT.—The appropriate Federal of-
19 ficial shall require that the reviews, inspections,
20 tests, certifications, and recertifications required
21 under sections 3 and 4 are performed or overseen by
22 independent third-party certifiers that have con-
23 tracted directly with the appropriate Federal official
24 rather than the operator and are assigned by the ap-
25 propriate Federal official to individual certifications

1 and recertifications, including the reviews, inspec-
2 tions, and tests required for such individual certifi-
3 cations and recertifications. The appropriate Federal
4 official shall ensure that—

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

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

10 (3) CONTRACTING AND FEES.—The appropriate
11 Federal official shall contract with independent
12 third-party certifiers to perform the reviews, inspec-
13 tions, tests, certifications, and recertifications re-
14 quired by the regulations issued under this Act and
15 shall assess fees upon operators to cover the reason-
16 able costs of such activities.

17 (4) ENFORCEMENT.—It shall be a violation of
18 this Act for any third-party certifier approved under
19 this section to make any false statement, knowingly
20 or with reckless disregard for the truth of such
21 statement, in any document submitted to the appro-
22 priate Federal official in connection with a certifi-
23 cation or recertification under this Act.

24 (c) EXPERT REVIEW PANELS.—The appropriate
25 Federal official may establish a panel of technical experts

1 to provide technical advice with regard to any well-specific
2 regulatory decision under this Act, including permitting
3 determinations under section 2 and agency actions de-
4 scribed in section 4. The appropriate Federal official shall
5 identify a pool of qualified experts in relevant areas for
6 this purpose and shall establish standards for including
7 and maintaining individuals in such pool, including stand-
8 ards to ensure technical competence and an absence of,
9 or a mechanism for adequately mitigating, any actual or
10 apparent conflicts of interest.

11 **SEC. 7. REGULATIONS AND ORDERS.**

12 (a) ISSUANCE, REVIEW, AND REVISION OF REGULA-
13 TIONS.—

14 (1) ISSUANCE OF REGULATIONS.—Not later
15 than 1 year after the date of enactment of this Act,
16 the appropriate Federal official shall issue the regu-
17 lations required under this Act.

18 (2) PERIODIC REVIEW AND REVISION OF
19 RULES.—At least once every 5 years, the appro-
20 priate Federal official shall review and, based on
21 new or updated information and taking into consid-
22 eration the recommendations of the Advisory Com-
23 mittee, shall—

24 (A) revise the regulations issued under this
25 Act to ensure that such regulations adequately

1 protect public health and safety and the envi-
2 ronment; or

3 (B) issue a written determination that re-
4 vision of such regulations would not materially
5 enhance protection of public health and safety
6 or the environment.

7 (3) ADVISORY COMMITTEE REVIEW.—Upon
8 issuance of any proposed regulation under this Act,
9 the appropriate Federal official shall promptly sub-
10 mit such proposed regulation to the Advisory Com-
11 mittee for its review. The Advisory Committee shall,
12 within 90 days, submit comments advising the ap-
13 propriate Federal official whether the proposed regu-
14 lation ensures adequate protection of public health
15 and safety and the environment and, if not, pro-
16 posing modifications to ensure such adequate protec-
17 tion. Before issuance of a final regulation under this
18 Act, the appropriate Federal official shall consider
19 and respond in writing to comments and proposed
20 modification submitted by the Advisory Committee.
21 If the appropriate Federal official declines to adopt
22 such proposed modifications, the appropriate Fed-
23 eral official shall clearly and specifically state the
24 reasons for such decision in the final regulation.

25 (4) RULEMAKING DOCKETS.—

1 (A) ESTABLISHMENT.—Not later than the
2 date of proposal of any regulation under this
3 Act, the appropriate Federal official shall estab-
4 lish a publicly available rulemaking docket for
5 such regulation.

6 (B) DOCUMENTS INCLUDED.—Promptly
7 upon receipt by the appropriate Federal official,
8 all written comments and documentary informa-
9 tion on the proposed rule received from any
10 person for inclusion in the docket during the
11 comment period shall be placed in the docket.
12 The transcript of public hearings, if any, on the
13 proposed rule shall also be included in the dock-
14 et promptly upon receipt from the person who
15 transcribed such hearings. All documents which
16 become available after the proposed rule has
17 been published and which the appropriate Fed-
18 eral official determines are of central relevance
19 to the rulemaking shall be placed in the docket
20 as soon as possible after their availability.

21 (C) DOCUMENTS SUBMITTED TO THE OF-
22 FICE OF MANAGEMENT AND BUDGET.—The
23 drafts of proposed rules submitted by the ap-
24 propriate Federal official to the Office of Man-
25 agement and Budget for any interagency review

1 process prior to proposal of any such rule, all
2 documents accompanying such drafts, and all
3 written comments thereon by other agencies
4 and all written responses to such written com-
5 ments by the appropriate Federal official shall
6 be placed in the docket no later than the date
7 of proposal of the rule. The drafts of the final
8 rule submitted for such review process prior to
9 issuance and all such written comments there-
10 on, all documents accompanying such drafts,
11 and written responses thereto shall be placed in
12 the docket no later than the date of issuance.

13 (b) INTERIM ORDERS.—Prior to the issuance and ef-
14 fective date of initial regulations required pursuant to sub-
15 section (a)(1), the appropriate Federal official may issue
16 an order applicable to one or more operators to ensure
17 that such operator or operators—

18 (1) have the capacity to prevent and respond to
19 a blowout;

20 (2) utilize safe and effective blowout preventers;

21 (3) use safe casing designs and cementing pro-
22 grams and procedures;

23 (4) use appropriate and safe designs of wells;

24 (5) use appropriate procedures and technologies
25 to minimize the risk of ignition or explosion of hy-

1 drocarbons or any other material discharged from
2 the well during a blowout or well control event; and
3 (6) take any other appropriate measure to
4 maintain well control and prevent blowouts.

5 **SEC. 8. WELL CONTROL AND BLOWOUT PREVENTION IN-**
6 **SPECTORS.**

7 The appropriate Federal official shall provide for
8 periodic unannounced inspections by agency inspectors of
9 drilling operations of covered wells to ensure that such op-
10 erations comply with the regulations issued pursuant to
11 this Act. The appropriate Federal official shall also pro-
12 vide for periodic in-person observation by agency inspec-
13 tors of tests undertaken for recertification under section
14 3. The appropriate Federal official may conduct inspec-
15 tions under this section at any time. The appropriate Fed-
16 eral official shall charge and collect fees from operators
17 in amounts the appropriate Federal official determines are
18 sufficient to cover reasonable costs of inspections under
19 this section.

20 **SEC. 9. JUDICIAL REVIEW OF REGULATIONS.**

21 Any person aggrieved by any regulation issued by the
22 appropriate Federal official under this Act may seek judi-
23 cial review of such regulation exclusively in the United
24 States Court of Appeals for the District of Columbia Cir-
25 cuit. Any petition for review under this section shall be

1 filed within 60 days from the date notice of the issuance
2 of such regulation appears in the Federal Register, except
3 that if such petition is based solely on grounds arising
4 after such sixtieth day, then any such petition for review
5 shall be filed within 60 days after such grounds arise.

6 **SEC. 10. INVESTIGATIONS AND INFORMATION REQUESTS.**

7 (a) INVESTIGATIONS.—The appropriate Federal offi-
8 cial is authorized to conduct investigations of violations
9 or alleged or suspected violations of this Act or of any
10 regulation or order issued under this Act. In any investiga-
11 tion conducted under this section, the appropriate Federal
12 official shall have the authority to summon witnesses and
13 to require the production of books, papers, documents, and
14 any other evidence. Attendance of witnesses or the produc-
15 tion of books, papers, documents, or any other evidence
16 shall be compelled by a similar process as in the district
17 courts of the United States.

18 (b) INFORMATION REQUESTS.—The appropriate
19 Federal official may require an operator or third-party
20 certifier, or an employee or contractor thereof, to provide,
21 on a one-time, periodic, or continuous basis, such informa-
22 tion as the appropriate Federal official may reasonably re-
23 quire for the purpose of—

1 (1) making any permitting or other regulatory
2 determination, issuing any order, or developing any
3 regulation under this Act;

4 (2) determining whether any person is in viola-
5 tion of this Act or of any regulation or order issued
6 under this Act; or

7 (3) carrying out any other provision of this Act.

8 **SEC. 11. CITIZEN SUITS.**

9 (a) IN GENERAL.—Any person having a valid legal
10 interest which is or may be adversely affected may com-
11 mence a civil action in a Federal district court of appro-
12 priate jurisdiction on such person’s own behalf to compel
13 compliance with this Act, or any regulation or order issued
14 under this Act, against any person, including the United
15 States, and any other government instrumentality or agen-
16 cy (to the extent permitted by the eleventh amendment
17 to the Constitution) for any alleged violation of any provi-
18 sion of this Act or any regulation or order issued under
19 this Act.

20 (b) NOTICE.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), no action may be commenced under sub-
23 section (a)—

24 (A) prior to 60 days after the plaintiff has
25 given notice of the alleged violation, in writing

1 under oath, to the appropriate Federal official,
2 to the State in which the violation allegedly oc-
3 curred or is occurring, and to any alleged viola-
4 tor; or

5 (B) if the Attorney General of the United
6 States has commenced and is diligently pros-
7 ecuting a civil action in a court of the United
8 States or a State with respect to such matter,
9 but in any such action in a court of the United
10 States any person having a legal interest which
11 is or may be adversely affected may intervene
12 as a matter of right.

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

19 (c) INTERVENTION.—In any action commenced pur-
20 suant to this section, the Attorney General of the United
21 States, upon the request of the appropriate Federal offi-
22 cial, may intervene as a matter of right.

23 (d) COSTS; SECURITY.—A court, in issuing any final
24 order in any action brought pursuant to this section, may
25 award costs of litigation, including reasonable attorney

1 and expert witness fees, to any party, whenever such court
2 determines such award is appropriate. The court may, if
3 a temporary restraining order or preliminary injunction
4 is sought, require the filing of a bond or equivalent secu-
5 rity in a sufficient amount to compensate for any loss or
6 damage suffered, in accordance with the Federal Rules of
7 Civil Procedure.

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

12 **SEC. 12. REMEDIES AND PENALTIES.**

13 (a) INJUNCTIONS AND RESTRAINING ORDERS.—At
14 the request of the appropriate Federal official, the Attor-
15 ney General of the United States or a United States attor-
16 ney shall institute a civil action in the district court of
17 the United States for the district in which the affected
18 operation is located for a temporary restraining order, in-
19 junction, or other appropriate remedy to enforce any pro-
20 vision of this Act or any regulation, order, approval under
21 section 2(b), or permit issued under this Act.

22 (b) CIVIL PENALTIES; HEARING.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), if any person fails to comply with any
25 provision of this Act or any regulation, order, ap-

1 proval under section 2(b), or permit issued under
2 this Act, after notice of such failure and expiration
3 of any reasonable period allowed for corrective ac-
4 tion, such person shall be liable for a civil penalty
5 of not more than \$75,000 for each day of the con-
6 tinuance of such failure. The appropriate Federal of-
7 ficial may assess, collect, and compromise any such
8 penalty. No penalty shall be assessed until the per-
9 son charged with a violation has been given an op-
10 portunity for a hearing. The appropriate Federal of-
11 ficial shall, by regulation at least every 3 years, ad-
12 just the penalty specified in this paragraph to reflect
13 any increases in the Consumer Price Index for all
14 urban consumers.

15 (2) THREAT OF SERIOUS IRREPARABLE OR IM-
16 MEDIATE HARM.—If a failure described in para-
17 graph (1) constitutes or constituted a threat of seri-
18 ous, irreparable, or immediate harm or damage to
19 life (including fish and other aquatic life), property,
20 any mineral deposit, or the marine, coastal, or
21 human environment, a civil penalty of not more than
22 \$150,000 shall be assessed for each day of the con-
23 tinuance of the failure.

24 (c) CRIMINAL PENALTIES.—Any person who know-
25 ingly and willfully—

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

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

10 (3) falsifies, tampers with, or renders inac-
11 curate any monitoring device or method of record re-
12 quired to be maintained under this Act,

13 shall, upon conviction, be punished by a fine of not more
14 than \$10,000,000, or by imprisonment for not more than
15 10 years, or both. Each day that a violation of paragraph
16 (1) continues, or each day that any monitoring device or
17 data recorder remains inoperative or inaccurate because
18 of any activity described in paragraph (3), shall constitute
19 a separate violation.

20 (d) LIABILITY OF CORPORATE OFFICERS AND
21 AGENTS FOR VIOLATIONS BY CORPORATION.—Whenever
22 a corporation or other entity is subject to prosecution
23 under subsection (c), any officer or agent of such corpora-
24 tion or entity who knowingly and willfully, or with willful
25 disregard, authorized, ordered, or carried out the pro-

1 scribed activity shall be subject to the same fines or im-
2 prisonment, or both, as provided for under subsection (c).

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

10 **SEC. 13. RETALIATION PROHIBITED.**

11 (a) PROHIBITION.—No person or employer may dis-
12 charge any employee or otherwise discriminate against any
13 employee with respect to the employee's compensation,
14 terms, conditions, or other privileges of employment be-
15 cause the employee (or any person acting pursuant to a
16 request of the employee)—

17 (1) notified the appropriate Federal official, a
18 Federal or State law enforcement or regulatory
19 agency, or the employee's employer of an alleged vio-
20 lation of this Act, or any regulation, order, section
21 2(b) approval, or permit under this Act, including
22 notification of such an alleged violation through
23 communications related to carrying out the employ-
24 ee's job duties;

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

7 (3) testified before or otherwise provided infor-
8 mation relevant for Congress or for any Federal or
9 State proceeding regarding any provision (or pro-
10 posed provision) of this Act;

11 (4) commenced, caused to be commenced, or is
12 about to commence or cause to be commenced a pro-
13 ceeding under this Act;

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

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

20 (b) ENFORCEMENT ACTION.—Any employee covered
21 by this section who alleges discrimination by an employer
22 in violation of subsection (a) may bring an action governed
23 by the rules and procedures, legal burdens of proof, and
24 remedies applicable under subsections (d) through (h) of
25 section 20109 of title 49, United States Code. A party

1 may seek district court review as set forth in subsection
2 (d)(3) of such section not later than 90 days after receiv-
3 ing a written final determination by the Secretary of
4 Labor.

5 **SEC. 14. CHEMICAL SAFETY BOARD INVESTIGATION.**

6 Section 112(r)(6) of the Clean Air Act (42 U.S.C.
7 7412(r)(6)) is amended by adding at the end the following:

8 “(T) AGREEMENT.—Not later than 30
9 days after the date of enactment of this sub-
10 paragraph, the Chemical Safety and Hazard In-
11 vestigation Board, the Coast Guard, and the
12 Department of the Interior shall enter into an
13 agreement in order to facilitate the Board’s in-
14 vestigation of the facts, circumstances, and
15 causes of an accidental fire, explosion, or re-
16 lease involving an offshore oil or gas exploration
17 or production facility (regardless of whether
18 there is a resulting marine oil spill). Such
19 agreement shall provide the Board with the fol-
20 lowing:

21 “(i) Unrestricted access to any per-
22 sonnel, records, witness statements, re-
23 corded witness interviews, and physical or
24 documentary evidence related to an off-
25 shore oil or gas exploration or production

1 facility under investigation collected or pos-
2 sessed by the Coast Guard or the Depart-
3 ment of the Interior.

4 “(ii) The ability to conduct recorded
5 interviews of all agency personnel and con-
6 tractors and the right to obtain records re-
7 lated to Federal regulatory, inspection, en-
8 forcement, and safety programs for off-
9 shore oil or gas exploration and produc-
10 tion.

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

15 “(iv) Such support and facilities as
16 may be necessary for the Board’s inves-
17 tigation, including transportation to the
18 accident site, coastal waters and affected
19 areas, and other offshore oil or gas explo-
20 ration and production facilities without
21 cost to the Board.

22 “(U) RECOMMENDATIONS.—Based on an
23 investigation of an accidental fire, explosion, or
24 release involving an offshore oil or gas explo-
25 ration or production facility, the Board shall

1 make recommendations with respect to pre-
2 venting subsequent accidental fires, explosions,
3 or releases to the Secretary of the Interior and
4 the Commandant of the Coast Guard. The Sec-
5 retary of the Interior and the Commandant of
6 the Coast Guard shall respond formally and in
7 writing to any recommendation of the Board
8 within 90 days of the receipt of such rec-
9 ommendations.”.

10 **SEC. 15. STATE AND FEDERAL REGULATION.**

11 (a) STATE PLANS.—Any State may submit to the ap-
12 propriate Federal official a plan demonstrating that the
13 State’s regulatory regime meets the applicable standard
14 under subsection (b) for effective regulation of oil or gas
15 exploration or production wells located in such State.

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

21 (1) in the case of offshore wells, establishes re-
22 quirements comparable to those applicable to cov-
23 ered wells under this Act, or alternative require-
24 ments providing an equal or greater level of safety

1 as those applicable to covered wells under this Act;
2 and

3 (2) in the case of onshore wells, effectively pro-
4 tects public health and safety and the environment.

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

12 (d) INEFFECTIVE REGULATION.—If a State does not
13 submit a plan pursuant to subsection (a), or if the appro-
14 priate Federal official determines that a State's regulatory
15 regime does not meet the applicable requirements under
16 subsection (b) and the State does not remedy the defi-
17 ciencies, then such State shall be considered incapable of
18 effectively regulating such wells for purposes of section
19 17(10)(B)(iv).

20 (e) WELLS ON FEDERAL OR TRIBAL LANDS.—In the
21 case of a well on Federal or tribal land, the appropriate
22 Federal official shall determine whether the combination
23 of the Federal, State, and tribal regulation applicable to
24 such well effectively protects public health and safety and
25 the environment. If the appropriate Federal official deter-

1 mines that the combination of Federal, State, and tribal
2 regulation does not effectively protect public health and
3 safety and the environment, then such well shall be consid-
4 ered not subject to effective regulation for purposes of sec-
5 tion 17(10)(C)(iv).

6 **SEC. 16. SAVINGS CLAUSE.**

7 Nothing in this Act shall be construed to preempt
8 regulation by any State or local government of oil and gas
9 exploration and production wells drilled in State waters,
10 on State lands, or on private lands within that State pur-
11 suant to the laws of that State or local government.

12 **SEC. 17. DEFINITIONS.**

13 In this Act:

14 (1) **ADVISORY COMMITTEE.**—The term “Advi-
15 sory Committee” means the Well Control Technical
16 Advisory Committee established pursuant to section
17 6(a).

18 (2) **APPROPRIATE FEDERAL OFFICIAL.**—The
19 term “appropriate Federal official” means the Sec-
20 retary of Energy or Secretary of the Interior, as des-
21 ignated for specific responsibilities provided in this
22 Act by the President of the United States.

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

1 (4) BLOWOUT.—The term “blowout” means the
2 uncontrolled release of hydrocarbons or other mate-
3 rials from a well.

4 (5) BLOWOUT PREVENTER.—The term “blow-
5 out preventer” means a wellhead device or combina-
6 tion of devices designed and intended to prevent a
7 blowout.

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

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

14 (8) CEMENTING.—The term “cementing”
15 means the practice of forcing cement into the annu-
16 lar space between the casing and the bore-hole or be-
17 tween any two pipes within the bore-hole to prevent
18 fluids or gases from finding a flow path through
19 that space.

20 (9) CEMENT BOND LOG.—The term “cement
21 bond log” means a test conducted, using acoustic
22 signals or such other technology as the appropriate
23 Federal official may designate that provides results
24 of equal or better quality, to determine the integrity
25 and completeness of a cementing job for a given well

1 or segment of a well by determining the extent to
2 which the cement has filled annular spaces and
3 bonded to pipes and surrounding formations.

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

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

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

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

13 (ii) is not a marginal well;

14 (iii) based on criteria established by
15 rule by the appropriate Federal official,
16 could, in the event of a blowout, lead to ex-
17 tensive and widespread harm to public
18 health and safety or the environment; and

19 (iv) is located in a State that the ap-
20 propriate Federal official determines under
21 section 15(d) cannot effectively regulate
22 the well; or

23 (C) an oil or gas exploration or production
24 well that—

- 1 (i) is located on Federal or tribal
2 land;
- 3 (ii) is not a marginal well;
- 4 (iii) based on criteria established by
5 rule by the appropriate Federal official,
6 could, in the event of a blowout, lead to ex-
7 tensive and widespread harm to public
8 health and safety or the environment; and
- 9 (iv) is determined by the appropriate
10 Federal official under section 15(e) to be
11 not subject to effective regulation.

12 (11) EXPLORATION WELL.—The term “explo-
13 ration well” means a well intended to determine
14 whether economically recoverable oil, natural gas,
15 natural gas liquids, or other hydrocarbons exist in
16 the geological deposits or strata to or through which
17 the well is drilled.

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

21 (13) LOCKDOWN DEVICE.—The term “lockdown
22 device” means a device at the top of the wellbore de-
23 signed to prevent upward movement of casing after
24 installation.

1 (14) MARGINAL WELL.—The term “marginal
2 well” means a production well that produces no
3 more than 10 barrels of oil and no more than
4 60,000 cubic feet of natural gas per day.

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

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

17 (17) PRESSURE TESTING.—The term “pressure
18 testing” means testing under conditions of elevated
19 hydrostatic pressure generated by natural or artifi-
20 cial means to determine well integrity, the effective-
21 ness of cementing, or the effectiveness of equipment
22 used in the well or to drill the well.

23 (18) PRODUCTION WELL.—The term “produc-
24 tion well” means a well which is being drilled to

1 allow the production of oil, natural gas, natural gas
2 liquids, or other hydrocarbons.

3 (19) ROV.—The term “ROV” is an acronym
4 for Remotely Operated Vehicle, and means an un-
5 manned, remotely operated, submersible device that
6 is capable of relaying images or information, manip-
7 ulating or operating various elements of a blowout
8 preventer or other equipment on the seabed, or per-
9 forming other subsea functions.

10 (20) SUBSEA BLOWOUT PREVENTER.—The
11 term “subsea blowout preventer” means a blowout
12 preventer installed on an offshore well below the sur-
13 face of the water.

14 (21) SYSTEM INTEGRATION TEST.—The term
15 “system integration test” means a test of the var-
16 ious elements of a blowout preventer, equipment as-
17 sociated with the use of such preventer, and the con-
18 trols of the blowout preventer, as combined and con-
19 figured for operation.

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

