

BSEE Direct Final Rule, "Offshore Downhole Commingling Administrative Updates"
Docket ID: BSEE-2025-0134

Comments submitted by Elmer P. Danenberger, Sept. 8, 2025

Legislatively dictating downhole commingling approvals, as per Section 50102 of the One Big Beautiful Bill (OB BB), is a reckless precedent from both technical and regulatory policy standpoints.

Rather than calling for the lease operator to demonstrate that a downhole commingling plan is safe and optimizes resource recovery, Section 50102 mandates that the plan **must be approved unless BSEE proves conclusively** that the operation could not be conducted safely or that resource recovery would be reduced.

The OB BB mandate is thus the antithesis of the operator responsibility doctrine and fundamental safety management principles that call for the operator to demonstrate that safety, environmental, and resource conservation risks have been fully considered and effectively mitigated.

In an unprecedented rush to promulgate a new regulation, the **direct final commingling rule** was published only 40 days after the OB BB was signed. This was only possible because BSEE determined that "**notice and comment are unnecessary because this rule is noncontroversial; of a minor, technical nature; and is unlikely to receive any significant adverse comments.**"

I strongly disagree with that determination. It is incumbent on BSEE to ensure that the OB BB mandate is implemented in a manner that minimizes the safety, environmental, and resource conservation risks. **BSEE must, therefore, as required by the Administrative Procedures Act, publish the implementing regulation in draft form for review and comment.** The public must have the opportunity to comment on both the technical issues and regulatory policy implications of the OB BB mandate, and to recommend implementation policies that will most effectively mitigate operational risks.

Below are some of the issues to be considered during the public comment period:

- **BSEE's own fact sheet** acknowledges the pressure differential, crossflow, and fluid compatibility risks associated with downhole commingling. The public should have the opportunity to provide input on the mitigation of these risks.

- The industry-funded [Univ. of Texas \(UT\) study](#), which led to a relaxation of downhole commingling restrictions in April, was specific to the “unique Paleogene Gulf of Mexico fields.” Does BSEE have evidence that supports the applicability of the study results to other fields?
- The authors of the UT study advise that their findings were based on a “simple but reasonable geological base case model.” They acknowledge the need for “a more comprehensive study using advanced geological models to explore additional geological features.” What are BSEE’s plans for such a study and other related research?
- Should an independent assessment of Gulf of America downhole commingling safety and resource recovery risks be conducted before finalizing a rule that essentially mandates approval of all applications?
- What criteria will BSEE use in determining that there is “conclusive evidence” that a commingling request would be unsafe or would reduce ultimate resource recovery?
- BSEE’s [April 2025 policy change](#) raised the allowable pressure differential for commingling production in Paleogene (Wilcox) reservoirs from 200 psi to 1500 psi. Unlike the policy update, the new rule includes no limiting parameters. The public should have the opportunity to comment on operational boundaries for safe downhole commingling and optimal reservoir management.
- How will BSEE ensure that production from each interval is accurately measured and accounted for?
- During the early years of deepwater production, some operators publicly expressed their intent to “skim the cream” from oil reservoirs to accelerate the return on their investment at the expense of ultimate oil recovery. Some also proposed to flare the associated gas until pipelines were in place. Minerals Management Service oversight prevented such practices. How will BSEE ensure that long term production benefits are not sacrificed in the interest of accelerated downhole commingling payouts?

Because the public has not had the opportunity to comment on these and other issues, the downhole commingling rule should be published in draft form, with a comment period of at least 90 days.

BSEE should also consider hosting a public forum during the comment period to present research on downhole commingling and accept input on mitigations and implementation policies.