



# INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

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[Docket Number USCG-2008-1088]

Docket Management Facility ((M-30))  
U.S. Department of Transportation  
West Building Ground Floor, Room W12-140  
1200 New Jersey Avenue, SE.  
Washington, DC 20590-0001

Re: Notice of Arrival on the Outer Continental Shelf - [RIN 1625-AB28]

To whom it may concern:

The International Association of Drilling Contractors is a trade association representing the interests of drilling contractors, onshore and offshore, operating worldwide. Our membership includes all drilling contractors currently operating mobile offshore drilling units (MODUs) in the areas subject to the jurisdiction of the United States, as well as all MODUs registered in the United States.

In regard to the notice of proposed rulemaking (74 FR 29439), issued by the U.S. Coast Guard on 22 June 2009, IADC strongly supports the intent and the underlying statute, *i.e.*, that for purposes of security the Coast Guard should have timely information regarding the arrival of vessels on the Outer Continental Shelf (OCS) and the identity of the persons on these vessels.

IADC offers the following comments and recommendations for your consideration.

### ***Definition of “OCS Activity” and its impact on the proposal***

The requirements for the advanced Notice of Arrival (NOA) can only be reached through the general requirements contained in 33 CFR Part 140.

The term “OCS activity” is defined in 33 CFR 140.10 as “any offshore activity associated with exploration for, or development or production of, the minerals of the Outer Continental Shelf.” IADC notes that Section 388 of the Energy Policy Act of 2005 amended the Outer Continental Shelf Lands Act to encourage alternative energy related uses of the OCS. However, it is unclear whether such alternative energy-related uses on the OCS should be subject to the provisions of the Coast Guard’s OCS Activities Regulations.

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IADC recommends that the Coast Guard examine section 388 of the Energy Policy Act of 2005, to determine if revision of the definition of “OCS activity” in 33 CFR 140.10 is warranted in order to extend the NOA requirements to vessels engaged in such alternative energy activities.

IADC also notes that the proposed 33 CFR 146.401 seemingly attempts to provide additional guidance regarding the definition of what constitutes an “OCS activity.” IADC views this as a serious issue that warrants in-depth consideration as it has implications far beyond the NOA. We believe that this may be within the scope of the unconsummated Outer Continental Shelf Activities proposed rulemaking (64 FR 68416).

### ***Additional reporting requirements***

IADC notes the discussion in the preamble regarding reporting requirements associated with OCS activities.

In addition to those discussed, 33 CFR 143.15 also has the effect of requiring a notice of arrival for certain vessels arriving on the OCS since these vessels, on arrival, transition from displaying navigational lights in accordance with the International Regulations for Preventing Collisions at Sea 1972, as amended, to displaying obstruction lights as artificial islands. A similar reporting requirement is included in the Code for the Construction and Equipment of Mobile Offshore Drilling Units, 2009, which is expected to be adopted by the IMO Assembly in November 2009, *i.e.*:

- 11.5.1 Each unit, while stationary at the site, including when engaged in drilling operations, should comply with all requirements prescribed in SOLAS chapter IV that are applicable to a ship sailing through the same area. Each unit should also report its position to the relevant World-Wide Navigational Warning Service (WWNWS) NAVAREA Coordinator when arriving on-site, in order for a Navigational Warning to be broadcast. Additionally, units should inform the NAVAREA Coordinator when departing from that site, in order for the broadcast to be cancelled.

Unless the rule is modified to clearly eliminate the need for the NOA for units moving between locations on the OCS (see below), IADC would recommend that the Coast Guard examine whether it is possible to coordinate processing of the NOA requirements with those regarding navigation safety in order to reduce the reporting burdens.

### ***Authority Citation***

While IADC understands that the Coast Guard has the mandate to develop this rule in accordance with section 109 of the SAFE Port Act, we question the assertion of authority under the Ports and Waterways Safety Act and the citation of those authorities (*i.e.*, 33 U.S.C. 1223 and 1226) in addition to that of Public Law No. 109-347, 120 Stat. 1884, Section 109 as authority for this rule. At the time that the Coast Guard proposed the existing NOA rules in 33 CFR 160.206, IADC questioned their applicability to OCS facilities as a “port or place in the United States.” In apparent response to our comments in the preamble to the final rule (68 FR 9538) it stated:

“The MODU’s arrival or change of location on the OCS does not require submission of an NOA, only the notification to the District Commander required by §146.202. If a MODU is

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leaving the OCS to arrive at a U.S. port the MODU must comply with the NOA submission requirement in this rule.”

We conclude from this statement that, notwithstanding the provisions of 43 U.S.C. 1333(a), the Coast Guard did not interpret such OCS locations to be a “port or place in the United States” for the purposes of the Ports and Waterways Safety Act (including, 33 U.S.C. 1223 and 1226). If this conclusion is correct, then we do believe that citation of 33 U.S.C. 1223 and 1226 as authority for this rule is correct.

If 33 U.S.C. 1223 and 1226 are to be included in the authority citation for this rule, IADC asks that the Coast Guard clearly articulate its interpretation of the authorities under the Ports and Waterways Safety Act vis-à-vis OCS facilities, including enforcement and penalty provisions.

### ***Use of Information Reported***

IADC notes the discussion in the preamble regarding the purpose of the rule, associating it with maritime domain safety and security awareness. Notwithstanding the Coast Guard’s assertions regarding security, IADC believes that information supplied in accordance with the rule is likely to be used for other purposes (e.g., for enforcement of cabotage, or OCS employment restrictions). The enclosed Congressional letter of 28 June 2007, speaks to this issue.

### ***Estimated Costs***

IADC has no objection to the Coast Guard’s estimated costs of the proposed rule if it is modified, as suggested below by IADC, to eliminate the need for vessels moving between locations on the OCS to comply with the NOA requirements.

### ***Economic impact***

IADC has no objection to the Coast Guard’s certification of the rule as not having a significant economic impact on a substantial number of small entities. However, regarding the USCG’s statement, “We anticipate the majority of affected entities are not located within the United States nor do they make a significant contribution through payment of U.S. taxes,” IADC finds this statement both misleading and gratuitous. In the case of most OCS activities, owners and employers are required to employ indigenous U.S. labor and pay U.S. taxes as would any enterprise in the United States.

### ***Information Collection Burden***

IADC has no objection to the Coast Guard’s estimates of the information collection burdens of the proposed rule if it is modified (as suggested below by IADC) to eliminate the need for vessels moving between locations on the OCS to comply with the NOA requirements; and to eliminate the need to report certain information regarding persons on board the arriving vessels.

***Proposed amendments to Part 146***

Note: In the comments below we have shown the original text of the proposed rule in bold, italicized text. We have underlined the areas of particular concern.

Following each section (146.103, 146.104, 146.215, 146.401 and 146.405), IADC has provided a recommendation for revised text for the rule. Where similar wording is used in other sections, to reduce excessive redundancy, we ask that the IADC comments and recommendations also be considered in relation to these sections.

***PART 146--OPERATIONS***

***1. The authority citation for part 146 is revised to read as follows:***

***Authority: 33 U.S.C. 1223, 1226; 43 U.S.C. 1333, 1348, 1350, 1356; Sec. 109, Pub. L. No. 109-347, 120 Stat. 1884; Department of Homeland Security Delegation No. 0170.1.***

- See IADC's comments (above under "Authority Citation") regarding use of 33 U.S.C. 1223 and 1226, in the citation.

***2. Add § 146.103 to read as follows:***

***§ 146.103 Safety and Security notice of arrival for U.S. floating facilities.***

***(a) General. At least 96 hours before a U.S. floating facility arrives on the OCS, excluding those U.S. floating facilities arriving directly from a U.S. port or place to engage in OCS activities, the owner or operator of the floating facility, except as provided in paragraph (f) of this section, must submit the following information to the National Vessel Movement Center (NVMC):***

- (1) The location, latitude and longitude, of the floating facility at the time the notice of arrival (NOA) is reported;***
- (2) The area designation and block number or lease number, assigned under 30 CFR 250.154 for identification, where the floating facility plans to perform OCS activities;***

- For both practical and enforcement purposes, consideration needs to be given to how the phrase "arrives on the OCS" is to be interpreted and applied. At the extremes of interpretation are:

(1) Arrival only occurs when the facility/vessel attaches to the seabed for the purpose of engaging in operations subject to the jurisdiction of the OCS Lands Act or commences operations otherwise subject to the Act (*e.g.*, geophysical operations subject to MMS permit); or

(2) Arrival occurs when the vessel/facility enters waters superadjacent to the U.S. OCS, if it is intended that the facility/vessel will ultimately engage in an OCS activity.

- IADC would also note that:

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- (1) For purposes of interpreting U.S. coastwise trade laws, Customs and Border Protection has ruled (HQ 109849; 18 November 1988) that “A self-propelled drilling vessel is considered to be a coastwise point when it is ‘at anchor’ at an OCS drilling site before, and after, it engages in drilling operations;”
  - (2) Unlike coastal and inshore ports (where the NOA provisions of 33 CFR 160.206 apply) all OCS locations are accessible, without any notice being provided to the Coast Guard or other U.S. authorities, by foreign vessels in “innocent passage.” Accordingly, in IADC’s view, the primary risks being mitigated by the proposed rule relate to the personnel who may ultimately enter the U.S. from the OCS facility/vessel, rather than risks posed by the facility/vessel itself; and
  - (3) Most OCS operating locations are distant from shore, thereby mitigating the risk posed by any non-compliance with the prescriptive requirements of the NOA.
- IADC recommends that the regulatory language be modified as indicated below to obviate some of these concerns. Our proposed changes also address the following:
    - (1) Facilities/vessels are not sentient and therefore cannot ‘plan.’
    - (2) Certain facilities/vessels (*e.g.*, geophysical survey ships and pipe-laying vessels) will move or be moved during the time that they engage in an OCS activity.
    - (3) As noted above, the Coast Guard has previously declined to interpret an OCS location as being a “port or place in the United States” (which we interpret as synonymous with “U.S. port or place”). IADC interprets the Coast Guard’s proposed wording as requiring NOAs for a facility/vessel moving between OCS operating locations. We do not believe this is warranted. IADC’s proposed regulatory text would obviate this requirement by adopting the term ‘foreign port or place.’ This term is used for related purposes by U.S. Customs and Border Protection in its 3 April 2008, Final Rule (73 FR 18384) regarding documents required by travelers at Sea and Land ports-of-entry.
      - (3) ***The floating facility's name, if any;***
  - IADC suggests that in addition to the facility’s name, the IMO number, if any, be reported. Most foreign MODUs have obtained IMO numbers.
    - (4) ***The date when OCS operations of the floating facility are expected to begin and end;***
    - (5) ***Names of the last two ports or places visited and the associated dates of arrival and departure;***
    - (6) ***The following information for each individual onboard:***
      - (i) ***Full name;***
      - (ii) ***Date of birth;***
      - (iii) ***Nationality;***

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- (iv) *Passport number or marine documentation number (type of identification and number);*
  - (v) *Position or duties on the floating facility; and*
  - (vi) *Name of the port, or place, and country where the individual embarked.*
- IADC believes that without the stated intention of using the description “position or duties” for enforcement of the provisions of the restrictions on employment in 33 CFR 141, the provision of a description of “position or duties” of personnel arriving on the facility/vessel is irrelevant and, given the myriad of job descriptions for industrial personnel, would be difficult for the Coast Guard to interpret in any case.
  - (7) *The date of issuance of the floating facility's International Safety Management Certificate (ISM), if any, and Document of Compliance certificate and the name of the flag administration, or its recognized representative, that issued those certificates; and*
  - (8) *The date of issuance of the floating facility's International Ship Security Certificate (ISSC), if any, and the name of the flag administration, or the recognized security organization representing the flag administration, that issued the ISSC.*
- As §146.103 is specific to U.S. floating facilities, the information in the above two paragraphs should already be available to the Coast Guard as the U.S. would be the flag administration. IADC recommends that paragraphs (a)(7) and (a)(8) be removed from this section.
  - (b) *Methods of submission. The notice must be submitted to the NVMC by electronic Notice of Arrival and Departure format using methods specified in the NVMC's Web site at <http://www.nvmc.uscg.gov/>.*
  - (c) *Updates to a submitted NOA. Unless otherwise specified in this section, whenever the most recently submitted NOA information becomes inaccurate, the owner or operator of a U.S. floating facility must revise and re-submit the NOA within the times required in paragraph (e) of this section. An owner or operator does not need to revise or re-submit an NOA for the following:*
    - (1) *A change in submitted arrival time that is less than 6 hours;*
    - (2) *Changes in the location, latitude and longitude, of the floating facility at the time the NOA is reported; or*
- IADC suggests that ‘6 hours’ should be changed to ‘24 hours’. As noted previously, there is ambiguity regarding what constitutes ‘arrival’ on the OCS. Given their generally remote locations and the minimal direct threat posed by such facilities/vessels, IADC does not believe that there is substantive difference in the risk posed by a delay of 24 hours versus a delay of 6 hours, particularly in light of the fact that the same facility/vessel with the same personnel on board could be at the same location in ‘innocent passage’ without any notice being provided to the Coast Guard. Further, should ‘arrival’ be interpreted in terms of ‘attachment to the sea-bed,’ IADC would not wish to see the situation created where safety is compromised and ‘attachment’ is either rushed or delayed to meet the arbitrary conditions of the NOA, rather than the controlling environmental conditions at the location.

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- IADC finds this sentence confusing. Presumably the location of the floating facility/vessel would be known at the time that the report was made. If this information was reported inaccurately, then it would seem that it would need to be ‘corrected’ rather than ‘changed’.

(3) *Changes to personnel positions or duties on the floating facility.*

- As previously stated, IADC believes that unless this information is to also be used for enforcement of the provisions of the restrictions on employment in 33 CFR 141, the description of the “position or duties” of personnel arriving on the facility/vessel is unnecessary.

(d) *Required reporting time of an initial NOA. The owner or operator of a U.S. floating facility subject to this section must submit an initial NOA:*

- (1) *If the voyage time is more than 96 hours, owners or operators of a floating facility must submit an initial NOA at least 96 hours before the U.S. floating facility arrives at the OCS location where it plans to perform OCS activities; or*
- (2) *If the voyage time is less than 96 hours, owners and operators of a floating facility must submit an initial NOA at least 24 hours before the U.S. floating facility arrives at the OCS location where it plans to perform OCS activities.*

- IADC believes that paragraph (d)(2) provides an exception to the 96 reporting requirement and that paragraph (d)(1) is redundant. Accordingly, IADC recommends that paragraph d(1) be deleted, and that paragraph d(1) be re-labeled as paragraph (d).

(e) *Required reporting time of an update to an NOA. Each floating facility subject to this section must submit an NOA update:*

- (1) *If the most recently submitted NOA, or NOA update, differs by 24 hours or more from the current estimated time of arrival, the owner or operator of the floating facility must provide an updated NOA as soon as practicable but at least 24 hours before the U.S. floating facility arrives at the OCS location where it plans to perform OCS activities; or*
- (2) *If the most recently submitted NOA, or NOA update, differs by less than 24 hours from the current estimated time of arrival, the owner or operator of the floating facility must provide an update as soon as practicable but at least 12 hours before the U.S. floating facility arrives at the OCS location where it plans to perform OCS activities.*

(f) *Towing vessels. When a towing vessel controls a U.S. floating facility required to submit an NOA under this subpart, the owner or operator of the towing vessel is responsible for submitting only one NOA containing the NOA information items required for the towing vessel, under §146.405, and the U.S. floating facility under paragraph (a) of this section.*

- IADC suggests that the towing vessel paragraph is misleading as it implies that the towing of a facility/vessel to an OCS location is an activity that, in and of itself, is subject to U.S. jurisdiction as an “OCS activity.” We are unaware of any precedent that would establish that a vessel towing a facility/vessel to an OCS location from a foreign port or place is engaging in an OCS activity. (The provisions of 33 CFR 146 can only be reached through the general provisions of 33 CFR 140, wherein the term “OCS activity” is defined.) IADC suggests that

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the entire paragraph (f) be removed. If the Coast Guard disagrees, then this paragraph should be modified to account for the possibility that multiple towing vessels may be involved in the tow of a single facility/vessel. IADC also suggests that consideration needs to be given to how the NOA requirements would be met with respect to a facility/vessel arriving on the OCS via a heavy lift transport vessel.

(g) *This section does not apply to U.S. floating facilities merely transiting the waters superjacent to the OCS and not engaged in OCS activities.*

- IADC recommends that “superjacent” be changed to “superadjacent” for consistency within Title 33 of the Code of Federal Regulations - see the definition of “Waters subject to the jurisdiction of the U.S.” at 33 CFR 101.105.

### **In summary, IADC recommends that the proposed § 146.103 read as follows:**

§ 146.103 Safety and Security notice of arrival for U.S. floating facilities.

- (a) At least 96 hours before a U.S. floating facility arrives at an OCS location, where it is intended that the floating facility will commence its OCS activity from a foreign port or place, the owner or operator of the floating facility, except as provided in paragraph (d) of this section, must submit the following information to the National Vessel Movement Center (NVMC):
- (1) The location, latitude and longitude, of the floating facility at the time the notice of arrival (NOA) is reported;
  - (2) The area designation and block number or lease number, assigned under 30 CFR 250.154 for identification, where it is intended that the floating facility will commence its OCS activity;
  - (3) The floating facility's name and IMO number, if any;
  - (4) The date when OCS operations of the floating facility are expected to begin and end;
  - (5) Names of the last two ports or places visited and the associated dates of arrival and departure;
  - (6) The following information for each individual onboard:
    - (i) Full name;
    - (ii) Date of birth;
    - (iii) Nationality;
    - (iv) Passport number or marine documentation number (type of identification and number);
    - (v) Name of the port, or place, and country where the individual embarked.
- (b) Methods of submission. The notice must be submitted to the NVMC by electronic Notice of Arrival and Departure format using methods specified in the NVMC's Web site at <http://www.nvmc.uscg.gov/>.
- (c) Updates or corrections to a submitted NOA. Unless otherwise specified in this section, whenever the most recently submitted NOA information becomes inaccurate, the owner or operator of a U.S. floating facility must revise and re-submit the NOA within the times required in paragraph (e) of this section. An owner or operator does not need to revise or re-submit a NOA for the following:
- (1) A change in submitted arrival time that is less than 24 hours; or
  - (2) Corrections to the location, latitude and longitude, of the floating facility at the time the NOA is reported.

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- (d) If the voyage time is less than 96 hours, owners and operators of a U.S. floating facility must submit an initial NOA at least 24 hours before the U.S. floating facility arrives at the OCS location where it is intended that the U.S. floating facility will commence its OCS activity.
- (e) Required reporting time of an update to a NOA. Each floating facility subject to this section must submit a NOA update:
  - (1) If the most recently submitted NOA, or NOA update, differs by 24 hours or more from the current estimated time of arrival, the owner or operator of the floating facility must provide an updated NOA as soon as practicable but at least 24 hours before the U.S. floating facility arrives at the OCS location where it is intended that the floating facility will commence its OCS activity; or
  - (2) If the most recently submitted NOA, or NOA update, differs by less than 24 hours from the current estimated time of arrival, the owner or operator of the floating facility must provide an update as soon as practicable but at least 12 hours before the U.S. floating facility arrives at the OCS location where it is intended that the floating facility will commence its OCS activity.
- (f) This section does not apply to U.S. floating facilities merely transiting the waters superadjacent to the OCS and not engaged in an OCS activity.

### **3. Add § 146.104 to read as follows:**

#### **§ 146.104 Safety and Security notice of arrival for foreign floating facilities.**

- (a) **General.** *At least 96 hours before a foreign floating facility arrives on the OCS to engage in OCS activities, the owner or operator of the floating facility, except as provided in paragraph (f) of this section, must submit the following information to the National Vessel Movement Center (NVMC):*
  - (1) *The location, latitude and longitude, of the foreign floating facility at the time the NOA is reported;*
  - (2) *The area designation and block number or lease number, assigned under 30 CFR 250.154 for identification, where the foreign floating facility plans to perform OCS activities;*
  - (3) *The foreign floating facility's name, if any;*
  - (4) *The date when OCS operations of the foreign floating facility are expected to begin and end;*
  - (5) *Names of the last two ports or places visited and the associated dates of arrival and departure;*
  - (6) *The following information for each individual onboard:*
    - (i) *Full name;*
    - (ii) *Date of birth;*
    - (iii) *Nationality;*
    - (iv) *Passport number or marine documentation number (type of identification and number);*
    - (v) *Position or duties on the foreign floating facility; and*
    - (vi) *Name of the port, or place, and country where the individual embarked.*
  - (7) *The date of issuance of the foreign floating facility's International Safety Management Certificate (ISM), if any, and Document of Compliance certificate and the name of the flag administration, or its recognized representative, that issued those certificates; and*
  - (8) *The date of issuance of the foreign floating facility's International Ship Security Certificate (ISSC), if any, and the name of the flag administration, or the*

*recognized security organization representing the flag administration, that issued the ISSC.*

- (b) Methods of submission. The notice must be submitted to the National Vessel Movement Center (NVMC) by electronic Notice of Arrival and Departure format using methods specified at the NVMC's Web site at <http://www.nvmc.uscg.gov/>.*
- (c) Updates to a submitted NOA. Unless otherwise specified in this section, whenever the most recently submitted NOA information becomes inaccurate, the owner or operator of the foreign floating facility must revise and re-submit the NOA within the times required in paragraph (e) of this section. An owner or operator does not need to revise or re-submit an NOA for the following:
  - (1) A change in submitted arrival time that is less than 6 hours;*
  - (2) Changes in the location, latitude and longitude, of the foreign floating facility at the time the NOA is reported; or*
  - (3) Changes to personnel positions or duties on the foreign floating facility.**
- (d) Required reporting time of an initial NOA. The owner or operator of a foreign floating facility subject to this section must submit an initial NOA:
  - (1) If the voyage time is more than 96 hours, owners or operators of a foreign floating facility must submit an initial NOA at least 96 hours before the foreign floating facility arrives at the OCS location where it plans to perform OCS activities; or*
  - (2) If the voyage time is less than 96 hours, owners or operators of a foreign floating facility must submit an initial NOA at least 24 hours before the foreign floating facility arrives at the OCS location where it plans to perform OCS activities.**
- (e) Required reporting time of an update to an NOA. The owner or operator of a foreign floating facility subject to this section must submit an NOA update:
  - (1) If the most recently submitted NOA, or NOA update, differs by 24 hours or more from the current estimated time of arrival, the owner or operator of the foreign floating facility must provide an updated NOA as soon as practicable but at least 24 hours before the floating facility arrives at the OCS location where it plans to perform OCS activities; or*
  - (2) If the most recently submitted NOA, or NOA update, differs by less than 24 hours from the current estimated time of arrival, the owner or operator of the foreign floating facility must provide an updated NOA as soon as practicable but at least 12 hours before the floating facility arrives at the OCS location where it plans to perform OCS activities.**
- (f) Towing vessels. When a towing vessel controls a foreign floating facility required to submit an NOA under this subpart, the owner or operator of the towing vessel is responsible for submitting only one NOA containing the NOA information items required for the towing vessel, under § 146.405, and the foreign floating facility under paragraph (a) of this section.*
- (g) This section does not apply to a foreign floating facility merely transiting the waters superjacent to the OCS and not engaged in OCS activities.*

**In summary, and for the reasons stated above, IADC recommends that the proposed § 146.104 read as follows:**

§ 146.104 Safety and Security notice of arrival for foreign floating facilities.

- (a) General. At least 96 hours before a foreign floating facility arrives at the OCS location where it is intended that the floating facility will commence its OCS activity from a foreign port or place*

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the owner or operator of the floating facility, except as provided in paragraph (d) of this section, must submit the following information to the National Vessel Movement Center (NVMC):

- (1) The location, latitude and longitude, of the foreign floating facility at the time the NOA is reported;
  - (2) The area designation and block number or lease number, assigned under 30 CFR 250.154 for identification, where the foreign floating facility will commence its OCS activity;
  - (3) The foreign floating facility's name and IMO number, if any;
  - (4) The date when OCS operations of the foreign floating facility are expected to begin and end;
  - (5) Names of the last two ports or places visited and the associated dates of arrival and departure;
  - (6) The following information for each individual onboard:
    - (i) Full name;
    - (ii) Date of birth;
    - (iii) Nationality;
    - (iv) Passport number or marine documentation number (type of identification and number); and
    - (v) Name of the port, or place, and country where the individual embarked.
  - (7) The date of issuance of the foreign floating facility's International Safety Management Certificate (ISM), if any, and Document of Compliance certificate and the name of the flag administration, or its recognized representative, that issued those certificates; and
  - (8) The date of issuance of the foreign floating facility's International Ship Security Certificate (ISSC), if any, and the name of the flag administration, or the recognized security organization representing the flag administration, that issued the ISSC.
- (b) Methods of submission. The notice must be submitted to the National Vessel Movement Center (NVMC) by electronic Notice of Arrival and Departure format using methods specified at the NVMC's Web site at <http://www.nvmc.uscg.gov/>.
- (c) Updates to a submitted NOA. Unless otherwise specified in this section, whenever the most recently submitted NOA information becomes inaccurate, the owner or operator of the foreign floating facility must revise and re-submit the NOA within the times required in paragraph (e) of this section. An owner or operator does not need to revise or re-submit a NOA for the following:
- (1) A change in submitted arrival time that is less than 24 hours; or
  - (2) Corrections to the location, latitude and longitude, of the foreign floating facility at the time the NOA is reported.
- (d) If the voyage time is less than 96 hours, owners and operators of a foreign floating facility must submit an initial NOA at least 24 hours before the foreign floating facility arrives at the OCS location where it is intended that the foreign floating facility will commence its OCS activity.
- (e) Required reporting time of an update to a NOA. The owner or operator of a foreign floating facility subject to this section must submit a NOA update:
- (1) If the most recently submitted NOA, or NOA update, differs by 24 hours or more from the current estimated time of arrival, the owner or operator of the foreign floating facility must provide an updated NOA as soon as practicable but at least 24 hours before the floating facility arrives at the OCS location where it is intended that the floating facility will commence its OCS activity; or
  - (2) If the most recently submitted NOA, or NOA update, differs by less than 24 hours from the current estimated time of arrival, the owner or operator of the foreign floating facility must provide an updated NOA as soon as practicable but at least 12 hours before the floating facility arrives at the OCS location where it is intended that the floating facility will commence its OCS activity; or.

- (f) This section does not apply to a foreign floating facility merely transiting the waters superadjacent to the OCS and not engaged in an OCS activity.

**4. Add § 146.215 to read as follows:**

**§ 146.215 Safety and Security notice of arrival for U.S. or Foreign MODUs.**

- (a) **General.** *At least 96 hours before a MODU arrives on the OCS to engage in OCS activities, excluding those U.S. MODUs arriving directly from a U.S. port or place, to engage in OCS activities, the owner or operator of the MODU, except as provided in paragraph (f) of this section, must submit the following information to the National Vessel Movement Center (NVMC):*
- (1) *The location, latitude and longitude, of the MODU at the time the notice of arrival (NOA) is reported;*
  - (2) *The area designation and block number or lease number, assigned under 30 CFR 250.154 for identification, where the MODU plans to perform OCS activities;*
  - (3) *The MODU's name, if any;*
  - (4) *The date when operations of the MODU are expected to begin and end;*
  - (5) *Names of the last two ports or places visited and the associated dates of arrival and departure;*
  - (6) *The following information for each individual onboard:*
    - (i) *Full name;*
    - (ii) *Date of birth;*
    - (iii) *Nationality;*
    - (iv) *Passport number or marine documentation number (type of identification and number);*
    - (v) *Position or duties on the MODU; and*
    - (vi) *Name of the port, or place, and country where the individual embarked.*
  - (7) *The date of issuance of the MODU's International Safety Management Certificate (ISM), if any, and Document of Compliance certificate and the name of the flag administration, or its recognized representative, that issued those certificates; and*
  - (8) *The date of issuance of the MODU's International Ship Security Certificate (ISSC), if any, and the name of the flag administration, or the recognized security organization representing the flag administration, that issued the ISSC.*
- (b) **Methods of submission.** *The notice must be submitted to the National Vessel Movement Center (NVMC) by electronic Notice of Arrival and Departure format using methods specified in the NVMC's Web site at <http://www.nvmc.uscg.gov/>.*
- (c) **Updates to a submitted NOA.** *Unless otherwise specified in this section, whenever the most recently submitted NOA information becomes inaccurate, the owner or operator of the MODU must revise and re-submit the NOA within the times required in paragraph (e) of this section. An owner or operator does not need to revise or re-submit an NOA for the following:*
- (1) *A change in submitted arrival time that is less than 6 hours;*
  - (2) *Changes in the location, latitude or longitude, of the MODU at the time the NOA is reported; or*
  - (3) *Changes to personnel positions or duties on the MODU.*
- (d) **Required reporting time of an initial NOA.** *The owner or operator of a MODU subject to this section must submit an initial NOA:*

## Notice of Arrival on the Outer Continental Shelf

- (1) *If the voyage time is more than 96 hours, owners and operators of a MODU must submit an initial NOA at least 96 hours before the MODU arrives at the OCS location where it plans to perform OCS activities; or*
  - (2) *If the voyage time is less than 96 hours, owners and operators of a MODU must submit an initial NOA at least 24 hours before the MODU arrives at the OCS location where it plans to perform OCS activities.*
- (e) *Required reporting time of an update to an NOA. The owner or operator of a MODU subject to this section must submit an NOA update:*
- (1) *If the most recently submitted NOA, or NOA update, differs by 24 hours or more from the current estimated time of arrival, the owner or operator of the MODU must provide an updated NOA as soon as practicable but at least 24 hours before the MODU arrives at the OCS location where it plans to perform OCS activities; or*
  - (2) *If the most recently submitted NOA, or NOA update, differs by less than 24 hours from the current estimated time of arrival, the owner or operator of the MODU must provide an updated NOA as soon as practicable but at least 12 hours before the MODU arrives at the OCS location where it plans to perform OCS activities.*
- (f) *When a towing vessel controls a MODU required to submit an NOA under this subpart, the owner or operator of the towing vessel is responsible for submitting only one NOA containing the information required for the towing vessel, under § 146.405, and the MODU under paragraph (a) of this section.*
- (g) *This section does not apply to MODU's merely transiting the waters superjacent to the OCS and not engaged in OCS activities.*

**In summary, and for the reasons stated above, IADC recommends that the proposed § 146.215 read as follows:**

### § 146.215 Safety and Security notice of arrival for U.S. or Foreign MODUs.

- (a) General. At least 96 hours before a MODU arrives at the OCS location where it is intended that the MODU will commence its OCS activity from a foreign port or place the owner or operator of the MODU, except as provided in paragraph (d) of this section, must submit the following information to the National Vessel Movement Center (NVMC):
- (1) The location, latitude and longitude, of the MODU at the time the notice of arrival (NOA) is reported;
  - (2) The area designation and block number or lease number, assigned under 30 CFR 250.154 for identification, where it where it is intended that the MODU will commence its OCS activity;
  - (3) The MODU's name and IMO number, if any;
  - (4) The date when operations of the MODU are expected to begin and end;
  - (5) Names of the last two ports or places visited and the associated dates of arrival and departure;
  - (6) The following information for each individual onboard:
    - (i) Full name;
    - (ii) Date of birth;
    - (iii) Nationality;
    - (iv) Passport number or marine documentation number (type of identification and number); and
    - (v) Name of the port, or place, and country where the individual embarked.

## Notice of Arrival on the Outer Continental Shelf

- (7) The date of issuance of the MODU's International Safety Management Certificate (ISM), if any, and Document of Compliance certificate and the name of the flag administration, or its recognized representative, that issued those certificates; and
  - (8) The date of issuance of the MODU's International Ship Security Certificate (ISSC), if any, and the name of the flag administration, or the recognized security organization representing the flag administration, that issued the ISSC.
- (b) Methods of submission. The notice must be submitted to the National Vessel Movement Center (NVMC) by electronic Notice of Arrival and Departure format using methods specified in the NVMC's Web site at <http://www.nvmc.uscg.gov/>.
- (c) Updates to a submitted NOA. Unless otherwise specified in this section, whenever the most recently submitted NOA information becomes inaccurate, the owner or operator of the MODU must revise and re-submit the NOA within the times required in paragraph (e) of this section. An owner or operator does not need to revise or re-submit a NOA for the following:
- (1) A change in submitted arrival time that is less than 24 hours; or
  - (2) Corrections to the location, latitude or longitude, of the MODU at the time the NOA is reported.
- (d) If the voyage time is less than 96 hours, owners and operators of a MODU must submit an initial NOA at least 24 hours before the MODU arrives at the OCS location where it is intended that the MODU will commence its OCS activity.
- (e) Required reporting time of an update to a NOA. The owner or operator of a MODU subject to this section must submit a NOA update:
- (1) If the most recently submitted NOA, or NOA update, differs by 24 hours or more from the current estimated time of arrival, the owner or operator of the MODU must provide an updated NOA as soon as practicable but at least 24 hours before the MODU arrives at the OCS location where it is intended that the MODU will commence its OCS activity; or
  - (2) If the most recently submitted NOA, or NOA update, differs by less than 24 hours from the current estimated time of arrival, the owner or operator of the MODU must provide an updated NOA as soon as practicable but at least 12 hours before the MODU arrives at the OCS location where it is intended that the MODU will commence its OCS activity.
- (f) This section does not apply to MODU's merely transiting the waters superadjacent to the OCS and not engaged in an OCS activity.

### ***5. Revise the heading in Subpart D to read as follows:***

#### ***Subpart D--Vessels--Notice of Casualty***

### ***6. Add Subpart E to read as follows:***

#### ***Subpart E--Vessels--Safety and Security Notice of Arrival***

#### ***§ 146.401 Applicability.***

***This subpart applies to all U.S. and foreign vessels, except those U.S. vessels traveling directly from a U.S. port or place, bound for a place on the OCS and planning to engage in OCS activities. Vessels under this subpart include, but are not limited to, standby vessels, attending vessels, offshore vessels, pipelay vessels, derrick ships, diving support vessels, oceanographic research vessels, towing vessels, and accommodation vessels. This subpart does not apply to MODUs, which are covered under § 146.215.***

## Notice of Arrival on the Outer Continental Shelf

- IADC believes that this proposed language implies a significant expansion of the operations which have been considered an ‘OCS activity’. While some expansion may be warranted, IADC believes that the proposed language is overreaching and inappropriate without modification of the OCS activity definition in 33 CFR 140.
- IADC believes that revising the definition of “OCS activity” is beyond the scope of this rulemaking but may be within the scope of the unconsummated Outer Continental Shelf Activities proposed rulemaking.

**In summary, and for the reasons stated above, IADC recommends that the proposed § 146.401 read as follows:**

### § 146.401 Applicability.

This subpart applies to all U.S. and foreign vessels, arriving at an OCS location from a foreign port or place with the intent that such vessel will engage in an OCS activity. This subpart does not apply to MODUs, which are covered under § 146.215.

### *§ 146.405 Safety and Security notice of arrival for vessels arriving at a place on the OCS.*

- (a) *General. The owner or operator of each vessel subject to this section must submit an initial NOA to the National Vessel Movement Center (NVMC):*
    - (1) *If the voyage time is more than 96 hours, at least 96 hours before the vessel arrives at a place on the OCS to engage in OCS activities;*
    - (2) *If the voyage time is less than 96 hours and more than 24 hours, before departure;*  
*or*
    - (3) *If the voyage time is less than 24 hours, at least 24 hours before the vessel arrives at a place on the OCS.*
  - (b) *Information required in an NOA. The following information is required for vessels submitting an NOA:*
    - (1) *All the information specified in 33 CFR Table 160.206 with the exception of information required in item (2)(iii) and item (6). Vessel owners and operators should protect any personal information they gather in preparing notices for transmittal to the NVMC so as to prevent unauthorized disclosure of that information;*
- It is unclear why the information required in item (2)(iii) of the table would be exempted, yet the information in items (2)(iv), 2(v), and 2(vi) would still be required. IADC’s previous comments regarding OCS locations being a ‘port or place in the United States’ also apply to this section.
  - IADC contends that most vessels subject to this subpart will not require customs clearance; therefore, it seems inappropriate to require the Cargo Declaration (item (8)).

- (2) *The Minerals Management Service (MMS) area and either the name of the place, the MMS block number, or the latitude and longitude of the place on the OCS to be visited; and*
      - (3) *If any person onboard, including a crewmember, is not required to carry a passport for travel, then passport information required in Table 160.206, items (4)(iv) through (vi), and (5)(iv) through (vi), need not be provided for that person.*
    - (c) *Updates to a submitted NOA. Unless otherwise specified in this section, whenever the most recently submitted NOA information becomes inaccurate, the owner or operator of that vessel must revise and re-submit the NOA within the times required in paragraph (e) of this section. An owner or operator does not need to revise and re-submit an NOA for the following:*
      - (1) *A change in submitted arrival time that is less than six hours;*
      - (2) *Changes in the location, latitude and longitude, of the vessel at the time the NOA is reported; or*
      - (3) *Changes to personnel positions or duties on the vessel.*
    - (d) *Methods of submission. The notice must be submitted to the NVMC by electronic Notice of Arrival and Departure format using methods specified at the NVMC's Web site at <http://www.nvmc.uscg.gov/>.*
    - (e) *Required reporting time of an NOA update. Each vessel subject to this section must submit an NOA update:*
      - (1) *If the most recently submitted NOA, or NOA update, differs by 24 hours or more from the current estimated time of arrival, the owner or operator of the vessel must provide an update as soon as practicable but at least 24 hours before the vessel arrives at the OCS location where it plans to perform OCS activities;*
      - (2) *If the most recently submitted NOA, or NOA update, differs by less than 24 hours from the current estimated time of arrival, the owner or operator of the vessel must provide an update as soon as practicable but at least 12 hours before the vessel arrives at the OCS location where it plans to perform OCS activities; or*
      - (3) *If the remaining voyage time is less than 24 hours, the owner or operator of the vessel must provide an update as soon as practicable, but at least 12 hours before the vessel arrives at a place on the OCS.*
    - (f) *When a towing vessel controls a vessel required to submit an NOA under this subpart, the owner or operator of the towing vessel is responsible for submitting only one NOA containing the information required for the towing vessel and the vessel under its control.*
- Refer to our previous comments regarding the expansion of the definition of ‘OCS activity’ in § 146.401. As worded, this section only addresses a towing vessel controlling another vessel, and not one controlling a floating facility or a MODU. It also fails to consider the situation where multiple towing vessels may be involved in a tow, as may be the case with a large floating facility or vessel. In general, IADC believes that a vessel/facility/MODU, which is manned when under tow, should each submit a separate NOA. However, it may be appropriate to provide for the option of having a “lead” towing vessel submit a single NOA for the combined “tow,” if it is determined that the towing of a vessel/facility/MODU from a foreign port or place to the OCS is an OCS activity. IADC is not willing to concede that such towing operations are an OCS activity.
  - (g) *This section does not apply to vessels merely transiting the waters superjacent to the OCS and not engaged in OCS activities.*

**For the reasons stated above, IADC recommends that §146.405 should read as follows:**

§ 146.405 Safety and Security notice of arrival for vessels arriving at a place on the OCS.

- (a) General. The owner or operator of each vessel subject to this section must submit an initial NOA to the National Vessel Movement Center (NVMC):
  - (1) If the voyage time is more than 96 hours, at least 96 hours before the vessel arrives at a place on the OCS where it where it is intended that the vessel will commence its OCS activity;
  - (2) If the voyage time is less than 96 hours and more than 24 hours, before departure; or
  - (3) If the voyage time is less than 24 hours, at least 24 hours before the vessel at the OCS location where it where it is intended that the vessel will commence its OCS activity.
- (b) Information required in a NOA. The following information is required for vessels submitting a NOA:
  - (1) All the information specified in 33 CFR Table 160.206 with the exception of information required in items (2)(iii), (2)(iv), (2)(v), (2)(vi) and item (6). The information required in item (8) is only required for those vessels which will required customs clearance in accordance with Customs and Border Protection regulations at 19 CFR 4.7. Vessel owners and operators should protect any personal information they gather in preparing notices for transmittal to the NVMC so as to prevent unauthorized disclosure of that information;
  - (2) The Minerals Management Service (MMS) area and either the name of the place, the MMS block number, or the latitude and longitude of the place on the OCS where it where it is intended that the vessel will commence its OCS activity; and
  - (3) If any person onboard, including a crewmember, is not required to carry a passport for travel, then passport information required in Table 160.206, items (4)(iv) through (vi), and (5)(iv) through (vi), need not be provided for that person.
- (c) Updates to a submitted NOA. Unless otherwise specified in this section, whenever the most recently submitted NOA information becomes inaccurate, the owner or operator of that vessel must revise and re-submit the NOA within the times required in paragraph (e) of this section. An owner or operator does not need to revise and re-submit a NOA for the following:
  - (1) A change in submitted arrival time that is less than six hours;
  - (2) Changes in the location, latitude and longitude, of the vessel at the time the NOA is reported; or
  - (3) Changes to personnel positions or duties on the vessel.
- (d) Methods of submission. The notice must be submitted to the NVMC by electronic Notice of Arrival and Departure format using methods specified at the NVMC's Web site at <http://www.nvmc.uscg.gov/>.
- (e) Required reporting time of a NOA update. Each vessel subject to this section must submit a NOA update:
  - (1) If the most recently submitted NOA, or NOA update, differs by 24 hours or more from the current estimated time of arrival, the owner or operator of the vessel must provide an update as soon as practicable but at least 24 hours before the vessel at the OCS location where it where it is intended that the vessel will commence its OCS activity;
  - (2) If the most recently submitted NOA, or NOA update, differs by less than 24 hours from the current estimated time of arrival, the owner or operator of the vessel must provide an update as soon as practicable but at least 12 hours before the vessel arrives at the OCS location where it where it is intended that the vessel will commence its OCS activity; or

## Notice of Arrival on the Outer Continental Shelf

- (3) If the remaining voyage time is less than 24 hours, the owner or operator of the vessel must provide an update as soon as practicable, but at least 12 hours before the vessel at the OCS location where it is intended that the vessel will commence its OCS activity.
- (f) When a towing vessel required to submit a NOA under this section controls a floating facility, MODU or another vessel required to submit a NOA under this subpart, the owner or operator of the towing vessel may submit only one NOA containing the information required for the towing vessel, the floating facility, MODU, or other vessel under its control, as well as any assisting towing vessels.
- (g) This section does not apply to vessels merely transiting the waters superadjacent to the OCS and not engaged in an OCS activity.

IADC appreciates the opportunity to comment on the proposed rulemaking and requests that our comments be given due consideration. If you have any questions about these comments or recommendations, please feel free to contact me by phone at (713) 292-1945, ext. 203.

Sincerely



John Pertgen  
Assistant Director, Offshore Technical  
and Regulatory Affairs

Enclosure:

Congressional letter dated 28 June 2007 to the Secretary, Department of Homeland Security

**Congress of the United States**  
**Washington, DC 20515**

June 28, 2007

The Honorable Michael Chertoff  
Secretary  
Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, DC 20528

Dear Secretary Chertoff:

We are writing with regard to two matters of great importance to the national defense and economic security of our Country, specifically, the offshore energy exploration and development industry. The Coast Guard and U.S. Customs and Border Protection each have somewhat overlapping jurisdiction with regard to offshore energy activities. We wish to bring to your attention two matters in this context, and urge you to increase the roles of each agency.

The first issue relates to a current rulemaking by the Coast Guard. Last year, Congress passed legislation that directed the Coast Guard to finalize a rulemaking related to the identification of foreign vessels operating on the Outer Continental Shelf. We did so in order to address a lapse in maritime domain awareness. At any given moment, there are on average 100 foreign vessels working in the offshore energy sector. Presently, foreign vessels that work off of the U.S. coastline, most commonly in the Gulf of Mexico, are not required to provide any notification or information to the Coast Guard or CBP on crew, location or nature of work, unless that vessel calls a U.S. port. While typically most foreign cargo and passenger vessels enter U.S. ports and thus are subject to the various notification requirements required by CBP and the Coast Guard, it is quite common for vessels working in the offshore energy sector to remain offshore and either never enter a U.S. port, or not do so until some amount of time has passed. With more than 4,000 oil and gas structures and 33,000 miles of pipelines off the U.S. coast, this lack of information on foreign vessels presents a serious threat to our offshore energy infrastructure, as these vessels work along side critical energy infrastructure, without even the slightest of information being provided to DHS. Thus, we encourage you to expedite the completion of this rulemaking, and require that a sufficient level of information must be provided by foreign vessels to the Coast Guard.

The second issue relates to the economic security of the energy supply industry. There is a substantial fleet of U.S. offshore energy supply vessels, serving the Gulf of Mexico, Alaska and other areas off our coastline. These vessels provide needed support to the oil and gas industry by operating crew boats, supply vessels, jack-up rigs, and other specialized equipment to support energy exploration and production. As U.S. owned and operated vessels, they are subject to numerous U.S. laws and regulations, while at the

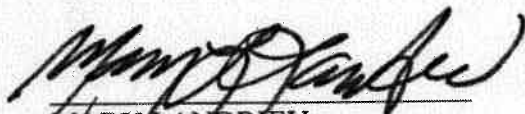
same time, enjoy the benefit of having specific work reserved solely for U.S companies, under a combination of laws commonly referred to as the Jones Act. These cabotage laws ensure the vitality of a U.S. maritime industry, and help to offset the disparity between U.S. vessels and their foreign counterparts, which are subjected to fewer safety, inspection and operating regulations of their home country and function in a cheaper labor environment, thereby enabling foreign companies to operate with significantly lower costs.

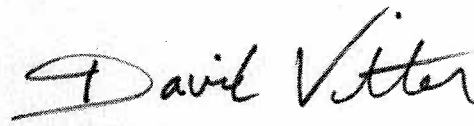
As you are aware, Customs and Border Protection is charged with interpreting and enforcing the Jones Act. Yet over the years, we have seen a gradual diminution of these laws and their enforcement. Such a lack of enforcement of one of the oldest economic laws in our Nation's history presents a startling threat to the vitality of the U.S. offshore energy supply industry. Equally as important, in this post-September 11<sup>th</sup> world, the Jones Act should be viewed by the Department as another weapon in our Country's arsenal against foreign interests seeking to do harm to us. As such, we encourage you to immediately review and reevaluate CBP's jurisdiction of the Jones Act, and develop a plan for more rigorous enforcement of these laws.

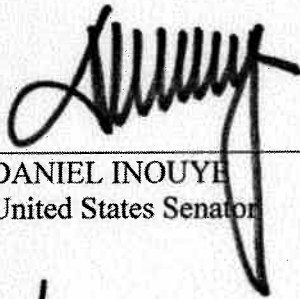
Finally, we share your goal of effecting greater coordination and cooperation among the agencies that make up the Department of Homeland Security. Given the shared missions that CBP and the Coast Guard have on many security issues, enforcement of the Jones Act is one area in which the two agencies, working in concert, should work effectively together. Indeed, that concept was one underlying reason Congress gave the Coast Guard the direction to collect information on foreign vessels working on the Outer Continental Shelf. We believe that such information, when provided to CBP, will prove useful to CBP's security function as well as its mandate to enforce the Jones Act. We also see this as an opportunity for CBP to use some of the innovative tools that the agency has utilized on other issues, such as industry partnerships and informed compliance efforts, in your enforcement efforts of these laws.

We appreciate your attention to these issues and look forward to our combined efforts in maintaining a high level of economic and maritime security.

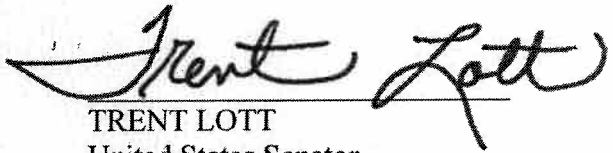
Sincerely,

  
MARY LANDRIEU  
United States Senator

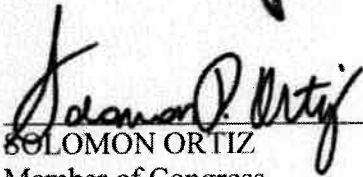
  
DAVID VITTER  
United States Senator



DANIEL INOUE  
United States Senator



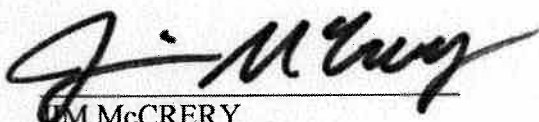
TRENT LOTT  
United States Senator



SOLOMON ORTIZ  
Member of Congress




RICHARD BAKER  
Member of Congress



JIM McCRERY  
Member of Congress



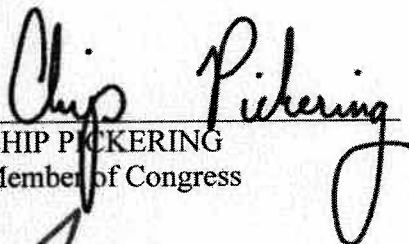
GENE TAYLOR  
Member of Congress



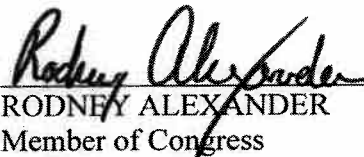
GENE GREEN  
Member of Congress



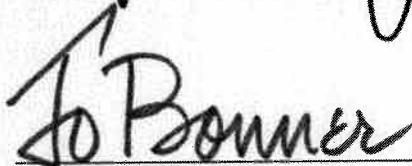
EDDIE BERNICE JOHNSON  
Member of Congress



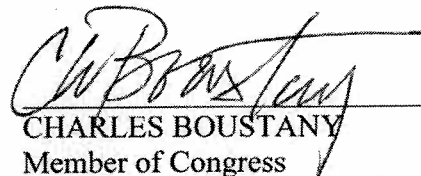
CHIP PICKERING  
Member of Congress



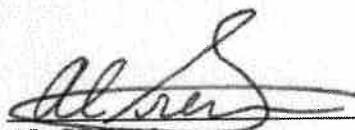
RODNEY ALEXANDER  
Member of Congress



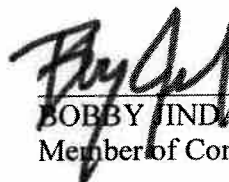
JO BONNER  
Member of Congress



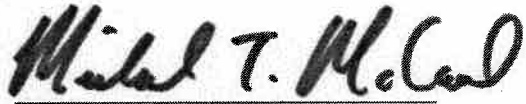
CHARLES BOUSTANY  
Member of Congress



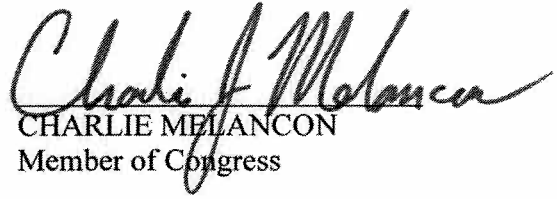
AL GREEN  
Member of Congress



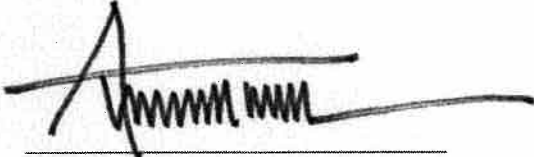
BOBBY LINDAL  
Member of Congress



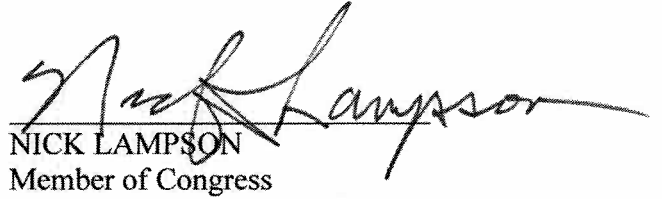
MICHAEL McCAUL  
Member of Congress



CHARLIE MELANCON  
Member of Congress



TED POE  
Member of Congress



NICK LAMPSON  
Member of Congress