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July 14, 2022

Department of the Interior  
Bureau of Safety and Environmental Enforcement  
Attention: Regulations and Standards Branch  
45600 Woodland Road, VAE-ORP  
Sterling, VA 20166

Via electronic submission to: <http://www.regulations.gov>

Re: *Oil and Gas and Sulfur Operations in the Outer Continental Shelf – High Pressure High Temperature and Subpart B Revisions*, 87 Fed. Reg. 29790 (May 16, 2022) (RIN 1014-AA49)

To Whom it May Concern:

Chevron U.S.A. Inc. (Chevron) respectfully submits the following comments on the proposed revisions to 30 C.F.R. Part 250 (*hereinafter* the Proposed Rule) to “add requirements for new or unusual technology, including equipment used in high pressure high temperature (HPHT) environments, to revise and reorganize information submission requirements for a project’s Conceptual Plans and Deepwater Operations Plans (DWOP), and to require independent third parties to review certain information prior to submission to BSEE.” 87 Fed. Reg. 29790, 29790 (May 16, 2022). The Department of the Interior’s (DOI) Bureau of Safety and Environmental Enforcement (BSEE) published the Proposed Rule on May 16, 2022, titled “Oil and Gas and Sulfur Operations in the Outer Continental Shelf – High Pressure High Temperature and Subpart B Revisions.” *Id.* HPHT Environment is defined in the Proposed Rule by a pressure threshold of greater than 15,000 pounds per square inch (psi) or a temperature threshold of greater than 350 degrees Fahrenheit. *See* Proposed 30 C.F.R. § 250.105. References to HPHT throughout these comments refer to those same pressure and temperature thresholds.

Chevron is a member company of both the American Petroleum Institute (API) and the Offshore Operators Committee (OOC). Accordingly, Chevron participated in the development of the comment letter submitted to BSEE jointly by API and OOC (collectively, the Associated Trades), supports those comments, and incorporates those comments by reference herein. The comment letter submitted by the Associated Trades is referenced throughout this letter as the “Associated Trades’ Comment Letter.”

Given Chevron’s position as one of the oil and gas industry’s leaders in advancement of HPHT equipment, its extensive investment in the HPHT equipment, and its development of HPHT projects including the Anchor project – scheduled to be one of the first deepwater, high pressure projects in the Gulf of Mexico (GOM) – Chevron also submits

these additional comments for BSEE's consideration. Chevron is one of the world's premier integrated energy companies, with a leading position in the deepwater GOM. Chevron, Union Oil Company of California, and our legacy companies have been operating in the GOM for 80 years. Throughout those eight decades, Chevron's approach to discovering and producing oil and gas in the GOM has continued to expand and evolve. Given this, Chevron is uniquely affected by the Proposed Rule. Further, Chevron has worked cooperatively with BSEE for nearly a decade towards approval of the Anchor project; thus, Chevron is uniquely positioned to provide feedback on the Proposed Rule, including by highlighting what appear to be unintended consequences of the Proposed Rule, as currently drafted.

### **Comments**

#### **A. BSEE should clarify that the incremental approval process developed over the last decade will continue.**

Chevron has been actively working with BSEE on HPHT equipment and processes as a general matter since 2013,<sup>1</sup> and more recently Chevron and BSEE have been working towards approvals of specific projects, with the shared goal of a clear and logical approval process that protects operational safety and the environment. For example, Chevron has engaged with BSEE on HPHT equipment specifically suited for Anchor since 2018. Relying on numerous existing regulatory approvals issued since at least 2016, Chevron currently plans to deliver first oil from the Anchor project in 2024. Significantly, Chevron's Anchor project is expected to be one of the first deepwater, high pressure projects in the GOM. As these efforts over the last decade demonstrate, Chevron has become an industry leader in the development of HPHT equipment and has worked with BSEE to develop a workable framework for BSEE's review and approval of HPHT projects. Currently, this process (as reflected in BSEE's NTL No. 2019-G02 and NTL No. 2019-G03) involves the incremental submission of engineering data on a timeline that is linked to the progression of the various stages of the project's funding, design, and fabrication. Chevron and BSEE's use of this incremental data submission process for the Anchor project to-date highlights that the currently-existing process works.

In January 2019, Chevron submitted the initial version of the Anchor C-Plan to BSEE, in which Chevron referenced relevant non-site-specific data that it had already submitted and BSEE had already accepted; provided a detailed, incremental framework for document submission and organization; and committed that, at the appropriate time in project progression, Chevron would supplement non-site-specific data with the required independent third party (I3P) documentation to establish that the relevant equipment is fit-for-purpose for the site-specific conditions of the Anchor project. In its 2019 response to the incremental approach proposed by Chevron, BSEE stated (emphasis added):<sup>2</sup>

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<sup>1</sup> See DeepStar 2013 Annual Conference, "BSEE Approvals Prior to Engineering Standards – HPHT Case."

<sup>2</sup> Letter from BSEE Acting Regional Supervisor to Chevron U.S.A. Inc. (Feb. 21, 2019).

Chevron has provided a clear logical structure for their proposed path forward leading to Anchor [C-Plan] approval. Chevron is clear on their path forward for the verification of HPHT equipment's Technical Specification and the HPHT equipment and well design's fitness for purpose for the site specific Functional Specifications by an [I3P]. Chevron's proposal for verification of the HPHT equipment and well design's fitness for service meets the requirements of 30 CFR 250.804.

Thus, BSEE has recognized that the ongoing information submission, review, and approval process for the Anchor project is "clear," "logical," and satisfies the current regulatory requirements.

Since submitting the initial Anchor C-Plan in 2019, and in reliance on BSEE's favorable response to that plan and to other BSEE and BOEM approvals since then, Chevron has made hundreds of additional submissions to BSEE that address numerous site-specific equipment and facilities and include numerous related I3P reports. Ultimately, these incremental submissions to BSEE will come together to form a complete Conceptual Plan for BSEE's approval (as previously committed to by Chevron and acknowledged by BSEE) and will support Chevron's DWOP for Anchor. Chevron understands that BSEE has employed the same incremental approach to data submission, review, and approval for other ongoing HPHT projects developed by other operators in the GOM.

We further understand and appreciate that BSEE intended to incorporate this established incremental approach into its Proposed Rule. See 87 Fed. Reg. at 29796 ("BSEE proposes to codify our existing practices"). But, as drafted, the Proposed Rule appears to upset this "clear logical"<sup>3</sup> structure by requiring that operators developing HPHT projects in the GOM submit a *complete* Conceptual Plan *before* beginning final engineering design (see Proposed 30 C.F.R. § 250.226) and obtain BSEE's approval of the *complete* Conceptual Plan "before any associated applicable permit (e.g., pipeline, platform, [APD], [APM]) approval" (87 Fed. Reg. 29791; see also Proposed 30 C.F.R. § 250.226). If so, such an approach is not technically possible. As Chevron's submissions relating to the Anchor project demonstrate, submissions must be made in an incremental approach. Requiring operators to submit *all* data so early in the progression of a project is unworkable. For instance, achieving the milestone of "final engineering design" for the various equipment required for an HPHT project does not occur at one time. Instead, the engineering design of equipment for an HPHT project occurs during the natural progression of a major capital project timeline. Engineering design for various equipment relating to a project is approved incrementally throughout the progression of a project and, thus, submissions to BSEE are made incrementally to track this process. It frequently takes *years* to qualify project HPHT equipment. Requiring the submission of *complete* information to BSEE before the final engineering design even begins simply cannot be reconciled with the multi-year sequence of project planning and development

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<sup>3</sup> *Id.*



from the standpoint of funding, design, fabrication, installation, and operations of an HPHT project.<sup>4</sup> Complete information is not available at the time complete information is required under the Proposed Rule (as currently drafted).

Because it would be impossible for Chevron (and other operators developing HPHT projects) to develop and submit completed Conceptual Plans *prior to* final engineering design and *prior to* undertaking any lease activities in all circumstances, the Proposed Rule's required sequence (as currently drafted) is "perforce unreasonable."<sup>5</sup> Rather than significantly altering what BSEE has agreed is a "clear logical structure" for the submission, review, and approval of data relating to HPHT projects, Chevron respectfully encourages BSEE to incorporate a data submission, review, and approval process into the regulations (specifically for HPHT projects) that aligns with the current incremental process that has proved technically feasible and efficient for Chevron's industry-leading Anchor project and for other operators developing HPHT projects in the GOM. The detailed comment table attached to the Associated Trades' Comment Letter includes suggestions that would provide these recommended clarifications.

**B. It is crucial that the Proposed Rule not impact ongoing approval processes for projects that have already been proposed or equipment that has already been reviewed by BSEE.**

As noted above, for years now, Chevron has been working with BSEE to obtain the approvals necessary to accomplish first oil from the Anchor project during 2024. In December 2019, in reliance on the approval process cooperatively developed with BSEE (involving the incremental submission and review of information), Chevron management sanctioned complete funding of the Anchor project, marking "industry's first deepwater high-pressure development to achieve a final investment decision."<sup>6</sup> In taking this action, Chevron reinforced its commitment to the development of HPHT equipment that will be critical not only for the Anchor project, but also for other HPHT projects developed by Chevron and other operators in the GOM.

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<sup>4</sup> Further, the preamble to the Proposed Rule suggests that *any* modification to a DWOP would automatically trigger revision to an applicable EP, DPP, or DOCD. But this broad requirement would contradict BOEM's regulation at 30 C.F.R. § 550.283, which only require that Operators modify EPs, DPPs, and DOCDs in specifically defined circumstances.

<sup>5</sup> *Alliance v. D.E.A.*, 930 F. 2d 936, 940 (D.C. Cir. 1991) ("Impossible requirements imposed by an agency are perforce unreasonable[.]"); *Smith v. United States Citizen & Immigration Serv.*, 2021 U.S. Dist. LEXIS 7992, \*21 (N.D. Ala. Jan. 5, 2021) (agency action imposing conditions that were impossible for the plaintiff to satisfy was arbitrary and capricious); *Cont'l Bank v. U.S.*, 517 F. Supp. 918 (E.D. Penn. 1981) (agency "not permit[ted] [] to impose procedural requirements which are impossible to fulfill"; 1972 regulation that imposed a 1971 deadline was "patently invalid").

<sup>6</sup> See Chevron Sanctions Anchor Project In the Deepwater Gulf of Mexico (Dec. 12, 2019) [*hereinafter* 2019 Article], available at <https://www.chevron.com/newsroom/2019/q4/chevron-sanctions-anchor-project-in-the-deepwater-us-gulf-of-mexico#:~:text=The%20Anchor%20Field%20is%20located,investment%20of%20approximately%20%245.7%20billion.>

Chevron estimates that it has already submitted to BSEE – and BSEE has already accepted – over 90% of the individual conceptual plan components that will ultimately be included in the final Anchor C-Plan. Further, Chevron has already provided – and BSEE has already reviewed – the majority of the I3P reports that will be required for BSEE’s approval of the Anchor project. Overall, Chevron estimates that, as of today, the data submission and BSEE review process for the Anchor project is more than three-quarters complete. Separately, based on the currently applicable data submission and review process, BSEE has already reviewed various HPHT submittals that are not necessarily project specific.

Because neither the text of the Proposed Rule nor the preamble indicates otherwise, we understand that the Proposed Rule will not apply to HPHT projects that have already been proposed and are amid the current review process or to HPHT submittals that BSEE has already reviewed; however, we request this point be clarified. As detailed above, the Anchor project has been proceeding for years under extensive regulatory reviews and with substantial investment by Chevron. Since at least 2019, Chevron has undertaken further development of this project, relying on a shared understanding with the agencies that the existing regulations, guidance, and practices will continue to apply to and guide the decision-making process for the Anchor project through final BSEE approval.

Any alternative understanding or attempt to apply regulatory changes retroactively to the Anchor project and other HPHT projects that are already underway would be unlawful for the reasons explained in the Associated Trades’ Comment Letter – *viz.*, applying the Proposed Rule to projects that are already underway would upset an operator’s reliance on the current procedure and would conflict with the strong presumption against retroactive application of new regulatory requirements.<sup>7</sup> Accordingly, to avoid any potential doubt on the issue, BSEE should clarify in both the language of the Proposed Rule and the preamble that any changes will apply only on a prospective basis to projects that are proposed in the first instance after the effective date (and that any changes would not impact BSEE reviews or approvals that pre-date the effective date).

Without this clarification, Chevron is concerned that certain language in BSEE’s Proposed Rule (which we believe is unintentional) could be read to introduce uncertainty and confusion regarding completion of the approval process for, and continued progression of, the Anchor project. After nearly a decade of cooperative progress with BSEE, any significant deviation in the submission process could impact the currently planned schedule of installations for the Anchor project and could ultimately delay first oil from the Anchor project – all without improving safety and environmental protections that are integral to Chevron’s plans for production from the Anchor project. Thus, BSEE’s clarification about the prospective application of any new rule and confirmation that

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<sup>7</sup> Further, in approving Suspensions of Production for the Anchor project, BSEE has *mandated* that Chevron satisfy a particular schedule of installations in order to maintain the Anchor project leases. Application of the Proposed Rule to Chevron’s Anchor project would be “perforce unreasonable” to the extent that it would render it impossible for Chevron to satisfy the schedule mandated by the SOPs. *Alliance v. D.E.A.*, 930 F. 2d 936, 940 (D.C. Cir. 1991).

Chevron will be able to continue to proceed with submissions to BSEE based on the incremental approach that has been employed for years would also facilitate the “expeditious and orderly development” of the OCS, furthering the stated goal of the 1978 amendments to the Outer Continental Shelf Lands Act. 43 U.S.C. § 1332(3); *see also* 43 U.S.C. § 1802(1).<sup>8</sup>

The significant delay and expense that would result if the Proposed Rule retroactively applied to the data submission, review, and approval process for the Anchor project would not be balanced by any gain in safety or environmental protection in the field operations that must be undertaken to install and commence production from the Anchor project facilities. Instead, the current, ongoing incremental process Chevron has been working on with BSEE for years – and has relied upon in making decisions about the Anchor project – accords with BSEE’s current regulations and guidance and ensures that operations associated with the Anchor project will proceed in a safe and environmentally sound manner.

Additionally, any attempt to apply any new rule retroactively would trigger additional analyses under Executive Orders 12,866 and 13,211, which have not been completed and would necessarily require public review and comment. Delays and expenses triggered by significant changes to the regulatory review process for the Anchor project would need to be factored into the assessments required by these Executive Orders, along with delays and impacts to other HPHT projects that are already underway. That BSEE has not completed these analyses further supports the conclusion that BSEE does not intend to apply the Proposed Rule retroactively to Anchor and other projects already underway.

We would like to emphasize that Chevron believes that BSEE did not intend for its Proposed Rule to apply retroactively (*e.g.*, we do not believe that BSEE intended the Proposed rule to impact the continued progression of the data submission, review, and approval process that is already underway for Chevron’s Anchor project). However, this important point warrants clarification. Therefore, Chevron respectfully requests that BSEE clearly explain in both the preamble and in the forthcoming regulatory text that any forthcoming final rule will apply only prospectively and, therefore, will only apply to HPHT projects that are proposed in the first instance on or after the effective date of the forthcoming rule.

### **Conclusion**

Chevron appreciates BSEE’s efforts to implement clear and consistent standards focused on ensuring operational safety and environmental protection on the OCS. However, as

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<sup>8</sup> Assuming continuity of the ongoing data submission, review, and approval process for the Anchor Project, first oil from the Anchor Project is anticipated in 2024. 2019 Article. The design capacity of the Anchor facility equals 75,000 barrels of crude oil and 28 million cubic feet of natural gas per day. *Id.* And, “[t]he total potentially-recoverable oil-equivalent resources for Anchor are estimated to exceed 440 million barrels.” *Id.*

drafted, the Proposed Rule would impose an unworkable framework for data submission, review, and approval for HPHT. Further, imposing the framework introduced by the Proposed Rule on Chevron's ongoing Anchor project would raise significant legal issues, could substantially increase Chevron's projected financial investment in the Anchor project, and also could significantly delay first oil from the Anchor project. And, the data submission, review, and approval process currently underway for the Anchor project is already designed to ensure safety and environmental protection. For these reasons, and those explained above and in the Associated Trades' Comment Letter, Chevron respectfully requests that BSEE revise the Proposed Rule to embrace rather than depart from the current incremental process for data submission, review, and approval for HPHT projects and to clarify that the Proposed Rule would apply only on a prospective basis to projects that are proposed in the first instance after the effective date.

We look forward to continued engagement with BSEE on this important rulemaking. Chevron would be happy to participate in workshops with BSEE to discuss the suggestions included in this letter and in the Associated Trades' Comment Letter.

Thank you for your consideration of these comments, please do not hesitate to contact us if you have any questions.

Sincerely,



Brad Middleton  
Vice President

**CHEVRON U.S.A. INC.**