

December 15, 2020

Peter Meffert  
Department of the Interior, Bureau of Ocean Energy Management  
1849 C Street NW,  
Washington, DC 20240

Kelly Odom  
Department of the Interior, Bureau of Safety and Environmental Enforcement  
45600 Woodland Rd,  
Sterling, VA 20166

**Re: Bureau of Ocean Energy Management Docket No. 2020-20827  
Risk Management, Financial Assurance and Loss Prevention, RIN 1082-AA02**

As a leading representative of the surety bond industry, The Surety & Fidelity Association of America (“SFAA”)<sup>1</sup> is writing to provide input on the potential regulatory changes to the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement’s (BSEE) financial assurance and loss prevention requirements to protect against oil and gas operators’ decommissioning liabilities. SFAA is pleased to see both agencies continue their efforts to formalize processes in which BOEM and BSEE may require additional financial security to ensure lessees maintain adequate protection for taxpayers; however, SFAA cautions the agencies against adopting these changes as proposed for the following reasons: (1) there is an overreliance on the credit rating agencies in that changes to ratings do not keep pace in real time with changes in the energy sector; (2) ratings are not available for the private operators, the very operators which the agencies are attempting to benefit with these changes; (3) given that there are no ratings available for private operators, the Regional Directors would now need to evaluate financial capability of an operator, leaving them broad discretion to determine when and if additional assurance will be required and thereby leading to potential inconsistencies in implementation; (4) SFAA members are best suited to evaluate the operators’ financial capabilities as this is their field of expertise; and (5) the changes will result in adverse selection against the surety market and thus less available surety capacity. In sum, overreliance on credit scores and broad discretion at the Regional Director level to determine which entities are required to secure additional financial assurance will not achieve the stated purpose of the rule making in furthering protections for taxpayers against unmitigated decommissioning liabilities. Please find further details on SFAA’s comments below, including the potential impact in the surety marketplace of the new credit rating threshold below which the Regional Director may require additional assurance, should the new rules be implemented.

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<sup>1</sup> SFAA is a trade association of more than 425 insurance companies that write 98 percent of surety and fidelity bonds in the U.S. SFAA is licensed as a rating or advisory organization in all states and it has been designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience.

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Under the proposed regulatory scheme, the director is given significant latitude to exempt companies she/he deems to be “financially sound” from securing additional bonding. This will create adverse selection in the surety market in which only companies with unsound financials seek additional bonding. The resulting environment likely would adversely impact the availability of surety credit for those very companies from which BOEM and BSEE require additional security. Some alternatives SFAA suggests BOEM and BSEE consider is to simply require all entities secure additional security, possibly with a lower bond amount required, or set a requirement for each permitted site, as this would eliminate the need to secure financial assurance at the time of a change in control of an asset, or a change in financial position of the licensee. To ensure the surety market can continue to provide bonds in this sector it is important to ensure a diverse array of operators continue to purchase additional security, not only those who are already at risk of defaulting due to low credit ratings or because they are deemed financially unsound.

Furthermore, the use of any credit rating does not provide an accurate real time snapshot of an operators’ financial strength. SFAA believes this methodology is inadequate to ensure BOEM and BSEE are protected against the risk of a lessee defaulting on its decommissioning liability. The use of credit ratings does not provide a full picture of a lessee’s financial strength in real-time, nor does it address the issue of how BOEM and BSEE could demand financial assurance once a rating falls below an established level. Credit rating changes lag what is currently happening in the marketplace, as demonstrated by what happened this year with the pandemic and the significant price fluctuations. SFAA also believes such a low rating will in fact increase the exposure to BOEM and ultimately taxpayers with respect to its decommissioning liabilities, particularly at a time when BOEM and taxpayers need the greatest protections from these liabilities given where we are in the life cycle of many of the leases in question.

Additionally, the new regulations present significant obstacles for smaller privately owned oil and gas operators. Privately owned operators, the apparent focus of the proposed rulemaking, often do not have a robust credit review process to the same degree as the larger operators in the space and thus do not have a rating from these agencies. Therefore, it is unclear how the financial strength of these companies will be determined by BOEM and BSEE. Although the rules may increase the number of smaller firms who’s rating is above BB- or Ba3 to compete with larger companies by increasing the number of operators now exempt from the additional security, in practice, larger firms subleasing to smaller firms will likely continue to require bonds through the private market to ensure they are protected as the upstream party responsible for meeting decommissioning liabilities if the current operator fails to satisfy its obligations.

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BOEM and BSEE should continue to rely on the surety market for its expertise in conducting the prequalification of these operators, which is a core part of the surety business.

Notwithstanding the above suggested changes and issues raised with certain aspects of the proposed rulemaking, SFAA strongly supports the changes in terminology included in the proposed rulemaking, specifically, the change from termination to cancellation when referencing the bond. This change more closely aligns with the terminology included in contract language and will help provide sureties more certainty when providing these bonds.

We appreciate the opportunity to comment on the proposed changes and invite further conversation with BOEM and BSEE on how to best determine which operators should provide additional financial assurance to guarantee their decommissioning liabilities.

Sincerely,



Julie Alleyne,  
Vice President, Policy and General Counsel