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4310-VH-P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE-2015-0012; 15XE1700DX EEEE500000 EX1SF0000.DAQ000]

RIN 1014-AA24

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—

Decommissioning Costs

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the regulations to require lessees and owners of operating rights to submit summaries of actual decommissioning expenditures incurred after completion of certain decommissioning activities for oil and gas and sulphur operations on the Outer Continental Shelf. This information will help BSEE to better estimate future decommissioning costs related to OCS leases, rights-of-way, and rights of use and easement.

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

FOR FURTHER INFORMATION CONTACT: Lakeisha Harrison, Chief, Regulations and Standards Branch, Lakeisha.Harrison@bsee.gov, (703) 787-1552.

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Executive Summary

This final rule requires lessees and owners of operating rights (collectively, “lessees”) to submit to the Bureau of Safety and Environmental Enforcement (BSEE) summaries of actual expenditures for decommissioning of wells, platforms and other facilities on the Outer Continental Shelf (OCS) that are required under BSEE’s existing regulations. This information will help BSEE to better estimate future decommissioning costs related to OCS leases, rights-of-way, and rights of use and easement. The Bureau of Ocean Energy Management (BOEM) may then use BSEE’s future decommissioning cost estimates to set necessary financial assurance levels to minimize or eliminate the possibility that the government will incur decommissioning liability.

In a proposed rule published on May 27, 2009, the Minerals Management Service (BSEE’s predecessor agency) proposed to require lessees to submit information (including supporting documentation) regarding expenditures actually incurred for certain mandatory decommissioning activities within 30 days of completion of each activity. Based on BSEE’s review of public comments on the proposed rule, the final rule generally requires only certified summaries of the actual expenditures (without other supporting documentation) for those decommissioning activities and extends the time period for submission of such reports to 120 days after completion of each such activity.

BSEE may, however, require additional supporting information for specific decommissioning costs on a case-by-case basis.

I. Background

On May 27, 2009, the former Minerals Management Service (MMS) published a Notice of Proposed Rulemaking in the *Federal Register (Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf)* in order to update and streamline the existing OCS leasing regulations under the Outer Continental Shelf Lands Act (OCSLA) and to clarify implementation of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (*see* 74 FR 25177). In 2010 and 2011, the Secretary of the Interior (Secretary) reorganized MMS into three bureaus: BSEE, BOEM, and the Office of Natural Resources Revenue. The Secretary then delegated to BSEE certain responsibilities under OCSLA that were formerly held by MMS, including responsibilities for overseeing decommissioning.¹ BSEE's primary purpose as an agency is to promote safety, protect the environment, and ensure responsible development and conservation of offshore oil and natural gas resources through vigorous regulatory oversight and enforcement.

This final rule completes the rulemaking for one of the issues covered by the proposed rule that is now under BSEE's authority. Specifically, this final rule addresses the proposed requirement that lessees submit information regarding actual expenditures incurred for certain decommissioning activities required under the existing regulations.

The other issues covered by the proposed rule now under BSEE's authority include proposed consolidation of mechanisms for maintaining and extending leases past their

¹ For convenience, hereafter we use the term "BSEE" rather than "MMS" in this document, where appropriate, when referring to past actions of MMS.

primary terms and a proposed requirement for submittal of pipeline-related reports after approval of an assignment or change of designated operator (*see* 74 FR 25177-25178). BSEE may issue a final rule in the future regarding the proposed consolidation of mechanisms for extending and maintaining leases beyond their primary terms. Similarly, BSEE will decide at a later date whether to finalize the proposed pipeline report requirement or to address that issue again, potentially in a broader rulemaking under 30 CFR part 250, Subpart J - *Pipelines and Pipeline Rights-of-Way*. Therefore, these two issues are not included in this final rule. In addition, this final rule does not include sections of the proposed rule that now fall under BOEM's authority.

II. What This Final Rule Covers

This final rule revises portions of BSEE's regulations at 30 CFR part 250, Subpart Q -- *Decommissioning Activities*. Specifically, the final rule requires lessees to submit certified summaries of actual decommissioning expenditures incurred for certain decommissioning activities that are required under Subpart Q (*i.e.*, plugging and abandonment of wells, removal of platforms and other facilities, and site clearance)² within 120 days of completion of each such activity. This information will help BSEE better estimate future decommissioning costs related to OCS leases, rights-of-way, and rights of use and easement. BSEE's decommissioning cost estimates may then be used by BOEM to set financial assurance levels necessary to minimize or eliminate the possibility that the government will incur decommissioning liability.

² For example, §§ 250.1710 and 250.1711 require wells to be plugged within a year after termination of a lease or when ordered by BSEE, respectively. Section 250.1725 requires platforms and other facilities to be removed within a year of termination of a lease unless the lessee has received approval to maintain the facility to conduct other activities. Section 250.1740 requires verification that a site has been cleared of obstructions within 60 days after a well has been plugged or a platform or other facility has been removed.

The proposed rule would have added new reporting provisions to three separate existing regulatory provisions—§§ 250.1717, 250.1729 and 250.1743—that require submission of decommissioning information (including supporting documentation) regarding well plugging and abandonment, removal of platforms and other facilities, and site clearance, respectively. BSEE has determined, however, that adding the decommissioning cost reporting requirements to three separate sections would be unnecessarily redundant and potentially confusing. Therefore, this final rule adds two new paragraphs—(h) and (i)—containing the decommissioning cost reporting requirements to the existing § 250.1704, which already provides other decommissioning applications and reporting requirements. This approach is intended to prevent unnecessary repetition and to provide for consistent cost reporting procedures for all of the specified decommissioning activities.

III. Differences Between Proposed Rule and Final Rule

The following is a discussion of differences between the proposed rule and the final rule with regard to 30 CFR part 250.

Subpart Q - *Decommissioning Activities* - The proposed rule would have amended §§ 250.1717, 250.1729 and 250.1743 to require submission of information, including supporting documentation, on expenditures for the decommissioning activities previously described in parts II and III. Instead of amending those sections, however, the final rule adds new paragraphs (h) and (i) to § 250.1704. Those new paragraphs require a lessee to submit to BSEE, after completing the specified decommissioning activities, a certified summary of actual decommissioning expenditures and, if requested by the Regional Supervisor, additional information to support the summary. The addition of paragraphs

(h) and (i) to § 250.1704 eliminates the need to insert repetitive language in §§ 250.1717, 250.1729, and 250.1743, and results in a more consolidated regulation, with consistent reporting procedures applicable to all of the specified decommissioning activities.

Under the proposed rule, BSEE would have expected supporting documentation to include a statement certifying the truth and accuracy of the reported costs. The final rule addresses that expectation, and eliminates any potential ambiguity, by expressly requiring that cost summaries include such a certification statement.

In addition, after consideration of comments received regarding potential burdens on lessees from the proposed requirement for submission of supporting documentation for each expenditure, the final rule requires that lessees submit, to the appropriate BSEE Regional Supervisor, only a certified summary of decommissioning expenditures.³ The final rule requires additional supporting information only if the appropriate Regional Supervisor specifically requires it on a case-by-case basis.

Finally, based on BSEE's review of the comments on the proposed rule, the final rule requires that lessees submit the summary of actual decommissioning costs within 120 days of completion of those decommissioning activities, instead of the proposed requirement for reporting within 30 days. BSEE has determined that 120 days constitutes a more appropriate period for lessees to collect, summarize, and submit this information.

IV. Comments and Responses

In response to the proposed rule, BSEE received three comments, all from representatives of the offshore oil and gas industry, related to the provisions for reporting costs of decommissioning activities. The full text of the relevant comments can be

³ As a practical matter, BSEE recognizes that a designated operator may submit the required summary of decommissioning costs on behalf of a lessee.

viewed at: www.regulations.gov. To access those comments, enter MMS–2007–OMM–0069 in the Search box. A summary of the comments, with BSEE’s responses, follows.

Comment: One industry commenter stated that the proposed addition of §§ 250.1717(e), 250.1729(d), and 250.1743(b)(8) to the regulations, requiring submittal of actual expenditures for every instance of site clearance, platform removal and well plugging, would be unduly burdensome in light of the potential benefits. The commenter stated that, while BSEE may need some access to accurate decommissioning cost data, there are alternatives available to obtain the same information, although the commenter did not state what those alternatives might be. The commenter also asserted that the proposed provisions gave no guidance as to exactly what expenditures should be included from an accounting perspective, and that the proposal to require each lessee to account for such expenses separately would diminish the usefulness of the information provided to BSEE. The commenter also stated that lessees are willing to work with BSEE on a case-by-case basis to provide specific cost information as necessary. Finally, the commenter stated that, to the extent any trade secret, or confidential or proprietary information might be included in submissions to BSEE, the proposed rule did not include a mechanism to protect that information from disclosure.

Response: Contrary to the commenter’s assertion, BSEE does not have ready access to other sources of information for actual expenditures incurred for decommissioning activities. As previously explained, BSEE needs and will use decommissioning cost data to estimate future decommissioning costs, which BOEM will use to set the amount of required bonds and other forms of financial security. However, while the final rule provides that a lessee must report actual decommissioning expenditures incurred for the

specified decommissioning activities, it now requires, in general, that the lessee submit only a summary of such expenditures rather than specific supporting documentation for each expenditure. The information needed to prepare such a summary is readily available to industry as a matter of business practice, and supplying this summary information does not constitute an unreasonable burden.

In addition, the final rule provides examples of activities (including, but not limited to, expenses incurred for the use of rigs, vessels, equipment, supplies and materials, transportation of any kind, personnel, and services) associated with the specified decommissioning activities for which summaries of actual expenditures incurred must be submitted.

While the final rule does not include the proposed requirement to submit supporting documentation for each decommissioning expenditure, the final rule provides that BSEE may request additional information on a case-by-case basis to support the summary, as suggested by the commenter. However, in such cases, BSEE will minimize the burden by working directly with the lessee to determine what specific supporting information is required.⁴ In addition, by working together on a case-by-case basis whenever supporting information is requested, BSEE and the lessee can help reduce the need to submit any confidential information. Any confidential information that is provided will be handled in accordance with the Freedom of Information Act (FOIA) (5 U.S.C. 552), the Department of the Interior's (DOI's) FOIA regulations (43 CFR part 2), and section 26 of OCSLA, 43 U.S.C. 1352.

⁴ Although BSEE does not anticipate that such supporting information will be needed often, there may be situations (*e.g.*, when a lessee's summary reflects decommissioning expenditures substantially higher or lower than other lessees' summaries for similar activities in the same area) where additional supporting information would be appropriate.

Comment: Another commenter also stated that the proposed requirement to submit all “expenses” with “supporting documentation” would impose a significant burden. Further, the commenter observed that since the proposed rule provided no guidelines on what constitutes an “expense,” BSEE likely would receive inconsistent reporting from lessees. The commenter’s preference is for BSEE to work directly with lessees to develop specific information requirements and to allow the lessees to exclude confidential or proprietary information.

Response: As previously explained, BSEE needs information regarding actual decommissioning expenditures incurred by lessees in order to appropriately estimate future costs and minimize the government’s risk of potential decommissioning liability. However, since the final rule typically will require only a summary of actual decommissioning expenditures, the overall potential burden on lessees will likely be less than under the proposed rule, and the summary will be less likely to reflect confidential or proprietary information. In addition, as suggested by two commenters, BSEE will work directly with lessees on a case-by-case basis, as necessary, whenever additional supporting information may be required in order to avoid or minimize the potential need for submission of any confidential information.

Finally, since the final rule now lists several examples of the types of expenditures that must be included in the summaries, and since BSEE will work with individual lessees to determine what additional supporting information, if any, is needed in specific cases, the possibility of inconsistent reporting suggested by the commenter will be minimized. In addition, BSEE expects to issue further guidance to assist lessees in

preparing expenditure summaries, such as using cost classifications and accounting methods consistent with current OCS joint interest summary form billing standards and practices.

Comment: A third commenter stated that BSEE did not need cost data with supporting documentation to help assess bonding requirements. Rather, the commenter suggested that BSEE could request operators to certify the cost information instead of requiring supporting documentation.

Response: As suggested by the commenter, instead of requiring supporting information in every case, the final rule requires that a lessee submit only a summary of its decommissioning costs, with a certification statement by an authorized company representative. Additional supporting information is required only when the Regional Supervisor requests such information on a case-by-case basis.

V. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 (E.O. 12866) provides that the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), will review all significant rules. 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, local, or tribal 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 alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients; and

- It does 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, and OIRA has not reviewed this rule.

Executive Order 13563 (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. 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 who perform decommissioning activities under 30 CFR part 250. This could include about 130 active companies. Offshore lessees fall under 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). For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 90 (or 69 percent) of the active companies are considered small. Thus, this final rule would affect a substantial number of small entities.

However, because the final rule requires only summary reports of actual expenditures related to performance of decommissioning activities, it will not impose significant new costs or burdens on offshore oil and gas companies. Accordingly, this rule will not have a significant economic effect on a substantial number of small entities, and BSEE is not required by the RFA to prepare a regulatory flexibility analysis for this rule.

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.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 801 *et seq.*). This 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.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule also will not have a significant or unique effect on state, local, or tribal 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 (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule will not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. Therefore, a Takings Implication Assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this rule does not have federalism implications. This rule does 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 rule does not affect that role. Accordingly, a Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

This 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 (Executive Order 13175)

We have evaluated this rule under the Department's tribal consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes, or on the relationship or distribution of power and responsibilities between the Federal Government and Indian tribes, and that 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 1014-0029, expiration November 30, 2018. We estimate the annual burden associated with this IC to be 820 hours per year.

The title of the collection of information for this rule is *30 CFR part 250, subpart Q, Decommissioning Costs*. Potential respondents include approximately 130 OCS lessees. 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 10/31/16; 29,437 burden hours and \$2,152,644 non-hour cost burdens).

We received three comments stating that the proposed requirements would impose a significant burden. Although we reduced the regulatory requirements for this final rule, as previously described, we felt it was prudent to use the same number of burden hours as in the proposed rule. We will adjust the burden hours accordingly in the IC renewal when industry has had enough experience with the final rule to determine the actual burden associated with these requirements. Also, based on comments received, there are some regulatory text revisions, which consist of the following. The final rule:

- requires lessees to submit to BSEE only a summary of actual decommissioning expenditures incurred for each decommissioning activity (unless additional information is specifically required by the BSEE Regional Supervisor on a case-by-case basis); and
- changes the summary submission period from 30 days to 120 days after completion of each decommissioning activity, giving industry more time to comply.

There are no non-hour cost burdens associated with this rulemaking. The following table is a breakdown of the burden estimate:

Burden Table

Citation 30 CFR 250	Reporting and Recordkeeping Requirements	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
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Citation 30 CFR 250	Reporting and Recordkeeping Requirements	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
<i>Proposed</i> 250.1717(e); 1729(d); 1743(b)(8)	Submit to the Regional Supervisor, within 120 days after completion of each identified decommissioning activity, a summary of expenditures incurred and subsequently, if requested, any additional information that will support and/or verify the summary.	1	820 summaries/ additional info.	820
Final 250.1704(h), (i)				
Final 250.1704(h)	Submit certified statement attesting to accuracy of expenditures incurred data.	Exempt from the PRA under 5 CFR 1320.3(h)(1).		0
TOTAL			820	820

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 43 CFR 46.210(i) and 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 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 concluded that this rule does not meet any of the criteria for 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 § 515, 114 Stat. 2763, 2763A-153-154).

Effects on the Nation's Energy Supply (Executive Order 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, Investigations, Oil and gas exploration, Penalties, Reporting and recordkeeping requirements, Sulphur.

Dated: August 28, 2015.

Janice M. Schneider
Assistant Secretary
Land and Minerals Management

Editorial note: [This document was received for publication by the Office of Federal Register on November 30, 2015.](#)

For the reasons stated in the preamble, BSEE amends 30 CFR part 250 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, 43 U.S.C. 1334.

2. Amend § 250.1704 by revising the section heading and the introductory text, and by adding new paragraphs (h) and (i) to the Decommissioning Applications and Reports Table, to read as follows:

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

You must submit decommissioning applications, receive approval of those applications, and submit subsequent reports according to the requirements and deadlines in the following table.

* * * * *

DECOMMISSIONING APPLICATIONS AND REPORTS TABLE

Decommissioning applications and reports	When to submit	Instructions
* * * * *		
(h) A certified summary of expenditures for permanently plugging any well, removal of any platform or other facility, and clearance of any site after wells have been plugged or platforms or facilities removed.	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

		<p>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.</p>
<p>(i) If requested by the Regional Supervisor, additional information in support of any decommissioning activity expenditures included in a summary submitted under paragraph (h) of this section.</p>	<p>Within a reasonable time as determined by the Regional Supervisor.</p>	<p>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.</p>