

30 C.F.R. § 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.

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(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.

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(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:

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(c) (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.

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(c) (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.

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(c) (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.

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(c) (3) 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.

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(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.

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(d) (2) If your guarantor complies with paragraph (d)(1) of this section, this compliance will not reduce its liability.

(d) (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.

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(d) (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.

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(e) (2) The indemnity agreement must bind each person and party executing the agreement jointly and severally.

(e) (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.

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(e) (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.

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(e) (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.

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(e) (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.

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(e) (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.

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(e) (8) Each indemnity agreement is deemed to contain all terms and conditions contained in this paragraph (e), even if the guarantor has omitted them.

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.

Current through September 6, 2018; 83 FR 45202.