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Part III

Department of the Interior

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Bureau of Ocean Energy Management

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30 CFR Parts 550, 556, 559, et al.

Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf; Final  
Rule

**DEPARTMENT OF THE INTERIOR****Bureau of Ocean Energy Management****30 CFR Parts 550, 556, 559 and 560**

RIN 1010-AD06

[Docket ID: MMS-2007-OMM-0069]

**Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf****AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.**ACTION:** Final rule.

**SUMMARY:** This final rule updates and streamlines the existing Outer Continental Shelf (OCS) leasing regulations and clarifies implementation of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, which amended the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). The final rule reorganizes leasing requirements to more effectively communicate the leasing process as it has evolved over the years. The final rule makes changes to regulations which relate to the oil, gas, and sulfur leasing requirements. The final rule does not, however, include substantive changes to regulations which relate to bonding, which will be the subject of a separate new proposed rulemaking.

**DATES:** This final rule will become effective May 31, 2016.**FOR FURTHER INFORMATION CONTACT:**

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**I. Executive Summary***A. Background*

On May 27, 2009, the Minerals Management Service (MMS) published a proposed rule (Notice of Proposed Rulemaking or NPRM) in the **Federal Register** entitled, “Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf” (74 FR 25177, May 27, 2009). Since that time, the MMS was renamed the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) and then was reorganized and divided into three separate bureaus—the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE) and the Office of Natural Resources Revenue (ONRR). The leasing program is under the authority of BOEM, whose regulations reside in 30 CFR Chapter V.

## 1. Why We Need to Publish a Rule

This final rule reorganizes and reorders the parts of the BOEM regulations concerning leasing, adds new sections to standardize or clarify practices in all three BOEM OCS regional offices, and eliminates redundant or otherwise unnecessary text. The final rule also includes regulatory provisions which, during the division of BOEMRE, were inadvertently assigned to an agency other than BOEM, but have proven necessary for BOEM’s use and are therefore added back into these regulations. (In this Preamble, the BOEMRE regulations, as they existed before BOEMRE was divided into BOEM, BSEE, and ONRR, are sometimes referred to as the “pre-split regulations.”)

Additionally, this final rule also updates and clarifies processes required by legislation enacted since BOEM’s regulations were last amended, such as those required by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, which amended FOGRMA, or by more recently promulgated regulations, such as the Department of the Interior’s (Department or DOI) non-procurement debarment rules. The final rule also includes changes that will assist BOEM in meeting its stewardship responsibilities and performing its role as a responsible regulator.

## 2. What is covered by the rule?

This final rule revises sections of the regulations at 30 CFR parts 550, “Oil and Gas and Sulfur Operations in the Outer Continental Shelf,” 556, “Leasing

of Sulfur or Oil and Gas in the Outer Continental Shelf,” 559, “Mineral Leasing: Definitions,” and 560, “Outer Continental Shelf Oil and Gas Leasing.”

The changes made in part 550, “Oil and Gas and Sulfur Operations in the Outer Continental Shelf” and those made in part 560, “Outer Continental Shelf Oil and Gas Leasing,” relate primarily to simplifying and clarifying the regulatory language, as well as creating new, and re-establishing pre-split, regulations that had been inadvertently deleted when the former BOEMRE was divided into three new agencies. For example, in October 2010 (as part of the direct final rule RIN 1010-AD70, *Reorganization of Title 30, Code of Federal Regulations* (75 FR 61051, October 4, 2010)), during the first split of the BOEMRE regulations, a regulation related to operating allowances was inadvertently deleted from the BOEM regulations and included only in the ONRR regulations. In order for ONRR’s operating allowance regulations to be effective, however, they must have counterpart provisions in the BOEM regulations. The operating allowance regulation is re-established in BOEM’s regulations by this final rule.

Most of the final rule consists of revisions to part 556. Part 556 includes regulations pertaining to: (1) The oil and gas leasing program; (2) preparing for a lease sale; (3) issuing, maintaining, transferring, and terminating a lease; and (4) bonding requirements. As explained in greater detail below, the final rule addresses the first three components, but the fourth component, bonding, is not addressed in this final rule, except to make minor editorial and conforming changes. Bonding and financial assurance will be further addressed in future rulemakings.

#### B. Abbreviations of Terms and Acronyms

The following are abbreviations of terms used in the preamble:

API American Petroleum Institute  
 ASTM American Society for Testing and Materials  
 BAST Best Available and Safest Technology  
 BOEM Bureau of Ocean Energy Management  
 BOEMRE Bureau of Ocean Energy Management, Regulation, and Enforcement  
 BSEE Bureau of Safety and Environmental Enforcement  
 CFR Code of Federal Regulations  
 CID Conservation Information Document  
 CPA Central Planning Area of the GOM  
 CZMA Coastal Zone Management Act  
 DOI Department of the Interior  
 DOCD Development Operations Coordination Document  
 DOO Designation of Operator

DPP Development and Production Plan  
 EIA Environmental Impact Analysis  
 EO Executive Order  
 EP Exploration Plan  
 EPA Eastern Planning Area of the GOM  
 EPA Act Energy Policy Act of 2005  
 ESIGN Electronic Signatures in Global and National Commerce Act of 2000  
 FNOS Final Notice of Sale  
 FOGRMA Federal Oil and Gas Royalty Management Act of 1982  
 FOGRSFA Federal Oil and Gas Royalty Simplification and Fairness Act of 1996  
 FR Federal Register  
 G&G Geological and Geophysical  
 GDIS Geophysical Data and Information Statement  
 GOM Gulf of Mexico  
 GOMESA Gulf of Mexico Energy Security Act of 2006  
 GPEA Government Paperwork Elimination Act of 1998  
 H<sub>2</sub>S Hydrogen sulfide  
 IC Information Collection  
 IOAA Independent Offices Appropriations Act of 1952  
 LLC Limited Liability Company  
 MBB Mapping and Boundary Branch  
 MMS Minerals Management Service  
 MSL Mean Sea Level  
 NAD North American Datum  
 NAICS North American Industry Classification System  
 NEPA National Environmental Policy Act of 1969  
 NGPA Natural Gas Processors Association  
 NOAA National Oceanic and Atmospheric Administration  
 NPR Notice of Proposed Rulemaking  
 NTL Notice to Lessees  
 OCS Outer Continental Shelf  
 OCSLA Outer Continental Shelf Lands Act  
 OMB Office of Management and Budget  
 ONRR Office of Natural Resources Revenue  
 OPD Official Protraction Diagram  
 PDP Proved Developed Producing (reserves)  
 PNOS Proposed Notice of Sale  
 PRA Paperwork Reduction Act  
 PSI Pounds Per Square inch  
 RFA Regulatory Flexibility Act of 1980  
 ROW Right of Way  
 RSV Royalty Suspension Volume  
 RUE Right of Use and Easement  
 SBA Small Business Administration  
 SBREFA Small Business Regulatory Enforcement Fairness Act of 1996  
 SEC Securities and Exchange Commission  
 SLA Submerged Lands Act of 1953  
 US United States  
 U.S.C. United States Code  
 USCG U.S. Coast Guard  
 USEPA U.S. Environmental Protection Agency  
 UTM Universal Transverse Mercator Coordinate System  
 WPA Western Planning Area of the GOM

#### C. Final Rule as Adopted and Response to Comments

On May 27, 2009, BOEM published a proposed rule entitled, “Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf” (74 FR 25177). In the six years since the proposed regulation was

published, several developments have brought about the need for the final rule to appear different from the proposed rulemaking. The organization of the final rule is structured differently from that of the proposed rule to make the regulations easier for the public to read and follow. The major reasons for the other differences between the proposed rule and the final rule are explained below:

##### 1. Availability of Public Comments

BOEM received a total of eight comments from the American Petroleum Institute (API), Shell Oil Company, Chevron Oil Company, Anglo Suisse, Dynamic Offshore Resources, RLI Insurance Company, and two citizens, who commented to show their support of OCS leasing and the oil and gas program. Each comment was considered and some resulted in changes to the proposed rule. BOEM’s responses are addressed in this Preamble.

All comments can be viewed at [www.BOEM.gov](http://www.BOEM.gov) under the Regulations section and at [www.regulations.gov](http://www.regulations.gov).

##### 2. Effects of the Reorganization of MMS Into Three Distinct Agencies

###### Background

On May 19, 2010, the Secretary signed Secretarial Order 3299 directing the split of MMS into three new bureaus, BOEM, BSEE, and ONRR. This split was accomplished in two phases. In 2010 MMS was split into two agencies, ONRR and BOEMRE. In 2011 BOEMRE was itself split into two agencies, BOEM and BSEE.

Prior to October 4, 2010, the regulations of BOEM, BSEE, and ONRR were contained in one set of regulations (“pre-split” regulations), which were issued by the MMS. On October 4, 2010, MMS published a final rule in the **Federal Register** (75 FR 61051), moving its regulations related to its royalty and revenue functions from MMS to ONRR and creating a new chapter XII. The name of the remaining organization was changed from the MMS to BOEMRE. On October 18, 2011, DOI published a final rule (76 FR 64432) splitting BOEMRE regulations into separate BOEM and BSEE chapters. Pursuant to that split, BOEM is responsible for the resource evaluation, planning, and leasing functions for offshore oil and gas. BSEE is primarily responsible for the safety and environmental enforcement of offshore oil and gas development activities. BOEM’s regulations were recodified into 30 CFR Chapter V. BSEE’s regulations remained in 30 CFR Chapter II.

## Assignment and Retention of Regulations

As time has passed, it has come to light that some regulations were incorrectly assigned during the split. For example, some of the regulatory provisions assigned to BSEE or ONRR have proven necessary for BOEM. Regulatory provisions that fall into this category have been included in the final rulemaking, as explained in this Preamble. Because of the reorganization of the former MMS, some provisions of the proposed rule are now outside the scope of BOEM's responsibilities and are not included in this final rule.

In addition, there are some regulatory provisions that appear in this final rulemaking that did not appear in the proposed rule. These regulatory provisions are not "substantively new," however. They appeared in the former MMS regulations. The Final Rule also differs from the Proposed Rule in that the Final Rule retains certain provisions that the Proposed Rule suggested deleting. Instances of retention of prior sections of the regulations are also discussed in this Preamble.

## Administrative Changes

There are some wholly administrative changes from the proposed rule that appear in the final rule. These changes were also primarily necessitated by the division of MMS into three separate agencies. For example, the BOEM regulations are now found in a different chapter of Title 30 of the Code of Federal Regulations (CFR) than the chapter in which the BOEMRE regulations were found. Before the BOEMRE regulations were divided into two sets of independent agency regulations, they were all contained in Chapter II of Title 30 of the CFR, within parts 203 through 291. This means that the first digit in the section number of each individual provision was a "2." After the division of the regulations, all BSEE regulations remained in Chapter II, and thus retained the first digit "2." And, because the proposed rule was published before the agency split, its provisions also begin with a "2." After the division, however, the BOEM regulations were moved into Chapter V. Thus, although the proposed rule provisions each began with a "2," all final BOEM rule provisions begin with a "5." Also, in the final rule, internal citations to section numbers were changed to maintain correct and consistent cross-references, and sections were re-numbered to maintain internal numerical order. Whenever appropriate, references to "MMS" from the proposed rule have been changed to "BOEM" in

the final rule. These administrative changes have no effect on the substance of the regulations, and therefore do not require notice and comment, but they do make the regulations clearer, more consistent, and easier to use.

## Removed Provisions

The proposed rule would have added a new "expenses . . . with supporting documentation" reporting requirement to the then-BOEMRE, now-BSEE regulatory sections 250.1717, 250.1729, and 250.1743. Section 250.1717 addresses the information that must be submitted after well plugging and abandonment. Section 250.1729 addresses the information that must be submitted after removal of a platform or other facility, and section 250.1743 addresses the information that must be submitted after site clearance. The proposed rule added new requirements concerning the submittal of information on the costs of decommissioning.

When BOEMRE was divided into two agencies, the operational aspects of decommissioning were placed within BSEE's rather than BOEM's purview. In the final rulemaking, therefore, BOEM decided to remove the three provisions proposing revisions to sections 250.1717, 250.1729, and 250.1743, as BSEE finalized the rule addressing the submittal of information on the costs of decommissioning in their rule entitled "Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Decommissioning Costs," RIN 1014-AA24, published in the **Federal Register** on December 4, 2015.

The other proposed provision that was removed from the final rule was proposed rule section 256.621, concerning the submission of reports about lease term pipelines when requesting BOEM's approval of a lease assignment. As with decommissioning, BSEE has been tasked with the administration of the operational aspects of pipelines on the OCS; therefore, the submission of reports on lease term pipelines is within BSEE's jurisdiction. BSEE has proposed to address the submission of reports concerning lease term pipelines in a rule entitled "Pipelines and Pipeline Right-of-Way Safety," RIN 1014-AA27.

## 3. Definitions

Several definitions have been added in the final rulemaking that did not appear in the proposed rulemaking to clarify the meaning of terms used in the regulations. In each case, the term either was defined in the BOEMRE regulations or its definition is apparent from the context of the prior regulatory language.

## 4. Delayed Provisions

The proposed rule included a subpart E, "Financial Accountability and Risk Management," which contained provisions addressing requirements for general and additional bonding, surety, and third-party indemnity. After the proposed rule was published, BOEM identified possible conflicts between the proposed rule's use/definitions of certain terms and their use/definitions within BOEM's oil spill financial responsibility regulations (30 CFR part 553). Also, after publication of the proposed rule, BOEM began a process of reassessing its bonding and financial assurance policies, leading to a decision to publish this final rule with the text of existing subpart I (Bonding), with only limited conforming changes. This decision will enable BOEM and the regulated public to continue to rely on the existing financial assurance regulations until BOEM is ready to make necessary changes to its policies and to propose and seek comment on separate new regulations specific to bonding and financial assurance to implement these new policies.

## 5. Other Editorial Improvements

A consistent change that was made in the final rule was to add, where appropriate, the word "final" before the phrase "notice of sale." Another change is eliminating any references to "Associate Director," since there are no longer any Associate Directors in BOEM. The word "sulphur" has been replaced with a more contemporary spelling of "sulfur." All cross-references and section numbers within this final rule have been updated.

## II. Derivation Tables

The following derivation tables describe the source(s) of the regulations in the final rule relative to those in the prior regulations and/or those in the proposed rule. These tables are intended only to provide cross-references to the other materials. The section-by-section analysis that follows these derivation tables provides a detailed explanation of the changes made with this final rule.

Most sections of the final rule reflect content from the proposed rule, however, in some cases, the organization of the regulations and the final section numbers have changed since the rule was proposed. The derivation tables compare the location of the various rule sections in the final rule to the prior section numbers in the prior regulations that have been modified and the corresponding section numbers from the proposed rule, if appropriate.

*A. Derivation Table for 30 CFR part 550—Oil and Gas and Sulfur Operations in the Outer Continental Shelf*

Final rule section	Prior regulation that the final rule would modify or replace	Corresponding section number from the proposal (if any)
Subpart A—General Provisions PERFORMANCE STANDARDS: 550.120—This section provides that BOEM will regulate activities under a lease, right-of-use and easement, or right-of-way, to promote the orderly exploration, development, and production of mineral resources, while preventing waste, protecting the environment and ensuring cooperation with other government agencies. 550.121—This section provides that BOEM may require additional measures to ensure the use of Best Available and Safest Technology (BAST) as identified by BSEE to avoid the failure of equipment that would have a significant effect on health, safety, property or the environment when economically feasible.	None .....	This section was in the regulations before the split of MMS into three different agencies and has been reinserted for consistency.  This section was in the regulations before the split of MMS into three different agencies and has been reinserted for consistency.
INFORMATION AND REPORTING REQUIREMENTS: 550.197(b)—This subsection provides that BOEM will generally release geological data and analyzed geological information two years after the required submittal date for such information or 60 days after a lease sale. 550.197(c)—This subsection provides that BOEM will generally release geological data and analyzed geological information to individuals with a need to know that agree to maintain the confidentiality of the relevant information. 550.197(d)—This section provides, in accordance with section 26 of OCSLA, that no proprietary information received by BOEM will be transmitted to any affected State unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.	550.197(b) ..... 550.197(c) .....	Section 256.100(b).  Section 256.100(b).
Subpart D—Leasing Maps and Diagrams 550.400—This section provides that any area of the OCS, which has been appropriately platted, may be leased for any mineral not included in an existing lease issued under the Act or meeting the requirements of subsection (a) of section 6 of the Act.	None ..... 556.8 .....	New provision required to conform the regulations to the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1352(c)).  New subpart. Section 256.202(a).

*B. Derivation Table for 30 CFR Part 556—Leasing of Sulfur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf*

Final rule section	Prior regulation that the final rule would modify or replace	Corresponding section number from the proposal (if any)
Subpart A—General Provisions 556.100—This section states that management of Outer Continental Shelf (OCS) resources is to be conducted in accordance with the findings, purposes, and policy directions provided by the Outer Continental Shelf Lands Act. 556.101—This section sets forth the purpose of the regulations in this part. 556.102—This section lists the statutory authorities for this part ... 556.103—This section lists related regulations ..... 556.104—This section provides the legal basis for BOEM's collection of information in connection with the administration of its OCS oil, gas and sulfur leasing program and describes how BOEM will handle and maintain proprietary information. 556.104(c)—This subsection describes BOEM's treatment of proprietary information received in response to a Call for Information and Nominations. 556.105—This section provides definitions for key terms used throughout this part of the regulations. 556.106—This section identifies administrative fees that BOEM requires for various services.	556.2 ..... 556.1 ..... 556.4 ..... 556.7 ..... 556.0, 556.10 ..... 556.10(a) ..... 556.5, 556.40 ..... 556.63 .....	None. Section 256.102. Undesignated authority section. None. Section 256.100.  Section 256.100(b).  Section 256.103. Section 256.104.

Final rule section	Prior regulation that the final rule would modify or replace	Corresponding section number from the proposal (if any)
556.107—This section sets forth an alternative procedure, to avoid the use of a corporate seal, for those electronic document submissions for which a corporate seal is otherwise required by these regulations.	556.46, 556.54, 556.95 .....	None.
Subpart B—Oil and Gas Five-Year Leasing Program		
556.200—This section reiterates those key provisions of OCSLA that require the Secretary to prepare an oil and gas leasing program that consists of a five-year schedule of proposed lease sales.	None .....	Section 256.200.
556.201—This section reiterates the OCSLA requirement that BOEM consider multiple uses of the OCS in its development of the Five-Year oil and gas leasing program.	None .....	New provision based on 43 U.S.C. 1344(a)(2)(D).
556.202—This section sets forth the steps BOEM takes in initiating the Five-Year program.	556.16 .....	Section 256.202.
556.203—This section provides that BOEM will invite comments from governors on a draft proposed program at least 60-days before it publishes a proposed Five-Year program.	556.17(a) .....	Section 256.203.
556.204—This section states the procedures to be followed to obtain inter-governmental and citizens' comments on the proposed Five-Year program.	556.17(b) .....	Section 256.204.
556.205—This section provides that the Secretary must provide a copy of the proposed Five-Year Program, or any significant revision thereto, to Congress and the President at least 60-days before approving it.	556.17(c) .....	Section 256.205.
Subpart C—Planning and Holding a Lease Sale		
556.300—This section provides that BOEM will prepare a report describing the general geology and potential mineral resources of the area under consideration for a sale.	556.22 .....	None.
556.301—This section outlines the process BOEM uses to collect information to inform its determination as to which areas should be made available for leasing.	556.23 .....	Section 256.300.
556.302—This section explains the process used to arrive at the Area ID.	556.26, 556.10 .....	Section 256.301.
556.303—This section sets forth the information that BOEM will provide to a State when an area proposed for leasing lies within three nautical miles of the seaward boundary of that State.	556.10, 556.25 .....	Section 256.302.
556.304—This section describes the process utilized to prepare a proposed notice of sale.	556.29 .....	Section 256.303.
556.305—This section outlines the process by which BOEM coordinates with affected States following the proposed notice of sale.	556.29, 556.31 .....	Section 256.304.
556.306—This section provides a process for resolving issues or disputes that may arise between a State and the Federal government when a hydrocarbon-bearing area underlies both the Federal OCS and State submerged lands.	556.25(b)–(d) .....	None. Added for consistency with OCSLA section 8(g)(3), as amended in 1986 (43 U.S.C. 1337 (8)(g)(3)).
556.307—This section provides a description of the process that BOEM will use to evaluate comments and recommendations of governors and local governments.	556.31 .....	Section 256.305.
556.308—This section sets forth BOEM's procedures for conducting a lease sale.	556.28, 556.32 .....	Section 256.306.
556.309—This section sets forth BOEM's procedures for conducting a Supplemental Sale.	556.12 .....	Section 256.206.
Subpart D—Qualifications		
QUALIFICATIONS:		
556.400—This section provides that, in order to bid on, own, hold, or operate a lease on the OCS, bidders, record title holders, and operating rights owners must first obtain a qualification number from BOEM.	556.35 .....	Section 256.400.
556.401—This section outlines BOEM's requirements for a prospective lessee to become a qualified bidder.	556.35, 556.46 .....	Section 256.400.
556.402—This section describes the types of evidence that BOEM will require in order to qualify a person to hold leases on the OCS.	556.35 .....	Section 256.401.
556.403—This section describes the circumstances under which a person may be excluded or disqualified from holding a lease on the OCS.	556.35(c), 556.46(h) .....	Section 256.402.
556.404—This section details how to comply with the Department's non-procurement debarment rules.	None .....	Section 256.403.
556.405—This section provides that lessees must notify BOEM of any merger, name change, or change of business form as soon as practicable, but in no case later than one year after the change or action.	585.109 .....	Section 256.404.

Final rule section	Prior regulation that the final rule would modify or replace	Corresponding section number from the proposal (if any)
Subpart E—Issuance of a Lease		
HOW TO BID:		
556.500—This section sets forth the procedures for submitting a bid at a lease sale.	556.46(a)–(b) .....	Section 256.410.
556.501—This section explains what geological and geophysical information must be submitted with a bid at a lease sale.	551.11, 551.12, 580.51 .....	None.
RESTRICTIONS ON JOINT BIDDING:		
556.511—This section prohibits joint bidding by major oil and gas producers under certain circumstances.	556.41 .....	Section 256.411.
556.512—This section provides the circumstances under which a bid for an oil and gas lease will be disqualified and/or rejected.	556.44 .....	Section 256.402.
556.513—This section explains the circumstances under which a lessee must prepare and send to BOEM a statement describing its oil and gas production and what the statement is to contain.	556.40 .....	Section 256.412.
556.514—This section details what production must be counted when determining whether a company should be considered a “restricted bidder”.	556.40, 556.43 .....	Section 256.413.
556.515—This section provides the circumstances under which a person may be exempted from joint bidding restrictions.	556.41(d) .....	Section 256.414.
HOW DOES BOEM ACT ON BIDS:		
556.516—This section outlines the procedures BOEM will follow when reviewing bids received for leases on the OCS and when handling tie bids.	556.47 .....	Section 256.416.
556.517—This section describes the reconsideration procedures that apply in the event that BOEM rejects a high bid.	556.47(e)(1)–(e)(3) .....	Section 256.417.
AWARDING THE LEASE:		
556.520—This section describes the steps involved in the lease award process.	556.47 .....	Section 256.420.
556.521—This section explains when a lease becomes effective ..	556.50 .....	Section 256.421.
556.522—This section provides that the terms and conditions of the lease will be stated in the final notice of sale, as well as in the lease instrument itself.	556.49 .....	Section 256.306(a)(2).
Subpart F—Lease Term and Obligations		
LENGTH OF LEASE:		
556.600—This section sets forth the primary term of an oil and gas lease.	556.37(a)–(b) .....	Section 256.600.
556.601—This section sets forth the methods by which a lessee may maintain its oil and gas lease beyond the primary term.	556.37(a)–(b), 556.70, 556.71, 556.72.	Section 256.601.
556.602—This section sets forth the primary term of a sulfur lease.	556.37(c) .....	Section 256.602.
556.603—This section sets forth the methods by which a lessee may maintain its sulfur lease beyond the primary term.	556.37(c) .....	Section 256.603.
LEASE OBLIGATIONS:		
556.604—This section outlines the rights and obligations of a record title holder of an OCS lease.	550.146, 556.62, 556.64 ....	Sections 256.605 and 256.612.
556.605—This section outlines the rights and obligations of an operating rights owner of an OCS lease.	550.146, 556.62, 556.64 ....	Sections 256.606 and 256.612.
HELIUM:		
556.606—This section provides that BOEM reserves the ownership of, and the right to extract, helium from all gas produced from an OCS lease, and describes what BOEM will do if it requests you to deliver helium from operations associated with a lease.	556.11 .....	Section 256.630.
Subpart G—Transferring All or Part of the Record Title Interest in a Lease		
556.700—This section describes how a company may apply for approval to assign its whole, or a partial, record title interest in its lease, or in any aliquot(s) thereof, or to sublease operating rights.	556.62, 556.64 .....	Sections 256.610, 256.611, and 256.612.
556.701—This section describes the process for obtaining BOEM approval of an assignment of a record title or operating rights interest in an OCS lease.	556.62(a), 556.65 .....	Section 256.611.
556.702—This section describes when an assignment will result in a segregated ( <i>i.e.</i> , new) lease.	556.68 .....	Section 256.613(a)(2).
556.703—This section addresses the effects of a lease segregation.	556.68 .....	Section 256.613(a)(2).
556.704—This section sets forth the circumstances under which BOEM would disapprove an assignment or sublease.	556.62, 556.64 .....	Section 256.611.
556.705—This section outlines the procedures to follow to transfer an interest in an OCS lease from a deceased natural person.	556.64(e)–(g) .....	Section 256.614.
556.706—This section outlines the process for transferring record title interests in more than one lease to different parties.	None .....	Section 256.615.

Final rule section	Prior regulation that the final rule would modify or replace	Corresponding section number from the proposal (if any)
556.707—This section outlines the process for transferring different types of interests in a lease to different parties.	556.67 .....	Section 256.615.
556.708—This section outlines the process for transferring record title interests in more than one lease to the same party.	556.64(a)(8), 556.67 .....	Section 256.615.
556.709—This section outlines the process for transferring the record title interest in one lease to more than one party.	556.64 .....	Section 256.616.
556.710—This section sets forth the effect of an assignment of record title on an assignor’s liability under the lease.	556.64 .....	Section 256.616.
556.711—This section provides that a record title holder who sub-leases operating rights remains liable for later accruing obligations of the lease, but is only secondarily liable for monetary obligations accruing thereafter.	556.64 .....	Section 256.616.
556.712—This section describes the effective legal date of the transfer of a record title interest in a lease.	556.62(c) .....	Section 256.617.
556.713—This section sets forth the effect of an assignment of record title on an assignee’s liability under the lease.	556.62(e) .....	Section 256.618.
556.714—This section describes procedures to be used in assignments between those on the restricted joint bidders list.	556.64(i) .....	Section 256.619.
556.715—This section provides that a lessee may create, transfer, or assign an economic interest in a lease without BOEM approval, but that such transferor must send BOEM a copy of each instrument creating or transferring such a lease interest within 90 days after the last party executes the transfer instrument.	556.64(a)(7) .....	Section 256.620.
556.716—This section provides the circumstances under which the transfer of a record title interest triggers the need to file a new designation of operator form with BOEM.	550.143 .....	Section 256.611.
Subpart H—Transferring All or Part of the Operating Rights in a Lease		
556.800—This section provides that an operating rights owner may assign all or part of its operating rights interests, subject to BOEM approval.	556.62, 556.64 .....	Section 256.612.
556.801—This section describes the process by which an assignor of operating rights must obtain approval of such an assignment.	550.143, 556.64 .....	Section 256.613.
556.802—This section sets forth the circumstances under which BOEM may disapprove an assignment of operating rights.	556.62 .....	Section 256.611.
556.803—This section addresses the assignment of operating rights interests in more than one lease to different parties.	556.67 .....	Section 256.615.
556.804—This section addresses the assignment of operating rights interests in one lease to more than one party.	556.64(a)(8) .....	Section 256.615.
556.805—This section sets forth the effect of an assignment of operating rights on an assignor’s liability under the lease.	556.62(d) .....	Section 256.616.
556.806—This section describes the effective legal date of the transfer of an operating rights interest in a lease.	556.62(c) .....	Section 256.617.
556.807—This section sets forth the effect of an assignment of operating rights on an assignee’s liability under the lease.	556.62, 556.64 .....	Section 256.618.
556.808—This section provides that an operating rights owner may create, transfer, or assign economic interests without BOEM approval, but that for record keeping purposes, the operating rights owner must send BOEM a copy of each instrument creating or transferring such interests within 90 days after the last party executes the transfer instrument.	556.64(a)(7) .....	Section 256.620.
556.809 .....	Reserved .....	None.
556.810—This section provides the circumstances under which the transfer of an operating rights interest triggers the need to file a new designation of operator form with BOEM.	550.143, 556.62 .....	Section 256.611.
Subpart I—Bonding or Other Financial Assurance		
556.900—This section sets forth general bonding/financial assurance requirements for OCS leases.	556.52 .....	Sections 256.500, 256.502, 256.510, and 256.521.
556.901—This section sets forth additional bonding/financial assurance requirements for OCS leases.	556.53 .....	Sections 256. 501 and 256.510.
556.902—This section sets forth the requirements which a bond or other security must meet.	556.54 .....	Sections 256.502 and 256.503.
556.903—This section sets forth what must be done if a bond lapses.	556.55 .....	Section 256.520.
556.904—This section sets forth the procedures for establishing lease abandonment accounts as a method of financial assurance.	556.56 .....	Section 256.512.
556.905—This section sets forth the procedures for using a third-party guarantee as a method of financial assurance.	556.57 .....	Section 256.511.
556.906—This section sets forth the procedures for terminating the period of liability of, and cancelling, a bond.	556.58 .....	Section 256.522 and 256.523.



Final rule section	Prior regulation that the final rule would modify or replace	Corresponding section number from the proposal (if any)
556.907—This section sets forth the procedures for forfeiting a bond or other security.	556.59 .....	Sections 256.524, 256.525, and 256.526.
Subpart J—Bonus or Royalty Credits for Exchange of Certain Leases		
556.1000—This section sets forth the deadline for applying for certain bonus or royalty credits which had been available under the Gulf of Mexico Energy Security Act of 2006 (GOMESA) (43 U.S.C. 1331 note).	556.90–556.95 .....	Sections 256.900–256.905.
Subpart K—Ending a Lease		
556.1100—This section provides the circumstances under which a lease will expire at the end of its primary term.	556.37(b)–(c) .....	Section 256.700.
556.1101—This section sets forth the procedures to follow for relinquishment of a lease.	556.76 .....	Section 256.701.
556.1102—This section provides the circumstances under which BOEM may cancel or void a producing or a non-producing OCS lease.	556.77 .....	Section 256.702.
Subpart L—Leases Maintained Under Section 6 of OCSLA		
556.1200—This section explains the relationship between BOEM’s regulations and leases maintained under section 6 of OCSLA.	556.79 .....	None.
556.1201—This section states that the existence of a lease for other minerals under section 6 of OCSLA in an area does not preclude the issuance of other leases in the same area.	556.80 .....	None.
Subpart M—Environmental Studies		
556.1300—This section provides that BOEM will conduct studies of any area or region included in any oil and gas lease sale, as needed, to assess and manage impacts on the human, marine and coastal environments which may be affected by OCS oil and gas or other mineral activities in such area or region.	556.82 .....	None.

DERIVATION TABLE FOR 30 CFR PART 560—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

Final rule section	Prior regulation that the final rule would modify or replace	Corresponding section number from the proposal (if any)
<b>Subpart A—General Provisions</b>		
560.100—This section describes the authorities applicable to this part.	Undesignated authority section.	Undesignated authority section.
560.101—This section describes the purpose of this part .....	560.1 .....	None.
560.102—This section sets forth the definitions applicable to this part.	559.001–559.002,560.2 ....	None.
560.103—This section describes BOEM’s information collection authority.	560.3 .....	None.
<b>Subpart B—Bidding Systems</b>		
<b>GENERAL PROVISIONS:</b>		
560.200—This section describes the purpose of this subpart .....	560.101 .....	None.
560.201—This section sets forth the definitions applicable to this subpart.	560.102 .....	None.
560.202—This section describes the bidding systems that BOEM may utilize.	560.110 .....	None.
560.203—This section describes the terms and conditions that would apply, depending on the bidding systems that BOEM utilizes.	560.111 .....	None.
<b>ELIGIBLE LEASES:</b>		
560.210—This section describes how royalty suspension volumes could apply to a lease.	560.112 .....	None.
560.211—This section describes when a lease may qualify for royalty suspensions.	560.113 .....	None.
560.212—This section describes how BOEM would assign royalty suspension volumes for eligible leases.	560.114 .....	None.
560.213—This section specifies how long royalty suspension volumes may be effective to eligible leases.	560.115 .....	None.
560.214—This section describes how a lessee should measure the natural gas production on an eligible lease, subject to the royalty suspension volume.	560.116 .....	None.
<b>ROYALTY SUSPENSION LEASES:</b>		
560.220—This section describes how royalty suspensions apply to leases issued in a sale held after November 2000.	560.120 .....	None.
560.221—This section describes when a lease issued in a sale held after November 2000 is entitled to a royalty suspension.	560.121 .....	None.

DERIVATION TABLE FOR 30 CFR PART 560—OUTER CONTINENTAL SHELF OIL AND GAS LEASING—Continued

Final rule section	Prior regulation that the final rule would modify or replace	Corresponding section number from the proposal (if any)
560.222—This section describes how long a royalty suspension volume would be effective for a lease issued in a sale held after November 2000.	560.122 .....	None.
560.223—This section describes how to measure natural gas production for a lease subject to royalty suspension volumes issued in a sale held after November 2000.	560.123 .....	None.
560.224—This section describes how a royalty suspension would apply if BOEM assigns a lease issued in a sale held after November 2000 to a field that has a lease issued before the enactment of the OCS Deep Water Royalty Relief Act. (43 U.S.C. 1337(3)).	560.124 .....	None.
<b>BIDDING SYSTEM SELECTION CRITERIA:</b>		
560.230—This section describes what criteria BOEM uses for selecting bidding systems and bidding system components.	560.130 .....	None.
<b>Subpart C—Operating Allowances</b>		
560.300—This section explains that Operating Allowances can be specified in an oil and gas leases.	206.120 .....	This section was originally part of MMS regulations at section 206.120 and was inadvertently omitted from BOEM regulations during the split of the MMS rules into those of three different agencies. 75 FR 65051.
<b>Subpart D—Joint Bidding</b>		
Reserved .....	560.301—560.303 .....	The proposed rule amended 30 CFR part 260 by removing subpart D, which consisted of prior regulations sections 560.301—560.303.
<b>Subpart E—Electronic Filings</b>		
560.500—This section describes BOEM's electronic document and data transmissions procedures.	None .....	This section is derived in part from proposed rule section 256.503(c).
560.501—This section describes how BOEM will maintain the confidentiality of electronic documents and data.	None .....	None.
560.502—This section describes under what circumstances electronic document filings will be considered legally binding.	None .....	None.

**III. Section-by-Section Analysis of the Final Rulemaking**

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

1. Subpart A—General Provisions

Section 550.120. What standards will BOEM use to regulate leases, rights-of-use and easement, and rights-of-way? This section provides that BOEM will regulate activities under a lease, right-of-use and easement, or right-of-way, to promote the orderly exploration, development, and production of mineral resources, while preventing waste, protecting the environment and ensuring cooperation with other government agencies. Final rule section 550.120 did not appear in the proposed rule, but it was in the pre-split regulations, at 30 CFR 250.106. When BOEMRE was split into two agencies, this regulation was assigned to BSEE, and it therefore still appears at 30 CFR 250.106. As time has passed, however, BOEM has found itself hampered in properly evaluating and approving certain types of plans (such as exploration plans (EPs), development

and production plans (DPPs), or development operations coordination documents (DOCDS)) without this provision in its regulations. This section has therefore been put into the final rule with minor word changes.

Section 550.121. What must I do to protect health, safety, property, and the environment? This section provides that, when economically feasible, BOEM may require additional measures to ensure the use of Best Available and Safest Technology (BAST) as identified by BSEE, to avoid the failure of equipment that would have a significant effect on safety, health, or the environment. Final rule section 550.121 did not appear in the proposed rule, but it was in the pre-split regulations, at 30 CFR 250.107 and tracks section 21(b) of OCSLA. When BOEMRE was split into two agencies, this regulation was assigned to BSEE, and it therefore still appears at 30 CFR 250.107. As time has passed, however, BOEM has found itself hampered in properly evaluating and approving certain types of plans (e.g., EPs) without this provision in the BOEM regulations. It has therefore been put into the final rule with some changes necessary to conform the

provision to the scope of BOEM's enforcement authority.

Section 550.197(b)(5). Data and information to be made available to the public or for limited inspection. This section provides that BOEM will generally release geological data and analyzed geological information two years after the required submittal date for such information or 60 days after a lease sale. This final rule provision did not appear in the proposed rule, but did appear in the pre-split regulations at section 250.197(b)(5) (now BOEM regulation 550.197(b)(5)). However, the prior section, 550.197(b)(5), states “[i]f the primary term specified in the lease is extended under the heading of ‘Suspensions’ under this subpart, the extension applies to this provision.” Since the agency split, the determination whether to grant a suspension is made by BSEE. Because BOEM does not make these determinations, “suspensions” are no longer addressed in this subpart. Accordingly, the text in this final rulemaking changes the statement to say: “[i]f the primary term specified in the lease is extended, the extension applies to this provision,” removing the

reference to “suspensions” and to “this subpart” while retaining the meaning of the earlier provision.

Section 550.197(c). Data and information to be made available to the public or for limited inspection. This section provides that BOEM may allow limited data and information inspection, but only by a person with a direct interest in related BOEM decisions and issues in a specific geographic area, and who agrees in writing to maintain the confidentiality of geological and geophysical (G&G) data and information submitted under this part. Similar to the last-discussed provision, this section did not appear in the proposed rulemaking, but it did appear in the pre-split regulations, at 250.197(c) (now BOEM regulation 550.197(c)). The provision in the final rulemaking changes “MMS” to “BOEM” and deletes a reference to “part 203,” which no longer exists in the regulations at Title 30. The pre-split regulation listed several activities done by MMS. Only the part of that list that is pertinent to BOEM is retained in this final rule section.

Section 550.197(d). Data and information to be made available to the public or for limited inspection. This section provides, in accordance with section 26 of OCSLA, that no proprietary information received by BOEM will be transmitted to any affected State unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal. The final rule includes this provision, which did not appear in the proposed rule, because section 26(c) of OCSLA requires a regulation providing for maintenance of the confidentiality of privileged or proprietary information received by BOEM. (43 U.S.C. 1352(c)).

## 2. Subpart D—Leasing Maps and Diagrams

This is a new subpart, which is being created as part of this rule.

Section 550.400. Leasing maps and diagrams. This section provides that any area of the OCS, that has been appropriately platted, may be leased for any mineral not included in an existing lease issued under the Act or meeting the requirements of subsection (a) of section 6 of the Act. This section was in the pre-split regulations at section 256.8 (now BOEM regulation 556.8), but was omitted in part from the proposed rule. The Derivation Table in the Preamble to the proposed rule said the language of 256.8 was “simplified” and placed in proposed rule section 256.202. Proposed rule section 256.202, however, is not

sufficient to ensure that the substance of former 256.8 is retained in the regulations. After reviewing these provisions, BOEM has determined that the text of former section 256.8 (now 556.8) should be retained. Hence, it has been included in this final rulemaking as section 550.400, which retains the text from prior section 556.8 without any changes.

## B. Part 556—Leasing of Sulfur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf

### 1. The Table of Contents for Part 556

The Table of Contents for part 556 in the final rulemaking reflects a changed organization and structure from the proposed rule. After publication of the proposed rule, and after BOEMRE was divided into two agencies, BOEM analyzed the organization of part 556 and the way in which information was presented within the sections in the part, and decided to modify the organization of the part.

The first three subparts in the final rule (subpart A—General Provisions, subpart B—Oil and Gas Five Year Leasing Program, and subpart C—Planning and Holding a Lease Sale), contain the same information as the first three subparts in the proposed rule; the fourth subpart, Subpart D, however, includes more significant organizational changes. In the proposed rule, Subpart D—Issuance of a Lease, contained five subtitles within it: Qualifications, How to Bid, Restrictions on Joint Bidding, How Does MMS Act on Bids?, and Awarding the Lease. In the final rule, Subpart D includes only one subtitle: Qualifications. BOEM made this change in order to separate out the qualifications provisions and set them out in a clearer, more sequential manner. Subpart E in the final rule picks up the other four subtitles from the proposed rule’s Subpart D.

In the proposed rule, Subpart E covered bonding and financial assurance. These topics are found in Subpart I in the final rule, but as previously noted, no substantive changes have been made to the provisions in this subpart in the final rule. Instead of adopting the proposed rule sections on these topics, BOEM will retain the prior bonding and financial assurance provisions—which, with minor editorial and conforming revisions, are found at final rule sections 556.900 through 556.907—until such time as a new rulemaking is proposed for these topics.

In the proposed rule, Subpart F was entitled, “Maintaining a Lease,” and it contained four subtitles: Initial Period of

a Lease, Lease Obligations, Transferring Interest in All or Part of a Lease, and Helium. In the final rule, Subpart F contains three subtitles: Length of Lease, Lease Obligations, and Helium. These subtitles cover the same regulatory issues as Subpart F in the proposed rule, with the exception of the proposed rule’s subtitle concerning transfers of interest. In the final rule, regulatory provisions concerning the transfer of a record title interest and those provisions concerning transfers of an operating rights interest have been split into two different Subparts—Subpart G and Subpart H, respectively.

The final rule’s Subpart H was “Reserved” in the proposed rule. In the final rule, Subpart H includes provisions addressing the transfer of operating rights interests. As noted above, final rule Subpart I addresses BOEM’s bonding and financial assurance requirements, which are substantively unchanged from the prior BOEM regulations. Provisions dealing with bonus or royalty credits in exchange for certain leases, found in final rule Subpart J, were found in proposed rule Subpart I. The final rule’s Subpart K—Ending a Lease, was the proposed rule’s Subpart G.

Finally, final rule Subpart L—Leases Maintained under Section 6 of OCSLA (43 U.S.C. 1335), and Subpart M—Environmental Studies, did not appear in the proposed rule. The Derivation Table in the Preamble to the proposed rule proposed to eliminate both subparts as unnecessary, but BOEM has rethought this elimination, and has decided to retain them. We do so because, in the case of Subpart L, there are extant “Section 6 Leases,” and with respect to Subpart M, OCSLA section 20 requires that the Secretary perform environmental studies. (43 U.S.C. 1346).

### 2. Subpart A—General Provisions

Section 556.100. Statement of Policy. This section states that management of Outer Continental Shelf (OCS) resources is to be conducted in accordance with the findings, purposes, and policy directions provided by OCSLA. The corollary to final rule section 556.100 is prior BOEM regulation 556.2. Both sections set forth a general policy statement. The proposed rule did not contain a section setting forth a statement of policy. Although this section is new in the final rule, it is explanatory in nature and does not impose any new requirements on the public. Therefore, BOEM is including it in this final rule without prior public notice and comment.

Section 556.101. Purpose. The proposed rule contained a statement of

purpose at section 256.102, “What does this part cover?” In the final rule, however, BOEM decided to retain the statement of purpose section from the prior regulations, which was found at 556.1.

Section 556.102. Authority. In the final rule, BOEM decided to include a regulatory section setting forth the authority(ies) for the issuance of these regulations, which has been updated to reflect the amendments made to FOGSMA by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, (30 U.S.C. 1701 note). The proposed rule did not contain a regulatory section with a list of authorities, but did contain such a list at the end of the proposed rule’s Table of Contents. The list needed to be updated since the publication of the proposed rule.

Section 556.103. Cross references. The proposed rule did not contain a section setting out cross-references. Current BOEM regulations section 556.7 lists pertinent cross-references, and BOEM decided to include a cross-reference section in the final rule. We did so because cross-references enable the reading public to more quickly find related regulations. Cross-references do not impose any new substantive requirements that require prior public notice and comment.

Section 556.104. Information collection and proprietary information. This section has two major provisions. The first provides the legal basis for BOEM’s collection of information in connection with the administration of its OCS oil, gas and sulfur leasing program. The second provision describes how BOEM will handle and maintain proprietary information. Final rule section 556.104 contains the same information as the corresponding proposed rule section, section 256.100. Subsection (b) of the proposed rule provision addressed “proprietary information,” but it was unclear whether the subsection extended to all proprietary information, or only to such information received in response to a Call for Information and Nominations (“Call”). To rectify this situation, we drafted the final rule provision to address proprietary information generally, (section 556.104(b)), and separately, proprietary information received in response to a Call (section 556.104(c)).

Section 556.105. Definitions. This section provides definitions for key terms used throughout this part of the regulations. As explained further below, some of these definitions are retained from the preexisting regulations; others are identical to definitions included in

the proposed rule; and finally, a few definitions are new to this final rule, but they define terms already used in the regulations.

The terms and phrases listed in the next paragraph have been retained from the regulations as they existed before BOEMRE was divided into two agencies, and therefore, as the regulations were constituted at the time of publication of the proposed rule.

The list of terms that have been retained from the pre-split regulations is as follows: Aliquot or Aliquot Part, Authorized officer, Average daily production, Barrel, Crude oil, Development block, Economic interest, Initial period, Lease term pipeline, Lessee, Natural gas, Operating rights, Operator, Outer Continental Shelf (OCS), Outer Continental Shelf Lands Act (OCSLA), Owned, Planning area, Regional Director, Regional Supervisor, Security, Single bid, Six-month bidding period, and Statement of production.

In the following cases, we moved definitions of terms from a substantive regulation to this definitions section, with no change to the meaning expressed.

*Aliquot part.* The definition of the term “aliquot part” from proposed rule section 256.611, which addresses transfers of lease interests, was moved into this definitions section (556.105).

*BOEM.* The term “BOEM” was retained, from the prior regulations, in final rule section 556.105.

*Development block.* The definition of the term “development block” was moved from section 556.12(c)(3) to this definitions section.

*Economic interest.* The definition of the term “economic interest” was moved from section 556.40 to this definitions section.

*Western Planning Area.* Pursuant to a commenter’s recommendation, a definition of “Western Planning Area” was added, in final rule section 556.105.

The following terms were retained unchanged from the prior BOEM regulations, or remain as described in the proposed rule: Act, Affected State, Authorized Officer, Coastal Environment, Coastal Zone, Coastline, Desoto Canyon OPD, Destin Dome OPD, Human Environment, Marine Environment, Pensacola OPD. The term “person” was added to the regulations, utilizing the definition from the proposed rule.

The following definitions have been added in final rule section 556.105 to define terms or concepts already used in the regulations, the definitions of which were apparent from the context of the prior regulatory language: BSEE, crude oil, designated operator, economic

interest, initial period, primary term, joint bid, lease, lease interest, lessee, natural gas, natural gas liquids, operating rights, operating rights owner, operating rights tract, operator, owned, planning area, primary term, regional director, regional supervisor, RUE, ROW, security, single bid, six month bid period, and statement of production. A few of these terms were updated, as follows:

- *Designated operator.* The requirement to designate an operator is set out in prior BOEM regulations at section 550.143. Consistent with the “designated operator” requirements in that section, BOEM is including a definition of the term “designated operator” in the definitions section of the final rule. Prior section 550.143(a) states that “each lessee must submit a Designation of Operator (DOO) form” to designate an operator. As implemented, this requirement applies to all record title owners and to those operating rights owners that own operating rights in the aliquots/depths in which the designated operator, to which the DOO form applies, will be operating. This interpretation is reflected in the definition of “[d]esignated operator” in the final rule.

- *Lease interest.* The term “lease interest” appears, as “interests in . . . leases,” in the first sentence of prior BOEM regulations at section 556.62. The final rule definition lists interests already recognized in the prior regulations.

- *Minerals.* The term has been redefined to better correspond to its meaning in OCSLA.

- *Natural gas liquids.* The definition of “Natural gas liquids” is taken from the prior term “Liquefied petroleum products.” 42 U.S.C. 6213 restricts joint bidding on leases for those producing more than an average worldwide daily production of 1.6 million barrels of crude oil and/or its equivalent in natural gas liquids and natural gas during a 6-month period preceding a lease sale. Previously, regulations implementing 42 U.S.C. 6213 referred to “liquefied petroleum products” rather than “natural gas liquids,” but then defined “liquefied petroleum products” as natural gas liquids. We dropped references to “liquefied petroleum products,” but there is no change in the concept; only the term has been changed.

- *Operating rights owner.* The definition of the term “Operating rights owner” has been added into this definitions section. It is based on the definition of “Operating rights” in prior BOEM regulations at section 550.105.

• *Right-of-use and easement.* The prior BOEM regulations, at 30 CFR 550.105, defined the terms “Easement” and “Right-of-use” separately. But the term that is actually used throughout the prior regulations is “right-of-use and easement.” (See, e.g., 30 CFR 550.16—550.166). The term “right-of-use and easement” is also used in the proposed rule (see, e.g., proposed rule sections 256.502(c), 256.410(a), and 256.511(a)). The term is defined in the final rule because it appears in final rule section 556.104, concerning BOEM’s information collections and its handling of proprietary information.

• *Right-of-way.* The definition of “Right-of-way” in the final rule is based on the definition of “Right-of-way pipelines” in the prior BOEM regulations at section 550.105, but the definition has been updated to make clear that a right-of-way authorization is issued by BSEE.

• *You.* The term “You” was defined in proposed rule provision 256.103 by providing a list of individuals to whom it would apply. This list has been retained in the final rule, but an introductory sentence has been added to the definition that defines the word, rather than merely listing the individuals to whom the term applies.

Section 556.106. Service fees. This section identifies various administrative fees that BOEM requires for various services. The language in the Service Fees section, 256.104(b), of the proposed rulemaking, “payment . . . must accompany . . . submission,” engendered comments as to whether the proposed rule would have required operators to send in checks with their submission(s). BOEM therefore changed the language of this provision in the final rule to reflect that evidence of payment of the required fee(s) via pay.gov must accompany document submission(s) or must be sent to the office identified by BOEM. The fees in this rule are being adjusted to reflect the Implicit Price Deflator change of 3.31 percent (inflation from 2011 through 2013). The fees were last adjusted for inflation through calendar year 2011 (78 FR 5836).

Section 556.107. Corporate Seal requirements. This section sets forth an alternative procedure, to avoid the use of a corporate seal, for those electronic document submissions for which a corporate seal is otherwise required by these regulations. BOEM’s rules require the use of a corporate seal in several instances. The Federal Government is, however, moving rapidly toward an all-electronic filing and records retention system. Because of this, BOEM has added section 556.107 to the final rule,

which permits document submitters to electronically file documents with BOEM using a secure electronic filing system without the use of corporate seals. The filer may choose to file a document electronically; electronic document submission is not required by the final rule.

In order to maintain the legal validity of documents filed electronically without corporate seals, BOEM is requiring that those entities who choose to so file provide BOEM with a one-time filing of a document containing the entity’s corporate seal, signed by an authorized party, and stating that the entity’s filings made through a secure electronic filing system will be legally binding.

Final rule section 556.107 also enables those who choose not to file documents electronically to forego repeated use of the corporate seal by filing a document similar to the document discussed in the last paragraph, which states that future non-electronic filings will be legally binding without the use of a corporate seal.

BOEM further recognizes that not all States issue corporate seals. Therefore, final rule section 556.107 contains a paragraph (c), which states that an entity from a non-corporate seal State may file a document with BOEM stating that its state of incorporation does not use corporate seals. This document must be signed by an authorized party and must state that submissions made by this corporation will be legally binding.

Final rule section 556.107 does not have a counterpart in the proposed rule, but notice and comment on this provision is unnecessary because the provision does not require that any member of the public do anything differently than was already required by the prior regulations. Section 556.107 will, however, reduce the burden on those who choose to use the options it provides by streamlining the document submission process for them. The provision is also in accord with the Federal-Government-wide effort to digitize government services. See, e.g., the Government Paperwork Elimination Act, Public Law 105–277, 112 Stat. 2681 (1998).

### 3. Subpart B—Oil and Gas Five Year Leasing Program

Sections under this subpart detail the steps BOEM takes to develop the Five-Year Oil and Gas Leasing Program. The final rule provisions set forth, sequentially, the stages in the development of the Five Year program, and closely mirror those in the proposed rule.

Proposed rule section 256.206, “Does MMS offer blocks in a sale that is not on the 5-year program schedule?” appeared under this Subpart B in the proposed rule. In the final rule, this section was moved to the next subpart, Subpart C—Planning and Holding a Lease Sale, because the section is substantively concerned with holding a certain type of lease sale, not with the development of the Five Year program. BOEM believes this section is more appropriately placed within Subpart C.

Section 556.200. What is the Five Year leasing program? This section reiterates those key provisions of OCSLA that require the Secretary to prepare an oil and gas leasing program that consists of a five-year schedule of proposed lease sales. Final rule section 556.200(a) substantially repeats proposed rule section 256.200. BOEM received two comments on proposed rule section 256.200 (section 556.200 in the final rule) that part of the section repeated language from OCSLA, and was therefore “inconsistent with the streamlining that MMS has taken with the proposed regulations.” BOEM considered these comments, but decided to retain the statutory language as it is important to explain the goals of the Five Year program. BOEM received no other comments on this subpart.

Section 556.201. Does BOEM consider multiple uses of the OCS? Final rule section 556.201 reiterates the OCSLA requirement that BOEM consider multiple uses of the OCS in its development of the Five Year oil and gas leasing program. This approach derives from a requirement in Section 18 of OCSLA (43 U.S.C. 1344(a)(2)(D)) that the leasing program shall be prepared and maintained in a manner consistent with, among other things, “other uses of the sea and seabed, including fisheries, navigation, existing or proposed sea lanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf.” Final rule section 556.201 emphasizes that BOEM gathers information about multiple uses of the OCS to assist the Secretary in making decisions on the Five Year program, pursuant to the provisions of 43 U.S.C. 1344. For this purpose, BOEM invites and considers suggestions from States and local governments, industry, and any other interested parties, primarily through public notice and comment procedures. BOEM also invites and considers suggestions from Federal agencies.

Section 256.201 from the proposed rule has been modified in the final rule. As originally worded, proposed rule section 256.201 might have been

considered confusing because it used the word “consult” in the context of the Five Year Program. The term “consult” is a term of art usually associated with consultation under the Endangered Species Act (16 U.S.C. 1531–1544) and government-to-government consultation with Indian tribes. The Endangered Species Act does not require consultation during the preparation of the Five Year program. OCSLA requires that BOEM invite and consider comments and suggestions from other agencies and from States during its Five Year program preparation process, 43 U.S.C. 1344(c), and so the final rule addresses that in sections 556.201 through 556.203.

Section 556.202. How does BOEM start the Five Year preparation process? This section sets forth the steps BOEM takes in initiating the Five Year program. Final rule section 556.202 substantively repeats proposed rule section 256.202, but the final rule changes the statement in the proposed rule that “[a]ny area properly included on the official 5-year diagrams and maps may be offered for lease for any mineral not already leased” by substituting the explanation that any “area not already leased for oil and gas may be offered for lease.” The statement in the proposed rule was inaccurate because the Five Year program applies only to the leasing of oil and gas.

Section 556.203. What does BOEM do before publishing a proposed Five Year program? This section provides that BOEM will invite comments from governors on a draft proposed program at least sixty days before it publishes a proposed Five Year program. Final rule section 556.203 repeats proposed rule section 256.203, with some minor wording changes.

Section 556.204. How do governments and citizens comment on a proposed Five Year program? This section states the procedures to be followed to obtain inter-governmental and citizens’ comments on the proposed Five Year program. Final rule section 556.204 repeats proposed rule section 256.204.

Section 556.205. What does BOEM do before approving a proposed final Five Year program or a significant revision of a previously-approved Five Year program? This section provides that the Secretary must provide a copy of the proposed Five Year Program, or any significant revision thereto, to Congress and the President at least sixty days before approving it. Final rule section 556.205 is substantively the same as proposed rule section 256.205.

#### 4. Subpart C—Planning and Holding a Lease Sale

Sections in this subpart address the process leading up to a lease sale, the conduct of a lease sale, and the circumstances under which a lease sale that is not on the Five Year Program schedule may be held. Subpart C in the final rule generally tracks Subpart C in the proposed rule, with certain differences, described in the following paragraphs, which discuss final rule sections 556.300 through 556.309.

Section 556.300. What reports may BOEM and other Federal agencies prepare before a lease sale? This section provides that BOEM will prepare a report describing the general geology and potential mineral resources of the area under consideration. Although this final rule section did not appear in the proposed rule, it did appear in the prior BOEM regulations, at prior Subpart C—Reports from Federal Agencies, which consists of one section, 556.22, “General.” The Preamble to the proposed rule stated that the precursor to prior regulations section 556.22 (*i.e.*, 256.22) was “[e]liminated as repetitive with [OCSLA].” BOEM has decided to retain the section in the final rule because the regulated public will be looking to the regulations, and not to OCSLA, for guidance on BOEM’s processes and requirements. Final rule section 556.300 is substantively identical to the prior BOEM regulation 556.22.

Section 556.301. What is a Call for Information and Nominations? The formal lease sale process usually begins with BOEM’s publication of a Call for Information and Nominations, sometimes referred to as the “Call.” The Call requests indications of interest from industry in the leasing of specific blocks, and requests comments on other relevant information that BOEM can use in developing a recommendation of leasing areas for the Secretary. This section outlines the process BOEM uses to collect information to inform its determination as to which areas should be made available for leasing.

Final rule section 556.301 is substantively identical to proposed rule section 256.300, except for the addition of an additional topic on which the Call will request comments. The prior regulations, at section 556.23(b), state that the Call “shall also request comments on areas which should receive special concern and analysis.” The proposed rule did not include “areas of special concern and analysis” as one of the topics on which the Call will request comments, but the Preamble to the proposed rule shed no

light on why this topic was omitted, stating only that section 256.23 (now 556.23) was “[r]eorganized.” BOEM sees no reason to omit “areas of special concern and analysis” from the list of topics on which the Call will request comments, and so has retained it in the list of such topics stated in final rule section 556.301.

Section 556.302. What does BOEM do with the information from the Call? Using the information received in response to the Call and further analysis of environmental issues, resource potential, stated interest, potential use conflicts, and other relevant information, the Director will develop a recommendation of the area to be included in a lease sale. This recommendation is often termed the “Area Identification,” or “Area ID.” This section explains the process used to arrive at the Area ID.

BOEM received one comment on proposed rule section 256.301, on which final rule section 556.302 is based. The comment noted that the phrase “as soon as possible,” which appeared in the analogous prior regulation (section 556.26(c)), had been deleted by the proposed rule, resulting in the following statement in section 256.301(b) of the proposed rule: “[w]e inform the public of any additions or deletions from the area proposed for leasing in the 5-year program that result from the call process.” The commenter requested that the phrase be retained in the final rule because whether or not areas have been deleted from a sale area is of great importance to potential bidders that are preparing for lease sales. BOEM agrees with this comment and has re-inserted this phrase in final rule section 556.302(c).

Section 256.301 of the proposed rule addressed the Area ID stage of BOEM’s lease sale preparation, but omitted several aspects that appeared in the prior BOEM regulations at section 556.26. There is no reason given in the proposed rule as to why certain aspects of this stage of the lease sale process were left out, except the statement that prior section 256.26 was “[r]eorganized.” Final rule section 556.302 contains the substance of proposed rule section 256.301, as well as several paragraphs from the prior section 556.26. Specifically, three aspects of prior section 556.26 were not in the proposed rule, but have been retained in section 556.302 of the final rule. First, subparagraph (a)(2) of final rule section 556.302 states that the Director may, on his or her own motion, include in his or her recommendation areas that were not indicated in response to a Call. (*See* section

556.26(a)). Second, the last sentence of final rule section 556.302(b) states that the Director may hold public hearings on the environmental analysis done on the areas identified for leasing. (See section 556.26(b)). Third, subparagraph 556.302(e) of the final rule repeats the last sentence in section 556.26(a), stating that, in the case of a supplemental sale, the Director's recommendation will be replaced with his findings made under this section.

Final rule section 556.302(d) states that the Director may, upon request, provide relative indications of interest in areas received in response to a Call. Paragraph (d) also addresses the potentially confidential nature of such indications of interest and indicates that BOEM will release this information in such a way so as not to compromise the competitive interest of any of the respondents to the Call. The language of this final rule paragraph was found in the prior regulations at section 556.10(d). The substance of this final rule paragraph 556.302(d) was found in the proposed rule at section 256.100(b)(1) and (2), but BOEM believes it is more appropriately placed in this final rule section, which addresses the treatment of information received in response to a Call.

Section 556.303. What does BOEM do if an area proposed for leasing is within three nautical miles of the seaward boundary of a coastal State? Final rule section 556.303 sets forth the information that BOEM will provide to a State when an area proposed for leasing lies within three nautical miles of the seaward boundary of that State. Section 556.303 is the same as proposed rule section 256.302, except that the final rule corrects the language of the provision to be consistent with OCSLA section 8(g) (43 U.S.C. 1337(g)) in its use of the term "nautical miles" instead of the proposed rule's "geographical miles."

Section 556.304. How is a proposed notice of sale prepared? This section describes the process utilized to prepare a proposed notice of sale. Final rule section 556.304 retains all the substance of proposed rule section 256.303, but for clarity divides the proposed rule provision's one paragraph into multiple paragraphs. The final rule provision also has a new title because the proposed rule provision's text and its title—"What happens with an approved proposed notice of sale?"—appears to have addressed an already-approved notice of sale without explaining how the agency arrives at the approved notice. The final rule provision helps clarify this by retaining some of the paragraphs from the analogous section

in the prior regulations, 556.29, which were left out of proposed rule provision 256.303, but which help to explain BOEM's procedures. The Preamble to the proposed rule stated that proposed rule provision 256.303 represented a "[s]implifi[cation]" of section 256.29 (now 556.29), but some steps were left out in the simplifying process, creating gaps in the regulations. These gaps have been eliminated with the retention of certain concepts from the prior regulations in final rule section 556.305.

Final rule section 556.305(a) states that the Director of BOEM may, in consultation with other Federal agencies, develop lease stipulations and conditions, which will appear or be referenced in the proposed notice of sale. Both the prior regulation section 556.29 and proposed rule section 256.303 contained similar language, but the proposed rule provision went further and stated that the proposed notice of sale also includes "the Director's findings, and all comments and recommendations received on the proposal." While reviewing the proposed rule, BOEM realized that these last three items are not *in* the proposed notice of sale, but accompany it when it is presented to the Secretary for approval. This concept that certain items will accompany the proposed notice of sale to the Secretary is correctly expressed in prior section 556.29(b), therefore this language has been used in final rule section 556.304(b).

BOEM received a comment requesting that the lease form be attached to or referenced in the proposed notice of lease sale because "the terms of an oil and gas lease sale are integral to the lessee/lessor relationship and lessees . . . should have the right to know the lease terms in advance of submitting bids." BOEM agrees with this comment insofar as potential bidders should be aware of the lease terms and conditions, to the extent possible, in advance of the lease sale. To that end, final rule provision 556.304(c) makes clear that the proposed notice of sale references the lease form.

Section 556.305. How does BOEM coordinate and consult with States regarding a proposed notice of sale? This section outlines the process by which BOEM coordinates with affected States following the proposed notice of sale. Final rule section 556.305 is substantively the same as proposed rule section 256.304. One change was made to the language of the section in the final rule as a result of a comment. The comment requested that the section "actually reference" the Coastal Zone Management Act (CZMA) (16 U.S.C.

1451–1466) "so that if the CZMA is modified or amended or repealed, [BOEM] can continue to follow the process outlined in the act, rather than risking conflict or inconsistency." BOEM agrees with this suggestion, and has included a reference to the CZMA in final rule section 556.305(b).

Section 556.306. What if a potentially oil-or gas-bearing area underlies both the OCS and lands subject to State jurisdiction? This section provides a process for resolving issues or disputes that may arise between a State and the Federal government when a hydrocarbon-bearing area underlies both the Federal OCS and State submerged lands. This final rule section did not appear in the proposed rule. The substance of the final rule section is, however, found at prior BOEM regulation section 556.25(b)–(d). The Preamble to the proposed rule stated that this section of the prior regulations had been left out in an attempt to simplify the regulations. Upon reconsideration, however, BOEM believes that the proposed rule may have over-simplified the regulations, resulting in a gap. The proposed rule, at section 256.302, addressed potentially leaseable areas "within 3 miles of the seaward boundary of a coastal State." The proposed rule did not, however, address potentially leaseable areas that underlie the Federal/State boundary, resulting in potentially leaseable resources on both sides of this boundary. The two situations are treated differently in OCSLA, at sections 8(g)(2) and 8(g)(3), respectively (43 U.S.C. 1337(g)(2) and 1337(g)(3)). Therefore, BOEM believes that they should be treated separately in the regulations and BOEM has decided to retain the prior regulations' provisions in the final rule, at section 556.306.

Section 556.307. What does BOEM do with comments and recommendations received on the proposed notice of sale? Final rule section 556.307 addresses BOEM's treatment of comments received on the proposed notice of sale, particularly those received from governors and local governments. This section provides a description of the process that BOEM will use to evaluate recommendations of governors and local governments. Section 556.307 is substantively the same as proposed rule section 256.305, but the final rule section has been divided into paragraphs for ease of reading and reference. The final rule section, at paragraph (b), contains one sentence that does not appear in the proposed rule, but did appear in the analogous prior section, 556.31(b). That sentence merely states that the determination of

the “national interest” as meant in this section, will be based on the findings, purposes, and policies of OCSLA.

Section 556.308. How does BOEM conduct a lease sale? Final rule section 556.308 explains that BOEM will publish a final notice of sale at least 30 days before the scheduled date of a lease sale. This final notice of sale will contain all the information needed to place a bid, as well as the terms and conditions of the lease, including any stipulations necessary to mitigate potential adverse impacts on the environment.

Final rule section 556.308, paragraphs (a)–(c), are substantively the same as proposed rule section 256.306. The final rule section includes a new paragraph (d), which was added at the request of a commenter. The commenter requested that “the Notices of Lease Sale should include the lease form that will be used to grant successful bids.” Therefore, final rule section 556.308 (d) states: “[t]he final notice of lease sale references, or provides a link to, the OCS lease form which will be issued to successful bidders.”

Section 556.309. Does BOEM offer blocks in a sale that is not on the Five Year program schedule (called a Supplemental Sale)? Under certain circumstances, detailed in proposed rule section 256.206 and final rule section 556.309, BOEM is authorized to offer blocks in an otherwise unscheduled sale, referred to as a supplemental sale. The proposed and final rule sections are the same.

##### 5. Subpart D—Qualifications

Final rule Subpart D—Qualifications, was a sub-subpart in the proposed rule, under proposed rule Subpart D—Issuance of a Lease. The substance of the provisions in Subpart D of the final rule is the same as that found in sections 256.400 through 256.404 of the proposed rule. BOEM decided, however, that the provisions covering the qualifications necessary to hold leases on the OCS were significant enough to merit a separate subchapter in the final rule. BOEM believes it is logical to place “Qualifications” into its own subpart and to remove it from under the heading “Issuance of a Lease,” where it was found in the proposed rule as one must qualify *before* a lease can be issued.

There are six sections within final rule Subpart D—Qualifications, which generally correspond with the five sections under the subheading “qualifications” in the proposed rule. There are, however, a few minor differences between the sections in the proposed rule and the sections in the final rule, including the lack of a table

in the final rule to set out the type of evidence required by BOEM to demonstrate proof of qualification to hold leases on the OCS. The proposed rule laid out the evidence requirements in a table format, but on reconsideration BOEM found this format too limiting, and opted to remove the table and instead use regulatory text to set forth the evidence requirements for qualification. The substance of the regulations remains the same in the final rule.

Generally, there were some logical gaps in the scheme laid out by the proposed rule sections regarding “Qualification” to hold leases on the OCS, which BOEM has rectified in the final rule. For example, BOEM has been issuing “qualification numbers” to qualified potential lessees for many years, but the fact that such a number must be obtained by a potential lessee as a first step in the leasing process has not been clearly spelled out in the regulations. The lay-out of the proposed rule sections on qualification appeared to assume that the reader knew that he or she must obtain a qualification number from BOEM in order to be “qualified” to hold leases on the OCS, without ever saying how that number would be obtained.

The other minor differences between the proposed and final rule provisions dealing with “Qualifications” are set forth, section-by-section, below.

Section 556.400. When must I demonstrate that I am qualified to hold a lease on the OCS? This section provides that, in order to bid on, own, hold, or operate a lease on the OCS, bidders, record title holders, and operating rights owners must first obtain a qualification number from BOEM. The title of this section was reworded to more clearly describe this purpose.

Final rule section 556.400 is an outgrowth of proposed rule section 256.401(a). Proposed rule section 256.401(a) stated that, a person, in order to show that he or she was qualified to be a lessee, must “provide [his] MMS qualification number.” The proposed rule failed to explain, however, that a potential lessee first had to obtain a qualification number from BOEM. Final rule section 556.400 explains that, “in order to bid, own, hold, or operate a lease on the OCS,” one must obtain a qualification number from BOEM. Final rule section 556.400 also makes clear that a bidder must be qualified in order to bid on OCS leases, as was required by prior section 556.46.

Section 556.401. What do I need to show to become qualified to hold a lease on the OCS and obtain a qualification number? This section outlines BOEM’s

requirements for a prospective lessee to become a qualified bidder. Final rule section 556.401 is essentially proposed rule section 256.400, with a few minor additions, which flow from the language of the proposed rule. Like the proposed rule provision, the final rule provision lists those who may become qualified to hold leases on the OCS, but better describes the entities previously identified only as “associations.” Proposed rule section 256.400(c) listed “[a] private, public or municipal corporation organized under the laws of any State of the U.S., the District of Columbia, or any territory or insular possession subject to U.S. jurisdiction.” A Limited Liability Company (LLC) was not listed in proposed rule section 256.400(c), but LLC was listed in the table in proposed rule section 256.401 as one of the entities that may become qualified to hold leases on the OCS. Therefore, the final rule provision adds to the list in section 556.401 a “Limited Liability Company or Limited Liability Corporation organized under the laws of any State of the United States, the District of Columbia, or any territory or insular possession subject to United States jurisdiction.”

Proposed rule section 556.400(e) listed a “State” as one entity potentially qualified to hold leases on the OCS. The final rule, at section 556.401(a)(5), using language from proposed rule section 256.400(c), instead says: “[a] State, the District of Columbia, or any territory or insular possession subject to United States jurisdiction.” Similarly, proposed rule section 256.400(f) listed a “political subdivision of States” as also potentially qualified to hold leases on the OCS. The final rule, at section 556.401(a)(6) instead says: “[a] political subdivision of a State, the District of Columbia, or any territory or insular possession subject to United States jurisdiction.”

Final rule section 556.401, at paragraph (a)(7) adds “Trust” to the types of entities that are potentially qualified to hold leases on the OCS. A trust is one of the entities listed in the table in proposed rule section 256.401, but it is not among those potentially qualified entities that were listed in proposed rule section 256.400. In order to rectify this oversight, the final rule section adds “Trust” to the list of those potentially qualified set forth in final rule section 556.401, and adds that any such Trust must also be “organized under the laws of any State of the United States, the District of Columbia, or any territory or insular possession subject to United States jurisdiction.”

Final rule section 556.401(c) affirmatively states that BOEM may



issue a qualification number to one who has provided acceptable evidence of qualification. This is a clarification of proposed rule section 256.401(a), which stated: “[p]rovide your . . . qualification number if you have qualified with us.” The final rule merely affirmatively states that BOEM will issue that number, if appropriate.

Section 556.402. How do I make the necessary showing to qualify and obtain a qualification number? This section describes the types of evidence that BOEM will require in order to qualify a person to hold leases on the OCS. Section 556.402 replaces proposed rule section 256.401, including the table in the latter. There are certain minor differences between the proposed and final rule sections, including the following:

Both proposed rule section 256.401 and final rule section 556.402 list the evidence needed to show that one is qualified to hold leases on the OCS. In the final rule, we added that such evidence must be “acceptable to BOEM.” This requirement was implicit in the proposed rule. There would be no point in requiring evidence of qualification if BOEM were obligated to accept evidence that is not sufficient as to form or content to enable BOEM to be certain of the status of the submitter. In order to be certain of this status, it is reasonable to expect that only evidence “acceptable to BOEM” will be accepted.

Final rule section 556.402, subparagraph (c)(3), adds the requirement that an entity seeking to qualify to hold leases on the OCS provide BOEM with a list of persons authorized to bind the entity, and that such list be kept current. This subparagraph reminds the entity that it is up to the entity, (and therefore, not up to BOEM) to determine who in its organization is authorized to bind it. BOEM believes that the requirement to provide a list of persons authorized to bind an organizational entity is a logical extension of the requirement to provide the various documents listed in the proposed rule table at proposed rule section 256.401. BOEM also believes that providing and updating this list of persons, along with the other evidence required by final rule section 556.402, is a simpler and more manageable way to approach the question of who is authorized to bind a specific entity than the prior regulations or the language used in the proposed rule.

Final rule section 556.402 contains several paragraphs that did not appear in the analogous section of the proposed rule (section 256.401). Both proposed rule section 256.401 and final rule section 556.402 address traditional

business entities, such as corporations and partnerships. There are, however, other types of business organizations that are eligible to qualify to hold leases on the OCS, but that would not have been covered by the qualifications provision in the proposed rule.

Paragraph (e) of final rule section 556.402 therefore addresses business entities with non-traditional business forms. Some of these non-traditional business forms do not have standard positions, such as “president” or “secretary.” Accordingly, paragraph (e) of final rule section 556.402 does not name a particular position but states that an individual from the highest level of management of an entity with a non-traditional business form, who is authorized by the entity’s operating agreement or governance documents to submit evidence of eligibility to hold OCS leases, must submit such evidence. Paragraph (e) is a clarification of proposed rule sections 256.401(c)(4) and 256.401(d), both of which sought to ensure that BOEM does business with the person within a qualified organization who has the authority to bind that organization. Paragraph (e) is a general catch-all meant to ensure that there are no gaps in BOEM’s regulations when it comes to the evidence necessary to demonstrate qualification to hold leases on the OCS.

Final rule section 556.402(f) states the entity that obtains a qualification number is responsible for ensuring that the number is used only for the purposes that the entity’s governance documents allow. This was implicit in the proposed rule, but the new final subsection makes it clear that it is not BOEM’s responsibility to ensure that entities are not going beyond their allowed powers in their dealings on the OCS.

Lastly, final rule section 556.402(h) makes it clear that one may not hold leases on the OCS until BOEM has issued a qualification number. This concept was also implicit in the proposed rule and in BOEM’s prior regulations in the requirement to obtain the qualification number.

Section 556.403. Under what circumstances may I be disqualified from holding a lease on the OCS? This section describes the circumstances under which a person may be excluded or disqualified from holding a lease on the OCS. Final rule section 556.403 substantively replicates proposed rule section 256.402, with some minor language changes. The language at final rule section 556.403, paragraph (b), tracks the language of OCSLA more closely than did the language of the corresponding section in the proposed

rule. This was done at the request of a commenter and ensures that paragraph (b) (“You may not hold an OCS lease if . . . The Secretary finds, after notice and hearing, that you or your principals fail to meet due diligence requirements or to exercise due diligence under section 8(d) of OCSLA . . . on any OCS lease”) could not be interpreted to conflict with section 8(d) of OCSLA (“No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other leases.” 43 U.S.C. 1337(d)).

Also, the language at final rule section 556.403, paragraph (c), was revised to make it clear that either BOEM or BSEE could offer notice and opportunity for a hearing to determine whether operating performance is unacceptable, pursuant to either appropriate BOEM regulations or appropriate BSEE regulations. This clarification is necessary because of the division of BOEMRE into two agencies, and the fact that both BOEM and BSEE have a role in determining whether operating performance is unacceptable.

Section 556.404. What do the non-procurement debarment rules require that I do? Final rule section 556.404 details how to comply with the Department’s non-procurement debarment rules, specifically those that relate to entering covered transactions and notifying BOEM if you know that you or your principals are excluded or disqualified, or have been indicted or convicted of a crime. It is substantively the same as proposed rule section 256.403, with minor conforming language changes.

Section 556.405. When must I notify BOEM of mergers, name changes, or changes of business form? This section provides that lessees must notify BOEM of any merger, name change, or change of business form as soon as practicable, but in no case later than one year after the change or action. Final rule section 556.405 is the same as the proposed rule section, 256.404, with one exception. The proposed section stated “[y]ou must immediately notify BOEM of a name change,” but then allowed up to one year within which to do so. A commenter pointed out the inconsistency between the word “immediately” and the one-year period, and BOEM has therefore dropped the word “immediately” from final rule section 556.405 and replaced it with “as soon as practicable.”

This same commenter opined that providing BOEM with name changes or changes of business form would be too burdensome and that BOEM has “multiple ways to learn of a merger or name change.” BOEM does not agree

with these opinions. BOEM has run into difficulties in the past brought about by name changes and/or mergers about which BOEM had not been timely informed. It is not practicable for BOEM to monitor filings of name changes and merger information in each State. BOEM does not see that it is a burden for entities doing business on the OCS to keep BOEM apprised of changes of name or corporate form, such as may occur with a merger.

#### 6. Subpart E—Issuance of a Lease

Subpart E—Issuance of a Lease, is divided into four subdivisions in the final rule: “How to Bid,” “Restrictions on Joint Bidding,” “How Does BOEM Act on Bids?” and “Awarding the Lease.” The regulations in the first subdivision delineate the process of submitting a bid to BOEM and the information that must be submitted with the bid. The next subdivision, “Restrictions on Joint Bidding,” explains the effect of being placed on BOEM’s Restricted Joint Bidders List and the reporting requirements for those placed on the List. “How Does BOEM Act on Bids?” presents information as to BOEM’s acceptance or rejection of bids, the treatment of a tied bid, and the options available to a high bidder whose bid was rejected. The last subdivision of Subpart E, “Awarding the Lease” explains the procedures the bidder must follow after BOEM accepts its bid.

Following is a section-by-section analysis of the sections within Subpart E.

#### How To Bid

Section 556.500. Once qualified, how do I submit a bid? Final rule section 556.500 states generally that each bidder must submit a separate sealed bid for each tract or bidding unit, along with a bid deposit. The final rule section specifies that information regarding the timing of bid submission, and the amount and payment method of bid deposits, will be set forth in the final notice of sale. Final rule section 556.500 appeared at proposed rule section 256.410.

Paragraph (c) of final rule section 556.500 reaffirms the practice from the prior regulations (section 556.46(b)) and the proposed rule (section 256.410(b)) that the final notice of sale will specify the amount of the bid deposit. Paragraph (c) adds, however, that if not so specified, the “default” deposit amount will be twenty percent of the bid, the deposit amount that has been required for many years. As pointed out by a commenter, a bid deposit of twenty percent is the “status quo.” Another commenter noted that the bid deposit is

“typically set at one-fifth of the bonus bid amount.” BOEM finds it unnecessary to seek comments on this “default” language, which merely reflects the “status quo.”

Section 556.501. What information do I need to submit with my bid? Final rule section 556.501 reiterates requirements, found in section 26(a)(1)(A) of OCSLA (43 U.S.C. 1352(a)(1)(A)), to provide geological and geophysical (G&G) data to BOEM upon request. Current BOEM regulations in part 551 of Title 30 of the CFR, “Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf,” already address this requirement, as applied to G&G activities permitted “on unleased lands or on lands leased to a third party,” 30 CFR 551.12(a). Therefore, current part 551 already applies to lands being bid upon, but BOEM has included section 556.501 in this final rule, because part 556 sets forth bidding and leasing procedures/requirements, and the requirement to provide G&G information with a bid logically falls within this comprehensive whole. Including final rule section 556.501 ensures that bidders are aware that they may need to submit requested G&G information at the time of bidding.

#### Restrictions on Joint Bidding

In the prior regulations, there are a series of definitions and other provisions that apply only in the context of restricted joint bidding, which were not in the proposed rule. Prior regulation section 556.40 lists 13 definitions, which help explicate the joint bidding restrictions. The proposed rule Preamble stated that section 256.40 (now 556.40) was “[e]liminated as redundant,” but, upon reviewing the proposed rule and the comments, BOEM decided that these definitions and provisions are not “redundant,” but instructive and helpful to explain the concepts underlying restrictions on joint bidding. The definitions have been retained in the final rule, some in the final rule definitions section, 556.106, and some in the provisions under this subheading of “Restrictions on Joint Bidding,” made up of final rule sections 556.511 to 556.515.

Further, there are several provisions previously found at 556.43(d) and (e), which explain how to measure oil, natural gas liquids, and natural gas, for purposes of determining whether a person’s production has exceeded 1.6 million barrels in the prior period, and thus whether he or she will be on the Restricted Joint Bidders List (sometimes referred to below as the “List”). For example, prior section 556.43(d) stated that: “[a]ll measurements of crude oil

. . . under this section shall be at 60 degrees Fahrenheit.” These important provisions were left out of the proposed rule with no explanation other than that section 256.43 (previously 556.43) was “simplified and reorganized.” BOEM has reconsidered this “simplification and reorganization” and has determined that these measurement-describing provisions should be retained. They appear in final rule section 556.513(d).

Section 556.511. Are there restrictions on bidding with others and do those restrictions affect my ability to bid? This section prohibits joint bidding by major oil and gas producers under certain circumstances. Final rule section 556.511 is substantively the same as proposed rule section 256.411, but the final rule section has one additional paragraph. This additional paragraph, 556.611(d), makes clear that a person on the Restricted Joint Bidders List may not enter into a pre-bidding agreement for the conveyance of any lease interest to another person on the List. The prohibition on pre-bid agreements between persons on the List was addressed in prior section 556.44 (c), but was not addressed in the proposed rule. BOEM has decided to retain this provision because of its continued relevance and applicability.

Section 556.512. What bids may be disqualified? This section provides the circumstances under which a bid for any oil and gas lease will be disqualified and/or rejected. Final rule section 556.512 does not have a counterpart in the proposed rule, but it was found in the prior regulations at section 556.44. The Preamble to the proposed rule stated that section 256.44 (now 556.44) was “simplified,” and the reader was directed to proposed rule section 256.402 in its stead, but this “simplification” would create a discrepancy. Current section 556.44 addresses disqualification of certain types of bids involving persons on the List of Restricted Joint Bidders. Proposed rule section 256.402 has nothing to do with joint bidding, but sets forth three discrete situations where any person may be disqualified from holding a lease (exclusion due to the non-procurement debarment and suspension system, failure to exercise due diligence, or unacceptable operating performance). The substance of prior section 556.44 did not appear anywhere in the proposed rule, but BOEM has decided that it is necessary for a full understanding of the effects and ramifications of being placed on the Restricted Joint Bidders List. Therefore, the text of prior section 556.44 has been retained, verbatim, with only necessary

conforming changes, in final rule section 556.512.

Section 556.513. When must I file a statement of production? This section explains the circumstances under which a lessee must prepare and send to BOEM a statement describing its oil and gas production and what the statement is to contain. Final rule section 556.513 contains the substance of proposed rule section 256.412, as well as three subparagraphs previously found at prior section 556.40(l) and omitted from the proposed rule. Proposed rule section 256.412 explained that a person on the List of Restricted Joint Bidders would have to file a statement of production when its production exceeded 1.6 million barrels of oil, natural gas liquids, and natural gas during the prior production period. The prior regulations had the same provision, but the prior regulations, at section 556.40(l), also defined what "Production" meant with respect to each of these resources. Appropriate portions of the 556.40(l) definitions have been retained in final rule section 556.513 to make clear what is to be included in the measurement of crude oil, natural gas liquids, and natural gas when determining production chargeable to the prior production period.

Section 556.514. How do I determine my production for purposes of the Restricted Joint Bidders List? This section details what production must be counted when determining whether a company should be considered a "restricted bidder." Final rule section 556.514 replicates proposed rule section 256.413, with some concepts included from prior sections 556.40 and 556.43. Section 556.43(d) states that "[a]ll measurements of crude oil and liquefied petroleum products [referred to as natural gas liquids in the final rule] . . . shall be at 60 degrees Fahrenheit." The proposed rule did not include the 60 degree Fahrenheit measurement parameter, but BOEM has decided to retain it as a necessary instruction for those persons who need to determine their production for purposes of the Restricted Joint Bidders List. The measurement parameter is in final rule section 556.514(a)(1).

Also in final rule section 556.514(a)(1) is a reference to the equivalency factors set forth in 42 U.S.C. 6213(b)(2) and (3), which state, respectively: "[o]ne barrel of natural gas equivalent equals 5,626 cubic feet of natural gas measured at 14.73 pounds per square inch [(PSI) relative to the mean sea level, or] (MSL) and 60 degrees Fahrenheit" and "[o]ne barrel of natural gas liquids equivalent equals 1.454 barrels of natural gas liquids at 60 degrees Fahrenheit." These

two equivalencies were found in the prior regulations at section 556.43(e), but were omitted from the proposed rule. BOEM believes that these equivalencies are also necessary instructions for persons attempting to determine whether their production would place them on the Restricted Joint Bidders List.

The final rule, at section 556.514(d), also retains the definition of "subsidiary" found in prior section 556.43(a)(3), but not contained in the proposed rule. Final rule section 556.514(f), which further explains how measurements of resources must be made, was not in the proposed rule, but was found at prior section 556.40(l)(1) and (2).

Final rule section 556.514(e) is a logical extension of the interplay among prior section 556.40's definitions of "economic interest" and "owned" and prior section 556.43(b). The definitions in prior section 556.40 applied to joint bidding and restrictions thereon. The definition of "economic interest" defines certain types of passive interests, such as a royalty interest or a net profits interest. The definition of "owned" in prior 556.40 included "having . . . an economic interest in" the production of crude oil, natural gas, or natural gas liquids. And 556.43(b) stated that a person is chargeable, for purposes of joint bidding restrictions, with production that it "owns." Therefore, reading these provisions logically together, a person's economic interest in production must be counted in that production chargeable to him or her for purposes of determining whether he or she is on the Restricted Joint Bidders List. This concept from the prior regulations is retained in the final rule in section 556.514(e) and the text was not changed from how it was originally proposed.

Section 556.515. May a person be exempted from joint bidding restrictions? This section provides the circumstances under which a person may be exempted from joint bidding restrictions. Final rule section 556.515 is based on proposed rule section 256.414. Proposed section 256.414, however, did not state the specific regulatory sections from which exemption from the joint bidding restrictions or reporting requirements may be granted. These specific designations were found in the prior regulations, at section 556.41(d), and have been retained in final rule section 556.515.

#### How Does BOEM Act on Bids?

Section 556.516. What does BOEM do with my bid? This section outlines the

procedures BOEM will follow when reviewing bids received for leases on the OCS and when handling tie bids.

Section 556.516 of the final rule is based on proposed rule section 256.416.

Proposed section 256.416(b) stated that BOEM would accept or reject all bids within 90 days, or a longer time if BOEM extended the 90-day period.

Section 556.516(b) of the final rule adds that BOEM will timely notify bidders in writing of a decision to extend the 90-day period. Proposed section 256.416(d) states that the Attorney General may review the results of a sale before BOEM accepts any bid. This requirement is repeated in final rule section 556.516(d), with additional language explaining that the Attorney General must act within 30 days and may consult with the Federal Trade Commission. Both of these strictures are found in section 8(c)(1) of OCSLA (43 U.S.C. 1344(c)(1)).

BOEM received the following comment: "There is no policy reason not to allow co-ownership by agreement of bidders with a tie bid, when the tie bidders are on the restricted joint bidder list. Those parties cannot have communicated or agreed with respect to the bid, but going forward could agree to an assignment creating co-ownership after the lease is awarded." Neither the prior regulations (see 30 CFR 556.47(c)), nor the proposed rule, (see section 256.416(c)), permit tie high bidders who are both (or all) on the Restricted Joint Bidders List to accept a lease jointly. BOEM considered the comment above but concluded that there is no way to know whether tie bidders "communicated or agreed with respect to the bid." Therefore, BOEM has decided that the current policy is a sound one and will not be changed.

There is one significant difference between proposed rule section 256.416 and final rule section 556.516. Proposed rule section 256.416(c) addressed tie bids and stated that if there was no agreement among the bidders as to who would receive the lease, BOEM would "award the lease to the high bidder selected by lot." The prior regulation, at section 556.47(e)(2), did not allow a bid to be awarded by lot, but stated that if an agreement from the tie bidders was not submitted to BOEM within 15 days, "all bids shall be rejected."

BOEM has reconsidered the "award by lot" policy enunciated in the proposed rule, and has decided not to adopt that policy. The policy is inherently unfair to one of the bidders and is inconsistent with BOEM's long-standing policy that if no bids are accepted, the lease will be withheld by BOEM and offered in the next lease sale. This policy affords BOEM the

opportunity to obtain a greater return, furthering OCSLA's goal that BOEM obtain fair market value for OCS leases. *See*, section 18(a)(4) of OCSLA (43 U.S.C. 1344(a)(4)). BOEM will therefore retain the policy in the existing regulation that all tie bids, for which a timely agreement delineating who will receive the lease has not been submitted to BOEM, will be deemed rejected. This policy is stated in final rule section 556.516(c)(3).

Section 556.517. What may I do if my high bid is rejected? This section describes the reconsideration procedures that apply in the event that a high bid is rejected by BOEM. Proposed rule section 256.417 would have allowed a bidder whose bid was rejected to request reconsideration of that rejection within 15 days, and stated that the bidder would receive a written response. The previous regulations at section 556.47(e), and the proposed rule at section 256.410, stated that the request for reconsideration is to be made to the Secretary. The proposed rule section did not address whether such a request could be appealed, but the previous regulations at 556.47 stated that decisions on high bids are not subject to review by the Department's Office of Hearings and Appeals.

BOEM received a comment on proposed section 256.417 that requested more detail regarding reconsideration of rejection of a high bid, specifically as to the review process for a reconsideration request. In response to the comment, BOEM has added detail to the final rule section to clarify the procedures to be followed by the bidder requesting reconsideration, and those that will be followed by BOEM when it receives such a request. Therefore, final rule section 556.517 states that the decision of the authorized officer on bids is the final action of the Department, and that the request for reconsideration of such a decision must be made to the Director, as the Secretary's delegate, and must include evidence as to why the decision should be reconsidered. The final rule section retains the section 556.47 statement that the decision on the reconsideration is not subject to review by the Department's Office of Hearings and Appeals.

#### Awarding the Lease

Section 556.520. What happens if I am the successful high bidder and BOEM accepts my bid? This section describes the steps involved in the lease award process. BOEM received several comments on proposed section 256.420, which appears at final rule section 556.520, particularly on proposed section 256.420(c). That paragraph

stated that if a successful bidder did not return the executed lease in the prescribed time or if it otherwise failed to comply with the regulations, its deposit would be forfeited "and [BOEM] may take appropriate action to collect the full amount bid." Three commenters pointed out that, traditionally, in the scenario posited above, the bidder's deposit was forfeited, but BOEM had never attempted to collect the full amount bid. One of these commenters stated that "[p]ayment of the one-fifth amount is sufficient penalty," and payment of amounts beyond that "is not warranted." Another of the commenters pointed out that forfeiting the "significant penalty" of the one-fifth deposit "allows lessees to make an informed decision on leasing if information relating to the area becomes available after the bids are made." The third commenter "objected" to the forfeiture of the full bid amount, but also suggested some alternatives for BOEM's implementation of this provision, such as offering the second-highest qualified bidder the lease if the high bidder forfeits.

BOEM generally agrees with the comments. Accordingly, final rule section 556.520 does not include the language that, in a forfeiture situation, BOEM may take action to collect the full amount bid. Nor will BOEM offer the lease to the second-highest bidder, as that could violate BOEM's mandate to obtain fair market value for all leases. Instead, BOEM will retain the current policy, now expressed in the regulations at section 556.47(g), that in the case of forfeiture, the forfeiting bidder will lose its deposit.

BOEM also received a comment on another aspect of proposed section 256.420(c). The comment noted that the proposed section states that a high bidder must "execute and return the lease within 11 business days after receipt" and contrasted that with the prior regulation, which stated that "the bidder shall, not later than the 11th business day after receipt of the lease, execute the lease." *See*, section 556.47(f). The comment pointed out that while the current language does not specify that the executed lease must be returned to BOEM by the 11th day, the proposed rule section does so specify. The comment asked if this "signif[ies] a change in how the process is administered?" The rule does not signify a change in the interpretation of the regulation or in the administration of the process. The prior regulation was interpreted to mean that the lease must be executed and returned by the 11th business day after it is received, and the proposed and final rules continue this

policy, but make the language more precise.

Section 556.521. When is my lease effective? Final rule section 556.521 and proposed rule section 256.421 are the same. They both state BOEM's long-standing policy that a lease is effective on the first day of the month following the month in which BOEM executes the lease, but that a lessee may request that its lease be made effective as of the first day of the month in which BOEM executes it. The final rule also adds a provision that, if BOEM agrees to make it effective as of the earlier date, it will so indicate when it executes the lease.

Section 556.522. What are the terms and conditions of the lease and when are they published? This section provides that the terms and conditions of the lease will be stated in the final notice of sale, as well as in the lease instrument itself. Final rule section 556.522 is based on prior section 556.49. The prior section stated that oil and gas and sulfur lease forms will be approved by the BOEM Director. The prior section also mentioned forms for other minerals. The section was not included in the proposed rule, the Preamble of which stated that the "[d]iscussion of form[s] for other minerals [was] eliminated as redundant." However, the proposed rule eliminated all of prior section 556.49 and BOEM has decided to retain, in final rule section 556.522, the statement as to forms for oil and gas and sulfur leases. Final rule section 556.522 also echoes final rule section 556.308(a)(2), which states that the terms and conditions of the lease will be found in the final notice of sale.

#### 7. Subpart F—Lease Term and Obligations

##### Length of Lease

Section 556.600. What is the primary term of my oil and gas lease? Final rule section 556.600 (a) and (b) closely follows OCSLA and makes clear that the initial period/primary term of a lease will be five years, unless BOEM determines that a longer initial period/primary term, up to 10 years, is necessary due to unusually deep water or unusually adverse conditions. Proposed section 256.600 stated that an initial period of an oil and gas lease "may range from five to ten years," but provided no clarification as to why there could be such a range. Section 8(b) of OCSLA (43 U.S.C. 1337(b)) states that the initial period of a lease must be for five years, or for up to 10 years, if extension of the lease term is necessary due to unusually deep water or other unusually adverse conditions.

Final rule section 556.600 (a) and (b) follows OCSLA's example, with one slight difference. OCSLA most commonly refers to the initial term of a lease as the "initial period," but also refers to the initial term as the "primary term." See, e.g., section 8(a)(7)(C) of OCSLA (43 U.S.C. 1337(a)(7)(C)). BOEM uses the phrase "primary term" in the final rule.

Proposed rule section 256.600 used the term "initial period" to refer to the originally granted length of a lease. The terms "primary term" and "initial period" were used interchangeably throughout BOEM's prior regulations to mean the same thing (for example, 556.37(a) and (b) refer to "initial period," while 556.68(b) and (c), and 556.70 refer to "primary term") and BOEM has elected to use the phrase "primary term" rather than "initial period" in this final rule in order to better reflect the lease term description that is most commonly used in the U.S. oil and gas industry.

The final rule removes the provision found in BOEM's previous regulations at section 556.37 and proposed rule section 256.600, which stated that, for leases in water depths between 400 and 800 meters, the primary term will be eight years, subject to administrative cancellation if no exploratory well is begun during the first five years after lease issuance. No further notice and comment are required for this change, as BOEM notified the public of the change in 2009 and provided an opportunity to comment, and all lease sales since 2009 have been consistent with this new practice. Specifically, BOEM stopped issuing leases with eight-year primary terms beginning with Central Gulf of Mexico Lease Sale 213, held on March 17, 2010. On November 16, 2009, eight months after the publication of the proposed rule, the MMS published the Proposed Notice of Sale for Lease Sale 213 (PNOS) (74 FR 58975). The PNOS notified the public that BOEM was considering dropping the eight-year primary term, and replacing it with a five-year primary term, which could be extended another three years if certain conditions were met. The PNOS also detailed that this five-year primary term, with a possible three-year extension, would apply in water depths between 0 and 800 meters, whereas a seven-year primary term, with a possible three-year extension, would apply in water depths between 800 and 1600 meters. In more than 1600 meters of water, the PNOS stated that the primary term would be 10 years.

The PNOS also stated that, if a five- or seven-year primary term were not extended, the lease would expire,

removing the need for administrative cancellation. The MMS received comments on the change from an eight-year primary term to a five- or seven-year primary term, as well as on the change from cancellation to expiration. The MMS carefully considered these comments and responded to them in the Final Notice of Sale for Lease Sale 213 (FNOS). In the FNOS, the MMS stated that it had decided to no longer offer leases with eight-year primary terms and to proceed with offering leases in Sale 213 with five- and seven-year primary terms, which would be subject to extension or expiration.

BOEM has offered five- and/or seven-year primary terms in all eight lease sales held since Sale 213 and intends to continue doing so. To avoid any confusion about whether BOEM intends to revert to the pre-2010 practice of issuing leases for eight year terms contingent on drilling in the first five years, however, final rule section 556.600 tracks OCSLA closely in stating that the primary term of all leases will be five years, unless BOEM specifies otherwise. Unlike the prior regulations and the proposed rule, section 556.600 in the final rule does not attempt to "specify otherwise" in the regulation itself. Instead, it states, at subsection 556.600(c), that BOEM will specify the primary term in the final notice of sale and in the lease instrument, giving BOEM flexibility for the future.

The new language will not preclude BOEM from offering eight year leases, nor does the existing regulation mandate eight year leases. Thus, the rule does not change BOEM's current practice. Accordingly, pursuant to 5 U.S.C. 553(b)(3)(B), BOEM, for good cause, finds that notice and public comment are unnecessary. In any event, as noted above, the public had an opportunity to express its views on the underlying policy in response to the PNOS published in the **Federal Register** in 2009.

Section 556.601. How may I maintain my oil and gas lease beyond the primary term? This section lists the ways in which a lessee may maintain its lease for a period of time after the end of the primary term. Final rule section 556.601 is substantively the same as proposed rule section 256.601, with some minor language changes for clarity. Proposed rule section 256.601(a) included, among the ways of maintaining a lease beyond its primary term, the granting of a suspension, but final rule section 556.601(f) retains the more specific language from prior sections 556.37(b) and 556.73 that maintenance of a lease beyond the primary term will not result from a suspension imposed due to gross

negligence or willful violation of a lease provision or regulation.

Section 556.602. What is the primary term of my sulfur lease? As described in proposed rule section 256.602, final rule section 556.602 states that the primary term of a sulfur lease will be not more than 10 years, as mandated by section 8(j) of OCSLA. (43 U.S.C. 1337(j)). Proposed section 256.602 stated that a sulfur lease is subject to administrative cancellation if an exploratory well was not begun in the first five years. BOEM is no longer following the practice of cancelling leases in these circumstances, and this provision has been dropped from the final rule. Instead, final rule 556.602 states that the sulfur lease will expire at the end of the primary term if not maintained in accordance with the regulations.

Section 556.603. How may I maintain my sulfur lease beyond the primary term? This section lists the ways in which a lessee may maintain its sulfur lease after the end of the primary term. Final rule section 556.603 is substantively the same as proposed rule section 256.603, with some minor language changes for clarity. Proposed rule section 256.603 included, among ways of maintaining a lease beyond its primary term, the granting of a suspension, but final rule section 556.603 elaborates that such an extension cannot result from a suspension imposed due to gross negligence or willful violation of a lease provision or regulation, as was stated at prior section 556.73.

#### Lease Obligations

Section 556.604. What are my rights and obligations as a record title owner? This section outlines the rights and obligations of a record title holder of an OCS lease. Final rule section 556.604 includes, with different subsections and some additional language, proposed rule sections 256.605 and 256.612. Proposed rule section 256.605 was entitled, "What are my obligations as a record title owner?" and proposed rule section 256.612 was entitled, "May I assign operating rights?" In the final rule, BOEM has combined these sections, as they both address the rights and obligations of a record title owner.

Proposed rule section 256.612 stated that a record title owner may assign (sever) operating rights, and refers to these assignments as "subleases," which they are. The term "assignment of operating rights" has been used in the past, but is inaccurate when referring to an initial severance of operating rights. Operating rights are a part of the whole of a record title interest. When they are initially severed, they are actually

carved out of the record title and subleased to another party, while the record title owner retains the rest of the record title interest, *i.e.*, that part of the record title from which the operating rights were severed. This is different from a true assignment of a record title interest, wherein the assignor does not retain the corresponding part of the record title interest. And it is also different from a true assignment of an operating rights interest, which would occur when one who owns operating rights transfers his operating rights interest to another. Final rule section 556.604(b) retains the proposed rule's use of the term "sublease" and specifically states that a record title owner may sublease its operating rights to someone else, who is thereby the sublessee, referred to in the regulations as the operating rights owner.

Both proposed rule section 256.612 and final rule sections 556.604(b) and (c) explain that operating rights must be described by officially designated aliquot parts, and that, within any aliquot part, a record title owner may create a maximum of two subleases by depth. The one, or two, subleases may include the entire depth of the lease, but if they do not, any depth intervals not subleased are retained by the lessee/sublessor. Final rule section 556.604(c) elaborates that if two subleases are created by depth level, the two subleases must abut each other, with no gap in between. The "no gap" concept did not appear in the proposed rule, but it is, and has been, BOEM's long-established policy, and imposes no new duty on lessees. Therefore notice and comment is unnecessary.

Both proposed rule section 256.605(a) and final rule section 556.604(d) explain that a record title interest owner is jointly and severally liable, with all other record title owners and all operating rights owners, for all non-monetary obligations of a lease that accrue while it holds record title. Final rule section 556.604(f) also contains the concept that a record title owner who obtained its record title through assignment is responsible for remedying all existing environmental or operational problems on a lease, with subrogation rights against prior lessees. This concept was found in both the prior regulations and in the proposed rule in sections addressing transfers of lease interests, (556.62(e) and 256.618, respectively), as it is in the final rule (556.713 and 556.807), but it is also appropriately included here, as the requirement that an assignee remedy all existing environmental and operational lease problems is an "obligation" of the assignee-record title owner.

Proposed rule section 256.605(b) and final rule section 556.604(f) both also address the responsibility of record title owners for monetary obligations, pursuant to the Federal Oil and Gas Royalty Simplification and Fairness Act. Both sections make clear that, with respect to operating rights retained by a record title owner, the record title owner is primarily liable for monetary obligations, but with respect to those operating rights that have been subleased to others, the record title owner becomes secondarily liable, while the sublessee/operating rights owner is primarily liable.

Section 556.605. What are my rights and obligations as an operating rights owner? Proposed rule section 256.606 and final rule section 556.605 both address the rights and obligations of an operating rights owner, as opposed to a record title owner.

Final rule section 556.605(d) was added as the result of two comments on the proposed rule. The comments pointed out that the proposed rule was inconsistent in that proposed section 256.605(a) stated that operating rights owners were jointly and severally liable with record title owners for all non-monetary obligations, but proposed section 256.606(c) stated that operating rights owners were so liable only with respect to that portion of the lease subject to their operating rights. To make clear that the latter concept is correct, BOEM added final rule section 556.605(d), which states: "[a]n operating rights owner is only liable for obligations arising from that portion of the lease to which its operating rights appertain and that accrue during the period in which the operating rights owner owned the operating rights."

Proposed rule sections 256.606(c) and (d) are essentially repeated in final rule sections 556.605 (e) and (g). In both cases, the former section states that an operating rights owner is jointly and severally liable, with all other operating rights owners and record title owners, for non-monetary obligations. Also in both cases, the latter section states that an operating rights owner is liable for monetary obligations in proportion to its share of operating rights. Final rule section 556.605(g) goes on to point out that operating rights owners are primarily liable for these monetary obligations, while (as stated in final rule section 556.604(f) and pointed out above) record title owners are secondarily liable.

Final rule section 556.605(f) also makes clear that operating rights owners that obtained rights through assignment are responsible for remedying all existing environmental or operational

problems on a lease, with subrogation rights against prior operating rights owners. As mentioned above, this concept was found in both the prior BOEM regulations and in the proposed rule in sections addressing transfers of lease interests, (556.62(e) and 256.618, respectively), as well as in other sections of the final rule (556.712 and 556.807), but it is also appropriately included here, as the requirement that an assignee remedy all existing environmental and operational lease problems is an "obligation" of an assignee of operating rights.

Helium

Section 556.606. What must a lessee do if BOEM elects to extract helium from a lease? This section provides that BOEM reserves the ownership of, and the right to extract, helium from all gas produced from an OCS lease, and describes what BOEM will do if it requests you to deliver helium from operations associated with a lease. Final rule section 556.606 repeats proposed rule section 256.630. The final rule makes no changes to the proposed rule, other than conforming changes, such as changing "MMS" to "BOEM."

8. Commentary on Subparts G & H—Transferring Interests in a Lease

The proposed rule followed the general format of the prior regulations in addressing together, in one regulatory subpart, both transfers of record title interests and transfers of operating rights interests. These two types of transfers are not the same, however, and they may have different consequences. Addressing them in the same regulatory sections has sometimes led to confusion and ambiguity. Therefore, in the final rule, BOEM divided the provisions dealing with assignment of different types of lease interests into two different subparts. Subpart G includes those provisions detailing the effects of an assignment of a record title interest, while subpart H includes those provisions detailing the effects of a sublease or subsequent assignment of an operating rights interest. None of the provisions in these subparts contains anything substantively new relative to the prior regulations, but the final rule more clearly separates out and explains the effects of an assignment of each type of lease interest on both the assignor and assignee. Subpart G consists of sections 556.700 through 556.716, and subpart H consists of sections 556.800 through 556.810. A section-by-section analysis of the sections in Subpart G is presented below, followed by a section-by-section analysis of the sections in Subpart H.

### 9. Subpart G—Transferring All or Part of a Record Title Interest in a Lease

Section 556.700. May I assign or sublease all or any part of the record title interest in my lease? This section describes how a company may apply for approval to assign its whole or partial record title interest in its lease, or in any aliquot(s) thereof or to sublease operating rights. Proposed rule sections 256.610, 256.611, and 256.612 were collapsed and subsumed into final rule section 556.700, insofar as they apply to transfers of record title interests. Proposed rule section 256.610 stated that all transfers of lease interests require BOEM approval. Proposed rule section 256.611 and proposed rule section 256.612 repeated this requirement, with respect to transfers of “lease interests,” and operating rights, respectively. The requirement that BOEM approve transfers of record title interests and severances of operating rights interests appears in final rule sections 556.700(a), (b), and (c). Proposed rule sections 256.611 and 256.612 also specified that transfers must be properly described by aliquot parts and/or depth. This requirement of proper description is retained in final rule section 556.700(c).

Proposed rule section 256.611 referred to both “subdivisions” and “aliquot parts” when describing transfers of lease interests, but in final rule section 556.700, we removed the reference to subdivisions, retaining only the reference to aliquot parts, in order to reduce the potential for confusion. We also removed the definition of “aliquot part” from this section and moved it into the definitions section of the rule, section 556.106.

The last sentence of proposed rule section 256.611, stating that BOEM may disapprove a transfer when the assignor or assignee has unsatisfied obligations under this chapter, has been moved to final rule section 556.704, entitled, “When would BOEM disapprove an assignment or sublease of an interest in my lease?” Placement in that final rule section is more appropriate.

Section 556.701. How do I seek approval of an assignment of the record title interest in my lease, or a severance of operating rights from that record title interest? This section describes the process for obtaining BOEM approval of an assignment of a record title or operating rights interest in an OCS lease. Final rule section 556.701(a) was found at proposed rule section 256.613(a). The proposed rule section, at 256.613(a)(1), set out the official form numbers and names that one would use to effectuate and request approval of a

transfer of lease interest. The final rule, however, merely states that the BOEM Regional Director will provide the form to be used to request and record such a transfer. BOEM made this change to retain flexibility as to form name and number in case these identifiers change in the future.

Proposed rule section 256.613(b), which provided that BOEM must consult with and consider the views of the Attorney General before approving a transfer of a lease interest, appears at final rule section 556.701(b). Finally, final rule paragraph 556.701(b) retains from prior section 556.65 the statement that the Secretary may act on a transfer if the Attorney General does not respond to a consultation request within 30 days of that request.

Section 556.702. When will my assignment result in a segregated lease? Final rule section 556.702(a) and proposed rule section 256.613(a)(2) both make clear that a transfer of 100% of the record title interest in one or more aliquots of a lease results in segregating the lease into two leases, both of which are referred to as “segregated leases” and are subject to all the terms and conditions of the original lease. (Although it would be uncommon, it is also possible that a lease could be segregated into more than two leases.)

Final rule section 556.702 also contains a subsection that was not found in the proposed rule and was not in the prior regulations—556.702(b). This provision in the final rule clarifies the principles governing lease segregation. It is an outgrowth and corollary of the lease segregation concept expressed in proposed rule section 256.613(a)(2). Specifically, final rule section 556.702(b) sets forth the direct corollary to section 556.702(a) by making clear that transfer of anything less than 100% of the record title interest in a certain aliquot does not create a new lease, but creates a joint ownership situation between the assignee(s) and assignor(s) in the portion of the lease in which part of the ownership was transferred.

The last sentence of final rule section 556.702(b) states that a transfer of less than 100% of the record title to an aliquot(s) is subject to BOEM approval. This sentence reiterates the principle that all transfers of lease interests are subject to approval by BOEM, pursuant to section 8(e) of OCSLA (43 U.S.C. 1337(e)), the lease terms (see section 20 of the current lease form, Form BOEM–2005), and prior regulations. This sentence was added in the final rule to ensure that there is no doubt as to whether a transfer that creates a joint ownership in a portion of a lease would

constitute a lease transfer necessitating BOEM approval.

Section 556.703. What is the effect of the approval of the assignment of 100 percent of the record title in a particular aliquot(s) of my lease and of the resulting lease segregation? Final rule section 556.703 addresses the effects of a lease segregation (*i.e.*, a transfer of 100% of a record title interest in a particular aliquot of a lease, which creates a new lease to be in effect on the segregated aliquot). It combines part of proposed rule section 256.613(a)(2) with retained parts of BOEM’s prior regulations from section 556.68. Proposed rule section 256.613(a)(2) stated that, in the case of a lease segregation, the requirement to post the requisite financial assurance applies to each new lease. This concept has been carried through into final rule section 556.703(a).

An important clarification is made in final rule section 556.703(c). The proposed rule at section 256.613(a)(2) stated that upon lease segregation, “the newly segregated lease . . . is subject to all the terms and conditions of your original lease.” The ambiguity of this language could give rise to an improper inference in certain circumstances that the terms of the original lease pertaining to any applicable royalty suspension volume (RSV) would apply in full and equally to each of the segregated leases.

BOEM’s prior regulations in section 556.68(a) were more specific than those from the proposed rule’s section 256.613(a)(2), but are still ambiguous on this point. The prior regulation stated that “[r]oyalty, minimum royalty and rental provisions of the original lease shall apply separately to each segregated portion.” The prior regulation mentioned royalty provisions specifically, and stated that such provisions will apply “separately” to each lease, but its relationship to any unused RSV was not clear.

The ambiguity in the prior regulation may have led some to incorrectly infer that when a lease is segregated, each new lease would be allowed the entire amount of remaining available RSV that applied to the original lease. Such an interpretation would not have been justified. In the case of segregation of a deep water lease with an RSV into two leases, for example, that interpretation would have the substantive effect of doubling the remaining volume of royalty-free production. That is not the intent of offering particular leases with specified royalty suspension volumes under the authority of 43 U.S.C. 1337(a)(1)(H) or 1337(a)(3)(C) (the royalty relief provisions of the OCSLA enacted in the Deep Water Royalty



Relief Act of 1995) or 42 U.S.C. 19504 or 19505 (the deep gas and deep water royalty relief provisions in the Energy Policy Act of 2005). The correct interpretation is that if an offshore lease is divided through segregation, any remaining unused RSV must be shared by the segregated leases in a manner not to exceed the total amount of the remaining unused RSV.

Final rule section 556.703(c) clarifies that in a lease segregation, each segregated lease is not individually entitled to the whole remaining RSV allowed to the original lease. Each lease segregation is unique and presents different circumstances that might affect the allocation of RSV. Therefore, paragraph (c) makes clear that BOEM will allocate the RSV among segregated leases on an equitable basis, considering all of the circumstances. Circumstances that may affect that allocation include the reasons for the segregation, whether the lease is producing, the relative production of the leases after segregation, future development plans, etc. The allocation of any remaining RSV will be stated in BOEM's approval of the assignment and segregation.

Final rule section 556.703(c) grows out of the proposed rule's statement at section 256.613(a)(2) that a newly segregated lease "is subject to all the terms and conditions of [the] original lease." The final rule section carries forward the concept that the newly segregated lease is "subject to" any RSV provision that applied to the original lease, but clarifies in what manner that RSV provision will be applied to the two now-segregated leases. The language of final rule section 556.703(c) also clarifies the prior regulation's statement that royalty provisions apply "separately" to each lease. The final rule's language continues to apply the RSV provision "separately" to each segregated lease, but clarifies that "separately" does not mean "equally."

Final rule section 556.703(d) retains from prior section 556.68(b) the principle that each segregated lease continues in effect for the primary term specified in the original lease, unless maintained thereafter pursuant to the regulations. Paragraph (d) makes express the principle that with respect to continuation beyond the primary term, each segregated lease stands on its own. To remain in force after the primary term, each segregated lease must, on its own, meet the requirements of section 556.601, regardless of whether other segregated leases, which were part of the original lease, meet such requirements. Production from one segregated lease will not keep any other lease that was part of the original lease

in effect beyond its primary term (unless, of course, the leases are included within the same unit). BOEM believes that the regulations are more clear with both principles expressly stated in the final rule.

Section 556.704. When would BOEM disapprove an assignment or sublease of an interest in my lease? Final rule section 556.704 sets forth when a transfer of a lease interest may be void or disapproved by BOEM. The final rule section combines parts of proposed rule section 256.611 and section 556.62 from BOEM's prior regulations. The last sentence of proposed rule section 256.611 stated that an assignment could be disapproved if the assignor or assignee had outstanding obligations under this chapter of the regulations. This provision appears at final rule section 556.704(a)(1). Prior section 556.62 voided assignments made pursuant to certain prelease agreements. This provision is found at final rule section 556.704(b).

Final rule section 556.704 also contains two provisions, at paragraphs (a)(2) and (a)(3), which make clear that BOEM may disapprove an assignment that is incorrect as to form or that does not comport with the regulations. Provision 556.704(a)(2) more clearly expresses the intent of proposed rule section 256.613, which listed the names and numbers of the forms that BOEM requires to be used to effectuate a transfer of record title or operating rights interests. Pursuant to the proposed rule, BOEM would accept only transfers submitted on these forms. Implicit in the requirement to use these forms is the requirement to complete them correctly. Transfers attempted to be submitted on other forms, on incorrectly completed forms, or using other documentation would not be accepted.

In order to allow more flexibility and avoid restricting BOEM to a particular form name or number stated in the regulations, the final rule states that the Regional Director will provide a form for use in transfers of record title or operating rights. As in the proposed rule, however, only the form provided by the Regional Director will be accepted by BOEM, and only when completed correctly. Therefore, final rule section 556.704(a)(2) makes clear that a transfer request submitted to BOEM may be rejected if not "acceptable as to form or content." The latter provision, 556.704(a)(3), provides that an attempted transfer that does not comport with the regulations or other applicable law will be disapproved.

Section 556.705. How do I transfer the interest of a deceased natural person

who was a lessee? This section outlines the procedures to follow to transfer an interest in an OCS lease from a deceased natural person. Final rule section 556.705 repeats proposed rule section 256.614, with minor wording changes.

Section 556.706. What if I want to transfer record title interests in more than one lease at the same time, but to different parties? Final rule section 556.706 repeats proposed rule section 256.615 with some minor language changes. Both the proposed and final rule sections address a lessee or other interest holder who desires to transfer interests it owns in different leases to different parties. Both sections note that in this situation, each transfer requires its own instrument, which must be originally executed and filed in duplicate with BOEM.

Section 556.707. What if I want to transfer different types of lease interests (not only record title interests) in the same lease to different parties? This section outlines the process for transferring different types of interests in a lease to different parties. Final rule section 556.707 derives from proposed rule section 256.615. That proposed rule section addressed the situation where interests in *different leases* are being transferred to different parties. The proposed rule said nothing, however, about the corollary situation: Where the interest holder desires to transfer different types of lease interests in the *same lease* to different parties. Final rule section 556.707 was added to cover this corollary situation. It states that even if an interest holder is transferring interests in the same lease, if they are different types of interests and being transferred to different parties, each transfer requires its own separate instrument, which must be duly executed and filed in duplicate with BOEM.

Section 556.708. What if I want to transfer my record title interests in more than one lease to the same party? This final rule section addresses lessees who desire to transfer interests in more than one lease to the same party. Final rule section 556.708 derives from the first sentence of proposed rule section 256.615. As noted by both proposed rule section 256.615 and final rule section 556.708, a lessee may not transfer record title interest in more than one lease using the same instrument. If a lessee wishes to transfer record title interest in more than one lease at the same time, the lessee must submit separate, originally executed forms for each transfer. Final rule section 556.708 also retains the statement from prior section 556.64(a)(8) that a separate fee applies to each individual transfer of interest.



Section 556.709. What if I want to transfer my record title interest in one lease to multiple parties? This section describes the requirements associated with transferring the record title interest in a lease to multiple parties. There is no analogous section in the proposed rule to final rule section 556.709, but the final rule section is a clarification of proposed rule section 256.615. That proposed rule section addressed the situations where interests in *different leases* are being transferred to different parties, or to the same party. The proposed rule did not address, however, the corollary situation, where the interest holder desires to transfer different portions of its record title interest in the *same lease* to multiple parties. Final rule section 556.709 was added to cover this corollary situation. It states that if a record title owner is transferring its record title interests in a single lease to multiple parties, it may use a single instrument. This differs from the circumstance addressed in section 556.707 where transfers of more than one type of interest in the single lease require use of more than one instrument. Final rule section 556.709 also retains the statement from prior section 556.64(a)(8) that where multiple transfers of interest are accomplished, a separate fee applies to each individual transfer of interest.

Section 556.710. What is the effect of an assignment of a lease on an assignor's liability under the lease? Final rule section 556.710 was found at proposed rule section 256.616. Both the proposed and final rule sections state the long-established regulatory concept that after an assignment an assignor remains liable for all monetary and non-monetary obligations that accrued before approval of the assignment. Proposed rule section 256.616 applied to assignments in general, but final rule section 556.710 applies only to transfers of record title interests, and an analogous final rule section, 556.805, applies only to transfers of operating rights interests.

Section 556.711. What is the effect of a record title holder's sublease of operating rights on the record title holder's liability? This section provides that a record title holder who subleases operating rights remains liable for later accruing obligations of the lease, but is only secondarily liable for monetary obligations accruing thereafter. Parts of proposed rule section 256.616 appear at final rule section 556.711, specifically in 556.711(a) and (b). These two paragraphs, along with final rule section 556.709, retain all of proposed rule section 256.616 and make clear the extent of the liability retained by a party

who assigns its record title interest. BOEM received a comment on proposed rule section 256.616 requesting that the final sentence be deleted because it was ambiguous. BOEM agrees with the comment and has deleted that sentence. The scenario it addressed in the proposed rule has been addressed without ambiguity in final rule section 556.711(a).

Final rule section 556.711(c) arises from FOGPMA, and states that a sublessee of operating rights is primarily liable for monetary obligations, but the record title holder, even after the sublease, remains secondarily liable for monetary obligations.

Section 556.712. What is the effective date of a transfer? This section describes the effective date of the transfer of a record title interest in a lease. Final rule section 556.712 is a combination of proposed rule section 256.617 and section 556.62(c) of BOEM's prior regulations. In the proposed rule, section 256.617 stated that an assignment is effective on the first day of the month following the request to assign, not following the date that BOEM approved the assignment. This left open the possibility, for example, that if you made a request to assign in April, it would become effective on the first of May, even if BOEM did not approve it until the fifteenth of May or later. The final rule section clarifies that, unless requested otherwise (see below), the effective date of a transfer of a lease interest is the first day of the next month after BOEM approves the transfer.

Final rule section 556.712, like proposed rule section 256.617, allows the parties to a transfer to specify a date on which their transfer will become effective. The proposed rule stated that BOEM would record the assignment as effective as of the date specified by the parties. The prior regulation, at section 556.62(c), did not affirmatively state that BOEM would accept the date specified by the parties. The prior regulation used the word "request" to refer to the parties' choice of a different effective date, and stated that the effective date would be specified in BOEM's approval. After further consideration of this issue, BOEM has decided to retain the idea in the prior regulation, and to clarify any ambiguity by stating that BOEM must approve a request for a specified effective date for a transfer of record title interest.

Both proposed rule section 256.617 and final rule section 556.712 also make clear that the transferor's obligations continue to accrue until BOEM approves the transfer, no matter when the effective date is specified to be. In

other words, the proposed and final rules clarify that if the parties to a transfer specify an effective date that falls before BOEM's approval of the transfer, this date is "effective" between the parties, but it does not have any effect on the obligations of the transferor to BOEM. The accrual of those obligations is ended only by BOEM's approval of the transfer.

Section 556.713. What is the effect of an assignment of a lease on an assignee's liability under the lease? With respect to an assignee of a record title interest, final rule section 556.713 repeats proposed rule section 256.618. Both sections recite the obligations of an assignee, which include complying with the lease terms and regulations, remedying existing environmental and operational problems, and performing decommissioning.

Section 556.714. As a restricted joint bidder, may I transfer an interest to another restricted joint bidder? Final rule section 556.714 requires a person on the Restricted Joint Bidders List, when transferring less than 100% of its interest in a lease to another person on the same list, to file with BOEM all agreements applicable to the acquisition of the interest transferred. Final rule paragraph 556.714(a) retains the language to this effect found in prior section 556.64(i). This same requirement was also found in proposed rule section 256.619, and it engendered a comment that objected to proposed rule section 256.619 on several grounds. The comment stated that the documents requested by proposed section 256.619 may be "sensitive," *i.e.*, confidential, and that the section is too broad and vague with an "unascertainable" intent. The comment also stated that because BOEM approves assignments, BOEM will be aware of the chain of title through which the assignor received its interest, rendering unnecessary the filing of agreements relating to the assignor's acquisition of that interest. The commenter suggested that BOEM "should only be interested in the timing and nature of the agreement whereby one restricted joint bidder acquired from another restricted joint bidder."

For the most part, BOEM disagrees with this comment. Proposed rule section 256.619 did not introduce a new concept, but restated what was originally in prior section 556.64(i). Nor does BOEM find the section overly vague. The filing of the requested agreements or the provision of the description of the transaction (see below) is necessary to allow the Department of Justice to properly review the antitrust implications of assignments between restricted joint

bidders, as is required for all assignments by section 8(e) of OCSLA (43 U.S.C. 1337(e)). Also, the final rule section does, as one comment noted, demonstrate BOEM's interest in "the timing and nature of the agreement whereby one restricted joint bidder acquired [a lease interest] from another restricted joint bidder." The final rule, by retaining the language from prior section 556.64(i), makes clear that BOEM is seeking information about acquisitions only from a transferor that was on the Restricted Joint Bidders List at the time of its acquisition of the interest, and that is now transferring less than its entire interest to an entity that was on the same list.

In response to the comment, however, BOEM has noted in section 556.714(d) that a person submitting the requested agreements may request they be treated confidentially and BOEM will do so to the extent authorized by its regulations and applicable Departmental regulations. Further, as suggested by the commenter, section 556.714(a) allows the assignor/submitter to choose whether to submit the requested agreements or instead to provide BOEM with a description of the timing and nature of the transfer agreement, together with a statement certifying the truth of this description.

Section 556.715. Are there any interests I may transfer or record without BOEM approval? This section provides that a lessee may create, transfer, or assign an economic interest in a lease without BOEM approval, but that such transferor must send BOEM a copy of each instrument creating or transferring such a lease interest within 90 days after the last party executes the transfer instrument. Final rule section 556.715 (along with final rule section 556.808) is the successor to proposed rule section 256.620. Final rule section 556.715 and proposed section 256.620 are substantively similar, but the language of the proposed section was changed somewhat in the final rule. The proposed rule section stated that a lessee could create or transfer "carried working interests, overriding royalty interests, or payments out of production" without BOEM approval. In the final rule, instead of listing these three types of interests, section 556.715(a) states that a lessee may create, transfer, or assign "economic interests" without BOEM approval. The term "economic interest" is defined in final rule section 556.106 to encompass "any right to, or any right dependent upon, production of crude oil, natural gas, or liquefied petroleum products," and includes, among others, the three

types of interests listed in the proposed section.

Final rule section 556.714 also makes clear that the 90-day deadline set forth in prior section 556.64(a)(2) applies to filings memorializing transfers of economic interests. Prior section 556.64(a)(2) did not explicitly state that the 90-day deadline applies to such filings. The 90-day filing deadline appears in final rule section 556.701 with respect to the filings of transfers of record title interests and the severance of operating rights interests, and the final rule makes clear that the deadline also applies to filings of transfers of economic interests by so stating in final rule section 556.714.

BOEM received one comment on proposed section 256.620, which expressed concerns about confidentiality of documents and asked whether the section intended to require the submission of joint operating agreements to BOEM. The comment notes this provision, *i.e.*, section 256.620, and its requirements are "not [] new," and that is correct—this provision is currently found at section 556.64(a)(7). The final rule section does not impose any new requirements and does not require the filing of joint operating agreements as they do not necessarily create economic interests, only rights to such interests. Once those interests are created, however, documents respecting them must be filed with BOEM. As to confidentiality, documents will be treated in accordance with BOEM's regulation at section 556.104 and any applicable Departmental regulations.

Section 556.716. What must I do with respect to the designation of operator on a lease when a transfer of record title is submitted? This section provides the circumstances under which the transfer of a record title interest triggers the need to file a new designation of operator form with BOEM. Final rule section 556.716 is based on several prior and proposed rule sections. Proposed rule section 256.611 and prior section 556.62 explained how a record title, or other lease interest, may be transferred, but did not mention the need, which often arises upon such a transfer, to file a new designation of operator form. Prior regulation section 550.143 stated that, when there is a change of designated operator, you must file a new designation of operator form with BOEM. Prior section 550.143 was, however, in a part of the regulations that does not address transfers of lease interests. Because, as stated above, the need to file a new designation of operator form often arises when lease interests are transferred, BOEM added

section 556.716 here in part 556, to augment section 550.143 and ensure that parties to a transfer are aware of their duties with respect to designation of an operator.

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

Section 556.800. As an operating rights owner, may I assign all or part of my operating rights interest? This section provides that an operating rights owner may assign all or part of its operating rights interests, subject to BOEM approval. Final rule section 556.800 repeats proposed rule section 256.612 with minor language changes.

Section 556.801. How do I seek approval of an assignment of my operating rights? This section describes the process by which an assignor of operating rights must obtain approval of such an assignment. Final rule section 556.801 is based on proposed rule section 256.613. The proposed rule section applied to all transfers of lease interests, but final rule section 556.801 applies only to assignments of operating rights from one operating rights owner to another, in accordance with the approach in the final rule to separate regulatory sections concerning transfers of operating rights and those concerning transfers of record title interests.

Both proposed rule section 256.613 and final rule section 556.801 require that BOEM approve transfers of operating rights. Documents memorializing such transfers must be filed within 90 days of the transfer. Both sections also note BOEM may consult with the Attorney General. The final rule section states the Regional Director will provide the form on which to record the transfer of operating rights, instead of citing particular forms as was done in the proposed rule. For the same reasons laid out above in the discussion of final rule section 556.716, final rule section 556.801 reiterates the requirement found at prior regulation section 550.143 that a new operating rights owner must file a designation of operator form.

One paragraph of final rule section 556.801 did not appear in the proposed rule: 556.801(c) states that if an operating rights owner transfers an undivided interest in its operating rights, that transfer creates a joint ownership of the operating rights in the transferor and the transferee. This provision did not appear in the proposed rule, but it is merely a description of the well-accepted legal consequences of such a transfer. As with a record title interest, an operating rights owner can transfer less than 100% of a certain part of its operating

rights interest, retaining some percentage of interest in that part. This is referred to as the transfer of an “undivided interest” and creates co-ownership.

Section 556.802. When would BOEM disapprove the assignment of all or part of my operating rights interest? Final rule section 556.802 sets forth the circumstances under which BOEM would disapprove an assignment of an operating rights interest. The final rule section is based on proposed rule section 256.611. The last sentence of proposed rule section 256.611 stated an assignment could be disapproved if the assignor or assignee had outstanding obligations under this chapter of the regulations. This provision appears at final rule section 556.802(a).

Final rule section 556.802 also contains two provisions, at paragraphs (b) and (c), which make clear that BOEM may disapprove an assignment of operating rights interests that is incorrect as to form or does not comport with the regulations. The former provision, 556.802(b), derives from proposed rule section 256.613, which listed the names and numbers of the forms that BOEM requires to be used to effectuate a transfer of record title or operating rights interests. Pursuant to the proposed rule, BOEM would accept only transfers submitted on—and consistent with—these forms.

In order to allow more flexibility and avoid restricting BOEM to a particular form name or number stated in the regulations, the final rule states the Regional Director will provide a form for use in transfers of record title or operating rights. As in the proposed rule, only the form provided by the Regional Director will be accepted by BOEM and only when completed correctly. Therefore, final rule section 556.802(b) makes clear that a transfer request submitted to BOEM may be rejected if not “acceptable as to form or content.” The latter provision, 556.802(c), provides that an attempted transfer that does not comport with the regulations and/or applicable law will be disapproved.

Section 556.803. What if I want to assign operating rights interests in more than one lease at the same time, but to different parties? This section addresses the assignment of operating rights interests in more than one lease to different parties. Final rule section 556.803 is based on proposed rule section 256.615. Both the first sentence of the proposed rule section and the final rule section address the situation where a lessee or other interest holder desires to transfer interests it owns in different leases to different parties. Final

rule section 556.803, however, applies only to an operating rights owner who desires to simultaneously assign its operating rights in multiple leases. The limited application of final rule section 556.803 is in keeping with the final rule’s separation of regulatory sections concerning transfers of record title by record title holders and those concerning transfers of operating rights by operating rights owners.

Section 556.804. What if I want to assign my operating rights in a lease to multiple parties? This section addresses the assignment of operating rights interests in one lease to more than one party. There was no analogous section in the proposed rule to final rule section 556.804, but the final rule section developed out of proposed rule section 256.615. That proposed rule section, also discussed immediately above, addressed the transfer of interests in *different leases* to different parties, or to the same party. The proposed rule did not address, however, the corollary situation, where the interest holder desires to transfer different portions of its operating rights interests in the *same lease* to multiple parties. Final rule section 556.804 was added to cover this corollary situation. It states that if an operating rights owner is transferring its operating rights in a single lease to multiple parties, it may use a single instrument. Final rule section 556.804 also retains the statement from prior section 556.64(a)(8), which states that where multiple transfers of interest are accomplished using one instrument, a separate fee applies to each individual transfer of interest.

Section 556.805. What is the effect of an operating rights owner’s assignment of operating rights on the assignor’s liability? This final rule section states the long-established regulatory concept that after an assignment, the assignor remains liable for all monetary and non-monetary obligations that accrued before approval of the assignment. Final rule section 556.805 was found at proposed rule section 256.616. That proposed rule section applied to assignments in general, but final rule section 556.805 applies only to assignments of operating rights interests.

Section 556.806. What is the effective date of an assignment of operating rights? This section describes the effective date of the transfer of an operating rights interest in a lease. Final rule section 556.806 is a combination of proposed rule section 256.617 and prior section 556.62(c). In the proposed rule, analogous provision 256.617 stated an assignment is effective on the first day of the month following the request to

assign, not following the date that BOEM approved the assignment. As explained above, in the discussion of final rule section 556.712, this left open the possibility that an assignment could ostensibly become “effective” before it was approved. Final rule section 556.806 clarifies that (unless requested otherwise, see below) the effective date of an assignment of an operating rights interest is the first day of the month after the month in which BOEM approves the transfer.

Final rule section 556.806, like proposed rule section 256.617, allows the parties to a transfer to specify a date on which their transfer will become effective. The proposed rule stated that BOEM would record the assignment as effective as of the date specified by the parties. The prior regulation, at section 556.62(c), did not affirmatively state that BOEM would accept the date specified by the parties. The prior regulation used the word “request” to refer to the parties’ choice of a different effective date, and stated that the effective date would be specified in BOEM’s approval. After further consideration of this issue, BOEM has decided, in the final rule, to retain the idea in the prior regulation, and to clarify any ambiguity by stating that BOEM must approve a request for a specified effective date for a transfer of an operating rights interest.

Both proposed rule section 256.617 and final rule section 556.806 also make clear that the transferor’s obligations do not end until BOEM approves the transfer, no matter when the effective date is specified to be. In other words, the proposed and final rules clarify that if the parties to a transfer specify an effective date that falls before BOEM’s approval of the transfer, this date is “effective” between the parties, but it does not have any effect on the obligations of the transferor to BOEM. The accrual of those obligations is ended only by BOEM’s approval of the transfer.

Section 556.807. What is the effect of an assignment of operating rights on an assignee’s liability? This section recites the obligations of an assignee, which include complying with the lease terms and regulations, remedying existing environmental and operational problems on the leasehold, and performing decommissioning obligations. Final rule section 556.807 repeats proposed rule section 256.618, but only with respect to an assignee of an operating rights interest. Proposed rule section 256.618 addressed both assignees of record title interests and operating rights interests, but consistent with the final rule’s separate treatment

of these two types of interests, this final rule section addresses only the effect of an assignment of operating rights on an assignee's liability.

Section 556.808. As an operating rights owner, are there any interests I may assign without BOEM approval? This section provides that an operating rights owner may create, transfer, or assign economic interests without BOEM approval, but that for record keeping purposes, the operating rights owner must send BOEM a copy of each instrument creating or transferring such interests within 90 days after the last party executes the transfer instrument. Final rule section 556.808 (along with final rule section 556.715) is the successor to proposed rule section 256.620. Final rule section 556.808 is substantively similar to proposed section 256.620, but the final rule section applies to operating rights owners and contains somewhat different language from the proposed section. The proposed rule section stated that you could create or transfer "carried working interests, overriding royalty interests, or payments out of production" without BOEM approval. In the final rule, instead of listing these three types of interests, section 556.808(a) states that you may create, transfer, or assign "economic interests" without BOEM approval. The term "economic interest" is defined in final rule section 556.106 to encompass "any right to, or any right dependent upon, production of crude oil, natural gas, or natural gas liquids," and includes, among others, the three types of interests listed in the proposed section.

Final rule section 556.808 also makes clear that the 90-day deadline set forth in prior regulation section 556.64(a)(2) also applies to filings memorializing transfers of economic interests. Prior section 556.64(a)(2) did not explicitly state that the 90-day deadline applies to such filings. The 90-day filing deadline appears in final rule section 556.801 with respect to the filings of assignments of operating rights interests, and the final rule makes clear that the deadline also applies to filings of transfers of economic interests by so stating in final rule section 556.808.

BOEM received one comment on proposed section 256.620, which expressed concerns about confidentiality of documents and asked whether the section intended to require the submission of joint operating agreements to BOEM. The comment notes that this provision, *i.e.*, 256.620, and its requirements are "not [ ] new" and that is correct—this provision is currently found at 556.64(a)(7). The final rule section does not impose any

new requirements and does not require the filing of joint operating agreements as they do not necessarily create economic interests, only rights to such interests. Once those interests are created, however, documents respecting them must be filed with BOEM. As to confidentiality, documents will be treated in accordance with final rule section 556.104 and any applicable Departmental regulations.

Section 556.810. What must I do with respect to the designation of operator on a lease when a transfer of operating rights ownership is submitted? This section provides the circumstances under which the transfer of an operating rights interest triggers the need to file a new designation of operator form with BOEM. Final rule section 556.810 is a clarification and extension of several prior and proposed rule sections. Proposed rule section 256.611 and section 556.62 from BOEM's previous regulations explained how a record title or operating rights interest may be transferred, but did not mention the need, which often arises upon such a transfer, to file a new designation of operator form. Current section 550.143 states that, when there is a change of designated operator, you must file a new designation of operator form with BOEM. Current section 550.143 is, however, in a part of the regulations that does not address transfers of lease interests. Because the need to file a new designation of operator form often arises when lease interests are transferred, such as operating rights interests, BOEM added section 556.810 here in part 556 to augment prior BOEM regulation section 550.143, and to ensure that parties to an operating rights transfer are aware of their duties with respect to designation of an operator.

#### 11. Subpart I—Bonding or Other Financial Assurance

Part 560, section 560.500(b) in the final rule, addresses the electronic filing of documents concerning bonding or other financial assurance. The substance of final rule section 560.500(b) was in proposed rule section 256.503(c), which established the circumstances under which BOEM may require, rather than request, electronic document submission. The proposed and final rule sections provide that BOEM reserves the right to mandate the submission of financial assurance information electronically after publishing a 90 day-notice to that effect in the **Federal Register**. Submission of financial assurance data electronically would contribute significantly to streamlining the bonding process and facilitate a more efficient transfer of data and

information between BOEM and the regulated community. BOEM received no comments on proposed rule section 256.503(c). Accordingly, although no other substantive changes related to bonding are made in the final rule, this provision was retained from the proposed rule at section 560.500(b).

Other than the electronic filing change that appears in final rule section 560.500(b) and minor administrative changes made to subpart I, as noted below, the regulatory sections in the subpart remain the same as in the prior regulations, where they are located at 30 CFR subpart I, consisting of prior sections 556.52 through 556.59.

Sections 556.900–556.907. These sections establish bonding requirements for the lessee of an OCS oil and gas or sulfur lease. BOEM is not making any substantive changes to Subpart I—Bonding or Other Financial Assurance—relative to the prior regulations. The only changes made to this subpart in the final rule are administrative or conforming changes necessary to avoid inconsistency with the rest of BOEM's regulations. These changes are: (1) Editorial improvement; (2) correction of the inadvertent deletion of cross-references to former MMS regulations now administered by BSEE and ONRR; (3) changes in the section numbers and conforming changes needed in the text due to the section number changes; (4) changing references to "Associate Director" to "Director," as there are no "Associate Directors" within BOEM; and (5) consistently referring to decommissioning obligations as "decommissioning obligations," rather than by listing some or all of the constituent parts of decommissioning.

#### 12. Subpart J—Bonus or Royalty Credits for Exchange of Certain Leases

Section 556.1000. Leases formerly eligible for a bonus or royalty credit. This section provides that bonus or royalty credits issued by BOEM pursuant to the Gulf of Mexico Energy Security Act of 2006 (GOMESA) (43 U.S.C. 1331 note) are no longer available. The deadline for applying for such a bonus or royalty credit was October 14, 2010; therefore, lessees may no longer apply for such credits. The proposed rule contained several sections addressing these credits because it was published in May 2009, before the October 2010 deadline. The final rule has only one section addressing these credits—section 556.1000.

Although the GOMESA lease exchange/credit program is no longer active, section 556.1000 has been included in the final rule because

GOMESA did not specify a deadline to apply for lease credits. The October 14, 2010, deadline was set by BOEM in its regulations, and must be retained to forestall future requests for lease credits under GOMESA.

### 13. Subpart K—Ending a Lease

Section 556.1100. How does a lease expire? This section provides the circumstances under which a lease will expire at the end of its primary term. Final section 556.1100 is substantively the same as proposed rule section 256.700, with minor wording changes. The final rule section is also divided into two paragraphs, one addressing oil and gas leases, and one addressing sulfur leases.

BOEM received one comment noting that proposed section 256.700 listed the ways to maintain a lease beyond the primary term, but failed to list production from unitized leases as one of those ways. The comment suggested that BOEM add in section 256.700 a reference to production from unitized leases as one of the ways to maintain a lease. Final rule section 556.1100 refers back to final rule section 556.601 for the ways in which to maintain a lease beyond the primary term, which includes, at 556.601(e), production from unitized leases.

Section 556.1101. May I relinquish my lease or an aliquot part thereof? Final rule section 556.1101 repeats the substance of proposed rule section 256.701. Both sections name the form that must be filed in triplicate by all lessees to effect a lease relinquishment and both note that the relinquishment is effective on the date of filing. Both sections also make clear that a relinquishment does not relieve the relinquisher(s) of any accrued obligations, but to express this concept the final rule section has retained the language in prior section 556.76, rather than using the proposed language.

Prior section 556.76 also stated that no filing fee is required for a relinquishment. The proposed rule, however, said nothing on this subject. It did not contain the statement in the prior regulations that no filing fee is required, but neither did it say that a filing fee was required for a relinquishment. The final rule retains the “no filing fee” statement from prior regulations at section 556.76.

Section 556.1102. Under what circumstances will BOEM cancel my lease? This section provides the circumstances under which BOEM may cancel a producing or a non-producing OCS lease. Final rule section 556.1102 contains the substance of proposed rule section 256.702, with some minor

wording changes for clarity. Both sections state that failure to comply with a provision of a lease or of the regulations may result in lease cancellation, but the final rule section also makes clear that failure to provide requested financial assurance may result in lease cancellation or assessment of civil penalties. (See final rule section 556.1102(f).) Final rule section 556.1102(f) is a clarification of proposed rule subsections 256.702(b) and (c). Both these subsections state that failure to comply with any provision of the regulations may result in lease cancellation, and this includes failure to comply with those regulations requiring the maintenance of financial assurance.

Proposed rule section 256.702 generally referred to section 5(a) of OCSLA (43 U.S.C. 1334(a)), whereas final rule section 556.1102 was written to more closely follow sections 5(a)(2)(A) and (B) of OCSLA (43 U.S.C. 1334(a)(2)(A) and 1334(a)(2)(B)). Both the final and proposed rule sections repeat section 5(a)'s directive that a lease may be cancelled any time BOEM finds that continued activity will probably cause harm or damage to *inter alia*, life or property, that such threat of harm or damage will not disappear or acceptably decrease in a reasonable time, and that the advantages of lease cancellation outweigh the advantages of continuing the lease. But final rule section 556.1102 paragraphs (d) and (e) also include section 5(a)'s requirements that cancellation pursuant to the terms above must be subsequent to a hearing and may not occur unless and until operations under the lease have been suspended or prohibited by the Department continuously for a period of five years.

### 14. Subpart L—Leases Maintained Under Section 6 of OCSLA

Subpart L consists of two final rule sections, 556.1200 and 556.1201, which have been retained from prior sections 556.79 and 556.80, respectively. These two sections were not in the proposed rule. The Preamble to the proposed rule stated that prior section 256.79 (now 556.79) was “[e]liminated as unnecessary repetition” of OCSLA section 6(b) (43 U.S.C. 1335(b)) and prior section 256.80 (now 556.80) was “covered in 30 CFR part 281” (now part 581).

BOEM has reconsidered its decision to eliminate subpart L from its regulations, and, for the reasons outlined below, has decided to retain it in this final rule.

Section 556.1200. Effect of regulations on lease. Final rule section 556.1200 makes clear the relationship between

BOEM's regulations and the lease provisions of those leases maintained under section 6 of OCSLA (43 U.S.C. 1335). Section 6 of OCSLA applies to a specific group of leases—State-issued OCS leases issued before December 21, 1948.

BOEM has retained this provision, derived from prior section 556.79, even though it includes some repetition of Section 6 of OCSLA. Retaining this in final rule section 556.112 is helpful to BOEM's stakeholders because it clarifies the interplay between BOEM's regulations and Section 6 leases.

Section 556.1201. Section 6(a) leases and leases other than those for oil, gas, or sulfur. BOEM has determined that the proposed rule was incorrect in asserting that prior part 556, subpart L, which consisted of prior sections 556.79 and 556.80, was an unnecessary duplication of provisions in another part of the regulations. BOEM has therefore decided to retain, in final rule section 556.1201, the substance of prior section 556.80. Final rule section 556.1201 states that the existence of a Section 6 oil and gas lease does not preclude the issuance, in the same area, of other types of leases under OCSLA. BOEM has determined that this section should be retained to clarify the circumstances surrounding Section 6 leases.

### 15. Subpart M—Environmental Studies

Section 556.1300. Environmental studies. Subpart M—Environmental Studies consists of section 556.1300 in the final rule and provides that BOEM will conduct studies of any area or region included in any oil and gas lease sale as needed to assess and manage impacts on the human, marine and coastal environments, which may be affected by OCS oil and gas or other mineral activities in such area or region. Subpart M in the previous regulations consisted of section 556.82. The proposed rule deleted subpart M as an “unnecessary recitation of internal procedures,” but section 20(c) of OCSLA specifically states that the “Secretary shall, by regulation, establish procedures for carrying out his duties [to conduct environmental studies] under this section.” (43 U.S.C. 1346(c)). BOEM has determined to retain subpart M to comply with section 20 of OCSLA and to set forth in the regulations, procedures for the conduct of environmental studies with minor revisions to clarify text.

#### C. Part 559—Mineral Leasing: Definitions

Prior part 559 was moved into final rule part 560, as explained below, in the discussion of final rule part 560.

*D. Part 560—Outer Continental Shelf Oil and Gas Leasing*

The final rule updates the authority citation for part 560 and amends the Table of Contents for part 560 by removing prior subpart D, reserving the subpart, and adding new subparts C and E.

Also, in this final rule, BOEM has moved the definitions from prior part 559 into final rule part 560 and deleted part 559. Prior part 559 consisted of only two sections. The first section, 559.001, stated that “[t]he purpose of this part 559 is to define various terms appearing in part 560.” The second section, 559.002, listed these definitions. This relocation did not appear in the proposed rule, but it is merely an administrative change, which streamlines the regulations and does not trigger the need for notice and comment.

The wording of the definition of “person” in part 560 has been made consistent with that in part 556, but no change is being made to the other definitions except their re-location within the regulations.

1. Subpart A—General Provisions

Section 560.100. Authority. This section provides a listing of the statutes that provide the legal basis for the regulations promulgated under this part. The authority provisions of part 560 have been revised in this new section, and the titles of the public laws corresponding to the relevant statutes have been added. FOGMA (30 U.S.C. 1701–1759) has been updated to include the amendments made to it by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, (FOGRSFA, 30 U.S.C. 1701 note).

Section 560.101. What is the purpose of this part? This final rule section retains the language of section 560.1 in the prior regulations, with no changes, but redesignated.

Section 560.102. What definitions apply to this part? This section consolidates and updates the definitions previously located in part 559 with the definitions previously located in section 560.2.

Section 560.103. What is BOEM’s authority to collect information? This section provides that BOEM may not conduct or sponsor a collection of information unless the information collection displays a currently valid OMB control number, and specifies the circumstances under which comments regarding any aspect of the collection of information under this part may be submitted to BOEM. This section is unchanged from section 560.3 but has been redesignated.

2. Subpart B—Bidding Systems

Sections 560.200–560.230. These provisions establish the bidding systems that BOEM may use to offer and sell Federal leases for the exploration, development, and production of oil and gas resources located on the OCS. No changes were made to this subpart, except that all section numbers have been changed to conform to the numbering convention used throughout the final rule.

3. Subpart C—Operating Allowances

Section 560.300. Operating allowances. The final rule includes a new subpart C, which consists of one section—560.300—that reestablishes a provision concerning operating allowances in the BOEM regulations. Operating allowance provisions were originally added into MMS (later BOEMRE) regulations by RIN 1010–AB93, 61 FR 3800, *Bidding Systems for Leases in the Outer Continental Shelf*. When the MMS was reorganized into ONRR, BOEM, and BSEE, the operating allowance sections of the regulations were moved from the BOEMRE regulations to the ONRR regulations, but the corresponding sections were not included in the BOEM regulations. Under the current organizational structure of the Department, ONRR will collect royalty as calculated using the operating allowance, but BOEM must first issue leases that contain the operating allowance. In order to effectuate the ONRR regulations related to operating allowances, therefore, counterpart provisions must also be re-established within the BOEM regulations.

Subpart C re-establishes the operating allowance provisions in BOEM’s regulations. It does not make any change to the regulatory provisions with respect to what sort of operating allowance would be available or when one might be granted.

4. Subpart D—Joint Bidding

Both the proposed and final rules amend part 560 by removing subpart D, which concerned joint bidding. All the provisions in the prior subpart D have been moved to part 556 in the final rule (see sections 556.511–556.515, and 556.106, definitions of “average daily production,” “barrel,” “crude oil,” “economic interest,” “joint bid,” “natural gas,” “natural gas liquids,” “owned,” “single bid,” “six-month bidding period,” and “statement of production”). The regulation sections that were in part 560, subpart D, more appropriately belong in part 556, subpart E, under the subheading,

“Restrictions on Joint Bidding,” because subpart E contains the full panoply of regulations relating to the restrictions on joint bidding. There is no clear rationale supporting retention of these sections in part 560 as well, and including these provisions twice in the regulations may cause confusion. Therefore, part 560, subpart D is being removed.

5. Subpart E—Electronic Filings

In part 560, the final rule includes a new subpart E, “Electronic Filings,” which provides that BOEM may notify lessees and other parties that it will allow or request the submission of information electronically through BOEM’s secure electronic filing system, through an alternate secure electronic filing system supported and maintained by the Department, or through some other electronic filing system that BOEM has approved for this purpose. This subpart did not appear in the proposed rule, nor did it appear in the prior regulations, but notice and an opportunity to comment on these new provisions are unnecessary because the subpart does not impose any requirements. Rather, it provides that anyone submitting documents to BOEM may do so electronically. The electronic-submittal option will likely reduce the burden on those making the submissions. Moreover, the option furthers the Federal government’s move toward all-electronic document production, submission, and filing, a goal evidenced by the Government Paperwork Elimination Act (GPEA), Public Law 105–277, 112 Stat. 2681 (1998), and the U.S. Office of Management and Budget’s guidance for implementing that Act (Memorandum 00–10 OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act, April 25, 2000). Because subpart E imposes no requirements on the public, it constitutes a procedural rule that does not require notice and comment.

Subpart E consists of three sections, which are individually addressed below.

Section 560.500. Electronic documents and data transmission. Final rule section 560.500 lists the types of information that may be filed electronically. The section also makes clear that if BOEM sends a document in an electronic format, return of the document using the same format or in print is acceptable (560.500(c)), and that BOEM may electronically approve or execute documents referenced in this section (560.500(d)).

Final rule section 560.500(b) repeats proposed rule section 256.503(c), which

established the circumstances under which BOEM may require, rather than request, electronic document submission. The proposed and final rule sections provide that BOEM reserves the right to mandate the submission of financial assurance information electronically after publishing a 90 day-notice to that effect in the **Federal Register**. Submission of financial assurance data electronically would contribute significantly to streamlining the bonding process and facilitate a more efficient transfer of data and information between BOEM and the regulated community. BOEM received no comments on proposed rule section 256.503(c). Accordingly, although most other changes related to bonding were removed from the final rule, this provision was retained at section 560.500(b).

Section 560.501. How long will the confidentiality of electronic document and data transmissions be maintained? Final rule section 560.501 states that electronically-submitted confidential information will be maintained as confidential for the same amount of time that corresponding non-electronic information would be so maintained.

Section 560.502. Are electronically filed document transmissions legally binding? Final rule section 560.502 has been included to ensure that electronic submission will not be a bar to legal viability. Pursuant to section 560.502, documents that are properly submitted through an approved electronic format will be considered legally binding (assuming they are properly prepared, executed, or whatever else may be necessary in each individual case), without the need to also submit a paper

copy of such document. In other words, if all else has been done properly with regard to a document submission, the fact that it has been submitted electronically will not bar it from being legally binding.

Final rule section 560.502 was not in the proposed rule and is being included in the final rule without a period of notice and comment. The Government Paperwork Elimination Act, found within the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277, 112 Stat. 2681 (1999)), at sections 1701 *et seq.*, authorizes agencies to consider properly submitted electronic submissions as legally binding. The Government Paperwork Elimination Act, at section 1707, specifically addresses the question of whether, and how, electronically filed documents are legally binding. It states: “Electronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.” Pub. L. 105-277, 112 Stat. 2681-751 (1999).

Further, section 7001(a) of the Electronic Signatures in Global and National Commerce Act (ESIGN) (15 U.S.C. 7001-7031) states: “Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II of this chapter), with respect to any transaction in or affecting interstate or foreign commerce—(1) a signature, contract, or other record relating to such

transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.”

Final rule section 560.502 is administrative and serves to reduce the burden on those submitting filings to BOEM, but more importantly it is necessary to effectuate BOEM’s electronic filing system and to ensure electronic submissions are considered legally valid documents.

**IV. Table of Comments and Responses**

We do not provide responses to comments on subpart I because no substantive changes were made to that subpart as part of this final rule.

*A. General Comment*

*Comment:* In an effort to streamline the regulations, the proposed rule eliminated several sections that repeat provisions of OCSLA. But in other instances, the proposed rule added language that is found in relevant statutes. BOEM should carefully review the proposed rule and eliminate instances in which the substance of statutes is simply repeated. Specifically, BOEM should consider proposed sections 556.101, 556.200 (second sentence), 556.304(b), 556.402(b) in this regard.

*Response:* We kept added statutory language when it was considered necessary for clarity.

*B. Section-Specific Comments*

Proposed rule section (30 CFR)	Comments received	BOEM Response
256.101 .....	The American Petroleum Institute (API) submitted comments on many sections of the proposed rule, which are discussed throughout the following Table. Section 256.101 references 18 U.S.C. 1001, which is unnecessary and potentially creates confusion. In the event 18 U.S.C. 1001 were revised, amended or repealed, MMS would need to do the same here. It's redundant and unnecessary.	BOEM agrees with the comment and has removed the provision referencing 18 U.S.C. 1001 from the final rule.
256.103 .....	The definition for “authorized officer” should be retained in proposed section 256.103, as it is still used in the regulations. The proposal includes definitions for the “Central Planning Area” and the “Eastern Planning Area,” but not for the “Western Planning Area.” For completeness, MMS should consider including a definition for the “Western Planning Area.”	We revised the definition for “Secretary” to include both the terms “official” and “designated employee” who are “authorized to act on behalf of the Secretary.” We have added the definition for the “Western Planning Area.”
256.200 .....	Section 256.200—The second sentence appears to be repeated from OCSLA and its repetition is not necessary. See, 43 U.S.C. 1344(a)(3). Repeating language from the statute is inconsistent with the streamlining approach that MMS has taken with the proposed regulations.	The second sentence is short and explicit and therefore has been retained.



Proposed rule section (30 CFR)	Comments received	BOEM Response
256.301 .....	Section 256.301 eliminates the requirement that MMS inform the public as soon as possible, when areas are deleted from leasing. This requirement should be retained. It should be recognized that deleting areas from leasing is of great importance to lessees who are spending resources in preparing for lease sales, and this information should be published as soon as possible.	We have not deleted this provision. See final rule section 556.302(c), which states: "BOEM will seek to inform the public, as soon as possible, of changes from the area(s) proposed for leasing that occur after the Call process."
256.304(b) .....	Section 256.304(b)—The Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 <i>et seq.</i> ) sets out the process for consistency determinations by the affected States. While MMS may be merely setting out the process it uses in order to ensure consistency with the States, the regulation should actually reference the CZMA so that if the CZMA is modified or amended or repealed, MMS can continue to follow the process outlined in that act, rather than risking conflict or inconsistency.	We cite the CZMA at section 556.305(b), where we refer to the consistency determination.
256.303 .....	Shell Exploration and Production Company (Shell) Comments. Section 256.303—The terms of an oil and gas lease are integral to the lessee/lessor relationship and lessees who are bidding millions of dollars on leases should have the right to know the lease terms in advance of submitting bids. Accordingly, Shell requests that the form of lease on which successful lease bids will be granted be attached to or referenced in the notice of lease sale.	We agree with this suggestion and have incorporated this requirement into sections 556.304(c) and 556.308. The final notice of sale will replicate the terms and conditions in the lease form. The following is a sample statement from a recent notice of sale: "BOEM will use the recently revised Form BOEM–2005 (October 2011) to convey leases; it can be viewed at: <a href="http://www.boem.gov/About-BOEM/Procurement-Business-Opportunities/BOEM-OCS-Operation-Forms/BOEM-OCS-Operation-Forms.aspx">http://www.boem.gov/About-BOEM/Procurement-Business-Opportunities/BOEM-OCS-Operation-Forms/BOEM-OCS-Operation-Forms.aspx</a> . The lease form will be amended with the specific terms, conditions and stipulations applicable to the individual lease."
256.402(b) .....	Section 256.402(b) should clarify that this section does not impact the statutory requirements under OCSLA that provide for a finding by the Secretary that the bidder is not meeting due diligence requirements and that provide for notice and hearing. Section 256.402(c) should cite to the statutory provisions authorizing the prohibition based upon unacceptable operating performance.	We agree with this comment and changed the language, which is now found at final rule section 556.403(b), to more closely track the language of section 8(d) of OCSLA (43 U.S.C. 1337(d)). Section 8(a)(1) of OCSLA (43 U.S.C. 1337(a)(1)) states: "The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf . . ." The Secretary has determined through promulgated regulations that acceptable operating performance under 30 CFR parts 250 and 550 on any other OCS lease is necessary to be considered a "responsible" bidder. This provision is not new. The prior regulations, at 30 CFR 556.35(c), provided that, "BOEM may disqualify you from acquiring any new lease holdings or lease assignments if your operating performance is unacceptable according to 30 CFR 550.135." We disagree that the citation to the statutory provisions codified from section 8(a)(1) of the OCSLA is necessary as the regulation is clear and the concept is long-standing in the prior regulations.
256.404 .....	Section 256.404—This new provision will create unnecessary additional administrative burdens. MMS has multiple ways to learn of a merger or name change, including, without limitation, the filing of merger and name change documents with the Secretary of State in most States and the submission of new designation of operator and other MMS forms. This additional obligation need not be imposed on lessees. In addition, MMS should delete "immediately" as it is inconsistent with the one year limit. The API suggested using "as soon as practicable," but not "immediately."	We disagree with this comment, but in final rule section 556.405, we replaced "immediately" with "as soon as practicable." The new provision is needed to address the problems that the Bureau has had in the past with name changes and/or mergers about which BOEM is not informed in a timely fashion. It is not practical for BOEM to monitor all filings with all Secretaries of State in the United States.



Proposed rule section (30 CFR)	Comments received	BOEM Response
256.416(b) .....	Section 256.416(b)—There is no policy reason not to allow co-ownership by agreement of bidders with a tie bid, when the tie bidders are on the restricted joint bidders list. Those parties cannot have communicated or agreed with respect to the bid, but going forward could agree to an assignment creating co-ownership after the lease is awarded.	We disagree with the recommended policy change proffered in this comment. The presumption that an agreement (whether written or oral, formal or informal) could not have been made prior to, or simultaneously with, the submission of bids by two or more bidders on the restricted joint bidders list is flawed. Collusive bidding practices are a possibility that is addressed explicitly in existing regulation, for example, section 556.44 specifically disqualifies bids where collusive bidding is evident. We clarified the language of paragraph (c) of final rule section 556.516 to address the treatment of tie high bids submitted by two bidders on the Restricted Joint Bidders List. Paragraph (c) states that only those tied bidders, “not otherwise prohibited from bidding together” may accept a lease jointly. Because two bidders on the restricted joint bidders list would “otherwise [be] prohibited from bidding together,” this provision retains the current policy of not allowing tied restricted joint bidders to accept a lease jointly. The use of the plural lessee(s) at section 556.516(c)(2) implies that there could be more than two tied bidders and that they could agree to allow more than one of the tied bidders to become lessees. We deleted the words “or they may decide” as the language did not clearly state how to notify us of their decision.
256.417 .....	Section 256.417—The protest procedure has been eliminated entirely. MMS should specify or refer to an appeal process: to whom appeals are made, how long the agency has to make a decision, who will make the decision, and to whom that decision will be appealed.	A procedure to request reconsideration of a rejected bid has been retained in the rule, but the difference in the proposed and prior regulations is that “Secretary” has been replaced by “BOEM Director.”
256.420 .....	Section 256.420—MMS should retain the status quo that the failure to pay the remaining 4/5ths lease bonus results in a forfeiture of the 1/5th payment. Payment of the 1/5th amount is sufficient penalty and MMS may still offer and lease the tract at the next lease sale. Payment of amounts beyond the 1/5th is not warranted. As a result, MMS should strike the words “and MMS may take appropriate action to collect the full amount bid.” In addition, the existing rule, §256.47(g), states that the successful bidder has 11 business days to execute the lease and otherwise comply with the applicable regulations. This proposed rule required that a lessee “execute and return” a lease within 11-business days after receipt (emphasis added.) Can MMS confirm whether the addition of the words “and return” signify a change in how the process is administered? If this does constitute a change, then can MMS explain the rationale behind this change?  As discussed above, API objects to forfeiture of the full bid amount, because forfeiture of the 1/5th payment is sufficient. However, in the event that this option is retained, MMS should consider providing some flexibility within this provision in the event that the full bid amount is collected. The bidder should not suffer forfeiture of the lease if the full bid amount has been paid. MMS should also consider giving the second highest qualified bidder the opportunity to receive the lease in the event that the high bidder forfeits the lease under these provisions.	BOEM agrees with this comment and has decided to limit the penalty for failure to pay the remainder to the amount of the bid deposit. Prior section 556.47(f) stated that “If a bid is accepted, such notice shall transmit three copies of the lease to the successful bidder.” As provided in the prior 30 CFR 1218.155, the bidder shall, not later than the 11th business day after receipt of the lease, execute the lease, pay the first-year’s rental, and unless deferred, pay the balance of the bonus bid.” 30 CFR 1218.155(c) made it clear that the payment must be “. . . received by the Federal Reserve Bank of New York no later than noon, eastern standard time, on the 11th business day after receipt of the lease forms by the successful bidder.” The new regulation makes it clear that the leases must be signed and returned to BOEM within 11-business days after the receipt. This has always been the rule and is not a change of BOEM processes.  Prior BOEM regulation section 556.47(g) said that if a bidder fails to execute the lease as required by the regulations, BOEM will collect or retain only the deposit. The final rulemaking, at section 556.520(c), says the same. Granting the second highest bidder the opportunity to receive the lease in the event that the high bidder forfeits the lease under this provision may not result in BOEM receiving fair market value for the lease (see section 18(A)(4) of OCSLA) and is contrary to the present BOEM policy of offering all blocks that are not awarded in a particular lease sale in the next lease sale for that planning area.
256.420(c) .....	Chevron comments: Chevron does not view section 256.420(c) as a clarification but a significant change. Delete the phrase from section 256.420(c) “and MMS may take appropriate action to collect the full amount bid, if so provided for in the notice of sale.”	Same response as above.

Proposed rule section (30 CFR)	Comments received	BOEM Response
256.605(a) and 256.606(c) ..	<p>Shell comment: MMS should reconsider allowing MMS to collect the full amount bid in the event a successful bidder does not pay the remaining 4/5th of the bid. Currently, lessees are permitted to suffer the significant penalty of forfeiting the 1/5th advance payment and this process allows lessees to make an informed decision on leasing if information relating to the area becomes available after the bids are made.</p> <p>API Comment: Section 256.605(a) is inconsistent with proposed section 256.606(c). In the former, operating rights and record title owners are jointly and severally liable for all non-monetary obligations, but in the latter, operating rights owners are only responsible for liabilities insofar as their interest in the lease.</p>	<p>Same response as above.</p> <p>We separated into two sections those provisions that concern the rights and obligations of record title owners (section 556.604) and those that concern the rights and obligations of operating rights owners (section 556.605).</p>
256.616 .....	<p>Section 256.616—The last sentence is ambiguous. The liabilities for an assignor are covered in section 256.605. The last sentence should be deleted.</p>	<p>We renumbered this item 556.710 and clarified it as follows: “Until there is a BOEM-approved assignment of interest, you, as the assignor, remain liable for the performance of all lease obligations that accrued while you held record title interest, until all such obligations are fulfilled.”</p>
256.619 .....	<p>Shell Comment: MMS should remove the last sentence of Proposed Section 256.616, which is ambiguous and which concept is addressed in Section 256.605. Also, proposed Section 256.605(a) is inconsistent with Section 256.606(c).</p> <p>API Comment: Section 256.619—The new rule poses the question, “As a restricted bidder, may I assign interest to another restricted joint bidder?” The new rule answers in the affirmative but also states that “you must submit to MMS a copy of any agreements relating to the acquisition of the lease or interest,” API is concerned about the submission of commercial agreements under this provision. The types of agreements requested are potentially highly sensitive. MMS should only be interested in the timing and nature of the agreement whereby one restricted joint bidder acquired from another restricted joint bidder. Agreements whereby a restricted joint bidder acquired the interest assigned are irrelevant (unless they came from another restricted joint bidder). Further, because assignments are approved, MMS will already know the chain of title by which the assigning party received the interest. Further, this provision is so broad as to be unascertainable as to the intent, raising further questions about implementation and what documents are sufficient to meet the requirement.</p>	<p>See above.</p> <p>We disagree with the comment. The requirement to provide the agreements between two parties on the restricted joint bidders list is not new, but simply represents a restatement of the prior 30 CFR 556.64(i), which required that “the assignor or transferor shall file a copy, prior to approval of the assignment, of all agreements applicable to the acquisition of that lease or a fractional interest.” The agreements are necessary for the Department of Justice to properly review the antitrust implications of these types of assignments. The new provision, now at final rule section 556.714, adds the option of both parties providing BOEM with “a description of the timing and nature of the agreement(s) by which the assignor or transferor acquired the interest it now wishes to transfer.” Thus, the company on the restricted joint bidders list has a choice of submitting what has previously been required under prior section 30 CFR 556.64(i), or may submit a description of the timing and nature of the agreement, subject to the applicability of 18 U.S.C. 1001. The implementation of this provision will not raise any questions as to which documents are needed as that portion of the provision at issue is not a new requirement of the regulations.</p>
256.620(a) .....	<p>Section 256.620(a)—This is not a new provision, but API questions the effectiveness or the need for filing with MMS contractually created interests that typically are not placed on record in any other public record. Theoretically, any time a co-owner stands out or goes “non-consent” under a joint operating agreement; it assigns its interests in the well until payout. Does MMS intend those joint operating agreements to be filed? We also have concerns about confidentiality of agreements; therefore, this rule should only apply to recorded documents.</p>	<p>This language is essentially identical to the language of the prior section 556.64(a)(7), but it is found at section 556.715 in the final rule. BOEM is not changing any legal requirement except that we may require filing of these interests electronically. Joint Operating Agreements are not required to be filed with BOEM as they do not necessarily create economic interests, only rights to such interests. However, once those interests are created, instruments creating these interests must be filed with BOEM, just as instruments creating these interests were required to be filed under prior section 556.64(a)(8).</p>
256.700 .....	<p>Section 256.700—This provision should reference section 256.601(d), relating to the effect of production from unitized leases, as an additional circumstance that maintains a lease.</p>	<p>We added the reference at final rule section 556.601(e) to clarify the effect of production from a BSEE approved unit on individual lease terms.</p>

Proposed rule section (30 CFR)	Comments received	BOEM Response
N/A .....	Anglo Suisse Offshore Partners comment: NTL (Notice to Lessees) No. 2008–N07 grossly over-estimates the amount of supplemental bonding required. NTL No. 2008–N07 also requires MMS staff to recalculate a lessee’s PDP reserve values rather than using third party Securities and Exchange Commission (SEC) reserve reports.	We have noted the comment. BOEM disagrees and has decided not to make any changes at this time to the NTL. There is nothing in the rule that prevents BOEM from taking SEC reserve reports into account, but BOEM is not obligated to use those numbers if it believes that they are inaccurate or insufficiently substantiated.
N/A .....	Additional Issues: <ul style="list-style-type: none"> <li>• Waiver criteria on supplemental bonds .....</li> <li>• Amount of bond vs. net worth .....</li> <li>• Credit for net worth in calculating bonding amounts ..</li> <li>• New surety rules for issuance of bonds .....</li> </ul> Should MMS attempt to value a company, rather than rely on the SEC to do so?	These issues are beyond the scope of the final rule and may be addressed in future rulemaking.

**V. Legal and Regulatory Analyses**

*A. Statutes and Executive Orders*

1. Improving Regulation and Regulatory Review (Executive Order (E.O. 13563))

E.O. 13563, *Improving Regulation and Regulatory Review* (January 18, 2011), together with follow-up memoranda *EO Guidance Memorandum, M–11–10 (February 2, 2011)* and *Retrospective Analysis Guidance Memorandum, M–11–19 (April 25, 2011)*, require that the regulatory system protect public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation. The regulatory system must be based on the best available science, while allowing public participation and an open exchange of ideas, thus promoting predictability and reducing uncertainty. The regulatory system must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends and it must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must also measure, and seek to improve, the actual results of regulatory requirements.

E.O. 13563 supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in E.O. 12866 of September 30, 1993. As stated in that E.O., and to the extent permitted by law, each agency must, among other things: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to

the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing information upon which the public can base choices, or providing economic incentives to encourage the desired behavior, such as user fees or marketable permits.

2. Regulatory Planning and Review (E.O. 12866)

This final rule is not a significant rule, as determined by the Office of Management and Budget (OMB), and is not subject to review under E.O. 12866, *Regulatory Planning and Review* (September 30, 1993). This rule primarily updates existing regulations that govern the Federal leasing process for offshore sulfur and oil and gas subject to the exclusive jurisdiction of the United States. The rule is rewritten in simple, clear language, and reorganized to reflect the steps in the leasing process as they have evolved over time. Minor changes will make certain practices uniform among the OCS regional offices.

(1) This final rule does not have an annual effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule rewrites 30 CFR part 556 in plain language, as well as portions of 30 CFR parts 550 and 560,

and contains similar reporting and recordkeeping requirements and attendant costs as the prior regulations. A cost-benefit analysis was not performed because this is a rule of administrative procedure for which such an analysis is not required. However, an overall economic analysis was performed pursuant to the Regulatory Flexibility Act.

(2) This rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. Nominal user fees imposed by the rule are not material in size or nature. The final rule includes a new fee for recording certain secondary lease interests, \$29, and continues existing fees for submitting non-required documents, \$29, and requesting approval of the assignment or transfer of certain lease interests, \$198.

(4) This rule does not raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in E.O. 12866. The final rule supersedes the existing regulations.

3. Regulatory Flexibility Act

The Department certifies that this final rule does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612).

The changes in this final rule affect lessees and potential lessees, of which there are approximately 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) Code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small

company is one with fewer than 500 employees. BOEM estimates that of the 130 lessees and operators that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent).

The costs associated with the information collection (IC) activities related to this rulemaking should not have any significant economic effect on small businesses. This rule contains most of the same burden hour requirements and non-hour cost burdens as were in effect with BOEM's prior regulations. The changes in reporting requirements that are implemented with this rule do not significantly increase the IC burden on respondents—large or small. BOEM estimates an annual cumulative increase of 2,441 hours in the paperwork burden for all lessees over that imposed by the prior regulations. There is also a new \$29 non-hour cost burden for recording certain secondary lease interests resulting in an annual increase of \$20,300 (\$29 × an estimated 700 filings). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is also not required.

#### 4. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a major rule under 5 U.S.C. 801–808), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of \$100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

#### 5. Comments From Small Businesses

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BOEM, call 1–888–734–3247. You may comment to the Small Business Administration (SBA) without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

#### 6. Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The final rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538) is not required.

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

Under the criteria in E.O. 12630, *Governmental Action and Interference with Constitutionally-Protected Property Rights* (March 15, 1988), this final rule does not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally-protected property rights. A takings implication assessment is not required.

#### 8. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, *Federalism* (August 4, 1999), this final rule does not have sufficient federalism implications to require a Federalism Assessment. This final rule does not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments play a role in OCS activities, this rule does not affect that role.

#### 9. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988, *Civil Justice Reform* (February 7, 1996). Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

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

#### 10. Consultation With Indian Tribal Governments (E.O. 13175)

Under the criteria in E.O. 13175, *Consultation and Coordination with Indian Tribal Governments* (November 9, 2000), we have evaluated this final rule and determined it has no substantial effect on Federally-recognized Indian tribes.

#### 11. Paperwork Reduction Act (PRA)

This rule contains new IC requirements; therefore, a submission to OMB under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–

3521) was required. The OMB has approved the IC for the final rulemaking and assigned OMB Control Number 1010–0006 for a total of 19,454 burden hours and \$766,053 non-hour cost burdens.

The title of the IC is “Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf (30 CFR part 550, part 556, and part 560)”. Respondents are Federal sulfur or oil and gas lessees and/or operators. Some responses to this IC are required to obtain or retain a benefit, and some are mandatory. The frequency of response varies but is primarily on occasion. The IC does not include questions of a sensitive nature. BOEM will protect proprietary information according to section 26 of OCSLA; the Freedom of Information Act (5 U.S.C. 552), its implementing regulations at 43 CFR part 2; and the regulations at 30 CFR 556.104(b) and 550.197, addressing proprietary data and data and information to be made available to the public or for limited inspection.

This rulemaking is a partial rewrite of 30 CFR part 556, Leasing of Sulfur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf and of 30 CFR part 560, OCS Oil and Gas Leasing. It also refers to, but does not change current requirements and burdens already approved by OMB under 30 CFR part 550, subpart A (1010–0114). BOEM uses the information collected in the rulemaking to help determine specific areas of leasing interest, to determine if applicants are qualified to hold leases in the OCS, to identify parties ineligible to bid jointly, and to track owners of, and operators on, leaseholds.

In response to the proposed rule (74 FR 25177, May 27, 2009), BOEM received comments from the American Petroleum Institute, Shell Exploration and Production Company, Chevron North America Exploration and Production, Anglo Suisse Offshore Partners, LLC. (and Anglo Suisse Texas Offshore Partners, LLC.), Dynamic Offshore Resources, RLI Insurance Company, and two private citizens. Comments that addressed aspects of the information collection for this rulemaking are summarized below. All comments are addressed in detail in the preamble of this final rule.

Commenting on proposed rule section 256.404, one company indicated that it is burdensome to submit merger or name change information and that BOEM can obtain the information from the Secretary of State in most States. In the final rule, BOEM is retaining the requirement to submit such information in order to address the problems that the Bureau has had in the past with name/

merger changes of which BOEM was not timely informed. It is not practical for BOEM to monitor all filings with the Secretaries of State in each State. In final rule section 556.405, however, BOEM replaced the immediate filing with a requirement that the filing be accomplished as soon as practicable. No change in the burden resulted.

Concerning proposed rule sections 256.619 and 256.620, one company questioned submitting commercial agreements relating to certain transfers between restricted joint bidders because of the information's sensitivity. In final rule section 556.714, BOEM provided an option for the submission of a description of the timing and nature of the agreement(s) by which the assignor or transferor acquired the interest it now wishes to transfer. No change in the hour burden resulted. However, partially in response to the comment, BOEM added a general provision to the part (section 556.104(b)) to protect proprietary information (+ 125 hours).

In addition, between the proposed and final rules, several actions occurred that affected the information collection.

- The MMS was reorganized, per Secretarial Orders 3302 and 3299, resulting in a realignment of the regulations, with the leasing regulations going to BOEM, under 30 CFR chapter 5 (e.g., 30 CFR part 256 is now 30 CFR part 556).

- The IC burden for 30 CFR part 550, subpart J, bonding requirements for pipelines and pipeline rights-of-way, was consolidated into the collection being revised for this rulemaking for 30 CFR part 556 (1010–0006) due to the regulations realignment. The consolidation was approved by OMB on 11/14/2011.

- The proposed rule included a total rewrite of 30 CFR part 556; however, the final rule does not make substantive revisions to the regulations for general and supplemental bonding in prior part 556 (subpart I). After the proposed rule was published, questions arose about possible inconsistencies between the revised bonding regulations and p regulations for oil-spill financial responsibility under 30 CFR part 553. Also, since the publication of the proposed rule, BOEM has decided to engage in an overhaul of its financial assurance processes, and subpart I will be revised in a separate rulemaking. Therefore, the regulations and the associated IC burden for 30 CFR part 550, subpart I, will remain in effect, but the sections in subpart I have been renumbered to fit within the numbering scheme of this rule (e.g., prior section 556.52 is now section 556.900).

- In the final rule, BOEM rearranged discussions to make the regulations easier to read and follow. Thus, all rule sections and citations have been renumbered from the proposed rule, as explained in the preamble of the final rule.

- The information collection for prior 30 CFR part 556 regulations (1010–0006) was renewed by OMB, thereby updating burden hours based on public outreach. BOEM has therefore used those updated estimates where relevant instead of those used in the proposed rulemaking.

## 12. Other Changes in the Information Collection (IC) Between the Proposed and Final Rules

- The proposed rule included regulatory text concerning the reporting of decommissioning costs in 30 CFR part 250, subpart Q, and text concerning reports on lease-term pipelines in section 256.621. Due to the realignment of regulations and bureau responsibilities, BOEM removed these requirements from the final rule as they were addressed in the Bureau of Safety and Environmental Enforcement (BSEE) regulations (– 820 hours for removing Subpart Q and – 1,500 hours for removing section 256.621 in the final rule).

- The final rule also removed the provisions under proposed rule sections 256.902(a) and 256.905 for requesting/transferring a bonus or royalty credit, because the program has officially ended (– 2 hours from current collection).

- BOEM also divided the IC requirements for commenting on the 5-Year Program and responding to Calls for Information, etc. (sections 556.201–204 and sections 556.301–302) into general (not considered IC per the PRA) and specific, in accordance with the currently approved collection for part 556 (+ 596 hours). Where applicable, all estimates were updated according to the recent Office of Management and Budget (OMB) approved renewal of the 30 CFR part 556 information collection.

- BOEM also included a burden that was overlooked in the proposed rule (section 256.100, now section 556.302(d)) for requesting a summary of interest on Calls for Information (+ 5 hours).

- The proposed rule (section 256.620) introduced a new cost recovery fee (\$27) for filing required documents for record purposes. In the final rule (section 556.715(a)), the fee has been increased to \$29 in accordance with changes BOEM made, due to inflation, to other such fees on January 28, 2013 (78 FR 5837).

- To make the regulations easier to follow, in the final rule BOEM split the discussion (requirements and associated fee) of assignment/transfer of record title and that of operating rights interests (30 CFR part 256, subpart G, in the proposed rule) into two subparts (30 CFR part 556, subparts G and H). With this reorganization, BOEM discovered that it had not properly counted the number of submissions for transfers of operating rights; therefore, in the final rule, BOEM is reporting an adjustment increase for such transfers of record title/operating rights (+ 421 hours; + \$83,358 non-hour costs).

In addition, to streamline activities, reduce the burden in the future, and assist respondents, the final rule includes:

- A clarification of the proposed rule (section 256.611) and BOEM's prior regulations (section 556.62), which both explained how a record title, or other lease interest may be transferred, but did not mention the need to file a new Designation of Operator form (BOEM–1123, 30 CFR part 550, subpart A), which often arises when a lease interest is transferred. This clarification in part 556 (sections 701(c); 715(b); 801(b); 810(b)) will result in a one-time increase in the number of submissions after the rule becomes effective (+ 80 hours); otherwise the requirement is covered under OMB Control No. 1010–0114.

- A clarification that geophysical statements and maps are included with bid submissions (sections 556.500–501). This requirement and its hour burden have always been part of the bid process but not specifically stated (no change in hour burden).

- A provision (section 556.107) to allow a company's one-time submission of documentation, with a corporate seal, to establish the legal status of future submissions without such seals, where such seals would otherwise be required (+ 67 hours as a one-time burden but expected to reduce the net burden for companies in the future).

- An expansion of a provision from the proposed rule (section 256.503(c)) to allow implementation of electronic submission systems (e.g., for bonding information) (sections 556.107; 560.500) (+ 800 hours as a one-time increase to allow companies to adjust their processes; however, we expect this provision to reduce the hour burden of each affected requirement in the future).

The following table shows the breakdown of the hour and non-hour cost burdens for this final rulemaking.

## 13. Burden Breakdown Table

*Italics show expansion of existing requirements; bold indicates new*

requirements; regular font shows collection are being used instead of current requirements. Where applicable, those in the proposed rulemaking.] updated estimates from the existing

30 CFR part 556 and NTLs	Reporting requirement *	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
<b>Subpart A</b>				
104(b) New .....	Submit confidentiality agreement .....	0.25 .....	500 .....	125
106 .....	Cost recovery/service fees; confirmation receipt ...	Cost recovery/service fees and associated documentation are covered under individual requirements throughout the part.		0
107 New .....	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the <b>Federal Register</b> in accordance with § 560.500.	Burden covered in § 560.500.		0
107 New .....	File seals, documents, statements, signatures, etc., to establish legal status of all future submissions (paper and/or electronic).	10 min .....	400 .....	67
Subtotal .....	.....	.....	900 .....	192
<b>Subpart B</b>				
201–204 .....	Submit nominations, suggestions, and general comments in response to Request for Information/Comments, proposed 5-year leasing program, etc., including information from States/local governments, Federal agencies, industry, and others.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
201–204 .....	Submit nominations & specific information requested in response to Request for Information/Comments, proposed 5-year leasing program, etc., including from States/local governments, Federal agencies, industry, and others.	4 .....	69 .....	276
Subtotal .....	.....	.....	69 .....	276
<b>Subpart C</b>				
301; 302 .....	Submit response & specific information requested in Requests for Industry Interest and Calls for Information and Nominations, etc., on areas proposed for leasing; including information from States/local governments.	4 .....	20 responses/sale × 2 sales/call × 2 calls/year = 80.	320
302(d) New .....	Request summary of interest (nonproprietary information) for Calls for Information/Requests for Interest, etc.	1 .....	5 .....	5
305; 306 .....	States or local governments submit comments, recommendations, and other responses on size, timing, or location of proposed lease sale. Request extension; enter agreement.	4 .....	25 .....	100
Subtotal .....	.....	.....	110 .....	425
<b>Subpart D</b>				
400–402; 405 .....	Establish file for qualification; submit evidence/certification for lessee/bidder qualifications. Provide updates; obtain BOEM approval & qualification number.	2 .....	107 .....	214
403(c) .....	Request hearing on disqualification .....	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0

30 CFR part 556 and NTLs	Reporting requirement *	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
403; 404 New .....	Notify BOEM if you or your principals are excluded, disqualified, or convicted of a crime—Federal non-procurement debarment and suspension requirements; request exception; enter transaction.	1.5 .....	50 .....	75
405 .....	Notify BOEM of all mergers, name changes, or changes of business.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
Subtotal .....	.....	.....	157 .....	289

**Subpart E**

500; 501 .....	Submit bids, deposits, and required information, including GDIS & maps; in manner specified. Make data available to BOEM.	5 .....	2,000 .....	10,000
500(e); 517 .....	Request reconsideration of bid decision .....	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
501(e) New .....	Apply for reimbursement .....	Burden covered in 1010–0048, 30 CFR part 551.		0
511(b); 517 .....	Submit appeal due to restricted joint bidders list; appeal bid decision.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
513; 514 .....	File statement and detailed report of production. Make documents available to BOEM.	2 .....	100 .....	200
515 .....	Request exemption from bidding restrictions; submit appropriate information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
516 .....	Notify BOEM of tie bid decision; file agreement on determination of lessee.	3.5 .....	2 .....	7
520; 521; 600(c) .....	Execute lease (includes submission of evidence of authorized agent/completion and request effective date of lease); submit required data and rental.	1 .....	852 .....	852
520(b) New .....	Provide acceptable bond for payment of a deferred bonus. (We do not expect this to occur, hence minimum burden).	0.25 .....	1 .....	1
Subtotal .....	.....	.....	2,955 .....	11,060

**Subparts F, G, H**

Subpart F, G, H .....	References to requests of approval for various operations or submit plans or applications. Burden included with other approved collections for BOEM 30 CFR part 550 (Subpart A 1010–0114; Subpart B 1010–0151) and for BSEE 30 CFR part 250 (Subpart A 1014–0022; Subpart D 1014–0018).			0
701(c); 716(b); 801(b); 810(b) New.	Submit new designation of operator (BOEM–1123). <i>One-time increase to existing requirements and burdens already covered in 1010–0114. Extra burden will be deleted in next renewal. No fee.</i>	0.5 .....	160 .....	80
700–715 .....	File application and required information for assignment/transfer of record title/lease interest (form BOEM–0150; form is 30 min.) (includes sell, sublease, sever, exchange, transfer); request effective date/confidentiality; provide notifications.	1 .....	1,414 .....	1,414
		\$198 fee × 1,414 forms = \$279,972		

30 CFR part 556 and NTLs	Reporting requirement *	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
800–810 .....	File application and required information for assignment/transfer of operating rights interest (form BOEM–0151; form is 30 min.) (includes sell, sublease, sever, exchange, transfer); request effective date; provide notifications.	1 .....	421 .....	421
		\$198 fee × 421 forms = \$83,358		
715(a); 808(a) .....	File required instruments creating or transferring working interests, etc., for record purposes.	1 .....	2,369 .....	2,369
New Fee .....		\$29 fee × 2,369 filings = \$68,701		
715(b); 808(b) .....	Submit “non-required” documents, for record purposes that respondents want BOEM to file with the lease document.  (Accepted on behalf of lessees as a service; BOEM does not require or need them.).	Accepted as a service.	11,518 .....	0
		\$29 fee × 11,518 filings = \$334,022		
Subtotal .....			15,882 .....	4,284
		\$766,053		

**Subpart I**

900(a)–(e); 901; 902; 903(a).	Submit OCS Mineral Lessee’s and Operator’s Bond (Form BOEM–2028); execute bond.	0.33 .....	135 .....	45
900(c), (d), (f), (g); 901(c), (d), (f); 902(e).	Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required on BOEM-approved forms. Monitor and submit required information.	3.5 .....	166 .....	581
900(e); 901; 902; 903(a)	Submit OCS Mineral Lessee’s and Operator’s Supplemental Plugging & Abandonment Bond (Form BOEM–2028A); execute bond.	0.25 .....	141 .....	35
900(f), (g) .....	Submit authority for Regional Director to sell Treasury or alternate type of securities.	2 .....	12 .....	24
901 .....	Submit EP, DPP, and DOCs .....	IC burden covered in 1010–0151, 30 CFR part 550, subpart B.		0
901(f) .....	Submit oral/written comment on adjusted bond amount and information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
903(b) .....	Notify BOEM of any lapse in previous bond/action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.	1 .....	4 .....	4
904 .....	Provide plan/instructions to fund lease-specific abandonment account and related information; request approval to withdraw funds.	12 .....	2 .....	24
905 .....	Provide third-party guarantee, indemnity agreement, financial and required information, related notices, reports, and annual update; notify BOEM if guarantor becomes unqualified.	19 .....	46 .....	874
905(d)(3); 906 .....	Provide notice of and request approval to terminate period of liability, cancel bond, or other security; provide required information.	0.5 .....	378 .....	189
907(c)(2) .....	Provide information to demonstrate lease will be brought into compliance.	16 .....	5 .....	80
Subtotal .....			889 .....	1,856



30 CFR part 556 and NTLs	Reporting requirement *	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
<b>Subpart K</b>				
1101 .....	Request relinquishment (form BOEM–0152) of lease; submit required information.	1 .....	247 .....	247
1102 .....	Request additional time to bring lease into compliance.	1 .....	1 .....	1
1102(c) .....	Comment on cancellation .....	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal .....	.....	.....	248 .....	248
30 CFR Part 556 Total.	.....	.....	21,210 .....	18,630
			\$766,053 Non-Hour Cost Burdens	
30 CFR Part 550 Subpart J	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
550.1011(a) .....	Provide surety bond (form BOEM–2030) and required information.	GOM 0.25 .....	52 .....	13
		Pacific 3.5 .....	3 .....	11
30 CFR Part 550, Subpart J, Total.	.....	.....	55 .....	24
30 CFR Part 560	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
560.224(a) .....	Request BOEM to reconsider field assignment of a lease.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
560.500 New .....	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the <b>Federal Register</b> (e.g., bonding info.).	1 .....	800 .....	800
30 CFR Part 560 Total.	.....	.....	800 .....	800
Total Reporting For Collection.	.....	.....	22,065 .....	19,454
			\$766,053 Non-Hour Cost Burdens	

\* In the future, BOEM may require electronic filing of certain submissions.

An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may comment, at any time, on the accuracy of the IC burden estimate in this rule and may submit any comments to the Information Collection Clearance Officer, Office of Policy, Regulations, and Analysis; Bureau of Ocean Energy Management; U.S. Department of the Interior; VAM–BOEM DIR; 45600 Woodland Rd, Sterling, Virginia 20166.

14. National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

BOEM has considered the rule under the criteria of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4370h) and 516 Departmental Manual 15. This rule meets the criteria set forth in 43 CFR 46.210(5) for a Departmental “categorical exclusion” in that this final rule is “. . . of an administrative, financial, legal, technical, or procedural nature or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis. . . .” This rule also meets the criteria set forth in 516 Departmental Manual 15.4(C)(1) for a BOEM “categorical exclusion” in that its impacts are limited to administrative, economic or technological effects. Further, BOEM has analyzed this rule to

determine if it meets any of the extraordinary circumstances that require an environmental assessment or an environmental impact statement as set forth in 43 CFR 46.215 and has concluded that it does not.

15. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (44 U.S.C. 3516–3521), Public Law 106–554, app. C section 515, 114 Stat. 2763, 2763A–153–154).

16. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211, *Actions Concerning Regulations*

*That Significantly Affect Energy Supply, Distribution, or Use* (May 18, 2001). A statement of energy effects is not required.

**List of Subjects**

**30 CFR Part 550**

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

**30 CFR Part 556**

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

**30 CFR Part 559**

Continental shelf, Federal lands, Federal lease, Gas, Government contracts, Mineral resources, Mineral royalties, Oil and gas exploration, Outer continental shelf, Reporting and recordkeeping requirements.

**30 CFR Part 560**

Continental shelf, Federal lands, Government contracts, Mineral

resources, Mineral royalties, Oil and gas exploration, Outer continental shelf, Reporting and recordkeeping requirements.

Dated: March 10, 2016.

**Amanda C. Leiter,**  
*Acting Assistant Secretary—Land and Minerals Management.*

For the reasons stated in the preamble, the Bureau of Ocean Energy Management, (BOEM) amends 30 CFR parts 550, 556, 559 and 560 as follows:

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

- 1. Revise the authority citation for 30 CFR part 550 to read as follows:

**Authority:** 31 U.S.C. 9701, 43 U.S.C. 1334.

**Subpart A—General Provisions**

- 2. Add § 550.120 to read as follows:

**§ 550.120 What standards will BOEM use to regulate leases, rights-of-use and easement, and rights-of-way?**

BOEM will regulate all activities under a lease, a right-of-use and easement, or a right-of-way to:

- (a) Promote the orderly exploration, development, and production of mineral resources;
- (b) Prevent injury or loss of life;
- (c) Prevent damage to or waste of any natural resource, property, or the environment; and
- (d) Ensure cooperation and consultation with affected States, local

governments, other interested parties, and relevant Federal agencies.

- 3. Add § 550.121 to read as follows:

**§ 550.121 What must I do to protect health, safety, property, and the environment?**

The Director may require additional measures to ensure the use of Best Available and Safest Technology (BAST) as identified by BSEE:

- (a) To avoid the failure of equipment that would have a significant effect on safety, health, or the environment;
- (b) If it is economically feasible; and
- (c) If the incremental benefits justify the incremental costs.

**§§ 550.145 and 550.146 [Redesignated as §§ 550.146 and 550.147]**

- 4. Redesignate §§ 550.145 and 550.146 as §§ 550.146 and 550.147, respectively.
- 5. Amend § 550.197 as follows:
  - a. Revise the first sentence of the introductory text.
  - b. Revise paragraph (b)(5).
  - c. Revise paragraph (c).
  - d. Add paragraph (d).

The revisions and addition read as follows:

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

BOEM will protect data and information that you submit under this chapter, as described in this section.

\* \* \*  
\* \* \* \* \*  
(b) \* \* \*

If	BOEM will release	At this time	Special provisions
(5) Your lease is still in effect and within the primary term specified in the lease.	Geological data, analyzed geological information.	Two years after the required submittal date or 60 days after a lease sale if any portion of an offered lease is within 50 miles of a well, whichever is later.	These release times apply only if the provisions in this table governing high-resolution systems and the provisions in § 552.7 do not apply. If the primary term specified in the lease is extended, this provision applies to the extension.

\* \* \* \* \*

(c) BOEM may allow limited data and information inspection, but only by a person with a direct interest in related BOEM decisions and issues in a specific geographic area, and who agrees in writing to maintain the confidentiality of geological and geophysical (G&G) data and information submitted under this part that BOEM uses to:

- (1) Promote operational safety;
- (2) Protect the environment; or
- (3) Make field determinations.

(d) No proprietary information received by BOEM under 43 U.S.C. 1352 will be transmitted to any affected State unless the lessee, or the permittee and

all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

- 6. Add subpart D to part 550 to read as follows:

**Subpart D—Leasing Maps and Diagrams**

**§ 550.400 Leasing maps and diagrams.**

(a) Any area of the OCS, which has been appropriately platted as provided in paragraph (b) of this section, may be leased for any mineral not included in an existing lease issued under the Act or meeting the requirements of

subsection (a) of section 6 of the Act. Before any lease is offered or issued an area may be:

- (1) Withdrawn from disposition pursuant to section 12(a) of the Act; or
- (2) Designated as an area or part of an area restricted from operation under section 12(d) of the Act.

(b) BOEM will prepare leasing maps and official protraction diagrams of areas of the OCS. The areas included in each mineral lease will be in accordance with the appropriate leasing map or official protraction diagram.

- 7. Revise part 556 to read as follows:

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

### **Subpart A—General Provisions**

Sec.

- 556.100 Statement of policy.
- 556.101 Purpose.
- 556.102 Authority.
- 556.103 Cross references.
- 556.104 Information collection and proprietary information.
- 556.105 Acronyms and definitions.
- 556.106 Service fees.
- 556.107 Corporate seal requirements.

### **Subpart B—Oil and Gas Five Year Leasing Program**

- 556.200 What is the Five Year leasing program?
- 556.201 Does BOEM consider multiple uses of the OCS?
- 556.202 How does BOEM start the Five Year program preparation process?
- 556.203 What does BOEM do before publishing a proposed Five Year program?
- 556.204 How do Governments and citizens comment on a proposed Five Year program?
- 556.205 What does BOEM do before approving a proposed final Five Year program or a significant revision of a previously-approved Five Year program?

### **Subpart C—Planning and Holding a Lease Sale**

- 556.300 What reports may BOEM and other Federal agencies prepare before a lease sale?
- 556.301 What is a Call for Information and Nominations?
- 556.302 What does BOEM do with the information from the Call?
- 556.303 What does BOEM do if an area proposed for leasing is within three nautical miles of the seaward boundary of a coastal State?
- 556.304 How is a proposed notice of sale prepared?
- 556.305 How does BOEM coordinate and consult with States regarding a proposed notice of sale?
- 556.306 What if a potentially oil or gas bearing area underlies both the OCS and lands subject to State jurisdiction?
- 556.307 What does BOEM do with comments and recommendations received on the proposed notice of sale?
- 556.308 How does BOEM conduct a lease sale?
- 556.309 Does BOEM offer blocks in a sale that is not on the Five Year program schedule (called a Supplemental Sale)?

### **Subpart D—Qualifications**

- 556.400 When must I demonstrate that I am qualified to hold a lease on the OCS?
- 556.401 What do I need to show to become qualified to hold a lease on the OCS and obtain a qualification number?
- 556.402 How do I make the necessary showing to qualify and obtain a qualification number?

- 556.403 Under what circumstances may I be disqualified from holding a lease on the OCS?
- 556.404 What do the non-procurement debarment rules require that I do?
- 556.405 When must I notify BOEM of mergers, name changes, or changes of business form?

### **Subpart E—Issuance of a Lease**

#### **How To Bid**

- 556.500 Once qualified, how do I submit a bid?
- 556.501 What information do I need to submit with my bid?

#### **Restrictions on Joint Bidding**

- 556.511 Are there restrictions on bidding with others and do those restrictions affect my ability to bid?
- 556.512 What bids may be disqualified?
- 556.513 When must I file a statement of production?
- 556.514 How do I determine my production for purposes of the restricted joint bidders list?
- 556.515 May a person be exempted from joint bidding restrictions?

#### **How does BOEM act on bids?**

- 556.516 What does BOEM do with my bid?
- 556.517 What may I do if my bid is rejected?

#### **Awarding the Lease**

- 556.520 What happens if I am the successful high bidder and BOEM accepts my bid?
- 556.521 When is my lease effective?
- 556.522 What are the terms and conditions of the lease and when are they published?

### **Subpart F—Lease Terms and Obligations**

#### **Length of Lease**

- 556.600 What is the primary term of my oil and gas lease?
- 556.601 How may I maintain my oil and gas lease beyond the primary term?
- 556.602 What is the primary term of my sulfur lease?
- 556.603 How may I maintain my sulfur lease beyond the primary term?

#### **Lease Obligations**

- 556.604 What are my rights and obligations as a record title owner?
- 556.605 What are my rights and obligations as an operating rights owner?

#### **Helium**

- 556.606 What must a lessee do if BOEM elects to extract helium from a lease?

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

- 556.700 May I assign or sublease all or any part of the record title interest in my lease?
- 556.701 How do I seek approval of an assignment of the record title interest in my lease, or a severance of operating rights from that record title interest?
- 556.702 When will my assignment result in a segregated lease?
- 556.703 What is the effect of the approval of the assignment of 100 percent of the

record title in a particular aliquot(s) of my lease and the resulting lease segregation?

- 556.704 When would BOEM disapprove an assignment or sublease of an interest in my lease?
  - 556.705 How do I transfer the interest of a deceased natural person who was a lessee?
  - 556.706 What if I want to transfer record title interests in more than one lease at the same time, but to different parties?
  - 556.707 What if I want to transfer different types of lease interests (not only record title interests) in the same lease to different parties?
  - 556.708 What if I want to transfer my record title interests in more than one lease to the same party?
  - 556.709 What if I want to transfer my record title interest in one lease to multiple parties?
  - 556.710 What is the effect of an assignment of a lease on an assignor's liability under the lease?
  - 556.711 What is the effect of a record title holder's sublease of operating rights on the record title holder's liability?
  - 556.712 What is the effective date of a transfer?
  - 556.713 What is the effect of an assignment of a lease on an assignee's liability under the lease?
  - 556.714 As a restricted joint bidder, may I transfer an interest to another restricted joint bidder?
  - 556.715 Are there any interests I may transfer or record without BOEM approval?
  - 556.716 What must I do with respect to the designation of operator on a lease when a transfer of record title is submitted?
- ### **Subpart H—Transferring Operating Rights in All or Part of a Lease**
- 556.800 As an operating rights owner, may I assign all or part of my operating rights interest?
  - 556.801 How do I seek approval of an assignment of my operating rights?
  - 556.802 When would BOEM disapprove the assignment of all or part of my operating rights interest?
  - 556.803 What if I want to assign operating rights interests in more than one lease at the same time, but to different parties?
  - 556.804 What if I want to assign my operating rights interest in a lease to multiple parties?
  - 556.805 What is the effect of an operating rights owner's assignment of operating rights on the assignor's liability?
  - 556.806 What is the effective date of an assignment of operating rights?
  - 556.807 What is the effect of an assignment of operating rights on an assignee's liability?
  - 556.808 As an operating rights owner, are there any interests I may assign without BOEM approval?
  - 556.809 [Reserved]
  - 556.810 What must I do with respect to the designation of operator on a lease when a transfer of operating rights ownership is submitted?

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

- 556.900 Bond requirements for an oil and gas or sulfur lease.
- 556.901 Additional bonds.
- 556.902 General requirements for bonds.
- 556.903 Lapse of bond.
- 556.904 Lease-specific abandonment accounts.
- 556.905 Using a third-party guarantee instead of a bond.
- 556.906 Termination of the period of liability and cancellation of a bond.
- 556.907 Forfeiture of bonds and/or other securities.

**Subpart J—Bonus or Royalty Credits for Exchange of Certain Leases**

- 556.1000 Leases formerly eligible for a bonus or royalty credit.

**Subpart K—Ending a Lease**

- 556.1100 How does a lease expire?
- 556.1101 May I relinquish my lease or an aliquot part thereof?
- 556.1102 Under what circumstances will BOEM cancel my lease?

**Subpart L—Leases Maintained Under Section 6 of OCSLA**

- 556.1200 Effect of regulations on lease.
- 556.1201 Section 6(a) leases and leases other than those for oil, gas, or sulfur.

**Subpart M—Environmental Studies**

- 556.1300 Environmental studies.

**Authority:** 30 U.S.C. 1701 note, 30 U.S.C. 1711, 31 U.S.C. 9701, 42 U.S.C. 6213, 43 U.S.C. 1331 note, 43 U.S.C. 1334, 43 U.S.C. 1801–1802.

**Subpart A—General Provisions****§ 556.100 Statement of policy.**

The management of Outer Continental Shelf (OCS) resources is to be conducted in accordance with the findings, purposes, and policy directions provided by the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA or the Act) (43 U.S.C. 1332, 1801, 1802), and other executive, legislative, judicial and departmental guidance. The Secretary of the Interior (the Secretary) will consider available environmental information in making decisions affecting OCS resources.

**§ 556.101 Purpose.**

The purpose of the regulations in this part is to establish the procedures under which the Secretary will exercise the authority to administer a leasing program for oil and gas, and sulfur. The regulations pertaining to the procedures under which the Secretary will exercise the authority to administer a program to grant rights-of-use and easements are found in part 550 of this chapter.

**§ 556.102 Authority.**

(a) The Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1334)

authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil and gas, and sulfur, in submerged lands of the OCS. The Act authorizes the Secretary to grant rights-of-way and easements through the submerged lands of the OCS.

(b) The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) (30 U.S.C. 1711) governs oil and gas royalty management and requires the development of enforcement practices to ensure the prompt and proper collection of oil and gas revenues owed to the U.S.

(c) The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes fees and charges for Federal government services.

(d) The Energy Policy and Conservation Act of 1975 (42 U.S.C. 6213) prohibits joint bidding by major oil and gas producers.

(e) The Gulf of Mexico Energy Security Act of 2006 (GOMESA) (Pub. L. 109–432, 43 U.S.C. 1331 note):

(1) Shares leasing revenues with Gulf producing states and the Land & Water Conservation Fund for coastal restoration projects; and

(2) Allows companies to exchange certain existing leases in moratorium areas for bonus and royalty credits to be used on other Gulf of Mexico leases.

**§ 556.103 Cross references.**

The following includes some of the major regulations relevant to offshore oil and gas development:

(a) For other applicable Bureau of Ocean Energy Management (BOEM) oil and gas regulations, see 30 CFR parts 550 through 560.

(b) For Bureau of Safety and Environmental Enforcement (BSEE) regulations governing exploration, development and production, and oil spill response, see 30 CFR chapter II.

(c) For Office of Natural Resources Revenue (ONRR) regulations related to rentals, royalties, and fees, see 30 CFR chapter XII.

(d) For BOEM regulations governing the appeal of an order or decision issued under the regulations in this part, see 30 CFR part 590.

(e) For regulations on the National Environmental Policy Act (NEPA), see 40 CFR 1500–1508 and 43 CFR part 46.

(f) For ocean dumping sites, see the U.S. Environmental Protection Agency (USEPA) listing—40 CFR part 228.

(g) For air quality, see USEPA regulations at 40 CFR part 55 and BOEM regulations at 30 CFR part 550 subparts B and C.

(h) For related National Oceanic and Atmospheric Administration (NOAA) programs, see:

(1) Marine Sanctuary regulations, 15 CFR part 922;

(2) Fishermen's Contingency Fund, 50 CFR part 296;

(3) Coastal Zone Management Act (CZMA), 15 CFR part 930;

(4) Essential Fish Habitat, 50 CFR 600.90.

(i) For U.S. Coast Guard (USCG) regulations on the oil spill liability of vessels and operators, see 33 CFR parts 132, 135, and 136.

(j) For USCG regulations on port access routes, see 33 CFR part 164.

(k) For Department of Transportation regulations on offshore pipeline facilities, see 49 CFR part 195.

(1) For Department of Defense regulations on military activities on offshore areas, see 32 CFR part 252.

**§ 556.104 Information collection and proprietary information.**

(a) *Information collection.* (1) The Office of Management and Budget (OMB) approved the collection of information under 44 U.S.C. 3501–3521, and assigned OMB Control Number 1010–0006. The title of this collection of information is “Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf (30 CFR part 550, part 556, and part 560).”

(2) BOEM collects this information to determine if an applicant seeking to obtain a lease or right-of-use and easement (RUE) on the OCS is qualified to hold such a lease or RUE and to determine whether any such applicant can meet the monetary and non-monetary requirements associated with a lease or RUE. Responses to this information collection are either required to obtain or retain a benefit or are mandatory under OCSLA (43 U.S.C. 1331–1356a). BOEM will protect proprietary information collected according to section 26 of OCSLA (43 U.S.C. 1352), and this section.

(3) The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires us to inform the public that an agency may not conduct or sponsor, and that no one is required to respond to, a collection of information unless it displays a current and valid OMB control number.

(4) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, by mail at 45600 Woodland Road, Sterling, VA 20166 or by email to [regulation1@boem.gov](mailto:regulation1@boem.gov), or by phone at (703) 787–1025.

(b) *Proprietary information.* (1) Any proprietary information maintained by BOEM will be subject to the requirements of 43 CFR part 2.

(2) No proprietary information received by BOEM under 43 U.S.C. 1352(c) will be transmitted to any affected State unless the lessee, to whom such information applies, or the permittee and all persons, to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

(c) Proprietary information in response to a Call for Information and Nominations (Call).

(1) A specific indication of interest in an area received in response to a Call issued by the Secretary is proprietary information.

(2) Notwithstanding paragraph (c)(1) of this section, BOEM may provide a summary of indications of interest in areas received in response to a Call for a proposed sale.

#### § 556.105 Acronyms and definitions.

(a) Acronyms and terms used in this part have the following meanings:

ASTM American Society for Testing and Materials  
 BAST Best Available and Safest Technology  
 BOEM Bureau of Ocean Energy Management  
 BSEE Bureau of Safety and Environmental Enforcement  
 CFR Code of Federal Regulations  
 CPA Central Planning Area of the GOM  
 CZMA Coastal Zone Management Act  
 DOI Department of the Interior  
 DOCD Development Operations Coordination Document  
 DOO Designation of Operator  
 DPP Development and Production Plan  
 EIA Environmental Impact Analysis  
 EP Exploration Plan  
 EPA Eastern Planning Area of the GOM  
 EPAct Energy Policy Act of 2005  
 FNOF Final Notice of Sale  
 FOGRMA Federal Oil and Gas Royalty Management Act of 1982  
 G&G Geological and Geophysical  
 GDIS Geophysical Data and Information Statement  
 GOM Gulf of Mexico  
 GOMESA Gulf of Mexico Energy Security Act of 2006  
 IOAA Independent Offices Appropriations Act of 1952  
 LLC Limited Liability Company  
 MBB Mapping and Boundary Branch  
 NAD North American Datum  
 NEPA National Environmental Policy Act of 1969  
 NGPA Natural Gas Processors Association  
 NOAA National Oceanic and Atmospheric Administration  
 NTL Notice to Lessees  
 OCS Outer Continental Shelf  
 OCSLA Outer Continental Shelf Lands Act  
 OMB Office of Management and Budget  
 ONRR Office of Natural Resources Revenue  
 OPD Official Protraction Diagram  
 PNOF Proposed Notice of Sale  
 PRA Paperwork Reduction Act  
 ROW Right of way

RSV Royalty Suspension Volume  
 RUE Right of Use and Easement  
 SLA Submerged Lands Act of 1953  
 U.S. United States  
 U.S.C. United States Code  
 USCG U.S. Coast Guard  
 USEPA U.S. Environmental Protection Agency  
 UTM Universal Transverse Mercator coordinate system  
 WPA Western Planning Area of the GOM

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

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

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

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

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

(iii) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment that was extracted from the OCS and transported directly to that State by means of one or more vessels or by a combination of means, including a vessel;

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

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

*Aliquot or Aliquot part* means an officially designated subdivision of a lease's area, which can be a half of a lease ( $\frac{1}{2}$ ), a quarter of a lease ( $\frac{1}{4}$ ), a quarter of a quarter of a lease ( $\frac{1}{4} \frac{1}{4}$ ), or a quarter of a quarter of a quarter of a lease ( $\frac{1}{4} \frac{1}{4} \frac{1}{4}$ ).

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

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

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

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

(ii) For purposes of computing production and reporting of natural gas liquids, 1,454 barrels of natural gas liquids at 60 °F equals one barrel of crude oil.

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

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

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

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

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

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

*Coastal zone* means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the water therein and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Ethane—C<sub>2</sub>H<sub>6</sub>

(B) Propane—C<sub>3</sub>H<sub>8</sub>

(C) Butane—C<sub>4</sub>H<sub>10</sub>, including all products covered by NGPA specifications for commercial butane, including isobutane, normal butane, and other butanes—all butanes not included as isobutane or normal butane;

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

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

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

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

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

*Operating rights owner* means the holder of operating rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Security or securities* means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; pre-organization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

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

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

(i) From May 1 through October 31; or

(ii) from November 1 through April 30.

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

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

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

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

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

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

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

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

*You* means any party that has, or may have, legal obligations to the Federal government with respect to any operations on the OCS in which it is or may become involved. Depending on the context of the regulation, the term "you" may include a lessee (record title owner), an operating rights owner, a designated operator or agent of the lessee, a predecessor lessee, a holder of a State or Federal RUE, or a pipeline ROW holder.

**§ 556.106 Service fees.**

(a) The table in this paragraph shows the fees you must pay to BOEM for the services listed. BOEM will adjust the fees periodically according to the Implicit Price Deflator for Gross Domestic Product and publish a document showing the adjustment in the **Federal Register**. If a significant adjustment is needed to arrive at a new fee for any reason other than inflation, then a proposed rule containing the new fees will be published in the **Federal Register** for comment.

**SERVICE FEE TABLE**

Service—processing of the following:	Fee amount	30 CFR Citation
(1) Assignment of record title interest in Federal oil and gas lease(s) for BOEM approval. ....	\$198	§ 556.701(a)
(2) Sublease or Assignment of operating rights interest in Federal oil and gas lease(s) for BOEM approval. ....	198	§ 556.801(a)
(3) Required document filing for record purpose, but not for BOEM approval. ....	29	§ 556.715(a) § 556.808(a)

SERVICE FEE TABLE—Continued

Service—processing of the following:	Fee amount	30 CFR Citation
(4) Non-required document filing for record purposes. ....	29	§ 556.715(b) § 556.808(b)

(b) Evidence of payment via pay.gov of the fees listed in paragraph (a) of this section must accompany the submission of a document for approval or filing, or be sent to an office identified by the Regional Director.

(c) Once a fee is paid, it is nonrefundable, even if your service request is withdrawn.

(d) If your request is returned to you as incomplete, you are not required to submit a new fee with the amended submission.

(e) The pay.gov Web site is accessible at <https://www.pay.gov/paygov/> or through the BOEM Web site at <http://www.boem.gov/Fees-for-Services>.

(f) The fees listed in the table above apply equally to any document or information submitted electronically pursuant to part 560, subpart E, of this chapter.

**§ 556.107 Corporate seal requirements.**

(a) If you electronically submit to BOEM any document or information referenced in § 560.500 of this chapter, any requirement to use a corporate seal under this chapter will be satisfied, and you will not need to affix your corporate seal to such document or information, if:

(1) You properly file with BOEM a paper, with a corporate seal and the signature of the authorized person(s), stating that electronic submissions made by you will be legally binding, as set forth in § 560.502 of this chapter; and

(2) You make electronic submissions to BOEM through a secure electronic filing system that conforms to the requirements of § 560.500; or,

(b) You may file with BOEM a non-electronic document, containing a corporate seal and the signature of an authorized person(s), attesting that future documents and information filed by you by electronic or non-electronic means will be legally binding without an affixed corporate seal. If you file such a non-electronic attestation document with BOEM, any requirement for use of a corporate seal under the regulations of this chapter will be satisfied, and you will not need to affix your corporate seal to submissions where they would have been otherwise required.

(c) If the State or territory in which you are incorporated does not issue or require corporate seals, the document referred to in paragraphs (a) and (b) of

this section need not contain a corporate seal, but must still contain the signature of the authorized person(s), a statement that the State in which you are incorporated does not issue or require corporate seals, and a statement that submissions made by you will be legally binding.

(d) Any document, or information submitted without corporate seal must still contain the signature of an individual qualified to sign who has the requisite authority to act on your behalf.

(e) Any document or information submitted pursuant to this section is submitted subject to the penalties of 18 U.S.C. 1001, as amended by the False Statements Accountability Act of 1996.

**Subpart B—Oil and Gas Five Year Leasing Program**

**§ 556.200 What is the Five Year leasing program?**

Section 18(a) of OCSLA (43 U.S.C. 1344(a)), requires the Secretary to prepare an oil and gas leasing program that consists of a five-year schedule of proposed lease sales to best meet national energy needs, showing the size, timing, and location of leasing activity as precisely as possible. BOEM prepares the five year schedule of proposed lease sales consistent with the principles set out in section 18(a)(1) and (2)(A)-(H) of OCSLA (43 U.S.C. 1344(a)(1) and (2)(A)-(H)) to obtain a proper balance among the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone, as required by OCSLA section 18(a)(3) (43 U.S.C. 1344(a)(3)).

**§ 556.201 Does BOEM consider multiple uses of the OCS?**

BOEM gathers information about multiple uses of the OCS in order to assist the Secretary in making decisions on the 5-year program pursuant to provisions of 43 U.S.C. 1344. For this purpose, BOEM invites and considers suggestions from States and local governments, industry, and any other interested parties, primarily through public notice and comment procedures. BOEM also invites and considers suggestions from Federal agencies.

**§ 556.202 How does BOEM start the Five Year program preparation process?**

To begin preparation of the Five Year program, BOEM invites and considers nominations for any areas to be included or excluded from leasing, by doing the following:

(a) BOEM prepares and makes public official protraction diagrams and leasing maps of OCS areas. In any area properly included in the official Five Year diagrams and maps, any area not already leased for oil and gas may be offered for lease.

(b) BOEM invites and considers suggestions and relevant information from governors of States, local governments, industry, Federal agencies, and other interested parties, through a publication of a request for information in the **Federal Register**. Any local government must first submit its comments on the request for information to its State governor before sending the comments to BOEM.

(c) BOEM sends a letter to the governor of each affected State asking the governor to identify specific laws, goals, and policies that should be considered. Each State governor, as well as the Department of Commerce, is requested to identify the relationship between any oil and gas activity and the State under sections 305 and 306 of the CZMA, 16 U.S.C. 1454 and 1455.

(d) BOEM asks the Department of Energy for information on regional and national energy markets and transportation networks.

**§ 556.203 What does BOEM do before publishing a proposed Five Year program?**

After considering the comments and information described in § 556.202, BOEM will prepare a draft proposed Five Year program.

(a) At least 60 days before publication of a proposed program, BOEM will send a letter, together with the draft proposed program, to the governor of each affected State, inviting the governor to comment on the draft proposed program.

(b) A governor, whether for purposes of preparing that State's comments or otherwise, may solicit comments from local governments that he determines may be affected by an oil and gas leasing program.

(c) If a governor's comments on the draft proposed program are received by



BOEM at least 15 days before submission of the proposed program to Congress and its publication for comment in the **Federal Register**, BOEM will reply to the governor in writing.

**§ 556.204 How do governments and citizens comment on a proposed Five Year program?**

BOEM publishes the proposed program in the **Federal Register** for comment by the public. At the same time, BOEM sends the proposed program to the governors of the affected States and to Congress and the Attorney General of the United States for review and comment.

(a) Governors are responsible for providing a copy of the proposed program to affected local governments in their States. Local governments may comment directly to BOEM, but must also send their comments to the governor of their State.

(b) All comments from any party are due within 90 days after publication of the request for comments in the **Federal Register**.

**§ 556.205 What does BOEM do before approving a proposed final Five Year program or a significant revision of a previously-approved Five Year program?**

At least 60 days before the Secretary may approve a proposed final Five Year program or a significant revision to a previously approved final Five Year program, BOEM will submit a proposed final program or proposed significant revision to the President and Congress. BOEM will also submit comments received and indicate the reasons why BOEM did or did not accept any specific recommendation of the Attorney General of the United States, the governor of a State, or the executive of a local government.

**Subpart C—Planning and Holding a Lease Sale**

**§ 556.300 What reports may BOEM and other Federal agencies prepare before a lease sale?**

For an oil and gas lease sale in a Five Year program, and as the need arises for other mineral leasing pursuant to part 581 of this chapter, BOEM will prepare a report describing the general geology and potential mineral resources of the area under consideration. The Director may request other interested Federal agencies to prepare reports describing, to the extent known, any other valuable resources contained within the general area and the potential effect of mineral operations upon the resources or upon the total environment or other uses of the area.

**§ 556.301 What is a Call for Information and Nominations?**

BOEM issues a Call for Information and Nominations (“Call”) on an area proposed for leasing in the Five Year program through publication in the **Federal Register** and other publications. A Call may include more than one proposed sale. Comments are requested from industry and the public on:

- (a) Industry interest in the area proposed for leasing, including nominations or indications of interest in specific blocks within the area;
- (b) Geological conditions, including bottom hazards;
- (c) Archaeological sites on the seabed or near shore;
- (d) Potential multiple uses of the proposed leasing area, including navigation, recreation, and fisheries;
- (e) Areas that should receive special concern and analysis; and
- (f) Other socioeconomic, biological, and environmental information.

**§ 556.302 What does BOEM do with the information from the Call?**

(a) Based upon information and nominations received in response to the Call, and in consultation with appropriate Federal agencies, the Director will develop a recommendation of areas proposed for leasing for the Secretary for further consideration for leasing and/or environmental analysis.

(1) In developing the recommendation, the Director will consider available information concerning the environment, conflicts with other uses, resource potential, industry interest, and other relevant information, including comments received from State and local governments and other interested parties in response to the Call.

(2) The Director, on his/her own motion, may include in the recommendation areas in which interest has not been indicated in response to a Call. In making a recommendation, the Director will consider all available environmental information.

(3) Upon approval by the Secretary, the Director will announce the area identified in the **Federal Register**.

(b) BOEM will evaluate the area(s) identified for further consideration for the potential effects of leasing on the human, marine, and coastal environments, and may develop measures to mitigate adverse impacts, including lease stipulations, for the options to be analyzed. The Director may hold public hearings on the environmental analysis after an appropriate notice.

(c) BOEM will seek to inform the public, as soon as possible, of changes

from the area(s) proposed for leasing that occur after the Call process.

(d) Upon request, the Director will provide relative indications of interest in areas, as well as any comments filed in response to a Call for a proposed sale. However, no information transmitted will identify any particular area with the name of any particular party so as not to compromise the competitive position of any participants in the process of indicating interest.

(e) For supplemental sales provided for by § 556.308, the Director’s recommendation will be replaced by a statement describing the results of the Director’s consideration of the factors specified above in this section.

**§ 556.303 What does BOEM do if an area proposed for leasing is within three nautical miles of the seaward boundary of a coastal State?**

For an area proposed for leasing that is within three nautical miles of the seaward boundary of a coastal State, as governed by section 8(g)(1) of OCSLA (43 U.S.C. 1337(g)(1)):

(a) BOEM provides the governor of the coastal State, subject to the confidentiality requirements in this chapter:

- (1) A schedule for leasing; and
- (2) An estimate of the potential oil and gas resources.

(b) At the request of the governor of a coastal State, BOEM will provide to that governor, subject to the confidentiality requirements in this chapter:

- (1) Information concerning geographical, geological, and ecological characteristics; and
- (2) An identification of any field, geological structure, or trap, or portion thereof, that lies within three nautical miles of the State’s boundary.

**§ 556.304 How is a proposed notice of sale prepared?**

(a) The Director will, in consultation with appropriate Federal agencies, develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environment, which will be contained, or referenced, in the proposed notice of sale.

(b) A proposed notice of sale will be submitted to the Secretary for approval. All comments and recommendations received and the Director’s findings or actions thereon, will also be forwarded to the Secretary.

(c) Upon approval by the Secretary, BOEM will send a proposed notice of sale to the governors of affected States and publish the notice of its availability in the **Federal Register**. The proposed notice of sale references or provides a

link to the lease form, and contains a description of the area proposed for leasing, the proposed lease terms and conditions of sale, and proposed stipulations to mitigate potential adverse impacts on the environment.

**§ 556.305 How does BOEM coordinate and consult with States regarding a proposed notice of sale?**

(a) Within 60 days after receiving the proposed notice of sale, governors of affected States may submit comments and recommendations to BOEM regarding the size, timing, and location of the proposed sale. Local governments may comment to BOEM directly, but must also send their comments to the governor of their State.

(b) BOEM will provide a consistency determination under the Coastal Zone Management Act (CZMA) (16 U.S.C. 1456) to each State with an approved coastal zone management program that will determine whether the proposed sale is consistent, to the maximum extent practicable, with the enforceable policies of the State's approved coastal zone management program.

**§ 556.306 What if a potentially oil- or gas-bearing area underlies both the OCS and lands subject to State jurisdiction?**

(a) Whenever the Director or the governor of a coastal State determines that a common potentially hydrocarbon-bearing area may underlie the Federal OCS and State submerged lands, the Director or the governor will notify the other party in writing of the determination.

(b) Thereafter the Director will provide to the governor of the coastal State, subject to the confidentiality requirements in this chapter:

- (1) An identification of the areas proposed for leasing and a schedule for, leasing; and
- (2) An estimate of the oil and gas resources.

(c) At the request of the governor of the coastal State, the Director will provide to such governor, subject to the confidentiality requirements in this chapter:

- (1) All geographical, geological, and ecological characteristics of the areas proposed for leasing; and
- (2) An identification of any field, geological structure, or trap that lies within 3 miles of the State's seaward boundary.

(d) If BOEM intends to lease such blocks or tracts, the Director and the governor of the coastal State may enter into an agreement for the equitable disposition of the revenues from production of any common potentially hydrocarbon-bearing area, pursuant to

OCSLA section 8(g)(3) (43 U.S.C. 1337(g)(3)). Any revenues received by the United States under such an agreement are subject to the requirements of OCSLA section 8(g)(2) (43 U.S.C. 1337(g)(2)).

(e) If the Director and the governor do not enter into an agreement under paragraph (d) of this section within 90 days, BOEM may nevertheless proceed with the leasing of the tracts, in which case all revenues will be deposited in a separate account in the Treasury of the United States, pending disposition of 27% (twenty-seven percent) of the revenues to the relevant coastal state(s), pursuant to the requirements of OCSLA section 8(g)(2). (43 U.S.C. 1337(g)(2)).

**§ 556.307 What does BOEM do with comments and recommendations received on the proposed notice of sale?**

(a) BOEM will consider all comments and recommendations received in response to the proposed notice of sale.

(b) If the Secretary determines, after providing opportunity for consultation, that a governor's comments, and those of any affected local government, provide a reasonable balance between the national interest and the well-being of the citizens of the State, the Secretary will accept the recommendations of a State and/or local government(s). Any such determination of the national interest will be based on the findings, purposes and policies of the Act set forth in 43 U.S.C. 1332 and 43 U.S.C. 1801.

(c) BOEM will send to each governor written reasons for its determination to accept or reject each governor's recommendation, and/or to implement any alternative means to provide for a reasonable balance between the national interest and the interests of the citizens of the State.

**§ 556.308 How does BOEM conduct a lease sale?**

(a) BOEM publishes a final notice of sale in the **Federal Register** and in other publications, as appropriate, at least 30 days before the date of the sale. The final notice:

- (1) States the place, time, and method for filing bids and the place, date, and hour for opening bids; and
- (2) Contains or references a description of the areas offered for lease, the lease terms and conditions of sale, and stipulations to mitigate potential adverse impacts on the environment.

(b) Oil and gas tracts are offered for lease by competitive sealed bid in accordance with the terms and conditions in the final notice of sale and applicable laws and regulations.

(c) Unless BOEM finds that a larger area is necessary for reasonable

economic production, no individual tract for oil and gas leasing will exceed 5,760 acres in area. If BOEM finds that an area larger than 5,760 acres is necessary in any particular area, the size of any such tract will be specified in the final notice of sale.

(d) The final notice of sale references, or provides a link to, the OCS lease form which will be issued to successful bidders.

**§ 556.309 Does BOEM offer blocks in a sale that is not on the Five Year program schedule (called a Supplemental Sale)?**

(a) Except as provided in paragraph (c) of this section, BOEM may offer a block within a planning area included in the Five Year program in an otherwise unscheduled sale, if the block:

- (1) Received a bid that was rejected in an earlier sale;
- (2) Had a high bid that was forfeited in a scheduled sale; or
- (3) Is a development block subject to drainage.

(b) For an unscheduled sale, BOEM may disclose the classification of the block as a development block.

(c) Blocks in the Central or Western Gulf of Mexico Planning Areas cannot be offered in a sale that is not on the schedule.

**Subpart D—Qualifications**

**§ 556.400 When must I demonstrate that I am qualified to hold a lease on the OCS?**

In order to bid on, own, hold, or operate a lease on the OCS, bidders, record title holders, and operating rights owners must first obtain a qualification number from BOEM.

**§ 556.401 What do I need to show to become qualified to hold a lease on the OCS and obtain a qualification number?**

(a) You may become qualified to hold a lease on the OCS and obtain a qualification number in accordance with § 556.402, if you submit evidence demonstrating that you are:

- (1) A natural person who is a citizen or national of the United States;
- (2) A natural person who is an alien lawfully admitted for permanent residence in the United States, as defined in 8 U.S.C. 1101(a)(20);
- (3) A private, public, or municipal corporation or Limited Liability Company or Limited Liability Corporation (either/both sometimes herein referred to as "LLC") organized under the laws of any State of the United States, the District of Columbia, or any territory or insular possession subject to United States jurisdiction;
- (4) An association of such citizens, nationals, resident aliens, or corporations;

(5) A State, the District of Columbia, or any territory or insular possession subject to United States jurisdiction;

(6) A political subdivision of a State, the District of Columbia, or any territory or insular possession subject to United States jurisdiction; or

(7) A Trust organized under the laws of any State of the United States, the District of Columbia, or any territory or insular possession subject to United States jurisdiction;

(b) Statements and evidence submitted to demonstrate qualification under paragraphs (a)(1) through (6) of this section are subject to the penalties of 18 U.S.C. 1001.

(b) BOEM may issue you a qualification number after you have provided evidence acceptable to BOEM.

**§ 556.402 How do I make the necessary showing to qualify and obtain a qualification number?**

(a) If BOEM has already issued you a qualification number, you may present that number to BOEM. If not, in order to become qualified, you must provide the information in paragraph (b) or (c) of this section before BOEM will issue you a BOEM qualification number.

(b) A natural person must be a citizen or national of the United States, or a resident alien, to qualify. A United States citizen or national must submit written evidence acceptable to BOEM attesting to United States citizenship or national status. A resident alien must submit an original or a photocopy of the United States Citizenship and Immigration Services form evidencing legal status as a resident alien.

(c) A person who is not a natural person must submit evidence (refer to paragraph (d) of this section) acceptable to BOEM that:

(1) It is authorized to conduct business under the laws of a State, the District of Columbia, or any territory or insular possession subject to United States jurisdiction under which it is organized;

(2) Under the operating rules of its business, it is authorized to hold OCS leases; and

(3) Includes an up-to-date list of persons, and their titles, who are authorized to bind the corporation, association or other entity when conducting business on the OCS. It is up to you, in accordance with your organizational structure or rules, to identify the individual, or group of individuals, who has actual authority to bind your organization, and the title(s) they will use when they sign documents to bind the organization. You must maintain and regularly update the information as to who has the authority

to bind the organization whenever that information changes.

(d) Acceptable evidence under paragraph (c) of this section includes, but is not limited to:

(1) For a corporation,

(i) A statement by the Secretary of the corporation, over corporate seal, certifying that the corporation is authorized to hold OCS leases; and

(ii) Evidence of authority of holders of positions entitled to bind the corporation, certified by Secretary of the corporation, over corporate seal, such as:

(A) Certified copy of resolution of the board of directors with titles of officers authorized to bind corporation;

(B) Certified copy of resolutions granting corporate officer authority to issue a power of attorney; or

(C) Certified copy of power of attorney or certified copy of resolution granting power of attorney.

(2) For a Limited or General Partnership,

(i) A statement by an authorized party certifying that the partnership is authorized to hold OCS leases;

(ii) A copy of your signed partnership formation documents, including a partnership agreement;

(iii) A statement from each partner indicating, as appropriate, U.S. citizenship or incorporation or organization under the laws of a State, the District of Columbia, or any territory or insular possession subject to U.S. jurisdiction; and

(iv) Documentation evidencing the existence of the partnership and that it was properly created, either from the Secretary of State of the State in which the partnership is registered or by an equivalent State or governmental office.

(3) For a Limited Liability Company or Limited Liability Corporation,

(i) A certificate of formation of the LLC;

(ii) A statement by an individual authorized to bind the LLC, as listed under (c)(4) above, certifying that the LLC is authorized to hold OCS leases;

(iii) A statement from each member indicating, as appropriate, U.S. citizenship, or incorporation or organization under the laws of a State, the District of Columbia, or any territory or insular possession subject to U.S. jurisdiction; and

(iv) Evidence of authority of holders of positions entitled to bind the LLC, certified by an individual authorized to bind the LLC.

(4) For a Trust,

(i) A copy of the trust agreement or document establishing the trust and all amendments, properly certified by the trustee; and

(ii) A statement indicating the law under which the trust is established and that the trust is authorized to hold OCS leases.

(e) In the event that a person may be eligible to hold OCS leases, but that type of person is not listed in paragraphs (c) or (d) of this section, evidence of such eligibility will be submitted and certified by the highest level of management of the person authorized to do so pursuant to its operating agreement or governance documents.

(f) Any person who obtains a qualification number from BOEM is responsible to ensure that it is not using the qualification number approved by BOEM for any purpose that its operating rules do not allow.

(g) Any evidence submitted in response to paragraphs (c), (d), or (e) of this section is submitted subject to 18 U.S.C. 1001.

(h) A person may not hold leases on the OCS until the evidence requested in this section has been accepted and approved by BOEM and BOEM has issued a qualification number to that person.

(i) If use of a corporate seal is required by this section, you may meet the requirement as specified in § 556.107.

**§ 556.403 Under what circumstances may I be disqualified from holding a lease on the OCS?**

You may not hold an OCS lease if:

(a) You or your principals are excluded or disqualified from participating in a transaction covered by Federal non-procurement debarment and suspension (2 CFR parts 180 and 1400), unless the Department explicitly approves an exception for a transaction pursuant to the regulations in those parts;

(b) The Secretary finds, after notice and hearing, that you or your principals (including in the meaning of "you," for purposes of this subparagraph, a bidder or prospective bidder) fail to meet due diligence requirements or to exercise due diligence under section 8(d) of OCSLA (43 U.S.C. 1337(d)) on any OCS lease; or

(c) BOEM disqualifies you from holding a lease on the OCS based on your unacceptable operating performance. BOEM will give you adequate notice and opportunity for a hearing before imposing a disqualification, unless BSEE has already provided such notice and opportunity for a hearing.

**§ 556.404 What do the non-procurement debarment rules require that I do?**

You must comply with the Department's non-procurement

debarment regulations at 2 CFR parts 180 and 1400.

(a) You must notify BOEM if you know that you or your principals are excluded, disqualified, have been convicted or are indicted of a crime as described in 2 CFR part 180, subpart C. You must make this notification before you sign a lease, sublease, or an assignment of record title interest or operating rights interest, or become a lease or unit operator. This paragraph does not apply if you have previously provided a statement disclosing this information, and you have received an exception from the Department, as described in 2 CFR 180.135 and 2 CFR 1400.137.

(b) If you wish to enter into a covered transaction with another person at a lower tier, as described in 2 CFR 180.200, you must first:

(1) Verify that the person is not excluded or disqualified under 2 CFR part 180; and

(2) Require the person to:

(i) Comply with 2 CFR part 180, subpart C; and

(ii) Include the obligation to comply with 2 CFR part 180, subpart C in its contracts and other transactions.

(c) After you enter into a covered transaction, you must immediately notify BOEM in writing if you learn that:

(1) You failed to disclose pertinent information earlier; or

(2) Due to changed circumstances, you or your principals now meet any of the criteria in 2 CFR 180.800.

**§ 556.405 When must I notify BOEM of mergers, name changes, or changes of business form?**

You must notify BOEM of any merger, name change, or change of business form as soon as practicable, but in no case later than one year after the earlier of the effective date or the date of filing the change or action with the Secretary of State or other authorized official in the State of original registry.

**Subpart E—Issuance of a Lease**

**How To Bid**

**§ 556.500 Once qualified, how do I submit a bid?**

(a) You must submit a separate sealed bid for each tract or bidding unit to the address provided and by the time specified in the final notice of sale. You may not bid on less than an entire tract or bidding unit.

(b) BOEM requires a deposit for each bid. The final notice of sale will specify the amount and method of payment.

(c) Unless otherwise specified in the final notice of sale, the bid deposit

amount will be 20 percent of the amount of the bid for any given tract or bidding unit.

(d) You may not submit a bid on an OCS tract if, after notice and hearing under section 8(d) of OCSLA (43 U.S.C. 1337(d)), the Secretary finds that you are not meeting the diligence requirements on any OCS lease.

(e) If the authorized officer within BOEM rejects your high bid, the decision is final for the Department, subject only to reconsideration upon your written request as set out in § 556.517.

**§ 556.501 What information do I need to submit with my bid?**

In accordance with OCSLA section 18(a)(4) (43 U.S.C. 1344(a)(4)), BOEM must evaluate every bid to ensure that the federal government receives fair market value for every lease. Section 26(a)(1)(A) of OCSLA (43 U.S.C. 1352(a)(1)(A)) provides that, in accordance with regulations prescribed by the Secretary, any lessee or permittee conducting any exploration for, or development or production of, oil or gas must provide the Secretary access to all data and information (including processed, analyzed, and interpreted information) obtained from that activity and must provide copies of that data and information as the Secretary may request.

(a) As part of the lease sale process, every bidder submitting a bid on a tract, or participating as a joint bidder in such a bid, may at the time of bid be required to submit various information, including a Geophysical Data and Information Statement (GDIS) corresponding to that tract, as well as the bidder's exclusive/proprietary geophysical data in order for BOEM to properly evaluate the bid. If a GDIS required, each GDIS must include, as required by § 551.12(b) and (c) of this chapter:

(1) A list of geophysical surveys or other information used as part of the decision to bid or participate in a bid on the block.

(2) An accurate and complete record of each geophysical survey conducted, including digital navigational data and final location maps. The bidder and any joint bidder must include a map for each survey identified in the GDIS that illustrates the actual areal extent of the proprietary geophysical data.

(b) If a bidder is required to submit a GDIS, the GDIS must be submitted even if the bidder did not rely on proprietary geophysical data and information in deciding to bid or participate as a joint bidder in the bid for any particular

block, and must include entries for all such blocks.

(c) The bidder must submit each GDIS in a separate and sealed envelope, or in an electronically readable spreadsheet format, with proprietary seismic data maps also available in an electronic format. Each bidder must submit the GDIS even if its joint bidder or bidders on a specific block also have submitted a GDIS.

(d) If BOEM requires additional information related to bidding, it will describe the additional information requirements in the final notice of sale.

(e) BOEM will reimburse bidders for the costs of complying with the requirements of this section, in accordance with § 550.196 (on lease) and/or § 551.13 (off lease) of this chapter.

(f) Bids that are not made in compliance with this section will be considered incomplete and invalid.

**Restrictions on Joint Bidding**

**§ 556.511 Are there restrictions on bidding with others and do those restrictions affect my ability to bid?**

The Energy Policy and Conservation Act of 1975, 42 U.S.C. 6213, prohibits joint bidding by major oil and gas producers under certain circumstances. BOEM implements 42 U.S.C. 6213 as follows:

(a) BOEM publishes twice yearly in the **Federal Register** a restricted joint bidders list. A person appearing on this list is limited in its ability to submit a joint bid. The list:

(1) Consists of the persons chargeable with an average worldwide daily production in excess of 1.6 million barrels of crude oil and/or its equivalent in natural gas liquids and natural gas for the prior production period; and

(2) Is based upon the statement of production that filed as required by § 556.513.

(b) If BOEM places you on the restricted joint bidders list, BOEM will send you a copy of the order placing you on the list. You may appeal this order to the Interior Board of Land Appeals under 30 CFR part 590, subpart A.

(c) If you are listed in the **Federal Register** in any group of restricted bidders, you may not bid:

(1) Jointly with another person in any other group of restricted bidders for the applicable 6-month bidding period; or

(2) Separately during the 6-month bidding period if you have an agreement with another restricted bidder that will result in joint ownership in an OCS lease.

(d) If you are listed in the **Federal Register** in any group of restricted

bidders, you may not make any pre-bidding agreement for the conveyance of any potential lease interest, whether by assignment, sale, transfer, or other means, to any person on the list of restricted joint bidders.

(e) Even if you are not listed in the **Federal Register** in any group of restricted bidders, you are prohibited from making any pre-bidding agreement for the assignment, sale, transfer, or other conveyance of any potential lease interest to two or more persons in different groups on the list of restricted joint bidders.

(f) As a bidder, you are prohibited from unlawful combination with, or intimidation of, bidders under 18 U.S.C. 1860.

**§ 556.512 What bids may be disqualified?**

The following bids for any oil and gas lease will be disqualified and rejected in their entirety:

(a) A joint bid submitted by two or more persons who are on the effective List of Restricted Joint Bidders; or

(b) A joint bid submitted by two or more persons when:

(1) One or more of those persons is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and natural gas liquids and has not filed a Statement of Production, as required by § 556.513 of this part for the applicable 6-month bidding period, or

(2) Any of those persons have failed or refused to file a detailed report of production when required to do so under § 556.513, or

(c) A single or joint bid submitted pursuant to an agreement (whether written or oral, formal or informal, entered into or arranged prior to or simultaneously with the submission of such single or joint bid, or prior to or simultaneously with the award of the bid upon the tract) that provides:

(1) For the assignment, transfer, sale, or other conveyance of less than a 100 percent interest in the entire tract on which the bid is submitted, by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or

(2) For the assignment, sale, transfer or other conveyance of less than a 100 percent interest in any fractional interest in the entire tract (which fractional interest was originally acquired by the person making the assignment, sale, transfer or other conveyance, under the provisions of the act) by a person or persons on the List of Restricted Joint Bidders, effective on

the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or

(3) For the assignment, sale, transfer, or other conveyance of any interest in a tract by a person or persons not on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to two or more persons on the same List of Restricted Joint Bidders; or

(4) For any of the types of conveyances described in paragraphs (c)(1), (2), or (3) of this section where any party to the conveyance is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and natural gas liquids and has not filed a Statement of Production pursuant to § 556.513 for the applicable six-month bidding period. Assignments expressly required by law, regulation, lease or lease stipulation will not disqualify an otherwise qualified bid; or

(d) A bid submitted by or in conjunction with a person who has filed a false, fraudulent or otherwise intentionally false or misleading detailed Report of Production.

**§ 556.513 When must I file a statement of production?**

(a) You must file a statement of production if your average worldwide daily production exceeded 1.6 million barrels for the prior production period, as determined using the method set forth in § 556.514. Your statement of production must specify that you were chargeable with an average daily production in excess of 1.6 million barrels for the prior production period.

(b) The prior production periods are as follows:

For the bidding period of	The prior production period is the preceding
(1) May through October.	July through December.
(2) November through April.	January through June.

(c) You must file the statement of production by the following deadlines:

For the bidding period of	You must file the statement by
(1) May through October.	March 17.
(2) November through April.	September 17.

(d) If you are required to file a statement of production, BOEM may require you to submit a detailed report of production.

(1) The detailed report of production must list crude oil, natural gas liquids, and natural gas produced worldwide from reservoirs during the prior production period, and therefore chargeable to the prior production period.

(i) The amount of crude oil chargeable to the prior production period will be established by measurement of volumes delivered at the point of custody transfer (e.g., from storage tanks to pipelines, trucks, tankers, or other media for transport to refineries or terminals), with adjustments for net differences between opening and closing inventories, and basic sediment and water.

(ii) The amount of natural gas liquids chargeable to the prior production period must include gas liquefied at surface separators, field facilities, or gas processing plants.

(iii) The amount of natural gas chargeable to the prior production period must include adjustments, where applicable, to reflect the volume of gas returned to natural reservoirs, and the reduction of volume resulting from the removal of natural gas liquids and non-hydrocarbon gases.

(2) You must submit the detailed report of production within 30 days after receiving BOEM's request.

(3) BOEM may inspect and copy any document, record of production, analysis, and other material to verify the accuracy of any earlier statement of production.

(e) If you submit a statement of production that misrepresents your chargeable production, the Department may cancel any lease awarded in reliance upon the statement.

**§ 556.514 How do I determine my production for purposes of the restricted joint bidders list?**

(a) To determine the amount of production chargeable to you, add together:

(1) Your average daily production in barrels of crude oil, natural gas liquids, and natural gas worldwide, all measured at 60 °F, using the

equivalency or conversion factors for natural gas liquids and natural gas set out in 42 U.S.C. 6213(b)(2) and (3); and

(2) Your proportionate share of the average daily production owned by any person that has an interest in you and/or in which you have an interest.

(b) For the purpose of paragraph (a)(1) of this section, your production includes 100 percent of production owned by:

- (1) You;
- (2) Every subsidiary of yours;
- (3) Every person of which you are a subsidiary; and

(4) Every subsidiary of any person of which you are a subsidiary.

(c) For purposes of paragraph (a)(2) of this section, interest means at least a five percent ownership or control of you or the reporting person and includes any interest:

(1) From ownership of securities or other evidence of ownership; or,

(2) By participation in any contract, agreement, or understanding regarding control of the person or their production of crude oil, natural gas liquids, or natural gas.

(d) For purposes of this section, subsidiary means a person, 50 percent or more of whose stock or other interest having power to vote for the election of a controlling body, such as directors or trustees, is directly or indirectly owned or controlled by another person.

(e) For purposes of this section, production chargeable to you includes, but is not limited to, production obtained as a result of a production payment or a working, net profit, royalty, overriding royalty, or carried interest.

(f) For purposes of this section, production must be measured with appropriate adjustments for:

- (1) Basic sediment and water;
- (2) Removal of natural gas liquids and non-hydrocarbon gases; and
- (3) Volume of gas returned to natural reservoirs.

#### **§ 556.515 May a person be exempted from joint bidding restrictions?**

BOEM may exempt you from some or all of the reporting requirements listed in § 556.513, and/or some or all of the joint bidding restrictions listed in §§ 556.511 and/or 556.512(a), (b), and/or (c), if, after opportunity for a hearing, BOEM determines that the extremely high costs in an area will preclude exploration and development without an exemption.

#### **How Does BOEM Act on Bids?**

##### **§ 556.516 What does BOEM do with my bid?**

(a) BOEM opens the sealed bids at the place, date, and hour specified in the final notice of sale for the sole purpose of publicly announcing and recording the bids. BOEM does not accept or reject any bids at that time.

(b) BOEM reserves the right to reject any and all bids received, regardless of the amount offered. BOEM accepts or rejects all bids within 90 days of opening. BOEM reserves the right to extend that time if necessary, and in that event, BOEM will notify bidder(s) in writing prior to the expiration of the initial 90-day period, or of any extension. Any bid not accepted within

the prescribed 90-day period, or any extension thereof, will be deemed rejected. If your bid is rejected, BOEM will refund any money deposited with your bid, plus any interest accrued.

(c) If the highest bids are a tie, BOEM will notify the bidders who submitted the tie bids. Within 15 days after notification, those bidders, if qualified, and not otherwise prohibited from bidding together, may:

(1) Agree to accept the lease jointly. The bidders must notify BOEM of their decision and submit a copy of their agreement to accept the lease jointly.

(2) Agree between/among themselves which bidder will accept the lease. The bidders must notify BOEM of their decision.

(d) If no agreement is submitted pursuant to paragraph (c) of this section, BOEM will reject all the tie bids.

(e) The Attorney General, in consultation with the Federal Trade Commission, has 30 days to review the results of the lease sale before BOEM may accept the bid(s) and issue the lease(s).

##### **§ 556.517 What may I do if my high bid is rejected?**

(a) The decision of the authorized officer on bids is the final action of the Department, subject only to reconsideration of the rejection of the high bid by the Director, in accordance with paragraph (b) of this section.

(b) Within 15 days of bid rejection, you may file a written request for reconsideration with the Director, with a copy to the authorized officer. Such request must provide evidence as to why the Director should reconsider your bid. You will receive a written response either affirming or reversing the rejection of your bid.

(c) The Director's decision on the request for reconsideration is not subject to appeal to the Interior Board of Land Appeals in the Department's Office of Hearings and Appeals.

#### **Awarding the Lease**

##### **§ 556.520 What happens if I am the successful high bidder and BOEM accepts my bid?**

(a) If BOEM accepts your bid, BOEM will provide you with the appropriate number of copies of the lease for you to execute and return to BOEM. Within 11 business days after you receive the lease copies, you must:

- (1) Execute all copies of the lease;
- (2) Pay the first year's rental;
- (3) Pay the balance of the bonus bid, unless deferred under paragraph (b) below;
- (4) Comply with subpart I of this part; and,

(5) Return all copies of the executed lease, including any required bond or other form of security approved by the Regional Director, to BOEM.

(b) If provided for in the final notice of sale, BOEM may defer any part of the bonus and bid payment for up to five years after the sale according to a schedule included in the final notice of sale. You must provide a bond acceptable to BOEM to guarantee payment of a deferred bonus bid.

(c) If you do not make the required payments and execute and return all copies of the lease and any required bond within 11 business days after receipt, or if you otherwise fail to comply with applicable regulations, your deposit will be forfeited. However, BOEM will return any deposit with interest if the tract is withdrawn from leasing before you execute the lease.

(d) If you use an agent to execute the lease, you must include evidence with the executed copies of the lease that a person who is on the list of persons referenced in § 556.402(c)(3) authorized the agent to act for you.

(e) After you comply with all requirements in this section, and after BOEM has executed the lease, BOEM will send you a fully executed lease.

##### **§ 556.521 When is my lease effective?**

Your lease is effective on the first day of the month following the date that BOEM executes the lease. You may request in writing, before BOEM executes the lease, that your lease be effective as of the first day of the month in which BOEM executes the lease. If BOEM agrees to make the lease effective as of the earlier date, BOEM will so indicate when it executes the lease.

##### **§ 556.522 What are the terms and conditions of the lease and when are they published?**

The terms and conditions of the lease will be stated in the final notice of sale and contained in the lease instrument itself. Oil and gas leases and leases for sulfur will be issued on forms approved by the Director.

#### **Subpart F—Lease Term and Obligations**

##### **Length of Lease**

##### **§ 556.600 What is the primary term of my oil and gas lease?**

(a) The primary term of an oil and gas lease will be five years, unless BOEM determines that:

- (1) The lease is located in unusually deep water or involves other unusually adverse conditions; and,
- (2) A lease term longer than five years is necessary to explore and develop the lease.

(b) If BOEM determines that the criteria in paragraphs (a)(1) and (2) of this section are met, it may specify a longer primary term, not to exceed 10 years.

(c) BOEM will specify the primary term in the final notice of sale and in the lease instrument.

(d) The lease will expire at the end of the primary term, unless maintained beyond that term in accordance with the provisions of § 556.601.

**§ 556.601 How may I maintain my oil and gas lease beyond the primary term?**

You may maintain your oil and gas lease beyond the expiration of the primary term as long as:

(a) You are producing oil or gas in paying quantities;

(b) You are conducting approved drilling or well reworking operations with the objective of establishing production in paying quantities, in accordance with 30 CFR 250.180;

(c) You are producing from, or drilling or reworking, an approved well adjacent to or adjoining your lease that extends directionally into your lease in accordance with 30 CFR 256.71;

(d) You make compensatory payments on your lease in accordance with 30 CFR 256.72;

(e) Your lease is included in a BSEE-approved unit, in accordance with 30 CFR part 250, subpart M; or

(f) Your lease is subject to a suspension of production or a suspension of operations, in accordance with 30 CFR 250.168 through 250.180, for reasons other than gross negligence or a willful violation of a provision of your lease or any governing regulations.

**§ 556.602 What is the primary term of my sulfur lease?**

(a) Your sulfur lease will have a primary term of not more than 10 years, as specified in the lease.

(b) BOEM will announce the primary term prior to the lease sale.

(c) The lease will expire at the end of the primary term unless maintained beyond that term in accordance with the provisions of § 556.603.

**§ 556.603 How may I maintain my sulfur lease beyond the primary term?**

You may maintain your sulfur lease after the primary term as long as you are producing sulfur in paying quantities, conducting drilling, well reworking or plant construction, or other operations for the production of sulfur or you are granted a suspension by BSEE; or your lease is subject to a suspension directed by BSEE for reasons other than gross negligence or a willful violation of a provision of your lease or governing regulations.

**Lease Obligations**

**§ 556.604 What are my rights and obligations as a record title owner?**

(a) As a record title owner, you are responsible for all administrative and operating performance on the lease, including paying any rent and royalty due.

(b)(1) A record title owner owns operating rights to the lease, unless and until he or she severs the operating rights by subleasing them to someone else.

(2) A sublease of operating rights from record title may be for a whole or undivided fractional interest in the entire lease or a described aliquot portion of the lease and/or a depth interval. The sublease creates an operating rights interest in the sublessee, herein referred to as the operating rights owner.

(c) Within any given aliquot, the record title owner may sublease operating rights for up to a maximum of two depth divisions, which may result in a maximum of three different depth intervals. But, if the one, or two, depth divisions to which operating rights are subleased do not include the entire depth of the lease, whatever depth division(s) has not been subleased, remains part of the lessee/sublessor's record title interest. The depth intervals for which operating rights are subleased must be defined by a beginning and ending depth and the ending of one depth level must abut the beginning of the next depth level, with no gap in between.

(d) Every current and prior record title owner is jointly and severally liable, along with all other record title owners and all prior and current operating rights owners, for compliance with all non-monetary terms and conditions of the lease and all regulations issued under OCSLA, as well as for fulfilling all non-monetary obligations, including decommissioning obligations, which accrue while it holds record title interest.

(e) Record title owners that acquired their record title interests through assignment from a prior record title owner are also responsible for remedying all existing environmental or operational problems on any lease in which they own record title interests, with subrogation rights against prior lessees.

(f) For monetary obligations, your obligation depends on the source of the monetary obligation and whether you have retained or severed your operating rights.

(1) With respect to those operating rights that you have retained, you are

primarily liable under 30 U.S.C. 1712(a) for your pro-rata share of all other monetary obligations pertaining to that portion of the lease subject to the operating rights you have retained, based on your share of operating rights in that portion of the lease.

(2) With respect to all monetary obligations arising from or in connection with those operating rights that have been severed from your record title interest, your obligation is secondary to that of the sublessee(s) or later assignee(s) of the operating rights that were severed from your record title interest, as prescribed in 30 U.S.C. 1712(a).

**§ 556.605 What are my rights and obligations as an operating rights owner?**

(a) As an operating rights owner, you have the right to enter the leased area to explore for, develop, and produce oil and gas resources, except helium gas, contained within the aliquot(s) and depths within which you own operating rights, according to the lease terms, applicable regulations, and BOEM's approval of the sublease or subsequent assignment of the operating rights.

(b) Unless otherwise prohibited, you have the right to authorize another party to conduct operations on the part of the lease to which your operating rights appertain.

(c) An owner of operating rights who is designating a new designated operator must file a designation of operator under § 550.143 of this chapter.

(d) An operating rights owner is only liable for obligations arising from that portion of the lease to which its operating rights appertain and that accrue during the period in which the operating rights owner owned the operating rights.

(e) You are jointly and severally liable with other operating rights owners and the record title owners for all non-monetary lease obligations pertaining to that portion of the lease subject to your operating rights, which accrued during the time you held your operating rights interest.

(f) An operating rights owner that acquires its operating rights interests through assignment from a prior operating rights owner is also responsible, with subrogation rights against prior operating rights owners, for remedying existing environmental or operational problems, to the extent that such problems arise from that portion of the lease to which its operating rights appertain, on any lease in which it owns operating rights.

(g) You are primarily liable for monetary obligations pertaining to that portion of the lease subject to your



operating rights, and the record title owners are secondarily liable. If there is more than one operating rights owner in a lease, each operating rights owner is primarily liable for its pro-rata share of the monetary obligations that pertain to the portion of the lease that is subject to its operating rights.

## Helium

### **§ 556.606 What must a lessee do if BOEM elects to extract helium from a lease?**

(a) BOEM reserves the ownership of, and the right to extract, helium from all gas produced from your OCS lease. Under section 12(f) of OCSLA (43 U.S.C. 1341(f)), upon our request, you must deliver all or a specified portion of the gas containing helium to BOEM at a point on the leased area or at an onshore processing facility that BOEM designates.

(b) BOEM will determine reasonable compensation and pay you for any loss caused by the extraction of helium, except for the value of the helium itself. BOEM may erect, maintain, and operate on your lease any reduction work and other equipment necessary for helium extraction. Our extraction of helium will be conducted in a manner to not cause substantial delays in the delivery of gas to your purchaser.

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

### **§ 556.700 May I assign or sublease all or any part of the record title interest in my lease?**

(a) With BOEM approval, you may assign your whole, or a partial record title interest in your entire lease, or in any aliquot(s) thereof.

(b) With BOEM approval, you may sever all, or a portion of, your operating rights.

(c) You must request approval of each assignment of a record title interest and each sublease of an operating rights interest. Each instrument that transfers a record title interest must describe, by aliquot parts, the interest you propose to transfer. Each instrument that severs an operating rights interest must describe, by officially designated aliquot parts and depth levels, the interest proposed to be transferred.

### **§ 556.701 How do I seek approval of an assignment of the record title interest in my lease, or a severance of operating rights from that record title interest?**

(a) The Regional Director will provide the form to record an assignment of record title interest in a Federal OCS oil and gas or sulfur lease, or a severance of operating rights from that record title interest. You must submit to BOEM two originals of each instrument that

transfers ownership of record title within 90 days after the last party executes the transfer instrument. You must pay the service fee listed in § 556.106 with your request and your submission must include evidence of payment via pay.gov.

(b) Before BOEM approves an assignment or transfer, it must consult with, and consider the views of, the Attorney General. The Secretary may act on an assignment or transfer if the Attorney General has not responded to a request for consultation within 30 days of said request.

(c) A new record title owner or sublessee must file a designation of operator, in accordance with § 550.143 of this chapter, along with the request for the approval of the assignment.

### **§ 556.702 When will my assignment result in a segregated lease?**

(a) When there is an assignment by all record title owners of 100 percent of the record title to one or more aliquots in a lease, the assigned and retained portions become segregated into separate and distinct leases. In such case, both the new lease and the remaining portion of the original lease are referred to as “segregated leases” and the assignee(s) becomes the record title owner(s) of the new lease, which is subject to all the terms and conditions of the original lease.

(b) If a record title holder transfers an undivided interest, *i.e.*, less than 100 percent of the record title interest in any given aliquot(s), that transfer will not segregate the portions of the aliquots, or the whole aliquots, in which part of the record title was transferred, into separate leases from the portion(s) in which no interest was transferred. Instead, that transfer will create a joint ownership between the assignee(s) and assignor(s) in the portions of the lease in which part of the record title interest was transferred. Any transfer of an undivided interest is subject to approval by BOEM.

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

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

(b) The royalty, minimum royalty, and rental provisions of the original lease will apply separately to each segregated lease.

(c) BOEM will allocate among the segregated leases, on a basis that is equitable under the circumstances, any remaining unused royalty suspension

volume or other form of royalty suspension or royalty relief that had been granted to the original lease, not to exceed in aggregate the total remaining amount.

(d) Each segregated lease will continue in full force and effect for the primary term of the original lease and so long thereafter as each segregated lease meets the requirements outlined in § 556.601. A segregated lease that does not meet the requirements of § 556.601 does not continue in force even if another segregated lease, which was part of the original lease, continues to meet those requirements.

### **§ 556.704 When would BOEM disapprove an assignment or sublease of an interest in my lease?**

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

(1) When the transferor or transferee has unsatisfied obligations under this chapter or 30 CFR chapters II or XII;

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

(3) When the transfer does not conform to these regulations, or any other applicable laws or regulations (*e.g.*, departmental debarment rules).

(b) A transfer will be void if it is made pursuant to any prelease agreement that would cause a bid to be disqualified, such as those described in § 556.511(c), (d), or (e).

### **§ 556.705 How do I transfer the interest of a deceased natural person who was a lessee?**

(a) An heir or devisee must submit evidence by means of a certified copy of an appropriate court order or decree that the person is deceased; or, if no court action is necessary, a certified copy of the will and death certificate or notarized affidavits of two disinterested parties with knowledge of the facts.

(b) The heir or devisee, if the lawful successor in interest, must submit evidence that he/she is the person named in the will or evidence from an appropriate judgment of a court or decree that he/she is the lawful successor in interest, along with the required evidence of his/her qualifications to hold a lease under subpart D of this part.

(c) If the heir or devisee does not qualify to hold a lease under subpart D of this part, he/she will be recognized as the successor in interest, but he/she



must divest him/herself of this interest in the lease, to a person qualified to be a hold a lease, within two years.

**§ 556.706 What if I want to transfer record title interests in more than one lease at the same time, but to different parties?**

You may not transfer interests in more than one lease to different parties using the same instrument. If you want to transfer the interest in more than one lease at the same time, you must submit duplicate, originally executed forms for each transfer. The forms used for each transfer must be accompanied by a cover letter executed by one of the parties to the transfer (or an authorized agent thereof) and evidence of payment via pay.gov.

**§ 556.707 What if I want to transfer different types of lease interests (not only record title interests) in the same lease to different parties?**

You may not transfer different types of lease interests in a lease to different parties using the same instrument. You must submit duplicate, originally executed forms for each transfer, to a different party, of a different type of lease interest. The form used to transfer each type of lease interest must be accompanied by a cover letter executed by one of the parties to the transfer (or an authorized agent thereof) and evidence of payment via pay.gov.

**§ 556.708 What if I want to transfer my record title interests in more than one lease to the same party?**

You may not transfer your record title interests in more than one lease to the same party using the same instrument. If you want to transfer record title interests in more than one lease at the same time, you must submit separate, originally executed forms for each transfer. The forms used for each transfer must be accompanied by a cover letter executed by one of the parties to the transfer (or an authorized agent thereof), and evidence of payment via pay.gov. A separate fee applies to each individual transfer of interest.

**§ 556.709 What if I want to transfer my record title interest in one lease to multiple parties?**

You may transfer your record title interest in one lease to multiple parties using the same instrument. That instrument must be submitted in duplicate originals, accompanied by a cover letter executed by one of the parties to the transfer (or an authorized agent thereof). In such a multiple transfer of interests using a single instrument, a separate fee applies to each individual transfer of interest, and

evidence of payment via pay.gov must accompany the instrument.

**§ 556.710 What is the effect of an assignment of a lease on an assignor's liability under the lease?**

If you assign your record title interest, as an assignor you remain liable for all obligations, monetary and non-monetary, that accrued in connection with your lease during the period in which you owned the record title interest, up to the date BOEM approves your assignment. BOEM's approval of the assignment does not relieve you of these accrued obligations. Even after assignment, BOEM or BSEE may require you to bring the lease into compliance if your assignee or any subsequent assignee fails to perform any obligation under the lease, to the extent the obligation accrued before approval of your assignment. Until there is a BOEM-approved assignment of interest, you, as the assignor, remain liable for the performance of all lease obligations that accrued while you held record title interest, until all such obligations are fulfilled.

**§ 556.711 What is the effect of a record title holder's sublease of operating rights on the record title holder's liability?**

(a) A record title holder who subleases operating rights remains liable for all obligations of the lease, including those obligations accruing after BOEM's approval of the sublease, subject to § 556.604(e) and (f).

(b) Neither the sublease of operating rights, nor subsequent assignment of those rights by the original sublessee, nor by any subsequent assignee of the operating rights, alters in any manner the liability of the record title holder for nonmonetary obligations.

(c) Upon approval of the sublease of the operating rights, the sublessee and subsequent assignees of the operating rights become primarily liable for monetary obligations, but the record title holder remains secondarily liable for them, as prescribed in 30 U.S.C. 1712(a) and § 556.604(f)(2).

**§ 556.712 What is the effective date of a transfer?**

Any transfer is effective at 12:01 a.m. on the first day of the month following the date on which BOEM approves your request, unless you request an earlier effective date and BOEM approves that earlier date, but such earlier effective date, if prior to the date of BOEM's approval, does not relieve you of obligations accrued between that earlier effective date and the date of approval.

**§ 556.713 What is the effect of an assignment of a lease on an assignee's liability under the lease?**

As assignee, you and any subsequent assignees are liable for all obligations that accrue after the effective date of your assignment. As assignee, you must comply with all the terms and conditions of the lease and regulations issued under OCSLA, and in addition, you must remedy all existing environmental and operational problems on the lease, properly abandon all wells, and reclaim the site, as required under 30 CFR part 250.

**§ 556.714 As a restricted joint bidder, may I transfer an interest to another restricted joint bidder?**

(a) Where the proposed assignment or transfer is by a person who, at the time of acquisition of an interest in the lease, was on the List of Restricted Joint Bidders, and that assignment or transfer is of less than the entire interest held by the assignor or transferor and to a person or persons on the same List of Restricted Joint Bidders, the assignor or transferor must file, prior to the approval of the assignment, a copy of all agreements applicable to the acquisition of that lease or fractional interest, or a description of the timing and nature of the agreement(s) by which the assignor or transferor acquired the interest it now wishes to transfer.

(b) Such description of the timing and nature of the transfer agreement must be submitted together with a certified statement that attests to the truth and accuracy of any information reported concerning that agreement, subject to the penalties of 18 U.S.C. 1001.

(c) If you wish to transfer less than your entire interest to another restricted joint bidder, BOEM may request the opinion of the Attorney General before acting on your request.

(d) You may request that any submission to BOEM made pursuant to this part be treated confidentially. Please note such a request on your submission. BOEM will treat this request for confidentiality in accordance with the regulations at § 556.104 and the regulations at 43 CFR part 2.

**§ 556.715 Are there any interests I may transfer or record without BOEM approval?**

(a) You may create, transfer, or assign economic interests without BOEM approval. However, for record purposes, you must send BOEM a copy of each instrument creating or transferring such interests within 90 days after the last party executes the transfer instrument. For each lease affected, you must pay the service fee listed in § 556.106 with your documents submitted for record

purposes and your submission must include evidence of payment via pay.gov.

(b) For recordkeeping purposes, you may also submit other legal documents to BOEM for transactions that do not require BOEM approval. If you submit such documents for record purposes not required by this part, you must pay the service fee listed in § 556.106 with your document submissions for each lease affected. Your submission must include evidence of payment via pay.gov.

**§ 556.716 What must I do with respect to the designation of operator on a lease when a transfer of record title is submitted?**

(a) If a transfer of ownership of the record title interest only changes the percentage ownership of the record title, no new parties or new aliquots are involved in the transaction, and no change of designated operator is made, you will not need to submit a new designation of operator form.

(b) In all cases other than that in paragraph (a) of this section, you must submit new designation of operator forms in accordance with § 550.143 of this chapter. In the event that you are transferring multiple record title interests, you must comply with this requirement for each interest that does not fall within paragraph (a) of this section.

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

**§ 556.800 As an operating rights owner, may I assign all or part of my operating rights interest?**

An operating rights owner may assign all or part of its operating rights interests, subject to BOEM approval. Each instrument that transfers an interest must describe, by officially designated aliquot parts and depth levels, the interest proposed to be transferred.

**§ 556.801 How do I seek approval of an assignment of my operating rights?**

(a) The Regional Director will provide the form to document the assignment of an operating rights interest. You must request approval of each assignment of operating rights and submit to BOEM two originals of each instrument that transfers ownership of operating rights within 90 days after the last party executes the transfer instrument. You must pay the service fee listed in § 556.106 with your request and your submission must include evidence of payment via pay.gov.

(b) A new operating rights owner must file a designation of operator, in accordance with § 550.143, along with

the request for the approval of the assignment.

(c) If an operating rights owner assigns an undivided ownership interest in its operating rights, that assignment creates a joint ownership in the operating rights.

(d) Before BOEM approves a sublease or re-assignment of operating rights, BOEM may consult with and consider the views of the Attorney General.

**§ 556.802 When would BOEM disapprove the assignment of all or part of my operating rights interest?**

BOEM may disapprove an assignment of all or part of your operating rights interest:

(a) When the transferor or transferee has outstanding or unsatisfied obligations under this chapter or 30 CFR chapter II or XII;

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

(c) When the transfer does not conform to these regulations, or any other applicable laws or regulations (*e.g.*, departmental debarment rules).

**§ 556.803 What if I want to assign operating rights interests in more than one lease at the same time, but to different parties?**

You may not assign operating rights interests in more than one lease to different parties using the same instrument. If you want to transfer operating rights interests in more than one lease at the same time, you must submit two originally executed forms for each transfer. Each request for a transfer of operating rights interest must be accompanied by a cover letter executed by one of the parties to the transfer (or an authorized agent thereof) and evidence of payment via pay.gov.

**§ 556.804 What if I want to assign my operating rights interest in a lease to multiple parties?**

You may assign your operating rights interest in one lease to multiple parties using the same instrument. That instrument must be submitted in duplicate originals, accompanied by a cover letter executed by one of the parties to the transfer (or an authorized agent thereof). In such a multiple transfer of interests using a single instrument, a separate fee applies to each individual transfer of interest and evidence of payment via pay.gov must accompany the instrument.

**§ 556.805 What is the effect of an operating rights owner's assignment of operating rights on the assignor's liability?**

An operating rights owner (who does not hold record title) who assigns the operating rights remains liable for all obligations of the lease that accrued during the period in which the assignor owned the operating rights, up to the effective date of the assignment, including decommissioning obligations that accrued during that period. BOEM's approval of the assignment does not alter that liability. Even after assignment, BOEM or BSEE may require the assignor to bring the lease into compliance if the assignee or any subsequent assignee fails to perform any obligation under the lease, to the extent the obligation accrued before approval of the assignment.

**§ 556.806 What is the effective date of an assignment of operating rights?**

An assignment is effective at 12:01 a.m. on the first day of the month following the date on which BOEM approves your request, unless you request an earlier effective date and BOEM approves that earlier date. Such an earlier effective date, if prior to the date of BOEM's approval, does not relieve you of obligations accrued between that earlier effective date and the date of approval.

**§ 556.807 What is the effect of an assignment of operating rights on an assignee's liability?**

As assignee, you and any subsequent assignees are liable for all obligations that accrue after the effective date of your assignment. As assignee, you must comply with all the terms and conditions of the lease and regulations issued under OCSLA. In addition, you must remedy all existing environmental and operational problems on the lease, properly abandon all wells, and reclaim the site, as required under 30 CFR part 250.

**§ 556.808 As an operating rights owner, are there any interests I may assign without BOEM approval?**

(a) You may create, transfer, or assign economic interests without BOEM approval. However, for record purposes, you must send BOEM a copy of each instrument creating or transferring such interests within 90 days after the last party executes the transfer instrument. For each lease affected, you must pay the service fee listed in § 556.106 with your documents submitted for record purposes, and your submission must include evidence of payment via pay.gov.

(b) For record keeping purposes, you may also submit other legal documents

to BOEM for transactions that do not require BOEM approval. If you submit such documents for record purposes that are not required by these regulations, for each lease affected, you must pay the service fee listed in § 556.106 with your document submissions, and your submission must include evidence of payment via pay.gov.

**§ 556.809 [Reserved]**

**§ 556.810 What must I do with respect to the designation of operator on a lease when a transfer of operating rights ownership is submitted?**

(a) If a transfer of ownership of operating rights only changes the percentage ownership; no new parties, new aliquots, or new depths are involved in the transaction; and no change of designated operator is made, you will not need to submit a new designation of operator form.

(b) In all cases other than that in paragraph (a) of this section, you must submit new designation of operator forms, in accordance with § 550.143 of this chapter. In the event that you are transferring multiple operating rights interests, you must comply with this requirement for each interest that does not fall within paragraph (a) of this section.

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

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

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

(a) Before BOEM will issue a new lease or approve the assignment of an existing lease to you as lessee, you or another record title owner for the lease must:

- (1) Maintain with the Regional Director a \$50,000 lease bond that guarantees compliance with all the terms and conditions of the lease; or
- (2) Maintain a \$300,000 area-wide bond that guarantees compliance with all the terms and conditions of all your oil and gas and sulfur leases in the area where the lease is located; or
- (3) Maintain a lease or area-wide bond in the amount required in § 556.901(a) or (b).

(b) For the purpose of this section, there are three areas. The three areas are:

- (1) The Gulf of Mexico and the area offshore the Atlantic Coast;
- (2) The area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; and
- (3) The area offshore the Coast of Alaska.

(c) The requirement to maintain a lease bond (or substitute security instrument) under paragraph (a)(1) of this section and § 556.901(a) and (b) may be satisfied if your operator or an operating rights owner provides a lease bond in the required amount that guarantees compliance with all the terms and conditions of the lease. Your operator or an operating rights owner may use an areawide bond under this paragraph to satisfy your bond obligation.

(d) If a surety makes payment to the United States under a bond or alternative form of security maintained under this section, the surety's remaining liability under the bond or alternative form of security is reduced by the amount of that payment. See paragraph (e) of this section for the requirement to replace the reduced bond coverage.

(e) If the value of your surety bond or alternative security is reduced because of a default or for any other reason, you must provide additional bond coverage sufficient to meet the security required under this subpart within 6 months, or such shorter period of time as the Regional Director may direct.

(f) You may pledge United States Department of the Treasury (Treasury) securities instead of a bond. The Treasury securities you pledge must be negotiable for an amount of cash equal to the value of the bond they replace.

(1) If you pledge Treasury securities under this paragraph (f), you must monitor their value. If their market value falls below the level of bond coverage required under this subpart, you must pledge additional Treasury securities to raise the value of the securities pledged to the required amount.

(2) If you pledge Treasury securities, you must include authority for the Regional Director to sell them and use the proceeds in the event that the Regional Director determines that you fail to satisfy any lease obligation.

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

(1) If you pledge an alternative type of security under this paragraph, you must monitor the security's value. If its market value falls below the level of bond coverage required under this subpart, you must pledge additional securities to raise the value of the securities pledged to the required amount.

(2) If you pledge an alternative type of security, you must include authority for the Regional Director to sell the security and use the proceeds when the Regional Director determines that you failed to satisfy any lease obligation.

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

- (1) Assess penalties under part 550, subpart N of this chapter;
- (2) Suspend production and other operations on your leases in accordance with 30 CFR 250.173; and
- (3) Initiate action to cancel your lease.

**§ 556.901 Additional bonds.**

(a) This paragraph explains what bonds you must provide before lease exploration activities commence.

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

(A) The date you submit a proposed exploration plan (EP) for approval; or

(B) The date you submit a request for approval of the assignment of a lease on which an EP has been approved.

(ii) The Regional Director may authorize you to submit the \$200,000 lease exploration bond after you submit an EP, but before approval of drilling activities under the EP.

(iii) You may satisfy the bond requirement of this paragraph (a) by providing a new bond or by increasing the amount of your existing bond.

(2) A \$200,000 lease exploration bond pursuant to paragraph (a)(1) of this section need not be submitted and maintained if the lessee either:

(i) Furnishes and maintains an areawide bond in the sum of \$1 million issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulfur leases held by the lessee on the OCS for the area in which the lease is situated; or

(ii) Furnishes and maintains a bond pursuant to paragraph (b)(2) of this section.

(b) This paragraph explains what bonds you (the lessee) must provide before lease development and production activities commence.

(1)(i) You must furnish the Regional Director a \$500,000 bond that guarantees compliance with all the terms and conditions of the lease by the earliest of:

(A) The date you submit a proposed development and production plan (DPP) or development operations coordination document (DOCD) for approval; or

(B) The date you submit a request for approval of the assignment of a lease on

which a DPP or DOCD has been approved.

(ii) The Regional Director may authorize you to submit the \$500,000 lease development bond after you submit a DPP or DOCD, but before he/she approves the installation of a platform or the commencement of drilling activities under the DPP or DOCD.

(iii) You may satisfy the bond requirement of this paragraph by providing a new bond or by increasing the amount of your existing bond.

(2) You need not submit and maintain a \$500,000 lease development bond pursuant to paragraph (b)(1) of this section if you furnish and maintain an areawide bond in the sum of \$3 million issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulfur leases you hold on the OCS for the area in which the lease is located.

(c) If you can demonstrate to the satisfaction of the authorized officer that you can satisfy your decommissioning obligations for less than the amount of lease bond coverage required under paragraph (b)(1) of this section, the authorized officer may accept a lease surety bond in an amount less than the prescribed amount, but not less than the amount of the cost for decommissioning.

(d) The Regional Director may determine that additional security (*i.e.*, security above the amounts prescribed in § 556.900(a) and paragraphs (a) and (b) of this section) is necessary to ensure compliance with the obligations under your lease, the regulations in this chapter, and the regulations in 30 CFR chapters II and XII.

(1) The Regional Director's determination will be based on his/her evaluation of your ability to carry out present and future financial obligations demonstrated by:

(i) Financial capacity substantially in excess of existing and anticipated lease and other obligations, as evidenced by audited financial statements (including auditor's certificate, balance sheet, and profit and loss sheet);

(ii) Projected financial strength significantly in excess of existing and future lease obligations based on the estimated value of your existing OCS lease production and proven reserves for future production;

(iii) Business stability based on five years of continuous operation and production of oil and gas or sulfur in the OCS or in the onshore oil and gas industry;

(iv) Reliability in meeting obligations based on:

(A) Credit rating; or

(B) Trade references, including names and addresses of other lessees, drilling contractors, and suppliers with whom you have dealt; and

(v) Record of compliance with laws, regulations, and lease terms.

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

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

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

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

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

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

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

#### **§ 556.902 General requirements for bonds.**

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

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

(2) Guarantee compliance with all of your obligations under the lease, regulations in this chapter, and regulations under 30 CFR chapters II and XII; and

(3) Guarantee compliance with the obligations of all lessees, operating rights owners and operators on the lease.

(b) All bonds and pledges you furnish under this part must be on a form or in a form approved by the Director. Surety bonds must be issued by a surety that the Treasury certifies as an acceptable surety on Federal bonds and that is listed in the current Treasury Circular No. 570. You may obtain a copy of the current Treasury Circular No. 570 from

the Surety Bond Branch, Financial Management Service, Department of the Treasury, East-West Highway, Hyattsville, MD 20782.

(c) You and a qualified surety must execute your bond. When either party is a corporation, an authorized official for the party must sign the bond and attest to it by an imprint of the corporate seal.

(d) Bonds must be non-cancellable, except as provided in § 556.906 of this part. Bonds must continue in full force and effect even though an event occurs that could diminish, terminate, or cancel a surety obligation under State surety law.

(e) Lease bonds must be:

(1) A surety bond;

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

(3) Another form of security approved by the Regional Director; or

(4) A combination of these security methods.

(f) You may submit a bond to the Regional Director executed on a form approved under paragraph (b) of this section that you have reproduced or generated by use of a computer. If you do, and if the document omits terms or conditions contained on the form approved by the Director, the bond you submit will be deemed to contain the omitted terms and conditions.

#### **§ 556.903 Lapse of bond.**

(a) If your surety becomes bankrupt, insolvent, or has its charter or license suspended or revoked, any bond coverage from that surety terminates immediately. In that event, you must promptly provide a new bond in the amount required under §§ 556.900 and 556.901 to the Regional Director and advise the Regional Director of the lapse in your previous bond.

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

#### **§ 556.904 Lease-specific abandonment accounts.**

(a) The Regional Director may authorize you to establish a lease-specific abandonment account in a federally insured institution in lieu of the bond required under § 556.901(d). The account must provide that, except as provided in paragraph (a)(3) of this section, funds may not be withdrawn without the written approval of the Regional Director.

(1) Funds in a lease-specific abandonment account must be payable

upon demand to BOEM and pledged to meet your decommissioning obligations.

(2) You must fully fund the lease-specific abandonment account to cover all decommissioning costs as estimated by BOEM within the timeframe the Regional Director prescribes.

(3) You must provide binding instructions under which the institution managing the account is to purchase Treasury securities pledged to BOEM under paragraph (d) of this section.

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

(c) The Regional Director may allow you to pledge Treasury securities that are made payable upon demand to the Regional Director to satisfy your obligation to make payments into a lease-specific abandonment account.

(d) Before the amount of funds in a lease-specific abandonment account equals the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, the institution managing the account must use the funds in the account to purchase Treasury securities pledged to BOEM under paragraph (c) of this section. The institution managing the lease specific-abandonment account will join with the Regional Director to establish a Federal Reserve Circular 154 account to hold these Treasury securities, unless the Regional Director authorizes the managing institution to retain the pledged Treasury securities in a separate trust account. You may obtain a copy of the current Treasury Circular No. 154 from the Surety Bond Branch, Financial Management Service, Department of the Treasury, East-West Highway, Hyattsville, MD 20782.

(e) The Regional Director may require you to create an overriding royalty or

production payment obligation for the benefit of a lease-specific account pledged for the decommissioning of a lease. The required obligation may be associated with oil and gas or sulfur production from a lease other than the lease bonded through the lease-specific abandonment account.

**§ 556.905 Using a third-party guarantee instead of a bond.**

(a) *When the Regional Director may accept a third-party guarantee.* The Regional Director may accept a third-party guarantee instead of an additional bond under § 556.901(d) if:

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

(2) The guarantee includes the terms specified in paragraph (d) of this section;

(3) The guarantor's total outstanding and proposed guarantees do not exceed 25 percent of its unencumbered net worth in the United States; and

(4) The guarantor submits an indemnity agreement meeting the criteria in paragraph (e) of this section.

(b) *What to do if your guarantor becomes unqualified.* If, during the life of your third-party guarantee, your guarantor no longer meets the criteria of paragraphs (a)(3) and (c)(3) of this section, you must:

(1) Notify the Regional Director immediately; and

(2) Cease production until you comply with the bond coverage requirements of this subpart.

(c) *Criteria for acceptable guarantees.* If you propose to furnish a third party's guarantee, that guarantee must ensure compliance with all lessees' lease obligations, the obligations of all operating rights owners, and the obligations of all operators on the lease. The Regional Director will base acceptance of your third-party guarantee on the following criteria:

(1) The period of time that your third-party guarantor (guarantor) has been in

continuous operation as a business entity where:

(i) Continuous operation is the time that your guarantor conducts business immediately before you post the guarantee; and

(ii) Continuous operation excludes periods of interruption in operations that are beyond your guarantor's control and that do not affect your guarantor's likelihood of remaining in business during exploration, development, production, and decommissioning.

(2) Financial information available in the public record or submitted by your guarantor, on your guarantor's own initiative, in sufficient detail to show to the Regional Director's satisfaction that your guarantor is qualified based on:

(i) Your guarantor's current rating for its most recent bond issuance by either Moody's Investor Service or Standard and Poor's Corporation;

(ii) Your guarantor's net worth, taking into account liabilities under its guarantee of compliance with all the terms and conditions of your lease, the regulations in this chapter and 30 CFR chapters II and XII, and your guarantor's other guarantees;

(iii) Your guarantor's ratio of current assets to current liabilities, taking into account liabilities under its guarantee of compliance with all the terms and conditions of your lease, the regulations in this chapter and 30 CFR chapters II and XII, and your guarantor's other guarantees; and

(iv) Your guarantor's unencumbered fixed assets in the United States.

(3) When the information required by paragraph (c) of this section is not publicly available, your guarantor may submit the information in the following table. Your guarantor must update the information annually within 90 days of the end of the fiscal year or by the date prescribed by the Regional Director.

The guarantor should submit	That
(i) Financial statements for the most recently completed fiscal year,	Include a report by an independent certified public accountant containing the accountant's audit opinion or review opinion of the statements. The report must be prepared in conformance with generally accepted accounting principles and contain no adverse opinion.
(ii) Financial statements for completed quarters in the current fiscal year, and	Your guarantor's financial officer certifies to be correct.
(iii) Additional information as requested by the Regional Director.	Your guarantor's financial officer certifies to be correct.

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

(1) If you, your operator, or an operating rights owner fails to comply

with any lease term or regulation, your guarantor must either:

(i) Take corrective action; or,

(ii) Be liable under the indemnity agreement to provide, within 7 calendar

days, sufficient funds for the Regional Director to complete corrective action.

(2) If your guarantor complies with paragraph (d)(1) of this section, this compliance will not reduce its liability.

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

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

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

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

(4) You must provide a suitable replacement security instrument before the termination of the period of liability under your third-party guarantee.

(e) *Required criteria for indemnity agreements.* If the Regional Director approves your third-party guarantee, the guarantor must submit an indemnity agreement.

(1) The indemnity agreement must be executed by your guarantor and all persons and parties bound by the agreement.

(2) The indemnity agreement must bind each person and party executing the agreement jointly and severally.

(3) When a person or party bound by the indemnity agreement is a corporate entity, two corporate officers who are authorized to bind the corporation must sign the indemnity agreement.

(4) Your guarantor and the other corporate entities bound by the indemnity agreement must provide the Regional Director copies of:

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

(ii) An affidavit certifying that the agreement is valid under all applicable laws; and

(iii) Each corporation's corporate authorization to execute the indemnity agreement.

(5) If your third-party guarantor or another party bound by the indemnity agreement is a partnership, joint venture, or syndicate, the indemnity agreement must:

(i) Bind each partner or party who has a beneficial interest in your guarantor; and

(ii) Provide that, upon demand by the Regional Director under your third-party guarantee, each partner is jointly and severally liable for compliance with all terms and conditions of your lease.

(6) When forfeiture is called for under § 556.907, the indemnity agreement must provide that your guarantor will either:

(i) Bring your lease into compliance; or

(ii) Provide, within 7 calendar days, sufficient funds to permit the Regional Director to complete corrective action.

(7) The indemnity agreement must contain a confession of judgment. It must provide that, if the Regional Director determines that you, your operator, or an operating rights owner is in default of the lease, the guarantor:

(i) Will not challenge the determination; and

(ii) Will remedy the default.

(8) Each indemnity agreement is deemed to contain all terms and conditions contained in this paragraph (e), even if the guarantor has omitted them.

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

This section defines the terms and conditions under which BOEM will terminate the period of liability of a bond or cancel a bond. Terminating the period of liability of a bond ends the period during which obligations continue to accrue, but does not relieve the surety of the responsibility for obligations that accrued during the period of liability. Canceling a bond relieves the surety of all liability. The liabilities that accrue during a period of liability include obligations that started to accrue prior to the beginning of the period of liability and had not been met, and obligations that begin accruing during the period of liability.

(a) When you or the surety under your bond requests termination:

(1) The Regional Director will terminate the period of liability under

your bond within 90 days after BOEM receives the request; and

(2) If you intend to continue operations, or have not met all decommissioning obligations, you must provide a replacement bond of an equivalent amount.

(b) If you provide a replacement bond, the Regional Director will cancel your previous bond and the surety that provided your previous bond will not retain any liability, provided that:

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

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

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

(c) This paragraph applies if the period of liability is terminated for a bond, but the bond is not replaced by a bond of an equivalent amount. The surety that provided your terminated bond will continue to be responsible for accrued obligations:

(1) Until the obligations are satisfied; and

(2) For additional periods of time in accordance with paragraph (d) of this section.

(d) When your lease expires or is terminated, the surety that issued a bond will continue to be responsible, and the Regional Director will retain other forms of security as shown in the following table:

For the following type of bond	The period of liability will end	Your bond will be cancelled
(1) Base bonds submitted under § 556.900(a), § 556.901(a), or (b).	When the Regional Director determines that you have met all of your obligations under the lease,	Seven years after the termination of the lease, 6 years after completion of all bonded obligations, or at the conclusion of any appeals or litigation related to your bonded obligation, whichever is the latest. The Regional Director will reduce the amount of your bond or return a portion of your security if the Regional Director determines that you need less than the full amount of the base bond to meet any possible future problems.

For the following type of bond	The period of liability will end	Your bond will be cancelled
(2) Additional bonds submitted under § 556.901(d).	When the Regional Director determines that you have met all your obligations covered by the additional bond,	When you meet your bonded obligations, unless the Regional Director: (i) Determines that the future potential liability resulting from any undetected problem is greater than the amount of the base bond; and (ii) Notifies the provider of the bond that the Regional Director will wait 7 years before cancelling all or a part of the bond (or longer period as necessary to complete any appeals or judicial litigation related to your bonding obligation).

(e) For all bonds, the Regional Director may reinstate your bond as if no cancellation or release had occurred if:

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

(2) The responsible party represents to BOEM that it has discharged its obligations under the lease, and the representation was materially false when the bond was canceled or released.

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

This section explains how a bond or other security may be forfeited.

(a) The Regional Director will call for forfeiture of all or part of the bond, other form of security, or guarantee you provide under this part if:

(1) You (the party who provided the bond) refuse, or the Regional Director determines that you are unable to comply with any term or condition of your lease; or

(2) You default on one of the conditions under which the Regional Director accepts your bond, third-party guarantee, and/or other form of security.

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

(c) The Regional Director will:

(1) Notify you, the surety on your bond or other form of security, and any third-party guarantor of a determination to call for forfeiture of the bond, security, or guarantee under this section.

(i) This notice will be in writing, and will provide the reason for the forfeiture and the amount to be forfeited.

(ii) The Regional Director must base the amount he/she determines is forfeited upon his/her estimate of the total cost of corrective action to bring your lease into compliance.

(2) Advise you, your third-party guarantor, and any surety that you, your

guarantor, and any surety may avoid forfeiture if, within five working days:

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

(ii) Your third-party guarantor agrees to and demonstrates that it will complete the corrective action to bring your lease into compliance within the timeframe that the Regional Director prescribes; or

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

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

(e) If the Regional Director determines that your bond and/or other security is forfeited, the Regional Director will:

(1) Collect the forfeited amount; and

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

(f) If the amount the Regional Director collects under your bond and other security is insufficient to pay the full cost of corrective actions he/she may:

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

(2) Recover from you, any co-lessee, operating rights owner, and/or any third-party guarantor responsible under this subpart all costs in excess of the amount he/she collects under your forfeited bond and other security.

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

**Subpart J—Bonus or Royalty Credits for Exchange of Certain Leases**

**§ 556.1000 Leases formerly eligible for a bonus or royalty credit.**

Bonus or royalty credits were available to lessees with leases:

(a) In effect on December 20, 2006, and located in:

(1) The Eastern Planning Area and within 125 miles of the coastline of the State of Florida; or,

(2) The Central Planning Area and within the Desoto Canyon OPD, the Destin Dome OPD, or the Pensacola OPD and within 100 miles of the coastline of the State of Florida.

(b) The deadline for applying for such a bonus or royalty credit was October 14, 2010; therefore, lessees may no longer apply for such credits.

**Subpart K—Ending a Lease**

**§ 556.1100 How does a lease expire?**

(a) Your oil and gas lease will automatically expire at the end of its primary term unless you have taken action, as set forth in § 556.601, to maintain the lease beyond the primary term.

(b) Your sulfur lease will automatically expire at the end of its primary term unless you have taken action, as set forth in § 556.603, to maintain the lease beyond the primary term.

**§ 556.1101 May I relinquish my lease or an aliquot part thereof?**

(a) A record title owner may relinquish a lease or an aliquot part of a lease if all record title owners of a lease or any aliquot part(s) of the lease file three original copies of a request to relinquish with BOEM on Form BOEM-0152, entitled, "Relinquishment of Federal Oil and Gas Lease." No filing fee is required.

(b) A relinquishment will be subject to the continued obligation of the record title owner and the surety to make all payments due, including any accrued rentals, royalties and deferred bonuses, and to abandon all wells and condition or remove all platforms and other facilities on the land to be relinquished to the satisfaction of the Director.



(c) The effective date of the relinquishment is the date on which the relinquishment is filed with the proper BOEM regional office.

**§ 556.1102 Under what circumstances will BOEM cancel my lease?**

(a) BOEM may cancel your non-producing lease if you fail to comply with any provision of OCSLA, the lease, or applicable regulations if the failure continues for 30 days after mailing of notice to your post office address of record by registered mail and you have not requested and been granted any additional time within which to correct the failure. Such cancellation is subject to judicial review under section 23 of OCSLA (43 U.S.C. 1349).

(b) Your producing lease may be cancelled if you fail to comply with any provision of OCSLA, the lease, or applicable regulations. The Secretary will cancel a producing lease after the judicial proceedings required under section 5(d) of OCSLA (43 U.S.C. 1334(d)).

(c) BOEM may cancel your lease if it determines that the lease was obtained by fraud or misrepresentation. You will have notice and an opportunity to be heard before BOEM cancels your lease.

(d) BOEM may cancel your lease at any time if it determines, after a hearing, that continued activity will probably cause serious harm or damage to life (including fish and other aquatic life), property, any mineral, national security or defense, or the marine, coastal, or human environment; that the threat of harm or damage will not disappear or decrease to an acceptable level within a reasonable period of time; and the advantages of cancellation outweigh the advantages of continuing the lease.

(e) BOEM may cancel your lease at any time after operations under the lease have been suspended or temporarily prohibited by the Department continuously for a period of five years pursuant to paragraph (d) of this section, absent your request for a shorter period.

(f) If, upon demand, you fail to provide a bond, or alternative type of security instrument acceptable to BOEM, the Regional Director may assess penalties or cancel your lease in accordance with part 550, subpart N of this chapter;

(g) Title 30, part 550, subpart A of the CFR provides the procedures for lease cancellation and compensation, if applicable.

**Subpart L—Leases Maintained Under Section 6 of OCSLA**

**§ 556.1200 Effect of regulations on lease.**

(a) All regulations in this part, insofar as they are applicable, will supersede the provisions of any lease that is maintained under section 6(a) of the Act. However, the provisions of a lease relating to area, minerals, rentals, royalties (subject to sections 6(a)(8) and (9) of the Act), and term (subject to section 6(a)(10) of the Act and, as to sulfur, subject to section 6(b)(2) of the Act) will continue in effect, and, in the event of any conflict or inconsistency, will take precedence over these regulations.

(b) A lease maintained under section 6(a) of the Act is also subject to all operating and conservation regulations applicable to the OCS. In addition, the regulations relating to geophysical and geological exploratory operations and to pipeline ROW(s) are applicable, to the extent that those regulations are not contrary to or inconsistent with the lease provisions relating to area, minerals, rentals, royalties and term. The lessee must comply with any provision of the lease as validated, the subject matter of which is not covered in the regulations in this part.

**§ 556.1201 Section 6(a) leases and leases other than those for oil, gas, or sulfur.**

The existence of an oil and gas lease maintained under section 6(a) of the Act precludes only the issuance in the same area of an oil and gas lease under OCSLA, but does not preclude the issuance of other types of leases under OCSLA. However, no other lease may authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the existing lease. The United States will not grant any sulfur leases on any area that is included in a lease covering sulfur under section 6(b) of the Act.

**Subpart M—Environmental Studies**

**§ 556.1300 Environmental studies.**

(a) The Director will conduct a study or studies of any area or region included in any oil and gas lease sale or other lease in order to establish information needed for assessment and management of impacts on the human, marine and coastal environments which may be affected by OCS oil and gas or other mineral activities in such area or region. The purposes of such studies will include, to the extent practicable, analyses of the impacts of pollutants introduced into the environments and impacts of offshore activities on the seabed and affected coastal areas.

(b) Studies will be planned and carried out in cooperation with the affected States and interested parties and, to the extent possible, will not duplicate studies done under other laws. Where appropriate, the Director will, to the maximum extent practicable, coordinate with the National Oceanic and Atmospheric Administration (NOAA) in executing its environmental studies responsibilities. The Director may also make agreements for the coordination with, or the use of the services or resources of, any other Federal, State or local government agency in the conduct of such studies.

(c) Any study of an area or region required by paragraph (a) of this section for a lease sale will be commenced not later than six months prior to holding a lease sale for that area. The Director may use information collected in any prior study. The Director may initiate studies for an area or region not identified in the leasing program.

(d) After the leasing and developing of any area or region, the Director will conduct such studies as are deemed necessary to establish additional information and will monitor the human, marine and coastal environments of such area or region in a manner designed to provide information, which can be compared with the results of studies conducted prior to OCS oil and gas development. This will be done to identify any significant changes in the quality and productivity of such environments, to establish trends in the area studies, and to design experiments identifying the causes of such changes. Findings from such studies will be used to recommend modifications in practices that are employed to mitigate the effects of OCS activities and to enhance the data/information base for predicting impacts which might result from a single lease sale or cumulative OCS activities.

(e) Information available or collected by the studies program will, to the extent practicable, be provided in a form and in a timeframe that can be used in the decision-making process associated with a specific leasing action or with longer term OCS minerals management responsibilities.

**PART 559—[REMOVED]**

■ 8. Under the authority of section 5(a) of OCSLA (43 U.S.C. 1334(a)), remove part 559.

**PART 560—OUTER CONTINENTAL SHELF OIL AND GAS LEASING**

■ 9. The authority citation for part 560 continues to read as follows:



**Authority:** Section 104, Public Law 97–451, 96 Stat. 2451 (30 U.S.C. 1714), Public Law 109–432, Div C, Title I, 120 Stat. 3000; 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334; 33 U.S.C. 2704, 2716; E.O. 12777, as amended; 43 U.S.C. 1331 *et seq.*, 43 U.S.C. 1337.

- 10. Revise the Table of Contents for 30 CFR part 560 to read as follows:

#### Subpart A—General Provisions

- 560.100 Authority
- 560.100 What is the purpose of this part?
- 560.102 What definitions apply to this part?
- 560.103 What is BOEM's authority to collect information?

#### Subpart B—Bidding Systems

##### General Provisions

- 560.200 What is the purpose of this subpart?
- 560.201 What definitions apply to this subpart?
- 560.202 What bidding systems may BOEM use?
- 560.203 What conditions apply to the bidding systems that BOEM uses?

##### Eligible Leases

- 560.210 How do royalty suspension volumes apply to eligible leases?
- 560.211 When does an eligible lease qualify for a royalty suspension volume?
- 560.212 How does BOEM assign and monitor royalty suspension volumes for eligible leases?
- 560.213 How long will a royalty suspension volume for an eligible lease be effective?
- 560.214 How do I measure natural gas production on my eligible lease?

##### Royalty Suspensions (RS) Leases

- 560.220 How does royalty suspension apply to leases issued in a sale held after November 2000?
- 560.221 When does a lease issued in a sale held after November 2000 get a royalty suspension?
- 560.222 How long will a royalty suspension volume be effective for a lease issued in a sale held after November 2000?
- 560.223 How do I measure natural gas production for a lease issued in a sale held after November 2000?
- 560.224 How will royalty suspension apply if BOEM assigns a lease issued in a sale held after November 2000 to a field that has a pre-Act lease?

##### Bidding System Selection Criteria

- 560.230 What criteria does BOEM use for selecting bidding systems and bidding system components?

##### Subpart C—Operating Allowances

- 560.300 Operating allowances.

##### Subpart D—[Reserved]

##### Subpart E—Electronic Filings

- 560.500 Electronic document and data transmissions.
- 560.501 How long will the confidentiality of electronic document and data transmissions be maintained?
- 560.502 Are electronically filed document transmissions legally binding?

#### Subpart B—Bidding Systems

- 11. Redesignate §§ 560.101, 560.102, 560.110 and 560.111 as §§ 560.200, 560.201, 560.202 and 560.203, respectively.
- 12. Redesignate §§ 560.112, 560.113, 560.114, 560.115 and 560.116 as §§ 560.210, 560.211, 560.212, 560.213 and 560.214, respectively.
- 13. Redesignate §§ 560.120, 560.121, 560.122, 560.123 and 560.124 as §§ 560.220, 560.221, 560.222, 560.223 and 560.224, respectively.
- 14. Redesignate § 560.130 as § 560.230.

#### Subpart A—General Provisions

- 15. Add § 560.100 as follows:

##### § 560.100 Authority.

(a) The Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1334) (“Outer Continental Shelf Lands Act Amendments of 1978”).

(b) The Federal Oil and Gas Royalty Management Act, as amended (FOGRMA) (30 U.S.C. 1711), including the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, (30 U.S.C. 1701 note).

(c) The Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

(d) Public Law 89–554, 1966 (5 U.S.C. 301).

##### § 560.1 [Redesignated as § 560.101]

- 16. Redesignate § 560.1 as § 560.101.
- 17. Redesignate § 560.2 as § 560.102, and revise redesignated § 560.2 to read as follows:

##### § 560.102 What definitions apply to this part?

(a) Terms used in this part have the meaning given in the Act and as defined in this part.

(b) The following definitions apply to this part:

*Area or region* means the geographic area or region over which the BOEM authorized officer has jurisdiction, unless the context in which those words are used indicates that a different meaning is intended.

*BOEM* means Bureau of Ocean Energy Management.

*Designated official* means a representative of DOI subject to the direction and supervisory authority of the Directors, BOEM, and the appropriate Regional Manager of the BOEM authorized and empowered to supervise and direct all oil and gas operations and to perform other duties prescribed in this chapter.

*Director* means Director, BOEM, DOI.

*DOI* means the Department of the Interior, including the Secretary of the Interior, or his or her delegate.

*Federal lease* means an agreement which, for consideration, including, but not limited to, bonuses, rents or royalties conferred, and covenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction.

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

*Oil* means a mixture of hydrocarbons that exists in a liquid or gaseous phase in an underground reservoir and which remains or becomes liquid at atmospheric pressure after passing through surface separating facilities, including condensate recovered by means other than a manufacturing process.

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

*OCSLA* means the Outer Continental Shelf Lands Act, as amended (Act of August 7, 1953, Ch. 345, 67 Stat. 462, 43 U.S.C. 1331–1356a, as amended by Pub. L. 95–372, 92 Stat. 629).

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

*We* means the Bureau of Ocean Energy Management (BOEM).

*You* means the lessee or operating rights owner.

##### § 560.3 [Redesignated as § 560.103]

- 18. Redesignate § 560.3 as § 560.103.
- 19. Add a new subpart C to read as follows:

#### Subpart C—Operating Allowances

##### § 560.300 Operating allowances.

Notwithstanding any other provision in the regulations in this part, BOEM may issue a lease containing an operating allowance when so specified in the final notice of sale and the lease. The allowance amount or formula will be specified in the final notice of sale and in the lease.

**Subpart D—[Removed and Reserved]**

- 20. Remove and reserve subpart D.
- 21. Add a new subpart E to read as follows:

**Subpart E—Electronic Filings**

560.500 Electronic document and data transmissions.

560.501 How long will the confidentiality of electronic document and data transmissions be maintained?

560.502 Are electronically filed document transmissions legally binding?

**Subpart E—Electronic Filings****§ 560.500 Electronic document and data transmissions.**

(a) BOEM may notify you that it will allow or request you to submit the following information electronically through BOEM's secure electronic filing system, through an alternate secure electronic filing system supported and maintained by the Department, or through some other electronic filing system that BOEM has approved for this purpose:

(1) Any document(s) or information described in the Qualifications section of part 556 of this chapter, as specified in subpart E. Such information would include, but not be limited to, the official name of the qualifying person, its legal and business address or addresses, its legal form and status, and the names and contact information of a person or organization authorized to act on the person's behalf.

(2) Any document(s) or information required to obtain BOEM's approval of an assignment or sublease, including any form or instrument that creates or transfers ownership of a lease interest.

(3) Any document(s) or information required to obtain BOEM's approval of your relinquishment of all, or any aliquot part of your lease, as specified in § 556.1101 of this chapter.

(4) Any document(s) creating, transferring or assigning economic interests, as specified in §§ 556.715 and 556.808 of this chapter.

(5) Any document(s) related to a bond, U.S. Treasury note or other security provided to BOEM, which is required to guarantee your compliance with terms and conditions of a lease.

(6) Any document(s) or information necessary to bid for an OCS lease.

(7) Any forms, document(s) or information necessary to determine worst case oil-spill discharge volume(s), or to provide evidence demonstrating oil spill financial responsibility, or to guarantee such financial responsibility or to comply with any other requirements of the Oil Spill Financial Responsibility Program, as described in part 553 of this chapter.

(b) BOEM reserves the right to require the electronic filing of any document(s) or information addressed in paragraph (a)(5) of this section upon a 90-day notice published in the **Federal Register**; if BOEM mandates that you transmit such document(s) or

information electronically, the **Federal Register** notice will specify the filing details necessary to comply with this regulation.

(c) In the event BOEM sends documents to you in a secure electronic format, you may either return the document(s) in an electronic format utilizing the same secure transmission mechanism or print the document(s) and return them.

(d) BOEM may electronically acknowledge, approve, sign, or execute any document(s) referenced in this section.

**§ 560.501 How long will the confidentiality of electronic document and data transmissions be maintained?**

The confidentiality of any electronically submitted information will be maintained for the same proprietary term that would apply to the corresponding non-electronic confidential submission, pursuant to § 556.104(b) of this chapter.

**§ 560.502 Are electronically filed document transmissions legally binding?**

Any document or information referenced in § 560.500 which is submitted to BOEM through a secure electronic filing system that is approved by BOEM will be legally binding, without the need for a paper copy thereof.

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