DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550, 556, and 590

[Docket No. BOEM–2023–0027]

RIN 1010–AE14

Risk Management and Financial Assurance for OCS Lease and Grant Obligations

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (the Department or DOI), acting through the Bureau of Ocean Energy Management (BOEM), is amending its risk management and financial assurance regulations. This final rule revises criteria for determining whether oil, gas, and sulfur lessees, right-of-use and easement (RUE) grant holders, and pipeline right-of-way (ROW) grant holders are required to provide financial assurance above the current minimum bonding levels to ensure compliance with their Outer Continental Shelf Lands Act (OCSLA) obligations. This final rule streamlines the criteria for evaluating the financial health of lessees and grantees, codifies the use of the Bureau of Safety and Environmental Enforcement's (BSEE) probabilistic estimates of decommissioning costs in setting the level of demands for supplemental financial assurance, removes restrictive provisions for third-party guarantees and decommissioning accounts, adds new criteria for cancelling supplemental financial assurance, and clarifies bonding requirements for RUEs serving Federal leases. BOEM estimates that a total of $6.9 billion in new supplemental financial assurance will be required from lessees and grant holders under this final rule to cover potential costs of decommissioning activities. This final rule significantly increases the amount of financial assurance available to the U.S. Government in the case of a lessee default and meaningfully reduces the risk to the government and consequently to the U.S. taxpayer. This final rulemaking does not apply to renewable energy activities.

DATES: This final rule is effective on June 24, 2024. You may make comments on the information collection (IC) burden in this rulemaking and the Office of Management and Budget (OMB) and BOEM must receive such comments on or before May 24, 2024. The IC burden comment opportunity does not affect the final rule effective date.

ADDRESSES: BOEM has established a docket for this action under Docket No. BOEM–2023–0027. All documents in the docket are listed on the *https://www.regulations.gov* website and can be found by entering the Docket No. in the ''Enter Keyword or ID'' search box and clicking ''search''.

You may submit comments on the IC to OMB's desk officer for the Department of the Interior through *https://www.reginfo.gov/public/do/PRAMain.* From this main web page, you can find and submit comments on this particular information collection by proceeding to the boldface heading ''Currently under Review—Open for Public Comments,'' selecting ''Department of the Interior'' in the ''Select Agency'' pull down menu, clicking ''Submit,'' then, checking the box ''Only Show ICR for Public Comment'' on the next web page, scrolling to this final rule, and clicking the ''Comment'' button at the right margin. Additionally, you may use the search function to locate the IC request related to the rule on the main web page. Please provide a copy of your comments to the Information Collection Clearance Officer, Office of Regulations, BOEM, Attention: Anna Atkinson, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0006 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Kelley Spence, Office of Regulations, BOEM, 45600 Woodland Road, Sterling, Virginia 20166, at email address *Kelley.Spence@boem.gov* or at telephone number (984) 298–7345; and Karen Thundiyil, Chief, Office of Regulations, BOEM, 1849 C Street NW, Washington, DC 20240, at email address *Karen.Thundiyil@boem.gov* or at telephone number (202) 742–0970. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting the contacts listed in this section. These services are available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: *Preamble acronyms and abbreviations.* Multiple acronyms are included in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, BOEM explains the following acronyms here:

ANCSA Alaska Native Claims Settlement Act
BOEM Bureau of Ocean Energy Management
BSEE Bureau of Safety and Environmental Enforcement
CFR Code of Federal Regulations
CRA Congressional Review Act
DOI Department of the Interior (or Department)
E.O. Executive Order
FDIC Federal Deposit Insurance Corporation
FR Federal Register
FSLIC Federal Savings and Loan Insurance Corporation
GAO Government Accountability Office
GOMESA Gulf of Mexico Energy Security Act of 2006
IBLA Interior Board of Land Appeals
IC Information Collection
INC Incident of Non-Compliance
IRFA Initial Regulatory Flexibility Analysis
mmboe Million barrels of oil equivalents
MMS Minerals Management Service
NAICS North American Industry Classification System
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking
NRSRO Nationally Recognized Statistical Rating Organization
NTL Notice to Lessees
OCS Outer Continental Shelf
OCSLA Outer Continental Shelf Lands Act
OIRA Office of Information and Regulatory Affairs (a component of OMB)
OMB Office of Management and Budget
ONRR Office of Natural Resources Revenue
PRA Paperwork Reduction Act
RIA Regulatory Impact Analysis
RFA Regulatory Flexibility Act
RUE Right-of-Use and Easement
ROW Right-of-Way
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act
SEC Securities and Exchange Commission
S&P Standard and Poor's
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code
U.S. EPA United States Environmental Protection Agency

Background information. On June 29, 2023, the Department proposed revisions to the regulations for risk management and financial assurance for Outer Continental Shelf (OCS) lease and grant obligations. The comments received regarding the proposed rule, some of which resulted in regulatory changes, and their corresponding responses are summarized in this preamble. A detailed summary of all public comments on the proposal and their corresponding responses are available in the memorandum titled,

Risk Management and Financial Assurance for OCS Lease and Grant Obligations: Response to Public Comments Received on the June 29, 2023, Notice of Proposed Rulemaking in the docket for this rulemaking (Docket No. BOEM–2023–0027). A ''track changes'' version of the regulatory language that identifies the changes in this action compared to the current regulations is also available in the docket.

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Executive Summary

1. Purpose of This Regulatory Action

The purpose of this final regulatory action is to address concerns regarding BOEM's financial assurance program. This rule finalizes amendments to the existing provisions to better protect the taxpayer from bearing the cost of facility decommissioning and other financial risks associated with OCS development, such as environmental remediation. Additionally, this final rule provides regulatory clarity to OCS lessees regarding their financial obligations by codifying requirements in the Code of Federal Regulations (CFR).

Since 2009, more than 30 corporate bankruptcies have occurred involving offshore oil and gas lessees that did not have sufficient financial assurance to cover their decommissioning liabilities. These bankruptcies have highlighted a weakness in BOEM's current supplemental financial assurance program. BOEM's existing program has, at times, been unable to forecast financial distress of these lessees and grantees that have not previously provided supplemental financial assurance and, as a result, BOEM has not had sufficient time to require and receive supplemental financial assurance prior to a declaration of bankruptcy. Additionally, challenges arising from bankruptcy proceedings, including the inability to sell less valuable assets that fail to generate new buyers at auction, can result in unplugged wells and orphaned infrastructure, potentially resulting in the American taxpayer paying to plug those wells and decommission that abandoned infrastructure. The amendments finalized in this rulemaking under section 5 of OCSLA (43 United States Code (U.S.C.) 1334) and Secretary's Order 3299 strengthen BOEM's financial assurance program to better protect the taxpayer from bearing the cost of facility decommissioning and other financial risks associated with OCS development.

2. Summary of Major Provisions

The following major provisions are included in this final rule:

- streamlining the criteria used for evaluating the financial health of lessees and grantees,
- codifying the use of the BSEE probabilistic estimates of decommissioning cost for determining the amount of supplemental financial assurance required,
- removing restrictive provisions for third-party guarantees and decommissioning accounts,
- adding new criteria under which a bond or third-party guarantee that was provided as financial assurance may be canceled, and
- clarifying financial assurance requirements for RUEs serving Federal leases.

With this rulemaking, the Department is finalizing an amendment to revise the criteria used to evaluate the need for supplemental financial assurance from the existing five criteria—financial capacity, projected financial strength, business stability, reliability in meeting obligations based on credit rating or trade references, and record of compliance with laws, regulations, and lease terms—to one of two criteria: (1) credit rating and (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. Specifically, the Department is finalizing the use of an investment grade credit rating threshold (or proxy credit rating equivalent) and a minimum 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves to determine if a lessee is required to provide supplemental financial assurance. If a current lessee meets one of these criteria, it will not be required to provide supplemental financial assurance. These amendments codify a forward-looking analysis for determining the need for supplemental financial assurance and strengthen BOEM's financial assurance program by providing a more accurate method for analyzing a lessee's financial health.

The Department is also finalizing the use of the BSEE probabilistic estimates of decommissioning cost for determining the amount of supplemental financial assurance required. The new estimates are based on industry-reported decommissioning costs pursuant to the notice-to-lessees (NTL) requiring the submittal of such data. Previously, BSEE provided a single algorithm-based deterministic estimate for OCS facilities for determining decommissioning cost estimates. Based on the reported data, BSEE has developed three probabilistic estimates (*i.e.,* P-values) of decommissioning costs for each OCS facility on any given lease. These values represent the likelihood of covering the full cost of decommissioning a facility as a percentage; for example, P70 represents a 70 percent likelihood of covering the full cost of decommissioning a facility. The Department is finalizing, as proposed, the use of the P70 decommissioning estimate value to determine the amount of supplemental financial assurance required from a current lessee that does not meet the financial waiver criteria. If probabilistic estimates are not available, then BOEM will use the available deterministic values. BOEM also notes that the use of the BSEE P70 value only reflects the amount of supplemental financial assurance that may be required to meet decommissioning obligations and does not reflect the total cost of corrective action that may be required to bring a lease or grant into compliance.

The Department's goal for BOEM's 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 at a competitive disadvantage. The Department acknowledges that the new regulations could have a significant financial impact on affected companies, and for that reason, the Department is finalizing the amendment, as proposed, to phase in the new financial assurance requirements over a 3-year period for existing leaseholders.

3. Costs and Benefits

The regulatory amendments in this rulemaking are expected to increase the total amount of financial assurance required from OCS lessees and grant holders. Those lessees that do not meet the updated criteria to avoid providing financial assurance will realize an increased compliance cost in the form of bonding premiums. BOEM has drafted a Regulatory Impact Analysis (RIA) detailing the estimated impacts of the respective provisions of this final rule and has included it in the docket. The impacts reflect both monetized and non-monetized impacts; the costs and benefits of the non-monetized impacts are discussed qualitatively in the document. The table below summarizes BOEM's monetized estimate of the cost of increased bonding premiums paid by lessees over a 20-year period. Additional information on the estimated transfers, costs, and benefits can be found in the RIA available in the docket for this rulemaking (Docket No. BOEM–2023–0027).

NET TOTAL ESTIMATED COMPLIANCE COST OF THE RULE
[2024–2043, 2023, $ millions]

2024–2043	Discounted at 3%	Discounted at 7%
Net Total Compliance Cost	$8,525	$5,923
Annualized Compliance Cost	573.0	559.0

This final rule affects holders of oil, gas, and sulfur leases, ROW grants, and RUE grants on the OCS. The analysis shows that this includes roughly 391 companies with ownership interests in OCS leases and grants. Entities that operate under this 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 271 (69 percent) of the businesses operating on the OCS subject to this rule are considered small; the remaining businesses are considered large entities. All the operating businesses meeting the SBA classification are potentially impacted; therefore, BOEM expects that the rule will affect a substantial number of small entities.

BOEM has estimated the annualized increase in compliance costs to lessees and RUE and ROW grant holders and allocated those to small and large entities based on their decommissioning liabilities. BOEM's analysis estimates small companies could incur $421 million (7 percent discounting) in annualized compliance costs from its changes. The Bureau recognizes that there will be incremental cost burdens to most affected small entities and has included a 3-year, phased compliance approach to reduce burden associated with the transition to the requirements of this rule. The changes are designed to balance the risk of non-performance with the compliance burdens that are associated with the requirement to provide supplemental financial assurance. Additional information about these conclusions can be found in the RIA for this rule.

B. Does this action apply to me?

Entities potentially affected by this final action are holders of oil, gas, and sulfur leases, ROW grants, and RUE grants on the OCS.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, BOEM will post an electronic copy of the documents related to this final action at: *https://www.boem.gov/regulations-and-guidance.*

BOEM's full response to comments on the June 29, 2023, notice of proposed rulemaking (NPRM), including any comments not discussed in this preamble, can be found in the memorandum titled, *Risk Management and Financial Assurance for OCS Lease and Grant Obligations: Response to Public Comments Received on the June 29, 2023, Notice of Proposed Rulemaking,* available in the docket (Docket No. BOEM–2023–0027).

II. Background

A. BOEM Statutory and Regulatory Authority and Responsibilities

Section 5 of OCSLA (43 U.S.C. 1334), authorizes the Secretary of the Interior (Secretary) to issue regulations to administer OCS leasing for mineral development. 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 [provisions of OCSLA]'' related to leasing on the OCS. Section 5(b) of OCSLA (43 U.S.C. 1334(b)) provides that ''compliance with regulations issued under'' OCSLA must 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. Section 18 of OCSLA (43 U.S.C. 1344) states that, ''Management of the [OCS] shall be conducted in a manner which considers economic, social, and environmental values of the renewable

and nonrenewable resources contained in the [OCS]. . .''.

The Secretary, in Secretary's Order 3299 (as amended), established BOEM and delegated to it the authority to carry out conventional energy- (*e.g.,* oil and gas) and renewable energy-related functions on the OCS, including, but not limited to, activities involving resource evaluation, planning, and leasing under the provisions of OCSLA. As such, BOEM is responsible for managing development of the Nation's offshore energy and mineral resources in an environmentally and economically responsible way. Secretary's Order 3299 also established BSEE and delegated to it the authority to, among other things, enforce an oil and gas lessee's obligation to perform decommissioning. BSEE provides estimates to BOEM to inform the financial assurance needed to cover the cost to perform decommissioning, thereby protecting the American taxpayer from incurring financial loss. When a current lessee is unable to perform its obligations, the Department's regulations at 30 CFR 556.604(d) and 556.605(e) hold current co-lessees responsible for all decommissioning obligations and predecessor lessees responsible for those decommissioning obligations that had accrued before they assigned their interests to others. See Section III.B for more detail on joint and several liability requirements. While BOEM also has program oversight for the financial assurance requirements set forth in 30 CFR parts 551, 581, 582, and 585, this final rule pertains only to the financial assurance requirements for oil and gas or sulfur leases under part 556, RUE grants and ROW grants under part 550, and appeals of supplemental financial assurance demands under part 590.

For more information on the statutory authority for this rule, see the preamble to the proposed rule at 88 FR 42138, June 29, 2023.

B. History of Bonding Regulations and Guidance

The Minerals Management Service (MMS), BOEM's predecessor, published the existing financial assurance requirements for oil, gas, and sulfur leases and pipeline ROW grants on May 22, 1997 (62 FR 27948). These regulations required lease-specific or area-wide base bonds in prescribed amounts, depending on the level of activity on a lease, and provided the authority to require additional supplemental financial assurance for leases above the base bonds depending on the financial health of the lessee. Additionally, MMS published the existing financial assurance requirements for RUE grants on December 28, 1999 (64 FR 72756). These regulations did not dictate a specific bond amount for a RUE but did provide the authority to require bonding if necessary. BOEM employs the same criteria for RUE and ROW grants as it does for leases to determine whether supplemental financial assurance is required, because specific criteria pertaining to supplemental financial assurance for grants do not exist in the current regulations.

The current bonding regulations at 30 CFR 556.901(d) provide five criteria that the Regional Director uses to determine whether a lessee's potential inability to carry out present and future decommissioning obligations warrants a demand for supplemental financial assurance; however, the current bonding regulations do not specifically describe how the criteria are weighted. To provide guidance, MMS issued a Notice to Lessees (NTL) effective December 28, 1998, which provided details on how it would apply the five criteria (NTL No. 98–18N). This NTL was superseded by NTL No. 2003–N06, effective June 17, 2003, and that NTL was later superseded by NTL No. 2008–N07, which was effective August 28, 2008. Most recently, NTL No. 2008–N07 was superseded on September 12, 2016, with NTL No. 2016–N01, which was later rescinded in February of 2020.

In December 2015, the Government Accountability Office (GAO) reviewed BOEM's supplemental financial assurance procedures and issued a report titled ''Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities.'' (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 supplemental financial assurance procedures, including the use of alternative measures of financial strength.'' *See https://www.gao.gov/products/gao-16-40.*

On October 16, 2020, DOI issued a notice of proposed rulemaking (85 FR 65904) to revise certain BSEE policies concerning decommissioning orders and the Department's financial assurance regulations that are administered by BOEM. In the joint proposed rule, the Department proposed to adjust the supplemental financial assurance criteria to reflect the risk mitigation already provided by the joint and several liability of financially stable co-lessees and predecessor lessees. The Department's regulations hold predecessors responsible for some or all of the decommissioning when a current lessee is unable to perform its obligations. In the 2020 proposed rule, the Department proposed to consider the financial stability of predecessor lessees by waiving supplemental financial assurance requirements for a current lessee when there is a financially strong predecessor lessee. The Department also proposed to change the methodology for measuring financial strength to focus on credit rating and the value of proved oil and gas reserves and to apply the credit rating methodology to RUE grants and ROW grants as well.

On April 18, 2023, DOI finalized the BSEE-administered provisions of the 2020 proposal (88 FR 23569). The Department's 2023 final rule implements provisions of the 2020 proposed rule to clarify decommissioning responsibilities of RUE grant holders and to formalize BSEE's policies regarding performance by predecessors ordered to decommission OCS facilities.

On June 29, 2023, the Department proposed a new rule in lieu of finalizing the BOEM provisions of the 2020 joint proposal. The new proposed rule provided recommended revisions to the regulations concerning risk management and financial assurance for OCS lease and grant obligations. This final action addresses the public comments received on the June 29, 2023, proposal and finalizes amendments to those regulations. For more details on the history of the bonding regulations, see the preamble to the proposed rule at 88 FR 42138.

C. Purpose of Rulemaking

The purpose of this rulemaking is to finalize amendments to address concerns regarding BOEM's financial assurance program. This rule finalizes amendments to the existing provisions to better protect the taxpayer from bearing the cost of facility decommissioning and other financial risks associated with OCS development, such as environmental remediation. This rule also provides regulatory clarity to OCS lessees regarding their financial obligations by codifying requirements in the CFR.

As discussed in the preamble to the proposed rule (88 FR 42140), the GAO identified three main shortcomings in the Department's prior approach to financial assurance: (1) the Department faced challenges in determining actual decommissioning liabilities due to data system limitations and inaccurate data; (2) the Department did not require sufficient financial assurance to cover liabilities, primarily due to the practice

of waiving supplemental bonding requirements, resulting in financial assurance coverage (such as bonds) for less than 8% of an estimated $38.2 billion in decommissioning liabilities; and (3) the Department's criteria for assessing lessees' financial strength did not provide accurate and timely information about their ability to cover future decommissioning costs. As the GAO report indicated, the existing regulatory structure is inadequate, introduces needless financial risk, and is unsustainable.

Importantly, relatively few major facilities have been decommissioned (relative to the number installed) because the vast majority of facilities are or were recently actively producing. As more facilities reach the end of their useful life, however, decommissioning will be required on a larger scale. Accordingly, previously low losses to the government are not a reliable indicator for future losses. The GAO has in fact asserted the opposite and has notified Congress that the current program must be revised to avoid putting the government in an untenable situation.

On February 20, 2024, the GAO issued a new report titled *Offshore Oil and Gas: Interior Needs to Improve Decommissioning Enforcement and Mitigate Related Risks* (GAO–24–106229) that provided four recommendations to DOI to strengthen BSEE's and BOEM's decommissioning oversight and enforcement. Recommendation 3 specifically stated the ''Secretary of the Interior should ensure the BOEM Director completes planned actions to further develop, finalize, and fully implement changes to financial assurance regulations and procedures that reduce financial risks, including by (1) requiring higher levels of supplemental bonding, and (2) addressing other known weaknesses.'' The measures BOEM described in the proposed rule and finalized here will, as a practical matter, address this GAO recommendation.

Since 2009, more than 30 corporate bankruptcies have occurred involving offshore oil and gas lessees with decommissioning liabilities that were not covered by financial assurance. The fact that bankruptcies have involved decommissioning liabilities without sufficient supplemental financial assurance demonstrates that 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 oil and gas prices. For example, ATP Oil & Gas was a mid-sized company with a supplemental financial assurance waiver when it filed for bankruptcy in 2012. Similarly, Bennu Oil & Gas LLC, had a waiver at the time of its bankruptcy filing, and Energy XXI, Ltd. and Stone Energy Corporation obtained waivers less than a year before filing for bankruptcy. While most OCS leases affected by the bankruptcies were ultimately sold or retained by the companies reorganized under chapter 11 of the U.S. Bankruptcy Code, these bankruptcies highlighted the weakness in BOEM's supplemental financial assurance program. BOEM's existing program has, at times, been unable to forecast financial distress of these lessees and grantees that have not previously provided supplemental financial assurance and, as a result, BOEM has not had sufficient time to require and receive supplemental financial assurance prior to a declaration of bankruptcy.

Additionally, challenges arising in bankruptcy proceedings, including the inability to sell less valuable assets that fail to generate new buyers at auction, can result in unplugged wells and orphaned infrastructure. This could result in the American taxpayer paying the cost to plug those wells and decommission that abandoned infrastructure. The amendments finalized in this rulemaking strengthen BOEM's financial assurance regulations to better protect the taxpayer from bearing the cost of facility decommissioning and other financial risks associated with OCS development.

D. Summary of the June 29, 2023, Proposed Rulemaking

On June 29, 2023, DOI published an NPRM in the **Federal Register** at 88 FR 42136, which proposed amendments to 30 CFR parts 550, 556, and 590. This NPRM proposed to streamline the criteria used for evaluating the financial health of lessees, codify the use of the BSEE probabilistic estimates of decommissioning cost for determining the amount of supplemental financial assurance required, remove restrictive provisions for third-party guarantees and decommissioning accounts, add criteria for which a bond or third-party guarantee that was provided as supplemental financial assurance may be canceled, and clarify bonding requirements for RUEs serving Federal leases. Specifically, the Department proposed to revise the criteria used to evaluate the need for supplemental financial assurance from lessees from the existing five criteria—financial capacity, projected financial strength, business stability, reliability in meeting obligations based on credit rating or trade references, and record of compliance with laws, regulations, and lease terms—to one of two criteria: (1) credit rating and (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. The Department proposed the use of an investment grade credit rating threshold (or proxy credit rating equivalent) and a minimum 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves to determine if a lessee is required to provide supplemental financial assurance.

After examining the financial assurance costs in conjunction with risk coverages derived from using different P-values for decommissioning costs over different time periods for the full implementation of this rule, BOEM proposed that an adequate balance between OCS development and financial risk level on the OCS is achieved by the combination of a P70 value and a phase-in period of 3 years. The proposed phased-in approach allows the lessee, grant holder, or operator to submit the amount due over 3 fiscal years, which is specifically designed to mitigate the disruptive impact of large, immediate financial assurance demands. BOEM notes that poorly-capitalized companies with end-of-life assets may declare bankruptcy at the P70 level, but that bankruptcy would also be a risk under a P90 or a P50 level threshold. It was BOEM's conclusion that a P70 threshold with a 3-year phase-in achieves an adequate balance between the level of protection against the risks that the proposed rule intends to manage with a reasonable period of time to fully implement the costs derived from these policy changes. Details regarding each of the specific proposal provisions are discussed in section III of this preamble.

III. Summary of the Final Rule and Public Comments

For each topic, this section provides a description of what the Department proposed, what the Department is finalizing, and a summary of key comments and responses for each proposal provision. BOEM's full response to comments on the June 29, 2023, NPRM, including any comments not discussed in this preamble, can be found in the memorandum titled, *Risk Management and Financial Assurance for OCS Lease and Grant Obligations: Response to Public Comments Received on the June 29, 2023, Notice of Proposed Rulemaking* available in the docket (Docket No. BOEM–2023–0027) (hereinafter *Response to Public Comments*).

A. Revisions to BOEM Supplemental Financial Assurance Requirements

The Department proposed and is finalizing revisions to the supplemental financial assurance requirements for oil, gas, and sulfur leases, RUE grants, and pipeline ROW grants, as discussed in the subsections below.

1. Leases

In the June 29, 2023, NPRM, the Department proposed changes to the lease financial assurance requirements to (1) modify the evaluation process for requiring supplemental financial assurance by clarifying and streamlining the evaluation criteria, and (2) remove restrictive provisions for third-party guarantees and decommissioning accounts. The proposed rule would allow the Regional Director to require supplemental financial assurance when a lessee or grant holder poses a substantial risk of becoming financially unable to carry out its obligations under its lease or grant, or when the property may not have sufficient value to be sold to another company that could assume those obligations. In the former case, the risk that the taxpayer might have to take on the financial obligations of a lessee or grant holder is mitigated when there is a co-lessee or co-grant holder that has sufficient financial capacity to carry out the obligations. These proposed provisions, the key public comments received on the provisions, and the Department's final amendments are discussed in the following subsections. A summary of all comments received regarding revisions to lease financial assurance provisions and BOEM's corresponding responses can be found in section 3 of the *Response to Public Comments.*

Additionally, DOI also proposed to use the costs of decommissioning resulting from BSEE's new methodology, which provides probabilistic costs using a database of reported decommissioning costs on the OCS, to determine the amount of supplemental financial assurance required, as discussed in section III.B of this preamble.

a. Evaluation of Co-Lessees

Lessees are jointly and severally liable for the lease decommissioning obligations that accrue during their ownership, as well as those that accrued prior to their ownership, which means that each current co-lessee is liable for the full obligation and BSEE may pursue full performance from any individual current lessee. See, *e.g.,* 30 CFR 556.604(d). 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. See, *e.g.,* 30 CFR 556.710. This transferor liability applies, however, only to those obligations existing at the time of transfer. New facilities, or additions to existing facilities, that were not in existence at the time of any lease transfer are not obligations of a predecessor company but are only considered obligations of the party that built such new facilities and its co- and successor lessees.

BOEM's existing supplemental financial assurance evaluation process, contained in 30 CFR 556.901(d), is not clear to what extent co-lessee financial capacity is to be considered. The Department proposed to codify in 30 CFR 556.901(d)(3) that this process includes an evaluation of the ability of a co-lessee to carry out present and future obligations. This proposed amendment recognizes that all current owners are benefiting from ongoing operations and are jointly and severally liable for compliance with DOI requirements. All current co-lessees are equally liable for present nonmonetary obligations and such future obligations that accrue while they are co-lessees. As proposed, BOEM would not require supplemental financial assurance for properties where at least one co-lessee meets the credit rating threshold. A summary of the comments received is provided here.

Comment: Several commenters expressed support for DOI's proposal to not require supplemental financial assurance on leases where at least one co-lessee meets the credit rating threshold.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 556.901(d), that the evaluation for determining whether supplemental financial assurance is required includes an evaluation of the ability of a co-lessee to carry out present and future obligations. This amendment recognizes that all current owners are benefiting from ongoing operations and are jointly and severally liable for compliance with DOI requirements. As proposed, the Department is finalizing the provision that it will not require supplemental financial assurance from properties where at least one co-lessee meets the credit rating threshold.

Comment: Several commenters expressed opposition to DOI's proposal, asserting that any co-lessee that does not maintain an investment grade credit rating (or equivalent proxy credit rating) should be required to provide supplemental financial assurance. Commenters recommended that the Department require supplemental financial assurance for their respective working interest shares from all co-lessees that do not maintain an investment grade credit rating for leases that are not exempt based on the reserve analysis. An additional commenter recommended the financial assurance evaluation be extended to sublessees when a company can provide evidence that the sublessee was one of the original installers/owners of the lease facilities.

Response: BOEM acknowledges the commenters' recommendations that the Department should require financial assurance from all co-lessees that do not maintain an investment grade credit rating for their respective working interests but concludes that it is impractical to evaluate co-lessees and operating rights owners since each co-lessee is liable for the total obligation and not their proportional share. DOI is finalizing, as proposed in 30 CFR 556.901(d), to not require supplemental financial assurance for leases where at least one co-lessee meets the credit rating threshold. This amendment recognizes that all current owners are benefiting from ongoing operations and are jointly and severally liable for compliance with DOI requirements. All current co-lessees are equally liable for present nonmonetary obligations and such future obligations that accrue while they are co-lessees.

b. Evaluation Criteria

The Department proposed to revise the criteria in 30 CFR 556.901(d) used to evaluate the need for supplemental financial assurance from lessees from the five criteria—financial capacity, projected financial strength, business stability, reliability in meeting obligations based on credit rating or trade references, and record of compliance with laws, regulations, and lease terms—to a simpler analysis of one of two criteria: (1) credit rating or (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. As discussed in the preamble to the proposed rule at 88 FR 42142–42144, the Department proposed to eliminate the ''business stability'' and the ''record of compliance'' criteria, to replace the ''financial capacity'' and ''reliability'' criteria with issuer credit rating or proxy credit rating, and to replace the ''projected financial strength'' criterion with a ratio of the value of proved oil and gas reserves on a lease to the decommissioning liability associated with those reserves.

Specifically, DOI proposed the following in 30 CFR 556.901(d) to determine whether supplemental financial assurance on a lease may be required: (1) a credit rating, either from an 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, or a proxy credit rating determined by BOEM based on a company's audited financial statements; or (2) a minimum ratio of the value of proved oil and gas reserves on a lease to the decommissioning liability associated with those reserves. For discussion of the justification of the credit rating selected and the minimum reserves to decommissioning liabilities ratio selected, see section III.D of this preamble.

These proposed criteria better align BOEM's evaluation process with accepted financial risk evaluation methods used by the banking and finance industry. As discussed in the preamble to the proposed rule (88 FR 42142), eliminating subjective or less precise criteria—such as the 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 often do not accurately or consistently predict financial distress. Additionally, the Department solicited comments on any other appropriate criteria for use in evaluating the need for supplemental financial assurance from OCS lessees.

Comment: Multiple commenters generally supported the streamlining of the evaluation criteria, particularly the use of credit ratings as a more appropriate criterion than financial capacity, projected financial strength, and business stability.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 556.901(d), the replacement of the prior five criteria with the two criteria: (1) credit rating and (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. This amendment codifies a forward-looking analysis for determining the need for supplemental financial assurance, which is simpler to evaluate for both the Department and lessees, in lieu of a backward-looking analysis.

Comment: Several commenters recommended that the Department completely remove the evaluation to determine if supplemental financial assurance is required. One commenter specifically asked the Department to eliminate this step entirely and to simply require all OCS leaseholders, regardless of financial strength, to provide supplemental financial assurance. An additional commenter urged the Department to require every lessee to post supplemental financial assurance to ensure decommissioning costs are covered and eliminate consideration of proxy credit ratings and the value of proved oil reserves associated with a given lease.

Response: BOEM is the agency within DOI responsible for managing development of the nation's offshore resources in an environmentally and economically responsible way. BOEM must balance OCS development with protection of both the taxpayer and the environment and concludes that this rule achieves an acceptable balance of objectives. BOEM does not believe requiring all entities to provide supplemental financial assurance can be justified by the potential risk to the taxpayer, because financially strong entities are highly unlikely to file for bankruptcy and are highly likely to be able to cover their decommissioning obligations. Additionally, requiring those entities with little likelihood of default to provide supplemental financial assurance would reduce funds available for other capital expenditures. Accordingly, the Department is finalizing, as proposed in 30 CFR 556.901(d), the two evaluation criteria for lessees: (1) credit rating and (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. The purpose of financial assurance is not to prevent problems; it is to ensure there is money to fix them. As such, criteria that do not relate to financial capacity do not target the companies for which the financial assurance is needed. Using the revised criteria simplifies the evaluation process, streamlining the Department's evaluation without compromising the risk to taxpayers. Indeed, the two new criteria are more protective than the existing criteria, as evidenced by the significant increase in the amount of financial assurance that will be required using the updated criteria.

Comment: Commenters who objected to the removal of the record of compliance criterion urged BOEM to be more attentive to past safety performance, deny waivers to any company with idle iron, stipulate that owners with decommissioning obligations for abandoned or idle wells would not be eligible for new leases, and develop a scoring system to grade companies on various safety and environmental metrics to incorporate into the financial assurance analysis.

Response: While commenters offered a conceptual argument to retain the record of compliance criterion, they provided no new data to suggest a correlation between financial strength of a company and its record of compliance. As discussed in the preamble to the proposed rule at 88 FR 42142, BOEM examined the number of incidents of non-compliance (INCs) issued by BSEE, their severity, and the relationship between INCs and financial health/strength of companies and found that the data was not a reliable indicator of financial strength. The data show that the number of incidents is correlated with the number of structures a lessee has on the OCS, and not necessarily to the financial health of the lessee. Additionally, BOEM's financial assurance program is not in and of itself designed to promote safety or compliance (there are other Department regulations addressing these matters), but to assure that a lessee can financially bring a noncompliant lease into compliance. The Department's forward-looking approach, which is being finalized here, allows time for BOEM to demand financial assurance, rather than waiting for inspections and corresponding incidents to occur and then determining that supplemental financial assurance is needed because of the number of INCs.

The Department is finalizing the replacement of the five criteria in 30 CFR 556.901(d) with two criteria for lessees: (1) credit rating and (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. This amendment codifies a forward-looking analysis for determining the need for supplemental financial assurance in lieu of the backward-looking analysis that resulted from the use of the five criteria or that would result from using INCs as an indicator. For a summary of all comments received regarding the streamlining of the evaluation criteria, including the removal of the record of compliance criterion, and BOEM's corresponding responses, see sections 3.1 through 3.6 of the *Response to Public Comments.*

2. Right-of-Use and Easement Grants

In the June 29, 2023, NPRM, the Department proposed changes to the RUE financial assurance requirements to clarify the financial assurance requirement for RUEs serving Federal leases, which is not explicitly addressed in the existing regulations. These proposed provisions, the public

comments received on the provisions, and DOI's final amendments are discussed in the following subsections.

a. Base Financial Assurance

The Department proposed to revise 30 CFR 550.166 to provide that any RUE grant holder must provide base financial assurance in a specific amount, regardless of whether the RUE serves a State lease or a Federal OCS lease and proposed a Federal RUE base financial assurance requirement matching the existing $500,000 base financial assurance requirement for State RUEs. For a summary of all comments received regarding revisions to base financial assurance provisions for RUEs and BOEM's corresponding responses, see section 4 of the *Response to Public Comments.*

Comment: Commenters supported the proposal to require a RUE grant holder to provide financial assurance in a specific amount, regardless of whether the RUE serves a State lease or Federal OCS lease, but asserted that BOEM should update the base financial assurance value because it was determined in 1993, was based on costs in relatively shallow waters, and significant inflation has occurred since the last revision.

Response: BOEM agrees with the commenters' assertion that the initial base bond amount was determined many years ago and acknowledges that this value should be reevaluated. Because BOEM did not propose a new value in the NPRM and, therefore, cannot revise it in the final rule, BOEM plans to evaluate the specific values of the base supplemental financial assurance for RUEs, ROWs, and leases in a future rulemaking.

With this rulemaking, the Department is finalizing 30 CFR 550.166, as proposed, that provides that any RUE grant holder must provide base financial assurance of $500,000, regardless of whether the RUE serves a State lease or a Federal OCS lease, to match the existing base financial assurance requirements for State RUEs.

b. Area-Wide Financial Assurance

The Department proposed in 30 CFR 550.166(a) a $500,000 area-wide base financial assurance for RUE grant holders, which would satisfy the base financial assurance requirement for any RUE holder that owns one or more RUEs within the same OCS area, regardless of whether the RUE serves a State or Federal lease. Additionally, the Department proposed in 30 CFR 550.166(a)(1) to allow any lessee that has previously posted area-wide lease financial assurance (pursuant to 30 CFR 556.900(a)(1) or 556.901(a)(2) or (b)(2) for the areas specified in 30 CFR 556.900(a)(2)) to modify that lease financial assurance to also cover any RUE(s) in the area owned by that lessee. The ability to use area-wide lease financial assurance to cover the RUE base financial assurance obligation would be subject to the requirement that the area-wide lease financial assurance be in an amount equal to or greater than the RUE base financial assurance requirement (*i.e.,* equal to or greater than $500,000).

Comment: A commenter asserted that there was no need for a new requirement for area-wide financial assurance for RUEs, as it would solely cover RUE rentals. They suggested that this aspect should already be sufficiently covered under the existing area-wide financial assurance for leases provided by lessees. The commenter also noted that, presently, ''BSEE does not permit transfers of RUEs.'' To address this, the commenter recommended that both BOEM and BSEE should mandate complete ownership filings for all co-owners of the respective ROW and RUE for the Department's approval. They asserted that this approach would appropriately distribute the risk among all co-owners.

Response: BOEM disagrees with the commenter's assertion that there ''is no need for'' area-wide financial assurance requirements for RUEs. RUE holders have decommissioning responsibility and not just that of paying rentals. Area-wide coverage is not being required but being offered as an alternative to separately bonding each RUE. In response to the suggestion that BOEM and BSEE should mandate complete ownership filings for ROW and RUEs, we note that is outside the scope of this rulemaking.

As discussed in the preamble to the proposed rule at 88 FR 42144, the proposed rule at 30 CFR 550.166(a)(1) would allow any lessee that has already posted area-wide lease financial assurance to modify that lease surety bond to also cover any RUE(s) in the area owned by the same lessee. The ability to use the area-wide lease financial assurance to cover the RUE base financial assurance would be subject to the requirement that the area-wide lease financial assurance would be in an amount equal to or greater than the RUE base financial assurance requirement. For example, under the proposal, a lessee with a $3 million area-wide lease surety bond could establish or acquire any number of Federal or State RUEs in the area without having to post any additional financial assurance (other than, potentially, supplemental financial assurance), provided the lessee agrees to modify the terms of its area-wide lease surety bond to also cover any State or Federal RUEs that it owns or acquires. If the existing area-wide financial assurance is not modified, the lessee may satisfy the requirement by providing new financial assurance to cover its RUE(s). In the example, BOEM believes the $3 million area-wide lease surety bond is sufficient to cover the RUE $500,000 requirement. The Department is finalizing this provision as proposed, in addition to new supplemental financial assurance requirements for RUE grant-holders that do not maintain an investment grade credit rating. As discussed earlier in this preamble, BOEM plans to evaluate the specific values of the base supplemental financial assurance for RUEs, ROWs, and leases in a future rulemaking.

The Department is finalizing, as proposed in 30 CFR 550.166(a), the option to provide $500,000 area-wide RUE financial assurance, which will satisfy the base financial assurance requirement for any RUE holder that owns one or more RUEs within the same OCS area, regardless of whether the RUE serves a State or Federal lease. Lessees that have previously posted area-wide lease financial assurance will be able to modify that lease surety bond to also cover any RUE(s) in the area owned by the same lessee. The ability to use area-wide lease financial assurance to cover the RUE base financial assurance obligation will be subject to the requirement that, in addition to covering the lease financial assurance requirement, the area-wide lease financial assurance must include an amount equal to or greater than the RUE base financial assurance requirement (*i.e.,* equal to or greater than $500,000) in order to cover the financial assurance requirements for both the leases and RUEs.

c. Supplemental Financial Assurance

The Department proposed to replace the general statement in 30 CFR 550.160(c) that RUE grant holders ''must meet bonding requirements'' with the specific criteria governing financial assurance requirements found in proposed 30 CFR 556.900 through 556.902, and the applicable financial assurance requirements in 30 CFR 550.166 and 30 CFR part 556, subpart I. Similar to the proposed changes to the evaluation criteria for lease holders, DOI proposed in 30 CFR 550.166(b) to consider the credit rating or proxy credit rating of RUE co-grant holders to determine if a grantee must provide supplemental financial assurance. The

value of proved oil and gas reserves was not included in this evaluation because a RUE grant does not entitle the holder to any interest in oil and gas reserves. For a summary of all comments received regarding revisions to supplemental financial assurance provisions for RUEs and BOEM's corresponding responses, see section 4 of the *Response to Public Comments.*

Comment: Commenters supported the proposal to evaluate the financial health of RUE grant holders using the same criterion as was proposed for oil and gas lessees (*i.e.,* investment grade credit rating of grant holders or co-holders).

Response: BOEM acknowledges the commenters' support, and the Department is finalizing 30 CFR 550.160(c), as proposed, to replace the general statement that RUE grant holders ''must meet bonding requirements'' with the evaluation of a grant holder's financial health using a credit rating or a proxy credit rating to determine supplemental financial assurance demands.

Comment: A commenter suggested that the Department should not require supplemental bonding for RUEs that are servicing and associated with high value leases because some companies own interest in the reserves associated with a RUE granted to maintain a platform operational on an expired lease for servicing production on another lease.

Response: BOEM disagrees with the commenter's assertion that the Department should not require supplemental bonding for RUEs that are servicing and associated with high value leases. RUEs do not grant a holder an interest in reserves. While the same company may own reserves as a lessee, DOI would not be able to compel the grantee to sell the lease to cover the costs of grant decommissioning.

The Department is finalizing, as proposed, 30 CFR 550.160(c), which provides that a RUE grant-holder may be required to provide supplemental financial assurance if they do not maintain an investment grade issuer credit rating or proxy credit rating equivalent. This change is consistent with the evaluation of oil and gas lessees found in finalized 30 CFR 556.901(d). The Department is also finalizing, as proposed, that the value of proved oil and gas reserves will not be considered in this evaluation because a RUE grant does not entitle the holder to any interest in the associated oil and gas reserves.

3. Pipeline Right-of-Way Grants

Existing bonding requirements for pipeline ROW grants, contained in 30 CFR 550.1011, prescribe a $300,000 area-wide base surety bond that guarantees compliance with all the terms and conditions of the pipeline ROW grants held by a company in an OCS area. Additionally, existing 30 CFR 550.1011(a)(2) states that BOEM may require a pipeline ROW grant holder to provide supplemental financial assurance if the Regional Director determines that financial assurance in excess of $300,000 is needed but, unlike with leases, the regulation provides no factors for the Regional Director's consideration when making this determination. Similar to the proposed changes to the evaluation criteria for lease holders, DOI proposed in 30 CFR 550.1011(c) to consider the credit rating or proxy credit rating of ROW co-grant holders to determine if the grantee must provide supplemental financial assurance. The value of proved oil and gas reserves was not included in this evaluation because a ROW grant does not entitle the holder to any interest in the associated oil and gas reserves. For a summary of all comments received regarding revisions to ROWs and BOEM's corresponding responses, see section 5 of the *Response to Public Comments.*

Comment: Commenters supported the proposal to evaluate the financial health of pipeline ROW grant holders using the same criterion as was proposed for oil and gas lessees (*i.e.,* investment grade credit rating or proxy credit rating of grant holders or co-holders).

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 550.1011(c), to evaluate pipeline ROW grant-holders using the criterion proposed for lessees (*i.e.,* investment grade credit rating or proxy credit rating of grant holders or co-holders).

Comment: A commenter suggested that the Department should not require supplemental bonding for ROW pipelines that are servicing and associated with high value leases because some companies own an interest in the reserves that their ROW pipeline services.

Response: BOEM disagrees with the commenter's assertion that the Department should not require supplemental bonding for ROW pipelines that are servicing and associated with high value leases. ROWs do not grant a holder an interest in reserves. While the same company may own reserves as a lessee, DOI would not be able to compel the grantee to sell the lease to cover the costs of grant decommissioning.

Comment: A commenter requested that the Department rethink allowing oil and gas operators to decommission pipelines in place and should ensure that BSEE's decommissioning costs sufficiently meet the cost of removing all pipeline from the seafloor.

Response: Changes to the regulations allowing oil and gas operators to decommission pipelines in place is outside the scope of this rulemaking.

DOI is finalizing, as proposed, 30 CFR 550.1011, which provides for an evaluation of pipeline ROW grant-holders using the criterion proposed for lessees (*i.e.,* issuer credit rating or proxy credit rating). This will ensure that pipeline ROW grant-holders can demonstrate that they have the financial ability to meet their obligations of the ROW.

The Department is finalizing the use of an investment grade credit rating or proxy credit rating for pipeline ROW co-grant holders to determine if a grant holder must provide supplemental financial assurance, consistent with the evaluation of oil and gas lessees in 30 CFR 550.1011(a)(2). The value of proved oil and gas reserves will not be considered in this evaluation because a ROW grant does not entitle the holder to any interest in oil and gas reserves.

B. Use of BSEE's Probabilistic Estimates for Determining Decommissioning Costs

When determining the necessary amount of supplemental financial assurance, BSEE previously provided to BOEM a single, algorithm-based deterministic estimate for decommissioning costs of OCS facilities. In 30 CFR 556.901, the Department proposed to replace BSEE's former single, algorithm-based deterministic estimates for OCS facility decommissioning costs with the new BSEE methodology that provides probabilistic estimates (*i.e.,* P-values) based on decommissioning costs reported by industry pursuant to NTL 2016–N03—*Reporting Requirements for Decommissioning Expenditures on the OCS,* later superseded by NTL 2017–N02. These values represent the likelihood of covering the full cost of decommissioning a facility as a percentage; for example, P70 represents a 70 percent likelihood of covering the full cost of decommissioning a facility. Specifically, the Department proposed to use the P70 value to determine the amount of any required supplemental financial assurance and solicited comments on the use of other values (*i.e.,* P50 and P90) and the associated impacts. Additionally, if probabilistic estimates are not available, BOEM will use the available deterministic value.

BOEM received a wide range of comments on the use of the P70 value that are discussed generally below. A

summary of all comments received regarding the use of BSEE's decommissioning estimates and BOEM's corresponding responses can be found in section 3.7 of the *Response to Public Comments.*

Comment: Multiple commenters supported the use of the P70 value and recommended that BOEM adopt the P70 value in the final rule for consistency with the stated purpose of the proposed rule: to ensure that current lessees are financially able to perform their decommissioning obligations.

Response: BOEM acknowledges the commenters' support for the proposal of P70. The Department is finalizing in 30 CFR 556.901, as proposed, the use of P70 to determine the financial assurance required for properties where the current lessee does not have an investment grade credit rating or the ratio of the value of the proved reserves to decommissioning liabilities associated with those reserves is not greater than or equal to 3-to-1. This approach holds all current lessees that do not meet the credit rating or reserve criteria responsible for providing supplemental financial assurance unless there is an investment grade co-lessee associated with the same decommissioning obligations.

Comment: Conversely, several commenters asserted that the P70 value was not sufficiently conservative to protect other parties and the public in the event of default. They asserted that BOEM should use the P90 value to increase the probability of ensuring that all decommissioning obligations are covered by those operating on the OCS.

Response: BOEM disagrees with the commenters' assertion that the P70 estimate is not sufficiently conservative to protect other parties and the public in the event of a default. The P70 value should not be confused with a figure representing 70 percent of the cost of decommissioning of a particular facility. The statistical P-value relies on the quality and size of the data inputs, as well as the uncertainty existing in these costs.

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 at a competitive disadvantage. A P70 financial assurance level will reduce offshore decommissioning risk to taxpayers relative to previous BSEE deterministic decommissioning estimates, while attempting to reduce the burden on available capital for continued OCS investment that would be imposed by using P90. BOEM's use of the P70 decommissioning value balances the risk of being underfunded at lower financial assurance levels against the risk of setting a financial assurance level at higher P-values that would overstate the costs in a significant number of cases.

BOEM considered bonding at P90, which would result in the lowest risk of the proposed options to the taxpayer from underfunded offshore decommissioning liabilities. However, P90 would result in an approximately 40 percent chance of being over bonded. In addition, BOEM considered the cost of financing, which would generally (particularly in high interest rate environments) increase the risks of burdensome over bonding. BOEM's analysis concluded that the increased cost to lessees resulting from adopting P90 rather than P70 would be too high when compared to the additional risk reduction. As a result, BOEM concluded that P70 reflects a risk tolerance that is neither too aggressive nor too conservative, striking an appropriate balance between the risk of default to the taxpayer and the burden to the regulated community.

Comment: Other commenters asserted that the proposed rule did not include sufficient information and transparency about how the probabilistic estimates are derived.

Response: In response to commenters asserting that BOEM did not explain the development of the P-values, BOEM notes that the development of BSEE's probabilistic estimates was discussed in the preamble to the proposed rule at 88 FR 42143. The decommissioning cost estimates are developed as a distribution (*i.e.,* P50, P70, and P90) based on actual decommissioning expenditure data received from OCS operators since mid-2016. The data is available based on a lease, ROW, or RUE basis and also contains details on a well, platform, pipeline, and site clearance level. It does not consider which companies are jointly and severally liable for meeting decommissioning obligations. The new probabilistic estimates were developed using industry-reported decommissioning costs pursuant to NTL–2016–N03, *Reporting Requirements for Decommissioning Expenditures on the OCS,* later superseded by NTL–2017–N02. Based on this reported data, BSEE developed three probabilistic estimates of decommissioning costs for each OCS facility on a given lease. The lowest cost estimate would have a 50 percent likelihood of covering the full cost of decommissioning a facility and is thus referred to as ''P50.'' The second lowest cost estimate, P70, would have a 70 percent likelihood of covering the full cost of decommissioning a facility. The third and highest cost estimate considered, P90, would have a 90 percent likelihood of covering the full cost of decommissioning a facility. These estimates are based on what the government would expect to pay if an operator failed to perform decommissioning. The current estimates can be found here: *https://www.data.bsee.gov/Leasing/DecomCostEst/Default.aspx.*

Comment: Some commenters asserted that the P70 values, and sometimes even the P50 values, exceed their internal estimates for their decommissioning costs and that BOEM should allow the use of company-provided estimates. These commenters noted that these internal estimates were based on contractor bids and experience.

Response: BOEM acknowledges the commenters' concerns that the P70 estimates may be higher than the actual cost of decommissioning for specific platforms. In general, it can be more expensive for the government to decommission a facility than it is for an OCS operator to do so. Therefore, even if the P70 value is higher than company-derived values, it may be more aligned with the costs that the government would incur to perform the decommissioning, which is the relevant consideration when determining the cost to decommission a facility if the company fails to do so. The final rule establishes a procedure for submitting these issues for the consideration of the Regional Director for a reduction in the supplemental financial assurance demand.

Comment: Multiple commenters asserted that BOEM should focus on sole liability properties (*i.e.,* properties with no predecessors or co-lessees), claiming that those properties pose the most risk to the U.S. taxpayer.

Response: BOEM disagrees with the commenters' assertion that it should focus only on sole liability properties, an approach that would not sufficiently protect the taxpayer. As discussed in the RIA, there are approximately $14.6 billion in decommissioning liabilities associated with leases without an investment grade predecessor in the chain of title, of which only $460 million is associated with sole liability properties. Thus, the Department is finalizing an approach that holds all current lessees responsible for providing supplemental financial assurance unless they meet the waiver criteria or are

associated with an investment grade co-lessee. The Department is finalizing, as proposed, the use of P70 to determine the amount of supplemental financial assurance required for properties where the current lessee or co-lessee does not have an investment grade credit rating or the ratio of the value of the proved reserves to decommissioning liabilities associated with those reserves is not greater than or equal to 3-to-1.

Comment: Commenters also asserted that the proposed rule ignored joint and several liability, and that by creating a system that does not account for the financial strength of liable predecessors, the proposed rule insulates predecessor lessees from their liabilities and relieves them of the need to perform due diligence when selling their lease(s) to a subsequent lessee.

Response: Omitting the existence of predecessor lessees from the analysis of whether to waive the requirement of supplemental financial assurance for a current lessee—the approach being finalized here—addresses several associated issues. It ensures that the current lessees have the financial capability to fulfill their decommissioning obligations. It also eliminates the incentive to use joint and several liability as an excuse to delay setting aside funds to pay for predictable decommissioning costs. This approach does not change or undermine joint and several liability; it retains BOEM's and BSEE's authority to pursue predecessor lessees for the performance of decommissioning.

Comment: Other commenters asserted that BOEM must consider the obligations of the predecessors in the chain-of-title before seeking additional financial assurance from current lessees, otherwise the result is requiring ''double bonding.''

Response: Commenters appear to be claiming that private arrangements between assignors (predecessors) and assignees (successors) are sufficient to protect the government without a requirement for providing supplemental bonds to the government. That is only partially the case. In most cases, the government cannot call the bonds in question. Any duplication can be avoided by the private parties cancelling any private arrangements that are not needed in light of government requirements. It is DOI's obligation to set bottom line, public, and uniform thresholds to protect the U.S. and its taxpayers; private agreements are unrelated to the Department's obligations under OCSLA.

Comment: One commenter provided an updated analysis of burden, including a comparison of the three proposed decommissioning estimate values, which was referenced by multiple commenters in their comment submissions. The commenter's analysis asserted that the results across the liability levels ''are largely dependent on each company's 'portfolio' of decommissioning liabilities'' and stated that in any portfolio of uncertain results, some cost estimates will exceed their expected value, while some cost estimates will be less. Accordingly, the commenter asserted, percentile values are not additive, as actual variances from estimates would offset each other so that the P70 of the combined outcomes of the portfolio would approach the sum of the mean. The commenter stated that a better approach would be to sum the mean values or to conduct a portfolio analysis for each operator. According to the commenter, P50 is more representative of a log-normal distribution's statistical average. Additionally, the commenter provided a cost comparison for P70 to P90 that included the following estimates: decrease in capital expenditures over 10 years ($4.7 billion vs $5.565 billion), decrease in OCS production (55 million barrels of oil equivalents (mmboe) vs 64 mmboe), and decrease in industry jobs across the Gulf coast region (36,200 vs 43,300).

Response: BSEE is responsible for providing BOEM (and the public) estimated costs to perform decommissioning. Since BOEM conducts the company financial risk evaluation to determine the appropriate financial assurance amount required, BSEE provides BOEM a range of estimates associated with analyses of data collected under the authority found at 30 CFR 250.1704 (subpart Q) and guidance under NTL No. 2017–N02. These costs are considered a proxy for ''fair value'', *i.e.,* how much it would cost BSEE to cause near immediate decommissioning by contracting with a third-party services provider.

Actual expenditure data has been collected by regulation since April 2016 for wells and facilities, and since May 2017 for pipelines. To date, BSEE has collected about 2,050 data points for wells, 1,235 for facilities (including removal and site clearance and verification), and 1,020 for pipelines. This actual expenditure data collected shows a wide range of costs for similarly situated infrastructure, making a probabilistic approach preferred over a single deterministic estimate. When sufficient data exists for a particular subset of the sample (*e.g.,* dry trees on fixed structures in 400 feet of water), BSEE performs multivariate regression analyses to create distributions of cost outcomes.

Based on these distributions, BSEE posts P50, P70, and P90 estimates for each well, platform, or pipeline, and aggregated for each lease, ROW, or RUE.[1] When sufficient data does not exist (*e.g.,* dry trees on floating structures) a single deterministic (or point) estimate is provided. Note that the point estimate contains no information about its potential variability. Contrast this with probabilistic estimates where a P50 estimate implies that half of the reported values should be less than and half should be more than the P50 estimate. Likewise, the P70 and P90 estimates imply that that there is 30 percent and 10 percent chance, respectively, that the decommissioning cost will be higher than the estimate. Said another way, P70 and P90 values imply there is a 70 percent and a 90 percent chance, respectively, that the estimated cost will not be exceeded. The data does not take into consideration which companies are jointly and severally liable for meeting decommissioning obligations.

It would be inappropriate for BOEM to consider the liability distribution across a company's entire portfolio, as financial assurance for one lease cannot be used to cover an unassociated lease. Financial assurance provided to BOEM is generally structured to provide coverage at the lease level; even for companies with multiple leases, policy coverage is typically limited to only those associated facilities on the specified lease. For example, financial assurance at BSEE's P70 level provides risk mitigation in the event of a default of that lessee where any excess financial assurance resulting from facilities on the same lease whose decommissioning costs were below the P70-estimate would be available to cover associated lease facilities whose decommissioning costs exceed the P70 value. For lessees or grant-holders that can demonstrate decommissioning costs below BSEE's estimates, the Department has included in the final rule a provision in 30 CFR 556.901(g) allowing for the submission of decommissioning cost data for consideration by the Regional Director in potentially reducing the supplemental financial assurance demand. Such information could include, for example, an existing contract for decommissioning activities. BOEM will consult with BSEE on the

[1] There is not a technical support document in support of these calculations; the data used for these estimates is available at *https://www.data.bsee.gov/Leasing/DecomCostEst/Default.aspx.*

information received prior to deciding to reduce the required amount of supplemental financial assurance. BOEM did not select the P90 level because of the expected burdens it would place on the industry, such as the examples highlighted by the commenter.

BOEM's goal for its financial assurance program continues to be the protection of the American taxpayer 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.

C. Revisions to Other Types of Supplemental Financial Assurance

The Department proposed and is finalizing revisions to the supplemental financial assurance requirements for third-party guarantees and decommissioning accounts, and prerequisites for transfers, as discussed in the subsections below.

1. Third-Party Guarantees

The Department proposed in 30 CFR 556.905(a) to evaluate a potential guarantor using the same credit rating or proxy credit rating criterion as was proposed for lessees. The value of proved oil and gas reserves of an associated lease would not be considered because that value is a characteristic of the lease belonging to the guaranteed lessee and not an asset belonging to the guarantor, and because liquid assets are needed to finance compliance or decommissioning. As discussed in the preamble to the proposed rule (88 FR 42145), the criteria to evaluate a guarantor provided in the existing regulations have proved difficult to apply. Using the same financial evaluation criterion, *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. Using the same criterion also simplifies the evaluation process, making it more efficient without compromising the risk to taxpayers.

Additionally, to allow more flexibility in the use of third-party guarantees, the final rule allows a third-party guarantee to be used as supplemental financial assurance for a RUE or ROW grant as well as a lease. Most significantly, the amendment proposed in § 556.902(a)(3) 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, and, as agreed to by BOEM, would allow a guarantee limited to a specific amount or limited one or more specific lease obligations.

A summary of all comments received regarding third-party guarantees and BOEM's corresponding responses regarding the provisions to evaluate third-party guarantors can be found in section 6.1 of the *Response to Public Comments.*

Comment: Commenters generally supported the proposal to evaluate a potential guarantor using the same credit rating or proxy credit rating criterion as proposed for lessees.

Response: BOEM acknowledges the commenters' support for the proposal to evaluate a potential guarantor using the same credit rating or proxy credit rating criterion as proposed for lessees, and the Department is finalizing this provision in 30 CFR 556.905(a) as proposed.

Comment: Multiple commenters generally supported the proposal to allow limiting third-party guarantees to a specific amount.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing the ability to limit third-party guarantees to a specific amount or one or more specific lease obligations in 30 CFR 556.902(a)(3).

Comment: One commenter suggested that DOI modify its regulations to allow guarantors to limit their guarantees to specific obligations. They asserted this modification is consistent with the proposed rule and would ease pressure on the security market by removing any additional and unstated obligations from guarantees that are not included in a financial assurance demand order.

Response: The Department is finalizing the proposed amendment to § 556.902(a)(3), which will 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, and will allow, as agreed to by BOEM, a guarantee limited to a specific amount or to one or more specific lease obligations. This change, to replace a requirement to cover all costs, parties, and obligations with permission to limit any of them, part of which BOEM is adding in response to public comments, allows a guarantor to limit its guarantee to a specific amount of the total financial assurance requirement. By allowing a third-party guarantor to guarantee only the obligations it wishes to cover, BOEM provides industry with the flexibility to use the guarantee to satisfy supplemental financial assurance requirements without forcing the guarantor to cover 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 the guarantor may have limited influence. Moreover, BOEM's capacity to accept a third-party guarantee that is limited to the obligations of a specific party does not reduce BOEM's protection because if a limited guarantee is approved, the guaranteed party will be required to provide other supplemental financial assurance with respect to any of its liabilities left uncovered by the limited guarantee.

Comment: Other commenters opposed the proposal and asserted that third-party guarantors should not be excused from the requirement that guarantees cover all obligations of lessees, operating rights owners, and operators on the lease, but did not provide supporting reasoning for their assertions.

Response: BOEM believes that allowing third-party guarantors to limit their guaranteed obligations will ease the burden for entities required to provide additional supplemental financial assurance, while continuing to reduce the risk to taxpayers. DOI has added regulatory language in the final rule in 30 CFR 556.905(b) specifically allowing a third-party to limit its cumulative obligations to a fixed dollar amount or to covering the costs to perform one or more specific lease obligations (with no fixed dollar amount). In both scenarios, the value or the obligations to be covered must be agreed to by BOEM at the time the third-party guarantee is provided.

Additionally, to allow more flexibility in the use of third-party guarantees, the final rule will allow a third-party guarantee to be used as supplemental financial assurance for a RUE or ROW grant, as well as a lease.

BOEM acknowledges the commenters' opposition to allowing third-party guarantors to limit their guarantee and BOEM assumes the concern flows from a belief that the third-party guarantee may be insufficient. Contrary to this understanding, however, the lessee must still provide the total amount of the supplemental financial assurance demand through other financial assurance methods, even if a third-party guarantor limits the guarantee.

The proposed rule included amendments to allow BOEM to cancel a third-party guarantee under the same terms and conditions that apply to cancellation of other types of financial assurance, as provided in proposed § 556.906(d)(2). No comments were received on this provision. Therefore, the Department is finalizing, as

proposed, amendments to allow BOEM to cancel a third-party guarantee under the same terms and conditions that apply to cancellation of other types of financial assurance, as provided in proposed § 556.906(d)(2).

Finally, the existing regulation refers to both a ''guarantee'' and an ''indemnity agreement'' (which BOEM intended to mean the same thing), and the proposed rule clarified that the regulations contemplate only one agreement: the guarantee agreement. No comments were received on this proposed amendment; therefore, the Department is also finalizing the clarification that both a ''guarantee'' and an ''indemnity agreement'' contemplate the same guarantee agreement by removing all references to ''indemnity agreement'' in the regulatory text. This terminology is changed to clarify that the government is not required to incur the expenses of decommissioning before demanding compensation from the guarantor.

2. Decommissioning Accounts

The Department proposed to rename the lease-specific abandonment accounts in 30 CFR 556.904 as ''Decommissioning Accounts,'' the terminology used by the industry. This name change is intended to remove any perceived limitation that this type of account can apply to only a single lease, and to signify that these accounts may be used to ensure compliance with supplemental financial assurance requirements for a RUE and ROW grant, as well as a lease. To make these accounts more attractive to parties who may desire to use this method of providing supplemental financial assurance, the Department also proposed to remove the requirement in 30 CFR 556.904(d) to pledge Treasury securities to fund the account once the funds equal the maximum amount insurable by the Federal Deposit Insurance Corporation (FDIC)/Federal Savings and Loan Insurance Corporation (FSLIC), for which insurance is currently capped at $250,000.

No comments were received specifically on the proposed amendment to rename the lease-specific abandonment accounts in 30 CFR 556.904 as ''Decommissioning Accounts'' or the proposed amendment to remove the requirement to pledge Treasury securities to fund the account before the funds equal the maximum amount insurable by the FDIC/FSLIC. Therefore, the Department is finalizing 30 CFR 556.904, as proposed, to rename the lease-specific abandonment accounts as ''Decommissioning Accounts.'' The Department is also finalizing the removal of the requirement to pledge Treasury securities to fund the account before the funds equal the maximum amount insurable by the FDIC/FSLIC.

3. Transfers of Lease Interests to Other Lessees or Operating Rights Holders

The Department proposed amendments to update subparts G (30 CFR 556.704) and H (30 CFR 556.802) of the Department's existing part 556 regulations to clarify that BOEM will not approve the transfer of a lease interest, whether a record title interest or an operating rights interest, until the transferee complies with all applicable regulations and orders, including financial assurance requirements. As discussed in the preamble to the proposed rule (88 FR 42146), many of the facilities currently on the OCS have decommissioning obligations where the cost of performance greatly exceeds the amount of financial assurance currently available to DOI. To address this problem, the Department proposed to clarify that it may withhold approval of any transfer or assignment of any lease interest unless and until the financial assurance requirements have been satisfied.

A summary of all comments received regarding transfers and BOEM's corresponding responses regarding revisions to transfers can be found in section 6.2 of the *Response to Public Comments.*

Comment: Commenters generally supported the proposal to allow BOEM to withhold approval of any new transfer or assignment of any lease interest until financial assurance obligations are satisfied.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed, amendments to update subparts G (30 CFR 556.704) and H (30 CFR 556.802) of the Department's existing part 556 regulations to clarify that BOEM may withhold approval of the transfer of a lease interest, whether a record title interest or an operating rights interest, until the transferee complies with all applicable regulations and orders, including financial assurance requirements. As a result of these final amendments, BOEM may withhold approval of any new transfer or assignment of any lease interest unless and until financial assurance demands have been satisfied.

D. Evaluation Methodology

The Department proposed and is finalizing revisions to the financial evaluation criteria that will be used for determining supplemental financial assurance requirements for oil, gas, and sulfur leases, RUE grants, and pipeline ROW grants. The proposed evaluation methodology for the revised criteria, the public comments received, and DOI's final amendments are discussed in the subsections below. Summaries of all comments received regarding credit ratings, proxy credit ratings, and valuing proved oil and gas reserves and BOEM's corresponding responses can be found in section 7 of the *Response to Public Comments.*

1. Credit Ratings

a. Use of an ''Issuer Credit Rating''

The Department proposed to use an ''issuer credit rating'' to evaluate the financial health of OCS lessees, grant holders, and guarantors, and proposed to include the new term and corresponding definition in 30 CFR 550.105 and 556.105. As discussed in the preamble to the proposed rule (88 FR 42146), an issuer credit rating provides the rating agencies' opinions of the entity's ability to honor senior unsecured debt and debt-like obligations. The Department proposed to accept only issuer credit ratings from a Nationally Recognized Statistical Rating Organization (NRSRO), such as Standard and Poor's (S&P) Rating Services and Moody's Investors Service Incorporated (or any of their subsidiaries). General comments on issuer credit ratings are as follows:

Comment: Commenters generally supported the use of an issuer credit rating. Several commenters recommended that BOEM include Fitch Ratings in the definition as it is an NRSRO equivalent to S&P's and Moody's.

Response: BOEM acknowledges the commenters' support and agrees with the commenters' assertion that the intent of the proposed rule was to allow credit ratings from Fitch Ratings. The Department has included Fitch Ratings and its subsidiaries in the final rule in 30 CFR 556.105.

Comment: An additional commenter noted that BOEM should remove the term and definition of issuer credit rating from part 550 because it is not used in the part.

Response: The commenters' assertion is correct, and the Department is not finalizing the proposed addition of ''Issuer credit rating'' to 30 CFR part 550. In part 550, the existing regulatory text references 30 CFR part 556 to discuss the use of the issuer credit rating.

b. Credit Rating Threshold

As discussed in the proposed RIA, 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. As would be expected, the average S&P historical 1-year default rates increase significantly with lower ratings. The average S&P 1-year default rate for BBB-rated companies from 1981 to 2020 was 0.24 percent. Comparatively, the average 1-year default rate for BB- rated companies was 1.21 percent, for B- rated companies, 8.73 percent, and for C rated companies, 24.92 percent. In the proposal, BOEM asserted that 1-year default rates are an appropriate measure of risk, given BOEM's policy of reviewing the financial status of lessees, ROW holders, and RUE holders, typically on an annual basis (the review typically corresponding with the release of audited annual financial statements). In addition, throughout the year, BOEM monitors company credit rating changes, market reports, trade press, articles in major news media, and quarterly financial reports to review the financial status of lessees, ROW holders, and RUE holders. The amended regulation, as proposed, would not preclude a demand for supplemental financial assurance through the Regional Director's regulatory authority at any time.

The Department proposed to use an investment grade credit rating threshold for determining if supplemental financial assurance may be required by a lessee. The Department proposed the term and associated definition of ''Investment grade credit rating'' in 30 CFR 550.105 and 556.105. BOEM explained in the preamble to the proposed rule (88 FR 42159) that the use of an investment grade credit rating standard for waiving supplemental financial assurance was an appropriate threshold because it minimizes credit default risk to the taxpayer without overburdening offshore companies with the cost of providing financial assurance in low credit risk scenarios. BOEM received a wide range of comments on the proposal to use an investment grade credit rating threshold for determining supplemental financial assurance requirements, as summarized below.

Comment: Multiple commenters asserted that the proposal would result in significant hardship to small businesses that did not meet this criterion and hence would have to provide supplemental financial assurance. Commenters argued that a requirement to provide supplemental financial assurance would increase the risks of defaulting, not investing in maintenance of existing operations, laying off employees, delaying performance of current decommissioning obligations, and diverting capital funds needed for future OCS energy development.

Response: BOEM acknowledges the commenters' concern and considered the effects on small entities; however, BOEM is not targeting the size of companies. BOEM is evaluating the financial strength of all companies in order to ensure that the development of energy in the OCS is safe and protects both the taxpayer and the environment. The Department has included numerous provisions in this rulemaking to reduce the burden on small entities. BOEM acknowledged in the proposed rule (88 FR 42146) that small businesses may not have issuer credit ratings and, to address this issue, proposed to allow entities without a rating to request that the BOEM Regional Director assess a proxy credit rating. Additionally, these small businesses can be evaluated on the proved reserves of their lease to determine whether they may be waived from the requirement to provide additional supplemental financial assurance, also potentially reducing their financial burden. Furthermore, on a lease where the lessee has an investment grade credit rating, BOEM will waive co-lessees from having to provide supplemental financial assurance. The Department also included phased-in implementation, and increased the flexibility of decommissioning accounts and third party guarantees to reduce the financial burden on all lessees, including small businesses.

Comment: Multiple commenters supported the use of an investment grade threshold.

Response: BOEM acknowledges the commenters' support and agrees that using a credit rating threshold of investment grade strikes the appropriate balance between both DOI's and the conventional energy sector's goal to protect the American taxpayers from exposure to financial loss associated with OCS development and the burden of providing financial assurance because of the low default risk associated with companies that maintain an investment grade credit rating. The Department is finalizing, as proposed in 30 CFR 556.105, the use of an investment grade credit rating threshold.

Comment: Other commenters supported an even higher credit rating threshold.

Response: BOEM acknowledges the commenters' support for the change in the proposed rule that changed the credit rating threshold for waiver of supplemental financial assurance from BB- to BBB- but disagrees with the commenters' assertion that BOEM should further raise the threshold to a higher rating. As discussed in the preamble to the proposed rule, BOEM believes that 1-year default rates are an appropriate measure of risk, given BOEM's policy of reviewing the financial status of lessees, ROW holders, and RUE holders at least on an annual basis (the review typically corresponds with the release of audited annual financial statements). As would be expected, the average S&P historical 1-year default rates increase significantly with lower ratings. The average S&P 1-year default rate for BBB- rated companies from 1981 to 2020 was 0.24 percent. Comparatively, the average 1-year default rate for BB- rated companies was 1.21 percent, for B- rated companies, 8.73 percent, and for C rated companies, 24.92 percent. Raising the threshold criteria would only reduce the rate to 0.12 percent for a credit rating of BBB+ or to 0.07 percent for a credit rating of A-. BOEM believes that the 1-year default rate for BBB- rated companies of 0.24 percent balances the need for ensuring lessee obligations in the OCS are met while ensuring that the development of the nation's offshore resources is not unreasonably hindered. Raising the threshold to a higher value would reduce capital available to companies for investment, with little additional protection from the effects of bankruptcy. Additionally, financial assurance can only be used for the obligations of the specific lease for which it is provided. Having more financial assurance from low-risk companies will not provide meaningful protection against the default of high-risk companies and thus would have an insignificant effect on aggregate risk.

Comment: One commenter asserted that the proposal is a ''form of adverse selection against financial assurance providers because only entities with an elevated risk of default will remain in the market for financial assurance instruments such as surety bonds.''

Response: BOEM disagrees with the commenter's assertion that the proposal is a ''form of adverse selection.'' ''Adverse selection'' describes the phenomenon whereby one party to a transaction has better information than the other and therefore prices are adjusted to accommodate this discrepancy in information. The commenters do not explain how that concept applies to the rulemaking. They assert that it amounts to ''adverse selection'' against financial assurance providers because ''only entities with an elevated risk of default will remain in the market for financial assurance

instruments such as surety bonds.'' There is no assertion of any discrepancy in the information available to lessees vs. assurance providers or any effect on the price of that transaction and BOEM does not see any. To the extent the commenters are asserting that the risk pool is too small to make underwriting feasible, their comment conflicts with other comments received claiming that the rule requires supplemental assurance from relatively low risk lessees. The Department continues, as proposed, to allow other types of financial assurance instruments in addition to bonds in the final rule. Under BOEM's past practice, many companies were waived from providing supplemental financial assurance, and it is likely that only companies with an elevated risk of default sought to obtain bonds to comply with the existing regulations. Additionally, the number of companies requesting bonds for use as supplemental financial assurance and their corresponding risk profile does not preclude a viable bond market as the market can set the fees and collateral required to obtain the bonds.

Comment: Several commenters expressed concerns that the preamble to the proposed rule alluded to monitoring of credit ratings, but the regulatory text did not mention the monitoring. They asserted that, to ensure these commitments are kept, the Department must include specific requirements for reviewing credit ratings regularly, with a requirement for BOEM to reassess credit ratings at least once per year.

Response: With respect to monitoring credit ratings, BOEM stated in the preamble to the proposed rule at 88 FR 42147 (and has repeated in this final rulemaking) that BOEM's general practice is to review ''the financial status of lessees, ROW holders, and RUE holders at least on an annual basis (the review typically corresponding with the release of audited financial statements).'' BOEM's financial assurance program is intended to ensure that private companies have the capacity to meet their financial and non-financial obligations. BOEM seeks to balance the financial risk to the government and the taxpayer with the regulatory burden on lessees and grantees. BOEM did not add additional regulatory text in this final rule to address this comment because it is unnecessary; BOEM maintains the general practice of evaluating lessees, RUE grant-holders, and pipeline ROW grant-holders for financial risk on at least an annual basis. The amended regulation would not preclude a demand for supplemental financial assurance through the Regional Director's regulatory authority at any time.

As discussed in the proposed RIA, of the 276 companies analyzed, none were rated at or above BBB- at the time of bankruptcy or within 10 years prior to bankruptcy. As such, BOEM has selected BBB- as the credit rating threshold for providing additional financial assurance. The Department is finalizing, as proposed in 30 CFR 556.901(d), an issuer credit rating threshold of BBB- (S&P and Fitch) or Baa3 (Moody's), an equivalent credit rating provided by another SEC-recognized NRSRO, or an equivalent proxy credit rating, to ensure that lessees and grant holders have the capacity to meet their financial and non-financial obligations. In order to both ensure that companies do not ''cause [unmitigated] damage to the environment or to property, or endanger life or health,'' 43 U.S.C. 1332(6), and to promote ''expeditious and orderly development,'' 43 U.S.C. 1332(3), BOEM seeks to balance the financial risk to the government and the taxpayer while minimizing unreasonable regulatory burdens. If different NRSROs provide different ratings for the same lessee, BOEM will use the higher of the lessee's ratings. Additionally, as BOEM monitors company rating changes throughout the year, use of this threshold will ensure that BOEM has adequate time to demand needed financial assurance before a company drops further below the investment grade rating.

2. Proxy Credit Ratings

The Department proposed in 30 CFR 556.901(d) to allow entities that do not have a NRSRO-issued credit rating to request that the Regional Director determine a proxy credit rating based on audited financial information for the most recent fiscal year, including an income statement, a balance sheet, a statement of cash flows, and the auditor's certificate. As proposed, DOI intended the ''most recent fiscal year'' to mean a continuous 12-month period within the 24-months prior to the Regional Director's determination that supplemental financial assurance is required. General comments on proxy credit ratings are as follows:

Comment: Commenters expressed concerns regarding BOEM's proposal to use a proxy credit rating for entities without an issuer credit rating. Commenters asserted that BOEM is not a financial rating agency and does not have the capacity or expertise to institute a program to develop proxy credit ratings.

Response: BOEM is not developing the credit rating; it is using S&P Global Inc.'s Credit Analytics credit model, in conjunction with company-provided financial information for the most recent fiscal year to obtain a proxy rating. As discussed in the preamble to the proposed rule at 88 FR 42146, the Regional Director would use the model and company-provided audited financial information for the most recent fiscal year, including an income statement, a balance sheet, a statement of cash flows, and the auditor's certificate. The use of S&P Global Inc.'s Credit Analytics credit model provides an accurate and objective method to assess any given company's probability of default on its financial obligations based on its audited financial statements. The vast majority of companies operating on the OCS are private companies that do not have an issuer credit rating; therefore, without an option for a proxy credit rating, these companies would be required to provide supplemental financial assurance unless they met the reserves criterion. The Department proposed, and is finalizing in 30 CFR 556.901(d), the use of a proxy credit rating to benefit those companies without an issuer credit rating, particularly small businesses, and to therefore reduce their burden by allowing them the opportunity to demonstrate that they should not be required to provide supplemental financial assurance.

Comment: Commenters asserted that companies would need to establish a proxy credit rating using the ''intricate financial models of S&P and Moody's'', which would be time consuming, and that providing the information that BOEM proposed to require in order to perform a proxy rating would represent a burden for small companies.

Response: BOEM disagrees with the commenter's assertion that the companies would need to establish a proxy credit rating using the ''intricate financial models of S&P and Moody's'' and that the development would be time-consuming. Companies without a credit rating can provide BOEM with audited financials and BOEM will perform the modeling to determine the proxy credit rating. BOEM does not believe this option creates an undue burden on small businesses, as those small businesses would be required to provide supplemental financial assurance if they could not obtain an issuer credit rating; the proxy credit rating provides an alternative for these businesses to qualify for the financial waiver. Additionally, if a company finds this alternative more burdensome than the benefit of avoiding posting

supplemental financial assurance, nothing in the regulations requires them to select this alternative. Providing audited financials in exchange for possible supplemental financial assurance avoidance is consistent with practice under the current regulations and thus not an additional burden.

The Department proposed to use S&P Global Inc.'s Credit Analytics credit model to calculate proxy credit ratings, but retained the right to use a different model if it determines that a different model more accurately reflects those factors relevant to the financial evaluation of companies operating on the OCS. BOEM specifically solicited comment on the use of S&P Global Inc.'s Credit Analytics credit model for developing proxy credit ratings. General comments on the use of the S&P model are as follows:

Comment: Commenters were generally supportive of the use of S&P Global Inc.'s Credit Analytics credit model.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 556.901(d), the option for companies without issuer credit ratings to request the Regional Director to determine a proxy credit rating based on audited financial information for the most recent fiscal year and the S&P credit model.

3. Valuing Proved Oil and Gas Reserves

The Department proposed in 30 CFR 556.901(d) to consider the proved reserves on a particular lease when determining whether supplemental financial assurance is required. As discussed in the preamble to the proposed rule (88 FR 42147), 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)) located on a given lease. DOI proposed that companies should report the value of their reserves using the methodology pursuant to the SEC's regulations on reserve reporting, and the presentation should be by the lease, or leases, for which the exemption is being requested. These regulations are commonly used and understood by offshore oil and gas companies and such reserve reports are already produced by publicly traded companies. This also allows BOEM to rely on the established SEC regulations on the definitions, qualifications, and requirements for proved reserves, rather than attempting to recreate these regulations. BOEM would use the value of proved oil and gas reserves per-lease when determining whether the discounted value of the reserves on any given lease exceeds three times the cost of the proposed P70 decommissioning estimate associated with the production of those reserves.

Additionally, the Department proposed the use of a ratio of the value of proved reserves to decommissioning liability associated with those reserves that meets or exceeds a value of 3-to-1. As discussed in the preamble to the proposed rule (88 FR 42148), BOEM believes that a property with a sufficient ''reserves-to-decommissioning cost'' ratio would likely be purchased by another company if a current lessee defaults on its obligations, thereby reducing the risk that decommissioning costs for that property would be borne by the government, and consequently reducing the need for supplemental financial assurance. In BOEM's judgment, a ratio of 3-to-1 provides sufficient risk reduction to justify a Regional Director determination that the lessee is not required to provide supplemental financial assurance for that lease. Bankruptcy data show that the most valuable properties of the bankrupt company (with at least a 3-to-1 ratio of the value of reserves to decommissioning costs) are acquired by another entity. That result accords with BOEM's experience and with common sense because the value of these properties is economically viable even after including the decommissioning cost. Additionally, no commenters provided a different value than 3-to-1 in response to BOEM's solicitation for comment on other appropriate values.

Comment: Multiple commenters generally supported the use of a minimum 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 556.901(d), the use of a minimum 3-to-1 ratio.

Comment: Several commenters opposed the use of the ratio, asserting that normal fluctuations in the demand and price of oil and gas, coupled with the imminent global shift away from fossil fuels to renewable energy, make it likely that the value of proved oil reserves in all leases will decline over time. As a result, lessees may earn less over the life of the lease and in turn, have less capital to cover decommissioning costs.

Response: There are many external factors that can impact the value of reserves. BOEM's use of this metric is only to determine the likelihood that a lease would be acquired, due to the value of the reserves left on the lease, by a financially healthy company that would then be liable for lease obligations.

Comment: Several commenters asserted that the value of decommissioning liability should be added back to the reserve value to avoid double counting. Additional commenters asserted that comparing undiscounted decommissioning liability to the present value of underlying reserves was an incorrect analysis.

Response: BOEM agrees with the commenters that the decommissioning liability should not be double counted; it is not the Bureau's intent to double count the decommissioning liability. The regulations are clear that BOEM is asking for the discounted value of the reserves (*e.g.,* realized sale price minus uplift costs) without factoring in decommissioning. BOEM requires lessees to provide supplemental financial assurance against undiscounted BSEE decommissioning estimates to protect from financial default events that may occur before scheduled end of life and the full accounting recognition of the asset retirement obligation, therefore BOEM concludes that using a discounted asset retirement obligation insufficiently protects the taxpayer. BOEM believes the regulations are sufficiently defined to ensure the reserve analysis is based on the ratio on the discounted value of proved reserves (excluding decommissioning costs) to the undiscounted BSEE decommissioning estimate. The Department is finalizing, as proposed in 30 CFR 556.901(d)(4), the use of a ratio of the value of proved reserves to decommissioning liability associated with those reserves that meets or exceeds 3-to-1.

E. Phased Compliance With Supplemental Financial Assurance Orders

In the preamble to the proposed rule, BOEM acknowledged that the proposed regulations could have a significant financial impact on affected companies (88 FR 42148). For that reason, BOEM proposed to phase in the new supplemental financial assurance requirements over a 3-year period for existing leaseholders in 30 CFR 556.901(h). As proposed, BOEM would require that any company receiving a supplemental financial assurance demand (within 3 years of the rule becoming effective) post one-third of the total amount by the deadline listed on the demand letter. A second one-third would be required within 24 months of the receipt of the demand letter. The final one-third payment would be due within 36 months of the receipt of the demand letter. BOEM specifically

solicited comments regarding this approach from potentially affected parties, and requested comment on how the new supplemental financial assurance demands could be most effectively implemented to minimize any unnecessarily adverse effects.

A summary of all comments received regarding the phased compliance approach and BOEM's corresponding responses can be found in section 8 of the *Response to Public Comments.*

Comment: In general, industry commenters supported the phased approach and several commenters recommended that it be extended to 5 years to ''mitigate potential significant risk to companies and to provide adequate time for the bonding market to adjust.''

Response: BOEM disagrees with the commenters' recommendation that the phased approach should be extended to 5 years. BOEM has concluded that the period of 3 years reduces exposure to risk of non-performance and hence addresses the need at issue in this rulemaking, requiring supplemental financial assurance where appropriate to protect the taxpayer while simultaneously providing adequate time for the bonding market to adjust to the new requirements. The bond market adjustment is basically a price adjustment and not so much a volume adjustment, and hence a 3-year period is sufficient to make these adjustments. On the other hand, lessees have a sufficient period of time to finance the cost of the required financial assurance. If the bond market does not provide bonding to a lessee, it is not due to market conditions, but rather to the high levels of risk, and hence the implication in this case is that the lessee is such a high risk that no bonding company wants to add this risk to its portfolio. The Department is finalizing in 30 CFR 556.901(h) a 3-year phased compliance period.

Comment: Additional commenters requested that BOEM include a phased provision for parties that were exempt but then later could not meet the exemption criteria because of changed circumstances and that BOEM include such provisions for parties that obtain OCS lease or grant interests in the first 3 years after implementation of the final rule.

Response: In response to commenters' suggestions that BOEM add clarification that this option is available for changed circumstances or for obtaining new lease interests, BOEM believes that the proposed text in 30 CFR 556.901(h) was broad enough to encompass these circumstances. If a party is exempt but then later cannot meet the exemption criteria because of changed circumstances (*e.g.,* change in credit rating), or if a party obtains an OCS lease or grant interest within the phased compliance time frame after implementation of the final rule, they would be allowed to use the phased compliance approach. BOEM has retained the language to establish a 3-year compliance window broad enough to encompass these circumstances. BOEM intends for any party who, within the 3-year compliance window, incurs new decommissioning liability or experiences changed circumstances resulting in a financial assurance demand from BOEM, to be allowed, at the Regional Director's discretion, to use the 3-year phased in approach to providing supplemental financial assurance. This compliance window will end on the date 3 years after the effective date of this final rule and any party receiving a supplemental financial assurance demand after that date will be required to provide the supplemental financial assurance in full as required by the demand, with no phase-in.

F. Appeal Bonds

As discussed in the preamble to the proposed rule (88 FR 42148), the Department proposed a new requirement in 30 CFR 556.902(h) whereby any company seeking to stay a supplemental financial assurance demand pending appeal must, as a condition of obtaining a stay of the order, post an appeal bond in the amount of supplemental financial assurance required. If the appeal is successful, the amount of the appeal bond in excess of the amount of any supplemental financial assurance determined to be required would be returned to the appropriate party. If the appeal is unsuccessful, the appeal bond could be replaced with, or converted into, bonds or other forms of financial assurance to cover the supplemental financial assurance demand.

Comments received regarding appeals and BOEM's corresponding responses can be found in section 9 of the *Response to Public Comments.*

Comment: Multiple commenters expressed opposition to BOEM's proposal, asserting that it raises due process concerns, specifically because the proposal inhibits the recipient's first opportunity to have an adjudication of BOEM's determination. They noted that the current process provides an opportunity for each party to express concerns at an early stage, while, under the proposal, a lessee could be forced into posting a bond that could be held for years, which is disproportionate to the perceived risk to the U.S. taxpayer. An additional commenter equated the appeal bond requirement to ''an automatic denial of stays,'' which, they claimed, could render most supplemental financial assurance demands subject to immediate judicial review, citing 5 U.S.C. 704 and 43 CFR 4.21(c). The same commenter also suggested that the appeal bond provision would contradict existing § 590.107 (sic) (should be ''§ 590.7'').

Response: BOEM disagrees that the appeal bond provision raises due process concerns. It does not prevent the recipient of a BOEM order from appealing, or from requesting a stay of that order. An appeal bond no more deprives an appellant of due process here than it does in the case of a judicial appeal. No court has held that due process requires that agencies assure the availability of stays without appeal bond requirements, nor is it the case that the Interior Board of Land Appeals' (IBLA's) decision on a stay request constitutes an adjudication of the decision appealed. Further, the appeal bond provision does not prevent the parties from being able to express concerns at an early stage. The recipient of a financial assurance demand has 60 days within which to file a notice of appeal with the IBLA, during which time it is free to meet with BOEM and attempt to resolve any issues with respect to the demand. See 30 CFR 590.3. In fact, the regulations specifically provide for early, informal resolution of issues. See 30 CFR 590.6. Moreover, whether an appeal bond is required has no effect on the IBLA's adjudication of the merits of an appeal. The requirement to post an appeal bond would, however, add a procedural step before a stay of a BOEM demand could be put in place. This step is necessary to ensure that financial assurance is available to cover an appellant's obligations if, during the pendency of the appeal, the appellant undergoes financial distress.

As noted above, if an appellant wins its appeal, and no financial assurance is required, the appeal bond will be cancelled, or the amount of the appeal bond in excess of the amount of financial security determined to be required will be returned to the appropriate party. Thus, an appellant is not ''forced'' to post an appeal bond that may be held for years, as claimed by the commenter. This is different from not appealing and posting a bond for lease compliance that will be held until decommissioning is performed. Nor did the proposed rule prescribe that an appeal bond must ''convert'' to a different type of bond to cover a required financial assurance obligation.

BOEM also disagrees that the appeal bond provision will result in ''automatic denials of stays,'' leading to more judicial litigation. The statutory and regulatory provisions cited by the commenter stand for the proposition that the unavailability of a stay excuses parties from the requirement to exhaust administrative remedies before seeking judicial review. But this outcome will occur only if the IBLA denies a stay request, and such a denial would be made independent of the appeal bond requirement. The IBLA must grant or deny a stay based on the factors set forth at 43 CFR 4.21(b)(1), and not on whether an appeal bond has been, or must be, posted. See 43 CFR 4.21(b)(4). Therefore, the requirement that an appeal bond be posted should not result in the IBLA granting fewer stay requests. Nor does the appeal bond provision contradict § 590.7. The latter provision, at paragraph (c), states that the IBLA may grant a stay of a BOEM decision, but that the decision remains in effect until the stay is granted. That is true regardless of the new appeal bond provision. Under the new provision, the IBLA may still grant a stay of a decision, and until a stay is granted, the decision remains in effect, but in order for the stay to take effect, the appellant must post the required appeal bond.

Comment: One commenter expressed concern that the proposed rule specifies that an appeal bond will ''automatically'' convert to a financial assurance obligation should the lease operator lose its appeal and noted that bonds do not operate in this manner. If finalized, the commenter asserted that the appeal bond should provide a certain number of days for the lease operator to post its financial assurance obligation to allow the surety to underwrite the operator at the time the bond is determined to be justified. Additionally, the commenter stated that BOEM did not offer support for this proposed requirement and requested data on the number of financial assurance appeals, the number of stays granted in those appeals, and the total historical decommissioning liability that has gone uncovered due to appellate stays.

Response: The proposed rule did not require that an appeal bond ''convert'' to a financial assurance obligation and BOEM is not finalizing the rule to require conversion. If an appellant lost its appeal, the appeal bond could be ''converted'' to financial assurance if that is a viable approach, or the lessee who lost the appeal would have to provide some other acceptable form of financial assurance. Neither the proposed nor final rule specify a timeline for this provision of financial assurance.

In response to the request for data, of the 1,449 appeals the IBLA received during the last 5 fiscal years, only 5 were from BOEM decisions concerning financial assurance. The appellant(s) filed a petition for a stay in 4 of those 5 appeals, and the IBLA granted one of them. Additional data regarding the current number of appeals is available at the following website: *https://www.doi.gov/oha/organization/ibla/IBLA-Pending-Appeals.*

Comment: A commenter also highlighted that BSEE, in its recent final rule arising from the Department's 2020 proposed rule, declined to retain an appeal bond provision that would have required the posting of an appeal bond to obtain a stay of a BSEE decommissioning order. This commenter suggested that it would be unreasonable for BOEM and BSEE to take two different approaches.

Response: There is no inconsistency with BSEE deciding not to require appeal bonds at the stage of an order to decommission and BOEM deciding to require them at the stage of financial assurance demands. The BSEE decision is based in large part on the assumption that financial assurance is already in place by the time it issues decommissioning orders and thus it does not face the risks that BOEM does at the time of demanding financial assurance. See 88 FR 23569, 23579 (April 18, 2023) (noting BSEE's reliance on the financial assurance regulations for determining an appeal bond is not necessary for the BSEE program).

BOEM's retention of the appeal bond provision means that, in the event of a stay of a financial assurance order, there will be an appeal bond, ensuring that, even if the appellant becomes insolvent during the appeal, there will be sufficient funds to perform decommissioning when it is ordered by BSEE. This fact supports, rather than contradicts, BSEE's decision not to retain its own appeal bond provision in the BSEE rule, as duplicative and unnecessary.

Additionally, after the publication of the NPRM, which included BOEM's proposed provision to require the appeal bond, on December 13, 2023, BSEE published a proposed rule titled *Bonding Requirements When Filing an Appeal of a Bureau of Safety and Environmental Enforcement Civil Penalty* (88 FR 86285), which would amend the bonding requirements when filing an appeal of a BSEE civil penalty. The proposed regulations would require that entities appealing a BSEE civil penalty decision to the IBLA must have a bond covering the civil penalty assessment amount for the IBLA to have jurisdiction over the appeal.

Further, an appeal bond requirement already applies to appeals of civil penalties assessed by BOEM and orders of the Office of Natural Resources Revenue (ONRR). Such a requirement is equally appropriate when the effect of a change in circumstances of the appellant, such as bankruptcy or insolvency, could leave DOI without the means of performing decommissioning. Companies can, and have, filed for bankruptcy while waiting for a decision from the IBLA on an appeal, leaving the government with no financial assurance to address decommissioning obligations. As such, the Department is finalizing, as proposed, the inclusion of the requirement whereby any company seeking to stay a supplemental financial assurance demand pending appeal must, as a condition of obtaining a stay of the order, post an appeal bond in the amount of supplemental financial assurance required.

G. Other Amendments

1. Revisions to Definitions

The Department proposed to revise definitions, remove terms and associated definitions, and add new definitions in 30 CFR 550.105 (*Definitions*) and 30 CFR 556.105 (*Acronyms and definitions*) as discussed in the following subsections. A summary of all comments received regarding revisions to definitions and BOEM's corresponding responses can be found in section 10 of the *Response to Public Comments.*

a. New Terms: ''Assign'' and ''Transfer''

The Department proposed to add new definitions for the terms ''Assign'' and ''Transfer'' to clarify that these terms are used interchangeably throughout 30 CFR parts 550 and 556. This change would also serve to clarify that the related terms ''transferee'' and ''transferor'' are interchangeable with ''assignee'' and ''assignor'' respectively. The definition of the new term ''Assign'' was proposed to mean conveying an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For purposes of this part, ''assign'' is synonymous with ''transfer'' and the two terms are used interchangeably. The definition of the new term ''Transfer'' was proposed to mean ''conveying an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''transfer'' is synonymous with ''assign'' and the two terms are used interchangeably.

General comments received are as follows:

Comment: Commenters suggested that BOEM clarify for the purposes of part 550 that ''transfer'' in both the new term and in the definition of ''Assign'' should be defined to exclude informal transfers. Examples of informal transfers were corporate name changes that are not technically a conveyance of an interest to a new entity. They provided suggested regulatory text edits as follows: ''Transfer means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''transfer'' is synonymous with ''assign'' and the two terms are used interchangeably, [Underline: except that a transfer excludes transactions subject to 30 CFR 556.715 or changes only in the corporate name of an interest owner that do not require BOEM approval]'' where the underline represents the commenter's proposed additional language.

Response: BOEM disagrees with the commenters' assertion that BOEM should clarify that ''Transfer'' excludes transactions subject to 30 CFR 556.715 or changes only in the corporate name of an interest owner that do not require BOEM approval. The referenced section, 30 CFR 556.715, addresses transactions of economic interests that should and will be included in the definition of transfer, although that section makes clear such transfers do not require BOEM approval. Additionally, BOEM does not consider a corporate name change to be an ''assignment'' and therefore, the suggested edit is unnecessary.

The Department is finalizing, as proposed, the new terms ''Assign'' and ''Transfer'' and their corresponding definitions.

b. Replacement: ''Right-of-Use'' and ''Easement'' With ''Right-of-Use and Easement''

The Department proposed to remove the terms ''Easement'' and ''Right-of-use'' from 30 CFR part 550 because neither are used separately in the regulations. In lieu of these two terms, and to define the term used in part 550, DOI proposed the addition of the new term ''Right-of-Use and Easement'' and its associated definition as ''a right to use a portion of the seabed, at an OCS site other than on a lease you own, to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, or other devices to support the exploration, development, or production of oil, gas, or sulfur resources from an OCS lease or a lease on State submerged lands.'' Additionally, the Department proposed to amend the definition of ''Right-of-Use and Easement'' in 30 CFR 556.105 to match the proposed definition in 30 CFR 550.105.

No public comments were received on the proposal to delete ''Easement'' and ''Right-of-use'' and replace with the new term ''Right-of-use and Easement'' in 30 CFR 550.105 or on the amendments to the existing definition in 30 CFR 556.105. As such, the Department is finalizing, as proposed, BOEM's amendments to remove the terms ''Easement'' and ''Right-of-use'' from 30 CFR part 550 because neither are used separately in the regulations. In lieu of these two terms, and to define the term used in part 550, the Department is finalizing the addition of the new term ''Right-of-Use and Easement'' and its associated definition. In the final rule, BOEM has removed ''adjacent to or accessible from the OCS'' from the proposed RUE definition, as it is not helpful. This is a technical correction and does not change any meaning or intent of the definition. Additionally, the Department is finalizing the edits to the same definition, in 30 CFR 556.105.

c. New Term: ''Financial Assurance''

The Department proposed to add a new term and definition for ''Financial assurance'' in 30 CFR 550.105 and 556.105(b) to list the various methods that may be used to ensure compliance with OCS obligations in 30 CFR parts 550 and 556. DOI proposed to define the term as ''a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or another form of security acceptable to the BOEM Regional Director, that is used to ensure compliance with obligations under the regulations in this part and under the terms of a lease, a RUE grant, or a pipeline ROW grant.'' General comments received are as follows:

Comment: One commenter expressed support for the new ''Financial assurance'' term and noted that it supported ''the breadth and optionality in the proposed'' definition.

Response: BOEM acknowledges the commenter's support, and the Department is finalizing the new term as proposed.

Comment: Commenters recommended that BOEM should be consistent and intentional in its use of ''financial assurance,'' ''security,'' and ''bond'' within the final rule. Specifically, they asked BOEM to consider using the global term ''security'' as in the 2020 Proposed Rule in lieu of ''financial assurance,'' which instead can refer to the process of furnishing security rather than the security itself.

Response: BOEM does not believe the term ''financial assurance'' is ever used as a ''process for furnishing security'' in this rulemaking and, instead, is used to describe any of a number of different types of securities that BOEM will accept to guarantee performance of obligations. As such, BOEM believes the term and associated definition is appropriate. BOEM has elected to simplify the rule by consistently using the term financial assurance instead of referring to the various types of financial securities. The Department is finalizing, as proposed, the removal of the term and definition of ''Security or securities'' in part 556, as these terms have been replaced with ''financial assurance'' throughout part 556 and 550 for regulatory consistency.

The Department is finalizing, as proposed, the new term and definition for ''Financial assurance'' in 30 CFR 550.105 and 556.105(b) to list the various methods that may be used to ensure compliance with the relevant OCS obligations in 30 CFR parts 550 and 556.

d. New Term: ''Investment Grade Credit Rating''

The Department proposed to add the new term and associated definition for ''Investment grade credit rating'' in 30 CFR 550.105 and 556.105(b). The associated definition was proposed as ''an issuer credit rating of BBB− or higher, or its equivalent, assigned to an issuer of corporate debt by a nationally recognized statistical rating organization (NRSRO) as that term is defined by the United States Securities and Exchange Commission (SEC).'' This definition was proposed as the threshold above which BOEM would typically not require supplemental financial assurance. General comments received are as follows:

Comment: As discussed in section III.D of this preamble, commenters both supported and opposed the addition of the ''Investment grade credit rating'' definition. Several commenters suggested that BOEM not add the term to 30 CFR 550.105 because the term is not used in part 550.

Response: As discussed in section III.D of this preamble, the Department is not finalizing the proposed addition of ''Investment grade credit rating'' to 30 CFR part 550, as the commenters' assertion that the term is not used in part 550 is correct. In part 550, the regulatory text references 30 CFR part 556 to discuss the use of the issuer credit rating.

The Department has revised the definition of ''Investment grade credit rating'' in 30 CFR 556.105(b) with this final rule to clarify which rating agency corresponded with the proposed BBB− rating. The final definition is ''an issuer credit rating of BBB− or higher (S&P Global Ratings and Fitch Ratings, Inc.), Baa3 or higher (Moody's Investors Service Inc.), or its equivalent, assigned to an issuer of corporate debt by a nationally recognized statistical rating organization as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934.''

e. New Term: ''Issuer Credit Rating''

The Department proposed to add the new term and associated definition for ''Issuer credit rating'' in 30 CFR 550.105 and 556.105(b). The associated definition was proposed as ''a credit rating assigned to an issuer of corporate debt by Standard and Poor's (S&P) Rating Services (or any of its subsidiaries), by Moody's Investors Service Incorporated (or any of its subsidiaries), or by another NRSRO as that term is defined by the United States SEC.'' General comments received are as follows:

Comment: Multiple commenters suggested that BOEM not add the term ''Issuer credit rating'' and associated definition to 30 CFR 550.105 because the term is not used in part 550. Other commenters recommended that BOEM include Fitch Ratings as one of the listed NRSROs in the new definition in 30 CFR 556.105.

Response: The Department is not finalizing the proposed addition of ''Issuer credit rating'' to 30 CFR part 550, as the commenters' assertion that it is not used in part 550 is correct. In part 550, the existing regulatory text references 30 CFR part 556 to discuss the use of the issuer credit rating. BOEM agrees with the commenters' assertion that Fitch Ratings is also an appropriate NRSRO and is adding it to the definition in 30 CFR 556.105.

f. Removal: ''Security or Securities''

The Department proposed to delete the term and associated definition of ''Security or securities'' in 30 CFR 556.105(b) since the term ''security'' was proposed to be replaced with ''financial assurance'' throughout the subpart. This term, *i.e.,* ''security,'' did not exist in 30 CFR part 550 and therefore was not proposed to be removed therefrom. General comments received are as follows:

Comment: Commenters recommended that BOEM be consistent and intentional in its use of ''financial assurance,'' ''security,'' and ''bond'' within the final rule. Specifically, they asked BOEM to consider utilizing the global term ''security'' as in the 2020 Proposed Rule in lieu of ''financial assurance,'' which instead can refer to the process of furnishing security rather than the security itself.

Response: BOEM does not believe the term ''financial assurance'' is ever used as a ''process for furnishing security'' in this rulemaking and, instead, is used to describe any of a number of different types of securities which BOEM accepts to guarantee performance of obligations. As such, BOEM believes the term and associated definition is appropriate. BOEM has elected to simplify the rule by consistently using the term financial assurance instead of the various types of financial securities. The Department is finalizing, as proposed, the removal of the term and definition of ''Security or securities'' from part 556, as these terms have been replaced with ''financial assurance'' throughout parts 556 and 550 for regulatory consistency.

g. Revision: ''You''

The Department proposed to revise the definition for ''You'' in 30 CFR parts 550 and 556 as, depending on the context of the part: ''a bidder, a lessee (record title owner), a sublessee (operating rights owner), a Federal or State RUE grant holder, a pipeline ROW grant holder, an assignor or transferor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the individuals listed in this definition.'' This change to the definition of ''You'' would, in concert with changes proposed in § 550.166, make explicit that any financial assurance provisions applicable to either a State or Federal RUE would apply to the other. General comments received are as follows:

Comment: Commenters expressed concerns with BOEM's proposed definition of ''You'' and asserted that BOEM was imposing on the regulated community the duty to ascertain which persons covered by the definition are subject to the specific regulatory requirements of each section. For example, a commenter asserted that the inclusion of ''an assignor or transferor'' in the definition is problematic in the context of part 556 because the scope ''is financial assurance that is solely the responsibility of current interest holders.''

Response: The Department did not revise the proposed definition of ''you'' in the final rule. BOEM retained ''assignor or transferor'' in the definition as it is appropriate in the context of some subsections across the broad scope of parts 550 and 556. The intent of the definition of ''you'' was always to be totally encompassing and to rely on context for its meaning in any particular situation.

The Department is finalizing, as proposed, the revisions to the definition of ''You.'' The definition of the term has traditionally been all-encompassing in both parts 550 and 556 and BOEM believes the context provided by the individual subsections is sufficient for determining which entity covered by the term is the appropriate entity to which a particular subsection applies.

2. Changing of the Spelling of ''Sulphur'' to ''Sulfur''

The Department proposed to replace the word ''sulphur'' with the more contemporary spelling of ''sulfur'' throughout the regulatory text where it has not been previously changed. BOEM noted that this edit was a technical correction and did not change any meaning or intent of the regulatory provisions. The Department proposed to update the word ''sulphur'' in the heading of part 550 and in §§ 550.101, 550.102, 550.105, and 550.199.

No comments were received on changing the spelling of ''sulphur'' to ''sulfur.'' Therefore, the Department is finalizing, as proposed, its plans to replace the word ''sulphur'' with the more contemporary spelling of ''sulfur'' in §§ 550.101, 550.102, and 550.105 in this final action.

IV. Summary of Cost, Economic Impacts, and Additional Analyses Conducted

A. What are the affected entities?

This final rule will affect current and future lessees, sublessees, RUE grant holders, and pipeline ROW grant holders. BOEM's analysis shows that this includes roughly 391 companies with record title ownership or operating rights in leases, and with interests in RUE grants and pipeline ROW grants. These lessees and grant holders are responsible for complying with the regulations and therefore would bear the compliance costs and realize the cost savings associated with the provisions in this final rule.

B. What are the economic impacts?

The amendments in this final rule are expected to increase the total amount of financial assurance required from OCS lessees and grant holders. Those lessees that do not meet the updated criteria to avoid providing supplemental financial assurance will have an increased compliance cost in the form of bond premiums. BOEM has drafted an RIA detailing the estimated impacts of the

respective provisions of this final rule. These impacts reflect both monetized and non-monetized impacts; the costs and benefits of the non-monetized impacts are discussed qualitatively in the RIA and in the following paragraphs. The table below summarizes BOEM's monetized estimate of the cost of increased bonding premiums paid by lessees over a 20-year period. This timeframe is expected to adequately capture the aging shallow-water OCS infrastructure removal while providing BOEM with time to monitor the efficacy of its new program. Due to technological advances and the changing nature of the OCS's role in the energy transition, estimates beyond 20-years are too speculative to be reliable at this stage. Regulatory certainty for OCS lessees is valuable, however; as the Statement of Energy Effects notes, higher compliance costs could make the U.S. OCS less competitive in a global oil market. Additional information on the estimated transfers, costs, and benefits can be found in the RIA posted in the public docket for this rule.

NET TOTAL ESTIMATED COMPLIANCE COST OF THE RULE

[2024–2043, 2023, $ millions]

2024–2043	Discounted at 3%	Discounted at 7%
Net Total Compliance Cost	$8,525	$5,923
Annualized Compliance Cost	573.0	559.0

The rule affects holders of oil, gas, and sulfur leases, ROW grants, and RUE grants on the OCS. The analysis shows that this includes roughly 391 companies with ownership interests in OCS leases and grants. Entities that operate under this rule are classified primarily under 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 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 271 (69 percent) of the businesses operating on the OCS subject to this rule are considered small; the remaining businesses are considered large entities. All the operating businesses meeting the SBA classification are potentially impacted; therefore, BOEM expects that the rule will affect a substantial number of small entities.

BOEM has estimated the annualized increase in compliance costs to lessees and allocated those to small and large entities based on their decommissioning liabilities. In the table below, BOEM's analysis estimates small companies could incur $421 million (7 percent discounting) in annualized compliance costs from changes in the final rule. The Bureau recognizes that there will be incremental cost burdens to most affected small entities and has included a 3-year phased compliance approach to provide flexibility for entities required to provide financial assurance under the new requirements. The changes are designed to balance the risk of non-performance with the compliance burdens that are associated with the requirement to provide supplemental financial assurance. Additional information about these conclusions can be found in the regulatory flexibility analysis for this rule.

ESTIMATED COMPLIANCE COSTS FOR NON-INVESTMENT GRADE SMALL ENTITIES

[2024–2043, 2023, $ millions]

2024–2043	Discounted at 3%	Discounted at 7%
Total Compliance Cost	$6,362	$4,455
Annualized Compliance Cost	428	421

C. What are the benefits?

OCSLA regulations and lease provisions require lessees to decommission facilities, including plugging and abandoning OCS wells and removing facilities when their useful life has concluded. If the current lessee fails to perform decommissioning of its OCS facilities, the burden to decommission OCS facilities may fall to other obligated parties, such as co-lessees or predecessor lessees, and failing that, the Federal Government and U.S. taxpayers. Some of the corporate bankruptcies involving offshore oil and gas lessees since 2009 have involved decommissioning liabilities not covered by bonds or other forms of financial assurance. As such, these bankruptcies demonstrate that BOEM's regulations have been inadequate to protect the public from potential responsibility for OCS decommissioning, especially during periods of low hydrocarbon prices. The final rule is intended to correct these shortcomings with an approach that promotes internalization of costs of decommissioning by lessees and grant holders by adhering to the general principle that each current owner should bear the costs for its own obligations. This final rule is expected to significantly increase the amount of financial assurance coverage that protects the Federal Government and taxpayer by requiring that every lessee, ROW grant holder, and RUE grant holder assume full responsibility for providing assurance for performance of its own obligations unless there is a financially strong co-lessee (*i.e.,* one that meets the credit rating threshold). Finally, the final rule is expected to reduce the decommissioning activity lead-time that can result in environmental harms arising out of orphaned, unmaintained, or minimally maintained facilities, which could result in additional environmental damage or increased obstacles to navigation, while awaiting the uncertain outcomes of bankruptcy proceedings or Congressional appropriations. A reduction in decommissioning activity lead-time could reduce environmental damage, but BOEM cannot quantify this benefit in this rulemaking.

Bonding of OCS liabilities by a surety company greatly reduces the risk that those liabilities will revert to a predecessor lessee or grant holder because DOI could, but is not required to, turn to the surety for performance before turning to a predecessor. Further, because this final rule is designed to secure the taxpayer against the riskiest subset of liability—*i.e.,* OCS obligations that belong to speculatively rated companies without marketable reserves—it will require more supplemental financial assurance than the Department currently holds from such companies and will decrease the likelihood that these liabilities become the responsibility of the government. These reductions in risk are dependent on the initial level of risk specific to each OCS lease and lessee, and as such, BOEM is not able to quantify them in aggregate, as discussed in the RIA. This rule will not affect the Department's regulatory authority to issue decommissioning orders to predecessor lessees or to intervene as necessary to address an imminent environmental or safety risk. However, without this final rule (*i.e.,* without the new supplemental financial assurance procedures fully in place), it could take longer to arrange for decommissioning. Orphaned, unmaintained, or minimally maintained facilities, which currently exist on the OCS, could result in additional environmental damage or increased obstacles to navigation, while awaiting the uncertain outcomes of bankruptcy proceedings or Congressional appropriations.

Additionally, this final rule provides lessees and grant holders with clarity and regulatory certainty regarding the

way in which BOEM will conduct its financial assurance program. The financial assurance it requires will provide accountability to the taxpayer that a current lessee's or grant holder's obligations to decommission will not go unfulfilled, or that an associated cost of business is not transferred to another party at the culmination of the life of the facility when the productive value is gone and only liabilities remain.

D. What tribal outreach did BOEM conduct?

On March 31, 2023, BOEM sent letters to all federally recognized Tribal Nations and Alaska Native Claims Settlement Act (ANCSA) Corporations to ensure they are aware of the proposed rulemaking, to answer any immediate questions they may have had, and to invite formal consultation if desired. Only one Tribe requested consultation, which was held on June 28, 2023; meeting notes for this consultation are available in the docket (Docket No. BOEM–2023–0027).

V. Section-by-Section Analysis

Severability

BOEM proposed in the preamble to the proposed rule at 88 FR 42156 that the provisions of the rule be severable. No public comments were received on severability. Should any court hold unlawful and/or set aside portions of this rule, the remaining portions are severable and therefore should not be remanded to the Department. The final rule contains three main components: (1) streamlining criteria warranting a demand for supplemental financial assurance; (2) establishing the amount of any supplemental financial assurance; and (3) making several, less significant changes to, among other things, transferring interests in RUE grants and requiring appeals bonds for a stay of an IBLA appeal. See section III of this preamble.

It is impracticable, if not impossible, for BOEM to anticipate and address every conceivable adverse court remedy order. For purposes of this rule, it suffices to substantiate BOEM's intent that the rule's three components operate largely independently of each other: the first component considers whether a lessee is at risk of default based on the lessee's credit rating or the proved reserves on the lease; the second component considers the appropriate level of financial assurance required in light of that risk; and the third component addresses several longstanding and technical matters that do not bear directly on the first two components. Indeed, these three components are sufficiently distinct that their utility does not depend on the specifics of this final rule. For example, if a court were to vacate BOEM's selection of the level of supplemental financial assurance required (P-value), that decision would remain severable from the threshold determination regarding *whether* to collect supplemental financial assurance and from the other separate technical changes included in this rule. In this scenario, BOEM could still collect supplemental financial assurance using the previously accepted BSEE deterministic estimate for decommissioning costs.

BOEM is amending the following regulations as follows:

Part 550—Oil and Gas and Sulfur Operations in the Outer Continental Shelf

The terms ''bond,'' ''bonding,'' ''surety bond,'' ''security,'' and ''securities'' are replaced throughout this part with the new term ''financial assurance'', as proposed.

The term ''sulphur'' is replaced throughout this part with ''sulfur'', as proposed. This edit is a technical correction and does not change any meaning or intent of the regulatory provisions.

Subpart A—General

Section 550.101 Authority and Applicability

The Department is finalizing the revision of ''sulphur'' to ''sulfur'' in the introductory text and is clarifying that the BOEM Director is the one granted authority by the Secretary to regulate oil, gas, and sulfur exploration, development, and production operations on the OCS.

Section 550.102 What does this part do?

The Department is finalizing the revision of ''sulphur'' to ''sulfur'' in the paragraphs (a) and (b).

Section 550.103 Where can I find more information about the requirements in this part?

The Department is removing the term ''supplement'' from this section as a technical correction. The existing regulatory text needs improvement because NTLs do not supplement regulatory requirements, but instead clarify, provide voluntary recommendations, or provide additional information concerning how to comply with requirements in the regulations (*e.g.,* addresses for submissions).

Section 550.105 Definitions

The Department is finalizing as proposed, and as discussed in section III.G of this preamble, new definitions for the terms ''Assign'' and ''Transfer'' to clarify that these terms are used interchangeably throughout the part. This change also serves to clarify that the related terms ''assignee'' and ''assignor'' are interchangeable with ''transferee'' and ''transferor,'' respectively.

The Department is finalizing, as proposed, revisions to the definition of ''Criteria air pollutant'' and ''Nonattainment area'' to explain the acronyms U.S. EPA and NAAQS. This is a technical correction and does not change any meaning or intent of the definitions.

The Department is finalizing as proposed, and as discussed in section III.G of this preamble, removal of the terms ''Easement'' and ''Right-of-use'' because neither are used separately in the regulations. In lieu of these two terms, and to define the term used in part 550, The Department is finalizing the addition of the new term ''Right-of-Use and Easement'' and its associated definition. Since proposal, BOEM has removed ''adjacent to or accessible from the OCS'' from the RUE definition, as it is not helpful. This is a technical correction and does not change any meaning or intent of the definition. This definition is consistent with the final amendments to the definition of RUE in 30 CFR 556.105.

The Department is finalizing as proposed, and as discussed in section III.G of this preamble, the addition of the new term and definition for ''Financial assurance'' to list the various methods that may be used to ensure compliance with OCS obligations. Additionally, the Department is finalizing, as proposed, and discussed in section III.G of this preamble, revisions to the definition of ''You.''

Section 550.160 When will BOEM grant me a right-of-use and easement (RUE), and what requirements must I meet?

The paragraph (a) introductory text is expanded, as in the proposed rule, to include additional functions and devices associated with a RUE by adding ''secure to the seafloor, use, modify'' after ''construct;'' by substituting ''or'' for ''and'' before the word ''maintain;'' and by adding references to ''seafloor production equipment'' and ''facilities.'' These edits create consistency between this section and the definition of RUE in § 550.105. A commenter suggested edits to

paragraph (a) because the commenter found the paragraph difficult to read. In response to this comment, DOI has replaced the proposed clause ''You must require the RUE'' with ''A RUE is required'' in this final rule. That change, in turn, could be confusing when read in conjunction with the existing introductory text of § 550.160. Accordingly, DOI is deleting the introductory text in this final rule. This deletion does not change any meaning or intent of any part of § 550.160.

The Department is finalizing, as proposed, revisions to paragraph (b) to provide that a RUE grant holder must exercise the grant according to the terms of the grant and the applicable regulations of part 550.

The Department is finalizing, as proposed, revisions to paragraph (c) to update the cross-reference to BOEM's lessee qualification requirements, §§ 556.400 through 556.402, and to replace the language in this paragraph referencing ''bonding requirements'' with a cross reference to § 550.166, which BOEM has amended to add specific criteria for financial assurance demands, as discussed in section III.A of this preamble. The Department is also revising paragraph (d) to replace ''right-of-use and easement'' with ''RUE.''

The Department is revising paragraphs (e) and (f)(2) to update the list therein to be consistent with the finalized revisions in paragraph (a). BOEM identified the need for these revisions after publication of the proposed rule and is making them in the final rule for consistency with the new definition of RUE.

Section 550.166 If BOEM grants me a RUE, what financial assurance must I provide?

As proposed, the Department is finalizing amendments to the section heading by removing the reference to ''a State lease'' and replacing ''surety bond'' with ''financial assurance.'' This reflects the change in the text of this section that provides that the financial assurance requirements of this section would apply to both a RUE granted to serve a State lease and one serving an OCS lease, as discussed in section III.A of this preamble. The term ''surety bond'' is replaced with ''financial assurance'' throughout the section.

The Department is finalizing revisions to paragraph (a) to require $500,000 in financial assurance that guarantees compliance with the terms and conditions of any OCS RUEs an entity holds, as discussed in section III.A of this preamble. Previously, paragraph (a) required $500,000 in financial assurance only for RUEs associated with State leases. Additionally, the Department is finalizing the addition of paragraph (a)(1), as proposed, to allow area-wide lease financial assurance to satisfy the requirements of paragraph (a) provided that assurance is in excess of the $500,000 base RUE financial assurance requirement and also guarantees compliance with all the terms and conditions of the RUE(s) it covers. The Department is also finalizing the addition of paragraph (a)(2) as proposed to allow the Regional Director to lower the required financial assurance amount for research and other similar types of RUEs, which reflects BOEM's experience that the total liability exposure for such RUEs can be well below $500,000. Lastly, the Department is finalizing the addition of paragraph (a)(3) as proposed to provide that the financial assurance requirements of section 556.900(d) through (g) and § 556.902 apply to the financial assurance required in paragraph (a).

The Department is finalizing, as proposed, the revision of paragraph (b) in this section to provide that, if BOEM grants a RUE that serves either an OCS lease or a State lease, the Regional Director may require the grant holder to provide supplemental financial assurance to ensure compliance with the obligations under the RUE grant. BOEM will use the issuer credit rating or proxy credit rating criterion found in § 556.901(d)(1) and (2) to evaluate a RUE grant holder, as discussed in section III.A of this preamble; *i.e.,* the Regional Director may require supplemental financial assurance if the grant holder does not have an issuer credit rating or a proxy credit rating that meets the criterion set forth in amended § 556.901(d)(1). Like lessees, most RUE holders are oil and gas companies, and BOEM will therefore, as discussed in section III.A of this preamble, use the same financial criterion to determine the need for additional financial assurance from RUE holders and lessees to provide consistency.

The Department is finalizing the revision to paragraph (b)(1) as proposed to update the regulatory citation in existing § 550.166(b)(1) to provide that the supplemental financial assurance must meet the requirements for lease surety bonds or other financial assurance provided in §§ 556.900 (d) through (g) and 556.902. This rule also finalizes the revision to § 550.166(b)(2) to include ''applicable BOEM and BSEE orders'' in the list of what RUE supplemental financial assurance must cover. The Department is not finalizing the proposed language that clarified that RUE holders must also comply with the decommissioning regulations at part 250, subpart Q of this title as it is no longer needed. BSEE adopted changes to their regulations in subpart Q to expressly state that RUE holders must comply with the BSEE decommissioning regulations. 88 FR 23569 (Apr. 18, 2023). As such, BOEM is not finalizing this reference to the BSEE regulations, as it is now redundant. The Department is finalizing the addition of new paragraph (c), as proposed, to provide that if a RUE grant holder fails to replace any deficient financial assurance upon demand, or fails to provide supplemental financial assurance upon demand, BOEM may assess penalties, request BSEE to suspend operations on the RUE, and/or initiate action for cancellation of the RUE grant.

Section 550.167 How may I assign my interest in a RUE?

The Department is finalizing the addition of a new § 550.167 to establish the ability to assign a RUE interest. Paragraph (a) establishes that those who want to obtain a RUE or are requesting assignment of an interest in a RUE must provide the information contained § 550.161 and must obtain BOEM's approval. In response to comment, the Department is finalizing the addition of a new paragraph (b) that parallels the provisions for ROW assignments in BSEE's regulations at 30 CFR 250.1018. New paragraphs (c)(1) through (4) establish, as proposed, the circumstances in which BOEM may disapprove an assignment. These circumstances are intended to prevent the assignment of a RUE when, for example, the assignment would result in inadequate financial assurance.

Section 550.199 Paperwork Reduction Act Statements—Information Collection

The Department is finalizing the revision of ''sulphur'' to ''sulfur'' in paragraph (b) and clarification that ''parts 551, 552'' refer to 30 CFR parts 551 and 552.

Subpart J—Pipelines and Pipeline Rights-of-Way

Section 550.1011 Financial Assurance Requirements for Pipeline Right-of-Way (ROW) Grant Holders

The Department is finalizing the revision of this section in its entirety. The section heading is revised to read, ''Financial assurance requirements for pipeline right-of-way (ROW) grant holders,'' to clarify that a pipeline ROW grant holder may meet the requirements of this section by providing bonds or other types of financial assurance.

The Department is finalizing, as proposed, revisions to paragraph (a) to

add '', attempt to assign,'' after ''apply for'' so that it is clear the financial assurance requirements of this section apply to an assignment of a right-of-way grant. The revisions subsume paragraph (a)(1) into paragraph (a) and revise it to remove the reference to 30 CFR part 256, which has no bonding requirements for pipelines, and to add the word ''pipeline'' before ''right-of-way.'' The revisions add ''grant'' after ''right-of-way (ROW)'' for clarification, and to clarify that the purpose of the area-wide financial assurance, which is required in paragraph (a), is to guarantee compliance with the terms and conditions of all the pipeline ROW grants held in an OCS area, as defined in § 556.900(b). These amendments clarify that the requirement to provide area-wide financial assurance for a pipeline ROW grant is separate and distinct from the financial assurance coverage provided for leases and RUEs. Existing paragraph (a)(2) is removed because supplemental financial assurance requirements would be covered by new paragraph (d).

The Department is finalizing, as proposed, the removal of existing 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). The Department is finalizing, as proposed, the replacement of the removed paragraph (b) with a new paragraph (b) to provide that the requirement under paragraph (a) to furnish and maintain area-wide financial assurance may be satisfied if the operator or a co-grant holder provides area-wide pipeline right-of-way financial assurance in the required amount that guarantees compliance with the regulations and the terms and conditions of the grant.

The Department is finalizing the replacement of paragraph (c), as proposed, with a provision stating that the requirements for lease financial assurance in §§ 556.900(d) through (g) and 556.902 apply to the area-wide financial assurance required in paragraph (a) of this section. The Department is finalizing the removal of existing paragraph (d), which is now made redundant by new paragraph (f).

The Department is finalizing, as proposed, the addition of a new paragraph (d) to provide that the Regional Director may determine that supplemental financial assurance is necessary to ensure compliance with the obligations under a pipeline ROW grant based on an evaluation of the grant holder's ability to carry out present and future obligations on the pipeline ROW. As discussed in section III.A of this preamble, the Department is finalizing the use of the same issuer credit rating or proxy credit rating criterion to evaluate a pipeline ROW grant holder, or co-grant holder, as the Department is finalizing to apply to lessees in § 556.901(d)(1). BOEM, as discussed in section III.A of this preamble, has found that reliance on credit ratings better evaluates financial stability than net worth, and is thus applying the same financial criterion in evaluating the financial stability of grant holders.

The Department is finalizing, as proposed in new paragraph (e)(1), a provision that the supplemental financial assurance must meet the general requirements for lease surety bonds or other financial assurance, as provided in §§ 556.900(d) through (g) and 556.902. The Department is not finalizing the proposed language in new paragraph (e)(2) that stated that any supplemental financial assurance for a pipeline ROW is required to cover costs and liabilities for regulatory compliance and compliance with applicable BOEM and BSEE orders, decommissioning of all pipelines or other facilities, and clearance from the seafloor of all obstructions created by the pipeline ROW operations, in accordance with the regulations set forth in 30 CFR part 250, subpart Q, because it is no longer needed and redundant. BSEE adopted changes to their regulations in subpart Q to expressly state that all ROW holders must comply with the BSEE decommissioning regulations. 88 FR 23569 (Apr. 18, 2023). As such, BOEM is not finalizing this reference to the BSEE regulations, as it is now redundant. New paragraph (e)(2) now states that any supplemental financial assurance for a pipeline ROW is required to cover the costs and liabilities for compliance with obligations of your ROW grants and with applicable BOEM and BSEE orders.

The Department is also finalizing the addition of new paragraph (f) to provide that if a pipeline ROW grant holder fails to replace any deficient financial assurance upon demand or fails to provide supplemental financial assurance upon demand, the Regional Director may assess penalties, request BSEE to suspend operations on the pipeline ROW, and/or initiate action for forfeiture of the pipeline ROW 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 Department is finalizing, as proposed, a technical correction to the authority citation for part 556 by removing the citation to 43 U.S.C. 1801–1802, because neither of these two sections contain authority allowing BOEM to issue or amend regulations.

The final rule also removes, as proposed, the citation to 43 U.S.C. 1331 note which is where the Gulf of Mexico Energy Security Act of 2006 (GOMESA) 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 that statute and has removed all regulations on this topic from part 556, except section 556.1000, which provides that lessees may no longer apply for such credits.

Additionally, the terms ''bond,'' ''bonding,'' and ''surety bond'' are replaced throughout this part with the new term ''financial assurance.'' The Department is finalizing, as proposed, the revision to the part 556 heading to update the spelling of sulfur and to replace ''bonding'' with ''financial assurance.''

Subpart A—General Provisions

Section 556.104 Information Collection and Proprietary Information

The Department is finalizing the removal of an incorrect phone number and email address in paragraph (a)(4). This is a technical correction, consistent with the content of other subparts, that was discovered after publication of the proposed rule and does not change the intent of the paragraph.

Section 556.105 Acronyms and Definitions

The Department is finalizing, as proposed, and as discussed in section III.G of this preamble, the new terms ''Assign'' and ''Transfer'' and associated definitions to clarify that these terms are used interchangeably throughout the part. This change also serves to clarify that the related terms ''assignee'' and ''assignor'' are interchangeable with ''transferee'' and ''transferor'' respectively.

The Department is finalizing the removal of ''GOMESA'' from the acronym list in paragraph (a) as discussed above. The final rule removes the citation to 43 U.S.C. 1331 note which is the only reference to GOMESA in part 556.

The Department is finalizing, as proposed, and as discussed in section III.G of this preamble, amendments to the definition of ''Right-of-Use and Easement (RUE)'' to include the words

''to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment.'' This amended definition is the same as the definition of ''Right-of-Use and Easement'' finalized in § 550.105.

The Department is finalizing revisions to the definition of ''Eastern Planning Area'' as proposed to remove the acronym ''EPA'' which can be confused with the United States Environmental Protection Agency (U.S. EPA). The Department is not finalizing the proposed removal of the rest of the first sentence in the existing definition to retain consistency with the definitions for ''Central Planning Area'' and ''Western Planning Area,'' which were not changed in the proposed rulemaking.

The Department is finalizing, as proposed, and as discussed in section III.G of this preamble, the addition of a new term and definition for ''Financial assurance'' to clarify that various methods can be used to ensure compliance with OCS obligations. This definition is the same as the definition of ''Financial assurance'' finalized in § 550.105.

The Department is finalizing, as proposed, and as discussed in sections III.D and III.G of this preamble, the addition of a new term and definition for ''Investment grade credit rating'' to 30 CFR part 556.

The Department is finalizing, as discussed in section III.G of this preamble, the addition of the new term ''Issuer credit rating'' and its corresponding definition, as revised based on public comment as: ''a credit rating assigned to an issuer of corporate debt by S&P Global Ratings, by Moody's Investors Service Inc., by Fitch Ratings, Inc., or by another nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934.''

The Department is adding the definition of ''Predecessor,'' as proposed in the 2020 proposed rule and as discussed in section III.B of this preamble, to describe the prior owners who share liability with the current owners.

The Department is finalizing, as proposed, the removal of the term and definition of ''Security or securities,'' as these terms have been replaced with ''financial assurance'' throughout parts 556 and 550 for regulatory consistency. Additionally, the Department is finalizing, as proposed, and discussed in section III.G of this preamble, the revisions to the definition of ''You.'' This definition is the same as the definition of ''You'' finalized in § 550.105.

Subpart G—Transferring All or Part of the Record Title Interest in a Lease

Section 556.703 What is the effect of the approval of the assignment of 100 percent of the record title in a particular aliquot(s) of my lease and of the resulting lease segregation?

The Department is removing ''bonding'' from paragraph (a) as a non-substantive change identified after proposal to be consistent with its replacement by the term ''financial assurance'' throughout the subpart.

Section 556.704 When may BOEM disapprove an assignment or sublease of an interest in my lease?

The Department is finalizing, as proposed, revisions to paragraph (a)(1) to clearly state that BOEM may disapprove an assignment or sublease when the transferor, transferee, or sublessee is not in compliance with all applicable regulations and orders, including financial assurance requirements. Similarly, this rule replaces the word ''would'' in the section heading with ''may'' to better reflect this discretion. Additionally, BOEM is non-substantively revising paragraph (a)(2) to remove the ''etc.'' in the parenthetical as it is not necessary since the parenthetical is a list of examples.

Subpart H—Transferring All or Part of the Operating Rights in a Lease

Section 556.802 When may BOEM disapprove the transfer of all or part of my operating rights interest?

The final rule revises paragraph (a) to clearly state that BOEM may disapprove a transfer of operating rights in a lease if the transferee is not in compliance with all applicable regulations and orders, including financial assurance requirements. This final rule also replaces the word ''would'' in the section heading with ''may'' to better reflect this discretion. Additionally, BOEM is non-substantively revising paragraph (b) to remove the ''etc.'' in the parenthetical as it is not necessary since the parenthetical is a list of examples.

Subpart I—Financial Assurance

Section 556.900 Financial Assurance Requirements for an Oil and Gas or Sulfur Lease

The Department is finalizing, as proposed, revisions to the section heading to read, ''Financial assurance requirements for an oil and gas or sulfur lease'' to ensure that the term ''bonding'' has been consistently replaced with ''financial assurance'' and to clarify that a number of forms of financial assurance can be provided, not just surety bonds. The Department is also finalizing the heading of subpart I to remove ''Bonding or Other'' consistent with the replacement of ''bonding'' with ''financial assurance.''

The Department is finalizing the addition of what was proposed as paragraph (a)(4) to make clear that any supplemental financial assurance required by the Regional Director must be provided before a new lease will be issued or an assignment of a lease approved. However, to avoid confusion in how to apply existing paragraphs (a)(1) through (3), BOEM has moved this language to the introduction of paragraph (a) to note that it is required in addition to any one of paragraphs (a)(1) through (3). BOEM's modified language in paragraph (a) also addresses a concern by a commenter that asserted ''the proposed provision makes no sense at the lease issuance stage because supplemental financial assurance can only be required after approved lease exploration or production activities commence.''

The Department is finalizing, as proposed, revisions to the introductory text in paragraph (g) to replace the word ''security'' with ''financial assurance,'' and to add the word ''surety'' before ''bond'' in two places to clarify that in those cases the regulation is referring to a ''surety bond.''

The Department is finalizing, as proposed, revisions to the introductory text in paragraph (h) to replace the words ''additional bond coverage'' with ''supplemental financial assurance'' to clarify that surety bonds are not the only means of meeting the requirement. The final rule also revises paragraph (h)(2) in recognition that BSEE, rather than BOEM, is the agency with authority to suspend production or other operations on a lease.

Finally, the Department is finalizing, as proposed, the addition of paragraph (i) to ensure consistency with the RUE financial assurance requirements by providing that area-wide lease surety bonds pledged to satisfy the financial assurance requirements for RUEs under § 550.166 may be called for performance of obligations arising from a RUE on which the holder of a RUE defaults.

Section 556.901 Base and Supplemental Financial Assurance

The Department is finalizing, as proposed, revisions to the section heading to read, ''Base and Supplemental Financial Assurance,'' because this section covers both base financial assurance and supplemental financial assurance requirements.

The Department is finalizing, as proposed, revisions to the introductory text of paragraph (a) to replace the word ''bonds'' with ''financial assurance'' for consistency with the terminology amendments in this subpart. The Department is also revising paragraph (a)(1)(i) introductory text to replace the word ''bond'' with ''lease exploration financial assurance'' for consistency with the terminology used in existing paragraph (a)(1)(ii) (lease exploration bond).

The Department is finalizing, as proposed, the elimination of the parenthetical ''(the lessee)'' from the paragraph (b) introductory text as it is made redundant by the definition of ''You.'' The Department is also finalizing, as proposed, revisions to the paragraph (b)(1)(i) introductory text to replace the word ''bond'' with ''lease development financial assurance'' for consistency with the terminology used in existing paragraph (b)(1)(ii), which is not being changed.

The Department is finalizing, as proposed, revisions to paragraph (c) to remove the words ''authorized officer'' and replace them with ''Regional Director,'' and to remove the words ''lease bond coverage'' and ''a lease surety bond'' and replace them in each instance with ''financial assurance'' to clarify that the Regional Director can review whether BOEM would be adequately secured by a surety bond, or another type of financial assurance, for an amount less than the amount prescribed in paragraph (a)(1) or (b)(1), but not less than the amount of the cost for decommissioning.

The Department in the final rule is, as proposed, combining the provisions of the existing paragraph (d) introductory text and the existing paragraph (d)(1) to provide that the Regional Director may determine that supplemental financial assurance is required to ensure compliance with the obligations, including decommissioning obligations, under a lease and the applicable regulations if the lessee does not meet at least one of the criteria provided in new paragraphs (d)(1) through (4).

The Department is finalizing, as proposed, the addition of a new paragraph (d)(1) to set forth the criterion BOEM would use to evaluate the ability of a lessee to carry out present and future obligations. Under this paragraph, BOEM will use an investment grade issuer credit rating from a NRSRO, as defined by the SEC, greater than or equal to either BBB− from S&P Global Ratings or Fitch Ratings Inc., or Baa3 from Moody's Investor Service Inc., or the equivalent rating from another NRSRO. If different SEC-recognized NRSROs provide different ratings for the same company, BOEM will apply the highest rating.

As discussed in section III of this preamble, the Department is finalizing the addition of a new paragraph (d)(2) that states that BOEM can also use a proxy credit rating calculated by BOEM based on audited financial information from the most recent fiscal year (including an income statement, balance sheet, statement of cash flows, and the auditor's certificate) greater than or equal to either BBB− from S&Ps Global Ratings or Fitch Ratings Inc., or Baa3 from Moody's Investor Service Inc., or their equivalent from another NRSRO. The proxy credit ratings that BOEM will calculate on behalf of lessees will be structured in the same scale as the standard ratings (*i.e.,* AAA to D). The audited financial information from the most recent fiscal year that BOEM uses to determine the proxy credit rating must be from a continuous 12-month period within the 24-month period prior to the lessee's receipt of the Regional Director's determination that the lessee must provide supplemental financial assurance. When determining a proxy credit rating, the Regional Director will consider all liabilities that may encumber a lessee's ability to carry out future obligations. Under the final rule in § 556.901(d)(2)(ii), the lessee is obligated to provide the Regional Director with information regarding its joint-ownership interests and other liabilities associated with OCS leases, which might not otherwise be accounted for in the audited financial information provided to BOEM.

The Department is finalizing revisions to paragraph (d)(3) to address the situation where the lessee does not meet the criterion in paragraph (d)(1) or (2), but one or more co-lessees or co-grant holders meet the criterion. The Regional Director may require a lessee to provide supplemental financial assurance for decommissioning obligations if no co-lessee or co-grant holder has an issuer credit rating or proxy credit rating that meets the threshold set forth in paragraph (d)(1) or (2). In response to comments, BOEM has revised new paragraph (d)(3) to make clear that the presence of such co-lessee or co-grant holder will allow the Regional Director to not require financial assurance from a current lessee only to the extent that the current lessee and that co-lessee or co-grant holder shares accrued liabilities.

The Department is finalizing the addition of a new paragraph (d)(4) to set forth the methodology the Regional Director would use to determine proved reserves if the lessee does not meet the criteria in paragraph (d)(1), (2), or (3). In this instance, the Regional Director will assess each lease, unit, or field to determine whether the value of the discounted proved oil and gas reserves on the lease exceeds three times the undiscounted estimated cost of the decommissioning associated with the production of those reserves. Under paragraph (d)(4), the Regional Director's assessment will be based on the evaluation of proved oil and gas reserves following the methodology set forth in SEC Regulation S–X at 17 CFR 210.4–10 and SEC Regulation S–K at 17 CFR 229.1200. BOEM received multiple comments requesting BOEM allow the proved oil and gas reserve analysis to be based on a unit or field basis, and to clarify when values are discounted and when they are undiscounted in the calculation; BOEM has added clarifications in paragraph (d)(4) to address these comments (*e.g.,* including the field or unit basis, and stating that undiscounted cost estimates will be used).

The Department is also finalizing the addition of new paragraphs (d)(4)(i) and (ii), which state that, when implementing this reserves criterion, BOEM will use decommissioning cost estimates, including a BSEE-generated probabilistic estimate at the P70 level when available, or, if such estimate is not available, BOEM will use the BSEE-generated deterministic estimate.

The Department is finalizing, as proposed, redesignation of existing paragraph (d)(2) as paragraph (e) and revisions to provide that a lessee may satisfy the Regional Director's demand for supplemental financial assurance either by increasing the amount of its existing financial assurance or by providing additional surety bonds or other types of acceptable financial assurance.

The Department is finalizing redesignation of existing paragraph (e) as paragraph (f) and revisions to remove the word ''bond'' and replace it with ''supplemental financial assurance,'' a term that includes a surety bond or another type of financial assurance. As discussed in section III.B of this preamble, the Department is finalizing the use of the BSEE P70 decommissioning probabilistic estimate to determine the amount of supplemental financial assurance required to guarantee compliance when there are insufficient reserves or no current lessee or co-lessee that meets the criterion in § 556.901(d)(1) or (2). The Department is finalizing, as proposed, the inclusion of the language from existing paragraph (e) in new paragraph (f) to establish that, in determining the

amount of supplemental financial assurance, the Regional Director will consider the lessee's potential underpayment of royalty and cumulative decommissioning obligations.

The Department is finalizing, as proposed, redesignation of existing paragraph (f) as paragraph (g) and revisions to replace the words ''bond'' and ''surety'' with ''financial assurance'' throughout. Existing regulation 30 CFR 556.901(f)(2) includes a statement to the effect that, if a company requests a reduction of the amount of the original bond required, the Regional Director may agree to such a reduction provided that he or she finds that ''the evidence you submit is convincing.'' The Department is finalizing, as proposed, the replacement of this less prescriptive regulatory text with new paragraph (g)(2) that states an entity must submit evidence to the Regional Director that demonstrates that the projected amount of royalties due to the United States Government and the estimated costs of decommissioning are less than the required financial assurance amount. Additionally, through the same process, BOEM will allow an entity to request a reduction if it opposes the amount of a proposed increase in the amount of financial assurance required.

The Department is finalizing the addition of new paragraph (h) to describe the limited opportunity lessees will have to provide the required supplemental financial assurance in phased installments during the first 3 years after the effective date of this regulation, subject to the conditions of paragraphs (h)(1) and (2). The Department proposed and is finalizing a 3-year approach, as discussed in section III.E of this preamble, which is appropriate to mitigate potentially significant risk to companies and to provide adequate time for the bonding market to adjust. Additionally, this approach reduces the immediate regulatory burden on lessees and grant holders that are required to provide financial assurance as a result of this rule, which are likely to mainly be small businesses.

The Department is finalizing the addition of new paragraphs (h)(1)(i) through (iii) to establish the timing and amounts of phased supplemental financial assurance that would need to be provided. Submissions would be required in three installments of one-third of the demand each, the first of which would be required within the timeframe specified in the demand letter, or within 60 calendar days of receiving the demand letter if no timeframe is specified. The second one-third would be required within 24 months from the date of receipt of the original demand letter, and the final installment would be due within 36 months from the date of the receipt of the original demand letter.

Additionally, the Department is finalizing, as proposed, the addition of new paragraph (h)(2) to establish a procedure in case a demand that has been approved for phased compliance is not met within the timeframes established by paragraphs (h)(1)(i) through (iii). If a phased compliance deadline under paragraphs (h)(1)(i) through (iii) is missed, the Regional Director will notify the party of the failure to meet the timeframe and that it will no longer be eligible to meet the supplemental financial assurance demand by using the phased compliance option set forth in paragraph (h). Moreover, the remaining balance of the demand will become due ten calendar days after the Regional Director's notification is received.

Section 556.902 General Requirements for Bonds or Other Financial Assurance

The Department is finalizing, as proposed, revisions to the section heading to read, ''General requirements for bonds or other financial assurance,'' to recognize that other types of financial assurance, such as a dual-obligee bond or a pledge of Treasury securities, may be provided under part 556. These amendments clarify that the same general requirements for financial assurance provided by lessees, operating rights owners, or operators of leases also apply to financial assurance provided by RUE grant and pipeline ROW grant holders. The final rule also revises paragraph (a), as proposed, to include ''grant holder'' and ''record title holder'' and to cover financial assurance provided under 30 CFR part 550. The requirements of this section are those that apply broadly to all types of financial assurance provided to BOEM for oil and gas activities on a lease or grant. Additional requirements applicable specifically to RUEs and ROWs are described in §§ 550.166 and 550.1011, respectively.

The Department is finalizing, as proposed, the addition of ''or grant'' after ''lease'' to clarify the change to include grant holders in paragraph (a)(2). The rule also adds compliance with ''all BOEM and BSEE orders'' as a requirement. Additionally, the final rule revises proposed paragraph (a)(3) to include the obligations of all record title owners, operating rights owners, and operators on the lease, except as stated in § 556.905(b) and to add ''all grant-holders on a grant.''

The Department is finalizing, as proposed, a revision to paragraph (e)(2) to clarify that the use of Treasury securities as financial assurance requires a pledge of Treasury securities, as provided in § 556.900(f).

The Department is finalizing, as proposed, the addition of new paragraph (g) to recognize the option to seek an informal resolution of a surety bond demand pursuant to § 590.6. This paragraph further provides that a request for an informal resolution of a dispute concerning the Regional Director's decision to require supplemental financial assurance will not affect the applicant's ability to request a phased payment of its supplemental financial assurance demand under § 556.901(h).

The Department is finalizing, as proposed, the addition of a new paragraph (h) to address risks arising in connection with the lessee's and grant holder's ability to stay the demand during an appeal of a demand for supplemental financial assurance to the IBLA pursuant to the regulations in 30 CFR part 590. The rule adds an additional requirement to the IBLA appeals process whereby if an appellant requests that the IBLA stay the supplemental financial assurance demand, the appellant will be required to post an appeals surety bond equal to the amount of supplemental financial assurance that the appellant seeks to stay before any stay can go into effect. Because IBLA appeals may continue for several years, it is important that BOEM ensure that the government's and taxpayers' interests are protected during the appeal. The appeal surety bond requirement will prevent the government from being left with inadequate security if the appellant files bankruptcy before the appeal process ends.

Section 556.903 Lapse of Financial Assurance

The Department is finalizing, as proposed, the replacement of the word ''bond'' in the section heading with ''financial assurance'' for consistency with the terminology change made throughout the subpart. The final rule revises paragraph (a) to add after the word ''surety,'' ''guarantor, or the financial institution holding or providing your financial assurance'' and to include references to the financial assurance requirements for RUE grants (§ 550.166) and pipeline ROW grants (§ 550.1011). The final rule also revises, as proposed, paragraph (a) by removing the words ''terminates immediately'' and substituting the words ''must be replaced.'' The final rule, in paragraph

(a), replaces the word ''promptly'' with a specific timeline of within 72 hours of learning of a negative event for the financial assurance provider and also adds a 30-calendar day timeframe in which the party must provide other financial assurance from a different financial assurance provider.

The Department is also finalizing, as proposed, a revision to the first sentence of paragraph (b) by inserting ''or financial institution'' after ''guarantor,'' to make the provision apply to all types of financial assurance providers, including those offering decommissioning accounts. BOEM is revising the second sentence of paragraph (b) for consistency in terminology by inserting the words ''or other financial assurance'' after the word ''bonds'' and inserting the words ''guarantor, or financial institution'' after the word ''surety,'' so that all surety bonds or other financial assurance instruments must require all financial assurance providers to notify the Regional Director within 72 hours of learning of an action filed alleging that the lessee or grant holder, or their financial assurance provider, is insolvent or bankrupt.

Section 556.904 Decommissioning Accounts

The Department is finalizing, as proposed, the revision of both the section heading and the term ''abandonment accounts'' throughout the section to read ''decommissioning accounts,'' in accordance with BOEM policy and accepted terminology used in the industry. The words ''lease-specific'' are removed throughout this section to make clear that a decommissioning account can be used for a lease or several leases, a RUE grant, or a pipeline ROW grant, or a combination thereof.

The Department is finalizing, as proposed, revisions to paragraph (a) to remove the term ''lease-specific'' and replace ''abandonment'' with ''decommissioning,'' and the addition of references to the lease base and supplemental financial assurance regulation (§ 556.901(d)), as well as the financial assurance regulations for RUE grants (§ 550.166(b)) and pipeline ROW grants (§ 550.1011(d)), consistent with the changes mentioned in the preceding paragraph. Although the paragraph (a) introductory text continues to allow a lessee or grant holder to establish a decommissioning account at a federally insured financial institution, this final rule eliminates the existing restriction that such deposits not exceed the FDIC/FSLIC insurance limits and the reference to paragraph (a)(3), which is being revised and is no longer relevant to withdrawal of funds from a decommissioning account.

The final rule, as proposed, re-arranges the existing sentence constituting § 556.904(a)(1). The rule also revises 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 final rule also revises paragraph (a)(2) to require funding of a decommissioning account ''pursuant to a schedule that the Regional Director prescribes,'' as opposed to ''within the timeframe the Regional Director prescribes'' as existing § 556.904(a)(2) now states.

The Department is finalizing revisions to paragraph (a)(3) as proposed to remove the requirement to provide binding instructions to purchase Treasury securities for a decommissioning account under certain circumstances. The final rule replaces 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, or if you fail to correct a missed payment within 30 days, you must immediately submit, and subsequently maintain, a surety bond or other financial assurance in an amount equal to the remaining unsecured portion of your estimated decommissioning liability. This change reflects BOEM's current policy to order a surety bond or other financial assurance in the event the payments into the decommissioning account are not timely made.

The Department is finalizing, as proposed, revisions to paragraph (b) by removing ''lease-specific'' and substituting ''decommissioning'' and to clarify that the interest paid on funds in the account will become part of the principal funds in the account unless the Regional Director authorizes, in writing, the payment of the interest to the party who deposits the funds.

The Department is finalizing, as proposed, the removal of existing paragraphs (c) and (d), which discuss the use of pledged Treasury securities to fund a decommissioning account. Existing paragraph (e) is redesignated as paragraph (c) except that the word ''pledged'' is removed, and ''other revenue stream'' is added to the list of optional sources for funding the account. In response to comments asserting that parties may elect to dedicate production to fund decommissioning accounts even if the Regional Director does not ''require'' them, the Department is adding to new paragraph (c) that the Regional Director may ''authorize,'' in addition to ''require,'' the optional funding sources.

The Department is finalizing the addition of new paragraph (d) with minor edits from the proposal, which describes the Regional Director's discretion to authorize BOEM to provide funds from a decommissioning account to a party that performs the decommissioning in response to a BOEM or BSEE order.

Section 556.905 Third-Party Guarantees

The Department is finalizing, as proposed, revisions to the section heading to read, ''Third-party guarantees.'' The final rule also revises the section throughout to remove the introductory titles of each paragraph to provide consistency in the format of the final regulatory text.

The Department is finalizing, as proposed, revisions to paragraph (a) to reference § 556.901(d) (related to lease financial assurance), and to cross-reference § 550.166(b) (related to RUEs) and 550.1011(d) (related to pipeline ROWs), to clarify that a third-party guarantee may be used as a type of supplemental financial assurance for not only leases, but RUE grants and pipeline ROW grants as well.

The Department is also finalizing, as proposed, revisions to paragraph (a)(1) to clarify that the guarantor, not the guarantee, as provided in the existing regulation, must meet the criteria in § 556.901(d)(1) or (2), as applicable. BOEM retains existing paragraph (a)(2), but revises it to include a requirement, which is found in existing paragraph (a)(4), that the guarantor or guaranteed party must submit a third-party guarantee agreement containing each of the provisions in proposed paragraph (d). As discussed below, paragraph (d) is revised to no longer use the term ''indemnity agreement'' and to provide instead that the provisions that BOEM previously required a lessee or grant holder to include in indemnity agreements must be included in a third-party guarantee agreement. This terminology is changed to clarify that the government is not required to incur the expenses of decommissioning before demanding compensation from the guarantor. The rule also removes existing paragraphs (a)(3) and (4), which are superseded by other revisions to this section.

The Department is finalizing the proposed new paragraph (b) with edits to allow guarantors to limit their guarantees to a fixed dollar amount, as agreed to by BOEM at the time the third-party guarantee is provided. In response

to comments, the Department is also finalizing additional regulatory text in new paragraph (b) to allow a guarantor, as agreed to by BOEM at the time the third-party guarantee is provided, to limit a guarantee's coverage to one or more specific lease obligations with no fixed dollar amount, notwithstanding § 556.902(a)(3).

The Department is finalizing, as proposed, redesignation of existing paragraph (b) as paragraph (c) and revisions to the introductory text to remove the reference to existing paragraph (c)(3) because the requirements in that paragraph have been superseded in this rule. The final rule replaces this reference with a reference to paragraph (a)(1) as revised. Because the cessation of production is neither desirable nor easily accomplished by an operator, this rule also revises existing paragraph (b)(2) to remove the requirement that, when a guarantor becomes unqualified, you must ''cease production until you comply with the surety bond coverage requirements of this subpart.'' Instead, the language in revised redesignated paragraph (c) provides that you must, within 72 hours, ''[s]ubmit, and subsequently maintain a surety bond or other financial assurance covering those obligations previously secured by the third-party guarantee.'' Additionally, the final rule removes existing paragraph (c) as the language has been superseded by the new language in § 556.905(a).

The Department is finalizing, as proposed, revisions to the 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:'' This revision is made for consistency with the revision of paragraph (a) to allow the use of a third-party guarantee for a RUE grant or a pipeline ROW grant.

Additionally, the rule revises, as proposed, paragraph (d)(1)(i) to clarify that the corrective action required is to bring the lease or grant into compliance with its terms, or any applicable regulation, to the extent covered by the guarantee. The rule also revises paragraph (d)(1)(ii) to clarify that the liability only extends to that covered by the guarantee and that payment of some amount less than the whole of the guarantee does not result in the cancellation of the guarantee, but rather a reduction in the remaining value of the guarantee equal to the payment made.

The rule removes existing paragraph (d)(2) for consistency with the revision to remove existing paragraph (c), as proposed. As a result, existing paragraph (d)(3) is redesignated as paragraphs (d)(2) and (4) is redesignated as paragraph (d)(3). The rule revises, as proposed, the redesignated paragraphs (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. Lastly, as proposed, the rule revises redesignated paragraph (d)(3) to replace the term ''a suitable replacement financial assurance'' with ''acceptable replacement financial assurance'' for clarity. The rule revises the paragraph so that it is clear that any replacement financial assurance must be provided before the termination of the period of liability of the third-party guarantee.

The Department is finalizing, as proposed, a new paragraph (e) to provide that BOEM will cancel a third-party guarantee under the same terms and conditions as those in revised § 556.906(b) and/or (d)(3).

The Department is finalizing the addition, as proposed, of new paragraphs (f) through (k) to replace the provisions of existing paragraph (e). The new paragraphs mirror the provisions of existing paragraph (e), while making minor adjustments to accommodate the new format and add clarification. The term ''indemnity agreement'' would be replaced with ''third-party guarantee agreement'' throughout.

Section 556.906 Termination of the Period of Liability and Cancellation of Financial Assurance

The Department is finalizing, as proposed, the replacement of the words ''security'' and ''surety bond'' with ''financial assurance'' and ''surety'' with ''financial assurance provider'' for consistency with the changes throughout the subpart. The section heading is also revised so that ''a bond'' is replaced with ''financial assurance.''

This final rule revises existing paragraph (b)(1) to remove the word ''terminated'' in two instances and replace it with ''cancelled'' to be consistent with the existing paragraph (b) introductory text, which provides that the Regional Director will cancel your previous financial assurance when you provide a replacement, subject to the conditions provided in paragraphs (b)(1) through (3). BOEM is also removing the word ''for'' before ''by the bond'' in paragraph (b)(1) for grammatical reasons.

The Department is finalizing, as proposed, revisions to existing paragraph (b)(2) to add cross-references to § 550.166(a), which is the financial assurance regulation for RUE grants, and § 550.1011(a), which is the financial assurance regulation for pipeline ROW grants, and revising existing paragraph (b)(3) to also reference supplemental financial assurance regulations for RUE grants (§ 550.166(b)) and pipeline ROW grants (§ 550.1011(d)). The Department is finalizing the deletion of the word ''base'' in front of financial assurance to clarify that the new financial assurance would replace whatever financial assurance previously existed, whether that financial assurance consisted of base financial assurance alone or together with any prior supplemental financial assurance.

The Department is finalizing, as proposed, revisions to the introductory text of paragraph (d) to cover financial assurance cancellations and return of pledged security and, in the table, is removing the middle column titled, ''The period of liability will end,'' because it was redundant with the provisions in proposed paragraphs (a) through (c).

In table 1 to paragraph (d), the Department is finalizing revisions to the column headers. In the existing column in the table titled, ''For the following type of bond,'' BOEM is removing the words ''type of bond'' and replacing those words with a colon at the top of the table so that this paragraph would apply to surety bonds or other financial assurance, as applicable. The existing column in the table titled, ''Your bond will be cancelled,'' is revised to read, ''Your financial assurance will be reduced or cancelled, or your pledged financial assurance will be returned,'' to clarify that financial assurance may be reduced or cancelled and pledged financial assurance, or a portion thereof, may be returned, and to specify other circumstances under which the Regional Director may cancel supplemental financial assurance or return pledged financial assurance. While the existing criteria identify most instances when cancellation of financial assurance is appropriate, occasionally there are other circumstances where cancellation would be warranted, as discussed in the paragraphs below.

Paragraph (d)(1) in the table 1 to paragraph (d) is revised to include a cross-reference to base financial assurance submitted under §§ 550.166(a) (for RUE grants) and 550.1011(a) (for pipeline ROW grants). The Department is finalizing revisions to paragraph (d)(2) in the same column to include a reference to supplemental financial assurance submitted under §§ 550.166(b) and 550.1011(d). The rule allows cancellation when BOEM determines, using the criteria set forth in § 556.901(d), § 550.166(b), or

§ 550.1011(d), as applicable, that a lessee or grant holder no longer needs to provide supplemental financial assurance for its lease, RUE grant, or pipeline ROW grant; when the operations for which the supplemental financial assurance was provided ceased prior to accrual of any decommissioning obligation; or when cancellation of the financial assurance is appropriate because BOEM determines such financial assurance never should have been required under the regulations. Additionally, DOI is finalizing, as proposed, the addition of a new paragraph (d)(3) in table 1 to paragraph (d) to address the cancellation of a third-party guarantee.

The Department is finalizing, as proposed, revisions to the introductory text in paragraph (e) to remove the words ''or release'' because the term ''release'' is undefined and not used in practice. Likewise, the rule removes the words ''or released'' from paragraph (e)(2). No substantive change is intended; rather BOEM seeks to clarify the meaning of the existing provision. Additionally, the Department is finalizing the revisions of paragraph (e) to reference RUE grants and pipeline ROW grants to provide that the Regional Director may reinstate the financial assurance on the same grounds as currently provided for reinstatement of lease financial assurance.

Section 556.907 Forfeiture of Bonds or Other Financial Assurance

The rule revises the section heading to read, ''Forfeiture of bonds or other financial assurance'' because the use of ''or'' is sufficient in this instance. The rule revises paragraph (a)(1) to include surety bonds or other financial assurance for RUE grants and pipeline ROW grants, in addition to leases, in the forfeiture provisions of this section. The Department is finalizing, as proposed, the clarification in paragraph (a)(2) that the Regional Director may pursue forfeiture of a surety bond or other financial assurance if you default on one of the conditions under which the Regional Director accepts your bond, third-party guarantee, and/or other form of financial assurance. Throughout this section, BOEM adds references to a grant, a grant holder, and grant obligations to implement the revisions in paragraph (a)(1). BOEM is revising paragraph (a)(2) to replace ''other form of security'' with ''other form of financial assurance'' for consistent terminology.

The Department is finalizing, as proposed, revisions to paragraph (b) to include surety bonds ''or other financial assurance'' so that BOEM may pursue forfeiture of a surety bond or other financial assurance. The word ''lessee'' is replaced with ''record title holder'' to clarify that the term includes record title holders in those situations where operating rights are subleased.

The Department is finalizing, as proposed, revisions to paragraph (c)(1) to include ''financial institution holding or providing your financial assurance'' as one of the parties the Regional Director would notify of a determination to call for forfeiture because a bank or other financial institution may hold funds subject to forfeiture. This rule revises paragraph (c)(1)(ii) to acknowledge limitations authorized by § 556.905(b) by more precisely stating that the Regional Director will use an estimate of the cost of the corrective action needed to bring a lease into compliance when determining the amount to be forfeited, subject, in the case of a guarantee, to any limitation authorized by § 556.905(b). Additionally, BOEM is replacing existing paragraphs (c)(2)(ii) and (iii) with a new paragraph (c)(2)(ii) that specifies that to avoid forfeiture by promising to take corrective action, any financial assurance provider would have to agree to, and demonstrate that it will, complete the required corrective action to bring the relevant lease into compliance within the timeframe specified by the Regional Director, even if the cost of such compliance exceeds the amount of the financial assurance. The amendments clarify that existing paragraphs (c)(2)(ii) and (iii) apply to all forms of financial assurance, including the caveat that corrective action must be completed even if the cost of compliance exceeds the limit of the financial assurance.

The Department is finalizing, as proposed, revisions to existing paragraphs (d) and (e)(2) by replacing ''leases'' with ''lease or grant'' to extend the applicability of these provisions to include RUE and ROW grants.

Similarly, the Department is finalizing, as proposed, revisions to paragraph (f)(1) to include ''grant'' as well as lease. The Department is revising 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 is consistent with the change made at § 556.905(b) to allow the use of limited third-party guarantees. This rule also rewords paragraph (g) for clarity.

In some circumstances, predecessor lessees that have been notified about the failure of their successor lessees to fulfill their decommissioning obligations will initiate the requisite decommissioning activities. In these cases, predecessor lessees or grantees are likely to incur costs that could be funded from financial assurance posted with BOEM on behalf of the current lessee. BOEM has finalized new paragraph (h), as proposed, to make clear that BOEM may provide funds collected from forfeited financial assurance to predecessor lessees or grant holders or to third parties taking corrective actions on the lease or grant.

Part 590—Appeal Procedures

Subpart A—Bureau of Ocean Energy Management Appeal Procedures

The Department is revising the heading of subpart A to remove the outdated reference to ''Offshore Minerals Management.'' The heading now reads ''Bureau of Ocean Energy Management Appeals Procedures'' to reflect the current organization of the DOI more accurately. This outdated reference was identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

Section 590.1 What is the purpose of this subpart?

The Department is revising the introductory text to remove the outdated references to ''Offshore Minerals Management (OMM) decisions'' and to correct prior erroneous text that stated the decisions and orders which are being appealed under part 590 are issued under subchapter C. The outdated reference and erroneous text were identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

Section 590.2 Who may appeal?

The Department is revising the introductory text to remove the outdated reference to ''OMM officials'' and to correct that the decisions and orders which are being appealed under part 590 are not issued under subchapter C. The outdated reference and erroneous text were identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

Section 590.3 What is the time limit for filing an appeal?

The Department is revising the introductory text to remove the outdated reference to ''OMM official's final decision'' and replacing it with the correct reference to ''BOEM.'' This outdated reference was identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

Section 590.4 How do I file an appeal?

The Department is revising paragraph (a) to remove the outdated reference to ''OEMM officer'' and replacing it with the correct reference to ''BOEM.'' This outdated reference was identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

The Department is finalizing, as proposed, the addition of paragraph (c) to specify that, while a demand for supplemental financial assurance may be appealed to the IBLA, a stay can only be granted if an appeal surety bond for an amount equal to the demand is posted. This is intended to mitigate the risk to the government that, after the appeal is decided, a company will be unable to perform its obligations because of its financial deterioration during pendency of the appeal.

Section 590.7 Do I have to comply with the decision or order while my appeal is pending?

The Department is revising paragraphs (a)(1) and (b) to remove the outdated reference to ''OMM'' and replacing it with the correct reference to ''BOEM.'' This outdated reference was identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

Section 590.8 How do I exhaust my administrative remedies?

The Department is revising paragraph (a) to remove an erroneous reference that previously stated that the decisions and orders, which are being appealed under part 590, are issued under subchapter C.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review, as Amended by Executive Order 14094: Modernizing Regulatory Review, and Executive Order 13563: Improving Regulation and Regulatory Review

E.O. 12866, as amended by E.O. 14094, 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 determined that this rule is a significant action under E.O. 12866, as amended by E.O. 14094, sec. 3(f)(1). This rulemaking will result in an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product).

E.O. 13563 reaffirms the principles of E.O. 12866, as amended by E.O. 14094, while calling for improvements in the Nation's regulatory system to promote predictability and reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. BOEM has developed this rule in a manner consistent with these requirements.

BOEM prepared an analysis of the potential costs and benefits associated with this action, which are described in the following OMB Circular A–4 Accounting Statement. For further discussion, this analysis, *Risk Management and Financial Assurance for OCS Lease and Grant Obligations Regulatory Impact Analysis,* is available in the docket and is summarized in sections IV.B and IV.C of this preamble.

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OMB Circular A–4 Accounting Statement; Estimates, Annualized over 2024–2043

($2023)

Category	Primary Estimate		Minimum Estimate	Maximum Estimate	Source Citation
	Annualized at 3% discount rate	Annualized at 7% discount rate			
Net Regulatory Benefits ($ millions)					
Annualized monetized benefits (discount rate in parentheses)	N/A	N/A	N/A	N/A	RIA
Unquantified benefits	This rule provides consistent, clear regulations which will provide clarity to the industry on how the Department's financial assurance program will be administered on the OCS. This rule is designed to decrease the risk to the taxpayer of assuming financial responsibility for defaulted decommissioning liabilities while providing the industry flexibility to avoid financial assurance if an entity can demonstrate it poses minimal risk. The rule may also reduce environmental damage by decreasing decommissioning activity lead time.				RIA
Costs ($ millions)					
20-year annualized monetized costs	$573.0	$559.0	N/A	N/A	RIA – **Table 1** (20 year)
Annualized quantified, but unmonetized, costs	N/A	N/A	N/A	N/A	RIA
Qualitative costs (unquantified)	Impacts to secondary markets may result in foregone production and royalties				RIA Section VIII. (E.O. 13211)
Net Monetized Benefits ($ millions)					
20-year annualized monetized benefits	-$573.0	-$559.0	N/A	N/A	
Transfers ($ millions)					
Annualized monetized transfers: "on budget"	$0	$0	$0	$0	RIA

Annualized monetized transfers: "off budget"	$0	$0	$0	$0	RIA
From whom to whom?	N/A				RIA
Effects on State, local, and/or Tribal governments	No material adverse effects.				RIA E.O. 12866
Effects on small businesses	Small entities are responsible for most of the Tier 2 liability. BOEM estimates the annualized compliance costs for Tier 2 small entities to be $421 million in bond premiums.				RFA (RIA Section VII.)
Effects on wages	None				None
Effects on growth	Increased compliance costs for oil and gas lessees could negatively impact the competitiveness of the OCS against other opportunities for investment and development.				RIA Section VIII. (E.O. 13211)

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B. Regulatory Flexibility Act (RFA)

The RFA, 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. Pursuant to sections 603 and 609(b) of the RFA, BOEM prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule that examined the impacts of the proposed rule on small entities, along with regulatory alternatives that could minimize that impact. A summary of the IRFA is presented in the proposed rule at 88 FR 42157 and was included in the docket for public comment (*Risk Management, Financial Assurance and Loss Prevention Initial Regulatory Impact Analysis,* Docket ID No. BOEM–2023–0027–0002).

As required by section 604 of the RFA, BOEM prepared a final regulatory flexibility analysis for this action. The analysis addresses the issues raised by public comments on the IRFA for the proposed rule. The complete analysis is available for review in the docket (Docket No. BOEM–2023–0027) and is summarized here.

The final rule affects OCS lessees and RUE and pipeline ROW grant holders; this includes approximately 391 companies with ownership interests in OCS leases and grants, of which approximately 271 (69 percent) are considered small. Because all 391 companies are subject to this final rule, BOEM expects the rule will affect a substantial number of small entities.

Under this final rule, BOEM will consider the financial capacity of all co-owners when determining the need for current lessees and grant holders to provide supplemental financial assurance. If one of these entities meets the issuer credit or BOEM proxy credit rating criteria, BOEM will not require the current lessee or grant holder to provide supplemental financial assurance. This will benefit financially strong lessees or grant holders that meet the investment grade credit rating criteria and lessees and grant holders that do not meet the credit rating criteria but are co-owners with investment grade co-lessees or co-grant holders. Certain lessees or grant holders with less-than-investment-grade credit ratings that are solely responsible for their OCS liability (sole liability leases or grants) are already bonded under the current regulations and these lessees will not be impacted. BOEM's analysis assumes that such non-investment-grade lessees and grant holders with non-investment-grade co-lessees or co-grant holders that have avoided financial assurance under the current regulations will be expected to provide financial assurance under this final rule. BOEM's estimates indicate that small entities are responsible for $11.6 billion, or approximately 80 percent, of the current $14.6 billion liability of non-investment-grade owners. Non-investment-grade small entities holding joint and several liabilities with other such companies will incur increased compliance burdens under the rule, assuming they do not meet the minimum 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves. This increased compliance burden will vary substantially by entity; the burden is a function of the small entity's decommissioning liability, reserves, and the price of the premiums paid for its financial assurance. Based on the estimates in Table 7 of the RIA, these premiums could exceed $258 per $1,000 of bond coverage for highly speculative small entities.

The regulatory alternatives evaluated for the rule are discussed in section VI (*Analysis of Regulatory Alternatives*) in the RIA and in section XII.B of the preamble to the proposed rule (88 FR 42157). The regulatory alternatives included both more stringent and less stringent regulatory options, as well as a no action alternative for the proposed rule. For the no action regulatory alternative, BOEM would continue the current regulatory policies and partial implementation of NTL No. 2016–N01. For the more stringent regulatory alternative, BOEM would fully implement NTL No. 2016–N01, which would require supplemental financial assurance from all lessees and grant holders with a credit rating less than AA- without a financially strong co-owner or co-grant holder. For the less

stringent regulatory alternative, BOEM would require supplemental financial assurance for lessees with a credit rating less than BB- and would waive requirements for those lessees if there was a financially strong predecessor lessee.

Under BOEM's less stringent regulatory alternative, small entities with a credit rating lower than BB- currently responsible for a liability that has at least one investment-grade predecessor lessee would benefit by avoiding the need to provide any supplemental financial assurance. However, a regulatory framework permitting financially weaker companies to forgo or delay the posting of supplemental financial assurance may create a private cost advantage for certain entities. This could distort competition and incentivize financially weaker companies to incur investment risks for activities they would otherwise not undertake.

BOEM has elected to maintain the proposed rule credit threshold of investment grade (*i.e.,* BBB-) rather than that of the less stringent alternative (*i.e.,* BB-) to reduce the potential risk imposed on taxpayers from uncovered decommissioning liabilities.

Under the more stringent regulatory alternative in the proposed rule, BOEM evaluated the full implementation of BOEM's 2016 NTL. In this alternative (''Alternative 1''), more small businesses would be required to provide supplemental financial assurance because all companies rated A+ and below (S&P) would be required to provide financial assurance to secure their OCS liabilities. BOEM determined that this alternative would not meaningfully reduce risk in comparison with the proposal and would result in significant new costs to industry. Aside from the prior implementation issues with the NTL, the 2016 NTL did not consider risk reduction provided by reserves. As a result, it would cost approximately $1 billion more in annual premiums, and the additional coverage over the final rule would come from investment grade companies that pose a much lower risk of default. Because A+, A, and A- companies have very low default rates, and any co-lessee or predecessor lessee would have responsibilities of covering decommissioning, the small reduction in risk beyond what is provided in the rule would not justify the cost of this regulatory alternative.

Under BOEM's proposed rule, all lessees without an investment-grade co-lessee were required to provide financial assurance at the P70 level if they did not meet the investment-grade credit rating threshold or have a minimum value of proved reserves to decommissioning liability ratio of 3-to-1. The Department is finalizing provisions that require non-investment-grade lessees responsible for properties to provide financial assurance at the P70 level (unless they qualify for the 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves exemption).

BOEM has designed its financial assurance program to accommodate small entities, while still fulfilling the goals of minimizing the risk of noncompliance with regulations. BOEM's use of lessee and grant holder issuer or proxy credit ratings and lease reserves for determining whether financial assurance would be required creates a performance standard rather than a prescriptive design standard for all companies operating on the OCS.

Decommissioning obligations and the joint and several liability framework for those obligations are not being changed with this rule. BOEM will not categorically exempt or provide differing compliance requirements for small entities. Categorically exempting small entities from the provisions of this rule based on size would place the taxpayer at unacceptable risk for assuming the decommissioning obligations of small entities. BOEM will use a 3-year, phased compliance approach for all lessees and grant holders to allow additional time to come into compliance in the early years of the rule. This could include arranging to secure financial assurance or suitable partnerships with stronger parties to avoid the necessity of providing financial assurance. Categorically providing small entities with more favorable compliance timetables before requiring financial assurance unreasonably increases risk due to the possible financial deterioration of a given company during that time. BOEM's financial assurance criteria are designed, in part, to provide BOEM ample time to intervene should a company's financial position begin to deteriorate. It is foreseeable that a company not meeting those criteria, but categorically granted additional time to provide financial assurance, could deteriorate more quickly than its compliance timetable and thus not be covered and able to satisfactorily perform its obligations to the public.

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 804(2), requires BOEM to perform a regulatory flexibility analysis, provide guidance, and help small businesses comply with statutes and regulations for major rulemakings. This action is subject to the SBREFA because it has an annual effect on the economy of $100 million or more.

Small businesses are expected to face increased compliance costs from this action, unless they have a financially strong co-lessee. BOEM estimates that the annual compliance cost for small businesses is $421 million (discounted at 7 percent). BOEM must apply the same requirements to all weak companies, regardless of size, in order to ensure that the development of energy in the OCS is safe and protects both the taxpayer and the environment. BOEM acknowledged that small businesses may not have issuer credit ratings in the proposed rule (88 FR 42146) and proposed, and is finalizing, provisions allowing entities without a credit rating to have the BOEM Regional Director assess a proxy credit rating to address this issue. Additionally, these small businesses can be evaluated on the proved reserves of their lease to determine if they may be required to provide additional supplemental financial assurance, also potentially reducing their financial burden. Furthermore, a strong co-lessee will obviate the need for financial assurance from the rest of the co-lessees on the lease. BOEM is also including a phased-in implementation and removal of impediments to the use of decommissioning accounts and third party guarantees to provide flexibility and reduce the financial burden. BOEM is tasked with ensuring that all lessee obligations in the OCS are met and believes this rulemaking is necessary to address insufficient financial resources available in the case of default.

For more information on the small business impacts, see the RFA analysis and the discussion in section IV of this preamble. Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman, and to the Regional Small Business Regulatory Fairness Board. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of BOEM, call 1–888–REG–FAIR (1–888–734–3247).

D. Unfunded Mandates Reform Act (UMRA)

The UMRA, 2 U.S.C. 1531–1538, requires BOEM, unless otherwise prohibited by law, to assess the effects

of regulatory actions on State, local, and Tribal governments, and the private sector. Section 202 of UMRA generally requires BOEM to prepare a written statement, including a cost-benefit analysis, for each proposed and final rule with ''federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. This action contains a Federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of $100 million or more for State, local and Tribal governments, in the aggregate, or the private sector in any one year. Accordingly, BOEM has prepared a written statement required under section 202 of UMRA. The statement is included in the RIA for this action and briefly summarized here.

Because all anticipated private sector expenditures that may result from the proposed rule are analyzed in the proposed rule RIA and in the RIA for this final rule (*i.e.,* expenditures of the offshore oil and gas industry), these documents satisfy the UMRA requirement to estimate any disproportionate budgetary effects of the rule on a particular segment of the private sector. As explained in the final RIA, this final rule is anticipated to have annualized net estimated compliance costs of $559 million annually (7 percent discounting), but provides strengthened financial assurance to protect taxpayers from the costs of decommissioning offshore infrastructure. No comments on the UMRA statement were received during the public comment period.

This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 12630 Governmental Actions and Interference With Constitutionally Protected Property Rights

Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights,* ensures that government actions affecting the use of private property are undertaken on a well-reasoned basis with due regard for the potential financial impacts imposed by the government. This action does not affect a taking of private property or otherwise have taking implications under E.O. 12630, and therefore, a takings implication assessment is not required. Additionally, no comments were received on E.O. 12630 during the public comment period.

F. Executive Order 13132 Federalism

Regulatory actions that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government are subject to E.O. 13132. Under the criteria in section 1 of E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No comments were received on E.O. 13132 during the public comment period.

G. Executive Order 12988 Civil Justice Reform

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

(1) 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

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

No comments were received on E.O. 12988 during the public comment period.

H. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 defines polices that have Tribal implications as regulations, legislative comments or proposed legislation, and other policy statements or actions that will or may have a substantial direct effect on one or more Indian Tribes, or on the relationship between the Federal Government and one or more Indian Tribes. Additionally, the DOI's consultation policy for Tribal Nations and ANCSA Corporations, as described in Departmental Manual part 512 chapter 4, expands on the above definition from E.O. 13175 and requires that BOEM invite Indian Tribes and ANCSA Corporations ''early in the planning process to consult whenever a Departmental plan or action with Tribal Implications arises.'' BOEM strives to strengthen its government-to-government relationships with Tribal Nations through a commitment to consultation with Tribes, recognition of their right to self-governance and Tribal sovereignty, and honoring BOEM's trust responsibilities for Tribal Nations.

As discussed in the proposal (88 FR 42161), BOEM evaluated the proposed rule under DOI's consultation policy and under the criteria in E.O. 13175 and determined that, while the proposed rule would likely not cause any substantial direct effects on environmental or cultural resources, there may be resource or economic impacts to one or more federally recognized Indian Tribes or ANCSA Corporations as a result of the proposed rule. BOEM sent letters to all Tribes and ANCSA Corporations on March 31, 2023, to ensure they were aware of the proposed rulemaking, to answer any immediate questions they may have, and to invite formal consultation if they would like to consult. Only one request for consultation was received, and consultation was held with the Red Willow (Southern Ute Tribe) on June 28, 2023, and meeting notes are included in the docket (memorandum titled *Tribal Outreach: Red Willow*). For more details on E.O. 13175, the DOI's consultation policy for Tribal Nations and ANCSA Corporations, and the consultations conducted regarding this rulemaking, see the memo in the docket titled *Tribal Outreach: Summary of Engagement Activities.* BOEM can consult at any time with federally recognized Tribes as sovereign nations.

I. Paperwork Reduction Act (PRA)

The PRA of 1995 (44 U.S.C. 3501–3521) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a ''collection of information'' unless it displays a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information and report it to a Federal agency (44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k)). This final rule contains collections of information that were submitted to the OMB for review and approval under 44 U.S.C. 3507(d).

A proposed rule, soliciting comments on this collection of information for 30 days, was published on June 29, 2023 (88 FR 42136). No comments on the collections of information were received.

This final rule references existing information collections (ICs) previously approved by OMB and adds new IC requirements for these Department regulations that have been submitted to OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). With this final rule BOEM updates the IC requirements under 30 CFR parts 550 and 556. The

updates associated with the risk management and financial assurance for OCS lease and grant obligations are in the ICs bearing the following OMB control numbers:

- 1010–0006 (BOEM), *Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf (30 CFR parts 550, 556, and 560)* (expires 03/31/2026), and
- 1010–0114 (BOEM), *30 CFR part 550, subpart A, General, and Subpart K, Oil and Gas Production Requirements* (expires 05/31/2026).

This final rule modifies collections of information under 30 CFR part 550, subparts A and J, and 30 CFR part 556, subpart I, concerning financial assurance requirements (such as bonding) for leases, pipeline ROW grants, and RUE grants. OMB has reviewed and approved the existing information collection requirements associated with financial assurance regulations for leases (30 CFR 556.900 through 556.907), pipeline ROW grants (30 CFR 550.1011), and RUE grants (30 CFR 550.160 and 550.166).

BOEM estimates that the number of information collection burden hours for the final rule overall is close to the same as that for the existing regulatory framework. When the rule becomes effective, the new and changed provisions will increase the overall annual burden hours for OMB Control Number 1010–0006 by 77 hours (totaling 22,012 annual burden hours) and 264 responses (totaling 22,090 responses) as justified below. The changed provisions for OMB Control Number 1010–0114 add new and revised requirements in 30 CFR part 550, subpart A, but do not impact the overall burden hours for this control number because the burdens for these provisions are counted under OMB Control Number 1010–0006. However, the regulatory descriptions of new and modified requirements are extensive enough to require an update of the IC bearing that OMB control number.

When needed, BOEM will submit future burden changes (either increases or decreases) of the OMB control numbers with reasoning to OMB for review and approval. Every 3 years, BOEM will also review the burden numbers for changes, seek public comment, and submit any request for changes to OMB for approval.

Title of Collection: 30 CFR part 550, ''Oil and Gas and Sulfur Operations in the Outer Continental Shelf,'' and 30 CFR part 556, ''Leasing of Sulfur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf.''

OMB Control Numbers: 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 RUE grant and pipeline ROW grant holders.

Total Estimated Number of Annual Responses: 22,090 responses for 1010–0006, and 5,621 responses for 1010–0114.

Total Estimated Number of Annual Burden Hours: 22,012 hours for 1010–0006, and 27,849 hours for 1010–0114.

Respondent's Obligation: Responses to these collections 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 Non-Hour Burden Cost: No additional non-hour costs. Non-hour costs remain at $766,053 for OMB Control Number 1010–0006, and $165,492 for OMB Control Number 1010–0114.

The following is a brief explanation of how the regulatory changes in this rulemaking affect the various subparts' hour and non-hour cost burdens for OMB Control Number 1010–0114:

Right-of-Use and Easement

BOEM's existing regulations concerning RUE grants supporting an OCS lease and a State lease are found at 30 CFR 550.160 through 550.166. The burdens related to 30 CFR 550.160 and 550.166 are identified in OMB Control Number 1010–0114 but accounted for in OMB Control Number 1010–0006.

Existing § 550.160 provides that an applicant for a RUE that serves an OCS lease must meet bonding requirements, but the regulation does not prescribe a base amount. This rule replaces this requirement with a cross-reference to the specific criteria governing financial assurance demands in § 550.166. Therefore, BOEM is establishing a Federal RUE base financial assurance requirement matching the existing base surety bond requirement for State RUEs. The annual burden hour does not change since RUEs that serve OCS leases are currently already meeting financial assurance requirements under BOEM's agreement-specific conditions of approval.

In § 550.166, BOEM is establishing a $500,000 area-wide RUE financial assurance requirement that guarantees compliance with the regulations and the terms and conditions of any RUE grants an entity holds. Previously, $500,000 in financial assurance for RUEs was only required for RUEs associated with State leases. BOEM is also allowing any lessee that has posted area-wide lease financial assurance to modify that financial assurance to also cover any RUE(s) held by the same entity.

BOEM is also revising the RUE regulations to clarify that any RUE grant holder, whether the RUE serves a State or Federal lease, may be required to provide supplemental financial assurance for the RUE if the grant holders do not meet the credit rating or proxy credit rating criterion. The existing regulations authorized demands for supplemental financial assurance but specified no criteria. The annual burden hour would not change based on these clarifications.

BOEM added § 550.167 to explain the requirements for obtaining and assigning an interest in a RUE. To obtain a RUE or assignment of a RUE, the applicant or assignee must apply for and receive approval from BOEM. Some of the new requirements parallel those for ROW assignments in BSEE's regulations at 30 CFR 250.1018. BOEM is expanding the burden estimate for RUE application requirements to include the application to obtain a RUE or assign a RUE interest in § 550.167. BOEM estimates 9 hours per respondent for requirements related to RUE applications or requests to assign a RUE interest.

The following is the revised burden table and a brief explanation of how the regulatory changes affect the various subparts' hour and non-hour cost burdens for OMB Control Number 1010–0006:

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Burden Table

[*Italics show expansion of existing requirements*; **bold indicates new requirements**; regular font shows current requirements. Where applicable, updated estimates from the current collection are being used.]

30 CFR part 550, subpart J	Reporting Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
1011(a)	Provide *area-wide financial assurance* (form BOEM-2030) and if required, supplemental financial assurance, and required information.	GOM 0.25	52	13
		Pacific 3.5	3	11
		Alaska	1	1
1011(d)	**Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of *financial assurance*, request reduction in amount of supplemental financial assurance required on BOEM-approved forms, *or request phased financial assurance*. Submit required information.**	Burden included in 30 CFR 556.901(d).		
30 CFR part 550, subpart J, TOTAL			**56 Responses**	**25 Hours**
30 CFR part 556 and NTLs	**Reporting Requirement***	**Hour Burden**	**Average No. of Annual Responses**	**Annual Burden Hours**
		Non-Hour Cost Burdens		
Subpart A				
104(b)	Submit confidentiality agreement.	0.25	500	125
106	Cost recovery/service fees; confirmation receipt.	Cost recovery/service fees and associated documentation are covered under individual reqts. throughout this part.		0
107	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the *Federal Register* in accordance with § 560.500.	Burden covered in § 560.500.		0
107	File seals, documents, statements, signatures, etc., to establish legal status of all future submissions (paper and/or electronic).	0.17 (10 min.)	400	67
Subtotal			900	192
Subpart B				
201-204	Submit nominations, suggestions, comments, and information in response to Request for Information/Comments, draft and/or proposed 5-year leasing program, etc., including information from States/local governments, Federal agencies, industry, and others.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
201-204	Submit nominations & specific information requested in draft proposed 5-year leasing program, from States/local governments.	4	69	276
Subtotal			69	276
Subpart C				
301; 302	Submit response & specific information requested in Requests for Industry Interest and Calls for Information and Nominations, etc., on areas proposed for leasing; including information from States/local governments.	Not considered IC as defined in 5 CFR 1320.3(h)(4)		0
302(d)	Request summary of interest (non-proprietary information) for Calls for Information/Requests for Interest, etc.	1	5	5
305; 306	States or local governments submit comments, recommendations, other responses on size, timing, or location of proposed lease sale. Request extension; enter agreement.	4	25	100
Subtotal			30	105
Subpart D				
400-402; 405	Establish file for qualification; submit evidence/certification for lessee/bidder qualifications. Provide updates; obtain BOEM approval & qualification number.	2	107	214

403(c)	Request hearing on disqualification.	Requirement not considered IC under 5 CFR 1320.3(h)(8).		0
403; 404	Notify BOEM if you or your principals are excluded, disqualified, or convicted of a crime—Federal non-procurement debarment and suspension requirements; request exception; enter transaction.	1.5	50	75
405	Notify BOEM of all mergers, name changes, or change of business.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
Subtotal			157	289
Subpart E				
500; 501	Submit bids, deposits, and required information, including GDIS & maps; in manner specified. Make data available to BOEM.	5	2,000	10,000
500(e); 517	Request reconsideration of bid decision.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
501(e)	Apply for reimbursement.	Burden covered in 1010-0048, 30 CFR part 551.		0
511(b); 517	Submit appeal due to restricted joint bidders list; request reconsideration of bid decision.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
513; 514	File statement and detailed report of production. Make documents available to BOEM.	2	100	200
515	Request exemption from bidding restrictions; submit appropriate information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
516	Notify BOEM of tie bid agreement; file agreement on determination of lessee.	3.5	2	7
520; 521; 600(c)	Execute lease (includes submission of evidence of authorized agent/completion and request effective date of lease); submit required data and rental.	1	852	852
520(b)	Provide acceptable bond for payment of a deferred bonus.	0.25	1	1
Subtotal			2,955	11,060
Subparts F, G, H				
Subparts F, G, H	Requests of approval for various operations or submit plans or applications. Burden included with other approved collections for BOEM 30 CFR part 550 (subpart A 1010-0114; subpart B 1010-0151) and for BSEE 30 CFR part 250 (subpart A 1014-0022; subpart D 1014-0018).			0
701(c); 716(b); 801(b); 810(b)	Submit new designation of operator (BOEM-1123).	Burden covered in 1010-0114.		0
700-716	File application and required information for assignment/transfer of record title/lease interest (form BOEM-0150; form is 30 min.) (includes sell, exchange, transfer); request effective date/confidentiality; provide notifications.	1	1,414	1,414
		$198 fee x 1,414 forms = $279,972		
800-810	File application and required information for assignment/transfer of operating interest (Form BOEM-0151) (includes sale, sublease, segregation exchange, severance, transfer); request effective date; provide notifications.	1	421	421
		$198 fee x 421 forms = $83,358		
715(a); 808(a)	File required instruments creating or transferring economic interests, etc., for record purposes.	1	2,369	2,369
		$29 fee x 2,369 filings = $68,701		
715(b); 808(b)	Submit "non-required" documents, for record purposes that respondents want BOEM to file with the lease document. (Accepted on behalf of lessees as a service; BOEM does not require or need them.)	.25	11,518	2,880
		$29 fee x 11,518 filings = $334,022		
Subtotal			15,722	7,084
			$766,053	
Subpart I				
900(a) through (e); **901**; 902; 903(a); **905**	Submit OCS Mineral Lessee's and Operator's Bond (Form BOEM-2028) or other financial assurance and, if required, provide supplemental financial assurance; execute forms.	0.33	405	135
900(c), (d), (f), *(g)*; 901(c),	Demonstrate financial ability to carry out present and future financial obligations, request approval of another form of *financial assurance*, request reduction in amount of supplemental financial assurance required on BOEM-approved forms, *or request*	3.5	160	560

(h), **901(d),** (f); 902; **904**	*phased provision of financial assurance*. Monitor and submit required information.			
900(e); 901; 902; 903(a)	Submit OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond (Form BOEM-2028A)*;* execute bond.	0.25	141	35
900(f), *(g), (i)*	Submit authority for Regional Director to sell Treasury or alternate type of *financial assurance*.	2	12	24
901	Submit EP, DPP, DOCDs.	IC burden covered in 1010-0151, 30 CFR part 550, subpart B.		0
901*(g)*	Submit oral/written comment on adjusted *financial assurance* amount and information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
902 (g), (h) NEW	**Request informal resolution or file an appeal of supplemental financial assurance demand**.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
903 (*a), (b);* 905 (c)	Notify BOEM of any lapse in *financial assurance* coverage/action filed alleging lessee, surety, guarantor, or financial institution is insolvent or bankrupt or had its charter or license suspended or revoked.	3	4	12
904	Establish decommissioning account for estimated decommissioning obligation.	12	2	24
905	Provide third-party guarantee, agreement, financial and required information, related notices, reports, and annual update; notify BOEM if guarantor becomes unqualified.	19	46	874
905(d); 906	Provide notice of and request approval to terminate period of liability, cancel *financial assurance*; provide required information.	0.5	378	189
907(c)(2)	Provide information to demonstrate lease will be brought into compliance.	16	5	80
Subtotal			1153	1,933
Subpart K				
1101	Request relinquishment of lease (form BOEM-0152); submit required information.	1	247	247
1102	Request additional time to bring lease into compliance.	1	1	1
1102(c)	Comment on cancellation.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			248	248
30 CFR part 556 TOTAL			21,234 Responses	21,187 Hours
			$766,053 Non-Hour Cost Burdens	
30 CFR part 560	**Reporting Requirement***	**Hour Burden**	**Average No. of Annual Responses**	**Annual Burden Hours**
560.224(a)	Request BOEM to reconsider field assignment of a lease.	Requirement not considered IC under 5 CFR 1320.3(h)(9)		0
560.500	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the *Federal Register* (e.g., financial assurance info.).	1	800	800
30 CFR part 560 TOTAL			**800 Responses**	**800 Hours**
TOTAL REPORTING FOR COLLECTION			**22,090 Responses**	**22,012 Hours**
			$766,053 Non-Hour Cost Burdens	

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Pipelines and Pipeline Right-of-Way Grants

Section 550.1011(d) relates to BOEM's determination of whether supplemental financial assurance is necessary to ensure compliance with the obligations under a pipeline ROW grant. This determination will be based on whether pipeline ROW grant holders have the ability to carry out present and future

obligations. The new criterion for the determination is 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, based on the submitted audited financial information, falls on BOEM. The annual burdens placed on the grant holder are minimal (providing to BOEM information the grant holder already has) and is included in the burden estimates for 30 CFR 556.901(d).

30 CFR part 556, subpart I (OMB Control Number 1010–0006):

Bond or Other Financial Assurance Requirements for Leases

A new provision at 556.900(a) clarifies that supplemental financial assurance required by the Regional Director must be provided before an assignment of a lease is approved. The burden increase for this requirement is included in OMB Control Number 1010–0006. Supplemental financial assurance required by this provision does not significantly impact the burdens due to low occurrence, but BOEM is accounting for the change in the burden table.

Base Bonds and Supplemental Financial Assurance

Section 556.901(d) relates to BOEM's determination of whether supplemental financial assurance is necessary to ensure compliance with the obligations under a lease. The lessee will be required to provide supplemental financial assurance if it does not meet at least one of the criteria outlined in the final regulations in this section.

Section 556.901(d)(1) bases this determination on an investment grade issuer credit rating.

Section 556.901(d)(2) provides that, alternatively, BOEM will consider a proxy credit rating, which must be based on audited financial information for the most recent fiscal year.

Section 556.901(d)(3) provides that BOEM will consider whether the co-lessee or co-grant holder has an issuer credit rating or proxy credit rating that meets the investment-grade threshold. The presence of such co-lessee or co-grant holder will allow the Regional Director to not require financial assurance only to the extent that the lessee or grant-holder and that co-lessee or co-grant holder share accrued liabilities, and the Regional Director may require the lessee or grant holder to provide supplemental financial assurance for decommissioning obligations for which such co-lessee or co-grant holder is not liable.

Section 556.901(d)(4) provides that BOEM will also consider the net present value of proved oil and gas reserves on the lease. Lessees' submission of information on proved reserves would account for additional annual burden hours. The lessee would not need to submit proved reserve information if supplemental financial assurance is not required based on its issuer credit rating or proxy credit rating, or those of its co-lessees.

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 rule, the revision of the evaluation criteria results in requiring less time for the respondents to prepare and submit the information, particularly for issuer credit rating. If companies choose to demonstrate that the net present value of proved oil and gas reserves on the lease exceeds three times the undiscounted cost of decommissioning associated with production of those reserves, then the time necessary for companies to prepare and submit information on the proved oil and gas reserves is likely greater than 3.5 hours. Therefore, BOEM is retaining the average 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 (lessee, co-lessee, grant holder, and co-grant holder) will be included in OMB Control Number 1010–0006.

The OMB-approved number of respondents who currently submit financial information under the existing provision is 166 respondents. Recently, BOEM has seen the number of leases decrease in the Gulf of Mexico. BOEM estimates the new number of respondents will be between 150 and 160 respondents. For this request, BOEM is using the higher number of 160 respondents (minus 6 respondents). This number will be reviewed during the next IC renewal process. 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 are 581 hours (166 respondents × 3.5 hours). With the changes provided in this rule and described above, BOEM estimates that the annual hour burden will decrease by approximately 21 annual burden hours, and total annual burden hours will equal 560 hours (160 respondents × 3.5 hours). This decrease in annual burden hours will be reflected in OMB Control Number 1010–0006 when the final rule becomes effective.

BOEM is adding paragraph (h) to § 556.901 to establish the limited opportunity to provide the required supplemental financial assurance in installments during the first 3 years after the effective date of this regulation. This provision establishes the timing and proportions of phased supplemental financial assurance that will be required in each installment. The lessee will have the option to submit the supplemental financial assurance once or in installments. If the lessee chooses to provide supplemental financial assurance in installments, the number of submissions of supplemental financial assurance will likely increase, but only in response to demands made during the first 3 years after the effective date of this regulation. OMB has currently approved 45 annual burden hours for supplemental financial assurance submissions (135 submissions which take 20 minutes each to submit). BOEM estimates the burden hours for the proposed installment submissions provision to be 135 annual burden hours (405 submissions × 20 minutes), which is an increase of 90 hours over the existing OMB approval.

General Requirements for Bonds and Other Financial Assurance

The scope of § 556.902(a) has been clarified to include ''grant holder'' and financial assurance posted under the requirements of 30 CFR part 550. This change would clarify that the same general requirements for financial assurance provided by lessees, operating rights owners, or operators also apply to financial assurance provided by RUE and pipeline ROW grant holders. BOEM proposes to keep the burdens the same as the existing OMB burdens.

Decommissioning Accounts

Revisions to § 556.904 allow the Regional Director to authorize a RUE grant holder and a pipeline ROW grant holder, as well as a lessee, to establish a decommissioning account as supplemental financial assurance required under § 556.901(d), § 550.166(b), or § 550.1011(d). Because this change represents a new option for grant holders, there are no existing burdens related to this provision under the current OMB approval. BOEM is capturing the increased opportunity to establish decommissioning accounts in

the burden table. BOEM estimates 24 annual burden hours for grant holders and/or lessees to establish their decommissioning account.

The rule contains a new provision under § 556.904(a)(3), which would require immediate submission of a surety bond or other financial assurance in the amount equal to the remaining unsecured portion of the supplemental financial assurance demand if the initial payment or any scheduled payment into the decommissioning account is not timely made. In the context of paperwork-burden, this provision replaces the existing provision that requires submission of binding instructions. The annual burden hours will remain the same but will shift to the new requirement and will be reflected in OMB Control Number 1010–0006 when the final rule is effective.

Third-Party Guarantees

New § 556.905(a) relates to the guarantor's ability to carry out present and future obligations. New § 556.905 replaces the term indemnity agreement with a third-party guarantee agreement with comparable provisions. This change would not impact annual burden hours. Section 556.905(a)(2) requires the guarantor to submit a third-party guarantee agreement. Paragraph (d) provides that the terms that the existing regulation requires for indemnity agreements must be included in a third-party guarantee agreement. This change is to avoid any inference that the government must incur the expenses of decommissioning before being indemnified by the guarantor. It is a change of the name of the agreement and does not change the associated burden.

New § 556.905(e) provides that a lessee or grant holder and the guarantor under a third-party guarantee may request BOEM to cancel a third-party guarantee. BOEM will cancel a third-party guarantee under the same terms and conditions provided for cancellation of other forms of financial assurance in § 556.906(d)(2). The current OMB-approved burden under § 556.905(d) and § 556.906 is 189 annual burden hours. BOEM will keep the burdens the same as the current OMB approved burdens at 189 annual burden hours.

New § 556.905(c)(2) eliminates the requirement that a lessee must cease production until supplemental financial assurance coverage requirements are met when a guarantor becomes unqualified. The regulatory provision is replaced with a requirement to immediately submit and maintain a substitute surety bond or other financial assurance. Both the existing and new provisions require the lessee to provide replacement surety bond coverage; however, BOEM's current OMB Control Number 1010–0006 does not quantify the burdens. Therefore, BOEM is adding approximately 8 annual burden hours to OMB Control Number 1010–0006 for any lessee whose guarantor becomes unqualified.

New § 56.905 removes the requirement that a guarantee must ensure compliance with all lessees' or grant holders' obligations and the obligations of all operators on the lease or grant. This revision allows a third-party guarantor, with BOEM's agreement, to limit the obligations covered by the third-party guarantee. In some situations, this change could result in additional paperwork burden due to additional surety bonds or other financial assurance that must be provided to BOEM to cover obligations previously covered by a third-party guarantee. BOEM estimates the number of additional financial assurance demands resulting from this revision to be low and the annual burdens are included in the existing burden estimates for OMB Control Number 1010–0006, and will be revised in future IC requests, if needed.

Termination of the Period of Liability and Cancellation of Financial Assurance

Section 556.906(d)(2) is revised to add additional circumstances when BOEM may cancel supplemental financial assurance. Section 556.906(d)(2) requires a cancellation request from the lessee or grant holder, or the surety, based on assertions that one of the stated circumstances is present. BOEM already receives these types of requests and has approved the requests, where warranted, as a departure from the regulations. These burdens are already counted in the existing OMB burden estimate for OMB Control Number 1010–0006.

Once this rule becomes effective and OMB approves the information collection requests, BOEM would revise the existing OMB control numbers to reflect the changes. 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.*

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) Is the proposed information collection necessary or useful for BOEM to properly perform its functions?

(2) Are the estimated annual burden hour increases and decreases resulting from the proposed rule reasonable?

(3) Is the estimated annual non-hour cost burden resulting from this information collection reasonable?

(4) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(5) Is there a way to minimize the information collection burden on those who must respond, such as by using appropriate automated digital, electronic, mechanical, or other forms of information technology?

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 online portal at *https://www.reginfo.gov.* You may view the information collection request(s) at *https://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 (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed environmental analysis under NEPA is not required because this final rule is covered by a categorical exclusion (see 43 CFR 46.205). This final rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this action is ''of an administrative, financial, legal, technical, or procedural nature.'' BOEM has also determined that the final rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

One comment was received on NEPA for the proposed rule. A commenter asserted that a NEPA review of the proposed rule is required. According to the commenter, the rule is highly likely to cause environmental effects because the lack of financial assurance could cause decommissioning to take longer to arrange, resulting in additional damage to the environment and obstacles to navigation.

BOEM disagrees with the commenter's assertion that a NEPA review of the proposed rule is required. BOEM conducted an initial NEPA analysis for the proposed rulemaking and determined that the proposed rule met the criteria for categorical exclusion under 43 CFR 46.210(i) of DOI regulations implementing NEPA. The regulations set forth in this rule are ''of an administrative, financial, legal, technical, or procedural nature.'' The final rule also meets these criteria. The final rule does not authorize any activities and does not alleviate BOEM's responsibility to conduct the appropriate environmental reviews throughout the OCS development process. This rulemaking does not reduce or eliminate BOEM's environmental review of conventional energy activities.

K. Data Quality Act

In promulgating this rule, BOEM 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). In accordance with the Data Quality Act, the Department has issued guidance regarding the quality of information that it relies upon for regulatory decisions. This guidance is available at the Department's website at: *https://www.doi.gov/ocio/policy-mgmt-support/information-and-records-management/iq*. *No comments were received on the Data Quality Act during the public comment period.*

L. Executive Order 13211 Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, BOEM is 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. BOEM has prepared the required statement and has concluded, for the reason described below, that this action, which is a significant regulatory action under Executive Order 12866, may have a significant adverse effect on the supply, distribution, or use of energy. BOEM has prepared a Statement of Energy Effects for this final rule, which is available in section VIII of the RIA.

BOEM estimates that stronger supplemental financial assurance requirements will increase compliance costs for non-investment grade companies operating on the OCS by approximately $559 million annually (7 percent discounting). Pursuant to OMB's memorandum M–01–27, BOEM recognizes that this action may ''adversely affect in a material way the productivity, competition, or prices in the energy sector.'' By increasing industry compliance costs, the regulation could make the U.S. offshore oil and gas sector less attractive than regions with lower operating costs. Additionally, increased costs may depress the value of offshore assets or cause continuing production to become uneconomic sooner, leading to shorter-than-otherwise useful life and potentially a loss of production.

For additional discussion on the energy effects and regulatory alternatives, please see the RIA for this final rulemaking, available in the docket (Docket No. BOEM–2023–0027).

M. Congressional Review Act (CRA)

This action is subject to the CRA, and BOEM will submit a rule report to each chamber of Congress and to the Comptroller General of the United States. This action meets the criteria in 5 U.S.C. 804(2).

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Oil pollution, 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, Government contracts, Intergovernmental relations, Oil and gas exploration, Outer continental shelf, Mineral resources, Reporting and recordkeeping requirements, Rights-of-way.

30 CFR Part 590

Administrative practice and procedure.

This action by the Deputy Assistant Secretary is taken herein pursuant to an existing delegation of authority.

Steven H. Feldgus,

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, BOEM amends 30 CFR chapter V as follows:

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

■ 1. 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.

■ 2. Revise the heading to part 550 to read as set forth above.

Subpart A—General

■ 3. Amend § 550.101 by revising the introductory text to read as follows:

§ 550.101 Authority and applicability.

The Secretary of the Interior (Secretary) authorized the Bureau of Ocean Energy Management (BOEM) to regulate oil, gas, and sulfur exploration, development, and production operations on the Outer Continental Shelf (OCS). Under the Secretary's authority, the BOEM Director requires that all operations:

* * * * *

■ 4. Amend § 550.102 by revising paragraphs (a) and (b)(16) to read as follows:

§ 550.102 What does this part do?

(a) This part contains the regulations of the BOEM Offshore program that

govern oil, gas, and sulfur exploration, development, and production operations on the OCS. When you conduct operations on the OCS, you must submit requests, applications, and notices, or provide supplemental information for BOEM approval.

(b) * * *

TABLE—WHERE TO FIND INFORMATION FOR CONDUCTING OPERATIONS

For information about	Refer to
* * * * *	
(16) Sulfur operations	30 CFR 250, subpart P.
* * * * *	

■ 5. Revise § 550.103 to read as follows:

§ 550.103 Where can I find more information about the requirements in this part?

BOEM may issue Notices to Lessees and Operators (NTLs) that clarify or provide more detail about certain regulatory requirements. NTLs may also outline what information you must provide, as required by regulation, in your various submissions to BOEM.

■ 6. Revise and republish § 550.105 to read as follows:

§ 550.105 Definitions.

Terms used in this part will have the meanings given in the Act and as defined in this section:

Act means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*)

Affected State means with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved under the provisions of the Act, any State:

(1) The laws of which are declared, under section 4(a)(2) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or according to the proposed activity, will receive oil for processing, refining, or transshipment that was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

Analyzed geological information means data collected under a permit or a lease that have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analysis, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

Ancillary activities mean those activities on your lease or unit that you:

(1) Conduct to obtain data and information to ensure proper exploration or development of your lease or unit; and

(2) Can conduct without BOEM approval of an application or permit.

Archaeological interest means capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest.

Arctic OCS means the Beaufort Sea and Chukchi Sea Planning Areas (for more information on these areas, see the Proposed Final OCS Oil and Gas Leasing Program for 2012–2017 (June 2012) at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/2012-2017/Program-Area-Maps/index.aspx*).

Arctic OCS conditions means, for the purposes of this part, the conditions operators can reasonably expect during operations on the Arctic OCS. Such conditions, depending on the time of year, include, but are not limited to: extreme cold, freezing spray, snow, extended periods of low light, strong winds, dense fog, sea ice, strong currents, and dangerous sea states. Remote location, relative lack of infrastructure, and the existence of subsistence hunting and fishing areas are also characteristic of the Arctic region.

Assign means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''assign'' is synonymous with ''transfer'' and the two terms are used interchangeably.

Attainment area means, for any criteria air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of the Environmental Protection Agency (EPA) to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

Best available and safest technology (BAST) means the best available and safest technologies that the Director determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.

Best available control technology (BACT) means an emission limitation based on the maximum degree of reduction for each criteria air pollutant and VOC subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The Regional Director will verify the BACT on a case-by-case basis, and it may include reductions achieved through the application of processes, systems, and techniques for the control of each criteria air pollutant and VOC.

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

Coastal zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) strongly influenced by each other and in proximity to the shorelands of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, under the authority in section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972.

Competitive reservoir means a reservoir in which there are one or more

producible or producing well completions on each of two or more leases or portions of leases, with different lease operating interests, from which the lessees plan future production.

Correlative rights when used with respect to lessees of adjacent leases, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, minerals from a common source.

Criteria air pollutant means any air pollutant for which the United States Environmental Protection Agency (U.S. EPA) has established a primary or secondary National Ambient Air Quality Standard (NAAQS) pursuant to section 109 of the Clean Air Act.

Data means facts and statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

Departures mean approvals granted by the appropriate BSEE or BOEM representative for operating requirements/procedures other than those specified in the regulations found in this part. These requirements/procedures may be necessary to control a well; properly develop a lease; conserve natural resources, or protect life, property, or the marine, coastal, or human environment.

Development means those activities that take place following discovery of minerals in paying quantities, including but not limited to geophysical activity, drilling, platform construction, and operation of all directly related onshore support facilities, and which are for the purpose of producing the minerals discovered.

Development geological and geophysical (G&G) activities means those G&G and related data-gathering activities on your lease or unit that you conduct following discovery of oil, gas, or sulfur in paying quantities to detect or imply the presence of oil, gas, or sulfur in commercial quantities.

Director means the Director of BOEM of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

District Manager means the BSEE officer with authority and responsibility for operations or other designated program functions for a district within a BSEE Region.

Eastern Gulf of Mexico means all OCS areas of the Gulf of Mexico the BOEM Director decides are adjacent to the State of Florida. The Eastern Gulf of Mexico is not the same as the Eastern Planning Area, an area established for OCS lease sales.

Emission offsets mean emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan (EP), Development and Production Plan (DPP), or Development Operations Coordination Document (DOCD).

Enhanced recovery operations mean pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations that alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

Existing facility, as used in § 550.303, means an Outer Continental Shelf (OCS) facility described in an Exploration Plan, a Development and Production Plan, or a Development Operations Coordination Document, approved before June 2, 1980.

Exploration means the commercial search for oil, gas, or sulfur. Activities classified as exploration include but are not limited to:

(1) Geophysical and geological (G&G) surveys using magnetic, gravity, seismic reflection, seismic refraction, gas sniffers, coring, or other systems to detect or imply the presence of oil, gas, or sulfur; and

(2) Any drilling conducted for the purpose of searching for commercial quantities of oil, gas, and sulfur, including the drilling of any additional well needed to delineate any reservoir to enable the lessee to decide whether to proceed with development and production.

Facility, as used in § 550.303, means all installations or devices permanently or temporarily attached to the seabed. They include mobile offshore drilling units (MODUs), even while operating in the ''tender assist'' mode (*i.e.,* with skid-off drilling units) or other vessels engaged in drilling or downhole operations. They are used for exploration, development, and production activities for oil, gas, or sulfur and emit or have the potential to emit any air pollutant from one or more sources. They include all floating production systems (FPSs), including column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc. During production, multiple installations or devices are a single facility if the installations or devices are at a single site. Any vessel used to transfer production from an offshore facility is part of the facility while it is physically attached to the facility.

Financial assurance means a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or another form of security acceptable to the BOEM Regional Director, that is used to ensure compliance with obligations under the regulations in this part and under the terms of a lease, a RUE grant, or a pipeline ROW grant.

Flaring means the burning of natural gas as it is released into the atmosphere.

Gas reservoir means a reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

Gas-well completion means a well completed in a gas reservoir or in the associated gas-cap of an oil reservoir.

Geological and geophysical (G&G) explorations mean those G&G surveys on your lease or unit that use seismic reflection, seismic refraction, magnetic, gravity, gas sniffers, coring, or other systems to detect or imply the presence of oil, gas, or sulfur in commercial quantities.

Governor means the Governor of a State, or the person or entity designated by, or under, State law to exercise the powers granted to such Governor under the Act.

H2S absent means:

(1) Drilling, logging, coring, testing, or producing operations have confirmed the absence of H2S in concentrations that could potentially result in atmospheric concentrations of 20 ppm or more of H2S; or

(2) Drilling in the surrounding areas and correlation of geological and seismic data with equivalent stratigraphic units have confirmed an absence of H2S throughout the area to be drilled.

H2S present means drilling, logging, coring, testing, or producing operations have confirmed the presence of H2S in concentrations and volumes that could potentially result in atmospheric concentrations of 20 ppm or more of H2S.

H2S unknown means the designation of a zone or geologic formation where neither the presence nor absence of H2S has been confirmed.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Interpreted geological information means geological knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of data and analyzed geological information.

Interpreted geophysical information means geophysical knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps,

developed by determining the geological significance of geophysical data and analyzed geophysical information.

Lease means an agreement that is issued under section 8 or maintained under section 6 of the Act and that authorizes exploration for, and development and production of, minerals. The term also means the area covered by that authorization, whichever the context requires.

Lease term pipelines mean those pipelines owned and operated by a lessee or operator that are completely contained within the boundaries of a single lease, unit, or contiguous (not cornering) leases of that lessee or operator.

Lessee means a person who has entered into a lease with the United States to explore for, develop, and produce the leased minerals. The term lessee also includes the BOEM-approved assignee of the lease, and the owner or the BOEM-approved assignee of operating rights for the lease.

Major Federal action means any action or proposal by the Secretary that is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. (2)(C) (*i.e.,* an action that will have a significant impact on the quality of the human environment requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act).

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Material remains means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

Maximum efficient rate (MER) means the maximum sustainable daily oil or gas withdrawal rate from a reservoir that will permit economic development and depletion of that reservoir without detriment to ultimate recovery.

Maximum production rate (MPR) means the approved maximum daily rate at which oil or gas may be produced from a specified oil-well or gas-well completion.

Minerals include oil, gas, sulfur, geopressured-geothermal and associated resources, and all other minerals that are authorized by an Act of Congress to be produced.

Natural resources include, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power or the use of water for the production of power.

Nonattainment area means, for any criteria air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of the U.S. EPA to be reliable) to exceed any primary or secondary NAAQS established by the U.S. EPA.

Nonsensitive reservoir means a reservoir in which ultimate recovery is not decreased by high reservoir production rates.

Oil reservoir means a reservoir that contains hydrocarbons predominantly in a liquid (single-phase) state.

Oil reservoir with an associated gas cap means a reservoir that contains hydrocarbons in both a liquid and gaseous (two-phase) state.

Oil-well completion means a well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

Operating rights mean any interest held in a lease with the right to explore for, develop, and produce leased substances.

Operator means the person the lessee(s) designates as having control or management of operations on the leased area or a portion thereof. An operator may be a lessee, the BOEM-approved or BSEE-approved designated agent of the lessee(s), or the holder of operating rights under a BOEM-approved operating rights assignment.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person includes a natural person, an association (including partnerships, joint ventures, and trusts), a State, a political subdivision of a State, or a private, public, or municipal corporation.

Pipelines are the piping, risers, and appurtenances installed for transporting oil, gas, sulfur, and produced waters.

Processed geological or geophysical information means data collected under a permit or a lease that have been processed or reprocessed. Processing involves changing the form of data to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements. Reprocessing is the additional processing other than ordinary processing used in the general course of evaluation. Reprocessing operations may include varying identified parameters for the detailed study of a specific problem area.

Production means those activities that take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and workover operations.

Production areas are those areas where flammable petroleum gas, volatile liquids or sulfur are produced, processed (*e.g.,* compressed), stored, transferred (*e.g.,* pumped), or otherwise handled before entering the transportation process.

Projected emissions mean emissions, either controlled or uncontrolled, from a source or sources.

Prospect means a geologic feature having the potential for mineral deposits.

Regional Director means the BOEM officer with responsibility and authority for a Region within BOEM.

Regional Supervisor means the BOEM officer with responsibility and authority for operations or other designated program functions within a BOEM Region.

Right-of-Use and Easement (RUE) means a right to use a portion of the seabed, at an OCS site other than on a lease you own, to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, and/or other devices to support the exploration, development, or production of oil, gas, or sulfur resources from an OCS lease or a lease on State submerged lands.

Right-of-way (ROW) pipelines are those pipelines that are contained within:

(1) The boundaries of a single lease or unit, but are not owned and operated by a lessee or operator of that lease or unit;

(2) The boundaries of contiguous (not cornering) leases that do not have a common lessee or operator;

(3) The boundaries of contiguous (not cornering) leases that have a common lessee or operator but are not owned and operated by that common lessee or operator; or

(4) An unleased block(s).

Sensitive reservoir means a reservoir in which the production rate will affect ultimate recovery.

Significant archaeological resource means those archaeological resources that meet the criteria of significance for eligibility to the National Register of Historic Places as defined in 36 CFR 60.4, or its successor.

Suspension means a granted or directed deferral of the requirement to produce (Suspension of Production (SOP)) or to conduct leaseholding operations (Suspension of Operations (SOO)).

Transfer means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''transfer'' is synonymous with ''assign'' and the two terms are used interchangeably.

Venting means the release of gas into the atmosphere without igniting it. This includes gas that is released underwater and bubbles to the atmosphere.

Volatile organic compound (VOC) means any organic compound that is emitted to the atmosphere as a vapor. Unreactive compounds are excluded from the preceding sentence of this definition.

Waste of oil, gas, or sulfur means:

(1) The physical waste of oil, gas, or sulfur;

(2) The inefficient, excessive, or improper use, or the unnecessary dissipation of reservoir energy;

(3) The locating, spacing, drilling, equipping, operating, or producing of any oil, gas, or sulfur well(s) in a manner that causes or tends to cause a reduction in the quantity of oil, gas, or sulfur ultimately recoverable under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; or

(4) The inefficient storage of oil.

Welding means all activities connected with welding, including hot tapping and burning.

Wellbay is the area on a facility within the perimeter of the outermost wellheads.

Well-completion operations mean the work conducted to establish production from a well after the production-casing string has been set, cemented, and pressure-tested.

Well-control fluid means drilling mud, completion fluid, or workover fluid as appropriate to the particular operation being conducted.

Western Gulf of Mexico means all OCS areas of the Gulf of Mexico except those the BOEM Director decides are adjacent to the State of Florida. The Western Gulf of Mexico is not the same as the Western Planning Area, an area established for OCS lease sales.

Workover operations mean the work conducted on wells after the initial well-completion operation for the purpose of maintaining or restoring the productivity of a well.

You, depending on the context of this part, means a bidder, a lessee (record title owner), a sublessee (operating rights owner), a Federal or State RUE grant holder, a pipeline ROW grant holder, an assignor or transferor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the individuals listed in this definition.

■ *7.*Amend § 550.160 by:

■ a. Revising the section heading;

■ b. Removing the introductory text; and

■ c. Revising paragraphs (a) introductory text, (b) through (e), and (f)(1) and (2).

The revisions read as follows:

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

(a) A RUE is required to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, and/or other devices at an OCS site other than an OCS lease you own, that are:

* * * * *

(b) You must exercise the RUE according to the terms of the grant and the regulations in this part.

(c) You must meet the qualification requirements at §§ 556.400 through 556.402 of this subchapter and the applicable financial assurance requirements in this section and part 556, subpart I of this subchapter.

(d) If you apply for a RUE on a leased area, you must notify the lessee and give her/him an opportunity to comment on your application; and

(e) You must receive BOEM approval for all platforms, seafloor production equipment, artificial islands, facilities, installations, and/or other devices permanently or temporarily attached to the seabed.

(f) * * *

(1) You obtain a RUE after January 12, 2004; or

(2) You ask BOEM to modify your RUE to change the footprint of the associated platform, seafloor production equipment, artificial island, facility, installation, and/or device.

* * * * *

■ 8. Revise § 550.166 to read as follows:

§ 50.166 If BOEM grants me a RUE, what financial assurance must I provide?

(a) Before BOEM grants you a RUE on the OCS, you must submit or maintain financial assurance of $500,000, which will guarantee compliance with the regulations and the terms and conditions of all RUEs you hold.

(1) You are not required to submit and maintain the financial assurance of $500,000 pursuant to this paragraph (a) if you furnish and maintain area-wide lease financial assurance in excess of $500,000 pursuant to § 556.901(a) of this subchapter, provided that the area-wide lease financial assurance also guarantees compliance with all the terms and conditions of all RUEs you hold in the area.

(2) The Regional Director may reduce the amount required in this paragraph (a) upon a determination that the reduced amount is sufficient to guarantee compliance with the regulations and the terms and conditions of all RUE grant(s) you hold.

(3) The requirements for financial assurance in §§ 556.900(d) through (g) 556.902 of this subchapter apply to the financial assurance required under paragraph (a) of this section.

(b) If BOEM grants you a RUE that serves either an OCS lease or a State lease, the Regional Director may require supplemental financial assurance above the amount required by paragraph (a) of this section, to ensure compliance with the obligations under your RUE grant, based on an evaluation of your ability to carry out present and future obligations on the RUE using the criteria set forth in § 556.901(d)(1) through (3) of this subchapter. This supplemental financial assurance must:

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

(2) Cover costs and liabilities for compliance with the obligations of your RUE grants and with applicable BOEM and Bureau of Safety and Environmental Enforcement (BSEE) orders.

(c) If you fail to replace any deficient financial assurance upon demand or fail to provide supplemental financial assurance upon demand, the Regional Director may:

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

(2) Request BSEE to suspend operations on your RUE; and/or

(3) Initiate action for cancellation of your RUE grant.

■ 9. Add § 550.167 to read as follows:

§ 550.167 How may I obtain or assign my interest in a RUE?

(a) To obtain a RUE or request an assignment of an interest in a RUE, the applicant or assignee must file an application and provide the information contained in § 550.161 if a change in uses is planned and must obtain BOEM's approval.

(b) An application for approval of an assignment of an interest in a RUE, in whole or in part, must be filed in triplicate with the Regional Director. Such application must be supported by a statement that the assignee agrees to comply with and to be bound by the terms and conditions of the RUE grant. The assignee must satisfy the bonding requirements in § 550.166. No RUE assignment will be recognized unless and until it is first approved, in writing, by the Regional Director. The assignee of an interest in a RUE must pay the same service fee as that listed in § 550.106(a)(1) for a lease record title assignment request.

(c) BOEM may disapprove an assignment in the following circumstances:

(1) When the assignee has unsatisfied obligations under the regulations in this chapter or in chapters II or XII of this title, or under any applicable BOEM or BSEE order;

(2) When an assignment is not acceptable as to form or content (*e.g.,* containing incorrect legal description, not executed by a person authorized to bind the corporation, assignee does not meet the requirements of §§ 556.401 through 556.405 of this subchapter);

(3) When the assignment does not comply with or would conflict with this part, or any other applicable laws or regulations (*e.g.,* Departmental debarment rules); or

(4) When the assignee does not meet the applicable financial assurance requirements in § 550.166 and part 556, subpart I of this subchapter, or has not complied with a BOEM or BSEE order.

■ 10. Amend § 550.199 by revising paragraph (b) to read as follows:

§ 550.199 Paperwork Reduction Act statements—information collection.

* * * * *

(b) Respondents are OCS oil, gas, and sulfur lessees and operators. The requirement to respond to the information collections in this part is mandated under the Act (43 U.S.C. 1331 *et seq.*) and the Act's Amendments of 1978 (43 U.S.C. 1801 *et seq.*). Some responses are also required to obtain or retain a benefit or may be voluntary. Proprietary information will be protected under § 550.197; parts 551 and 552 of this subchapter; and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations at 43 CFR part 2.

* * * * *

Subpart J—Pipelines and Pipeline Rights-of-Way

■ 11. Revise § 550.1011 to read as follows:

§ 550.1011 Financial assurance requirements for pipeline right-of-way (ROW) grant holders.

(a) Except as provided in paragraph (b) of this section, when you apply for, attempt to assign, or are the holder of a pipeline right-of-way (ROW) grant, you must furnish and maintain $300,000 of area-wide financial assurance that guarantees compliance with the regulations and the terms and conditions of all the pipeline ROW grants you hold in an OCS area as defined in § 556.900(b) of this subchapter. The requirement to furnish and maintain area-wide financial assurance for a pipeline ROW grant is separate and distinct from the requirement to provide financial assurance for a lease or right-of-use and easement (RUE).

(b) The requirement to furnish and maintain area-wide pipeline ROW financial assurance under paragraph (a) of this section may be satisfied if your operator or a co-grant holder provides such financial assurance in the required amount that guarantees compliance with the regulations and the terms and conditions of the grant.

(c) The requirements for lease financial assurance in §§ 556.900(d) through (g) and 556.902 of this subchapter apply to the area-wide financial assurance required in paragraph (a) of this section.

(d) The Regional Director, using the criteria set forth in § 556.901(d)(1) through (3) of this subchapter, will evaluate your financial ability to carry out present and future obligations, and as a result, may require supplemental financial assurance (*i.e.,* above the amount required by paragraph (a) of this section) to ensure compliance with the obligations under your pipeline right-of-way grant.

(e) The supplemental financial assurance required under paragraph (d) of this section must:

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

(2) Cover costs and liabilities for compliance with the obligations of your ROW grants and with applicable BOEM and BSEE orders.

(f) If you fail to replace any deficient financial assurance upon demand or fail to provide supplemental financial assurance upon demand, the Regional Director may:

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

(2) Request BSEE to suspend operations on your pipeline ROW; and/or

(3) Initiate action for forfeiture of your pipeline ROW grant in accordance with § 250.1013 of this title.

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

■ 12. The authority citation for part 556 is revised to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 6213; 43 U.S.C. 1334.

■ 13. Revise the heading to part 556 to read as set forth above.

Subpart A—General Provisions

■ 14. Amend § 556.104 by revising paragraph (a)(4) to read as follows:

§ 556.104 Information collection and proprietary information.

(a) * * *

(4) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, by mail to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

* * * * *

■ 15. Amend § 556.105 by:

■ a. In paragraph (a), removing the acronyms ''EPA'' and ''GOMESA''; and

■ b. Revising and republishing paragraph (b).

The revision read as follows:

§ 556.105 Acronyms and definitions.

* * * * *

(b) As used in this part, each of the terms and phrases listed below has the meaning given in the Act or as defined in this section.

Act means the Outer Continental Shelf Lands Act, as amended (OCSLA) (43 U.S.C. 1331–1356a).

Affected State means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of OCSLA, any State:

(i) The laws of which are declared, pursuant to section 4(a)(2) of OCSLA (43 U.S.C. 1333(a)(2)), to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(ii) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of OCSLA (43 U.S.C. 1333(a)(1));

(iii) Which is receiving, or in accordance with the proposed activity

will receive, oil for processing, refining, or transshipment that was extracted from the OCS and transported directly to that State by means of one or more vessels or by a combination of means, including a vessel;

(iv) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment; or a State in which there will be significant changes in the social, governmental, or economic infrastructure resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(v) In which the Secretary finds that because of such activity, there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from one or more vessels, pipelines, or other transshipment facilities.

Aliquot or Aliquot part means an officially designated subdivision of a lease's area, which can be a half of a lease (1/2), a quarter of a lease (1/4), a quarter of a quarter of a lease (1/4 1/4), or a quarter of a quarter of a quarter of a lease (1/4 1/4 1/4).

Assign means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''assign'' is synonymous with ''transfer'' and the two terms are used interchangeably.

Authorized officer means any person authorized by law or by delegation of authority to or within BOEM to perform the duties described in this part.

Average daily production means the total of all production in an applicable production period that is chargeable under § 556.514 divided by the exact number of calendar days in the applicable production period.

Barrel means 42 U.S. gallons. All measurements of crude oil and natural gas liquids under this section must be at 60 °F.

(i) For purposes of computing production and reporting of natural gas, 5,626 cubic feet of natural gas at 14.73 pounds per square inch equals one barrel.

(ii) For purposes of computing production and reporting of natural gas liquids, 1.454 barrels of natural gas liquids at 60 °F equals one barrel of crude oil.

Bidding unit means one or more OCS blocks, or any portion thereof, that may be bid upon as a single administrative unit and will become a single lease. The term 'tract,'' as defined in this section, may be used interchangeably with the term ''bidding unit.''

BOEM means Bureau of Ocean Energy Management of the U.S. Department of the Interior.

Bonus or royalty credit means a legal instrument or other written documentation approved by BOEM, or an entry in an account managed by the Secretary, that a bidder or lessee may use in lieu of any other monetary payment for a bonus or a royalty due on oil or gas production from certain leases, as specified in, and permitted by, the Gulf of Mexico Energy Security Act of 2006, Pub. L. 109–432 (Div. C, Title 1), 120 Stat. 3000 (2006), codified at 43 U.S.C. 1331, note.

BSEE means Bureau of Safety and Environmental Enforcement of the U.S. Department of the Interior.

Central Planning Area (CPA) means that portion of the Gulf of Mexico that lies southerly of Louisiana, Mississippi, and Alabama. Precise boundary information is available from the BOEM Leasing Division, Mapping and Boundary Branch (MBB).

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inland to the boundaries of the coastal zone.

Coastal zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the water therein and thereunder), strongly influenced by each other and in proximity to the shorelines of one or more of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, whose zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shore lines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inland boundaries of which may be identified by the several coastal States, under section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972, 16 U.S.C. 1454(b)(1).

Coastline means the line of mean ordinary low water along that portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters.

Crude oil means a mixture of liquid hydrocarbons, including condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, but does not include liquid hydrocarbons produced from tar sand, gilsonite, oil shale, or coal.

Designated operator means a person authorized to act on your behalf and fulfill your obligations under the Act, the lease, and the regulations, who has been designated as an operator by all record title holders and all operating rights owners that own an operating rights interest in the aliquot/depths in which the designated operator, to which the Designation of Operator form applies, will be operating, and who has been approved by BOEM to act as designated operator.

Desoto Canyon OPD means the Official Protraction Diagram (OPD) designated as Desoto Canyon that has a western edge located at the universal transverse mercator (UTM) X coordinate 1,346,400 in the North American Datum of 1927 (NAD27).

Destin Dome OPD means the Official Protraction Diagram (OPD) designated as Destin Dome that has a western edge located at the Universal Transverse Mercator (UTM) X coordinate 1,393,920 in the NAD27.

Development block means a block, including a block susceptible to drainage, which is located on the same general geologic structure as an existing lease having a well with indicated hydrocarbons; a reservoir may or may not be interpreted to extend on to the block.

Director means the Director of the BOEM of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

Eastern Planning Area means that portion of the Gulf of Mexico that lies southerly and westerly of Florida. Precise boundary information is available from the BOEM Leasing Division, Mapping and Boundary Branch (MBB).

Economic interest means any right to, or any right dependent upon, production of crude oil, natural gas, or natural gas liquids and includes, but is not limited to: a royalty interest; an overriding royalty interest, whether payable in cash or kind; a working interest that does not include a record title interest or an operating rights interest; a carried working interest; a net profits interest; or a production payment.

Financial assurance means a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or another form of security acceptable to the BOEM Regional Director, that is used to ensure compliance with obligations under the regulations in this part and under the terms of a lease, a RUE grant, or a pipeline ROW grant.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Initial period or primary term means the initial period referred to in 43 U.S.C. 1337(b)(2).

Investment grade credit rating means an issuer credit rating of BBB- or higher (S&P Global Ratings and Fitch Ratings, Inc.), Baa3 or higher (Moody's Investors Service Inc.), or its equivalent, assigned to an issuer of corporate debt by a nationally recognized statistical rating organization as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934.

Issuer credit rating means a credit rating assigned to an issuer of corporate debt by S&P Global Ratings, by Moody's Investors Service Inc., by Fitch Ratings, Inc., or by another nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934.

Joint bid means a bid submitted by two or more persons for an oil and gas lease under section 8(a) of the Act.

Lease means an agreement that is issued under section 8 or maintained under section 6 of the Act and that authorizes exploration for, and development and production of, minerals on the OCS. The term also means the area covered by that agreement, whichever the context requires.

Lease interest means one or more of the following ownership interests in an OCS oil and gas or sulfur lease: a record title interest, an operating rights interest, or an economic interest.

Lessee means a person who has entered into a lease with the United States to explore for, develop, and produce the leased minerals and is therefore a record title owner of the lease, or the BOEM-approved assignee-owner of a record title interest. The term lessee also includes the BOEM-approved sublessee- or assignee-owner of an operating rights interest in a lease.

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, conditions, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Mineral means oil, gas, and sulfur; it also includes sand, gravel, and salt used to facilitate the development and production of oil, gas, and sulfur.

Natural gas means a mixture of hydrocarbons and varying quantities of non-hydrocarbons that exist in the gaseous phase.

Natural gas liquids means liquefied petroleum products produced from reservoir gas and liquefied at surface separators, field facilities, or gas processing plants worldwide, including any of the following:

(i) Condensate—natural gas liquids recovered from gas well gas (associated and non-associated) in separators or field facilities; or

(ii) Gas plant products—natural gas liquids recovered from natural gas in gas processing plants and from field facilities. Gas plant products include the following, as classified according to the standards of the Natural Gas Processors Association (NGPA) or the American Society for Testing and Materials (ASTM):

(A) Ethane—C2H6;

(B) Propane—C3H8;

(C) Butane—C4H10, including all products covered by NGPA specifications for commercial butane, including isobutane, normal butane, and other butanes—all butanes not included as isobutane or normal butane;

(D) Butane-Propane Mixtures—All products covered by NGPA specifications for butane-propane mixtures;

(E) Natural Gasoline—A mixture of hydrocarbons extracted from natural gas, that meets vapor pressure, end point, and other specifications for natural gasoline set by NGPA;

(F) Plant Condensate—A natural gas plant product recovered and separated as a liquid at gas inlet separators or scrubbers in processing plants or field facilities; and

(G) Other Natural Gas plant products meeting refined product standards (*i.e.,* gasoline, kerosene, distillate, etc.).

Operating rights means an interest created by sublease out of the record title interest in an oil and gas lease, authorizing the owner to explore for, develop, and/or produce the oil and gas contained within a specified area and depth of the lease (*i.e.,* operating rights tract).

Operating rights owner means the holder of operating rights.

Operating rights tract means the area within the lease from which the operating rights have been severed on an aliquot basis from the record title interest, defined by a beginning and ending depth.

Operator means the person designated as having control or management of operations on the leased area or a portion thereof. An operator may be a lessee, the operating rights owner, or a designated agent of the lessee or the operating rights owner.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in the Submerged Lands Act (43 U.S.C. 1301–1315) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Outer Continental Shelf Lands Act (OCSLA) means the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1356a), as amended.

Owned, as used in the context of restricted joint bidding or a statement of production, means:

(i) With respect to crude oil—having either an economic interest in or a power of disposition over the production of crude oil;

(ii) With respect to natural gas—having either an economic interest in or a power of disposition over the production of natural gas; and

(iii) With respect to natural gas liquids—having either an economic interest in or a power of disposition over any natural gas liquids at the time of completion of the liquefaction process.

Pensacola OPD means the Official Protraction Diagram (OPD) designated as Pensacola that has a western edge located at the UTM X coordinate 1,393,920 in the NAD27.

Person means a natural person, where so designated, or an entity, such as a partnership, association, State, political subdivision of a State or territory, or a private, public, or municipal corporation.

Planning area means a large portion of the OCS, consisting of contiguous OCS blocks, defined for administrative planning purposes.

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. A predecessor is liable for obligations that accrued or began accruing while it held an ownership interest in that lease or grant.

Primary term or initial period means the initial period referred to in 43 U.S.C. 1337(b)(2).

Regional Director means the BOEM officer with responsibility and authority for a Region within BOEM.

Regional Supervisor means the BOEM officer with responsibility and authority for leasing or other designated program functions within a BOEM Region.

Right-of-Use and Easement (RUE) means a right to use a portion of the

seabed at an OCS site other than on a lease you own, to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, and/or other devices to support the exploration, development, or production of oil, gas, or sulfur resources from an OCS lease or a lease on State submerged lands.

Right-of-Way (ROW) means an authorization issued by BSEE under the authority of section 5(e) of the OCSLA (43 U.S.C. 1334(e)) for the use of submerged lands of the Outer Continental Shelf for pipeline purposes.

Secretary means the Secretary of the Interior or an official or a designated employee authorized to act on the Secretary's behalf.

Single bid means a bid submitted by one person for an oil and gas lease under section 8(a) of the Act.

Six-month bidding period means the 6-month period of time:

(i) From May 1 through October 31; or

(ii) from November 1 through April 30.

Statement of production means, in the context of joint restricted bidders, the following production during the applicable prior production period:

(i) The average daily production in barrels of crude oil, natural gas, and natural gas liquids which it owned worldwide;

(ii) The average daily production in barrels of crude oil, natural gas, and natural gas liquids owned worldwide by every subsidiary of the reporting person;

(iii) The average daily production in barrels of crude oil, natural gas, and natural gas liquids owned worldwide by any person or persons of which the reporting person is a subsidiary; and

(iv) The average daily production in barrels of crude oil, natural gas, and natural gas liquids owned worldwide by any subsidiary, other than the reporting person, of any person or persons of which the reporting person is a subsidiary.

Tract means one or more OCS blocks, or any leasable portion thereof, that will be part of a single oil and gas lease. The term tract may be used interchangeably with the term ''bidding unit.''

Transfer means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''transfer'' is synonymous with ''assign'' and the two terms are used interchangeably.

We, us, and our mean BOEM or the Department of the Interior, depending on the context in which the word is used.

Western Planning Area (WPA) means that portion of the Gulf of Mexico that lies south and east of Texas. Precise boundary information is available from the Leasing Division, Mapping and Boundary Branch.

You, depending on the context of this part, means a bidder, a lessee (record title owner), a sublessee (operating rights owner), a Federal or State RUE grant holder, a pipeline ROW grant holder, an assignor or transferor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the individuals listed in this definition.

Subpart G—Transferring All or Part of the Record Title Interest in a Lease

■ 16. Amend § 556.703 by revising paragraph (a) to read as follows:

§ 556.703 What is the effect of the approval of the assignment of 100 percent of the record title in a particular aliquot(s) of my lease and of the resulting lease segregation?

(a) The financial assurance requirements of subpart I of this part apply separately to each segregated lease.

* * * * *

■ 17. Amend § 556.704 by revising the section heading and paragraphs (a) introductory text, and (a)(1) and (2) to read as follows:

§ 556.704 When may BOEM disapprove an assignment or sublease of an interest in my lease?

(a) BOEM may disapprove an assignment or sublease of all or part of your lease interest(s):

(1) When the transferor, transferee, or sublessee is not in compliance with all applicable regulations and orders, including financial assurance requirements;

(2) When a transferor attempts a transfer that is not acceptable as to form or content (*e.g.,* not on standard form, containing incorrect legal description, not executed by a person authorized to bind the corporation, transferee does not meet the requirements of § 556.401); or

* * * * *

Subpart H—Transferring All or Part of the Operating Rights in a Lease

■ 18. Amend § 556.802 by revising the section heading, introductory text, and paragraphs (a) and (b) to read as follows:

§ 556.802 When may BOEM disapprove the transfer of all or part of my operating rights interest?

BOEM may disapprove a transfer of all or part of your operating rights interest:

(a) When the transferor or transferee is not in compliance with all applicable regulations and orders, including financial assurance requirements;

(b) When a transferor attempts a transfer that is not acceptable as to form or content (*e.g.,* not on standard form, containing incorrect legal description, not executed in accordance with corporate governance, transferee does not meet the requirements of § 556.401); or

* * * * *

■ 19. Revise the heading to subpart I to read as follows:

Subpart I—Financial Assurance

■ 20. Amend § 556.900 by:

■ a. Revising the section heading and introductory text;

■ b. Revising paragraphs (a) introductory text, (g) introductory text, and (h); and

■ c. Adding paragraph (i).

The revisions and addition read as follows:

§ 556.900 Financial assurance requirements for an oil and gas or sulfur lease.

This section establishes financial assurance requirements for the lessee of an OCS oil and gas or sulfur lease.

(a) Before BOEM will issue a new lease to you as the lessee, you or another lessee for the lease must comply with one of the options in paragraphs (a)(1) through (3) of this section. Before BOEM will approve the assignment of a record title interest in an existing lease to you as the lessee, you or another lessee for the lease must provide any supplemental financial assurance required by the Regional Director and also comply with one of the options in paragraphs (a)(1) through (3).

* * * * *

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

* * * * *

(h) If you fail to replace deficient financial assurance or to provide supplemental financial assurance upon demand, the Regional Director may:

(1) Assess penalties under part 550, subpart N of this subchapter;

(2) Request BSEE to suspend production and other operations on your lease in accordance with § 250.173 of this title; and/or

(3) Initiate action to cancel your lease.

(i) In the event you amend your area-wide surety bond covering lease obligations, or obtain a new area-wide lease surety bond, to cover the financial

assurance requirements for any RUE(s), your area-wide lease surety bond may be called in whole or in part to cover any or all the obligations on which you default that are associated with your RUE(s) located in the area covered by such area-wide lease surety bond.

■ 21. Amend § 556.901 by:
■ a. Revising the section heading;
■ b. Revising paragraphs (a) introductory text and (a)(1)(i);
■ c. Revising paragraphs (b) introductory text and (b)(1)(i);
■ d. Revising paragraphs (c) through (f); and
■ e. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

§ 556.901 Base and supplemental financial assurance.

(a) You must provide the following financial assurance before commencing any lease exploration activities.

(1) * * *

(i) You must furnish the Regional Director $200,000 in lease exploration financial assurance that guarantees compliance with all the terms and conditions of the lease by the earliest of:

* * * * *

(b) This paragraph (b) explains what financial assurance you must provide before lease development and production activities commence.

(1) * * *

(i) You must furnish the Regional Director $500,000 in lease development financial assurance 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 and other lease obligations for less than the amount of financial assurance required under paragraph (a)(1) or (b)(1) of this section, the Regional Director may accept financial assurance in an amount less than the prescribed amount but not less than the amount of the cost for decommissioning.

(d) The Regional Director may determine that supplemental financial assurance (*i.e.,* financial assurance above the amounts prescribed in §§ 550.166(a) and 550.1011(a) of this subchapter, § 556.900(a), or paragraphs (a) and (b) of this section) is required to ensure compliance with your lease obligations, including decommissioning obligations; the regulations in this chapter; and the regulations in chapters II and XII of this title. The Regional Director may require you to provide supplemental financial assurance if you do not meet at least one of the following criteria:

(1) You have an investment grade credit rating. If any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, provides a credit rating for you that differs from that of any other nationally recognized statistical rating organization, BOEM will apply the highest rating for purposes of determining your financial assurance requirements.

(2) You have a proxy credit rating determined by the Regional Director that they determine reflects creditworthiness equivalent to an investment grade credit rating, which must be based on audited financial information for the most recent fiscal year (which must include an income statement, balance sheet, statement of cash flows, and the auditor's certificate).

(i) The audited financial information for your most recent fiscal year must cover a continuous twelve-month period within the twenty-four-month period prior to your receipt of the Regional Director's determination that you must provide supplemental financial assurance.

(ii) In determining your proxy credit rating, the Regional Director may include the total value of the offshore decommissioning liabilities associated with any lease(s) or grants in which you have an ownership interest. Upon the request of the Regional Director, you must provide the information that the Regional Director determines is necessary to properly evaluate the total value of your offshore decommissioning liabilities, including joint ownership interests and liabilities associated with your OCS leases and grants.

(3) Your co-lessee or co-grant holder has an issuer credit rating or proxy credit rating that meets the criterion set forth in paragraph (d)(1) or (2) of this section, as applicable. However, the presence of such co-lessee or co-grant holder will allow the Regional Director to not require financial assurance from you only to the extent that you and that co-lessee or co-grant holder share accrued liabilities, and the Regional Director may require you to provide supplemental financial assurance for decommissioning obligations for which such co-lessee or co-grant holder is not liable.

(4) There are proved oil and gas reserves on the lease, unit, or field, as defined by the SEC Regulation S–X at 17 CFR 210.4–10 and SEC Regulation S–K at 17 CFR 229.1200, the discounted value of which exceeds three times the estimated undiscounted cost of the decommissioning associated with the production of those reserves, and that value must be based on proved reserve reports submitted to the Regional Director and reported on a per-lease, unit, or field basis. BOEM will determine the decommissioning costs associated with the production of your reserves, and will use the following undiscounted decommissioning cost estimates:

(i) Where BSEE-generated probabilistic estimates are available, BOEM will use the estimate at the level at which there is a 70 percent probability that the actual cost of decommissioning will be less than the estimate (P70).

(ii) If there is no BSEE probabilistic estimate available, BOEM will use the BSEE-generated deterministic estimate.

(e) You may satisfy the Regional Director's demand for supplemental financial assurance by increasing the amount of your existing financial assurance or providing additional surety bonds or other types of acceptable financial assurance.

(f) The Regional Director will use the BSEE P70 decommissioning probabilistic estimate to determine the amount of supplemental financial assurance required to guarantee compliance when there is no lessee or co-lessee that meets the criterion in paragraph (d)(1) or (2) of this section. In making this determination, the Regional Director will also consider your potential underpayment of royalty and cumulative decommissioning obligations. Note that BOEM will use these P-values only in the context of determining how much financial assurance is required, and not in the context of bond forfeiture. Regardless of whether you are required to provide supplemental financial assurance at the P70 level, you remain liable for the full costs of decommissioning, and your surety remains liable for the full amount of decommissioning up to the limit of assurance provided.

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

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

(i) Notify you and your financial assurance provider of any proposed adjustment to the amount of financial assurance 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 supplemental financial assurance required, or oppose the amount of a proposed adjustment, you

must submit evidence to the Regional Director demonstrating that the projected amount of royalties due to the United States Government and the estimated costs of decommissioning are less than the required financial assurance amount. Upon review of your submission, the Regional Director may reduce the amount of financial assurance required.

(h) During the first 3 years from June 24, 2024, you may, upon receipt of a demand letter for supplemental financial assurance under this section, request that the Regional Director allow you to provide, in three equal installments payable according to the schedule provided under this paragraph (h), the full amount of supplemental financial assurance required.

(1) If the Regional Director allows you to provide the amount required on such a phased basis, you must comply with the following:

(i) You must provide the initial one-third of the total supplemental financial assurance required within the timeframe specified in the demand letter or, if no timeframe is specified, within 60 calendar days of the date of receipt of the demand letter.

(ii) You must provide the second one-third of the required supplemental financial assurance to BOEM within 24 months of the date of receipt of the demand letter.

(iii) You must provide the final one-third of the required supplemental financial assurance to BOEM within 36 months of the date of receipt of the demand letter.

(2) If the Regional Director allows you to meet your supplemental financial assurance requirement in a phased manner, as set forth in this section, and you fail to timely provide the required supplemental financial assurance to BOEM, the Regional Director will notify you of such failure. You will no longer be eligible to meet your supplemental financial assurance requirement in the manner prescribed in this paragraph (h), and the remaining amount due will become due 10 calendar days after such notification is received.

■ 22. Amend § 556.902 by revising the section heading, paragraphs (a) and (e)(2), and adding paragraphs (g) and (h) to read as follows:

§ 556.902 General requirements for bonds or other financial assurance.

(a) Any surety bond or other financial assurance that you, as record title owner, operating rights owner, grant holder, or operator, provide under this part, or under part 550 of this subchapter, must:

(1) Be payable upon demand to the Regional Director;

(2) Guarantee compliance with all your obligations under the lease or grant, the regulations in chapters II and XII of this title, and all BOEM and BSEE orders; and

(3) Except as stated in § 556.905(b), guarantee compliance with the obligations of all record title owners, operating rights owners, and operators on the lease, and all grant-holders on a grant.

* * * * *

(e) * * *

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

* * * * *

(g) If you believe that BOEM's supplemental financial assurance demand is unjustified, you may request an informal resolution of your dispute in accordance with the requirements of § 590.6 of this chapter. Your request for an informal resolution will not affect your right to request to meet your supplemental financial assurance requirement in a phased manner under § 556.901(h).

(h) You may file an appeal of a supplemental financial assurance demand with the Interior Board of Land Appeals (IBLA) pursuant to the regulations in part 590 of this chapter. However, if you request that the IBLA stay the demand pending a final ruling on your appeal, you must post an appeal surety bond equal to the amount of the demand that you seek to stay before any such stay is effective.

■ 23. Revise § 556.903 to read as follows:

§ 556.903 Lapse of financial assurance.

(a) If your surety, guarantor, or the financial institution holding or providing your financial assurance becomes bankrupt or insolvent, or has its charter or license suspended or revoked, any financial assurance coverage from such surety, guarantor, or financial institution must be replaced. You must notify the Regional Director within 72 hours of learning of such event, and, within 30 calendar days of learning of such event, you must provide other financial assurance from a different financial assurance provider in the amount required under §§ 556.900 and 556.901, or § 550.166 of this subchapter, or § 550.1011 of this subchapter.

(b) You must notify the Regional Director within 72 hours of learning of any action filed alleging that you are insolvent or bankrupt or that your surety, guarantor, or financial institution is insolvent or bankrupt or has had its charter or license suspended or revoked.

All surety bonds or other financial assurance instruments must require the surety, guarantor, or financial institution to timely provide this required notification both 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(s) in a federally insured financial institution to satisfy a supplemental financial assurance demand made pursuant to § 556.901(d), § 550.166(b) of this subchapter, or § 550.1011(d) of this subchapter. The decommissioning account must be set up in such a manner that funds may not be withdrawn without the written approval of the Regional Director.

(1) Funds in the account must be used only to meet your decommissioning obligations and must be payable upon demand to BOEM.

(2) You must fully fund the account to cover all decommissioning costs as estimated by BSEE, to the amount, and pursuant to the schedule, that the Regional Director prescribes.

(3) If you fail to make the initial payment or any scheduled payment into the decommissioning account and you fail to correct a missed payment within 30 days, you must immediately submit, and subsequently maintain, a surety bond or other financial assurance in an amount equal to the remaining unfulfilled portion of the supplemental financial assurance demand.

(b) Any interest paid on funds in a decommissioning account will become part of the principal funds in the account unless the Regional Director authorizes in writing the payment of the interest to the party who deposits the funds.

(c) The Regional Director may authorize or require you to create an overriding royalty, production payment obligation, or other revenue stream for the benefit of an account established as financial assurance for the decommissioning of your lease(s) or RUE or pipeline ROW grant(s). The obligation may be associated with oil and gas or sulfur production from a lease other than a lease or grant secured through the decommissioning account.

(d) BOEM may provide funds from the decommissioning account to the party that performs the decommissioning in response to a BOEM or BSEE order to perform such decommissioning or to cover the costs thereof. BOEM will

distribute the funds from the decommissioning account upon presentation of paid invoices for reasonable and necessary costs incurred by the party performing the decommissioning.

■ 25. Revise § 556.905 to read as follows:

§ 556.905 Third-party guarantees.

(a) The Regional Director may accept a third-party guarantee to satisfy a supplemental financial assurance demand made pursuant to § 556.901(d), § 550.166(b) of this subchapter, or § 550.1011(d) of this subchapter, if:

(1) The guarantor meets the credit rating or proxy credit rating criterion set forth in § 556.901(d)(1) or (2), as applicable; and

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

(b) Notwithstanding § 556.902(a)(3), a third-party guarantor may, as agreed to by BOEM at the time the third-party guarantee is provided, limit its cumulative obligations to a fixed dollar amount or limit its obligations so as to cover the performance of one or more specific lease obligations (with no fixed dollar amount).

(c) If, during the life of your third-party guarantee, your guarantor no longer meets the criterion referred to in paragraph (a)(1) of this section, you must, within 72 hours of so learning:

(1) Notify the Regional Director; and

(2) Submit, and subsequently maintain, a surety bond or other financial assurance covering those obligations previously secured by the third-party guarantee.

(d) 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 to bring the lease or grant into compliance with its terms or any applicable regulation, to the extent covered by the guarantee; or

(ii) Be liable under the third-party guarantee agreement to provide, within 7 calendar days, sufficient funds for the Regional Director to complete such corrective action to the extent covered by the guarantee. Such payment does not result in the cancellation of the guarantee, but instead reduces the remaining value of the guarantee in an amount equal to the payment.

(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 calendar 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 liabilities that accrued or began accruing prior to the termination and responsible for all work and workmanship performed during the period of liability.

(3) Before the termination of the period of liability of the third-party guarantee, you must provide acceptable replacement financial assurance.

(e) 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 supplemental financial assurance and return of pledged financial assurance in § 556.906(b) and/or (d)(3).

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

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

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

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

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

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

(2) An affidavit certifying that the agreement is valid under all applicable laws; and

(3) Each corporation's corporate authorization to enter into the third-party guarantee agreement.

(h) 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:

(1) Bind each partner or party who has a beneficial interest in your guarantor; and

(2) Provide that each member of the partnership, joint venture, or syndicate is jointly and severally liable for the obligations secured by the guarantee.

(i) The third-party guarantee agreement must provide that, in the event forfeiture is called for under § 556.907, your guarantor will either:

(1) Take corrective action to bring your lease or grant into compliance with its terms, and the regulations, to the extent covered by the guarantee; or

(2) Provide sufficient funds within 7 calendar days to permit the Regional Director to complete such corrective action to the extent covered by the guarantee.

(j) 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 not in compliance with any regulation applicable to such lease or grant, the guarantor:

(1) Will not challenge the determination; and

(2) Will remedy the default to the extent covered by the guarantee.

(k) Each third-party guarantee agreement is deemed to contain all terms and conditions contained in paragraphs (d), (i), and (j) of this section, even if the guarantor has omitted these terms from the third-party guarantee agreement.

■ 26. Revise § 556.906 to read as follows:

§ 556.906 Termination of the period of liability and cancellation of financial assurance.

This section defines the terms and conditions under which BOEM will terminate the period of liability of, or cancel, financial assurance. Terminating the period of liability ends the period during which obligations continue to accrue, but does not relieve the financial assurance provider of the responsibility for obligations that accrued during the period of liability. Canceling a financial assurance instrument relieves the financial assurance provider of all liability. The liabilities that accrue during a period of liability include obligations that started to accrue prior to the beginning of the period of liability and had not been met, and obligations that begin accruing during the period of liability.

(a) When you or your financial assurance provider request termination:

(1) The Regional Director will terminate the period of liability under your financial assurance within 90 calendar days after BOEM receives the request; and

(2) If you intend to continue operations, or have not met all decommissioning obligations, within 90 calendar days after BOEM receives your termination request, you must provide replacement financial assurance of an equivalent amount.

(b) If you provide replacement financial assurance, the Regional Director will cancel your previous financial assurance and the previous financial assurance provider will not retain any liability, provided that:

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

(2) For financial assurance submitted under § 556.900(a), § 556.901(a) or (b), § 550.166(a) of this subchapter, or § 550.1011(a) of this subchapter, the new financial assurance provider agrees to assume all outstanding obligations that accrued during the period of liability that was terminated; and

(3) For supplemental financial assurance submitted under § 556.901(d), § 550.166(b) of this subchapter, or § 550.1011(d) of this subchapter, the new financial assurance provider 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 financial assurance submitted under § 556.900(a), § 556.901(a) or (b), § 550.166(a) of this subchapter, or § 550.1011(a) of this subchapter. The Regional Director will notify the provider of the new financial assurance of the amount required.

(c) This paragraph (c) applies if the period of liability is terminated, but the financial assurance is not replaced with financial assurance of an equivalent amount pursuant to paragraph (b) of this section. The financial assurance provider will continue to be responsible for obligations that accrued prior to the termination of the period of liability:

(1) Until the obligations are satisfied; and

(2) For additional periods of time in accordance with paragraph (d) of this section.

(d) BOEM will cancel the financial assurance for your lease or grant, and the Regional Director will return any pledged financial assurance, as shown in the following table:

For the following:	Your financial assurance will be reduced or cancelled, or your pledged financial assurance will be returned:
(1) Financial assurance submitted under § 556.900(a), § 556.901(a) or (b), § 550.166(a) of this subchapter, or § 550.1011(a) of this subchapter..	(i) 7 years after the lease or grant expires or is terminated, 6 years after the Regional Director determines that you have completed all covered obligations, or at the conclusion of any appeals or litigation related to your covered obligations, whichever is the latest. The Regional Director will reduce the amount of your financial assurance or return a portion of your pledged financial assurance if the Regional Director determines that less than the full amount of the financial assurance or pledged financial assurance is required to cover any potential obligations. (ii) [Reserved]
(2) Financial assurance submitted under § 556.901(d), § 550.166(b) of this subchapter, or § 550.1011(d) of this subchapter..	(i) When the lease or grant expires or is terminated and the Regional Director determines you have met your covered obligations, unless the Regional Director: (A) Determines that the future potential liability resulting from any undetected problem is greater than the amount of the financial assurance submitted under § 556.900(a), § 556.901(a) or (b), § 550.166(a) of this subchapter, or § 550.1011(a) of this subchapter; and (B) Notifies the provider of financial assurance submitted under § 556.901(d), § 550.166(b) of this subchapter, or 550.1011(d) of this subchapter that the Regional Director will wait 7 years before cancelling all or a part of such financial assurance (or longer period as necessary to complete any appeals or judicial litigation related to your secured obligations). (ii) At any time when: (A) BOEM has determined, using the criteria set forth in § 556.901(d)(1), as applicable, that you no longer need to provide the supplemental financial assurance for your lease, RUE grant, or pipeline ROW grant. (B) The operations for which the supplemental financial assurance was provided ceased prior to accrual of any decommissioning obligation; or, (C) Cancellation of the financial assurance is appropriate because, under the regulations, BOEM determines such financial assurance never should have been required.
(3) Third-party Guarantee under § 556.901(d), § 550.166(b) of this subchapter, or § 550.1011(d) of this subchapter..	(i) When the Regional Director determines you have met your obligations secured by the guarantee (or longer period as necessary to complete any appeals or judicial litigation related to your obligations secured by the guarantee). (ii) [Reserved]

(e) For all financial assurance, the Regional Director may reinstate your financial assurance as if no cancellation had occurred if:

(1) A person makes a payment under the lease, RUE grant, or pipeline ROW grant, and the payment is rescinded or must be returned 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, RUE grant, or pipeline ROW grant and the representation was materially false when the financial assurance was cancelled.

■ 27. Revise § 556.907 to read as follows:

§ 556.907 Forfeiture of bonds or other financial assurance.

This section explains how a bond or other financial assurance may be forfeited.

(a) The Regional Director will call for forfeiture of all or part of the bond, or other form of financial assurance, including a guarantee you provide under this part, if:

(1) You, or any party with the obligation to comply, refuse to comply with any term or condition of your

lease, RUE grant, pipeline ROW grant, or any BOEM or BSEE order, or any applicable regulation, or the Regional Director determines that you are unable to so comply; or

(2) You default on one of the conditions under which the Regional Director accepts your bond, third-party guarantee, and/or other form of financial assurance.

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

(c) The Regional Director will:

(1) Notify you, your surety, guarantor, or the financial institution holding or providing your financial assurance, of a determination to call for forfeiture of your financial assurance, whether it takes the form of a surety bond, guarantee, funds, or other type of financial assurance.

(i) This notice will be in writing and will provide the reason for the forfeiture and the amount to be forfeited.

(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, subject, in the case of a guarantee, to any limitation in the guarantee authorized by § 556.905(b).

(2) Advise you and your financial assurance provider that forfeiture may be avoided if, within five business days:

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

(ii) The provider of your financial assurance agrees to and demonstrates that it will complete the corrective action to bring your lease or grant into compliance within the timeframe the Regional Director prescribes, even if the cost of compliance exceeds the amount of that financial assurance.

(d) If the Regional Director finds you are in default under paragraph (a)(1) or (2) of this section, the Regional Director may cause the forfeiture of any financial assurance provided to ensure your compliance with BOEM and BSEE orders, the terms and conditions of your lease or grant, and the regulations in this chapter and chapters II and XII of this title.

(e) If the Regional Director determines that your financial assurance is forfeited, the Regional Director will:

(1) Collect the forfeited amount; and

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

(f) If the amount the Regional Director collects under your financial assurance is insufficient to pay the full cost of corrective action, the Regional Director may:

(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 other record title owner, operating rights owner, co-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 financial assurance.

(g) If the amount that the Regional Director collects under your forfeited financial assurance exceeds the costs of taking the corrective action required to bring your lease or grant into compliance with its terms and the regulations in this chapter, BOEM and BSEE orders, and chapters II and XII of this title, the Regional Director will return the excess funds to the party from whom they were collected.

(h) The Regional Director may pay the funds from the forfeited financial assurance to a co- or predecessor lessee or third party who is taking the corrective action required to obtain partial or full compliance with the regulations, BOEM or BSEE orders, and/or the terms of your lease or grant.

Subchapter C—Appeals

PART 590—APPEAL PROCEDURES

■ 28. The authority citation for part 590 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 29. Revise the heading to subpart A to read as follows:

Subpart A—Bureau of Ocean Energy Management Appeal Procedures

■ 30. Revise § 590.1 to read as follows:

§ 590.1 What is the purpose of this subpart?

The purpose of this subpart is to explain the procedures for appeals of Bureau of Ocean Energy Management (BOEM) decisions and orders.

■ 31. Revise § 590.2 to read as follows:

§ 590.2 Who may appeal?

If you are adversely affected by a BOEM official's final decision or order issued under chapter V of this title, you may appeal that decision or order to the Interior Board of Land Appeals (IBLA). Your appeal must conform with the procedures found in this subpart and 43 CFR part 4, subpart E. A request for reconsideration of a BOEM decision concerning a lease bid, authorized in § 556.517(b), § 581.21(a)(2), or § 585.118(c)(1) of this chapter, is not subject to the procedures found in this part.

■ 32. Revise § 590.3 to read as follows:

§ 590.3 What is the time limit for filing an appeal?

You must file your appeal within 60 days after you receive BOEM's final decision or order. The 60-day time period applies rather than the time period provided in 43 CFR 4.411(a). A decision or order is received on the date you sign a receipt confirming delivery or, if there is no receipt, the date otherwise documented.

■ 33. Amend § 590.4 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 590.4 How do I file an appeal?

* * * * *

(a) A written Notice of Appeal, together with a copy of the decision or order you are appealing, in the office of the BOEM officer that issued the decision or order. You cannot extend the 60-day period for that office to receive your Notice of Appeal; and

* * * * *

(c) You may file an appeal of a BOEM supplemental financial assurance demand with the IBLA. However, if you request that the IBLA stay the demand pending a final ruling on your appeal, you must post an appeal surety bond equal to the amount of the demand that you seek to stay before any such stay is effective.

■ 34. Amend § 590.7 by revising paragraphs (a)(1) and (b) to read as follows:

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

(a) * * *

(1) BOEM notifies you that the decision or order, or some portion of it, is suspended during this period because there is no likelihood of immediate and irreparable harm to human life, the environment, any mineral deposit, or property; or

* * * * *

(b) This section applies rather than 43 CFR 4.21(a) for appeals of BOEM orders.

* * * * *

■ 35. Amend § 590.8 by revising paragraph (a) to read as follows:

§ 590.8 How do I exhaust my administrative remedies?

(a) If you receive a decision or order issued under this chapter, you must appeal that decision or order to the IBLA under 43 CFR part 4, subpart E, to exhaust administrative remedies.

* * * * *

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