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DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

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RIN: 1014-AA35

Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Lease Continuation Through Operations

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: As specifically mandated by the Consolidated Appropriations Act of 2017, this final rule revises the requirements contained in the Bureau of Safety and Environmental Enforcement regulations relating to maintaining a lease beyond its primary term through continuous operations by changing all of the references to the period of time before which a lease expires due to cessation of operations from “180 days” and “180th day” to a “year” and from “180-day period” to a “1-year period.”

DATE: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dennis Yang, Regulations and Standards Branch, Bureau of Safety and Environmental Enforcement, (713) 220-9203 or by email: regs@bsee.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 5, 2017, the President signed into law the Consolidated Appropriations Act of 2017 (“the CAA”), Pub. L. 115-31. Section 121 (“Continuous Operations”) of the CAA directs the Secretary of the Interior to revise 30 CFR 250.180. Specifically, Section 121 of the CAA states that, “[n]ot later than 30 days after the date of enactment of this Act, the Secretary of the Interior shall amend the regulations issued under section 250.180 of title 30, Code of Federal Regulations....” Section 121 also specifies the precise language that must be used in revising § 250.180. Within the Department of the Interior (Department), the Assistant Secretary for Land and Minerals Management (ASLMM), is responsible for promulgating and revising the regulations in 30 CFR part 250 administered by the Bureau of Safety and Environmental Enforcement (BSEE); thus, the BSEE and the ASLMM are responsible for implementing the statutorily mandated revisions to § 250.180.

The current provisions of § 250.180 state that a lease expires if the lessee or operator stops conducting operations (drilling, well-reworking, or production in paying quantities) during the last 180 days of the lease term or on a lease that has continued beyond its primary term, unless the operator resumes operations, or receives a Suspension of Operations (SOO) or a Suspension of Production (SOP) from the Regional Supervisor, within 180 days from stopping operations. The regulatory revisions mandated by Section 121 extend the existing 180 day periods to one year.

Section 121 of the CAA requires the Department to amend § 250.180 not later than 30 days after the enactment of the CAA (*i.e.*, by June 4, 2017). It also mandates the precise wording of the revisions that must be made to § 250.180. Therefore, it is both unnecessary and impracticable for the BSEE to publish a notice of proposed rulemaking and to provide an

opportunity for public comment before issuing a final rule. For these reasons, it is appropriate and necessary to publish a final rule in order to comply with the statute.

Section-by-section Discussion

Revisions to § 250.171 (How do I request a suspension?)

Although Section 121 of the CAA does not explicitly require amendment of any other provision of the BSEE's regulations, the BSEE has determined that this final rule must also amend the introductory paragraph of § 250.171 to align it with the language modifications that Congress mandated for § 250.180. As previously stated, § 250.180 provides that a leaseholder may request that the BSEE Regional Supervisor issue a suspension to prevent lease expiration following passage of the identified period of time (formerly 180 days and now one year) permitted between leaseholding operations near the end of or after the primary term. Section 250.171 establishes the procedures for requesting a suspension, and the introductory sentence to that section specifies (among other things) that a request must be received by the BSEE "before the ...end of the 180-day period following the last leaseholding operation...." This requirement is clearly based on the 180-day period provided in existing § 250.180. If § 250.171 was not revised to conform to the changes to § 250.180, it would require suspension applications be filed six months before the lease would expire as a result of the statutory revision. To avoid this unintended consequence, it follows that § 250.171 must be revised to conform to the mandated revisions to § 250.180. This involves striking the reference to "180-day period" in § 250.171 and inserting in its place the words "1-year period." This amendment of § 250.171 is essential to maintaining consistency with § 250.180, preserving the logical connection between the two sections, and preventing any potential future confusion.

Revisions to § 250.180 (What am I required to do to keep my lease term in effect?)

This final rule amends § 250.180 to implement the revisions mandated by Section 121 of the CAA. The revisions entail: striking each reference to “180 days” and inserting in its place “year”; striking each reference to “180th day” and inserting in its place “year”; and striking each reference to “180-day period” and inserting in its place “1-year period.” The effect of changing the references from “180 days” to one year will be to extend the length of time (absent a suspension issued by the Regional Supervisor) that an Outer Continental Shelf (OCS) lease will remain in effect, beyond its primary term, following cessation of production or other leaseholding operations. The mandated changes to § 250.180 will provide operators with more time and flexibility to evaluate information (*e.g.* review prior well data, plan an additional well, obtain Authorization for Expenditure approval) to determine if they will perform another leaseholding operation. This change will be of interest and potential benefit to current and future holders of OCS leases and to other entities in the offshore oil and gas industry.

The term “year” as used in revised § 250.180 refers to the 365-day (or 366-day during leap years) period after the end of the last leaseholding operation. It does not refer to the end of a specific calendar year. For example, “...before the end of the year after you stop operations” means before the end of the 365-day (or 366-day) period after the operator stops operations as opposed to meaning before midnight on December 31st of the current (or subsequent) calendar year.

II. Procedural Matters

A. Administrative Procedure Act (5 U.S.C. 551, *et seq.*)

Section 121 of the CAA mandates the revision of 30 CFR section 250.180 within 30 days of the CAA’s enactment (May 5, 2017) and the exact wording that must be used in revising

§ 250.180. Congress has provided the BSEE with no discretion in how to revise the final rule. Therefore, it is impracticable and unnecessary for the BSEE to provide prior notice and opportunity to comment on this rulemaking. Even if time permitted the BSEE to provide such prior notice, any comments submitted by the public could not change the final outcome of this rulemaking.

Similarly, as previously explained, this final rule also revises § 250.171, using the same language that Congress mandated for § 250.180, in order to preserve the logical connection and consistency between these two closely-related sections. Failure to so revise § 250.171 at this time would create unnecessary conflict between the language of that section and § 250.180 and result in needless confusion and uncertainty in the regulated community. For these reasons, and in accordance with 5 U.S.C. 553(b)(3)(B), the BSEE for good cause finds that prior notice and public comment are unnecessary for this rulemaking.

Moreover, good cause for proceeding directly to a final rule also exists because Congress expressly directed the BSEE to amend its regulations within 30 days, making prior notice and comment highly impracticable.

In accordance with 5 U.S.C. 553(d)(3), the BSEE also finds good cause to make this final rule effective immediately when published in the *Federal Register* in order to comply with the statutory mandate to amend § 250.180 within 30 days of the date of enactment of the CAA (May 5, 2017). If Congress had meant merely that this rule should be published within 30 days, and need not take effect until a later date, it presumably would have said so. Instead, it expressly required that the regulations be amended within that time frame. In addition, since this final rule will not require the regulated members of the public to adjust their operations to comply with the terms of the rule, there is no need to postpone its effectiveness to a later date.

B. Regulatory Planning and Review (E.O. 12866 and 13563)

Section 6 (b)(1) of Executive Order (E.O.) 12866 provides that the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) may review only actions identified by the agency or by OIRA as significant regulatory actions. A “significant regulatory action,” as defined in E.O. 12866, is any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this E.O.

This final rule does not meet the definition of a “significant regulatory action,” and therefore OIRA review is not necessary.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to 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. This rulemaking is consistent with the principles and requirements of E.O. 13563.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules for which an agency is required to first publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. (See 5 U.S.C. 603(a) and 604(a)). Because Section 121 of the CAA requires the Department to amend § 250.180 with specified language not later than 30 days after the enactment of the CAA, the BSEE is not required to publish a proposed rule before publication of this final rule. Thus, the RFA does not apply to this rulemaking.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

- (1) Will not have an annual effect on the economy of \$100 million or more.
- (2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act of 1995

This rule will not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. This rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. In addition, this rule implements requirements specifically mandated by statute (*i.e.* the amendatory language set forth in Section 121 of the CAA). Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

F. Takings Implication Assessment (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(1) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(2) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation with Indian Tribes (E.O. 13175 and Departmental policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department of the Interior's consultation policy, under Departmental Manual Part 512 Chapters 4 and 5, and under the criteria in E.O. 13175. We have determined that this rule has no substantial direct effects on federally recognized Indian tribes or any Alaska Native Corporation established pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) and that consultation under the Department of the Interior's tribal consultation policy is not required.

J. Paperwork Reduction Act of 1995

This rule does not contain any new information collection requirements, and a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We 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.

K. National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion (see 43 CFR 46.210(i)) in that this rule is "of an administrative, financial, legal, technical, or procedural nature...." Further, we have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under

NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

M. Data Quality Act

In developing this final rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, app. C § 515).

N. Regulatory Reform (E.O. 13771, E.O. 13783, and E.O. 13795)

The BSEE has reviewed this final rule for compliance with E.O. 13771 (“Reducing Regulation and Controlling Regulatory Costs”), which requires Federal agencies to offset the number and cost of new regulations through the repeal, revocation, or revision of existing regulations. As provided in OMB Memorandum M-17-21 (“Implementing E.O. 13771”), a “regulatory action” subject to E.O. 13771 is a significant regulatory action as defined in section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero. For the reasons identified in the previous sections, this final rule is not a significant regulatory action under E.O. 12866 and thus does not require any offsetting deregulatory action. In fact, this rule is a “deregulatory action” under E.O. 13771 because its total costs will be less than zero considering the rule provides more time and flexibility for operators to plan and conduct operations than the existing regulation and thus reduces associated administrative and operational burdens. E.O. 13771 deregulatory actions are not limited to those defined as significant under E.O. 12866. In addition, in accordance with OMB Memorandum M-17-21, even if this final rule were a “significant regulatory action,” it would be exempt from the E.O. 13771 offset requirements because it is a statutorily required action.

The BSEE has also determined that this final rule is not subject to review under E.O. 13783 (“Promoting Energy Independence and Economic Growth”), which requires Federal agencies to review all agency actions that potentially burden the development or use of domestically produced energy resources, including oil and natural gas. As provided in Section 2(a) of E.O. 13783, this final rule is not subject to review because it is mandated by law. Moreover, this rule would not be subject to review under that E.O. because it does not burden the development or use of oil or natural gas, as “burden” is defined in section 2(b) of E.O. 13783. In fact, this rule is deregulatory in nature and will decrease existing burdens on offshore producers of oil and natural gas.

The BSEE has also reviewed this final rule for consistency with E.O. 13795 (“Implementing an America-First Offshore Energy Strategy”), which requires the Department to take certain actions to encourage energy exploration and production, including on the OCS, while ensuring that those exploration and production activities are safe and environmentally responsible. Specifically, the BSEE has determined that this rule is necessary because it is both required by law and is consistent with the policy set forth in section 2 of E.O. 13795.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Oil and gas exploration, Penalties, Pipelines, Continental Shelf—mineral resources, Continental shelf—rights-of-way, Reporting and recordkeeping requirements, Sulfur.

Katharine S. MacGregor
Acting Assistant Secretary -
Land and Minerals Management

For the reasons stated in the preamble, the Bureau of Safety and Environmental Enforcement (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. In § 250.171, revise the introductory text to read as follows:

§ 250.171 How do I request a suspension?

You must submit your request for a suspension to the Regional Supervisor, and BSEE must receive the request before the end of the lease term (*i.e.*, end of primary term, end of the 1-year period following the last leaseholding operation, and end of a current suspension). Your request must include:

* * * * *

3. In § 250.180, revise paragraphs (a)(1), (b), (d), (e), (g), and (j) to read as follows:

§ 250.180 What am I required to do to keep my lease term in effect?

(a) * * *

(1) You must submit a report to the District Manager according to paragraphs (h) and (i) of this section whenever production begins initially, whenever production ceases during the last year of the primary term, and whenever production resumes during the last year of the primary term.

* * * * *

(b) If you stop conducting operations during the last year of your primary lease term, your lease will expire unless you either resume operations or receive an SOO or an SOP from the Regional Supervisor under § 250.172, § 250.173, § 250.174, or § 250.175 before the end of the year after you stop operations.

* * * * *

(d) If you stop conducting operations on a lease that has continued beyond its primary term, your lease will expire unless you resume operations or receive an SOO or an SOP from the Regional Supervisor under §250.172, §250.173, §250.174, or §250.175 before the end of the year after you stop operations.

(e) You may ask the Regional Supervisor to allow you more than a year to resume operations on a lease continued beyond its primary term when operating conditions warrant. The request must be in writing and explain the operating conditions that warrant a longer period. In allowing additional time, the Regional Supervisor must determine that the longer period is in the National interest, and it conserves resources, prevents waste, or protects correlative rights.

* * * * *

(g) If your lease is continued beyond its primary term, you must submit a report to the District Manager under paragraphs (h) and (i) of this section whenever production begins initially, whenever production ceases, whenever production resumes before the end of the 1-year period after having ceased, or whenever drilling or well-reworking operations begin before the end of the 1-year period.

* * * * *

(j) For leases continued beyond the primary term, you must immediately report to the District Manager if operations do not begin before the end of the 1-year period.

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