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

Docket No. BOEM-2023-0027

Prepared by

BOEM
Bureau of Ocean Energy Management

ICF

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List of Abbreviations

APA	Administrative Procedure Act
ARO	Asset Retirement Obligation
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
CRS	Congressional Research Service
CRA	Comparative Risk Assessment
EIA	U.S. Energy Information Agency
FASB	Financial Accounting Standards Board
FOGRMA	Federal Oil and Gas Royalty Management Act
FR	Federal Register
GAAP	Generally Accepted Accounting Principles
GAO	Government Accountability Office
GDP	Gross Domestic Product
GOM	Gulf of Mexico
INC	Incidence of Non-Compliance
LWCF	Land and Water Conservation Fund
NTL	Notice to Lessees
NPRM	Notice of Proposed Rulemaking
NRSRO	Nationally Recognized Statistical Ratings Organization
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
RUE	Right-of-Use and Easement
ROW	Right-of-Way
SEC	U.S. Securities and Exchange Commission
S&P	Standard & Poor

Introduction

On June 29, 2023, on behalf of the Department of the Interior (DOI), the Bureau of Ocean Energy Management (BOEM) issued a notice of proposed rulemaking (NPRM) titled "Risk Management and Financial Assurance for Outer Continental Shelf (OCS) Lease and Grant Obligations," published at 88 FR 42136. The rule proposed to modify the 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 may be required to provide financial assurance above the current regulatorily prescribed base financial assurance to ensure compliance with their Outer Continental Shelf Lands Act (OCSLA) obligations. Further, the rule proposed to remove existing restrictive provisions for third-party guarantees and decommissioning accounts; add new criteria under which a bond or third-party guarantee that was provided as supplemental financial assurance may be canceled; and clarify financial assurance requirements for RUE grants serving Federal leases. The comment period was open from June 29, 2023, to August 28, 2023, and then was extended until September 7, 2023.

BOEM received a total of 2,151 public comment submissions in response to the proposed rulemaking (Docket ID: BOEM-2023-0027). Of the total 2,151 total public submissions, 161 were identified as unique (95 substantive and 64 non-substantive). The remaining comments include 1,973 form letter copies that are part of 5 form letter campaigns and 17 duplicate or not germane comments.

Index of Substantive Submissions Sorted by Submission Number

Submission ID	Commenter Name	Commenter Type
BOEM-2023-0027-0027	Anonymous	Anonymous
BOEM-2023-0027-0028	National Ocean Industries Association (NOIA)	Business/Trade Association
BOEM-2023-0027-0030	Center for Regulatory Freedom	Advocacy Group
BOEM-2023-0027-0031	American Petroleum Institute	Business/Trade Association
BOEM-2023-0027-0032	The Surety & Fidelity Association of America	Business/Trade Association
BOEM-2023-0027-0070	Adrian Loeb	Individual
BOEM-2023-0027-0352	Adrian Belkin	Individual
BOEM-2023-0027-0506	Alan Clayton	Individual
BOEM-2023-0027-1124	Andrew Kost	Individual
BOEM-2023-0027-1155	Gulf Energy Alliance	Business/Trade Association
BOEM-2023-0027-1162	House Committee on Small Business	Federal Elected Official
BOEM-2023-0027-1181	Drew Riviere	Individual
BOEM-2023-0027-1182	James Bollinger	Individual
BOEM-2023-0027-1197	Benjamin Frederick	Individual
BOEM-2023-0027-1198	Gordon Reese	Individual
BOEM-2023-0027-1200	Caleb Merendino	Individual
BOEM-2023-0027-1201	CAC Specialty	Other
BOEM-2023-0027-1219	Elmer Danenberger	Individual
BOEM-2023-0027-1241	Gail Maniscalco	Individual
BOEM-2023-0027-1289	Hayden Marze	Individual
BOEM-2023-0027-1592	Cantium, LLC	Industry
BOEM-2023-0027-1610	John Rogers Smith	Individual
BOEM-2023-0027-1692	Anonymous	Anonymous
BOEM-2023-0027-1696	True Transition	Advocacy Group
BOEM-2023-0027-1699	SBA	Federal Agency
BOEM-2023-0027-1732	Apache Corporation	Industry
BOEM-2023-0027-1753	Sabin Center for Climate Change Law at Columbia Law School	Academic
BOEM-2023-0027-1791	Advancing American Freedom	Advocacy Group

Submission ID	Commenter Name	Commenter Type
BOEM-2023-0027-1792	Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth	Advocacy Group
BOEM-2023-0027-1793	Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth	Advocacy Group
BOEM-2023-0027-1812	Scott Broekstra	Individual
BOEM-2023-0027-1838	Zachary Arnouville	Individual
BOEM-2023-0027-1857	Talos Energy	Individual
BOEM-2023-0027-1906	Occidental Petroleum Corporation	Industry
BOEM-2023-0027-1930	LLOG Exploration Company, LLC	Industry
BOEM-2023-0027-1938	Ridgelake Energy	Industry
BOEM-2023-0027-1940	Apache Corporation	Industry
BOEM-2023-0027-1961	Ocean Conservancy	Advocacy Group
BOEM-2023-0027-1962	Carlos Mirabal	Individual
BOEM-2023-0027-1963	Anonymous	Anonymous
BOEM-2023-0027-1964	Lance Boudreaux	Individual
BOEM-2023-0027-1965	Nicholas Joseph	Individual
BOEM-2023-0027-1966	Fred Klein	Individual
BOEM-2023-0027-1969	Ron Mangels	Individual
BOEM-2023-0027-1970	Anonymous	Anonymous
BOEM-2023-0027-1971	Donald Eynon	Individual
BOEM-2023-0027-1972	Don M	Individual
BOEM-2023-0027-1973	Anonymous	Anonymous
BOEM-2023-0027-1974	Chevron U.S.A., Inc.	Industry
BOEM-2023-0027-1975	Aon	Industry
BOEM-2023-0027-1976	Ocean Conservancy	Advocacy Group
BOEM-2023-0027-1977	Ocean Defense Initiative	Advocacy Group
BOEM-2023-0027-1978	Senators Cassidy, Cruz, Kennedy and Manchin	Federal Elected Official
BOEM-2023-0027-1979	Chad Hurta	Individual
BOEM-2023-0027-1980	Tim Beard	Individual
BOEM-2023-0027-1981	David Allison	Individual
BOEM-2023-0027-1982	Anonymous	Anonymous
BOEM-2023-0027-1983	Lundin Schneider	Individual
BOEM-2023-0027-1984	Dustin Cade	Individual
BOEM-2023-0027-1985	State of Louisiana	State Government
BOEM-2023-0027-1986	Hess Corporation	Industry

Submission ID	Commenter Name	Commenter Type
BOEM-2023-0027-1987	Robert Ladner	Individual
BOEM-2023-0027-1988	Brittany Staton	Individual
BOEM-2023-0027-1989	W&T Offshore, Inc. and W&T Offshore VI, LLC	Industry
BOEM-2023-0027-1991	Opportune LLP	Industry
BOEM-2023-0027-1993	Pat Padayachee	Individual
BOEM-2023-0027-1994	Joseph Watson	Individual
BOEM-2023-0027-1995	Joseph Watson	Individual
BOEM-2023-0027-1996	Jeff Hemingway	Individual
BOEM-2023-0027-1997	Thomas Greer	Individual
BOEM-2023-0027-1998	The Surety & Fidelity Association of America	Business/Trade Association
BOEM-2023-0027-1999	Charles Liles	Individual
BOEM-2023-0027-2000	Thomas Reece	Individual
BOEM-2023-0027-2001	QuarterNorth Energy LLC	Industry
BOEM-2023-0027-2002	A W Hluza	Individual
BOEM-2023-0027-2003	bp America Inc.	Industry
BOEM-2023-0027-2005	Talos Energy Inc.	Industry
BOEM-2023-0027-2006	American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association	Business/Trade Association
BOEM-2023-0027-2007	Murphy Oil Corporation	Industry
BOEM-2023-0027-2008	Joey DeAgazio	Individual
BOEM-2023-0027-2009	Brendon Manuel	Individual
BOEM-2023-0027-2010	Brendon Manuel	Individual
BOEM-2023-0027-2011	Kimberly Manuel	Individual
BOEM-2023-0027-2012	Shell Offshore Inc.	Industry
BOEM-2023-0027-2013	Beacon Offshore Energy	Industry
BOEM-2023-0027-2031	Cantium, LLC	Industry
BOEM-2023-0027-2056	Marc Alston	Individual
BOEM-2023-0027-2064	Chris Habenicht	Individual
BOEM-2023-0027-2070	Stephanie Leimkuhler	Individual
BOEM-2023-0027-2096	Arena Energy, LLC	Industry
BOEM-2023-0027-2139	Rhonda Sigman	Individual
BOEM-2023-0027-2146	White Fleet Drilling, LLC / White Fleet Abandonment, LLC	Industry
BOEM-2023-0027-2164	Joseph Ryan	Individual

Submission ID	Commenter Name	Commenter Type
BOEM-2023-0027-2165	GEA, IPAA, USOGA, LOGA, MEI & SOGA	Business/Trade Association
BOEM-2023-0027-2166	University of Houston	Academic
BOEM-2023-0027-2167	Patrick Scott	Individual

Section 1 – General Comments

Section 1.1 – General Support

Comment: Two commenters expressed general support for the proposed rule.[1] Several commenters expressed support specifically for the Department's efforts to protect the U.S. taxpayers from bearing the costs of decommissioning activities[2] by ensuring that current lessees provide the requisite financial assurance that they will perform all operational lease and grant duties, including required decommissioning activities.[3]

Response: BOEM acknowledges the commenters' support for the proposed rulemaking, and the Department is finalizing the rule to address concerns regarding BOEM's financial assurance program. This rule finalizes amendments to the existing provisions to better protect the taxpayer from potentially 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.

Comment: A commenter expressed support for the proposed rule because it is consistent with the Department's responsibilities to the public and that a high level of effectiveness in decommissioning is necessary to avoid the legacy of pollution and environmental damage beyond the productive life of a well.[4]

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[1] Occidental Petroleum Corporation (BOEM-2023-0027-1906); Shell Offshore Inc. (BOEM-2023-0027-2012).
[2] Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753); Ocean Conservancy (BOEM-2023-0027-1961).
[3] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); Hess Corporation (BOEM-2023-0027-1986); Chevron U.S.A., Inc. (BOEM-2023-0027-1974).
[4] J. Rogers Smith (BOEM-2023-0027-1610).

Response: BOEM acknowledges the commenter's support for the proposed rulemaking, and the Department is finalizing the rule to address concerns regarding BOEM's financial assurance program. BOEM agrees with the commenter's assertion that it is consistent with the Department's responsibilities to the public and that a high level of effectiveness in decommissioning is necessary to avoid the potential legacy of pollution and environmental damage beyond the productive life of a well.

Section 1.2 – General Opposition

Comment: Many commenters discussed general concerns with the proposed rule, including:

- Negative and financially burdensome effects on the offshore oil and gas industry;[5]
- Negative effects on the U.S. economy and job growth, especially in the GOM;[6]
- Negative impacts on smaller and mid-sized businesses specifically;[7]
- Negative national security implications, including reduced U.S. energy independence;[8]
- Negative effects on American consumers and taxpayers;[9] and
- Negative environmental implications, including emissions harm.[10]

Additionally, many commenters asked the Department to explore alternative approaches that strike a balance between economic and job growth and environmental responsibility and preservation.[11] A few commenters asserted that the Department should prioritize collaboration with industry experts in creating a plan that balances environmental protection, economic growth, and job security.[12] Similarly, some commenters asserted that the Department should work on finding a balance between safeguarding natural resources and ecosystems and supporting American communities and businesses,[13] while a few commenters asked the Department to focus on the balance between safety and economic viability.[14]

A commenter asserted that the proposed rule would cause more economic harm than benefit, namely:

- $4.7 billion less industry spending over the next 10 years;

[5] Anonymous (BOEM-2023-0027-0027); Center for Regulatory Freedom (BOEM-2023-0027-0030); J. Bollinger (BOEM-2023-0027-1182); H. Marze (BOEM-2023-0027-1289); R. Mangels (BOEM-2023-0027-1969).

[6] A. Loeb (BOEM-2023-0027-0070); L. Boudreaux (BOEM-2023-0027-1964); Anonymous (BOEM-2023-0027-1970); L. Schneider (BOEM-2023-0027-1983); D. Cade (BOEM-2023-0027-1984); C. Liles (BOEM-2023-0027-1999); T. Reece (BOEM-2023-0027-2000); J. DeAgazio (BOEM-2023-0027-2008); B. Manuel (BOEM-2023-0027-2009); C. Habenicht (BOEM-2023-0027-2064).

[7] B. Frederick (BOEM-2023-0027-1197); S. Broekstra (BOEM-2023-0027-1812); Anonymous (BOEM-2023-0027-1963); D. M (BOEM-2023-0027-1972); Anonymous (BOEM-2023-0027-1982); P. Padayachee (BOEM-2023-0027-1993); J. Watson (BOEM-2023-0027-1994); T. Greer (BOEM-2023-0027-1997); K. Manuel (BOEM-2023-0027-2011); M. Alston (BOEM-2023-0027-2056).

[8] A. Clayton (BOEM-2023-0027-0506); A. Kost (BOEM-2023-0027-1124); D. Riviere (BOEM-2023-0027-1181); Advancing American Freedom (BOEM-2023-0027-1791); C. Mirabal (BOEM-2023-0027-1962); N. Joseph (BOEM-2023-0027-1965); C. Huerta (BOEM-2023-0027-1979); B. Staton (BOEM-2023-0027-1988).

[9] A. Kost (BOEM-2023-0027-1124); Arena Energy, LLC (BOEM-2023-0027-2096).

[10] Center for Regulatory Freedom (BOEM-2023-0027-0030); A. Belkin (BOEM-2023-0027-0352).

[11] G. Reese (BOEM-2023-0027-1198); Z. Amouville (BOEM-2023-0027-1838); N. Joseph (BOEM-2023-0027-1965); F. Klein (BOEM-2023-0027-1966); R. Mangels (BOEM-2023-0027-1969); D. Eynon (BOEM-2023-0027-1971); C. Huerta (BOEM-2023-0027-1979); T. Beard (BOEM-2023-0027-1980); A. W. Hluza (BOEM-2023-0027-2002); R. Sigman (BOEM-2023-0027-2139).

[12] D. Allison (BOEM-2023-0027-1981); R. Ladner (BOEM-2023-0027-1987); J. Hemingway (BOEM-2023-0027-1996); P. Scott (BOEM-2023-0027-2167).

[13] L. Boudreaux (BOEM-2023-0027-1964); Anonymous (BOEM-2023-0027-1982); D. Cade (BOEM-2023-0027-1984); P. Padayachee (BOEM-2023-0027-1993); J. Watson (BOEM-2023-0027-1995).

[14] Anonymous (BOEM-2023-0027-1970); D. M (BOEM-2023-0027-1972); J. Ryan (BOEM-2023-0027-2164).

- Future production from the OCS reduced by 55 million barrels of oil;
- About $2.8 billion in reduced revenue to the industry;
- $573 million in lower royalties to the federal government; and
- Gulf Coast states losing $9.9 billion in growth and 36,000 jobs.[15]

A commenter listed barriers to the effectiveness of the proposed rule, including current bonding, the dynamics of the bond industry, environmental impacts from reduced capital funds, reduction of installed platforms, and abandonment cost estimates, among others. They asserted that the annual projected bonding cost is six times greater than the historical cumulative cost since 1950 of all uncovered abandonment costs, and that BOEM "fails to acknowledge that the annual surety bonding payments are not used to reduce abandonment liabilities; instead, the funds go to surety companies and they benefit." They stated by "implementing this proposed rule, BOEM actually reduces the available dollars for abandonment while simultaneously weakening the operating companies, possibly pushing them to bankruptcy due to these excessive, non-productive costs." [16]

Another commenter listed negative effects of the proposed rule, including reduced drilling and availability of production in the GOM, job losses, increased decommissioning costs, and increased environmental and safety risks, among others.[17]

A commenter asserted that the proposed rule would impose financial burdens on lessees and deter further development in the GOM,[18] while another commenter added that the proposed rule understates costs and does not account for industry interests.[19] Additionally, a commenter asserted that the proposed rule does not have an actual problem to fix under the current decommissioning arrangement, and that the proposed rule is only hurting industry.[20] A commenter added that the proposed rule would hurt offshore investment and give American companies a competitive disadvantage.[21]

Response: BOEM acknowledges the commenters' opposition to the proposed rulemaking and, the Department is finalizing this rule, as proposed, to address concerns regarding BOEM's financial assurance program. Under the final rule, all companies will be required to provide supplemental financial assurance at the P70 level if they, or their co-lessee, does not meet the investment-grade credit rating threshold or their lease does not have a minimum 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves. Since 2009, more than 30 corporate bankruptcies have occurred involving offshore oil and gas lessees that did not have

[15] A. Loeb (BOEM-2023-0027-0070).
[16] Cantium, LLC (BOEM-2023-0027-1592).
[17] White Fleet Drilling, LLC / White Fleet Abandonment, LLC (BOEM-2023-0027-2146).
[18] Apache Corporation (BOEM-2023-0027-1732).
[19] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).
[20] State of Louisiana (BOEM-2023-0027-1985).
[21] Beacon Offshore Energy (BOEM-2023-0027-2013).

sufficient financial assurance to cover their decommissioning liabilities. These bankruptcies have highlighted a weakness in BOEM's current supplemental financial assurance program. The amendments finalized in this rulemaking under section 5 of OCSLA (43 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. Further responses to specific concerns raised here are discussed in the appropriate sections of this document.

Section 1.3 – Other General Comments

Comment: A commenter expressed concern that the proposed rule does not improve financial assurance requirements to a level that would sufficiently ensure lessees and operators meet decommissioning obligations.[22] Similarly, while another commenter expressed support for the Department's efforts to provide "more definite" regulations, reasoning the industry has been in "regulatory limbo for nearly a decade," they added that the proposed rule lacked "key" elements concerning financial assurance.[23] A commenter suggested that the final rule should eliminate ambiguity and uncertainty in the financial assurance process by providing rules that ensure certainty for business and transparency for taxpayers.[24]

Response: BOEM disagrees with the commenters' assertion that the proposed rule did not improve financial assurance requirements to a level that would sufficiently ensure lessees and operators meet decommissioning obligations. In the proposal RIA, BOEM estimated an increase in aggregate financial assurance of $9.2 billion available to the U.S. government for decommissioning activities. BOEM acknowledged that this value represented approximately 25 percent of the total offshore decommissioning liability in the preamble to the proposed rule, but also acknowledged much of the total liability would be covered by financially strong lessees and predecessors. Additionally, BOEM noted in the preamble to the proposed rule, that further increasing the compliance costs for industry, could 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. As a result, BOEM acknowledged that this could adversely make the U.S. offshore oil and gas sector less attractive than regions with lower operating costs. BOEM is responsible for managing development of the nation's offshore resources in an environmentally and economically responsible way and is interested in making sure that all lessee obligations in the OCS are met. BOEM must balance OCS energy development with protection for both the taxpayer and the environment in its risk management and financial assurance program. BOEM believes this final rule achieves an acceptable balance of these objectives. The final RIA shows updated costs and benefits of this rule, which is available in the docket for this rulemaking (Docket ID: BOEM-2023-0027).

Comment: A commenter stated that changes to the Department's financial assurance requirements were long overdue, but that the proposed rule limited the government's ability to hold companies responsible for covering their own decommissioning costs, and that it failed to address the financial risks of decommissioning. The commenter concluded that the Department should ensure the Federal government and taxpayers are not liable for the decommissioning costs of private entities, and that these entities are held to responsible environmental and economic standards by requiring bonds from all lessees in the full amount of estimated decommissioning liabilities at the highest probabilistic

[22] Ocean Defense Initiative (BOEM-2023-0027-1977).
[23] CAC Specialty (BOEM-2023-0027-1201).
[24] bp America Inc. (BOEM-2023-0027-2003).

estimate.[25] While urging the Department to finalize the rule as quickly as possible, a commenter suggested BOEM take additional steps to ensure leaseholders fulfill their obligations to decommission offshore infrastructure. The commenter added that as the U.S. transitions to clean-ocean energy, offshore oil and gas companies must be held accountable for plugging wells, removing platforms and other structures, decommissioning pipelines, and removing other obstructions from the seafloor.[26]

Response: The Department is finalizing this rule to address concerns regarding BOEM's financial assurance program. BOEM disagrees with the commenter's assertion that the proposed rule limits the government's ability to hold companies responsible for covering their own decommissioning costs and that it failed to address the financial risks of decommissioning. The approach in the proposed rule did not change or undermine joint and several liability – the final rule, as proposed, retains BOEM's and BSEE's authority to pursue predecessor lessees for the performance of decommissioning. In the RIA, BOEM estimates an increase in new financial assurance of $6.9 billion available to the U.S. government for decommissioning activities. This value is a significant increase in funds available to the U.S. government over currently available funds and it should be acknowledged that much of the total liability would be covered by financially strong lessees and predecessors. 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, while acknowledging protections provided by joint and several liability. Additionally, this final rule also strengthens the regulatory provisions applicable to lessees and extends requirements to RUE and ROW grant holders.

Comment: A commenter expressed support for the proposed rule reasoning that it would help ensure taxpayers are not liable for decommissioning expenses. However, the commenter expressed concern that the proposed rule would burden companies that included abandonment costs in their initial purchase of leases and instead favor companies that purchased companies at inflated prices while disregarding abandonment costs.[27]

Response: BOEM acknowledges the commenter's support and agrees that changes to the regulations will help ensure taxpayers are not liable for decommissioning expenses. BOEM is not privy to private arrangements between companies operating in the OCS and does not require companies to report private arrangement information, however, the rule is intended to require all purchasers to make plans to cover decommissioning costs, and those lessees that are not financially strong will be required to provide the supplemental financial assurance to the government. The Department sets the rules regarding financial assurance and lets private parties decide how they share these cost obligations in their private arrangements, as long as obligations established in leases, grants, and the

[25] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).
[26] Ocean Conservancy (BOEM-2023-0027-1976).
[27] Ridgelake Energy (BOEM-2023-0027-1938).

regulations are fully covered. Contrary to the commenter's prediction, the cost of financial assurance should be less for companies which have already set aside capital for this purpose.

Comment: A commenter stated that the U.S. Nuclear Regulatory Commission's (U.S. NRC) approach to requiring licensees to demonstrate financial assurance serves as a successful model for regulating the industry, ensuring that companies fulfill their maintenance obligations at the conclusion of a site's utilization.[28]

Response: BOEM has reviewed the U.S. NRC's approach as recommended by the commenter however, it is unclear which provisions the commenter believes are not in the proposal or existing regulations that would make BOEM's financial assurance program better. Under the U.S. NRC program, a reactor licensee can demonstrate financial assurance for decommissioning by one or more of the following methods: (1) prepayment – a deposit by the licensee at the start of operation in a separate account such as a trust fund, (2) surety, insurance, or parent company guarantee method – assurance that the cost of decommissioning will be paid by another party should the licensee default, and (3) external sinking fund – the licensee sets aside funds toward the cost of decommissioning from a portion of the rates or other charges approved by the regulator. Oil and gas lessees can demonstrate financial assurance for decommissioning through the use of bonds, trust funds, third-party guarantees, and decommissioning accounts. The sinking fund is a variation on a decommissioning account, but without a comparable ratesetting mechanism for oil and gas, it is not an option for this rule. We note that the U.S. NRC provides for surety bonds to be used in conjunction with sinking funds in the early years while funds accumulate. BOEM could emulate that practice without express provisions in the rule.

[28] True Transition (BOEM-2023-0027-1696).

Section 2 – Background

Section 2.1 – Statutory/Legal Authority

Section 2.1.1 – Outer Continental Shelf Lands Act (OCSLA)

Comment: A commenter asserted that the Department lacks congressionally delegated authority for its new rule, despite citing three statutory sources from the OCSLA. The commenter asserted that the Department is broadly interpreting the empowering statute to justify a regulation of substantial "economic and political significance." The commenter contended that the Department's stated purpose, to protect taxpayers from decommissioning costs, misinterprets congressionally delegated authority, as the statute primarily concerns the leasing of offshore mineral exploitation. They asserted that the agency's claim about taxpayers covering decommissioning costs is rare, and the proposed solution would increase costs. They also contended that the Department lacks clear congressional delegation of authority to make such a substantial regulation, as their authority primarily pertains to leasing offshore mineral extraction sites.[29]

Another commenter contended that the proposed rule could have significant impacts on the economy and energy industry, requiring a clear delegation of authority from Congress, which they asserted was not provided in the 2023 NPRM. Therefore, they concluded that the proposed rule is improper and should be withdrawn. Additionally, they emphasized that the statutes the Department relies on for support only authorize rulemaking for leasing the OCS, without granting the authority to drastically alter the decommissioning process or impose unprecedented financial assurance requirements. They asserted that the Department has overstepped its rulemaking authority granted by Congress.[30]

An additional commenter questioned whether the Department's intention is to make financial assurance requirements so onerous that it drives firms out of oil and gas exploration, favoring renewable energy projects. They asserted that this approach contradicts Congress' intent to allow development of all OCS resources, including oil. The commenter contended that the Department lacks statutory authority to implement the proposed rule, as it is not deemed "necessary" to prevent waste or conserve OCS resources, and it imposes a disproportionate financial burden with no evidence of an actual problem. They highlighted that the costs would disproportionately affect smaller Tier 2 firms and could hinder competition and development in the OCS. The commenter ultimately calls for the withdrawal of the proposed rule.[31]

Response: The Department's authority to promulgate this rule is outlined in the OCSLA. The relevant section of this statute is listed here:

[29] Center for Regulatory Freedom (BOEM-2023-0027-0030).
[30] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[31] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).

OCSLA *43 U.S.C. § 1334. Administration of leasing*
(a) Rules and regulations; amendment; cooperation with State agencies; subject matter and scope of regulations

The Secretary shall administer the provisions of this subchapter relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this subchapter.

The authority granted to the Secretary is very broad. To summarize, as stated above in 43 U.S.C. 1344, "The Secretary … shall prescribe such rules and regulations as may be necessary [and] may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper." Bonding requirements were part of the 1921 regulations for the Mineral Leasing Act and oil and gas bonding regulations are a common feature of similar leasing regimes in the states; bonding requirements are implicit in the authority to regulate. The subject of this rulemaking, financial assurance, has been part of BOEM's regulations, and those of its predecessor agencies, since at least 1996, with the adoption of some key updates to BOEM's leasing regulations (61 FR 34730).

The financial assurance requirements set by this rule are intended to cover the costs of removing oil and gas facilities (including wells) after they are no longer useful to support the oil and gas production for which they were built. This rule does not establish any new policy but simply implements a longstanding policy stating that the oil company that owns an offshore facility must remove it at the end of its useful life and that BOEM has an obligation to ensure that such a company has the financial resources to do so (61 FR 34730, July 3, 1996).

Additionally, the Department's authority is not limited to preventing waste and conserving OCS resources. This rulemaking is an amendment to an existing program that has been long standing in the regulations. Moreover, "OCS resources" include many resources other than hydrocarbons, leading courts to uphold OCSLA regulations for the protection of the environment. Union Oil Co. of California v. Morton, 512 F.2d 743 (9th Cir. 1975).

Comment: A commenter questioned the Department's statutory authority for mandating supplemental bonding under 43 U.S.C. § 1338(a) or any other statute. They asserted that Section 1338(a) provides no such authority and "[i]t merely allows forfeited bonds to accrete to BOEM rather than the Treasury." The commenter disputed the Department's assertion that BOEM has the general authority to develop "the Nation's offshore energy and mineral resources in an economically responsible way"

claiming that the "supplemental bonding requirements in the Proposed Rule are economically irrational and infeasible." They further asserted that "BOEM must be *objectively* economically responsible, not *subjectively* adherent to musing about moral hazard" and that "the problem BOEM cites is imaginary, and because its authority in attempting to solve it is also imaginary, the Proposed Rule does not belong in the [CFR]." [32]

Response: The Department's authority to require supplemental bonding is not based primarily on 43 U.S.C. § 1338a as the commenter claims, but on 43 U.S.C. § 1334, as noted in a previous comment response. However, the reference to the OCSLA bonds in 43 U.S.C. § 1338a clearly shows that Congress did not question this authority.

The commenter is incorrect in their assertion that the "problem BOEM cites is imaginary" and that the rule was not "objectively" economically responsible. The reasons for the rulemaking and the necessity of modifying the existing regulatory framework are to address the risks in the financial assurance program, as highlighted in the Government Accountability Office (GAO) report. While BOEM acknowledges that to date the Federal government and taxpayer has not had to bear the majority of costs of decommissioning, GAO and BOEM have both found that the future risk of such an outcome is significant, and can and should be mitigated by strengthening the financial assurance program to ensure that the parties that should bear the costs (*i.e.*, lessees and grant holders) have the resources to do so. 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. In addition, BOEM acknowledges the need for regulatory action due to a recent increase in the number of entities filing for bankruptcy and the fact that, as the age of existing facilities continues to increase, the costs associated with the decommissioning of such facilities (including wells) is likely to increase as well.

Comment: A commenter asserted that the proposed rule is an attempt to sidestep the mandatory leasing requirements of OCSLA, showing favoritism towards renewables while hindering the profitability of oil and gas leasing. They note that the Administration's preference for renewables over oil production has faced legal challenges, with the Department being a subject of admonishment in multiple instances. Despite criticism, the commenter observes that the Department remains resolute in its approach. They emphasized that the Department's primary duty, as mandated by Congress, is to facilitate energy capture on the OCS, and view attempts to hinder leasing through excessive bonding requirements as an overreach.[33]

Response: Independent of any other uses of the OCS, BOEM is required to ensure that all oil and gas lessee obligations on the OCS are met. The past 15 years have shown that the existing regulations

[32] State of Louisiana (BOEM-2023-0027-1985).
[33] State of Louisiana (BOEM-2023-0027-1985).

were not sufficient to provide the desired and acceptable level of risk for oil and gas operations on the OCS, hence this rulemaking was considered necessary. BOEM will continue to schedule oil and gas lease sales as required by statute. In addition, BOEM will continue to execute its required legal obligations for all activities on the OCS. Similarly, DOI is also finalizing amendments to the financial assurance requirements for renewable energy operations on the OCS through a separate rulemaking, the Renewable Energy Modernization Rule. For more details, see *Reginfo.gov*, Regulatory Identification Number (RIN) 1010-AE04 in the *Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions*.

Section 2.1.2 – Administrative Procedure Act (APA)

Comment: A commenter asserted that the proposal fails to comport with the basic standards of the Administrative Procedure Act (APA). They asserted that various flaws in the proposal render it arbitrary and capricious, in violation of the APA's requirement for reasonable and well-explained agency action. Specifically, they stated "[t]he inadequate cost-benefit analysis, combined with the lack of a clear and well-supported justification for the new strict measures, raises significant doubts about the regulation's necessity and undermines its legitimacy." [34]

Response: BOEM disagrees with the commenter's assertion that the proposed rule fails to comport with the basic standards of the APA. The APA defines the basic requirements for federal rulemakings, as discussed in detail in a paper produced by the Congressional Research Service (CRS) titled "The Federal Rulemaking Process: An Overview."[35] The basic steps to this process are:

1) Congress passes a statute authorizing the issuance of a rule;
2) The agency develops a draft proposed rule;
3) The Department reviews and approves the rule;
4) The Office of Management and Budget (OMB) reviews and approves of the rule;
5) A Notice of Proposed Rulemaking is published in the Federal Register;
6) Public comments are sent to the agency;
7) The agency responds to comments and prepares a final rule;
8) The Department reviews and approves the final rule;
9) OMB reviews and approves of the final rule;
10) The rule is published in the Federal Register;
11) Congress is notified of the rule and, if it elects not to overturn it; and
12) The rule takes effect (subject to later legal challenge, if any).

For this rulemaking, BOEM has undertaken steps 1 through 6 twice, and is now in the process of completing the remaining steps.

[34] Center for Regulatory Freedom (BOEM-2023-0027-0030).
[35] Available at https://crsreports.congress.gov/product/pdf/RL/RL32240.

BOEM explained in the preamble to the proposed rule at 88 FR 42136 the deficiencies it was addressing with the rule, the factors being considered, and the evidence and reasoning for the proposed amendments, as well as the analysis associated with those amendments. As such, the commenter did not provide any justification for their assertion that BOEM's analysis and proposal was "arbitrary and capricious" under the APA. BOEM's rule is a rational approach to addressing financial assurance and is well supported by the record.

Additionally, the Initial Regulatory Impact Analysis (IRIA) provides supporting documentation and analysis for the NPRM and was done in accordance with established procedures. In addition, changes to Federal regulations undergo several types of economic analysis, especially for a "significant regulatory action" such as this rule. The IRIA included these analyses and was available in the docket for the proposed rulemaking for public review and comment. The Final Regulatory Impact Analysis (FRIA) is also available in the docket for this rulemaking.

Comment: A commenter asserted that the regulation lacks a thorough cost-benefit analysis, which goes against the requirements of the APA. They asserted that the emphasis on potential benefits is disproportionate, while the economic harm to taxpayers, small businesses, and the environment is downplayed.[36]

A couple of commenters stated that under the APA, an error in the cost-benefit analysis can render the rule unreasonable when an agency relies on the cost-benefit analysis in its rulemaking. The commenters stated that "BOEM's failure to engage in a robust cost-benefit analysis is arbitrary and capricious in violation of the APA."[37]

Response: BOEM disagrees with the commenter's assertion that the regulation lacks a thorough cost-benefit analysis. BOEM's IRIA provides supporting documentation and analysis for the NPRM and was done in accordance with established procedures. In addition, changes to Federal regulations undergo several types of economic analysis, especially for a "significant regulatory action" such as this rule. The IRIA included these analyses and was available in the docket for the proposed rulemaking for public review and comment. The Final Regulatory Impact Analysis (FRIA) is also available in the docket for this rulemaking.

Additionally, this comment overlooks that the requirement to remove and decommission a facility at the end of its useful life has been a provision in BOEM's regulations, and those of BOEM's predecessors, since OCS leasing began, and is a condition of every lease contract. Although the costs of such decommissioning may not have been known at the time the facility was built, the obligation to ultimately remove the facility has always existed.

[36] A. Belkin (BOEM-2023-0027-0352) [Form Letter Master].
[37] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165); Arena Energy, LLC (BOEM-2023-0027-2096).

BOEM also disagrees with the commenters' assertion that the potential benefits of the rule were disproportionate compared to the economic harm to taxpayers, small businesses, and the environment. The requirement to decommission a facility at the end of its useful life has been part of every lease contract issued on the OCS. The fact that BOEM expects its lessees to comply with their contractual and regulatory obligations is not new or unusual. The fact that the costs of compliance may now be higher than originally anticipated is not the result of anything that the Department has done but, like the variability in oil prices, is subject to market trends and conditions outside of the Department's control. BOEM believes the approach finalized in this rulemaking reasonably balances the development of OCS resources with protection for both the taxpayer and the environment.

Comment: A commenter asserted that the proposed rule represents a significant and unjustified departure from the current regulatory framework, posing substantial threats to the domestic energy industry, U.S. economy, and citizens. The commenter added that the failure to address the disproportionate costs and benefits of the rule is considered arbitrary and capricious under the APA.[38]

Response: This regulation is a proportionate and reasonable approach for dealing with a problem that has been outstanding and growing for decades. The rule does not impose any new performance obligations on lessees or operators but simply requires that existing lessees and operators demonstrate that they have the financial means to comply with their existing obligations. 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 companies at a competitive disadvantage. The Department acknowledges that the new supplemental financial assurance demands could have a significant financial impact on affected companies, and for that reason, the Department is finalizing provisions intended to reduce regulatory burden on those entities.

Section 2.1.3 – Major Questions Doctrine

Comment: Multiple commenters asserted that the proposal fails to comport with the requirements set by the U.S. Supreme Court (SCOTUS) under *West Virginia v. EPA* (2022), particularly as they apply to the "Major Questions Doctrine."[39] Two commenters specifically argued that in general, the Department exceeded its statutory authority, as prescribed by the Supreme Court in *West Virginia v.*

[38] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[39] Center for Regulatory Freedom (BOEM-2023-0027-0030); Beacon Offshore Energy (BOEM-2023-0027); Arena Energy, LLC (BOEM-2023-0027-2096); State of Louisiana (BOEM-2023-0027-1985).

EPA.[40] One commenter also contended that the Department lacks clear congressional delegation of authority to make such a substantial regulation, as their authority primarily pertains to leasing offshore mineral extraction sites. This, according to the commenter, contradicts the Major Questions Doctrine established in *West Virginia v. EPA*.[41]

Response: The case *West Virginia v. EPA* is a decision of the SCOTUS that related to an interpretation of the Clean Air Act. In that case, the SCOTUS ruled that the EPA could not regulate carbon dioxide emissions related to climate change because Congress had not given it the explicit authority to do so. The court invoked the "Major Questions Doctrine," which provides generally that courts will presume that Congress does not delegate to executive agencies issues of major political or economic significance unless the relevant statute explicitly made this delegation. On major questions of law, the court held that Congressional silence or ambiguity in a statute is not an implicit delegation of authority to the agency entrusted to implement the statute where major policy issues are at stake.

In the case of this regulation, the Major Questions Doctrine does not apply because OCSLA states: "The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this subchapter." Not only have BOEM's rules explicitly regulated bonding and financial assurance for many years, BOEM's authority to regulate applies to "all operations conducted under a lease issued or maintained under the provisions of this subchapter." There is no ambiguity here.

The financial assurance requirements set by this rule are intended to cover the costs of removing oil and gas facilities (including wells) after they are no longer useful to support the oil and gas production for which they were built. This rule does not establish any new policy but simply implements a longstanding policy stating that the oil company that owns an offshore facility must remove it at the end of its useful life and that BOEM has an obligation to ensure that such a company has the financial resources to do so (61 FR 34730, July 3, 1996). Removal is required by the laws of every state and nation that has oil and gas development.

[40] Beacon Offshore Energy (BOEM-2023-0027); Arena Energy, LLC (BOEM-2023-0027-2096).
[41] Center for Regulatory Freedom (BOEM-2023-0027-0030).

Section 2.2 – Existing Regulatory Framework

Comment: Referencing a 2015 GAO report, a commenter discussed financial risks associated with the Department's existing decommissioning liability regulations and procedures. According to the commenter, the GAO identified three main shortcomings in the Department's approach: (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 assurances to cover liabilities, primarily due to the practice of waiving supplemental bonding requirements, resulting in less than 8% of an estimated $38.2 billion in decommissioning liabilities being covered by financial assurances like bonds; and (3) the Department criteria for assessing lessees' financial strength did not provide accurate information about their ability to cover future decommissioning costs.[42]

Response: The Department concurs with the GAO report and its findings.

Comment: In response to the GAO's report, a commenter stated that the Department took steps to address the identified issues. They claimed that the Department published a Notice to Lessees (NTL) in July of 2016, which revised financial assurance procedures, requiring additional security for sole liability lessees, including surety bonds. They considered this a necessary and incremental improvement. They argued that, in response to an executive order from President Trump in 2017, the Department delayed implementation of these new procedures and eventually rescinded the 2016 NTL. [43]

Response: BOEM concurs with this comment.

Comment: One commenter argued that under existing regulations, lessees are supposed to furnish bonds at three stages, with additional financial assurances required based on operators' ability to carry out their decommissioning obligations. However, they stated that these bonds do not cover all decommissioning costs, posing a financial risk to the government, taxpayers, and environmental and community interests.[44]

Response: Bonds, or other financial assurance, are indeed collected incrementally, commensurate with the obligations they are intended to cover. The amount of financial assurance required does not only reflect the amount of the lessee's potential obligations, however, but takes into consideration the lessee's capacity to meet those obligations. To the extent that BOEM determines that the lessee is able to meet its financial obligations without providing supplemental bonding or other forms of assurance, it would not be required to provide any supplemental financial assurance beyond base

[42] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).
[43] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).
[44] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).

bonds.

Comment: A commenter reasoned that the existing joint and several liability regulations, which hold predecessor owners responsible for decommissioning defaults by successor owners, have been effective in safeguarding the government's interests.[45]

One commenter expressed confidence in the effectiveness of the current regulatory framework governing OCS lease obligations. They reasoned that the combination of policies, procedures, and regulations enforced by relevant authorities effectively ensured safe and responsible operations in compliance with lease terms.[46]

Another commenter reasoned that the existing joint and several liability regulations, which hold predecessor owners responsible for decommissioning defaults by successor owners, have been effective in safeguarding the government's interests. They emphasized that the government's established practice is to issue decommissioning orders to predecessor owners, rather than immediately calling bonds. The commenter concluded that this approach has proved to be the most efficient way to address decommissioning defaults. According to the commenter, unless the government intends to change this longstanding practice, there is no necessity for additional financial assurances, as the current system adequately protects taxpayers and small businesses. They asserted that existing laws and tools within BOEM's and BSEE's purview have effectively shielded taxpayers from absorbing any significant level of unfunded decommissioning liabilities for decades, and they expected this protection to persist in the foreseeable future.[47]

A commenter advocated for a regulation aligned with the existing framework in place since 1953, emphasizing its effectiveness in safeguarding taxpayer interests. The commenter asserted that the proposed rule was unnecessary, as current regulations already held owners and predecessors jointly liable for decommissioning obligations.[48]

A commenter asserted that the proposed rule addresses a non-existent problem. They stated that, while the agency purports to pursue this rulemaking to benefit the American taxpayer, it overlooks how the well-established joint and several liability mechanism has effectively protected taxpayers from decommissioning costs.[49]

Response: BOEM disagrees with the commenters' assertion that the existing legal framework, which was also in place at the time the 2020 NPRM was published, adequately protects the taxpayer and sufficiently addresses the need to ensure that lessees comply with their obligations. As the GAO

[45] QuarterNorth Energy LLC (BOEM-2023-0027-2001).
[46] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).
[47] QuarterNorth Energy LLC (BOEM-2023-0027-2001).
[48] Beacon Offshore Energy (BOEM-2023-0027-2013).
[49] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

report clearly indicates, the existing regulatory structure is inadequate, introduces needless financial risk, and is unsustainable. For example, for leases in the Gulf of Mexico that expired between 2010 and 2022, operators missed BSEE's deadline to decommission within 1 year for more than 40 percent of wells and 50 percent of platforms – many of which still have not been decommissioned. Over 75 percent of end-of-lease and idle infrastructure in the Gulf of Mexico was overdue under BSEE's deadlines as of June 2023 – over 2,700 wells and 500 platforms. In addition, BOEM acknowledges the need for regulatory action due to a recent increase in the number of entities filing for bankruptcy and the fact that, as the age of existing facilities continues to increase, the costs associated with the decommissioning of such facilities (including wells) is likely to increase as well.

With respect to the assertion that the existing financial assurance mechanism adequately protects the taxpayers, this assertion is contrary to the findings of the GAO that the agency is at significant risk that lessees will not be able to meet their financial obligations. While BOEM acknowledges that to date the Federal government and taxpayer has not had to bear the majority of costs of decommissioning, GAO and BOEM have both found that the future risk of such an outcome is significant, and can and should be mitigated by strengthening the financial assurance program to ensure that the parties that should bear the costs (*i.e.*, lessees and grant holders) have the resources to do so.

Comment: One commenter pointed out various safeguards, including a comprehensive insurance program, approval processes for assignments, extensive safety and environmental management programs, routine inspections, and a system of penalties for non-compliance adequately protects the government from risks.[50]

Response: There are many different risks associated with oil and gas exploration and production on the OCS that must be managed simultaneously by BOEM and BSEE. Many of those risks are outside the scope of BOEM's financial risk management program or are handled in a different manner. For example, BSEE's safety management systems and inspections programs, which are intended to minimize operational risks, are not covered by the financial assurance mechanism that is the subject of this rule. As another example, the oil spill responsibility program, which is intended to minimize the exposure of third parties to harm caused by oil spills, is also outside the scope of BOEM's financial risk management program. While all of these regulations have value, only the regulations pertaining to BOEM's financial risk management program ensure that the lessees and grantees have the financial means of complying with their obligations.

Comment: One commenter highlighted industry practices such as preferential positioning in bankruptcies, adherence to specific programs, and the industry's overall track record of positive results, as additional indicators of why the changes to BOEM's regulations are not necessary. The commenter contended that these measures, in conjunction with existing regulations, adequately

[50] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).

mitigated risks associated with decommissioning liabilities, negating the necessity for proposed changes. They emphasized that available data did not support the need for such alterations.[51]

Response: While industry practices may have helped to mitigate the risk, BOEM's history over the past 15 years has shown that the existing regulations were not sufficient to assure an acceptable level of risk on the OCS. As noted previously, the GAO reviewed the overall financial risk program and made a definitive assessment that the risk exposure of the existing programs is such that the government could potentially be responsible for covering billions of dollars in unmet lessee financial obligations.

Comment: A commenter emphasized the crucial need to shield the American taxpayer from decommissioning liabilities. They argued that the established joint and several liability of all companies involved has effectively served this purpose. The commenter acknowledged potential risks in specific situations, like sole liability properties or high-risk non-sole liability properties lacking financially robust co-owners. They praised the Department's attention to these areas since 2016.[52]

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.

Comment: A commenter provided a comprehensive critique of the proposed rule, contending that it may be redundant given the existing framework that enforces joint and several liability for decommissioning obligations. They emphasized the efficacy of this long-standing practice in safeguarding taxpayers from bearing the costs of decommissioning.[53]

Response: The principle that all prior and current owners of an OCS facility are jointly and severally liable for the obligation to remove the facility at the end of its useful life has always been a feature of the Department's regulations and is not being changed with this rule. There are many circumstances when this one principle does not, in and of itself, adequately protect the government and the various stakeholders involved in the OCS oil and gas program. This rule is intended to ensure that taxpayers are protected, even if the joint and several liability provisions are inapplicable (for sole liability leases or grants) or not fully adequate (when predecessors are not financially robust).

[51] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).
[52] Arena Energy, LLC (BOEM-2023-0027-2096).
[53] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

Comment: A commenter expressed concern over the proposed departure from the established joint and several liability mechanism that has been integral to the industry's operations for nearly 7 decades.[54]

Response: The joint and several liability provisions of the regulations are not being changed in any way as a result of this rulemaking. In fact, this rulemaking makes no changes to the financial or performance obligations of lessees and operators whatsoever. This rule simply changes what financial assurance, if any, is required to meet the existing obligations of lessees and operators, so that sufficient resources are made available to guarantee that these companies are able to meet their existing obligations.

Comment: A commenter emphasized that joint and several liability for decommissioning costs has been a fundamental principle in the U.S. Gulf of Mexico (GOM) since the enactment of OCSLA in 1953. They highlighted how major oil and gas companies initially undertook offshore operations, creating the decommissioning obligations addressed in the proposed rule. The commenter also pointed out that in the late 1980s, major companies shifted their focus to deeper waters, selling shallow-water properties to smaller independents, prompting discussions on the treatment of accrued liabilities in such transactions. Additionally, the commenter noted a regulatory clarification in 1997 affirming joint and several liability for accrued decommissioning obligations, rejecting alternative liability models due to potential complications and increased administrative burdens.[55]

Response: Joint and several liability is an established and fundamental principle which is not being changed by this rulemaking, but it is not always enough to encompass all liabilities and provide sufficient protection for the taxpayer, as history has shown.

[54] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[55] Arena Energy, LLC (BOEM-2023-0027-2096).

Section 2.3 – Purpose and Need

Comment: A commenter claimed the absence of a clear rationale for the proposed stringent measures and raised doubts about the regulation's necessity and legitimacy.[56]

Response: The reasons for the rulemaking and the necessity of modifying the existing regulatory framework are to address the risks in the financial assurance program, as highlighted in the GAO report. In addition, BOEM acknowledges the need for regulatory action due to a recent increase in the number of entities filing for bankruptcy and the fact that, as the age of existing facilities continues to increase, the costs associated with the decommissioning of such facilities (including wells) is likely to increase as well.

Comment: A commenter stated that the Department's proposed rule was unnecessary, asserting that it addresses a non-existent problem. The commenter pointed out that over the past 2 decades, despite various economic and environmental challenges, the total abandonment losses in the GOM covered by the American taxpayer amounted to approximately $50 million. The commenter stated that a substantial revenue influx of $125 billion from royalties and fees during the same period. The commenter further emphasized that this calculation did not take into account additional income from Federal, State, or parish taxes, as well as the significant positive impact on employment stemming from tens of thousands of direct and indirect jobs associated with supporting GOM operations for independent oil and gas producers.[57]

Another commenter pointed out that, according to the proposed rule itself, instances where taxpayers have directly funded decommissioning are infrequent, despite the mention of over 30 bankruptcies. They asserted that the actual costs absorbed by American taxpayers in decommissioning have been minimal.[58]

Response: BOEM disagrees with the commenter's assertion that the proposed rule addresses a non-existent problem. The GAO identified three main shortcomings in the Department's prior approach: (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 less than 8% of an estimated $38.2 billion in decommissioning liabilities being covered by financial assurance like bonds; and (3) the Department criteria for assessing lessees' financial strength did not provide accurate information about their ability to cover future decommissioning costs. As the GAO report clearly indicates, the existing regulatory structure is inadequate, introduces needless financial risk, and is unsustainable. For example, for leases in the

[56] Center for Regulatory Freedom (BOEM-2023-0027-0030).
[57] Cantium, LLC (BOEM-2023-0027-1592).
[58] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

Gulf of Mexico that expired between 2010 and 2022, operators missed BSEE's deadline to decommission within 1 year for more than 40 percent of wells and 50 percent of platforms – many of which still have not been decommissioned. Over 75 percent of end-of-lease and idle infrastructure in the Gulf of Mexico was overdue under BSEE's deadlines as of June 2023 – over 2,700 wells and 500 platforms.

With respect to the assertion that taxpayers have not paid for decommissioning to date, it must be highlighted that relatively few major facilities have been decommissioned (relative to the number installed) because the vast majority of facilities are or were recently actively producing. It is only now, as more facilities reach the end of their useful life that 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 notified Congress that the current program must be revised to avoid putting the government in an untenable situation.

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 operators 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 attract 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 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.

With respect to revenues from royalty payments versus cost of decommissioning to the government, royalty payments are a financial obligation for the ability to operate on the OCS, and decommissioning wells and platforms is also a requirement for operating on the OCS. The industry would not bear the full cost of their operations if the government were to just deduct abandonment losses from the revenues from royalty payments.

Comment: A commenter raised a critical point regarding the intent of the proposed rulemaking. They highlighted that the proposed rule itself acknowledges that instances where taxpayers have actually shouldered decommissioning costs are exceedingly rare. In fact, out of the 30 corporate bankruptcies involving substantial offshore decommissioning liabilities since 2009, amounting to $7.5 billion, only a fraction of $30 million (0.4%) has been covered by the Federal Government (BSEE). The

commenter continued that this amount is exclusively associated with infrastructure lacking a predecessor (referred to as "sole-liability properties") and any financial assurance for decommissioning. The commenter further noted that the low taxpayer cost aligns with the proposed rule's own statement, emphasizing that the actual financial risk to the United States is notably lower than the overall offshore decommissioning liability linked with corporate bankruptcies. This, the commenter clarified, is partly due to the fact that other private parties, such as co-lessees and predecessors, uphold preexisting obligations to fund or perform decommissioning.[59]

Response: This comment raises two issues. First, it asserts that because losses on the part of the government have been "rare" in the past, BOEM should not be concerned about future losses. Second, it asserts that the Department should not concern itself with who covers facilities removal costs because of private party transactions, as long as the government is not required to meet this obligation. BOEM disagrees with both assertions.

With respect to the first point, it must be highlighted that relatively few major facilities have been decommissioned (relative to the number installed) because the vast majority of facilities are or were recently actively producing. It is only now, as more and more facilities reach the end of their useful life that decommissioning will be required on a larger scale. The fact that losses to the government have been low in the past does not necessarily comport with a likelihood that they will be similarly low in the future. The GAO has, in fact, asserted the opposite and notified Congress that the current program must be revised to avoid putting the government in an untenable situation. 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 operators 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 attract 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.

With respect to the second point, BOEM has always maintained that the current lessee should be held financially responsible for decommissioning facilities that it owns. When a company purchases an OCS lease, that purchase is always contingent on the purchaser assuming the obligations for decommissioning the lease. That obligation is incorporated in the price of the purchase. If a company elects to drain the resource without making appropriate provision for removing the facilities, and then declares bankruptcy, it has essentially acted in bad faith with respect to the companies from whom it purchased the lease and with respect to the government which owns the

[59] Opportune LLP (BOEM-2023-0027-1991).

property. By not requiring companies to take on the liabilities they agreed to assume and ensuring the financial assurance program promotes their compliance on this front, the Department would essentially be allowing or even facilitating this bad faith.

Comment: A commenter reasoned that companies with robust financial foundations, including a strong balance sheet, substantial revenue, new discoveries, and solid predecessor owners in the ownership chain, do not pose a discernible risk to the American taxpayer. They contended that imposing significant additional bonding requirements for decommissioning liabilities in such cases, as a result of implementing the rule, is considered unnecessary. Furthermore, they stated that this could divert substantial capital away from exploration, production, and other proactive decommissioning activities.[60]

Response: BOEM acknowledges that companies with robust financial foundations, including a strong balance sheet, and substantial revenue may not pose a discernible risk to the American taxpayer. However, as highlighted in the 2105 GAO report, a financial strength test imposes the lowest cost on the companies using it, but also typically poses the highest financial risks to the government entity accepting it. The purpose of this rulemaking is to reduce the financial risks to the government and subsequently the taxpayer. This final rule does not require companies with a strong capacity to meet their financial obligations (*i.e.*, investment grade companies) to provide supplemental financial assurance but allows the Regional Director, as currently allowed, to order its provision.

Comment: According to a commenter, the American taxpayer should never be burdened with covering decommissioning liabilities in the GOM.[61]

Response: The Department's position is to balance continued oil and gas development with protection of both the taxpayer and the environment, and concludes that this final rule achieves an acceptable balance of those objectives.

Comment: A commenter argued that the Department's rationale for the proposed rule, which emphasizes the reduction of environmental damage, overlooks the recent final rule issued by BSEE. This final rule, titled "Risk Management, Financial Assurance, and Loss Prevention—Decommissioning Activities and Obligations," stipulates that in the event of a lessee default, predecessors are mandated to initiate the maintenance and monitoring of the defaulting party's abandoned offshore facilities within 30 days. The predecessors are further granted 90 days to designate a decommissioning operator or agent, followed by 150 days to submit a decommissioning plan. The commenter contended that this final BSEE rule, coupled with the existing joint and several liability of all current and former owners, already constitutes the most efficient, effective, and prompt means of safeguarding the environment and ensuring the swift decommissioning of offshore

[60] QuarterNorth Energy LLC (BOEM-2023-0027-2001).
[61] QuarterNorth Energy LLC (BOEM-2023-0027-2001).

infrastructure. They asserted that the proposed rule does not offer any additional safeguard against environmental damage.[62]

Response: BSEE's final rule requires that, if the defaulting party is still operating the lease, that the predecessor assume the operations but that if the defaulting party is not operating the lease, any predecessor could be obligated to fund or perform decommissioning. This essentially reinforces the joint and several obligations of parties with respect to leases that were held by a lessee at any time. The rule is robust but does not ensure that decommissioning obligations will always be met, because there may not be any financially viable predecessors that are liable. Regardless, the fact that third parties may be obligated to meet the defaulted obligations of current lessees does not absolve the current leaseholder of its obligations, nor does it justify not holding current leaseholders accountable for posting appropriate financial assurance to guarantee their own obligations. As such, this rule that is being finalized is a companion but not a replacement for the BSEE rule; this final rule is intended to increase confidence that there is sufficient financial assurance to address decommissioning.

Comment: A commenter referenced a press release issued by the Department on August 18, 2021, which outlined an expansion of its financial assurance efforts. According to the commenter, the framework outlined in this announcement is robust and more than sufficient to shield the U.S. taxpayer from assuming any risk related to decommissioning liabilities in the GOM. The commenter asserted that, in this press release, the Department announced its intent to broaden its focus on supplemental financial assurance beyond "sole liability" properties, extending the requirement to certain high-risk, non-sole liability properties. These include properties that are inactive, properties with a remaining production life of fewer than 5 years, and properties with damaged infrastructure, regardless of the remaining lifespan of the surrounding producing assets. The commenter recommended that BOEM follow the framework of this press release when finalizing the rule instead of moving forward with the structure of the proposed rule. Additionally, they stated that "BOEM should not require financial assurance for lease assets that a lessee can provide valid evidence that it plans to decommission within the ensuing 1-year period."[63]

Response: The press release cited has no legal effect and only described a prioritization of the companies and facilities being focused on based on what was codified in the regulations at the time. The press release did not assert that those actions were sufficient to meet the decommissioning needs, but it anticipated a future rulemaking to improve the program. This rulemaking is intended to streamline the criteria used while bolstering financial assurance protections, in a manner in which they can be properly enforced. In response to the request that BOEM not require supplemental financial assurance for lease assets that will be decommissioned within 1 year, the final rule establishes a procedure for submitting these issues to the Regional Director for consideration in a reduction in the supplemental financial assurance demand.

[62] Talos Energy Inc. (BOEM-2023-0027-2005).
[63] Talos Energy Inc. (BOEM-2023-0027-2005).

Comment: A commenter asserted that there is no compelling case for the proposed rule. They argued that the relatively low risk hardly justifies the proposed rule's regulatory impact, especially considering the potential economic damage it could inflict on Independents and its potential impact on the country's energy and national security. Additionally, they asserted that the evidence presented demonstrates that Independents are fulfilling their decommissioning obligations, rendering the concept of a "moral hazard" associated with them ignoring these obligations unfounded.[64]

Response: BOEM's risk management and financial assurance criteria have not been updated in many years. The most recent update to the regulations, related to requirements for general bonds, was made in August of 2015. Substantive guidance and rulemakings related to risk management and financial assurance have not been updated for at least 20 years. Since that time, the oil and gas industry has changed substantially, and the level of potential risks has also grown substantially. The most important paper issued by the GAO on this topic, published in December 2015 is titled "Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities."[65] As recently as March 2021, in a report to Congress, the GAO prepared a report titled "Updated Regulations Needed to Improve Pipeline Oversight and Decommissioning."[66] There are thousands of oil and gas facilities on the OCS that are no longer being used and which need to be decommissioned. These numbers continue to grow. The Department is committed to ensuring that three key objectives are met with respect to these facilities. First, that all of the facilities no longer being used are decommissioned in a safe and environmentally sound manner. Second, that those who have the primary obligation to remove the facilities are the ones that conduct or fund the decommissioning. Third, that a robust financial security mechanism is in place to ensure that no new facilities are built that may generate unfunded obligations in the future. These objectives cannot be achieved without making changes to the Department's regulations and oversight procedures. BOEM has made several attempts in prior years to resolve this issue and the need for reform has only grown.

Comment: A commenter contended that the true beneficiaries of the proposed rule are the large international companies involved in these transactions, not the American taxpayer. They emphasized that the presence of one of these major oil and gas companies in the chain of title already provides substantial protection for the taxpayer, given the size and sophistication of these corporations. Requiring Independents to post supplemental bonds in this scenario, they argued, primarily benefits the major oil and gas companies at the expense of the Independents. They criticized this as an inappropriate use of Federal rulemaking and argued that it does not serve the interests of the taxpayer.[67]

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[64] Beacon Offshore Energy (BOEM-2023-0027-2013).
[65] Available at: https://www.gao.gov/assets/gao-16-40.pdf
[66] Available at: https://www.gao.gov/assets/gao-21-293.pdf
[67] Beacon Offshore Energy (BOEM-2023-0027-2013).

Response: In most cases where a lease was sold, the transaction was structured to take into consideration that the purchaser would be responsible for the decommissioning obligations associated with the property being purchased, unless other provisions were specifically provided for in the transaction documents (*i.e.*, the transferor expressly kept the decommissioning liability). The price paid by each purchaser would have already taken this obligation into account. Holding the current lessees responsible for the obligations they freely agreed to assume is not biasing the rules in favor of the selling organizations. To the contrary, this policy is consistent with the agreements made between sellers and purchasers of OCS facilities.

Comment: A commenter called for evidence-based rulemaking, suggesting that the regulation may prioritize big oil companies over the interests of citizens, and emphasized the need for accountability, transparency, and unbiased regulations that serve the American people's best interests.[68]

Response: The rulemaking has no provisions that give any preferences to any company on the basis of size. Rather, the rule requires that BOEM compare the cumulative financial obligations of each lessee against its financial capacity to meet those obligations. The fact that larger companies tend to be financially stronger and better capitalized, and therefore less likely to be adversely impacted by the financial provisions of this rule, does not imply that BOEM has discriminated against, or intends to discriminate against, smaller companies.

Comment: A commenter contended that the Department's proposed regulation contradicts the Biden administration's stated commitment to environmental protection, as it targets practices aimed at reducing environmental impact. While the Department claims the regulation is meant to safeguard the environment from lessee negligence, the commenter stated that it overlooks the associated environmental costs. The commenter suggested that the revised rule was likely prompted by the Biden administration's push for increased environmental regulation to address the climate crisis.[69]

Response: There are two issues raised by this comment. The first has to do with the environmental impacts of operations on the OCS itself and the second has to do with the environmental impacts associated with greenhouse gas emissions and their effects on global warming. With respect to the first issue, any financial assurance collected by BOEM is intended to ensure compliance with the Department's regulations, one of whose key purposes is to ensure operational safety and environmental compliance. Nothing in this final rule is intended to prevent or deter compliance with any environmental rules or regulations. With respect to the issue of greenhouse gas emissions, this is addressed in the response to a subsequent comment in Section 13 of this document.

Comment: A commenter asserted that the primary focus of this rulemaking should be to ensure the

[68] Center for Regulatory Freedom (BOEM-2023-0027-0030).
[69] Center for Regulatory Freedom (BOEM-2023-0027-0030).

protection of the American taxpayer, rather than catering to major oil and gas companies. [70]

Response: BOEM agrees with the commenter's assertion that the rulemaking focus on the protection of the American taxpayer and believes that is precisely what is being done with this final rule. The rule makes no changes with respect to who is liable, but merely ensures that those who have outstanding obligations are able to meet those obligations.

Comment: A commenter also raised questions about the necessity of the proposed change, given the existing mechanisms in place that allow regulatory authorities to issue decommissioning orders to predecessors, ensuring timely action is taken to safeguard and decommission abandoned properties. They asserted that the absence of a supplemental bond from the defaulting party would not significantly impact the government's ability to enforce regulations related to maintenance and monitoring of abandoned wells and infrastructure. [71]

Response: To the extent that a company defaults on a decommissioning obligation, it would be in default of its obligation to properly seal wells, pipelines, and other infrastructure, since decommissioning obligations are not limited to the removal of an oil rig but would extend to all connected ancillary equipment. If a company is unable or unwilling to perform its legal obligations and there is no appropriate financial assurance to rely on, BOEM could be forced to hire a third party to perform this activity on its behalf. In the absence of adequate financial assurance, there is a significant risk that this activity would not be reimbursed and that, as a result, the taxpayer would be obligated to cover an obligation that properly belongs to the lessee.

Comment: A commenter emphasized the need to revise regulations governing risk management, financial assurance, and loss prevention in the offshore business environment. They supported strict adherence to contractual and regulatory obligations associated with decommissioning activities for lease owners. The commenter asserted that a robust risk management, financial assurance, and loss prevention program is crucial to prevent the Federal government and U.S. taxpayers from shouldering unaddressed decommissioning obligations.

The commenter insisted that all offshore operators and leaseholders, regardless of their company's size, should be held to uniform high standards when operating on the OCS. They reasoned that adherence to laws, regulations, industry practices, government procedures, and guidelines is vital for ensuring safe and environmentally responsible operations. The commenter expressed a strong commitment to compliance with these standards, underscoring that there should be no deviation in operating protocols.

The commenter affirmed their dedication to conducting business responsibly and in accordance with

[70] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[71] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

applicable laws and regulations, with top priority given to protecting employees and the environment. The commenter also called on other entities in the energy industry to uphold these guiding principles, particularly in offshore operations.[72]

An additional commenter generally supported the Department's proposed rule related to increasing financial assurance and clarifications and streamlining for supplemental bonding.[73]

Response: BOEM concurs with the commenters' assertions and is finalizing updates to the risk management program with this rulemaking in accordance with these principles.

[72] Chevron U.S.A., Inc. (BOEM-2023-0027-1974).
[73] Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753).

Section 2.4 – 2020 Joint Proposed Rule

Comment: In 2020, the Department proposed a new rule to modify its financial assurance procedures, aiming to replace the evaluation of five criteria with two new criteria for providing supplemental financial assurances. According to the commenter, this 2020 proposed rule estimated a decrease in required financial assurances by about $200 million. They contended that this would exacerbate decommissioning problems for the Federal government, U.S. taxpayers, and increase risks to the environment and communities dependent on the GOM. [74]

Response: The commenter is correct in their assertion that BOEM stated the 2020 proposed rule would reduce the financial assurance amount from $3.3 billion to $3.1 billion while focusing on the riskiest properties. The difference between the 2020 proposed rule and the 2023 NPRM is the reliance on predecessors for determining if supplemental financial assurance from the current lessee is required. The Department is finalizing in this rule that predecessors are not used to determine if supplemental financial assurance is required, nor is their presence considered to determine the amount that is required. This is expected to result in a significant increase in financial assurance available to the US government to address decommissioning obligations that are not addressed by lessees.

Comment: In contrast to the 2020 NPRM, a commenter asserted that the new proposed rule mandates double insurance for every OCS property, which they argue is an unnecessary and inefficient redundancy. They drew a parallel to other resource allocations, emphasizing the need for effective resource utilization across various areas. The commenter underscored that the proposed stacking of financial devices aimed to guard against an exaggerated threat, which they argued historically incurred costs similar to other initiatives. The commenter argued that the 2020 NPRM better addressed the issue by avoiding what the commenter refers to as "double insurance." [75]

Response: The assertion that the Department is mandating "double insurance" for every OCS property is incorrect. The Department's policy on financial assurance has always been that the liability for meeting financial and performance requirements under the lease and the regulations was joint and several. Thus, any time a lease was sold, the predecessor would still remain secondarily liable for the completion of the lease obligations until such time as all of those obligations have been met (and the corresponding financial assurance is returned to the lessee). Just because multiple parties may have an obligation to ensure that the lease requirements are fulfilled does not mean that the Department is "double insuring" the lease. This is no different from a situation where three parties to a loan could each be held liable for the full payment obligations under a loan. Instead, the primary difference between the 2020 NPRM and the 2023 NPRM is that the more recent proposed rule recognizes that the current leaseholder is primarily liable for ensuring that the lease obligations are met and is being held responsible for providing sufficient financial assurance to meet those obligations, whereas the

[74] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).
[75] State of Louisiana (BOEM-2023-0027-1985).

prior proposed rule would have allowed a financially incapable party to avoid posting financial assurance provided that some predecessor had the financial capacity to make up for the current lessee's failure. Based on the comments received, the Department has determined that the approach underlying this final rule is more consistent with the historical policy and better aligned with the principle that every lessee should be able to cover its own financial obligations, notwithstanding the contingent liabilities of any third party.

Comment: A commenter cited the success of the joint liability protocol and highlighted that the 2020 NPRM assessed the need for supplemental financial security based on lessees' creditworthiness. They criticized the 2023 NPRM for deviating from this approach and potentially requiring unnecessary bonding.[76]

Response: BOEM is interested in making sure that all lessee obligations in the OCS are met. The past 15 years have shown that the existing regulations were not sufficient to ensure the desired and acceptable level of risk on the OCS, hence this rulemaking was considered necessary. Based on the comments received, the Department has determined that the approach underlying this final rule is more consistent with the historical policy and better aligned with the principle that every lessee should be able to cover its own financial obligations, notwithstanding the contingent liabilities of any third party.

Comment: Regarding the 2020 NPRM, a commenter stated that it balanced safeguarding the American taxpayer from decommissioning liability with the Department's duty to make the OCS available for development. They highlighted that the 2020 NPRM recognized the joint and several liability of all current and former owners for decommissioning, providing a balanced approach for stakeholders involved in offshore development in the GOM. They contrasted this with the current 2023 NPRM, which they viewed as overly punitive to small businesses and too opaque for effective implementation.[77] Similarly, a commenter asked that the 2023 proposed rule be reconsidered, stating that the 2020 proposed rule is a "good place to start."[78]

Response: BOEM acknowledges the main difference between the 2020 proposed rule and the 2023 NPRM as the reliance on predecessors for determining if supplemental financial assurance from the current lessee is required. The Department is finalizing in this rule, as proposed, that predecessors are not used to determine if supplemental financial assurance is required, nor are they considered when determining the amount of supplemental financial assurance required. This is expected to result in a significant increase in financial assurance available to the US government to address decommissioning obligations that are not currently addressed by lessees and grant holders.

[76] Beacon Offshore Energy (BOEM-2023-0027-2013).
[77] Arena Energy, LLC (BOEM-2023-0027-2096).
[78] S. Leimkuhler (BOEM-2023-0027-2070).

Comment: A commenter recommended that the Department withdraw the proposed rule, conduct a more comprehensive evaluation of the pertinent issues, and consider an approach aligned with the 2020 proposed rule and the comments provided on the current rulemaking.[79]

A commenter asserted that the proposed rule significantly deviated from the 2020 NPRM, omitting crucial elements. They argued that the joint-and-several chain-of-title system in place at the time effectively distributed risk, including that of the taxpayer. According to their perspective, supplemental bonding was unnecessary as long as a creditworthy party existed in the chain of title, thereby eliminating any significant decommissioning burden on the Federal government. They highlighted that the 2020 NPRM recognized this and excluded properties "already covered" with financially stable predecessors-in-title.[80]

Response: The major difference between the 2020 and 2023 proposed rules has to do with how the Department treats predecessor liability with respect to the determining the amounts of bonding or other financial assurance required of lessees. The 2020 proposal would have substantially waived financial assurance requirements for companies whose leases and facilities were previously owned by a financially secure company. That approach was changed with the 2023 NPRM based on the comments received on the 2020 proposal. Those comments essentially pointed out that companies currently owning oil and gas facilities could ignore their primary obligation to maintain adequate capital resources to comply with their obligations under their lease, assuming BOEM would have recourse to the resources of predecessors. This is not, and was never, the intent of the financial assurance program. It has always been the Department's policy that current leaseholders should be held primarily responsible for the obligations on their leases and that the current leaseholders should have the financial condition to uphold those obligations (61 FR 34730, July 3, 1996). The current rule supports this interpretation of the policy.

[79] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[80] State of Louisiana (BOEM-2023-0027-1985).

Section 3 – Revisions to Financial Assurance Requirements for Leases

Section 3.1 – Evaluation of Co-lessees' Ability to Fulfill Current and Future Obligations

Comment: A commenter expressed general support for the Department's proposed approach for evaluating co-lessees.[81]

Response: BOEM acknowledges the commenter's 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 that it will not require supplemental financial assurance from properties where at least one co-lessee meets the credit rating threshold.

Comment: A commenter recommended that, for any leases that are not exempt from financial assurance through a lease specific reserve analysis (*i.e.*, the lease has a proved reserve value three times greater than decommissioning liabilities), the Department should require financial assurance from all co-lessees that do not maintain an investment grade credit rating or proxy credit rating for their respective working interest shares.[82]

Response: BOEM acknowledges the commenter's 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. The Department 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. BOEM believes this approach reasonably balances the development of OCS resources with protection for both the taxpayer and the environment.

Comment: A commenter recommended that the evaluation should extend to sublessees when a company can provide evidence that the sublessee was one of the original installers/owners of the lease facilities.[83]

Response: BOEM will continue to evaluate lessees and send demands for financial assurance to record

[81] Hess Corporation (BOEM-2023-0027-1986-0007).
[82] LLOG Exploration Company, LLC (BOEM-2023-0027-1930).
[83] Talos Energy Inc. (BOEM-2023-0027-2005).

title holders, however, if the lessee believes the financial assurance demand needs to be adjusted, companies will be able to submit additional information at that time requesting the adjustment and providing the evidence to support its request. With this rule, BOEM is not changing the process regarding the process by which it sends demands for financial assurance, only the thresholds they need to meet in order to not provide supplemental financial assurance.

Comment: A commenter asserted that the Department should modify its proposed rule to strike proposed 30 CFR § 556.901(d)(3), and issue financial assurance demand orders to the designated operator and each co-owner based on its proportionate ownership interest. The commenter stated that, in addition, the Department should also allow the option for co-owners to satisfy their financial assurance demand orders by providing the Department a single security.[84]

An additional commenter advised the Department to replace the undefined terms "co-lessee or co-grant-holder" with "any other lessee, sublessee, or grant holder."[85]

Response: The Department is finalizing in 30 CFR 556.901(d) that the evaluation for determining whether supplemental financial assurance is required include 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 that supplemental financial assurance will not be required from properties where at least one co-lessee meets the credit rating threshold. However, if no co-lessees meet the minimum credit rating threshold, and the lease does not meet the minimum 3-to-1 value of proved reserves to decommissioning liabilities ratio, the lessees will be required to provide supplemental financial assurance to cover decommissioning liabilities. The supplemental financial assurance can be provided by each co-lessee separately, or by a single security, as long as decommissioning liability is fully covered. With this rule, BOEM is not changing the process by which it sends demands for financial assurance, only the thresholds they need to meet to not provide supplemental financial assurance.

BOEM has revised sections in this final rule to clarify that a co-lessee may only rely on other co-lessees to the extent that co-lessees or co-grant holders share accrued liabilities. The definition of the term "lessee" is sufficiently defined in existing regulations and therefore edits were not made in the final rule in response to this comment.

Comment: A commenter asked, "[w]hen looking at the named parties on a lease and serial register page, does the Department only look at record title holders or can this be further broken down to look at specific aliquots, knowing that those are distinctly defined and often entirely separate

[84] Shell Offshore Inc. (BOEM-2023-0027-2012).
[85] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

operations from the rest of the lease?"[86]

Response: Nothing in this rule prevents BOEM evaluating specific aliquots and it will do so before waiving financial assurance based on co-lessee financial strength.

[86] CAC Specialty (BOEM-2023-0027-1201).

Section 3.2 – Streamlining of Evaluation Criteria

Comment: Several commenters expressed support for streamlining the evaluation criteria.[87] Another commenter expressed support for the Department's revisions that clarify and streamline the Department's standards for supplemental bonding.[88] An additional commenter asserted that the Department should replace the existing five-factor process for determining whether lessees must provide the Department supplemental financial assurance, in favor of the simplicity and predictability of streamlined financial strength criteria.[89]

Response: BOEM acknowledge the commenters' support, and the Department is finalizing, as proposed, in 30 CFR 556.901(d), the replacement of the prior five criteria with two criteria, *i.e.*, credit rating and 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 a backward-looking analysis.

Comment: Several commenters recommended that the evaluation to determine if supplemental financial assurance is required be completely removed. 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.[90] An additional commenter urged the Department to require every lessee to post supplemental financial assurances 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.[91]

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 taxpayers 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

[87] Shell Offshore Inc. (BOEM-2023-0027-2012).; C. Merendino (BOEM-2023-0027-1200); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); Opportune LLP (BOEM-2023-0027-1991); Hess Corporation (BOEM-2023-0027-1986); Chevron U.S.A., Inc. (BOEM-2023-0027-1974).
[88] Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753).
[89] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[90] Ocean Conservancy (BOEM-2023-0027-1961).
[91] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).

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: A commenter expressed concern that the Department has not properly considered the effects this would have on small entities during this rulemaking process. The commenter said that small businesses will be disfavored by these new credit rating standards because small businesses are less likely to have a business credit score and credit ratings agencies consider an entity's size in determining its credit rating.[92]

Response: BOEM acknowledges the commenter's 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 required 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: Several commenters expressed general opposition to the Department's evaluation criteria.[93] One commenter characterized the proposed changes as arbitrary and capricious because the APA requires agencies to establish a "rational connection between the facts found and the choices made" during rulemaking, which the commenter stated is lacking in the proposed rule.[94]

Response: BOEM disagrees with the commenter's assertion that the proposed changes are arbitrary and capricious under the APA. The APA requires BOEM to allow public participation in the regulatory development process through notice and comment rulemaking. BOEM explained in the preamble to the proposed rule at 88 FR 42142 that the proposed criteria were established financial criteria used in

[92] House Committee on Small Business (BOEM-2023-0027-1162).
[93] Center for Regulatory Freedom (BOEM-2023-0027-0030); J. Rogers Smith **(**BOEM-2023-0027-1610).
[94] Center for Regulatory Freedom (BOEM-2023-0027-0030).

the banking and financial industry. Additionally, BOEM explained that the proposed amendment would codify a forward-looking analysis for determining the need for supplemental financial assurance in lieu of a backward-looking analysis. The commenter did not provide any justification for their assertion that BOEM's analysis and proposal was "arbitrary and capricious" under the APA. Moreover, there is a rational connection between the facts found and the choices made and finalized in the final rule. As noted throughout this document, the reasons for this rulemaking and the necessity of modifying the existing regulatory framework are to address the risks in the financial assurance program, as highlighted in the GAO report.

While BOEM acknowledges that to date the Federal government and taxpayer has not had to bear the majority of costs of decommissioning, 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. BOEM seeks to balance the financial risk to the government and the taxpayer with the regulatory burden on lessees and grantees and believes that this final rule achieves an acceptable balance of objectives. The Department is finalizing, as proposed, in 30 CFR 556.901(d), the replacement of the five criteria with the two criteria, credit rating and ratio of proved reserves to decommissioning liability associated with those reserves.

Comment: Several commenters asserted that each and every current lessee and grant holder should be able to demonstrate that it has the financial capability to meet all of its lease or grant obligations, including decommissioning.[95]

Response: BOEM concurs with the commenter's assertion that every current lessee and grant holder be able to demonstrate that it has the financial capability to meet all OCS lease or grant obligations, including decommissioning. In this rule, the Department is finalizing that the credit or proxy credit rating of the current lessees will be one of the two criteria used to determine if supplemental financial assurance is required. BOEM believes this approach and the consideration of proved reserves accurately demonstrates the financial capability of the lessee to meet its OCS obligations.

Comment: A commenter asserted that the new criteria, while claiming to protect taxpayers, lacked compelling evidence of current vulnerability to those taxpayers.[96]

[95] Chevron U.S.A., Inc. (BOEM-2023-0027-1974); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[96] A. Belkin (BOEM-2023-0027-0352) [Form Letter Master].

Response: As discussed in the preamble to the proposed rule, the vulnerability to taxpayers was highlighted in the 2015 GAO report. The report identified three main shortcomings in the Department's approach: (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 assurances to cover liabilities, primarily due to the practice of waiving supplemental bonding requirements, resulting in less than 8% of an estimated $38.2 billion in decommissioning liabilities being covered by financial assurances like bonds; and (3) the Department criteria for assessing lessees' financial strength did not provide accurate information about their ability to cover future decommissioning costs. This statement by the GAO accurately summarizes the issues that BOEM is attempting to address with this rulemaking. In addition, BOEM acknowledges the need for regulatory action due to a recent increase in the number of entities filing for bankruptcy and the fact that, as the age of existing facilities continues to increase, the costs associated with the decommissioning of such facilities (including wells) is likely to increase as well.

Comment: A commenter asserted that it is unclear whether or how a lessee operating under a current permit would be impacted if, at some point, they fail to meet the financial or proved reserve valuation requirements, and if they would be prohibited from operating.[97]

Response: If, within the phased compliance time frame after implementation of the final rule, a party lost its exemption because of changed circumstances (*e.g.*, change in credit rating, or obtaining an OCS lease or grant interest with liabilities exceeding value, or change in parent company), they would be allowed to use the phased compliance approach. BOEM has not made any changes to the regulatory text to address this comment but intends for any party obtaining new decommissioning liability or for any party with changed circumstances within the finalized 3-year compliance phase-in window, to be allowed at the Regional Director's discretion to use the 3-year phased approach to providing supplemental financial assurance. This compliance window will end on the date 3 years after the effective date of this regulation 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.

Comment: A commenter suggested that the Department should allow companies to submit "a tailored financial assurance plan, whereby those properties without any investment grade co-lessees, sublessees or subsidiaries with investment grade backing would be bonded first."[98]

Response: BOEM will require supplemental financial assurance from any lessee that does not meet the criteria (*i.e.,* they do not maintain an investment grade credit rating or the ratio of the value of the proved reserves to decommissioning liabilities associated with those reserves is not equal to or greater than 3-to-1).

[97] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[98] Talos Energy Inc. (BOEM-2023-0027-2005).

Section 3.2.1 – Request for comment: Should supplemental financial assurance be required of all companies, regardless of credit rating? What are the associated impacts?

Comment: Several commenters suggested that all offshore leaseholders, without exception and regardless of credit rating, should post supplemental financial assurance in order to ensure that all operators have the means to decommission and remove wells and every piece of equipment and infrastructure properly.[99] A commenter further stated that a no-exceptions policy would eliminate administrative burdens for the Department, eliminate reliance on credit ratings, would underscore the obligations of lessees and operators for decommissioning activities on the OCS, and would provide an increase in supplemental financial assurance.[100]

A commenter recommended that because current base bonds are insufficient to cover all decommissioning costs, the Department should require all operators to hold decommissioning financial assurance. The commenter further stated that the Department should require all lessees to maintain a Decommissioning Account, to which they would contribute a lump-sum, and annual or monthly payment, and to purchase a surety bond for each individual well. The commenter stated that these requirements would ensure that funds are set aside for future decommissioning activities and are outside the reach of bankruptcy processes.[101]

A commenter expressed support for the proposed rule's increase of "collateral available to the United States for offshore decommissioning expenses," but urged the Department to take a "broader categorical restriction on 'self-bonding' practices that allow oil companies to provide financial assurance in an amount below their anticipated decommissioning expenses" into consideration. The commenter discussed self-bonding practices and regulations, referencing the GAO's review of financial assurances under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). According to the commenter, the "NPRM accompanying the Proposed Rule" does not justify the Department's ongoing acceptance of self-bonding. The commenter concluded that the Department should consider alternatives that would eliminate self-bonding, and urged the Department to remove any provisions that would permit oil companies to self-bond. Instead, suggested the commenter, the Department should "adopt regulations that require all oil companies to provide enough financial assurance to secure their anticipated decommissioning obligations."[102]

Response: BOEM disagrees with the commenters' recommendation to require supplemental financial assurance for all companies, regardless of credit rating. BOEM does not believe requiring all entities

[99] C. Merendino (BOEM-2023-0027-1200); True Transition (BOEM-2023-0027-1696); Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792); Ocean Conservancy (BOEM-2023-0027-1961); Ocean Conservancy (BOEM-2023-0027-1976); The Surety & Fidelity Association of America (BOEM-2023-0027-1998).

[100] Ocean Conservancy (BOEM-2023-0027-1961).

[101] True Transition (BOEM-2023-0027-1696).

[102] Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753).

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. After reviewing public comment and updating the regulatory impact analysis, the Department is finalizing, as proposed, to waive companies with an investment grade credit rating or a value of proved reserves to decommissioning liability associated with those reserves ratio of greater than 3-to-1 from providing supplemental financial assurance. BOEM believes the updated criteria for determining the need for financial assurance will significantly reduce the risk on the OCS and will provide an increase in supplemental financial assurance available to the Department for uncovered decommissioning liabilities in the event of a default. 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.

BOEM disagrees with the commenter's suggestion that all lessees maintain a decommissioning account, to which they would contribute a lump-sum, and annual or monthly payment, and to purchase a surety bond for each individual well. This final rule reduces the risk of lessees/grant holders not having the financial ability to meet their obligations, but by providing multiple paths/options to demonstrate financial assurance, it provides flexibility and reduces potential burdens on industry while meeting the goal of the rulemaking. The Department is finalizing, as proposed, to allow the use of other supplemental financial assurance tools in addition to surety bonds such as decommissioning accounts.

Comment: A commenter stated that they did not support requiring financial assurance for all companies because, for companies that do meet the proposed criteria in 30 CFR 556.901(d), the financial assurance requirement would "unnecessarily [tie] up capital that could be used to invest in further offshore exploration and production that would otherwise contribute millions of dollars annually to the Federal treasury and LWCF in the form of bonus, rental and royalty payments while not putting the U.S. taxpayer at an increased risk for assuming decommissioning liabilities."[103]

Response: BOEM acknowledges the commenter's opposition to requiring supplemental financial assurance for all companies, regardless of credit rating, and is finalizing, as proposed, to waive companies with an investment grade credit rating or ratio of the value of proved reserves to decommissioning liability associated with those reserves of greater than 3-to-1 from providing supplemental financial assurance.

Comment: A commenter stated that they supported the Department's elimination of the Director discretion for financial assurance. They stated that "[a]s a result of the Director's discretion,

[103] Chevron U.S.A., Inc. (BOEM-2023-0027-1974).

BOEM's inconsistent enforcement of its existing regulations has been improper and causes uncertainty for all stakeholders." The commenter further stated that if the Department required financial assurance from all lessees, the leasing program would be more equitable and sustainable.[104]

Response: First, BOEM must clarify that it did not eliminate the discretion of the Regional Director as the commenter states. 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 3-to-1 ratio of the value of proved oil and gas reserves on a lease to the decommissioning liability associated with those reserves.

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 may not accurately or consistently predict financial distress.

[104] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).

Section 3.3 – Elimination of "business stability" criterion

Comment: Several commenters stated that using credit ratings provided by a NRSRO incorporate a broad range of qualitative and quantitative factors, and a business entity's credit rating represents its overall credit risk, or its ability to meet its financial commitments in the future. Of the original five criteria used by BOEM to assess an entity's financial capacity, credit rating was by far the most important. Eliminating reliance on less relevant information, such as length of time in operation to determine business stability, trade references, and record of compliance to determine reliability in meeting obligations is prudent. These criteria are inferior to credit rating and not a good indicator of a lessee's or grant holder's ability to meet its future financial obligations.[105]

Response: BOEM agrees with the commenters' assertion that using credit ratings is more relevant than length of time in operation. Credit ratings and proved oil reserves are good indicators of the likelihood that a company will be able to meet its financial obligations. 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 may not accurately or consistently predict financial capability or, conversely, distress. BOEM has determined that the use of the proposed threshold of investment grade issuer credit rating from an NRSRO or an investment grade proxy credit rating provides an appropriate level of risk reduction. As such, the Department is finalizing, as proposed, to replace the financial capacity and reliability criteria with credit ratings.

[105] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006; Chevron U.S.A., Inc. (BOEM-2023-0027-1974).

Section 3.4 – Elimination of "record of compliance" criteria

Comment: Several commenters expressed support for the elimination of "record of compliance" criteria.[106] One commenter agreed that the proposed rule's assertion that an entity's receipt of incidents of noncompliance is not a salient factor for its financial capacity.[107] Another commenter stated that while there may be some correlation between the number and/or types of incidents of non-compliance (INCs) and those entities that default, utilizing INCs to determine supplemental financial assurance requirements carries many challenges and risks, including:

- The commenter asserted that there are too many variables to draw conclusions based on "perceived correlations."
- While companies at or near bankruptcy may have historically received a higher-than-average total number of INCs or ratio of INCs to inspections, the commenter reasoned that a bankruptcy filing is distinct from an entity's likelihood of default.
- Given observed disrepair and poor maintenance, the commenter suggested that some current owners will not be further dissuaded from meeting their compliance obligations should the Department remove "record of compliance" as a supplemental financial assurance criterion.[108]

Response: BOEM concurs with the commenter's assertion that "there are too many variables to draw conclusions based on perceived correlations" between a company's financial health and the number of INCs they receive. As discussed in the preamble to the proposed rule at 88 FR 42142, BOEM examined the number of 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 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) ratio of the value of proved reserves to decommissioning liability associated with those reserves. 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.

Comment: Several commenters expressed opposition to the proposed removal of the record of

[106] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); Shell Offshore Inc. (BOEM-2023-0027-2012).
[107] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[108] Shell Offshore Inc. (BOEM-2023-0027-2012).

compliance criteria,[109] citing reports of INCs[110] and asking if the Department has developed a better violation report paradigm to replace the criteria.[111]

Listing examples of INCs, a commenter urged the Department to be more attentive to past safety performance[112] and another commenter asked the Department to establish fitness to bid/fitness to operate standards that prevent weak or poor-performing operators from bidding on or otherwise acquiring OCS oil and gas leases.[113]

A commenter expressed concern regarding the Department's assertion that the number of INCs is merely correlated with the size and complexity of operators' operations. The commenter said this analysis is "oversimplified" and overlooks the significance of the number of INCs as an indicator of safety performance and financial health.[114]

A commenter stated that the Department has sufficient means to monitor and regulate compliance, recommending the creation of a scoring system that grades companies on various metrics that the Department could incorporate into its supplemental financial assurance waiver risk analysis.[115]

Other commenters highlighted issues related to "idle iron." A commenter recommended that the Department supplement the use of credit ratings with consideration of the lessee's record of compliance, including requiring supplemental financial assurances for companies that have not decommissioned idle iron.[116] Citing recent studies, a commenter said that the Department should stipulate that historic or current owners of abandoned or idle wells in Federal waters that need decommissioning should not be eligible for new leases.[117]

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 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

[109] True Transition; Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792); Ocean Conservancy (BOEM-2023-0027-1961); Ocean Defense Initiative (BOEM-2023-0027-1977).
[110] True Transition (BOEM-2023-0027-1696).
[111] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[112] E. Danenberger (BOEM-2023-0027-1219).
[113] Ocean Conservancy (BOEM-2023-0027-1961).
[114] Center for Regulatory Freedom (BOEM-2023-0027-0030).
[115] True Transition (BOEM-2023-0027-1696).
[116] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).
[117] Ocean Defense Initiative (BOEM-2023-0027-1977).

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.

With respect to the commenter's assertion that the Department should stipulate that historic or current owners of abandoned or idle wells in Federal waters that need decommissioning should not be eligible for new leases, BOEM acknowledges the comment, but this rule is focused on ensuring that there is sufficient financial assurance to cover decommissioning obligations on current leases and grants. Thus, the comment is out of scope for this rule. This rule reiterates that noncompliance with financial obligations can be a basis for disapproving new leases or assignments. Supplemental financial assurance will need to be provided for all decommissioning obligations from lessees that do not meet the credit rating or reserve criteria, including those related to idle iron.

Section 3.4.1 – Request for comment: Should BOEM use violations and fines to determine companies' ability to fulfill decommissioning obligations?

Comment: A commenter emphasized the legal obligation for the Department to assess diligence on leases, using fines and violations to gauge continued program participation. They argued that this evaluation tool should also apply to determine if a company warranted a waiver for supplemental financial assurance. The commenter contended that INCs should continue to be a metric for risk assessment, highlighting the importance of consequences for rule violations.[118]

Response: While the commenter offered a conceptual argument to use fines and violations to determine if a company should be allowed a waiver for supplemental financial assurance, 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

[118] True Transition (BOEM-2023-0027-1696).

determining that supplemental financial assurance is needed because of the number of INCs.

Section 3.4.2 – Request for comment: Does the elimination of INC's criteria create a disincentive to comply with regulations?

Comment: A commenter asserted that removal of the "record of compliance" criterion for financial assurance will not create a disincentive for regulatory compliance, reasoning that the BOEM and BSEE have sufficient enforcement tools.[119]

Response: BOEM agrees with the commenter's assertion that BOEM and BSEE have sufficient enforcement tools and, therefore, the removal of the "record of compliance" criterion from the financial assurance requirement evaluation will not create a disincentive for regulatory compliance. As discussed in the preamble to the proposed rule at 88 FR 42142, BOEM examined the number of INCs, their severity, and the relationship between INCs and financial health/strength of companies and found the data was not a reliable indicator of financial distress. 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 is finalizing, as proposed, the removal of the "record of compliance" criterion in 30 CFR 556.901(d).

Comment: A commenter stated that a counterpoint to the "moral hazard" argument presented by the Department is that an operator's prior compliance with BOEM and BSEE regulations should be a significant indicator as to whether an operator would or would not rely on the "majors' backstop." The commenter said that the Department should allow the inclusion of pertinent predecessor lessees only if the current lessee(s) have a good compliance record.[120] Another commenter remarked that moral hazard is a symptom of asymmetric information because the insured party has more information about themselves and their future intentions than the insurer. According to the commenter, this proposal does not solve a moral hazard problem, nor would the alternative create a new one.[121]

Response: BOEM explained in the IRIA that the less stringent regulatory alternative could theoretically introduce a moral hazard into offshore oil and gas operations, including decommissioning obligations. It further explained that the concept of a moral hazard is that a party protected in some manner from risk will act differently than it would if that party did not have protection. However, during the public comment period, BOEM received comments which suggested differing viewpoints as to where moral hazard exists. Because of the points raised in the comments, BOEM has removed

[119] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[120] CAC Specialty (BOEM-2023-0027-1201).
[121] SBA (BOEM-2023-0027-1699).

the moral hazard discussion from the final RIA.

Section 3.4.3 – Request for comment: Is the cost of decommissioning likely to increase based on the type, quantity, and magnitude of previous violations?

Comment: A commenter stated that the Department already has data that the cost of decommissioning is likely to increase based on the type, quantity, and magnitude of previous violations. Citing a GAO report, the commenter asserted that the longer a structure is present in the Gulf, the more likely it is to be damaged by a storm, requiring riskier and more difficult, time-consuming salvage work. The commenter estimated that decommissioning a storm-damaged structure may cost 15 times or more than the cost of decommissioning an undamaged structure.[122]

Response: As discussed in the preamble to the proposed rule at 88 FR 42142, BOEM examined the number of INCs, their severity, and the relationship between INCs and financial health/strength of companies and found the data was not a reliable indicator of financial strength. Additionally, BSEE has its own policies regarding safety performance. The commenter's assertion that "the longer a structure is present in the Gulf, the more likely it is to be damaged by a storm, requiring riskier and more difficult, time-consuming salvage work" does not provide a correlation between INCs and the cost of decommissioning increases associated with those INCs.

[122] True Transition (BOEM-2023-0027-1696).

Section 3.5 – Replacement of "financial capacity" and "reliability criteria" with credit ratings

Comment: A commenter stated that using issuer credit rating or a third-party credit model is improper, citing the volatility of oil and gas commodities in recent years. The commenter concluded that using credit ratings would lead to ultimately placing the financial burden upon the taxpayer and recommended that the Department consider financial assurance providers like sureties to underwrite these risks.[123]

Response: BOEM disagrees with the commenter's assertion that using credit ratings will ultimately lead to placing the burden on the taxpayer. As discussed in the preamble to the proposed rule (88 FR 42142), DOI proposed to use credit ratings to streamline the evaluation for determining if supplemental financial assurance is required. This streamlined approach is expected to evaluate a lessee's financial health more accurately as compared to the use of "financial capacity" and "reliability in meeting obligations based on credit rating or trade references" and is a widely accepted financial risk evaluation method used by the banking and finance industry. Credit ratings and proved oil reserves are good indicators of the likelihood that a company will be able to meet its financial obligations. 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 may not accurately or consistently predict financial distress. BOEM has determined that the use of the proposed threshold of investment grade issuer credit rating from an NRSRO or an investment grade proxy credit rating provides an appropriate level of risk reduction. As such, the Department is finalizing, as proposed, to replace the financial capacity and reliability criteria with credit ratings. The rulemaking continues the practice of relying on financial assurance providers such as sureties when unreasonable risk has been determined.

Comment: A commenter expressed support for the proposal to modify 30 CFR 556.901(d) to rely on issuer and proxy credit ratings but requested the Department provide clarity on whether and how frequently it will monitor credit ratings. The commenter suggested that the Department monitor issuer credit ratings, provided by S&P Rating Services, Moody's Investors Service Incorporated, and Fitch Ratings, at least on a yearly basis and prior to the approval of an assignment.[124]

Response: BOEM acknowledges the commenter's support for the proposal to modify § 556.901(d) to rely on issuer and proxy credit ratings. 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

[123] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[124] Shell Offshore Inc. (BOEM-2023-0027-2012).

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.

With respect to the commenter’s assertion that BOEM should review the credit rating prior to the approval of an assignment, 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.

Comment: Several commenters expressed support for relying on credit ratings,[125] adding that a credit rating threshold of BBB- or higher is appropriate.[126] If the Department were to consider additional financial tests, one of the commenters expressed support for a “Net Worth Test” for lessees who provided financials that support “Assets minus Liabilities” of greater than $5 billion.[127]

Response: BOEM acknowledges the commenters’ support for relying on credit ratings, and the Department is finalizing, as proposed, to replace the financial capacity and reliability criteria with credit ratings. As discussed in the preamble to the proposed rule (88 FR 42142), DOI proposed to use credit ratings to streamline the evaluation for determining if supplemental financial assurance is required. This streamlined approach is expected to evaluate a lessee’s financial health more accurately as compared to the use of “financial capacity” and “reliability in meeting obligations based on credit rating or trade references” and is a widely accepted financial risk evaluation method used by the banking and finance industry. BOEM has determined that the use of the threshold of investment grade issuer credit rating from an NRSRO or an investment grade proxy credit rating provides an appropriate level of reduction in financial risk and an additional test of net worth is not necessary.

Additionally, as for the commenter’s suggestion to use a “net worth test” for lessees who provide

[125] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); bp America Inc. (BOEM-2023-0027-2003); Chevron U.S.A., Inc. (BOEM-2023-0027-1974); Shell Offshore Inc. (BOEM-2023-0027-2012).
[126] Chevron U.S.A., Inc. (BOEM-2023-0027-1974); bp America Inc. (BOEM-2023-0027-2003).
[127] bp America Inc. (BOEM-2023-0027-2003).

audited financials to BOEM, the GAO report indicated that "net worth provides limited value to assess a company's financial strength and ability to pay future liabilities." They also reported that "net worth is 'backward looking' and can be skewed by the volatile nature of commodity prices, among other factors." They further noted that "[c]redit rating agencies use financial measures that emphasize the evaluation of cash flow, such as debt-to-earnings and debt-to-funds from operations to evaluate whether a company will be able to pay its liabilities." As such, BOEM did not include a net worth analysis in the final rule.

Comment: A commenter asked if this rule, by establishing tiers largely based on credit ratings, would disproportionately impact small businesses?[128]

Response: BOEM acknowledges the commenter's concern, however, it is not requiring financial assurance based on the size of companies, but their ability to meet their obligations. BOEM is evaluating the financial strength of all companies in order to ensure that the development of energy in the OCS is safe, strong, 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 to allow entities without a rating to request that 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. For all entities, regardless of size, without an investment grade credit rating or a lower than 3-to-1 ratio of the value of proved reserves to decommissioning liabilities associated with those reserves, the Department is finalizing the use of decommissioning data at the P70 level. 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 assurance available in the case of a default.

Comment: A commenter said that regarding the use of credit ratings to assess an entity's financial capacity, eliminating reliance on less relevant information, such as length of time in operation to determine business stability, trade references, and record of compliance to determine reliability in meeting obligations is prudent. The commenter remarked that these criteria are inferior to credit rating and not a good indicator of a lessee's or grant holder's ability to meet its future financial obligations.[129]

Response: BOEM acknowledges the commenter's support and agrees with their assertion that the

[128] House Committee on Small Business (BOEM-2023-0027-1162).
[129] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

existing criteria are not as good of an indicator of a lessee's ability to meet its future financial obligations as those in the final rule. the Department is finalizing, as proposed, to replace the financial capacity and reliability criteria with credit ratings.

Comment: Several commenters suggested simplifying the financial strength criterion to use forward-looking data based on an entity's audited financial statements.[130]

Response: The Department is finalizing the replacement of the five criteria approach with two criteria, credit rating and ratio of proved reserves to decommissioning liability. This rule codifies a forward-looking analysis for determining the need for supplemental financial assurance in lieu of a backward-looking analysis. BOEM will use audited financial statements to develop proxy credit ratings if an entity does not have an issuer credit rating. Credit ratings are good indicators of the likelihood that a company will be able to meet its financial obligations and reduce the need for BOEM to review audited financial statements independently, as the NRSROs will have already done so in their analysis to issue the rating.

Section 3.5.1 – Request for comment: Alternative options for determining the need for supplemental financial assurance

Comment: A commenter suggested that, in evaluating the need for supplemental bonding, the Department should consider: not requiring supplemental bonds for properties where at least one current or former owner has a credit rating or proxy rating that does not represent a significant risk of default on decommissioning obligations; reducing the required amount for supplemental bonding by the amount of private bonding already in place; and ensuring that any new supplemental bonding issued should be "callable by BOEM **only if**: (i) BSEE has issued decommissioning orders to all current and former owners, **and** (ii) all current and former owners fail to perform or pay for the decommissioning." The commenter argued that these risk-based considerations would "achieve the goal of protecting the taxpayer while, at the same time, avoid all the devastating consequences outlined in this comment," and ensure that "supplemental bonding available in the market is targeted to where the actual risk to the taxpayer lies and thus any additional costs imposed on small business are narrowly tailored and justified."[131]

Response: BOEM disagrees with the commenter's assertion that the department should consider not requiring supplemental financial assurance for properties where at least one current or former owner has a credit rating or a proxy rating that does not represent a significant risk of default on decommissioning obligations. BSEE and BOEM regulations hold predecessors (for obligations accrued during their period of liability) and current co-lessees responsible for decommissioning

[130] Opportune LLP (BOEM-2023-0027-1991); Murphy Oil Corporation (BOEM-2023-0027-2007).
[131] Arena Energy, LLC (BOEM-2023-0027-2096).

when a current lessee is unable to perform its obligations. The omission of predecessor lessees as determinative of a current lessee's financial assurance requirement from the proposed approach addressed several financial assurance issues. It ensures the current lessees have the financial capability to fulfill their decommissioning obligations and discourages lessees from ignoring end-of-life decommissioning costs. It also simplified potential administrative demands since it obviates the need for parties to distinguish between wells with predecessor lessees and more recent sole-liability wells, side-track wells, and other sole-liability components. The proposed rule retained the authority to pursue predecessor lessees for the performance of decommissioning; however, it would not rely on the financial strength of predecessor lessees when determining whether, or how much, supplemental financial assurance should be provided by current OCS leaseholders. The Department is finalizing this approach, as proposed. DOI is finalizing the use of the P70 value to determine the amount of supplemental financial assurance required from the current lessee if it does not meet either of the financial criteria: an investment-grade credit rating or a minimum of a 3-to-1 ratio of proved reserves to decommissioning liabilities associated with those reserves (as discussed in sections III.A and III.D of the final rule preamble). Additionally, as discussed in section III.A of the final rule preamble, leases with co-lessees that have an investment-grade credit rating will not be required to provide supplemental financial assurance. This approach will hold all current lessees responsible for providing supplemental financial assurance, when necessary.

BOEM also disagrees with the commenter's suggestion to reduce the required amount for supplemental bonding by the amount of private bonding already in place. Private bonding that DOI cannot call in the case of abandoned infrastructure does not answer the government's need to minimize risk to the taxpayer.

Additionally, BOEM is not changing its process for when it will call financial assurance. Current lessees will be required to provide supplemental financial assurance if they do not meet the credit rating or reserve criteria.

Section 3.6 – Replacement of "projected financial strength" with ratio of proved oil and gas value to cost of decommissioning

Comment: Several commenters said that the ratio of the value of proved reserves to lease decommissioning costs should not be used to reduce supplemental financial assurance. The commenters asserted that oil and gas prices can fluctuate, changing the value of reserves, and the costs to decommission can also fluctuate.[132] Another commenter said that in their experience with two recent bankruptcies, there can be a significant difference in the reported asset value, estimated production life, decommissioning costs, and the decommissioning schedule from when the company was operating normally as compared to operating in Chapter 11.[133] A commenter stated that the Department should "eliminate the use of the value of proved oil and gas reserves to waive supplemental financial assurances."[134]

Response: BOEM's general practice of reviewing 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 annual financial statements) will also involve reviewing the ratio of the value of proved reserves to lease decommissioning costs associated with those reserves. The amended regulation would not preclude a demand for supplemental financial assurance through the Regional Director's regulatory authority at any time, which includes if a lessee does not maintain an investment grade credit rating and the ratio of the value of proved reserves to decommissioning liabilities associated with those reserves drops below 3-to-1. BOEM uses the most recent data to maintain the assurance levels are updated. The value of assets and credit ratings are common financial variables used in the banking/financial industry to manage risk.

Additionally, as discussed in the preamble to the proposed rule at 88 FR 42148, in BOEM's judgment, a proved reserves-to-decommissioning liabilities cost ratio that meets or exceeds 3-to-1 provides enough risk reduction to justify a determination that the lessee is not required to provide supplemental financial assurance for that lease. This protects the taxpayer during periods of commodity price volatility. If commodity prices decline in a manner similar to late 2014 through early 2016, for example, BOEM believes this ratio assures the property would most likely retain its economic viability and financial attractiveness to potential buyers in a bankruptcy sale.

Comment: Several commenters supported the 3-to-1 ratio, as using this test would allow the Department to know when a producing lease is still producing sufficient revenue to meet current and potential future lease obligations, and to know when to begin a dialogue with the lease operator to

[132] E. Danenberger (BOEM-2023-0027-1219); Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792); Ocean Defense Initiative (BOEM-2023-0027-1977); Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753).
[133] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[134] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).

ascertain their plans for addressing decommissioning obligations.[135]

Response: BOEM acknowledges the commenters' support and is finalizing, as proposed, the replacement of the "projected financial strength" criterion with the 3-to-1 ratio of proved oil and gas reserves value to decommissioning cost liabilities associated with those reserves.

Comment: A commenter said that the 3-to-1 ratio is essentially describing the oil and gas industry's own Economic Limit (EL) analysis to determine eligibility for the supplemental financial assurance waiver, and this new process will merely sanction the ongoing practice of divesting mature assets to avoid asset retirement obligations (AROs).[136]

Response: BOEM disagrees with the commenter's assertion that the use of the ratio will "sanction the ongoing practice of divesting mature assets to avoid [AROs]." As discussed in the preamble to the proposed rule at 88 FR 42148, in BOEM's judgment, a reserves-to-decommissioning cost ratio that meets or exceeds 3-to-1 provides enough risk reduction to justify a determination that the lessee is not required to provide supplemental financial assurance for that lease. This protects the taxpayer during periods of commodity price volatility. If commodity prices decline in a manner similar to late 2014 through early 2016, for example, BOEM believes this ratio assures the property would most likely retain its economic viability and financial attractiveness to potential buyers.

Comment: A few commenters supported the 3-to-1 ratio but said that the proved reserves should be calculated on a unit basis or a field or hub basis, rather than a lease basis. The commenters said that restricting the calculation against the reserves on a lease basis does not reflect the economic reality of an oil and gas development project.[137]

Response: In response to this comment, BOEM has revised the regulatory text to include that the proved reserves can be calculated on a unit or a field basis. The presentation of the proved reserves will depend on the decommissioning liability to be covered, a practice that should be familiar to companies that have reserve-based loans.

Comment: Several commenters asserted that the value of decommissioning liability should be added back to the reserve value utilized to avoid double counting.[138]

Response: BOEM agrees with the commenter that the decommissioning liability should not be double counted; it is not the Bureau's intent to double count the decommissioning liability. The regulations

[135] Chevron U.S.A., Inc. (BOEM-2023-0027-1974); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); Shell Offshore Inc. (BOEM-2023-0027-2012).
[136] True Transition (BOEM-2023-0027-1696).
[137] Hess Corporation (BOEM-2023-0027-1986); bp America Inc. (BOEM-2023-0027-2003); Murphy Oil Corporation (BOEM-2023-0027-2007).
[138] Opportune LLP (BOEM-2023-0027-1991); Murphy Oil Corporation (BOEM-2023-0027-2007).

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.

Comment: A commenter recommended that the Department not create third party auditing requirements beyond existing rules and standards of the SEC.[139]

Response: BOEM did not propose, and is not creating, third party auditing requirements with this final rule. As stated in the preamble to the proposed rule at 88 FR 42148, DOI proposed to use SEC regulations on reserve reporting because they are commonly accepted and understood by the offshore oil and gas companies and documents in response to them 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 those regulations. Companies can decide whether presentation of such information to obtain exemption from financial assurance requirements is cost-effective.

Comment: A commenter said that financial assurance requirements should be designed around the unique risks of each operator and contended that the proposed rule's focus on a "3:1 Reserves: ARO" ratio is arbitrary and not a good measure of a company's ability to meet its decommissioning obligations. Additionally, they asserted that other metrics provide a more financially sound and reliable measure of a company's ability to satisfy its decommissioning obligations, including cash balances, net debt, production levels, and the expected remaining productive life of producing assets, and planned near-term decommissioning schedules.[140]

Response: BOEM disagrees with the commenter's assertion that the rule's main focus is the 3-to-1 proved reserves to decommissioning liability ratio; the main focus in the rule for determining the financial stability of an entity is that entity's credit rating. DOI proposed to add the ratio to reduce the burden on businesses that may not maintain an investment grade credit rating for various reasons by providing the alternative as a waiver for supplemental financial assurance. When a financial institution looks at the risk of a company, it looks at the credit rating of the company and the value of assets versus the liability of the company, which is also in DOI's finalized approach.

[139] Murphy Oil Corporation (BOEM-2023-0027-2007).
[140] QuarterNorth Energy LLC (BOEM-2023-0027-2001).

Section 3.6.1 – Request for comment: End-of-Life (Years) evaluation of asset value as alternative to decommissioning cost ratio

Comment: Several commenters expressed support for decommissioning ratios in lieu of End-of-Life, saying that End-of-Life is subject to more variables and decommissioning ratios offer adequate warning of the need for supplemental financial assurance.[141]

Response: BOEM acknowledges the commenters' support for the ratio in lieu of an end-of-life evaluation and has finalized, as proposed, the 3-to-1 decommissioning ratio in lieu of the End-of-Life alternative.

Comment: A commenter asked what the Department would consider an adequate threshold of useful life to provide the same assurance as proved value.[142] Another commenter requested clarification on how End-of-Life (Years) differs from a 3-to-1 ratio of value of reserves to decommissioning costs. The commenter said that the number of years left on a lease are determined by the remaining production.[143]

Response: The criteria of 3-to-1 ratio is based on the value of the asset versus the cost of decommissioning the asset. When a financial institution looks at the risk of a company, it looks at the credit rating of the company and the value of assets compared to the liability of the company. In essence BOEM is doing the exact same thing. Reserve-based loans from a bank to an oil company look at reserves in a similar manner in which the rule finalizes.

Comment: A commenter supported the proposal to not require supplemental financial assurance from lessees where the value of reserves on the lease exceeds three times the decommissioning liabilities with that lease but recommended that the Department also exempt from supplemental financial assurance all leases where there are at least 4 years of production remaining on the lease.[144]

Response: BOEM is not adding the End-of-Life (years) alternative to the final rule, and therefore is not adding a provision to allow exemption from supplemental financial assurance on leases where there are at least 4 years of production remaining on the lease. The commenter's recommended exemption may not accurately account for the financial liabilities associated with decommissioning activities on a lease, potentially limiting the sale of the lease in the event of a default. This scenario would not adequately protect the government and the taxpayer from funding decommissioning activities, without valuing those reserves and the liabilities. BOEM believes the use of credit ratings and a ratio

[141] Chevron U.S.A., Inc. (BOEM-2023-0027-1974); Opportune LLP (BOEM-2023-0027-1991); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); Shell Offshore Inc. (BOEM-2023-0027-2012).
[142] CAC Specialty (BOEM-2023-0027-1201).
[143] True Transition (BOEM-2023-0027-1696).
[144] Talos Energy Inc. (BOEM-2023-0027-2005).

of the value of proved reserves to decommissioning liabilities associated with those reserves will provide BOEM sufficient time to recognize when an entity may be struggling financially and at risk for default, without adding an alternative criterion such as number of years of remaining production on a lease. 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. BOEM believes this provides enough risk reduction to justify a Regional Director determination that the lessee is not required to provide supplemental financial assurance for that lease. Establishing an appropriate ratio protects the taxpayer during periods of commodity price volatility. If commodity prices decline in a manner similar to late 2014 through early 2016, for example, BOEM believes a ratio of the value of proved reserves to decommissioning liability associated with those reserves of a minimum of 3-to-1 assures the property would most likely retain its economic viability and financial attractiveness to potential buyers.

Section 3.7 – Use of BSEE's probabilistic decommissioning cost estimates for determining supplemental financial assurance requirements

Comment: Several commenters expressed general support for the Department's proposal to use P70 decommissioning cost estimates from BSEE.[145] Additional commenters recommended adopting, at a minimum, the P70 estimate to stay consistent with the stated purpose of the proposed rule.[146]

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: A commenter asserted that the P70 estimate is not sufficiently conservative to protect other parties and the public in the event of default.[147]

Response: BOEM disagrees with the commenter's 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 the 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 companies 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

[145] Chevron U.S.A., Inc. (BOEM-2023-0027-1974); Hess Corporation (BOEM-2023-0027-1986); Murphy Oil Corporation (BOEM-2023-0027-2007).
[146] bp America Inc. (BOEM-2023-0027-2003); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[147] E. Danenberger (BOEM-2023-0027-1219).

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: Multiple commenters asserted that the proposed rule did not include sufficient information and transparency about how the probabilistic estimates are made.[148]

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. 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. 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

[148] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792); Opportune LLP (BOEM-2023-0027-1991).

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. The current estimates can be found here: https://www.data.bsee.gov/Leasing/DecomCostEst/Default.aspx.

Comment: A commenter recommended utilizing lessees' calculation of decommissioning liability for deep water operations and utilizing P50 for shallow water operations. The commenter added that a more accurate system of calculating decommissioning in the deep water is needed.[149]

Response: BOEM has considered this comment but has decided not to change the risk threshold based on whether the lease covers deep water operations or shallow water operations. The final rule establishes a procedure for submitting these issues to the Regional Director for consideration in a reduction in the supplemental financial assurance demand. 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. 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.

The Department is finalizing in 30 CFR 556.901, as proposed, the use of P70 to determine the amount of supplemental financial assurance required for all 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 at not greater than or equal to least 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: Several commenters asserted that the P70 estimates prepared by BSEE are significantly higher than the actual costs necessary to complete the work based on experience.[150] A commenter stated that their current escrow account with the Department for future abandonment significantly exceeds the Department's P50 estimates and added that the commenter's internal estimates are based on contractors' bids and their past experience. The commenter expressed concern that requiring them to deposit additional cash in excess of their likely obligations would inhibit their ability to invest in maintaining and increasing their production. The commenter said that this would shorten the economic life of their assets and reduce future royalty and tax payments without providing any

[149] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[150] Cantium, LLC (BOEM-2023-0027-1592); Apache Corporation (BOEM-2023-0027-1732).

additional security to the Federal government.[151] An additional commenter asserted that the P50 estimate more accurately captures a lessee's total decommissioning liability within the lessee's portfolio than the proposed P70 estimate.[152]

Response: BOEM acknowledges the commenters' concerns that the P70 estimates may be higher than the actual cost of decommissioning for a single specific facility but highlights that BSEE's P-values are based on the cumulative results of industry-submitted data which demonstrate that other similar properties have been decommissioned for larger amounts than the commentor is anticipating. If the commentor wishes to demonstrate evidence for lower decommissioning costs, the final rule establishes a procedure for submitting these issues to the consideration of the Regional Director for a reduction in the supplemental financial assurance demand.

Comment: A commenter recommended the creation of an OCS-wide levy that is deposited into a dedicated trust fund, "similar to the federal Abandoned Mine Land Fund, maintained by the Department of the Interior." The commenter suggested that this "Orphaned Liability Trust Fund" could be in the form of an additional royalty percentage or a flat fee across lessees. They further asserted that if the Department were to opt for the lower P70 figure, DOI should impose an additional royalty percentage or flat fee to be deposited into an Orphaned Liability Trust Fund, with BSEE as beneficiary to reduce cost exposure to the public.[153]

Response: BOEM lacks statutory authority to impose an additional royalty percentage or flat fee to be deposited into an Orphaned Liability Trust fund as a result of this rulemaking. OCSLA does not provide such authority at this time, therefore this comment is out of scope.

Comment: A commenter asserted that the Department should base the amount of supplemental financial assurance required on the BSEE decommissioning cost estimate using decommissioning expenditures reported by offshore companies.[154]

Response: BOEM acknowledges the commenter's support for the use of BSEE's decommissioning cost estimates using expenditures reported by offshore companies and is finalizing its use in this rulemaking.

Comment: A commenter expressed support for the use of BSEE's P90 decommissioning estimates over the use of BSEE's P70 estimates. The commenter said that they have found instances where BSEE's P90 estimates were sometimes lower and sometimes higher than the cost of decommissioning upon execution. The commenter stated that instead of promulgating a lower estimate of P70, the Department should rely upon BSEE's P90 estimates and BSEE should continue to refine its

[151] Ridgelake Energy (BOEM-2023-0027-1938).
[152] Beacon Offshore Energy (BOEM-2023-0027-2013).
[153] True Transition (BOEM-2023-0027-1696).
[154] Hess Corporation (BOEM-2023-0027-1986).

decommissioning estimates to better reflect actual decommissioning expenses rather than the Department accepting a greater risk (through P70) that it has under current secured offshore decommissioning liabilities.[155] An additional commenter expressed support for utilizing 90 percent for the probabilistic estimates for decommissioning costs.[156]

Response: BOEM disagrees with the commenters' recommendation for the use of a higher P-value, and based on comments and further analysis of regulatory impacts, the Department is finalizing the use of P70 to determine the amount of supplemental financial assurance required from the current lessee if they do not maintain an investment grade credit rating or their proved reserves to decommissioning costs ratio is less than 3-to-1. This approach requires that all current lessees are held responsible for providing supplemental financial assurance.

BOEM's goal for its financial assurance program continues to be the protection of the American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production companies at a competitive disadvantage. 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. As discussed in the RIA, BOEM's total expected financial assurance portfolio at P90 levels would hold an additional $5 billion over P70 levels. Requiring financial assurance at the P-90 value would cost approximately $1,039 million, an increase of approximately $374 million in annual financial assurance premiums over the P70 levels.

BOEM considered bonding at P90, which would result in the lowest possible 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: A commenter recommended that the Department adopt, at a minimum, the P70 estimate for decommissioning costs, as a lower estimate would be inconsistent with the stated purposes of the

[155] Shell Offshore Inc. (BOEM-2023-0027-2012).
[156] Murphy Oil Corporation (BOEM-2023-0027-2007).

proposed rule. The commenter also expressed the expectation that BSEE will need to continue refining its estimates based on actual data, so that the actual costs will fall within the probabilistic range. [157]

Response: BOEM acknowledges the commenter's support for the use of P70. The Department is finalizing the use of P70 for determining the amount of supplemental financial assurance required for lessees that do not have an investment grade credit rating or the ratio of the value of their proved reserves to decommissioning liabilities for those reserves is less than 3-to-1. BSEE continues to refine its estimates based on actual decommissioning data which will then be used to update the supplemental financial assurance requirements.

Comment: A commenter requested clarification on how the financial assurance amount would be calculated. Specifically, they requested clarification on if the calculations would consider additional private security (*e.g.*, private bonds, decommissioning escrow funds, letters of credit) guaranteeing decommissioning performance provided by a current lessee in favor of a predecessor lessee.[158]

Response: BOEM's financial assurance amounts are based on BSEE's probabilistic estimates which are publicly available at https://www.data.bsee.gov/Leasing/DecomCostEst/Default.aspx. BOEM is not privy to private transactions and does not know the arrangements made between private parties; BOEM will account for dual obligee bonds, but will not consider securities that BOEM cannot call in the case of default.

Comment: A commenter asserted that BOEM will utilize BSEE's historically averaged decommissioning estimates without becoming more familiar with the lease's infrastructure and individual assets, discounting the operator's vast experience with decommissioning and its own infrastructure. They noted that, in "many cases, the operator may already have contractual arrangements with reputable decommissioning contractors that support the decommissioning cost estimates the operator provides for determining the required amount of financial assurance." As such, the commenter recommended that BOEM and BSEE "allow the lease owner to present its own decommissioning estimates and additional information BSEE may not have considered, such as a contractual agreement with a reputable decommissioning contractor which can be made transferrable to or assumable through normal bankruptcy proceedings."[159]

Response: BOEM acknowledges the commenter's concerns that the P70 estimates may be higher than the lessee's actual cost of decommissioning for specific platforms. The final rule establishes a procedure for submitting these issues and supporting documentation to the Regional Director for consideration of a reduction in the supplemental financial assurance demand.

[157] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[158] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[159] Talos Energy Inc. (BOEM-2023-0027-2005).

Comment: A commenter asserted there was a mathematical error in BSEE's decommissioning estimates, emphasizing the need for assessments to be based on present value. They asserted that comparing undiscounted decommissioning liability to the present value of underlying reserves was an incorrect analysis. The commenter insisted that amendments to the proposed ratio calculation were necessary to avoid double-counting, emphasizing that failure to make these corrections would have been categorically incorrect.[160]

Response: 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.

Comment: A commenter suggested that the Department first determine the average cost of plugging, capping, and removing the infrastructure of abandoned wells in each Gulf of Mexico Zone (*e.g.,* wetlands, shallow water/coastal, and deep water). The commenter suggested the Department change the proposed rule to require each company to post a bond for each of its proposed wells that cover the Department-determined average cost of closure, post-closure, third-party liability, and corrective action. The commenter further suggested the Department promulgate a rulemaking that would require industry members to cap or plug abandoned wells and remove all infrastructure that does not benefit the environment or be charged a daily fine. Alternatively, the commenter suggested the Department require companies to pay into a fund that is used to cap or plug abandoned wells and remove non-beneficial infrastructure.[161]

Response: BOEM disagrees with the commenter's recommendation that DOI determine average costs of plugging, capping, and removing infrastructure based on each Gulf of Mexico Zone. BSEE determines cost estimates of plugging, capping, and removing OCS infrastructure based on industry reported data including information which drives the cost, such as water depth; well, platform, and pipeline characteristics; and site clearance levels. The use of a probabilistic distribution instead of an average accounts for the different types of facility characteristics. Because the probabilistic estimates account for different facility characteristics, they are expected to be more accurate than trying to determine estimates based on a geographic zone. BOEM explained the development of BSEE's probabilistic estimates in the preamble to the proposed rule at 88 FR 42143.

In response to the commenter's assertion that the Department promulgate a rulemaking that would

[160] Opportune LLP (BOEM-2023-0027-1991).
[161] Anonymous (BOEM-2023-0027-1692).

require industry to cap or plug abandoned wells and remove all the infrastructure, the Department already has those requirements in place. The existing regulations for decommissioning activities can be found in 30 CFR part 250, subpart Q. For more information on decommissioning requirements, see https://www.bsee.gov/decommissioning. With respect to requiring companies pay daily fines into a fund if they have not capped wells or removed infrastructure, the Department does not currently have this authority. OCSLA does not provide such authority at this time, therefore this comment is out of scope.

Section 3.7.1 – Request for comment: What are the costs and benefits of including impacts to offshore capital expenses and taxpayer liability for each of the P-values?

Comment: Multiple commenters referenced a study provided by Opportune regarding the regulatory impact of the rulemaking, particularly impacts from the various P-values.[162] Opportune 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. As a result, the commenter reasoned that 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, they provided the data in the table below.[163]

	P70	**P90**
	($ in millions)	
Decrease in Capital Expenditures over 10 years	$ 4,700	$ 5,565
Decrease in OCS Production	55 mmboe	64 mmboe
Decreased Industry Revenue	$ 2,800	$ 3,350
Decreased Federal Royalties	573	685
Decreased Industry Jobs Across the Gulf Coast	36,200	43,300
Decreased Gulf Cost GDP	$ 9,900	$ 11,900

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

[162] A. Loeb (BOEM-2023-0027-0070), Arena Energy, LLC (BOEM-2023-0027-2096), Beacon Offshore Energy (BOEM-2023-0027-2013), Center for Regulatory Freedom (BOEM-2023-0027-0030), GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165), State of Louisiana (BOEM-2023-0027-1985), W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).
[163] Opportune LLP (BOEM-2023-0027-1991).

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. Based on this reported data, BSEE developed three probabilistic estimates of decommissioning costs for each OCS facility on a given lease. This calculation is not performed on a portfolio basis. The commenter's position is that across a company's entire portfolio of leases (and facilities) the combined outcome would be expected to approach P50 and so those are the estimates that should be used. However, the financial assurance is limited only to the leases (and facilities) it specifically covers. Recognizing that proceeds from one bond can not be used to cover the obligations of another lease or the rest of the portfolio, BOEM is erring on the side of being slightly over bonded at the individual lease-level. It's possible that in a default event the proceeds could be pooled and shared across the portfolio, but that would be up to factors outside of the Department's direct control (*i.e.*, the bankruptcy proceedings). Thus, to ensure the US Government and, by extension, the taxpayer are protected, BSEE's calculation at the lease level are appropriate.

BOEM agrees with the commenter as to the additive nature of decommissioning obligations for associated facilities on a lease. However, this is inappropriate at the portfolio level because individual financial assurance instruments aren't available to cover unrelated properties. Given the need to have adequate decommissioning financial assurance for each individual lease, ROW, or RUE, BOEM incorporated a P70 requirement in the final rule. 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 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 commentor.

Section 3.7.2 – Request for comment: Are financial assurance requirements based on different liability levels appropriate for different circumstances?

Comment: A commenter stated that setting assurance requirements based on different liability levels would not aid in transparency. The commenter asserted that the most efficient, effective, and transparent approach would be to hold all current and future lessees to the same requirements.[164] An additional commenter supported holding all lessees to the same liability threshold and supported the use of a P70 or greater decommissioning value.[165]

Response: BOEM acknowledges the commenters' recommendation for not varying liability thresholds for varying circumstances and is finalizing the approach, as proposed, to use one P-value for all current lessees.

Comment: A commenter suggested lowering the required financial assurance to P50 for assets with a predecessor in title with an investment grade credit rating, arguing that there is little risk the taxpayer will bear the burden of abandonment if a major oil company is in the chain of title. The commenter asserted that this exception should not apply to properties transferred after the effective date of the final rule.[166] Another commenter stated that, to the extent that reserves are considered in evaluating financial strength, P50 is a more reasonable measure that would reduce the burden on small businesses without placing taxpayers at risk.[167]

Response: BOEM has analyzed the policies recommended by the commenters and disagrees that P50 should be used for assets with a predecessor in the chain of title. The Department is finalizing the use of P70 regardless of whether there is an investment grade predecessor in the chain of title. The final rule does not limit this provision to transactions that occur after the effective date of the final rule, but instead provides a 3-year phase-in period to help alleviate the burden of initially implementing the final rule. Limiting the new requirements to only future infrastructure and future transfers does not address the issue of needed financial assurance for current decommissioning obligations that could be covered by the government in the event of a default. This approach holds all current lessees responsible for providing supplemental financial assurance.

[164] bp America Inc. (BOEM-2023-0027-2003).
[165] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[166] Ridgelake Energy (BOEM-2023-0027-1938).
[167] QuarterNorth Energy LLC (BOEM-2023-0027-2001).

Section 3.8 – Use of joint and several liability for determining supplemental financial assurance requirements

Comment: A commenter asserted that given joint and several liability law, no additional security is needed for any property in which a company that would not be required by the Rule to post supplemental financial assurances in the chain of title.[168]

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. The proposed rule retained the authority to pursue predecessor lessees for the performance of decommissioning; however, it would not rely on the financial strength of predecessor lessees when determining whether, or how much, supplemental financial assurance should be provided by current OCS leaseholders.

BOEM disagrees with the commenter's assertion that no additional security is needed for any property in which a company that would not be required by the regulations to post supplemental financial assurance is in the chain of title. DOI is finalizing the use of the P70 value to determine the amount of supplemental financial assurance required from the current lessee if it does not meet either of the financial criteria: an investment-grade credit rating or a minimum of a 3-to-1 ratio of the value of proved reserves to decommissioning liabilities associated with those reserves (as discussed in sections III.A and III.D of the final rule preamble). Additionally, as discussed in section III.A of the final rule preamble, leases with co-lessees that maintain an investment-grade credit rating will not be required to provide supplemental financial assurance. This approach will hold all current lessees responsible for providing supplemental financial assurance, when necessary.

Comment: A commenter expressed opposition to the Department's consideration of predecessors in determining supplemental financial assurance. The commenter stated that allowing current owners to decrease their financial assurance obligation based on financially strong predecessors is bad policy and legally unsupportable. Further, the commenter said that the Department should adhere to the proposed rule's principle of requiring current interest holders to provide the requisite financial assurance that they would properly perform all operational lease and grant obligations, including decommissioning.[169]

[168] QuarterNorth Energy LLC (BOEM-2023-0027-2001).
[169] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

Response: BOEM acknowledges the commenter's assertion that decreasing a lessee's financial assurance obligation based on financially strong predecessors is bad policy and legally unsupportable. While industry practices may have helped to mitigate the risk, BOEM's history over the past 15 years has shown that the existing regulations were not sufficient to assure an acceptable level of risk on the OCS. As noted previously, the GAO reviewed the overall financial risk program and made a definitive assessment that the risk exposure of the existing programs is such that the government could potentially be responsible for covering billions of dollars in unmet lessee financial obligations. DOI is finalizing the use of the P70 value to determine the amount of supplemental financial assurance required from the current lessee if they do not meet one of the financial criteria (*i.e.*, an investment grade rating, or a minimum of 3 to 1 ratio of reserves to decommissioning liability). Additionally, as discussed in section III.A of the final rule preamble, leases with co-lessees that maintain an investment-grade credit rating will not be required to provide supplemental financial assurance. This approach holds all current lessees responsible for providing supplemental financial assurance when necessary.

Comment: Regarding impacts to taxpayers as related to utilization of joint and several liability for determining supplemental financial assurance, commenters stated the following:

- A short delay would not endanger the taxpayer to assume decommissioning liability.[170]
- As current regulations ensure that firms operating in the OCS meet their decommissioning obligations without passing costs on to taxpayers, the proposed Financial Assurance Rule is unnecessary.[171]
- The rule's actual beneficiaries are exempted companies, not taxpayers.[172]
- The Department should revise the proposed rule to include reliance upon the financial strength of predecessors as well as lessees, co-lessees and grant holders as this would achieve the Department's goals expressed therein, providing the protections required to ensure U.S. taxpayers would never have to bear the burden of decommissioning liabilities, while reducing unnecessary costs to lessees, co- lessees and grant holders. Additionally, they asserted that the cost reductions that would result from relying on predecessors would provide additional capital to small businesses that can be used for additional exploration, development, production, maintenance, and importantly, decommissioning activities.[173]
- If the stated objective is the protection of the taxpayer and not maximizing costs and bonding obligations on the industry, reliance on the joint and several liability regime is the best course to ensure the protection of the taxpayer from decommissioning liability.[174]
- The Department states that its "objective" is to ensure that taxpayers do not bear the costs of

[170] Gulf Energy Alliance (BOEM-2023-0027-1155).
[171] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).
[172] QuarterNorth Energy LLC (BOEM-2023-0027-2001); Arena Energy, LLC (BOEM-2023-0027-2096); GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[173] Talos Energy Inc. (BOEM-2023-0027-2005).
[174] Beacon Offshore Energy (BOEM-2023-0027-2013).

decommissioning. However, the proposed rule is unnecessary to accomplish this objective.[175]

Another commenter remarked that joint and several liability among co-lessees and predecessors provides important protection against governmental loss. According to the commenter, as co-lessees and predecessors are jointly and severally liable for decommissioning costs, a current lessee would have to default, file for bankruptcy, fail to auction off its assets, and have no solvent co-lessee or predecessor before taxpayers would incur liability. The commenter stated that the Department offers nothing to suggest that highly implausible scenario is common and added that historical data suggest the opposite.[176]

Response: BOEM acknowledges the commenters' concerns but disagrees that joint and several liability alone is sufficient to protect the taxpayer. 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. As discussed earlier, the GAO identified three main shortcomings in the Department's prior approach: (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 less than 8% of an estimated $38.2 billion in decommissioning liabilities being covered by financial assurance like bonds; and (3) the Department criteria for assessing lessees' financial strength did not provide accurate information about their ability to cover future decommissioning costs. As the GAO report clearly indicates, the existing regulatory structure is inadequate, introduces needless financial risk, and is unsustainable. For example, for leases in the Gulf of Mexico that expired between 2010 and 2022, operators missed BSEE's deadline to decommission within 1 year for more than 40 percent of wells and 50 percent of platforms – many of which still have not been decommissioned. Over 75 percent of end-of-lease and idle infrastructure in the Gulf of Mexico was overdue under BSEE's deadlines as of June 2023 – over 2,700 wells and 500 platforms.

Comment: A commenter asserted that BOEM's regulations should continue to consider the joint and several liability of all predecessor lessees and grant-holders for all non-monetary obligations on a lease as a key component of determining whether supplemental financial assurance is required. They asserted that imposing "unnecessary and punitive supplemental bonding requirements on current leaseholders when U.S. taxpayers are already fully protected by credit-worthy predecessors in interest who remain jointly and severally liability for such obligations is bad public policy,

[175] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[176] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).

particularly when it would be so harmful to the many independent lessees, sublessees and grant-holders in the OCS." They asserted that doing so changes "the rules in the middle of the game" because sales of OCS lease interest have taken place for many decades with all buyers and sellers understanding the rules and regulations pertaining to joint and several liability. They claimed that the divesting party "has always had to choose between price and protection" when selling their lease interest. They noted that their company had posted over $886 million in bonds and other forms of financial instruments as security to sellers from whom they acquired OCS assets who chose to receive more financial assurance and a lower purchase price.

The commenter stated that the decision made by the private parties has "no bearing on the risk to U.S. taxpayers because all credit-worthy sellers remain liable for these decommissioning liabilities forever" and further asserted that "imposing bonding obligations on the independent companies who were acquirers under this framework would solely benefit the selling parties, in most cases major oil and gas companies, who were more than capable of requiring such security at the time they disposed of their properties." [177]

Response: BOEM disagrees with the commenter's assertion that no additional security is needed for any property in which a company that would not be required by the regulations to post supplemental financial assurance is in the chain of title. BOEM is not privy to private arrangements between companies operating in the OCS and does not benefit from them. 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: A commenter urged BOEM to "make the rule effective on a prospective basis, and not apply to existing leases and infrastructure with investment grade predecessors" if the final rule aligns with the proposed rule structure.[178]

Response: The Department is finalizing the proposed approach to supplemental financial assurance and it has not made the final rule effective on a prospective basis – all current and future lessees will be subject to the final rule. The rule will apply to existing leases and infrastructure – as discussed earlier, the existing regulatory structure is inadequate, introduces needless financial risk, and is unsustainable without obtaining supplemental financial assurance from existing lessees; if a current lessee does not meet either of the financial criteria (*i.e.,* an investment-grade credit rating or a minimum of a 3-to-1 ratio of proved reserves to decommissioning liabilities associated with those reserves) it will be required to provide supplemental financial assurance. Additionally, to ease burden on current lessees resulting from the new demands, the final rule includes a 3-year phase-in period option for providing the new supplemental financial assurance.

[177] Talos Energy Inc. (BOEM-2023-0027-2005).
[178] Talos Energy Inc. (BOEM-2023-0027-2005).

Comment: A commenter made the following points regarding the proposed rule:

- The rule could lead to increased "moral hazard" in transactions by insulating predecessors from joint-and-several liability and relieving sellers from due diligence responsibilities.
- The proposed rule could disproportionately benefit large companies while imposing redundant bonding requirements on small current leaseholders, potentially harming them.
- The rule disregards the long-standing principle of joint-and-several liability, which has traditionally protected taxpayers from unfunded decommissioning liabilities.[179]

Response: BSEE and BOEM regulations hold predecessors (for obligations accrued during their period of liability) and current co-lessees responsible for decommissioning when a current lessee is unable to perform its obligations. 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 with this rulemaking - 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. The final rule retains the authority to pursue predecessor lessees for the performance of decommissioning; however, it does not rely on the financial strength of predecessor lessees when determining whether, or how much, supplemental financial assurance should be provided by current OCS leaseholders. Predecessors are still jointly and severally liable; they are not "insulated" from such liability. Since they are not current holders, there is no "moral hazard" of a change in their diligence.

Section 3.8.1 – Request for comment: Costs and benefits of considering predecessor lessees or grantees in determining financial assurance

Comment: A commenter remarked that the proposed rule harms small businesses holding current leases for oil and gas extraction in the OCS by ignoring the joint and several liability of large predecessor leaseholders in DOI regulations and written into the leases. It requires small businesses that have already paid for assurance bonds, agreed as part of the sale of the lease, to purchase duplicative assurance bonds for the Federal government. The commenter said that the Department should narrowly tailor this rule to cover only those liabilities for which there are no predecessor leaseholders that the Department considers credit worthy.[180]

Response: The Department's policy on financial assurance has always been that the liability for meeting performance requirements under the lease and the regulations was joint and several. Thus, any time a lease was sold, the predecessor would remain secondarily liable for the completion of the lease obligations until such time as all those obligations have been met (and the corresponding financial

[179] Arena Energy, LLC (BOEM-2023-0027-2096).
[180] SBA (BOEM-2023-0027-1699).

assurance is returned to the lessee). If a company decides to sell a lease and require the buyer to bond back to the seller, the buyer is unable to argue validly that the United States is already bonded, the reason being that the bond covering the decommissioning of this lease is in favor of the seller, not in favor of the US. In most cases, the government cannot call the bonds in question. However, the buyer can ensure that the bonds are of a dual-obligee type, or make other arrangements with the seller, to cover the supplemental financial assurance obligation and at the same time avoid double-bonding. 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: Several commenters expressed support for the proposed rule not allowing the Department to rely upon the financial strength of predecessor lessors when determining whether, or how much, supplemental financial assurance should be provided by current OCS leaseholders.[181]

Response: BOEM acknowledges the commenters assertion that the financial strength of predecessors should not be used to determine if the current OCS lessee(s) must provide supplemental financial assurance and is finalizing this approach, as proposed. This approach holds all current lessees responsible for providing supplemental financial assurance when necessary.

Comment: A commenter said that by creating a system that requires bonding only for current leaseholders, the Department is insulating predecessor leaseholders from joint and several liability and relieving the sellers of the need to perform due diligence on the subsequent leaseholder. The commenter stated that this jeopardizes the taxpayers and the environment by making future abandonments and bankruptcy more likely.[182]

Response: The commenter is incorrect in their assertion that DOI is insulating predecessor leaseholders from joint and several liability. Joint and several liability remains unchanged, but BOEM considers the joint and several liability of predecessors as a last resort, hence BOEM intends to make sure that all companies operating on the OCS are able to cover their decommissioning obligations.

Comment: A commenter stated that instead of recognizing and encouraging private security, the proposed rule is focused on providing inefficient and less functional security for the Department while deterring arrangements that would incentivize the actual performance of decommissioning in an efficient and timely manner. The commenter stated that the proposed rule does not account for significant security already in place and should promote, not hinder, private security.[183] Another commenter said that the proposed rule ignores the $3 billion in existing security that is in place for decommissioning and would instead re-trade decades worth of transactions and step in to shield the large, international companies that voluntarily engaged in these transactions. The commenter

[181] E. Danenberger (BOEM-2023-0027-1219); True Transition (BOEM-2023-0027-1696).
[182] SBA (BOEM-2023-0027-1699).
[183] Apache Corporation (BOEM-2023-0027-1732).

concluded that the proposed rule would require independent oil and gas companies to issue double bonds on many properties, further exacerbating the compliance costs of the proposed rule.[184]

Response: The assertion that the Department is mandating "double bonding" for every OCS property is false. The Department's policy on financial assurance has always been that the liability for meeting performance requirements under the lease and the regulations was joint and several. Thus, any time a lease was sold, the predecessor would remain secondarily liable for the completion of the lease obligations until such time as all those obligations have been met (and the corresponding financial assurance is returned to the lessee). If a company decides to sell a lease and require the buyer to bond back to the seller, the buyer is unable to argue validly that the United States is already bonded, the reason being that the bond covering the decommissioning of this lease is in favor of the seller, not in favor of the US. In most cases, the government cannot call the bonds in question. However, the buyer can ensure that the bonds are of a dual-obligee type, or make other arrangements with the seller, to cover the supplemental financial assurance obligation and at the same time avoid double-bonding. 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. The final rule recognizes that the current leaseholder is primarily liable for ensuring that the lease obligations are met and holds it responsible for providing sufficient financial assurance to meet those obligations. Based on the comments received, the Department has determined that the approach underlying this final rule is more consistent with the historical policy and better aligned with the principle that every lessee should be able to cover its own financial obligations, than the commenters' proposal to instead rely on the contingent liabilities of any third party.

Comment: A commenter remarked that regardless of whether private security exists between parties in the chain of title for a lease or right of way, those parties made a decision on the allocation of decommissioning obligations between them. The commenter added that to the extent that a predecessor chose to maximize the cash value of a sale to a successor instead of also insisting on some separate means of securing the performance of plugging, abandonment, and decommissioning obligations, that predecessor chose to secure those obligations through its own financial position and balance sheet. The commenter reasoned that the Department should not now impose new financial assurance obligations on the successors in these properties while ignoring the fact that a financially secure predecessor has joint and several responsibility to perform the obligations which the Department seeks to secure.[185]

Another commenter asserted that modernization of the financial assurance rules hinges on consistent application of the joint and several liability framework across the OCS and adjudication of BSEE's cost estimates for each lessee. The commenter stated that the Department must consider both the obligations of predecessors in the chain-of-title before seeking additional financial assurance from

[184] Beacon Offshore Energy (BOEM-2023-0027-2013).
[185] Apache Corporation (BOEM-2023-0027-1732).

current lessees; and private-party bonds that were previously negotiated by such predecessors and currently exist to the benefit of the taxpayer. The commenter added that the Department must also provide due process in allowing lessees to challenge BSEE cost estimates attributable to individual leases and related infrastructure.[186]

A commenter asked how the Department would proceed if a current operator failed to meet its decommissioning obligations. They asked if the Department would first seek recoveries from the predecessors on the lease or would it proceed against the financial assurance posted by the predecessors, or would it first pursue the current lessee and the financial assurance posted by the current lessee. This commenter stated that this is critically important for the sureties to understand when underwriting lease operators, specifically whether to continue to write in this space or how to change the terms under which they will continue to write bonds for lease operators.[187]

Response: This rulemaking does not change the order in which BOEM would call financial assurance. BOEM's general practice has been to call financial assurance from the current lessee(s), then from predecessors, and in a bankruptcy, from the funds from a sale. Additionally, BOEM is not a party to private arrangements between companies operating in the OCS and does not benefit from them. In most cases, the government cannot call the bonds in question. 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. Private entities are able to decide how to address these obligations in their private agreements, mindful of lease obligations. Such challenges can be brought before the IBLA.

Comment: A commenter said that the proposed rule confirms the decades-long agency practice of holding current interest owners and their operators accountable to provide adequate financial security for their operations on OCS leases and grants. The commenter said that the Department should retain and reinforce this core underlying principle of current interest holder responsibility in its final rule.[188] Another commenter expressed support for the same principle in the proposed rule and said that avoiding needless tie-up of significant capital in financial assurance for predecessor lessees is important, particularly for small and mid-sized operators with a long history of responsible operations in the GOM.[189]

Response: BOEM agrees with the commenters' assertions and is finalizing that the current lessee (or its co-lessee) must maintain an investment grade credit rating or the lease must have a proved oil reserves to decommissioning liability ratio of greater than or equal to 3-to-1, otherwise the current lessee will be required to provide supplemental financial assurance. It is BOEM's goal to hold current lessees accountable for their decommissioning obligations. Only the parties to the assurance

[186] Opportune LLP (BOEM-2023-0027-1991).
[187] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[188] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[189] Murphy Oil Corporation (BOEM-2023-0027-2007).

for the benefit of predecessors have the power to release that capital, but BOEM is willing to enter into appropriate dual-oblige bonds to minimize this burden.

Comment: A commenter remarked that the bedrock joint and several liability framework has done its job of protecting taxpayers as the amount of taxpayer dollars spent to decommission GOM infrastructure is infinitesimal relative to the hundreds of billions in royalties benefiting U.S. taxpayers from offshore production. The commenter also said that the proposed rule should focus on protecting the taxpayer, not predecessors. The commenter further stated that a solution aimed at protecting the taxpayer should focus on the specific problem at hand, namely the $750 million of higher risk sole liability exposure.[190] Another commenter said that if the stated objective of the proposed rule is to protect the taxpayer and not maximize costs and bonding obligations on the industry, reliance on the joint and several liability regime is the best way to ensure the protection of the taxpayer from decommissioning liability. The commenter stated that the Department's unexplained disregard of this long-established regulatory framework is arbitrary and capricious.[191]

Response: BOEM disagrees with the commenters' assertion that reliance on joint and several liability with regard to predecessor lessees is the best way to protect the taxpayer from decommissioning liability. As discussed earlier in this document, the GAO report clearly indicates the existing regulatory structure is inadequate, introduces needless financial risk, and is unsustainable. Neither the proposed rule nor this final rule changed the joint and several liability provisions, it does however, hold current lessees accountable for their decommissioning obligations. BOEM does not agree that it should rely on predecessor joint and several liability alone, because it is important current leaseholders take the responsibility for fulfilling their lease obligations.

Comment: A commenter highlighted the Department's acknowledgment of 30 corporate bankruptcies since 2009, totaling $7.5 billion in decommissioning liabilities tied to offshore assets. They emphasized the Department's recognition that the actual financial risk to the United States is significantly less due to the obligations of co-lessees and predecessors to fund or perform decommissioning. The commenter also noted that the Department stated that cases where taxpayers actually paid for decommissioning are rare, according to them, a result of the longstanding laws imposing joint and several liability. [192]

Response: 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 unduly affect offshore investment or position American offshore exploration and production companies at a competitive disadvantage. The principle that all prior and current owners of an OCS facility are jointly and severally liable for the

[190] Arena Energy, LLC (BOEM-2023-0027-2096).
[191] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[192] Talos Energy Inc. (BOEM-2023-0027-2005).

obligation to remove the facility at the end of its useful life has always been a feature of the Department's regulations and is not being changed with this rule. There are many circumstances when this one principle does not, in and of itself, adequately protect the government and the various stakeholders involved in the OCS oil and gas program. This rule is intended to ensure that taxpayers are protected, even if the joint and several liability provisions are inadequate or do not fully do so.

Comment: A commenter stated that the Department's proposed focus on predecessors in interest of existing offshore structures may encourage current interest holders to participate, financially or in kind, in repurposing projects for offshore CO2 transport, injection, storage and monitoring, hydrogen production, or offshore wind. As such, the commenter reasoned that appropriate projects would create a "win/win" opportunity to reduce costs for these projects and put off such D&A exposures for 20+ years. The commenter added that the delay of these AROs, combined with 45Q carbon credits (which can be traded and exchanged) could provide a fertile environment for innovative commercial foundations for rapidly evolving offshore CO2, hydrogen, and wind projects.[193]

Response: BOEM did not propose, and is not finalizing, regulatory amendments to address alternative uses of oil and gas offshore structures; approval of alternate use of existing OCS oil and gas infrastructure are already covered by other BOEM and BSEE regulations. In addition, BOEM will address carbon sequestration on the OCS with a future rulemaking. Carbon Sequestration NPRM (RIN 1082-AA04), discussed in the Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions (available at Reginfo.gov), will address scenarios such as those discussed by the commenter. The Infrastructure Investment and Jobs Act of 2021 directed the Department to establish regulations regarding carbon sequestration on the OCS. That proposed joint rulemaking between the BOEM and the BSEE would establish new regulations to implement processes in support of safe and environmentally responsible carbon sequestration activities on the OCS.

Comment: A commenter asked if "a predecessor in title cannot escape their decommissioning liability, why not then make that predecessor's obligation a part of the value of the lease with respect to existing liability and have a separate rule dealing with decommissioning liability from a go-forward date?"[194]

Response: Making demands only to cover new infrastructure does not address the large inventory already in place. Additionally, BOEM is not privy to private transactions and does not know the arrangements made between private parties; BOEM will account for dual obligee bonds but will not consider securities that BOEM cannot call in the case of default. As noted previously, the Department does not administer the financial assurance program in the aggregate but on an individual facility and lessee basis. Costs for decommissioning are calculated for each facility. The cumulative costs of decommissioning all the facilities owned by any given lessee are then compared

[193] University of Houston (BOEM-2023-0027-2166).
[194] CAC Specialty (BOEM-2023-0027-1201).

to the net worth of that lessee in order to determine whether that lessee is capable of meeting its existing financial obligations. The existing amounts of bonding are considered in this analysis. Therefore, to the extent that a lessee has already posted an amount of financial security equal to its financial obligations, no additional financial assurance would be required under this final rule. In fact, some lessees may find that their existing bonding amounts may be reduced, rather than increased under this rule. This evaluation does not include security protecting parties other than BOEM, but BOEM will agree to accept conversions of such security to dual-obligee bonds.

Section 3.8.2 – Sole liability properties

Comment: A commenter asserted that to the extent the Department determines additional security is needed to protect taxpayers from paying for decommissioning defaults, such security should be required only on properties in which there is no exempt party in the chain of title—*e.g.*, sole liability properties. The commenter further stated that to the extent the government mandates any additional financial security to prevent taxpayers from funding decommissioning defaults, it should be for the portion of Sole Liability Properties that is not already covered by bonds or some other type of financial security. According to the commenter, requiring only this level of added security would achieve the Rule's stated goal without violating the Regulatory Flexibility Act, and has the added benefit of requiring levels of additional financial security that is available in the marketplace.[195]

An additional commenter stated that the Department could easily track potential "sole liability" components utilizing its existing data and, if appropriate, request supplemental bonding when the permit to drill or install infrastructure is submitted.[196]

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. In response to the commenter's assertion that the Department can track sole liability components and request supplemental bonding when the permit to drill or install infrastructure is submitted – after BOEM has secured financial assurance for all existing liability that

[195] QuarterNorth Energy LLC (BOEM-2023-0027-2001).
[196] Beacon Offshore Energy (BOEM-2023-0027-2013).

does not meet the thresholds, BOEM will require additional financial assurance for new sole liability at the time it is created. Additionally, making demands only to cover new infrastructure does not address the large inventory already in place.

Comment: A commenter remarked that there is a risk of taxpayer exposure for decommissioning liabilities for certain limited, specific types of facilities, namely, sole liability properties and certain high-risk, non-sole liability properties for which there are no financially strong co-owners or predecessors in the chain of title. The commenter reasoned that the Department's focus since 2016 on sole liability properties and certain high-risk, non-sole liability properties where the chain of title does not provide an adequate backstop is therefore appropriate and is the best, most efficient safeguard for the American taxpayer. According to the commenter, all the $60 million in losses that have been absorbed by taxpayers were on sole liability leases.[197]

Additionally, the commenter asserted that the proposed rule is not cost-effective in its current form and exacerbates, rather than ameliorates, potential harm to the taxpayer because it will accelerate defaults by small businesses who are unable to secure the required supplemental bonding and increase the decommissioning liability exposure to predecessors. The commenter stated that consistent with the law, any proposed rule regarding this highly complex issue should be rooted on the foundation that any financial assurance requirements must be primarily focused on sole liability properties where (1) the current owner is the only responsible party for the property (*i.e.*, there are no co-lessees or other grant holders), and (2) there are no prior interest holders in the chain of title to satisfy the lease obligations ("Sole Liability Properties").[198]

Response: BOEM noted in the preamble to the proposed rule that further increasing the compliance costs for industry, could 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. As a result, BOEM acknowledged that this could adversely make the U.S. offshore oil and gas sector less attractive than regions with lower operating costs. BOEM must balance oil and gas development with protection of both taxpayers and of the environment, and believes this rule achieves an acceptable balance of objectives. The RIA shows costs and benefits of the rule. 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. BOEM is interested in making sure that all lessee obligations in the OCS are met. The past 15 years have shown that the existing regulations were not sufficient to provide the desired and acceptable level of risk on the OCS, hence this rulemaking is necessary. 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

[197] Arena Energy, LLC (BOEM-2023-0027-2096).
[198] Arena Energy, LLC (BOEM-2023-0027-2096).

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.

As discussed earlier, BOEM disagrees with the commenters' assertion that the final rule should only focus on sole-liability properties, as it would not sufficiently protect the taxpayer, and there is no law requiring BOEM to focus on sole liability properties (nor does the commenter provide citations for their general assertion that there is such a law). 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 (without investment grade credit ratings, financially strong co-lessees or proved reserves valued more than three times decommissioning liability) responsible for providing supplemental financial assurance.

Section 3.8.3 – Parent company liability

Comment: Several commenters stated that the Department should make clear that parent companies are directly, jointly, and severally liable for OCS AROs. They stated that parent companies derive traceable financial benefit from OCS leases, and their direct liability should be unambiguous. [199] A commenter also asserted that it is against common sense and the spirit of the OCS program to allow a regime where multinationals or any company can only derive benefits and then stick the liability onto the American public.[200]

Response: The Department is finalizing, as proposed, a requirement that a current lessee itself must maintain an investment grade credit rating and the credit rating of a parent company would not exempt a property from the requirement. It lacks the authority to change corporation law to make corporate stockholders liable for subsidiary obligations. The parent company could act as a third-party guarantor for its subsidiary, but in that case, it is not shielded from liability.

Comment: A commenter remarked that any consideration of "predecessors" by the Department must be limited only to those entities named on the lease, RUE, or ROW (as applicable) because that is the only entity that may have accrued and retained obligations. While it appears the Department acknowledges this in portions of its proposal, the Department incorrectly identified and attributed a parent entity's issuer credit rating to its subsidiary in the 2020 proposed rule, despite parent entities not accruing liability under any lease, RUE, ROW, or the Department or BSEE regulations.[201]

[199] True Transition (BOEM-2023-0027-1696); Ocean Conservancy (BOEM-2023-0027-1961).
[200] True Transition (BOEM-2023-0027-1696).
[201] Shell Offshore Inc. (BOEM-2023-0027-2012).

Response: While BOEM may have attributed a parent entity's issuer credit rating to its subsidiary in the 2020 proposal, it did not do so in the 2023 NPRM. The Department is finalizing, as proposed, that the parent company would only be considered under the financial assurance rule if it is acting as a third-party guarantor for the subsidiary for the parent's credit rating to be relevant.

Section 4 – Revisions to Financial Assurance Requirements for Right-of-Use (RUE) and Easement Grants

Section 4.1 – Requirement that RUE grant holder post financial assurance for RUES serving State and/or Federal OCS leases

Section 4.1.1 – $500k base financial assurance level for area-wide RUEs

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, with their approval. They asserted that this approach would appropriately distribute the risk among all co-owners.[202]

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 liabilities 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 existing regulations state that an applicant for a RUE that serves an OCS lease "must meet bonding requirements" but does not prescribe the base surety bond amount. The Department is finalizing, as proposed, a provision 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 is establishing a Federal RUE base financial assurance requirement matching the existing $500,000 base financial assurance requirement for State RUEs. 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 party. The ability to use area-wide lease financial assurance to cover the RUE base financial assurance obligation will 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 (*i.e.*, equal to or greater than $500,000). This amendment for RUEs creates financial symmetry with leases and ROWs.

Comment: A commenter asserted that because the initial base bond amount was determined in 1993 and was based on costs in relatively shallow waters, the base bond requirement needs to be updated to account for deeper drilling and higher decommissioning costs. The commenter also asserted that the Department should update this base bond and, if the Department continues to waive

[202] Talos Energy Inc. (BOEM-2023-0027-2005).

supplemental financial assurances, the Department should "eliminate or significantly increase the area-wide base bonds."[203] Additionally, a commenter recommended an increase to the blanket bond amount "based on the amount of time that has passed and inflation experienced since the last revisions," which required $3 million bonds.[204]

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 re-evaluated. BOEM disagrees with the commenter's assertion that the Department should eliminate the area-wide base bonds if it did not significantly increase them with the final rule. 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. In 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.

Section 4.1.2 – Area-wide coverage for lessees who post one surety bond on one RUE within that area

Comment: A commenter stated that the Department should eliminate area-wide base bonds or significantly increase the total required for area-wide bonds because some companies may hold multiple leases and are only paying bonds for a fraction of their leases.[205]

Response: 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 bond 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

[203] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).
[204] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[205] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).

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.

Section 4.2 – Criteria for determining whether RUE supplemental financial assurance above $500,000 is required

Comment: A commenter expressed support for the Department exercising additional oversight on the RUE application process and using "the same issuer credit rating or proxy credit rating criteria" to evaluate a RUE and easement grant holder as applied to current lessees. The commenter also supported the right of the Regional Director to "require a grant holder to provide additional security if the [RUE] grant holder does not have an issuer credit rating or a proxy credit rating that meets the new criteria."[206] Another commenter generally supported the proposed rule's extension of lease financial assurance requirements to holders of OCS RUEs and ROWs. The commenter concurred that the regulatory structure for RUEs should be more parallel with the regulations' treatment of ROWs, including their express assignability.[207]

Response: BOEM acknowledges the commenter's 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 each current owner of a RUE "should demonstrate that it has the financial ability to meet all of its obligations under the RUE, including abandonment."[208]

Response: BOEM agrees with the commenter's assertion and is finalizing, as proposed, to evaluate RUE grant-holders using one of the criteria proposed for lessees (*i.e.*, issuer credit rating or proxy credit rating). This will ensure that RUE grant-holders have the financial ability of meet their obligations of the RUE or provide supplemental financial assurance.

Comment: Several commenters supported the proposed supplemental financial assurance rules, including the extension of lease financial assurance requirements to holders of RUEs and ROWs on the OCS, noting that these changes would continue "to protect the American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production companies at a competitive disadvantage."[209]

Response: BOEM agrees with the commenters' assertion that the proposed requirements would continue "to protect the American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect

[206] Chevron U.S.A., Inc. (BOEM-2023-0027-1974).
[207] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[208] Chevron U.S.A., Inc. (BOEM-2023-0027-1974).
[209] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); Murphy Oil Corporation (BOEM-2023-0027-2007).

offshore investment or position American offshore exploration and production companies at a competitive disadvantage." The Department is finalizing the provision that RUE grant-holders be evaluated using one of the same criteria as lessees (*i.e.*, issuer credit rating or proxy credit rating).

Comment: A commenter asserted that the proposed rule lacks a timeline or trigger for the review of the financial status of lessees and ROW and RUE holders on an annual basis.[210]

Response: 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 while minimizing regulatory burden. 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 a RUE grant-holder's 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.

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.[211]

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. 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, 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. 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.

[210] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[211] Talos Energy Inc. (BOEM-2023-0027-2005).

Section 5 – Revisions to Financial Assurance Requirements for Pipeline Right-of-Way (ROW) Grants

Section 5.1 – Requirement that ROW holders post assurance fails to meet credit or proxy credit rating requirements of lessees

Comment: A commenter expressed support for the Department using the same issuer credit rating or proxy credit rating criteria to evaluate pipeline ROW grants as the Department proposes to apply to current lessees. The commenter also supported the Regional Director retaining the right to require a grant holder to provide additional security if the pipeline ROW grant holder does not meet the criteria established in 30 CFR 556.901(d)(1) and (2) once adopted as proposed.[212] Another commenter generally supported the proposed rule's extension of lease financial assurance requirements to holders of OCS ROWs. [213]

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 one of the criteria proposed for lessees (*i.e.*, investment grade credit rating or proxy credit rating of grant holders or co-holders).

Comment: A commenter recommended that the Department not require supplemental bonding for ROW pipelines that are servicing and associated with high value leases. The commenter said that, in contrast to the proposed rule's assertion, it and many other GOM companies are entitled to interest in oil and gas reserves when they hold ROWs.[214]

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. The Department is finalizing, as proposed, a provision that a pipeline ROW 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.

Comment: A commenter expressed support for the Department's effort to adopt regulations ensuring that holders of OCS ROW properly perform all operational duties, including their obligation to decommission their wells, pipelines, and facilities.[215]

Response: BOEM acknowledges the commenter's support, and the Department is finalizing, as proposed, to evaluate pipeline ROW grant-holders using one of the criteria proposed for lessees (*i.e.*, issuer credit rating or proxy credit rating). This will require that pipeline ROW grant-holders

[212] Chevron U.S.A., Inc. (BOEM-2023-0027-1974).
[213] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[214] Talos Energy Inc. (BOEM-2023-0027-2005).
[215] Murphy Oil Corporation (BOEM-2023-0027-2007).

demonstrate that they have the financial ability of meet its obligations of the ROW or provide financial assurance.

Comment: A commenter recommended that the Department commit to reviewing the need for supplemental financial assurance for leases and grants at least annually.[216]

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.

Comment: A commenter suggested that: the Department should rethink allowing oil and gas operators to decommission pipelines in place; and should ensure that BSEE's decommissioning cost estimates sufficiently meet the cost of removing all pipeline from the seafloor.[217]

Response: Changes to the BSEE regulations allowing oil and gas operators to leave pipelines in place is out of scope for this rulemaking. In response to ensuring that the cost estimates sufficiently meet the cost of removing all pipeline from the seafloor, BSEE's 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. 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.

[216] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[217] Ocean Conservancy (BOEM-2023-0027-1961).

Section 6 – Revisions to other types of Supplemental Financial Assurance

Section 6.1 – Changes to allowing third-party guarantors to serve as supplemental assurance for ROW and RUE grants and OCS leases

Comment: A commenter expressed support for the Department's efforts to increase flexibility for third-party guarantees.[218] An additional commenter expressed support for the proposed flexibility in types of financial assurance, particularly endorsing the Department's proposed expanded flexibility to facilitate third-party guarantees.[219]

Response: BOEM acknowledges the commenter's support for the proposal to increase flexibility for third-party guarantees, and has finalized the amendments, as proposed.

Comment: A commenter expressed support for the Department's consideration of the credit ratings of sureties and expressed support for the Department's proposal to establish credit rating thresholds for the qualification of guarantors.[220]

Response: BOEM acknowledges the commenter's agreement with the use of credit ratings for guarantors, which is included in the final rule.

Section 6.1.1 – Request for comment: Should third-party guarantors be exempt from requirement that all guarantees comply with obligations of all lessees, operating rights, owners, and operators on the lease in addition to limited third-party guarantee amount?

Comment: A commenter expressed support for the Department's proposal to modify third-party guarantees, making them limited to specific dollar amounts. They agreed with the Department's assertion that this approach is more likely to expand the use of guarantees.

Furthermore, the commenter suggested that the Department should modify its regulations to allow guarantors to limit their guarantees to specific obligations. They reasoned that this modification aligns logically with and is consistent with the proposed rule. According to the commenter, it would also ease pressure on the security market by removing any additional and unstated obligations from guarantees that are not included in the Department's financial assurance demand order.

Additionally, the commenter supported the Department's proposal to assess the qualification of a third-party guarantor based solely on its issuer or proxy credit rating. They pointed out the challenges faced with the current criteria and appreciated the Department's efforts to reduce confusion by establishing threshold public and proxy credit ratings to qualify a guarantor, aligning it

[218] Opportune LLP (BOEM-2023-0027-1991).
[219] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[220] Shell Offshore Inc. (BOEM-2023-0027-2012).

with the credit rating applied to the lessees in proposed 30 CFR § 556.901(d).[221]

An additional commenter expressed support for the proposed rule's expanded flexibility for third-party guarantees, advocating for explicit provisions allowing third-party guarantors to cover specified lease or grant obligations in addition to fixed dollar amounts.

Regarding the Department's question about excluding third-party guarantors from certain requirements, a commenter responded affirmatively. They stated that this change aligns with the intent of the proposed rule to make third-party guarantees a more commercially viable form of financial assurance. They reasoned that a guarantor's ability to assess potential exposure to the risks of the party they are guaranteeing is limited, and excluding third-party guarantors from certain requirements ensures adequate financial assurance for current lessees and grantees.[222]

Response: The Department is finalizing the proposed amendment to 30 CFR 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 financial assurance with respect to any of its liabilities left uncovered by the limited guarantee.

Comment: A commenter stated that third-party guarantors should be excluded from the requirement of § 556.902(a)(2) that guarantees must "guarantee compliance with all obligations of all lessees, operating rights, owners, and operators on the lease." They asserted that limiting the obligations of third-party guarantors to specific obligations and specific amounts would expand the available security market beyond traditional bonding agencies. They reasoned that this would ease the burden for entities required to provide additional supplemental financial assurance.[223]

Response: BOEM concurs with the commenter's assertion that allowing third-party guarantors to limit

[221] Shell Offshore Inc. (BOEM-2023-0027-2012).
[222] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[223] Shell Offshore Inc. (BOEM-2023-0027-2012).

their guaranteed obligations will ease the search for providers of additional supplemental financial assurance. The Department is finalizing, as proposed, the exclusion of third-party guarantors from the requirement of § 556.902(a)(2).

Comment: A commenter emphasized that third-party guarantors should not be excluded from the requirement that guarantees cover all obligations of lessees, operating rights owners, and operators on the lease.[224]

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 as a result of this rulemaking. BOEM has added regulatory language in the final rule specifically allowing a third-party to limit its cumulative obligations to a fixed dollar amount or it may limit its obligations to cover the costs to perform one or more specific lease obligations (with no fixed dollar amount). 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 financial assurance with respect to any of its liabilities left uncovered by the limited guarantee.

Comment: A commenter responded to the request for comment with a "No." They further asserted that if a third-party meets the U.S. government's regulatory requirements for conducting activity and assuming risk, the Department should not impose additional limitations beyond those mandated by the relevant regulatory body whose responsibility it is to regulate such a third-party.[225]

Response: The commenter did not provide any additional reasoning for why third-party guarantors should not be allowed to limit their obligations. BOEM believes the commenter's assertion that the Department should not impose additional limitations beyond those mandated by the relevant regulatory body is related to the proposed requirement that the third-party guarantor have an investment grade credit rating and is responding based on that assumption. There is a difference between providing financial assurance through a bonding/insurance company that is found sufficient by the Federal Agency that regulates surety companies and providing assurance through a third-party guarantee. BOEM accepts the company bonding without any additional restrictions; however, when the financial assurance is provided through a third-party guarantee, BOEM requires that the guarantor be an investment grade company, otherwise BOEM would be simply transferring the risk from one risky company to a second risky company. As a result, and to be consistent with the

[224] True Transition (BOEM-2023-0027-1696).
[225] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).

financial requirements that ROW and RUE grant holders and lease holders must meet, the Department is finalizing the proposed amendment to require third-party guarantors maintain an investment grade issuer credit rating or proxy credit rating.

Section 6.2 – Approval conditions of any new transfer or assignment of any lease interest until financial assurance obligations are satisfied

Comment: A commenter expressed support for the policy but asserted that it is difficult to implement and made several points regarding the transfer of leases and financial responsibility. They asserted that BSEE should assess the fitness of new leaseholders based on published safety and compliance criteria before approving a lease assignment. They emphasized that new lessees must demonstrate financial assurance in line with the Department requirements. The commenter suggested that the transferor should continue to demonstrate financial assurance until lease ownership is transferred again, at which point the original lessees would no longer be financially liable. They provided an example and a diagram to illustrate their point and emphasized the need for the Department to enforce policies regarding the transfer of lease interests and compliance with regulations and orders. Additionally, the commenter raised concerns and questions about the implementation of certain policies related to transferor liability and the issuance of decommissioning orders to predecessor lessees. They specifically asked the following:[226]

- What if the transferee fails to properly maintain the existing facilities?
- What if the existing facilities are toppled or badly damaged by a hurricane subsequent to the transfer?
- Who is responsible for wells that are sidetracked following the transfer?
- What constitutes "new facilities?" Does that include updated equipment?
- How are the respective liabilities determined and managed?

Response: The commenter's assertion that BSEE should assess the fitness of new leaseholders based on published safety and compliance criteria before approving a lease assignment is out of scope for this rulemaking. BOEM acknowledges the commenter's support for the policy that the current lessee or grant holder will need to provide financial assurance unless they meet any of the criteria that would exempt them as discussed earlier in this document and is finalizing this provision as proposed. The commenter's recommended approach in the diagram is also out of scope for this rulemaking, as DOI did not propose and is thus not changing how liability moves with transfers or the existing joint and several liability framework; DOI only proposed that financial assurance requirements must be met prior to a transfer. With respect to the commenter's questions, the current lessee or grant holder is responsible for maintaining the existing facilities including wells, which was not changed in the proposed rulemaking.

Comment: A commenter highlighted that the proposed rule empowers the Department to restrict new transfers or assignments of OCS leases until the parties involved comply with financial assurance requirements and other applicable regulations. While the commenter expressed appreciation for these positive changes, they urged the Department to go even further and implement additional

[226] E. Danenberger (BOEM-2023-0027-1219).

measures to strengthen the proposed rule. Specifically, the commenter recommended that BOEM prohibit noncompliant companies, including those with idle iron, from acquiring new OCS leases through either a new OCS lease sale or via transfer from another lessee.[227]

Response: The commenter's assertion that BOEM prohibit noncompliant companies, including those with idle iron, from acquiring leases through a sale or transfer is out of scope for this rulemaking. It should be noted that all lessees that do not meet the exemption criteria will be required to provide supplemental financial assurance, including those with idle iron, as a result of this rulemaking. BOEM acknowledges the commenter's support for the proposed provisions to restrict transfers unless all financial assurance obligations are satisfied. No additional changes were made to the proposed rule text in this final rule regarding transfers or assignments.

[227] Ocean Conservancy (BOEM-2023-0027-1961).

Section 6.3 – Dual-obligee security

Comment: A commenter expressed support for the inclusion of dual-obligee bonds as a form of financial assurance. They requested clarification in the final rule regarding how such bonds could be utilized by affected parties. The commenter characterized the acceptance of dual-obligee bonds by the Department as a promising way to mitigate the risks of a current lease owner being unable to fulfill its contractual and regulatory obligations, including decommissioning. According to the commenter, these risks are presently shared by the Federal government and lease owners, including predecessors. The commenter supported the Department's acceptance of bonds that would allow each predecessor in title to immediately access the full amount of security to meet the defaulting party's regulatory obligations, providing meaningful protection for all parties involved.[228]

Response: A current lessee using dual-obligee bonds as a form of financial assurance would need to include terms adequately protecting BOEM's interest.

Comment: A commenter proposed expanding dual-obligee security from predecessors to designated operators, citing challenges facing entities that are often named designated operator for GOM infrastructure when non-operating co-owners lack financial stability. According to the commenter, this situation poses risks for the BOEM, BSEE, and taxpayers. The commenter asserted that a "potential fix to these problems is to provide for mechanisms where supplemental financial assurance tendered to BOEM can be in the form of dual-obligee security such that the designated operator, in conjunction with BOEM, can access such security to cover the defaults of its non-operating co-owners." The commenter concluded that this would enable the designated operator, in collaboration with the Department, to access the supplemental financial assurance for the entity actually performing the decommissioning operations. The commenter added that such a provision would streamline decommissioning operations, eliminating the need for the designated operator to wait for the Department to act or pursue litigation. The commenter continued that the current options, such as assuming the decommissioning activities or engaging in legal proceedings, could lead to delays in decommissioning. The commenter emphasized that dual-obligee security is already used in assignor/assignee contracts, making it a logical step in contracts governing operations among co-owners.[229]

Response: BOEM finalized the definition of financial assurance in both parts 550 and 556 as "a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or other form of security acceptable to the BOEM Regional Director…" This definition includes dual-obligee bonds and BOEM has accepted such bonds in the past. In such cases, the co-obligee may call the bond under specified circumstances.

[228] bp America Inc. (BOEM-2023-0027-2003).
[229] LLOG Exploration Company, LLC (BOEM-2023-0027-1930).

Comment: A commenter emphasized the recognition of "dual-obligee bonds" in the proposed rule's preamble, highlighting it as a type of financial assurance covered by the section. They advocated for making supplemental financial assurance amounts provided by a current owner of a lease or grant available to the party actually performing the decommissioning or other related obligations in case the current owner fails to do so. The commenter reasoned that this approach aligns with the proposed rule's core principle of non-reliance on predecessors.

Additionally, the commenter proposed specific revisions to subsections 556.902 (a)(1), (a)(2), and (a)(3) for clarity and alignment with the proposed rule's approach for third-party guarantees in § 556.905 and a new subsection (a)(4). They recommended adjustments to ensure that financial assurance instruments appropriately cover relevant lease or grant obligations. Their recommended revisions are as follows:

> (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 30 CFR part 550, must:
>
> (1) Be payable upon demand to the Regional Director [Underline: or to a party other than current interest holders that in response to a BOEM or BSEE order actually performs decommissioning or other corrective action];
>
> (2) Guarantee compliance with all your obligations under the lease or grant, the regulations under 30 CFR chapters II [Strikethrough text: and XII], and all BOEM and BSEE orders [Underline: that are effective, not stayed, and pertain to the lease or grant covered by the financial assurance]; and
>
> (3) [Strikethrough text: G][Underline: Collectively with any other financial assurance for the lease or grant], 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.; and
>
> (4) [Underline: Be primary to expenditure by any predecessor toward performance of the same obligation covered by the financial assurance].[230]

Regarding 30 CFR § 556.902(a), a commenter recognized the importance of multi-beneficiary bonds and suggested a provision ensuring that the negotiated security instrument protects the allocated asset regardless of the performing party. They proposed adding a new provision in 556.902 (a)(4) to specify that financial assurance should be payable to the party performing the decommissioning or other lease or grant obligation. The commenter reasoned that this change aligns with the proposed rule's intent to recognize the use of "dual-obligee bonds" as a form of financial assurance. They emphasized the significance of dual-obligee bonds in facilitating OCS transactions and investments, while preventing double securing of lease obligations.[231]

Response: BOEM finalized the definition of financial assurance in both parts 550 and 556 as "a surety

[230] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[231] Shell Offshore Inc. (BOEM-2023-0027-2012).

bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or other form of security acceptable to the BOEM Regional Director…" This definition includes dual-obligee bonds and BOEM has accepted such bonds in the past. In such cases, the co-obligee may call the bond under specified circumstances. BOEM disagrees with the commenter's recommended revisions, including the addition of new paragraph (a)(4), and did not include them in the final rule. The intent of section 556.902 is to prescribe general requirements for bonds and other types of financial assurance, not to prescribe the distribution of those funds for decommissioning activities.

Section 6.4 – Addition of paragraph to clarify that BOEM may provide funding collected from forfeited financial assurance to predecessor lessees or grant holders or to third parties taking corrective actions on a lease or grant

Comment: A commenter provided recommendations related to supporting timely and efficient decommissioning. They emphasized the need for the Department to clarify that available supplemental financial assurance may be directed to the current designated operator or other current lessees not in default, in addition to predecessors addressing decommissioning.

The commenter endorsed the concept proposed by the Department to utilize forfeited financial assurance from the current lessee or other successor lessees for decommissioning activities initiated by predecessor lessees. They suggested adding additional specificity to ensure that financial assurance from a defaulting party is not exclusively available to predecessors. Instead, the current designated operator and non-defaulting co-lessees should also be considered for funding from the defaulting party's financial assurance. This expansion of concepts, according to the commenter, would facilitate efficient and timely decommissioning.

Furthermore, the commenter emphasized the importance of providing all available supplemental financial assurance to the current designated operator when defaults occur, ensuring that they have the necessary resources for addressing decommissioning liabilities covered by the assurance. The commenter reasoned that this approach would shift the responsibility of default to the entities compensated for taking on the credit risk of the defaulting party, ultimately de-risking the designated operator and other non-defaulting co-lessees and benefiting the overall decommissioning process.[232]

Additional commenters emphasized the importance of the Department providing clarity regarding supplemental bonds. They outlined two key clarifications: (i) supplemental bonds should be called if the current owners fail to perform, either concurrently with or before calling on predecessors in title; and (ii) such bonds should also be made accessible to predecessors who are directed to undertake corrective action on the lease or grant. The commenter expressed concern that without these specific clarifications, current owners may continue to rely on the financial resources of their predecessors.[233]

Another commenter expressed general support for flexibility in types of financial assurance, endorsing the Department's proposed expanded flexibility and application of established standards. They also advocated for specific allocation of financial assurance to specific OCS assets and prompt distribution of forfeited financial security to performing entities when existing holders do not fulfill their obligations. To that end, they asserted that BOEM's final rule should go further to require, rather than just allow, the prompt distribution of any forfeited financial security to those entities actually performing decommissioning on the OCS when existing lease or grant holders do not

[232] LLOG Exploration Company, LLC (BOEM-2023-0027-1930).
[233] Chevron U.S.A., Inc. (BOEM-2023-0027-1974); Hess Corporation (BOEM-2023-0027-1986).

perform their obligations. They emphasized the need for prompt access to supplemental financial assurance amounts provided to the agency by a current owner of a lease or grant, in the event that the current owner fails to perform. They asserted that this access should take precedence over any expenditure by predecessors towards the same obligation, aligning with the proposed rule's core principle of non-reliance on predecessors.[234]

Response: BOEM retains the ability for the Regional Director to disburse collected funds to predecessors or other parties that are performing the decommissioning, as specifically stated in the final rule. Additionally, in response to this comment, BOEM has added "BOEM or BSEE orders" to the list of activities for which the Regional Director may use the forfeited financial assurance in 556.907(h). Given the restricted nature of forfeited funds (restricted for use remedying lease obligations) and BOEM's currently existing capability to release the funding to parties performing decommissioning, BOEM rejects the necessity of further adding regulations to this same effect.

Comment: A commenter expressed concern over the change proposed by the Department to no longer allow "component" bonding. They highlighted the potential impact, as wells and lease term pipelines would now be bonded at the lease level. According to the commenter, this could lead to the Department holding a company's bond until all decommissioning liabilities for the lease are settled. The commenter urged the Department to consider allowing the release of bonds once decommissioning is finalized for specific operating rights or an aliquot area of a lease.[235]

Response: BOEM can utilize specific aliquots or specific operating rights if needed to determine when an entity's decommissioning liabilities are settled when addressing the cancellation of financial assurance; this did not change with the proposed or final rule.

Comment: A commenter asked the following questions:

- In the event a surety allowed forfeiture of a bond in an amount demanded by the Department (in accordance with 556.902(a)(3)), which is in an amount less than the amount of the bond, would the Department be able to make a further "forfeiture demand" on the balance of the bond?
- In the event of forfeiture, when the amount of forfeiture is less than the bond amount, the Department can make further claims against the bond?[236]

Response: BOEM would release the remainder of the bond in accordance with the regulations in 30 CFR 556.906-907. BOEM retains the right to make a further forfeiture demand on the balance of the bond.

Comment: A commenter discussed the need for financial assurance to secure lease-specific obligations,

[234] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[235] Talos Energy Inc. (BOEM-2023-0027-2005).
[236] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).

citing 30 CFR § 556.902(a)(2). They argued that any funds received from forfeited financial assurance **should** be distributed to a party (predecessor or otherwise) that performs decommissioning or corrective action in response to a BOEM or BSEE order. As such, they recommended modifying 30 CFR § 556.907(h) to specify that the Regional Director shall pay the funds from forfeited financial assurance to a co- or predecessor lessee or third party undertaking the corrective action.[237]

Similarly, in 556.904(d), a commenter asserted that the Department should change "may" to "will" when providing funds for decommissioning, and that payment should not be limited to a "liable party," but should go to the party actually performing the decommissioning. They also stated that funds should be paid to performing parties as costs are incurred, rather than only after completion of all actions. Their recommended revisions are as follows:

> (d) BOEM ~~may~~ will provide funds from the decommissioning account to the ~~liable~~ party that performs the decommissioning in response to a BOEM or BSEE order to cover the costs thereof. BOEM will promptly distribute the funds from the decommissioning account upon presentation of paid invoices for costs incurred by the party performing the decommissioning.

In 556.907(d), the commenter suggested changing "may" to "will" to prioritize calling for financial assurance from sureties before looking to predecessors to address unperformed lease obligations.[238]

Response: BOEM disagrees with the commenter's recommendation to change "may" to "will" as there could be some scenarios when it may not be appropriate to release the funds. BOEM will retain its discretion to distribute funds by keeping the word as "may." BOEM agrees with the commenter's recommendation to remove "liable" and has removed it in this final rule. BOEM also agrees with the commenter's recommendation that funds could be paid to the performing parties as costs are incurred, rather than only after completion of all actions. As such, BOEM has included the following statement in the final rule: "BOEM may distribute the funds from the decommissioning account upon presentation of paid invoices for reasonable and necessary costs incurred by the party performing the decommissioning." In response to this comment, BOEM has added "BOEM or BSEE orders" to the list of activities for which the Regional Director may use the forfeited financial assurance.

Comment: In the table in 556.906(d), a commenter concurred with BOEM's clarification in the proposed rule that financial assurance instruments can be cancelled under certain conditions, and recommended revisions to Table 1 paragraph (d)(2), including citing 30 CFR 550.166(b) instead of (a) and releasing financial assurance immediately after verification of completed decommissioning work. They asserted that there "is no need to hold financial assurance for years after verified completion of the decommissioning work based on the possibility of a 'problem' arising sometime in

[237] Shell Offshore Inc. (BOEM-2023-0027-2012).
[238] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

the future." They further asserted that "[h]olding additional securities provided by lessees and grant holders for prolonged periods of time is unnecessary and, in many cases, reduces the capability of a lessee or grant holder from obtaining financial assurance for other decommissioning obligations due to exposure limitations sureties place on companies." The recommended revisions are as follows:

> (i) When the lease or grant expires or is terminated and the Regional Director determines you have met your covered obligations.[239] ~~Unless the Regional Director:~~
>
> ~~(A) Determines that the future potential liability resulting from any undetected problem is greater than the amount of financial assurance submitted under §556.900(a), §556.901(a) or (b), 30 CFR 550.166(a), or 30 CFR 550.1011(a); and~~
>
> ~~(B) Notifies the provider of financial assurance submitted under §556.901(d), 30 CFR 550.166(b), or 30 CFR 550.1011(d) that the Regional Director will wait 7 years before canceling 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).~~

Response: The commenter is correct in their assertion that the statement in (d)(2) should refer to section 550.166(b) instead of (a) and has been corrected in this final rule. BOEM disagrees with the commenter's recommended removal of 556.906 (d)(2)(i)(A) and (B) and did not remove these sections in the final rule. While BOEM can immediately release financial assurance after decommissioning work has been completed, there may be circumstances in which BOEM may need to retain part or all of the financial assurance to address outstanding issues. The regulatory text in subsections (A) and (B) does not preclude BOEM from releasing the financial assurance immediately if there are no issues, however the regulatory text retains the discretion to allow BOEM to make that determination and retain the financial assurance if necessary.

Comment: In 556.907(g), a commenter recommended revisions for better clarification on when excess funds will be returned to the party who provided them. The revisions are as follows:

> (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 and 30 CFR chapter II, the Regional Director will return the excess funds to the party from whom they were collected [Underline: as soon as reasonably possible after the corrective action has been completed, all invoices have been paid, and no additional funds are reasonably needed to address the corrective action that had been performed.][240]

Response: BOEM disagrees with the commenter's suggested edits to the regulatory text. BOEM's

[239] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[240] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

practice is to return the funds as soon as reasonably possible after the corrective action has been completed, all invoices have been paid, and no additional funds are needed to address the corrective action, however, BOEM believes adding this language to the regulatory text creates unnecessary ambiguity around "reasonably possible." As such, BOEM did not add the commenter's recommended regulatory text in the final rule.

Comment: In 556.907 (h), a commenter proposed changing "may" to "will" to specify the release of forfeited funds to parties performing decommissioning work. The revisions are as follows:

> (h) The Regional Director ~~may~~ will 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 and the terms of your lease or grant.[241]

Response: BOEM disagrees with the commenter's recommendation to change "may" to "will" as there could be some scenarios when it may not be appropriate to release the funds to co- or predecessor lessees. BOEM will retain its discretion to release the funds by keeping the word as "may."

[241] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

Section 6.5 – Decommissioning Accounts

Comment: A commenter recommended that the final rule "should specify that funds may not be withdrawn from decommissioning accounts for other purposes." According to the commenter, these kinds of withdrawals should require the Department approval.[242]

Response: The regulatory text in 30 CFR 556.904(a), as proposed and as finalized, specifies that funds cannot be withdrawn without written approval from the Regional Director.

Comment: The commenter expressed support for flexibility in types of financial assurance, particularly endorsing the Department's proposed expanded flexibility to broaden the use of decommissioning accounts for lessees unable to secure other forms of supplemental financial assurance.[243]

Response: BOEM acknowledges the commenter's support for the proposed flexibilities, and has finalized the addition of these flexibilities, including the use of decommissioning accounts, as proposed.

Comment: A commenter suggested that the Department should require decommissioning accounts if current interest holders fail to satisfy the supplemental financial assurance requirements. Specifically, they recommended that "BOEM amend proposed [556.904] subsection (a) to also authorize BOEM to compel the establishment of a decommissioning account if a current interest holder fails to timely satisfy, or obtain an IBLA stay of, a supplemental financial assurance demand." They asserted this would promote prompt provision of financial assurance and provide adequate protection of other entities and the public. Their revisions are as follows:

> (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), 30 CFR 550.166(b) or 30 CFR 550.1011(d). [Underline text: The Regional Director may direct you to establish a decommissioning account(s) in a federally insured financial institution if you fail to satisfy a] supplemental financial assurance demand previously made pursuant to § 556.901(d), 30 CFR 550.166(b) or 30 CFR 550.1011(d) for the same lease or grant. 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.[244]

Response: BOEM disagrees with the commenters' assertion that DOI should require the establishment of a decommissioning account if current interest holders fail to satisfy financial assurance requirements and is not adopting the commenter's recommended regulatory text in the final rule.

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[242] E. Danenberger (BOEM-2023-0027-1219).
[243] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[244] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

BOEM finalized the definition of financial assurance in both parts 550 and 556 as "a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or other form of security acceptable to the BOEM Regional Director…" because decommissioning accounts are not the only way to ensure the government is covered for these obligations in the future.

Comment: A commenter also asserted that the consequence for missing a due date for scheduled payments to a decommissioning account should be lessened as the late payment may be the result of staff absences or clerical errors in the proposed subsection 556.904(a)(3). They recommended BOEM to "modify the provision so that additional financial assurance is required if you miss a scheduled payment and do not cure that deficiency within 30 days of the due date." The also asserted that BOEM could require additional supplemental financial assurance if scheduled payments are submitted routinely late.

> (3) If you fail to make the initial payment [Strikethrough text: or any scheduled payment] into the decommissioning account, [Underline: if you fail to correct a late scheduled payment within 30 days after the due date for that payment, or if BOEM determines that you are chronically making scheduled payments late], you must immediately submit . . . .[245]

Response: In response to the request to lessen the consequence for missing a due date for a scheduled payment to the decommissioning account, BOEM has added in 30 CFR 556.904(a)(3) that a late scheduled payment must be corrected within 30 days after the due date for that payment or the entire remaining unfulfilled portion of the demand must be submitted immediately.

Comment: A commenter suggested that the proposed modifications related to decommissioning accounts should allow for the incorporation of private security arrangements. They stated that they generally supported the changes to 556.904 but asserted that the proposed text in subsection (a) may impact current and future decommissioning security agreements and only further the existence of "double security." They recommended that BOEM add "subject to the terms of any agreement where the US Government is a named third-party beneficiary" to the end of subsection (a).[246]

Response: DOI is finalizing the definition of financial assurance in both parts 550 and 556 as "a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or other form of security acceptable to the BOEM Regional Director…" This definition does include a dual-obligee bond and BOEM has accepted such bonds in the past. BOEM will account for dual obligee bonds but will not consider securities that BOEM cannot call in the case of default. BOEM did not add the recommended text to 556.904(a) because the regulations recognize these dual-obligee bonds with the US Government as the beneficiary and the Regional Director would review the agreement when approving or disapproving of the withdrawal from the decommissioning account.

[245] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[246] Shell Offshore Inc. (BOEM-2023-0027-2012).

Section 7 – BOEM Evaluation Methodology

Section 7.1 – Issuer Credit Ratings

Section 7.1.1 – Use of NRSRO or SEC-issued credit ratings

Comment: A commenter expressed support for the use of credit ratings issued by a major, nationally recognized agency as this approach is well understood by key stakeholders, thus helping to ensure the transparency and quality of information.[247]

Response: BOEM acknowledges the commenter's support for the proposed utilization of credit ratings issued by an NRSRO and concurs that the approach should help ensure transparency and quality of BOEM's financial evaluations. The Department is finalizing the use of issuer credit ratings in this rulemaking.

Comment: A commenter stated that page 42147 of the preamble to the proposed rule (part of Section VI.A) indicates that non-publicly traded companies do not have credit ratings. However, according to the commenter, some non-publicly traded companies do have credit ratings, and some publicly traded companies do not.[248]

Response: BOEM's intent at 88 FR 42147 was to explain the need for the development of a proxy credit rating, not to state categorically that all non-publicly traded companies do not have credit ratings. BOEM will develop a proxy credit rating for a company that does not have an issuer credit rating, if requested by that company.

Comment: A commenter discussed the provision in the proposed rule related to investment grade credit ratings and issuer credit ratings. They asserted that while the intent of the proposed regulations implies that Fitch Ratings may provide an acceptable issuer credit rating, further clarity is needed to avoid ambiguity during implementation. They suggested a revision to the definition of issuer credit rating to explicitly include Fitch Ratings alongside S&P and Moody's, thereby referencing all three of the most recognized NRSROs recognized by the SEC. According to the commenter, this change would eliminate any potential ambiguity in the application of the new regulations.[249]

Response: BOEM agrees with the commenter's 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 definition of issuer credit rating in the final rule for 30 CFR 556.105.

[247] bp America Inc. (BOEM-2023-0027-2003).
[248] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[249] Apache Corporation (BOEM-2023-0027-1732).

Section 7.1.2 – Request for comment: Should BOEM use bond issuance ratings in addition to issuer credit ratings; if so, what is an appropriate threshold?

Comment: A commenter remarked that bond issuance ratings are specifically for one tranche of security and are unique to the underlying offering associated therewith. It is therefore not applicable to the overall credit health of an entity, reasoned the commenter, and should thus be taken into consideration as an indicator of credit health, but not serve as a proxy to an overall credit rating.[250]

Response: BOEM agrees with the commenter's assertion that a bond issuance rating should not serve as a proxy to an overall credit rating and the Department is not adopting the use of a bond issuance rating when determining supplemental financial assurance requirements for an entity with this final rule.

Comment: A commenter expressed support for the proposed rule's use of issuer credit ratings or proxy credit ratings in lieu of bond issuance ratings which could undercut the proposed rule's simpler and effective approach to supplemental financial assurance. The commenter said that if the Department elects to include consideration of bond issuance ratings for supplemental financial assurance, then the requisite bond issuance ratings should still be commensurate with the criteria in proposed § 556.901(d).[251]

Response: BOEM agrees with the commenter's assertion that using a bond issuance rating could cause the final rule approach to be more complicated, and therefore, the Department is not adopting the use of a bond issuance rating when determining supplemental financial assurance requirements for an entity with this final rule.

Comment: One commenter recommended that the Department should rely on a company's bond rating if it is higher than its credit rating.[252]

Response: The Department has decided not to include bond ratings in addition to credit ratings in the final rule. As discussed in the preamble to the proposed rule at 88 FR 42146, lessees may have both an issuer credit rating and a bond issuance rating, however, the bond issuance rating is an opinion of the credit quality of a specific debt obligation only. This can vary based on the priority of a creditor's claim in bankruptcy or the extent to which assets are pledged as collateral. BOEM believes the use of a bond issuance rating could cause the regulations to be more complicated and that credit rating is the better of the two ratings to describe the overall financial health of an entity.

[250] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[251] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[252] Talos Energy (BOEM-2023-0027-1857).

Section 7.1.3 – Investment grade credit rating threshold

Comment: A commenter asserted the proposed rule's requirement that operators have an investment grade rating to avoid bonding significantly and unfairly burdens the smaller independents as only the major oil companies hold an Investment Grade rating. According to the commenter, it is unfathomable to have the Department impose such a burden on, and disadvantage solely, the small businesses of the energy sector.[253]

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 on the OCS is safe and protects both the taxpayer and the environment. Recognizing the number of small entities operating on the OCS, the Department has included numerous provisions and flexibilities in this rulemaking to reduce the compliance burden for affected entities. BOEM acknowledged in the proposed rule (88 FR 42146) that some 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 businesses can be evaluated on the proved reserves of their lease to determine whether they may be required to provide additional supplemental financial assurance, also potentially reducing their financial burden. For all entities without an investment grade credit rating or with a lower than 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves, the Department is finalizing the use of decommissioning estimates at the P70 level. Furthermore, a lessee with an investment grade credit rating will waive the rest of the co-lessees on the lease from having to provide supplemental financial assurance. The Department also included phased-in implementation and is providing additional flexibility for lessees to increase the use of decommissioning accounts and third party guarantees to reduce the financial burden.

Comment: A commenter requested clarification for whether an investment grade credit rating of a company would automatically apply to the company's wholly owned subsidiary.[254]

Response: No, the investment grade credit rating of a company would not automatically apply to the company's wholly owned subsidiary. In this scenario, the parent company rating would only be relevant if acting as a third-party guarantor for the subsidiary.

Comment: A commenter remarked that investment grade credit ratings are an improvement over net worth analysis.[255] Another commenter expressed support for using a credit rating threshold of investment grade and stated that it strikes an appropriate balance between both the Department's and the industry's goal to protect the American taxpayers from exposure to financial loss associated with

[253] Cantium, LLC (BOEM-2023-0027-1592).
[254] CAC Specialty (BOEM-2023-0027-1201).
[255] True Transition (BOEM-2023-0027-1696).

OCS development.[256] Several commenters expressed support for relying on credit ratings,[257] adding that a credit rating threshold of BBB- or higher is appropriate.[258]

Response: BOEM acknowledges the commenters' support and agrees that using a credit rating threshold of investment grade strikes the appropriate balance between both the 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, to use an investment grade credit rating threshold.

Comment: A commenter expressed support for some of the Department's changes in the proposed rule, such as raising the credit rating threshold for waiver of supplemental financial assurances from BB- or Ba3 to BBB- or Baa3. However, the commenter remarked that the Department should further raise the investment grade rating to ensure the risk of failing to meet decommissioning liabilities is low.[259] An additional commenter asserted that if the Department plans to rely exclusively on a credit rating to determine whether supplemental financial assurances are justified, it should provide a "much higher" level of certainty to the companies that will comply with their decommissioning obligations. The commenter cited the descriptions S&P and Moody's utilize for BBB- and Baa3, respectively, as "adequate capacity to meet financial commitments" and "subject to moderate credit risk . . . [and] may possess speculative characteristics." The commenter concluded that lessees that qualify for this rating do not demonstrate a strong potential to meet their debt obligations.[260]

Response: BOEM acknowledges the commenter's support for the change in the proposed rule which 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 general practice 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

[256] Hess Corporation (BOEM-2023-0027-1986).
[257] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); bp America Inc. (BOEM-2023-0027-2003); Chevron U.S.A., Inc. (BOEM-2023-0027-1974); Shell Offshore Inc. (BOEM-2023-0027-2012).
[258] Chevron U.S.A., Inc. (BOEM-2023-0027-1974); bp America Inc. (BOEM-2023-0027-2003).
[259] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).
[260] Ocean Defense Initiative (BOEM-2023-0027-1977).

credit rating of A-. BOEM believes that the 1-year default rate 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 the available capital available to companies for investment, with little additional protection from the effects of bankruptcy.

Comment: A commenter advised the Department to raise the proposed credit rating threshold while retaining protections for predecessor lessees in a manner that also maintains strong protection against risk of default.[261]

Response: The Department is finalizing, as proposed, the use of an investment grade credit rating threshold. BOEM 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 general 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). 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.

Comment: A commenter discussed section 556.901(d)(2) of the proposed rule. They reasoned that on page 42152, in the Section-by-Section Analysis, there is a reference to credit ratings from S&P and Moody's. They suggested changing the reference to Moody's from "Ba3" to "Baa3," which is equivalent to S&P's BBB- credit rating. According to the commenter, this change would align with the consistency observed in other credit rating references within the proposed regulations.[262]

Response: The commenter's assertion is correct; 88 FR 42152 inadvertently included the incorrect equivalent credit rating. The Baa3 rating is the correct Moody's equivalent to S&P and Fitch BBB-. The final rule has been corrected to include the Baa3 Moody's rating.

Comment: A commenter asked the Department to consider requiring bonds to cover 75% of decommissioning liabilities for companies with a BBB credit rating, 50% for companies with an A credit rating, 25% for companies with an AA credit rating, and a full waiver for companies with a AAA credit rating.[263]

[261] Murphy Oil Corporation (BOEM-2023-0027-2007).
[262] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[263] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).

Response: BOEM disagrees with the commenters' assertion that BOEM should require bonds to cover 75% of decommissioning liabilities for companies with a BBB credit rating, 50% for companies with an A credit rating, 25% for companies with an AA credit rating, and a full waiver for companies with a AAA credit rating. As discussed in a response above, 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 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. Requiring financially strong companies with BBB or higher ratings to provide supplemental financial assurance would reduce the available capital available to those companies for investment, with little additional protection from the effects of bankruptcy. Additionally, requiring different percentages of decommissioning liabilities for companies with different credit ratings introduces further complications to the regulations which could make them more difficult and burdensome to implement.

Comment: A commenter asserted that an investment grade credit rating is excessive and noted that banks and investors lend to their company even though their credit rating is below the investment grade threshold. They also asserted that it "is inaccurate and misleading to characterize all lessees and grant holders who do not qualify as investment grade as facing substantial risk of becoming financially unable to carry out their lease obligations." The commenter requested that the Department remove all references to "investment grade credit rating" in the final rule. A couple of commenters suggested a threshold credit rating less than either BB- from S&P ratings or Fitch Ratings (Fitch), Ba3 from Moody's Investor Service (Moody's),[264] or an equivalent proxy credit rating, should constitute grounds for the Regional Director to require a lessee to provide supplemental financial assurance.[265]

Response: BOEM disagrees with the commenter's assertion that an investment grade credit rating threshold is excessive and that BOEM characterized "all lessees and grant holders who do not qualify as investment grade as facing substantial risk of becoming financially unable to carry out their lease obligations" in the preamble to the proposed rule. BOEM explained in the preamble at 88 FR 42147 that it had evaluated the 1-year default rates and found that the rate for companies with an investment grade credit rating (*i.e.*, 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. Although not all entities with a lower than investment grade credit rating are risky, they can become too risky too quickly for BOEM to evaluate the need for and request

[264] Talos Energy Inc. (BOEM-2023-0027-2005); Murphy Oil Corporation (BOEM-2023-0027-2007).
[265] Murphy Oil Corporation (BOEM-2023-0027-2007); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

supplemental financial assurance. As such, the Department is finalizing, as proposed, the use of an investment grade credit rating and has not removed the references in the regulations as requested by the commenter.

Comment: One commenter urged the Department to make publicly available "the credit ratings of all companies holding lease interests in the GOM and specify those that qualify as investment grade (Tier 1) and those that do not qualify as investment grade (Tier 2)."[266]

Response: The credit ratings of publicly traded companies are already available on the internet. BOEM has no current plans to make all developed proxy credit ratings publicly available, for example, in a database. Any individual requests for this information would be subject to the regulations implementing the Freedom of Information Act (FOIA).

Comment: A commenter recommended that the Department revise § 556.901(d)(1) in the final rule to include a credit rating threshold of BB or higher, asserting that the increase in default risk between an issuer credit rating of BBB- to BB is "negligible." The commenter added that if the threshold is set at BBB- or higher, a decrease in credit rating to that of BB does not pose an imminent risk, while a decrease in credit rating below that of BB to BB- does present a risk and should not be provided a phased option.[267]

A couple of commenters suggested the use of issuer credit rating of BB-[268] or higher.[269] One of the commenters suggested the rating be assigned to an issuer of corporate debt by an NRSRO.[270] A couple of commenters stated that the Department overestimated the risk to the taxpayer by misapplying the S&P cumulative historical BB- default rates in their assessment of credit ratings. Additionally, they added that the Department cited 1-year and cumulative 5-year default rates for BB- ratings of 1.21% and 9.03% but did not consider historical recovery rates. [271]

Response: BOEM disagrees with the commenter's assertion that the threshold should be BB instead of BBB-. 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 general practice 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-

[266] Talos Energy (BOEM-2023-0027-1857).
[267] Occidental Petroleum Corporation (BOEM-2023-0027-1906).
[268] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[269] Murphy Oil Corporation (BOEM-2023-0027-2007).
[270] Murphy Oil Corporation (BOEM-2023-0027-2007).
[271] Opportune LLP (BOEM-2023-0027-1991).

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 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. The Department is finalizing, as proposed, the use of an investment grade credit rating and has not removed the references in the regulations as requested by the commenter.

BOEM has determined that the use of the proposed threshold of investment grade issuer credit rating from an NRSRO or an investment grade proxy credit rating provides an appropriate level of risk reduction while balancing the burden on the oil and gas sector. BOEM did not misapply S&P default rates. BOEM chose not to consider historical recovery rates since it is common for companies that emerge from bankruptcy to shed liabilities.

Comment: A commenter asserted that the Department should require every lessee to provide supplemental financial assurances for decommissioning costs. They stated that if the Department chooses to grant waivers, it should do so only for lessees with investment credit ratings higher than BBB- (S&P) or Baa3 (Moody's), taking into consideration the lessees' compliance history and whether they have idle iron. The commenter expressed the view that the Department should eliminate the consideration of proxy credit ratings and the value of proved oil reserves associated with a given lease.[272]

Response: BOEM disagrees with the commenter's assertion that every lessee should provide supplemental financial assurance for decommissioning costs. 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 taxpayers 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 capital expenditures.

BOEM disagrees with the commenter's assertion that DOI should eliminate the consideration of proxy credit ratings. 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. Removal of the proxy credit rating would prevent small businesses that do not

[272] Chevron U.S.A., Inc. (BOEM-2023-0027-1974).

have an issuer credit rating from obtaining a waiver for supplemental financial assurance notwithstanding their strong economic posture.

BOEM also disagrees with the commenter's assertion that DOI should eliminate the consideration of the value of proved oil reserves. While 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: A commenter stated that the Department's proposal to increase the bonding requirements for non-investment-grade drilling companies will negatively impact companies' ability to explore and drill in the OCS and the GOM.[273]

Response: In order to minimize the impact to companies that do not have an investment grade credit rating or proxy rating, the final rule provides companies may still be exempt from needing to provide financial assurance if they meet the reserve valuation criteria.

[273] Center for Regulatory Freedom (BOEM-2023-0027-0030).

Section 7.2 – Proxy Credit Ratings

Section 7.2.1 – Use of BOEM-issued proxy credit ratings

Comment: A commenter discussed the introduction of a specific investment credit grade rating by S&P or Moody's as the threshold for necessitating supplemental bonding. They asserted that many independent oil and gas producers lack credit ratings, and to evaluate the practical and future implications of the proposed rule, these companies would need to establish a "proxy" credit rating using the intricate financial models of S&P and Moody's. They asserted that this process would be time-consuming, and a comprehensive analysis of the proposed rule's consequences would only be feasible after this task is finished.[274]

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 an NRSRO rating can provide BOEM with audited financials and BOEM will perform the necessary modeling to determine the proxy credit rating. BOEM also disagrees with the commenter's assertion that the consequences of the proposed rulemaking were not adequately clear. BOEM explained in the IRIA, available in the proposed rule docket for review and public comment (Document ID No. BOEM-2023-0027-0002), that BOEM assessed compliance costs to industry using either the NRSRO ratings or existing proxy ratings associated with decommissioning liability if a company has previously supplied BOEM with audited financials, BOEM used that information to determine the potential compliance costs of the rule. If an NRSRO rating or proxy rating was unavailable, the unrated liability was assumed to be sub-investment grade and assigned an average value based on the distribution of sub-investment grade liabilities. Because of this assumption, BOEM expects that some companies could provide audited financials to BOEM for determining a proxy credit rating that may result in an investment grade rating, resulting in a lower total compliance cost of the rulemaking than the RIA estimates. Additionally, if a company finds this alternative more burdensome than the benefit of avoiding posting supplemental financial assurance, nothing in the regulations require 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.

Comment: Several commenters expressed support for the option present in 30 CFR 556.901(d)(2) for a proxy credit rating determined by the Regional Director based on audited financial information for the most recent fiscal year and the use of the S&P credit model.[275]

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as

[274] Gulf Energy Alliance (BOEM-2023-0027-1155).
[275] Shell Offshore Inc. (BOEM-2023-0027-2012); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

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.

Section 7.2.2 – Authority of BOEM to issue proxy credit ratings

Comment: A commenter remarked that first, the Department is not a credit rating agency, and the additional level of analysis required to issue companies proxy credit ratings would be administratively burdensome; and second, in the last decade, a new player has introduced a different level of risk into the traditional energy model, namely private equity. The commenter said that among oil and gas companies that filed for bankruptcy in 2020, nearly 60 percent were backed by private equity firms. According to the commenter, these venture funds amount to a trench coat of non-liable entities and IOUs and would be exceedingly difficult for the Department to accurately assess. [276] Similarly, another commenter stated that the Department should abandon its proposal to use proxy credit ratings as it is not a financial agency, nor does it have the capacity or expertise to properly institute such a system. The commenter said that the Department should instead use its resources to determine whether nationally recognized statistical ratings organization (NRSRO) credit ratings are missing any key information.[277]

Response: The commenter is correct in their assertion that DOI is not a credit rating agency, however, 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 meet 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.

Additionally, BOEM disagrees with the commenter's assertion that it should use the proxy credit

[276] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).
[277] True Transition (BOEM-2023-0027-1696).

rating or other resources to determine whether the NRSRO credit ratings are missing key information. As discussed in the preamble to the proposed rule at 88 FR 42146, a review of S&P and Moody's rating methodologies showed that the analyses they perform to determine an issuer credit rating are wide-ranging and include factors beyond corporate financials such as history, senior management, and commodity price outlook. An issuer credit rating provides the rating agencies' opinions of the entity's ability to honor senior unsecured debt and debt-like obligations. These organizations are sufficiently equipped to evaluate the financial stability of entities and it is outside the purview of DOI to audit them.

Comment: A commenter requested that the Department allow public companies the option to use a proxy credit rating based on audited financial information for the most recent fiscal year, in lieu of an assigned issuer credit rating. According to the commenter, this would reduce the adverse effects of the rule on small and mid-sized public companies. The commenter said that having an alternative means, such as a proxy credit rating, for evaluating a public company's capability to meet its debt obligations would provide additional flexibility without increasing risks to taxpayers or disadvantaging public companies relative to private companies.[278]

Response: BOEM did not propose to only allow private companies to use the proxy credit rating. The Department is finalizing provisions, as proposed, that any company which does not have an issuer credit rating may provide the required documents and request a proxy credit rating from the Regional Director.

Comment: A commenter asked the Department if proxy credit ratings also adversely rate small entities based on their size.[279]

Response: A proxy credit rating does not adversely rate small entities base on their size. 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. A company's size is not one of the criteria used for analysis. 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, 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. Additionally, if a company finds this alternative more burdensome than the benefit of avoiding posting supplemental financial assurance, nothing in the regulations require them to select this alternative.

[278] Murphy Oil Corporation (BOEM-2023-0027-2007).
[279] House Committee on Small Business (BOEM-2023-0027-1162).

Section 7.2.3 – Use of S&P Global Inc.'s Credit Analytics Credit Model

Comment: Several commenters expressed support the use of the S&P credit model.[280]

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 556.901(d), the option for companies without an issuer credit rating 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.

Comment: A commenter said that before determining that "a proxy credit rating using a commercially available credit model" is sufficient, the Department should explicitly back-test those models to determine if they would have triggered "red flag" warnings in previous bankruptcies, including Cox Operating & Fieldwood. The commenter asserted that if these models do show that the company was sending up red flags, then the Department should explain why it ignored the warning signs in the run-up to those bankruptcies. The commenter concluded that if they don't produce red flags, then the Department should not use the models.[281]

Response: BOEM tested the use of the proxy credit rating on all U.S. oil and gas companies that went bankrupt that had financial data available to do so. The testing showed BOEM would have had more than a year to secure additional financial assurance from the time the company fell below the proposed credit rating threshold of BBB-. BOEM will continue to test this threshold to see if it needs to be adjusted.

Section 7.2.4 – Contingent Liabilities

Comment: A commenter expressed opposition to the proposal to include the offshore joint and several decommissioning liabilities of exempt co-lessees when determining an entity's proxy credit rating, recommending that the Department and ratings agencies rely on "an entity's application of US GAAP in determining whether a contingent co-lessee liability is both probable and estimable under FASB ASC 450, Contingencies."[282]

Additional commenters expressed opposition to the Department's proposal to include "contingent liabilities," recommending the deletion of § 556.901(d)(2)(ii).[283]

[280] Shell Offshore Inc. (BOEM-2023-0027-2012); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[281] True Transition (BOEM-2023-0027-1696).
[282] Opportune LLP (BOEM-2023-0027-1991).
[283] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); Shell Offshore Inc. (BOEM-2023-0027-2012).

Response: As discussed in the preamble to the proposed rule at 88 FR 42147, BOEM identified a circumstance in which the use of the proxy credit rating may not adequately account for the potential risk of default. This circumstance would occur in a situation where a company has a substantial contingent liability for decommissioning OCS facilities associated with its minority ownership of such facilities if the majority owners are unable to or unwilling to meet their obligations. BOEM did not delete § 556.901(d)(2)(ii), however it has added language in the final rule to limit the scope to contingent offshore decommissioning liabilities. Specifically, the final rule states that "the Regional Director may include the total value of the offshore decommissioning liabilities associated with any lease(s) or grant(s) 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." Additionally, when a financial institution looks at the financial risk of a company, it considers the credit rating of the company and the value of assets as compared to the liability of the company. In essence, BOEM will be doing the exact same thing in determining the proxy credit rating.

Comment: A commenter suggested that if "BOEM undertakes an additional review of the financial stability of co-lessees of a company with an investment grade proxy credit rating owning a minority interest in a lease, and BOEM determines that co-lessee default risk exists, BOEM should require supplemental financial assurance from the co-lessees responsible for such risk on that particular lease for their respective working interest shares, rather than penalize the company with an acceptable proxy credit rating on that lease or in general."[284]

Response: 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. As such, in the scenario suggested by the commenter, no lessees would be required to provide supplemental financial assurance because one maintains an investment grade proxy credit rating.

Comment: A commenter supported the aggregation of a company's whole inventory of decommissioning liability, including those for which it remains joint and severally liable, in determining eligibility for supplemental financial assurance waivers and for use in proxy credit ratings.[285]

[284] LLOG Exploration Company, LLC (BOEM-2023-0027-1930).
[285] True Transition (BOEM-2023-0027-1696).

Response: BOEM concurs with the commenter's assertion that the whole inventory of an entity's decommissioning liability should be used in determining its proxy credit rating to determine eligibility for the supplemental financial assurance waiver and has finalized this amendment in this rulemaking.

Section 7.2.5 – Disproportionately high liabilities

Comment: A commenter asserted that "disproportionately high" is vague and subjects the Department and the regulated community to unnecessary confusion of what qualifies and does not qualify. The commenter suggested that the Department should generate proxy credit ratings using audit financials created under GAAP or IFRS and not seek to artificially modify the audited financials and inputs into the modeling such that these modifications increase (or somehow decreases) the resulting probability of default.[286] Another commenter discouraged the Department from adopting this option, stating that it is seeking to modify credit ratings in a unilateral way utilizing an unregulated and undefined manner.[287]

Response: BOEM is not finalizing any regulatory text regarding "disproportionately high liabilities." BOEM has added language in § 556.901(d)(2)(ii) with the final rule to limit the scope to contingent offshore decommissioning liabilities. Specifically, the final rule states that "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."

[286] Shell Offshore Inc. (BOEM-2023-0027-2012).
[287] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).

Section 7.3 – Valuing Proved Oil and Gas Reserves

Comment: A commenter asked the following:

- How will the Department evaluate reserves from conflicting reports around proved value when multiple co-lessees are involved?
- What consideration is being given to the midstream companies (*i.e.*, ROW grant holders) in the OCS space? If their asset is tied to a qualifying 3-to-1 lease, should the same rights be given to the owner of that ROW since their values are inherently tied to one another?[288]

Response: BOEM will make its determination based off the information provided and may request additional information if needed to determine an appropriate estimate of proved reserves. As proposed, the value of proved oil and gas reserves was not included in the final rule as a criterion for ROW grant holders because a ROW grant does not entitle the holder to any interest in oil and gas reserves.

Comment: A commenter urged the Department to ensure consistency in its approach to discounting in calculations under paragraph § 556.901(d)(4). The commenter stated that the discounting/inflation of the abandonment cost used for the ratio calculation should be the same as the discounting/inflation used in the SEC cash flow calculation for each case.

The commenter advised the Department to avoid double counting of decommissioning costs under paragraph § 556.901(d)(4). SEC reserves reporting requirements include the asset retirement costs (*i.e.*, abandonment). For supplemental financial assurance purposes, the Department's final rule should clarify that reserves value under paragraph § 556.901(d)(4) will be calculated without the inclusion of such costs. This change would ensure abandonment costs are not double counted.

The commenter requested clarification on how the Department would calculate and apply this reserves ratio where a facility receives production from multiple leases in a unit or field. The commenter said that the Department should not restrict itself to a "per-lease basis" in calculating reserves or decommissioning costs where use of a production facility located on another lease is necessary for production from the lease or unit and there is common ownership of the production and the production facility. The commenter recommended that SEC methodology for estimating reserves is followed for hydrocarbon price, OPEX, and CAPEX, and provided a recommended revision.[289]

Response: BOEM has included in the final rule that the reserves ratio can be calculated on a lease, unit, or field basis. BOEM may request additional information in order to make an appropriate determination specific to unique circumstances. BOEM agrees with the commenter that the

[288] CAC Specialty (BOEM-2023-0027-1201).
[289] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

decommissioning liability should not be double counted; it is not the Bureau's intent to double count the decommissioning liability. This provision is clear that BOEM is asking for the discounted value of the reserves (*e.g.*, realized sale price minus uplift costs) without factoring in decommissioning.

Comment: A commenter suggested that the Department allow ROWs/RUEs to be included in the reserves test in order to align with SEC reserves reporting requirements.[290]

Response: The value of proved oil and gas reserves was not included in the final rule as a criterion for ROW/RUE grant holders because a ROW/RUE grant does not entitle the holder to any interest in oil and gas reserves.

Comment: A commenter stated that if the Department were to allow lease owners and ROW/RUE grant holders to attribute off-lease allocating of decommissioning obligations to leases with different owners, the following challenges could arise:

- Increased administrative burden for the Department and Industry.
- Increased complexity of calculations and risks to ensure proportionate allocation of decommissioning costs.
- Potential for some entities to avoid security by attributing their accrued decommissioning liabilities to leases in which they do not hold any interest.
- Inconsistency with the proposed rule's intent to not allocate proved reserves to ROWs and RUEs.[291]

Response: The value of proved oil and gas reserves was not included in the final rule as a criterion for ROW or RUE grant holders because a ROW or RUE grant does not entitle the holder to any interest in oil and gas reserves.

Comment: A commenter expressed concern with the proposed rule, stating that the use of undiscounted decommissioning values is in conflict with accounting principles. The commenter further asserted that the Department overstates potential liability because some portions of facilities will never be fully decommissioned, such as those used in the Rigs-to-Reef program.[292]

Response: 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. While some of the liability may be mitigated potentially by the facility being approved for the Rigs-to-Reef program, until it is approved it is a liability that BOEM must ensure will be covered.

[290] Murphy Oil Corporation (BOEM-2023-0027-2007).
[291] Shell Offshore Inc. (BOEM-2023-0027-2012).
[292] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).

Comment: A commenter asked the following:

- Does the Department intend to standardize reserve assessments and measurements?
- Will the Department have any verification mechanism to confirm that companies have reserve information as a matter of general operations?[293]

Response: BOEM will require audited reserve information and will require lessees to submit this information for Regional Director review on an annual basis. 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.

Comment: A commenter asserted that the Department should require every lessee to provide supplemental financial assurances for decommissioning costs. They stated that if the Department chooses to grant waivers, it should do so only for lessees with investment credit ratings, taking into consideration the lessees' compliance history and whether they have idle iron. The commenter expressed the view that the Department should eliminate the consideration of proxy credit ratings and the value of proved oil reserves associated with a given lease.[294]

Response: BOEM disagrees with the commenter's assertion that DOI should eliminate the consideration of proxy credit ratings and the value of proved oil reserves associated with a given lease. 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 meet the reserves criterion. The Department proposed, and is finalizing, 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. Additionally, an offshore oil and gas lease that has a significant reserve-to-liability value – that is, a property that can generate a cash flow significantly in excess of the costs associated with the decommissioning of its assets – is likely to be purchased by another company in the event of a default by the current lessee. The acquiring company would then become liable for existing decommissioning obligations, but due to the value of existing reserves, it would acquire sufficient positive cash flow to reduce the risk that the costs associated with the decommissioning of

[293] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[294] Chevron U.S.A., Inc. (BOEM-2023-0027-1974).

the assets would be borne by the government. Given this likely outcome, the Department is finalizing the rule to allow for lessees to be waived by meeting an investment grade credit rating (themselves or through a co-lessee) or the proved reserves ratio.

With respect to compliance history for determining supplemental financial assurance, as discussed in the preamble to the proposed rule at 88 FR 42142, BOEM examined the number of 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. With respect to the commenter's assertion that the Department should stipulate that historic or current owners of abandoned or idle wells in Federal waters that need decommissioning should not be eligible for new leases, BOEM acknowledges the comment, but this rule is focused on ensuring that there is sufficient financial assurance to cover decommissioning obligations on current leases and grants. Thus, the comment is out of scope for this rule. This rule reiterates that noncompliance with financial obligations can be a basis for disapproving new leases or assignments.

Section 7.3.1 – Request for comment: Is the proposed 3-to-1 an appropriate threshold? Are there better approaches and/or data sets available for analysis that would provide BOEM with better certainty that taxpayer interests will ultimately be protected?

Comment: A commenter suggested that the Department should "calculate the value of proved oil reserves based on a scenario where oil companies are forced, by mechanisms like carbon taxes or civil litigation, to incorporate the externalities of emissions associated with their products." The commenter further suggested that the Department refer to CEQ guidance on greenhouse gas emissions and climate change, including the use of the best available SC-GHG estimates, but should also adopt an appropriate pricing model. Additionally, the commenter stated that the Department should "discount the value of proved reserves in any 'Reserves-to-Decommissioning Cost Ratio' to account for climate-related asset stranding."[295]

Response: BOEM disagrees with the commenter's assertion that DOI calculate the value of proved oil reserves based on a scenario where oil companies are forced to incorporate the externalities of emissions associated with their products as a result of carbon taxes or civil litigation. Climate-related asset stranding is not a criterion BOEM is assessing when determining the need for additional financial assurance because these events are too speculative at this time. There are many external factors that can impact the value of reserves, however, 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.

[295] Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753).

Comment: A few commenters supported the proposed 3-to-1 ratio for decommissioning costs in order to assure economic viability in situations where the credit rating, or proxy credit rating, threshold is not met.[296] A commenter provided suggestions for revisions to this proposed rule, including:

- using "undiscounted" costs;
- excluding AROs because they can deflate the value of proved reserves;
- considering "the value of the remaining proved reserves as a ratio to the combined currently outstanding and future decommissioning obligations on the lease;"
- evaluating on a per lease basis; and
- not restricting "proved reserves" to artificial lease boundaries.[297]

Response: BOEM has included in the final rule that the reserves ratio can be calculated on a lease, unit, or field basis. BOEM may request additional information in order to make an appropriate determination of the reserves specific to unique circumstances. BOEM agrees with the commenter 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 of the discounted value of proved reserves (excluding decommissioning costs) to the undiscounted BSEE decommissioning estimate.

[296] Chevron U.S.A., Inc. (BOEM-2023-0027-1974); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[297] Shell Offshore Inc. (BOEM-2023-0027-2012).

Section 7.4 – Monitoring of Evaluation Criteria

Comment: A commenter stated that the Department alludes to monitoring credit ratings in the preamble but does not mention monitoring in the text of the regulations. To ensure that these commitments are kept, the commenter said that the Department must include specific requirements for reviewing credit ratings regularly, with a requirement to reassess credit ratings at least once per year. According to the commenter, the financial strength of companies can change quickly, particularly for companies that rely heavily on the price of oil and gas. The commenter said it is imperative that the Department regularly assess companies' credit ratings to ensure that they continue to have a strong capacity to meet their decommissioning obligations.[298] An additional commenter asked the Department to specify if the Department will assess the need for a lessee to post financial security annually, stating that it is not clear in the proposed rule. Specifically, they asked, "how frequently will the Department require lessees and individual leases to be evaluated?"[299]

Response: 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.

Comment: A commenter expressed concern that the monitoring of 1-year default rates may not be enough to appropriately monitor change in risk, and anything above that may be too onerous for the Department to realistically administer.[300] An additional commenter asked the Department to provide clarity on whether and how frequently it will monitor credit ratings, suggesting that the Department monitor issuer credit ratings, provided by S&P Global Ratings, Moody's, and Fitch at least on a yearly basis and prior to the approval of an assignment. For proxy ratings, the commenter advised that the Department should reevaluate entities annually, when audited financial statements are available, prior to the approval of an assignment, and when there is a "material adverse change," such as when an entity accrues new decommissioning liabilities greater than a prescribed amount or percentage of the entity's existing decommissioning liabilities.[301]

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[298] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).
[299] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[300] True Transition (BOEM-2023-0027-1696).
[301] Shell Offshore Inc. (BOEM-2023-0027-2012).

Response: BOEM agrees with the commenter's recommendation that BOEM should reevaluate entities annually, when audited financial statements are available, prior to the approval of an assignment, and when there is a material adverse change in an entity's financials. BOEM disagrees with the other commenter's assertion that monitoring of 1-year default rates may not be enough to appropriately monitor change in risk. By setting the credit rating threshold at investment grade, BOEM believes that monitoring companies annually provides ample time to identify potential adverse changes in an entity's financial health and provides ample time to BOEM to request any supplemental financial assurance demands before a company would be unable to provide them. It is not likely that a company with an investment grade credit rating would file for bankruptcy within a year of holding that rating. BOEM did not add additional regulatory text in this final rule to address these comments, however, BOEM maintains the general policy to evaluate lessees, RUE grant-holders, and pipeline ROW grant-holders for financial risk on at least an annual basis. 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 grant-holders, and RUE grant-holders. The amended regulation would not preclude a demand for supplemental financial assurance through the Regional Director's regulatory authority at any time.

Section 7.5 – Other Comments on Evaluation Methodology

Comment: A commenter asked for the following clarification: If the proposed rule would override allocation of responsibility for owners in a well that have joint and several liability, or if the proposed rule would only apply to new obligations arising under new JOAs.[302]

Response: No, BOEM requires financial assurance for the lease as a whole and it is up to the owners to determine how they bear the cost.

Comment: A commenter requested clarification on whether "negative event" will continue to be "the bankruptcy, insolvency, or suspension or revocation of the charter or license of the financial assurance provider."[303]

Response: The commenter's clarification is correct. The regulatory text does not reference a "negative event," however the preamble to the proposed rule stated that "[t]he proposed rule would replace the word "promptly" [in paragraph 556.903(a)] with a specific timeline of within 7 calendar days of learning of a negative event for the financial assurance provider and would also add a 30-calendar day timeframe in which the party must provide other financial assurance from a different financial assurance provider" (88 FR 42153). The regulatory text in paragraph 556.903(a) explains "[i]f 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" the financial assurance must be replaced.

Comment: A commenter requested clarification regarding order of alignment, *i.e.*, who would be first to pay in a default scenario.[304]

Another commenter suggested that "new supplemental bonding issued following the proposed rule becoming final should be callable by BOEM only if: (i) BSEE has issued decommissioning orders to all current and former owners, and (ii) all current and former owners fail to perform or pay for the decommissioning." The commenter asserted that this approach would protect the taxpayer.[305]

Response: This rulemaking does not change the order in which BOEM would call financial assurance. BOEM's general practice has been to call financial assurance from the current lessee(s), then from predecessors, and in a bankruptcy, from the funds from a sale.

Comment: A commenter asserted that it is "not legally proper for BOEM to require that any one lease

[302] CAC Specialty (BOEM-2023-0027-1201).
[303] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[304] CAC Specialty (BOEM-2023-0027-1201).
[305] Beacon Offshore Energy (BOEM-2023-0027-2013).

interest owner guarantee payment of the royalty obligations of its co-interest owners in the lease," and asserted that supplemental financial assurance requirements for royalty disputes are "duplicative and unnecessary."[306]

Response: Nothing in the rule requires parties to pay for financial assurance for the obligations of others, but jointly procured assurance may be the most cost-effective way for the co-lessees to do so.

Comment: A commenter requested clarification on what would happen to a lease if a lessee was unable or unwilling to post financial assurance.[307]

Response: BOEM did not change the consequences to a lessee if they are unable or unwilling to post financial assurance with the proposed or final rulemaking. Typically, a shut-in order and/or civil penalties would be assessed first, followed by potentially lease cancellation and debarment from operating on the OCS.

Comment: A commenter suggested that BOEM add text to state that the timing for supplemental financial assurance should be commensurate with the time of lease operations, should be assessed once a well is drilled, and should be delayed until later in the lease term once a facility or pipeline is installed. They asserted that BOEM should not require the "needless tie-up of significant capital in financial assurance" and, as such, "should not require lease or grant holders to provide supplemental financial assurance before the need for the additional security accrues as a result of drilling wells or installing platforms" or "when lease production is at its peak." [308]

Response: BOEM has not made any regulatory text changes in response to this comment. BOEM did not propose to change the timing of the requirement of either base or supplemental financial assurance. The rule does clarify that supplemental financial assurance may be required by the Regional Director before BOEM will issue a new lease or RUE/ROW or approve an assignment/transfer of an existing lease or RUE/ROW.

Comment: A commenter recommended that BOEM remove the reference in section 556.102(f) that requires the Regional Director to consider "underpayment of royalty" as a component of demands for supplemental financial assurance. They asserted that the term "royalty" in this context is too vague, and the concept is "an anachronism due to the treatment of federal oil and gas lease royalty obligations" under FOGRMA, as amended by the Royalty Simplification and Fairness Act. They recommended the section be revised as follows:

> (f) The Regional Director will determine the amount of supplemental financial assurance required to guarantee compliance. In making this determination, the Regional Director will

[306] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[307] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[308] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

consider [Strikethrough text: potential underpayment of royalty and] cumulative decommissioning obligations [Strikethrough text: using the methodology set forth in paragraph (d)(3) of this section]. [Underline: The Regional Director must consider the proper timing for you to provide any supplemental financial assurance. If you do not meet the financial assurance criteria in § 556.901(d)(1)—(4), the Regional Director may not require you to provide supplemental financial assurance until you temporarily abandon or complete a well, install a platform, pipeline, or other facility, or create an obstruction to users of the OCS, that would be covered by the supplemental financial assurance.][309]

Response: BOEM did not remove "potential underpayment of royalty and" from 30 CFR 556.102(f) as recommended by the commenter, because the Regional Director may determine that underpayment of royalties is a legitimate reason for which to require supplemental financial assurance.

[309] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

Section 8 – Phased Compliance

Section 8.1 – 3-year phase-in of compliance with new supplemental financial assurance demands

Comment: Multiple commenters expressed support for the proposed option for a phase-in for new supplemental financial assurance obligations.[310]

Response: BOEM acknowledges the commenters' support for the proposed option for a phase-in for new supplemental financial assurance obligations. BOEM believes this approach mitigates potential significant risk to companies and provides adequate time for the bonding market to adjust. The Department is finalizing a 3-year phase-in period, as discussed in section III.E of the preamble to the final rule.

Comment: Two commenters suggested that the Department should provide the same or similar phased option to parties that met the criteria in subsections 556.901(d)(1) - (d)(3) or parties that obtain OCS lease or grant interests in the first 3 years after implementation of the final rule.[311] An additional commenter suggested that the phased compliance approach should apply to assignees entering into a lease and to lessees which are not in compliance due to a co-lessee exiting the lease.[312]

Response: 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 not made any changes to the regulatory text to address this comment but intends for any party obtaining new decommissioning liability or for any party with changed circumstances within the finalized 3-year compliance phase-in window, to be allowed, at the Regional Director's, discretion to use the 3-year phased 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.

[310] Occidental Petroleum Corporation (BOEM-2023-0027-1906); Opportune LLP (BOEM-2023-0027-1991); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[311] Occidental Petroleum Corporation (BOEM-2023-0027-1906); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[312] Hess Corporation (BOEM-2023-0027-1986).

Section 8.2 – Request for comment: Impact of phased payment approach of new supplemental financial assurance requirements for existing leaseholders

Comment: Multiple commenters expressed support for a 5-year phased compliance period "to mitigate potential significant risk to companies and to provide adequate time for the bonding market to adjust."[313]

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: Multiple commenters expressed support for the proposed 3-year phased compliance, suggesting that this phasing will "give adequate notice to the surety (security) markets, allow BOEM to identify questions and issue clarification on compliance, and allow entities that must provide supplemental financial assurance sufficient time to identify the underlying collateral and equity necessary to obtain the security."[314]

Response: BOEM acknowledges the commenters' support for the proposed option for a 3-year phase-in for new supplemental financial assurance obligations and is finalizing the approach as proposed. BOEM believes the general phase-in approach mitigates potential significant risk to companies and to provide adequate time for the bonding market to adjust. The Department is finalizing a 3-year phase-in period, as discussed in section III.E of the preamble to the final rule.

Comment: A commenter suggested that instead of the Regional Director allowing for phased installation of supplemental financial assurance, the phased approach should be automatically granted to a lessee, sublessee or grant holder who wishes to utilize it.[315]

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[313] Chevron U.S.A., Inc. (BOEM-2023-0027-1974); Talos Energy Inc. (BOEM-2023-0027-2005).
[314] Hess Corporation (BOEM-2023-0027-1986); Shell Offshore Inc. (BOEM-2023-0027-2012); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[315] Talos Energy Inc. (BOEM-2023-0027-2005).

Response: The Department is finalizing, as proposed, to retain the language that requires Regional Director approval, because there may be some circumstances where a phased approach may not be appropriate.

Comment: Several commenters asked for clarification on the following questions and topics:

- "If a lessee already has financial assurance and simply needs to provide an increase to that financial assurance, for the 3-year phase-in period, would this apply to the increase or the lessee's portfolio as a whole?"[316]
- The timeframe for reducing the guarantee of the original lessee.[317]
- If the Department has factored into its decommissioning liabilities calculations "private bonds" written between the transferring parties where the new lessee provides assurances to the predecessor.[318]
- The timeline for posting additional assurance in the case of a lessee experiencing a downgrade.[319]
- "If a lessee experiences credit rating fluctuations while utilizing the 3- year ramp-up, what happens to the financial assurances they provided?"[320]
- How a predecessor's security will be handled while the new lessee's security is being posted over the 3-year timeframe.[321]
- How the Department will proceed if a current lessee fails to meet its obligations to post the additional financial assurances during that 3-year timeframe.[322]
- How the Department will proceed if a current operator fails to meet its decommissioning obligations.[323]

Response: The phase-in period will apply to any additional financial assurance required by the final rule and may be requested if a lessee or grant holder receives a demand for supplemental financial assurance during the first 3 years after the final rule. BOEM does not have a time frame for reducing a guarantee or a predecessor in the event that replacement security is provided in a phased manner. BOEM does not consider private bonds or securities that BOEM is not a party to. If a lessee is allowed to phase-in its obligations and does not adhere to the schedule, BOEM will send a demand for the total remaining required amount. BSEE will continue to take the same actions it currently does when an operator fails to meet its decommissioning obligations.

[316] CAC Specialty (BOEM-2023-0027-1201).
[317] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[318] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[319] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[320] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[321] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[322] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[323] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).

Section 9 – Appeal Bonds

Section 9.1 – Proposed Requirement to Post Appeal Bonds

Comment: Several commenters expressed opposition to the proposal, asserting that it raises due process concerns.[324]

One of the commenters stated that due process concerns arise because this "compromises the recipient's first opportunity to have an adjudication of BOEM's determination." The commenter recommended that the Department delete proposed subsection 30 CFR 590.4(c), reasoning that if a recipient is able to qualify for a stay under the IBLA's standards, then it should not be required to post security. They asserted that "[p]roposed subsection (c), like proposed § 556.902(h) above, is at best confusing, and at worst impermissibly renders an IBLA stay illusory." The commenter recommended that the Department should, at a minimum if it maintains the proposed provision, clarify that an appeal bond is only required after 60 days following issuance of a supplemental financial assurance order until a stay is issued. The commenter stated that if the Department instead intends to require an appeal surety bond throughout the effectiveness of a stay then that is the same thing as complying with the financial assurance order, which could be more burdensome, expensive, and contradictory to 30 CFR 590.107.[325]

The other commenter noted that the current process provides an opportunity for each party to express concerns at an early stage, while under the proposed rule, a lessee could be forced into posting bond that could be held for years, even if the appeal succeeds. The commenter concluded that the proposal is "disproportionate" to the perceived risk.[326]

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 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 or not 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

[324] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); Hess Corporation (BOEM-2023-0027-1986).
[325] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[326] Hess Corporation (BOEM-2023-0027-1986).

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 section 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: A commenter noted that BSEE recently decided against a similar approach to that proposed by BOEM, asserting that it would be "arbitrary and unreasonable" for the Department to adopt a contradictory position. They provided reference to 88 FR 23569 which stated, in response to the proposal to amend 30 CFR part 250 in the 2020 joint proposed rule the following:

> *2. Requiring a Surety Bond To Stay the Effectiveness of Decommissioning Orders During Appeal—§ 250.1709 and 30 CFR 290.7*
>
> *In the proposed rule, BSEE proposed to require a party that files an appeal of a BSEE decommissioning order and seeks to obtain a stay of that order during the appeal to post a surety bond in an amount adequate to ensure completion of the decommissioning activities. Multiple commenters asserted that such a surety bond is not necessary in light of other existing and adequate financial assurance requirements designed to secure decommissioning obligations.*

BSEE agrees with these commenters and is not finalizing the proposed appeal bond provisions in § 250.1709 and 30 CFR 290.7. [327]

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 the 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.

Comment: A commenter requested that the Department amend 30 CFR 556.902(h) relating to administrative appeals by expanding the first sentence to encompass not only a "demand," but also any Department determination related to supplemental financial assurance. The commenter

[327] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

recommended the following revisions of subsection (h) where underline represents recommended new text and strikethrough represents deletion of existing text:

You may file an appeal of a ~~supplemental financial assurance~~ demand or any other BOEM determination relating to supplemental financial assurance with the Interior Board of Land Appeals (IBLA) pursuant to the regulations in 30 CFR part 590. ~~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.~~[328]

Response: BOEM disagrees with the commenter's recommended regulatory text changes and has finalized subsection (h) as proposed. An entity can already appeal any BOEM order under 30 CFR part 590, and the addition of "or any other BOEM determination relating to supplemental financial assurance" is therefore unnecessary. The proposed (and finalized) language promotes adjudicative economy - until a supplemental financial assurance demand is received, a company has not suffered any injury.

Comment: A commenter stated that the Department does not offer sufficient support for its new appeal-bond requirement. The commenter said that the NPRM does not include any data showing: (1) the number of financial assurance appeals; (2) the number of stays granted in those appeals; or (3) the total historical decommissioning liability that has gone uncovered due to appellate stays. They criticized the requirement for unnecessary appeals bonds, stating that litigating the Department's financial-assurance determinations already consumed a substantial amount of resources. They asserted that the cost would only compound if a title-holder had to post an appeal bond regardless of their financial condition. The commenter contended that the proposed rule would exacerbate constraints on development spending, potentially leading to a devastating effect, including a roughly $9.9 billion decrease in Gross Domestic Product (GDP) over a 10-year period and the potential loss of approximately 36,000 American jobs.[329]

Response: As discussed in the preamble to the proposed rule at 88 FR 42148, if an entity appeals a demand to the IBLA and requests a stay of BOEM's financial assurance demand, and the IBLA grants the stay, BOEM has no ability to ensure that a facility is covered by adequate financial assurance until the appeal is decided because the stay removes BOEM's ability to enforce its demand. It is important that BOEM ensure that the government's interests are protected during the appeal because the IBLA appeals may continue for several years. If the company appealing the supplemental financial assurance demand declares bankruptcy before its appeal is resolved, BOEM has no further ability to obtain financial assurance to cover the cost of corrective action.

In response to the request for data, of the 1,449 appeals the IBLA received during the last 5 fiscal

[328] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[329] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).

years, only 5 were from BOEM decisions concerning financial assurances. The appellant(s) filed a petition for a stay in 4 of those 5 appeals, and the IBLA only 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.

Section 9.2 – Other Comments on Appeal Bonds

Comment: A 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, noting that bonds "do not operate in this manner." The commenter said the appeal bond should provide a certain number of days for the lease operator to post its financial assurance to allow the surety to underwrite the operator at the time the bond is needed. The commenter asked if, in the event of an unsuccessful appeal, would the conversion of the bond be required by the surety providing the appeal bond? The commenter requested that "such a requirement be at the option of the surety, with the understanding that the lessee would need to provide financial assurance in some form."[330]

Response: BOEM disagrees with the commenters assertion that the proposed regulations specify that an appeal bond will "automatically" convert to a financial assurance obligation should the lease operator lose its appeal. The preamble to the proposed rule at 88 FR 42148 state "[i]f the appeal is unsuccessful, the appeals bond ***could be replaced or converted*** into bonds to cover the supplemental financial assurance demand" (emphasis added). The regulatory amendments, as proposed and as finalized, do not address replacing or converting the appeals bond to supplemental financial assurance, as those decisions would be between the provider of the supplemental financial assurance and the entity obtaining it. 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.

[330] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).

Section 10 – Proposed Revisions to BOEM Definitions

Section 10.1 – New terms: "Assign" and "Transfer"

Comment: A commenter expressed concern that the terms "assign" and "transfer" be interchangeable in part 550, stating that "transfer" should be defined to exclude informal transfers and providing recommended definitions:

- 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, and except as specified in the definition of transfer in this section, "assign" is synonymous with "transfer" and the two terms are used interchangeably.
- 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, 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.[331]

Response: The Department is finalizing, as proposed, the new terms "Assign" and "Transfer" and their corresponding definitions. 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 that 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.

[331] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

Section 10.2 – New term: "Financial assurance"

Comment: A commenter expressed support for the "breadth and optionality" in the proposed definition of "financial assurance," adding appreciation for the consistency of the definition across leases, RUEs, and ROWs.[332]

Response: BOEM acknowledges the commenters support, and the Department is finalizing, as proposed, to add a new term and definition for "Financial assurance" to list the various methods that may be used to ensure compliance with OCS obligations in 30 CFR parts 550 and 556.

Comment: A commenter asserted that the Department should not adopt its proposed amendment to § 556.901 subsections (a), (a)(1)(i), (b), and (b)(1)(i) to replace the term "bond" with the term "financial assurance," and should replace the term "Base financial assurance" in the title of this section with "Base bonds. They asserted that BOEM "should not complicate the base financial assurance security requirements for exploration and development by allowing for other forms of financial assurance." Specifically, they recommended the following revisions (where "underline" represents recommended new language and strikethrough represents removed language):

> § 556.901 Base [Strikethrough text: financial assurance][Underline: bonds] and supplemental financial assurance.
>
> (a) This paragraph (a) explains what [Strikethrough text: financial assurance][Underline: bonds] you must provide before lease exploration activities commence.
>
> (1) -----
>
> (i) You must furnish the Regional Director $200,000 in lease exploration [Strikethrough text: financial assurance][Underline: bonds] that guarantees compliance with all the terms and conditions of the lease by the earliest of:
>
> -----
>
> (b) This paragraph (b) explains what [Strikethrough text: financial assurance][Underline: bonds] you must provide before lease development and production activities commence.
>
> (1)
>
> (i) You must furnish the Regional Director $500,000 in lease development [Strikethrough text: financial assurance][Underline: bonds] that guarantees compliance with all the terms and conditions of the lease by the earliest of:

Additionally, the commenter recommended that BOEM revise the last sentence of proposed subsection (d) to clarify that if the Regional Director makes the determination that existing financial assurance is insufficient, then it "will" (not "may") require existing lessees to provide supplemental financial assurance unless they can meet the requirements of paragraphs (d)(1) – (4). They asserted that if "BOEM were to choose not to require supplemental financial assurance from those parties, it

[332] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

would be shifting that burden to predecessor interest owners, or possibly to taxpayers where the lease is a sole liability property, which BOEM has stated is contrary to the purposes of this Proposed Rule." They further asserted that for this reason "the Regional Director's obligation to require supplemental financial assurance from existing lessees when necessary to meet lease obligations must be mandatory and not discretionary. This standard is also of critical importance to cover sole liability instances where there are no predecessors in title." [333]

Response: BOEM disagrees with the commenter's assertion that those sections should continue to use "base bonds" in lieu of BOEM's proposed "base financial assurance." In the past, there was no strict policy that "base bonds" were required literally to be "bonds." As examples:

1) existing § 556.900(c) specifically states: "The requirement to maintain a lease bond (or substitute security instrument) under paragraph (a)(1) of this section and § 556.901 (a) and (b) ....";
2) existing § 556.900(e) states: "If the value of your surety bond or alternative security is reduced....";
3) existing § 556.900(f) allows the pledge of Treasury securities in lieu of a base bond; and
4) existing § 556.900(g) specifically allows the pledge of "alternative types of security instruments instead of providing a bond."

Because BOEM allows for different types of security for lessees to meet their obligations, BOEM has elected to include a broader definition for "financial assurance" in the final rule that is more encompassing to include the various types of securities.

[333] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

Section 10.3 – New term: "Investment grade credit rating"

Comment: A commenter expressed support of the addition of "investment grade credit rating" and its proposed definition, asserting that offshore companies with less than investment grade credit ratings have a greater potential of defaulting on their decommissioning obligations.[334]

Response: BOEM acknowledges the commenters' support and agrees that using a credit rating threshold of investment grade strikes the appropriate balance between both the 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. The Department is finalizing, as proposed, the use of an investment grade credit rating threshold.

Additionally, 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 reads as follows: *"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."

Comment: Instead of an investment grade credit rating, a commenter expressed preference for a credit rating threshold, defined as "an issuer credit rating of BB or higher, or its equivalent, assigned to an issuer of corporate debt by a nationally recognized statistical rating organization (NRSRO) as that term defined by the United States Securities and Exchange Commission (SEC)."[335]

Response: BOEM acknowledges the commenter's request to change the credit rating threshold in the definition to BB or higher but has retained the investment grade credit rating threshold of BBB- as discussed in section III of the preamble to the final rule and in section 7.1 of this memorandum.

Comment: A commenter noted that while the Department proposes the term "investment grade credit rating" in § 550.105, the Department does not use this term in proposed part 550, reasoning that the Department should remove it from this section altogether in the final rule.[336]

Another commenter stated that they have no concerns with the proposed definitions of "Investment grade credit rating" and "Issuer credit rating" in part 556. The commenter asserted that BOEM proposes to include definitions in parts 550 and parts 556, however, BOEM does not use these terms in proposed part 550, and therefore BOEM should remove them from this section in the final rule.

[334] Chevron U.S.A., Inc. (BOEM-2023-0027-1974).
[335] Occidental Petroleum Corporation (BOEM-2023-0027-1906).
[336] Occidental Petroleum Corporation (BOEM-2023-0027-1906).

These same terms are defined in § 556.105, the "Acronyms and definitions" section for part 556, which is the appropriate section to include definitions for both of these terms. The commenter also noted that they took no position on whether investment grade issuer credit rating is the proper minimum standard for whether supplemental financial assurance would be required and deferred to individual companies for those comments. [337]

Response: As discussed in section III.D of the preamble to the final rule, the Department is not finalizing the proposed addition of "Issuer 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.

[337] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

Section 10.4 – Replacement: "Right-of-use" and "Easement" with "Right-of-Use and Easement"

Comment: A commenter requested the following regulatory text change: Change § 550.160(a) from (a) You must require the RUE to "A RUE is required to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, or other devices at an OCS site other than an OCS lease you own, that are:" [338]

Response: BOEM has deleted the introductory paragraph in section 550.160 that read "BOEM may grant you a right of use and easement on leased and unleased lands on the OCS, if you meet these requirements:" and changed paragraph (a) from "you must" to "a RUE is required" to address the commenter's asserted ambiguity.

Comment: A commenter requested the following regulatory text change: Add a new subsection § 550.160: (i) BOEM may issue interests in a RUE to more than one person. A RUE interest holder may assign all or part of its interest in the RUE with BOEM approval under § 550.167.[339]

Response: BOEM did not make this recommended change because it is out of scope of this rulemaking.

Comment: A commenter requested the following regulatory text change where underline represents added language: Revise § 550.166 (b)(2) Cover costs and liabilities for compliance with regulations, compliance with BOEM and BSEE orders that are effective, not stayed, and pertain to the RUE grant covered by the financial assurance.[340]

Response: BOEM added "applicable" before BOEM and BSEE orders to address this comment.

Comment: A commenter requested the following regulatory text change where underline represents added language and strikethrough represents removed language:

- Update § 550.167 as follows:
  - (a) To obtain or receive assignment of an interest in a RUE, the applicant or assignee, respectively, ~~you~~ must file an application and provide the information contained in § 550.161 and ~~you~~ must obtain BOEM's approval.
  - (b) An application for approval of an assignment of a RUE grant, in whole or in part, must be filed in triplicate with the Regional Director. Any application for approval for an assignment, in whole or in part, of any RUE grant must be accompanied by the same showing of qualifications of the assignees as is required of an applicant for a RUE in 30 CFR 550.160 and must be supported by a statement that the assignee agrees to comply with and to be

[338] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[339] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[340] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

bound by the terms and conditions of the RUE grant. The assignee must satisfy the bonding requirements in 30 CFR 550.166. No transfer will be recognized unless and until it is first approved, in writing, by the Regional Director. The assignee of a RUE grant must pay the same service fee as listed in 30 CFR 550.106(a)(1) for a lease record title assignment request.

- Revise proposed paragraph (b)(1) to clarify that "BOEM or BSEE order" includes only such an order that is effective, not stayed, and pertinent to the subject RUE grant.[341]

Response: BOEM has revised paragraph 550.167(a) to address this comment to read as follows: "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."

BOEM included the recommended paragraph 550.167(b) in the final rule and redesignated existing paragraph (b) to be new paragraph (c).

BOEM has revised paragraph 550.167(b)(1) to clarify "applicable" BOEM or BSEE orders in response to the commenter's recommendation. This edit is now in paragraph (c)(1) per the redesignation discussed with the previous amendment.

Comment: A commenter requested the following regulatory text change: Revise § 550.1011 Financial assurance requirements for pipeline ROW grant holders as follows: (a) Except as provided in subsection (b), w~~W~~hen you apply for, ~~attempt to assign~~, or are the holder or assignee of a pipeline right- of-way grant, you must furnish and maintain $300,000 of area- wide financial assurance.

Additionally, the commenter recommended the last sentence of proposed subsection (a) be deleted and instead be structured the same way as for a RUE proposed in § 550.166(a)(1):

~~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)~~] You are not required to submit and maintain the financial assurance of $300,000 pursuant to this paragraph (a) if you furnish and maintain area-wide lease financial assurance in excess of $500,000 pursuant to 30 CFR 556.901(a), provided that the area-wide lease financial assurance also guarantees compliance with all the terms and conditions of the pipeline ROWs you hold.

Edit proposed (e)(2) to clarify the scope of BOEM and BSEE "orders" covered by adding the underlined phrase: "Cover costs and liabilities for compliance with regulations, compliance with BOEM and BSEE orders that are effective, not stayed, and pertain to the ROW grant covered by the

[341] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

financial assurance.[342]

Response: BOEM has revised paragraph 550.1011(a) to include the recommended "Except as provided in paragraph (b) of this section" but did not remove "attempt to assign" as suggested by the commenter. The proposed intent was that an area-wide financial assurance of $300,000 be provided with an assignment of a ROW and the final rule maintains that intention.

BOEM did not revise paragraphs (a) and (b) to be consistent with the RUE requirements as recommended by the commenter as consistency between the two subparts is not required.

BOEM has revised paragraph (e)(2) to clarify "applicable" BOEM or BSEE orders in response to the commenter's recommendation.

[342] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

Section 10.5 – Removal: "Security or securities"

Comment: A commenter recommended that the Department should be consistent and intentional in its use of "financial assurance," "security," and "bond" within the final rule. Specifically, the commenter asked the Department to consider utilizing the global term "security" as in the Department's 2020 proposed rule in lieu of "financial assurance," which instead can refer to the process of furnishing security rather than the security itself.[343]

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 part 556 and 550 for regulatory consistency.

[343] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

Section 10.6 – Revision: "You."

Comment: A couple of commenters urged the Department to ensure clear and consistent use of "you" throughout the final rule, asking the Department to consider specifying which party (current lessee, sublessee, or grantee) to which each subsection refers.[344] Similarly, a commenter suggested that the definition of "you" should be based on the entity named in the applicable instrument that accrues liability under the instrument and regulations.[345]

Response: BOEM did not revise the proposed definition of "you" in the final rule but did review the use of "you" and made edits where appropriate for clarification. In section 550.160, BOEM deleted the introductory paragraph that read "BOEM may grant you a right of use and easement on leased and unleased lands on the OCS, if you meet these requirements:" and changed paragraph (a) from "you must" to "a RUE is required" to remove the commenter's asserted ambiguity of the term "you." BOEM has clarified in section 556.900(a) that "you" refers to the lessee.

Comment: A commenter suggested that the Department remove "assignor or transferor" from the proposed rule to avoid confusion because those terms include parties that are not current owners.[346] An additional commenter expressed concerns with including "assignor or transferor" in the definition of "you" in parts 550 and 556 and asserted that including those persons in the definition "creates the opportunity for BOEM or BSEE to impose financial assurance other lease obligations in the first instance on predecessors-in-interest." The commenter recommended that BOEM remove those persons from the proposed definition to avoid confusion and that the removal is consistent with the "stated intent of the Proposed Rule not to impose financial burdens in the first instance on predecessors." For part 556, the commenter recommended that BOEM consider adding a separate definition for subpart I such as: "For purposes of this subpart, 'you' means a current lessee, sublessee, or grantee."[347]

Response: BOEM did not revise the proposed definition of "you" in the final rule, because the intent of the definition of "you" was to always be totally encompassing and to rely on context for its meaning in any particular situation. BOEM retained "assignor or transferor" in the definition as it is appropriate in the context of some subsections.

Comment: Several commenters requested that the Department clarify that §556.901 subsection (d) does not require financial assurance beyond 100 percent of the value of lease obligations because, in the proposed subsection, it is unclear if the term "you" refers to current interest holders collectively or individually. The commenters recommended that it should be the former to avoid duplicative

[344] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006); Murphy Oil Corporation (BOEM-2023-0027-2007).
[345] Shell Offshore Inc. (BOEM-2023-0027-2012).
[346] Chevron U.S.A., Inc. (BOEM-2023-0027-1974).
[347] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

financial assurance.[348]

Response: BOEM requires the current interest holders collectively to provide supplemental financial assurance, never more than the P70 amount; this did not change with the proposed or final rule.

Comment: A commenter expressed "substantial concerns with BOEM's proposal to make the term "you" all-encompassing, and then impose on the regulated community the duty to ascertain which persons covered by the definition are subject to the specific regulatory requirements." The commenter asserted that it is insufficient to include "depending on the context of the regulations" in the definition of "you" and recommended that the final rule be specific in all regulations in parts 550 and 556 as to which person(s) has the duty to meet the regulatory requirement.

Specifically, the commenter highlighted proposed § 550.167(a) and asserted that the term "obtain" would apply when a RUE is first applied for, but if the RUE interest holder wants to assign its existing interest in a RUE, it is unclear whether the obligation to file an application and provide the information belongs to the person assigning the RUE, or to the person receiving the assignment because both are included in the definition of "you."

The commenter stated that proposed § 550.1011 (applicable to pipeline ROWs) provides that: "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. . . " The commenter asserted that it is unclear whether it applies to a person receiving a ROW assignment, which person must provide the required financial assurance, and whose ROW grants are referenced.[349]

Response: BOEM did not revise the definition of "you" because the intent of the definition of "you" was to always be totally encompassing and to rely on context for its meaning in any particular situation. BOEM did not make any other changes to the proposed language in 556.902(a)(1) - (3). BOEM reviewed the suggested revisions for 556.905 and has accepted them for the final rule.

Comment: A commenter asserted that it is inappropriate for BOEM to include "a bidder" or "an applicant seeking to become one of the above" in the definition of "you" because it undermines the concept that decommissioning and other lease or grant obligations are the responsibility of the current lessee or grant holder by "including persons who do not have contractual or regulatory privity with BOEM."[350]

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[348] Murphy Oil Corporation (BOEM-2023-0027-2007); American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[349] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[350] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

Response: BOEM disagrees with the commenter's assertion that it is inappropriate to include "a bidder" or "an applicant seeking to become one of the above" in the definition of "you" because it undermines the concept that decommissioning and other lease or grant obligations are the responsibility of the current lessee or grant holder as some sections of the part refer to bidders and applicants. For example, 556.714 (d) refers to "you" as the bidder: "You may request that any submission to BOEM made pursuant to this part be treated confidentially." "You" is being defined for sections and purposes other than decommissioning liability.

Comment: A commenter suggested the following regulatory text revisions based on their comments:

You, [Strikethrough text: depending on the context of the regulations,] [Underline: for purposes of this part], means [Strikethrough text: a bidder,] a lessee (record title owner), a sublessee (operating rights owner), a Federal or State RUE grant holder, a pipeline ROW grant holder, [Strikethrough text: an assignor or transferor], [Underline: or] a designated operator or agent of the lessee or grant holder, [Strikethrough text: or an applicant seeking to become one of the above].[351]

Response: BOEM did not revise the definition of "you" in this final rule, because the intent of the definition of "you" was to always be totally encompassing and to rely on context for its meaning in any particular situation.

Comment: A commenter recommended that BOEM should delete the list of entities in 556.902 already covered by the term "you" as it is duplicative and unnecessary, unless BOEM does not retain the inclusive definition in the final rule.[352]

Response: BOEM did not delete the list of entities in 556.902 covered by the term "you." Listing possible entities provides clarification as to which specific entities are expected to meet the regulatory requirements for the section.

Comment: Regarding 556.907(a)(1), a commenter reasoned that if the Department retains its broad definition of "you," the clause that reads "or any party with the obligation to comply" should be deleted because "you" already encompasses those parties. If the Department revises the definition, they suggested retaining the clause.[353]

Response: BOEM did not remove the clause as recommended by the commenter because the definition of "you" does not include the party providing the guarantee, such as a third-party, and the intent of section 556.907(a)(1) is to clarify that a forfeiture can also happen if a third-party guarantor doesn't comply with the applicable regulations.

[351] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[352] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[353] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).

Section 11 – Regulatory Impacts

Section 11.1 – Existing Liabilities

Comment: A commenter stated that estimates indicated a requirement of over $42 billion for the proper decommissioning of offshore oil and gas infrastructure. The commenter pointed out that once production ceased, it was legally mandated for oil and gas leaseholders to plug offshore wells and remove equipment such as platforms and pipelines. However, they asserted that existing rules had, in many instances, enabled oil companies to evade these responsibilities. They further stated that, in certain cases, U.S. taxpayers had ended up covering the costs of cleaning up unplugged wells and abandoned infrastructure.[354]

Response: BOEM agrees with the commenter's assertion that the existing rules have enabled oil companies to evade these responsibilities and in some cases the U.S. taxpayers covered the cost. BOEM is promulgating this final rule with the intent to address this issue.

Comment: A commenter asserted that the Department's proposed rule aimed to address a problem that did not actually exist. They highlighted that over the past 20 years, the total abandonment losses in the GOM covered by the American taxpayer were approximately $50 million, significantly lower than the $125 billion in royalties and fees generated during the same period. The commenter emphasized that this did not account for additional tax revenues and the positive impact on employment.[355]

Response: BOEM disagrees with the commenter's assertion that the rule is aimed to address a problem that does not exist. The reasons for the rulemaking and the necessity of modifying the existing regulatory framework are to address the risks highlighted in the GAO report. In addition, BOEM acknowledges the need for regulatory action due to a recent increase in the number of entities filing for bankruptcy and the fact that, as the age of existing facilities continues to increase, the costs associated with the decommissioning of such facilities (including wells) is likely to increase as well. The obligation to decommission is accepted by the lessee and is not satisfied by the payment of royalty and taxes.

Comment: A commenter asserted that the language in the proposed rule, which claimed to protect the U.S. taxpayer from $42.8 billion in potential liability, was intellectually dishonest, biased, and misleading. They contended that the authors of the proposed rule were aware of the relatively small true exposure to the U.S. taxpayer due to existing safeguards, such as significant bonding and escrow accounts, the financial strength of most GOM producers, and chain-of-title protection from large oil companies. The commenter asserted that if the Department excluded abandonment tied to these safeguards, the estimated true exposure would be approximately $400 million, which was significantly lower (99% lower) than the headline figure of $40+ billion. The commenter

[354] C. Merendino (BOEM-2023-0027-1200).
[355] Cantium LLC (BOEM-2023-0027-2031).

emphasized that the proposed rule failed to acknowledge that the historical abandonment losses to the U.S. taxpayer were less than 0.02% of the historical royalties generated in the GOM.[356]

Response: BOEM disagrees with the commenter's assertion that the claim to protect the U.S. taxpayer from $42.8 billion in potential liability was intellectually dishonest, biased, and misleading. BOEM stated in the preamble to the proposed rule at 88 FR 42139 that "[t]hese bankruptcies involved a total offshore decommissioning liability of approximately $7.5 billion. This figure includes properties with co-lessees and predecessor lessees and properties held by companies that successfully emerged from a chapter 11 reorganization. However, the actual financial risk to the United States is significantly less than the total offshore decommissioning liability associated with offshore corporate bankruptcies. This is in part because other private parties may be responsible for decommissioning costs. Co-lessees and predecessors retain pre-existing obligations to fund or perform decommissioning. Also, a bankrupt company's assets were often sold to financially stronger buyers who assumed those liabilities."

Additionally, BOEM noted that "[t]he American taxpayer **may** pay the cost of plugging those wells and reclaiming that abandoned infrastructure. BSEE has identified orphaned infrastructure without a predecessor and no financial assurance to cover the cost of decommissioning. BSEE's fiscal year 2023 budget request included $30 million in order to address this uncovered infrastructure" (emphasis added).

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.

Comment: A commenter provided data indicating a significant decline in decommissioning liability. They stated that of the 7,000 platforms initially installed in the GOM, only around 1,500 remain, with independent oil and gas companies predominantly responsible for platform removals. The commenter asserted that these companies are diligently fulfilling their decommissioning obligations, resulting in a reduction of the government's overall decommissioning liability.

The commenter expressed concern that the proposed rule, by imposing an additional annual cost of $379 million, may divert essential capital away from ongoing decommissioning efforts. They emphasized that this could potentially hinder the progress that is already underway.

The commenter scrutinized the Department's assertion about the necessity of the proposed rule to

[356] Cantium, LLC (BOEM-2023-0027-1592).

prevent a "moral hazard." They challenged this notion, contending that there is no substantial evidence to support the claim that lessees are neglecting their decommissioning responsibilities. They also criticized the reliance on theoretical philosophical constructs in regulatory decision-making, deeming it inappropriate and potentially capricious.

In conclusion, the commenter contended that the proposed rule lacks a valid justification, especially in light of the disproportional response it offers to a relatively small decommissioning liability issue. They concluded that the proposed measures are not aligned with the factual and legal circumstances, and thus, appear arbitrary and capricious.[357]

Response: With the increase of offshore bankruptcies and the increased possibility that OCS liabilities might not be covered even with predecessors, this final rule is targeting areas of risk to ensure that taxpayers will not have to fund decommissioning in the future.

Comment: A commenter asserted that the Department's "estimates of total decommissioning liabilities and the amount of supplemental financial assurances that the proposed rule would require are not fully explained or sufficient."[358]

Response: BOEM disagrees with the commenter's assertion that the liabilities and amount of supplemental financial assurances that the proposed rule would require were not fully explained or sufficient. The RIA provided in the docket for the proposed rule provided supporting documentation and analysis for the proposed rule and was done in accordance with established procedures. In the proposal RIA, BOEM estimated an increase in aggregate financial assurance of $9.2 billion available to the U.S. government for decommissioning activities. BOEM acknowledged that this value represented approximately 25 percent of the total offshore decommissioning liability in the preamble to the proposed rule, but also acknowledged that much of the total liability would be covered by financially strong owners and predecessors. Additionally, BOEM noted in the preamble to the proposed rule that further increasing the compliance costs for industry, could 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. As a result, BOEM acknowledged that this could adversely make the U.S. offshore oil and gas sector less attractive than regions with lower operating costs. BOEM is responsible for managing development of the nation's offshore resources in an environmentally and economically responsible way and is interested in making sure that all lessee obligations in the OCS are met. BOEM must balance OCS energy development with protection for both the taxpayer and the environment in its risk management and financial assurance program. BOEM believes this final rule achieves an acceptable balance of these objectives. The final RIA shows updated costs and benefits of this rule, which is available in the docket for this rulemaking (Docket ID: BOEM-2023-0027).

[357] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[358] Ocean Defense Initiative (BOEM-2023-0027-1977).

Comment: A commenter agreed with the Gulf Energy Alliance's assessment that the government's exposure is overstated and rapidly diminishing. They cited a study conducted by Opportune LLP, a leading business advisory firm, which found that the total decommissioning associated with properties not involving major oil and gas companies or large Independents amounted to only $1.2 billion, a fraction of the claimed $42.8 billion. They pointed out that approximately $761 million in bonding has already been posted to cover this exposure. They argued that this relatively low risk hardly justifies the proposed rule's regulatory impact, especially considering the potential economic damage it could inflict on Independents and its potential impact on the country's energy and national security.[359]

Response: The Department has relied on the GAO's assessment of the risks and liabilities of the existing OCS risk management program, not on private party assessments of risk. To the extent that any given lessee believes that its assessment of financial assurance is excessive, it has the right to seek a reduction, appeal the Department's determination or to take appropriate legal action in the courts to dispute the assessment amounts.

Comment: A commenter emphasized that the total decommissioning liability is steadily decreasing, with a significant number of platforms being removed each year. They concluded that the evidence presented demonstrates that Independents are fulfilling their decommissioning obligations, rendering the concept of a "moral hazard" associated with them ignoring these obligations unfounded.[360]

Response: Although the number of facilities being decommissioned each year may be reducing the total number of OCS facilities that ultimately will need to be decommissioned, the number of facilities that will need to be decommissioned over the next few years is continuing to increase, because the number of facilities that are no longer producing oil and gas are increasing.

Comment: A commenter contended that the proposed rule would impose significant burdens on current lessees, who are predominantly independent oil companies. They asserted that this would lead to delays in decommissioning activities, causing environmental harm, hampering domestic oil and natural gas production, bolstering the positions of other oil-producing nations that pose national security risks to the United States, increasing oil prices and related consumer costs and resulting in damage to the U.S. economy and its citizens.[361]

Response: This rule will not impose any new performance obligations on existing leaseholders since the requirement to remove facilities at the end of their useful life has always been a part of the Department's regulations and lease terms. What this rule does is require that companies with

[359] Beacon Offshore Energy (BOEM-2023-0027-2013).
[360] Beacon Offshore Energy (BOEM-2023-0027-2013).
[361] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

existing decommissioning obligations have the financial capacity to meet their existing obligations. The Department could have imposed a requirement that funds for asset retirement be put into an escrow account at the time the facilities were built. While the use of an escrow account remains an option under this final rule, it is not a requirement. Instead, BOEM is simply requiring that companies demonstrate that they have the financial wherewithal to meet their obligations when the facilities decommissioning is required. Those parties that may be harmed by this rule are ones that failed to set aside funds to meet their asset retirement obligations. The Department does not believe that the U.S. taxpayer should assume the liability for such deliberate negligence on the part of oil and gas leaseholders.

Comment: A commenter asserted that the rule's estimate of a $42.8 billion decommissioning exposure in the GOM is inflated. They reasoned that this estimate is flawed for several reasons, including its failure to rely on operators' informed assumptions and estimates, which are typically audited by third parties. The commenter stated that the rule does acknowledge that the actual financial risk to the United States is much less than the total offshore decommissioning liability linked to offshore corporate bankruptcies. They asserted that the actual decommissioning liability, where there is no jointly and severally liable party in the ownership chain, is slightly over $1 billion, even using the figures provided by BSEE—which the commenter contended are inflated. They argued that the Rule should be based on this actual risk rather than the exaggerated premise. Additionally, they noted that over three-quarters of a billion in bonding has already been secured to cover this sole liability risk, reducing the actual decommissioning default exposure to well under half a billion dollars.[362]

Response: The rule does not impose obligations on the oil and gas industry as a whole but instead on the basis of an evaluation of every lessee and facility individually. For any given facility, BSEE estimates the likely decommissioning cost and produces three numbers, one estimate that is 50 percent likely to cover the total decommissioning costs, one estimate that is 70 percent likely to cover all the decommissioning costs and one estimate that is 90 percent likely to cover all the decommissioning costs. BOEM evaluates the cumulative financial obligations of each lessee to determine whether that company has the financial capacity to meet its cumulative obligations. In many cases, no supplemental financial assurance is required. Lessees are free to dispute both the decommissioning cost estimates and the estimates of their financial capacity. In the event that an agreement cannot be reached, a formal appeals process exists to resolve any outstanding issues. Lessees are also free to challenge the cost estimates and proxy credit ratings in federal court.

Comment: A commenter stated that the proposed rule disregards the existing $3 billion security already in place for decommissioning. Instead, they argued, the rule would re-evaluate decades of transactions, aiming to protect large international companies that knowingly engaged in these transactions, prioritizing higher sales prices over demanding more security from the buyer. As a consequence, the proposed rule, in their view, would necessitate independent oil and gas companies

[362] QuarterNorth Energy LLC (BOEM-2023-0027-2001).

to issue double bonds on many properties, thereby compounding the compliance costs.[363]

Response: BOEM disagrees that private arrangements between predecessors and successors are sufficient to protect the government without a requirement for providing supplemental financial assurance 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 the Department'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: A commenter asserted the absence of a robust cost-benefit analysis and a clear rationale for the proposed stringent measures, raises doubts about the regulation's necessity and legitimacy. This lack of clarity, they asserted, leaves stakeholders uncertain about the potential harm stemming from the abandonment of the current liability framework.

The same commenter contended that the Department's proposal exhibits this allegedly irrational behavior by neglecting the detrimental costs associated with the regulation's implementation. They criticized the Department for focusing solely on perceived benefits, while ignoring the actual harm to taxpayers, the economy, small businesses, and the environment, thereby lacking a rational basis.[364]

Response: The cost benefit analysis is outlined in the IRIA and in the RIA associated with this rulemaking. The fundamental point that is overlooked by this comment is that the requirement to remove and decommission a facility at the end of its useful life has been a provision in BOEM's regulations, and that of its predecessors since OCS leasing began, and is a condition of every lease contract. Although the costs of such decommissioning may not have been known at the time the facility was built, the obligation to ultimately remove the facility has always existed.

With respect to the issue of the regulation's necessity, BOEM has determined that the amount of capital reserved by lessees is insufficient to cover the costs associated with decommissioning of OCS facilities and that many lessees are undercapitalized to meet their performance obligations. As a result, if the amounts of financial assurance required of lessees is not increased, BOEM could be in the position of having to force the U.S. taxpayer to cover the financial obligations of lessees. BOEM does not determine the costs associated with any given lessee's performance obligations under its lease but simply takes the actual cost information lessees furnished to BSEE as a basis for determining whether a company has the financial capacity to meet its obligations. If any given company believes that the cost estimates are exaggerated, there is an informal review process whereby the company can request the cost be reviewed and adjusted.

[363] Beacon Offshore Energy (BOEM-2023-0027-2013).
[364] Center for Regulatory Freedom (BOEM-2023-0027-0030).

Comment: One commenter asserted that, based on the government's own assessment, properties involving companies exempted from the proposed rule's supplemental financial assurance requirement pose no significant risk to taxpayers. The commenter concluded that no additional bonding is needed to secure taxpayers from defaults on properties with exempt companies in the chain of title.[365]

Response: BOEM agrees that well capitalized and financially sound companies should not be required to post bonds or other forms of financial assurance and that is the premise of this regulation. However, in the case where the existing lessee is financially weak and unlikely able to meet its financial obligations, BOEM does not believe that they should be excused from their primary obligation to decommission existing facilities. The reasons for this are described in detail in other parts of this response to comments document.

Comment: A commenter asserted that taxpayers should not bear decommissioning costs.[366]

Response: BOEM agrees and is promulgating this final rule to update the financial assurance program.

Comment: A commenter asserted that, in those rare cases where taxpayers covered the decommissioning costs for OCS facilities, those costs were not directly linked to corporate bankruptcies.[367]

A commenter pointed out that, according to the proposed rule itself, instances where taxpayers have directly funded decommissioning are infrequent, despite the mention of over 30 bankruptcies.[368]

Response: With respect to the assertion that taxpayers have not paid for decommissioning to date, it must be highlighted that relatively few major facilities have been decommissioned (relative to the number installed) because the vast majority of facilities have been actively producing to date. It is only now, as more and more facilities reach the end of their useful life that decommissioning will be required on a larger scale. The fact that losses to the government have been low in the past does not necessarily comport with a likelihood that they will be similarly low in the future. The GAO has, in fact, asserted the opposite and notified Congress that the current program must be revised to avoid putting the government in an untenable situation. The risk management program is intended to ensure that known and predictable costs and obligations are covered. It is not intended to address circumstances that are unknown and unpredictable. There have been instances where undersea earthquakes have substantially damaged OCS facilities to such an extent that the normal decommissioning costs were inadequate to cover the actual remediation work required. There have

[365] QuarterNorth Energy LLC (BOEM-2023-0027-2001).
[366] Beacon Offshore Energy (BOEM-2023-0027-2013).
[367] Beacon Offshore Energy (BOEM-2023-0027-2013).
[368] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

been other situations where oil spills or other disasters have created situations that were not anticipated and, for which, normal risk management procedures and processes would be inadequate. This does not mean, however, that predictable and known events, such as the removal of a facility that is no longer in use and not infrequent bankruptcy filings, should not be accounted for by the risk management program.

Comment: A commenter voiced apprehensions that major oil and gas companies might seek to retroactively modify transactions, potentially disadvantaging independent companies. They stressed that the rulemaking's primary focus should be safeguarding the taxpayer, prioritizing their protection above the interests of major companies.[369]

Response: There is no way in which a prior lessee could retroactively modify its sales contract with current lessees and there is no provision in the Department's regulations or this rule that would allow or facilitate this.

BOEM is interested in making sure that all lessee obligations in the OCS are met. The past 15 years have shown that the existing regulations were not sufficient to provide the acceptable level of risk on the OCS. With respect to the concern that this rulemaking should be limited to protecting taxpayers, BOEM disagrees. It is not advantageous to the oil and gas leasing program to allow some companies to escape their financial obligations by acting irresponsibly and depleting their capital knowing that another company may be forced to cover their obligations.

Comment: A commenter stated that current lessees should be held primarily responsible for decommissioning costs, but also "decommissioning obligations not met by a current lessee in bankruptcy should be imposed on prior owners to that specific interest in reverse chronological order" for financial assurance purposes. The commenter further asserted that the proposed rule, in contrast to the Department's citation related to Tier 2 lessees, "creates a moral hazard whereby i) predecessor leaseholders will be insulated from the joint and several liability by which they previously and willingly transacted in a free market; and ii) current sellers will be relieved of the need to perform due diligence on subsequent leaseholders. Sellers will be incentivized to shed assets at discounted prices to pass decommissioning liabilities on to not only buyers, but also to other current owners unrelated to the transaction."[370]

Response: This rulemaking did not propose, and is not finalizing, a provision to change the order for calling decommissioning obligations. Current lessees will be required to provide financial assurance if they do not meet the credit rating or reserve criteria. Additionally, decommissioning obligations and the joint and several liability framework for those obligations are not being changed with this rule.

[369] Arena Energy, LLC (BOEM-2023-0027-2096).
[370] Opportune LLP (BOEM-2023-0027-1991).

Comment: A commenter expressed support for the Department's efforts to simplify financial tests for requiring additional financial assurance, increase flexibility for third-party guarantees, and allow a phased payment implementation approach by lessees to comply with financial assurance demands. However, the commenter also raised concerns, stating the intent of the proposed rule lacked credibility. They further asserted that certain assumptions and valuation techniques utilized in the proposed rule were categorically false.[371]

Response: DOI proposed and intends to use widely accepted methodologies in the banking and financial sectors. All entities in the oil and gas industry should be familiar with these practices.

Comment: A commenter asserted that the proposed rule exhibited a lack of calibration and proportionality. They mentioned that the proposed rule did not provide information on how much prior decommissioning costs had been covered by taxpayers. Assuming the reported total absorbed liability of $58 million, the commenter reasoned that the proposed call for an additional $9.2 billion in bonds at an annual cost of $327 million was disproportionate and not grounded in factual or legal basis.

The commenter emphasized that a significant portion of these costs would be borne by small businesses, as acknowledged by the Department in the preamble. They pointed out that 76 percent of businesses operating on the OCS subject to the proposed rule were considered small entities.

Furthermore, the commenter contended that the proposed rule deviated from the guiding principles of modern rulemaking, citing Executive Order 12866. They highlighted that the proposed rule did not represent the most cost-effective and least burdensome approach to safeguarding taxpayers from decommissioning liability. The commenter suggested that the Department had already introduced a more effective and less costly method in the 2020 Proposed Rule, which would only require supplemental bonding in the absence of a creditworthy co-lessee or predecessor in the chain of title. This risk-based approach, according to the commenter, would strike a more balanced burden on businesses while still achieving the goal of protecting the taxpayer.[372]

Response: BOEM's approach is to target risk and has made several changes to reduce effects on small businesses. For example, BOEM added the new reserve valuation criteria where the impact will not vary in relation to the size of a company.

[371] Opportune LLP (BOEM-2023-0027-1991).
[372] Beacon Offshore Energy (BOEM-2023-0027-2013).

Section 11.2 – Small Businesses

Comment: A commenter raised concerns about the reliance on credit ratings agencies in this rule. They questioned whether the Department factored in the costs incurred by small businesses in obtaining a credit rating during the drafting of this rule.[373]

Response: BOEM acknowledged in the proposed rule that the vast majority of companies operating on the OCS are private companies that do not have a credit rating; therefore, the default would be for them to provide supplemental financial assurance. DOI proposed, and is finalizing, 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. Those companies would provide audited financial statements to BOEM, and BOEM would determine the proxy credit rating, resulting in no additional costs to small businesses. 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 require them to select this alternative. Providing audited financials in exchange for supplemental financial assurance avoidance is consistent with practice under the current regulations and thus not an additional burden.

Comment: The commenter contended that the true beneficiaries of the proposed rule are the large international companies involved in these transactions, not the American taxpayer. They emphasized that the presence of one of these major oil and gas companies in the chain of title already provides substantial protection for the taxpayer, given the size and sophistication of these corporations. Requiring Independents to post supplemental bonds in this scenario, they argued, primarily benefits the major oil and gas companies at the expense of the Independents. They criticized this as an inappropriate use of Federal rulemaking and argued that it does not serve the interests of the taxpayer.[374]

Response: In every case where a lease was sold, the transaction was structured to take into consideration that the purchaser would obtain the decommissioning obligations associated with the property being purchased. The price paid by each purchaser would have already taken this obligation into account. By holding the current lessees responsible for the obligations that they freely agreed to assume is not biasing the rules in favor of the selling organizations. To the contrary, this policy is consistent with the agreements made between sellers and purchasers of OCS facilities. To instead hold the sellers liable for an obligation that the purchaser already agreed to assume would be an

[373] House Committee on Small Business (BOEM-2023-0027-1162).
[374] Beacon Offshore Energy (BOEM-2023-0027-2013).

inappropriate use of Federal rulemaking and this would be inconsistent with the longstanding policy of the Department.

Comment: Several commenters stated that the proposed rule would disproportionately affect small businesses.[375] A commenter asserted that the proposed rule "imposes devastating costs and consequences on the offshore oil and gas industry and the country."[376] A commenter expressed general concerns that the rule would impose unnecessary costs on small businesses.[377] They suggested that the proposed rule could lead to adverse economic impacts, including reduced offshore drilling and potential bankruptcy for small businesses, all of which would have negative repercussions for taxpayers. An additional commenter stated that the proposed rule would disproportionately impact small businesses and reasoned that such entities should have more than 60 days to "evaluate the effects of the proposed rule."[378]

Another commenter expressed concerns about potential unintended negative consequences of the Proposed Regulations. They reasoned that requiring additional financial assurances from less financially capable lessees could lead to increased collateral demands and potentially result in a rise in bankruptcies among small, independent operators, ultimately exacerbating unfunded decommissioning liabilities. The commenter also discussed how the Proposed Regulations could create an environment where surety providers are less likely to offer additional coverage due to the unavailability of significant collateral from lessees. They further suggested that it might prompt surety providers to reevaluate existing contracts, potentially leading to additional collateral demands. The commenter expressed worries that recent bankruptcy rulings have already increased market risks, and the Proposed Regulations could intensify the reluctance of the surety industry to participate, potentially leading to further capacity concerns.[379]

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 that small businesses may not have issuer credit ratings in the proposed rule (88 FR 42146) and proposed to allow entities without a rating to request that 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 reducing their financial burden. For all entities without an investment grade credit rating or lower

[375] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165); Beacon Offshore Energy (BOEM-2023-0027-2013).
[376] Beacon Offshore Energy (BOEM-2023-0027-2013).
[377] A. Belkin (BOEM-2023-0027-0352) [Form Letter Master].
[378] Senators Cassidy, Cruz, Kennedy and Manchin (BOEM-2023-0027-1978).
[379] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).

than 3-to-1 ratio of the value of reserves to decommissioning liabilities associated with those reserves, the Department is finalizing the use of decommissioning data at the P70 level. Furthermore, a strong lessee will cover the rest of the co-lessees on the lease. BOEM also included phased-in implementation, decommissioning accounts, and third party guarantees to reduce the financial burden resulting from this rulemaking. BOEM is tasked with ensuring that all lessee obligations in the OCS are met and believes this rulemaking is necessary to address insufficient financial assurance available in the case of a default.

Comment: A commenter asserted that the Department imposes unfair financial burdens on independent oil companies and hinders their conservation efforts, despite these companies playing a role in environmental responsibility. This led the commenter to question why the Department's proposed rule would divert resources currently used for decommissioning, given the agency's focus on decommissioning liability.[380]

Response: The intent of the rule is to ensure that asset retirement obligations of lessees are met in an environmentally responsible manner. The rule is no way intended to encourage or promote early retirement of operating facilities, nor is it intended to force companies to divert funds from ongoing decommissioning activities towards paying financial assurance. Companies that can demonstrate that they are decommissioning existing facilities in a timely manner would not be expected to post financial assurance beyond the amount that they would ordinarily expect to pay to decommission their existing facilities with respect to already commenced decommissioning operations, therefore, this proposal should effectively be cost neutral.

Comment: A commenter contended that the proposed bonding requirements are economically unsound. They emphasized the lack of quantitative support for the Department's claims about the current liability regime and suggested that the proposed rule lacks a solid foundation.[381]

Response: BOEM disagrees with the commenter's assertion that the proposed requirements are economically unsound. The RIA provided in the docket for the proposed rule provided supporting documentation and analysis for the proposed rule and was done in accordance with established procedures. In the proposal RIA, BOEM estimated an increase in aggregate financial assurance of $9.2 billion available to the U.S. government for decommissioning activities. BOEM acknowledged that this value represented approximately 25 percent of the total offshore decommissioning liability in the preamble to the proposed rule, but also acknowledged much of the total liability would be covered by financially strong owners and predecessors. Additionally, BOEM noted in the preamble to the proposed rule that further increasing the compliance costs for industry, could 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. As a result, BOEM acknowledged that

[380] Center for Regulatory Freedom (BOEM-2023-0027-0030).
[381] State of Louisiana (BOEM-2023-0027-1985).

this could adversely make the U.S. offshore oil and gas sector less attractive than regions with lower operating costs. BOEM is responsible for managing development of the nation's offshore resources in an environmentally and economically responsible way and is interested in making sure that all lessee obligations in the OCS are met. BOEM must balance OCS energy development with protection for both the taxpayer and the environment in its risk management and financial assurance program. BOEM believes this final rule achieves an acceptable balance of these objectives. The final RIA shows updated costs and benefits of this rule, which is available in the docket for this rulemaking (Docket ID: BOEM-2023-0027).

Comment: A commenter acknowledged the importance of safety and environmental regulations, expressing full support for initiatives aimed at preserving ocean sustainability and ensuring worker safety. However, they emphasized the necessity for thorough evaluation of rule changes to prevent unintended repercussions, particularly for smaller producers already operating with narrow profit margins. The commenter urged careful consideration of the potential adverse effects on small- and mid-sized businesses in the Gulf region before the finalization of the rule change. They stressed the need to find a balance between environmental protection and fostering economic growth and stability within the industry.[382]

Another commenter outlined several concerns about the proposed rule. They discussed potential negative impacts, including increased costs for operators in the GOM, which could reduce available cash flow for new wells. Additionally, they highlighted that the rule might lead to increased capital requirements for operators, restricting capital for drilling and abandonment. The commenter argued that the rule could freeze new capital investment in the GOM and reduce demand for drilling services.

They expressed concern that the surety industry’s ability to support operators has been affected by recent losses, potentially making it cost-prohibitive for smaller operators to procure new bonds. The commenter also explained that requiring new bonding could force operators to enter into indemnity agreements with surety companies, which may lead to collateral demands and further constrain cash flow for investments.

Furthermore, the commenter noted that the proposed rule could negatively impact drilling companies and the rig market in the GOM. They provided data showing a decrease in the number of jack-up rigs in the area and suggested that the rule might exacerbate this trend, leading to equipment shortages for drilling and decommissioning.

The commenter pointed out that the rule could accelerate decommissioning obligations, potentially straining an already overstretched decommissioning rig market. They emphasized that an influx of unqualified vendors and contractors due to increased demand could pose risks to human health and

[382] Don M. (BOEM-2023-0027-1972).

the environment. The commenter also expressed concern about the viability of the remaining jack-up rigs for servicing the GOM.

Overall, the commenter urged the Department to withdraw the proposed rule and conduct a comprehensive cost-benefit analysis engaging all stakeholders potentially affected. They suggested that a more narrowly tailored rule might be justified after such a review. The commenter also provided background information about their organization and its involvement in drilling and decommissioning projects in the GOM.[383]

Response: The changes in the rule are to target risk to ensure that taxpayers will not have to fund decommissioning. BOEM acknowledges that higher risk companies will be impacted by the changes in this rule. The requirement to decommission a facility at the end of its useful life has been part of every lease contract issued on the OCS. The fact that BOEM expects its lessees to comply with their contractual and regulatory obligations is not new or unusual. The fact that the costs of compliance may now be significantly higher than originally anticipated is not the result of anything that the Department has done but, like the variability in oil prices, is subject to market trends and conditions outside of the Department's control.

The RIA provided in the docket for the proposed rule provides supporting documentation and analysis for BOEM's NPRM titled, "Risk Management and Financial Assurance for OCS Lease and Grant Obligations" (RIN 1010-AE14) and was done in accordance with established procedures. In addition, changes to Federal regulations undergo several types of economic analysis, especially for "significant regulatory action" such as this rule. BOEM has revised the RIA in this final rulemaking, which is also available in the docket.

Comment: A commenter emphasized the symbiotic relationship between Independents and Majors in developing the nation's Deepwater oil and gas resources. They noted that Independents often handle smaller yet profitable projects with efficient emissions profiles, as well as larger, technically complex projects that may not be prioritized by Majors. Together, the commenter continued, these entities support the oil and gas service providers and generate thousands of jobs for Americans. The commenter expressed concern that any regulation, especially the proposed rule, which targets either group disproportionately, particularly Independents, could jeopardize the viability of the service sector and, consequently, the overall offshore oil and gas industry in the GOM.[384]

Response: BOEM acknowledges the commenters concern, however, the regulation does not base its requirements on 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.

[383] White Fleet Drilling, LLC / White Fleet Abandonment, LLC (BOEM-2023-0027-2146).
[384] Beacon Offshore Energy (BOEM-2023-0027-2013).

Comment: A commenter pointed out that there had been a significant reduction in GOM facilities over the past 30 years, primarily driven by independent operators. They expressed dissatisfaction with the requirement for operators to have an investment grade rating to avoid bonding, which they stated would unfairly burdened smaller independents. They also questioned the reliance on the BSEE P70 estimate for abandonment costs, suggesting that companies should be allowed to provide their own supported abandonment estimates.[385]

Response: It must be highlighted that relatively few major facilities have been decommissioned because the vast majority of facilities have been actively producing. It is only now, as more and more facilities reach the end of their useful life, that decommissioning will be required on a large scale. The fact that losses to the government have been low in the past does not have anything to do with the likelihood that they will be similarly low in the future. The GAO has, in fact, asserted the opposite and notified Congress that the current program must be revised to avoid putting the government in an untenable situation.

Section 11.2.1 – Request for comment: What are the costs and benefits including impacts to offshore capital expenses and taxpayer liability?

Comment: A commenter expressed agreement with the Department's stance that the U.S. taxpayer should not bear the burden of decommissioning liability. However, the commenter stated that the entirely overhauled financial assurance framework outlined in the proposed rule would severely impact numerous small businesses operating in the GOM. They contended that this proposal would lead to a significant decrease in offshore investment and expedite the end of life for many producing fields. Consequently, they argued that this would result in reduced domestic offshore energy production and an increase in lessees defaulting on their decommissioning responsibilities. The commenter concluded that these changes would provide no additional protection to the U.S. taxpayer.[386]

Response: BOEM is not targeting this regulation on the basis of the size of companies, it is targeting the financial strength of companies in order to make sure that the development of energy in the OCS is safe and protects both the taxpayer and the environment. The decommissioning data to be used is at the P70 level. Furthermore, a strong lessee will cover the rest of the co-lessees on the lease. BOEM also included phased-in implementation, decommissioning accounts, relaxed burdens on third party guarantees and proxy credit ratings. BOEM is interested in making sure that all lessee obligations in the OCS are met. The past 15 years have shown that the existing regulations were not sufficient to provide the acceptable level of risk on the OCS, hence this rulemaking was considered necessary.

[385] Cantium LLC (BOEM-2023-0027-2031).
[386] Talos Energy Inc. (BOEM-2023-0027-2005).

Comment: A commenter discussed an independent study conducted by Opportune LLP, a global business advisory firm, which assessed the Department's bonding proposals, including the current one. The commenter referenced the study's criticisms of the Department's economic analysis, contending that the reduction in taxpayer liability for decommissioning costs through Additional Bonding Requirements was not justified, considering its impact on industry, regional/national economy. The commenter asserted that the Department's approach was inefficient in safeguarding taxpayers, focusing solely on decommissioning costs without fully considering default risk at the lease level. They reasoned that while increased collateral provided incremental protection for riskier leases, the overall benefit was relatively small. The commenter stated that the Department's plan incurred high costs, resulting in significant reductions in industry spending, future OCS production, revenue, royalties, economic activity, and jobs. They stated that reducing bonding expenses could lead to substantial growth and job creation over the next decade.[387]

Response: BOEM disagrees with the commenter's assertion that no additional security is needed for any property in which a company that would not be required by the regulations to post supplemental financial assurance is in the chain of title. Additionally, BOEM's regulatory impact analysis for the final rule has been updated to include bonding cost data provided by Opportune in their cost-benefit study, which was cited by multiple commentors and also submitted by Opportune as a standalone comment. BOEM's Statement of Energy Effects broadly recognizes that increased compliance cost has the potential to adversely impact oil and gas production through higher operational costs. Under OCSLA, lessees and grant holders are obligated to provide for the restoration of the lease, easement, or right-of-way. It is and has been longstanding policy that operators on the OCS must demonstrate their financial ability to fulfill their obligations to the government.

With respect to the commenter's assertion that increased collateral provides incremental protection for riskier leases, the regulations do not specify increased collateral; this is a matter addressed between the provider of the financial assurance and the entity obtaining the financial assurance.

Comment: A commenter asserted that in order for the members of its organization to grasp the potential impacts and costs of the Proposed Rule, they must conduct an extensive analysis of their producing offshore leases, infrastructure assets, and estimated decommissioning costs. This analysis would determine which producing leases have a proved reserve value, as per U.S. Securities and Exchange Commission (SEC) regulations, sufficient to obviate the need for supplemental bonding, as outlined in the Proposed Rule. The commenter stated that the Proposed Rule required this analysis to be performed on a per-lease basis, using BSEE's P70 decommissioning estimates, which differed from the industry's usual practice of evaluating proved reserves and associated decommissioning costs on a field basis, using their own estimates. As a result, the commenter concluded that companies would need to "deconstruct" the decommissioning cost estimates to allocate them on a lease basis while

[387] Center for Regulatory Freedom (BOEM-2023-0027-0030).

utilizing BSEE's P70 estimates. The commenter emphasized that only after this complex analysis was completed could a company fully comprehend the Proposed Rule's impacts on their operations, enabling them to provide meaningful and detailed feedback to the Department.

The commenter also suggested that a short delay in implementing the rule would not put taxpayers at risk regarding decommissioning liability. They pointed out that the proposed rule itself acknowledged that taxpayer liability for decommissioning offshore infrastructure was rare. The commenter further explained that the current system of joint and several liability among lessees and grant holders, along with prior lessees remaining responsible for accrued obligations, had effectively protected taxpayers from decommissioning liability for decades, even in the face of recent industry bankruptcies.[388]

Response: Companies provide reserve estimates to financial institutions when requesting reserve-based loans. The Department's proposal is no different. In response to comments, the Department is modifying the proposal by the inclusion of the use of per unit and per field basis for determining reserves for demonstration of the 3-to-1 ratio.

Comment: A commenter argued that unnecessary surety bonds artificially constrain a company's access to capital and flexibility in deploying it. They pointed out that annual fees associated with surety bonds were significant, and many sureties required debtors to post collateral as security, further limiting liquidity. The commenter referenced a study by Opportune, which highlighted that small independents would struggle to provide the necessary cash collateral due to recent asset impairments, permanently reducing their net worth. They emphasized that U.S. Generally Accepted Accounting Principles (GAAP) prevented asset values from being written back up as commodity prices recovered in the future.

They further pointed out that because the proposed rule would require Tier 2 OCS firms to divert capital to supplemental bonding, firms would have less cash on hand to pay other creditors. Given the macroeconomic environment, the commenter suggested that the proposed rule might push firms into bankruptcy and could lead to decommissioning-liability defaults, which would directly contradict the stated purpose of the rule. They referenced a legal precedent, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, to support their argument.

The commenter concluded by expressing concern that these costs would predominantly be borne by small businesses and new entrants, potentially stifling competition in OCS resource development. They highlighted that the Department's only plausible basis for requiring supplemental financial assurances was based on recent bids sought by BSEE for decommissioning wells and facilities, funded from appropriations in the 2021 Infrastructure and Jobs Act. However, they asserted that the decommissioning liability associated with those interests was relatively small compared to the

[388] Gulf Energy Alliance (BOEM-2023-0027-1155).

royalties and revenue the U.S. Government received from OCS operations in 2021. The commenter questioned the justification for such a fundamental shift in policy for what they viewed as a relatively small cost to taxpayers.[389]

Response: BOEM has designed its financial assurance program to provide flexibilities for small entities, while still fulfilling the goals of minimizing the risk of noncompliance with regulations. BOEM's use of lessee 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.

BOEM's Statement of Energy Effects, found in section VIII in the RIA for this final rule, broadly recognizes that increased compliance cost has the potential to adversely impact oil and gas production through higher operational costs. The financial assurance requirements set by this rule are intended to cover the costs of removing oil and gas facilities after they are no longer useful to support the oil and gas production for which they were built. This rule does not establish any new policy but simply implements a longstanding policy that the oil company that owns an offshore facility must remove it at the end of its useful life and that BOEM has an obligation to ensure that such a company has the financial resources to do so. This final rule is designed to ensure that taxpayers are not required to pay for decommissioning obligations.

BOEM's risk management and financial waiver criteria have not been updated in many years. The most recent update to the regulations, related to requirements for general bonds, was made in August of 2015. Substantive guidance and rulemakings related to this topic have not been updated for at least 20 years. Since that time, the oil and gas industry has changed substantially, and the level of potential risks has also grown substantially. There are thousands of oil and gas facilities on the OCS that are no longer being used and which need to be decommissioned and these numbers continue to grow. The Department is committed to ensuring that three key objectives are met with respect to these facilities. First, that the facilities no longer being used are decommissioned in a safe and environmentally sound manner. Second, that those who have the primary obligation to remove the facilities are the ones that conduct or fund the decommissioning. Third, that a robust financial security mechanism is in place to ensure that no new facilities are built that may generate unfunded obligations in the future. These objectives cannot be achieved without making changes to the Department's regulations and oversight procedures.

Comment: A commenter asserted that while they agreed that the U.S. taxpayer should never bear the cost of decommissioning liabilities, imposing an additional $9.2 billion in financial assurance requirements, with nearly 80% to be borne by small businesses, to cover a liability of less than $60 million was highly disproportionate and unwarranted. They highlighted the Department's acknowledgment that approximately 76% of businesses operating on the OCS subject to the

[389] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).

proposed rule were considered small, and that such businesses would likely incur total compliance costs of $2.676 billion. They further criticized the proposal, asserting that imposing costs of $2.676 billion, solely on small businesses, to protect U.S. taxpayers from $58 million of potential exposure was indefensible as public policy.

The commenter then raised concerns about potential negative consequences of the proposed rule, including its impact on independent producers, who contribute a significant portion of GOM production and total revenues to the U.S. Treasury. They argued that regulations requiring independent companies to tie up their capital in unnecessary supplemental bonding would reduce potential buyers for producing properties. They also emphasized that the rule could adversely affect productivity, competition, or prices in the energy sector.

The commenter concluded by suggesting that instead of imposing additional financial burdens on independent producers, the Department should focus on enhancing the financial position of these companies, ensuring they have the strength to fulfill their decommissioning obligations. They asserted that this approach, combined with the joint and several liability of all credit-worthy predecessors in interest, is the best way to protect the U.S. taxpayer from decommissioning liabilities.[390]

Response: BOEM must balance development with protection of both taxpayers and of the environment. BOEM believes this rule achieves an acceptable balance of objectives. The RIA shows costs and benefits of the rule. BOEM is not targeting the size of companies, it is targeting the financial strength of companies to make sure that the development of energy in the OCS is safe and protects both the taxpayer and the environment. The decommissioning data to be used for implementation of this rule is at the P70 level. Furthermore, a strong lessee will cover the rest of the co-lessees on the lease. BOEM also included phased-in implementation, decommissioning accounts, third party guarantees and proxy credit ratings. BOEM is interested in making sure that all lessee obligations in the OCS are met. The past 15 years have shown that the existing regulations were not sufficient to provide the desired and acceptable level of risk on the OCS, hence this rulemaking was considered necessary.

Comment: A commenter asserted that the proposed rule overlooks the existing $3 billion security already in place for decommissioning. They contended that instead of recognizing this security, the proposed rule would essentially renegotiate decades' worth of transactions, favoring large international companies that knowingly engaged in these transactions, prioritizing higher sales prices over demanding more security from the buyer.

The commenter asserted that the real beneficiaries of the proposed rule are these major oil and gas companies, not the American taxpayer. They maintained that having one of these major companies in

[390] Talos Energy Inc. (BOEM-2023-0027-2005).

the chain of title already provides sufficient protection for the taxpayer, given their size and sophistication. Requiring independent companies to issue additional bonds in this scenario, in the commenter's view, according to the commenter, only benefits the major companies at the expense of the independents.

The commenter criticized the approach of picking winners and losers between independent and major oil and gas companies, particularly when the majors were aware of their ongoing liability for decommissioning when they entered into sales transactions. They concluded that this constitutes an inappropriate use of Federal rulemaking and does not serve the interests of the taxpayer.[391]

A commenter argued that GOM transactions were based on the joint and several liability mechanism and that retroactively exempting sellers from this obligation, based on their choice for higher purchase prices and lower financial assurance, would be unjust. They stated that if "independent companies were required to unnecessarily bond such properties, the funds required to secure the new surety bonds would significantly reduce the capital available to the affected small businesses that they would otherwise be able to deploy in their lease operations and decommissioning operations." They asserted that this would "increase default risk while simultaneously reducing the amount of decommissioning operations that would be performed because capital that could have otherwise been used to enhance the viability of the business, thus reducing default risk, or performing decommissioning liabilities would be diverted to obtaining unnecessary financial assurance that benefits only majors who are the predecessors in interest." The commenter urged the Department to recognize that mandating superfluous financial assurance might escalate default risk and impede decommissioning performance. Additionally, they asserted that "[c]ommentors who argue in favor of imposing bonding obligations on current owners despite the existence of credit-worthy predecessors in interest do so only to serve their own self-interest without being able to articulate any concomitant benefit to the American taxpayer. At the same time, such a requirement would almost exclusively harm independent producers who are the current owners and who contribute ~35% of Gulf of Mexico production and total revenues to the U.S. Treasury from OCS operations."[392]

A commenter explained their current bonding situation, which included dual-obligee bonds with BOEM named as co-obligee, surety bonds, private bonds, and other forms of financial security instruments such as escrows, letters of credit, and notes receivable. They asserted that, as written, the proposed rule would require them to "double bond" their assets because they would be "required to acquire bonds in favor of BOEM, regardless of the fact that [their] predecessors are fully bonded for the same potential liability." Additionally, they asserted "Any final rule should recognize these existing private bonds and other forms of financial instruments, and no further financial assurance should be required on those privately bonded properties. In addition, BOEM should release any bonds associated with leases where there are these private bonds in place sufficient to address the

[391] Beacon Offshore Energy (BOEM-2023-0027-2013).
[392] Talos Energy Inc. (BOEM-2023-0027-2005).

lease's decommissioning obligations."[393]

Response: With respect to the assertion that the proposed rule overlooks the private security in place between companies, BOEM is not privy to those private arrangements between companies operating in the OCS, however, the rule is intended to require all purchasers to make plans to cover decommissioning costs, and those lessees that are not financially strong will be required to provide the supplemental financial assurance to the government. BOEM sets the rules regarding financial assurance and lets private parties decide how they share these cost obligations in their private arrangements, as long as obligations established in leases, grants, and the regulations are fully covered.

BOEM disagrees with the commenter's assertion that the real beneficiaries of the proposed rule are the major oil and gas companies, not the American taxpayer. BOEM has always maintained that the current lessee should be held financially responsible for decommissioning facilities that it owns. When a company purchases an OCS lease, that purchase is always contingent on the purchaser assuming the obligations for decommissioning the lease. That obligation is incorporated in the price of the purchase. If a company elects to drain the resource without making appropriate provision for removing the facilities, and then declares bankruptcy, it has apparently acted in bad faith with respect to the companies from whom it purchased the lease and with respect to the government which owns the property. By not requiring companies to take on the liabilities they agreed to assume and ensuring the financial assurance program promotes their compliance on this front, the Department would essentially be allowing or even facilitating this bad faith.

With respect to impacts on small businesses, BOEM must balance development with protection of both taxpayers and the environment. BOEM believes this rule achieves an acceptable balance of objectives. The RIA shows costs and benefits of the rule. BOEM is not targeting the size of companies, it is targeting the financial strength of companies to make sure that the development of energy in the OCS is safe and protects both the taxpayer and the environment. The decommissioning data to be used to implement this final rule is the P70 value. Furthermore, a strong lessee will cover the rest of the co-lessees on the lease. BOEM also included phased-in implementation, decommissioning accounts, third party guarantees and proxy credit ratings. BOEM is interested in making sure that all lessee obligations in the OCS are met. The past 15 years have shown that the existing regulations were not sufficient to provide the desired and acceptable level of risk on the OCS, hence this rulemaking was considered necessary.

Comment: A commenter asserted that the proposed rule failed to acknowledge that independent oil and gas companies were fulfilling their decommissioning obligations, leading to a consistent decrease in total decommissioning liability over the years. The commenter stated that the Department conceded that a significant portion of the costs imposed by the proposed rule would be borne by small

[393] Talos Energy Inc. (BOEM-2023-0027-2005).

businesses, estimating that around 76 percent of the businesses operating on the OCS would be considered small entities. The commenter asserted that these small businesses and independent oil and gas companies played a crucial role in reducing decommissioning liability in the GOM over the past 15 years.

The commenter contended that under the proposed rule, independent oil and gas companies would face enormous compliance costs, potentially forcing them to slow down their decommissioning efforts. This, they argued, could increase the risk to the government and taxpayer. The commenter emphasized that independent companies have limited capital, and diverting a significant portion of it towards duplicative bonds would hinder their ability to conduct decommissioning activities. They suggested that this could lead to a prolonged presence of wells and platforms in the Gulf, potentially increasing decommissioning liability.

Furthermore, the commenter stated the proposed rule would have negative unintended consequences for both predecessors and taxpayers. They concluded that the rule, if implemented, would lead to decreased oil and gas production in the GOM, job losses, reduced revenue for the U.S. Treasury, increased emissions, reduced competition, and weakened supply chains supporting the offshore oil and gas industry.[394]

Response: BOEM disagrees with the commenter's assertion that the proposed rule failed to acknowledge that some companies are fulfilling their decommissioning obligations – most companies with OCS facilities in need of decommissioning are fulfilling their legal and contractual obligations to the United States as expected. The focus of this rulemaking is on the instances where that has not been the case; particularly where BOEM's financial assurance regulations have, or will in the future, insufficiently protected the government. A significant portion of the costs of the rule are estimated to be borne by small entities because a significant number of small entities operate on the OCS - many with financials unknown to BOEM.

BOEM's Statement of Energy Effects, found in section VIII in the RIA for this final rule, broadly recognizes that increased compliance cost has the potential to adversely impact oil and gas production through higher operational costs. The financial assurance requirements set by this rule are intended to cover the costs of removing oil and gas facilities after they are no longer useful to support the oil and gas production for which they were built. This rule does not establish any new policy but simply implements a longstanding policy that the oil company that owns an offshore facility must remove it at the end of its useful life and that BOEM has an obligation to ensure that such a company have the financial resources to do so. This final rule is designed to ensure that taxpayers are not required to pay for decommissioning obligations.

BOEM's risk management and financial waiver criteria have not been updated in many years. The

[394] Arena Energy, LLC (BOEM-2023-0027-2096).

most recent update to the regulations, related to requirements for general bonds, was made in August of 2015. Substantive guidance and rulemakings related to this topic have not been updated for at least 20 years. Since that time, the oil and gas industry has changed substantially, and the level of potential risks has also grown substantially. There are thousands of oil and gas facilities on the OCS that are no longer being used and which need to be decommissioned and these numbers continue to grow. The Department is committed to ensuring that three key objectives are met with respect to these facilities. First, that the facilities no longer being used are decommissioned in a safe and environmentally sound manner. Second, that those who have the primary obligation to remove the facilities are the ones that conduct or fund the decommissioning. Third, that a robust financial security mechanism is in place to ensure that no new facilities are built that may generate unfunded obligations in the future. These objectives cannot be achieved without making changes to the Department's regulations and oversight procedures.

Section 11.2.2 – Request for comment: What are the impacts of using P90 or higher BSEE decommissioning estimate, including impacts to small entities?

Comment: A few commenters urged the Department to use the P90 value. According to the commenters, using the P90 value could mitigate risk.[395] A couple of commenters stated that applying the P70 value or relying on the estimates generated by BSEE could underestimate decommissioning costs.[396] A commenter added that using the P90 value could facilitate completion of decommissioning processes in a timely manner to prevent environmental damage. The commenter further stated that the Department should "seek to obtain as close to 100 percent of the estimated decommissioning cost" rather than "settle for an amount that is only 70 percent likely to cover the costs." Another commenter suggested that the Department should alternatively utilize a cost model that accounts for "sector-wide climate transition-driven demand risk."[397]

Response: BOEM disagrees with the commenters' assertion that the P90 is a more appropriate value. BOEM's goal for its financial assurance program continues to be the protection of the American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production companies at a competitive disadvantage. A financial assurance level at P70 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.

[395] Ocean Conservancy (BOEM-2023-0027-1961); Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792); Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753).

[396] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792); Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753).

[397] Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753).

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.

Section 11.3 – Surety Markets

Comment: Some commenters expressed concern that the proposed rule will strain the surety bond market, asserting that the surety market lacks the capacity to accommodate the rule changes.[398] One of the commenters stated that the proposed rule could cause a "run on the bank" for companies with existing surety bonds.[399] Another commenter expressed concern with overburdening the surety market, stating that the Department "falsely assumes" that $9.2 billion in estimated additional financial assurance under the proposed rule is available in the surety market. The commenter suggested that the Department limit the assessment of additional financial assurance requirements only to Tier 2 lessees and Sole-Liability Properties to avoid straining the surety market.[400]

Response: The commenters overlook the fact that the regulations allow other types of financial assurance instruments in addition to surety bonds such as third-party guarantees and decommissioning accounts. 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: A commenter stated that if the bonds required by the proposed rule are placed between the predecessors and the taxpayer (*i.e.*, the bonds are callable *only* upon the exhaustion of existing private and supplemental bonds *and* after the default of predecessors to perform the decommissioning), the international surety market will likely have capacity to issue bonds at reasonable prices. The commenter advised the Department to clarify where the bonds required by the proposed rule will be placed in the existing hierarchy of security.[401] Similarly, a commenter suggested that any new supplemental bonding issued after the final rule should be callable by BOEM *only if* (i) BSEE has issued decommissioning orders to all current and former owners, *and* (ii) all current and former owners fail to perform or pay for the decommissioning.[402] Another commenter concurred that bonds that are callable only after current and former owners' default are likely available in the market and still protect the taxpayer.[403]

Response: BOEM is not changing its practice of how and when it calls bonds. BOEM will continue to retain the right to call bonds if the current lessee is not in compliance. Additionally, BOEM did not change the order to seek recoveries with the proposed rulemaking. The general order followed is lessee(s), predecessors, and in a bankruptcy, the funds from a sale.

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[398] Gulf Energy Alliance (BOEM-2023-0027-1155); Cantium, LLC (BOEM-2023-0027-1592); W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989); QuarterNorth Energy LLC (BOEM-2023-0027-2001); Arena Energy, LLC (BOEM-2023-0027-2096); GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[399] Arena Energy, LLC (BOEM-2023-0027-2096).
[400] Opportune LLP (BOEM-2023-0027-1991).
[401] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[402] Arena Energy, LLC (BOEM-2023-0027-2096).
[403] Beacon Offshore Energy (BOEM-2023-0027-2013).

Comment: A commenter recommended that the Department commission a comprehensive study of decommissioning bond market capacity and take into account both the primary bonding market and the surety reinsurance market. According to the commenter, the underwriting qualification process for surety capacity, collateral requirements, and surety premium pricing is based on the principal's financial health and creditworthiness. [404] Similarly, a commenter urged the Department to commission or perform a study of surety companies and potentially establish basic criteria for the companies providing OCS supplemental assurance sureties.[405]

Response: Commissioning or performing a study of surety companies to evaluate the rule impacts and to establish basic criteria for the companies providing OCS supplemental financial assurance is outside of DOI's purview. BOEM is not involved in the business decisions of the surety industry but is tasked with ensuring that OCS oil and gas lessees fund their decommissioning obligations, which lessees can do through multiple types of financial assurance tools in addition to surety bonds.

Comment: A commenter asked the Department the following questions regarding surety bonds:

- What assurance and/or protections does the Department plan to offer the surety market in exchange for providing future coverage?
- How can a surety ensure that the revenues of the assets that once qualified their underwriting decision are going to remain with their lesser value bonded assets?[406]

Response: Nothing in the final rule would alter the association of existing bonds with specific leases. The surety industry and the oil and gas industry are better situated to devise the economic terms to their mutual satisfaction than DOI could do by regulation.

Comment: A commenter stated that, contrary to other commenters' assertions, it is logical to presume the surety markets will reorganize to meet the anticipated increase in demand caused by the proposed rule. The commenter asserted that the relevant question is whether current owners requiring supplemental financial assurance can satisfy the sureties' low risk tolerance. The commenter continued that when a current owner cannot obtain a bond, it is not because the surety market is unable to supply the demand for that bond but is that the current owner cannot obtain the bond because the current owner lacks the financial wherewithal and credibility to prove they will not default on their obligations. The commenter concluded that this is exactly the risk the Department aims to mitigate in the proposed rule.[407]

Response: BOEM agrees with the commenter's assertion and expects that the surety markets will reorganize, if necessary, to meet the increase in demand BOEM has estimated resulting from this

[404] Aon (BOEM-2023-0027-1975).
[405] True Transition (BOEM-2023-0027-1696).
[406] CAC Specialty (BOEM-2023-0027-1201).
[407] Shell Offshore Inc. (BOEM-2023-0027-2012).

final rule. Additionally, the regulations allow for the use of other types of financial assurance instruments in addition to surety bonds.

Comment: A commenter asserted that the surety industry cannot use pricing to improve the availability of surety capacity in this marketplace, reasoning that the proposed rule is "steeped in adverse selection." The commenter stated that the proposed rule estimates surety bond pricing to range from 2% to 12%, however, sureties do not price based on expected loss levels—they are underwritten based on an expectation of zero losses. The commenter recommended that all lessees be required to post security at any time the lease is transferred to that party, whether in the ordinary course of business or as part of a bankruptcy matter.[408]

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 financial 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.

Additionally, 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.

Comment: A commenter suggested that if the Department retains the proposed exemptions from

[408] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).

financial assurance requirements for certain lessees in the proposed regulations, at a minimum, the Department should make clear that bonds that are canceled after a lessee meets the exemption criteria are not subject to reinstatement.[409]

Response: Cancellation of financial assurance is final, unless it was obtained by misrepresentation or based on payments that were voided in a bankruptcy.

Comment: A commenter asserted that the Department's financial assurance requirement was a "needless tie-up of significant capital" that "could impair economic development of leases or precipitate the very defaults that the Department aims to prevent." The commenter suggested that the Department should not require supplemental financial assurance because it could be "duplicative or excessive" and could "risk putting excess strain on the security market."[410]

Response: DOI proposed to allow other types of financial assurance instruments in addition to bonds in the proposed rule. BOEM has included provisions such as a phase-in period to provide additional bonding over a 3-year period instead of immediately in this final rule in order to mitigate some of the burden associated with implementation.

Comment: A commenter also pointed out that this rule presupposes the existence of a surety market with sufficient capacity to meet the rule's requirements, which they argued does not currently exist.[411]

Another commenter asserted that the proposed rule's requirements may exceed the capacity of surety markets. They suggest that such a large-scale bond/surety market as proposed may not exist, potentially forcing regulated entities to exit the market, which would be counter to OCSLA's aim of facilitating appropriate development.[412]

Response: This final rule does not make any assumptions regarding the availability or non-availability of surety bonds. The final rule has modified the existing financial assurance requirements to make them more flexible for third-party guarantees and decommissioning accounts. Companies can obtain financial guarantees from third parties, they can pledge Treasury securities as collateral, or they can make arrangements to set up asset decommissioning accounts that would be funded over the life of the facility to cover the eventual removal of the facility.

Comment: The commenter expressed concerns about potential unintended negative consequences of the proposed regulations. They discussed how the proposed regulations could create an environment where surety providers are less likely to offer additional coverage due to the unavailability of

[409] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).
[410] American Petroleum Institute and the Louisiana Mid-continent Oil and Gas Association (BOEM-2023-0027-2006).
[411] QuarterNorth Energy LLC (BOEM-2023-0027-2001).
[412] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).

significant collateral from lessees. They stated that it is unlikely that the demand in surety markets assumed by the proposed rule will exist without lessees providing substantial collateral to their surety provider(s), which would make commercial implementation of the proposed regulations unlikely through surety bonds alone. They further suggested that it might prompt surety providers to reevaluate existing contracts, potentially leading to additional collateral demands. The commenter expressed worries that recent bankruptcy rulings have already increased market risks, and the proposed regulations could intensify the reluctance of the surety industry to participate, potentially leading to further capacity concerns.[413]

Response: BOEM acknowledges that lessees may be required to provide substantial collateral to their surety provider which may make implementation of the proposed regulations unlikely through surety bonds alone, as such, DOI proposed to allow other types of financial assurance instruments in addition to bonds in the proposed rule.

Comment: A commenter pointed out that the Department's own calculated annual surety bond cost for the proposed rule was over $300 million, which was six times greater than the historical cumulative cost since 1950 of all the uncovered abandonment costs. They asserted that the Department did not recognize that the annual surety bonding payments did not go towards reducing abandonment liabilities, but instead benefited surety companies. The commenter contended that by implementing the proposed rule, the Department would actually reduce the available funds for abandonment while simultaneously weakening operating companies, potentially leading them towards bankruptcy due to excessive and non-productive costs.

Based on the Department's estimate for the required additional abandonment bonding under the proposed rule, the commenter estimated that their annual surety bonding cost could increase dramatically. They stated that they discussed this possibility with their surety brokers and companies, who acknowledged that they were unprepared to issue the considerable number of additional bonds to the industry, estimated to be in excess of $9 billion. The commenter concluded that this bonding constraint alone justified postponing and re-examining the proposed rule until the Department better understood the surety market.

Additionally, the commenter questioned the Department's calculation of annual surety bond costs, pointing out a discrepancy in the projected cost and the historical cumulative cost of abandonment since 1950. The commenter criticized the proposal for not acknowledging that annual surety bonding payments do not reduce abandonment liabilities but benefit surety companies. The commenter also highlighted the potential financial strain on operating companies due to excessive, non-productive costs.

The commenter estimated a significant increase in their annual surety bonding cost if the proposed

[413] The Surety & Fidelity Association of America (BOEM-2023-0027-1998).

rule is implemented, potentially rising from $2 million to $20 million. They discussed their concerns with surety brokers and companies, who expressed being unprepared to issue the substantial number of additional bonds estimated to be over $9 billion. This, according to the commenter, justified postponing and re-examining the proposed rule until the Department gains a better understanding of the surety market.[414]

Response: BOEM disagrees with the commenter's assertion that it should postpone and reexamine the proposed rule. BOEM acknowledges that lessees may be required to provide substantial collateral to their surety provider, which may make implementation of the proposed regulations unlikely through surety bonds alone; as such, BOEM allows other types of financial assurance instruments in addition to bonds in the final rule. For example, the final rule has modified the existing financial assurance requirements to make them more flexible for third-party guarantees and decommissioning accounts. Companies can obtain financial guarantees from third parties, they can pledge Treasury securities as collateral, or they can make arrangements to set up asset decommissioning accounts that would be funded over the life of the facility to cover the eventual removal of the facility. BOEM must balance OCS development with protection of both taxpayers and the environment -- BOEM believes this rule achieves an acceptable balance of these objectives.

Comment: A commenter expressed various concerns regarding the proposed rule. They emphasized the need for clarity regarding the beneficiary of the proposed $9 billion in additional supplemental bonding, as this information is crucial for the surety industry to assess capacity and pricing. They questioned whether the government intends to treat the new bonds as "the last dollar out" protecting only the taxpayer, or if the intent is to transfer risk from predecessors to the surety industry.

The commenter asserted that the failure to provide clarity on this matter hinders stakeholders from making informed comments on the proposed rule. They reasoned that if the bonds were to benefit predecessors, the rule would be unimplementable due to various reasons, including sureties' unwillingness to provide new capacity and the lack of available capital sources. They criticized the proposed $9.2 billion in additional bonding, stating it was a disproportionate response to the estimated $60 million in historical decommissioning liabilities.

The commenter also contended that the total decommissioning liabilities were overstated in the proposed rule, pointing to a study by an advisory firm. They highlighted that the majority of sole liability risk already had existing bonds in place to cover the exposure. The commenter further noted a significant decrease in total decommissioning liability over time and emphasized the role of independent producers in decommissioning activities.

Additionally, the commenter asserted that the proposed rule lacked a robust cost-benefit analysis and distorted the benefits by ignoring the joint-and-several liability regime. They referenced a cost-

[414] Cantium, LLC (BOEM-2023-0027-1592).

benefit analysis conducted by the advisory firm, which projected negative economic consequences, including a decrease in production, job losses, forfeited royalties, and a decline in GDP. The commenter pointed out that these projections did not include other potential impacts on energy security and emissions.[415]

Response: BOEM disagrees with the commenter's assertion that decommissioning liabilities are diminishing. As noted throughout this document, the reasons for this rulemaking and the necessity of modifying the existing regulatory framework are to address the risks in the financial assurance program, as highlighted in the GAO report. While BOEM acknowledges that to date the Federal government and taxpayer has not had to bear the majority of costs of decommissioning, GAO and BOEM have both found that the future risk of such an outcome is significant, and can and should be mitigated by strengthening the financial assurance program to ensure that the parties that should bear the costs (*i.e.*, lessees and grant holders) have the resources to do so. In addition, BOEM acknowledges the need for regulatory action due to a recent increase in the number of entities filing for bankruptcy and the fact that, as the age of existing facilities continues to increase, the costs associated with the decommissioning of such facilities (including wells) is likely to increase as well. BOEM seeks to balance the financial risk to the government and the taxpayer with the regulatory burden on lessees and grantees and believes that this final rule achieves an acceptable balance of objectives.

Additionally, BOEM is not changing how and when it calls bonds and decommissioning obligations and the joint and several liability framework for those obligations are not being changed with this rule. BOEM is targeting high risk leases and grants to ensure that the cost of decommissioning does not fall on the taxpayer.

Comment: A commenter asserted that "imposing additional bonding obligations would also stress a currently well-functioning surety market." They claimed that that the market did not have sufficient capacity to use the estimated $9.2 billion in additional bonds required by the proposed rule and claimed that BOEM had not sought input from surety providers as to their ability to provide those bonds. The commenter recommended that BOEM "confer with surety providers to obtain a full understanding of this limited marketplace and the impacts to small businesses if they are unable to meet the obligations imposed by the Proposed Rule."

The commenter further asserted that independent producers in the GOM would not be able to obtain the surety bonds required because of the market capacity and they would be "forced to pursue other forms of financial assurance, such as letters of credit or cash collateral, and in many cases they would simply be unable to provide the financial assurance required by BOEM." The commenter claimed that they believed, in the event that lessees could not provide the required financial assurance, operations would be required to shut-in or forfeit the leases entirely while still retaining

[415] Arena Energy, LLC (BOEM-2023-0027-2096).

the obligation to perform the decommissioning obligations. This would increase the risk of default of these companies through the loss of production and revenue.[416]

An additional commenter raised concerns about the capacity of the surety market to support the additional bonding required by the proposed rule. They pointed out that the market has experienced significant losses in recent years, leading surety companies to be increasingly hesitant about maintaining current levels of bonding. The commenter added that some surety companies have even exited the offshore oil and gas market entirely. The commenter contended that the constraint lies not in pricing, but in the sheer lack of capacity to issue an additional $9.2 million in bonds. They noted that despite efforts from the international surety market to engage with the Department, the Department did not actively assess or collaborate with them on the practicality of any new bonding requirements.[417]

Response: BOEM disagrees with the commenters' assertion that it did not meet with the surety providers during the development of this regulation. BOEM met with SFAA on August 10, 2023, and provided meeting notes in the docket for public review (Docket ID No. BOEM-2023-0027-1184). The final rule has modified the existing financial assurance requirements to make them more flexible for third-party guarantees and decommissioning accounts. Companies can obtain financial guarantees from third parties, they can pledge Treasury securities as collateral, or they can make arrangements to set up asset decommissioning accounts that would be funded over the life of the facility to cover the eventual removal of the facility. BOEM must balance OCS development with protection of both taxpayers and the environment-- BOEM believes this rule achieves an acceptable balance of these objectives. The RIA shows costs and benefits of the rule. In the proposed rule RIA, BOEM acknowledged that lessees may be required to provide substantial collateral to their surety provider which may make implementation of the proposed regulations unlikely through surety bonds alone, as such, DOI proposed to allow other types of financial assurance instruments in addition to bonds in the proposed rule. BOEM is finalizing these provisions, as proposed, with this rulemaking.

[416] Talos Energy Inc. (BOEM-2023-0027-2005).
[417] Beacon Offshore Energy (BOEM-2023-0027-2013).

Section 11.4 – Environmental Consequences

Comment: A commenter urged the Department to propose no new OCS oil and gas leases because there is "no place for additional offshore drilling in a clean energy future." The commenter also asked the Department to take aggressive steps to ensure its regulations require OCS oil and gas lessees "to address environmental justice impacts, adhere to strict environmental standards and pay their fair share for the costs—including decommissioning costs—that OCS oil and gas activities impose on coastal communities, society and our environment."[418]

Response: BOEM disagrees with the commenter's assertion that the Department should stop scheduling oil and gas lease sales, as it is statutorily required. Section 18 of OCSLA requires the Secretary of the Interior to establish a schedule of lease sales for a 5-year period in a National OCS Oil and Gas Leasing Program by evaluating specified attributes of OCS areas. The Secretary is authorized to select the size, timing, and location of proposed OCS lease sales that best meet national energy needs and that balance, to the maximum extent practicable, the potential for environmental damage, discovery of oil and gas, and adverse impact on the coastal zone. The Department will continue to execute its required legal obligations for all activities on the OCS. The Department is finalizing this rulemaking with the intent of ensuring that OCS oil and gas lessees fund their decommissioning obligations.

Comment: Several commenters expressed concern regarding the environmental consequences of the proposed rule because of the contribution of oil and gas to greenhouse gas emissions and, ultimately, climate change.[419] One of the commenters also noted the potential for a large-scale "climate-related decommissioning event" brought on by a sector-wide decline in the oil and gas industry, decreased demand or legal restrictions on supply.[420] Other commenters asserted that the proposed rule does not consider that oil and gas drilling in the GOM is less carbon intense than drilling in different areas.[421] Another commenter asserted that the proposed rule could lead to adverse environmental impacts, specifically an increase in carbon emissions because the "Gulf of Mexico has a low carbon intensity, and the proposed rule will make it more expensive to recover, resulting in more demand for higher carbon intensity oil from other global sources."[422]

Regarding the transition to a lower carbon future, a commenter acknowledged its inevitability and affirmed support for the offshore industry, encompassing both Majors and Independents. They asserted that global demand for oil and natural gas will continue to rise for decades, citing

[418] Ocean Conservancy (BOEM-2023-0027-1961).
[419] Ocean Conservancy (BOEM-2023-0027-1961); Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753).
[420] Sabin Center for Climate Change Law at Columbia Law School (BOEM-2023-0027-1753).
[421] Cantium, LLC (BOEM-2023-0027-2031); GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165); Beacon Offshore Energy (BOEM-2023-0027-2013); Cantium, LLC (BOEM-2023-0027-1592); Center for Regulatory Freedom (BOEM-2023-0027-0030).
[422] A. Belkin (BOEM-2023-0027-0352) [Form Letter Master].

projections from the U.S. Energy Information Agency (EIA) and the International Energy Agency. The commenter asserted that given this rising demand, it is imperative to either encourage the production of low carbon oil and gas domestically or rely on imports from foreign countries with potentially lower environmental standards. They pointed to a recent instance where the administration encouraged increased production from Venezuela, a country with substantial natural gas flaring.[423]

Another commenter presented evidence that the Gulf of Mexico (GOM) has significantly lower carbon intensity compared to onshore areas, with deepwater production emitting the least greenhouse gases among oil-producing regions. They asserted that the Gulf's contribution to U.S. consumers reduces the need for additional oil transportation and subsequent emissions. However, the same commenter asserted that the rule could negatively impact the US energy economy by reducing oil and gas resources, potentially leading to increased reliance on dirtier-burning foreign oils.[424]

Response: The Department recognizes that its more stringent environmental controls and regulations cause OCS operations to generally pollute significantly less, relative to the amounts of oil and gas produced. As discussed in the 2024-2029 National OCS Oil and Gas Leasing Proposed Final Program, current data suggests that deepwater GOM production has among the lowest carbon intensity of crude oil projects due to several factors including restrictions on venting and flaring of OCS natural gas, the medium gravity crude oil that is prevalent in the area, and the efficiencies associated with larger development facilities. As such, stringent controls on operations, particularly to control flaring and venting, contribute significantly to minimizing greenhouse gas emissions on the OCS. The Department also recognizes that, to the extent that OCS operations are reduced, and domestic oil and gas production are offset by imports, the net result would likely be an increase in greenhouse gas emissions worldwide. The Department does not expect this rulemaking to cause reduced OCS oil and gas production, however, because it is simply ensuring that companies are able to meet existing contractual obligations. Financially responsible lessees and operators, who properly accounted for their asset retirement obligations, should see only a minimal effect from the implementation of this rule.

Comment: A commenter expressed concern about the environmental and safety risk that will result with the implementation of the proposed rule because it strains an already overstretched rig and decommissioning services market.[425] Another commenter similarly stated that the proposed rule's increased bonding requirements would increase, not decrease, the length of time it will take to decommission defaulted properties, which could result in increased safety and environmental risks during the increased time that will result from disputing and deciding how monitoring and decommissioning will be addressed.[426]

[423] Beacon Offshore Energy (BOEM-2023-0027-2013).
[424] Center for Regulatory Freedom (BOEM-2023-0027-0030).
[425] White Fleet Drilling, LLC / White Fleet Abandonment, LLC (BOEM-2023-0027-2146).
[426] QuarterNorth Energy LLC (BOEM-2023-0027-2001).

Response: BOEM disagrees with the commenters' assertions that the increased supplemental financial assurance requirements will result in increased time to complete decommissioning obligations, because it does not change decommissioning processes, only the securing of the funding thereof. Financially responsible lessees and operators, who properly accounted for their asset retirement obligations, should see only a minimal effect from the implementation of this rule. Additionally, the commenters did not provide any documentation explaining why the proposed rule would strain the decommissioning services market.

Comment: A commenter cited a recent study, which found that the industry has approximately 10,800 unplugged wells in Federal waters alone, incurring an estimated decommissioning cost of $42 billion. The report indicated that over 7,000 of these wells are inactive, with an estimated decommissioning cost of $28.65 billion. The study also highlighted an additional 7,000 inactive and unplugged wells in State waters, with a lower estimated decommissioning cost of $2 billion. The commenter emphasized the potential environmental impact, particularly near the coast, where a higher concentration of sensitive species exists.[427]

Response: BOEM acknowledges the commenter's concern regarding the environmental impacts of unplugged, inactive wells. The Department is finalizing this regulatory action to ensure that all lessees have the financial capability to cover their decommission obligations, which includes the plugging of the inactive wells and removing the associated structures.

Comment: A commenter raised concerns about previously plugged and abandoned wells that continue to leak oil and harmful gases, including methane, benzene, nitrogen oxides, and carbon dioxide. They attributed this issue to vague and inadequate regulations when the wells were originally plugged. They pointed out that the Department and BSEE do not consistently monitor the condition of these wells. The commenter underscored that oil and gas companies acquiring leases for offshore fossil fuel development are mandated to safely decommission all infrastructure after it ceases operation, aiming to prevent harm to human, marine, and coastal environments. The Department's regulations specifically require lessees to permanently plug wells, remove platforms and other facilities, clear the seafloor of all lease-related obstructions, and decommission pipelines.[428]

Response: BOEM agrees with the commenter's assertion that oil and gas companies acquiring leases for offshore fossil fuel development are mandated to safely decommission all infrastructure after it ceases operation, which is why the Department is finalizing this regulatory action to ensure that all lessees have the financial capability to cover their decommission obligations.

[427] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).
[428] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).

Comment: A commenter expressed concern about the impacts of offshore drilling on coastal restoration and national parks, and that the proposed rule could lead to a reduction in funding in these areas. Specifically, they asserted that "Coastal restoration plays a crucial role in maintaining the health and beauty of our shores, protecting them from erosion, and preserving diverse ecosystems. Additionally, our national parks serve as important natural habitats and recreational areas, attracting tourists and supporting local economies. It is disheartening to think that significant reductions in funding for these vital projects may be a consequence of this rule change."[429]

Response: The commenter's assertion that the proposed rule will result in significant funding reductions for coastal restoration and national parks is unsubstantiated. BOEM does not have evidence suggesting that the cost of compliance with the rule will reduce OCS production to an extent it would impact funding for coastal restoration and national parks.

[429] Anonymous (BOEM-2023-0027-1973).

Section 12 – Executive Orders and Statutory Reviews

Section 12.1 – Regulatory Planning and Review (E.O. 12866 and 13563)

Comment: A few commenters stated that the proposed rule would significantly impact the supply, distribution, and use of energy, adding that it is a "significant regulatory action under Executive Order 12866."[430] A couple of commenters stated that the proposed rule "ignores the modern principles of modern rulemaking" and cited Executive Order 12866. They asserted that the rule was not the most cost-effective and least burdensome manner to achieve the goal of protecting the taxpayer from decommissioning liability, and further asserted that the 2020 Proposed Rule was an effective and less costly manner for achieving the regulatory objectives.[431]

Response: BOEM disagrees with the commenters' assertion that the 2023 proposed rule "ignores the modern principles of modern rulemaking" and the assertion that the 2020 NPRM was an effective and less costly manner for achieving BOEM's regulatory objectives. The major difference between the 2020 and 2023 proposed rules has to do with how the Department treats predecessor liability with respect to the determining the need for and amounts of bonding or other financial assurance required of lessees. The 2020 proposal would have substantially waived financial assurance requirements for companies whose leases and facilities were previously owned by a financially secure company. That approach was changed with the 2023 NPRM based on the comments received on the 2020 proposal. Those comments essentially pointed out that companies currently owning oil and gas facilities could ignore their primary obligation to maintain adequate capital resources to comply with their obligations under their lease, assuming BOEM would have recourse to the resources of predecessors. This is not, and was never, the intent of the financial assurance program. It has always been the Department's policy that current leaseholders should be held primarily responsible for the obligations on their leases and that the current leaseholders should have the financial condition to uphold those obligations. This final rule supports this longstanding policy. The Department is finalizing in this rule that predecessors are not used to determine the amount of supplemental financial assurance required, nor if it is required. This is expected to result in a significant increase in financial assurance available to the US government to address decommissioning obligations that are not currently addressed by lessees and grant holders.

Comment: According to a few commenters, the costs of the consequences of the proposed rule were not evaluated or compared to its benefits in accordance with Executive Order 12866.[432] A couple of commenters stated that the proposed rule lacks a robust cost-benefit analysis and referenced the cost-benefit analysis conducted by Opportune LLP. The commenters concluded that the Department

[430] Beacon Offshore Energy (BOEM-2023-0027-2013); Arena Energy, LLC (BOEM-2023-0027-2096); GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[431] Beacon Offshore Energy (BOEM-2023-0027-2013); GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).
[432] Beacon Offshore Energy (BOEM-2023-0027-2013); Arena Energy, LLC (BOEM-2023-0027-2096); GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

would not have determined that the proposed rule is justified had it conducted a proper analysis of the costs and benefits.[433] Another commenter stated that the 2020 proposed rule would impose less burden on businesses while still protecting taxpayers from decommissioning liability, referencing the "GEA proposal to revert to the 2020 Proposed Rule."[434]

Response: BOEM disagrees with the commenters' assertion that a proper cost benefit analysis was not performed. Both the proposed rule RIA and the final rule RIA provide supporting documentation and analysis for BOEM's rulemaking and was done in accordance with established procedures. The proposed rule RIA included these analyses and was available in the docket for the proposed rulemaking for public review and comment. BOEM explained in the both the RIA and the preamble to the proposed rule at 88 FR 42136 the deficiencies it was addressing with the rule, the factors being considered, and the evidence and reasoning for the proposed amendments, as well as the analysis associated with those amendments.

[433] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165); Beacon Offshore Energy (BOEM-2023-0027-2013).
[434] Beacon Offshore Energy (BOEM-2023-0027-2013).

Section 12.2 – Regulatory Flexibility Act (RFA)

Comment: The commenter highlighted that the Department's analysis revealed that non-investment grade companies would face significantly higher costs for decommissioning bonds compared to investment grade companies. They inquired about the range of alternatives the Department had examined. Specifically, they wanted to know if the Department had considered options that were more specifically tailored to address the requirements of small businesses, beyond the alternatives discussed in the rule.[435]

Response: BOEM considered the regulatory alternatives discussed in the Initial Regulatory Impact Analysis, available in the docket at www.regulations.gov (Document ID: BOEM-2023-0027-0002), which was available in the docket for public review and comment during the public comment period. BOEM has also provided an RIA for the final rule, which is also available in the docket for this rulemaking. BOEM considered a "no action" alternative, which would be the equivalent of the proposed action not being adopted and the regulatory baseline codified in the regulations. BOEM also considered a more stringent regulatory alternative, which evaluated full implementation of NTL No. 2016-N01.

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 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 greater 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 provide flexibility to secure financial assurance or suitable partnerships with stronger parties. 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 able to satisfactorily perform its obligations to the public.

[435] House Committee on Small Business (BOEM-2023-0027-1162).

Comment: A commenter asserted that an informed evaluation of the proposed rule is not possible without a robust cost-benefit analysis, which is completely lacking in the proposed rule. According to the commenter, the proposed rule also distorts and inflates the benefits of the proposed regulation by ignoring the joint and several liability framework. The commenter stated that given the effectiveness of joint and several liability in protecting the taxpayer, it is hard to justify the proposed regulation even if the proposed rule carried only de minimis costs given the far-reaching negative consequences the regulation would create.[436]

Response: BOEM disagrees with the commenter's assertion that the proposed rule was lacking a robust cost-benefit analysis. The analysis for the proposed rule was available in the docket for public review and comment at www.regulations.gov (Document ID: BOEM-2023-0027-0002). BOEM has also provided an RIA for the final rule, which is available in the docket for this rulemaking. 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: A commenter asserted that the proposed rule disproportionately impacts small independent offshore oil businesses. They contended that this places an unjust financial burden on these vulnerable companies, potentially jeopardizing their survival. The commenter emphasized that this may favor larger oil companies and lead to higher prices for consumers due to reduced industry competition.

The commenter acknowledged the Department's recognition of the financial impact on small businesses but criticized the lack of satisfactory justification for the excessive burden imposed. The commenter argued that the Department's proposed 3-year compliance period for affected small businesses does not adequately address the regulation's detrimental impact. Specifically, they stated "Even with these acknowledgments, the rulemaking continues without offering a satisfactory justification for the excessive burden imposed on these vulnerable small businesses. To satisfy the [RFA], BOEM proposes a 3-year compliance period for the small businesses affected. However, this weak solution fails to address the detrimental impact on small businesses or rectify the regulation's arbitrary nature. Although BOEM may present this phased approach as an attempt to ease the burden on vulnerable companies, the reality remains that the undue financial strain on independent oil businesses will persist throughout the compliance period. An extended timeline does not negate the fact that the proposed rule imposes billions of additional dollars in bonding requirements."

[436] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

The commenter also criticized the Department for not recognizing the significant efforts of independent oil companies in fulfilling their decommissioning obligations. They asserted that imposing additional bonding requirements diverts resources away from vital decommissioning activities.

Furthermore, the commenter raised concerns about the broader economic impact of the proposed rule. They cited a model demonstrating lost economic opportunities from regulation, suggesting that the proposed rule would add to the regulatory burden on American small businesses. They recommended a substantial revision or abandonment of the proposal based on a fair analysis of both direct and indirect economic impacts, as well as lost opportunity costs.[437]

Response: BOEM disagrees with the commenter's assertion that it lacked satisfactory justification for the burden imposed on small businesses. 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 greater 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 provide flexibility to secure financial assurance or suitable partnerships with stronger parties. 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 as requested by the commenter, could deteriorate more quickly than its compliance timetable and thus not be able to satisfactorily perform its obligations to the public.

BOEM disagrees with the commenter's assertion that BOEM should substantially revise or abandon the proposed approach based on a "fair" analysis of direct and indirect costs. As discussed in the proposal RIA, which was available in the docket for public comment, upstream and midstream OCS oil and gas companies need a regulatory environment on which they can rely. The perceived uncertainty of BOEM's financial assurance regulatory environment for the last several years may be impacting OCS investment decisions. As discussed in the Background section of the final rule RIA, BOEM's changes and ongoing discussions of potential financial assurance changes have created regulatory uncertainty for companies. A clear understanding of BOEM's financial assurance standards and processes may incentivize OCS investment and provide public benefits through increased leasing revenues or other indirect economic activity.

Additionally, BOEM acknowledged in the proposal RIA that the proposed rule's estimated compliance costs would likely be more burdensome on the secondary market than on the larger

[437] Center for Regulatory Freedom (BOEM-2023-0027-0030).

companies that have historically developed the OCS, as assets would likely be sold to companies for which bond acquisition is more costly. As a result, with the increased compliance costs, properties could become less valuable or more difficult to sell. With higher compliance costs, these resources could also become uneconomic more quickly, leading to an earlier-than-otherwise decommissioning and potential loss of production and royalties. Though the secondary market and, potentially, offshore production generally, could be hurt in this way, BOEM has observed that in recent years the secondary market has started privately accounting for the decommissioning liability risks. In recent transactions involving offshore assets, some larger sellers, recognizing the joint-and-several liability framework in BOEM's regulations, have opted to require the purchasers of their offshore assets to provide financial assurance protecting the seller from forthcoming decommissioning liabilities as a term of the sale. In exchange for this protection from future risk, the seller may forgo a higher selling price. In these cases, a portion of the increased surety cost may already be priced into the secondary market and the ultimate impact of the regulation may be less.

BOEM's goal for its financial assurance program continues to be the protection of the American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production companies at a competitive disadvantage. A financial assurance level at P70 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 a higher value. This approach requires that all current lessees are held responsible for providing supplemental financial assurance.

BOEM acknowledged that small businesses may not have issuer credit ratings in the proposed rule (88 FR 42146) and proposed to allow entities without a rating to request that 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 reducing their financial burden. Furthermore, a strong lessee will cover the rest of the co-lessees on the lease. BOEM also included phased-in implementation, and more flexible provisions for decommissioning account, and third-party guarantees, to 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 assurance available in the case of a default.

Comment: A commenter asserted that the Department's cost-benefit analysis for the proposed rule is irrational. They contended that the rule's aim to prevent taxpayers from covering decommissioning costs is based on a hypothetical scenario that has never occurred in history. The commenter stated that while the potential benefits are unclear, the costs, which could lead to nearly $10 billion in direct and indirect costs associated with decreased development, are quantifiable and predictable. They suggested that the Department did not adequately consider more-targeted approaches and alternative

bonding requirements for higher-risk chains of title. Additionally, the commenter raised concerns about the impact on industry reliance interests, emphasizing that long lead times for exploring and developing reserves require a stable regulatory regime. They concluded that the proposed rule could disrupt industry planning based on the existing regime. The commenter also criticized the Department for not quantifying or addressing the potential impact on industry reliance interests and for not explaining why any impact is justified by the proposal's speculative benefits.[438] Additional commenters stated that the Department overestimated the risk to the taxpayer by assuming all defaults will result in a "zero-recovery rate."[439]

Response: The cost-benefit analysis is outlined in the IRIA and in the RIA associated with this rulemaking. The fundamental point that is overlooked by this comment is that the requirement to remove and decommission a facility at the end of its useful life has been a provision in BOEM's regulations, and that of its predecessors, for many years, and is a condition of every lease contract. It also overlooks that the authority to demand supplemental financial assurance is also a longstanding feature of BOEM regulations. This rule refines that practice; it does not initiate a new program.

With respect to the issue of the regulation's necessity, BOEM has determined that the amount of collateral provided by lessees is insufficient to cover the costs associated with decommissioning of OCS facilities and that many lessees are undercapitalized to meet their performance obligations. As a result, if the amounts of financial assurance required of lessees is not increased, BOEM could be in the position of having to force the US taxpayer to cover the financial obligations of lessees. BOEM does not determine the costs associated with any given lessee's performance obligations under its lease but simply takes the independent estimates that are provided to it as a basis for determining whether a company has the financial capacity to meet its obligations. If any given company believes that the cost estimates are exaggerated, there is an appeal process whereby the company can request the cost be reviewed and adjusted.

Comment: A commenter stated that the proposed rule could lead to a decrease in revenue for the Treasury and Louisiana. They asserted that the Department failed to properly balance costs and benefits as mandated by the OCSLA. The commenter asserted that the Department did not provide concrete figures for the benefits the American people would receive in return for the proposed changes. Additionally, they mentioned that cost-benefit analyses should rely on data and rational connections between facts and choices, rather than hunches and feelings. The commenter referenced an independent cost-benefit analysis, which concluded that the proposed rule would cost $10.5 billion to potentially save $391 million in uncovered risk. They emphasized that this imbalance between costs and benefits goes against legal principles. The commenter also raised concerns about how the proposed changes could affect the leasing process, potentially limiting competition and

[438] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).
[439] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

negatively impacting Louisiana's interests under GOMESA.[440]

Response: BOEM's regulatory impact analysis has been updated to include bonding cost data provided by Opportune in their cost-benefit study, which was cited by multiple commentors and also submitted by Opportune as a standalone comment. BOEM's Statement of Energy Effects broadly recognizes that increased compliance cost has the potential to adversely impact oil and gas production through higher operational costs. Under OCSLA, lessees and grant holders are obligated to provide for the restoration of the lease, easement, or right-of-way. It is and has been longstanding policy that operators on the OCS must demonstrate their ability to fulfill their obligations to the government, either by performance or financial means.

Comment: A commenter discussed the Regulatory Flexibility Act (RFA), emphasizing its importance in preventing unnecessary harm to small businesses when proposing new regulations. They asserted that Federal agencies should aim to achieve statutory goals efficiently without imposing excessive burdens on small businesses. The commenter asserted that the proposed rule, in its attempt to address the RFA, relied on the concept of "moral hazard" to justify imposing new bonding requirements on small businesses. They contended that the existing joint and several liability regime adequately protected taxpayers without unduly burdening small businesses.

The commenter pointed out that the majority of decommissioning liability in the Gulf was associated with leases where Exempt Companies were predecessor owners. They explained that these companies, aware of their ongoing liability for decommissioning defaults, had taken measures to protect themselves, either through financial assurances or by maximizing profits from property sales. The commenter maintained that it was unnecessary for the government to intervene to protect these companies from their business decisions.

Regarding the proposed rule's assertion of moral hazard, the commenter argued that all parties involved in transactions were aware of the risks and regulations, making such protection unwarranted. They suggested that if additional security was deemed necessary, it should only apply to properties without an exempt party in the chain of title, known as Sole Liability Properties.

The commenter also critiqued the estimation of decommissioning liability in the Gulf, deeming it significantly inflated. They asserted that the proposed solution, based on this flawed premise, was likewise fundamentally flawed. Additionally, they highlighted that a substantial portion of the estimated decommissioning liability for Sole Liability Properties was already covered by bonding. This led them to conclude that the actual problem the final rule should focus on was a much smaller decommissioning default exposure.[441]

[440] State of Louisiana (BOEM-2023-0027-1985).
[441] QuarterNorth Energy LLC (BOEM-2023-0027-2001).

Response: As discussed in the RIA, BOEM has designed its financial assurance program to accommodate small entities, while still fulfilling the goals of minimizing the risk of noncompliance with regulations. 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 greater 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 provide flexibility to secure financial assurance or suitable partnerships with stronger parties. 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 beyond the 3-year phase in period in the final rule, could deteriorate more quickly than its compliance timetable and thus not be able to satisfactorily perform its obligations to the public. Additionally, BOEM received comments which suggested differing viewpoints as to where moral hazard exists, and, as such, removed the moral hazard discussion from the final rule RIA.

Finally, BOEM is not privy to private arrangements between companies operating in the OCS and does not intend to interfere with private party agreements. In most cases, the government cannot call the bonds in question. 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. Private entities are able to decide how to address these obligations in their private agreements, mindful of lease obligations. The Department is finalizing provisions that all current lessees that do not have an investment grade credit rating, an investment grade co-lessee, or a proved reserves to decommissioning liabilities ratio of equal to or greater than 3-to-1 will be required to provide supplemental financial assurance as a result of this rulemaking.

Comment: A commenter discussed the proposed rule, emphasizing the need for a comparative risk assessment (CRA) to evaluate potential environmental consequences. They highlighted that CRA allows for a nuanced evaluation of risks associated with different policies, considering not only economic costs but also human and environmental impacts. The commenter asserted that the Department's approach focused solely on perceived benefits without considering potential harm, which raised concerns about rational decision-making.

Additionally, the commenter expressed concerns about the proposed regulation's impact on taxpayers and small businesses. They contended that it unfairly burdened small oil businesses, potentially leading to reduced revenue and job opportunities. The commenter criticized the Department for not acknowledging the significant efforts of independent oil companies in fulfilling

decommissioning obligations. They asserted that the proposed regulation imposed unwarranted bonding requirements on these companies, diverting resources from vital decommissioning activities.

Furthermore, the commenter referenced an independent study by Opportune, which found the Department's economic analysis to be severely flawed. According to the commenter, the study stated that the reduction in risk to taxpayers provided by Additional Bonding Requirements is not justified given the impact on the industry and the economy. The commenter highlighted that the costs of the Department's plan are very high, leading to reduced industry spending, production, revenue, and royalties. The commenter added that the study suggested that reducing bonding expenses could generate significant growth and job opportunities.

In summary, the commenter raised concerns about the lack of a CRA, the potential impact on taxpayers and small businesses, and criticized the Department's economic analysis. They stressed the importance of CRA and referenced an independent study to support their arguments.[442]

Response: The use of a CRA is not appropriate for this rulemaking. A CRA quantifies risks in health outcomes, lives saved, or environmental impacts averted. BOEM performed a cost benefit analysis, which is outlined in the IRIA and in the RIA associated with this rulemaking. The fundamental point that is overlooked by this comment is that the requirement to remove and decommission a facility at the end of its useful life has been a provision in BOEM's regulations, and that of its predecessors, for many years, and is a condition of every lease contract. Although the costs of such decommissioning may not have been known at the facility was built, the obligation to ultimately remove the facility has always existed. Additionally, while there are expected to be positive potential health and environmental impacts, these impacts cannot be quantified with this rulemaking because it not imposing new decommissioning requirements, it is only changing how and when an entity funds those obligations.

Comment: A commenter expressed concern that the proposed rule, if implemented, would impose a significant financial burden on their members. According to the commenter, the proposed rule could lead to an additional $9.2 billion in bonding requirements, impacting small businesses the most. The proposed rule, as per the Department's own analysis, is expected to result in compliance costs of nearly $5 billion over the next two decades, with 80% of this burden falling on small businesses.

The commenter emphasized that the proposed rule represents a substantial shift in the existing regulatory framework that has been in place in the GOM for many years. They asserted that these changes could have far-reaching effects on activities in the GOM, potentially jeopardizing the oil and gas production of independent producers, who currently contribute 35% of the region's oil and gas output.

[442] Center for Regulatory Freedom (BOEM-2023-0027-0030).

Furthermore, the commenter highlighted the complexity of the analysis that their members would need to undertake to fully comprehend the implications and costs of the proposed rule. They explained that this involves an in-depth evaluation of producing offshore leases, infrastructure assets, and estimated decommissioning costs. According to the commenter, the proposed rule mandates a per-lease basis analysis using BSEE's P70 decommissioning estimates, which differs from the usual field basis evaluation performed by most companies. The commenter continued that this necessitates a detailed deconstruction of decommissioning cost estimates to align them with the lease basis approach stipulated in the proposed rule. The commenter stressed that only after completing this intricate analysis can a company grasp the full impact of the proposed rule on its operations.[443]

Response: BOEM acknowledges the commenter's concern and considered the effects on small entities; however, the regulation being finalized requires financial assurance of a company of any size that has poor credit rating and few reserves associated with its OCS leases. 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 required to provide additional supplemental financial assurance, also potentially reducing their financial burden. Furthermore, a lessee with an investment grade credit rating will waive the rest of the co-lessees on the lease 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 by all lessees, including small businesses.

Understanding the impact of the rule on company operations does not require a complex analysis nor any information not readily available to companies in this industry. BOEM acknowledges the additive nature of decommissioning obligations for associated facilities on a lease, however, this is inappropriate at the portfolio level because individual financial assurance instruments aren't available to cover unrelated properties. Given the need to have adequate decommissioning financial assurance for each individual lease, ROW, or RUE, BOEM is finalizing the use of P70 in the final rule. BOEM has included in the final rule a provision for submitting decommissioning cost data for consideration to the Regional Director for a reduction in the supplemental financial assurance demand.

Comment: A commenter discussed that the proposed rule brought forth substantial enhancements compared to the existing system. They acknowledged and appreciated positive changes, particularly the increase in aggregate supplemental financial assurance. According to the Department projections,

[443] Gulf Energy Alliance (BOEM-2023-0027-1155).

the proposed rule would raise supplemental financial assurance by $9.2 billion compared to current levels.[444]

Response: BOEM acknowledges the commenter's support and is finalizing amendments to BOEM's risk management and financial assurance program to better protect the taxpayer from future defaults of lessees in the OCS.

Comment: A commenter asserted that the proposed rule aimed to limit future production in the GOM's OCS by imposing financial restrictions on smaller independent lessees. They proposed a focus on Sole-Liability Properties for any changes to financial assurance regulations, advocating for a measurement based on the present value of related decommissioning liabilities. The commenter asserted that when conducting its Regulatory Impact Analysis, the Department should have taken into account lessees' true cost of capital and availability, rather than assuming a fixed rate.

Furthermore, the commenter suggested that in cases where current lessees were unable to meet decommissioning obligations, the Department should have assigned these liabilities to predecessor owners in reverse chronological order. They criticized the rule for potentially allowing sellers to benefit from re-trading previous deals.

Regarding the estimated cost of the proposed rule, the commenter asserted that the Department's figures were significantly underestimated due to erroneous assumptions about lessees' cost of capital. They contended that the actual annual cost of additional financial assurance was much higher. The commenter explained that the cost was influenced by a lessee's cost of available debt or equity, as funds used for surety premiums and collateral requirements directly impacted borrowing capabilities for development, operating, and decommissioning.[445]

Response: BOEM acknowledges that recent actions by the Federal Reserve to increase the Federal Funds Rate has led to a rise in the cost of capital for OCS lessees and grant holders. As a consequence, BOEM's original cost of capital estimates are no longer applicable. Many commentors highlighted a study by Opportune, which offers a more current cost of capital estimate. BOEM has integrated these updated estimates into the RIA, replacing the previous study.

This rule focuses on BOEM's financial assurance program which is designed to proactively ensure OCS obligations are secured if a lessee becomes unable to perform decommissioning. In cases where a lessee cannot meet decommissioning obligations, BSEE handles performance demands and their order according to its regulations and policies. Those matters are outside the scope of this rulemaking, except to acknowledge the role of a surety bond resulting from this program could be beneficial in the restoration of the lease, ROW, or RUE.

[444] Ocean Conservancy (BOEM-2023-0027-1961).
[445] Opportune LLP (BOEM-2023-0027-1991).

Comment: A commenter asserted that the proposed rule lacked consideration for the economic consequences linked to offshore drilling. They emphasized that the industry played a significant role in sustaining numerous jobs, benefiting both local communities and the national economy. The commenter reasoned that imposing restrictions on exploration and production in the GOM would not only put these jobs at risk, but also impede investments in forward-thinking technologies and programs aimed at advancing environmental conservation efforts.[446]

Response: BOEM performed a cost benefit analysis, which is outlined in the IRIA and in the RIA associated with this rulemaking. BOEM has reviewed the cost-benefit analysis conducted by the advisory firm and updated the final RIA as appropriate. BOEM's risk management and financial waiver criteria have not been updated in many years. The most recent update to the regulations, related to requirements for general bonds, was made in August of 2015. Substantive guidance and rulemakings related to this topic have not been updated for at least 20 years. Since that time, the oil and gas industry has changed substantially, and the level of potential risks has also grown substantially. The most important paper issued by the GAO on this topic, published in December 2015 is titled "Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities."[447] As recently as March 2021, in a report to Congress, the GAO prepared a report titled "Updated Regulations Needed to Improve Pipeline Oversight and Decommissioning."[448] There are thousands of oil and gas facilities on the OCS that are no longer being used and which need to be decommissioned and these numbers continue to grow.

The Department is committed to ensuring that three key objectives are met with respect to these facilities. First, that all of the facilities no longer being used are decommissioned in a safe and environmentally sound manner. Second, that those who have the primarily obligation to remove the facilities are the ones that conduct or fund the decommissioning. Third, that a robust financial security mechanism is in place to ensure that no new facilities are built that may generate unfunded obligations in the future. These objectives cannot be achieved without making changes to the Department's regulations and oversight procedures. BOEM has made several attempts in prior years to resolve this issue and the need for reform has only grown.

Comment: A commenter repeated text in the proposed rule indicating that leaseholders would be required to provide additional financial assurance bonds to protect taxpayers from shouldering over $42 billion in offshore decommissioning liabilities. While DOI proposed that companies with sufficiently high credit ratings or sufficiently high reserve ratios would be exempt from this requirement as a way to alleviate the financial impact of the rule, BOEM also acknowledged that this exemption would ultimately only apply to a limited number of small businesses. As a result, DOI

[446] J. Bollinger (BOEM-2023-0027-1182).
[447] Available at: https://www.gao.gov/assets/gao-16-40.pdf
[448] Available at: https://www.gao.gov/assets/gao-21-293.pdf

proposed that it would not recognize the joint and several liability of predecessor leaseholders and only require financial assurances from current leaseholders.

The commenter also restated that BOEM prepared an Initial Regulatory Flexibility Analysis and developed a less stringent regulatory alternative that included the credit worthiness of predecessor leaseholders to determine when additional financial assurance would be required. BOEM eventually rejected that option, stating "consideration of predecessor lessees and grantees encourages moral hazard by incentivizing current lessees to pass risk to predecessors rather than proactively prepare for decommissioning and related obligations." The commenter disagreed with BOEM's position.[449]

Response: The commenter is correct in their assertion that BOEM considered a less stringent regulatory alternative that included a lower credit rating threshold and the use of a predecessor waiver. Additionally, BOEM received comments which suggested differing viewpoints as to where moral hazard exists, and, as such, removed the moral hazard discussion from the final rule RIA. The RIA shows that this regulatory alternative resulted in a net bonding decrease, which is not consistent with the objective of this rulemaking.

Comment: A commenter asserted that the proposed rule lacked a robust cost-benefit analysis and distorted the benefits by ignoring the joint-and-several liability regime. They referenced a cost-benefit analysis conducted by the advisory firm, which projected negative economic consequences, including a decrease in production, job losses, forfeited royalties, and a decline in GDP. The commenter pointed out that these projections did not include other potential impacts on energy security and emissions.[450] An additional commenter also criticized BOEM for failing to provide a cost-benefit analysis to support the proposed rule.[451]

Response: BOEM performed a cost benefit analysis, which is outlined in the IRIA and in the RIA associated with this rulemaking. BOEM has reviewed the cost-benefit analysis conducted by the advisory firm and updated the final RIA as appropriate.

Comment: A commenter stated that the US Treasury has obtained a substantial revenue influx of $125 billion from royalties and fees from the oil and gas program. The commenter further emphasized that the calculation of financial assurance obligations does not take into account additional income from Federal, State, or parish taxes, as well as the significant positive impact on employment stemming from tens of thousands of direct and indirect jobs associated with supporting GOM operations for independent oil and gas producers. They further asserted that the authors of the proposed rule failed to understand various aspects, including current bonding practices, dynamics of the surety bond industry, environmental impact, nuances of credit rating agencies, historical reduction of platforms,

[449] SBA (BOEM-2023-0027-1699).
[450] Arena Energy, LLC (BOEM-2023-0027-2096).
[451] Cantium, LLC (BOEM-2023-0027-1592).

appropriate abandonment cost estimates, and the overall implications of implementing the rule. They concluded that the proposed implementation would be disjointed, inconsistent, costly, and would provide virtually no benefit to the American public.[452]

Response: BOEM recognizes the immense value of the OCS in contributing to the growth and development of the US economy. As OCSLA itself notes in section 1332(3): "the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs." The value of the OCS and the oil and gas program is not in dispute. Rather, the issue is who should pay the associated costs of the program. The Department's position has always been that lessees should be required to pay the costs for obligations they assumed in their lease contracts and that those who profited most from the development should be required to cover those costs. In this case, it has always been the policy that the company who builds and owns an OCS facility should be required to pay to have it removed when it is no longer necessary to support oil or gas production. That principle holds regardless of the amount of money that any given resource contributes. Every lessee knows that this obligation exists before they build a facility, and they acknowledge in their lease agreement that they will meet this obligation when necessary. BOEM is not requiring anything new with this rulemaking, other than ensuring that the actual costs are considered in determining whether any given lessee can meet its financial obligations.

Comment: A commenter asserted that the proposed regulations might unintentionally hasten financial defaults among inadequate lessees. They recommended analyzing a similar incident in the state of Colorado, where the state made changes to their plugging and abandonment financial assurance requirements.

The commenter questioned whether the estimated $9.2 billion increase in financial assurance considered existing assurance lost due to assets meeting the 3-to-1 proved value to decommissioning cost estimate exemption. They also inquired about the allocation of this amount per lessee and per operator, seeking probabilistic feedback on the market's capacity to obtain such a sum. Furthermore, the commenter asked about taxpayer losses incurred under the existing rules and specifically sought information on losses related to the combined 30 bankruptcies since 2009.[453]

Response: BOEM noted in the preamble to the proposed rule that further increasing the compliance costs for industry could 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. As a result, BOEM acknowledged that this could adversely make the U.S. offshore oil and gas sector less attractive than regions with lower operating costs. BOEM reviewed the March 1,

[452] Cantium LLC (BOEM-2023-0027-2031).
[453] CAC Specialty (BOEM-2023-0027-1201).

2022, Colorado Oil and Gas Conservation Commission financial assurance regulations but could not find the incident to which the commenter referred generally, therefore it was unable to analyze the incident as recommended.

As explained in the RIA for the proposed rule, which was available in the docket for public review and comment, BOEM's estimated increase in financial assurance did consider an estimated $438M of supplemental financial assurance released under the proposed rule. In the final rule RIA, also available in the docket for this rulemaking, BOEM has revised this number to $488.5M released.

With respect to the taxpayer losses incurred under the existing regulations, it must be highlighted that relatively few major facilities have been decommissioned (relative to the number installed) because the vast majority of facilities have been actively producing to date. It is only now, as more and more facilities reach the end of their useful life that decommissioning will be required on a larger scale. The fact that costs to the government have been low in the past does not necessarily comport with a likelihood that they will be similarly low in the future. The GAO has, in fact, asserted the opposite and notified Congress that the current program must be revised to avoid putting the government in an untenable situation.

On February 20, 2024, 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 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." This final rule addresses this GAO recommendation to strengthen BOEM's financial assurance regulations to reduce financial risks to the U.S. government.

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. 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. 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 operators 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 under section 5 of OCSLA (43 U.S.C. 1344) and Secretary's Order 3299 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.

Comment: A commenter asserted that the proposed rule, which aimed to address decommissioning liability, was uncalibrated and prejudicial to small businesses. The commenter noted that the proposed rule did not disclose how much decommissioning liability had been absorbed by the taxpayer, but assuming the Department's report that the total liability absorbed by taxpayers was $58 million, the commenter found the proposed rule's response to be widely disproportionate.

The commenter contended that to address a $58 million problem, the proposed rule called for the issuance of an additional $9.2 billion in bonds at an annual cost of $379 million. They considered this response to be uncalibrated, disproportionate, and not based on factual or legal grounds. They emphasized that while taxpayers should not be responsible for any decommissioning liability, the proposed rule's approach seemed excessive.

The commenter further pointed out that the proposed rule could have unintended consequences, potentially slowing down decommissioning efforts conducted by independent companies. This, they reasoned, could increase the potential for properties to be orphaned in the event of a default by the current owners. They stressed that diverting a significant amount of capital towards unnecessary bonds would reduce the available capital for decommissioning campaigns, potentially prolonging the presence of wells and platforms in the Gulf and increasing potential decommissioning liabilities. They concluded that, contrary to its intended purpose, the proposed rule might actually increase exposure to the taxpayer.[454]

Response: BOEM disagrees with the commenter's assertion that the proposed rule's response to potential taxpayer liability is widely disproportionate. While BOEM acknowledges that to date the Federal government and taxpayer has not had to a significant portion of the costs of decommissioning, GAO and BOEM have both found that the future risk of such an outcome is significant, and can and should be mitigated by strengthening the financial assurance program to ensure that the parties that should bear the costs (*i.e.*, lessees and grant holders) have the resources to do so. In addition, BOEM acknowledges the need for regulatory action due to a recent increase in the number of entities filing for bankruptcy and the fact that, as the age of existing facilities continues to increase, the costs associated with the decommissioning of such facilities (including

[454] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

wells) is likely to increase as well.

BOEM also disagrees with the commenter's assertion that under the rule bonding will divert money away from performing decommissioning, as it will require provision of the financial assurance before performance is imminent. In the circumstances described in the comment, decommissioning accounts offer an alternative to paying bond premiums and the funds are available as the decommissioning work is performed.

Section 12.3 – Small Business Regulatory Enforcement Fairness Act

Comment: The Office of Advocacy explained that Congress established the office to represent the views of small entities before Federal agencies and Congress. They asserted that the RFA, as amended by the Small Business Regulatory Flexibility Act (SBREFA), gives small entities a voice in the rulemaking process and for all rules that are expected to have an economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives. Additionally, they noted that the Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy and BOEM must include a response to written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register. They asserted that their comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."

The comments provided by Advocacy assert that the proposal indicates a focus on unfunded decommissioning liabilities held by small companies lacking a sufficiently strong credit rating. They asserted that the Department's analysis overlooks the protective mechanism of joint and several liability for taxpayers. According to the commenter, this presumption puts undue risk on small businesses, especially considering the support extended to exempted companies. As a result, the commenter reasoned that the proposal disproportionately impacts small businesses, exclusively harming them.

In an effort to safeguard taxpayers, Advocacy suggested that market dynamics in risk allocation should not be disregarded. Instead, the commenter proposed that the Department concentrate on risks lacking a predecessor leaseholder with the necessary resources to indemnify the taxpayer. To address this, they recommended an economic approach that mandates bonding solely for the initial leaseholder, allowing rational economic actors to manage risk allocation through contracts. Acknowledging the challenge of reaching back to the first lessee in some cases, the commenter stated that the Department should consider including a waiver for leases involving predecessor leaseholders meeting the proposed creditworthiness standard.[455]

Response: BOEM's goal for its financial assurance program continues to be the protection of the American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production companies at a competitive disadvantage. A financial assurance level at P70 will reduce offshore decommissioning risk to taxpayers relative to previous BSEE deterministic decommissioning estimates, while attempting to reduce burden on

[455] SBA (BOEM-2023-0027-1699).

available capital for continued OCS investment that would be imposed by using a higher value, such as 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 unnecessarily burden the holder of any lease that can be decommissioned at a lower cost.

BOEM acknowledged that small businesses may not have issuer credit ratings in the proposed rule (88 FR 42146) and proposed to allow entities without a rating to request that 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 reducing their financial burden. Furthermore, a strong lessee will cover the rest of the co-lessees on the lease. BOEM also included phased-in implementation, and less stringent limits on the use of decommissioning accounts and third party guarantees to 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 assurance available in the case of a default.

Comment: A commenter recommended that the Department eliminate the consideration of small entities as a criterion to set the supplemental assurance rate. The commenter reasoned that standards should not be lessened to accommodate "everyone who has interest."[456] Another commenter stated all OCS leaseholders should be held to the same standard, regardless of their size. The commenter added that the potential impacts of P90 should not affect the amount of supplemental financial assurance that the Department requires.[457]

Response: BOEM is not considering business size in requiring supplemental financial assurance. BOEM is evaluating the financial strength of all companies 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, a lessee with an investment grade credit rating will waive the rest of the co-lessees on the lease 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 by all lessees, including small businesses.

[456] True Transition (BOEM-2023-0027-1696).
[457] Ocean Conservancy (BOEM-2023-0027-1961).

Section 12.4 – National Environmental Policy Act (NEPA)

Comment: A commenter asserted that a NEPA review of the proposed rule is required. According to the commenter, the final rule is highly likely to cause environmental effects because the lack of financial assurances could cause decommissioning to take longer to arrange, resulting in additional damage to the environment and obstacles to navigation.[458]

Response: BOEM has prepared a categorical exclusion review for the proposed and final rule. 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.

[458] Earthjustice, Oceana, Center for Biological Diversity, and Friends of the Earth (BOEM-2023-0027-1792).

Section 12.5 – Effects on Nation's Energy Supply (E.O. 13211)

Comment: A commenter stated that the proposed rule is likely to significantly affect the energy sector, resulting in reduced revenue, fewer job opportunities, and diminished attractiveness of the U.S. offshore oil and gas sector. Further, the commenter asserted that should this proposal be implemented in its current form, United States oil and gas production would decrease by 5% and prices would increase by 96.3%, skyrocketing average American family costs. They further asserted that "as the Biden administration turns its back on oil production, it signals to the world, especially the Middle East, that [the U.S.] is no longer interested in producing oil" and that "there is no need to take the U.S. seriously when it comes to flexing 'soft power'." According to the commenter, the Department's proposal only makes the U.S. weaker.[459]

Several commenters expressed concern that the proposed rule would decrease domestic oil production, increasing the country's dependence on foreign oil and diminishing the nation's energy security.[460]

A commenter expressed concern about reducing oil and gas development in the OCS. According to the commenter, "due to [this] artificial depression in production, the Department of Interior (and by extension, American taxpayers) would stand to lose ~$573 million in royalties over a [10-year] period." The commenter asserted that the Department's cost-benefit analysis does not meaningfully account for these consequences.[461]

A commenter underscored the critical importance of GOM production for US energy and national security interests, aligning with the GEA's stance on the matter. They emphasized the need for continued robust domestic production to avoid dependency on foreign sources that might not align with US interests. They argued that to meet both global and domestic demand, advance emissions reduction efforts, and safeguard US energy and national security, it is crucial to continue producing the least carbon-intensive barrels from the GOM without unfairly targeting any sector of the industry.[462]

While expressing support for "responsible" offshore drilling in the Gulf, a commenter expressed concern that the proposed rule would hinder domestic offshore drilling operations. The commenter further stated that any change in regulations should take into account the long-term effects on domestic energy supply, the United States' reliance on foreign oil, the environment, and local economies in the Gulf.[463] Expressing similar concerns, a different commenter suggested the Department consider alternative strategies to regulations, such as technological advancements, safety

[459] Center for Regulatory Freedom (BOEM-2023-0027-0030).
[460] D. Riviere (BOEM-2023-0027-1181); J. Bollinger (BOEM-2023-0027-1182).
[461] W&T Offshore, Inc. and W&T Offshore VI, LLC (BOEM-2023-0027-1989).
[462] Beacon Offshore Energy (BOEM-2023-0027-2013).
[463] G. Reese (BOEM-2023-0027-1198).

protocols, and "responsible extraction practices."[464] Also, suggesting an alternative approach, another commenter asserted that the rule would inhibit offshore development, and instead suggested implementation of CO2 abatement solutions, such as carbon capture, utilization, or sequestration.[465]

A commenter underscored the pivotal role of GOM production in bolstering both national and energy security. They emphasized that recent global events, such as the conflict in Ukraine and Russia's substantial reserves of oil and gas, highlighting the necessity of a self-reliant domestic energy sector. According to the commenter, a robust domestic production infrastructure was crucial to safeguarding the country from potential disruptions caused by geopolitical tensions or the decisions of foreign governments.

The same commenter further emphasized that the GOM had proved to be a vital resource for the United States, contributing significantly to domestic oil and gas production. According to the commenter, this catalyzed the growth of a dynamic supply chain encompassing shipyards, ports, vessels, drilling rigs, and various manufacturing and repair facilities along the Gulf Coast. The commenter added that these operations had generated hundreds of thousands of jobs, many of which were located in communities that may face economic disadvantages. They also highlighted a recent study that illustrated how offshore oil and gas activity supported a substantial number of jobs, often with wages surpassing the national average.

Moreover, the commenter underscored the significant financial contributions of offshore oil and natural gas production to the U.S. Treasury, providing substantial revenue through royalties, lease bonuses, and rentals. These funds, they asserted, played a crucial role in supporting various government programs across the country, including the Land and Water Conservation Fund (LWCF) and coastal restoration efforts. The commenter contended that these programs were essential for environmental conservation and the well-being of communities, particularly those in economically distressed urban areas.

Regarding future energy demand, the commenter asserted that while a transition to lower carbon alternatives was inevitable and supported by the industry, global demand for oil and natural gas is projected to persist for decades. They referenced predictions by the EIA and the International Energy Agency, which foresee a substantial growth in worldwide energy consumption. This growth, they asserted, necessitated a continued reliance on oil and gas to meet the needs of a growing global population, especially in regions with higher rates of poverty and underdeveloped energy resources.[466]

Response: BOEM's Statement of Energy Effects, found section VIII in the RIA for this final rule,

[464] G. Maniscalco (BOEM-2023-0027-1241).
[465] Talos Energy (BOEM-2023-0027-1857).
[466] GEA, IPAA, USOGA, LOGA, MEI & SOGA (BOEM-2023-0027-2165).

broadly recognizes that increased compliance cost has the potential to adversely impact oil and gas production through higher operational costs. The financial assurance requirements set by this rule are intended to cover the costs of removing oil and gas facilities after they are no longer useful to support the oil and gas production for which they were built. This rule does not establish any new policy but simply implements a longstanding policy stating that the oil company that owns an offshore facility must remove it at the end of its useful life and that BOEM has an obligation to ensure that such a company have the financial resources to do so. This final rule is designed to ensure that taxpayers are not required to pay for decommissioning obligations.

BOEM's risk management and financial waiver criteria have not been updated in many years. The most recent update to the regulations, related to requirements for general bonds, was made in August of 2015. Substantive guidance and rulemakings related to this topic have not been updated for at least 20 years. Since that time, the oil and gas industry has changed substantially, and the level of potential risks has also grown substantially. There are thousands of oil and gas facilities on the OCS that are no longer being used and which need to be decommissioned and these numbers continue to grow. The Department is committed to ensuring that three key objectives are met with respect to these facilities. First, that the facilities no longer being used are decommissioned in a safe and environmentally sound manner. Second, that those who have the primary obligation to remove the facilities are the ones that conduct or fund the decommissioning. Third, that a robust financial security mechanism is in place to ensure that no new facilities are built that may generate unfunded obligations in the future. These objectives cannot be achieved without making changes to the Department's regulations and oversight procedures.

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.

Historically, OCS oil and gas infrastructure has been developed and installed by larger entities with sufficient resources to take on capital intensive projects. In general, larger companies have higher internal rates of return thresholds than smaller companies. As such, they often transfer offshore facilities to smaller independent companies when the assets no longer meet those return thresholds. This secondary market, which flourishes today, may not be as financially strong, but nonetheless typically extends the useful life of the offshore asset, and thereby provides additional U.S.-based oil and gas production, employment, and royalty payments to the Treasury.

The rule's estimated compliance costs would likely be more burdensome on this secondary market than on the larger companies that have historically developed the OCS, as assets would likely be sold to companies for which bond acquisition is more costly. As a result, with the increased compliance costs, properties could become less valuable or more difficult to sell. With higher compliance costs, these resources could also become uneconomic more quickly, leading to an earlier-than-otherwise cessation of production and a potential loss of production and royalties.

Though the secondary market and, potentially, offshore production generally, could be hurt in this way, BOEM has observed that in recent years the secondary market has started privately accounting for the decommissioning liability risks. In recent transactions involving offshore assets, some larger sellers, recognizing the joint-and-several liability framework in BOEM's regulations, have opted to require the purchasers of their offshore assets to provide financial assurance protecting the seller from forthcoming decommissioning liabilities as a term of the sale. In exchange for this protection from future risk, the seller may forgo a higher selling price. In these cases, a portion of the increased surety cost may already be priced into the secondary market and the ultimate impact of the regulation on these transactions may be less.

Section 13 – Other Comments

Section 13.1 – Comment Period Extension

Comment: A commenter expressed support for maintaining the 60-day comment period.[467]

Response: On August 25, 2023, BOEM published a comment period extension notice for 10 additional days in response to multiple requests to extend the public comment period. This notice extended the closing date of the public comment period from August 28, 2023, to September 7, 2023.

Comment: Several commenters asked the Department to provide a 60-day extension of the comment period.[468]

Response: BOEM acknowledges the commenters concerns but chose not to extend the public comment period for an additional 60-days to ensure timely completion of the final rule. On August 25, 2023, BOEM published a comment period extension notice for 10 additional days in response to multiple requests to extend the public comment period. This notice extended the closing date of the public comment period from August 28, 2023, to September 7, 2023.

[467] American Petroleum Institute (BOEM-2023-0027-0031).

[468] The Surety & Fidelity Association of America (BOEM-2023-0027-0032); National Ocean Industries Association (NOIA) (BOEM-2023-0027-0028); Gulf Energy Alliance (BOEM-2023-0027-1155); Senators Cassidy, Cruz, Kennedy and Manchin (BOEM-2023-0027-1978).

Section 13.2 – Renewables

Comment: Several commenters expressed concern regarding the disparate treatment of renewable energy and oil and gas.[469] A commenter recommended that the Department establish parity between offshore energy leasing programs to remedy this inequity.[470] One of the commenters asserted that the proposed rule's exclusion of renewable energy activities from its requirements creates a disparate treatment of industries, which causes the rule to be invalid. They emphasized that the stated purpose of the rule was to protect the government from incurring decommissioning costs and highlighted the explicit statement that it would not apply to renewable energy activities. Additionally, the commenter contended that for the rule to be considered valid, there must be an objective basis for treating oil and gas decommissioning risk and renewable energy decommissioning risk differently, which was not provided. They criticized the rule for lacking analysis or justification for its exclusion of renewable energy activities.

Furthermore, the commenter pointed out that if the government had analyzed the risk of defaulted decommissioning obligations in the renewable energy space, they would have found that the cost had already exceeded the cost to the government of decommissioning defaults in the entire history of the offshore industry. They reasoned that without a robust body of predecessor owners of renewable energy assets like what exists in the oil and gas sector, the risk to the government of future defaults associated with renewable energy assets may exceed the default risk associated with oil and gas assets.

The commenter also emphasized the importance of the oil and gas industry in providing the majority of the country's power and highlighted the significance of the GOM in producing clean barrels of oil. They argued that the nation's energy needs cannot be met by renewable energy sources alone and emphasized the country's abundant reserves of hydrocarbons. They cautioned against favoring renewable energy sources over oil and gas, warning that it could lead to energy shortages and dependence on nations that may not have America's interests as their priority.[471]

Response: BOEM has considered the differences in the financial assurance process between renewable energy and conventional energy and is seeking to create parity where appropriate. Additionally, DOI is also finalizing amendments to the financial assurance requirements for renewable energy operations on the OCS through its Renewable Energy Modernization Rule. For more details, see *Reginfo.gov*, Regulatory Identification Number (RIN) 1010-AE04 in the *Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions*.

[469] QuarterNorth Energy LLC (BOEM-2023-0027-2001); State of Louisiana (BOEM-2023-0027-1985); D. Riviere (BOEM-2023-0027-1181); Opportune LLP (BOEM-2023-0027-1991).
[470] True Transition (BOEM-2023-0027-1696).
[471] QuarterNorth Energy LLC (BOEM-2023-0027-2001).

Comment: A commenter stated that the Department should stop scheduling new OCS oil and gas leases and should focus on accelerating the transition to responsible renewable energy.[472]

Response: This comment is out of scope for this rulemaking. BOEM will continue to schedule oil and gas lease sales as required by statute. In addition, BOEM will continue to execute its required legal obligations for all activities on the OCS.

[472] Ocean Conservancy (BOEM-2023-0027-1961).

Section 13.3 – Repurposing of OCS Facilities

Comment: A commenter stated that they assume the Federal and Texas State regulators of existing "Rigs to Reefs" programs in the U.S. GOM would approve and acknowledge the following:

- The existing rich subsurface mariculture associated with the subsurface portions of structures that can be repurposed for CO2 transport, injection and storage in the U.S. GOM; and
- The possible 'reefing" of repurposed CO2 injection, storage and monitoring structures to perpetuate and increase the existing aquaculture for recreational purposes (such as fishing and diving) of residents in the U.S. Gulf Coast.[473]

Response: The Rigs-to-Reefs program is out of scope for this rulemaking.

Comment: A commenter suggested that in proposing new and "made for purpose" decommissioning regulations, BOEM or BSEE take the opportunity to update their leasing, operational, decommissioning and abandonment regulations to address potential repurposing offshore structures (pipelines, risers, fixed and floating structures) for use in CO2 transport, injection, storage and monitoring, hydrogen production or other renewable energy projects. They stated that they assumed that repurposed offshore structures for CO2 transport, storage and monitoring, and the offshore submerged lands/leases where they are located, will be subject to new and existing BOEM, BSEE and other regulatory frameworks concerning decommissioning and abandonment and use CO2 storage. The commenter also recommended that the Department issue a more general Request for Information concerning offshore oil and gas fixed assets that would be due for decommissioning and abandonment at the end of their current functions but may be suitable for repurposing for CO2 transport, injection and monitoring activities or other transitional energy projects. Additionally, they stated that they assume that "the $50-85 45Q carbon tax credits under the Infrastructure Investment Act (IRA) for CO2 transport, storage and monitoring in saline geologic formations" in the U.S. GOM are or would be transferrable in approved transactions involving third parties.[474]

Response: This comment is out of scope for this rulemaking. BOEM did not propose, and is therefore unable to finalize, regulatory amendments to address alternative uses of oil and gas offshore structures. BOEM will address the potential use of existing structures for carbon sequestration with a future rulemaking. Carbon Sequestration NPRM (RIN 1082-AA04), discussed in the *Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions* (available at Reginfo.gov), may address scenarios discussed by the commenter. The proposed Carbon Sequestration rulemaking could address the transportation and geologic sequestration aspects of a development, including leasing; siting of storage reservoirs; environmental plans and mitigations; facility and infrastructure design and installation; injection operations; monitoring; incident response; financial assurance; and safety. The Infrastructure Investment and Jobs Act of 2021 directed the Department to establish regulations

[473] University of Houston (BOEM-2023-0027-2166).
[474] University of Houston (BOEM-2023-0027-2166).

intended to initiate OCS activities to accomplish carbon sequestration. This proposed joint rulemaking between the BOEM and the BSEE would establish new regulations to implement processes in support of safe and environmentally responsible carbon sequestration activities on the OCS.

Section 13.4 – Fitness to Operate / Bid

Comment: A commenter recommended that the Department use this rulemaking to establish a pre-qualification standard for oil and gas lessees that are similar to those that it has for renewable energy leases. They highlighted that DOI committed to establishing "fitness to operate" standards for the oil and gas leasing program in its November 2021 Report on the Federal Oil and Gas Leasing Program and asserted that "this rulemaking is an excellent opportunity to make good on that promise." The commenter stated that this would prevent companies that are financially unsound or those with poor "reclamation histories" from leasing or acquiring OCS oil and gas leases. They added that the Department should use its regulatory authority to prohibit noncompliant companies or companies with poor lease performance from acquiring additional OCS oil and gas leases, particularly those companies not in good standing with respect to rentals, royalties, or other rents on any federal leases (including both onshore and offshore).[475]

Response: This comment is out of scope for this rulemaking. BOEM acknowledges that there is a need to address fitness to operate for OCS oil and gas leases and plans to address this in a future rulemaking because this was not included in the NPRM. BOEM plans to address compliance with laws, regulations, and lease terms with a future rulemaking. The Fitness to Operate Standards for OCS Oil and Gas Operations NPRM (RIN 1010-AE21), discussed in the *Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions* (available at www.reginfo.gov), will propose safety, environmental, and financial responsibilities for oil and gas companies to meet in order to operate on the U.S. OCS.

Comment: A commenter provided other suggestions to tighten eligibility on who can bid on a lease or acquire an existing lease in Federal waters:

- Use existing authority and enforce existing lease terms and regulations and prohibit OCS bids from companies and individuals with delinquent rentals, royalties or other rents on any Federal leases which should include BLM, BOEM, or Tribal leases. The commenter added that the Department should create a workflow between ONRR, alerting BSEE of the need for enforcement actions and alerting the Department to add companies to its prohibited bidder list.
- Require company disclosure of global AROs as part of their pre-qualification bidding procedures - this should include those obligations where the pre-lessee shares joint and several or trailing liability.
- Vet companies prior and establish "pre-qualification" thresholds and procedures, which could include investment grade ratings, prior to lease sales.[476]

Response: This comment is out of scope for this rulemaking. BOEM will consider these suggestions as

[475] Ocean Conservancy (BOEM-2023-0027-1961).
[476] True Transition (BOEM-2023-0027-1696).

it develops new fitness to operate standers in a future rule making. The Fitness to Operate Standards for OCS Oil and Gas Operations NPRM (RIN 1010-AE21), discussed in the *Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions* (available at Reginfo.gov), will establish safety, environmental, and financial responsibilities for oil and gas companies to meet in order to operate on the U.S. OCS.

Section 13.5 – Out of Scope

Comment: A commenter requested that "the Department consider whether the respective mission and structure of both BOEM and BSEE pose inherent barriers to prioritizing effective and efficient decommissioning and determine what additional steps are needed to properly monitor, manage, and implement decommissioning requirements to protect both taxpayers and the environment."[477]

Response: This comment is out of scope for this rulemaking, however, BOEM and BSEE continue to work together to improve operations on the OCS.

[477] Ocean Defense Initiative (BOEM-2023-0027-1977).