



4310-VH-P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Parts 250 and 290

[Docket ID: BSEE-2023-0014 EEEE500000 245E1700D2 ET1SF0000.EAQ000]

RIN: 1014-AA57

Bonding Requirements When Filing an Appeal of a Bureau of Safety and Environmental Enforcement Civil Penalty

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior (Interior) is proposing to amend regulations administered by the Bureau of Safety and Environmental Enforcement (BSEE) regarding the bonding requirements for entities filing an appeal of a BSEE decision that assesses a civil penalty. The proposed regulations would clarify that entities appealing a BSEE civil penalty decision to the Interior Board of Land Appeals (IBLA) must have a bond covering the civil penalty assessment amount for the IBLA to have jurisdiction over the appeal.

DATES: Submit comments on the proposed rule to BSEE by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. BSEE may not fully consider comments received after this date.

ADDRESSES: You may submit comments on the proposed rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1014-AA57 as an identifier in your message.

- Federal eRulemaking Portal: <https://www.regulations.gov>. In the entry titled Enter Keyword or ID, enter BSEE-2023-0014 then click search. Follow the

instructions to submit public comments and view supporting and related materials available for this rulemaking. BSEE may post all comments submitted.

- Mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Attention: Regulations and Standards Branch; 45600 Woodland Road, Sterling, Virginia 20166. Please reference “Bonding Requirements When Filing an Appeal of a Bureau of Safety and Environmental Enforcement Civil Penalty, 1014-AA57” in your comments and include your name and return address.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. In order for BSEE to withhold from disclosure your personal identifying information, you must identify any information contained in your comment submittal that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence(s) of the disclosure of information, such as embarrassment, injury, or other harm. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Janine Marie Tobias at Janine.Tobias@bsee.gov or (202) 208-4657. For procedural questions, contact Kirk Malstrom at (703) 787-1751 or by email at regs@bsee.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

Pursuant to the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1350), BSEE has the delegated authority to assess civil penalties to certain entities engaged in oil and gas exploration, development, and production operations on the Outer Continental Shelf (OCS) following certain violations by those entities of a statutory provision, regulation, order, or lease term. The

Department's implementing regulations for this authority are located at 30 CFR part 250, Subpart N-Outer Continental Shelf Civil Penalties (§§ 250.1400-250.1409). Additional relevant regulations regarding the procedures for appealing civil penalty assessments are at 30 CFR part 290, Subpart A-Bureau of Safety and Environmental Enforcement Appeal Procedures (§§ 290.1-290.8).

BSEE recently commenced a review of its civil penalty assessment appeal processes at 30 CFR part 250, Subpart N and 30 CFR part 290, Subpart A. BSEE's review was initiated following the IBLA's July 7, 2022, order in *Petro Ventures, Inc.* (IBLA No. 2020-48) analyzing the effect of the civil penalty appeal bonding requirements in 30 CFR 250.1409. This regulation, at paragraph (b), requires that an entity filing an appeal of a civil penalty assessment must either "[s]ubmit a surety bond in the amount of the penalty" or request that "your lease-specific/area-wide bond on file be used as the bond for the penalty amount." When Interior proposed what is now 30 CFR 250.1409 in 1999, it explained that the civil penalty appeal bonding requirement was "designed to ensure that funds will be available to cover the final civil penalty assessment if the appeal is denied, and to discourage any appeals filed for the sole purpose of delaying payment of that assessment." 64 FR 1930, 1966 (January 12, 1999). BSEE and its predecessors have consistently intended and understood this bonding requirement to operate as a condition precedent to an entity's right to pursue an appeal, and most entities pursuing civil penalty appeals have a similar understanding. The IBLA, however, concluded in *Petro Ventures, Inc.* that while 30 CFR 250.1409 requires that the appealing entity have bonding covering the appealed civil penalty amount, the regulation is not phrased in such a way as to make it a jurisdictional precondition or to support dismissal of the appeal if the bonding requirement is not met.

Accordingly, Interior is proposing revisions to 30 CFR 250.1409, *What are my appeal rights?*, and 30 CFR 290.4, *How do I file an appeal?*, to effectuate the original intent of the bonding requirement by ensuring that bonding is a jurisdictional precondition for maintaining an appeal of a BSEE civil penalty assessment at the IBLA.

Section-by-Section Discussion of Proposed Changes:

What are my appeal rights? (§ 250.1409)

BSEE proposes to change the introductory sentence of § 250.1409(b) from “If you file an appeal, you must either:” to “In order to file an appeal, you must perform one of the following actions within the 60-day appeal period to have your appeal heard:”. BSEE also proposes to move existing § 250.1409(d) to a new § 250.1409(e). The new proposed § 250.1409(d) would state: “Satisfying the bonding requirement in paragraph (b) of this section is a jurisdictional precondition for a civil penalty appeal. If you have timely filed a request with BOEM pursuant to paragraph (b)(2) of this section to use your lease-specific/area-wide bond on file as the bond for the penalty amount, the IBLA’s jurisdiction over the appeal is preserved while BOEM’s decision on your request is pending. Should BOEM deny your request or require additional security pursuant to paragraph (c) of this section, you have 30 days to satisfy paragraph (b)(1) of this section or post the required additional security, as applicable, and jurisdiction is preserved during that 30-day period. If you fail to satisfy these bonding requirements, the IBLA will lose jurisdiction and must dismiss your appeal.” Together, these proposed provisions would effectuate the intended functions of BSEE’s bonding requirements for filing and maintaining a civil penalty appeal at the IBLA. BSEE requires bonding covering the civil penalty amount for all civil penalty appeals to ensure that funds will be available to cover the civil penalty amount if the assessment is upheld and to discourage appeals filed for the sole purpose of delaying payment of that assessment.

Lastly, BSEE proposes to modify the existing § 250.1409(d), which would become the new § 250.1409(e), by changing the introductory sentence from “If you do not either pay the penalty or file a timely appeal, BSEE will take one or more of the following actions:” to “If you do not either pay the penalty or fully satisfy the appeal requirements, the Department may take one or more of the following actions:”. In paragraph (e)(1), BSEE proposes to delete “We will” and start the sentence with “Collect.” In paragraph (e)(2), BSEE proposes to delete “We may”

and start the sentence with “Initiate.” In paragraph (e)(3), BSEE proposes to delete “We may” and start the sentence with “Bar.” BSEE proposes these edits because different entities within Interior may take the listed actions and to improve the grammatical structure of the overall provision.

How do I file an appeal? (§ 290.4)

BSEE proposes to add a new paragraph (c) to § 290.4. Existing § 290.4 sets forth the items that BSEE must receive within 60 days after a party receives the appealed decision for the appeal to be considered properly filed. The proposed paragraph (c) would add to that list: “If you are appealing a civil penalty assessment, either notification of payment of the penalty or documentation demonstrating satisfaction of the requirements in 30 CFR 250.1409(b).” As with the other appeal filing requirements in the section, it would also expressly state that the appellant “cannot extend the 60-day period for satisfying this requirement, except as specifically provided in 30 CFR 250.1409(d).” BSEE is proposing these additions to ensure awareness of, and consistency with, the requirements in the proposed § 250.1409; to ensure that appealing entities timely provide BSEE with documentation demonstrating compliance with § 250.1409; and to further emphasize the nature of the bonding requirement as a jurisdictional precondition to maintenance of an appeal.

PROCEDURAL MATTERS:

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

BSEE estimates that at least 80 entities (lessees, grant holders, and operators) would be subject to this proposed rule, of which approximately 60 percent are small according to the U.S. Small Business Administration size standards based on each firm's North American Industry Classification System code, number of employees, and annual revenues. Therefore, BSEE has determined that this proposed rule would apply to a substantial number of small entities.

However, BSEE has determined that the impact on entities affected by the proposed rule would not be significant. The provisions would only align the language of the regulations with BSEE's and the regulated industry's longstanding understanding of the effects of the existing requirement. Existing regulations have long required satisfaction of appeal bonding requirements for appeals of civil penalty assessments, and the proposed revisions would only clarify the procedural effects of noncompliance with that requirement. They would not add any cost burdens to entities that would be subject to the proposed rule. Accordingly, the Department hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. BSEE invites comments from members of the public who believe there would be a significant impact on companies subject to the proposed rule.

Congressional Review Act (5 U.S.C. 801-808)

The Congressional Review Act (CRA) defines a rule as major if it meets any of three criteria. The three criteria are:

- A. Does the rule have an annual effect on the economy of \$100 million or more?
- B. Will the rule cause a major increase in the cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions?
- C. Does the rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises?

This proposed rule is not a major rule under the CRA. This rule would neither generate an annual economic effect of \$100 million or more; nor cause major price increases for

consumers, businesses, or governments, or geographic regions; nor degrade competition, employment, investment, productivity, innovation, or the ability of U.S. businesses to compete against foreign businesses. Its effects would be purely administrative, legal, and procedural.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*)

This proposed rule would not impose an unfunded mandate on state, local, or Tribal governments or the private sector of more than \$189 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act 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.

National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347)

This proposed rule would 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, as a regulation of an administrative, legal, and procedural nature, this proposed rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). BSEE also determined that the proposed rule would not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, a detailed statement under NEPA is not required.

Regulatory Planning and Review (Executive Orders (E.O.) 12866 and 13563)

E.O. 12866, *Regulatory Planning and Review*, as amended by E.O. 14094, provides that OMB's Office of Information and Regulatory Affairs (OIRA) will review all significant regulatory actions. A significant regulatory action is one that is likely to result in a rule that:

A. Has an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

B. Creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

C. Materially alters the budgetary impacts of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof; or

D. Raises legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in E.O. 12866.

OIRA has concluded that this proposed rule is not a significant action under E.O. 12866. The provisions would only align the language of the regulations with BSEE's and the regulated industry's longstanding understanding of the effects of the existing requirements and would not add any cost burdens to entities that would be subject to the proposed rule, yielding only procedural effects. Accordingly, BSEE does not anticipate that this proposed rule would have an annual economic impact of \$200 million or more or would have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, public health or safety, the environment, or State, local, or Tribal governments or communities. This proposed rule also would not raise novel legal or policy issues.

E.O. 13563, *Improving Regulation and Regulatory Review*, 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. E.O.

13563 further 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. We have developed this proposed rule in a manner consistent with these requirements.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A federalism assessment is not required.

Civil Justice Reform (E.O. 12988)

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

A. 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

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

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

BSEE strives to strengthen its government-to-government relationships with Tribal Nations and Alaska Natives through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We are also respectful of our responsibilities for consultation with Alaska Native Claims Settlement Act Corporations. BSEE has reviewed this proposed rule pursuant to the criteria in E.O. 13175, Consultation and

Coordination with Indian Tribal Governments (dated November 6, 2000), Interior's Policy on Consultation with Indian Tribes and Policy on Consultation with Alaska Native Claims Settlement Act Corporations (512 Departmental Manual 4, dated November 30, 2022, and 512 Departmental Manual 6, dated November 30, 2022, respectively), and Interior's Procedures for Consultation with Indian Tribes and Procedures for Consultation with Alaska Native Claims Settlement Act Corporations (512 Departmental Manual 5, dated November 30, 2022, and 512 Departmental Manual 7, dated November 30, 2022, respectively) and has determined that this rule would not have substantial direct effects on Tribal Nations or Alaska Natives, on the relationship between the Federal government and Tribal Nations or Alaska Natives, or on the distribution of power and responsibilities between the federal government and Tribal Nations or Alaska Natives.

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

This proposed rule is not a significant energy action under the definition in E.O. 13211. This proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. A Statement of Energy Effects is not required.

Effects on Environmental Justice for Minority and Low-Income Populations (E.O. 12898)

E.O. 12898 requires Federal agencies to make achieving environmental justice part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. BSEE has determined that this proposed rule would not have a disproportionately high or adverse human health or environmental effect on native, minority, or low-income communities because its provisions are administrative and procedural in nature and do not affect public safety, environmental protection, or OCS operational requirements.

Clarity of this Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- A. Be logically organized;
- B. Use the active voice to address readers directly;
- C. Use clear language rather than jargon;
- D. Be divided into short sections and sentences; and
- E. Use lists and tables whenever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the “ADDRESSES” section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, or the sections where you feel lists or tables would be useful.

List of Subjects

30 CFR Part 250

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

30 CFR Part 290

Administrative practice and procedure.

Steven H. Feldgus
Deputy Assistant Secretary
Land and Minerals Management

For the reasons stated in the preamble, the Department of the Interior is proposing to revise 30 CFR parts 250 and 290 as follows:

PART 250—OIL AND GAS AND SULPHUR 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.

Subpart N—Outer Continental Shelf Civil Penalties

2. Amend § 250.1409 by:

- a. Revising paragraph (b) introductory text;
- b. Redesignating paragraph (d) as paragraph (e);
- c. Adding new paragraph (d); and
- d. Revising paragraph (e).

The revisions and additions read as follows:

§ 250.1409 What are my appeal rights?

* * * * *

(b) In order to file an appeal, you must perform one of the following actions within the 60-day appeal period to have your appeal heard:

* * * * *

(d) Satisfying the bonding requirement in paragraph (b) of this section is a jurisdictional precondition for a civil penalty appeal. If you have timely filed a request with BOEM pursuant to paragraph (b)(2) of this section to use your lease-specific/area-wide bond on file as the bond for the penalty amount, the IBLA's jurisdiction over the appeal is preserved while BOEM's decision on your request is pending. Should BOEM deny your request or require additional

security pursuant to paragraph (c) of this section, you have 30 days to satisfy paragraph (b)(1) of this section or post the required additional security, as applicable, and jurisdiction is preserved during that 30-day period. If you fail to satisfy these bonding requirements, the IBLA will lose jurisdiction and must dismiss your appeal.

(e) If you do not either pay the penalty or fully satisfy the appeal requirements, the Department may take one or more of the following actions:

(1) Collect the amount you were assessed, plus interest, late payment charges, and other fees as provided by law, from the date you received the Reviewing Officer's final decision until the date we receive payment;

(2) Initiate additional enforcement, including, if appropriate, cancellation of the lease, right-of-way, license, permit, or approval, or the forfeiture of a bond under this part; or

(3) Bar you from doing further business with the Federal Government according to Executive Orders 12549 and 12689, and section 2455 of the Federal Acquisition Streamlining Act of 1994, 31 U.S.C. 6101. The Department of the Interior's regulations implementing these authorities are found at 43 CFR part 12, subpart D.

PART 290—APPEAL PROCEDURES

3. The authority citation for part 290 continues to read as follows:

Authority: 5 U.S.C. 305; 43 U.S.C. 1334.

Subpart A—Bureau of Safety and Environmental Enforcement Appeal Procedures

4. Amend § 290.4 by:

- a. Removing the text “and” at the end of paragraph (a);
- b. Removing the text “.” at the end of the sentence and adding the text “; and” at the end of the paragraph (b) introductory text; and
- c. Adding paragraph (c).

The revisions and additions read as follows:

§ 290.4 How do I file an appeal?

* * * * *

(c) If you are appealing a civil penalty assessment, either notification of payment of the penalty or documentation demonstrating satisfaction of the requirements in 30 CFR 250.1409(b). You cannot extend the 60-day period for satisfying this requirement, except as specifically provided in 30 CFR 250.1409(d).

[FR Doc. 2023-27079 Filed: 12/12/2023 8:45 am; Publication Date: 12/13/2023]