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Department of the Interior
Minerals Management Service
Attention: Regulations and Standards Branch (RSB)
381 Elden Street
MS-4024
Herndon, Virginia 20170-4817

Re: Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf, 1010-AD06

To Whom It May Concern:

The American Petroleum Institute ("API") represents nearly 400 companies involved in all aspects of the oil and gas industry (Exploration and Production, Refining, Marketing and Transportation). Furthermore, API member companies are engaged in all aspects of the exploration, development and production of offshore oil and natural gas resources, and are active as owners and operators of offshore leases. Therefore, API member companies have a direct and substantial interest the Minerals Management Service's (MMS) proposed rule entitled "Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf."

API appreciates the opportunity to comment on this proposed rule. API supports efforts by the MMS to update, streamline and clarify the existing Outer Continental Shelf (OCS) leasing and bonding regulations. MMS states that it is simply reordering and reorganizing the leasing requirements to "reflect the leasing process more efficiently." Given the stated intent of streamlining the regulations, MMS should ensure that the final rule is limited to reordering and reorganizing the regulations, and clarification only as necessary. In some instances, MMS adds language in apparent interpretation/implementation of the underlying statute, which is inconsistent with the stated intent (see discussion of specific provisions below).

API provides the following comments on specific, proposed provisions (the discussion references the proposed sections and corresponding changes):

<u>Changes to 30 CFR Part 250</u>

The proposed amendments to 30 CFR Part 250 would require the submission of expenses of plugging and abandonment, removal, decommissioning, and sit clearance with supporting documentation. Although API understands that MMS may need some access to accurate costs,

requirements to submit expenses upon every clearance, platform removal, and well plug and abandonment is unduly burdensome in light of the benefits to MMS and alternatives available to obtain the same information. Lessees are willing to work with MMS on a case-by-case basis, and to provide such cost information to the MMS as necessary. As proposed, there is no guidance as to exactly what costs should be included from an accounting perspective. Accordingly, each lessee may account for such expenses separately, which will diminish the usefulness of the information provided to MMS. Further, to the extent that any trade secret or confidential or proprietary information could be included in submissions to MMS, there is no mechanism for protection of that information from disclosure in the proposed amendments.

Section 250.1717, Section §250.1729(d) and Section 250.1743(b)(7)(8):

In addition to the above discussion, all three sections are too vague, overly burdensome and beg the question of whether information will be treated as confidential.

<u>Changes to 30 CFR Part 256</u>

Section 256.101:

Section 256.101 references 18 U.S.C. 1001, which is unnecessary and potentially creates confusion. In the event 18 U.S.C. 1001 were revised, amended or repealed, MMS would need to do the same here. It's redundant and unnecessary.

Section 256.103:

The definition for "authorized officer" should be retained in proposed 256.103, as it is still used in the regulations. The proposal includes definitions for the "Central Planning Area" and the "Eastern Planning Area," but not for the "Western Planning Area." For completeness, MMS should consider including a definition for the "Western Planning Area."

Section 256.200:

Section 256.200 - The second sentence appears to be repeated from the Act and its repetition is not necessary. See 43 U.S.C. § 1344(a)(3). Repeating language from the statute is inconsistent with the streamlining approach that MMS has taken with the proposed regulations.

Section 256.301:

Section 256.301 eliminates the requirement that MMS inform the public as soon as possible, when areas are deleted from leasing. This requirement should be retained. It should be recognized that deleting areas from leasing is of great importance to lessees who are spending

resources in preparing for lease sales, and this information should be published as soon as possible.

Section 256.304(b):

Section 256.304(b) - The Coastal Zone Management Act (CZMA) sets out the process for consistency determinations by the affected States. While the MMS may be merely setting out the process in order, it should actually reference the CZMA so that if the CZMA is modified or amended or repealed, the MMS can continue to follow the process outlined in that act, rather than risking conflict or inconsistency.

Section 256.306:

Section 256.306 – In order to promote fairness and openness, Notices of Lease Sale should include the lease form that will be used to grant successful bids or reference the currently effective lease form as that on which successful leases will be awarded. Also, Section 256.306 fails to require that a form of lease be included.

Section 256.402:

Section 256.402(b) should clarify that this section does not impact the statutory requirements under the Outer Continental Shelf Lands Act (OCSLA) that provide for a finding by the Secretary that the bidder is not meeting due diligence requirements and that provide for notice and hearing. Section 256.402(c) should cite to the statutory provisions authorizing the prohibition based upon unacceptable operating performance.

Section 256.404:

Section 256.404 (c) - This new provision will create unnecessary additional administrative burdens. MMS has multiple ways to learn of a merger or name change, including, without limitation, the filing of merger and name change documents with the Secretary of State in most states and the submission of new designation of operator and other MMS forms. This additional obligation need not be imposed on lessees. In addition, MMS should delete "immediately" as it is inconsistent with the one year limit. API suggests using "as soon as practicable", but not "immediately".

Section 256.416:

Section 256.416(b) - There is no policy reason not to allow co-ownership by agreement of bidders with a tie bid, when the tie bidders are on the restricted joint bidder list. Those parties cannot have communicated or agreed with respect to the bid, but going forward could agree to an

assignment creating co-ownership after the lease is awarded.

Section 256.417:

Section 256.417 - The protest procedure has been eliminated entirely. MMS should specify or refer to an appeal process: to whom appeals are made, how long the agency has to make a decision, who will make the decision, and to whom that decision will be appealed.

Section 256.420:

Section 256.420 – MMS should retain the status quo that the failure to pay the remaining four-fifths lease bonus results in a forfeiture of the one-fifth payment. Payment of the one-fifth amount is sufficient penalty and MMS may still offer and lease the tract at the next lease sale. Payment of amounts beyond the 1/5th is not warranted. As a result, MMS should strike the works "and MMS may take appropriate action to collect the full amount bid."

In addition, the existing rule, 30 CFR 256.47(g), states that the successful bidder has 11 business days to execute the lease and otherwise comply with the applicable regulations. This proposed rule requires that a lessee "execute **and return**" a lease within 11 business days after receipt (emphasis added). Can MMS confirm whether the addition of the words "and return" signify a change in how the process is administered? If this does constitute a change, then can MMS explain the rationale behind this change?

As discussed above, API objects to forfeiture of the full bid amount, because forfeiture of the one-fifth payment is sufficient. However, in the event that this option is retained, MMS should consider providing some flexibility within this provision in the event that the full bid amount is collected. The bidder should not suffer forfeiture of the lease if the full bid amount has been paid. MMS should also consider giving the second highest qualified bidder the opportunity to receive the lease in the event that the high bidder forfeits the lease under these provisions.

Section 256.503:

Section 256.502 – This provision states that any bond or surety must "[g]uarantee compliance under the lease and regulations of all of your **nonmonetary obligations**" (emphasis added). The phrase "non-monetary lease obligations" is vague. What non-monetary lease obligations are covered by the rule? MMS should provide a definition of this term that it intends to apply**.**

Sections 256.504 and 256.505:

Sections 256.504 and 256.505 – In order for parties to be fully informed, MMS should provide notices to affected parties if they are excluded from bonding under these provisions.

Section 256.510(b):

Section 256.510(b) eliminates "proven reserves of future production" as a factor considered in its decision to require supplemental bonds. The financial community recognizes proved reserves as an asset, and MMS should consider them for purposes of requiring supplemental bonding.

Section 256.521:

Section 256.521- In the present economic climate, the change to 45 days establishes too short of a time period to provide the additional bond coverage. The period of time should remain six months, or, at the very least, be 90 days.

Section 256.605(a) and Section 256.606(c):

Section 256.605(a) is inconsistent with Proposed 256.606(c). In the former, operating rights and record title owners are jointly and severally liable for all non-monetary obligations, but in the latter, operating rights owners are only responsible for liabilities insofar as their interest in the lease.

Section 256.616:

Section 256.616- The last sentence is ambiguous. The liabilities for an assignor are covered in 256.605. The last sentence should be deleted.

Section 256.619:

Section 256.619 – The new rule poses the question, "As a restricted bidder, may I assign interest to another restricted joint bidder?" The new rule answers in the affirmative but also states that "you must submit to MMS a copy of any agreements relating to the acquisition of the lease or interest," API is concerned about the submission of commercial agreements under this provision. The types of agreements being requested are potentially highly sensitive. The MMS should only be interested in the timing and nature of the agreement whereby one restricted joint bidder acquired from another restricted joint bidder. Agreements whereby a restricted joint bidder acquired the interest assigned are irrelevant (unless they came from another restricted joint bidder). Further, because assignments are approved, the MMS will already know the chain of title by which the assigning party received the interest. Further, this provision is so broad as to be unascertainable as to the intent, raising further questions about implementation and what documents are sufficient to meet the requirement.

Section 256.620(a):

Section 256.620(a) - This is not a new provision, but API questions the effectiveness or the need for filing with MMS contractually created interests that typically are not placed on record in any other public record. Theoretically, any time a co-owner stands out or goes “non-consent” under a joint operating agreement (JOA), it assigns its interests in the well until payout. Does MMS intend those JOAs to be filed? We also have concerns about confidentiality of agreements; therefore, this rule should only apply to recorded documents.

Section 256.621:

Section 256.621 – This new provision imposes additional administrative burdens on a lessee. Buyers and sellers of OCS leases possess the necessary incentives to complete the appropriate paperwork relating to lease term pipelines. In any case, "30 calendar days" is an insufficient period of time to submit the report described in this rule. Furthermore, MMS should consider including a definition of “lease term pipeline.”

Section 256.700:

Section 256.700 – This provision should reference 30 CFR 256.601(d), relating to the effect of production from unitized leases, as an additional circumstance that maintains a lease.

Thank you for the opportunity to provide comments on this important rulemaking. Should you have any questions or would otherwise like to discuss, please contact Erik Milito, API Managing Counsel, at 202-682-8273 (militoe@api.org).

Sincerely,

Doug Morris