Risk Management, Financial Assurance and Loss Prevention
Initial Regulatory Impact Analysis

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PROPOSED RULE

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Parts 250 & 290

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Contents

I. Background

Lessees[1] of Outer Continental Shelf (OCS) oil and gas leases, as well as holders of OCS pipeline right-of-way (ROW) grants, are required to decommission their wells, platforms, pipelines, and other infrastructure, collectively referred to as "facility" or "facilities" in this document. The Bureau of Safety and Environmental Enforcement (BSEE) and the Bureau of Ocean Energy Management (BOEM) are both responsible for ensuring that the taxpayer is protected from failures to perform by lessees and grant holders. Under existing regulations for BSEE (30 CFR § 250.146, § 250.1701) and BOEM (30 CFR § 556.604), the liability for OCS decommissioning obligations is joint and several amongst all who have accrued the liability, and survives until those obligations are met. Lessees and grant holders are liable for the entire amount of the facility decommissioning obligations that have accrued prior to and during their ownership. If the lessee or grant holder assigns its interests, it remains jointly and severally liable for the decommissioning obligations it accrued during its ownership, but does not accrue liability for any new facilities installed by subsequent lessees or grant holders.

BOEM's supplemental bonding (also referred to as "additional security") regulations address the risk of non-performance and provide the framework for determining whether a lessee or grant holder must provide supplemental bonds to BOEM to ensure decommissioning obligations are covered. As defined by BOEM's proposed supplemental bonding requirements within this joint rulemaking, BOEM may determine that supplemental bonding is not necessary for a lease or grant if any of the following conditions are met: (a) the lessee or a co-lessee liable for decommissioning the facilities on the lease is a company of sufficient financial strength; (b) a predecessor lessee is a company of sufficient financial strength; or (c) (for leases only) there are proved oil and gas reserves large enough to ensure the lease facility has re-sale liquidation value in the secondary market, i.e., a net present value associated with production of those reserves that is greater than 300% of the cost of the decommissioning liability. BOEM's Initial

[1] Throughout this document, the term "lessees" is used broadly to include holders of record title as well as owners of operating rights carved out of that record title.

Regulatory Impact Analysis discusses the supplemental financial assurance proposal in greater detail.

When decommissioning performance is at risk, it is often as a result of the bankruptcy of a current lessee or grant holder. In the event of a bankruptcy involving a lease where the expected returns from producing the remaining reserves exceed the estimated decommissioning costs, an interested party may decide to acquire the lease, which results in acquiring both the remaining reserves and the decommissioning obligations. However, if no interested party acquires the lease, and it is relinquished, abandoned, or otherwise terminated, BSEE is charged with ensuring that other liable parties satisfy their decommissioning obligations and will look to predecessor lessees to perform due to the default by the current lessee(s). If the affected facility was covered by a bond under BOEM's financial assurance framework, once the current lessee(s) defaults, BOEM may call that bond (i.e. demand performance or payment from the surety) for use toward decommissioning operations.

II. Need for Regulation

The Administration's domestic energy policies set forth in Executive Orders 13771 ("Reducing Regulation and Controlling Regulatory Costs"), 13777 ("Enforcing the Regulatory Reform Agenda"), 13783 ("Promoting Energy Independence and Economic Growth"), and 13795 ("Implementing an America-First Offshore Energy Strategy") directed agencies to review regulations to identify opportunities to streamline or eliminate unnecessary and burdensome regulations, especially as they relate to domestic energy production. On June 22, 2017, the Department reached out to stakeholders to identify additional regulatory reforms (82 FR 28429), and both BOEM and BSEE received feedback from stakeholders on how to improve their decommissioning regulations. Feedback for BSEE asserted that certainty in how BSEE pursues decommissioning compliance from affected lessees and grant holders would be helpful to industry stakeholders in planning future actions. These stakeholders suggested that certain measures could promote more efficiency, and possibly improve safety, in the decommissioning program. BSEE's proposed provisions take into consideration that feedback and are joined with BOEM's financial assurance proposals in this joint rulemaking because of the shared

responsibility of the two bureaus to minimize the risk that industry's decommissioning obligations will fall on the public.

III. Baseline and Assumptions

Affected Population

BSEE's proposed regulations would affect any OCS lessee or grant holder who has accrued decommissioning obligations for a well, platform or other facility, lease term pipeline, or pipeline ROW where the current lessee or grant holder fails to perform decommissioning obligations. This scope would potentially include any former or current lessees and grant holders who have accrued decommissioning liability under any OCS oil and gas leases or grants. Under BSEE's existing decommissioning regulations (30 CFR part 250, Subpart Q), in the event all current lessees or grant holders fail to perform their decommissioning responsibilities, BSEE holds all predecessor lessees, operating rights holders, or ROW grant holders jointly and severally responsible for their accrued decommissioning obligations (see, e.g., § 250.1701). In applying existing regulations, BSEE typically approaches all predecessor lessees and grant holders at the same time, but may also approach them in any order deemed appropriate by the agency to ensure orderly and expeditious decommissioning.

Activity Levels

Company defaults or other non-performance events are sporadic and can occur for myriad reasons, from a global oil price downturn, to poor decision-making by an individual company. BSEE Regional staff identified seven occasions between September 2014 and September 2019, where federal OCS lessees failed to perform decommissioning responsibilities, and which resulted in BSEE issuing decommissioning orders to predecessor lessees. In three of these instances, a single predecessor received an order; the other four instances involved multiple predecessors that received orders concurrently. In all cases, decommissioning has either been performed or is currently underway.

This IRIA does not attempt to forecast the occurrence of non-performance events due to their unpredictable nature; rather, it recognizes they may occur and qualitatively describes the regulatory impact the proposed provisions would have on the companies involved or the government. In any event, BSEE's proposed regulations would not affect the likelihood that a company would file for bankruptcy or otherwise fail to perform its decommissioning obligations.

Assumptions

This IRIA assumes all lessees, operating rights owners, and grant holders operating on the OCS are doing so prudently, with awareness of, and intent to fulfill, their obligations to their creditors and shareholders, and their joint and several obligations to the public. It assumes good faith in the structure and financial management of their operations, compliance with lease and grant instruments, and adherence to the baseline and proposed regulatory frameworks. This IRIA does not attempt to account for any burdens or savings that are the result of operations outside of these assumptions.

IV. Regulatory Impact of BSEE Proposed Provisions

In addition to the additional security provisions proposed by BOEM, the Department, through BSEE, is proposing to revise multiple provisions under 30 CFR parts 250 and 290 to provide clarity in its approach toward enforcement of decommissioning compliance. None of the changes proposed by BSEE would affect the joint and several liability of lessees or grant holders for decommissioning obligations, and therefore they would have no impact on the likelihood that a decommissioning liability ultimately would become the responsibility of the taxpayer. In this section, the proposed provisions are presented and discussed in detail.

Table 1 – Summary of Proposed Revisions

Proposed edits	***Description of Proposed Amendment***	***Impact on Cost or Savings***	***Impact on Risk to Safety or the Environment***
Amend § 250.105 *Definitions*	Technical clarification	No impact	No impact
Amend § 250.1700 *What do the terms "decommissioning," "obstructions," and "facility" mean?*	Revised to include returning the area of a right-of-use and easement (RUE), in addition to a lease and a pipeline ROW, to a condition that meets the requirements of BSEE and other agencies that have jurisdiction over decommissioning activities. Adds definition of "predecessor" for purposes of subpart Q.	Unquantified cost to the extent that existing RUE grant holders are not obligated to decommission by their RUE grant approval letter or private agreement with lessee.	Unquantified reduction in environmental risk to the extent that existing RUE grant holders are not obligated to decommission by their RUE grant approval letter or private agreement with lessee.
Revise § 250.1701 *Who must meet the decommissioning obligations in this subpart?*	States that all holders of a RUE grant are jointly and severally liable, along with other responsible parties, for meeting decommissioning obligations.		
Amend § 250.1702 *When do I accrue decommissioning obligations?*	Provides that you accrue decommissioning obligations when you are or become the holder of a RUE grant on which there is a well, pipeline, platform or other facility, or an obstruction.	Unquantified cost to the extent that existing RUE grant holders are not obligated to decommission by their RUE grant approval letter or private agreement with lessee.	Unquantified reduction in environmental risk to the extent that existing RUE grant holders are not obligated to decommission by their RUE grant approval letter or private agreement with lessee.
Amend § 250.1703 *What are the general requirements for decommissioning?*	Requires a RUE grant holder to clear the seafloor of all obstructions created by its RUE operations.		
Amend § 250.1704 *What decommissioning applications and reports must I submit and when must I submit them?*	Adds the requirement for predecessors under a proposed 250.1708 order to submit a decommissioning plan into the "*Decommissioning Applications and Reports Table*."	No impact	No impact
Replace reserved § 250.1708 with a new § 250.1708	Implements an explicit decommissioning enforcement framework (i.e., "reverse chronological order") for ordering predecessors to decommission.	Greater regulatory certainty; Non-monetized transfer from predecessors more remote in time to those more recent.	No impact
Replace reserved § 250.1709 with a new § 250.1709	Requires any party appealing a BSEE decommissioning decision or order to obtain a surety bond for unsecured decommissioning liability as part of appeal procedure.	Appeals bond premium if a company chooses to appeal decommissioning order	Reduces risk of nonperformance resulting from decreases in lessees' financial ability to decommission during the appeals process.
Amend § 250.1725 *When do I have to remove platforms and other facilities?*	Provides that a RUE grant holder must remove all platforms and other facilities within 1 year after the RUE grant terminates.	No impact	No impact
Amend § 290.7(a) *Do I have to comply with the decision or order while my appeal is pending?*	Reflects new bonding requirements of proposed 250.1709 in appeal regulations.	No impact	No impact

RUE Grants - § 250.1701

BSEE is proposing to revise 30 CFR § 250.1701 with respect to OCS facilities used under RUE grants. These grants are similar to ROW grants for pipelines, but apply to non-pipeline support infrastructure located beyond the boundary of the grant holder's lease tract, and constructed, modified, or maintained under the authority of the RUE grant. While the proposed revisions would make the decommissioning obligations of RUE grant holders clear, lessees that have also accrued such obligations for facilities and equipment on the RUE would retain their joint and several liability for satisfying those obligations under § 250.1701.

Regulatory Impact

These proposed changes to BSEE's regulations would be consistent with current practices on the OCS. BOEM has included the acceptance of decommissioning obligations as a term of RUE grants since 2017. RUE holders whose grants do not expressly address decommissioning could potentially challenge their decommissioning responsibilities in the absence of clear language in the regulations. However, RUE holders often have undertaken these obligations through agreements with the owners of the facilities by which RUE holders secure title to or rights to use facilities originally installed when the tract was subject to a lease. At most, this proposed change could represent a transfer of these accrued decommissioning obligations from the original lessee to the RUE holder while representing a de minimis decommissioning burden on RUE holders as to those facilities installed after the issuance of the grant. To the extent the proposed changes could be argued to modify the obligations with respect to RUE holders whose grants do not expressly address decommissioning liability, due to uncertainty regarding the outcome of any potential challenge and lack of access to data regarding private liability arrangements, it is not possible to provide a meaningful quantitative analysis of potential impacts. Otherwise, BSEE's proposed amendment to 30 CFR 250.1701 is intended to update its regulations to reflect the status quo and to that extent does not impose any incremental burden on RUE holders.

The proposed changes to §§ 250.1700, 250.1702, 250.1703, and 250.1725 are merely designed to remove confusion created by a succession of revisions of the underlying regulation and ensure consistency with the proposed revision of § 250.1701.

Decommissioning Plan - §§ 250.1704 and 250.1708

BSEE is proposing to add a requirement for predecessors who receive decommissioning orders to submit a decommissioning plan under 30 CFR § 250.1708(b)(3), which would also be reflected in the "*Decommissioning Applications and Reports Table*" in 30 CFR § 250.1704. Decommissioning plans are important in that they demonstrate to BSEE that the ordered entity is prepared and able to meet its decommissioning obligations to the public in a timely and responsible manner. For that reason, BSEE is now requiring parties ordered to perform decommissioning to submit a decommissioning plan as part of the revised enforcement scheme proposed in 30 CFR § 250.1708(b)(3). Under this proposed provision, the plan would be required to be submitted within 90 days of receipt of the order, it must include the full scope and schedule for all of the decommissioning work to be completed, and it must designate the responsible operator for those operations.

Regulatory Impact

Decommissioning plans consistent with this proposed provision have been required by BSEE in connection with past decommissioning orders. BSEE is not requiring additional plans, nor is it changing the timing of plan submission from what is generally required within current decommissioning orders. BSEE considers this proposed provision to be a regulatory codification of long-standing practice. Because there is no incremental burden on the part of the entity responding to decommissioning orders, BSEE does not consider the proposed amendment to be an increase over the regulatory baseline.

Proposed Reverse Chronological approach - § 250.1708

BSEE is proposing new § 250.1708 to implement an explicit reverse chronological decommissioning framework. This approach would provide predecessor lessees and grant holders greater certainty with regard to how BSEE selects predecessors to receive

decommissioning orders in the event of a default or other nonperformance by current lessees or grantees. Under BSEE's proposed approach, in the event a current lessee or grant holder fails to fulfill decommissioning obligations for an OCS facility, BSEE would look to the most recent group of predecessor lessees and grant holders in the chain-of-title to decommission prior to reaching out to earlier predecessors. If the affected facilities were secured under BOEM's financial assurance program, BOEM could, at BSEE's request, render the security's proceeds to the group of performing predecessors to offset some or all the cost of decommissioning. Alternatively, if there are no remaining predecessors, BSEE may, with the proceeds, pay a third-party to perform the decommissioning.

Under the existing joint and several liability regulations, BSEE has discretion to select a single lessee or grant holder to bear the entire burden of decommissioning, based on the specific circumstances, or a combination of some lessees or grant holders, or all of the lessees and grant holders, regardless of any lessee's or grant holder's position in the chain-of-title. In the past, BSEE has typically called first on the current lessees or grant holders to decommission. Then, in the event the current lessees or grant holders failed to perform some or all of their decommissioning obligations, BSEE called on all of the jointly and severally liable predecessors at the same time. However, the entities (or entity) that ultimately perform the decommissioning may be a subset of this larger group. Under the existing regulations and varying outcomes of past nonperformance events, predecessor lessees and grant holders lack regulatory certainty, for when (if ever) or to what extent (if at all) BSEE will order them to perform decommissioning following assignment of their interests.

BSEE is proposing in new § 250.1708(a) to organize the predecessors into groups holding interests generally within a "common era," as defined by the tenure of one designated operator. This would include any lessee with relevant interests in that lease or, when applicable, a holder of a ROW grant or RUE grant, during the time of that designated operator's tenure. The most recent common era group of predecessors would receive the initial decommissioning order. This group would also include any predecessor that assigned interests to any defaulting entity.

This approach would ensure two outcomes that are not expressly addressed in the existing regulations: (1) When possible, BSEE will hold multiple predecessors responsible, and (2) BSEE would select those predecessors in accordance with a reverse chronological sequence. While all predecessors would remain jointly and severally liable for their accrued obligations, BSEE's proposal would focus enforcement of those obligations first on those predecessors with more recent interests in the affected facility and infrastructure. These entities are more likely to be liable for all, or a greater portion of, the necessary decommissioning and are presumably more knowledgeable about current circumstances at the decommissioning site -- and thus potentially better situated to ensure that decommissioning is performed safely and on a timely basis -- than those predecessors with older, more remote, and potentially incomplete interests. This approach would allow all predecessors -- whether more recent or more remote -- to better plan for their potential need to decommission. However, to ensure that this approach would not result in undue delay or pose safety or environmental threats, the proposed rule would also confirm that BSEE may deviate from the "reverse chronological" approach under the circumstances described in proposed § 250.1708(d) discussed below.

Once BSEE issues a decommissioning order, proposed § 250.1708(b) would require predecessors to begin maintenance and monitoring of all identified facilities within 30 days, identify an entity to serve as the decommissioning operator within 60 days, and provide a decommissioning plan for approval by the Regional Supervisor within 90 days. These requirements are generally consistent with requirements set forth in BSEE's current decommissioning orders. Failure to comply with this provision, as outlined in proposed § 250.1708(c), could result in BSEE's issuance of a *Notification of Incident of Noncompliance* (INC) and other enforcement actions (such as civil penalties or recommending disqualification as operator). While this analysis assumes good faith compliance, the regulatory framework must include provisions in the event there is not, and so it is important to confirm that BSEE retains enforcement mechanisms to ensure performance.

Proposed § 250.1708(d) would provide that, in the event either: (1) the ordered entity(ies) fails to obtain approval of or execute a decommissioning plan; (2) there is an emergency condition or a safety or an environmental concern; or (3) BSEE determines that the reverse chronological

approach would unreasonably delay decommissioning, BSEE may depart from the order established in § 250.1708(a) and issue orders to any and all remaining predecessor lessees or grant holders for performance of their accrued decommissioning obligations. This scenario would be consistent with the current baseline, where BSEE is free to demand performance from any or all liable predecessors at its discretion.

Regulatory Impact

Non-performance events are sporadic by nature, and are largely the result of decisions made by management of the responsible entity. Though oil price downturns can be a catalyst for bankruptcies in the industry, most companies operating on the OCS prudently weather these events and fulfill their regulatory obligations. BSEE's proposed decommissioning framework in this rulemaking only operates once a company (or group of companies) fails to perform its accrued decommissioning obligations. The proposed provisions would not have any effect on increasing or decreasing the likelihood of a failure.

Because of the small number and sporadic nature of past decommissioning non-performance events, BSEE currently treats them on a case-by-case basis, evaluating the situation to determine how best to approach responsible parties to ensure timely and orderly decommissioning. For this reason, it is not possible to establish a consistent baseline to forecast the differences in the two compliance schemes.

However, this analysis notes that all companies in the chain-of-title for a facility or infrastructure that is subject to decommissioning are jointly and severally liable for the full accrued decommissioning obligations. As a practical matter, that means all predecessors have continued liability for their full accrued decommissioning obligations until such obligations are met and should be prepared for the possibility that they alone would be required to satisfactorily decommission any facility for which they accrued decommissioning obligations. BSEE is not proposing to change this overall liability structure.

BSEE is proposing to make its procedures for enforcing decommissioning compliance more explicit, to provide the affected companies with greater certainty regarding the order in which predecessors will be approached and how they will be expected to comply with BSEE's

decommissioning orders. As a result, BSEE concludes that no company operating on the OCS will face an incremental burden over the current regulatory expectations.

The proposed procedures would codify BSEE's preference for spreading the decommissioning cost across liable predecessors by steering enforcement towards all such entities within a common operating era (except when unusual circumstances warrant proceeding against any or all predecessors).

Transfers

While the obligation and overall cost to decommission remain unaffected, BSEE's proposed reverse chronological approach is likely to result in transfers of intangible economic costs and benefits between industry participants. Under current practice, BSEE typically would issue simultaneous orders for decommissioning to all jointly and severally liable parties, regardless of how distant their connection was to the well, platform, pipeline or other OCS facility. However, this proposal would incrementally transfer the likelihood, and possibly the amount of decommissioning burden, from more distant parties to more recent predecessors. As a result, it is more likely that recent, common era predecessors would bear a higher decommissioning cost under the proposed rule than under current practice, while companies more distant in the chain-of-title could realize a lower burden.

Existing regulations do not expressly require BSEE to pursue all predecessors simultaneously. In certain scenarios where it selected a single entity (among multiple candidates) to pursue for compliance, BSEE no longer would have that option (at least initially) under the proposed rule. In this manner, that single entity could realize a lower burden to the extent that BSEE pursues decommissioning from multiple predecessors. It is not possible to predict the outcome of a typical nonperformance event, as each scenario is dependent on the extent of nonperformance and the composition of the affected chain-of-title. These circumstances vary significantly, and so BSEE does not consider these potential transfers to be regular or consistent across each group of predecessors. But over time this proposal is more likely than not to benefit industry participants that install infrastructure over those that acquire used assets on the secondary

market. Ultimately though, all parties with accrued obligations remain jointly and severally liable for the performance.

Appeals Bond – § 250.1709 and § 290.7

Predecessors may appeal their decommissioning orders to the Interior Board of Land Appeals (IBLA). Under proposed new § 250.1709 and amended § 290.7, BSEE would require that a recipient of a decommissioning order that appeals the order and seeks a stay of its effectiveness must post an appeal bond in an amount BSEE determines adequate to cover the unsecured accrued decommissioning. When facing unsecured decommissioning obligations, it is in the government's best interest to ensure, before a lengthy appeal process begins, that subsequent non-performance by a predecessor whose appeal is denied does not ultimately result in burdens on the taxpayer. The appeals bond requirement would provide that assurance while awaiting a final decision by the IBLA.

Regulatory Impact

Bonding requirements are a common tool on the OCS to ensure protection for the taxpayer where there is risk of nonperformance. However, surety bonds are not currently required by BSEE to appeal a decommissioning order, and therefore this proposed requirement represents an incremental cost over BSEE's existing regulations. Costs of bonds vary, but generally a combination of premium and collateral is required in exchange for bond coverage based on a company's financial strength and an evaluation of the risk to the surety company. As such, the cost associated with these provisions would be highly dependent on the merit of the appeal and the ability of the bonded company to perform the decommissioning. It is not possible to assume the merit of a hypothetical appeal, but it follows from the second criterion that the significance of this cost on the predecessor would be relative, in part, to its financial strength. An appeal is optional, so this incremental cost would only be incurred in the event a predecessor receives decommissioning orders, opts to appeal them, and seeks a stay of their effectiveness pending appeal. However, the cost would be limited and short-lived, as the bond would be released if the appellant were to successfully establish that it was not responsible for the obligation. Further, the cost of posting the requisite bond could be spread among multiple

predecessor- appellants. A stay of performance pending appeal would also defer the expenditure of substantial sums in performance of decommissioning, potentially by a number of years, further offsetting the cost of the bond. BSEE welcomes comments and information from the public on surety bonds in the context of an appeal to better understand how they would be structured and priced.

Summary of the Costs and Benefits of the Proposed Rule

Ensuring orderly, timely, and comprehensive decommissioning of OCS facilities is a priority for BSEE, BOEM, and the Department of the Interior. Decommissioning OCS facilities requires a significant expenditure of capital by the responsible parties. Providing regulatory certainty in BSEE's approach to issuing decommissioning orders potentially makes it easier for companies with accrued decommissioning obligations to understand and plan for these potential large capital outlays. The provisions in this rulemaking proposed by BSEE are intended to codify an explicit approach to the process for demanding decommissioning from predecessors in the event of a default. They also would provide a mechanism to secure decommissioning in the event a predecessor chooses to appeal BSEE's orders and thus carry a variable cost depending on the merits of the appeal and the financial strength of the appellant. BSEE's proposed approach does not affect the requirements necessary to decommission an OCS facility.

V. Regulatory Alternatives

For this proposed rule and IRIA, BSEE considered three regulatory alternatives:

1. The Proposed Rule
2. A "No Action" alternative that would retain the existing regulations without change
3. Different Compliance Approaches

The preferred alternative, the "proposed rule," and the benefits and impacts of its provisions on regulated stakeholders and the public are presented in the preceding sections.

No Action Alternative

An agency promulgating revisions to existing regulations generally has the option to take no action. This "no action" alternative describes the world where the existing regulatory baseline remains the status quo. Under this scenario, the parties liable for decommissioning offshore facilities remain liable in the same manner as under the proposed rule. However, predecessors lack regulatory certainty as to when or to what degree they may be ordered by BSEE to perform their residual accrued decommissioning obligations in the event of defaults by current lessees or grant holders. The extent to which BSEE can provide industry with greater certainty could help predecessors plan for and be prepared to meet their regulatory obligations. Because BSEE can provide added clarity without increasing burdens on industry or decreasing the likelihood of the successful decommissioning of affected OCS facilities, it opts not to select the "no action" alternative.

Different Compliance Approaches

One-by-one approach

BSEE considered demanding compliance from predecessors "one-by-one" in reverse chronological order in lieu of the "common-era" group approach. This one-by-one approach would likely result in longer times to obtain satisfactory decommissioning. The longer timetables would likely materially increase the probability that problems or emergency situations could arise in the interim. It would also present a significant administrative burden to the government given that lease interests are commonly divided among multiple parties who often transfer their interests in different forms at different times. It would be extremely difficult to identify a single party as a next-in-line predecessor, and BSEE expects that litigation over that designation would be likely. Holding multiple predecessors responsible who share a common designated operator is more straightforward and more difficult to dispute, and so BSEE opted to propose that approach.

Appeals bond

Appeals to the IBLA of decommissioning orders currently do not require a surety bond, and BSEE could have opted not to propose to require one in the event a recipient of a decommissioning order decides to appeal to the IBLA. A lessee's appeal of decommissioning orders may lead to an extended appeal to the IBLA. It is possible that a company, previously able to meet its decommissioning obligation, would not be able to satisfactorily perform decommissioning due to financial constraints at the conclusion of an unsuccessful appeal. BSEE hopes to avoid this situation, and though it may represent a burden on the appellant, it is balanced by risk mitigation the security provides. As such, BSEE proposes to revise the current regulations and to include the proposed appeals bond requirement to ensure that financial security is in place before a company's appeals are heard and ultimately decided.

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601-612, requires agencies to analyze the economic impact of regulations when there is likely to be a significant economic impact on a substantial number of small entities and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the regulation will not have a significant economic impact on a substantial number of small entities. BSEE has developed an IRFA to discuss the impact of this proposed rule on small entities. BSEE concludes its proposed changes would not result in any incremental change to the existing burdens of small entities because, if they accrued decommissioning liability, they remain liable for decommissioning under both current regulations and these proposed regulations, given that the joint and several liability would remain the same. While restricting the groups of predecessors that BSEE may approach in any particular circumstances may have differing impacts on different operators, those effects are highly case-dependent and too uncertain to evaluate at a general level. BSEE welcomes public comment on the analysis and alternatives to achieve the same regulatory objectives.

Description of the Reasons Why Action by the Agency Is Being Considered

Since the start of 2017, the President has issued several Executive Orders (E.O.s) that necessitated the review of BSEE rules. On March 28, 2017, the President issued E.O. 13783, "Promoting Energy Independence and Economic Growth" (82 FR 16093). Section 2(a) of E.O. 13783 directs the heads of all agencies to:

> review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, "agency actions") that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources.

Section 2(g) of E.O. 13783 directs the heads of all agencies to address agency actions that hinder the development or use of domestically produced energy resources:

> [T]he head of the relevant agency shall, as soon as practicable, suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding, those actions, as appropriate and consistent with law. Agencies shall endeavor to coordinate such regulatory reforms with their activities undertaken in compliance with Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs).

On April 28, 2017, the President issued E.O. 13795, "Implementing an America-First Offshore Energy Strategy" (82 FR 20815), which directed the Secretary to review and to "…lawfully revise any related rules and guidance for consistency with the policy set forth in section 2 …" of E.O. 13795. Section 2 of E.O. 13795 in turn provides:

> It shall be the policy of the United States to encourage energy exploration and production, including on the Outer Continental Shelf, in order to maintain the Nation's position as a global energy leader and foster energy security and resilience for the benefit of the American people, while ensuring that any such activity is safe and environmentally responsible.

To carry out the directives contained in these Executive Orders, the Secretary of the Interior issued Secretary's Order No. 3349, "American Energy Independence," which requires that:

> each bureau and office shall review all existing regulations, orders, guidance documents, policies, instructions, notices, implementing actions, and any other similar actions (Department Actions) related

> to or arising from the Presidential Actions set forth above and, to the extent deemed necessary and permitted by law, initiate an appropriate process to suspend, revise, or rescind any such actions, consistent with the policies set forth in the March 28, 2017 E.O.

BOEM has received (and provided to BSEE) comments and feedback asserting the need for, and importance of, providing greater certainty in BSEE's enforcement of residual accrued OCS decommissioning obligations against predecessor lessees and grant holders under the joint and several liability framework. BSEE's intent with these proposed changes is to provide improvements to meet those ends, as well as to provide the opportunity through the notice and comment period for all interested parties and the public to provide substantive comments on these proposals.

Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

To address the directives contained in the Executive and Secretary's Orders, BSEE is proposing to amend and update regulations in 30 CFR Parts 250 and 290 pertaining to the decommissioning of wells, platforms, pipelines, and other infrastructure associated with OCS leases, RUE grants, and pipeline ROW grants. Under OCSLA, the Secretary of the Interior is authorized to prescribe "such rules and regulations as may be necessary to carry out [OCSLA's] provisions . . . and may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the [OCS] . . ." and that "shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of [OCSLA]." (43 U.S.C. § 1334(a)).

The Secretary delegated most of the Department's responsibilities under OCSLA to BOEM and BSEE, each of which is charged with administering and regulating aspects of the nation's OCS oil and gas program. BSEE is responsible for regulating to promote operational safety and environmental protection associated with operations conducted under OCSLA. BSEE requires and is responsible for ensuring that decommissioning of OCS facilities occurs when a lease or grant terminates or the facilities are no longer useful for operations. Current and former lessees and grant holders are jointly and severally liable pursuant to both BSEE (30 CFR §§ 250.146,

250.1701) and BOEM (30 CFR § 556.604) regulations for the performance of decommissioning obligations that accrue during the tenure of their interest. BSEE is not proposing to change that requirement except to the extent the proposed rule clarifies RUE holders accrue decommissioning obligations. Instead, BSEE is proposing to clarify how it will enforce decommissioning obligations against predecessor lessees and grant holders upon default by subsequent interest holders to ensure there is greater certainty in the process.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to which the Proposed Rule Would Apply

A small entity, as defined by the RFA, consists of small businesses, small not-for-profit organizations, and small governmental jurisdictions. BSEE has identified no small not-for-profit organizations or government jurisdictions that the rule would impact, so this analysis focuses on impacts to small businesses (hereafter referred to as "small entities").[2]

The proposed rule would affect OCS lessees and RUE grant and pipeline ROW grant holders. BSEE is relying on BOEM's IRFA analysis showing that this includes roughly 555 companies with ownership interests in OCS leases and grants.[3] The definition of small business varies from industry to industry to reflect industry size differences. Entities that would operate under this rule are classified primarily under North American Industry Classification System (NAICS) codes 211120 (Crude Petroleum Extraction), 211130 (Natural Gas Extraction), and 486110 (Pipeline Transportation of Crude Oil and Natural Gas).[4] For NAICS classifications 211120 and 211130, the Small Business Administration defines a small business as one with fewer than 1,250 employees; for NAICS code 486110, it is a business with fewer than 1,500 employees. All of the operating businesses meeting the SBA classification are potentially impacted; therefore, BSEE

[2] Native American or Native Alaskan corporations with ownership interests in OCS properties are not considered government jurisdictions for this analysis.

[3] The count of companies often includes multiple subsidiary companies under one parent. The categorization of small versus large company is made based on the size of the parent company per SBA Office of Advocacy guidance.

[4] Some holders of OCS properties may be categorized under other NAICS codes. For example, a venture capital fund with only an economic interest in an OCS property may be categorized under another NAICS code, but BSEE believes the three NAICS Codes used here capture the overwhelming majority of OCS lessees and grant holders.

expects that the proposed rule would affect a substantial number of small entities. Based on this criterion, approximately 386 (70 percent) of the entities with OCS decommissioning obligations are considered small and would be subject to this proposed rule; the rest are considered large entities.

As a general assumption, as an OCS facility ages, ownership is passed from larger companies to smaller companies, though not necessarily small entities. Larger companies tend to be financially stronger, more diversified, and better capitalized than their smaller counterparts. Generally, when proceeding in reverse chronological order through any given chain-of-title that contains multiple lessees or grant holders over a long time period, BSEE would likely encounter the smaller entities prior to reaching the larger companies.

Costs of decommissioning a given OCS facility are unlikely to vary substantially between a larger entity and a smaller one. While BSEE recognizes that decommissioning in general may represent a larger *relative* cost for the smaller entity, financial strength, or the lack thereof, cannot itself become a criterion for decommissioning compliance. Organizing the order of recourse to favor smaller entities could weaken the public's support for smaller entities operating while carrying a materially large decommissioning obligation compared to their financial capacity. BSEE notes, however, that small entities have acquired interests in OCS leases with full knowledge of the joint and several liability framework, which binds them to an obligation to decommission into the future, and assumes they have prepared for that eventuality, even where -- for predecessors -- that obligation might be contingent upon a successor's default. Therefore, BSEE believes the additional cost of this rule is zero for affected small entities because they were always liable. For these reasons, BSEE believes the proposed rule is unlikely to affect those small entities. BSEE invites comment on this analysis.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

BSEE's provisions in the proposed rule add minor new reporting, recordkeeping, or other compliance requirements associated with providing an appeals bond proposed in § 250.1709 and § 290.7 if a company chooses to appeal its decommissioning orders. The decommissioning

plan proposed in § 250.1708 is an existing requirement currently included in BSEE's decommissioning orders.

Identification of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rule

The proposed rule does not conflict with any relevant Federal rules or duplicate or overlap with any Federal rules in any way that would unnecessarily add cumulative regulatory burdens on small entities without any gain in regulatory benefits.

Description of Significant Alternatives to the Proposed Rule

Instead of the proposed reverse chronological compliance approach to ensuring decommissioning, BSEE could instead seek compliance from large entities first. This approach would likely favor small entities who may not be as financially sound and not have the same level of assets, cash flow, or line(s) of credit as a larger counterpart. Ordering decommissioning from large entities first would not prevent BSEE from achieving the statutory goal of timely performance of decommissioning. However, BSEE is not proposing this alternative as it potentially results in several undesirable outcomes. As discussed earlier, changes are likely to occur on a lease over time, such as the drilling of new wells, installation of new platforms, and installation of new pipelines. In such cases, a distant predecessor may lack the knowledge and understanding of the facility as modified over time, and frequently has no responsibility for later installations, meaning they are less likely to be in a position to decommission the affected facility as efficiently as a predecessor more recent in time. Because larger entities are typically more temporally distant in the chain of title than small entities, prioritizing pursuit of larger entities would lead to the potential negative outcomes the proposed rule is designed to avoid.

Furthermore, if companies are more likely to realize a decommissioning liability due to their large size, it would be more difficult for them to efficiently allocate their resources. This could likely negatively impact the ability to obtain investments or lines of credit and therefore potentially limit other areas of U.S. investment, in greater amounts than the face value of decommissioning. Larger companies are critical to accomplishing national objectives on the

OCS, including the development of new technologies and advancing the development of natural resources. This may have the undesired effect of decreasing the competitiveness of the affected area, mainly the Gulf of Mexico in this case.

The regulatory obligations and compliance requirements are performance in nature. BSEE does not prescribe the methods by which companies must decommission, only that they do so satisfactorily. BSEE has endeavored to make the compliance and reporting requirements in this rule clear, consolidated, and simple for all. It is not feasible to vary those requirements between large and small entities because performance must be consistent and often collaborative and concurrent in order to ensure the proper completion of decommissioning

For these reasons and the reasons discussed earlier in the IRIA, BSEE is not proposing to exempt or provide differing compliance requirements for small entities. Decommissioning obligations and the joint and several nature of those obligations are not being changed with this proposed rule. Small entities that hold and have held interests in OCS leases or grants acquired and exercised those interests with a knowledge of the regulatory obligations that accompanied them. This proposed rule would not alter any element of the longstanding regulatory regime establishing those obligations in a manner that would justify creating new exemptions for small entities. Timely performance of decommissioning is a foundational responsibility of any lessee/grant holder, large or small. Exempting small entities from the provisions of this proposed rule could create a moral hazard situation where the risk to the public increases, and the taxpayer is at greater risk for assuming the decommissioning obligations, increasing risk of environmental harms. Providing small entities with additional time to perform decommissioning in the regulations could result in a greater financial deterioration for one or more liable companies prior to completion of performance. It is possible that a company, previously able to meet its decommissioning obligation, would not be able to satisfactorily perform decommissioning due to developing financial constraints if categorically granted additional time to comply with a decommissioning order. And, BSEE cannot have different timetables for parties who shared a common operator if it is to maintain the reverse chronological element central to this proposal. Further, should the entity ultimately default following the passage of that additional time, other jointly and severally liable parties may

likewise have deteriorated to the point of being no longer available by the time they are called upon to perform.

VII. Unfunded Mandates Reform Act (UMRA) Analysis

This proposed rule would not impose an unfunded Federal mandate on State, local, or Tribal governments or the private sector of more than $163 million per year.[5] This proposed rule would not have a significant or unique effect on State, local, or Tribal governments, or the private sector. Thus, an UMRA statement is not required.

VIII. Effects on the Nation's Energy Supply (E.O. 13211)

Under E.O. 13211 (66 FR 28355, May 22, 2001), agencies are required to prepare and submit to the Office of Management and Budget (OMB) a Statement of Energy Effects for significant energy actions. This should include a detailed statement of any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) expected to result from the action and a discussion of reasonable alternatives and their effects. OMB provides guidance for implementing this E.O., outlining outcomes that may constitute "a significant adverse effect" when compared with the regulatory action under consideration:

- Reductions in crude oil supply in excess of 10,000 barrels per day.
- Reductions in fuel production in excess of 4,000 barrels per day.
- Reductions in coal production in excess of 5 million tons per year.
- Reductions in natural gas production in excess of 25 million Mcf per year.
- Reductions in electricity production in excess of 1 billion kilowatt hours per year or in excess of 500 megawatts of installed capacity.
- Increases in energy use required by the regulatory action that exceed the thresholds above.

[5] The private-sector cost threshold established in UMRA in 1996 was $100 million. After adjusting for inflation, the 2019 private-sector threshold is $163 million.

- Increases in the cost of energy production in excess of 1 percent.
- Increases in the cost of energy distribution in excess of 1 percent.
- Other similarly adverse outcomes.

In addition, there may be a significant adverse effect if the regulation:

- Adversely affects in a material way the productivity, competition, or prices in the energy sector.
- Adversely affects in a material way productivity, competition, or prices within a region.
- Creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency regarding energy.
- Raises novel legal or policy issues adversely affecting the supply, distribution, or use of energy arising out of legal mandates, the President's priorities, or the principles set forth in E.O.s 12866 and 13211.[6]

Since BSEE's proposed regulatory changes would apply only to facilities that are subject to decommissioning after exploration, development, and production activities have ended, and would add no significant burdens to entities seeking to undertake such activities, those changes would not lead to adverse effects on the Nation's energy supply, distribution, or use. Therefore, a statement of a "significant adverse effect" is not required.

[6] OMB. 2001. Memorandum For Heads of Executive Department Agencies, and Independent Regulatory Agencies, Guidance For Implementing E.O. 13211, M-01-27. https://www.whitehouse.gov/wp-content/uploads/2017/11/2001-M-01-27-Guidance-for-Implementing-E.O.-13211.pdf