



**4310-MR-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Safety and Environmental Enforcement**

**30 CFR Parts 250 and 290**

**Bureau of Ocean Energy Management**

**30 CFR Parts 550 and 556**

**[Docket ID: BOEM–2018–0033]**

**RIN 1082–AA02**

**Risk Management, Financial Assurance and Loss Prevention**

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Bureau of Safety and Environmental Enforcement (BSEE), Interior.

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The Department of the Interior (the Department), acting through BOEM and BSEE, proposes to streamline its evaluation criteria for determining whether oil, gas and sulfur lessees, right-of-use and easement (RUE) grant holders, and pipeline right-of-way grant holders may be required to provide bonds or other security above the prescribed amounts for base bonds to ensure compliance with their Outer Continental Shelf (OCS) obligations. BOEM’s portion of the proposed rule would also remove restrictive provisions for third-party guarantees and decommissioning accounts, and would add new criteria under which additional bonds and third-party guarantees may be cancelled. Based on the proposed framework, BOEM estimates its amount of financial assurance would decrease from \$3.3 billion to \$3.1 billion, although it would provide greater protection as the financial assurance would be focused on the riskiest properties. BSEE’s portion of this proposed rule would establish the order in which BSEE could order predecessor lessees, owners of operating rights, or grant holders, who have accrued

decommissioning obligations, to perform those obligations when the current owners of a lease or grant fail to do so. BSEE's proposed provisions would also clarify decommissioning responsibilities for RUE grant holders and require that any party appealing any final decommissioning order provide a surety bond to ensure that funding for decommissioning is available if the order is affirmed on appeal and the liable party subsequently defaults.

**DATES:** Submit comments on the substance of this rulemaking on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. BOEM and BSEE may not consider comments received after this date. You may submit comments to the Office of Management and Budget (OMB) on the information collection (IC) burden in this rulemaking on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This does not affect the deadline for the public to comment to BOEM and BSEE on the proposed regulations.

**ADDRESSES:** You may submit comments on the rulemaking by any of the following methods. Please reference "Risk Management, Financial Assurance and Loss Prevention, RIN 1082-AA02." Please include your name, return address, and phone number or email address, so we can contact you if we have questions regarding your submission.

- *Federal rulemaking portal:* <http://www.regulations.gov>. In the entry entitled, "Enter Keyword or ID," enter BOEM-2018-0033 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BOEM and BSEE may post all submitted comments.

- *Mail or delivery service:* Send comments on the BOEM portions of the proposed rule to the Department of the Interior, Bureau of Ocean Energy Management, Office of Policy, Regulation and Analysis, Attention: Peter Meffert, 1849 C Street NW, Mailstop DM5238, Washington, DC

20240. Send comments on the BSEE portions of the proposed rule to Department of the Interior, BSEE, Office of Offshore Regulatory Programs (OORP), Regulations and Standards Branch, Attention – Kelly Odom, 45600 Woodland Rd, (Mail code VAE-ORP), Sterling, VA 20166.

- Send comments on the IC in this proposed rule to: Interior Desk Officer, Office of Management and Budget; 202–395–5806 (fax); or via the [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find the information collection by selecting “Currently under 30-day Review – Open for Public Comments or by using the search function. Please also send a copy of comments on the BOEM IC to BOEM, Office of Policy, Regulation and Analysis, Attention: Anna Atkinson, 45600 Woodland Road, Sterling, VA 20166. Please send a copy of any comments on the BSEE IC to BSEE, OORP, Regulations and Standards Branch, Attention: Nicole Mason, 45600 Woodland Road, (Mail code VAE-ORP), Sterling, VA 20166.

*Public Availability of Comments:* Before including your name, return address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. In order for BOEM or BSEE to withhold from disclosure your personally identifiable information, you must identify any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

**FOR FURTHER INFORMATION CONTACT:** For questions on any BOEM issues, contact Deanna Meyer-Pietruszka, Chief, Office of Policy, Regulation and Analysis, Bureau of Ocean

Energy Management (BOEM), at [deanna.meyer-pietruszka@boem.gov](mailto:deanna.meyer-pietruszka@boem.gov) or at (202) 208-6352.

For questions on any BSEE issues, contact Amy White, Bureau of Safety and Environmental Enforcement (BSEE), at [amy.white@bsee.gov](mailto:amy.white@bsee.gov) or at (703) 787-1665.

To see a copy of either IC request submitted to OMB, go to <http://www.reginfo.gov> (select Information Collection Review, Currently Under Review). You may obtain a copy of the supporting statement for BOEM's new collection of information by contacting BOEM, Office of Policy, Regulation and Analysis, Attention: Anna Atkinson, at 45600 Woodland Road, Sterling, VA 20166. You may obtain a copy of the supporting statement for BSEE's new collection of information by contacting BSEE, OORP, Regulations and Standards Branch, Attention: Nicole Mason, 45600 Woodland Road, (Mail code VAE-ORP), Sterling, VA 20166.

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents**

- I. Background of BOEM Regulations
  - A. BOEM Statutory and Regulatory Authority and Responsibilities
  - B. History of Bonding Regulations and Guidance
  - C. Regulatory Reform - New Executive and Secretary's Orders
  - D. Purpose of BOEM's Portion of the Proposed Rulemaking
  
- II. Background of BSEE Regulations
  - A. BSEE Statutory and Regulatory Authority and Responsibilities
  - B. BSEE's Decommissioning Regulations and Guidance
  - C. Regulatory Reform
  - D. Stakeholder Engagement
  - E. Purpose of BSEE's Portion of the Proposed Rulemaking
  
- III. Proposed Revisions to BOEM Bond and Other Security Requirements
  - A. Leases
  - B. Right-of-Use and Easement Grants
  - C. Pipeline Right-of-Way Grants
  
- IV. Proposed Revisions to Other BOEM Security Requirements
  - A. Third-party Guarantees
  - B. Lease-specific Abandonment Accounts
  - C. Cancellation of Additional Bonds

## V. BOEM Evaluation Methodology

- A. Credit Ratings
- B. Valuing Proved Oil and Gas Reserves

## VI. Proposed Revisions to BOEM Definitions

## VII. Proposed Revisions to BSEE Decommissioning Regulations

- A. Decommissioning by Predecessors
- B. Decommissioning of Rights-of-Use and Easement
- C. Bonding Requirement for Appeals of Decommissioning Decisions and Orders

## VIII. Section-by-Section Analysis

- A. Regulations Proposed by BSEE
- B. Regulations Proposed by BOEM

## IX. Additional Comments Solicited by BOEM and BSEE

## X. Procedural Matters

- A. Regulatory Planning and Review (E.O. 12866, 13563 and 13771)
- B. Regulatory Flexibility Act
- C. Small Business Regulatory Enforcement Fairness Act
- D. Unfunded Mandates Reform Act of 1995
- E. Takings Implication Assessment (E.O. 12630)
- F. Federalism (E.O. 13132)
- G. Civil Justice Reform (E.O. 12988)
- H. Consultation with Indian Tribes (E.O. 13175 and Departmental Policy)
- I. Paperwork Reduction Act
- J. National Environmental Policy Act
- K. Data Quality Act
- L. Effects on the Nation's Energy Supply (E.O. 13211)
- M. Clarity of This Regulation

## **I. Background of BOEM Regulations**

### **A. BOEM Statutory and Regulatory Authority and Responsibilities**

BOEM derives its authority primarily from the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331-1356b, which authorizes the Secretary of the Interior (Secretary) to lease the OCS for mineral development, and to regulate oil and gas exploration, development, and production operations on the OCS. Section 5(a) of OCSLA (43 U.S.C. 1334(a)) authorizes the

Secretary to “prescribe such rules and regulations as may be necessary to carry out” the “provisions of [OCSLA] relating to the leasing of the” OCS and “to provide for the prevention of waste and conservation of the natural resources of the [OCS] and the protection of correlative rights therein,” and provides that “such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under” OCSLA. Section 5(b) of OCSLA provides that “compliance with regulations issued under” OCSLA shall be a condition of “[t]he issuance and continuance in effect of any lease, or of any assignment or other transfer of any lease, under the provisions of” OCSLA.

BOEM is responsible for managing development of the nation's offshore resources in an environmentally and economically responsible way. The Secretary, in Secretary's Order 3299, delegated the authority to BOEM to carry out conventional (*e.g.*, oil and gas) and renewable energy-related functions including, but not limited to, activities involving resource evaluation, planning, and leasing. Secretary's Order 3299 also assigned authority to BSEE, including, but not limited to, enforcement of the obligation to perform decommissioning. BSEE provides estimates of decommissioning costs to BOEM so that the financial assurance required by BOEM will be sufficient to cover the cost to perform decommissioning, thereby protecting the government from incurring financial loss to the maximum extent practicable. While BOEM has program oversight for the financial assurance requirements set forth in 30 CFR Parts 550, 551, 556, 581, 582 and 585, this proposed rule pertains only to the financial assurance requirements for oil and gas or sulfur leases under Part 556, and associated right-of-use and easement grants and pipeline right-of-way grants under Part 550.

## **B. History of Bonding Regulations and Guidance**

BOEM's existing bonding regulations for leases (30 CFR 556.900 – 907) and pipeline right-of-way grants (30 CFR 550.1011) published by BOEM's predecessor, the Minerals Management Service (MMS) on May 22, 1997 (62 FR 27948), provide the authority for the Regional Director to require bonding for leases and pipeline right-of-way grants. Section 556.900(a) and § 556.901(a) and (b) require lease-specific base bonds or areawide base bonds in prescribed amounts, depending on the level of activity on a lease or leases. Section 556.901(d) authorizes the Regional Director to require additional security for leases above the prescribed amounts for lease and areawide base bonds. Similarly, § 550.1011 authorizes the Regional Director to require an areawide base bond in a prescribed amount and additional security above the prescribed amount for pipeline right-of-way grants.

BOEM's existing bonding regulations for right-of-use and easement grants (30 CFR 550.160 and 550.166), published by the MMS on December 28, 1999 (64 FR 72756), provide the authority for the Regional Director to require bonds or other security for right-of-use and easement grants. Section 550.160, which applies only to an applicant for a right-of-use and easement that serves an OCS lease, provides that the applicant "must meet bonding requirements." While there is no requirement for an applicant for a right-of-use and easement that serves an OCS lease to provide a base bond in a prescribed amount, § 550.160 authorizes the Regional Director to require bonding if the Regional Director determines it is necessary.

Section 550.166 requires an applicant for a right-of-use and easement that serves a State lease to provide a base bond of \$500,000. Section 550.166 also provides that BOEM may require additional security above the prescribed \$500,000 base bond from the holder of a right-of-use and easement that serves a State lease to cover additional costs and liabilities.

MMS, and now BOEM, has employed the criteria for determining whether additional security should be required for leases to also determine whether additional security should be required for right-of-use and easement grants or pipeline right-of-way grants, since there are no criteria specified in the existing Part 550 for these purposes. The existing lease bonding regulations under § 556.901(d) provide five criteria the bureau uses to determine whether a lessee's potential inability to carry out present and future financial obligations warrants a demand for additional security. However, these regulations do not specifically describe how the agency weighs those criteria. To provide guidance, MMS issued Notice to Lessees (NTL) No. 98-18N, effective December 28, 1998, which provided details on how it would apply these regulations and the five criteria. This NTL was replaced by NTL No. 2003-N06, effective June 17, 2003, which was later replaced by NTL No. 2008-N07, effective August 28, 2008.

Pursuant to BOEM's standard, historical practice under NTL No. 2008-N07, a lessee or grant holder that passed established financial thresholds was waived from providing additional security to cover its decommissioning liabilities. Additionally, co-lessees (regardless of their own financial strength), were not required to provide additional security for the decommissioning liability for that lease if one lessee was waived. The decommissioning liability on a lease, on which there were two waived lessees, was not attributed to either lessee in calculating whether a lessee's cumulative potential decommissioning liability was less than 50% of the lessee's net worth, which was the standard for a lessee to qualify for a supplemental bonding waiver. The policy was based on the assumption that the chances were very remote that both lessees would become financially distressed and not be able to meet their obligations. While NTL No. 2008-N07 was the most recent, fully implemented NTL, BOEM did not fully enforce it during the oil price collapse of 2014-2016. BOEM was concerned that fully enforcing NTL No. 2008-N07



would have led to an increase of bond demands that, in turn, would have contributed to an increase in bankruptcy filings.

Since 2009, there have been 30 corporate bankruptcies of offshore oil and gas lessees involving owned or partially owned offshore decommissioning liability of approximately \$7.5 billion in total. This figure includes properties with co-lessees and predecessors, and properties held by companies that successfully emerged from a Chapter 11 reorganization bankruptcy. While BOEM cannot predict the outcomes of bankruptcy proceedings, the actual financial risk is significantly less than the total offshore decommissioning liability associated with offshore corporate bankruptcies. Several of these companies experienced financial distress when oil prices fell sharply at the end of 2014. Further, the fact that a company entered bankruptcy does not necessarily suggest that there would be no private party responsible for decommissioning costs, as company assets may be sold, and predecessors would retain their pre-existing obligation to fund or perform the decommissioning.

The fact that recent bankruptcies and reorganizations have involved un-bonded decommissioning liabilities demonstrates that BOEM's regulations and the waiver criteria in NTL No. 2008-N07 were inadequate to protect the public from potential responsibility for OCS decommissioning liabilities, especially during periods of low hydrocarbon prices. Specifically, ATP Oil & Gas was a mid-sized company with a financial assurance waiver when it filed for bankruptcy in 2012. Similarly, Bennu Oil & Gas was waived at the time of its bankruptcy filing, and Energy XXI and Stone Energy did not lose their waivers until less than 12 months prior to filing bankruptcy. While most affected OCS properties were ultimately sold or the companies reorganized under Chapter 11 of the U.S. Bankruptcy Code, several bankruptcies, including those of ATP and Bennu, demonstrated the weaknesses in BOEM's financial assurance program.

These weaknesses were apparent because the unsecured decommissioning liabilities exceeded the value of the leases to potential purchasers or investors. BOEM cannot forecast the outcome of bankruptcy proceedings, which may lead to the restructuring or liquidation of an insolvent company, in addition to other potential outcomes. If BOEM has insufficient financial assurance at the time of bankruptcy, BOEM may seek legal avenues for obtaining funds in bankruptcy proceedings, but outcomes are not assured and there may be no recourse for obtaining additional funds, resulting in the Department of the Interior's needing to perform the decommissioning with the cost coming from the American taxpayer.

In 2009, MMS issued a proposed rule (74 FR 25177) to rewrite the entirety of the leasing provisions of Part 256 (now designated as Part 556). However, because of uncertainty associated with revising the bonding requirements, BOEM deferred revision of the bonding regulations to a separate rulemaking. This separate rulemaking commenced August 14, 2014, with an advance notice of proposed rulemaking (79 FR 49027) to solicit ideas for improving the bonding regulations.

In December 2015, the Government Accountability Office (GAO) reviewed BOEM's financial assurance procedures (see GAO-16-40, <https://www.gao.gov/products/GAO-16-40>) (the GAO Report). While acknowledging BOEM's ongoing efforts to update its policies, the GAO Report recommended, *inter alia*, that "BOEM complete its plan to revise its financial assurance procedures, including the use of alternative measures of financial strength." GAO-16-40 at 34. Following further analysis and a series of stakeholder meetings in 2015 and 2016 to solicit industry input, BOEM attempted to remedy the weaknesses in its financial assurance program as administered under NTL No. 2008-N07 with new NTL No. 2016-N01, *Requiring Additional Security*, which became effective September 12, 2016. NTL No. 2016-N01 sought to

clarify the procedures and explain how BOEM would use the regulatory criteria to determine if, and when, additional security may be required for OCS leases, right-of-use and easement grants, and pipeline right-of-way grants. The NTL continued to use net worth of a lessee as a measure of financial strength because this measure was required by the regulations. The NTL also detailed several changes in policy and refined the criteria used to determine a lessee's or grant holder's financial ability to carry out its obligations. On August 29, 2016, BOEM requested GAO to close the above stated recommendation in the GAO Report, stating that BOEM had implemented the recommendation by issuance of the NTL. GAO found that the recommendation had been implemented and closed the audit recommendation later in fiscal year 2016. BOEM acknowledges that NTL No. 2016-N01 was never fully implemented. This proposed rulemaking is another effort (in addition to the partially implemented NTL) to revise BOEM's financial assurance procedures, including the proposal to use alternative measures to evaluate financial strength.

In December 2016, BOEM began implementing the NTL and issued numerous orders to lessees and grant holders to provide additional security for "sole liability properties," *i.e.*, leases, right-of-use and easement grants, and pipeline right-of-way grants for which the lessee or grant holder is the only party liable for meeting the lease or grant obligations.

On January 6, 2017, BOEM issued a Note to Stakeholders extending implementation of NTL No. 2016-N01 for six months. The extension applied to leases, right-of-use and easement grants, and pipeline right-of-way grants for which there were co-lessees, predecessors in interest, or both, except where BOEM determined there was a substantial risk of nonperformance of the interest holder's decommissioning obligation. The extension of the implementation timeline allowed BOEM an opportunity to evaluate whether certain leases and grants were considered to

be sole liability properties. Upon closer examination and upon receiving feedback from notified stakeholders regarding inaccuracies in BOEM's assessment of sole liabilities, BOEM issued a second Note to Stakeholders on February 17, 2017, announcing that it would withdraw the December 2016 orders issued on sole liability properties to allow time for the new Administration to review BOEM's financial assurance program.

### **C. Regulatory Reform - New Executive and Secretary's Orders**

On March 28, 2017, the President issued Executive Order (E.O.) 13783—*Promoting Energy Independence and Economic Growth*. Section 2 of the E.O. directed Federal agencies to: review all existing regulations and other agency actions that potentially burden the development of domestic energy resources; provide recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency actions that burden domestic energy production; and pursue processes for implementing such recommendations, as appropriate and consistent with law. While section 2 of the E.O. directed Federal agencies to review regulations, section 2 did not direct any particular changes or outcomes.

On April 28, 2017, the President issued E.O. 13795, *Implementing an America-First Offshore Energy Strategy*, which ordered the Secretary of the Interior to direct the BOEM Director to take all necessary steps consistent with law to review BOEM's NTL No. 2016-N01 and determine whether modifications are necessary, and if so, to what extent, to ensure operator compliance with lease terms while minimizing unnecessary regulatory burdens. This E.O. also required the Secretary of the Interior to review BOEM's financial assurance regulatory policy to determine the extent to which additional regulation is necessary.

Secretary's Order No. 3350 of May 1, 2017, *America-First Offshore Energy Strategy*, followed on E.O. 13795 and directed BOEM to promptly complete its previously announced

review of NTL No. 2016-N01 and to “provide to the Assistant Secretary – Land and Minerals Management (ASLM), the Deputy Secretary, and the Counselor to the Secretary for Energy Policy, a report describing the results of the review and options for revising or rescinding NTL No. 2016-N01.” Secretary’s Order No. 3350 further specified that BOEM’s previously announced extension of the implementation timelines for NTL No. 2016-N01 would remain in effect pending completion of the review.

On June 22, 2017, BOEM issued a third Note to Stakeholders announcing that it was in the final stages of its review of NTL No. 2016-N01, but had determined that “more time was necessary to work with industry and other interested parties,” and therefore, that it would be appropriate to extend the implementation timeline beyond June 30, “except in circumstances where there would be a substantial risk of nonperformance of the interest holder’s decommissioning liabilities.”

BOEM continued to review the provisions of NTL No. 2016-N01 and examine options for revising or rescinding the NTL. BOEM also continued to review its financial assurance regulatory policy to determine the extent to which regulatory revision is necessary. As a result, BOEM recognized the need to develop a comprehensive program to assist in identifying, prioritizing, and managing the risks associated with industry activities on the OCS.

In October 2019, the President issued E.O. 13891, *Promoting the Rule of Law Through Improved Agency Guidance Documents*, which, in recognition that Americans deserve an open and fair regulatory process, defines “significant guidance documents” as having an effect of \$100 million or more, sets a policy that guidance documents should be non-binding, and encourages legally binding requirements to be enacted through notice and comment rulemaking under the Administrative Procedure Act. Because the NTL was issued rather than moving forward with the

2014 ANPRM, BOEM believes that compliance with E.O. 13981 is best achieved by rulemaking, which provides for notice and comment.

#### **D. Purpose of BOEM's Portion of the Proposed Rulemaking**

BOEM's goal for its financial assurance program continues to be the protection of the American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production companies at a competitive disadvantage. After carefully considering the recommendations of the GAO report, as well as feedback received during the review of NTL No. 2016-N01 indicating that the policy changes identified in the NTL could result in significant economic hardships for companies operating on the OCS, particularly during times of low oil prices, BOEM reconsidered its approach for identifying, prioritizing, and managing the risks associated with industry activities on the OCS.

The proposed rule would implement the recommendation of the GAO report that BOEM look to alternative measures of financial strength. Under the proposed rule, instead of relying primarily on net worth to determine whether a lessee must provide additional security, BOEM would primarily consider a lessee's or its predecessor's credit rating. Credit rating agencies take many factors into account when evaluating a company, particularly those that emphasize cash flow, such as debt-to-earnings ratios and debt-to-funds from operations. A credit rating would consider forward-looking factors, including the income statement and cash flow statement, which provide a broader picture of how well a company can meet its future liabilities. On the other hand, a net worth analysis tends to be backward-looking, because it is calculated from a company's balance sheet, which shows the current amount of its assets and liabilities. A lessee's financial deterioration can occur quickly. Relying on the more forward-looking credit rating

analysis, both to determine whether additional security may be necessary and to determine whether a company can be a guarantor on the OCS, would allow BOEM to foresee a lessee's possible financial distress sufficiently ahead of time to take appropriate action.

Further, the proposed rule's new approach would be rooted in the joint and several liability of all lessees, co-lessees, and predecessor lessees for all non-monetary obligations on a lease. In most cases of default by a current lessee, a predecessor lessee can be called upon to perform decommissioning. This proposed rule would rely on the combined responsibility of all current and predecessor lessees to perform required decommissioning. Regardless of the proposed rule, even in cases where a predecessor divested its full interest in a lease to another company by assignment after accruing an obligation to decommission certain infrastructure (*i.e.*, well, platform, pipeline), the predecessor remains jointly and severally liable for decommissioning that infrastructure. The proposed rule would acknowledge the larger universe of companies to whom BSEE can look for performance under the law, and so would reduce the circumstances under which BOEM would need to require additional security.

BOEM's proposed regulatory changes would allow the bureau to more effectively address a number of complex financial and legal issues (*e.g.*, joint and several liability and economic viability of offshore assets) associated with decommissioning liability on the OCS. By addressing the issues through rulemaking, BOEM will afford all interested and potentially affected parties the opportunity to provide additional substantive comments to the agency. This rulemaking need not be concerned with general bond amounts, nor is BOEM requesting comments on the general bond amounts, because any potential shortfall could be addressed using the flexibility of the additional security provisions.

In summary, BOEM is proposing this rulemaking to clarify and simplify its financial assurance requirements with the ultimate goal of providing regulatory changes that would continue to protect taxpayers while providing certainty and needed flexibility for OCS operators.

## **II. Background of BSEE Regulations**

### **A. BSEE Statutory and Regulatory Authority and Responsibilities**

Like BOEM, BSEE derives its authority primarily from OCSLA, which authorizes the Secretary, as discussed in part I.A, to regulate oil and gas exploration, development, and production operations on the OCS. As previously stated, Secretary's Order 3299 delegated authority to perform certain of these regulatory functions to BSEE. To carry out its responsibilities, BSEE regulates offshore oil and gas operations to enhance the safety of exploration for and development of oil and gas on the OCS, to ensure that those operations protect the environment, to conserve the natural resources of the OCS, and to implement advancements in technology. BSEE's regulatory program covers a wide range of facilities and activities, including decommissioning requirements, which are the primary focus of this rulemaking. Detailed information concerning BSEE's regulations and guidance to the offshore oil and gas industry may be found on BSEE's website at: <http://www.bsee.gov/Regulations-and-Guidance/index>.

### **B. BSEE's Decommissioning Regulations and Guidance**

On May 17, 2002, MMS issued regulations that amended requirements for plugging wells, decommissioning platforms and pipelines, and clearing sites. (See 67 FR 35398.) In 2011, Secretary's Order 3299 assigned responsibility for certain MMS programs and regulations, including the decommissioning regulations, to BSEE. On October 18, 2011, BSEE revised the decommissioning regulations to reflect BSEE's role. (See 76 FR 64432.) On August 22, 2012,



BSEE amended the decommissioning regulations to implement certain safety recommendations arising out of various *Deepwater Horizon* reports and moved the regulations to 30 CFR part 250 subpart Q. (See 77 FR 50856.)

The Subpart Q regulations generally require that lessees and owners of operating rights and pipeline right-of-way (ROW) grant holders decommission wells, platforms and other facilities, and pipelines when they are no longer useful for operations, but no later than one year after a lease or ROW terminates.<sup>1</sup> Failure to do so within this one-year period, absent BSEE's approval, will typically result in the issuance of a Notice of Incident of Noncompliance (INC) -- the initial stage of enforcement. Subpart Q also provides BSEE with the authority to require the decommissioning of wells, platforms and other facilities, and pipelines when no longer useful for operations on active leases.

BSEE's regulation, at 30 CFR 250.1701, also provides that lessees and owners of operating rights are jointly and severally liable for meeting decommissioning obligations for facilities on leases, including the obligations related to lease term pipelines, as the obligations accrue and until each obligation is met.<sup>2</sup> Likewise, all holders of a ROW grant are jointly and severally liable for meeting decommissioning obligations for facilities on their right-of-way, including ROW pipelines, as the obligations accrue and until each obligation is met. (*See id.* at 250.1701(b)). Section 250.1702 explains when lessees, operating rights owners, and pipeline

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<sup>1</sup> Existing § 250.1703 generally requires lessees and ROW grant holders to permanently plug all wells, remove platforms and other facilities, and decommission all pipelines when they are no longer useful for operations and to clear the seafloor of all obstructions created by the lease or a pipeline right-of-way. Existing § 250.1710 requires that wells be permanently plugged within one year after a lease terminates, while § 250.1725 requires that platforms and other facilities be removed within one year after the lease or a pipeline right-of-way terminates (unless BSEE approves maintaining the structure for other uses). Sections 250.1750 and 250.1751 allow lessees and ROW grant holders to decommission pipelines in place (*i.e.*, without removal) under certain conditions.

<sup>2</sup> A similar requirement is imposed under existing § 250.146.

ROW grant holders accrue decommissioning obligations. Section 250.1703 describes general requirements for decommissioning of wells, platforms and other facilities, and pipelines. In particular, paragraph (g) of § 250.1703 requires that responsible parties conduct all decommissioning activities “in a manner that is safe, does not unreasonably interfere with other uses of the OCS, and does not cause undue or serious harm or damage to the ... environment.”

BOEM regulations at 30 CFR 556.710 and 556.805 provide that lessees and owners of operating rights, who assign their interests, remain liable post-assignment for all obligations they accrued during the period in which they owned their interest. Those regulations also provide that BOEM and BSEE can require such assignor predecessors to perform those obligations if a subsequent assignee fails to perform. *Id.*

In accordance with the joint and several liability provisions of 30 CFR Part 250: Subpart Q and the residual liability provisions of part 556, when current lessees, operating rights owners, or ROW holders fail to perform decommissioning obligations, BSEE typically orders all predecessors that have accrued the defaulted obligation to perform any required decommissioning. If a right-of-use and easement (RUE) grant holder fails to perform (when obligated by the terms of the grant), BSEE typically orders any lessees or owners of operating rights that accrued the relevant obligation prior to issuance of the RUE to perform required decommissioning. BSEE may issue such orders without regard to whether a predecessor’s ownership of interests in a lease or grant was in recent years or several decades before. For example, if a predecessor divests its full interest in a lease to another company by assignment after accruing the obligation, BSEE would still have the authority to order the predecessor to perform accrued obligations upon default by a subsequent assignee, regardless of the regulatory revisions in this proposed rulemaking.

To provide guidance and additional detail on the decommissioning requirements, MMS issued NTL No. 2004-G06, *Structure Removal Operations* (effective April 5, 2004). MMS replaced this NTL in 2010 with NTL No. 2010-G05, *Decommissioning Guidance for Wells and Platforms*, which BSEE in turn replaced in December 2018 with NTL No. 2018-G03, *Idle Iron Decommissioning Guidance for Wells and Platforms*. The 2018 NTL states that BSEE may issue orders to lessees and ROW grant holders who fail to meet deadlines to decommission, as specified in the NTL, for wells and facilities on active leases that are no longer useful for operations. It also states that BSEE will typically issue INCs if decommissioning does not occur within one year after a lease or ROW grant expires, terminates, or is relinquished, to prompt the owners and their operator to address problems that occur when decommissioning is not carried out in a timely manner. The 2018 NTL also states that, pursuant to 30 CFR 250.1711(a), BSEE will issue orders to permanently plug any wells that pose hazards to safety or the environment.

### **C. Regulatory Reform**

On February 24, 2017, the President issued E.O. 13777, *Enforcing the Regulatory Reform Agenda*, which establishes two main goals for Federal agencies in alleviating unnecessary burdens placed on the American people:

(1) To improve implementation of the regulatory reform initiatives and policies specified in E.O. 13771 (*Reducing Regulation and Controlling Regulatory Costs*), E.O. 12866, and E.O. 13563 (*Improving Regulation and Regulatory Review*); and

(2) To identify regulations for repeal, replacement, or modification, that, among other things, are outdated, unnecessary, or ineffective; impose costs that exceed benefits; or create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

#### **D. Stakeholder Engagement**

On June 22, 2017, the Office of the Secretary issued a Request for Comments to solicit public input on how the Department can improve implementation of regulatory reform initiatives and policies and identify regulations for repeal, replacement, or modification (see 82 FR 28429). As a result, the Department received several written comments, some of which pertained to BOEM's financial assurance regulatory requirements, including financial assurance for decommissioning, and some of which addressed BSEE's procedures for requiring performance of decommissioning obligations by predecessors when the current lessees or grant holders fail to do so. The commenters that addressed BSEE's procedures urged BSEE to focus responsibility for decommissioning liabilities on current lessees, regardless of predecessors in title, inasmuch as predecessors are not held responsible for liabilities created after their ownership terminates; and, in cases of a default by current owners, to pursue performance by predecessors in reverse chronological order starting with the most recent predecessor.

BSEE has considered the comments from stakeholders and determined that BSEE's decommissioning regulations could be revised to support the goals of the Administration's regulatory reform initiatives, while also ensuring safety and environmental protection.

Accordingly, BSEE proposes to revise existing 30 CFR Part 250: Subpart Q regulations to address the order in which predecessors will be ordered to perform decommissioning if the current lessees or grant holders fail to do so. In addition, BSEE proposes to revise the decommissioning regulations to expressly include holders of RUE grants among the parties who can accrue obligations for decommissioning. Finally, BSEE proposes to require parties who file administrative appeals of decommissioning decisions or orders to post a surety bond in order to seek to obtain a stay of that decision or order pending the appeal, and thus minimize any

possibility that resources for the performance of decommissioning will be unavailable following exhaustion of appeals, such as if no other predecessors exist to perform the decommissioning activities.

#### **E. Purpose of BSEE's Portion of the Proposed Rulemaking**

Timely decommissioning of oil and gas wells, platforms and other facilities, and pipelines and related infrastructure is a critical requirement for OCS operators to adhere to, and when necessary, for BSEE to enforce. If not properly decommissioned, such infrastructure could cause safety hazards or environmental harm, or become obstructions by interfering with navigation or other uses of the OCS (such as fishing and future resource development). Under some conditions, however, lessees or grant holders may transfer platforms to artificial reef sites maintained by coastal states, or ROW grant holders may decommission pipelines in place, in lieu of removal. This proposed rule would not change regulations governing the operational aspects of decommissioning.

Under existing regulations, BSEE can require a predecessor to bring a lease into compliance if its assignee or any subsequent assignee has failed to perform an obligation that accrued prior to assignment. BSEE's proposed rule would create a new procedure under Subpart Q for establishing the sequence in which BSEE will order predecessors to carry out their accrued decommissioning obligations when current lessees or grant holders (or other predecessors) fail to do so. Specifically, after the current lessees or grant holders have defaulted, BSEE would pursue liable predecessors in reverse chronological order through the chain-of-title to perform their accrued decommissioning obligations. Under this approach, the most recent predecessors would receive orders to conduct decommissioning first, before BSEE turns to predecessors more remote in time.

This proposed change may provide additional transparency and clarity for BSEE and BOEM, as well as for the public and the oil and gas industry, in ensuring that decommissioning requirements will be met. In light of the proposed approach, lessees and grant holders wanting to sell their leases or grants may choose to consider financially stronger companies as potential purchasers or assignees. Under the proposal, both parties to such transactions would know in advance that BSEE would turn first to the most recent assignor to perform decommissioning if the current lessee or grant holder fails to perform its decommissioning obligation; in that case, the seller may well want some assurance that the purchasing company has the means to perform. Accordingly, this additional transparency may result in limiting the universe of potential purchasers to more financially capable companies that present a reduced risk of default or are able to provide financial assurances to the seller, thus assuring that decommissioning can be performed.

In addition, since the more recent owners are more familiar with the current state of the facilities than previous owners, the proposed approach would further ensure safer and more efficient decommissioning. Also, the more recent prior owners often accrue liabilities for wells, pipelines, or platform improvements for which earlier owners have no liability because these wells, pipelines, or platform improvements were added after the earlier owners had assigned their interests. The more recent prior owners are, therefore, the most likely predecessor(s) who can be required to fully decommission all facilities. In summary, as proposed, it is reasonable and efficient for BSEE to turn first to the most recent owners when the current owners do not perform all the decommissioning obligations.

BSEE's proposal would not exempt any current lessees or grant holders, or predecessors, from liability; each party remains liable for its own accrued obligations. The proposal would

simply establish a procedure through which BSEE would prioritize its efforts toward the groups of jointly and severally liable predecessors by looking first to the most recent in time, rather than looking initially to all jointly and severally liable predecessors. Details of the proposal are found in part VII.A of this proposed rule.

The proposed rule, if adopted, could increase confidence that the cost of decommissioning will be borne by the more recent owners while still ensuring that decommissioning is carried out in a safe and environmentally responsible manner. While there is no amount of time which reduces or eliminates joint and several liability of predecessors for their accrued liabilities, defining an order of recourse among predecessors would eliminate some of the unpredictability perceived in the past. In addition, the proposed rule would help BSEE to better address maintenance and monitoring of facilities in cases where all current owners' default.

The proposed rule would also address the decommissioning of OCS facilities located on RUE grants. These grants authorize a RUE holder to use a portion of the seabed at an OCS site not leased by the RUE holder, in order to construct, modify, or maintain platforms, artificial islands, facilities, installations, and other devices that support the exploration, development, or production of oil and gas from a RUE holder's nearby lease. BOEM's financial assurance regulations encompass RUEs as a defined category of interest in OCS lands, and provide that RUE grant holders must comply with the same bonding obligations as other lessees. However, as a result of numerous revisions of the regulations specific to decommissioning, those regulations no longer clearly address decommissioning by RUE grant holders, so BSEE now proposes to add RUE holders to the parties that accrue obligations for decommissioning. This is consistent with BOEM's existing process of including the decommissioning obligation in the terms of the RUE grant, as well as the general understanding typically captured in agreements

between RUE holders and facility owners by which RUE holders secure title to or rights to use existing facilities originally installed when the tract was subject to a lease. This proposed amendment to the existing BSEE regulations is discussed more completely at part VII.B.

In addition, BSEE's existing regulations (at 30 CFR part 290) allow parties adversely affected by a final BSEE order or decision - including a decommissioning-related decision or order - to administratively appeal that decision to the Interior Board of Land Appeals (IBLA). Existing § 290.7(a)(2) requires a party appealing a civil penalty order issued by BSEE to post a surety bond, in accordance with 30 CFR 250.1409, pending the appeal. There has previously been no such bonding requirement for appeals of decommissioning orders.

Inasmuch as income generation from a lease typically ceases well before decommissioning orders are issued, an appeal poses a risk to BSEE that, where financial assurance was not already in place, a lessee appealing a decommissioning order may not have the wherewithal to decommission after a lengthy appeal has run its course and the Board affirms BSEE's order. Moreover, the delay occasioned by the appeal process may create a risk that some or all other predecessors may have deteriorated financial health by the time BSEE turns to them for performance.

Thus, in order to avoid the possibility of undue delays, and to ensure that funds are available to meet the decommissioning requirements in a safe and environmentally sound manner when an unsuccessful appellant subsequently defaults, BSEE proposes to amend the 30 CFR Part 250: Subpart Q and Part 290 regulations as described in part VII.C. Specifically, BSEE proposes to require any party appealing a decommissioning decision or order to post a surety bond in order to seek to obtain a stay of that decision or order pending the appeal to ensure that the necessary



decommissioning activities can be performed in a timely manner if the appeal is denied and the appellant(s) subsequently fail to perform the required decommissioning activities.

### **III. Proposed Revisions to BOEM Bonds and Other Security Requirements**

BOEM's existing bonding and other security regulatory framework has two main components: 1) base bonds, generally required in amounts prescribed by regulation, and 2) bonds or other security above the prescribed amounts that may be required by order of the Regional Director upon determination that an increased amount is necessary to ensure compliance with OCS obligations. BOEM's objective is to ensure that taxpayers never have to bear the cost of meeting the obligations of lessees and grant holders on the OCS. At the same time, BOEM must balance this objective against the costs and disincentives to additional exploration, development and production that are imposed on lessees and grant holders by increased amounts of surety bonds and other security requirements. To maintain a balanced framework, BOEM proposes to: 1) modify the evaluation process for requiring additional security; 2) streamline the evaluation criteria; and 3) remove restrictive provisions for third-party guarantees and decommissioning accounts. The proposed rule would allow the Regional Director to require additional security only when: 1) a lessee or grant holder poses a substantial risk of becoming financially unable to carry out its obligations under the lease or grant; 2) there is no co-lessee, co-grant holder, or predecessor that is liable for those obligations and that has sufficient financial capacity to carry out the obligations; and 3) the property is at or near the end of its productive life, and thus, may not have sufficient value to be sold to another company that would assume these obligations.

#### **A. Leases**

Each current lessee is jointly and severally liable for the lease decommissioning obligations, which means that each lessee is liable up to the full amount of the relevant obligation and that

BOEM may pursue compliance with the obligations from any one lessee. As such, each lessee is liable for all decommissioning obligations that accrue during its ownership, as well as those that accrued prior to its ownership. In addition, a lessee that transfers its interest to another party continues to be liable for any unperformed decommissioning obligations that accrued prior to, or during, the time that lessee owned an interest in the lease.

BOEM's additional security evaluation process, contained in 30 CFR 556.901(d), is based on the current lessee's ability to carry out present and future obligations. BOEM proposes to expand this evaluation process to include an evaluation of the ability of a co-lessee, or a predecessor lessee, to carry out present and future obligations. This change recognizes the mitigation of the risk occasioned by the joint and several liability of all current and predecessor lessees, which allows BSEE to require co-lessees or predecessor lessees, or both, to perform decommissioning when a current lessee is unable to perform. While the liability for obligations between current and predecessor lessees has always been joint and several, this would be the first time BOEM has explicitly considered the ability of predecessor lessees to carry out the present and future obligations of current lessees when determining the additional security requirements for current lessees.

Under BOEM's existing regulations, the Regional Director's evaluation of a lessee's potential need for additional security for a lease is based on the following five criteria: financial capacity; projected financial strength; business stability; reliability in meeting obligations based upon credit rating or trade references; and record of compliance with laws, regulations, and lease terms. BOEM is proposing to streamline its evaluation process by using only two criteria to determine whether additional security on a lease may be required: 1) a credit rating, either a credit rating from a Nationally Recognized Statistical Rating Organization (NRSRO), as

identified by the United States Securities and Exchange Commission (SEC) pursuant to its grant of authority under the Credit Rating Agency Reform Act of 2006 and its implementing regulations at 17 CFR Parts 240 and 249(b), or a proxy credit rating determined by BOEM using audited financial statements; and 2) the value of proved oil and gas reserves. These two criteria better align BOEM's evaluation process with accepted financial risk evaluation methods used by the banking and finance industry. Eliminating reliance on less relevant information, such as length of time in operation to determine business stability, or trade references to determine reliability in meeting obligations, will simplify the process and remove criteria that may not accurately or consistently predict potential financial distress.

BOEM proposes to eliminate the "business stability" criterion found in existing § 556.901(d)(1)(iii). The existing regulation bases business stability on five years of continuous operation and production of oil and gas, but BOEM determined that there is little correlation between being in business for five or more years and a company's ability to carry out its present and future obligations. BOEM met with S&P credit analysts about their process for considering business stability. S&P credit analysts confirmed that business stability is a factor in credit ratings, however, S&P does not measure a company's business stability by merely noting how long it has been since the company was incorporated. BOEM conducted an analysis of offshore bankruptcies, including an assessment of the number of years incorporated prior to bankruptcy, and determined that whether a company was in business for five or more years had no relationship to its likelihood to declare bankruptcy.

BOEM also proposes to eliminate the existing "record of compliance" criterion found in existing § 556.901(d)(1)(v). BOEM reviewed BSEE's INCs and Increased Oversight List. BOEM's review of these lists confirmed the feedback BOEM received in response to the NTL,

which was that companies with a large number of properties and components tended to receive a large number of INCs and had a larger number of individual properties on the Increased Oversight List.<sup>3</sup> BOEM has determined that the primary predictor of the number of INCs a company receives is not its financial health, but the number of OCS properties that it owns. BOEM determined that a company's record of compliance did not correlate to its overall financial health and, therefore, is not an accurate indicator of the need for financial assurance to assure that the company carries out its present and future OCS obligations. Offshore companies with a large portfolio of offshore assets inspected by BSEE accumulated a far greater number of BSEE-issued Incidents of Non-Compliance than offshore companies with fewer offshore assets inspected by BSEE, irrespective of the company's overall financial health. The "record of compliance" criterion was also difficult to fairly apply since not all noncompliance is considered equal evidence of a lack of commitment to observe regulatory requirements.

BOEM proposes to replace the existing "financial capacity" and "reliability" criteria in § 556.901(d)(1) with issuer credit rating or proxy credit rating. BOEM has found credit rating, which had been a part of the reliability criterion, to be the most reliable indicator of financial ability. Credit ratings provided by a NRSRO incorporate a broad range of qualitative and quantitative factors, and a business entity's credit rating represents its overall credit risk, or its ability to meet its financial commitments.

If a lessee does not have a credit rating from a NRSRO, the lessee may instead submit audited financial statements, and BOEM will determine a proxy credit rating using the S&P Credit Analytics Credit Model, or a similar widely accepted credit rating model. Such audited financial information is currently the basis of one of the five criteria - the "financial capacity"

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<sup>3</sup> Most recent data available at <https://www.data.bsee.gov/Company/INCs/Default.aspx>

criterion. In the proposed rule, this information will be just one of the considerations used for proxy credit ratings, following credit rating agency models.”

BOEM has concluded that audited financial statements, prepared in accordance with Generally Accepted Accounting Principles (GAAP) and accompanied by an auditor’s certificate, provide a level of certainty that the financial statements accurately represent the company’s economic position and operational performance. Using this audited financial information to generate a proxy credit rating would allow BOEM to accurately determine if additional security is needed.

The proposed rule would allow the Regional Director to require a lessee to provide additional security if the lessee does not have a credit rating from a NRSRO that is greater than or equal to either BB- from S&P Global Ratings (S&P) or Ba3 from Moody’s Investor Service (Moody’s); or a proxy credit rating greater than or equal to either BB- or Ba3 as determined by the Regional Director based on audited financial information including an income statement, balance sheet, and statement of cash flows, with an accompanying auditor’s certificate.

Under existing BOEM regulations, co-lessees and predecessors are jointly and severally liable for accrued decommissioning obligations, and the risk that the government will be responsible for the decommissioning cost is reduced when those entities are financially viable. Hence, BOEM may determine not to require additional security for properties with financially viable co-lessees and predecessors. To be considered financially viable, the co-lessee or predecessor would have to meet the same credit rating or proxy credit rating criteria as a lessee.

If the lessee does not meet the credit rating or proxy credit rating criteria, BOEM would review the lessee’s obligations at the lease level and determine whether to require additional security for each lease owned by that lessee. BOEM may require the lessee to provide additional

security on a lease-by-lease basis if a co-lessee does not meet the credit rating or proxy credit rating criteria.

If the co-lessee does not meet the credit rating or proxy credit rating criteria, BOEM would review the proved oil and gas reserves on the lease. The Regional Director may require the lessee to provide additional security for that lease if the net present value of those proved reserves is less than or equal to three times the cost of the decommissioning (as estimated by BSEE) associated with the production of the reserves. As described in more detail below, BOEM determined that properties with a net present value of proved oil and gas reserves exceeding three times the decommissioning costs associated with production of those reserves pose minimal risk that the government will be required to bear the cost of decommissioning, because these properties are more likely than other properties to be purchased by another company. That company would then become liable for existing decommissioning obligations, reducing the risk that those costs would be borne by the government. Consequently, BOEM is proposing to use (and is requesting comments on) this test – net present value of proved oil and gas reserves on the lease exceeding three times the decommissioning costs (decommissioning costs as estimated by BSEE) associated with production of those reserves – as the criterion to replace the existing generalized “projected financial strength” criterion, which considered whether the estimated value of a lessee’s existing lease production and proven reserves was significantly in excess of the lessee’s existing and future lease obligations.

If neither the lessee nor any co-lessee meets the credit rating or proxy credit rating criteria and there are not sufficient oil and gas reserves on the lease, BOEM would look to the credit ratings of prior lessees. If no predecessor lessee liable for decommissioning any facilities on the lease meets the credit rating or proxy credit rating criteria, the Regional Director may require the

lessee to provide additional security. Moreover, even if a predecessor meets the credit rating or proxy credit rating criteria, the Regional Director may require the lessee to provide additional security for decommissioning obligations for which such a predecessor is not liable.

## **B. Right-of-Use and Easement Grants**

BOEM's regulations concerning right-of-use and easement grants for an OCS lessee and a State lessee are found in 30 CFR 550.160 through 550.166. Section 550.160 provides that an applicant for a right-of-use and easement that serves an OCS lease "must meet bonding requirements," but the regulation does not prescribe a base bond amount. The proposed rule would replace this vague requirement with a cross-reference to the specific criteria governing bond demands in § 550.166(d).

BOEM is proposing to revise the bonding regulations to clarify that any right-of-use and easement grant holder, whether the right-of-use and easement serves a State lease or serves an OCS lease, may be required to provide additional security for the right-of-use and easement if the grant holder does not meet the credit rating or proxy credit rating criteria proposed to be used for lessees. The value of proved oil and gas reserves will not be considered because a right-of-use and easement grant does not entitle the holder to any interest in oil and gas reserves. However, this proposal would allow consideration of the credit rating of a predecessor right-of-use and easement grant holder and a predecessor lessee, *i.e.*, a lessee that held interests in the lease on which the right-of-use and easement is now located and is liable for accrued obligations for the facilities thereon, which better aligns BOEM's evaluation process with accepted financial risk evaluation methods used by the banking and finance industry.

## **C. Pipeline Right-of-Way Grants**

BOEM's bonding requirements for pipeline right-of-way grants, contained in 30 CFR 550.1011, prescribe a \$300,000 area-wide base bond that guarantees compliance with all the terms and conditions of the pipeline right-of-way grants held by a company in an OCS area. BOEM may require a pipeline right-of-way grant holder to provide additional security if the Regional Director determines that a bond in excess of \$300,000 is needed. BOEM is proposing to revise the bonding regulations to provide the criteria under which the Regional Director could demand a pipeline right-of-way grant holder to provide additional security and that criteria is similar to that proposed for lessees, *i.e.*, when the grant holder does not meet the credit rating or proxy credit rating criteria proposed to be used for lessees. BOEM would not consider proved reserves because right-of-way grants do not authorize holders to produce hydrocarbon reserves. Another change proposed by the rule – to allow consideration of the credit rating or proxy credit rating of a co-grant holder – would better align BOEM's evaluation process with accepted financial risk evaluation methods used by the banking and finance industry. BOEM also proposes to expand this evaluation to include consideration of the credit rating or proxy credit rating of predecessor right-of-way grant holders because they remain liable for accrued decommissioning obligations for facilities and pipelines on their right-of-way until each obligation is met.

#### **IV. Proposed Revisions to Other BOEM Security Requirements**

##### **A. Third-party Guarantees**

BOEM is proposing to evaluate a potential guarantor using the same credit rating or proxy credit rating criteria proposed for lessees. The value of proved oil and gas reserves will not be considered because the value of proved reserves quantify only the marketability of the lease



interest being covered by the guarantee, in which the guarantor would not have an interest, and is not used to describe the guarantor's overall financial strength.

The criteria to evaluate a guarantor provided in the existing regulations have proven difficult to apply. For example, § 556.905(a)(3) provides that the guarantor's total outstanding and proposed guarantees are not allowed to exceed 25 percent of its unencumbered net worth in the United States. A company's total outstanding and proposed guarantees depends on accurate information provided by the guarantor, and BOEM has no way to confirm whether the 25 percent threshold has been exceeded at the time of the application or afterward. The same provision requires BOEM to consider the unencumbered net worth of the company in the United States, while another provision, § 556.905(c)(2)(iv), requires BOEM to consider the guarantor's unencumbered fixed assets in the United States. Both of these criteria are difficult to apply when the company being evaluated has domestic and international assets that must be separated. Utilizing the same financial evaluation criteria, *i.e.*, issuer credit rating or proxy credit rating, to assess both guarantors and lessees as the most relevant measure of future capacity would provide consistency in evaluations and avoid overreliance on net worth, which was GAO's concern.

To allow more flexibility in the use of third-party guarantees, this proposed rule would remove the requirement for a third-party guarantee to ensure compliance with the obligations of all lessees, operating rights owners, and operators on the lease. Additionally, the proposed rule would allow a third-party guarantee to be used as additional security for a right-of-use and easement grant and/or a right-of-way grant, as well as a lease. Potential guarantors are reluctant to provide a guarantee if they cannot choose the entity for which they are guaranteeing compliance or limit the amount of their guarantee. This change would allow a guarantor to limit its guarantee to a subset of lease or grant obligations, *e.g.*, an amount sufficient to cover a

percentage of the decommissioning liability in proportion to the ownership percentage of a particular lessee or grant holder, a specific dollar amount, or a specific facility.

By allowing a third-party guarantor to guarantee only the obligations it wishes to cover, BOEM would provide industry with the flexibility to use the guarantee to satisfy financial assurance requirements without the burden of forcing the guarantor to cover all the risks associated with all parties on the lease or grant or operations in which the party they wish to guarantee has no interest and over which this party may have no control. Moreover, the proposal to allow BOEM to accept a third-party guarantee that is limited to specific obligations does not reduce BOEM's protection because the combination of all bonds and guarantees still would have to ensure that all lease and grant obligations are fully secured.

The proposed rule would also allow BOEM to cancel a third-party guarantee under the same terms and conditions that apply to cancellation of additional bonds and return of pledged security, as provided in proposed § 556.906(d)(2).

Lastly, the existing regulation somewhat confusedly refers to both a "guarantee" and an "indemnity agreement" (which meant the same thing), and the proposed rule clarifies that there is only one agreement contemplated – the guarantee agreement.

## **B. Lease-specific Abandonment Accounts**

Section 556.904 currently allows lessees to establish a lease-specific abandonment account in lieu of the bond required in § 556.901(d). BOEM proposes to rename these accounts "Decommissioning Accounts," which is the current terminology used in industry, to remove any perceived limitation to a single lease, and to allow these accounts to be used to ensure compliance with additional security requirements for a right-of-use and easement grant or a pipeline right-of-way grant as well as a lease. To make these accounts more attractive to lessees

who may need to use this method, BOEM also proposes to remove the requirements to pledge Treasury securities to fund the account before the amount of funds in the account equals the maximum amount insurable by the Federal Deposit Insurance Corporation (FDIC), which is currently \$250,000. BOEM notes that due to this current requirement, lessees may have been unwilling to use decommissioning accounts since the vast majority of decommissioning moneys would be in the form of low-yield Treasury securities. BOEM has determined that the risk of loss through a bank failure is minimal, so, as a practical matter, the government's security does not depend on FDIC insurance.

### **C. Cancellation of Additional Bonds**

BOEM proposes to revise § 556.906(d) to add three additional circumstances when BOEM may cancel an additional bond, as discussed below in the analysis of § 556.906.

## **V. BOEM Evaluation Methodology**

### **A. Credit Ratings**

In this rulemaking, BOEM proposes to use an “issuer credit rating” when referring to “credit rating” to evaluate the financial health of lessees and grant holders doing business or offering guarantees on the OCS. An evaluation of S&P's and Moody's rating methodologies revealed that the analyses they perform to determine an issuer credit rating are wide-ranging and include factors beyond corporate financials (such as history, senior management, and commodity price outlook). An issuer credit rating provides the rating agencies' opinions of the entity's ability to honor senior unsecured debt and debt-like obligations. It is common for lessees to have both an issuer credit rating and a bond issuance rating. However, bond issuance ratings are opinions of the credit quality of a specific debt obligation only, which can vary based on the priority of a creditor's claim in bankruptcy or the extent to which assets are pledged as collateral. Due to the

priority of claims associated with debt and the limited purpose of bond issuance ratings, BOEM proposes to accept only issuer credit ratings from a NRSRO, and references to credit rating in this rulemaking refer only to an issuer credit rating. BOEM proposes to add “Issuer credit rating,” as defined by S&P, as a newly defined term in Parts 550 and 556.

If an entity does not have an issuer credit rating, BOEM proposes to determine a proxy credit rating based on audited financial information, including an income statement, balance sheet, statement of cash flows, and the auditor's certificate.

BOEM proposes to use S&P’s Credit Analytics Credit Model to calculate proxy credit ratings. This model would allow BOEM to compare the company with similar public companies in the same industry segment. BOEM invites comments on the appropriateness of relying on this model, or other similar, widely accepted credit rating models, to generate proxy credit ratings.

In establishing the issuer credit rating threshold of BB- (S&P) or Ba3 (Moody’s), an equivalent credit rating provided by an SEC-recognized NRSRO, or a proxy credit rating determined by the Regional Director, BOEM seeks to balance the financial risk to the government and the taxpayer with minimizing unnecessary regulatory burdens as directed by Executive Order 13795. BOEM compared the historical default rates for Moody’s credit ratings and found the Ba3 credit rating was equivalent to the S&P BB- credit rating. BOEM reviewed historical default rates across the entire credit rating spectrum, as well as the credit profile of oil and gas sector bankruptcies arising from the commodity price downturn in 2014, to determine an appropriate level of risk. The average S&P one-year default rate for BB- rated companies from 1981 to 2017 was 1.00%. The average S&P historical one-year default rates of BB- rated companies are significantly better than average default rates for B rated companies (ranging from 2.08% to 7.15%) and C rated companies (26.82%). On the higher end of BB ratings at BB+, the

average one-year default rate (0.34% ) is similar to the average one-year default rate (0.25%) for the lowest investment-grade rating of BBB-.

BOEM believes that one-year default rates are an appropriate measure of risk, given BOEM's policy of reviewing the financial status of lessees/ROW holders/RUE holders at a minimum on an annual basis, the review typically corresponding with the release of audited annual financial statements. In addition, BOEM continually monitors company credit rating changes, market reports, trade press, articles in major news outlets, and quarterly financial reports to review the financial status of lessees/ROW holders/RUE holders throughout the year and can demand supplemental financial assurance through the Regional Director's regulatory authority as a result of mid-year changes in financial status.

BOEM invites comments on the appropriateness of this approach of relying on lessee and grant holder credit ratings, including whether BOEM has proposed an appropriate credit rating threshold, and if not, what threshold or set of thresholds would best protect taxpayer interests while minimizing unnecessary industry burdens. BOEM also invites comments on the IRIA generally, including the analytical assumptions and the regulatory alternatives analyzed. Specifically, the IRIA analyzed a BBB- credit rating alternative threshold and a no-action alternative.

## **B. Valuing Proved Oil and Gas Reserves**

Under the proposed rule, if a lessee requests BOEM to take into account the proved reserves on a particular lease to determine whether additional security is required, BOEM would require the lessee to submit a reserve report for the proved oil and gas reserves (as defined by the SEC regulations at 17 CFR 210.4-10(a)(22)) for the lease associated with the asset to be decommissioned. The reserve report should contain the projected future production quantities of

proved oil and gas reserves, the production cost for those reserves, and the discounted future cash flows from production. The reserve report would be required to provide the net present value of the proved oil and gas reserves determined in accordance with the accounting and reporting standards set forth in SEC Regulation S-X at 17 CFR 210.4-10 and SEC Regulation S-K at 17 CFR 229.1200. BOEM would use the net present value when determining whether the value of the reserves exceeds three times the cost of the decommissioning (as estimated by BSEE) associated with the production of those reserves.

BOEM believes that a property with a high enough “reserves-to-decommissioning cost” ratio would likely be purchased by another lessee if a current lessee defaults on its obligations, thereby reducing the risk that decommissioning costs would be borne by the government, and consequently reducing the need for additional security.

A reserves-to-decommissioning cost ratio of one-to-one would mean that the estimated value of remaining oil and gas reserves on a lease is equal to the cost of decommissioning. BOEM does not expect any new lessee to purchase a property with a ratio of one-to-one as the new lessee would not receive any return on its investment once it bears the cost of decommissioning. A reserves-to-decommissioning cost ratio below three-to-one might be considered adequate to compensate a new lessee for the cost of purchasing the lease and assuming liability for all of the existing decommissioning obligations. Based on past experience, BOEM, however, considers that a lease with a ratio below three-to-one is often too risky to find a new lessee that is willing to purchase it.

BOEM believes that a reserves-to-decommissioning cost ratio that exceeds three-to-one may provide enough risk reduction that the Regional Director may determine the lessee is not required to provide additional security for that lease. Three-to-one may be considered an

adequate ratio to provide time for the lessee to provide bonds or another form of financial assurance prior to the property falling into a range where it may not attract a purchaser.

Establishing an appropriate reserves-to-decommissioning cost ratio is one approach toward protecting the taxpayer during periods of commodity price volatility. Should commodity prices decline in a manner similar to late 2014 through early 2016, BOEM believes a 3-to-1 ratio means the property would most likely retain its economic viability and financial attractiveness to potential buyers. BOEM requests comment on whether this is in fact an appropriate threshold, or if there are better approaches and/or data sets available for analysis that would allow BOEM to provide better certainty that taxpayer interests will ultimately be protected.

## **VI. Proposed Revisions to BOEM Definitions**

To implement the changes proposed above, BOEM proposes to add or revise several definitions in 30 CFR Part 550 and Part 556. For proposed Part 550, BOEM proposes to add new terms and definitions for “Issuer credit rating,” “Predecessor,” and “Security,” and to revise the definition of “You.” BOEM proposes to add a new term and definition for “Right-of-Use and Easement” and remove the separate definitions of “Right-of-use” and “Easement” in Part 550 because those terms are not used in the existing regulatory text. Similarly, for Part 556, BOEM proposes to add new terms and definitions for “Issuer credit rating” and “Predecessor,” remove the existing term and definition of “Security or securities” and add a new term and definition for “Security,” and revise the definitions of “Right-of-Use and Easement (RUE)” and “You,” all of which will match those in proposed Part 550.

## **VII. Proposed Revisions to BSEE Decommissioning Regulations**

### **A. Decommissioning by Predecessors**

Most of the decommissioning provisions now located in 30 CFR Part 250: Subpart Q became effective in 2002. Since that time, BSEE has become aware that some industry stakeholders believe that certain provisions can cause uncertainty -- and thus create planning problems and potentially unnecessary financial burdens -- for lessees or grant holders that long ago assigned their interests. Specifically, some industry stakeholders have expressed concern that, when current lessees or grant holders default or otherwise fail to perform their decommissioning obligations, simultaneous pursuit by BSEE of any or all predecessors (consistent with their joint and several liability), without focusing first on the most recent predecessors, may result in confusion and inefficiency among the parties. Those stakeholders also assert that the current process may reduce incentives for current and recent lessees or grant holders to prepare to finance decommissioning. Such outcomes, according to those stakeholders, could make it harder for BSEE to achieve the safety and environmental goals of the decommissioning regulations.

In particular, some stakeholders have asserted that -- since many leases have been owned or operated by numerous entities over many years -- the immediate predecessors of the current lessees or grant holders are more likely to be familiar with all of the facilities and equipment on that lease that require decommissioning than the earlier predecessors whose connections with operations are more remote. Thus, those stakeholders suggested that the closer in time predecessors are to current operational conditions (*e.g.*, status of repair, maintenance and monitoring of equipment), the more those predecessors will know about any existing or potential safety, environmental, or other risks related to the decommissioning operations, and the better able they will be to address those risks.

Similarly, some stakeholders have suggested that the most immediate predecessors in the chain-of-title are in a better position to understand the financial security necessary for



decommissioning at a particular site, and are more likely to have maintained or obtained such security (e.g., through private security arrangements with later lessees or grant holders), in the event that the current lessee or grant holder defaults.

Accordingly, these stakeholders recommended that, when the current lessee or grant holder defaults, BSEE should enforce predecessor decommissioning obligations in a reverse chronological sequence. Under this approach, after a default, BSEE would issue decommissioning orders to the most recent predecessor(s) first before turning to predecessors more remote in time. The stakeholders suggest that such an approach would better ensure safety and environmental protection, as well as provide greater predictability and transparency as to how BSEE enforces decommissioning obligations, compared to the current approach.

Although BSEE does not necessarily agree with all of those stakeholders' assertions, following such a reverse chronological sequence among predecessors may be a reasonable approach to ensuring that the goals of the decommissioning regulations are met in a transparent manner -- provided that the regulations include appropriate exceptions, under certain scenarios, in order to ensure timely decommissioning in a safe and environmentally responsible manner. Accordingly, without affecting the existing requirement for joint and several liability, proposed new § 250.1708, *How will BSEE enforce accrued decommissioning obligations against predecessors?*, would create a reverse chronological order of recourse among predecessors, organized according to periods of time during which a particular designated operator(s)<sup>4</sup> approved by BOEM was in control of operations. Under the proposed rule, BSEE would identify the predecessor lessees or grant holders who held their interests during the designated

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<sup>4</sup> By definition, the term "operator" means the person "the lessee(s) designates as having control or management of operations on the leased area or a portion thereof during a given time period." (See 30 CFR 250.105.)

operator(s)' tenure. After default by the current lessees or grant holders (or a prior group of predecessors), BSEE would issue orders to a 'group' of temporally related predecessors to perform their remaining accrued decommissioning obligations. In addition to the predecessors in the relevant designated operator-based time period, proposed § 250.1708 would make clear that BSEE will issue orders to other predecessors who assigned interests to a defaulted lessee. The proposed rule would also add a new definition of "predecessor" to existing § 250.1700 to clarify the meaning of that term as used in the other proposed revisions to Subpart Q.

However, the proposed rule also would provide that BSEE may deviate from the reverse chronological order (*i.e.*, may issue decommissioning orders to any or all other liable predecessors) where previously ordered parties fail to obtain approval of a decommissioning plan, or fail to timely execute the decommissioning according to the approved decommissioning plan, as required under proposed §§ 250.1704(b) and 250.1708. When predecessors fail to perform, unacceptable delays in decommissioning are likely to occur. Such delays could, in some cases, lead to leaking wells or corrosion-laden structures that may pose safety or environmental risks, or other concerns (as determined by a Regional Supervisor), making it essential that BSEE be able to deviate from a strict chronological sequence.

Under the proposed rule, BSEE would also be able to deviate from a strict reverse chronological framework when emergency conditions<sup>5</sup> or safety or environmental threats arise (*e.g.*, when facilities are not properly maintained or monitored) or when BSEE determines that an unreasonable delay would otherwise occur. The ability to address exigent circumstances

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<sup>5</sup> BSEE has noted that the cost and time to permanently plug wells and remove infrastructure damaged by storms is significantly higher than the cost and time to decommission assets that have not been damaged. (*See* NTL No. 2018-G03 at p. 1.)

posed by facilities and equipment awaiting decommissioning is critical to the accomplishment of the purposes of Subpart Q. The exceptions proposed in § 250.1708(d) would confirm that BSEE retains the authority to make demands on the most capable predecessors when risks associated with delay raise concern about safety and environmental protection or unobstructed use of the OCS, while in the majority of situations focusing demands on current owners and the most recent predecessors.

Finally, proposed § 250.1708(b) would require predecessors to identify an entity to begin maintaining and monitoring any facility identified in the BSEE decommissioning order within 30 days of receiving the order. The proposed rule would also require predecessors to identify a designated operator for decommissioning within 60 days of receiving an order, and to submit a decommissioning plan that includes the scope of work and projected decommissioning schedule for all wells, platforms, other facilities within 90 days of receiving an order. These proposed provisions would ensure that the ordered decommissioning proceeds in a timely and structured fashion that ensures safety and environmental protection.

## **B. Decommissioning of Rights-of-Use and Easement**

BSEE also proposes to revise the decommissioning regulations with respect to OCS facilities used under RUE grants. These grants are similar to ROW grants for pipelines, but allow the holder to construct, modify, or maintain platforms, artificial islands, facilities, installations, and other devices on parcels for which it does not hold a lease authorizing development of that parcel's minerals. BOEM's existing regulations, at 30 CFR 550.105, recognize "State lessees granted a right-of-use and easement" within BOEM's definition of "You" and provide that RUE

grant holders must comply with bonding obligations (*see* § 550.160(c)).<sup>6</sup> BSEE’s existing Subpart Q definition of “You” (see proposed § 250.1701 paragraph (d)) does not expressly reference RUE grant holders. BSEE proposes to add such language to that definition and to expressly include RUE grant holders as parties that can accrue decommissioning obligations.

These proposed changes to BSEE’s regulations would be consistent with BOEM’s current practice of requiring applicants to accept decommissioning obligations as a term of RUE grants. RUE grant holders are familiar with the facilities and equipment on their RUEs; and should be able to decommission such infrastructure in a safe and environmentally sound manner. Most have expressly agreed to accept those responsibilities in the RUE grant and in agreements with those who owned the infrastructure when the location was leased. While the proposed revisions would expressly extend decommissioning obligations to RUE grant holders, lessees that have also accrued such obligations for facilities and equipment on the RUE would retain their joint and several liability for satisfying those obligations under § 250.1701.

Accordingly, BSEE proposes to amend §§ 250.1700 and 250.1701 in Subpart Q to state that RUE grant holders will accrue decommissioning obligations in the same way as lessees, operating rights holders, and ROW grant holders. The proposed amendments would enhance the completeness and transparency of Subpart Q and would better ensure that decommissioning of facilities located on a RUE actually takes place in a timely manner.

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<sup>6</sup> BOEM is also proposing to replace its existing definitions of “easement” and “right of use” in § 550.105 with a single definition of “right-of-use and easement.”

### **C. Bonding Requirement for Appeals of Decommissioning Decisions and Orders**

Part 290 of BSEE's regulations allows parties adversely affected by a final BSEE order or decision, including a decommissioning order or decision, to administratively appeal that decision to the IBLA. Part 290 also lays out certain procedures for filing and pursuing such appeals. While existing § 250.1409(b)(1) requires a party filing an appeal of a civil penalty order issued by BSEE to post a surety bond pending the appeal, there is currently no such bonding requirement for appeals of decommissioning orders. In the past, the absence of an express bonding requirement for decommissioning appeals was of little or no practical consequence because, when a current lessee or grant holder failed to perform its decommissioning obligations, BSEE usually issued decommissioning orders to all jointly and severally liable predecessors at the same time. Thus, even if one or more of the predecessors appealed such an order, it was probable that other predecessors would perform the decommissioning on a timely basis.

However, under the proposed reverse chronological approach toward predecessors, it is likely that each temporally related group of lessees or grant holders ordered to perform decommissioning at any given point will be smaller in number than the entire set of "any or all predecessors" ordered to decommission under BSEE's current approach. The smaller number of entities in any chronological group could increase the probability that performance of decommissioning could be delayed by appeals from a predecessor or predecessors in that group, or by a succession of appeals by later groups of predecessors (assuming that the IBLA grants a requested stay of the decommissioning order pending the appeal).<sup>7</sup> The reduced pool of lessees or grant holders in the designated group of predecessors, and the potential for such resulting

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<sup>7</sup> Under existing § 290.7, a challenged order remains in effect pending the appeal, unless the IBLA, in its discretion, grants a stay, or BSEE agrees to a stay.

delays, could exacerbate the possibility that the ultimately responsible party(ies) might default or otherwise be unavailable or unable to perform decommissioning if the appeal is ultimately unsuccessful. In such a case, BSEE might have difficulty ensuring that decommissioning will actually be performed on a timely basis, and without reliance on taxpayer funds, absent the additional financial assurance provided by the proposed requirement to post a surety bond in order to obtain a stay of a decision or order pending appeal.

For example, by the time an appeal has been filed and heard, and the decommissioning order subsequently affirmed by the IBLA (and potentially thereafter by a Federal court), several years may have passed. During this time the appealing party may have lost its financial capacity to fund or perform decommissioning. The proposed bond, however, would provide up-front assurance that the appealing party will nevertheless meet its financial decommissioning obligations if the appeal is denied. In the event that the appeal is denied and the appealing party defaults, and no other viable predecessors exist at that point, BSEE could use the proceeds of the forfeited bond to arrange for decommissioning without shifting that financial burden to the public.

Further, even in cases where other predecessors do exist, the passage of time during the appeal may create circumstances (*e.g.*, deteriorating infrastructure) that require decommissioning on an expedited basis to prevent adverse environmental or safety impacts or to avoid interference with other uses of the OCS. The immediate availability of a forfeited bond from an appellant that defaults after its appeal is denied would facilitate BSEE's ability to ensure the timely performance of decommissioning activities. In this manner, the proposed rule would allow BSEE to use funds from forfeited bonds to arrange for immediate decommissioning without having to re-start the process for holding additional parties responsible, which potentially could

be subject to similar risks of additional defaults and delays. In addition, the proposed bonding requirement could deter a predecessor from filing an appeal that is frivolous, or designed solely to delay performance.

Accordingly, to ensure that the decommissioning regulations fulfill all goals related to Subpart Q without unnecessary cost to taxpayers, and to reduce the risks of deteriorating financial capacity during the pendency of the appeal together with potential delays associated with postponing pursuit of predecessors, BSEE proposes to amend its regulations to require any predecessor who appeals a decommissioning order or decision to post a surety bond in order to obtain a stay of that decision or order pending the appeal. The bond would be in an amount deemed sufficient by BSEE to ensure that necessary decommissioning activities can be timely performed if the appellant loses the appeal and defaults on its obligations.

## **VIII. Section-by-Section Analysis**

### **A. Regulations Proposed by BSEE**

BSEE proposes to revise the following regulations:

#### **Part 250-OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF**

##### **§ 250.105 Definitions**

This proposed rule would amend § 250.105 by removing the terms and definitions for “Easement” and “Right-of-use” and replacing them with a new term and definition for “Right-of-Use and Easement.” The revision would make BSEE’s regulations consistent with BOEM’s, providing a clear definition for the regulatory concept of a RUE as an authorization to use a portion of the seabed not encompassed by the holder’s lease site in order to construct, modify, or

maintain platforms, artificial islands, facilities, installations, and other devices established to support the exploration, development, or production of oil and gas, mineral, or energy resources on the OCS or a State submerged lands lease.

**§ 250.1700 What do the terms “decommissioning,” “obstructions,” and “facility” mean?**

This proposed rule would revise the title of this section to include the term “predecessor,” and would revise paragraph (a)(2) to include the area of an RUE, in addition to areas of a lease and a pipeline ROW, among the areas that must be returned through decommissioning to a condition that meets the requirements of BSEE and other agencies that have jurisdiction over decommissioning activities. This revision aligns with the other proposed revisions to the decommissioning obligations associated with RUEs. The proposed rule would also add a new paragraph (d) defining the term “predecessor” to mean a prior lessee or owner of operating rights, or a prior holder of a RUE grant or a pipeline ROW grant, that is liable for accrued obligations on that lease or grant. This definition is designed to capture those entities, including assignees, that remain liable for the decommissioning obligations that accrued during their prior ownership of an interest in a lease, an RUE grant, or a pipeline ROW grant for purposes of the proposed provisions establishing BSEE’s modified approach toward enforcement of such obligations.

**§ 250.1701 Who must meet the decommissioning obligations in this subpart?**

This proposed rule would add a new paragraph (c) to this section and re-designate the existing paragraph (c) as paragraph (d). The new paragraph (c) would clarify that all holders of a RUE grant are jointly and severally liable, along with other liable parties, for meeting decommissioning obligations on their RUE, including those pertaining to a well, pipeline, platform, or other facility, or an obstruction, as the obligations accrue and until each obligation is



met. BSEE would also revise the current definition of the term “you” in existing paragraph (c), which would become paragraph (d) under the proposed rule, to include RUE grant holders and predecessors among the list of parties categorized as “you” or “I” for purposes of the Subpart Q decommissioning regulations. These revisions are designed to ensure alignment between § 250.1701 and the other proposed revisions to Subpart Q.

**§ 250.1702 When do I accrue decommissioning obligations?**

This proposed rule would revise paragraph (e) to clarify that all holders of a ROW accrue the obligation to decommission; re-designate paragraph (f) as paragraph (g); and add a new paragraph (f) to provide that an entity accrues decommissioning obligations when it is or becomes the holder of a RUE grant on which there is a well, pipeline, platform or other facility, or an obstruction. These proposed changes are designed to implement the RUE decommissioning principles discussed previously and to reflect BSEE practice related to multiple ROW holders.

**§ 250.1703 What are the general requirements for decommissioning?**

This proposed rule would revise paragraph (e) to expand the current provision for clearing obstructions to require that a RUE grant holder clear the seafloor of all obstructions created by its RUE grant operations. This revision is designed to ensure alignment between § 250.1703 and the other proposed revisions to Subpart Q, including the RUE decommissioning principles discussed previously.

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

This proposed rule would add a new paragraph (b) in the Table to provide that predecessors must submit for BSEE approval, within 90 days of receiving a decommissioning order under

proposed § 250.1708, a decommissioning plan with a scope of work and schedule to address wells, pipelines, and platforms. This proposed revision is designed to reflect the proposed changes to § 250.1708 regarding decommissioning plans, discussed further below.

**§ 250.1708 How will BSEE enforce accrued decommissioning obligations against predecessors?**

The proposed rule would add a new § 250.1708 (in place of the currently reserved § 250.1708). Paragraph (a) of this section would provide that, when holding predecessors responsible for performing accrued decommissioning obligations, BSEE will issue decommissioning orders to such predecessors in reverse chronological order through the chain-of-title. BSEE would issue such orders to groups of predecessors organized according to changes in the designated operator over time, as well as to any predecessor who assigned interests to a party that has defaulted.

Proposed paragraph (b) would require predecessors to identify a single entity to begin maintaining and monitoring any facility identified in the BSEE decommissioning order within 30 days of receiving the order. It would also require predecessors, within 60 days of receiving the order, to designate a single entity as the operator for decommissioning operations. Further, within 90 days of receiving the order, the predecessors must submit a decommissioning plan that includes the scope of work and projected decommissioning schedule for all wells, platforms and other facilities, pipelines, and site clearance, as identified in the order. Finally, proposed paragraph (b) would require the predecessor to perform the required decommissioning in the time and manner specified by BSEE in its decommissioning plan approval.

Proposed paragraph (c) would specify that failure by a predecessor to comply with an order to maintain and monitor a facility or to submit a decommissioning plan, as required in paragraph (b),

may result in various enforcement actions, including civil penalties and disqualification as an operator.

Proposed paragraph (d) would allow BSEE to depart from the reverse chronological order sequence, and to issue orders to any or all other predecessors for the performance of their respective accrued decommissioning obligations, when: (1) none of the predecessors who had been ordered to perform obtains approval of the decommissioning plan or executes the decommissioning according to the approved decommissioning plan; (2) the Regional Supervisor determines that there is an emergency condition, safety concern, or environmental threat, such as improperly maintained and monitored facilities, leaking wells or vessels, sustained casing pressure on wells, or lack of required valve testing; or (3) the Regional Supervisor determines that applying the reverse chronological sequence would unreasonably delay decommissioning.

Proposed paragraph (e) would clarify that BSEE's issuance of orders to additional predecessors will not relieve any current lessee or grant holder, or any other predecessor, of its obligations to comply with any prior decommissioning order or to satisfy its accrued decommissioning obligations. Proposed paragraph (f) would provide that the appeal of any decommissioning order does not prevent BSEE from proceeding against other predecessors pursuant to proposed paragraph (d).

**§ 250.1709 What must I do to appeal a BSEE final decommissioning decision or order issued under this subpart?**

BSEE's proposed rule would replace existing § 250.1709 of Subpart Q (which is currently reserved) with a new section that confirms the right of a lessee or grant holder to appeal a final decommissioning order or decision issued under Subpart Q to the IBLA, in accordance with the

appeal procedures in existing part 290 of BSEE's regulations. Proposed § 250.1709 would require, in combination with proposed revisions to existing § 290.7(a)(2), that a lessee or grant holder appealing a decommissioning decision or order must post a surety bond in an amount deemed by BSEE to be adequate to ensure completion of decommissioning if the lessee or grant holder loses its appeal and subsequently defaults on its obligation.

### **§ 250.1725 When do I have to remove platforms and other facilities?**

This proposed rule would expand the first sentence of paragraph (a) to provide that a RUE grant holder must remove all platforms and other facilities within 1 year after the RUE grant terminates, unless the grant holder receives approval to maintain the structure to conduct other activities. This proposed revision is designed to ensure alignment between § 250.1725 and the other proposed revisions to Subpart Q regarding the RUE decommissioning principles discussed previously.

## **PART 290—APPEAL PROCEDURES**

### **§ 290.7 Do I have to comply with the decision or order while my appeal is pending?**

The proposed rule would amend paragraph (a)(2) to provide that any person that appeals a decommissioning decision or order must post a surety bond in order to seek to obtain a stay of that decision or order, in accordance with proposed § 250.1709. This proposed revision is designed to ensure alignment between § 290.7 and the proposed revision adding new § 250.1709 to Subpart Q.

## **B. Regulations Proposed by BOEM**

BOEM is proposing to revise the following regulations:

### **Part 550-OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF**

## **SUBPART A—General**

### **§ 550.105 Definitions.**

The proposed rule would add a definition of “Issuer credit rating,” which is a newly defined term in this part, for the reasons set forth above.

The proposed rule would also add a definition of “Predecessor,” which is another newly defined term in this part. The definition would include those entities, including assignees, that remain liable for the obligations that accrued during their prior ownership of an interest in a lease (including the area now subject to a right-of-use and easement grant), a right-of-use and easement grant, or a pipeline right-of-way grant. Those entities will be considered in BOEM’s evaluation of a current grant holder’s ability to carry out accrued obligations.

BOEM would remove the terms “Easement,” and “Right-of-use,” neither of which is used separately or applies to any approved activities on the OCS. In lieu of these two terms, and consistent with the terms used in Part 550, BOEM would add the term and a corresponding definition for “Right-of-Use and Easement.”

This proposed rule would also add a new term and definition for “Security” to list the various methods that may be used to ensure compliance with OCS obligations.

BOEM would also revise the definition of the term “You” to include, depending on the context of the regulations, a bidder, a lessee (record title owner), a sublessee (operating rights owner), a right-of-use and easement grant holder, a pipeline right-of-way grant holder, a predecessor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the above.

**§ 550.160 When will BOEM grant me a right-of-use and easement, and what requirements must I meet?**

The proposed rule would revise the introductory text of this section to clarify that a right-of-use and easement does not have to cover both leased and unleased lands, but rather, BOEM may grant a right-of-use and easement on leased or unleased lands, or both. The paragraph (a) introductory text would also be revised by substituting “or” for “and” to clarify that the right-of-use and easement may be needed to construct or maintain facilities, but not necessarily both, because the grant holder often uses a facility constructed by another, including either a predecessor lessee or a predecessor grant holder.

BOEM also proposes to revise paragraph (b) to provide that a right-of-use and easement grant holder must exercise the grant according to the terms of the grant and the applicable regulations of part 550, as well as the requirements of part 250, subpart Q of this title.

BOEM also proposes to revise paragraph (c) to update the citation to BOEM’s lessee qualification requirements, §§ 556.400 through 556.402, and to replace the authority that is cited in this paragraph for requiring a bond with a cross reference to § 550.166(d), which BOEM also proposes to revise to add specific criteria for such demands, as provided below.

**§ 550.166 If BOEM grants me a right-of-use and easement, what surety bond or other security must I provide?**

The proposed rule would revise the section heading to read, “If BOEM grants me a right-of-use and easement, what surety bond or other security must I provide?” so that the bonding and additional security requirements of this section would apply, where specified, to both a right-of-use and easement granted to serve a State lease and one serving an OCS lease.

Notwithstanding the change in the section heading to cover all rights-of-use and easement, the requirement to furnish a \$500,000 bond still applies only to right-of-use and easement grants that serve State leases. Therefore, BOEM proposes to revise paragraph (a) of this section to make clear it applies only to those grants.

BOEM also proposes to revise paragraph (b) of this section to add that the requirement to provide a \$500,000 surety bond may be satisfied if the operator of the right-of-use and easement provides a surety bond in the required amount.

BOEM proposes to add paragraph (c) of this section to ensure that the general administrative requirements for lease bonds also apply to the \$500,000 surety bond required in paragraph (a) of this section.

BOEM would also add paragraph (d) introductory text in this section to provide that, if BOEM grants a right-of-use and easement that serves either an OCS lease or a State lease, BOEM may require the grant holder to provide additional security to ensure compliance with the obligations under any right-of-use and easement. For a right-of-use and easement grant that serves a State lease, the required additional security would be any amount required above the \$500,000 base bond. Since BOEM does not require a standard base bond for a right-of-use and easement grant that serves an OCS lease, the proposed additional security provisions would authorize BOEM to require security.

BOEM proposes to add paragraph (d)(1) in this section to set forth the criteria BOEM would use to evaluate the ability of a right-of-use and easement grant holder to carry out present and future obligations and to determine whether BOEM should require additional security. BOEM would use the same issuer credit rating or proxy credit rating criteria to evaluate a right-of-use and easement grant holder as BOEM proposes to apply to lessees, *i.e.*, that the Regional Director

may require a grant holder to provide additional security if the right-of-use and easement grant holder does not have an issuer credit rating or a proxy credit rating that meets the criteria set forth in § 556.901(d)(1). Similar to lessees, the vast majority of right-of-use and easement holders are oil and gas companies and, therefore, BOEM would use the same financial criteria to provide consistency in its analysis.

If the right-of-use and easement grant holder does not meet the criteria set forth in proposed (d)(1) of this section, BOEM would review the obligations on each right-of-use and easement grant held by that grant holder and determine whether to require additional security for each grant. BOEM proposes to add paragraph (d)(2) to this section to provide that the Regional Director may require a grant holder to provide additional security on a grant-by-grant basis if a predecessor right-of-use and easement grant holder or a predecessor lessee liable for decommissioning any facilities on the right-of-use and easement does not meet the issuer credit rating or proxy credit rating criteria described above. Moreover, even if a predecessor meets the credit rating or proxy credit rating criteria, the Regional Director may require the grant holder to provide additional security for decommissioning obligations for which such a predecessor is not liable.

BOEM also proposes to update the regulatory citation in existing § 550.166 (b)(1) and incorporate that paragraph and citation into new paragraph (e)(1) to provide that the additional security must meet the requirements for lease bonds or other security provided for in § 556.900(d) through (g) and § 556.902.

The proposed rule would also revise the provisions of existing 550.166 (b)(2) and incorporate them into a new paragraph (e)(2) to ensure that any additional security would cover costs and



liabilities for decommissioning the facilities on the right-of-use and easement in accordance with the regulations set forth in part 250, subpart Q of this title that apply to leases.

The proposed rule would also add new paragraph (f) to provide that if a right-of-use and easement grant holder fails to replace a deficient bond or fails to provide additional security upon demand, BOEM may assess penalties, request BSEE to suspend operations on the right-of-use and easement, and initiate action for cancellation of the right-of-use and easement grant.

### **Subpart J—Pipelines and Pipeline Rights-of-Way**

#### **§ 550.1011 Bond or other security requirements for pipeline right-of-way grant holders.**

The proposed rule would revise this section in its entirety. The section heading would be revised to read, “Bond or other security requirements for pipeline right-of-way grant holders,” to clarify that a pipeline right-of-way grant holder may meet the requirements of this section by providing either a bond, mentioned in the existing regulation, or another form of security.

The proposed rule would also revise paragraph (a) to remove the reference to 30 CFR part 256, which has no bonding requirements, to add the word “pipeline” before “right-of-way,” and add “grant” after “right-of-way” for clarification, and to provide that the areawide bond required in paragraph (a) is to guarantee compliance with all the terms and conditions of all of the pipeline right-of-way grants held in an OCS area, as defined in § 556.900(b). The proposed rule would also remove the language, which states that the requirement to provide an areawide bond for a pipeline right-of-way grant would be in addition to the bond coverage required in 30 CFR part 556, as unnecessary because it is clear that an areawide bond provided for under Part 556 applies only to leases, not pipeline right-of-way grants. The provisions in Part 550 are freestanding provisions that must be satisfied by a bond furnished under Part 550 instead of by a bond furnished under Part 556. Existing paragraph (a)(2) would be removed because additional

security requirements would be covered by new paragraph (d). BOEM would also remove paragraph (b), which defines the three recognized OCS areas, because it is made redundant by the reference to § 556.900(b) in revised paragraph (a).

BOEM also proposes to add new paragraph (b) to provide that the requirement under paragraph (a) to furnish and maintain an areawide bond may be satisfied if the operator or a co-grant holder provides an areawide bond in the required amount.

BOEM also proposes to replace paragraph (c) with a provision stating that the requirements for lease bonds in § 556.900(d) through (g) and § 556.902 apply to the areawide bond required in paragraph (a) of this section. BOEM would remove existing paragraph (d), which would be made redundant by this new paragraph (c).

BOEM would add paragraph (d) introductory text to provide that BOEM may determine that additional security is necessary to ensure compliance with the obligations under a pipeline right-of-way grant. BOEM would also add new paragraph (d)(1) to set forth the criteria BOEM would use to evaluate the ability of a pipeline right-of-way grant holder to carry out present and future obligations in order to determine whether BOEM should require additional security. No criteria are specified in the existing regulations. Pursuant to this proposed rule, BOEM would use the same issuer credit rating or proxy credit rating criteria to evaluate a pipeline right-of-way grant holder as BOEM proposes to apply to lessees in 556.901(d). BOEM would use the same financial criteria to provide consistency in its analysis.

Paragraphs (d)(2)(i) and (ii) would provide that, if the pipeline right-of-way grant holder does not meet the criteria in paragraph (d)(1), the Regional Director may require the grant holder to provide additional security on a grant-by-grant basis if there is no co-grant holder with an issuer credit rating or a proxy credit rating that meets the criteria set forth in § 556.901(d)(1) nor

predecessor pipeline right-of-way grant holder liable for decommissioning any facilities on the pipeline right-of-way that has an issuer credit rating or a proxy credit rating that meets the criteria set forth in § 556.901(d)(1). Moreover, even if a predecessor meets the credit rating or proxy credit rating criteria, the Regional Director may require the grant holder to provide additional security for decommissioning obligations for which such a predecessor is not liable.

BOEM also proposes to provide, in new paragraph (e)(1), that the additional security must meet the general requirements for lease bonds or other security provided in § 556.900(d) through (g) and § 556.902.

The proposed rule would also provide, in new paragraph (e)(2), that any additional security for a pipeline right-of-way would cover liabilities for regulatory compliance and decommissioning, in accordance with the regulations set forth in part 250, subpart Q of this title.

The proposed rule would also add new paragraph (f) to provide that if a pipeline right-of-way grant holder fails to replace a deficient bond or fails to provide additional security upon demand, BOEM may assess penalties, request BSEE to suspend operations on the pipeline, and initiate action for forfeiture of the pipeline right-of-way grant in accordance with 30 CFR 250.1013.

## **PART 556—LEASING OF SULFUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF**

The proposed rule would make a technical correction to the authority citation for part 556 by removing the citation of 43 U.S.C. 1801-1802, which is erroneous because neither of these two sections contains authority allowing BOEM to issue or amend regulations.

The proposed rule would also remove the citation to 43 U.S.C. 1331 note, which is where the Gulf of Mexico Energy Security Act of 2006 is set forth. While this statute required BOEM to issue regulations concerning the availability of bonus or royalty credits for exchanging eligible

leases, the deadline for applying for such a bonus or royalty credit was October 14, 2010; therefore, lessees may no longer apply for such credits. BOEM no longer needs the authority to issue regulations under this statute and has removed all regulations on this topic from Part 556, except for § 556.1000, which provides that lessees may no longer apply for such credits.

## **Subpart A -- General Provisions**

### **§ 556.105 Acronyms and definitions.**

The proposed rule would add a definition of “Issuer credit rating,” which is a newly defined term in this part, for the reasons set forth above.

This proposed rule would add a new term and definition for “Predecessor.” This definition would include those entities, including assignees, that, because of their prior ownership of an interest in a lease, including record title and operating rights interests, remain liable for obligations that accrued during their ownership. Those entities would be considered in BOEM’s evaluation of a current lessee’s ability to carry out accrued obligations. This definition would be the same as the definition of “Predecessor” proposed for § 550.105.

The proposed rule would also revise the definition of “Right-of-Use and Easement (RUE)” to remove the acronym “(RUE)” and to include the words “to construct, modify or maintain platforms.” This definition would be the same as the definition of “Right-of-Use and Easement” proposed for § 550.105.

The proposed rule would also replace the definition for “Security or securities” with a definition for “Security” to clarify the various methods that can be used to ensure compliance with OCS obligations. This definition would be the same as the definition of “Security” proposed for § 550.105.

The proposed rule would also revise the definition of the term “You” to include, depending on the context of the regulations, a bidder, a lessee (record title owner), a sublessee (operating rights owner), a right-of-use and easement grant holder, a pipeline right-of-way grant holder, a predecessor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the above.

## **SUBPART I—Bonding or Other Financial Assurance**

### **§ 556.900 Bond or other security requirements for an oil and gas or sulfur lease.**

The proposed rule would revise the section heading to read, “Bond or other security requirements for an oil and gas or sulfur lease.”

The proposed rule would revise paragraph (a) introductory text to add the words “or sublease” after the word “assignment” to reflect that the transfer of operating rights from a record title owner creates a sublease. The proposed rule would also add the words “interest in an” before the words “existing lease” because an assignment or transfer under Subparts G and H of this part may include less than the entire lease. The proposed rule would also revise paragraph (a) introductory text to clarify that record title owners and operating rights owners for the lease are equally obligated to maintain a bond in the required amount.

BOEM also proposes to revise paragraphs (a)(2) and (3) to change the spelling of “area-wide” to “areawide” for consistency with the spelling of this word in other sections of this part.

The proposed rule would also revise paragraph (g) introductory text to add the word “surety” before “bond” in two places to clarify that the regulation is referring to a “surety bond.”

The proposed rule would revise paragraph (h) introductory text to replace the words “bond coverage” with “security” for consistency in terminology. The proposed rule would also revise

paragraph (h)(2) to clarify that BSEE, rather than BOEM, is the agency with authority to suspend production or other operations on a lease.

**§ 556.901 Bonds and additional security.**

The proposed rule would revise the section heading to read, “Bonds and additional security,” because this section covers both base bond and additional security requirements.

The proposed rule would also revise paragraph (a)(1)(i) introductory text to insert the words “lease exploration” before “bond” for consistency with the terminology used in paragraph (a)(1)(ii).

The proposed rule would also revise paragraph (c) to remove the words “authorized officer” and replace them with “Regional Director,” and remove the words “lease bond coverage” and “a lease surety bond” and replace them in each instance with “security” to clarify that the Regional Director can review whether BOEM would be adequately secured by a surety bond, or another type of security, for an amount less than the amount prescribed in paragraph (b)(1), but not less than the estimated cost for decommissioning.

BOEM proposes to revise paragraph (d) introductory text to combine the provisions of the existing paragraph (d) introductory text and the existing introductory paragraph (d)(1) to provide that the Regional Director may determine that additional security is necessary to ensure compliance with the obligations under a lease based on an evaluation of the lessee’s ability to carry out present and future obligations on the lease and that the Regional Director may require a lessee to provide additional security if the lessee does not meet at least one of the criteria provided below.

BOEM proposes to add new paragraph (d)(1) to set forth the criteria BOEM would use to evaluate the ability of a lessee to carry out present and future obligations. BOEM would use an

issuer credit rating from a nationally recognized statistical rating organization (NRSRO), as defined by the United States Securities and Exchange Commission (SEC), greater than or equal to either BB- from Standard & Poor's Ratings Service or Ba3 from Moody's Investor Service, or a proxy credit rating determined by the Regional Director based on audited financial information (including an income statement, balance sheet, statement of cash flows, and the auditor's certificate) greater than or equal to either BB- from Standard & Poor's Ratings Service or Ba3 from Moody's Investor Service.

BOEM proposes to add new paragraph (d)(2) to set forth the criteria BOEM would use if the lessee does not meet the criteria in paragraph (d)(1). The Regional Director may require a lessee to provide additional security on a lease-by-lease basis if no co-lessee has an issuer credit rating or proxy credit rating criteria that meets the criteria set forth in paragraph (d)(1); there are no proved oil and gas reserves on the lease, as defined by the SEC at 17 CFR 210.4-10(a)(22), the net present value of which exceeds three times the cost of the decommissioning (as estimated by BSEE) associated with the production of those reserves; and no predecessor lessee liable for decommissioning any facilities on the lease has an issuer credit rating or a proxy credit rating that meets the criteria set forth in paragraph (d)(1). Moreover, even if a predecessor meets the credit rating or proxy credit rating criteria, the Regional Director may require the lessee to provide additional security for decommissioning obligations for which such a predecessor is not liable.

BOEM proposes to redesignate existing paragraph (d)(2) as paragraph (e) and revise it to provide that a lessee may satisfy the Regional Director's demand for additional security either by increasing the amount of its existing bond or by providing additional bonds or other security.

BOEM proposes to redesignate existing paragraphs (e) and (f) as paragraphs (f) and (g), respectively, and revise them to remove the word “bond” and replace it with “security,” a term that includes a surety bond or another type of security.

**§ 556.902 General requirements for bonds or other security.**

The proposed rule would revise the section heading to read, “General requirements for bonds or other security,” to recognize that other types of security, such as a pledge of Treasury securities, may be provided under part 556.

The proposed rule would also revise paragraph (a) to include “grant holder” and to include bonds provided under 30 CFR Part 550. These revisions clarify that the same general requirements for bonds provided by lessees, operating rights owners, or operators of leases, also apply to bonds provided by right-of-use and easement grant and pipeline right-of-way grant holders.

The proposed rule would also revise paragraph (e)(2) to clarify that the use of Treasury securities, instead of a bond, requires a pledge of Treasury securities, as provided in § 556.900(f).

**§ 556.903 Lapse of bond.**

The proposed rule would revise paragraph (a) to reference a new bond “or other security” consistent with the terminology used throughout this subpart and to include references to the bond and other security regulations for right-of-use and easement grants and pipeline right-of-way grants to ensure that these grants are covered by the provisions of this section. The proposed rule would also revise paragraph (a) by removing the words “terminates immediately” and substituting “must be replaced.”



BOEM also proposes to revise the first sentence of paragraph (b) by inserting “or financial institution” after “guarantor.” BOEM also proposes to revise the third sentence of paragraph (b) for consistency in terminology by inserting the words “or other security” after the word “bonds” and inserting the words “guarantor or financial institution” after the word “surety” so that this section would apply to a third-party guarantor and a financial institution where a decommissioning account is held.

#### **§ 556.904 Decommissioning accounts.**

The proposed rule would revise the section heading to read, “Decommissioning accounts,” in accordance with BOEM policy and accepted terminology used in the industry. The words “lease-specific” would be removed throughout this section so that a decommissioning account could be used in lieu of a bond for a lease or several leases, a right-of-use and easement grant or a pipeline right-of-way grant, or a combination thereof.

BOEM proposes to revise paragraph (a) to remove the term “lease-specific” and replace it with “decommissioning,” and to add references to the bonding and other security regulations for right-of-use and easement grants and pipeline right-of-way grants, consistent with the changes above. The paragraph (a) introductory text would also be revised to provide that BOEM would authorize a lessee or grant holder to establish a decommissioning account at a federally insured financial institution. The proposed rule would also delete the reference to paragraph (a)(3), which is being revised and is no longer relevant to withdrawal of funds from a decommissioning account.

The proposed rule would revise paragraph (a)(1) to remove the words “and pledged” and to provide that funds in the account must be payable to BOEM if BOEM determines the lessee or grant holder has failed to meet its decommissioning obligations.

The proposed rule would also revise paragraph (a)(2) to remove the words “as estimated by BOEM” to clarify that BOEM does not estimate decommissioning costs, but rather uses the estimates of decommissioning costs determined by BSEE. The proposed rule would also revise paragraph (a)(2) to require funding of a decommissioning account pursuant to the schedule that the Regional Director prescribes.

The proposed rule would revise paragraph (a)(3) to remove the requirement to provide binding instructions to purchase Treasury securities for a decommissioning account, which is currently BOEM’s policy. The proposed rule would replace the existing language with a new provision providing that if you fail to make the initial payment or any scheduled payment into the decommissioning account, you must immediately submit, and subsequently maintain, a bond or other security in an amount equal to the remaining unsecured portion of your estimated decommissioning liability. This change reflects BOEM’s current policy to order bond or other security in the event the payments into the decommissioning account are not timely made.

The proposed rule would revise paragraph (b) by removing “lease-specific” and substituting “decommissioning.”

The proposed rule would also remove paragraphs (c) and (d), which concern the use of pledged Treasury securities to fund a decommissioning account. Because of this revision, existing paragraph (e) would be redesignated as paragraph (c), which BOEM proposes to revise to remove the word “pledged” and to provide that BOEM may require a lessee to create an overriding royalty or production payment obligation for the benefit of an account established as security for the decommissioning of a lease.

#### **§ 556.905 Third-party guarantees.**

The proposed rule would revise the section heading to read, “Third-party guarantees.” BOEM also proposes to revise paragraph (a) to add the words “or other security” after the words “additional bond” and to reference §§ 550.166(d) and 550.1011(d) to clarify that a third-party guarantee may be used instead of an additional bond or other security required under § 550.166(d) for right-of-use and easement grants, § 550.1011(d) for pipeline right-of-way grants, or § 556.901(d) for leases.

BOEM would also revise paragraph (a)(1) to clarify that the guarantor, not the guarantee, must meet the criteria in paragraph (c) and would revise paragraph (a)(2) to require the guarantor to submit a third-party guarantee agreement containing each of the provisions in paragraph (d) of this section. As discussed below, paragraph (d) is being revised to provide that the terms previously required for indemnity agreements must be included in a third-party guarantee agreement. This terminology is changed to avoid any inference that the government must incur the expenses of decommissioning before being indemnified by the guarantor. The proposed rule would also remove paragraphs (a)(3) and (4), which have been superseded by other revisions to this section.

The proposed rule would revise paragraph (b) introductory text to remove references to paragraphs (a)(3) and (c)(3) of this section because the criteria in these two paragraphs have been superseded. The proposed rule would replace these references with a reference to paragraph (c) as proposed to be revised. Because the cessation of production is neither desirable nor easily accomplished by an operator, the proposed rule would also revise paragraph (b)(2) to remove the requirement that, when a guarantor becomes unqualified, you must “cease production until you comply with the bond coverage requirements of this subpart.” Instead, the language would be

revised to provide that you must “immediately submit and maintain a bond or other security covering those obligations previously secured by the third-party guarantee.”

The proposed rule would revise paragraph (c) to clarify that BOEM will use an issuer credit rating or proxy credit rating to evaluate a third-party guarantor, and would remove the requirement that a third-party guarantee ensure compliance with all the obligations of all lessees, all operating rights owners, and operators on the lease.

The proposed rule would revise paragraph (d)(1) introductory text to read “if you fail to comply with the terms of any lease or grant covered by the guarantee, or any applicable regulation, your guarantor must either:” to be consistent with the revision of paragraph (a) to allow the use of a third-party guarantee for a right-of-use and easement grant or a pipeline right-of-way grant and to be consistent with the revision to remove language from paragraph (c) to allow a guarantor to limit the obligations covered by a guarantee.

The proposed rule would remove subparagraph (d)(2) to be consistent with the revision to remove language from paragraph (c) to allow a guarantor to limit the obligations covered by a guarantee. As a result, existing paragraph (d)(3) would be redesignated as paragraph (d)(2) and paragraph (d)(4) would be redesignated as paragraph (d)(3).

The proposed rule would revise redesignated subparagraphs (d)(2)(ii) and (iii) to remove the words “your guarantor’s” and replace them with the word “the” to clarify that redesignated paragraph (d)(2) applies to the guarantee itself.

The proposed rule would revise new paragraph (d)(3) to replace the term “a suitable replacement security” with “acceptable replacement security” for clarity.

The proposed rule would also add a new paragraph (d)(4) to provide that BOEM may cancel a third-party guarantee under the same terms and conditions as those proposed for cancellation of additional bonds and return of pledged security in § 556.906(d)(2) and (e).

BOEM also proposes to add new paragraphs (d)(5) through (10) to revise and incorporate all of the provisions of existing paragraph (e), which would be removed.

### **§ 556.906 Termination of the period of liability and cancellation of a bond.**

The proposed rule would revise the wording in paragraphs (b) and (d) of this section to cite the bonding regulations for right-of-use and easement grants and pipeline right-of-way grants to ensure that they are covered under the terms of this section.

The proposed rule would revise paragraph (b)(1) to remove the word “terminated” in two instances and replace it with “cancelled” to be consistent with paragraph (b) introductory text, which provides that the Regional Director will cancel your previous bond when you provide a replacement bond, subject to the conditions provided in paragraphs (b)(1) through (3). BOEM would also remove the word “for” before “by the bond” in paragraph (b)(1) for grammatical reasons.

The proposed rule would revise paragraph (b)(2) to reference §§ 550.166(a) and 550.1011(a) and would revise paragraph (b)(3) to reference §§ 550.166(d) and 556.1011(d). BOEM also proposes to revise paragraph (b)(3) to clarify that the notification required under this section is to the surety providing the new additional bond.

The proposed rule would revise the paragraph (d) introductory text to cover bond cancellations and return of pledged security, and would remove the middle column of the table entitled, “The period of liability will end,” because it is redundant with provisions of paragraphs (a), (b) and (c).

In paragraph (d)(1), in the column in the table entitled, “For the following type of bond,” BOEM proposes to remove the words “type of bond” at the top of the table so that this paragraph would apply to bonds or other security, as applicable. Paragraph (d)(1) would also be revised to include a reference to base bonds submitted under §§ 550.166(a) and 550.1011(a). BOEM would also revise paragraph (d)(2) in the same column to include a reference to bonds submitted under §§ 550.166(d) and 550.1011(d).

The proposed rule would revise paragraph (d)(2) in the column entitled, “Your bond will be cancelled,” to read, “Your bond will be reduced or cancelled or your pledged security will be returned,” to clarify that the bonds may be reduced or cancelled and a pledged security, or a portion thereof, may be returned, and to specify other circumstances under which the Regional Director may cancel additional bonds or return a pledged security. While the existing criteria identify most instances when cancellation of a bond is appropriate, occasionally there are other circumstances where cancellation would be warranted. The proposed rule would allow bond cancellation, at any time, when BOEM determines, using the criteria set forth in § 556.901(d), or § 550.166(d) or § 550.1011(d), as applicable, that a lessee or grant holder no longer needs to provide the additional bond for its lease, right-of-use and easement grant, or pipeline right-of-way grant; when the operations for which the bond was provided ceased prior to accrual of any decommissioning obligation; and when cancellation of the bond is appropriate because BOEM determines such bond never should have been required under the regulations.

The proposed rule would revise introductory paragraph (e) to remove the words “or release” because the term “release” is undefined and not used in practice. Likewise, the proposed rule would remove the words “or released” from paragraph (e)(2).

The proposed rule would also revise paragraph (e) to reference right-of-use and easement grants and pipeline right-of-way grants to provide that the Regional Director may reinstate the bonds on the same grounds as currently provided for reinstatement of lease bonds.

**§ 556.907 Forfeiture of bonds or other securities.**

The proposed rule would revise the section heading to read, “Forfeiture of bonds or other securities” because the use of “and/or” may be ambiguous. The proposed rule would revise paragraph (a)(1) to include bonds or other security for right-of-use and easement grants and pipeline right-of-way grants, in addition to leases, in the forfeiture provisions of this section. BOEM also proposes to clarify that the Regional Director may call for forfeiture of all or part of a bond or other form of security, or demand performance from a guarantor, if the party who provided the bond refuses or is unable to comply with any term or condition of a lease, a right-of-use and easement grant, or a pipeline right-of-way grant, as well as “any applicable regulation.” Throughout this section, BOEM proposes to add references to a grant, a grant holder, and grant obligations to implement the revisions in paragraph (a)(1).

BOEM proposes to revise paragraph (b) to include bonds or other security so that BOEM may pursue forfeiture of a bond or other security.

BOEM proposes to revise paragraph (c)(1) to include “financial institution holding your decommissioning account” as one of the parties the Regional Director would notify of a determination to call for forfeiture of a bond, security, or guarantee because a bank or other financial institution may hold funds subject to forfeiture.

The proposed rule would revise the wording of paragraph (c)(1)(ii) and paragraph (d) for clarity.

BOEM proposes to revise paragraph (c)(2)(ii) to add the words “even if the cost of compliance exceeds the limit of the guarantee” after the word “prescribes” to be consistent with the revisions to § 556.905, which would allow a guarantor to guarantee less than all obligations of all lessees, grant holders or operators.

BOEM proposes to revise paragraph (f)(1) to include “grant” as well as lease. BOEM also proposes to revise paragraph (f)(2) to clarify that BOEM may recover additional costs from a third-party guarantor only to the extent covered by the guarantee. This would be consistent with the changes made to § 556.905 to allow the use of limited third-party guarantees.

This rulemaking would also reword paragraph (g) for clarity.

#### **IX. Additional Comments Solicited by BOEM and BSEE**

BOEM requests comments on how the proposed rule would affect existing contracts and agreements with respect to responsibility for decommissioning liabilities and other lease obligations.

BSEE requests comments on whether, as some stakeholders have asserted, issuing decommissioning orders first to the predecessors nearest in time to the current lessees or grant holders would have positive safety and environmental impacts because the most recent predecessors should be more familiar with the current circumstances at a decommissioning site than more remote predecessors. BSEE also requests comments on any other potential effects of the proposed changes on the timely and effective completion of decommissioning.

#### **X. Procedural Matters**

##### **A. Regulatory Planning and Review (E.O. 12866, 13563 and 13771)**



E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has reviewed this proposed rule and determined that it is a significant action E.O. 12866.

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. The E.O. 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 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. BOEM has developed this rule in a manner consistent with these requirements.

E.O. 13771 requires Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations. BOEM and BSEE have evaluated this rulemaking based on the requirements of E.O. 13771. BOEM's proposed changes are estimated to reduce the private cost to lessees in the form of bonding premiums. BSEE's proposed cost changes are not estimated; but are expected to provide regular and continuous benefits and infrequent costs. Each agency has drafted an Initial Regulatory Impact Analysis (IRIA) detailing the estimated impacts of its respective provisions of this joint proposed rule. These reflect both monetized and non-monetized impacts, the costs and benefits of which are discussed qualitatively in each document. Both BOEM and BSEE's IRIs are available in the public docket for this rulemaking. Overall, important aspects of this rule (*e.g.*, regulatory clarifications,

refined procedures and reduced bonding requirements) make this rulemaking an E.O. 13771 deregulatory action.

BOEM expects this proposed rule to reduce the private cost to lessees through lower bonding premiums. The table below summarizes BOEM’s estimate of the decrease in bonding premiums paid by lessees over a 10-year and 20-year time horizon. Additional information on the estimated transfers, costs, and benefits can be found in the IRIA posted in the public docket for this proposed rule.

**Total Estimated Decrease in Bonding Premiums Associated with BOEM’s Proposed Amendments (2018\$)**

<b>Year</b>	<b>Discounted at 3%</b>	<b>Discounted at 7%</b>
<b>10 Year Annualized</b>	\$16,584,362	\$16,473,168
<b>10 Year NPV</b>	\$141,467,969	\$115,700,639
<b>20 Year Annualized</b>	\$17,191,929	\$16,988,417
<b>20 Year NPV</b>	\$255,772,485	\$179,975,527

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires agencies to analyze the economic impact of regulations when a significant economic impact on a substantial number of small entities is likely and to consider regulatory alternatives that will achieve the agency’s goals while minimizing the burden on small entities. BOEM and BSEE each provide an Initial Regulatory Flexibility Analysis (IRFA), which assesses the impact of this proposed rule on small entities. Each of these are in their respective IRIAs available in the public docket for this rule.

As defined by the Small Business Administration (SBA), a small entity is one that is “independently owned and operated and which is not dominant in its field of operation.” What

characterizes a small business varies from industry to industry. The proposed rule would affect OCS lessees and right-of-use and easement grant and pipeline right-of-way grant holders on the OCS. The analysis shows that this includes roughly 555 companies with ownership interests in OCS leases and grants. Entities that would operate under this proposed rule are classified primarily under North American Industry Classification System (NAICS) codes 211120 (Crude Petroleum Extraction), 211130 (Natural Gas Extraction) and 486110 Pipeline Transportation of Crude Oil and Natural Gas. For NAICS classifications 211120 and 211130, the Small Business Administration (SBA) defines a small business as one with fewer than 1,250 employees; for NAICS code 486110, it is a business with fewer than 1,500 employees. Based on this criterion, approximately 386 (70 percent) of the businesses operating on the OCS, subject to this proposed rule, are considered small; the remaining businesses are considered large entities.

The analysis shows that there are about 386 small companies with active operations or ownership interests on the OCS. All of the operating businesses meeting the SBA classification are potentially impacted; therefore, BOEM and BSEE expect that the proposed rule would affect a substantial number of small entities.

The BOEM portion of this proposed rule is a deregulatory action. BOEM has estimated the annualized decrease in private cost to lessees and allocated those savings to small and large entities based on their decommissioning liabilities. BOEM's analysis concludes small companies would realize 23 percent (\$3.3 million) of the decrease in private costs to lessees from its proposed changes and large companies 77 percent (\$10.7 million). The agencies recognize that there may be incremental cost burdens to some affected small entities, but the proprietary data is not available for the agencies to estimate those costs. The agencies are seeking specific comment and feedback from affected small entities on the costs associated with this rulemaking.

BSEE concludes its proposed changes would not result in any incremental change to the existing burdens of small entities because, if they accrued decommissioning liability, they remain liable for decommissioning under both current regulations and these proposed regulations, given that the joint and several liability would remain the same. Additional information about these conclusions can be found in each bureau’s respective IRFA for this proposed rule.

**Estimated Annual Decrease in Private Cost for Small and Large Lessees  
(2018, \$thousands)**

<b>Credit Rating</b>	<b>Large Co.</b>	<b>Small Co.</b>	<b>Grand Total</b>
BB- and above	\$10,665	\$1,631	\$12,296
B+ and below	\$40	\$1,652	\$1,691
<b>Grand Total:</b>	<b>\$10,705</b>	<b>\$3,283</b>	<b>\$13,987</b>

The proposed changes are designed to balance the risk of non-performance with the costs and disincentives to production that are associated with the requirement to provide additional security. BOEM and BSEE believe the proposed action would strongly protect the public from incurring decommissioning costs and minimize the financial assurance burden on small entities.

**C. Small Business Regulatory Enforcement Fairness Act**

This proposed rule would revise the financial assurance requirements for OCS lessees and grant holders, and would reduce the number of circumstances in which financial assurance will be required. The changes would not have any negative impact on the economy or any economic sector, productivity, jobs, the environment, or other units of government. BOEM’s proposed changes would 1) modify the evaluation process for requiring additional security, 2) streamline the evaluation criteria, and 3) remove restrictive provisions for third-party guarantees and decommissioning accounts. BSEE’s proposed changes would 1) clarify interested parties’ decommissioning liabilities, and 2) provide industry with more explicit decommissioning compliance expectations. These changes reflect the risk mitigation provided by BOEM’s and

BSEE's joint and several liability regulation, better align the evaluation criteria with industry practices, reduce bonding cost for industry, and provide greater certainty to industry on fulfilling accrued decommissioning obligations while continuing to protect the public from exposure to financial obligations and liabilities arising from noncompliant OCS exploration and development.

Accordingly, this proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because implementation of this rule will not:

- (a) have an annual effect on the economy of \$100 million or more;
- (b) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (c) result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### **D. Unfunded Mandates Reform Act of 1995**

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Moreover, the proposed rule would not have disproportionate budgetary effects on these governments. BOEM and BSEE have also determined that this proposed rule would not impose costs on the private sector of more than \$100 million in a single year. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required and BOEM and BSEE have chosen not to prepare such a statement.

#### **E. Takings Implication Assessment (E.O. 12630)**

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

**F. Federalism (E.O. 13132)**

Under the criteria in section 1 of E.O. 13132, this proposed 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.

**G. Civil Justice Reform (E.O. 12988)**

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

**H. Consultation with Indian Tribes (E.O. 13175 and Departmental Policy) (OEP to advise)**

BOEM and BSEE strive to strengthen their government-to-government relationships with American Indian and Alaska Native Tribes through a commitment to consultation with the 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 (ANCSA) Corporations. We have evaluated the proposed 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 and determined that, while there are no substantial direct effects on environmental or cultural resources, there may be economic impacts to one Indian tribe and one ANCSA Corporation. BOEM has invited consultation with the Indian tribe and the ANCSA

Corporation to discuss possible impacts and to solicit and fully consider their views on the proposed rulemaking.

## **I. Paperwork Reduction Act (PRA)**

This proposed rule contains existing and new information collection (IC) requirements for both BSEE and BOEM regulations, and a submission to the OMB for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is required. Therefore, an IC request for each Bureau is being submitted to OMB for review and approval. BSEE and BOEM are seeking to renew and extend IC requests for each OMB control number listed below for three years from approved date. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB has reviewed and approved the information collection requirements associated with risk management, financial assurances, and loss prevention and assigned the following OMB control numbers:

- 1014–0010 (BSEE), “30 CFR 250, Subpart Q - Decommissioning Activities” (expires 04/30/2023, and in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB),
- 1010-0006 (BOEM), “Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf (30 CFR parts 550, Subpart J; 556, Subparts A through I, and K; and 560, Subparts B and E) (expires 01/31/2023), and
- 1010-0114 (BOEM), “30 CFR 550, Subpart A, General, and Subpart K, Oil and Gas Production Requirements (expires 02/28/2023).

The IC aspects affecting each Bureau are discussed separately. Instructions on how to comment follow those discussions.

***BSEE Information Collection—30 CFR Parts 250 and 290***

This proposed rule would add new collections of information under regulations at 30 CFR Part 250, Subpart Q, concerning the decommissioning regulatory requirements related to oil, gas, and sulphur operations in the OCS. These regulatory requirements are the subject of this collection.

The new information collection requirements identified below require approval by OMB. BSEE uses the information collected under the Subpart Q regulations to ensure that operations on the OCS are carried out in a safe and environmentally protective manner, do not interfere with the rights of other users on the OCS, and balance the conservation and development of OCS resources. The following proposed regulatory changes would affect the annual burden hours; however, they would not impact non-hour cost burdens.

The proposed rule would clarify decommissioning responsibilities, including those requirements for RUE grants, and would establish an order in which predecessor lessees or grant holders would be ordered to decommission OCS facilities when the current owner of the lease or grant fails to do so. When holding predecessors responsible for the performance of accrued decommissioning obligations, BSEE proposes to issue decommissioning orders to predecessors in reverse chronological order through the chain-of-title, organized in groups by designated operator(s).

This proposed rule would require predecessors to submit a work plan and schedule as directed under proposed §§ 250.1704(b) and 250.1708. Given the potentially lengthy process of holding predecessors responsible, BSEE would establish a step early in the process for the predecessors to submit decommissioning plans. BSEE considers this necessary to protect the public from incurring future decommissioning costs and to prevent safety and environmental



risks posed by delayed performance of decommissioning. Within 90 days of receiving an order to perform decommissioning under proposed § 250.1708(a), the predecessor would be required to submit a work plan and projected decommissioning schedule that addresses all wells, platforms and other facilities, pipelines, and site clearance. This proposed requirement would add an estimated 4,320 annual burden hours to the existing OMB control number (+4,320 annual burden hours).

Title of Collection: Revisions to Regulations under 30 CFR part 250, Subpart Q – Decommissioning.

OMB Control Number: 1014-0010.

Form Number: None.

Type of Review: Revision of a currently approved collection of information.

Respondents/Affected Public: Currently there are approximately 60 Oil and Gas Drilling and Production Operators in the OCS. Not all the potential respondents would submit information at any given time, and some may submit multiple times.

Total Estimated Number of Annual Respondents: Not all of the potential respondents will submit information in any given year and some may submit multiple times.

Total Estimated Number of Annual Responses: 3,248 responses.

Total Estimated Number of Annual Burden Hours: 15,997 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Submissions are generally on occasion.

Total Estimated Annual Nonhour Burden Cost: \$1,143,556.

## BURDEN TABLE

[New requirements due to the proposed rule shown in **bold**; *Changes to existing requirements due to the proposed rule are italicized.*]

L/T = Lease Term

### Burden Breakdown

ROW = Right of Way

Citation 30 CFR part 250 Subpart Q	Reporting Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burdens		
<b>General</b>				
<i>1704(h); 1706(a), (f); 1712; 1715; 1716; 1721(a),(d), (f)- (g); 1722(a), (b), (d); 1723(b); 1743(a); Sub G</i>	These sections contain references to information, approvals, requests, payments, etc., which are submitted with an APM, the burdens for which are covered under its own information collection.	APM burden covered under 1014-0026		
1700 thru 1754	General departure and alternative compliance requests not specifically covered elsewhere in Subpart Q regulations.	Burden covered under Subpart A 1014-0022		0
1703; 1704	Request approval for decommissioning.	Burden included below		0
<b>1704(b); 1708</b>	<b>Submit work plan &amp; schedule under § 250.1708(b) that addresses all wells, platforms and other facilities, pipelines, and site clearance upon receiving an order to perform decommissioning; additional information as requested by BSEE.</b>	<b>1,440</b>	<b>3 submittals</b>	<b>4,320</b>
<i>1704(j), (k)</i>	Submit to BSEE, within 120 days after completion of each decommissioning activity (including pipelines), a summary of expenditures incurred; any additional information that will support and/or verify the summary.	1	1,320 summaries (including pipelines)/ additional information	1,320
<i>1704(j); NTL</i>	Request and obtain approval for extension of 120-day reporting period; including justification.	15 min.	75 requests	19
<i>1704(j)</i>	Submit certified statement attesting to accuracy of the summary for expenditures incurred.	Exempt from the PRA under 5 CFR 1320.3(i)(1).		0
1712	Required data if permanently plugging a well.	Requirement not considered Information Collection under 5 CFR 1320.3(h)(9).		0
1713	Notify BSEE 48 hours before beginning operations to permanently plug a well.	0.5	725 notices	363
1721(f)	Install a protector structure designed according to 30 CFR part 250, Subpart I, and equipped with aids to navigation. (These requests are processed via	Burden covered under Subpart I 1014-0011		0

	the appropriate Platform Application, 30 CFR part 250 Subpart I by the OSTs.)			
1721(e); 1722(e), (h)(1); 1741(c)	Identify and report subsea wellheads, casing stubs, or other obstructions; mark wells protected by a dome; mark location to be cleared as navigation hazard.	U.S. Coast Guard requirements.		0
1722(c), (g)(2); 1704(i)	Notify BSEE within 5 days if trawl does not pass over protective device or causes damages to it; or if inspection reveals casing stub or mud line suspension is no longer protected.	1	11 notices	11
1722(f), (g)(3)	Submit annual report on plans for re-entry to complete or permanently abandon the well and inspection report.	2.5	98 reports	245
1722(h)	Request waiver of trawling test.	1.5	4 requests	6
1725(a)	Requests to maintain the structure to conduct other activities are processed, evaluated and permitted by the OSTs via the appropriate Platform Application process, 30 CFR part 250 Subpart I. (Other activities include but are not limited to activities conducted under the grants of right-of-ways (ROWs), rights-of-use and easement (RUEs), and alternate rights-of-use and easement authority issued under 30 CFR part 250 Subpart J, 30 CFR 550.160, and / or 30 CFR part 585, etc.)	Burden covered under Subpart I 1014-0011		0
1725(e)	Notify BSEE 48 hours before beginning removal of platform and other facilities.	0.5	133 Notices	67
1726; 1704(a)	Submit initial decommissioning application in the Pacific and Alaska OCS Regions.	20	2 application	40
1727; 1728; 1730; 1703; 1704(c); 1725(b)	Submit final application and appropriate data to remove platform or other subsea facility structures (This included alternate depth departures and / or approvals of partial removal or toppling for conversion to an artificial reef.)	28	153 applications	4,284
		\$4,684 fee x 153 = \$716,652		
1729; 1704(d)	Submit post platform or other facility removal report; supporting documentation; signed statements, etc.	9.5	133 Reports	1,264
1740; 1741(g)	Request approval to use alternative methods of well site, platform, or other facility clearance; contact pipeline owner/operator before trawling to determine its condition.	12.75	30 requests /contacts	383
1743(b); 1704(g), (i)	Verify permanently plugged well, platform, or other facility removal site cleared of obstructions; supporting documentation; and submit certification letter.	5	117 certifications	585
1750; 1751; 1752; 1754; 1704(e)	Submit application to decommission pipeline in place or remove pipeline (L/T or ROW).	10	142 L/T applications	1,420
		\$1,142 L/T decommission fee x 142 = \$162,164		
		10	122 ROW applications	1,220
		\$2,170 ROW decommissioning fees x 122 = \$264,740		
1753; 1704(f)	Submit post pipeline decommissioning report.	2.5	180 reports	450

<b>Total Burden</b>	<b>3,248 Responses</b>	<b>15,997 hours</b>
	<b>\$1,143,556 Non-Hour Cost Burdens</b>	

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) total capital and startup cost component and (2) annual operation, maintenance, and purchase of service component. Your estimates should consider the cost to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (1) before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection by the date indicated in the DATES section to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or via at the [www.reginfo.gov](http://www.reginfo.gov) portal (online). You may view the information collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>. Please provide a copy of your comments to the BSEE Information Collection Clearance Officer (see the ADDRESSES section). You may contact Kye Mason, BSEE Information Collection Clearance Officer at (703) 787-1607 with any questions. Please reference Risk Management, Financial Assurance and Loss Prevention (OMB Control No. 1014-0010), in your comments.

***BOEM Information Collection—Parts 550 and 556***

This proposed rule would modify collections of information under 30 CFR part 550, Subparts A and J, and 30 CFR part 556, Subpart I, concerning bonding and security requirements for leases, pipeline right-of-way grants, and right-of-use easement grants. OMB has reviewed and approved the information collection requirements associated with bonding and additional security regulations for leases (30 CFR 556.900-907), pipeline right-of-way grants (30 CFR 550.1011), and right-of-use easement grants (30 CFR 550.160 and 550.166).

BOEM recognized the need to develop a comprehensive program to help identify, prioritize, and manage the financial risks associated with oil and gas activities on the OCS. BOEM’s goal for this program is to protect American taxpayers from exposure to financial or environmental risks from nonperformance of obligations associated with OCS leases and grants while also assuring that its financial assurance program does not negatively impact offshore investment or operations.

By moving forward with the proposed regulations for the financial assurance program, BOEM would be able to more effectively address a number of complex financial issues. The

proposed regulations would establish new criteria that will reduce regulatory burdens and compliance costs on Federal OCS oil, gas, and sulfur lessees, grant holders and operators. New criteria would help determine whether OCS oil, gas and sulfur lessees, and right-of-use and easement grant and pipeline right-of-way grant holders would be required to provide additional bonds or other security (above prescribed amounts) to ensure compliance with their contractual and regulatory obligations to BOEM. The proposed regulations would streamline the evaluation criteria and would allow BOEM to consider the financial strength and reliability of a lessee, a co-lessee, a co-holder of a grant, and/or a predecessor, to determine whether a lessee or grant holder must provide additional security. The regulations would also remove overly restrictive provisions for third-party guarantees and decommissioning accounts.

BOEM intends to modify OMB Control Number 1010-0006 (expiration January 31, 2023; 19,054 hours; \$766,053 non-hour costs), Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf (30 CFR part 550, Subpart J; 556, Subparts A through I, and K; and 560, Subparts B and E)); and OMB Control Number 1010-0114 (expiration February 28, 2023; 18,323 hours; \$165,492 non-hour costs), 30 CFR part 550, Subpart A, General, and Subpart K, Oil and Gas Production Requirements. If this proposed rule becomes final and effective, the new and changed provisions would reduce the overall annual burden hours for OMB Control Number 1010-0006 by 13 hours. The changed provisions for OMB Control Number 1010-0114 would add new and revise requirements in 30 CFR part 550, Subpart A, but would not impact the overall burden hours for this control number. However, the new and modified requirements would be significant enough to update the OMB control number.

Title of Collection: 30 CFR Parts 550 and 556, Risk Management, Financial Assurance and Loss Prevention.

OMB Control Number: 1010-0006 and 1010-0114.

Form Number: None.

Type of Review: Revision of currently approved collections.

Respondents/Affected Public: Federal OCS oil, gas, and sulfur operators and lessees, and right-of-use and easement grant and pipeline right-of-way grant holders.

Total Estimated Number of Annual Responses: 10,305 responses for 1010-0006, and 5,302 responses for 1010-0114.

Total Estimated Number of Annual Burden Hours: 19,041 hours for 1010-0006, and 18,323 hours for 1010-0114.

Respondent's Obligation: Responses to this collection of information are mandatory, or are required to obtain or retain a benefit.

Frequency of Collection: The frequency of response varies, but is primarily on the occasion or as per the requirement.

Total Estimated Annual Nonhour Burden Cost: \$766,053 for 1010-0006, and \$165,492 for 1010-0114.

The following is a brief explanation of how the proposed regulatory changes would affect the various subparts' hour and non-hour cost burdens:

30 CFR part 550, Subpart A (OMB Control Number 1010-0114):

Proposed § 550.160(b) would be revised to clarify that a right-of-use and easement grant holder must exercise the grant according to the terms of the grant and the applicable regulations of part 550, as well as the requirements of part 250, subpart Q. The annual burden hour would not change based on this clarification.

Proposed § 550.160(c) would be revised to update the lessee qualification requirements previously provided in § 556.35 (now obsolete), with associated burden hours “to establish a regional Company File as required by BOEM,” to reflect the requirements in BOEM’s existing regulations at §§ 556.400 through 556.402, which requires a lessee to demonstrate qualifications to hold a lease on the OCS and to obtain a BOEM qualification number. The burden is currently identified in OMB Control Number 1010-0114, and although the description of the lessee qualification requirements has changed slightly, the annual burden would not change.

Proposed § 550.160(c) would also clarify that the criteria to determine when the holder of a right-of-use and easement grant that serves an OCS lease may be required to provide security by replacing a vague reference to “bonding requirements” with a cross-reference to § 550.166(d) and its criteria. The annual burden hour would not change based on this clarification.

Proposed § 550.166 (d)(1) relates to BOEM’s determination of whether additional security is necessary to ensure compliance with the obligations under a right-of-use and easement grant. This determination will be based on whether a right-of-use and easement grant holder has the ability to carry out present and future financial obligations. The criteria proposed for the financial determination include an issuer credit rating, or a proxy credit rating based on audited financial information. The issuer credit rating and the audited financial information on which BOEM determines a proxy credit rating already exist. The burden of determining a proxy credit rating falls on BOEM. The annual burdens placed on the grant holder would be minimal and would be included in the burden estimates for 30 CFR 556.901(d) found in OMB Control Number 1010-0006.

New § 550.166(d)(2) would allow BOEM to consider the issuer credit rating or proxy credit rating of a predecessor right-of-use and easement grant holder or a predecessor lessee. This is a



new provision that may slightly increase annual burden hours. Burden change would be reflected in the burden estimate for 30 CFR 556.901(d)(2) found in OMB Control Number 1010-0006.

30 CFR part 550, Subpart J (OMB Control Number 1010-0006):

Proposed § 550.1011(d)(1) relates to BOEM's determination of whether additional security is necessary to ensure compliance with the obligations under a pipeline right-of-way grant. This determination would be based on whether a pipeline right-of-way grant holder has the ability to carry out present and future financial obligations. The criteria proposed for the financial determination include an issuer credit rating or a proxy credit rating. The issuer credit rating and the audited financial information on which BOEM determines a proxy credit rating already exist. The burden of determining a proxy credit rating falls on BOEM. The annual burdens placed on the grant holder would be minimal and would be included in the burden estimates for 30 CFR 556.901(d).

Proposed § 550.1011(d)(2)(i) would allow BOEM to consider the issuer credit rating or proxy credit rating of a co-grant holder. This is a new provision that may slightly increase annual burden hours. Burden change would be reflected in the burden estimates for 30 CFR 556.901(d)(2).

Proposed § 550.1011(d)(2)(ii) would allow BOEM to consider the issuer credit rating or proxy credit rating of a predecessor pipeline right-of-way grant holder. This is a new provision that may slightly increase annual burden hours. Burden change would be reflected in the burden estimates for 30 CFR 556.901(d)(2).

30 CFR part 556, Subpart I (OMB Control Number 1010-0006):

Proposed § 556.901(d)(1) relates to BOEM's determination of whether additional security is necessary to ensure compliance with the obligations under a lease. This determination would be based on the lessee's ability to carry out present and future financial obligations as demonstrated by an issuer credit rating or a proxy credit rating determined by BOEM based on audited financial information.

New § 556.901(d)(2)(i) would allow BOEM to consider the issuer credit rating or proxy credit rating of a co-lessee, and new § 556.901(d)(2)(ii) would allow BOEM to consider the net present value of proved oil and gas reserves on the lease. There would be no need to submit proved reserve information if the lessee is not required to provide additional bonding based on its issuer credit rating, or proxy credit rating, or those of its co-lessees or predecessors. Under the existing regulations, the Regional Director was to take this "financial strength" information into account in every case when determining whether additional security is necessary.

New § 556.901(d)(2)(iii) would allow BOEM to consider the issuer credit rating or proxy credit rating of a predecessor lessee. This would not change existing burden hour estimates. This proposed requirement would likely increase the number of respondents due to additional companies' preparing and submitting an issuer credit rating or audited financials so that BOEM can determine proxy credit ratings.

The existing OMB approved hour burden for each respondent to prepare and submit the information for the existing evaluation criteria requirements is 3.5 hours. In this proposed rule, the evaluation criteria would be streamlined and would likely require less time for the respondents to prepare and submit the information, particularly for an issuer credit rating or audited financials. However, the time necessary for companies to prepare and submit information on the proved oil and gas reserves would likely be greater than 3.5 hours. Therefore,

BOEM proposes to retain the 3.5 hour burden to reflect the decrease in time required to prepare and submit issuer credit ratings and audited financials and the increase in time required for preparing and submitting information on proved reserves. When the final rule becomes effective, the related burden hours for all respondents (a lessee, co-lessee, a co-grant holder, and/or a predecessor) would be included in OMB Control Number 1010-0006.

The OMB approved number of respondents who currently submit financial information under the existing provisions is 166 respondents. Recently, BOEM has seen the number of leases decrease in the Gulf of Mexico. Therefore, BOEM expects the overall number of respondents, even with the increase of new respondents related to § 556.901(d)(2), to be less than the current 166 respondents. BOEM estimates the new number of respondents would be approximately between 150 and 160 respondents. When the final rule becomes effective, BOEM will include the new number of respondents in OMB Control Number 1010-0006.

The existing OMB approved annual burden hours for § 556.901 related to demonstrating financial worth/ability to carry out present and future financial obligations is 581 hours. With the changes provided in the proposed rule and described above, BOEM estimates that the annual hour burden would decrease by approximately 21 annual burden hours. This decrease in annual burden hours would be reflected in OMB Control Number 1010-0006 when the final rule becomes effective.

Proposed revisions to § 556.904 would allow the Regional Director to authorize a right-of-use and easement grant holder and a pipeline right-of-way grant holder, as well as a lessee, to establish a decommissioning account as additional security required under § 556.901(d), or § 550.166(d) or § 550.1011(d). BOEM also proposes to remove the requirement to provide instructions for the institution managing the account to purchase Treasury securities pledged to

BOEM and to actually use such Treasuries to fund the account before the account equals the maximum insurable amount determined by the Federal Deposit Insurance Corporation, currently \$250,000. A new provision is proposed under § 556.904(a)(3), which would require immediate submission of a bond or other security in the amount equal to the remaining unsecured portion of the estimated decommissioning liability amount if the initial payment or any scheduled payment into the decommissioning account is not timely made. This provision may increase the annual burden hours slightly, and would be reflected in OMB Control Number 1010-0006.

Proposed § 556.905(b)(2) would be revised to eliminate the requirement that, when a guarantor becomes unqualified, a lessee must cease production, until bond coverage requirements are met. The regulatory provision would be replaced with a requirement to immediately submit and maintain a substitute bond or other security. Both the existing and proposed provisions require the lessee to provide bond coverage; however, BOEM's current OMB Control Number 1010-0006 does not quantify the burdens associated with either situation. Therefore, BOEM would add approximately 8 annual burden hours to OMB Control Number 1010-0006 for any lessee whose guarantor became unqualified.

Proposed § 556.905(c) relates to the guarantor's ability to carry out present and future financial obligations, which would be evaluated using an issuer credit rating, or a proxy credit rating based on audited financial information, both of which exist independent of the requirement for submitting them to BOEM. Since BOEM would evaluate the financial ability of the guarantor, the burden would fall on BOEM. The annual burdens placed on the guarantor would be minimal and would be included in the burden estimates for OMB Control Number 1010-0006.

Proposed § 556.905(c) would remove the requirement that a guarantee ensure compliance with all lessees' or grant holders' obligations and the obligations of all operators on the lease or

grant. This revision would allow a third-party guarantor to limit the obligations covered by the third-party guarantee. In some situations, this change could result in additional paperwork burden due to additional bonds or other security that must be provided to BOEM to cover obligations previously covered by a third-party guarantee. BOEM estimates these occurrences to be low and the annual burdens would be included in the burden estimates for OMB Control Number 1010-0006.

Proposed § 556.905(d) also replaces the indemnity agreement with a third-party guarantee agreement with comparable provisions. This change would not impact annual burden hours.

Proposed § 556.905(d)(4) would provide that a lessee or grant holder and the guarantor under a third-party guarantee may request BOEM to cancel a third-party guarantee. BOEM would cancel a third-party guarantee under the same terms and conditions provided for cancellation of additional bonds in proposed § 556.906(d)(2). The existing OMB burden under § 556.905 and § 556.906 would be expanded to include this new provision. The current burden for OMB Control Number 1010-0006 is overestimated at ½ hour time by 378 responses. Therefore, the burden added by the new provision for these types of requests would be included in the existing burden.

Proposed § 556.906(d)(2) would be revised to add three additional circumstances when BOEM may cancel an additional bond or other security. Proposed paragraphs 556.906(d)(2)(ii)(A) through (C) would require a cancellation request from the lessee or grant holder, or the surety, based on assertions that one of these three circumstances is present. BOEM already receives these types of requests and has approved the requests, where warranted, on the basis of a departure from the regulations. Therefore, the existing OMB burden estimate for OMB Control Number 1010-0006 includes these requests.

Overall, this proposed rule would result in the following adjustments in hour burden, which would lead to an overall reduction of 13 annual burden hours:

- The hours per response for all respondents (*i.e.*, a lessee, a co-lessee, a co-grant holder, and/or a predecessor) who demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required, along with the monitoring and submission of required information, will remain at 3.5 hours as approved by OMB in OMB Control Number 1010-0006. The number of responses for the provisions related to §§ 550.160, 550.166, 550.1011, and 556.900 through 902 would decrease to 160 respondents from 166 respondents due to program changes as explained above. The related existing and new provisions would result in a decrease of 21 burden hours from 581 to 560 annual burden hours, which would be reflected in OMB Control Number 1010-0006.
- The hours per response for proposed § 556.905(b)(2) would be an increase from 0 to 2 hours. The number of responses for this provision would increase from 0 to 4. Therefore, this new provision would add 8 annual burden hours to OMB Control Number 1010-0006.

If this proposed rule becomes effective, BOEM would use the existing OMB control numbers for the affected subparts discussed above and would adjust their IC burdens accordingly.

The IC does not include questions of a sensitive nature. BOEM will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI implementing regulations (43 CFR part 2), 30 CFR 556.104, *Information collection and proprietary*

*information, and 30 CFR 550.197, Data and information to be made available to the public or for limited inspection.*

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) total capital and startup cost component and (2) annual operation, maintenance, and purchase of service component. Your estimates should consider the cost to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (1) before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection by the date indicated in the DATES section to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or via the [www.reginfo.gov](http://www.reginfo.gov) portal (online). You may view the information collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>. Please provide a copy of your comments to the BOEM Information Collection Clearance Officer (see the ADDRESSES section). You may contact Anna Atkinson, BOEM Information Collection Clearance Officer at (703) 787-1025 with any questions. Please reference Risk Management, Financial Assurance and Loss Prevention (OMB Control No. 1010-0006), in your comments.

#### **J. National Environmental Policy Act**

A detailed environmental analysis under the National Environmental Policy Act of 1969 (NEPA) is not required if the proposed rule is covered by a categorical exclusion (see 43 CFR 46.205). This proposed rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental Categorical Exclusion in that this proposed rule is “. . . of an administrative, financial, legal, technical, or procedural nature . . . .” We have also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### **K. Data Quality Act**

In developing this proposed 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, sec. 515, 114 Stat. 2763, 2763A–153–154).

#### **L. Effects on the Nation’s Energy Supply (E.O. 13211)**



Under E.O. 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for “significant energy actions.” This should include a detailed statement of any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) expected to result from the action and a discussion of reasonable alternatives and their effects.

The proposed rule is an E.O. 13771 deregulatory action and does not add new regulatory compliance requirements that would lead to adverse effects on the nation’s energy supply, distribution, or use. Rather, in accordance with E.O. 13783, the proposed regulatory changes will help to reduce compliance burdens on the oil and gas industry that may hinder the continued development or use of domestically produced energy resources.

The BOEM regulatory changes are expected to provide the oil and gas industry with direct annualized compliance cost savings of \$17.0 million (7% discounting) over the proposed rule’s 20-year analysis of the rule’s effects. The compliance cost savings experienced by the offshore oil and gas industry under this proposed rule will reduce the overall costs of OCS operating companies. BSEE’s proposals result in no cost impacts. Moreover, since BSEE’s proposed regulatory changes apply only to facilities that occur after exploration, development and production activities have ended, those changes would not affect the nation’s energy supply, distribution and use. Reduced regulatory burdens do not adversely affect productivity, competition, or prices within the energy sector. This proposed rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

#### **M. Clarity of This Regulation**

BOEM is 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 BOEM publishes must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

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

## **List of Subjects**

### *30 CFR Part 250*

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

### *30 CFR Part 290*

Administrative practice and procedure.

### *30 CFR Part 550*

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

### *30 CFR Part 556*

Administrative practice and procedure, Continental shelf, Environmental protection, Federal lands, Government contracts, Intergovernmental relations, Oil and gas exploration, Outer continental shelf, Mineral resources, Reporting and recordkeeping requirements.

Casey Hammond  
Principal Deputy Assistant Secretary,  
Exercising the Authority of the Assistant Secretary,  
Land and Minerals Management

For the reasons stated in the preamble, BOEM and BSEE propose to amend 30 CFR parts 250, 290, 550, and 556 as follows:

**TITLE 30—MINERAL RESOURCES**

**CHAPTER II—BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT,  
DEPARTMENT OF THE INTERIOR**

**SUBCHAPTER B--OFFSHORE**

**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. Amend § 250.105 by removing the definitions of “Easement” and “Right-of-use” and adding in their place in alphabetical order the definition for “Right-of-Use and Easement” to read as follows:

**§ 250.105 Definitions.**

\* \* \* \* \*

*Right-of-Use and Easement* means a right to use a portion of the seabed at an OCS site, other than on a lease you own, to construct, modify, or maintain platforms, artificial islands, facilities, installations, and other devices, established to support the exploration, development, or production of oil and gas, mineral, or energy resources from an OCS or State submerged lands lease.

\* \* \* \* \*

3. Amend § 250.1700 by revising the section heading and paragraph (a)(2), and adding paragraph (d), to read as follows:

**§ 250.1700 What do the terms “decommissioning,” “obstructions,” “facility,” and “predecessor” mean?**

(a) \* \* \*

(2) Returning the lease, pipeline right-of-way, or the area of a right-of-use and easement to a condition that meets the requirements of BSEE and other agencies that have jurisdiction over decommissioning activities.

\* \* \* \* \*

(d) *Predecessor* means a prior lessee or owner of operating rights, or a prior holder of a right-of-use and easement grant, or a pipeline right-of-way grant, that is liable for accrued obligations on that lease or grant.

4. Revise § 250.1701 to read as follows:

**§ 250.1701 Who must meet the decommissioning obligations in this subpart?**

(a) Lessees, owners of operating rights, and their predecessors, are jointly and severally liable for meeting decommissioning obligations for facilities on leases, including the obligations related to lease-term pipelines, as the obligations accrue and until each obligation is met.

(b) All holders of a right-of-way grant and their predecessors are jointly and severally liable for meeting decommissioning obligations for facilities on their right-of-way, including right-of-way pipelines, as the obligations accrue and until each obligation is met.

(c) All right-of-use and easement grant holders and prior lessees of the parcel on whose leases there existed facilities or obstructions that remain on the right-of-use and easement grant are jointly and severally liable for meeting decommissioning obligations, including obligations for any well, pipeline, platform or other facility, or an obstruction, on their right-of-use and easement, as the obligations accrue and until each obligation is met.

(d) In this subpart, the terms “you” or “I” refer to lessees and owners of operating rights, including their predecessors, as to facilities installed under the authority of a lease; to pipeline right-of-way grant holders, including their predecessors, as to facilities installed under the authority of a pipeline right-of-way grant; and to right-of-use and easement grant holders, including their predecessors, such as former lessees of the parcel, as to facilities constructed, modified, or maintained under the authority of the right-of-use and easement grant.

5. Amend § 250.1702 by revising paragraph (e), re-designating paragraph (f) as paragraph (g), and adding new paragraph (f), to read as follows:

**§ 250.1702 When do I accrue decommissioning obligations?**

\* \* \* \* \*

(e) Are or become a holder of a pipeline right-of-way on which there is a pipeline, platform, or other facility, or an obstruction;

(f) Are or become the holder of a right-of-use and easement grant on which there is a well, pipeline, platform, or other facility, or an obstruction; or

\* \* \* \* \*

6. Amend § 250.1703 by revising paragraph (e) to read as follows:

**§ 250.1703 What are the general requirements for decommissioning?**

\* \* \* \* \*

(e) Clear the seafloor of all obstructions created by your lease, pipeline right-of-way, or right-of-use and easement operations;

\* \* \* \* \*

7. Amend § 250.1704 by redesignating paragraphs (b) through (j) as paragraphs (c) through (k) respectively, and adding new paragraph (b) to read as follows:

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

\* \* \* \* \*

**DECOMMISSIONING APPLICATIONS AND REPORTS TABLE**

<b>Decommissioning applications and reports</b>	<b>When to submit</b>	<b>Instructions</b>
<p>*****</p> <p>(b) Submit decommissioning plan per § 250.1708(b)(3) that addresses all wells, platforms and other facilities, pipelines, and site clearance upon receiving an order to perform decommissioning.</p> <p>*****</p>	<p>Within 90 days of receiving an order to perform decommissioning under § 250.1708(a)</p>	<p>Include information required under § 250.1708(b)(2) and (3)</p>

8. Add § 250.1708 to read as follows:

**§ 250.1708 – How will BSEE enforce accrued decommissioning obligations against predecessors?**

(a) Except as provided in paragraph (d) of this section, when holding predecessors responsible for performing accrued decommissioning obligations, BSEE will issue decommissioning orders to groups of predecessors who held interests in the lease or grant within the same general timeframe in reverse chronological order. BSEE will issue such orders to predecessors in groups organized by the following:

(1) Changes in designated operator(s) over time (*i.e.*, all predecessors who held relevant lease or grant interests during the tenure of a particular designated operator or during the tenure of contemporaneous designated operators); and

(2) Predecessors who assigned interests to a lessee, owner of operating rights, or grant holder that subsequently defaulted.

(b) When BSEE issues an order to predecessors to perform accrued decommissioning obligations, the predecessors must:

(1) Within 30 days of receiving the order, begin maintaining and monitoring, through a single entity identified to BSEE, any facility, including wells and pipelines as identified by BSEE in the order, in accordance with applicable requirements under this part (including, but not limited to, testing safety valves and sensors, draining vessels, and performing pollution inspections); and

(2) Within 60 days of receiving the order, designate a single entity to serve as operator for the decommissioning operations;

(3) Within 90 days of receiving the order, the entity identified in paragraph (b)(2) of this section must submit a decommissioning plan for approval by the Regional Supervisor that includes the scope of work and a reasonable decommissioning schedule for all wells, platforms and other facilities, pipelines, and site clearance, as identified in the order; and

(4) Perform the required decommissioning in the time and manner specified by BSEE in its decommissioning plan approval.

(c) Failure to comply with the obligations under paragraph (b) of this section to maintain and monitor a facility or to submit a decommissioning plan may result in a Notice of Incident of Noncompliance and potentially other enforcement actions, including civil penalties and disqualification as an operator.



(d) Under certain circumstances, BSEE may depart from the order of recourse prescribed in paragraph (a) of this section and issue orders to any or all predecessors for the performance of their respective accrued decommissioning obligations. Those circumstances include, but are not limited to:

(1) Failure to obtain approval of a decommissioning plan under paragraph (b)(3) of this section or to execute decommissioning according to the approved decommissioning plan;

(2) Determination by the Regional Supervisor that there is an emergency condition, safety concern, or environmental threat, including but not limited to facilities not being properly maintained and monitored in accordance with applicable requirements under this part; or

(3) Determination by the Regional Supervisor that proceeding pursuant to paragraph (a) of this section would unreasonably delay decommissioning.

(e) BSEE's issuance of orders to any predecessors will not relieve any current lessee or grant holder, or any other predecessor, of its obligations to comply with any prior decommissioning order or to satisfy any accrued decommissioning obligations.

(f) A pending appeal, pursuant to 30 CFR part 290, of any decommissioning order does not preclude BSEE from proceeding against any or all predecessors other than the appellant in accordance with paragraph (d) of this section.

9. Add § 250.1709 to read as follows:

**§ 250.1709 What must I do to appeal a BSEE final decommissioning decision or order issued under this subpart?**

If you file an appeal, pursuant to 30 CFR part 290, of a BSEE decision or order to perform any decommissioning activity under subpart Q of this part, in order to seek to obtain a stay of that decision or order, you must post a surety bond in an amount that BSEE determines will be

adequate to ensure completion of the specified decommissioning activities in the event that your appeal is denied and you thereafter fail to perform any of your decommissioning obligations.

10. Amend § 250.1725 by revising the first sentence of paragraph (a) to read as follows:

**§ 250.1725 When do I have to remove platforms and other facilities?**

(a) You must remove all platforms and other facilities within 1 year after the lease, pipeline right-of-way, or right-of-use and easement terminates, unless you receive approval to maintain the structure to conduct other activities.\* \* \*

\* \* \* \* \*

**SUBCHAPTER C—APPEALS**

**PART 290—APPEAL PROCEDURES**

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

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

12. Amend § 290.7 by revising paragraph (a)(2) to read as follows:

**§290.7 Do I have to comply with the decision or order while my appeal is pending?**

(a) \* \* \*

(2) You post a surety bond under 30 CFR 250.1409 pending the appeal challenging an order to pay a civil penalty or under 30 CFR 250.1709 pending the appeal challenging a decommissioning decision or order.

\* \* \* \* \*

**CHAPTER V—BUREAU OF OCEAN ENERGY MANAGEMENT, DEPARTMENT OF  
THE INTERIOR**

**SUBCHAPTER B—OFFSHORE**

**PART 550—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER  
CONTINENTAL SHELF**

13. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

**Subpart A—General**

14. Amend § 550.105 by:

- a. Removing the definition of “Easement”;
- b. Adding definitions in alphabetical order for “Issuer credit rating” and “Predecessor”;
- c. Removing the definition of “Right-of-use”;
- d. Adding definitions in alphabetical order for “Right-of-Use and Easement” and “Security”; and
- e. Revising the definition of “You”.

The additions and revision read as follows:

**§ 550.105 Definitions.**

\* \* \* \* \*

*Issuer credit rating* means a forward-looking opinion about an obligor’s overall creditworthiness. This opinion focuses on the obligor’s capacity and willingness to meet its financial commitments as they come due. It does not apply to any specific financial obligation, as it does not take into account the nature of and provisions of the obligation, its standing in bankruptcy or liquidation, statutory preferences, or the legality and enforceability of the obligation.

\* \* \* \* \*

*Predecessor* means a prior lessee or owner of operating rights, or a prior holder of a right-of-use and easement grant or a pipeline right-of-way grant, that is liable for accrued obligations on that lease or grant.

\* \* \* \* \*

*Right-of-Use and Easement* means a right to use a portion of the seabed at an OCS site other than on a lease you own, to construct, modify or maintain platforms, artificial islands, facilities, installations, and other devices, established to support the exploration, development, or production of oil and gas, mineral, or energy resources from an OCS or State submerged lands lease.

\* \* \* \* \*

*Security* means a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee or any other form of financial assurance provided to BOEM to ensure compliance with obligations under a lease, a right-of-use and easement grant, or a pipeline right-of-way grant.

\* \* \* \* \*

*You*, depending on the context of the regulations, means a bidder, a lessee (record title owner), a sublessee (operating rights owner), a right-of-use and easement grant holder, a pipeline right-of-way grant holder, a predecessor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the above.

15. Amend § 550.160 by revising the introductory text and paragraphs (a) introductory text, (b) and (c) to read as follows:

**§ 550.160 When will BOEM grant me a right-of-use and easement, and what requirements must I meet?**

BOEM may grant you a right-of-use and easement on leased or unleased lands or both on the OCS, if you meet these requirements:

(a) You must need the right-of-use and easement to construct or maintain platforms, artificial islands, facilities, installations, and other devices at an OCS site other than an OCS lease you own, that are:

\* \* \* \* \*

(b) You must exercise the right-of-use and easement according to the terms of the grant and the applicable regulations of this part, as well as the requirements of part 250, subpart Q of this title.

(c) You must meet the qualification requirements at §§ 556.400 through 556.402 of this chapter and the bonding requirements in § 550.166(d).

\* \* \* \* \*

16. Revise § 550.166 to read as follows:

**§ 550.166 If BOEM grants me a right-of-use and easement, what surety bond or other security must I provide?**

(a) Before BOEM grants you a right-of-use and easement on the OCS that serves your State lease, you must furnish the Regional Director a surety bond for \$500,000.

(b) The requirement to furnish a surety bond under paragraph (a) of this section may be satisfied if your operator provides a surety bond in the required amount that guarantees compliance with all the terms and conditions of the right-of-use and easement grant.

(c) The requirements for lease bonds in § 556.900(d) through (g) and § 556.902 of this chapter apply to the \$500,000 surety bond required if BOEM grants you a right-of-use and easement to serve your State lease.

(d) If BOEM grants you a right-of-use and easement that serves either an OCS lease or a State lease, the Regional Director may determine that additional security (*i.e.*, security above the amount prescribed in paragraph (a) of this section) is necessary to ensure compliance with the obligations under your right-of-use and easement grant based on an evaluation of your ability to carry out present and future obligations on the right-of-use and easement. The Regional Director may require you to provide additional security if you do not meet at least one of the criteria provided in paragraphs (d)(1) or (2) of this section:

(1) You have an issuer credit rating or a proxy credit rating that meets the criteria in § 556.901(d)(1) of this chapter; or

(2) If you do not meet the criteria in paragraph (d)(1) of this section, a predecessor right-of-use and easement grant holder or a predecessor lessee liable for decommissioning any facilities on your right-of-use and easement has an issuer credit rating or a proxy credit rating that meets the criteria set forth in § 556.901(d)(1) of this chapter. However, the Regional Director may require you to provide additional security for decommissioning obligations for which such a predecessor is not liable.

(e) This additional security must:

(1) Meet the requirements of § 556.900(d) through (g) and § 556.902 of this chapter; and

(2) Cover costs and liabilities for regulatory compliance, well abandonment, platform and structure removal, and site clearance of the seafloor of the right-of-use and easement, in accordance with the standards set forth in part 250, subpart Q of this title.

(f) If you fail to replace a deficient bond or fail to provide additional security upon demand, the Regional Director may:

(1) Assess penalties under subpart N of this part;

(2) Request BSEE to suspend operations on your right-of-use and easement; and

(3) Initiate action for cancellation of your right-of-use and easement grant.

#### **Subpart J—Pipelines and Pipeline Rights-of-Way**

17. Revise § 550.1011 to read as follows:

##### **§ 550.1011 Bond or other security requirements for pipeline right-of-way grant holders.**

(a) When you apply for or are the holder of a pipeline right-of-way grant, you must furnish and maintain a \$300,000 areawide bond that guarantees compliance with all the terms and conditions of all of the pipeline right-of-way grants you hold in an OCS area as defined in § 556.900(b) of this chapter.

(b) The requirement to furnish and maintain an areawide pipeline right-of-way bond under paragraph (a) of this section may be satisfied if your operator or a co-grant holder provides an areawide pipeline right-of-way bond in the required amount that guarantees compliance with all the terms and conditions of the grant.

(c) The requirements for lease bonds in § 556.900(d) through (g) and § 556.902 of this chapter apply to the areawide bond required in paragraph (a) of this section.

(d) The Regional Director may determine that additional security (*i.e.*, security above the amount prescribed in paragraph (a) of this section) is necessary to ensure compliance with the obligations under your pipeline right-of-way grant based on an evaluation of your ability to carry out present and future obligations on the pipeline right-of-way. The Regional Director may require you to provide additional security if you do not meet at least one of the criteria provided in paragraphs (d)(1) or (2) of this section:

(1) You have an issuer credit rating or a proxy credit rating that meets the criteria in § 556.901(d)(1) of this chapter; or

(2) If you do not meet the criteria in paragraph (d)(1) of this section:

(i) Your co-grant holder has an issuer credit rating or a proxy credit rating that meets the criteria in § 556.901(d)(1) of this chapter; or

(ii) A predecessor pipeline right-of-way grant holder liable for decommissioning any facilities on your pipeline right-of-way has an issuer credit rating or a proxy credit rating that meets the criteria in § 556.901(d)(1) of this chapter. However, the Regional Director may require you to provide additional security for decommissioning obligations for which such a predecessor is not liable.

(e) This additional security must:

(1) Meet the requirements of § 556.900(d) through (g) and § 556.902 of this chapter, and

(2) Cover additional costs and liabilities for regulatory compliance, decommissioning of all pipelines, and site clearance from the seafloor of all obstructions created by your pipeline right-of-way operations in accordance with the standards set forth in part 250, subpart Q of this title.



(f) If you fail to replace a deficient bond or fail to provide additional security upon demand, the Regional Director may:

- (1) Assess penalties under subpart N of this part;
- (2) Request BSEE to suspend operations on your pipeline; and
- (3) Initiate action for forfeiture of your pipeline right-of-way grant in accordance with § 250.1013 of this title.

**PART 556—LEASING OF SULFUR OR OIL AND GAS AND BONDING  
REQUIREMENTS IN THE OUTER CONTINENTAL SHELF**

18. Revise the authority citation for part 556 to read as follows:

Authority: 30 U.S.C. 1701 note; 30 U.S.C. 1711; 31 U.S.C. 9701; 42 U.S.C. 6213; 43 U.S.C. 1334.

**Subpart A—General Provisions**

19. Amend § 556.105 paragraph (b) by:

- a. Adding definitions in alphabetical order for “Issuer credit rating” and “Predecessor”;
- b. Revising the definition of “Right-of-Use and Easement (RUE)”;
- c. Adding a definition in alphabetical order for “Security”;
- d. Removing the definition of “Security or securities”; and
- e. Revising the definition of “You”.

The additions and revisions read as follows:

**§ 556.105 Acronyms and definitions.**

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

*Issuer credit rating* means a forward-looking opinion about an obligor's overall creditworthiness. This opinion focuses on the obligor's capacity and willingness to meet its financial commitments as they come due. It does not apply to any specific financial obligation, as it does not take into account the nature of and provisions of the obligation, its standing in bankruptcy or liquidation, statutory preferences, or the legality and enforceability of the obligation.

\* \* \* \* \*

*Predecessor* means a prior lessee or owner of operating rights, or a prior holder of a right-of-use and easement grant or a pipeline right-of-way grant, that is liable for accrued obligations on that lease or grant.

\* \* \* \* \*

*Right-of-Use and Easement* means a right to use a portion of the seabed at an OCS site other than on a lease you own, to construct, modify or maintain platforms, artificial islands, facilities, installations, and other devices, established to support the exploration, development, or production of oil and gas, mineral, or energy resources from an OCS or State submerged lands lease.

\* \* \* \* \*

*Security* means a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee or any other form of financial assurance provided to BOEM to ensure compliance with obligations under a lease, a right-of-use and easement grant or a pipeline right-of-way grant.

\* \* \* \* \*

*You*, depending on the context of the regulations, means a bidder, a lessee (record title owner), a sublessee (operating rights owner), a right-of-use and easement grant holder, a pipeline right-of-way grant holder, a predecessor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the above.

### **Subpart I—Bonding or Other Financial Assurance**

20. Amend § 556.900 by revising the section heading and paragraphs (a) introductory text, (a)(2) and (3), (g) introductory text, and (h) to read as follows:

#### **§ 556.900 Bond or other security requirements for an oil and gas or sulfur lease.**

\* \* \* \* \*

(a) Before BOEM will issue a new lease or approve the assignment or sublease of an interest in an existing lease, you or another record title or operating rights owner of the lease must:

\* \* \* \* \*

(2) Maintain a \$300,000 areawide bond that guarantees compliance with all the terms and conditions of all your oil and gas and sulfur leases in the area where the lease is located; or

(3) Maintain a lease or areawide bond in the amount required in § 556.901(a) or (b).

\* \* \* \* \*

(g) You may pledge alternative types of security instruments instead of providing a surety bond if the Regional Director determines that the alternative security protects the interests of the United States to the same extent as the required surety bond.

\* \* \* \* \*

(h) If you fail to replace a deficient bond or to provide additional security upon demand, the Regional Director may:

- (1) Assess penalties under part 550, subpart N of this chapter;
- (2) Request BSEE to suspend production and other operations on your lease in accordance with § 250.173 of this title; and
- (3) Initiate action to cancel your lease.

21. Amend § 556.901 by revising the section heading and paragraphs (a)(1)(i) introductory text and (c) through (f), and adding paragraph (g) to read as follows:

**§ 556.901 Bonds and additional security.**

(a) \* \* \*

(1)(i) You must furnish the Regional Director a \$200,000 lease exploration bond that guarantees compliance with all the terms and conditions of the lease by the earliest of:

\* \* \* \* \*

(c) If you can demonstrate to the satisfaction of the Regional Director that you can satisfy your decommissioning obligations for less than the amount of security required under paragraph (a)(1) or (b)(1) of this section, the Regional Director may accept security in an amount less than the prescribed amount, but not less than the estimated cost for decommissioning.

(d) The Regional Director may determine that additional security (*i.e.*, security above the amounts prescribed in § 556.900(a) and paragraphs (a) and (b) of this section) is necessary to ensure compliance with the obligations under your lease, the regulations in this chapter, and the regulations in 30 CFR chapters II and XII, based on an evaluation of your ability to carry out present and future obligations on the lease. The Regional Director may require you to provide additional security if you do not meet at least one of the criteria provided paragraphs (d)(1) or (2) of this section:

(1) You have an issuer credit rating from a nationally recognized statistical rating organization (NRSRO), as defined by the United States Securities and Exchange Commission (SEC), greater than or equal to either BB- from S&P Global Ratings or Ba3 from Moody's Investor Service, or an equivalent credit rating provided by an SEC-recognized NRSRO, or a proxy credit rating determined by the Regional Director based on audited financial information (including an income statement, balance sheet, statement of cash flows, and the auditor's certificate) greater than or equal to either BB- from S&P Global Ratings or Ba3 from Moody's Investor Service or an equivalent credit rating provided by an SEC-recognized NRSRO; or

(2) If you do not meet the criteria in paragraph (d)(1) of this section:

(i) Your co-lessee has an issuer credit rating or a proxy credit rating that meets the criteria set forth in paragraph (d)(1) of this section;

(ii) There are proved oil and gas reserves on the lease, as defined by the SEC at 17 CFR 210.4-10(a)(22), the net present value of which exceeds three times the cost of the decommissioning associated with the production of those reserves; or

(iii) A predecessor lessee liable for decommissioning any facilities on your lease has an issuer credit rating or a proxy credit rating that meets the criteria set forth in paragraph (d)(1) of this section. However, the Regional Director may require you to provide additional security for decommissioning obligations for which such a predecessor is not liable.

(e) You may satisfy the Regional Director's demand for additional security by increasing the amount of your existing bond or by providing additional bonds or other security.

(f) The Regional Director will determine the amount of additional security required to guarantee compliance. The Regional Director will consider potential underpayment of royalty and cumulative decommissioning obligations.

(g) If your cumulative potential obligations and liabilities either increase or decrease, the Regional Director may adjust the amount of additional security required.

(1) If the Regional Director proposes an adjustment, the Regional Director will:

(i) Notify you and the surety of any proposed adjustment to the amount of security required; and

(ii) Give you an opportunity to submit written or oral comment on the adjustment.

(2) If you request a reduction of the amount of additional security required, you must submit evidence to the Regional Director demonstrating that the projected amount of royalties due the Government and the estimated costs of decommissioning are less than the required security amount. If the Regional Director finds that the evidence you submit is convincing, the Regional Director will reduce the amount of security required.

22. Amend § 556.902 by revising the section heading and paragraphs (a) introductory text and (e)(2) to read as follows:

**§ 556.902 General requirements for bonds or other security.**

(a) Any bond or other security that you, as lessee, operating rights owner, grant holder, or operator, provide under this part, or under part 550 of this chapter, must:

\* \* \* \* \*

(e) \* \* \*

(2) A pledge of Treasury securities as provided in § 556.900(f);

\* \* \* \* \*

23. Revise § 556.903 to read as follows:

**§ 556.903 Lapse of bond.**

(a) If your surety becomes bankrupt, insolvent, or has its charter or license suspended or revoked, any bond coverage from that surety must be replaced. In that event, you must notify the Regional Director of the lapse of your bond and promptly provide a new bond or other security in the amount required under §§ 556.900 and 556.901, or § 550.166 or § 550.1011 of this chapter.

(b) You must notify the Regional Director of any action filed alleging that you, your surety, guarantor or financial institution are insolvent or bankrupt. You must notify the Regional Director within 72 hours of learning of such an action. All bonds or other security must require the surety, guarantor or financial institution to provide this information to you and directly to BOEM.

24. Revise § 556.904 to read as follows:

**§ 556.904 Decommissioning accounts.**

(a) The Regional Director may authorize you to establish a decommissioning account in a federally insured financial institution in lieu of the bond required under § 556.901(d), or § 550.166(d) or § 550.1011(d) of this chapter. The decommissioning account must provide that funds may not be withdrawn without the written approval of the Regional Director.

(1) Funds in the account must be payable upon demand to BOEM if BOEM determines you have failed to meet your decommissioning obligations.

(2) You must fully fund the account to cover all decommissioning costs pursuant to the schedule the Regional Director prescribes.

(3) If you fail to make the initial payment or any scheduled payment into the decommissioning account, you must immediately submit, and subsequently maintain, a bond or other security in an amount equal to the remaining unsecured portion of your estimated decommissioning liability.

(b) Any interest paid on funds in a decommissioning account will be treated as other funds in the account unless the Regional Director authorizes in writing the payment of interest to the party who deposits the funds.

(c) The Regional Director may require you to create an overriding royalty or production payment obligation for the benefit of an account established as security for the decommissioning of a lease. The required obligation may be associated with oil and gas or sulfur production from a lease other than the lease secured through the decommissioning account.

25. Revise § 556.905 to read as follows:

**§ 556.905 Third-party guarantees.**

(a) *When the Regional Director may accept a third-party guarantee.* The Regional Director may accept a third-party guarantee instead of an additional bond or other security under § 556.901(d), or § 550.166(d) or § 550.1011(d) of this chapter, if:

(1) The guarantor meets the criteria in paragraph (c) of this section; and

(2) The guarantor submits a third-party guarantee agreement containing each of the provisions in paragraph (d) of this section.



(b) *What to do if your guarantor becomes unqualified.* If, during the life of your third-party guarantee, your guarantor no longer meets the criteria of paragraph (c) of this section, you must:

(1) Notify the Regional Director immediately; and

(2) Immediately submit, and subsequently maintain, a bond or other security covering those obligations previously secured by the third-party guarantee.

(c) *Criteria for acceptable guarantees.* The Regional Director will accept your third-party guarantee if the guarantor has an issuer credit rating or a proxy credit rating that meets the criteria in § 556.901(d)(1).

(d) *Provisions required in all third-party guarantees.* Your third-party guarantee must contain each of the following provisions:

(1) If you fail to comply with the terms of any lease or grant covered by the guarantee, or any applicable regulation, your guarantor must either:

(i) Take corrective action that complies with the terms of such lease or grant, or any applicable regulation, to the extent covered by the guarantee; or,

(ii) Be liable under the third-party guarantee agreement, to the extent covered by the guarantee, to provide, within 7 calendar days, sufficient funds for the Regional Director to complete such corrective action.

(2) If your guarantor wishes to terminate the period of liability under its guarantee, it must:

(i) Notify you and the Regional Director at least 90 days before the proposed termination date;

(ii) Obtain the Regional Director's approval for the termination of the period of liability for all or a specified portion of the guarantee; and

(iii) Remain liable for all work and workmanship performed during the period that the guarantee is in effect.

(3) You must provide acceptable replacement security before the termination of the period of liability under your third-party guarantee.

(4) If you or your guarantor request BOEM to cancel your third-party guarantee, BOEM will cancel the guarantee under the same terms and conditions provided for cancellation of additional bonds and return of pledged security in § 556.906(d)(2) and (e).

(5) The guarantor must submit a third-party guarantee agreement that meets the following criteria:

(i) The third-party guarantee agreement must be executed by your guarantor and all persons and parties bound by the agreement.

(ii) The third-party guarantee agreement must bind, jointly and severally, each person and party executing the agreement.

(iii) When your guarantor is a corporate entity, two corporate officers who are authorized to bind the corporation must sign the third-party guarantee agreement.

(6) Your guarantor and the other corporate entities bound by the third-party guarantee agreement must provide the Regional Director copies of:

(i) The authorization of the signatory corporate officials to bind their respective corporations;

- (ii) An affidavit certifying that the agreement is valid under all applicable laws; and
  - (iii) Each corporation's corporate authorization to execute the third-party guarantee agreement.
- (7) If your third-party guarantor or another party bound by the third-party guarantee agreement is a partnership, joint venture, or syndicate, the third-party guarantee agreement must:
- (i) Bind each partner or party who has a beneficial interest in your guarantor; and
  - (ii) Provide that, upon demand by the Regional Director under your third-party guarantee, each partner is jointly and severally liable for those obligations secured by the guarantee.
- (8) When forfeiture is called for under § 556.907, the third-party guarantee agreement must provide that your guarantor will either:
- (i) Bring your lease or grant into compliance; or
  - (ii) Provide sufficient funds within 7 calendar days, to the extent covered by the guarantee, to permit the Regional Director to complete corrective action.
- (9) The third-party guarantee agreement must contain a confession of judgment. It must provide that, if the Regional Director determines that you are in default of the lease or grant covered by the guarantee or any regulation applicable to such lease or grant, the guarantor:
- (i) Will not challenge the determination; and
  - (ii) Will remedy the default to the extent covered by the guarantee.

(10) Each third-party guarantee agreement is deemed to contain all terms and conditions contained in this paragraph (d), even if the guarantor has omitted these terms in the third-party guarantee agreement.

26. Amend § 556.906 by revising paragraphs (b)(1) through (3), (d) and (e) to read as follows:

**§ 556.906 Termination of the period of liability and cancellation of a bond.**

\* \* \* \* \*

(b) \* \* \*

(1) The new bond is equal to or greater than the bond that was cancelled, or you provide an alternative form of security, and the Regional Director determines that the alternative form of security provides a level of security equal to or greater than that provided by the bond that was cancelled;

(2) For a base bond submitted under § 556.900(a) or § 556.901(a) or (b), or § 550.166(a) or § 550.1011(a) of this chapter, the surety issuing the new bond agrees to assume all outstanding obligations that accrued during the period of liability that was terminated; and

(3) For additional bonds submitted under § 556.901(d), or § 550.166(d) or § 550.1011(d) of this chapter, the surety issuing the new additional bond agrees to assume that portion of the outstanding obligations that accrued during the period of liability that was terminated and that the Regional Director determines may exceed the coverage of the base bond, and of which the Regional Director notifies the surety providing the new additional bond.

\* \* \* \* \*

(d) BOEM will cancel the bond for your lease or grant, the surety that issued the bond will continue to be responsible, and the Regional Director may return any pledged security, as shown in the following table:

<p style="text-align: center;"><b>For the following</b></p>	<p style="text-align: center;"><b>Your bond will be reduced or cancelled or your pledged security will be returned</b></p>
<p>(1) Base bonds submitted under § 556.900(a) or § 556.901(a) or (b), or § 550.166(a) or § 550.1011(a) of this chapter.</p>	<p>Seven years after the lease or grant expires or is terminated, six years after the Regional Director determines that you have completed all bonded obligations, or at the conclusion of any appeals or litigation related to your bonded obligations, whichever is the latest. The Regional Director will reduce the amount of your bond or return a portion of your security if the Regional Director determines that you need less than the full amount of the base bond to meet any potential obligations.</p>
<p>(2) Additional bonds submitted under § 556.901(d), or § 550.166(d) or § 550.1011(d) of this chapter.</p>	<p>(i) When the lease or grant expires or is terminated and the Regional Director determines you have met your bonded obligations, unless the Regional Director:</p> <p>(A) Determines that the future potential liability resulting from any undetected problem is greater than the amount of the base bond; and (B) Notifies the provider of the bond that the Regional Director will wait seven years before canceling all or a part of the additional bond (or longer</p>

	<p>period as necessary to complete any appeals or judicial litigation related to your bonded obligations).</p> <p>(ii) At any time when:</p> <p>(A) BOEM has determined, using the criteria set forth in § 556.901(d), or § 550.166(d) or § 550.1011(d) of this chapter, as applicable, that you no longer need to provide the additional bond for your lease, right-of-use and easement grant, or pipeline right-of-way grant.</p> <p>(B) The operations for which the bond was provided ceased prior to accrual of any decommissioning obligation;</p> <p>or</p> <p>(C) Cancellation of the bond is appropriate because, under the regulations, BOEM determines such bond never should have been required.</p>
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(e) For all bonds, the Regional Director may reinstate your bond as if no cancellation had occurred if:

(1) A person makes a payment under the lease, right-of-use and easement grant, or pipeline right-of-way grant, and the payment is rescinded or must be repaid by the recipient because the person making the payment is insolvent, bankrupt, subject to reorganization, or placed in receivership;

or

(2) The responsible party represents to BOEM that it has discharged its obligations under the lease, right-of-use and easement grant, or pipeline right-of-way grant and the representation was materially false when the bond was cancelled.

27. Amend § 556.907 by revising the section heading and paragraphs (a)(1), (b), (c)(1), (c)(1)(ii), (c)(2)(i) through (iii), (d), (e)(2), (f)(1) and (2), and (g) to read as follows:

**§ 556.907 Forfeiture of bonds or other securities.**

\* \* \* \* \*

(a) \* \* \*

(1) You (the party who provided the bond or other security) refuse, or the Regional Director determines that you are unable, to comply with any term or condition of your lease, right-of-use and easement grant, pipeline right-of-way grant, or any applicable regulation; or

\* \* \* \* \*

(b) The Regional Director may pursue forfeiture of your bond or other security without first making demands for performance against any lessee, operating rights owner, grant holder, or other person authorized to perform lease or grant obligations.

(c) \* \* \*

(1) Notify you, your surety, guarantor, or financial institution holding your decommissioning account, of a determination to call for forfeiture of the bond, security, guarantee, or funds.

\* \* \* \* \*

(ii) The Regional Director will determine the amount to be forfeited based upon an estimate of the total cost of corrective action to bring your lease or grant into compliance.

(2) \* \* \*

(i) You agree to and demonstrate that you will bring your lease or grant into compliance within the timeframe that the Regional Director prescribes;

(ii) Your third-party guarantor agrees to and demonstrates that it will complete the corrective action to bring your lease or grant into compliance within the timeframe that the Regional Director prescribes, even if the cost of compliance exceeds the limit of the guarantee; or

(iii) Your surety agrees to and demonstrates that it will bring your lease or grant into compliance within the timeframe that the Regional Director prescribes, even if the cost of compliance exceeds the face amount of the bond or other surety instrument.

(d) If the Regional Director finds you are in default, he/she may cause the forfeiture of any bonds and other security provided to ensure your compliance with the terms and conditions of your lease or grant and the regulations in this chapter and 30 CFR chapters II and XII.

(e) \* \* \*

(2) Use the funds collected to bring your lease or grant into compliance and to correct any default.

(f) \* \* \*

(1) Take or direct action to obtain full compliance with your lease or grant and the regulations in this chapter; and

(2) Recover from you, any co-lessee, operating rights owner, grant holder or, to the extent covered by the guarantee, any third-party guarantor responsible under this subpart, all costs in excess of the amount the Regional Director collects under your forfeited bond and other security.



(g) If the amount that the Regional Director collects under your forfeited bond and other security exceeds the costs of taking the corrective actions required to obtain full compliance with the terms and conditions of your lease or grant and the regulations in this chapter and 30 CFR chapters II and XII, the Regional Director will return the excess funds to the party from whom they were collected.

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