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Current Developments in the Outer Continental Shelf

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I. Notice to Lessees/Letters to Lessees

The MMS periodically issues information (ITL), letters (LTL) and notices (NTL) to lessees and operators of oil and gas leases in the Outer Continental Shelf (OCS). The NTLs may either be specific to a certain region or issued by the National Office. The different regions are the Alaska OCS Region, the Atlantic OCS Region, the Gulf of Mexico OCS Region (GOMR) and the Pacific OCS Region.

NTLs are formal documents that provide clarification, description, or interpretation of a regulation or OCS standard; provide guidelines on the implementation of a special lease stipulation or regional requirement; provide a better understanding of the scope and meaning of a regulation by explaining the MMS interpretation of a requirement; or transmit administrative information such as current telephone listings and a change in MMS personnel.

ITLs and LTLs are formal documents that provide additional information and clarification, or interpretation of a regulation, OCS standard or regional requirement, or provide a better understanding of the scope and meaning of a regulation by explaining the MMS interpretation of a requirement. The MMS intends to either rescind the existing LTLs or revise the existing LTLs and reissue them as NTLs. The LTLs are to remain in effect until they are either rescinded or superseded.

A copy of all of ITLs, LTLs, and NTLs currently in effect can be found on the MMS website at http://www.gomr.mms.gov/homepg/regulate/regs/ntlltl.html.

Summarized below are certain NTLs published within the past year which we believe would be of interest to landmen and attorneys involved with the OCS. A complete copy of each of the NTLs summarized below can be found at the website described above.

1. NTL No. 2009-N02 Timely Submission of Suspension Requests [Effective Date: February 10, 2009, Expiration Date: February 10, 2014]

This NTL was issued to clarify the timing for submitting a request for a lease or unit suspension. 30 CFR 250.171 states: “You must submit your request for a suspension to the Regional Supervisor, and the MMS must receive the request before the end of the lease term (i.e., end of...
primary term, end of the 180-day period following the last leaseholding operation, and end of a current suspension).

In a memorandum from the Solicitor of the US Department of Interior to the Director of the MMS, dated January 5, 2009, the Solicitor states that any request for a suspension filed subsequent to the expiration of a lease is simply a request for lease reinstatement, and that the OCS Lands Act does not grant authority to revive or reinstate leases after they have expired. The MMS is bound by the regulations promulgated under the OCS Lands Act and can only act on applications that are received prior to lease expiration. However, as to requests which are received in a timely manner, the MMS may act on same after the expiration date of the lease.

If a suspension request is received after the end of the lease term (e.g. administrative oversight), the suspension will be denied and the lease or unit will be deemed to have expired.

2. **NTL No. 2008-G24 Lease Term Extensions Pursuant to 30 CFR 250.180(e) Due to Hurricane Damage [Effective Date: December 31, 2008, Expiration Date: June 30, 2009]**

This NTL was issued to implement a temporary policy for granting lease extensions in cases where the lessee cannot complete the necessary assessment work in order to commit to the restoration of production from its lease or unit prior to lease expiration. In cases where the assessment has been completed and there is a firm commitment to restore production in paying quantities, a suspension of production (SOP) should be requested.

The MMS feels the extensive damage caused to offshore oil and gas facilities and pipelines, and disruption of onshore support services, caused by Hurricanes Gustav and Ike constitute an "operating condition", under 30 CFR 250.180(e). This regulation states, you may "ask the Regional Supervisor to allow you more than 180 days to resume operations on a lease continued beyond its primary term when operating conditions warrant."

When additional time is needed to evaluate your lease, a request must be submitted to the Regional Supervisor of the Office for Production and Development, and the request must include a number of items more fully described in this NTL.

The MMS will determine how much additional time will be needed in order for the assessment work to be completed; however, any lease term extension will not exceed 180 days. Once the assessment work has been completed, a SOP should be requested in cases where the lessee can provide a firm commitment to restore production.

3. **NTL No. 2008-G20 Revisions to the List of OCS Lease Blocks Requiring Archaeological Resource Surveys and Reports [Issue**
This NTL supersedes NTL 2006-G07 by providing new additions and modifications to the list of OCS blocks that require archaeological resource surveys and reports for submittal to the MMS, and the required survey line-spacing for each block. This NTL does not rescind NTL 2005-G05. The complete list of GOMR OCS blocks requiring archaeological resource surveys and reports including the blocks identified in this NTL and other previously identified blocks are published on the MMS website:


This NTL does not apply to lease blocks in the Atlantic OCS Region. The MMS will not approve requests to use 3-D seismic data as a substitute for high-resolution sidescan sonar data in deepwater areas. For EP's and DOCD's in deepwater lease blocks, Autonomous Underwater Vehicle (AUV) or Remote Operated Vehicle (ROV) surveys may be appropriate.

4. NTL No. 2008-G19 Changes to the Designation of Operator of an OCS oil and Gas or Sulphur Lease [Effective Date: October 2, 2008, Expiration Date: October 2, 2013]

This NTL supersedes NTL No. 2007-G24 and provides for exceptions to the policy of not approving Designations of Operator (DOO) that involve an individual well or multiple wells, and makes other minor technical changes. The following guidance applies to all changes to DOOs in the MMS GOMR:

a. The MMS GOMR will no longer approve requests that designate an operator of an individual well or multiple wells. When the MMS GOMR approves a change of operator, the new operator becomes responsible for all wells, platforms, and lease term pipelines with the described lease or aliquot part(s). The MMS GOMR may grant an exception to this policy only in the following instances: (1) you request a change of operator so that another company may drill an individual well on your lease or (2) after you assign your lease to another company, you need to be the designated operator for an individual well or multiple wells so that you can fulfill your remaining decommissioning obligations. If you would like to pursue either of these exceptions, contact the MMS GOMR before you file the designation and include the requirements more particularly set out in this NTL.

b. Under 30 CFR 250.144, when a DOO terminates, each affected lessee must submit Form MMS-1123, naming the new designated operator. The affected lessees are (1) all record title owners and (2) the appli-
cable operating rights owners who own an interest in an area affected by the change in operator.

c. An operating rights owner does not need to submit a Form MMS-1123 for a designation change, unless the new designated operator will be designated to operate a portion of the lease where the operating rights are owned by such party.

d. If the designation change applies to the entire lease, one should ensure that the description of the lease on Form MMS-1123 is identical to the description in the lease.

e. If the designation change applies to a portion of the lease, describe the portion in the aliquot parts using $\frac{1}{2}$ and $\frac{1}{4}$ of a block only. The smallest aliquot part that you can designate in a description is $\frac{1}{4} \frac{1}{4} \frac{1}{4}$ of the lease block.

f. The designation change may contain a depth limitation applicable either to the entire lease or to an aliquot part; however, the designation should not make reference to any stratigraphic equivalents or information recited from a well log.

g. When multiple co-lessees each must designate an operator, the MMS GOMR will not approve the designation change until all required designations are properly executed and filed with the MMS.

5. NTL No. 2008-G12 Drilling Windows, Eastern Gulf of Mexico [Effective Date: June 1, 2008, Expiration Date: December 1, 2009]

This NTL supersedes NTL No. 2007-G06 and is effective June 1, 2008. It provides a new schedule for the drilling window program. A new map showing the areas covered by the drilling window program can be found at http://www.gomr.mms.gov/homepg/regulate/regs/ntls/2008NTLs/drillwindow.pdf. This new map shows that Group “E” has been reconfigured so that it does not include any of the OCS blocks leased in Lease Sale Nos. 205, 206 and 224. This reconfiguration does not affect the status of any of the existing leases in Group “E.”

The drilling window program ensures that exploration activities can be conducted predictably, orderly, and safely without interfering with scheduled military activities or jeopardizing the national defense mission. The drilling window program divides the subject leases into five groups designated as Groups “A” though “E.” The MMS GOMR usually opens one group of leases every three months.

The GOMR will direct a suspension of operations (SOO) and it will be in effect for all oil and gas leases that were obtained through Lease Sale Nos. 79, 94, and 116. Similar suspensions will likewise be directed by separate letters of notification for all such leases not included in a future drilling window and will be effective as of the date of the opening of the drilling window. Any such SOO will terminate when the lease is included in an open drilling window.
The term of any affected lease will be extended for a period of time equal to the period that the SOO is in effect. No payment of rental or minimum royalty will be required during the period of the SOO. If the lease anniversary date occurs within a period that an SOO is in effect, for which no rental or minimum royalty payments are required, the prorated rentals or minimum royalties are due and payable as of the date the SOO terminates. The anniversary date of the lease will not change by reason of any period of lease suspension or rental or royalty relief resulting from such suspension.

6. NTL No. 2008-N09 Extension of Lease and Unit Terms by Production in Paying Quantities [Effective Date: October 29, 2008]

This NTL supersedes NTL No. 2003-N04 and explains your obligation to maintain production in paying quantities or other lease holding operations in order to extend your lease beyond its primary term. The term "lease” is used below, but the requirements contained in this NTL also apply to approved units.

To extend your lease beyond its primary term, you must satisfy the requirements found in: (1) the terms and conditions of your OCS lease agreement and (2) the regulations found at 30 CFR 250.180 or 250.168 through 177.

You must produce in paying quantities to maintain your lease beyond its primary term. Production in paying quantities means the production of enough oil, gas, sulfur, or other minerals, as specified in the lease, to yield a positive stream of income after subtracting normal expenses (i.e., operating costs), which include the sum of: (1) minimum royalty or actual royalty payments, whichever is greater, and (2) the direct lease operating costs.

If the Regional Supervisor determines that your lease did not produce in paying quantities for a period that exceeded 180 days, the MMS either may issue an order to show cause as to why your lease did not expire by its own terms at the end of the 180-day period or may issue a determination that your lease has expired.

7. NTL No. 2008-N07 Supplemental Bond Procedures [Effective Date: August 28, 2008]

This NTL clarifies the procedures and criteria the MMS uses to determine when a supplemental bond is required to cover potential decommissioning liability. This NTL has been updated and revised to clarify that: (1) the lessee must initially meet a minimum net worth of $65 million, as indicated on the lessee’s audited balance sheet; (2) the lessee must initially meet an allowable cumulative decommissioning liability amount calculated using only record title interest as a percentage of its net worth; and (3) a portion of the value of a lessee’s proved producing reserves may be added to their net worth, only after meeting certain fi-
This NTL supersedes and replaces NTL No. 2003-N06, effective June 17, 2003.

This NTL sets forth the procedures and criteria that the MMS uses to: calculate decommissioning liability, determine the risk regarding the lessee’s ability to carry out present and future financial obligations, and specify the types and terms of the supplemental bonds or other additional security the MMS may require or accept. The MMS reserves the right to vary from the procedures or criteria in this NTL on a case-by-case basis within the framework established in the governing regulations.

Generally, the MMS will conduct an initial review of the potential decommissioning liability when a lessee submits an Exploration Plan (EP) for approval. Usually, a supplemental bond will be required for a lease, right-of-use and easement (RUE), or right-of-way (ROW), unless it is determined that at least one record title owner or holder of the RUE or ROW meets the conditions more fully described in this NTL that demonstrate financial strength and reliability.

Regardless of any assumptions made by the MMS in estimating decommissioning costs, the lessee is responsible for ensuring that all decommissioning obligations on its lease are satisfied. When the MMS requires the lessee to provide and maintain a supplemental bond, the amount of the supplemental bond for the lease will be determined by the criteria more particularly set forth in this NTL.

Within 45 days following the MMS’ written notification, the lessee must submit one of the items listed in this NTL to meet the supplemental bonding obligations. The lessee may submit a third party indemnity agreement in lieu of a supplemental bond. The indemnity must be provided by a third party (indemnitor) who will guarantee compliance with all lease obligations. The indemnitor must also comply with all requirements in 30 CFR 256.57. The MMS will accept a third party indemnity only if the indemnitor and the indemnitee agree to meet all of the criteria described in this NTL.

The MMS reserves the right to deny the lessee’s request for a finding that a supplemental bond is not necessary, even though an independent accountant provides an audit and certification that the lessee meets the financial strength and performance criteria described herein. Normally, such a denial or revocation or a previous finding will be based on a review of independently audited information that indicates that recent or anticipated future events may adversely affect the lessee’s ability to comply with current and/or future decommissioning obligations. The MMS may also require a supplemental bond on any lease, regardless of any prior determination under these requirements, if it is determined that the designated operator has not fully and consistently complied with MMS regulations.
8. NTL No. 2008-N05 Guidelines for Oil Spill Financial responsibility (OSFR) for Covered Facilities [Effective Date: August 26, 2008, Expiration Date August 26, 2013]

This NTL provides clarification, guidance, and information to operators/owners of facilities and leases on the MMS's policies and procedures for submitting OSFR documents to the GOMR under 30 CFR part 253. The GOMR serves as the national program manager for all OSFR applications. This NTL replaces NGL 99-N01, and NTL 99-01 Addendum No. 1.

You must demonstrate OSFR coverage for a covered offshore facility(s) (COF) on a lease, pipeline (permit), or right-of-use and easement (RUE), if you are designated as a Designated Applicant by a responsible party(s). Your coverage will include all listed facilities that you classify as a COF. This NTL addresses more than 30 questions commonly asked regarding OSFRs and COFs.

The MMS has a web site to assist with various aspects of the OSFR program. For example, you can print all OSFR application forms through a pdf format at www.gomr.mms.gov/homepg/1sesale/osfr. These application forms expire every three years, therefore you must use the correct updated forms, when they become available, with all OSFR submittals.


This NTL is issued pursuant to 30 CFR 250.103 and 250.175(a), and provides guidance to the existing authority for approving requests for lease or unit Suspension of Operations (SOO) based on rig delays. This NTL also implements a temporary policy for granting a SOO based on lack of rig availability and unanticipated time frames needed to secure long lead equipment such as high pressure/temperature tubular and well-heads.

Pursuant to 30 CFR 250.175(a), an SOO may be granted to extend the term of a lease when a drilling rig was contracted and scheduled to begin leaseholding operations prior to the lease expiration, but due to reasons beyond the lessees control, the rig was delayed. Any delay in a rig release date should be short in term and it is expected that the lessee should have an approved plan and an approved APD. The MMS may also approve an SOO when long lead equipment was contracted for and scheduled to arrive in time to commence a lease holding operation prior to expiration of the lease, but was delayed for reasons beyond the control of the lessee. The particular requirements of what must be included in an SOO requests are more fully described in this NTL.
This NTL also provides that an SOO may be approved under a temporary policy when the lessee can demonstrate to the MMS’ satisfaction that a timely search has resulted in a total lack of rigs capable of drilling prior to lease expiration. In this case the SOO will be considered to allow time for the first available rig to commence operations, provided a drilling contract has been executed prior to lease expiration. The requirements of what must be included in this SOO request are described more fully in this NTL.

Also under this temporary policy, the MMS may approve an SOO when timely attempts to secure long lead equipment needed for the commencement of leaseholding operations prior to lease expiration were unsuccessful. Late attempts to secure a drilling rig contract or long lead equipment will not be justification for an SOO approval. All SOO requests must be received by the MMS prior to lease expiration and late permit filings are not justifications for an SOO approval.


This NTL provides guidance for submitting requests for a Subsalt and for Ultradeep Suspension of Operations (SOO) under 30 CFR 250.175(b) and 30 CFR 250.175(c) for leases issued with 5-year or 8-year primary terms. This NTL describes the meaning of potential hydrocarbon-bearing formations and identifies ways in which operators may demonstrate that such a formation lies or may lie beneath their leases.

A potential hydrocarbon-bearing formation means that there is a distinctive and mappable subsurface layer that can be identified by the 3-D depth migrated data. This layer is likely to consist of reservoir-quality rock that may contain hydrocarbons.

Subsalt SOO

As required by 30 CFR 250.175(b), you must demonstrate that you acquired and interpreted 3-D depth migrated data by the end of the third year of the primary term of the relevant lease. You must show that this data indicates the presence of a salt sheet, that all or a portion of a potential hydrocarbon-bearing formation may lie beneath or adjacent to the salt sheet, and that the salt sheet interferes with identification of the potential hydrocarbon-bearing formation. You must also demonstrate that additional time is needed for geophysical work with the objective of identifying a potential hydrocarbon-bearing formation which may lead to the drilling of a subsalt well on your lease.

You may demonstrate that these conditions are met by presenting 3-D depth migrated seismic data with clear, continuous seismic reflectors away from the salt sheet that can be tied to reservoir-quality rock in an analog well. The seismic reflectors may be poorly imaged beneath the salt sheet, but the clear, continuous reflectors adjacent to the salt sheet...
should indicate that the analog horizon would logically extend under the salt and onto your lease.

**Ultradeep SOO**

As required by 30 CFR 250.175(c), you must demonstrate that you acquired and interpreted 3-D depth migrated data by the end of the fifth year of the primary term of the relevant lease. You must show that your 3-D depth migrated data over the entire lease area indicates that all or a portion of a potential hydrocarbon-bearing formation lies below 25,000 feet TVD SS. You must demonstrate that additional time is needed for geophysical work to determine whether there is a stratigraphic or structural trap on your lease, which may lead to the drilling of a well below 25,000 feet TVD SS.

You may demonstrate that these conditions are met by presenting 3-D depth migrated seismic data with minimal processing artifacts and clear, continuous seismic reflectors at the target horizon that can be tied to reservoir-quality rock in an analog well.

11. **NTL No. 2007-G21: Conservation Information Documents [Effective June 1, 2007]**

This NTL provides guidance for submitting Conservation Information Documents (CID) for certain deepwater development projects as required in 30 CFR 250 Subpart B, specifically 30 CFR 250.296 through 250.299.

The MMS will evaluate the CID with the objective of preventing waste and maximizing ultimate recovery of all economically producible reservoirs. In particular, the MMS will evaluate all penetrated reservoirs in water depths greater than 400 meters, and ensure that those deemed economic by the MMS will be produced. For water depths less than 400 meters, CIDs are no longer required.

As required by 30 CFR 250.296(a), your CID shall be submitted at the same time that you submit your Development Operations Coordination Document (DOCD) or Development and Production Plan (DPP) to the Office of Field Operations. However, the CID is submitted to the Office of Production and Development (PD), Reservoir Analysis Unit. You must also submit a CID when a Supplementary DOCD or DPP is submitted but only if requested by the Regional Supervisor of PD. Also, you may request a departure under 30 CFR 250.142 to the timing of the CID submittal and such request must occur before submittal of the DOCD or DPP. The Regional Supervisor will approve the departure request in writing in cases where it is demonstrated that a later submittal is in the best interest of MMS. Failure to submit the CID as required, may result in the issuance of a Notification of Incidents of Noncompliance (INC).
As specified in 30 CFR 250.125, you must pay a cost-recovery fee in the amount of $24,200 with the submittal of the CID. You are not required to submit a fee for a revision to an approved CID.

The information you submit under 30 CFR 250.297 should be based on all wells drilled at the time of your CID submittal. In addition, the MMS should be notified of any wells drilled to total depth during the CID evaluation period. The data gathered from wells drilled during the evaluation period will be reviewed by the MMS and may result in a requirement that you update your CID.

The MMS may take up to 150 calendar days to review your CID and if it does not act within 150 days, your CID is considered approved. The 150 day period may be suspended if the MMS determines there is missing, inaccurate or incomplete data, or if a well is drilled to total depth during the evaluation period. Approval of the CID does not constitute approval of any other plan, application or permit.

Production may not begin before your CID is approved per 30 CFR 250.299. Production prior to approval will result in issuance of an INC and possible civil penalties.

12. NTL No. 2007-G05: Well Productivity Determinations [Effective March 1, 2007]

The purpose of this NTL is to provide information concerning new filing procedures to obtain a determination of well productivity (effective with the date of the determination). This NTL replaces NTL No. 2000-G04 (Effective Date January 28, 2000). Changes in the lease addendums beginning with lease OCS G-22500 (Lease Sale 178) no longer transfer a lease into minimum royalty status when a well qualifies in accordance with 30 CFR 250.115 or 30 CFR 250.116. These leases remain in rental status and the annual rental payments for future lease years becomes payable at the end of the lease year, until the start of royalty bearing production. In the lease year that royalty bearing production begins, royalties become payable in accordance with the lease instrument which specifies the royalty rate and minimum royalty requirements.

Once the GOMR makes a determination of well productivity, no further determination of well productivity will be made on the lease, which will eliminate the necessity for you to resubmit open-hole petrophysical data. The requirements for demonstrating well productivity are found in 30 CFR 250.115 or 250.116. You can obtain a determination of well productivity by sending a written request or an email to the Supervisor of the Petrophysical Analysis Unit (SPAU).

Determination of Well Productivity Based on a Well Test

a. According to 30 CFR 250.115(b)(1), you must give the appropriate MMS GOMR District Supervisor an opportunity to witness each well test that you conduct. Instead of witnessing a test, the GOMR will accept
test data with your affidavit, or third-party test data (with affidavit), but
the SPAU must approve this arrangement prior to the tests. Submit test
data with your affidavit or third-party test data (with their affidavit) from
wireline formation tests and/or drill stem tests to the SPAU.

b. You can submit your test data for approval by postal mail, email,
or telefax.

c. If the well is an oil well, conduct a production test that lasts at
least two hours after flow stabilizes.

d. If the well is a gas well, conduct either a deliverability test that
lasts at least two hours after flow stabilizes or a four-point back pressure
test.

**Determination of Well Producibility Based on Petrophysical Data**

a. You no longer have to submit any open-hole petrophysical data
with your request for a determination of well producibility since 30 CFR
250.468 and 30 CFR 250.469 ensures that the MMS already has all open-
hole data needed to determine the producibility of the well. You need
only specify the well and the qualifying zone in your application; how-
ever, you can submit any supplemental and supporting documentation for
the requested well qualification.

b. The criteria of 30 CFR 250.116(b), (c), and (d) determines
whether a well is producible. The Petrophysical Analysis Unit will use
established petrophysical software to assist in their determination.

The GOMR realizes that not all formations in the Gulf of Mexico
possess the same properties and may accept sound well log interpretation
techniques that demonstrate that a well would produce hydrocarbons in a
particular area, even though the well may not otherwise qualify as pro-
ducible under 30 CFR 250.116(b), (c), and (d).

**Well Producibility Requests**

The following information must be in your request for a determina-
tion of well producibility:

a. Active lease number

b. Area and block number

c. Well name and number (and lease number if different from active
lease number)

d. Operator name

e. Date total depth (TD) was reached or date of final log run for the
well

f. TD of well in feet, i.e., measured depth (MD) and true vertical
depth subsea (TVDSS)

g. Expiration date of primary lease term

h. API number of well
i. Requested qualification type (wireline test or petrophysical)

j. Hydrocarbon type: oil, gas, or condensate

k. Depth to top of pay in feet (MD and TVDSS)

l. Depth to base of pay in feet (MD and TVDSS)

m. Net thickness of continuous pay section in feet (MD and TVDSS)

n. For a qualification based on a wireline well test and/or drill stem test, the depth of the tested interval (MD and TVDSS), date of test, test number (if more than one test in the well), and results

The GOMR may place the lease in minimum royalty status or the lease may remain in rental status beginning with lease OCS G-22500 (Lease Sale 178) if it makes a positive well producibility determination.


This NTL provides guidance on cost recovery fees and State Coastal Zone Management review fees, and updates on regulatory citation. It is issued pursuant to 30 CFR 250.103 and supersedes NTL No. 2006-G15, effective July 12, 2006.

Changing Approved and Pending EP and DOCD

Under 30 CFR part 250, subpart B, you must submit Exploration Plans (EP) and Development Operations Coordination Documents (DOCD) to the MMS. In addition to the Initial EP and DOCD, there are four types of changes that can be made to an approved and pending EP and DOCD. These changes are referred to as a supplemental, revised, modified, and amended EP and DOCD (see § 250.200(b) for definitions of these types of EPs and DOCDs).

Each supplemental and revised, modified, or amended EP or DOCD need only contain that information related to or affected by the proposed changes to the EP or DOCD, as approved or pending. Make sure that the descriptions of the proposed changes are complete and includes the rationale for the proposed changes. Also it is advised that you reference the approval date or MMS control number of the approved EP or DOCD you are changing.

Pursuant to § 250.283(b), supplement your approved EP or DOCD when you propose to conduct lease or unit activities that require applications or permits and which are not described in your approved EP or DOCD.

Pursuant to § 250.283(a), revise your approved EP or DOCD when you:

a. Change the type of drilling rig to one with a different impact on the seafloor, production facility, or transportation mode you will use;
b. Change the surface location of a well by more than 30 meters (100 feet) in water depths less than 400 meters (1,312 feet), or by more than 152 meters (500 feet) in water depths 400 meters (1,312 feet) or greater;

c. For DOCD that propose activities that affect the State of Florida, change the type of production from natural gas to oil;

d. Increase the emissions of an air pollutant to an amount that exceeds the amount specified in your approved EP or DOCD;

e. Request a new hydrogen sulfide (H2S) area classification, or encounter a concentration of H2S greater than 500 parts per million (ppm);

f. Change the location of your onshore support base from one State to another or to a new base requiring expansion; or

g. Change the approved anchor array pattern associated with your activities, or increase the anchor radius by more than 152 meters (500 feet) if the MMS GOMR did not approve a specific anchor pattern.

**Copies of EP and DOCD**

Pursuant to § 205.206, submit the following number of copies for Initial and Supplemental EP and DOCD to the MMS GOMR.

<table>
<thead>
<tr>
<th>Initial and Supplemental EP and DOCD that describe activities on leases and unit areas on the OCS that affect the:</th>
<th>No. of Proprietary Copies</th>
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<td>B. State of Alabama</td>
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<td>G. State of Texas</td>
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<td>H. State of Texas, with such activities being exempted from CZM certification requirements</td>
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</table>
Pursuant to § 250.206, submit the following number of copies for Revised, Modified, and Amended EP and DOCD GOMR:

7 copies (5 proprietary and 2 public information)

Electronic Submissions

You can also submit copies of any EP or DOCD electronically in accordance with § 250.186(a)(3). If this is done you must submit it as a single file on a separate CD-ROM and ensure that all electronic files are in portable document format (PDF) or other acceptable format. If you submit your EP or DOCD electronically, provide:

a. In lieu of the five proprietary copies specified above, one proprietary copy on paper and one proprietary copy on CD-ROM; and

b. For EP and DOCD that propose activities that do not affect the State of Florida, one public information copy on paper, and one less than the specified number of public information copies on separate CD-ROM; or

c. For EP and DOCD that propose activities that do affect the State of Florida, provide 8 public information copies on separate CD-ROMS.

Cost Recovery and State Coastal Zone Management Review Fees

Cost Recovery Fees. Effective September 1, 2006, cost recovery fees must accompany the submission of all Initial and Supplemental EP and DOCD to the MMS GOMR. Refer to 30 CFR 250.125-126 and NTL No. 2006-N05 for information on fee amounts and payment methods.

Coastal Zone Management Review Fees. The State of Louisiana and Alabama require a fee in order to process a consistency certificate for an EP or DOCD that affects their respective State.

II. Recent Federal Register Activity Concerning the MMS

A. Call for Information and Interest/Nominations and Notice of Intent to Prepare an EIS

Outer Continental Shelf (OCS), Gulf of Mexico OCS Region, Mid-Atlantic Proposed Oil and Gas Lease Sale 220 (Federal Register/Vol. 73, No. 220/Thursday, November 13, 2008)

On September 30, 2008, Congress let expire the previous Department of Interior Appropriations measures that had imposed an Atlantic drilling ban that lasted a total of 25 years. The last lease sale in the Mid-Atlantic Planning Area was Sale 76 held on April 26, 1983. When lease sales were previously conducted in the Mid-Atlantic Area, including the offshore Virginia program area, a total of 32 exploration wells were drilled resulting in no commercial hydrocarbon discoveries.

This Call and NOI are the initial information-gathering steps in a process that incorporates planning and analysis for proposed OCS Oil and Gas Lease Sale 220 in the Mid-Atlantic Planning Area in the area.
offshore the Commonwealth of Virginia. The program area is that
subarea of the Mid-Atlantic Planning Area offshore Virginia identified in
the OCS Oil and Gas Leasing Program, 2007-2012, that may be offered
in proposed Sale 220. The proposed action is to offer for lease all of the
blocks in this Mid-Atlantic Planning Area offshore Virginia.

The program area extends offshore from about 50 statute miles to
approximately 183 statute miles (or 159 nautical miles), in water depths
from approximately 40 meters to 3,500 meters. This area consists of
approximately 593 whole and partial blocks encompassing about 2.9
million acres. Based on the 2006 National Assessment, it is estimated
that the mean Undiscoverable Technically Recoverable Resources
contained in Sale 220 are to be 130 million barrels of oil and 1,140
billion cubic feet of gas. The Comment period for this Call and NOI

B. Notices

Request for Comments on the Draft Proposed 5-Year Outer
Continental Shelf (OCS) Oil and Gas Leasing Program for
2010-2015 and Notice of Intent to Prepare and Environmental
Impact Statement (EIS) for the Proposed 5-Year Program
(Federal Register/Vol. 74, No. 12/Wednesday. January 21, 2009)

The MMS requested comments on the Draft Proposed 5-year OCS
Oil and Gas Leasing Program for 2010-2015 (DPP). This draft proposal
is for a new oil and gas program to succeed the current program that is
currently set to expire on June 30, 2012, and forms the basis for
conducting the studies and analyses the Secretary will consider in
making future decisions on what areas of the OCS to include in the
program. Section 18 of the OCS Lands Act (43 U.S.C. 1344) specifies a
multi-step process of consultation and analysis that must be completed
before the Secretary of the Interior may approve a new 5-year program.
The required steps following this notice include the development of a
proposed program, a proposal final program, and Secretarial approval.
Pursuant to the National Environmental Policy Act (NEPA), the MMS
also will prepare an EIS for the new 5-year program. Comments are to be
submitted to the MMS no later than March 23, 2009.

The DPP proposes a total of 31 OCS lease sales in 12 areas (4 areas
off Alaska, 3 areas off the Atlantic coast, 2 areas off the Pacific coast,
and 3 areas in the Gulf of Mexico). The DPP includes sales in all three
areas of the Gulf of Mexico Region - Western, Central, and Eastern. The
Central and Western Gulf of Mexico Planning Areas remain the two
areas of highest national resource potential and interest. The DPP would
continue the customary practice of annual lease sales in these two areas,
offering all of the area that is not leased or under restriction. In addition,
a second proposal sale is scheduled for 2011 in a small portion of the
Central Gulf of Mexico Planning Area. This portion was recently made available with the lifting of restrictions.

Three sales are proposed for the Eastern Gulf of Mexico Planning Area, starting in 2010, offering all of the area that is not leased or under restriction. The majority of the planning area is under restriction pursuant to Gulf of Mexico Energy Safety Act (GOMESA). The DPP area encompasses a portion of the planning area in the event that the restriction is lifted or modified during the 2010-2015 timeframe. The DPP includes a 75-mile wide no permanent surface structures zone, with no leasing eastward of that zone. This area has been configured to preliminarily address military multiple use issues. Dialogue with the Department of Defense will continue through the development of this 5-Year Program and throughout the pre-lease process. To the extent that GOMESA restrictions remain in effect during the duration of the program, the program area for these sales would include the area offered in Sale 224 in 2008 as mandated by GOMESA plus a small portion to the south of the Sale 224 area recently made available with the lifting of restrictions.

The MMS plans to issue the proposed program and draft EIS in mid-summer 2009 for a 90-day comment period. They plan to issue the proposed final program and final EIS in spring 2010, which then may be approved by the Secretary 60 days later to go into effect as of July 1, 2010.

C. Final Rules

1. Allocation and Disbursement of Royalties, Rentals, and Bonuses – Oil and Gas, Offshore (Federal Register/Vol. 73, No. 247/Thursday, December 23, 2008)

The MMS is amending regulations on distribution and disbursement of royalties, rentals, and bonuses to include the allocation and disbursement of revenues from certain leases on the Gulf of Mexico Outer Continental Shelf in accordance with the provisions of the Gulf of Mexico Energy Security Act of 2006 (GOMESA). The regulations set forth the formula and methodology for calculating and allocating revenues to the States of Alabama, Louisiana, Mississippi, and Texas, their eligible political subdivisions, and the Land and Water Conservation Fund from the 181 Area in the Eastern Planning Area and 181 South Area in the Gulf of Mexico. The Secretary of the Interior will begin to disburse these revenues beginning on or before March 31, 2009. The new regulations are set forth in 30 CFR 219, Subpart D – Oil and Gas, Offshore. This final rule became effective January 22, 2009.

2. Royalty Relief – Ultra-Deep Gas Wells and Deep Gas Wells on Leases in the Gulf of Mexico; Extension of Royalty Relief Provisions to Leases Offshore of Alaska (Federal Register/Vol. 73, No. 223/Tuesday, November 18, 2008)
This final rule amends existing deep gas royalty relief regulations to reflect statutory changes enacted in the Energy Policy Act of 2005. It provides additional royalty relief for certain ultra-deep wells on Outer Continental Shelf leases in shallow water in the Gulf of Mexico. It extends both the existing and the additional deep gas royalty relief to Outer Continental Shelf leases in deeper water than before. Finally, this final rule applies discretionary royalty relief procedures that have been used by deepwater leases in the Gulf of Mexico to leases offshore Alaska. The new regulations are set forth in 30 CFR Part 203 – Relief or Reduction in Royalty Rates and Part 260 – Outer Continental Shelf Oil and Gas Leasing. This final rule became effective December 18, 2008.

3. Revisions to Subpart A – General; Subpart I – Platforms and Structures; and Subpart J – Pipelines and Pipeline Rights-of-Way (Federal Register/Vol. 73, No. 211/Thursday, October 30, 2008)

The MMS amended its regulations to require lessees, lease operators, and pipeline right-of-way holders to submit a report if a facility or pipeline is damaged by a hurricane or other natural phenomena. The final rule also requires operators to provide assessment information on the structural integrity of Outer Continental Shelf platforms; information on the use of unbounded flexible pipe for pipelines; and additional information when installing pipeline risers on floating platforms. The rule also incorporates an industry-developed standard concerning the in-service inspection of mooring hardware for floating drilling units. These changes will allow the MMS to better regulate the safety of the oil and gas infrastructure, and to promptly assess damage resulting from hurricanes or other natural phenomena. The new regulations are set forth in 30 CFR Part 250 – Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf. This rule became effective December 1, 2008.

4. Bonus or Royalty Credits for Relinquishing Certain Leases Offshore Florida (Federal Register/Vol. 73, No. 178/Friday, September 12, 2008)

This final rule amends regulations for oil and gas leases on the Outer Continental Shelf to implement a mandate in the Gulf of Mexico Energy Security Act of 2006. These amendments (1) provide a credit to lessees who relinquish certain eligible leases in the Gulf of Mexico; (2) define eligible leases as those within 125 miles of the Florida coast in the Eastern Planning Area, and certain leases within 100 miles of Florida coast in the Central Planning Area; and (3) allow lessees to use the credits in lieu of monetary payment for either a lease bonus bid or royalty due on oil and gas production from most other leases in the Gulf of Mexico, or to transfer the credits to other Gulf of Mexico lessees for their use. The new regulations are set forth in 30 CFR Part 256 – Leasing.
of Sulphur or Oil and Gas in the Outer Continental Shelf. This final rule became effective on October 14, 2008.

5. Electronic Payment of Fees for Outer Continental Shelf Activities (Federal Register/Vol. 73, No. 165/Monday, August 25, 2008)

This final rule requires that all lessees, operators, permittees, and right-of-way holders pay all fees for processing plans, applications, and permits electronically. This rule will aid industry in payment processing and reduce payment processing errors. This rule will improve MMS processing efficiency and facilitate the correction of industry payment errors. The MMS will not accept checks, money orders, or cashier’s checks for payment of fees after the effective date of this final rule. The final rule also adjusts certain cost recovery fees for inflation. This rule became effective on September 24, 2008.

III. Recent MMS Announcements and Adjudication Tips

As noted in recent MMS Weekly Activity Reports, effective as of February 1, 2009, the Leasing Activities Section of the MMS was reorganized into three separate units, namely, Adjudication, Leasing and Financial Responsibility (formerly known as Sales and Support Unit), and Leasing Data Management.

Ms. Ann Glazner is the Supervisor of the Adjudication Unit. This unit handles the qualification of new companies, qualification updates, transfers of interest (record title, operating rights and pipeline right-of-way grants), designations of operator, relinquishments and non-required document filings.

Mr. Carrol Williams is the Supervisor of the Leasing and Financial Responsibility Unit and the unit will continue to handle all lease sale planning and execution functions and manage the Oil Spill Financial Responsibility (OSFR) filings and bonding actions. Mr. Pat Clancy will continue to receive and process OSFR filings. Ms. Cheryl Olivier will receive and process new submittals for general and supplemental bonds, replacement bonds and bond termination/cancellation requests. Mr. Joshua Joyce will receive and process matters pertaining to financial waivers, third party indemnifications, trust agreements, bankruptcy and supplemental bonding issues.

Mr. Brian Russo is the Supervisor of the newly established Leasing Data Management Unit which will handle matters such as data entry, data clean-up, data reporting, scanning of documents (including documents scanned to active lease files, expired/terminated lease files and non-required records).

The MMS, through its Weekly Activity Reports, routinely advises the public with regard to changes in approval procedures of one or more
of the above referenced units and the failure to comply with such procedural changes could result in a delay in the MMS approval of a submitted document, the requirement for additional information prior to a requested approval or a rejection of the filing and its return to the sender. The following tips and reminders have been published by the MMS, primarily through its Weekly Activity Reports, and should be considered in connection with any filings that you may prepare for submittal to the MMS, to-wit:

“Non-Required” Filings: All documents submitted for filing in the “Non-Required” records (including documents involving overriding royalties, production payments, and net profits) must be accompanied by a receipt evidencing payment of the required service/filing fee via Pay.Gov (the U.S. Treasury’s government-wide collection portal). Please note the service fee is $27.00 per document, per lease affected (i.e., one document that affects 3 leases will cost $81.00 to file record purposes. When submitting documents to be filed for record purposes, you must submit the following:

1. One copy of each document to be filed for record purposes (originals are not necessary). If you desire date stamped copies be returned to you, you must supply the additional copies at the time of submittal;
2. Receipt evidencing payment of the service fees; and
3. Cover letter containing the following information: Contact name, address, and phone number of submitter and a list of documents to be filed for record purposes.

The cover letter must contain the following information for each document being filed:

1. Title of document;
2. Identity of parties to the document;
3. Leases affected (in numerical order); and
4. Category under which the document should be filed *(see list of categories below).

* Categories:

1 = Mortgage, Deed of Trust, Security Agreement
2 = Release of Mortgages and Liens
3 = UCC Filings and Financial Statements
4 = Abstract of Judgment
5 = Overriding Royalty, Production Payment, Net Profit
6 = Liens and Lien Affidavit
7 = Contracts, Agreements, and Conveyances
8 = Miscellaneous
Assignments of Pipeline Right-of-Way Grants:

1. Form MMS-149 “Assignment of Federal OCS Pipeline Right-of-Way Grant” can be found at: http://www.gomr.mms.gov/homepg/mmsforms/FormMMS-149.pdf.

2. Assignments must be between parties who are qualified by the MMS.

3. The Assignee must be in good standing with acceptable performance as provided under 30 CFR 250 and 256.

4. Assignment forms must be typed.

5. Assignment forms must be accompanied by a transmittal letter (also called a cover letter) executed on behalf of one of the parties to the transfer. The transmittal letter should identify the parties to the transfer, their GOM Company Numbers, and the pipeline right-of-way affected. This letter can be signed by any company official. A disinterested third party, such as an attorney, may execute the transmittal letter and submit the assignment package if the third party provides a letter of authorization from one of the parties to the transfer, authorizing said third party to act on its behalf. When using generic corporate letterhead, a subsidiary must clearly identify itself by typing its name in the signature block.

6. Assignment forms must be accompanied by a receipt evidencing payment of the required service fees via Pay.gov. Pay.gov is the U.S. Treasury’s government-wide collection portal which was developed specifically for Federal agencies to process collections electronically using internet technologies. Effective September 24, 2008, the MMS published a final rule requiring all lessees, operators, permittees, and right-of-way holders to pay all fees electronically. The MMS no longer accepts checks, money orders, or cashier’s checks for payment of fees. This final rule also adjusted certain cost recovery fees for inflation. As such, the current fee for the processing of an Assignment of Pipeline Right-of-Way Grant is $186.00 per transfer. If, early in the evaluation process, an assignment is deemed “incomplete,” it will not be subject to additional service fees upon resubmission. Such “incomplete” assignments will be returned with a receipt stamped “Incomplete.” In order to avoid paying additional service fees on “Incomplete” resubmissions, you must include a copy of the receipt stamped “Incomplete” with your resubmission.

7. Assignments must be accompanied by the following additional information/forms, if applicable: (i) Identification of operator if pipeline will not be operated by assignee [see 30CFR250.1000 (b) (2)], (ii) Oil Spill Financial Responsibility, and (iii) General and/or Supplemental
Bonds. Forms may be found at: http://www.gomr.mms.gov/homepg/mmsforms/frmindx.html.

8. Assignment forms for Pipeline Right-of-Way Grants should be filed in triplicate originals.

9. Separate assignment forms must be used for each Right-of-Way.

10. The legal description must be identical to the description contained in the latest approval letter issued by the MMS (may be the initial letter approving the ROW or if modifications have been approved it will be the latest letter issued by the MMS approving a modification). ROW holders should maintain such approval letters in their records. Some, but not all, ROW applications and approvals are available on the MMS website; however, please note that there is a time lag for updates to be made to the MMS website. Additionally, several ROW files are available only in microfiche format in the Public Information office located on the first floor of the GOMR MMS office.

11. Transfers of interest in a Pipeline Right-of-Way must result in one party having 100% ownership of the ROW or it will not be approved.

12. May transfer interest in a lineal segment of a ROW but that will result in a new ROW number being issued.

Bond Rider Effective Dates - Bond riders submitted in connection with name changes and business conversions must have the same effective date as the effective date of the name change or business conversion, as recognized by the Secretary of State. Bonds with an effective date that is after the effective date of the name change or business conversion are the exception to this rule, and in those cases, the effective date of the rider must be the same as the effective date of the bond. Effective January 1, 2009, riders not meeting this requirement will be returned.

Certified Copies - Requests for certified copies should be submitted to the Adjudication Unit Contact Representative, Ms. Sandy Pavlas, at sandra.pavlas@mms.gov. In order to request certified copies, please do the following: Go to the MMS website and print the index in which the documents you are interested in appear. Mark the documents you wish to obtain certified copies of and advise as to how many copies of each you require. Send a scanned image of the marked index to Ms. Pavlas. The cost for certified copies is $1.00 per page plus $1.00 per certification (i.e., two 10-page documents will cost $22.00). Once certifications are complete you will be notified via e-mail of the cost incurred. The fees associated with certified copies should be paid using pay.gov and a copy of such payment sent to the Adjudication staff member who advises you of the cost incurred.

Counterpart Signatures - Assignments of OCS right-of-way grants, record title interest and operating rights, as well as relinquish-
ments, may be executed and filed using counterparts. However, all counterparts must be filed simultaneously, and all other instructions followed, or the assignment or relinquishment will not be accepted. For assignment forms MMS-149, 150 and 151, counterparts must be executed using additional copies of Page 2. For Form MMS-152 (relinquishments), counterparts must be executed using additional copies of Page 1. To minimize the number of pages being processed and filed in MMS records, please use counterparts only when necessary.

**Stale Executions on Assignment Forms** - Assignment forms must be filed with the MMS within 90 days of the last date that a party executes the form. In instances where executions are older than 90 days, in lieu of having each party re-execute, the MMS suggests that you have one party execute a new Page 2 with a current date, cross out said party's old execution, and attach the new updated execution as a counterpart. It is strongly suggested that you obtain the permission of all parties to the instrument prior to following the MMS suggestion to mark out information in the instrument and provide a current date.

**Designation of Operator Forms** - Designation of Operator forms should not designate an operator for more than the designating party owns. For instance, Company A is the current operator of the entire block, you are receiving an operating rights interest in the N/2 from surface to 10,000' via an operating rights assignment and you want to designate Company A. Even though Company A operates the entire block, because you will only own the N/2 from surface to 10,000' the Designation of Operator forms that you file in connection with your Operating Rights assignment should only designate Company A for the N/2 from surface to 10,000'. Effective, December 1, 2008, all Designation of Operator forms wherein the designating party is designating an operator for more than they own in will be deemed "incorrect" and will be returned to the submitting party.

**Procedure for Submitting Designations of Operator for Individual Well(s)** - The MMS GOMR no longer approves requests that designate an operator of an individual well or multiple wells. When the MMS GOMR approves a change of operator, the new designated operator becomes responsible for all wells, platforms, and lease term pipelines within the described lease or aliquot part(s). Pursuant to NTL 2008-G19, the MMS GOMR may grant an exception to this policy only in certain instances more fully described in the NTL. The procedure for requesting an exception and having the associated designation of operator approved is as follows:

1. First, contact Mr. B. J. Kruse, Chief, Office of Structural and Technical Support by email at: bernard.kruse@mms.gov.

2. If Mr. Kruse concurs that the exception should be granted, he will provide his concurrence via a reply to your email.
3. After receiving concurrence from Mr. Kruse, submit the designation of operator forms to the Adjudication Unit with a copy of Mr. Kruse's concurrence and the required filing/service fees.

Designations of Operator for individual well(s) that are not accompanied by written concurrence from Mr. Kruse will be deemed incorrect and returned to the submitter.

If a lease has an operator that in the past was designated and approved to operate individual well(s), it is considered “Grandfathered” in until new designation of operator forms are filed (whether filed by new interest owners in connection with an assignment, designating the same operator, or as part of a change in the designation of operator). In both cases, the operator must be designated by describing the aliquots associated with the well(s) and any depth restrictions, if applicable, but should not describe any wells.

**Principal's Signature Block On Bonds** - In order to clarify the requirements for the Principal’s signature block on bonds, please note the following:

1. The signatory for the Principal needs to be a qualified signatory pursuant to the MMS qualification files and the MMS policies regarding their name and title apply;

2. The principal must be bound properly per the MMS qualification files (i.e., an LLC that needs to be bound through its Sole Member);

3. If the Principal is a corporation, the corporate seal must be affixed; and

4. If the Principal is not a corporation but must be bound through another entity that is a corporation, the corporate seal of the corporation with binding authority should be affixed.

Effective December 1, 2008, bonds that do not meet the above criteria will be returned to the submitter.

**Titles of Authorized Signatories** - An authorized signatory must execute documents using their name exactly as it appears in the qualification files;

An authorized signatory must execute documents using a title that they are recognized as having pursuant to the qualification files;

The title that an authorized signatory uses when executing documents filed with the Adjudication unit must appear exactly as it appears in the qualification files and must be a title empowered to execute the type of document being submitted, pursuant to the company resolution contained in the qualification files;

If an authorized signatory has multiple titles that are all empowered through the resolution, it is not necessary that they use every title, as long
as they use one that is empowered to execute the type of document being submitted; and

If an authorized signatory has multiple titles but only one is empowered through the resolution, they need only use the title that is empowered to execute the type of document being submitted.

**Mergers, Changes-of-Name and Business Conversion** - Each qualified entity is responsible for notifying the Adjudication Unit of any merger, change-of-name, or change of business form. The required documents should be filed with the Adjudication Unit after filing the change or action with the Secretary of the State or other authorized official in the State of original registry. All required documents must be filed together as a package or the filing will be returned unapproved.

**Service Fees on Resubmissions** - When resubmitting a package that was returned as “Incorrect,” you must include the required service/filing fee or the package will again be returned.

When resubmitting a package that was returned as “Incomplete,” you must include the receipt containing the “Incomplete” stamp that was included in the returned package in order to avoid paying additional service/filing fees. Packages returned as “Incomplete” that are resubmitted without the receipt containing the 'Incomplete” stamp will be returned.

**Corrections** - Utilizing liquid paper on any document which requires last minute corrections is acceptable.

**Assignments and Related OSFR Forms** - Assignments of Record Title, Operating Rights, and Pipeline Rights-of-Way will be returned, unapproved, if all required OSFR forms are not submitted.

**Additional Reminders:**

Pursuant to a Final Rule published in the Federal Register on August 25, 2008, effective September 24, 2008, the MMS will NOT accept checks, money orders, or cashier’s checks for payment of fees.

Effective July 1, 2008, all forms submitted to the Adjudication Unit for processing that include a lease number, must identify the lease number exactly as it appears on the lease instrument. It should be identical to the lease instrument with regard to either “OCS” or “OCS-G” and with regard to the number of leading zeros, if any. Forms submitted to the Adjudication Unit for processing that contain a lease number that is not identical to the lease number on the lease instrument will be deemed to be incorrect and will be returned to the submitter. When said incorrect forms are resubmitted to the MMS, additional service fees will be required, if applicable, and the forms will be placed in line for processing based on the date they are resubmitted.

Incomplete or incorrect action may not be held for correction or supplementation. Every incomplete or incorrect action must be returned to the submitter for correction or supplementation. When the returned
actions are resubmitted, they will be placed at the end of the line. There will be no exceptions, regardless of past practices. This policy is implemented in order to streamline the processing of all actions filed with the Adjudication Unit.

The MMS policy is to send all processed actions (assignments, DOOs, bond acceptance letters, qualifications, etc.) to industry via the U.S. mail. This policy is in place to ensure equal treatment for all entities doing business with the MMS as well as to avoid interruptions to the normal workflow. Requests for faxing or e-mailing of processed actions cannot be granted. However, the MMS can accommodate requests for overnight delivery of processed actions if such handling is requested in writing at the time the action is filed with the MMS and if a pre-paid, self-addressed overnight envelope is included with the action when it is filed with the MMS.

IV. Recent Decisions

A. Kerr-McGee Oil & Gas Corp. v. United States Department of Interior

In the case, Kerr-McGee Oil & Gas Corp. v. United States Department of the Interior, 2009 WL 08-30069 (5th Cir. 2009), the Outer Continental Shelf Deepwater Royalty Relief Act of 1995 (“DWRRA”), codified at 43 U.S.C. § 1337, was enacted by Congress to encourage exploration of oil and gas in the Gulf of Mexico’s deepwater. The DWRRA replaced the Secretary’s discretion to set the volume of royalty suspension for leases issued between November 28, 1995 and November 28, 2000 (“Mandatory Royalty Relief Leases”). See 43 U.S.C § 1337(a)(3)(C)(i).

On January 6, 2006, Kerr-McGee Oil & Gas Corp. (“Kerr-McGee”) was ordered to pay royalties on eight deepwater leases by Acting Assistant Secretary Burton, on natural gas it produced in 2003, and on both oil and natural gas it produced in 2004 (“Burton Decision”). The eight deepwater leases were issued as Mandatory Royalty Relief Leases pursuant to the DWRRA and contained language that made the statutory royalty relief subject to specified price thresholds. Under the terms of such leases, Kerr-McGee was obligated to make royalty payments if the commodity price of oil or gas exceeded a prescribed price threshold level (“Price Threshold”). Kerr-McGee challenged the Burton Decision stating that its eight deepwater leases were not subject to the specified Price Thresholds.

The Outer Continental Shelf Lands Act (“OCSLA”) gives the Secretary of the Interior (“Secretary”) the authority to issue and administer oil and gas leases on the Outer Continental Shelf and to promulgate implementing regulations. 43 U.S.C. § 1334(a). The DWRRA amended OCSLA and gave the Secretary the authority to suspend royalties on certain volumes of initial production from the deepest areas of the Gulf of

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Mexico. 43 U.S.C § 1337(a)(3)(C)(i) & (ii). Three specific schemes were established for royalties from deepwater leases. 43 U.S.C § 1337(a)(3)(C)(v)-(vii).

First, under Section 302 of the DWRRA, leases existing as of November 28, 1995 were permitted to apply for royalty relief, which the Secretary would award if the lease would otherwise not be economical. In addition, Section 302 provided that no royalty relief was allowed if the price of oil or gas meets a certain price threshold, as statutorily defined by Congress. Second, under Section 304 of the DWRRA, Congress provided for royalty relief to leases enacted between November 28, 1995 and November 28, 2000. Third, under Section 303 of the DWRRA, the Secretary was authorized to provide royalty relief and impose price thresholds on leases issued after the five-year period ended on November 28, 2000.

Interpreting Section 304, the Burton Decision found that Kerr-McGee owed royalties from the eight leases because price thresholds were satisfied. The Burton Decision rejected Kerr-McGee’s interpretation that the Mandatory Relief Leases are not subject to price thresholds and found that the royalty relief available to the eight Kerr-McGee leases was limited by price thresholds contained in the terms of the leases, imposed pursuant to Congressional authority.

Kerr-McGee argued that it was Congress’ intent to establish mandatory royalty relief for specified volumes in the DWRRA and that the mandatory royalty relief provision, Section 304, prevented the Secretary from enacting price thresholds. The Secretary argued that the DWRRA clearly established the authority to establish price thresholds on Mandatory Royalty Relief Leases and Section 304 did not deprive the agency of its ability to establish price thresholds because Section 304 specified the use of the Section 303 bidding system.

In summarizing the dispute, the court stated “the crux of this case is whether Section 304, which requires mandatory royalty relief for specified volumes, also stripped the Interior of its discretion to set price thresholds that would apply before a Mandatory Royalty Lease produced the minimum volume of royalty free production.”

The court began its analysis by reviewing the Fifth Circuit’s decision of Santa Fe Snyder Corp. v. Norton. In this decision, the Fifth Circuit found that Section 304 of the DWRRA clearly articulated Congress’ unambiguous intent that the royalty relief for Mandatory Royalty Relief leases was automatic and unconditional. Thus, under Santa Fe Snyder, the Fifth Circuit found that the Interior’s addition of new production requirements was contrary to law.

The court found that the price threshold requirement in Kerr-McGee’s Mandatory Royalty Relief leases was similarly unlawful under the plain text of the DWRRA because the DWRRA’s Section 304 apply-
ing to new leases, clearly require minimum royalty relief. The Interior had no discretion to enact a price threshold requirement that applied to volumes below the minimum volume of royalty free-production. The court held that the Secretary exceeded its Congressional authority by imposing price threshold requirements on Kerr-McGee's eight deepwater leases.

The fifth circuit recently affirmed the holding of the district court holding that the DWRRA unambiguously granted royalty suspension up to production volume thresholds, and thus, the department's attempt to collect royalties when volume thresholds had not be yet been met was invalid.

B. GOM Shelf, LLC v. Sun Operating Limited Partnership

In GOM Shelf, LLC v. Sun Operating Limited Partnership, 2008 WL 901482 (S.D. Tex. March 31, 2008), Cities Service Oil Company, Skelly Oil Company, Sun Oil Company ("Sun"), and Getty Oil Company obtained a lease in Block A-16 Mustang Island Area, Offshore Texas (the "Mustang Block"), with each company obtaining a 25% interest. There were several changes of ownership after the lease was granted.

The plaintiff in this suit, GOM Shelf, LLC ("GOM"), paid 100% of the plugging and abandoning costs for the Mustang Block from 2002-2006. At the time these expenses accrued, GOM had only a 50% interest in the Mustang Block with Cronus Offshore, Inc. ("Cronus") holding the remaining 50%. Cronus filed for bankruptcy and thereafter GOM filed suit against the two assignors, Sun and Online Resources, Inc. ("Online"), who conveyed interests in the Mustang Block to Cronus.

The JOA applicable to the lease for the Mustang Block contains the following language in pertinent part: "The assignment of any such interest shall not relieve the assignor making such assignment of any responsibility or liability hereunder accruing on or prior to the execution, delivery and approval by lessor, if required, of such assignment unless consented to in writing by all of the parties then owning and holding interest in said leases, permits and areas........ Should any party hereto sell its entire interest in the leases, permits and area, then the party so disposing of its interest shall be relieved of all obligations hereunder which accrue subsequent to the date of the delivery to the purchaser of written assignment or conveyance of such interest, approved by lessor, if such approval is required, provided that the party disposing of its entire interest has fully paid its share of all costs incurred or accrued hereunder to the time of such sale." Id. at 9.

The above quoted provision provides, in part, that an assignor is liable for liabilities and responsibilities that accrued before it assigns its interest to a third party. 30 C.F.R. § 250.1702(d) states that "decommissioning obligations accrue when you are or become a lessee or the owner of operating rights of a lease on which there is a well that
has not been permanently plugged according to this subpart, a platform, a lease term pipeline, or other facility, or an obstruction.” *Id.* at 10. Applying this statute, the defendants’ plugging and abandoning responsibilities accrued before they assigned their interests in the Mustang Block to Cronus and their assignment did not relieve them of the aforementioned liabilities and responsibilities.

The court found that the remaining portion of the above quoted provision was not a release of any of the defendants’ liabilities and responsibilities. The Texas Supreme Court agreed with its holding in a previous Supreme Court case addressing the same issue, which had the same holding as the instant case. The Court held “the JOA did not expressly provide that Sun and Online’s obligations under the operating agreement should terminate upon assignment, and these defendants were not expressly released following the assignments of their working interests.” *Id.* at 11. As a result, Sun and Online have a continuing obligation to pay their share of plugging and abandoning expenses.

C. *Bois d’Arc Energy, Inc. v. BHP Billiton Petroleum (Deepwater)*

In *Bois d’Arc Energy, Inc. v. BHP Billiton Petroleum (Deepwater)*, 2008 WL 2080747 (E.D. La. May 16, 2008), the plaintiff, Bois d’Arc Energy, Inc. (“Bois d’Arc”), sued BHP Billiton Petroleum (Deepwater) (“BHP”) for breach of contract and quantum meruit, arising out of a letter agreement regarding the acquisition of certain mineral rights. The plaintiff was seeking liquidated damages in the amount of $1,000,000.00, alternatively, for quantum meruit. The focus of the dispute involved the interpretation of two provisions in a letter agreement between the parties.

Paragraph (6) of the agreement provided “Except as provided in Paragraph 7 of this Agreement, BHP shall commence, or cause to be commenced the drilling of an exploratory well.....However, if BHP does not commence the drilling of an exploration test well to a depth below 19,500’ TVD on OCS-G 23896, or on acreage included within an exploration unit which includes all, or a portion of the Properties on or before January 15, 2007, BHP shall, subject to the provisions of Paragraph 7 below, reassign all of the Properties back to Bois d’Arc.” *Id.* at 1.

Paragraph (7) of the agreement provided “Notwithstanding the terms of Paragraph 6, since a specialty rig (rated to depths bellow 19,500’) is required to drill an exploratory test well, BHP shall be deemed to have satisfied the January 15, 2007, drilling obligation described above by executing a rig contract and committing in writing, to Bois d’ Arc prior to January 15, 2007.....Should BHP commit to the drilling of an exploration test well on OCS-G 23896, or on acreage included within an exploration unit which includes all, or a portion of OCS-G 23896 and fails to commence actual drilling operations prior to the original lease expiration date (which date is April 30, 2007), or any extension thereof due to the MMS granting a Suspension of Operations,
BHP’s sole liability to Bois d’Arc for such failure to commence actual drilling operations shall be payment, by wire transfer of liquidated damages to Bois d’Arc in the amount of $1,000,000.00.” *Id.* at 1.

BHP did not commence the drilling of an exploratory test well as provided for in Paragraph (6) and did not execute a rig contract or commit in writing to commencing drilling operations as provided for in Paragraph (7). BHP did reassign the operating rights to Bois d’Arc pursuant to Paragraph (6).

The court concluded that there was no conflict between the two paragraphs and the language in the contract was unambiguous for purposes of La. Civ. Code Articles 2045 and 2046. When the two paragraphs are read together the circumstance with which provokes the liquidated damages provision did not occur according to the undisputed facts.

D. Chieftain Int’l (U.S.), Inc v. Southeast Offshore, Inc

In the case of Chieftain International (U.S.), Inc. *v.* Southeast Offshore, Inc, 2008 WL 5264018 (C.A.5 Dec. 19, 2008), an operator of oil and gas leases in the Gulf of Mexico brought a breach of contract action against owners of fractional interest in leases for failing to pay their proportionate share of the costs of operations.

Southeast Offshore, Inc. (“Southeast”) became the owner of a fractional working interest in two federal offshore oil and gas leases in the Gulf of Mexico. The joint operations on the leases were governed by two substantially similar, but separate, joint operating agreements (“JOA”). After acquiring its interest in the leases Southeast became a party to and assumed the rights and obligations under each JOA. Hunt Chieftain Development, L.P. and Hunt Oil Company (collectively, “Hunt”), as Operator under the JOAs advanced 100% of the costs of the operations.

Southeast stopped paying Hunt’s invoices and subsequently entered into a written assignment with a newly formed, wholly owned subsidiary, South Pass Properties (“South Pass”), who assumed all of Southeast’s rights and obligations under the leases and JOAs. South Pass did not pay any of the bills associated with the joint operations prior to or after the assignment from Southeast. Hunt sued both Southeast and South Pass alleging breach of contract, asserting that the assignment between Southeast and South Pass did not release Southeast from its obligations under the applicable JOAs.

The Louisiana Civil Code provides that an assignee and assignor remain solidarily liable with regard to the assignor’s obligations to a third party unless the third party releases the assignor. The assignment between Southeast and South Pass could not release Southeast of its obligations to Hunt without the consent of Hunt.

Southeast pointed to two provisions in the JOAs arguing that these provisions provided that there will be no joint or several liability between
Southeast and South Pass and that an assignor is not solitarily liable after an assignment. The court rejected these arguments explaining that the provisions noted do not relieve a co-owner from continuing obligations if it assigns its interest in the lease to a third party and that the provisions do not pertain to an assignment of a co-owner’s working interest to a third party.

Since the JOAs did not contain a release of Southeast’s obligations by Hunt, the appellate court affirmed the lower court’s finding that Southeast was solitarily liable for the obligations under the leases and JOAs. Southeast was ordered to pay Hunt $5,841,950.18 plus interest, costs, and attorney’s fees.

E. *Caldwell Lands, Inc. vs. Cedyco Corporation*

The case of *Caldwell Lands, Inc. vs. Cedyco Corporation*, 980 So.2d 827 (La. App. 3 Cir. April 2, 2008), involved an unleased landowner who brought an action against an operator of an oil and gas unit, seeking unpaid production proceeds attributable to its unleased interests. Caldwell Lands, Inc. ("Caldwell") filed suit against Cedyco Corporation ("Cedyco") to recover proceeds from oil, gas, and/or condensate production attributable to a portion of a 10.3 acre tract it owned. Caldwell had not been paid proceeds of the production attributable to its property from any source including Cedyco, the operator of the unit.

The trial court awarded Caldwell the unpaid production proceeds attributable to Caldwell’s acreage inside the unit. The appellate court applied Louisiana Civil Code Articles 487 and 488 to Caldwell’s claims. Cedyco argued that Article 487 had never been applied to a claim for nonpayment of royalties and Caldwell pointed out that its claim does not involve nonpayment of royalties pursuant to a lease since Cedyco does not own the lease from Caldwell, but instead that Cedyco does not own a lease from Caldwell and had produced oil, gas, and/or condensate from the unit without paying proceeds of production to it.

Article 488 provides that a good faith possessor has the right to be reimbursed for his expenses, while a bad faith possessor does not. In the trial court, Caldwell could not rebut the presumption of good faith possessor on the part of Cedyco. The appellate court agreed with the trial court and held that Cedyco was required to pay Caldwell the production proceeds attributable to its property; however, the court also held that Cedyco was entitled to reimbursement from Caldwell for a share of its production expenses.

On rehearing the court reexamined Article 487, which provides: “A possessor is in good faith when he possesses by virtue of an act translative of ownership and does not know of any defects in his ownership.” *Id.* at 830. The record did not show any act translative of ownership in favor of Cedyco, i.e. an act which transferred title to
Cedyco. On rehearing the court reversed its previous holding that had ordered Caldwell to reimburse Cedyco for its production expenses after the court determined that the record before it did not contain evidence that Cedyco was in fact a good faith possessor.

F. *Hall vs. James*

In the case of *Hall v. James*, 986 So.2d 817 (La. App. 2 Cir. June 4, 2008), mineral interest owners sued fellow owners to recover improperly awarded royalties. Leon Gray and his wife Mary were the owners of two corporations, Leon W. Gray Contractor Inc. ("Gray Contractor"), and Leon W. Gray Investments, Inc. ("Gray Investments"). On July 12, 1996 James purchased immovable property from Gray Investments by a deed conveying to James one-half of the royalties and mineral interests in the property and reserving the other one-half to Gray Investments. Kelly Oil Corporation, a predecessor-in-interest to Samson Lone Star Limited Partnership and Samson Contour Energy E&P, LLC ("Samson") prepared division orders pertaining to production attributable to the mineral interests of concern and James began receiving royalties attributable to such interests. Later, Mr. Gray died and his property was divided between his wife and children.

Gray’s children sued Samson and James for recovery of the proceeds when it was discovered James was paid one-half of the total royalties owned by and owed to Gray Investments and/or Mr. Gray, rather than the one-half due them for royalties on the property they had purchased. The trial court denied the exceptions of prescription, no right of action, and no cause of action. In the appellate court James contended that the plaintiffs had no cause of action against the defendant because there was no privity of contract between the parties. James argued that both the plaintiffs and James each had a contract with Samson for the payment of royalties, but not with each other.

Louisiana Civil Code Article 2298, dealing with enrichment without cause, specifies that “[a] person who has been enriched without cause at the expense of another person is bound to compensate that person. The term “without cause” is used in this context to exclude cases in which the enrichment results from a valid judicial act or the law. The remedy declared here is subsidiary and shall not be available if the law provides another remedy for the impoverishment or declares a contrary rule.” *Id.* At 820.

Unjust enrichment is a remedy of last resort, available only when no other remedy is available. The court found that because the plaintiffs had a cause of action against Samson to recover for the underpayment of royalties to them and the overpayment to James, the requirement of Article 2298 was not satisfied. The court reversed the trial court’s ruling denying the exception of no cause of action and held the plaintiffs had no cause of action against James.
G. Coastal Oil & Gas Corp. v. Garza Energy Trust

A long-awaited decision in the case of Coastal Oil & Gas Corp. v. Garza Energy Trust, 2008 WL 3991029 (Tex. Aug. 29, 2008), was reached on August 29, 2008 by the Texas Supreme Court. The Court reversed the decision of the two lower courts holding that the Rule of Capture bars recovery for subsurface trespass caused by hydraulic fracturing which extends beyond lease lines.

Respondents, royalty interest owners of oil and gas leases, brought the action against the gas well operator for subsurface trespass along with breach of duty of good faith pooling and breach of implied covenants to develop, market and protect against drainage. The respondents, referred to herein collectively as Salinas, own minerals in a 748-acre tract of land known as Share 13 in Hidalgo County, Texas. Coastal Oil & Gas Corp. ("Coastal") was the lessee of the minerals under Share 13 and Share 15, a tract adjacent to Share 13. Coastal was also the lessee of another adjacent tract, Share 12, but in 1995 acquired the mineral estate. Underlying all three of these tracts is a natural gas reservoir, the Vicksburg T formation, lying between 11,688 and 12,610 feet ("Vicksburg T").

Natural gas cannot be commercially produced from the Vicksburg T without hydraulic fracturing stimulation, or "fracing", as the process is known in the industry. Salinas contended that the incursion of hydraulic fracturing fluid and proppants (a slurry containing small granules) into another's land two miles below the surface constitutes a trespass from which the minerals owner can recover damages equal to the value of the royalty of the gas drained from the land.

The Court concluded that had Coastal caused proppants to be deposited on the surface of Share 13, it would be liable for trespass. The Court looked at the ancient common law maxim that land ownership extends to the sky above and the earth's center below, *cujus est solum ejus est usque ad coelum et ad inferos*, but determined that it has "no place in the modern world." In comparing drilling two miles below the surface to a plane flying over one's land, the Court stated, "Wheeling an airplane across the surface of one's property without permission is a trespass; flying the plane through the airspace two miles above the property is not." *Id.* at 5.

The Court stated that it did not need to decide the broader issue at this time and expressly declined to decide whether subsurface fracing could ever be considered a trespass. Actionable trespass requires injury and Salinas's only claim of injury is that Coastal's fracing operations made it possible for gas to flow from beneath Share 13 to the Share 12 wells; an action precluded by the Rule of Capture. The Rule of Capture gives a mineral rights owner title to the oil and gas produced from a lawful well bottomed on the owner's property, even if the oil and gas flowed from beneath another owner's property.
Salinas then compared hydraulic fracturing to drilling a deviated or slant well that is bottomed on another’s property. The Court rejected this argument because gas being produced from a deviated well does not migrate across the border onto one’s property, both the well and gas being produced is on the same property. While the Rule of Capture allows for protection from hydraulic fracturing, it offers no protection from a person who drills a deviated well.

In addition to the holding that damages for drainage by hydraulic fracturing are precluded by the Rule of Capture, the Court also ruled on claims for breach of the implied covenants and the correct amount of damages for those breaches. This case has taken several years to come to a decision and although the Court did not decide decisively that subsurface fracturing can never bring rise to an action for trespass, oil and gas operators across Texas can rest assured that as of today, landowners may not seek damages for subsurface trespass caused by hydraulic fracturing from their adjacent operators, but instead must sue their own operators for failure to protect against drainage.

H. ATP Oil & Gas Corp.

In ATP Oil & Gas Corp., 173 IBLA 250 (2008), the Interior Board of Land Appeals (“IBLA”) affirmed a denial of a Suspension of Operations (“SOO”) by the MMS where a lessee submitted a revised exploration plan (“EP”) 11 days before the end of the lease primary term, and an application for permit to drill (“APD”) 6 days before the end of the lease primary term, and the records shows that at the time these documents were submitted the lessee had no expectation that it could conduct lease activities before the lease expiration date.

The MMS issued oil and gas lease OCS-G 16662, Mississippi Canyon Area, Block 943, effective August 1, 1996, in favor of BHP Petroleum (Gulf of Mexico) (“Lease”). ATP Oil & Gas Corp. (“ATP”) bought a 75% working interest in the lease and became the lease operator on May 23, 2006. After ATP’s acquisition, it had a little more than 2 months to begin lease operations before the lease expiration date. ATP acquired the remaining 25% working interest in the lease on July 24, 2006.

Prior to acquiring any interest in the Lease, ATP entered into discussions with Diamond Drilling Company (“Diamond”) about using its Ocean Quest rig to drill on the lease. Later Diamond determined that the rig would not be able to drill to the total depth desired due to riser handling capability and because of a negative forecast for the approaching storm season. On July 20, 2006, the day after the discovery of loop currents, ATP filed an amendment to its pending EP. ATP amended the EP to provide for the use of a semi-submersible drilling unit and to change well locations. ATP requested an expedited review of its EP, however, ATP failed to notify the MMS of the existence of loop currents, which fact could pose a problem in any drilling operations.
On July 25, 2006, ATP filed an APD and a request for an SOO. ATP’s explanation was that it had never been able to obtain a commitment from Diamond to drill the planned deep well or to find a mooring system that would allow it to drill to “conductor setting depth” before the lease expiration date. The MMS did not approve the SOO, EP, or APD prior to the July 31, 2006, lease expiration date. During the next month ATP continued to attempt to obtain the services of another rig, BP’s Marianas rig. On August 17, 2006 the MMS granted ATP another week to contract with BP for use of the Marianas to drill the well to total depth, and committed to grant the SOO if ATP was able to contract the Marianas.

On August 29, 2006 the MMS issued a decision denying the SOO. The MMS relied on NTLs 2000-G17 and 2006-G02, stating that it was ATP’s responsibility to show that a drilling rig was scheduled to commence operations prior to lease expiration and to have an approved EP and APD. The MMS reviewed the situation and found that even if weather conditions were ideal and a rig was available to drill the well to total depth, a well could not have been drilled because ATP lacked required approvals to do so.

The IBLA explained that the record showed that ATP acquired a lease close to its expiration date, which the IBLA described as a “risky venture.” It then gambled that the semi-submersible rig it had under contract since 2005, approved to drill to 3,500 feet, could be pressed to drill a deeper well. ATP never had a contract to drill any well on Mississippi Canyon Block 943 and thus never had a “drilling rig [that] was contracted and scheduled to begin leaseholding operations prior to the lease expiration.” NTL 2006-G02.

Additionally BHP’s EP was for a drilling rig and the Ocean Quest was a semi-submersible rig. Thus, if ATP ever intended to use the Ocean Quest it was required to submit a revised EP. ATP waited until July 20th, 2 months after acquiring the lease, with the lease expiration date in 11 days to file the revised EP. The rules require an approved revised EP before lease activities could occur, and anticipated 30 days, at a minimum, for the MMS to approve an EP. ATP also waited until July 25 to submit an APD contemporaneous with its SOO request. By this date, ATP was not anticipating drilling a well before the lease expired. ATP filed its APD on July 25 in order to obtain an SOO, not to actually drill a well before lease expiration. It was ATP’s responsibility to file both the EP and APD early enough before the expiration of the lease to obtain the MMS’s approval within the time allowed by the regulations.

The IBLA went on further to state that the MMS attempted to keep the lease alive even after it expired by its own terms, but even 30 days after lease expiration, ATP could find no option to conduct lease activities, and so the MMS allowed the EP and APD, without the amendment
that would have been required, to go unapproved. The IBLA denied ATLP's request for a hearing and affirmed the decision by the MMS.