

PUBLICATION

MMS Demands Compliance by June 28, 2010

June 23, 2010

The United States Mineral Management Services (MMS) has issued a National Notice to Lessees (NTL No. 2010-N05, effective June 8, 2010) setting forth various certification requirements for leaseholders and operators engaged in mineral exploration and production on the Outer Continental Shelf (OCS). In conjunction with the six-month moratorium on deepwater drilling mandated by President Obama, the MMS has ordered that all OCS operators – through their Chief Executive Officer or other authorized official – "are required to submit a general certification that they are knowledgeable of all operating regulations at 30 CFR 250 – Oil and Gas and Sulphur Operations in the OCS – and that they are conducting their operations in compliance with those regulations." In addition to this general statement of compliance, NTL No. 2010-N05 requires a second specific certification statement related to four particular areas of OCS operations:

1. examination of all well control equipment – including blowout preventers (BOPs) – to ensure proper automated functionality, as well as examination of remote operated vehicle (ROV) hot-stab mechanisms to ensure capabilities for remote activation of BOPs;
2. review of all drilling, casing, cementing, well abandonment (temporary and permanent), completion, and workover practices to ensure that well control is not compromised at any point while the BOP is installed on the wellhead;
3. review of all emergency shutdown and dynamic positioning capabilities vis-à-vis functionality for emergency well control operations;
4. proper training for all well personnel with respect to both normal drilling and emergency well control operations.

These two certifications, or a statement explaining why the certifications can not be made that includes a plan and timetable for future compliance, must be filed with the MMS by 5:00 p.m. EDT June 28, 2010, by mail or email, along with a third certification statement by the signatory CEO, providing as follows: "By signing this certification, I certify in my capacity as authorized official that the statements herein are true and complete to the best of my knowledge. I understand that the submission of false statements to the United States is a criminal offense under 18 U.S.C. Section 1001."

The requirements set forth in NTL No. 2010-N05 are similar to the financial reporting certifications mandated in the wake of the Enron scandal in the comprehensive Sarbanes-Oxley Act – specifically the corporate certification requirements included at 15 U.S.C. § 7241. As a result of the fallout and public outcry arising after the Enron scandal, the Sarbanes-Oxley Act ultimately imposed stiff criminal penalties (\$1 million – \$5 million and/or 10-20 years imprisonment) for false certifications under its reporting provisions.

While NTL No. 2010-N05 does not (at this point) have the force of a federal statute like the Sarbanes-Oxley provisions, the required certification under the NTL expressly recognizes the potential for criminal liability for submission of false information in the context of the required certifications regarding well operations on the OCS.

Baker Donelson can offer assistance with the required certifications, and will continue to monitor legislative activity to keep clients up to date.

If you have questions about this or other compliance and regulatory issues, please contact your Baker Donelson attorney.