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4310-VH-P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE-2016-0004; 17XE1700DX EEEE500000 EX1SF0000.DAQ000]

RIN 1014-AA32

**Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Decommissioning
Costs for Pipelines**

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This rule amends Bureau of Safety and Environmental Enforcement (BSEE) regulations requiring lessees and owners of operating rights to submit summaries of actual decommissioning expenditures incurred for certain decommissioning activities related to oil and gas and sulfur operations on the Outer Continental Shelf (OCS). The amendment requires lessees, owners of operating rights, and right-of-way (ROW) holders to submit summaries of actual expenditures incurred for pipeline decommissioning activities.

DATES: This final rule becomes effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Betty Cox, Regulatory Analyst, Regulations and Standards Branch at regs@bsee.gov or by telephone at (703) 787-1616.

SUPPLEMENTARY INFORMATION:

BSEE's Functions and Authority

BSEE promotes safety, protects the environment, and conserves natural resources through vigorous regulatory oversight and enforcement regarding certain activities on the OCS. BSEE derives its authority primarily from the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331–1356a. Congress enacted OCSLA in 1953, codifying Federal control over the OCS and authorizing the Secretary of the Interior (Secretary) to, among other things, regulate oil and natural gas exploration, development, and production operations and to grant rights-of-way on the OCS. The Secretary has authorized BSEE to perform certain of these functions, including overseeing decommissioning. (*See* 30 CFR 250.101; 30 CFR part 250, subpart Q.) To carry out its responsibilities, BSEE regulates exploration, development, and production of oil and natural gas and pipeline operations to enhance safety and environmental protection in a way that reflects advancements in technology and new information. BSEE also conducts onsite inspections to ensure compliance with regulations, lease terms, and approved plans or permits. Detailed information concerning BSEE’s regulations and guidance for the offshore industry may be found on BSEE’s website at: www.bsee.gov/Regulations-and-Guidance/index.

Background

Among its responsibilities, BSEE regulates certain types of oil and gas pipelines used on the OCS. (*See* 30 CFR 250.1000 - 250.1019). In general, BSEE regulates pipelines or pipeline segments on the OCS that are operated by oil and gas producers.¹ (*See id.*) Pipelines regulated by BSEE generally fall within two categories, “lease term” pipelines or ROW pipelines. Among other things, BSEE approves the installation, modification, and decommissioning of all lease term and ROW pipelines, and the modification or relinquishment of all pipeline ROW grants on the OCS. BSEE’s regulations for decommissioning pipelines are found at 30 CFR 250.1700

¹ BSEE also regulates transporter-operated pipelines that DOI and the U.S. Department of Transportation (DOT) have agreed are to be regulated by BSEE, as well as all OCS pipelines not subject to DOT regulation. *See* 30 CFR 250.1001.

through 250.1704 and 250.1750 through 250.1754. A more detailed discussion of BSEE's regulations for OCS pipelines is found in the preamble to the proposed rule for this rulemaking. (See 81 FR 53348 (Aug. 12, 2016).)

Purpose and Summary of Proposed and Final Amendment to Decommissioning Cost Reporting Requirements

In 2009, BSEE's predecessor agency, the Minerals Management Service (MMS), proposed new reporting requirements related to lease assignment for lease term pipelines. (*See* 74 FR 25177 (May 27, 2009).) MMS also proposed to require the submission of information on expenditures for decommissioning of wells, platforms, and other facilities and for site clearance. (*See id.*)

In a final rule published on December 4, 2015, BSEE amended its regulations to require lessees and owners of operating rights to submit summaries of actual decommissioning expenditures for certain required decommissioning activities within 120 days after completion of each such activity. (*See* 80 FR 75806.) Specifically, the final rule requires reporting of summaries of expenditures for plugging wells, removing platforms and other facilities, and clearing obstructions from sites. In addition, the final rule authorizes BSEE to require additional supporting information regarding specific decommissioning costs on a case-by-case basis. The December 2015 final rule was codified at 30 CFR 250.1704(h) and (i).

On April 27, 2016, BSEE issued a Notice to Lessees and Operators (NTL), No. 2016-N03, *Reporting Requirements for Decommissioning Expenditures on the OCS*, providing guidance and clarification regarding the submission of the decommissioning cost summaries required by § 250.1704(h). On April 29, 2016, BSEE adopted a final rule revising and establishing requirements for improving well control equipment and procedures (the Well Control Rule).

(*See* 81 FR 25888.) Among other things, effective July 28, 2016, the Well Control Rule revised paragraph (g) of § 250.1704, added a new paragraph (h), and redesignated existing paragraphs (h) and (i) as paragraphs (i) and (j), respectively. The Well Control Rule did not, however, affect the substance of those decommissioning cost reporting provisions.

BSEE did not include reporting of expenditures for pipeline decommissioning in the December 2015 final rule because the 2009 proposed rule did not expressly refer to pipeline decommissioning expenditures. BSEE has determined, however, that accurate information about expenditures incurred for pipeline decommissioning activities is needed to better estimate future decommissioning costs for those activities.

As BSEE explained in the December 2015 final rule, with regard to expenditures for other types of decommissioning activities, summaries of actual decommissioning expenditures will help BSEE better estimate future decommissioning costs. (*See* 80 FR 75806.) For the same reason, summaries of actual pipeline decommissioning expenditures will help BSEE better estimate future decommissioning costs. In addition, BSEE will share its pipeline decommissioning cost estimates – as well as all other decommissioning cost estimates – with the Bureau of Ocean Energy Management (BOEM) for use by BOEM in setting necessary financial assurance levels to minimize the possibility that (1) the government will incur future financial liability for decommissioning pipelines where the responsible party has failed to carry out the required decommissioning and has posted inadequate financial assurance; or (2) financial assurance requirements will exceed the amount actually necessary to cover future decommissioning liabilities.

Accordingly, on August 12, 2016, BSEE published a proposed rule to extend the existing decommissioning cost reporting regulations to require lessees, owners of operating rights, and

pipeline ROW holders to submit information regarding actual expenditures incurred for activities related to decommissioning of pipelines. (*See* 81 FR 53348.) Specifically, BSEE proposed to expand the scope of: (1) existing § 250.1704(i) in order to require that lessees, owners of operating rights, and pipeline ROW holders submit certified summaries of actual expenditures for decommissioning of pipelines; and (2) existing § 250.1704(j) in order to authorize Regional Supervisors to require the submission of additional information, on a case-by-case basis, to support summaries of pipeline decommissioning expenditures submitted under § 250.1704(i). The rule did not propose to revise the existing decommissioning cost reporting provisions.

For the reasons stated in the proposed rule and based on BSEE's evaluation of the public comments received, this rule finalizes the proposal to require lessees, owners of operating rights, and pipeline ROW holders to submit information reflecting actual expenditures incurred for the decommissioning of pipelines.² The final rule amends paragraphs (i) and (j) of § 250.1704 to require lessees, owners of operating rights, and pipeline ROW holders to submit certified summaries of actual expenditures for decommissioning of pipelines, and to authorize Regional Supervisors to require additional information, on a case-by-case basis, as needed, to support a specific summary of such expenditures.

Changes Between Proposed and Final Rules

BSEE has made no changes to the language of the proposed rule and is finalizing the regulatory text as proposed.

Summary of and Responses to Public Comments

In response to the proposed rule, BSEE received one comment, which was submitted by a trade association representing producing companies and service providers to the offshore oil and

²As stated in the proposed rule, BSEE recognizes that a designated operator may submit the required summary of decommissioning costs on behalf of a lessee. (*See* 81 FR 53350 n.4.)

natural gas industry. The full text of the comment can be viewed at: www.regulations.gov. To access the comment, enter BSEE-2016-0004 in the search box. A summary of the issues raised by the comment, with BSEE's responses, follows.

Comment: The commenter asserted that BSEE had not provided guidance or details on how the certified summary of pipeline decommissioning expenditures should categorize and report information. The commenter stated that, at a minimum, the guidance in NTL No. 2016-N03 should be updated before the final rule is implemented to include specific guidance on decommissioning costs for pipelines, umbilicals, pipeline end terminations (PLETS), manifolds, and other equipment permitted through pipeline applications and bonding.

Response: Subsequent to publication of the December 2015 Decommissioning Cost Reporting final rule, BSEE issued NTL No. 2016-N03, which provides guidance and clarification regarding the submission of certified decommissioning cost expenditure summaries for wells, platforms or other facilities, and for clearance of any site. Among other things, that NTL addresses the format of submitted data and recommends the submission of cost data for each decommissioning activity type, including PLETS, pipeline end manifolds, and other types of equipment being decommissioned. Notwithstanding the clarification provided by NTL No. 2016-N03, BSEE understands that supplemental guidance and clarification may be needed regarding the submission of certified summaries of pipeline decommissioning cost expenditures and expects to issue additional guidance and clarification, as future circumstances may warrant, through appropriate means (*e.g.*, in a revised or new NTL).

Comment: The commenter suggested that, if aggregate data are used by BSEE to estimate future decommissioning costs, these data should be made available, with specific operator information removed, to industry for benchmarking purposes. In addition, the commenter

suggested that the owner or operator should have the ability to request an adjustment to a BSEE cost estimate by presenting its own decommissioning estimate data to BSEE/BOEM for review.

Response: The commenter's suggestions do not warrant any revision to the proposed regulatory language; however, BSEE will take these suggestions into consideration as aggregated data are developed and analyzed under the final rule. Regarding the commenter's suggestion that BSEE allow the presentation of company-specific estimates for review and possible adjustment of the BSEE cost estimates, BSEE has always allowed such submissions and they will continue to be part of the BSEE process for estimating future costs.

Comment: The commenter asserted that the phrase "actually incurred" in proposed § 250.1704(i) is ambiguous, since operators may develop a figure for the value of work done (VOWD) prior to receiving an invoice from the vendor, and the VOWD may differ from the vendor invoice that, in some cases, may not be received until more than 120 days after the decommissioning work is completed. The commenter further stated that, while the 120-day deadline for submitting a summary of expenditures may be practicable if a summary based on the VOWD is acceptable, 120 days may be insufficient if the summary is required to be based on actual invoices for services received.

Response: BSEE disagrees that the phrase "expenditures actually incurred" is ambiguous. BSEE is requiring a summary of actual decommissioning expenditures for pipelines, using the same terminology used in the December 2015 final rule for submitting summaries of actual expenditures for decommissioning of wells, platforms, or other facilities and for site clearance. Such certified summaries are based on actual invoice data. By contrast, VOWD estimates may not accurately reflect the actual decommissioning costs and could negatively

impact future BSEE decommissioning cost estimates. Accordingly, submitting a VOWD would not satisfy the requirement of this rule.

Regarding the commenter's assertion that 120 days may not be enough time to submit a certified summary based on actual invoice data, BSEE expects to apply the same guidance under this new rule as that contained in NTL No. 2016-N03, *i.e.*:

BSEE appreciates that there could be situations where it may take longer than the 120-day reporting period allowed by regulation for lessees to receive and process all decommissioning related invoices. In such cases, BSEE will consider granting an extension when timely requested and sufficiently justified. BSEE would rather receive a single complete submission with a reporting period extension than a preliminary summary followed by some number of revisions/supplements. However, failure to submit decommissioning cost summaries in the timeframe required by the regulation, or as extended by BSEE, may result in BSEE's issuance of an Incident of Noncompliance.

BSEE expects to address any special situations that may warrant an extension of the deadline for submitting a summary of pipeline decommissioning expenditures in the same manner as requests to extend the deadline for summaries of other decommissioning costs.

Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), will review all significant regulatory

actions. BSEE has determined that this final rule is not a significant regulatory action as defined by section 3(f) of E.O. 12866 because:

- It is not expected to have an annual effect on the economy of \$100 million or more;
- It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments or communities;
- It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients; and
- It will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Accordingly, BSEE has not prepared an economic analysis beyond the analysis required under the Paperwork Reduction Act, and OIRA has not reviewed this rule under E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. It also emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. BSEE developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

BSEE certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This rule potentially affects offshore lessees, owners of operating rights and other operators, and pipeline ROW holders who perform decommissioning activities under 30 CFR part 250, subpart Q. In the December 2015 final rule, using the Small Business Administration's North American Industry Classification System (NAICS) codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells), we estimated that a substantial number, about 90 of the 130 active companies potentially affected by that rule (*i.e.*, lessees and operators), would be considered small entities. (*See* 80 FR 75808.) However, we concluded that the final rule would not have a significant economic effect on those small entities because the cost of preparing decommissioning cost summaries is not significant. (*See id.*)

This final rule will affect some additional companies (*i.e.*, ROW holders that were not covered by the December 2015 final rule as lessees or owners of operating rights) that will be required to submit pipeline decommissioning cost summaries. Using more recent information than was available when we published the December 2015 final rule, we estimate that this final rule's requirement to report pipeline decommissioning costs could affect approximately 111 lessees, owners of operating rights, and ROW holders that currently own or control DOI pipelines, including many companies already covered by the December 2015 final rule. Of these 111 potentially affected entities, we estimate that a substantial number (66 companies) are small entities. Therefore, this final rule will affect a substantial number of small entities.

However, because the final rule requires only summary reports of actual expenditures related to pipeline decommissioning activities, it will not impose significant new economic impacts on any affected small entities. The requirement to submit pipeline decommissioning cost

summaries will not result in significant additional costs or burdens for any affected entity. As indicated in the Paperwork Reduction Act section of this document, the annual burden of the rule is estimated to be only 519 hours in total for all affected entities to prepare and submit their pipeline decommissioning cost summaries. Accordingly, since the changes reflected in this final rule will not have a significant economic effect on a substantial number of small entities, the RFA does not require BSEE to prepare a regulatory flexibility analysis for this rule.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This final rule will not:

- Have an annual effect on the economy of \$100 million or more;
- Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BSEE, call 1-888-734-3247. You may comment to the Small Business Administration (SBA) without fear of retaliation. Allegations of discrimination/retaliation filed with the SBA will be investigated for appropriate action.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate on State, Tribal, or local governments or the private sector of more than \$100 million per year. This rule also will not have a significant or unique effect on State, Tribal, or local governments or the private sector. Thus, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this final rule will not effect a taking or otherwise have takings implications. This rule is not a governmental action capable of interference with constitutionally protected property rights. Therefore, a Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this final rule does not have federalism implications. This rule will not have a substantial direct effect on the States or the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this final rule will not affect that role. Accordingly, a federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This final rule complies with the requirements of Executive Order 12988 (E.O. 12988), *Civil Justice Reform* (February 7, 1996). Specifically, this rule:

- Meets the criteria of section 3(a) of E.O. 12988 requiring that all regulations be reviewed to eliminate drafting errors and ambiguity and be written to minimize litigation; and
- Meets the criteria of section 3(b)(2) of E.O. 12988 requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribal Governments (E.O. 13175)

We have evaluated this final rule under the Department's tribal consultation policy, under Departmental Manual Part 512 Chapters 4 and 5, and under the criteria in E.O. 13175 and have determined that it will have no substantial direct effects on federally recognized Indian tribes. As a result, consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA)

This rule contains new information collection (IC) requirements and submission to the OMB under the PRA of 1995 (44 U.S.C. 3501 *et seq.*) is required. The OMB has approved the IC in this rule under OMB Control Number 1014-0030, expiring on November 30, 2019. We estimate the annual burden associated with this IC to be 519 hours per year.

The title of the collection of information for this rule is *30 CFR part 250, subpart Q, Decommissioning Costs for Pipelines*. Potential respondents include approximately 111 OCS lessees, owners of operating rights, and ROW holders. Responses to this collection are mandatory. The frequency of response is on occasion. The IC does not include questions of a sensitive nature. BSEE will protect confidential commercial and proprietary information according to section 26 of OCSLA (43 U.S.C. 1352), FOIA (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2), and according to 30 CFR 250.197 (*Data and information to be made available to the public or for limited inspection*).

Once the requirements of this rulemaking have been codified, BSEE will consolidate these additional burden hours into the primary collection for 30 CFR part 250, subpart Q, under OMB Control Number 1014-0010 (expiration November 30, 2016; 15,524 burden hours and \$1,686,396 non-hour cost burdens). There are no non-hour cost burdens associated with this rulemaking.

The following table is a breakdown of the burden estimate:

We received one comment in response to the proposed rule pertaining to the information collection. Please see the **Summary of and Responses to Public Comments** section in this preamble. Based on the comment received, we are increasing the burden to reflect requests for extension to the 120-day reporting period (+ 19 hours).

Burden Table

| Citation 30 CFR 250 | Reporting and Recordkeeping Requirements | Hour Burden | Average No. of Annual Responses | Annual Burden Hours |
|------------------------------------|---|---|--|------------------------------------|
| 1704(i), (j) | Submit to the Regional Supervisor a complete summary of expenditures incurred within 120 days after completion of each decommissioning activity (including permanently plugging any well, removal of any platform or facility, decommissioning of pipelines, etc.); any additional information that will support and/or verify the summary. | 1 hour | 500 pipeline summaries | 500 |
| 1704(i); NTL | Request and obtain approval for extension of 120-day reporting period; including justification. | 15 min. | 75 requests | 19 |
| 1704(i) | Submit certified statement attesting to accuracy of the summary for expenditures incurred. | Exempt from the PRA under 5 CFR 1320.3(i)(1). | | 0 |
| TOTAL | | | 575 Responses | 519 Hours |

An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may comment at any time on the accuracy of the IC burden in this rule and may submit any comments to the Department of the Interior, Bureau of Safety and Environmental Enforcement, Attention: Regulations and Standards Branch, VA-ORP, 45600 Woodland Road, Sterling, VA 20166.

National Environmental Policy Act of 1969 (NEPA)

This rule meets the criteria set forth in 516 Departmental Manual (DM) 15.4C(1) for a categorical exclusion because it involves modification of existing regulations, the impacts of

which would be limited to administrative or economic effects with minimal environmental impacts.

We have also analyzed this rule to determine if it involves any of the extraordinary circumstances set forth in 43 CFR 46.215 that would require an environmental assessment or an environmental impact statement for actions otherwise eligible for a categorical exclusion. We have concluded that this rule does not involve any of the listed extraordinary circumstances.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (44 U.S.C. 3516 *et seq.*, Pub. L. 106-554, app. C sec. 515, 114 Stat. 2763, 2763A-153-154).

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

This rule is not a significant energy action under Executive Order 13211 (E.O. 13211) because:

- It is not a significant regulatory action under E.O. 12866;
- It is not likely to have a significant adverse effect on the supply, distribution or use of energy; and
- It has not been designated as a significant energy action by the Administrator of OIRA.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration,

Penalties, Reporting and recordkeeping requirements, Sulfur.

Dated: November 1, 2016.

Amanda C. Leiter,
Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, BSEE amends 30 CFR part 250 as follows:

**PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER
CONTINENTAL SHELF**

1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

2. Amend § 250.1704 by revising paragraphs (i) and (j) in the table to read as follows:

**§ 250.1704 What decommissioning applications and reports must I submit and when
must I submit them?**

* * * * *

Decommissioning Applications and Reports Table

| Decommissioning applications and reports | When to submit | Instructions |
|---|--|---|
| * * * * * | | |
| (i) A certified summary of expenditures for permanently plugging any well, removal of any platform or other facility, clearance of any site after wells have been plugged or platforms or facilities removed, and decommissioning of pipelines. | Within 120 days after completion of each decommissioning activity specified in this paragraph. | Submit to the Regional Supervisor a complete summary of expenditures actually incurred for each decommissioning activity (including, but not limited to, the use of rigs, vessels, equipment, supplies and materials; transportation of any kind; personnel; and services). Include in, or attach to, the summary a certified statement by an authorized representative of your company attesting to the truth, accuracy and completeness of the summary. The |

| | | |
|--|---|---|
| | | Regional Supervisor may provide specific instructions or guidance regarding how to submit the certified summary. |
| (j) If requested by the Regional Supervisor, additional information in support of any decommissioning activity expenditures included in a summary submitted under paragraph (i) of this section. | Within a reasonable time as determined by the Regional Supervisor | The Regional Supervisor will review the summary and may provide specific instructions or guidance regarding the submission of additional information (including, but not limited to, copies of contracts and invoices), if requested, to complete or otherwise support the summary. |

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