

Locke Lord QuickStudy: BOEM Wasn't Built in a Day: After Three Years New Financial Regulations Are Nearing Finalization ?

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The Bureau of Ocean Energy Management (“BOEM”) along with the Bureau of Safety and Environmental Enforcement (“BSEE”) recently proposed changes to “modernize” financial assurance requirements for the offshore oil and gas industry. The changes were published in the Federal Register June 29th, triggering a 60-day public comment period that ends on August 28th. The recent publication alters a 2020 rulemaking proposal that had yet to be finalized.

The new regulations are intended to decrease the likelihood that decommissioning costs will be borne by taxpayers while also reducing the overall amount of financial assurance required to be posted by strategically targeting operators most likely to default. The government will consider two metrics when assessing the risk of defaulting on decommissioning obligations posed by a stakeholder. BOEM will use credit ratings from national agencies, or a proxy rating generated by a statistical model. Companies without an investment-grade rating may be required to post additional financial disclosure and/or assurance. BOEM is interested in public comments on the costs and benefits of considering predecessors when determining how much financial assurance a company must provide. The Bureau will consider the current value of proved reserves when making decisions on bonds, given that any lease with significant reserves still available would likely be acquired by another operator that would assume decommissioning liabilities.

BSEE has also proposed going forward with a previously proposed regulation that would require any party appealing a BSEE financial assurance demand to post an appeal bond as part of the appeal process. The justification for the bond requirement is that appeals can take a long time, and if a company files bankruptcy while an appeal is pending, financial assurance may not be in place. These proposed regulations do not include a general appeal bond requirement that had been proposed previously.

BSEE withdrew its proposal to establish a reverse chronological order constraint on BSEE's pursuit of predecessors' stakeholders for performance of decommissioning. Instead, the agency announced they will continue to hold all working interest owners and predecessors in title jointly and severally liable and issue orders in the most efficient manner possible. This allows the government to continue their practice of holding larger, more stable companies responsible for decommissioning obligations not met by defaulting assignees. This proposed policy is neutral regarding contractual obligations between interest holders and is silent on any “subrogation”

rights for those companies that actually incur costs to perform the work.

The published rule adds more time to the original 30/60/90-day timeframe to respond to a decommissioning order, changing it to 30/90/150. Within 30 days of receipt, recipients of a decommissioning order must begin maintaining and monitoring facilities identified in the order. Within 90 days of receiving the order, the recipients must designate a single entity to serve as operator or agent of decommissioning operations. Within 150 days of receiving the order, the agent must submit a decommissioning plan that includes scope of work and reasonable schedule for all facilities identified in the order.

During the next 60 days, BOEM is actively seeking comments on what credit rating threshold would best protect taxpayer interests without being unduly burdensome on industry. They are also seeking comment on the wisdom of considering the financial viability of predecessors when determining how much financial assurance for decommissioning obligations a company must provide. Finally, it seeks comments to its proposal to set decommissioning estimates based on industry-reported data and allowing current lessees to pay new bond amounts in phases over three years.

For further information or to discuss how this decision may impact your projects and potential financial exposure, please contact the authors.

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