

New Clarifications from BSEE on Suspensions of Production and Operations

By Bryan Dupree

Associate at Gordon Arata Montgomery Barnett McCollam Duplantis & Eagan LLC

On May 7, 2019, the Bureau of Safety and Environmental Enforcement (BSEE) issued a Notice to Lessees and Operators ([NTL No. 2019-G01](#)) regarding Suspensions of Production (SOPs) and Suspensions of Operations (SOOs). This new NTL supersedes [NTLs No. 2000-G17](#) and [No. 2011-N10](#) and includes additional clarification on what lessees can and should do to help ensure a suspension is granted in their favor.

In general, lessees and operators are expected to explore, develop and commence production within the primary term of their offshore Federal leases. A lease may be maintained beyond its primary term through lease-holding operations including drilling, well re-working, or production in paying quantities (30 C.F.R. § 250.180(a)(2)).

If these lease-holding operations are halted, or if a lease is at the end of its primary term with no operations, the lease will expire within one year of the last operation unless either of two things occurs. (This grace period was increased from 180 days to one year in 2017). First, if lease-holding operations are resumed within one year, the lease will not expire. Second, if an application for an SOP or SOO is sent to the BSEE Regional Supervisor within that year, and the SOP or SOO is granted, the lease will still be in effect for the time granted (30 C.F.R. § 250.180(d)).

Just as in prior NTLs, BSEE prefers to receive the SOP request approximately three weeks before the scheduled lease expiration date (SOO requests may be received later because the request is based upon unforeseen circumstances beyond a lessee's control). The three week rule is not a hard requirement, however. Under 30 C.F.R. § 250.171, the lessee simply needs to submit the request before the expiration of the lease. However, if a lease expires while the request is under consideration, a lessee cannot perform any operations on the lease until the suspension is granted. Therefore, it is wise to submit the request sooner than later to ensure certainty for the future.

To a greater extent than prior versions, NTL No. 2019-G01 gives detailed explanations of what should be included in an SOP request. It discusses the necessity of demonstrating a firm commitment to production (CTP). It is absolutely essential to make a commitment to production before the time the lease would otherwise expire. Under this NTL, a commitment is firm if it is "based on a definitive decision by the operator to bring the discovered hydrocarbons to production." Additionally, exploration and delineation drilling must be completed, and the operator must be able to show that the project is an economic venture. When a CTP relies upon the use of another entity's production facility, the relevant parties must have committed to such use before the date the lease would otherwise expire.

Although essential, a firm CTP alone is not enough to ensure the SOP is granted. A request must also justify the need for the suspension by summarizing how the suspension will lead to production and explaining how much additional time is being requested. This should include a reasonable schedule of work with measureable milestones leading to the

commencement or restoration of production. The NTL provides an example of what such a timeline might look like.

Additional requirements include the identification of a well drilled on the lease that has been determined to be producible, an explanation of the regulatory basis for granting a suspension under 30 C.F.R. §§ 250.172-250.174, and payment of the service fee. Not submitting the service fee before the lease expires will mean that the suspension request was not timely submitted. BSEE has no authority to grant late requests so it is imperative that the fee is paid on time. If a request is the first one for a particular lease, there is the additional requirement of including reservoir structure map(s), isopach map(s), and a reserve estimate.

In the 2011 *Statoil* (or *Julia*) decision, the Director of the Department of the Interior's Office of Hearings and Appeals made it clear that BSEE's grant an SOP or SOO is discretionary (*Statoil Gulf of Mexico LLC*, 42 OHA 267). Thus, even if a lessee technically meets all the requirements for the granting of an SOP or SOO, BSEE could still deny the request. This is so because such decisions must always consider the national interest using "a balancing of factors according to the circumstances of the case" (*Id.* at 308). The *Statoil* decision can be found at <https://www.oha.doi.gov:8080/index.html>, by searching for DIR-2010-0027 in Directors Decisions (1996-Present).

If the SOP is granted, its duration will depend on the circumstances of the individual case. NTL No. 2019-G01 differs from the 2000 version regarding duration. Under 30 C.F.R. § 250.170, no single suspension may be granted for more than five years. Although NTL 2000-G17 explicitly mentioned this cap, the new NTL does not. As the 2000 version noted, even with the five year cap, most suspensions are granted for one year or less. The lack of mention of the five year cap is unlikely to be an indication of a shift in BSEE's policies to allow for longer suspensions.

In addition, NTL No. 2019-G01 provides a much more expansive look at what is required to obtain an SOP for phased development. Phased development occurs when hydrocarbons have been discovered by wellbore penetration but the operator is waiting for production capacity at the host facility to become available.

Generally, BSEE does not approve suspensions for phased development, but exceptional circumstances may move BSEE to grant one. In addition to everything needed for a normal SOP, the applicant must also demonstrate, to the Regional Supervisor's satisfaction, that the project has unique or unusual circumstances, phased development is appropriate, and phased development would not harm ultimate recovery or cause waste. The NTL enumerates various elements that, if proven, would help to demonstrate these requirements. There is an important potential economic consequence that any lessee seeking an SOP for phased development should consider: BSEE may require a lessee to execute an agreement that would compensate the federal government should the lease fail to produce as proposed.

The new NTL also provides guidance on SOPs for technology development. At this time, a request for an SOP (or SOO) solely to provide time for technology to be developed is unlikely to be granted. Nonetheless, time for technology development can be a factor for granting an SOP where all of the normal requirements for an SOP are met.

Although the requirements for granting SOPs and SOOs have significant crossover, they are two distinct things. SOOs are granted because of reasons beyond the control of the lessee or operator. If a lessee has not scheduled operations before the lease is to expire, BSEE will almost certainly deny an SOO request. More specific requirements for SOOs are set forth in 30 C.F.R. § 250.171 *et seq.*

With these recent clarifications, it is perhaps easier to know when you might qualify for and what information you need to provide to receive a suspension on offshore leases. Nevertheless, the new NTL should not be read in isolation. When requesting an SOP or SOO, it is important to verify that all of the requirements of 30 CFR 250.169 *et seq.* are satisfied before lease expiration.