



# **OCS ADVISORY BOARD WORKSHOP**

## **Today's Legal Landscape: An Update on Recent Interesting Cases, Financial Assurance and Predecessor Liability, and Other Regulatory and Policy Matters Impacting the OCS**

**Paul J. Goodwine**  
**Looper Goodwine P.C.**  
**January 29, 2020**

# Recent Court Decisions



# Recent Court Decisions

## Applying State Law

*Parker Drilling  
Management Svcs.,  
Ltd. v. Newton, 139 S.  
Ct. 1881 (2019)*

- To the extent federal law applies to a particular issue, state law is inapplicable.
- There must be an actual void or gap in federal law for state law to apply.
- State law will not act as an extension of federal law or as a supplement to federal law on any point where there is actual federal law.

# Recent Court Decisions

## Operator Discretion under JOA

### *Apache v. W&T*, 2019 WL 3143769 (5<sup>th</sup> Cir. 2019)

- **SDTX (Judge Hittner):**
  - Jury awarded Apache \$43.2MM for breach of JOA but offset award by \$17MM for Apache's alleged bad faith.
  - Judge Hittner set aside jury's offset and bad faith finding as being inconsistent with operator discretion under JOA and Louisiana law.
  - In order to avoid liability for bad faith, W&T needed to establish that (i) Apache failed to perform under the JOA *and* (ii) such failure caused W&T's breach, which W&T failed to do.
- **Fifth Circuit Affirmation**
  - Affirmed \$43.2MM jury verdict.
  - Did not recognize \$17MM offset for bad faith.
  - Rehearing *en banc* denied by the Fifth Circuit on August 13, 2019.

# Recent Court Decisions

## Maritime Contracts

*Doiron v. Specialty  
Rental Tools*, 879 F.3d  
569 (5<sup>th</sup> Cir. 2018)

### *IS IT A MARITIME CONTRACT?*

- **First**, is the contract one to provide services to facilitate the drilling or production of oil and gas on navigable waters?
- **Second**, if yes, does the contract provide, or do the parties expect, that a vessel will play a substantial role in completion of the contract?

# Recent Court Decisions

## Louisiana Indemnity Statute

*Atlantic Specialty Ins. Co. v.  
Phillips 66 Co.*

(5<sup>th</sup> Cir. 10/24/2019)

- Louisiana Anti-Indemnity Act (“LAIA”) LA R.S. 9:2780.1 voids indemnity and insurance provisions in “construction contracts” for both personal injury *and* property damage.
- Does not apply when Louisiana Oilfield Indemnity Act (“LOIA”) LA R.S. 9:2780 is applicable (agreements “pertaining to a well”).

# Recent Court Decisions

## Gathering Agreements

*Alta Mesa Holdings, LP v. Kingfisher  
Midstream, LLC (Adversary No. 19-  
03609)*

*USBC SDTX*

*12/20/2019*

- **Judge Isgur:** Rights under gathering agreements “run with the land.”
- Therefore, such agreements are not subject to rejection under §365 of the Bankruptcy Code.
- This case created a contrary result to the well known 2017 Sabine decision.

# Recent Court Decisions

## Regulation Interpretation Deference

*Kisor v. Wilkie*, 139 S. Ct.  
2400 (2019)

- Justices decline to overrule “*Auer* deference,” but reminded us that deference should *only be given if the regulation is genuinely ambiguous*.
- If it is ambiguous, deference appropriate only if agency’s interpretation is reasonable and reflects the agency’s official position in an area of its expertise.



# Recent IBLA Decision

## Agency Decision Deference

### *Taylor Energy Company LLC (193 IBLA 283)*

- IBLA appeal concerning BSEE's denial of a series of departure requests from certain of Taylor's decommissioning obligations at MC 20.
- IBLA affirmed BSEE's decision; although the "current record" and the "current state of knowledge" might not support the drilling of additional intervention wells, BSEE can "defer" its decision to wait for "advances in technology."

# Predecessor Liability



*"All in favor of a cap on our liability?"*

# Predecessor Liability

## BSEE Regs

### 30 CFR § 250.1701

*“Who must meet the decommissioning obligations in this subpart?”*

- Lessees and owners of operating rights are jointly and severally responsible for meeting decommissioning obligations . . . , as the obligations accrue and until each obligation is met.
- All holders of a right-of-way are jointly and severally liable for meeting decommissioning obligations . . . , as the obligations accrue and until each obligation is met.

# Predecessor Liability

## BSEE Regs

### 30 CFR § 250.1702

*“When do I accrue decommissioning obligations?”*

- You accrue decommissioning obligations when you do any of the following:
  - Drill a well.
  - Install a platform, pipeline, or other facility.

# Predecessor Liability

## BOEM

*What are my rights  
and obligations as  
a record title  
owner?*

### 30 CFR § 556.604(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.

# Predecessor Liability

## BOEM

*What are my rights  
and obligations as  
a record title  
owner?*

### 30 CFR § 556.604(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.

## 30 CFR §556.710

# Predecessor Liability

***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.

## 30 CFR §556.711

# Predecessor Liability

***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 §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).



# Predecessor Liability (Joint & Several Liability)

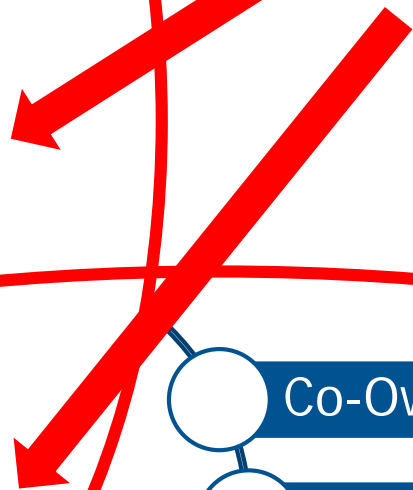
Company  
A



Company  
B



Company  
C  

- Co-Owner & DOO
- Co-Owner
- Co-Owner

## JOA Jurisprudence

### Predecessor Liability

### Historical Caselaw

- Chieftain Int'l v. Southeast Offshore, Fifth Circuit
- Seagull Energy v. Eland Energy, Texas Supreme Court
- GOM Shelf v. Sun Operating, USDC SDTX
- LLOG Expl. v. Newfield Expl., USDC EDLA
- Nippon Oil Expl. v. Murphy Expl. & Prod., USDC EDLA
- Chieftain Int'l v. Statoil Expl., USDC EDLA

# Predecessor Liability (JOA)

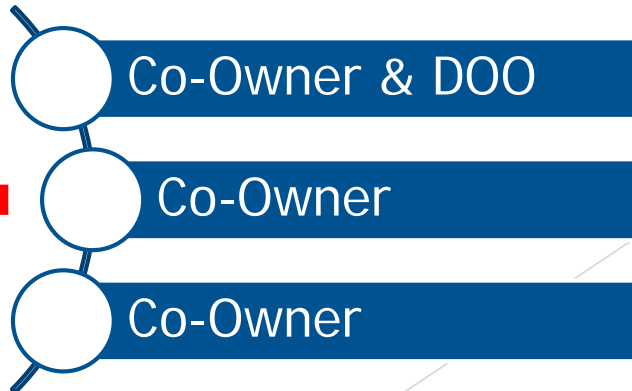
Company  
A



Company  
B



Company  
C





# Recent Court Decisions

## Predecessor Liability

### ***TOTAL v. Marubeni*, USDC SDTX**

- **3 intertwined cases dealing with P&A of the Canyon Express Assets.**
- **3 main issues in dispute:**
  - **Did Marubeni perform the requisite P&A Activities consistent with expectations under the applicable operating agreements?**
  - **Did Marubeni appropriately account for all of the P&A expenses across the 3 fields and the pipeline system?**
  - **What impact did certain motions and orders in the ATP bankruptcy case have on the rights, duties, and responsibilities of TOTAL and Marubeni?**
- **Alabama Law Applies**



# Recent Court Decisions

## Predecessor Liability

### ***TOTAL v. Marubeni, USDC SDTX***

#### ➤ **SDTX (Judge Atlas)**

- **Granted Marubeni motion for summary judgment finding TOTAL liable for the Canyon Express Pipeline System P&A liabilities under the applicable operating agreement and through subrogation/contribution.**
- **Granted a motion in limine excluding any evidence as to a damage offset for value Marubeni purportedly received from the ATP bankruptcy.**
- **Parties stipulated to damages in favor of Marubeni for \$12.6 million.**
- **Case is presently on appeal before 5th Circuit.**

#### ➤ **SDTX (Judge Gilmore)**

- **Granted Marubeni motion for summary judgment finding TOTAL liable for Aconcagua (MC 305) P&A liabilities under the applicable operating agreement and through subrogation/contribution.**
- **Denied a motion in limine excluding any evidence as to a damage offset for value Marubeni received from the ATP bankruptcy.**
- **At trial on damages, the jury awarded Marubeni \$21.6 million, deducting \$11.4 million from the award for value Marubeni purportedly received from the ATP bankruptcy.**
- **Case is presently on appeal before 5th Circuit.**

#### ➤ **SDTX (Judge Hughes)**

- **Cross-Motions for Summary Judgment pending.**



# Recent Court Decisions

## Predecessor Liability

### ***Industrial Development Board v. Russell,*** **Alabama Supreme Court**

- **Not an oil and gas case but illustrates general contract law principles that may be applied to JOAs to hold predecessors liable for decommissioning.**
- **Former homeowners sued IDB for breach of option contracts.**
- **Prior to the suit, IDB assigned the option contracts to the City.**
- **IDB claimed that its assignment of the option contracts relieved it of liability to the former homeowners.**
- **Alabama Supreme Court disagreed.**
- **“IDB states no authority for its proposition that the assignment of rights under a contract relieves the assignor of any potential for liabilities under the assigned contract” and the law “indeed supports the contrary position.”**



# Predecessor Liability

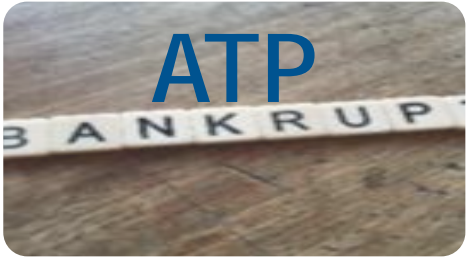
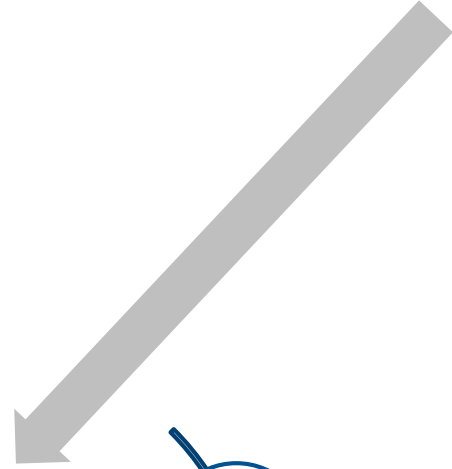
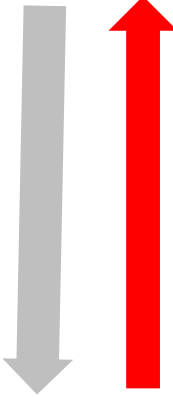
## ***Industrial Development Board v. Russell,*** **Alabama Supreme Court**

- Court distinguished between rights and duties under a contract.
- “[U]pon assignment of a right, the assignor’s interest in that right is extinguished; however, upon the delegation of a contractual duty, the delegating party remains liable under the contract, unless the contract provides otherwise or there is a novation.”
- "If assigning a right is like passing a football, then delegating a duty resembles more the dissemination of a catchy tune or a communicable disease: Passing it on is not the same as getting rid of it."
- Upon assignment to the City, IDB lost its rights under the option contracts but retained its duties.
- Applying the case to JOAs, upon assignment of a JOA, the assigning party will lose its rights under the JOA, but retain its duties under the JOA for decommissioning.

# Predecessor Liability (JOA Liability)

TOTAL

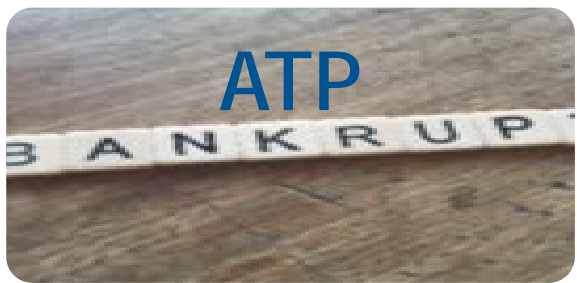
Other  
Predecessors





# Predecessor Liability (Subrogation)

TOTAL



- MOGUS (DOO)
- Black Elk

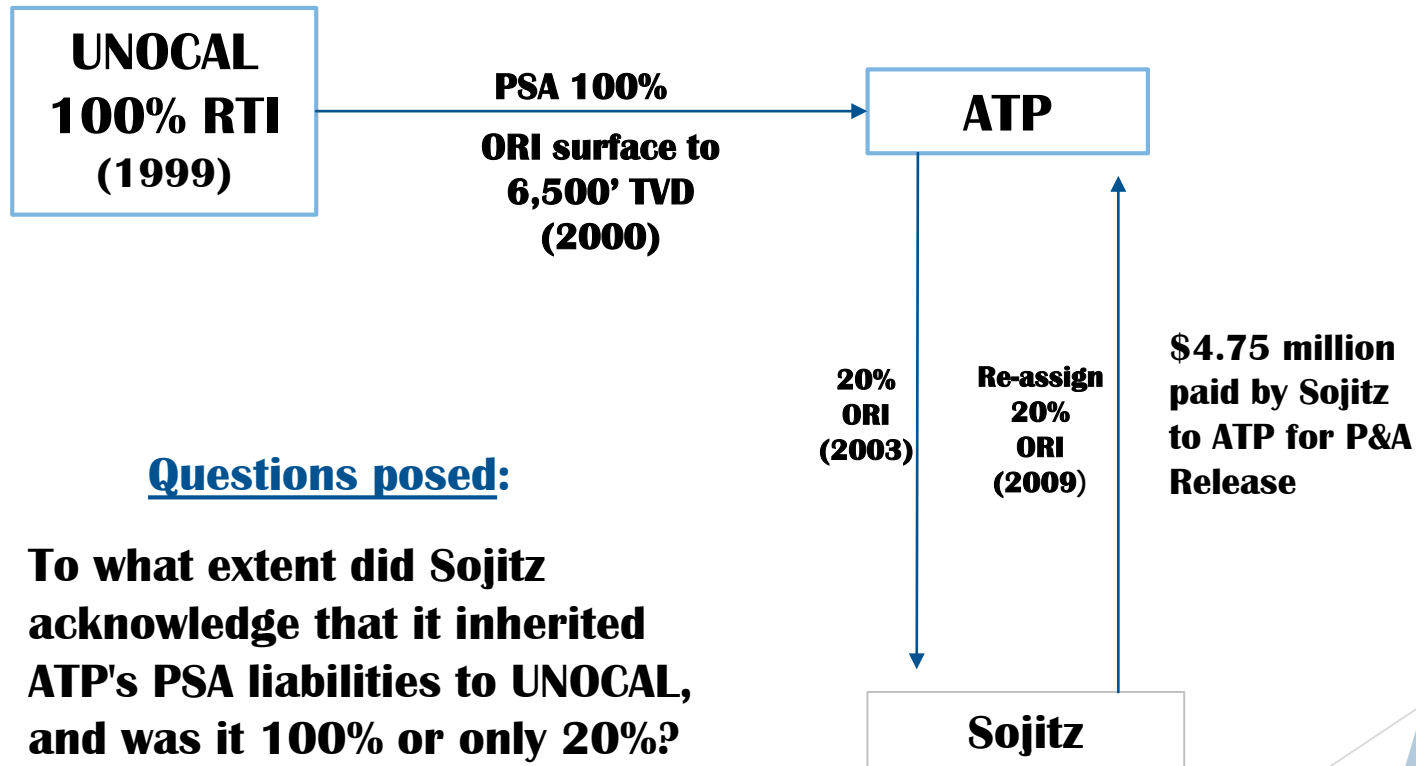




# Recent Court Decisions

## Predecessor Liability

### *Sojitz v. UNOCAL*, USDC SDTX



#### Questions posed:

- To what extent did Sojitz acknowledge that it inherited ATP's PSA liabilities to UNOCAL, and was it 100% or only 20%?
- Is UNOCAL Liable?
- Under what legal theory?
- To what extent?



# Financial Assurance



# Financial Assurance

UNITED STATES DEPARTMENT OF THE INTERIOR  
MINERALS MANAGEMENT SERVICE

NTL No. 2008-N07

Effective Date: 08-28-08

**NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL, GAS, AND  
SULFUR  
LEASES AND PIPELINE RIGHT-OF-WAY HOLDERS IN THE OUTER  
CONTINENTAL SHELF**

Supplemental Bond Procedures

The Minerals Management Service (MMS) is issuing this NTL to clarify the procedures and criteria MMS uses to determine when a supplemental bond is required to cover potential decommissioning liability. This NTL has been updated and revised to clarify in paragraph III, that: 1) the lessee must initially meet a minimum net worth of \$65 million, as indicated on the lessee's audited balance sheet; 2) the lessee must initially meet an allowable cumulative decommissioning liability amount calculated using only record title interest as a percentage of its net worth; and 3) a portion of the value of a lessee's proved producing reserves may be added to their net worth, only after meeting certain financial criteria. This NTL supersedes and replaces NTL No. 2003-N06, effective June 17, 2003.

**Background**

For each OCS lease, 30 CFR 256.53(c) and (e) provide the Regional Director the authority to require additional security [i.e. security above the amounts prescribed in 30 CFR 256.52(a) and 256.53(a) and (b)] in the form of a supplemental bond, based upon a calculation of the potential decommissioning liability and an evaluation of the lessee's ability to carry out present and future financial obligations in this regard. Each lease, right-of-use and easement (RUE), and right-of-way (ROW) with determined liability must be covered by a supplemental bond unless at least one lessee or holder of a RUE or ROW demonstrates to the satisfaction of the MMS that it has the financial ability to ensure that wells can be plugged and abandoned, platforms removed and the drilling and platform sites, including pipeline corridors, cleared of all obstructions, per MMS regulations. Supplemental bonds may additionally be required to satisfy other lease obligations, as determined by the Regional Director.

**I. General**

This NTL sets forth the procedures and criteria that MMS uses to: calculate decommissioning liability, determine the risk regarding the lessee's ability to carry out present and future financial obligations, and specify the types and terms of the supplemental bonds or other additional security the MMS may require or accept. The MMS reserves the right to vary from the procedures or criteria in this NTL on a case-by-case basis within the framework established in the governing regulations.

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF OCEAN ENERGY MANAGEMENT

NTL No. 2016-N01

Effective Date: September 12, 2016

**NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS,  
AND SULFUR LEASES, AND HOLDERS OF PIPELINE RIGHT-OF-WAY  
AND RIGHT-OF-USE AND EASEMENT GRANTS IN THE OUTER  
CONTINENTAL SHELF**

**Requiring Additional Security**

**Introduction**

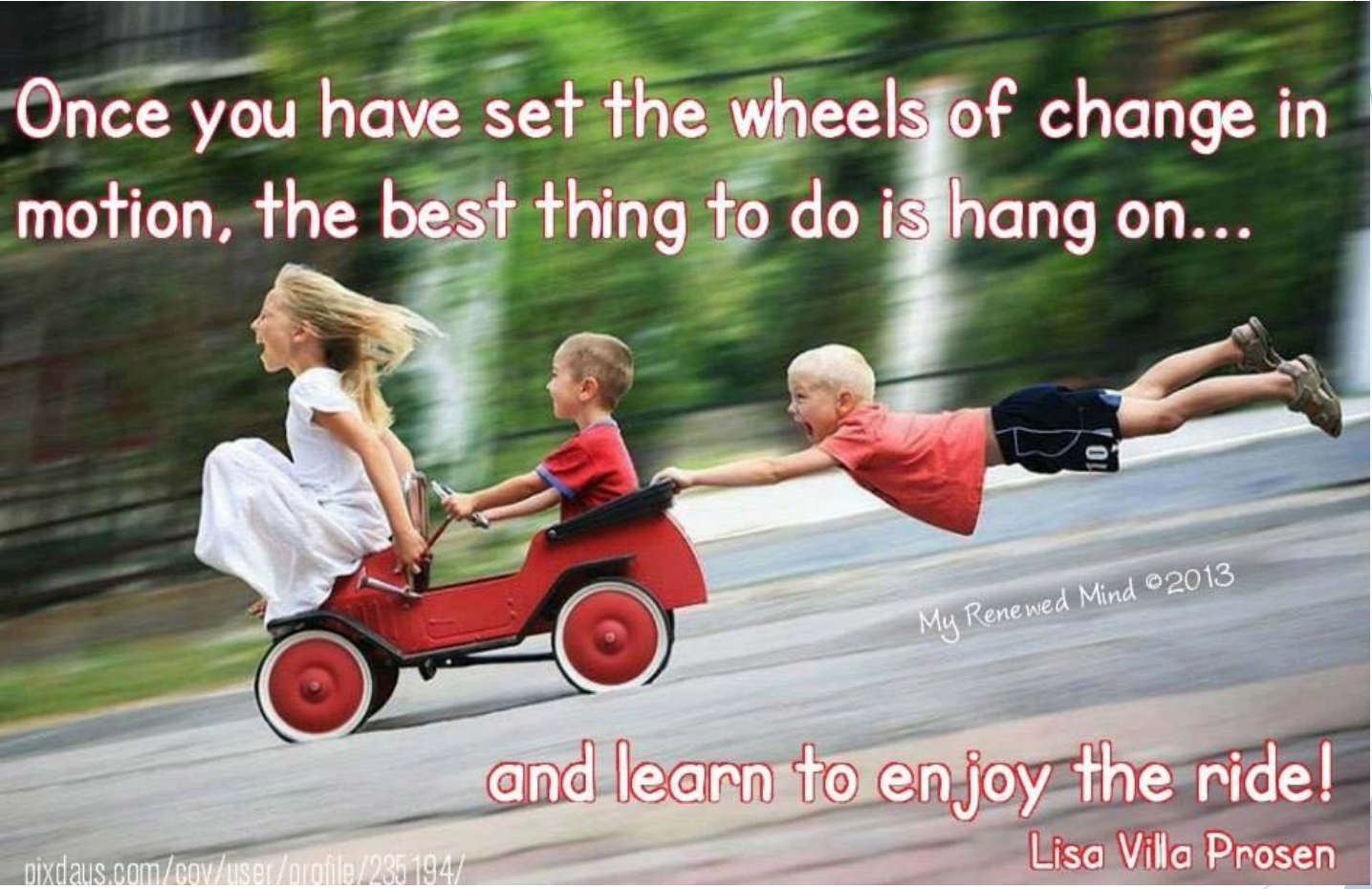
The Bureau of Ocean Energy Management (BOEM) is issuing this Notice to Lessees and Operators (NTL) to clarify the procedures and criteria that BOEM Regional Directors use to determine if and when additional security, pursuant to 30 CFR § 556.901(d)-(f), may be required for Outer Continental Shelf (OCS) leases, pipeline rights-of-way (ROW), and rights-of-use and easement (RUE). This NTL supersedes and replaces NTL No. 2008-N07. The guidance and clarification of requirements described in this NTL apply to all BOEM Regions. Additionally, this NTL has been reformatted, revised, and updated to include correct Bureau names and contact information, citations, and web addresses.

This NTL, issued by the Director, details several changes in policy that are within the scope of the existing regulations and the discretion vested in the Regional Directors. This NTL discontinues the policies under NTL No. 2008-N07, whereby if BOEM determined that one or more co-lessees or co-owners had sufficient financial strength and reliability, it was not necessary to provide additional security, and, for the purpose of determining the requirement for additional security, BOEM would exclude from your decommissioning liability calculation the full amount of the decommissioning liability on leases, ROWs and RUEs on which there was a financially strong co-lessee or co-owner. Now, when determining the amount of additional security that may be required, the Regional Director will consider 100 percent of your decommissioning and other liability for every lease, ROW, and RUE in which you hold an ownership interest or for which you provide a guarantee. However, BOEM may determine that you have the ability to self-insure some portion of, or all of, the additional security obligations for a lease, ROW, or RUE. And, in order to meet all or a portion of your additional security required for any one lease, ROW or RUE, you may be able to make arrangements to rely upon financially strong co-lessees or co-owners who agree to allocate BOEM-determined self-insurance to such lease, ROW or RUE.

BOEM has also determined that its previously utilized formulas for determining financial strength and reliability are outdated and no longer provide sufficient protection for liabilities incurred during OCS operations. Therefore, this NTL describes new criteria that will be used to determine your financial ability to carry out your obligations and addresses the possibility of individually tailoring a plan to enable you to use one or more forms of additional security and/or to phase-in compliance with your additional security requirement pursuant to such a plan.

# Financial Assurance

Once you have set the wheels of change in motion, the best thing to do is hang on...



*My Renewed Mind ©2013*

and learn to enjoy the ride!

Lisa Villa Prosen

[pixdaus.com/cov/user/profile/235194/](http://pixdaus.com/cov/user/profile/235194/)

# Not So Fast...



## Presidential Documents

Executive Order 13795 of April 28, 2017

### Implementing an America-First Offshore Energy Strategy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, and in order to maintain global leadership in energy innovation, exploration, and production, it is hereby ordered as follows:

**Section 1. Findings.** America must put the energy needs of American families and businesses first and continue implementing a plan that ensures energy security and economic vitality for decades to come. The energy and minerals produced from lands and waters under Federal management are important to a vibrant economy and to our national security. Increased domestic energy production on Federal lands and waters strengthens the Nation's security and reduces reliance on imported energy. Moreover, low energy prices, driven by an increased American energy supply, will benefit American families and help reinvigorate American manufacturing and job growth. Finally, because the Department of Defense is one of the largest consumers of energy in the United States, domestic energy production also improves our Nation's military readiness.

**Sec. 2. Policy.** It shall be the policy of the United States to encourage energy exploration and production, including on the Outer Continental Shelf, in order to maintain the Nation's position as a global energy leader and foster energy security and resilience for the benefit of the American people, while ensuring that any such activity is safe and environmentally responsible.

**Sec. 3. Implementing an America-First Offshore Energy Strategy.** To carry out the policy set forth in section 2 of this order, the Secretary of the Interior shall:

(a) as appropriate and consistent with applicable law, including the procedures set forth in section 1344 of title 43, United States Code, in consultation with the Secretary of Defense, give full consideration to revising the schedule of proposed oil and gas lease sales, as described in that section, so that it includes, but is not limited to, annual lease sales, to the maximum extent permitted by law, in each of the following Outer Continental Shelf Planning Areas, as designated by the Bureau of Ocean Energy Management (BOEM) (Planning Areas): Western Gulf of Mexico, Central Gulf of Mexico, Chukchi Sea, Beaufort Sea, Cook Inlet, Mid-Atlantic, and South Atlantic;

(b) ensure that any revisions made pursuant to subsection (a) of this section do not hinder or affect ongoing lease sales currently scheduled as part of the 2017–2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program, as published on November 18, 2016; and

(c) develop and implement, in coordination with the Secretary of Commerce and to the maximum extent permitted by law, a streamlined permitting approach for privately funded seismic data research and collection aimed at expeditiously determining the offshore energy resource potential of the United States within the Planning Areas.

**Sec. 4. Responsible Planning for Future Offshore Energy Potential.** (a) The Secretary of Commerce shall, unless expressly required otherwise, refrain from designating or expanding any National Marine Sanctuary under the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.*, unless the sanctuary designation or expansion proposal includes a timely, full accounting from the Department of the Interior of any energy or mineral resource potential



THE SECRETARY OF THE INTERIOR  
WASHINGTON

ORDER NO. 3350

Subject: America-First Offshore Energy Strategy

**Sec. 1 Purpose.** This Order further implements the President's Executive Order entitled: "Implementing an America-First Offshore Energy Strategy" (April 28, 2017); enhances opportunities for energy exploration, leasing, and development on the Outer Continental Shelf (OCS); establishes regulatory certainty for OCS activities; and enhances conservation stewardship, thereby providing jobs, energy security, and revenue for the American people.

**Sec. 2 Authorities.** This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and other applicable authorities, including the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*

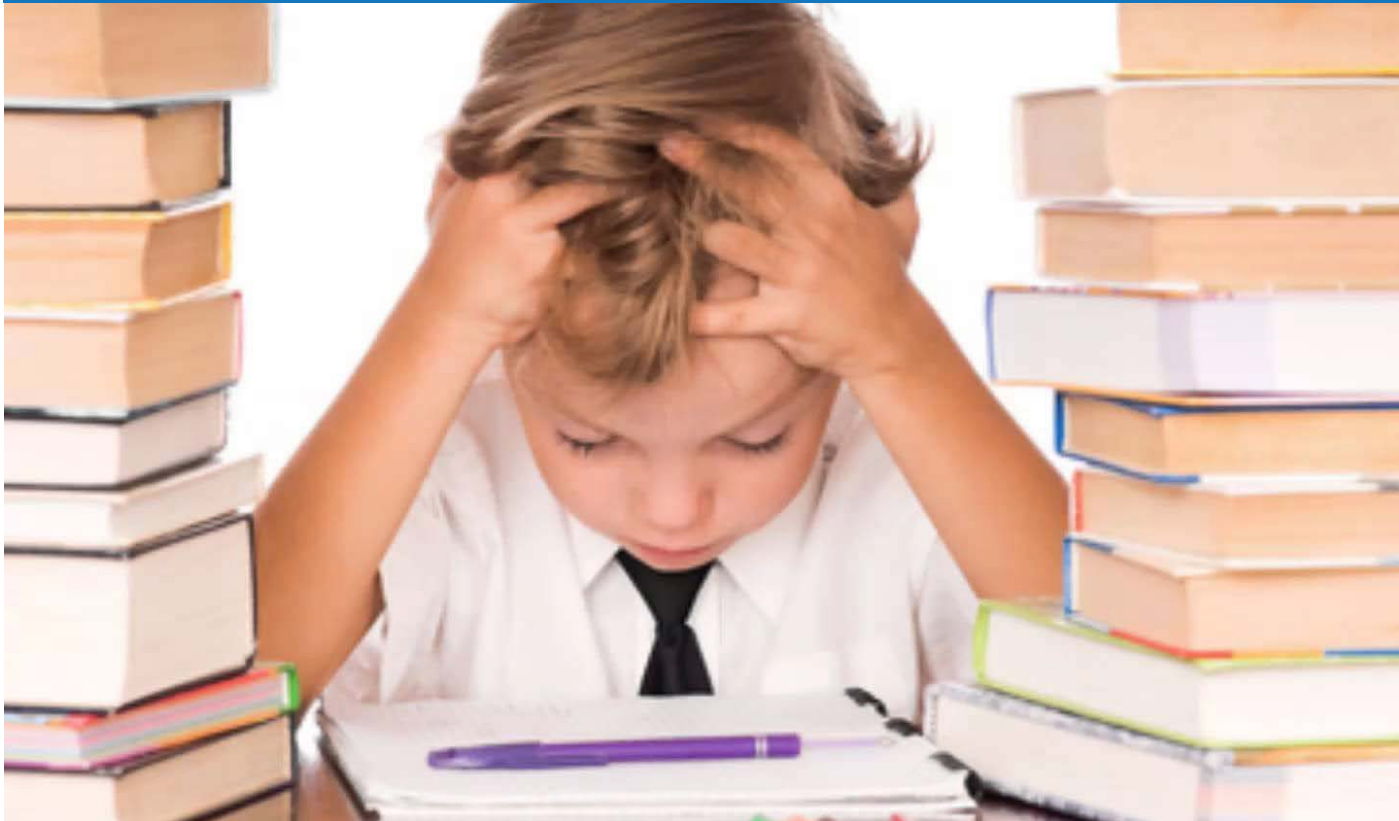
**Sec. 3 Background.** Safe and responsible development of our offshore natural resources is critical to the Nation's environment and economy. The Bureau of Ocean Energy Management (BOEM) is responsible for administering the leasing program for oil and gas resources on the OCS and developing a five-year schedule of lease sales designed to "best meet national energy needs" for the five-year period following the schedule's approval, as required in Section 18 of the OCSLA, 43 U.S.C. 1334. The BOEM also permits seismic surveys on the OCS and, in conjunction with the Bureau of Safety and Environmental Enforcement (BSEE), regulates leasing, exploration, and development activities on the OCS.

In January 2017 the 2017 - 2022 Outer Continental Shelf Oil and Gas Leasing Program was approved excluding lease sales in the Atlantic Ocean and the Beaufort and Chukchi Seas offshore Alaska. By excluding these areas from the leasing program, the Department has forgone considering areas that potentially contain tens of billions of barrels of oil and over 100 trillion cubic feet of gas by BOEM's own estimates of undiscovered technically recoverable oil and gas resources. In addition, through a series of Presidential Memoranda issued by the previous Administration, huge swaths of the OCS were withdrawn from disposition by leasing along the Alaska and Atlantic coasts.

In addition to existing restrictions on OCS leasing, concerns have been raised by stakeholders that certain final or proposed rules, such as BSEE's final rule on "*Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control*" published at 81 Federal Register 25887 (April 29, 2016), unnecessarily include prescriptive measures that are not needed to ensure safe and responsible development of our OCS resources. Accordingly, a reevaluation of these rules is appropriate and necessary.

On April 28, 2017, the President issued an Executive Order entitled: "Implementing an America-First Offshore Energy Strategy (Executive Order)," which reconfirmed that it is "the policy of the United States to encourage energy exploration and production, including on the

# Back to the Drawing Board!





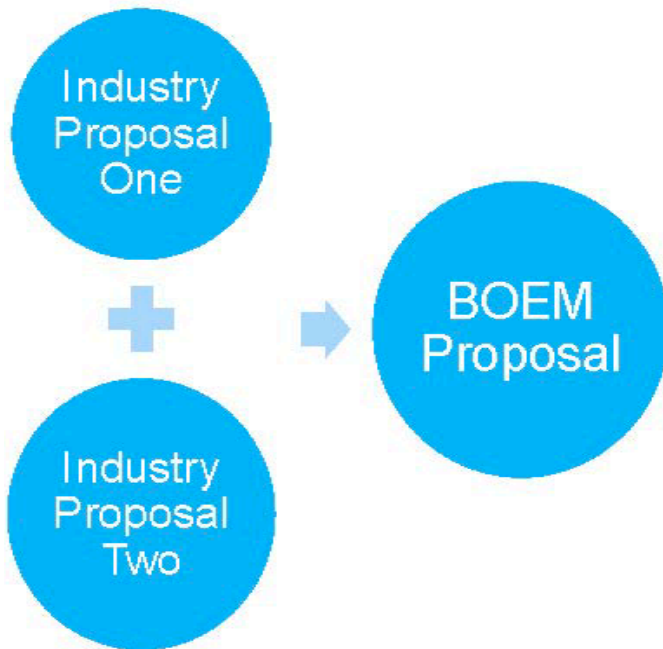
# Financial Assurance

- ▶ **Spent the last 3 years behind closed doors, re-drafting bond regs**
- ▶ **Met with sureties**
- ▶ **Met with industry stakeholders**
- ▶ **Internal collaborations**



# Financial Assurance

## Industry and BOEM Proposals



Both proposals address:

- Lessee Evaluation
- Property Evaluation
- Co-Lessees
- Predecessors

BOEM has taken these into consideration.

# Financial Assurance

Company  
A



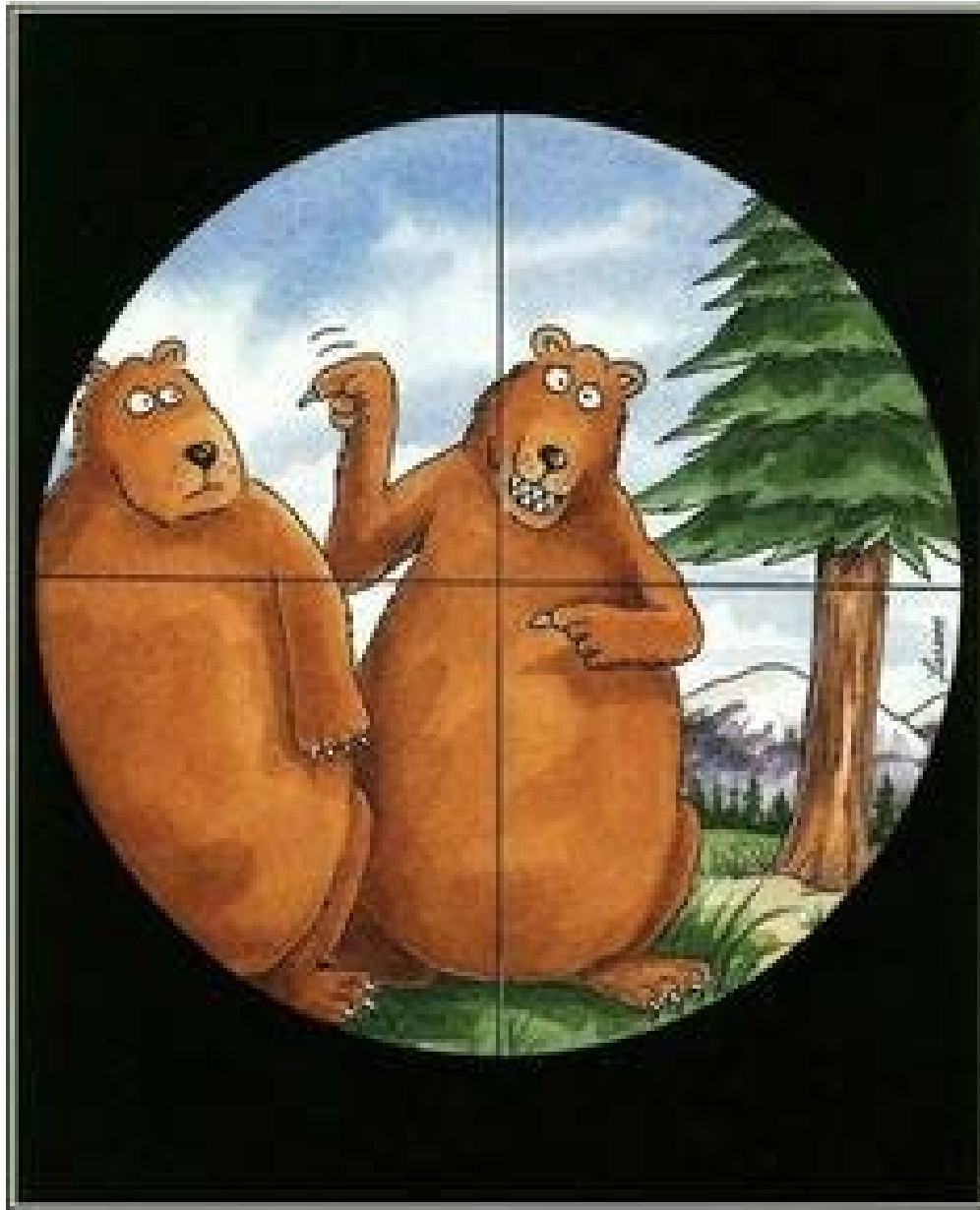
Company  
B



Company  
C



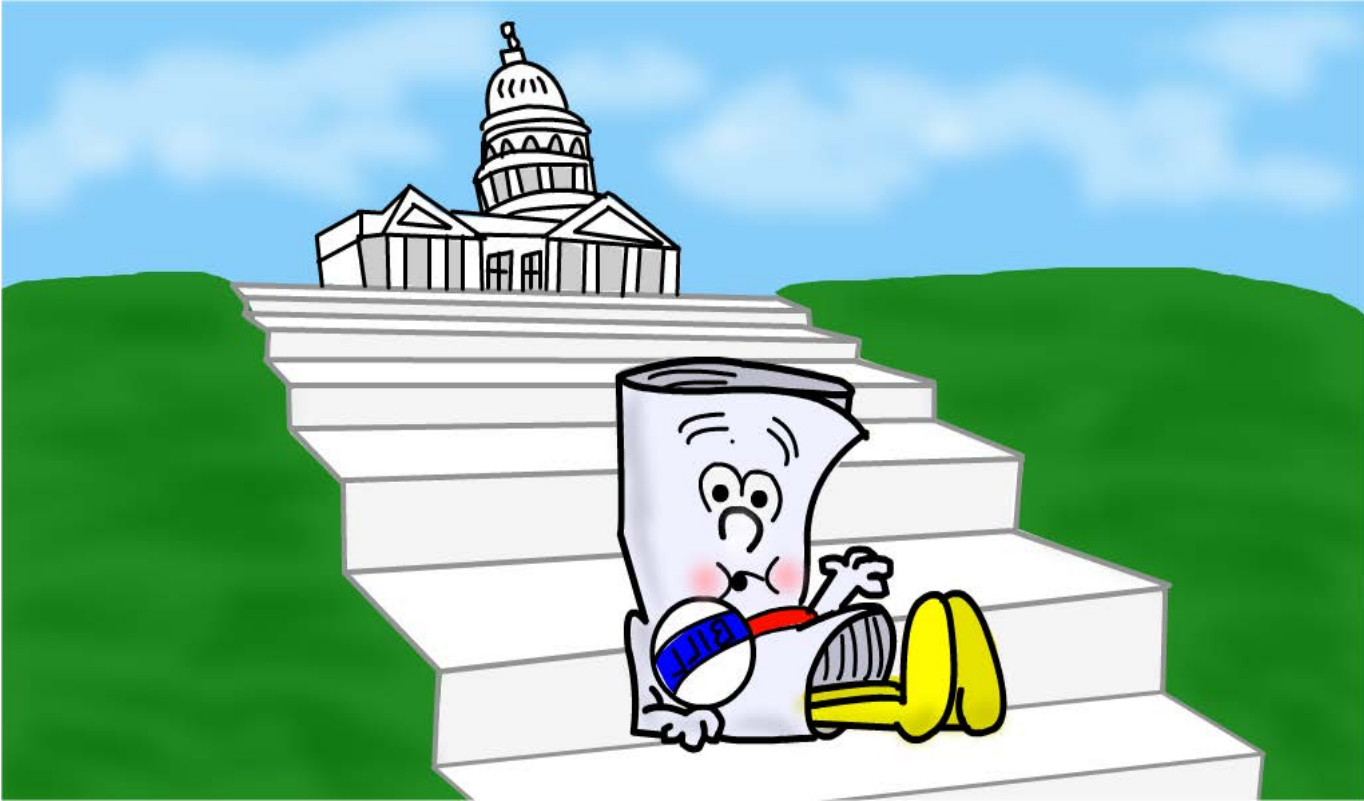
- Co-Owner & DOO
- Co-Owner
- Co-Owner



# Financial Assurance

- **March 6, 2019** Statement of Walter Cruickshank to House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources.
- **April 11, 2019**, Secretary Bernhardt confirmed, letter from API to Secretary Bernhardt, and CRA reminder memorandum from OMB published.
- **July 30, 2019** letter to Secretary Bernhardt from Representatives Grijalva and Lowenthal (U.S. House Committee on Natural Resources).
- **August 8, 2019** letter to Secretary Bernhardt from Louisiana Senators Cassidy and Kennedy.
- **November 20, 2019** Proposed Rule No. 1082-AA02 submitted by DOI/ASLM to OMB/OIRA for EO 12866 review.

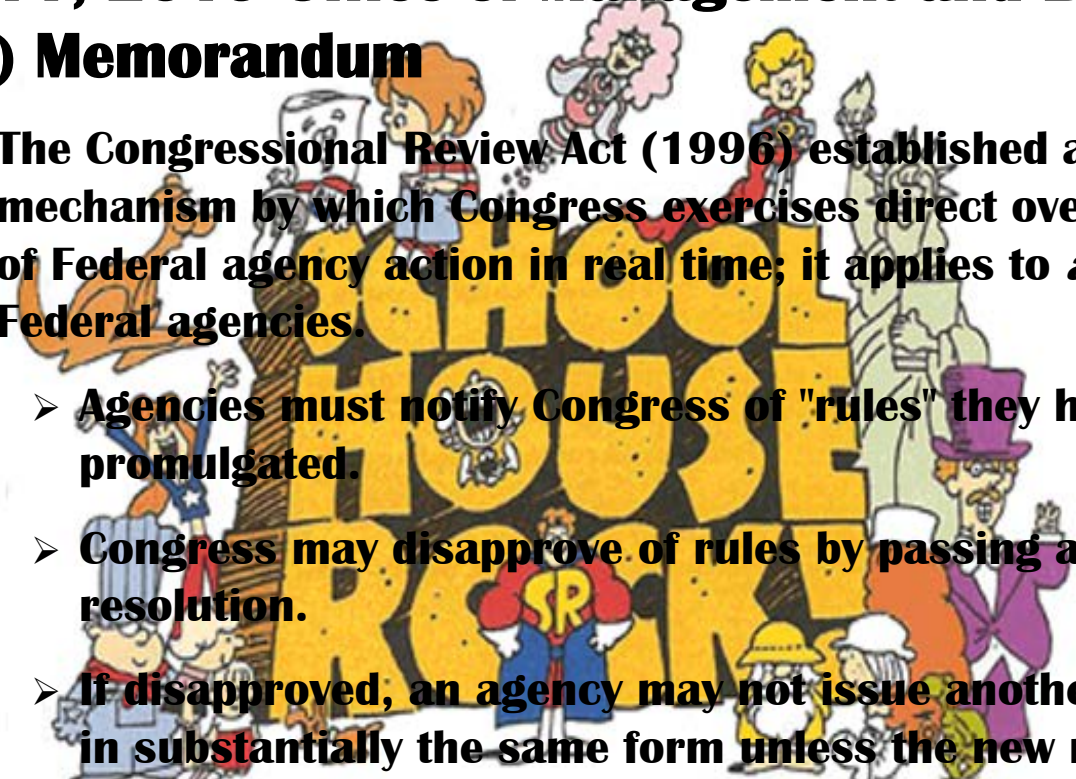
# REGULATIONS & POLICY



Hi! I'm Bill. Remember me?

# REGULATIONS & POLICY

## April 11, 2019 Office of Management and Budget (OMB) Memorandum

- 
- **The Congressional Review Act (1996) established a mechanism by which Congress exercises direct oversight of Federal agency action in real time; it applies to *all* Federal agencies.**
    - **Agencies must notify Congress of "rules" they have promulgated.**
    - **Congress may disapprove of rules by passing a joint resolution.**
    - **If disapproved, an agency may not issue another rule in substantially the same form unless the new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.**



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 11, 2019

M-19-14

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Russell T. Vought  
Acting Director

SUBJECT: Guidance on Compliance with the Congressional Review Act

**I. Introduction**

The Constitution vests all Federal legislative power in Congress.<sup>1</sup> In our system of separation of powers, agencies may prescribe rules only insofar as they have statutory authority delegated to them by Congress. The Congressional Review Act (CRA),<sup>2</sup> enacted in 1996, establishes a mechanism by which Congress is able to exercise direct oversight of Federal agency action in real time, consistent with its role as the sole constitutionally authorized legislative authority. This Memorandum reinforces the obligations of Federal agencies under the CRA in order to ensure more consistent compliance with its requirements across the Executive Branch. It also sets forth guidelines for analysis that the Office of Information and Regulatory Affairs (OIRA) will use to properly classify regulatory actions for purposes of the CRA.

The CRA provides that agencies must submit “rule[s],” defined expansively,<sup>3</sup> to Congress. Congress may then pass a joint resolution of disapproval that, if signed by the President or enacted over the President’s veto, invalidates the rule.<sup>4</sup> If a rule is disapproved, an agency may not issue another rule in substantially the same form unless the new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.<sup>5</sup>

The CRA places specific responsibilities on Federal agencies, OIRA, and the Government Accountability Office (GAO). The CRA requires Federal agencies to notify Congress of rules they have promulgated and to provide information regarding compliance with the CRA and other

<sup>1</sup> U.S. CONST. art. I, § 1, cl. 1.

<sup>2</sup> 5 U.S.C. §§ 801-808 (reprinted in Appendix).

<sup>3</sup> In this Memorandum, “rule” refers to the CRA definition of the term, which includes a wide range of regulatory actions. See Part II *infra*.

<sup>4</sup> *Id.* § 801. Moreover, “[a]ny rule that takes effect and later is made of no force or effect by an enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.” *Id.* § 801(f).

<sup>5</sup> 5 U.S.C. § 801(b)(2).

# Rule-Making Process

► **EO 12866 review is not a new step in the rule-making chain, but the process itself was clarified by the April 11, 2019 Office of Management and Budget (OMB) Memorandum Entitled: *Guidance on Compliance with the Congressional Review Act (CRA) (Effective May 11, 2019) (Supersedes March 30, 1999 OMB Memorandum No. M-99-13 (Guidance for Implementing the Congressional Review Act))*.**





# Financial Assurance Rule-Making Process

- **Is the rule “Major”?**
  - **If yes, triggers a report by the Government Accountability Office (GAO) and a delayed effective date while Congress may consider whether it will disapprove the rule.**
  - **Generally, “Major” designations focused on annual effect on economy of \$100 million or more.**
  - **“Major” also includes rules and regulations likely to result in a “major increase in costs or prices for consumers, individual industries, governments, or geographic regions,” or there is a “significant adverse effects on competition, employment, investment, productivity, innovation” or “US entities' ability to compete with foreign entities.”**
  - **Memo directs agencies to follow specific approaches to determine rule's economic effect.**



# Financial Assurance Rule-Making Process

- **November 20, 2019, Proposed Rule No. 1082-AA02 pertaining to financial assurance submitted to OMB/OIRA for E.O. 12866 review.**
- **OIRA review is limited by E.O. 12866 to 90 days (+30 if Director extends); no minimum.**
  - **90 days from submittal = February 18, 2020 = NPRM may be published some time around this date.**
- **Comment period (period set in NPRM) usually 60 days but can be longer or extended.**
  - **Listening sessions presently on-going.**
- **All Comments received must be addressed.**
- **Final rule published.**
- **Rules may take effect no sooner than the later of 60 calendar days after CRA report submitted to Congress *or* the rule is published in the Federal Register.**

# Financial Assurance

Search:  Agenda  Reg Review  ICR

Go

[Home](#) | [Unified Agenda](#) | [Regulatory Review](#) | [Information Collection Review](#) | [FAQs / Resources](#) | [Contact Us](#)

## View Rule

[View EO 12866 Meetings](#)

[Printer-Friendly Version](#)

[Download RIN Data in XML](#)

**DOV/ASLM**

**RIN:** 1082-AA02

**Publication ID:** Fall 2019

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

**Abstract:**

As directed by Executive Order 13795, the Bureau of Ocean Energy Management (BOEM) has reconsidered its financial assurance policies, as reflected in Notice to Lessees No. 2016-N01 (September 12, 2016). In consideration of that review, BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) are now developing a joint rule that is intended to revise existing financial assurance policies for oil and gas operations on the Outer Continental Shelf in order to ensure operator compliance with financial and performance obligations while reducing unnecessary regulatory burdens.

**Agency:** Department of the Interior(DOI)

**RIN Status:** Previously published in the Unified Agenda

**Major:** No

**EO 13771 Designation:** Deregulatory

**CFR Citation:** [30 CFR 550](#) [30 CFR 556](#)

**Legal Authority:** [43 U.S.C. 1331 et seq.](#)

**Legal Deadline:** None

**Timetable:**

	Action	Date	FR Cite
NPRM		11/00/2019	

**Regulatory Flexibility Analysis Required:** Yes

**Small Entities Affected:** Businesses, Governmental Jurisdictions

**Included in the Regulatory Plan:** Yes

**RIN Data Printed in the FR:** Yes

**Related RINs:** Previously reported as 1010-AD83

**Agency Contact:**

Deanna Meyer-Pietruszka

Chief, OPRA

Department of the Interior

Bureau of Ocean Energy Management

1849 C Street NW,

Washington, DC 20240

Phone: 202 208-6352

Email: [deanna.meyer-pietruszka@boem.gov](mailto:deanna.meyer-pietruszka@boem.gov)

**Priority:** Other Significant

**Agenda Stage of Rulemaking:** Proposed Rule Stage

**Unfunded Mandates:** No

**Government Levels Affected:** Federal, State, Tribal

**Federalism:** No

\*Submitted to OMB/OIRA Nov. 20, 2019

# The Reg Map

## Informal Rulemaking



### Step One

#### Initiating Events

**Agency Initiatives**  
Agency initiatives for rulemaking originate from such things as:

- Agency priorities and plans
- New scientific data
- New technologies
- Accidents

**Required Reviews**

**Statutory Mandates**

**Recommendations from Other Agencies/External Groups/States/Federal Advisory Committees**

**Lawsuits**

**Petitions**

**OMB Prompt Letters**

### Step Two

#### Determination Whether a Rule Is Needed

**Administrative Procedure Act Provisions**  
Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish in the Federal Register:

- Substantive rules of general applicability
- Interpretive rules
- Statements of general policy

Rules of procedure apply. The following are exempted:

- Rules concerning military or foreign affairs functions
- Rules concerning agency management or personnel
- Rules concerning public property, loans, grants, benefits, or contracts
- Interpretive rules
- General statements of policy
- Rules of agency organization, procedure, or practice
- Non-significant rules for which the agency determines that public input is not warranted
- Rules published on an emergency basis

*Note: Even if an exemption applies under the Administrative Procedure Act provisions, other statutory authority or agency policy may require that proposed rulemaking procedures be followed.*

### Step Three

#### Preparation of Proposed Rule

**Proposed Rule**  
A notice of proposed rulemaking proposes to add, change, or delete regulatory text and contains a request for public comments.

**Administrative Procedure Act Provisions**  
Under the Administrative Procedure Act provisions at 5 U.S.C. 553, rules may be established only after proposed rulemaking procedures (steps three through six) have been followed, unless an exemption applies. The following are exempted:

- Rules concerning military or foreign affairs functions
- Rules concerning agency management or personnel
- Rules concerning public property, loans, grants, benefits, or contracts
- Interpretive rules
- General statements of policy
- Rules of agency organization, procedure, or practice
- Non-significant rules for which the agency determines that public input is not warranted
- Rules published on an emergency basis

*Note: Even if an exemption applies under the Administrative Procedure Act provisions, other statutory authority or agency policy may require that proposed rulemaking procedures be followed.*

### Step Four

#### OMB Review of Proposed Rule

**OMB Review Under Executive Order 12866**  
OMB reviews only those rulemaking actions determined to be "significant."  
Independent agencies are exempt from OMB review.

### Step Five

#### Publication of Proposed Rule

**Administrative Procedure Act Provisions**  
The Administrative Procedure Act provisions at 5 U.S.C. 553 require proposed rules to be published in the Federal Register.

### Step Six

#### Public Comments

**Comments**  
Under the Administrative Procedure Act provisions of 5 U.S.C. 553, an agency must provide the public the opportunity to submit written comments for consideration by the agency.  
As required by Public Law No. 107-347, agencies must provide for submission of comments by electronic means and must make available online the comments and other materials included in the rulemaking docket under 5 U.S.C. 553 (c).  
Executive Order 12866 established 60 days as the standard for the comment period.  
The holding of a public hearing is discretionary unless required by statute or agency policy.

### Step Seven

#### Preparation of Final Rule, Interim Final Rule, or Direct Final Rule

**Final Rule**  
A final rule adds, changes, deletes, or affirms regulatory text.

**Special Types of Final Rules**  
**Interim Final Rule**  
An interim final rule adds, changes, or deletes regulatory text and contains a request for comments. The subsequent final rule may make changes to the text of the interim final rule.  
**Direct Final Rule**  
A direct final rule adds, changes, or deletes regulatory text as a duty to withdraw the rule if the agency receives adverse comments within the period specified by the agency.

### Step Eight

#### OMB Review of Final Rule, Interim Final Rule, or Direct Final Rule

**OMB Review Under Executive Order 12866**  
OMB reviews only those rulemaking actions determined to be "significant."  
Independent agencies are exempt from OMB review.

### Step Nine

#### Publication of Final Rule, Interim Final Rule, or Direct Final Rule

**Congressional Review Act (5 U.S.C. 801-808)**  
An agency must submit most final rules, interim final rules, and direct final rules, along with supporting information, to both houses of Congress and the General Accounting Office before they can take effect.  
Major rules are subject to a delayed effective date (both certain exceptions).  
Action by Congress and the President could have an impact on the rule.

**Administrative Procedure Act Provisions**  
Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish final rules, interim final rules, and direct final rules in the Federal Register.

### Specific Analyses for Steps Three and Seven

<b>Regulatory Planning and Review (E.O. 12866)</b>	Would the rule have a \$100 million annual impact, raise novel issues, and/or have other significant impacts?	→ If yes	Prepare economic impact analysis.
<b>Regulatory Flexibility Act (5 U.S.C. 601-612)</b>	Is a notice of proposed rulemaking required by law? Would the rule "have a significant economic impact on a substantial number of small entities?"	→ If yes → and yes	Prepare regulatory flexibility analysis. <i>Note: Under limited circumstances analyses also are required for certain interpretive rules involving internal revenue laws (5 U.S.C. 603, 604).</i>
<b>Paperwork Reduction Act (44 U.S.C. 3501-3520)</b>	Does the rule contain a "collection of information" (reporting, disclosure, or recordkeeping)?	→ If yes	Prepare information collection clearance package for OMB review and approval, and prepare request for public comments.
<b>Unfunded Mandates Reform Act (2 U.S.C. Chs. 17A, 25)</b>	Does the rulemaking process include a proposed rule? Does the rule include any Federal mandate that may result in the expenditure (direct costs minus direct savings) by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year (adjusted annually)?	→ If yes → and yes	Prepare unfunded mandates analysis (unless an exclusion applies).
<b>Federalism (E.O. 13132)</b>	Is the rule a discretionary rule that has federalism implications and imposes substantial un reimbursed direct compliance costs on State and local governments? Does the rule have federalism implications and preempt State law?	→ If yes → If yes	Prepare federalism summary impact statement. Prepare federalism summary impact statement.
<b>Indian Tribal Governments (E.O. 13175)</b>	Is the rule a discretionary rule that has tribal implications and imposes substantial un reimbursed direct compliance costs on Indian tribal governments? Does the rule have tribal implications and preempt tribal law?	→ If yes → If yes	Prepare tribal summary impact statement. Prepare tribal summary impact statement.

### Using The Reg Map

The Reg Map is based on general requirements. In some cases, more stringent or less stringent requirements are imposed by statutory provisions that are agency specific or subject matter specific. Also, in some cases more stringent requirements are imposed by agency policy.

In a typical case, a rulemaking action would proceed from step one through step nine with a proposed rule and a final rule.

However, if a rulemaking action is exempt from the proposed rulemaking procedures under the Administrative Procedure Act provisions (explained under step three) or under other statutory authority, an agency may:

- promulgate a final rule omitting steps three through six, or
- promulgate an interim final rule omitting steps

### Drafting Requirements for Rulemaking Documents

**Regulatory Planning and Review (E.O. 12866)**  
Rulemaking documents must comply with the specified regulatory philosophy and principles of regulation.

**Civil Justice Reform (E.O. 12988)**  
Rulemaking documents must be written in clear language designed to help reduce litigation.

**Presidential Memorandum on Plain Language**

### Agendas for Rules Under Development or Review

**Unified Regulatory Agenda**  
The Unified Regulatory Agenda provides information concerning agency rules under development or review.  
The Unified Regulatory Agenda is published in the Federal Register in the spring and fall of each year.

**Regulatory Plan**  
The Regulatory Plan provides information concerning the most important significant regulatory actions that the agency is planning to take.



# **Other Regulatory Changes likely sparked by Financial Assurance Rulemaking**

- **BSEE NTL No. 2017-N02 – Reporting Requirements for Decommissioning Expenditures on the OCS – March 2, 2017.**
  - **"BSEE will use this information . . . to improve estimates of future decommissioning costs", which it will share with BOEM for setting financial assurance requirements.**
  
- **BSEE NTL No. 2017-N04 – Pipeline ROW Grant Assignments to Multiple Pipeline ROW Holders –August 18, 2017.**
  - **Process: Single ROW grant applicant files to establish ROW; Once ROW is established, Form BSEE-0149 submitted to assign interests to multiple holders**



# Financial Assurance

So, where are we?



# Financial Assurance

Company  
A



Company  
B



Company  
C



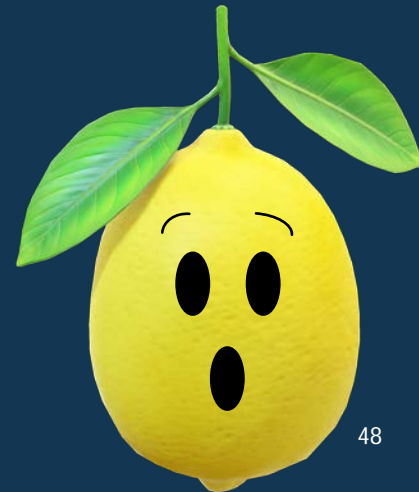
- Co-Owner & DOO
- Co-Owner
- Co-Owner

**When life gives  
you lemons...**

...think outside the box!

# **Financial Assurance Issues to Consider**

- **Reducing Regional Director Discretion**
- **Who's responsible for defaulting entity's share?**
- **ARO best guide for timing/amount of security**
- **Solutions implemented – Multi-Obligee Bonds; ROW Assignments to multiple holders; P&A Cost Reporting**





# Financial Assurance: What We Need to Do





# **Changes sparked by Financial Assurance Rulemaking: Multi-Obligee Bonds**

- **Multi-Obligee Bonds in Asset Transactions**
  - **At least 4 different asset transactions have utilized them.**
  - **Used BOEM Supplemental Bond Form as starting point for creating the Multi-Obligee Supplemental Bond Template for Predecessors that has not changed much.**
  - **BOEM and Seller(s) act as co-beneficiaries.**
- **Working on a multi-obligee bond template in which BOEM and Designated Operator would be co-beneficiaries**
  - **Designed to speed up P&A and to protect all non-defaulting co-lessees.**

# Financial Assurance

Company  
A



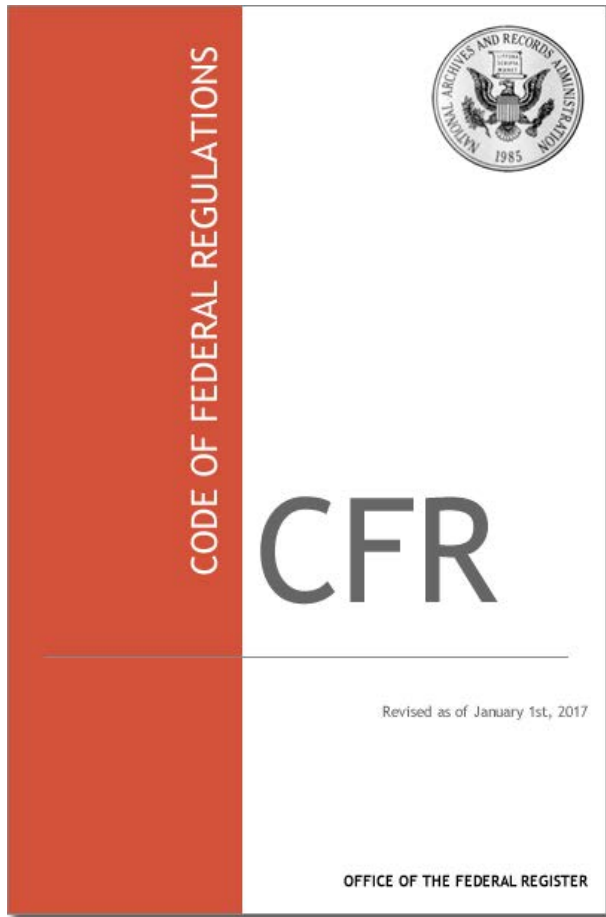
Company  
B



Company  
C



- Co-Owner & DOO
- Co-Owner
- Co-Owner



# Regulations and Policy



**"I need someone who is comfortable  
in the regulatory jungle."**



At last he had found the Regulatory Guidelines.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 11, 2019

M-19-14

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Russell T. Vought  
Acting Director

SUBJECT: Guidance on Compliance with the Congressional Review Act

**I. Introduction**

The Constitution vests all Federal legislative power in Congress.<sup>1</sup> In our system of separation of powers, agencies may prescribe rules only insofar as they have statutory authority delegated to them by Congress. The Congressional Review Act (CRA),<sup>2</sup> enacted in 1996, establishes a mechanism by which Congress is able to exercise direct oversight of Federal agency action in real time, consistent with its role as the sole constitutionally authorized legislative authority. This Memorandum reinforces the obligations of Federal agencies under the CRA in order to ensure more consistent compliance with its requirements across the Executive Branch. It also sets forth guidelines for analysis that the Office of Information and Regulatory Affairs (OIRA) will use to properly classify regulatory actions for purposes of the CRA.

The CRA provides that agencies must submit “rule[s],” defined expansively,<sup>3</sup> to Congress. Congress may then pass a joint resolution of disapproval that, if signed by the President or enacted over the President’s veto, invalidates the rule.<sup>4</sup> If a rule is disapproved, an agency may not issue another rule in substantially the same form unless the new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.<sup>5</sup>

The CRA places specific responsibilities on Federal agencies, OIRA, and the Government Accountability Office (GAO). The CRA requires Federal agencies to notify Congress of rules they have promulgated and to provide information regarding compliance with the CRA and other

<sup>1</sup> U.S. CONST. art. I, § 1, cl. 1.

<sup>2</sup> 5 U.S.C. §§ 801-808 (reprinted in Appendix).

<sup>3</sup> In this Memorandum, “rule” refers to the CRA definition of the term, which includes a wide range of regulatory actions. See Part II *infra*.

<sup>4</sup> *Id.* § 801. Moreover, “[a]ny rule that takes effect and later is made of no force or effect by an enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.” *Id.* § 801(f).

<sup>5</sup> 5 U.S.C. § 801(b)(2).

# Rule-Making Process

► **EO 12866 review is not a new step in the rule-making chain, but the process itself was clarified by the April 11, 2019 Office of Management and Budget (OMB) Memorandum Entitled: *Guidance on Compliance with the Congressional Review Act (CRA) (Effective May 11, 2019) (Supersedes March 30, 1999 OMB Memorandum No. M-99-13 (Guidance for Implementing the Congressional Review Act))*.**



# REGULATIONS & POLICY

## April 11, 2019 Office of Management and Budget (OMB) Memorandum

- **Asserts that the Congressional Review Act encompasses a wide range of regulatory actions, including:**
  - **Guidance Documents**
  - **General Statements of Policy**
  - **Interpretive Rules**
- **Scope of the Congressional Review Act would potentially include:**
  - **Proposed rulemaking and changes to applicable regulations**
  - **BOEM and BSEE NTL's and related notifications to industry**
  - **ONRR "Dear Reporter"**
  - **BSEE Safety Alerts**
  - **BSEE Safety Bulletins**





# REGULATIONS & POLICY

## **April 11, 2019 Office of Management and Budget (OMB) Memorandum**

**BSEE issued 8 NTL'S between OMB memorandum dated April 11, 2019 and its effective date of May 11, 2019:**

<b><u>NTL No.:</u></b>	<b><u>Effective Date:</u></b>
<b>NTL 2019-N02</b>	<b>5/3/19</b>
<b>NTL 2019-N01</b>	<b>5/3/19</b>
<b>NTL 2019-G01</b>	<b>5/7/19</b>
<b>NTL 2019-G05</b>	<b>5/9/19</b>
<b>NTL 2019-G04</b>	<b>5/9/19</b>
<b>NTL 2019-G03</b>	<b>5/10/19</b>
<b>NTL 2019-G02</b>	<b>5/10/19</b>
<b>NTL 2019-N04</b>	<b>5/10/19</b>



# REGULATIONS & POLICY

## **April 11, 2019 Office of Management and Budget (OMB) Memorandum**

- **Select Impacts: Blowout Preventer Systems and Well Control Rule and new Oil and Gas Production Safety Systems Rule – effective July 15, 2019.**
  - **Discussions with BSEE; requested FAQ to help understand changes; but will have to go through OMB first.**
  - **Cannot produce NTL's/guidance documents until agency first runs by OMB.**



# REGULATIONS & POLICY

## **BSEE NTL No. 2018-G03 – *Idle Iron Decommissioning Guidance for Wells and Platforms* – Effective December 11, 2018 – supersedes NTL No. 2010-G05 (*Decommissioning Guidance for Wells and Platforms*)**

- **Generally, clean-up relating to:**
  - **Current state of operations.**
    - **Prior NTL didn't seem to necessarily include Deepwater concepts such as subsea trees, etc.**
  - **Current state of regulations.**
    - **Recent rule changes eliminated certain section previously cited.**
    - **Alternative-uses for offshore infrastructure.**



# REGULATIONS & POLICY

## **BSEE NTL No. 2018-G03 – *Idle Iron Decommissioning Guidance for Wells and Platforms* – Effective December 11, 2018 – supersedes NTL No. 2010-G05 (*Decommissioning Guidance for Wells and Platforms*)**

- **Future Use Determination for Idle Wells on Active Leases:**
  - BSEE may require you to perform downhole zonal isolation per 30 CFR 250.106(c), depending on length of time before wells can resume useful operations.
- **Future Use Determination for Idle Platforms or Other Facilities on Active Leases:**
  - Must submit (i) detailed discussion of facility's future utility and (ii) detailed schedule for operations to resume on the facility.
- **Idle Iron Reporting:**
  - BSEE retains discretion to be flexible on timing
  - You are expected to monitor your infrastructure and undertake P&A on your own initiative
  - Failure to comply with timelines outlined in this NTL (without a BSEE extension) may result in decommissioning Orders.



# REGULATIONS & POLICY

**BSEE NTL No. 2018-G03 – *Idle Iron Decommissioning Guidance for Wells and Platforms* – Effective December 11, 2018 – supersedes NTL No. 2010-G05 (*Decommissioning Guidance for Wells and Platforms*)**

- **Reminds lessees of obligation to decommission terminated/expired/relinquished leases/ROWs within 1 year; failure to do so, absent BSEE extension, typically results in INC.**
- **BSEE expect operators to prioritize P&A on terminated/expired leases over Idle Iron, absent countervailing safety/environmental considerations.**
- **Reminder to submit decommissioning application, obtain approvals, and submit subsequent reports as required by regulations, including 30 CFR 250.1704(i) – certified summary of expenditures for P&A.**



# REGULATIONS & POLICY

## **Office of Inspector General of DOI March 26, 2019 Closeout Memorandum**

- **The DOI Inspector General reviewed BSEE idle infrastructure oversight and enforcement.**
- **BSEE not yet implemented decommissioning policies/procedures at national level – training needed.**
- **Will review in next 2 years to allow BSEE to develop/implement bureau-wide decommissioning policy.**



# REGULATIONS & POLICY

## Marine Minerals Program

- **BOEM launched Marine Minerals Information System (MMIS) as part of the National Offshore Sand Inventory to ensure all parties have access to detailed offshore information critical to responsible decision-making in relation to disaster recovery and coastal community resilience planning.**
- **Presentation about the inventory can be found at:**  
<https://www.youtube.com/watch?v=y-ToyIleBdM>
- **MMIS accessible at:**  
<https://mmis.doi.gov/BOEMMMIS>



# REGULATIONS & POLICY

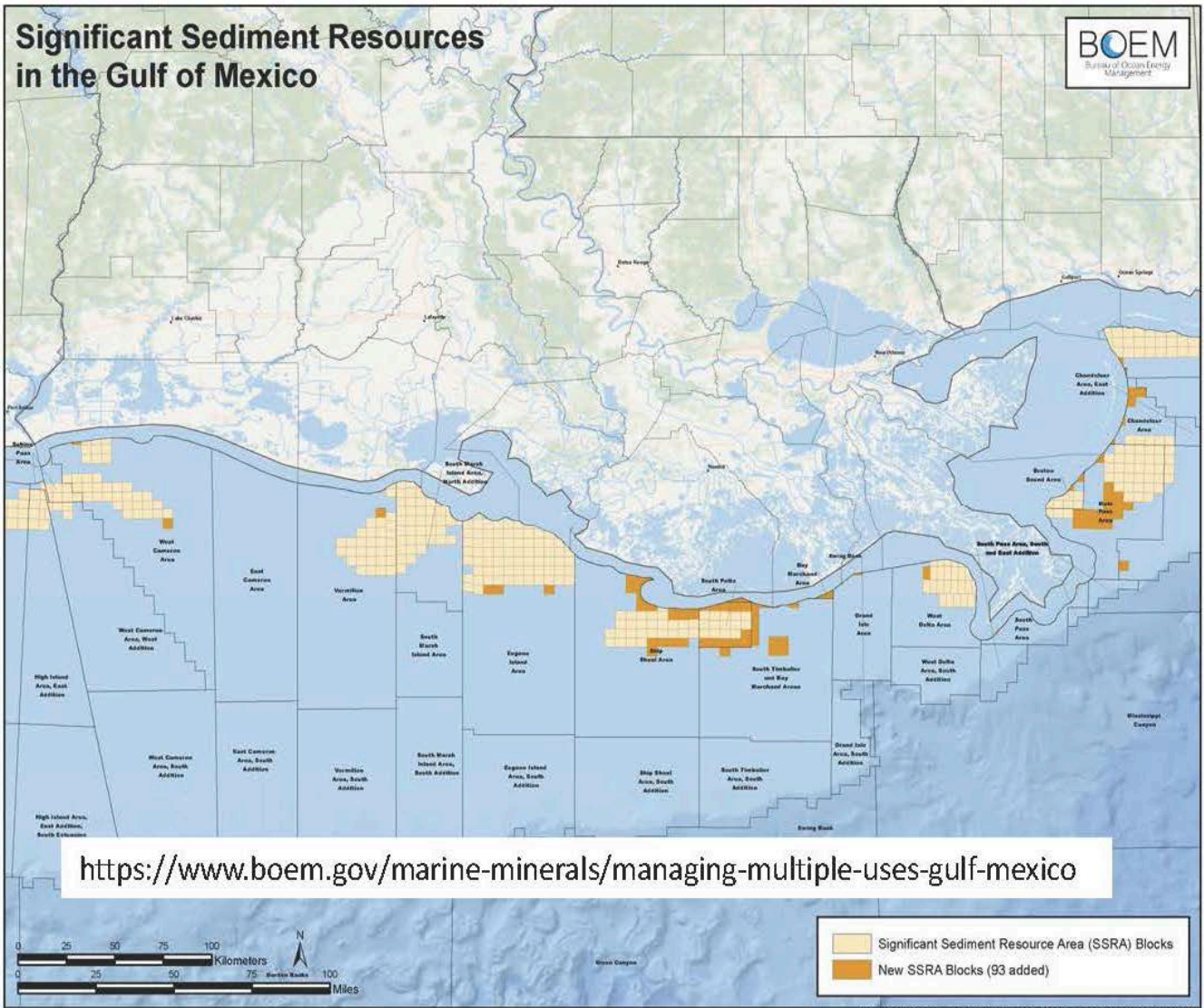
## Marine Minerals Program

- **What does this mean for us?**
  - **It is our understanding (from presentations we've attended) that abandonment in place of OCS infrastructure will not be permitted in any designated Sand Resource Areas.**
  - **As States receive BP settlement funds, more coastal restoration projects are underway, so more Marine Minerals are requested for designation.**
    - **BOEM just designated 93 additional blocks off the coast of Louisiana.**





# REGULATIONS & POLICY



Source: BOEM presentation 12/11/2019 OOC General Meeting

# REGULATIONS & POLICY

## Oil and Gas Pipelines within Significant Sediment Resource Area (SSRA)

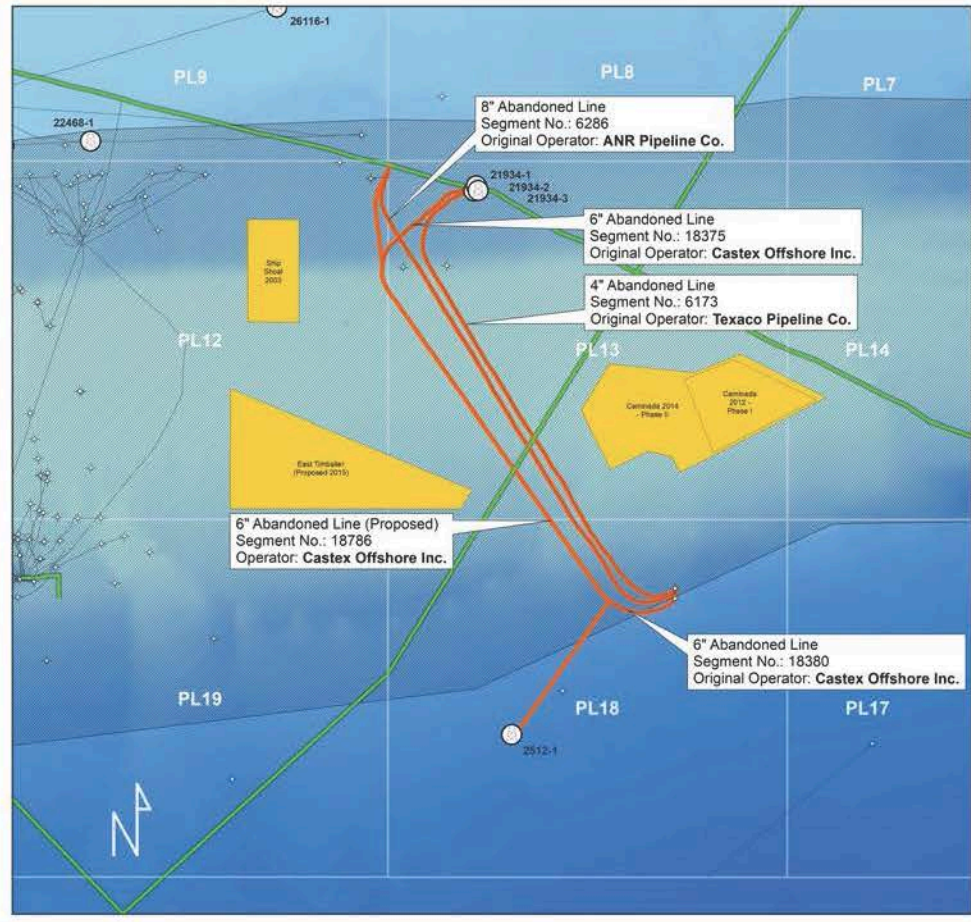
U.S. Outer Continental Shelf, Gulf of Mexico Region



	Borehole (Surface)
	Platform Structure
	Abandoned O&G Pipeline within SSRA
	Abandoned O&G Pipeline (Highlighted)
	Active O&G Pipeline
	Significant Sediment Resource Area (SSRA)
	OCS Sand and Gravel Borrow Area
	SSRA Sand Resource
	SSRA Block
	OCS Protraction Area

NAD 1987 StatePlane Louisiana Offshore FIPS 1703  
 Projection: Lambert Conformal Conic  
 Datum: North American 1927  
 False Easting: 2,000,000.0000  
 False Northing: 0.0000  
 Central Meridian: -91.3333  
 Standard Parallel 1: 26.1667  
 Standard Parallel 2: 27.8333  
 Latitude Of Origin: 29.6667  
 Units: Foot US

Map Scale: 1:25,000  
 0 0.5 1 2 Nautical Miles





# REGULATIONS & POLICY

## **The Saga of ONRR's Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Final Rule**

- **July 1, 2016 – Final Rule published; effective January 1, 2017.**
- **September 13, 2016 ONRR Dear Reporter Letter – Outlines new Rule for oil and gas valuation and reporting changes for production beginning January 1, 2017.**
- **Several industry groups challenged the 2016 Rule by filing suit in D.C. and Wyoming on December 29, 2016 alleging it would create widespread uncertainty and render compliance impossible.**



# REGULATIONS & POLICY

## **The Saga of ONRR's Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Final Rule**

- **February 27, 2017, ONRR published Postponement Notice.**
- **In response, California and New Mexico filed suit alleging ONRR's action violated the APA.**
- **April 4, 2017 – ONRR Proposed Repeal notice published – claimed repeal consistent with Executive Order 13783 (*Promoting Energy Independence and Economic Growth* issued March 28, 2017).**
- **August 7, 2017 – 82 FR 36934 – ONRR published Final Repeal of 2016 Valuation Rule and simultaneously reinstated the valuation regulations in effect before January 1, 2017.**
- **Repeal/reinstatement effective September 6, 2017.**



# REGULATIONS & POLICY

## **The Saga of ONRR's Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Final Rule**

- **March 29, 2019 – Judge granted MSJ for violation of APA and vacated ONRR's repeal of new Rule.**
- **June 13, 2019 – ONRR Dear Reporter Letter – by vacating repeal of new Rule, the Court reinstated such rule effective January 1, 2017 – “Accordingly, all federal oil and gas lessees and all federal and Indian coal lessees, should recalculate royalties under the 2016 Rule for oil, gas, and coal production from January 1, 2017, forward.”**
  - **Lessees should resubmit amended royalty reports, pay (or take credit) for under/over paid royalties, and prospectively report and pay under provisions outlined in 2016 Rule.**
  - **ONRR expects corrected reporting NLT January 1, 2020.**



# REGULATIONS & POLICY

## **The Saga of ONRR's Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Final Rule**

- **June 13, 2019 – API filed suit in Wyoming for review of the final agency action repealing the 2016 Valuation Rule (3 different, consolidated cases).**
- **July 19, 2019 – Joint Motion for Preliminary Injunction**
  - **September 4, 2019 – Hearing**
  - **October 8, 2019 – Order granting in part (new valuations are enjoined as to coal valuations) and denied in part (new valuations are not enjoined for oil and gas)**
- **March 6, 2020 – Administrative Record due**



# **Renewable Energy and Alternative Uses of Existing Facilities on the OCS**

## **30 CFR § 585, et seq.**

- **Subpart J: Rights of Use and Easement for Energy and Marine-Related Activities Using Existing OCS Facilities**
- **Alternate Use RUEs - 30 C.F.R 585.1000, et seq.**
  - **Who? Owners of existing facilities. Or non-owner that has contacted the lessee and owner of the facility and reached a preliminary agreement as to the proposed activity.**
  - **What? Activities that use (or propose to use) an existing OCS facility for energy- or marine-related purposes, that are not otherwise authorized under any other part of this subchapter or any other applicable Federal statute.**
  - **Where? Existing facilities on the OCS**

# Alternate-Use RUE

Explorers are we, intrepid and bold,  
Out in the wild, amongst wonders untold.  
Equipped with our wits, a map, and a snack,  
We're searching for fun and we're on the right track!







# Renewable Energy and Alternative Uses of Existing Facilities on the OCS 30 CFR 585, et seq.

## View Rule

[View EO 12866 Meetings](#)

[Printer-Friendly Version](#)

[Download RIN Data in XML](#)

DOI/BOEM

RIN: 1010-AE04

Publication ID: Spring 2019

Title: Deregulating and Streamlining Renewable Energy Regulations

**Abstract:**

Bureau of Ocean Energy Management (BOEM) has identified deregulatory opportunities for reforming, streamlining, and clarifying its renewable energy regulations. This rulemaking contains reforms that are intended to facilitate offshore renewable energy development without decreasing environmental safeguards.

Agency: Department of the Interior(DOI)

Priority: Other Significant

RIN Status: Previously published in the Unified Agenda

Agenda Stage of Rulemaking: Proposed Rule Stage

Major: No

Unfunded Mandates: No

EO 13771 Designation: Deregulatory

CFR Citation: [30 CFR 585](#)

Legal Authority: [43 U.S.C. 1337\(p\)](#)

Legal Deadline: None

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/2019	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: No

Included in the Regulatory Plan: No

RIN Data Printed in the FR: No

Related RINs: Merged with 1010-AD89, Merged with 1010-AD91

Related Agencies: Common: DOI/BSEE;

**Agency Contact:**

Deanna Meyer-Pietruszka

Chief, OPRA

Department of the Interior

Bureau of Ocean Energy Management

1849 C Street NW,

Washington, DC 20240

Phone:202 208-6352

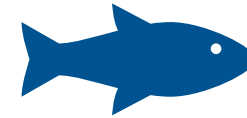
Email: [deanna.meyer-pietruszka@boem.gov](mailto:deanna.meyer-pietruszka@boem.gov)

# Alternate Use RUEs



## How Obtained?

- Submit request for Alt Use RUE
- Include type of activities, maps, additional structures, effects (30 CFR 585.1005)
- Competitive offering to the public



## Contemplated Uses

- Offshore renewable energy
- Wind energy
- Fish studies and research
- Reef studies
- Oil spill monitoring, restoration
- Fish farming



**The Seaventures Dive Rig is a hotel and scuba school on a converted oil rig in the western Pacific near Borneo in Southeast Asia.**

**Adam Dean for The New York Times**



# REGULATIONS & POLICY

## BOEM Adjudication Housekeeping Matters

- **BOEM OCS Operation Forms – Leasing and Adjudication Forms 0150, 0151, and 0152.**
- **Effective December 1, 2019, BOEM will not accept correction/white out tape of any kind. (Liquid Paper is not synonymous with “correction/white out tape” and is still an acceptable way to make corrections on BOEM official forms filed in Adjudication.)**
- **Be aware of approaching holiday closures (no filings accepted).**
  - **Monday, February 17, 2020 – President’s Day.**
  - **Monday, May 25, 2020 – Memorial Day.**



"ANOTHER ADVANTAGE OF INCREASED REGULATIONS IS CREATING THOUSANDS OF JOBS FOR LAWYERS."

# Any Questions?



THE FAR SIDE

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"Mr. Osborne, may I be excused?  
My brain is full."



# **OCS ADVISORY BOARD WORKSHOP**

## **Today's Legal Landscape: An Update on Court Decisions, Evolving Legal Issues, and Other Regulatory and Policy Matters Impacting the OCS**

**Paul J. Goodwine**  
**Looper Goodwine P.C.**  
**January 29, 2020**