

Criteria to Determine Financial Ability to Carry Out Obligations

These are the Criteria that BOEM Regional Directors will use to determine if and when additional security, pursuant to 30 CFR § 556.53(d)-(f), may be required for Outer Continental Shelf (OCS) leases, pipeline rights-of-way (ROW), and rights-of-use and easement (RUE).

All owners of record title interest in a lease, owners of operating rights in a lease, pipeline ROW holders, or RUE holders are responsible for ensuring that all obligations, including decommissioning, are satisfied for every lease, ROW or RUE to which they are a party. If, to this end, the BOEM Regional Director determines that their financial ability to carry out their obligations or their existing financial assurance is not sufficient to cover their OCS obligations, he or she may require you to provide and maintain additional security.

To determine your financial ability to carry out your obligations, the Regional Director will evaluate, based on information you submit, your financial capacity, strength, stability, reliability, and record of compliance, considering 100 percent of the decommissioning liability for every lease, ROW and RUE in which you hold an interest or for which you provide a guarantee. The Regional Director will use the five criteria set forth below to evaluate your financial ability to carry out your obligations.

After evaluating the criteria below, the Regional Director may find that you do not have the financial ability to carry out some or all of your obligations. If the Regional Director makes this finding, he/she may allow you to submit, for his/her consideration, other evidence that you believe is of equal merit to those criteria listed below. Based on his/her review of this other evidence, the Regional Director may change his/her finding.

The Regional Director will determine your financial ability to carry out your obligations based upon the following:

1. As set forth in 30 CFR § 556.53(d)(1)(i), Financial Capacity substantially in excess of existing and anticipated lease and other obligations, as evidenced by your most recent (not more than 12 months old) audited financial statements, is demonstrated in part by applicable financial criteria, including but not limited to, those listed below:
 - Total Revenue
 - Total Equity
 - Return on Capital

- Intangible Assets/Revenue
- Gross Margin
- EBITDA Interest Coverage
- Net Debt to EBITDA
- Basic Defense Interval
- Asset Turnover
- Payable/Receivable
- Times Interest Earned
- Return on Assets
- Cash Flow from Operations (CFO)/CAPEX
- EBITDA Margin
- Total Debt/Average Daily Production
- Total Debt/Proven Reserves
- Total Debt/ Capitalization
- Total Proved Reserves/Asset Retirement Obligation
- Current Ratio
- CFO/Current Liabilities

2. As set forth in 30 CFR § 556.53(d)(1)(ii), Projected Strength significantly in excess of existing and future lease obligations is based upon:

The estimated value of your existing OCS lease production and proven reserves of future production.

3. As set forth in 30 CFR § 556.53(d)(1)(iii), Business Stability is based upon:

Five years of continuous operation and production on the OCS or onshore.

4. As set forth in 30 CFR § 556.53(d)(1)(iv), Reliability is based upon:

Your rating by Moody's, Standard and Poor's, or Dun and Bradstreet, or your trade references.

5. As set forth in 30 CFR § 556.53(d)(1)(v), to determine your Record of Compliance, the Regional Director will consider your operational history, including, but not limited to:

Whether you or any of your affiliated or subsidiary companies:

- a. have been assessed civil penalties by either BOEM or the Bureau of Safety and

Environmental Enforcement;

- b. have been found by BOEM to be non-compliant with any lease term or condition;
- c. have been cited by any other agency(ies) with jurisdiction on the OCS, for non-compliance with any applicable regulation; and/or
- d. have been cited for non-payment or under-payment of rentals, royalties, interest bills, civil penalties, or inspection fees, and such non-payment or under-payment has been referred to the U.S. Treasury for collection within the past five years. On a case-by-case basis, the Regional Director may deem a late payment(s) excusable if you present sufficient and reasonable justification detailing the extenuating circumstances that prevented timely payment(s).

When making a determination of your financial ability to carry out your obligations, the Regional Director may consider factors within the scope of the criteria listed above, such as: transfer(s) of working interests, off balance sheet transaction(s), contractual default(s), suspension(s), debarment(s), and/or violation(s) of U.S. law(s).

Acceptable Forms of Additional Security

If the Regional Director requires you to provide additional security, you may meet this requirement by using one or more of the methods listed below (see 30 CFR § 556.52 et. seq):

- Surety bond(s) (See 30 CFR § 556.54(b));
- U.S. Treasury Security (ies) (See 30 CFR § 556.52(f));
- Abandonment Account(s) (See 30 CFR § 556.56);
- Third-Party Guarantee(s), in which the guarantor agrees to perform the activities required to bring the lease, ROW, or RUE into compliance, or in which the guarantor's funds, which are securing the performance of those required activities, are to be paid to BOEM prior to such performance, to allow BOEM to hire a person to perform those activities (See 30 CFR § 556.57); or
- Alternative forms of security, if approved by the Regional Director (See 30 CFR § 556.54(e)).

Meeting Your Additional Security Requirement

The Regional Director, in his/her written notification of the requirement to provide additional security, will include a time period within which that additional security must be provided to BOEM. Within this time period, you may either:

- Provide the total amount of additional security required, or
- Submit a tailored plan for the Regional Director's review and approval.

Tailored Plans to Meet Additional Security Requirement

You may develop a plan to use multiple types of financial assurance (tailored plan) to meet your total additional security requirement using:

- Types of financial assurance set forth in the regulations (30 CFR part 556, subpart I) and/or
- Other types of financial assurance permitted through the discretion vested in the Regional Director (30 CFR § 556.54 (e)).

If you decide to develop a tailored plan, you must submit it to the Regional Director for review and approval. If requested, BOEM can provide guidance in formulating and developing your tailored plan.

Phased-In Timetable for Compliance

If you are submitting a tailored plan, you may phase-in compliance with your additional security requirement according to the following compliance schedule:

- Once your tailored plan is approved by the Regional Director, you will have 120 calendar days from the date of the Regional Director's approval to provide, pursuant to your approved plan, at least one-third (1/3) of your required additional security;
- You will then have 120 calendar days, beginning on the first day following the expiration of the first 120-day period, to provide, pursuant to your approved plan, another one-third (1/3) of your required additional security, and;
- You will then have 120 calendar days, beginning on the first day following the expiration of the second 120-day period, to provide, pursuant to your approved plan, the final one-third (1/3) of your required additional security.

After your tailored plan is approved, you may request that the Regional Director review and approve a modification of that plan. Pending the decision on your request, you must adhere to your approved plan.