

# BOEM Delays NTL 2016-01 for Non-Sole Liability Properties

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Just hours after we posted our blog questioning the future viability of the Bureau of Ocean Management (BOEM) new financial assurance regime, BOEM announced in a Note to Stakeholders that it “will extend the implementation timeline for NTL 2016-N01 by an additional six months as to leases, rights-of-way and rights of use and easement for which there are co-lessees and/or predecessors in interest, except in circumstances in which BOEM determines there is a substantial risk of nonperformance of the interest holder’s decommissioning liabilities.” BOEM had issued NTL 2016-N01 (dated July 12, 2016) to “clarify the procedures and criteria that BOEM Regional Directors use to determine if and when additional security ... may be required” for OCS leases, pipeline ROWs and RUEs. As our previous blogs have mentioned, the NTL became effective on September 12, 2016.

Operators and lessees on the OCS have repeatedly expressed to us and to BOEM their frustrations in attempting to comply with the NTL, particularly where co-lessees or predecessors-in-interest are involved. BOEM has now recognized that “navigating the multi-party business relationships that exist between co-lessees and predecessors-in-interest can prove challenging and time-consuming. Further, because the non-sole liability properties may include several co-lessees and prior interest owners, their existing financial arrangement may require assessing the extent to which these existing financial arrangements can be considered in determining whether BOEM needs additional security.” “Sole-liability properties” are leases, ROWs or RUEs for which there are no co-lessees and no prior interest holders responsible for the outstanding obligations. The sixth-month delay of effectiveness for non-sole liability properties will push the effective date of the NTL to March 12, 2017.

However, the NTL’s effectiveness has not been delayed for sole-liability properties. BOEM believes that sole-liability properties “represent the greatest programmatic risk to the American taxpayer.” The Orders to Provide Additional Security that BOEM issued in December 2016 for sole liabilities properties are not affected by this extension. In addition, BOEM has left open the possibility of requiring any interest holder to immediately comply with the NTL if BOEM

determines “there is a substantial risk of nonperformance of the interest holder’s decommissioning liabilities.” As you may be aware, there are ongoing discussions between BOEM and BSEE as to which assets are sole liability properties. For example, RUEs can only be held by one party and cannot be assigned. So technically each RUE could be considered as a sole liability property. However, in most instances the facility covered by a RUE was installed by lessees pursuant to an oil and gas lease which has since terminated and the facility may have also been covered by one or more prior RUEs in favor of third parties. Therefore while the RUE will only be owned by one party, in most instances several parties will be responsible for the decommissioning liability for the facility covered by the RUE. BOEM has recently sent orders to RUE owners requiring them to post security for these facilities as sole liability properties, even when various other parties have accrued obligations to decommission the same facility. We hope that BOEM and BSEE are able to resolve this issue and recognize that most RUEs are not sole liability properties.

During the six-month extension, BOEM will continue to negotiate tailored plans for non-sole liability properties. Given the new political climate, and calls by the oil and gas industry for an even longer delay of the NTL’s effectiveness, the future of the regime outlined in NTL 2016-N01 has become even more uncertain.