



## Bureau of Ocean Energy Management Issues New NTL Changing Financial Security Considerations for Offshore Oil and Gas Companies

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On July 15, 2016, the United States Department of the Interior Bureau of Ocean Energy Management (BOEM) issued a new Notice to Lessees and Operators (NTL) dramatically changing the way in which BOEM will evaluate the financial strength of operators and lessees in the outer continental shelf and further requiring operators and lessees to create compliance plans to provide financial security for their offshore operations. The NTL, No. 2016-N01, supersedes the prior NTL, No. 2008-N07, and has an effective date of September 12, 2016.

### Financial Ability Determination

The NTL provides a new framework under which the Regional Directors for BOEM will evaluate the financial ability of companies to carry out their offshore decommissioning obligations. The NTL contemplates periodic reviews of companies when BOEM becomes aware of any change in company strength, and reviews can also be triggered by companies requesting reevaluation.

The Regional Directors will evaluate the following factors in determining financial ability of an operator or lessee: financial capacity (cash flow, earnings, debt, etc.), projected financial strength (production, reserves), business stability, reliability/ credit rating, and record of compliance. The Regional Director will also evaluate the entire scope of decommissioning obligations each company faces. Based this evaluation, the Regional Director will determine the company's "tangible net worth." Companies will be allowed to use ten percent of their "tangible net worth" to self-insure decommissioning obligations. However, instead of the blanket exemptions available under the prior NTL, operators and lessees will have to apportion their self-insurance among their lease, right-of-way, and right-of-use decommissioning obligations.

### Determination of Additional Security

Operators and lessees will be required to submit additional security for their decommissioning obligations. Part of this security may come from the self-insurance available following the financial ability determination. BOEM will also continue to accept surety bonds and U.S. Treasury securities. However, the new NTL adds an additional security concept, the Tailored Financial Plan.

The Tailored Financial Plan may include escrow accounts, third party guarantees, and a variety of other forms of security, which may be approved by the Regional Director. The Tailored Financial Plan further contemplates a phased-in approach. BOEM will submit notices to companies requesting they furnish additional security. After such notice, companies have 30 days to object and, absent objection, additional security must be provided within 60 days. BOEM will allow phased-in compliance for properties that are not solely owned by the operator or lessee with one-third of the required security provided within 120 days, two-thirds provided within 240 days, and full security provided within 360 days.

### Other Considerations

The NTL presents a number of challenges for companies, particularly in the current commodity price dynamic. Companies face difficulty in obtaining surety bonds, and additional security requirements may create other financial pressures. Additionally, the Bureau of Safety and



Environmental Enforcement (BSEE) is currently working to reassess the cost of decommissioning obligations across the outer continental shelf. An increase in decommissioning cost estimates could create additional pressures for operators and lessees.

If you request additional information regarding this Quick Study, would like additional counseling regarding the NTL, or need advice regarding how to address BOEM orders issued under the NTL, we are available to assist. Please contact:

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