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Re: API and LMOGA Comments on BOEM Proposed Rule on Risk Management and Financial Assurance, 91 Fed. Reg. 11,212 (March 9, 2026), RIN 1010-AE26, Docket ID: BOEM–2025–0042

Dear Mr. Giacona and Ms. Thundiyil:

The American Petroleum Institute ("API") and the Louisiana Mid-Continent Oil & Gas Association ("LMOGA") appreciate the opportunity to submit comments on the above-referenced Bureau of Ocean Energy Management ("BOEM") Proposed Rule. API is the only national trade association representing all facets of the oil and natural gas industry, which supports more than 10 million U.S. jobs and nearly 8 percent of the U.S. economy. API is the global leader in convening subject matter experts across segments to establish, maintain, and distribute consensus standards for the oil and gas industry. API represents companies that account for 85% of the top 15 deepwater oil and gas lease purchases in the 2012-2025 period on the Outer Continental Shelf ("OCS") and a similar percentage of total dollars invested in these OCS resources. Founded in 1923, LMOGA is Louisiana's longest standing trade association, exclusively representing all sectors of the oil and gas industry in Louisiana and across the Gulf of America, including exploration, production, mid-stream activities, pipeline, refining and marketing. For ease of reading, we refer to API and LMOGA herein collectively as "API."

Together with its member companies, API is committed to ensuring a strong, viable U.S. oil and gas industry capable of meeting the energy needs of our Nation in an efficient and environmentally responsible manner. API members have a keen interest in the Proposed Rule because they currently hold ownership and operating rights interests in OCS leases, pipeline right-of-way ("ROW") grants, and right-of-use-and-easement ("RUE") grants, and they are also predecessor interest owners in other OCS oil and gas properties who expended significant capital investment to unlock development of the Gulf of America. For many years, API and its members have worked collaboratively with BOEM and the Bureau of Safety and Environmental Enforcement ("BSEE") on OCS financial assurance, culminating in adoption of BOEM's well-reasoned and workable current regulations at 30 C.F.R. part 556 subpart I for leases and at 30

C.F.R. part 550 subparts A and J for RUE and pipeline ROW grants. 89 Fed. Reg. 31,544 (Apr. 24, 2024) ("Existing Rule").[1]

BOEM should not adopt this Proposed Rule, particularly its proposed novel, retroactive, and unlawful conversion of predecessor interest owners into involuntary sureties to excuse many current interest holders from their obligation to financially assure compliance with their lease and grant obligations. *See* 91 Fed. Reg. at 11,226. The Proposed Rule's primary analytical and legal flaw is that any residual *non-monetary* decommissioning obligation of predecessors, *if* current interest holders fail to perform that obligation, is substantively and legally distinct from, and not a substitute for, current interest holders' *sole monetary* obligation to provide financial assurance to BOEM for their lease and grant obligations. In absolving current interest holders' financial assurance obligation anytime a perceived financially strong predecessor exists, BOEM effectively would fashion a retroactive and arbitrary regulatory obligation for entities that completed agency-approved assignments of their OCS lease and grant interests long ago to now ensure fulfillment of financial obligations that to date have been the exclusive responsibility of current lessees and grantees. Predecessors would bear this new obligation despite that they still owe no financial security directly to BOEM. BOEM (including its predecessor agencies) has *never* utilized this predecessor reliance concept for financial assurance of lease and grant obligations during its longtime administration of the OCS, but instead has repeatedly *rejected* it, and for good reasons. At base, companies currently operating on the OCS are required to fulfill their own regulatory obligations, including, but not limited to, financial assurance to the regulator for performance of decommissioning and other obligations. Also, unlike for current interest holders in privity with the government, BOEM lacks available legal or practical means to reliably obtain and assess information regarding the current financial strength of predecessor entities. Despite comprising a variety of company types, API's membership uniformly opposes BOEM's proposed consideration of predecessors as substitutes for current lessees and grant holders providing financial assurance.

Further, foisting financial assurance obligations on predecessors will *not* achieve BOEM's stated aims of financial "savings" and increased OCS oil and gas production; it more likely will do the opposite. The Proposed Rule would just *shift* financial assurance burdens to financially stronger predecessors, many of which remain engaged in the majority of leasing and production across the OCS and are far more likely to be future investors in increased OCS development and production. By contrast, nothing ensures that entities standing to benefit from the Proposed Rule will reinvest saved financial assurance premium dollars into OCS production; in fact, such entities largely do not explore or increase reserves, but merely buy pre-discovered reserves and produce them to a lower economic limit. Nor would the Proposed Rule promote or save costs for future OCS transactions since, in the absence of any option for BOEM-demanded financial assurance from current interest holders, assignors will demand financial assurance at sufficiently conservative levels to address the risk of residual liability if assignees default on their obligations. The Proposed Rule also would incentivize current interest holders freed from

[1] API and LMOGA incorporate by reference their submitted comments on prior BOEM proposed rules on OCS financial assurance. 88 Fed. Reg. 42,136 (June 29, 2023); https://www.regulations.gov/comment/BOEM-2023-0027-2006; 85 Fed. Reg. 65,904 (Oct. 16, 2020); https://www.regulations.gov/comment/BOEM-2018-0033-0018.

providing any financial assurance to operate with impunity and disregard their decommissioning and other obligations such as monitoring and maintenance. They instead could dedicate their financial capital solely to their own economic benefit for maximum profit and increase the risk and cost of unfunded decommissioning activities. BOEM's proposal to constrain itself by eliminating even its option of demanding more than $1 billion in total financial assurance—and possibly even less—from current interest holders to cover the Proposed Rule's estimate of $35 to $41 billion in total OCS decommissioning costs (91 Fed. Reg. at 11,225) is especially inexplicable given prevalent bankruptcies by current interest holders. This Administration has been a leader in promoting energy dominance, but key elements of this Proposed Rule fail to promote and even undercut that goal. Contrary to its myopic view, the Proposed Rule would overall *harm* oil and natural gas production and BOEM's other stated goals on the OCS.

Simply put, financial capacity of predecessors in interest cannot factor into BOEM's supplemental financial assurance determination process for current OCS lessees and grant holders, and BOEM should withdraw those aspects of its Proposed Rule at a minimum. If finalized, those provisions would substantially depart from longstanding regulatory standards and have significant and far-reaching consequences. Largely because of their retroactive effect and upsetting of long-standing obligations, they also would be particularly vulnerable to legal challenges far stronger than the meritless claims pending against the Existing Rule, which the United States has roundly refuted, and a federal court has preliminarily declined to endorse. *See Louisiana v. Haaland*, No. 24-cv-820 (W.D. La. filed June 16, 2024); *id.* Dkt. No. 58 (U.S. Opp. to Mot. Prelim. Inj.); *id.*, 2025 WL 761743 (Mar. 10, 2025) (Order denying preliminary injunction and stay of Existing Rule).

Finally, this letter represents the views of companies that currently produce an overwhelming percentage of oil and natural gas production from the Gulf of America. As shown in the attached report from Rystad Energy, these are the companies, operating in the deepwater, that are building and investing in the Gulf for both today and tomorrow. These companies are making generational investments in new technologies, new infrastructure, and the people that make it possible. This Proposed Rule is designed to ease the burden of responsible lease ownership on a handful of operators who instead of investing in the future are siphoning from current projects and leaving potential liabilities for predecessors. Instead of BOEM using its financial assurance tools to ensure responsible lease ownership, for more than a decade companies without adequate financial assurance in place have repeatedly used bankruptcy courts to shed responsibility for their obligations and foist some of them upon predecessors. Congress is unlikely to change the bankruptcy laws, but BOEM through its financial assurance regulations can insist on accountability for current operators to ensure that the responsibility that comes with operating a lease on the OCS is adequately met and to prevent the chaos of the bankruptcy courts deciding winners and losers in the Gulf. BOEM's proposal to take its financial assurance regulations backwards to a reckless structure that leaves little accountability for current operators to meet their legal obligations would set back confidence in the Gulf for the predecessors and others that are looking to drive new investment. At a time when advancements in technology, and potential new resources, are driving investment in the deepwater, the Proposed Rule threatens to burden the very companies that are poised to invest and grow that region with the anchor of fiscal avoidance by successor operators who cannot maintain the financial responsibility required to operate in the Gulf.

GENERAL COMMENTS

API has consistently adhered to core overarching principles for OCS financial assurance:

1. The OCS should remain a viable and attractive investment option through a responsible, balanced, predictable, and equitable financial assurance program.

2. Companies that obtain OCS oil and gas leases and grants should have the financial capacity to address, on a realistic timeline, all contractual and regulatory obligations legally assumed or created.

3. The financial strength of former lease or grant interest owners is not an acceptable substitute for the obligation of current owners to provide financial assurance to the regulator for operational and financial risks. Predecessors are no more legally responsible for meeting the current interest owners' regulatory financial assurance obligations than they would be for fulfilling other financial payment obligations (e.g., royalties on production) or curing operational violations of current interest owners.

4. The financial assurance program should be risk-based and focused on OCS oil and gas properties late in their economic life cycle. Implementation should be phased-in, allowing companies to successfully comply with any modification to the existing financial assurance program.

BOEM's Existing Rule adopted in 2024 reflects a reasonable accommodation of these principles. To that end, API supports BOEM's retention of several facets of the Existing Rule, particularly its simplification and standardization of criteria for assessing entities' financial strength prior to demanding supplemental financial assurance, reliance on credit ratings, and expansion of options and mechanisms for providing financial assurance, including limited-scope third-party guarantees. On this last point, API supports the Proposed Rule's express provision for dual-obligee financial assurance instruments; API offers further comments to ensure that such funds are promptly made available directly to entities that perform the actual decommissioning. API also generally shares BOEM's stated goals of not unnecessarily tying up capital that could otherwise be utilized for productive purposes consistent with satisfying all associated obligations. Our members further share Congress' and BOEM's goal to protect U.S. taxpayers from the burden of any default of those OCS lease and grant decommissioning obligations.

API and its members, however, do *not* support the Proposed Rule's wholesale shift to predecessors to excuse current interest holders' obligation to provide supplemental financial assurance obligations for OCS oil and gas leases, RUEs, or pipeline ROWs in which predecessors no longer have any ownership interest. It is of paramount importance that BOEM continue to retain each and every current lessee's and grantee's long-standing regulatory obligation in the first instance to meet all of its lease and grant obligations, including to provide any required financial assurance. Allowing current interest owners to decrease their financial assurance obligations based on financially stronger predecessors in a chain of title is bad policy and legally unsupportable. BOEM instead should adhere to the Existing Rule's principle of requiring current interest holders to provide the requisite financial assurance that they will properly perform all operational lease and grant obligations. The Existing Rule strikes the

appropriate balance of ensuring that BOEM and federal taxpayers receive reasonable financial assurance from current lessees and grantees in exchange for the opportunity to operate on the OCS. The public at large benefits from BOEM ensuring that lessees and grantees are fiscally responsible for their operations on the OCS. Indeed, the Proposed Rule's stated concern about protecting taxpayers from incurring decommissioning costs is best served if BOEM retains the option to demand financial assurance from current owners before looking to predecessors for decommissioning. BOEM thus should retain that basic framework.

The Proposed Rule instead would create a newly-minted, retroactive legal obligation for predecessors to insure the activities of current lessees and grantees, by categorically eliminating even the option of BOEM demanding financial assurance from current owners whenever a perceived financially strong predecessor is in the chain of title. As stated above, its core legal flaw is that the monetary obligation to provide financial assurance is *distinct* from any non-monetary obligation to perform decommissioning. The United States recognized as much in its representations in federal court, resulting in denial of a preliminary injunction against the Existing Rule. *E.g.*, *Louisiana*, *supra*, Dkt. No. 58 at 24 ("Plaintiffs' fundamental error is the conflation of joint and several liability with a form of financial assurance."); *id.* at 25 ("But joint and several liability does not ensure that one or more owners are themselves sufficiently solvent to satisfy the decommissioning liability, as the regulations and lease require."); *Louisiana*, 2025 WL 761743 at *7.

The Proposed Rule repeats that same fundamental error. While it speaks to "the joint and several liability of all current lessees, co-lessees, and predecessor lessees for all non-monetary obligations on a lease" such as decommissioning (91 Fed. Reg. at 11,220), it identifies nothing equating or creating shared liability among current and former interest owners for the separate monetary obligation to provide financial assurance that lease and grant obligations will be performed when due. Indeed, BOEM's regulations unaffected by the Proposed Rule provide for joint and several liability only for "non-monetary" obligations accruing while an entity held a lease record title or operating rights interest. 30 C.F.R. §§ 556.604(d), 556.605(e); *cf. id.* §§ 556.604(f), 556.605(g). In addition, the non-monetary obligation for a predecessor interest owner to decommission is a contingency that presents only "if your assignee or any subsequent assignee fails to perform any obligation under the lease, to the extent the obligation accrued before approval of your assignment." 30 C.F.R. §§ 556.710 (lease record title), 556.805 (lease operating rights). In contrast, the Proposed Rule's effective conversion of predecessors in the chain of title into involuntary sureties is an immediate and ongoing obligation unrelated to any current interest owner's failure to meet its financial assurance obligation.

The monetary obligation to provide sufficient financial assurance *always* has been the *sole* responsibility of *current* interest holders that received assignments from predecessors. 30 C.F.R. §§ 556.713 (lease record title), 556.807 (lease operating rights) ("As assignee, you must comply with all the terms and conditions of the lease and the regulations issued under OCSLA …."); 30 C.F.R. § 556.900(a) ("Before BOEM will approve the assignment of a record title interest in an existing lease to you as the lessee, *you or another lessee for the lease must provide any supplemental financial assurance required by the Regional Director* ….") (emphasis added). To be sure, ensuring that current OCS lessees and grantees provide the necessary financial assurance that they will satisfy their decommissioning and other obligations has been BOEM's regulatory focus for *decades*. But the Proposed Rule now expressly would have "predecessor

lessees serve the same purpose as surety companies as new lessees are not required to post financial assurance." 91 Fed. Reg. at 11,226. Even more problematically, the Proposed Rule would retroactively impose this new regulatory burden on entities that divested their OCS property interests years (or decades) earlier—in reliance on BOEM's regulations that required their assignees to provide any supplemental financial assurance. Such entities are no longer in privity with BOEM, and have no control over current operations on those OCS properties. The Proposed Rule would reach back even to impose these obligations on predecessors that divested their interests before the 1997 regulatory imposition of joint and several liability for assignors (a time period on which the Proposed Rule is silent).

This novel and misguided approach allows, and even encourages, current interest holders to eschew their lease and grant obligations, and instead freely operate on the backs of predecessors and taxpayers. Meanwhile, current interest holders could choose to allocate little or no funding for end-of-life obligations like decommissioning whenever they desire to conclude production, file for bankruptcy, and leave BOEM to eventually issue decommissioning orders to predecessors that have not operated the grants and leases for years or even decades. This would create higher administrative and financial burdens for the government and system as a whole, including where no viable predecessor had accrued liability for decommissioning *all* facilities present on the lease or grant, and potential operational impacts that a predecessor has no obligation to cure.

This new proposed obligation on predecessors is arbitrary and capricious and unlawful on multiple grounds. It violates the rule against retroactivity by creating new federal liability stemming from already-completed transactions. It violates the agency change in position doctrine, particularly given that BOEM on multiple occasions has rejected precisely the same approach as in the Proposed Rule. It is unsupported, as it overstates the burdens under the discretionary Existing Rule, disregards repeated U.S. Government Accountability Office ("GAO") and BOEM findings calling for more robust financial assurance by current interest holders, cites only anecdotal prior comments while ignoring the bulk of countervailing comments detailing reality on the OCS, and identifies no means by which BOEM can compel, collect, and assess adequate financial information for all predecessor entities. And it is self-contradictory, including by tying up more capital among entities producing the vast majority of oil and natural gas on the OCS. Underscoring this last point, API attaches and incorporates an updated study by Rystad Energy illustrating OCS economic trends and contextualizing the outsized role of API members' current and expected future leasing and production activities relative to the activities of entities operating primarily in shallow water and urging the Proposed Rule's approach.

Apart from the Proposed Rule's provisions imposing new obligations on predecessors, API believes that the Existing Rule's existing P70 threshold for BSEE probabilistic estimates of decommissioning costs is appropriate and should be retained rather than reduced to a P50 level. API attaches and incorporates a study by Longford Credit Rating Advisors ("CRA") LLC on proxy credit ratings, highlighting the numerous variables and concerns inherent in making such determinations. While API is not opposed to the proxy credit rating option, API reinforces that any proxy credit rating must meet the existing regulatory standard to reach an equivalent result as issuer credit ratings, and API is unaware of existing tools sufficient to consistently yield that outcome. API additionally recommends that public companies have the option to utilize proxy

credit ratings to preserve a level playing field in applying the regulatory standards. API also refers BOEM to comments submitted by individual API members regarding credit rating issues. Other aspects of the Proposed Rule are potentially acceptable to API and its members, but depend on specifics of implementation.

SECTION-BY-SECTION COMMENTS

The comments below correspond to the Proposed Rule's numbered regulatory sections. For clarity and to facilitate BOEM's consideration, API provides suggested regulatory text revisions in redline format. Recommended language for removal is indicated in ~~strikethrough text~~, except where API recommends deletion of a provision of the Proposed Rule in its entirety. Recommended language for addition is indicated in underlined text.

A. § 556.901(d)(4) Consideration of predecessor strength for supplemental financial assurance.

BOEM should delete *in its entirety* its proposed new § 556.901(d)(4), and renumber proposed § 556.901(d)(5) as (d)(4) like in the Existing Rule. The Proposed Rule relies on untrue pretenses regarding the history, legal basis, and predicted outcomes of this self-described "major deregulatory change" (91 Fed. Reg. at 11,228). Moreover, as BOEM asserts, this most problematic provision is readily "severable" from the rest of the Proposed Rule (*id.* at 11,227).

1. The Proposed Rule's Consideration of Predecessors for Financial Assurance Is Novel.

The Proposed Rule asserts that it is "returning to the previous BOEM practice of considering the financial strength of jointly liable predecessor lessees" in determining supplemental financial assurance for current interest owners. *Id.* at 11,213; *see also id.* at 11,227 (similar); 91 Fed. Reg. 25,255, 25,256 (May 8, 2026) (similar). Likewise, it avers that "[a] significant component of BOEM's financial assurance program has traditionally been the joint and several liability shared between co-lessees and co-grant holders with joint ownership and the predecessor liability retained by lessees and grant holders after asset divestiture." 91 Fed. Reg. at 11,218. These statements are inaccurate. In reality, the Proposed Rule would create a wholly new concept of effectively shifting the long-established financial assurance obligations of current interest owners to predecessors.

BOEM's adopted regulations and longstanding implementation thereof *never* excused current interest holders from their primary responsibility to satisfy any supplemental financial assurance obligations merely due to the existence of a financially strong predecessor company in a chain of title. Rather, BOEM's regulations have subjected only current interest holders to additional financial security demands. *E.g.*, 30 C.F.R. § 556.900(a) ("Before BOEM will approve the assignment of a record title interest in an existing lease *to you* as the lessee, *you or another lessee for the lease must provide any supplemental financial assurance required by the Regional Director* ….") (emphasis added). The supplemental financial assurance regulation now at 30 C.F.R. § 556.901 was originally promulgated in 1993 at 30 C.F.R. § 256.61(d). 58 Fed. Reg. at 45,257-58, 45,262. It was recodified without substantive change in 1997 at 30 C.F.R. § 256.53(d). 62 Fed. Reg. 27,948, 27,951, 27,956 (May 22, 1997). It was recodified again

without substantive change in 2011 at 30 C.F.R. § 556.53, after BOEM and BSEE were each created out of the former Minerals Management Service ("MMS") in 2010. 76 Fed. Reg. 64,432, 64,450 (Oct. 18, 2011). It was recodified yet again without substantive change in 2016 at 30 C.F.R. § 556.901. 81 Fed. Reg. 18,112, 18,115-19 (Mar. 30, 2016). The Existing Rule in 2024 did not modify the most recently preceding numbering for this regulation.

Throughout this decades-long history of the OCS financial assurance program, nothing in BOEM's regulations enabled BOEM to consider the existence or financial strength of predecessors in the chain of title when determining whether it needed to demand supplemental financial assurance from a current interest holder. For example, the 1993 final rule prescribed that when requiring additional security BOEM "shall base the decision on an evaluation of the ability of *the lessee* to carry out its present and future financial obligations" under several factors pertinent only to that lessee. 30 C.F.R. § 256.61(d) (1993); 58 Fed. Reg. 45,255, 42,262 (Aug. 27, 1993). It further clarified that, following the effective date of an assignment, the "assignee" is liable "to furnish surety bonds" as specified in OCS leases and the regulations. 30 C.F.R. § 256.62 (1993). BOEM rejected excusing a current lessee's financial assurance obligation based on predecessor considerations—and BOEM therein only considered the context of a predecessor's voluntary and documented election to continue bond coverage. 55 Fed. Reg. 2,388, 2,390 (Jan. 24, 1990); 58 Fed. Reg. at 45,257. BOEM's Existing Rule consistently demands financial assurance only from existing interest holders. *E.g.*, 30 C.F.R. § 556.902(a) (requirements for "any surety bond or other financial assurance that you, as record title owner, operating rights owner, grant holder, or operator, provide"); *id.* § 556.907(h) (payment of current interest holder's forfeited financial assurance funds to a predecessor undertaking corrective action); *see also id.* §§ 556.713 (lease record title), 556.807 (lease operating rights).

The Proposed Rule identifies no evidence of BOEM previously employing its now-proposed approach to force predecessors to serve as involuntary sureties for current interest owners in lieu of the latter providing financial assurance. Not until its 2020 proposed rule did BOEM first contemplate such a concept—and even then BOEM ultimately and rightly rejected it based on further consideration and comments received. BOEM should again reject that brand-new concept in any final rule.

2. <u>The Proposed Rule's New Financial Assurance Obligation on Predecessors Is Unlawful.</u>

As written, proposed § 556.901(d)(4) would enable BOEM to waive any need for additional security from a current interest holder by simply ignoring its credit rating and instead jumping to the chain of title for a predecessor with a perceived adequate credit rating. This proposed regulatory text is nearly identical to what BOEM considered and rejected in 2024. It is just as misguided and unlawful now as it was then.

a. The Proposed Rule improperly conflates financial assurance and joint and several liability for accrued decommissioning obligations.

As noted above, and as the government has already conceded elsewhere, the Proposed Rule's core flaw is its conflation of distinct regulatory obligations. On one hand, as defined in the Existing Rule and unaltered by the Proposed Rule, "financial assurance" is a monetary

obligation to provide "a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or another form of security acceptable to the BOEM Regional Director, that is used to ensure compliance with obligations under the regulations in this part and under the terms of a lease, a RUE grant, or a pipeline ROW grant." 30 C.F.R. § 556.105 (defining terms used in 30 C.F.R. part 556). The financial assurance obligation occupies a dedicated regulatory subpart, 30 C.F.R. part 556 subpart I. As discussed above, the financial assurance obligation belongs, and has always belonged, solely to current interest holders. *E.g.*, 30 C.F.R. §§ 556.900(a), 556.902(a), 556.713, 556.807. And decommissioning is just one of several "obligations" covered by financial assurance. *E.g.*, *id.* § 556.902(a)(2) ("Any surety bond or other financial assurance … must … [g]uarantee compliance with *all* your obligations under the lease or grant, the regulations in chapters II and XII of this title, and all BOEM and BSEE orders.") (emphasis added).

On the other hand, the non-monetary obligation to decommission is principally prescribed in BSEE (not BOEM) regulations at 30 C.F.R. part 250 subpart Q. *See* 30 C.F.R. §§ 250.1701(a)-(c). Current BOEM regulations similarly provide that current and prior lease record title holders and operators are "jointly and severally liable" for "fulfilling all non-monetary obligations, including decommissioning obligations, which accrue while it holds record title interest." 30 C.F.R. § 556.604(d) (record title owners); *see also* § 556.605(e) (similar for operating rights owners). This decommissioning obligation nowhere obviates a current interest holder's obligation, or creates a predecessor obligation, to provide financial assurance ensuring performance of that and other lease obligations.

The Proposed Rule also overstates the nature of predecessors' decommissioning liability. At the outset, as the Proposed Rule recognizes, a predecessor is not liable at all for obligations accruing post-assignment, including for any infrastructure installed by the current interest holder. *E.g.*, 91 Fed. Reg. at 11,220 ("New facilities, or additions to existing facilities, that were not in existence at the time of any lease transfer are not obligations of a predecessor company….") Yet the Proposed Rule offers no solution to the practical problem of differentiating pre-assignment and post-assignment components of OCS operations for purposes of imposing supplemental financial assurance obligations on predecessors. This increases the risk of BOEM issuing overbroad performance orders to predecessors and BOEM ultimately being unable to obtain non-taxpayer funds to perform certain obligations.

In addition, BOEM and BSEE have always imposed operational requirements, including decommissioning, on current lease and grant holders and their operators in the first instance, and have looked to predecessors only when those current entities fail to perform. Current regulations (unaltered by the Proposed Rule) contain a condition precedent that "your assignee or a subsequent assignee fails to perform" an obligation before BOEM or BSEE may look to a predecessor. 30 C.F.R. §§ 556.710, 556.805. BOEM must approve all transfers of lease interests, including to ensure that the recipient can capably hold and operate the interest. 30 C.F.R. §§ 556.700, 556.800. BOEM's and BSEE's definition of "lessee" also supports that regulatory duties fall in the first instance on current interest owners. 30 C.F.R. § 556.105 ("a person who has entered into a lease with the United States to explore for, develop, and produce the leased minerals and is therefore a record title owner of the lease, or the BOEM-approved assignee-owner of a record title interest. The term lessee also includes the BOEM-approved sublessee- or assignee-owner of an operating rights interest in a lease."); *id.* § 250.105 (similar).

Moreover, 30 C.F.R. § 556.710 states that "[u]ntil there is a BOEM-approved assignment of interest, you, as the assignor remain liable for the performance of all lease obligations that accrued while you held record title interest, until all such obligations are fulfilled." The corollary is that, once BOEM approves the assignment, the performance obligation shifts to the assignee and no longer remains with the assignor in the first instance. The Proposed Rule recognizes this principle as well. *E.g.*, 91 Fed. Reg. at 11,217 ("*When a current lessee is unable to perform its obligations*, the Department's regulations at 30 CFR 556.604(d) and 556.605(e) hold current co-lessees responsible for all decommissioning obligations and predecessor lessees responsible for those decommissioning obligations that had accrued before they assigned their interests to others.") (emphasis added).

The Proposed Rule also erroneously presumes that all predecessors are, and have always been, liable for unperformed OCS decommissioning post-assignment, when in fact predecessor liability was not codified until 1997. *See* 30 C.F.R. § 256.62(f) (1997) (redesignated § 556.605 in 2011). The Proposed Rule's preamble begins its historical discussion in 1997, and does not even mention preceding rules in place when many of API's members fully divested their OCS interests to agency-approved assignees. The Department of the Interior ("DOI") issued an interpretative communication in 1988,[2] and again in 1989,[3] that specifically addressed the matter of retained assignor liability under earlier regulations (former 30 C.F.R. §§ 256.62(d) and (e)). DOI therein explained that the predecessor agency to BOEM and BSEE, the MMS, would *not* proceed against an assignor where its assignee failed to perform decommissioning obligations. Thus, there remains a substantial question whether pre-1997 assignors retain any responsibility for decommissioning—let alone jointly and severally with current interest owners—further undercutting the Proposed Rule's reliance on such liability to obviate financial assurance by current interest holders.

Further, it is worth noting that the financial assurance obligation serves a distinct function from the obligation to decommission. The government has so told a federal court in defending the Existing Rule: "The authority to require financial assurance is 'necessary' to Interior's administration of leasing under 43 U.S.C. § 1334(a) because the United States requires some mechanism to ensure it can recoup against lessees who violate the law or the terms of their contract. For similar reasons, financial assurance is 'necessary and proper' to prevent waste and conserve natural resources. 43 U.S.C. § 1334(a)." *Louisiana*, *supra*, Dkt. No. 58 at 18. Moreover, "[i]nsofar as the [Existing Rule] ensures a lessee is financially able to timely meet its decommissioning obligations, it is difficult to conjure a regulation *more* 'necessary and proper in order to provide for the … conservation of the natural resources of the [OCS],' and *more*

[2] June 6, 1988 Letter from MMS Director to Amoco Production Company ("It is our position that if the assignee is unable to fulfill its obligations to plug and abandon wells and remove facilities, that Interior will not proceed against the original lessee-assignor to perform those functions.").

[3] November 3, 1989 Memorandum re "Responsibility of Assignors and Assignees" from the MMS Associate Director for Offshore Minerals Management to the Regional Director, Gulf Region ("Once the Secretary's designee unconditionally approves the assignment of a lease, the assignee must be looked to for the fulfillment of 'all' obligations under the lease. Thus, MMS faces the same situation when a subsequent lessee (assignee) defaults in an obligation as it would face if the original lessee defaults in an obligation.").

necessary to the administration of leasing. 43 U.S.C. § 1334(a)." *Id.* at 18-19 (emphasis in original). The Existing Rule does not alter any existing joint and several liability, whereas the Proposed Rule would substitute such liability for a separate financial assurance obligation. BOEM in its Existing Rule declined to "rely on such companies as a backstop for far weaker lessees" (*id.* at 26), and BOEM countermanding that approach now would be reversible error.

b. Proposed § 556.901(d)(4) Is Impermissibly Retroactive.

Exacerbating its legal errors, the Proposed Rule's new obligation on predecessors to serve as involuntary sureties would be retroactive. It is well-established that retroactive rulemaking is legally suspect. Imposing unanticipated regulatory obligations on predecessors that divested their interests long ago violates these core principles of law and good governance. "Retroactivity is not favored in the law." *Landgraf v. Usi Film Prods*., 511 U.S. 244, 264 (1994) (quoting *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)). "The aim of the presumption is to avoid unnecessary post hoc changes to legal rules on which parties relied in shaping their primary conduct." *Republic of Austria v. Altmann*, 541 U.S. 677, 696 (2004). "[T]hese antiretroactivity concerns are most pressing in cases involving new provisions affecting contractual or property rights, matters in which predictability and stability are of prime importance." *Id.* at 693 (internal quotations omitted).

Consistently, "an agency may not promulgate retroactive rules absent express congressional authority." *Nat'l Min. Ass'n v. Dep't of Lab.*, 292 F.3d 849, 859 (D.C. Cir. 2002) (citing *Bowen*, 488 U.S. at 208). No statute, including the Outer Continental Shelf Lands Act ("OCSLA"), confers such express authority here. *E.g.*, 43 U.S.C. § 1334(a) (Interior prescribed or amended "rules and regulations shall, *as of their effective date*, apply to all operations conducted under a lease issued or maintained under the provisions of this subchapter") (emphasis added). "A provision operates retroactively when it 'impair[s] rights a party possessed when he acted, increase[s] a party's liability for past conduct, or impose[s] new duties with respect to transactions already completed.'" *Id.* (quoting *Landgraf*, 511 U.S. at 280). "In the administrative context, a rule is retroactive if it takes away or impairs vested rights acquired under existing law, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past." *Id.* (internal quotation marks and citations omitted). An agency's novel re-interpretation of its authority under a longstanding statute also is entitled to no deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024).

Here, the Proposed Rule creates new obligations on predecessors based on historical transactions already completed and approved by BOEM under regulations then in effect and on which the assigning parties properly relied at the time. Traditionally, OCS leases that were divested decades ago were sold to companies with substantial OCS assets in their portfolios, and agency regulations were in place to ensure that the buyers (i.e., the current assignees/owners) provided financial security to BOEM to safeguard compliance with their decommissioning obligations. Sellers reasonably and justifiably relied on the agency regulations requiring assignees to provide adequate financial security and typically did not require private financial security as a condition of the sale. Rarely did these buyers default on their decommissioning obligations and bankruptcies were rare.

Today, circumstances are different. Many OCS property buyers in the secondary market, often backed by large private equity lenders, create limited liability companies ("LLCs") to hold their leasehold interests. Often these LLCs are created only for a specific lease or field. When producing properties are sold, the purchase price often is *reduced* due to the decommissioning liabilities being assumed by the purchaser. The Proposed Rule furnishes no claimed "evidence" or details of its contrary passing assertion that "sellers on the secondary OCS oil and gas market are now accounting for their contingent and retained decommissioning liabilities through different mechanisms in the structure of their sales, such as by requiring their own surety bonds or requiring funding of a trust account at the time of sale." 91 Fed. Reg. at 11,221. Nor does it provide any support that such was the case decades ago before aging OCS infrastructure and BOEM's more contemporaneous focus on decommissioning obligations.

The Proposed Rule in fact would provide a greater opportunity for these more recent purchasers to default on their decommissioning obligations, thereby penalizing the sellers by potentially requiring the sellers to pay for decommissioning twice—once when they sold the property at a reduced price that accounted for the buyer's assumed decommissioning obligations, and a second time when the buyer defaults on its decommissioning obligations because BSEE and BOEM have set up predecessors as involuntary sureties. BOEM's proposal to look solely to predecessors' financial capacity to underpin the financial strength of a financially weak lessee or grant holder therefore could ultimately leave to the predecessor the financial decommissioning burden of current lessees that would not be held accountable or responsible for such costs.

Assignors might have structured their transactions differently had the proposed changes to the regulations been in place at the time. But because the Proposed Rule imposes added risk on assignors retroactively, they had no opportunity to account for this new exposure in their transactions. The Proposed Rule's passing remark that "it would allow market participants to arrange and price these OCS liabilities without unnecessary government interference, while still affording adequate protection to the taxpayer" (91 Fed. Reg. at 11,220) is cold comfort because at this point it overwhelmingly targets large numbers of arrangements and pricing *that already occurred*. Indeed, as the Proposed Rule elsewhere concedes, the only action that predecessors could realistically take to "internalize" their "increased risk" absent current interest owners' financial assurance would be to "set aside or otherwise idle capital" for decommissioning. 91 Fed. Reg. at 11,236. Therefore, to address retroactivity concerns if BOEM were to adopt proposed § 556.901(d)(4), BOEM at a minimum should clarify that it applies only to lease or grant interests assigned after the effective date of any final rule.

However, it remains API's position that, even prospectively, the financial strength of predecessors should not be a substitute for financial assurance provided by current owners for meeting all of their lease obligations. To further the advancement of the Administration's objective of energy dominance, API supports a robust, active secondary market to conserve the natural resources of the Gulf of America with the appropriate rules covering financial assurance.

c. Proposed § 556.901(d)(4) Is an Unexplained Change in Position.

The text of § 556.901(d)(4) in the Proposed Rule is nearly identical to the text of § 556.901(d)(2)(iii) that BOEM proposed in 2020 and then roundly rejected in 2023 and 2024.

BOEM's reincarnation of this rejected concept less than two years later would be an arbitrary change of position and thus unlawful under the Administrative Procedure Act ("APA").

As the Supreme Court and other courts have repeatedly affirmed, "the APA requires an agency to provide more substantial justification when its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary and capricious to ignore such matters." *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 106 (2015). Rather than simply disavowing prior findings, BOEM must ensure its Proposed Rule rests on substantial evidence, is administratively workable, and respects industry reliance interests. *See Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (in cases of policy reversals, "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy")).

Here, the Proposed Rule satisfies none of the requisite criteria for BOEM to suddenly begin relying upon predecessors' financial strength rather than demanding supplemental financial assurance from current interest owners not meeting the requisite criteria. First, BOEM does not even recognize its change in position, wrongly asserting that its novel proposal reflects its prior practice. Second, BOEM offers no evidence or justification for its proposal beyond a couple of anecdotal comments criticizing the proposed version of the Existing Rule and BOEM's nakedly stated (and failed) aims to reduce regulatory burdens. Third, BOEM fails to explain why its well-founded justifications for dismissing predecessor considerations in its financial assurance decisions no longer apply. For example, as the Existing Rule's preamble explained:

> Omitting the existence of predecessor lessees from the analysis of whether to waive the requirement of supplemental financial assurance for a current lessee—the approach being finalized here—addresses several associated issues. It ensures that the current lessees have the financial capability to fulfill their decommissioning obligations. It also eliminates the incentive to use joint and several liability as an excuse to delay setting aside funds to pay for predictable decommissioning costs. This approach does not change or undermine joint and several liability; it retains BOEM's and BSEE's authority to pursue predecessor lessees for the performance of decommissioning.

89 Fed. Reg. at 31,554. Likewise, the government represented in federal court that the Existing Rule's "benefits accrue not merely because the increased bonding will protect the United States in the event that a lessee is solely liable or has a financially strong predecessor that later becomes unable to perform, but also because the increased bonding will incentivize current lessees to operate responsibly as a means to timely decommission, thereby decreasing the cost of individual decommissioning." *Louisiana*, *supra*, Dkt. No. 58 at 22-23. Fourth, the Proposed Rule acknowledges yet summarily disregards multiple GAO findings calling for more robust financial assurance from lessees on the OCS, which the Existing Rule achieved but the Proposed Rule would undo. 91 Fed. Reg. at 11,217-18. Finally, as discussed above, the Proposed Rule would

have real repercussions on the reasonable reliance interests of predecessors that expected BOEM to uphold current interest holders' financial assurance obligations as the agency had for decades.

d. Proposed § 556.901(d)(4) Is Unsupported and Internally Inconsistent.

For similar reasons as above, proposed § 556.901(d)(4) regarding predecessors is arbitrary and capricious also because it is unsupported by the record. The Proposed Rule makes no detailed factual or legal findings to support its sudden reversal of the Existing Rule. Its bare conclusions and silence do not suffice. *E.g.*, *McDonnell Douglas Corp. v. Dep't of Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) ("[W]e do not defer to the agency's conclusory or unsupported suppositions."). The Proposed Rule includes, but is not limited to, the following unexplained deficiencies.

BOEM cites and ascribes seminal importance to only a couple of 2023 comments critical of what became the Existing Rule. 91 Fed. Reg. at 11,215. Yet it offers no critical analysis of these assertions. It also omits that a federal court essentially dismissed these stated concerns in denying a preliminary injunction of the Existing Rule. *Louisiana*, 2025 WL 761743, at *6 ("vaguely referencing compliance measures taken even before demand letters have been issued, falls far short of" the harm standard); *id.* ("unresolved issues prevent the court from finding that plaintiffs have a "substantial likelihood of success on the merits"). Nor does it discuss API's and its members' own submitted comments further justifying the continued regulatory exclusion of predecessor considerations for supplemental financial assurance on the OCS.

The Proposed Rule does not define or otherwise explain what it means by a "Tier 1" or "Tier 2" entity. 91 Fed. Reg. at 11,228-29, 11,236-37. It also appears to erroneously conflate all subsidiaries of oil and gas companies for purposes of applying credit rating thresholds. In reality, not all subsidiaries, even of major oil and gas companies, are investment-grade. In many circumstances, the predecessor lease or grant interest holder was not a major company with an investment-grade credit rating, but was an affiliated entity of the major company that did not itself hold an investment-grade credit rating and does not carry such a rating now. The same is true for many current interest holders that are subsidiaries or affiliates of companies with an investment-grade credit rating but do not themselves have such a rating. Moreover, many prior lease and grant interest holders that were affiliated with a major oil company and assigned away their lease interests years or even decades ago no longer exist. Some existing interest owners also may be financially sound and capable of providing supplemental financial assurance (though they may be below the credit rating standard that precludes the need to provide supplemental financial assurance), and thus there is no rational justification for painting with a broad brush and automatically foisting the financial assurance obligation on their predecessor interest owners. The Proposed Rule acknowledges none of this. Nor does it account for the basic legal tenet that corporate entities should remain distinct. *E.g.*, *United States v. Bestfoods*, 524 U.S. 51, 62 ("It is a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries."). To the extent that a predecessor entity no longer exists, BOEM cannot violate this principle by looking to a perceived parent entity (and even the Proposed Rule does not suggest otherwise).

The Proposed Rule again does not substantiate its assumption that assignors have priced decommissioning into their prior transactions or established private bonding, and ignores the reality and variety of OCS business transactions. Assignors reasonably and properly relied upon the fact that under agency regulations (including 30 C.F.R. § 556.713, "As assignee, you must comply with all the terms and conditions of the lease and regulations issued under OCSLA …"), the new assignee would be required to provide financial assurance to the agency for decommissioning obligations, and that the obligation would not fall back on the assignors. Assignors therefore entered transactions expecting that the agency would fulfill its responsibilities to ensure that assignees would fulfill financial assurance and decommissioning requirements, rather than assuming that their assignees ultimately would default. Thus, the assignor reasonably did not uniformly require the assignee to provide a private bond to the assignor to protect the assignor in the event the assignee later defaulted on some or all of its obligations. Moreover, assignors have no control over BOEM's approval of subsequent assignments of the same OCS interest to other persons, which may occur years or even decades after the initial assignment. The initial assignor may have assigned its lease to a financially capable assignee that later assigned to a less than financially capable assignee. Nevertheless, the Proposed Rule could result in an assignor, or multiple assignors in a chain of title, effectively insuring for decommissioning twice over by excusing assignees from adequately planning for and funding performance of their decommissioning and other obligations that they find easier and cheaper to foist onto predecessors.

The Proposed Rule also neither recognizes nor reconciles coastal States' own laws requiring current lessees to provide financial assurance for oil and gas operations within offshore State waters, which (like BOEM's Existing Rule) contain no exclusion based on the financial wherewithal of predecessors. *See* 26-003 Miss. Code R. § OS-1.11; Texas Nat. Res. Code §§ 91.104, 91.105, 91.9041, 91.9042; La. Admin. Code tit. 43 § XIX-104.

In addition, the Proposed Rule overstates its benefits by mischaracterizing the requirements of the Existing Rule as somehow newly imposing $6.9 billion in additional burdens on current interest holders. That is incorrect for several reasons. First, the Existing Rule *narrowed* the universe of current interest holders from whom BOEM may demand financial assurance by clarifying the financial strength criteria to waive that obligation. That is, the Existing Rule subjected no company to greater financial assurance burdens; rather, BOEM could demand the same financial assurance from the same companies under its preexisting rules as it can under the Existing Rule. Second, the term "may" in existing § 556.901(d) is inherently discretionary; BOEM did not accept API's recommendation to utilize compulsory language that BOEM "will" demand supplemental financial assurance when current interest holders fail to meet the threshold credit ratings or minimum ratio of proved reserves to decommissioning costs. Third, as the Proposed Rule recognizes, the true cost of providing financial assurance (e.g., bond premiums) is typically less than the amount of financial assurance. *E.g.*, 91 Fed. Reg. at 11,226 (claiming "savings" in undiscounted "annual premiums" of "$508 million," not billions of dollars). Finally, the Proposed Rule simply assumes that current interest holders will invest all of these supposed savings into further OCS oil and gas production, regardless of the economic or technical feasibility of doing so, versus the option of simply pocketing the savings or pursuing other business opportunities. Like death and taxes, decommissioning costs ultimately are a certainty, and the Proposed Rule encourages current interest owners to ignore those obligations for their own benefit, thereby ineluctably foisting them on predecessors.

On the flip side of the coin, the Proposed Rule understates its own imposed burdens. While the Proposed Rule touts current interest holders' opportunity cost of providing financial assurance in lieu of investing in greater oil and gas production, predecessors likewise face opportunity cost by being forced to subsidize current interest holders who fail to fund and perform their obligations. In fact, in deeper water where API member company producers predominantly operate, production volumes are larger and generate more royalty and other revenue. The Proposed Rule admits that it may tie up substantial capital for predecessors—but then wholly brushes aside this internal contradiction. *E.g.*, 91 Fed. Reg. at 11,236. As the Proposed Rule further concedes, this could impair production of OCS oil and gas going forward. *E.g.*, *id.*; *see also* attached Rystad Energy study (including opportunity costs lost under the Proposed Rule). The Proposed Rule fails to mention its creation of perverse incentives for economic waste by excusing current interest holders from proper planning and performance of their decommissioning and other obligations, and potentially increasing the costs of performance, whenever a financially strong predecessor appears in the chain of title. Again, the Proposed Rule fails to explain how predecessors can adjust their behavior for past transactions to account for the Proposed Rule if finalized. And BOEM overlooks that in no event can predecessors be held liable for the full range of lease and grant obligations covered by current interest holders' financial assurance, including royalty and operational violations; to allow current interest owners to avoid their financial assurance obligations thus increases the risk of unaccounted costs to taxpayers from defaulting current interest holders, including situations such as bankruptcies where insufficient supplemental financial assurance and general bonding exists to cover unpaid royalties and other obligations held solely by the defaulting current interest holders. Additionally, the Proposed Rule may lead to a business decision by the primary owner of an initial discovery to decommission an asset before the secondary market is explored. This would impact the conservation of resources in the Gulf of America and reduce the amount of new capital invested in an existing asset to explore and produce secondary formations via infrastructure that was funded based on the primary productive reservoir.

For any or all of the above reasons, BOEM should omit its proposed § 556.901(d)(4) from any final rule.

B. § 556.901(d)(1)-(2) Credit rating threshold for supplemental financial assurance.

API supports BOEM's continued use of credit ratings for current interest holders as under the Existing Rule. But consistent with its above comments, API opposes BOEM's proposed application of those criteria to predecessors for financial assurance purposes. Further, API supports only looking to the credit rating of the expressly named entity holding the lease or grant interest. API refers BOEM to comments submitted by individual API members regarding these credit rating standards.

If BOEM retains the option for a proxy credit rating when an issuer credit rating is unavailable, any proxy credit rating analysis should yield similar results as would an issuer credit rating. As the Existing Rule states (and the Proposed Rule retains), a proxy credit rating may be utilized where it "reflects creditworthiness equivalent" to an issuer credit rating. 30 C.F.R. § 556.901(d)(2). However, the financial information specified in the regulation—"an income statement, balance sheet, statement of cash flows, and the auditor's certificate"—are generally

insufficient for accurate proxy credit rating determinations. That conclusion is consistent with the attached Langford study. Moreover, API is unaware of any existing proxy credit rating tool on the market that meets the standard of being "equivalent" to an issuer credit rating. BOEM's proposed consideration of predecessors' proxy credit ratings is problematic additionally because BOEM has no demonstrated authority or means to obtain from predecessors the information necessary to prepare such proxies.

The attached report from Longford CRA—a team of former senior credit rating analysts from S&P and Moody's, investment bankers, and finance academics—evaluates the reliability of data-driven proxy credit scores, including those generated by S&P Global Market Intelligence's Capital IQ RiskGauge credit model, in the context of BOEM's financial assurance program. Longford's analysis raises substantial concerns about the use of such proxy scores as a basis for consequential regulatory determinations. As an initial matter, Longford emphasizes that the Capital IQ credit model is produced by S&P Global Market Intelligence, which is organizationally and editorially separate from S&P Global Ratings, where analyst-led rating committees assign the Issuer Credit Ratings ("ICRs") relied upon in the debt capital markets and other credit risk applications. This distinction is critical: the proxy scores generated by the Capital IQ system are primarily quantitative, backward-looking, and point-in-time assessments that do not incorporate the broad range of other factors—such as management strategy, governance, geopolitical risk, ownership structure, M&A activity, rock quality, operating basin characteristics, and regulatory considerations—that comprise approximately 50% of the rating outcome for E&P companies under S&P's own Oil & Gas Exploration and Production methodology. Longford's findings demonstrate that the correlation between Capital IQ credit model scores and analyst-assigned ICRs is notably poor in the energy sector: only 22% of credit model-generated scores are an exact match with the ICR, and only 64% match within one notch, while S&P's Probability of Default Model Fundamentals indicator correlates to just 19% of ICRs and only 50% within one notch—among the lowest correlations of any corporate sector in S&P's rated universe. The practical consequences of these gaps are illustrated by Longford's data set, which shows that proxy scores for major operators with significant OCS exposure diverge materially from their analyst-assigned ratings—meaning the credit model systematically understates the creditworthiness of the financially strongest companies in the basin. Conversely, the model can overstate the creditworthiness of weaker companies, as demonstrated by Fieldwood Energy, which received a proxy score of bb- despite having filed for Chapter 11 bankruptcy in 2020.

API urges BOEM to recognize these analytical limitations and ensure that its financial assurance evaluation framework relies on formal nationally recognized statistical rating organization-issued credit ratings or, where unavailable, a proxy credit rating determination made by the Regional Director that incorporates the kind of holistic business and financial risk analysis that data-driven credit models alone cannot provide. To the extent that BOEM or any commenter suggests that Capital IQ or similar credit analytics tools can serve as a substitute for analyst-led credit ratings in making supplemental financial assurance determinations, the Longford study demonstrates that such reliance would introduce unacceptable error rates and risk misjudging companies on both the upside and the downside—outcomes that could either impose unjustified capital burdens on financially sound operators or, worse, underestimate the risk posed by financially distressed lessees to the American taxpayer.

Moreover, BOEM should provide that any proxy credit determination will be made public. Doing so will allow co-lessees and co-grantees to rely on that determination and avoid demands for duplicative financial assurance. Lastly, BOEM should reevaluate credits ratings at least annually, including when a current lessee or grantee becomes aware of an event that would likely result in a material change to its credit rating.

API refers BOEM to the attached study by Longford CRA on proxy credit ratings and to individual API member comments on this topic.

Recommended Revisions:

§ 556.901 Base and supplemental financial assurance

…

(d)

…

(2) You have a proxy credit rating determined and published by the Regional Director that they determine reflects creditworthiness equivalent to an issuer credit rating greater than or equal to [INSERT CREDIT LEVEL(S) SELECTED IN FINAL RULE]~~either BB- from S&P Global Ratings, Ba3 from Moody's Investor Service~~, or the equivalent rating from another nationally recognized statistical rating organization, which must be based on audited financial information for the most recent fiscal year (which must include an income statement, balance sheet, statement of cash flows, and the auditor's certificate) and utilize a holistic rather than a solely data-driven credit model.

C. § 556.901(d)(5)(i), (f) BSEE probabilistic estimates of decommissioning costs

API believes that, as reflected in the Existing Rule (30 C.F.R. §§ 556.901(d)(4)(i), (f)), BSEE's P70 probabilistic decommissioning cost is the appropriate minimum level for BOEM to utilize both in applying the reserves ratio criterion and, when supplemental financial assurance is warranted, in setting the amount of the demand. BOEM thus should remove its proposed amendments of these regulatory provisions to utilize the P50 level estimate instead. Using at least a P70 decommissioning cost as the threshold for setting required supplemental financial assurance strikes a reasonable balance between risk to taxpayers and OCS developers. Actual decommissioning costs may exceed even a P90 estimate—especially when a more knowledgeable current operator defaults to a decades-removed predecessor. By contrast, a P50 threshold would expose taxpayers and predecessors to unwarranted risk, as it inherently would understate decommissioning costs in *half* of situations and create a widening gap of responsibility. Indeed, in its Existing Rule, BOEM recently rejected arguments from financially weak operators stating that their estimates of decommissioning costs were closer to P50 than P70 values. 89 Fed. Reg. at 31,553. After all, under the Proposed Rule, such operators need not protect against the risk of actual decommissioning costs being greater than estimated—that risk would transfer to financially stronger predecessors or the government. API reiterates the need for BSEE to continue refining its estimates based on actual data, so that the actual costs will land

within the probabilistic range. API's members also reserve comments or objections to the accuracy of BSEE estimates for any specific lease or grant, recognizing that they are not the subject of this Proposed Rule.

D. § 556.901(h) Phase-in period

API supports the Existing Rule's phased 3-year compliance option to mitigate potential significant risk to companies associated with supplemental financial assurance demands thereunder. However, API does not support restarting across-the-board a new 3-year period, either from May 8, 2026 as stated in proposed § 556.901(h) (the initial due date for comments on the Proposed Rule) or from the date any final rule is issued. Current interest owners already should have been aware of the regulatory requirements during the past two years. The Proposed Rule only reduces the scope of required financial assurance by removing or lowering thresholds without altering the Existing Rule's basic mechanics for assessing financial strength or the reserves ratio. As evidenced by court filings, the government also voluntarily committed to not issue any new supplemental financial assurance demands under the Existing Rule since at least April 2025. Further years-long delay in obtaining financial assurance from current interest holders across-the-board is unwarranted. With that said, BOEM should provide the same or another phased option to parties that obtain OCS lease or grant interests in the first three years after implementation of the Existing Rule.

E. § 556.902(e)(3) Dual-obligee financial assurance instruments

API previously recommended that BOEM clarify that lessees and grantees have the option to utilize dual-obligee financial assurance instruments, and commends BOEM for its proposal to now do so expressly in its regulatory text at 30 C.F.R. § 556.902(e)(3). Also, BOEM should take this opportunity to clarify that a dual-obligee instrument should not operate to hold or divert funds to BOEM rather than to a dual obligee or other predecessor performing a non-monetary obligation if the obligor/current interest holder fails to perform. To this end, API recommends further clarification to related provisions at 30 C.F.R. §§ 556.902(a) and 556.907(h) to facilitate priority release of funds from a lease- and grant-specific security instrument to entities performing decommissioning of that lease or grant, and provide that use of such amounts should be primary to any expenditure by predecessors toward the same obligation.

Recommended Revisions:

§ 556.902 General requirements for bonds or other financial assurance.

> (a) Any surety bond or other financial assurance that you, as record title owner, operating rights owner, grant holder, or operator, provide under this part, or under 30 CFR part 550, must:
>
> (1) Be payable upon demand to the Regional Director <u>or to a party other than current interest holders that in response to a BOEM or BSEE order actually performs decommissioning or other corrective action</u>;

(2) Guarantee compliance with all your obligations under the lease or grant, the regulations under 30 CFR chapters II and XII, and all BOEM and BSEE orders; ~~and~~

(3) Guarantee compliance with the obligations of all record title owners, operating rights owners, and operators on the lease, and all grant-holders on a grant; and

(4) Be primary to expenditure by any predecessor toward performance of the same obligation covered by the financial assurance.

…

§ 556.907 Forfeiture of bonds or other financial assurance.

…

(h) The Regional Director ~~may~~will pay the funds from the forfeited financial assurance to a co- or predecessor lessee or third party who is taking the corrective action required to obtain partial or full compliance with the regulations and the terms of your lease or grant.

F. § 556.908 Short-term decommissioning obligations

API is generally supportive of the Proposed Rule's concept that financial assurance for decommissioning is unnecessary when performance of decommissioning is underway and will be soon completed. As outlined in this proposed provision, it is critical that BOEM closely monitor its implementation to ensure it is not utilized as a means for current interest holders to avoid financial assurance that otherwise would be warranted. As such, *both* a contract *and* a schedule for decommissioning (rather than just one of them) should be required to avoid a demand for supplemental financial assurance.

Recommended Revisions:

§ 556.908 Short-term decommissioning obligations.

(a) In instances where decommissioning is scheduled to occur within one year of a new supplemental financial assurance demand, the Regional Director has the discretion to accept a third-party decommissioning contract and~~/or~~ a decommissioning schedule from those entities in lieu of supplemental financial assurance.

G. § 550.166(b)(4) RUEs

API opposes the Proposed Rule's proposed consideration of predecessors in BOEM financial assurance demands for RUEs, for the same reasons explained above for leases.

H. § 550.1011(d)(1) ROWs

API opposes the Proposed Rule's proposed consideration of predecessors in BOEM financial assurance demands for pipeline ROWs, for the same reasons explained above for

leases. API supports BOEM's proposal to consider the value of reserves from other properties, if those properties are serviced by the ROW. This proposed change preserves the concept that financial assurance should be property-specific, including based on a unit or field comprising multiple OCS lease blocks. BOEM should further clarify that this linkage condition is satisfied by production of those reserves flowing through the pipeline ROW, but not by mere common ownership or a tangential relationship.

INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

As discussed throughout API's comments, the Proposed Rule overstates its benefits and understates its burdens. Per the Proposed Rule and RIA, the Proposed Rule purports to save only a handful of annual premiums by current interest holders for certain financial assurance instruments, while ignoring its true costs to predecessor companies, assignees, and taxpayers. In particular, BOEM's proposal to rely on the financial strength of predecessor companies merely shifts, and may magnify, financial exposure rather than eliminating it for the industry. As such, the Proposed Rule's "deregulatory" label is a misnomer. *See* 91 Fed. Reg. at 11,220, 11,225, 11,228, 11,237). It also should not qualify as "deregulation" under Executive Order 14192. *See id.* at 11,237. In reality, the Proposed Rule likely will result in increased net costs and burdens.

Several points illustrate BOEM's misallocation of costs and benefits in the Proposed Rule and RIA. First, BOEM recognizes that the Proposed Rule would add costs for predecessor companies by automatically excusing current interest owners from providing financial assurance based on the perceived financial strength of predecessors in the chain of title. *E.g.*, 91 Fed. Reg. at 11,236 ("in the event of a lessee or grantee default, there is an increased likelihood that a predecessor lessee or the Federal Government would assume decommissioning liability"); *id.* ("Tier 1 predecessors may be required to set aside additional capital for decommissioning obligations."). But the Proposed Rule provides no meaningful analysis of these transferred costs to predecessors, such as possibly greater capital reservation, higher cost of capital, constrained investment capacity, and distorted development decisions. *E.g., id.* ("BOEM does not monetize or quantify potential transfers under the proposed rule."). Nor does BOEM explain how predecessors could adjust their behavior for already completed transactions, other than by tying up capital that the Proposed Rule purports to liberate. *E.g.*, *id.* ("These Tier 1 companies, which would see an increased risk of being called upon to perform, would theoretically internalize this risk into their decision-making processes and may set aside or otherwise idle capital to prepare for their contingent liabilities.").

Second, BOEM simply assumes that it can accurately evaluate predecessors' financial strength, when there exists no mechanism or obligation for BOEM to obtain such information about predecessors. Exacerbating this problem, credit ratings for parent entities often differ substantially from an affiliate that may be the relevant predecessor lessee or grantee. Thus the Proposed Rule may overstate BOEM's ability to compel predecessors to fully perform a current interest holder's defaulted obligations, and thus understate the effects of bypassing current financial assurance.

Finally, even for future transactions that could adapt to the Proposed Rule (whereas all completed transactions cannot), assignees would realize zero net savings because assignors

would inexorably demand financial assurance from assignees where BOEM now could not do so based solely on the existence of the financially strong predecessor in the chain of title. Assignors would especially need to protect themselves from any liability stemming from future assignments outside their control where BOEM waives the new assignee's obligation to provide financial assurance. As the Proposed Rule concedes, these dynamics could chill assignments of leases and grants altogether. 91 Fed. Reg. at 11,236 ("OCS investment may be deterred by discouraging Tier 1 companies from farm-in/out deals with Tier 2 companies or prompting earlier infrastructure decommissioning when project economics fall below their NPV thresholds.").

To provide fuller context, API refers BOEM to the attached economic study by Rystad Energy discussing OCS leasing and production activities and investments, and to API individual members' comments, all of which BOEM should consider prior to issuing any final rule.

RESPONSES TO BOEM PREAMBLE QUESTIONS

API's above comments provide contextual responses to BOEM's various specific requests for comment in its preamble to the Proposed Rule. For clarity and comprehensiveness, API also provides the below separate responses on topics identified in Section VI of the Proposed Rule's preamble (reproduced in italicized, quoted text).

BOEM Question (91 Fed. Reg. at 11,223): "BOEM is soliciting comments on whether the 3-to-1 ratio remains the appropriate threshold."

API Response: API supports the Existing Rule's test using the value of provided oil and gas reserves exceeding three times the decommissioning costs in BOEM's evaluation of the financial ability of the current lessee or pipeline ROW grantee to fulfill its decommissioning obligations. Retaining this test will allow BOEM to know when a producing lease is still generating sufficient revenue to meet current and potential future lease obligations. Setting a lower ratio and allowing current interest owners to reduce lease reserves until leases can no longer be sold, without setting aside funds to cover decommissioning obligations, would encourage defaults and create greater exposure for predecessors as well as for taxpayers. BOEM should further clarify how it will monitor to ensure that reserves are tied to specific lease obligations, and how often BOEM will reassess this ratio.

BOEM Question (91 Fed. Reg. at 11,223-24): "[T]he Department is proposing to retain the available 3-year phase-in period for implementation of new requirements in 30 CFR 556.901(h), but starting on the date this rulemaking is finalized. BOEM specifically solicits comments regarding this approach from potentially affected parties, and requests comments on how the new supplemental financial assurance demands could be most effectively implemented to minimize any unnecessarily adverse effects."

API Response: See comments above on proposed § 556.901(h). API does not support a new, across-the-board 3-year phase-in period as proposed. There has already been considerable delay in current interest holders providing requisite financial assurance, and demands should promptly issue under the Existing Rule or any later final rule without further unnecessary delay.

BOEM Question (91 Fed. Reg. at 11,228): "In summary, BOEM specifically requests comments on the following provisions: consideration of the financial strength of predecessors when determining if a current lessee or grant holder must provide supplemental financial assurance"

API Response: See above comments on proposed § 556.901(d)(4) and general comments. In no circumstances should BOEM consider the financial strength of predecessors when determining supplemental financial assurance for a current lessee or grantee. BOEM's determination should be based solely on the financial strength of the current interest holder to perform all of its obligations.

BOEM Question (91 Fed. Reg. at 11,228): "allowing the Regional Director's discretion to consider the combined decommissioning liability of the ROW and the lease or leases that the ROW grant holder holds to determine if the total decommissioning liability meets the minimum ratio to waive supplemental financial assurance"

API Response: See comments above on proposed § 550.1011(d)(1). API supports this provision as stated in the Proposed Rule's regulatory language providing for a nexus between the lease served by the pipeline ROW, rather than any lease that the ROW grantee holds anywhere on the OCS.

BOEM Question (91 Fed. Reg. at 11,228): "revising the credit rating threshold from BBB – to BB – (S&P) when determining the financial strength of current lessees and grant holders, and predecessor lessees and grant holders"

API Response: See comments above on proposed § 550.901(d)(1)-(2). API opposes assessment of predecessors for financial assurance purposes. As to current interest holders, API defers to its individual members' comments on this topic.

BOEM Question (91 Fed. Reg. at 11,228): "allowing entities to provide a proposed payment schedule for their potential supplemental financial assurance demands prior to receipt of an official demand letter and BOEM forgoing the official demand letter"

API Response: This proposal is acceptable if its implementation does not delay or reduce supplemental financial assurance demands that are otherwise warranted under the Existing Rule's criteria.

BOEM Question (91 Fed. Reg. at 11,228): "allowing the Regional Director discretion to accept a third-party decommissioning contract or a decommissioning schedule in lieu of supplemental financial assurance for short-term decommissioning obligations"

API Response: See comments above on proposed § 556.908. A decommissioning schedule alone is inadequate. Otherwise, this proposal is acceptable if BOEM maintains close oversight over its implementation to ensure timely performance by current interest holders.

BOEM Question (91 Fed. Reg. at 11,228): "removal of the appeal bond requirement;"

API Response: API has no comment on this proposed provision at this time. API defers to its individual members' comments on this topic.

BOEM Question (91 Fed. Reg. at 11,228): "alternatives in a regulatory design where BOEM could incorporate a risk diversified total portfolio approach or other innovative de-regulatory approaches"

API Response: The Existing Rule already sets forth a simplified and robust approach for financial assurance based on forward-looking and verifiable assessment of current interest holders' financial strength to perform all of their obligations when due.

When BOEM in 2020 raised (before rejecting) predecessor considerations for its financial assurance regulations, it did so in conjunction with a BSEE proposal to approach predecessors in reverse chronological order ("RCO") of their prior held interests to perform decommissioning if a current interest owner failed to perform. *See* 85 Fed. Reg. at 65,932 (proposed 30 C.F.R. § 250.1708(a)), 65,909 ("Under this approach, the most recent predecessors would receive orders to conduct decommissioning first, before BSEE turns to predecessors more remote in time."). API continues to support this RCO concept. It could help ensure that impacts more equitably fall on predecessors most recently involved and familiar with the facilities and the assignee, rather than in the first instance on entities far earlier in the chain of title. Indeed, recent interest owners will have responsibility for more of the wells and facilities since interest owners retain post-assignment responsibility to decommission only their *accrued* obligations, i.e., only those wells and facilities on the lease or grant that existed at the time they held their lease or grant interest. 30 C.F.R. §§ 250.1701(a), 556.604(d), 556.710. Also, recent predecessors are more likely than earlier predecessors to have access to technical information on the status of wells, pipelines and platforms, though as explained above the on-the-ground situation may vary by lease or grant, and earlier predecessors may benefit from receiving notice apprising them of BSEE demands to recent predecessors. Yet, the Proposed Rule divorces and omits any RCO provision, BSEE is not yet a participant in this rulemaking, and this concept warrants a proposal for public comment. Accordingly, before BOEM finalizes any rule, BSEE should develop and propose amendments to its regulations at 30 C.F.R. part 250 subpart Q to codify the RCO concept. And those amendments should reflect API's feedback on the 2020 proposed provision to fully effectuate this RCO concept.

BOEM Question (91 Fed. Reg. at 11,228): "explicitly allowing dual-obligee financial assurance instruments"

API Response: See comments above on proposed § 556.902(e)(3). API supports this proposal.

BOEM Question (91 Fed. Reg. at 11,228): "Additionally, BOEM requests comments on the following topics associated with regulatory impacts: if the reliance of Tier 1 predecessors increases the moral hazard risk of current Tier 2 lessees and grant holders diverting capital to activities other than pending decommissioning obligations"

API Response: See above comments on proposed § 556.901(d)(4) and general comments. API concurs with this fundamental concern. The Proposed Rule would encourage this very

adverse result, and its consideration of predecessors for financial assurance thus should be removed from any final rule.

BOEM Question (91 Fed. Reg. at 11,228): "methods to quantify benefits other than bon [sic] premium cost savings"

API Response: See above comments on proposed § 556.901(d)(4) and general comments. BOEM should reexamine the purported benefits of the proposed rule, which would yield no real "savings," but instead undisclosed net burdens.

BOEM Question (91 Fed. Reg. at 11,228): "how companies would deploy capital that would have previously been spent on financial assurance premiums that may become available as a result of the rule, if finalized"

API Response: See comments above on proposed § 556.901(d)(4). The Proposed Rule offers no evidence for its assumptions that current interest owners excused from providing financial assurance would invest more capital into OCS oil and gas leasing and production and fulfill their existing obligations, or that the rule as proposed would avoid creating an incentive to drain resources from late-in-life leases. Meanwhile, the Proposed Rule necessarily would newly and unlawfully shift financial assurance burdens to predecessors by making them involuntary sureties for current owners' operations. The Proposed Rule's assumptions seem to be based on a flawed premise—that financially weak operators and lessees (predominantly on the shallow water shelf where the financial insurance premiums would most likely be applicable) would use those savings for reinvestment. The Rystad data strongly suggest that the redeployment of freed capital will differ significantly between such entities and API members (with operations more heavily concentrated in the deepwater). Deepwater operators have historically reinvested approximately 40% of production revenues back into capital expenditures, supported by a robust pipeline of greenfield developments and tieback extensions that is projected to sustain over $100 billion in deepwater investment over the coming decade. In contrast, shallow water operators—who face a structurally declining production base that has fallen 95% since 2000, aging infrastructure where 58% of remaining structures exceed 40 years of age, and shelf capex that is almost entirely confined to brownfield maintenance among a small group of specialist independents—were far less likely to redeploy freed capital into new OCS exploration and production. The Rystad study clearly shows that spudded wells on the shelf have gone to near zero by the mid-2020s and that new structure installations on the shelf are negligible today.

BOEM Question (91 Fed. Reg. at 11,228): "additional impacts and unintended consequences BOEM did not consider, including any impacts to existing predecessors who may be in strong financial positions;"

API Response: See above comments on proposed § 556.901(d)(4) and general comments, and the attached Rystad Energy study regarding the Proposed Rule's burdens and lost opportunity costs on predecessors and OCS activities. The Proposed Rule's elimination of financial assurance requirements for many current interest owners may incentivize predecessors to divert capital resources that would otherwise be available for OCS investment, which generate revenues and production for the taxpayer to cover boomerang obligations that do not generate either. These are estimated to be in the range of billions of dollars, representing future capital

that cannot be deployed to invest in exploration and production activities. Rystad's study shows that each dollar of deepwater investment generates approximately 71 cents in direct government revenues through royalties, bonus payments, rents, and corporate income taxes, meaning that capital freed for deepwater reinvestment yields a substantial and measurable return to the U.S. taxpayer.

BOEM Question (91 Fed. Reg. at 11,228): "potential deregulatory cost savings not quantified under E.O. 14154 and E.O. 14192"

API Response: See above comments on proposed § 556.901(d)(4) and general comments. API does not perceive deregulatory cost savings stemming from the Proposed Rule. In fact, the Proposed Rule *increases* costs to industry. Moreover, as discussed above, the Proposed Rule's ultimate cost to the taxpayer would be that for every dollar diverted from deepwater investment, approximately 71 cents in direct government revenues through royalties, bonus payments, rents, and corporate income taxes will be lost. Thus, the Proposed Rule is not "deregulatory" under the cited Executive Orders and should not be characterized as such.

BOEM Question (91 Fed. Reg. at 11,228): "analytical assumptions underlying the regulatory impact analysis, and we request that entities provide relevant data that BOEM could use to improve our analysis"

API Response: See above comments on proposed § 556.901(d)(4) and general comments, and the attached Rystad Energy and Longford CRA studies.

BOEM Question (91 Fed. Reg. at 11,228): "potential impacts to the energy supply (both positive and negative) in light of E.O. 13211"

API Response: See above comments on proposed § 556.901(d)(4) and general comments, and the attached Rystad Energy study. The Proposed Rule likely would result in overall negative impacts to OCS oil and gas production. Indeed, the Proposed Rule itself cites E.O. 13211 and concedes negative "Effects on growth" thereunder: "OCS investment may be deterred by discouraging Tier 1 companies from farm-in/out deals with Tier 2 companies or prompting earlier infrastructure decommissioning when project economics fall below their NPV thresholds. Tier 1 predecessors may be required to set aside additional capital for decommissioning obligations." 91 Fed. Reg. at 11,236.

BOEM Question (91 Fed. Reg. at 11,228): "small business or small operator impacts."

API Response: See above comments on proposed § 556.901(d)(4) and general comments. Whether large or small, entities operating on the OCS must fulfill their own obligations. And not only small companies must provide supplemental financial assurance to BOEM under the Existing Rule, including those provisions unaffected by the Proposed Rule. For example, affiliates of major oil companies that currently hold lease or grant interests but do not themselves hold the requisite credit ratings could be required to provide supplemental financial assurance under the Existing Rule.

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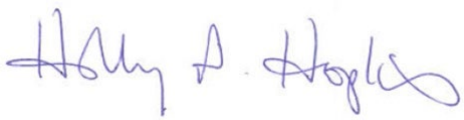
In conclusion, API, LMOGA, and our members support regulations ensuring that current lessees of OCS oil and gas leases, and current holders of OCS RUE and ROW grants, properly perform all operational lease and grant duties, including their obligation to decommission OCS wells, pipelines, and facilities, and to provide any necessary financial assurance in support of those obligations. Our members also share the agency's goal to protect U.S. taxpayers from the burden of any default of those OCS lease and grant decommissioning obligations. Key sections of the Proposed Rule—particularly those addressing predecessors of leases and grants—would undercut those goals, substantially depart from longstanding regulatory standards, and have significant and far-reaching financial consequences. Therefore, API and LMOGA respectfully request that BOEM consider these comments and either withdraw those provisions or, at a minimum, solicit additional public stakeholder feedback on the issues raised in this letter and the Proposed Rule before issuing any final rule.

Thank you again for the opportunity to provide these comments. API, LMOGA, and our members remain committed to working with BOEM on the subject matter of this Proposed Rule. Please do not hesitate to contact any of us with any questions.

Sincerely,



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