

***The AAPL 2006 OCS Committee Workshop
January 19, 2006***

***Anadarko Building, Allison Hall
The Woodlands, Texas***

OCS UPDATE

**LAMBERT M. LAPEROUSE
GIEGER, LABORDE & LAPEROUSE, L.L.C.**

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

Land and Legal Issues in the Outer Continental Shelf

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- b. Federal Register Notice on NTLs
- c. Particular NTLs pertinent to landmen:
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 - § NTL No. 2005-G20: Damage Caused by Hurricanes Katrina and Rita
 - § NTL No. 2005-G10: Revisions to List of OCS Blocks Requiring Archaeological Resource Surveys and Reports
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 - § NTL No. 2005-G04: Flaring and Venting Regulations
 - § NTL No. 2000-G22: Subsalt Lease Term Extension
 - § NTL No. 2000-G17: Suspension of Production/Operations Overview

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

- \$ NTL No. 2000-G16: Guidelines for General Lease Surety Bonds
- \$ NTL 2000-G04: Well Producibility Determinations
- \$ NTL 99-N01: Guidelines for Oil Spill Financial Responsibility for Covered Offshore Facilities
- \$ NTL 98-18N: Supplemental Bond Procedures; NTL 98-18N (Addendum 1): Additional Guidance for Third-Party Guarantees
- \$ NTL 97-16: Production Within 500 Feet of a Unit or Lease Line
- \$ NTL 96-08: Time Allowed for the Correction of Incidents of Noncompliance (INC's) and for the Return of Notification of INC Forms

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701 Poydras Street, Suite 4800
 New Orleans, Louisiana 70139
 Telephone: 504-561-0400
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 Cellphone: 504-616-6176
 Email: laperouse@gllaw.com

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 Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
 Houston, Texas 77056
 Telephone: 713-968-6555
 Facsimile: 713-968-6554
 Cellphone: 713-594-9500
 Email: laperouse@gllaw.com

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1. Notices 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 Gulf of Mexico OCS Region 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 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 explaining 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.

The MMS sometimes publishes in the Federal Register a list of the NTLs that are currently in effect. The MMS last published such a list in the Federal Register on January 15, 2001 (Vol. 66, No. 18), that listed the NTLs that were in effect as of January 15, 2001. If an NTL was issued prior to January 15, 2001 and was not listed in such Federal Register notice, then such NTL was deemed cancelled and no longer in effect. The Federal Register notice published on January 15, 2001 does not list the currently existing LTLs; however, such LTLs are to remain in effect and a list of the active LTLs is available from the GOMR.

Summarized below are certain NTLs which we believe would be of interest to landmen and attorneys involved with the OCS.

701 Poydras Street, Suite 4800
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Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

□ **NTL No. 2005-G23: Gulf of Mexico Regional Office Operations**
[Effective November 8, 2005; expires June 30, 2006]

This NTL provides a description and information regarding the status of the offices of the Minerals Management Service, OCS Gulf of Mexico Region (“MMS”) after Hurricanes Katrina and Rita. It supersedes NTL 2005-G18 that was effective October 7, 2005.

The MMS office building in New Orleans reopened; however, several sections of the MMS remain in Houston while the building in New Orleans is being repaired. The sections remaining in Houston (and their telephone numbers) are the Office of the Regional Supervisor for Field Operations (281-873-1848), which includes the Office of Structural and Technical Support (281-873-1811) and Technical Assessment Operations Support Section (281-873-1841), and the Office of the Regional Supervisor for Production and Development (281-873-1882), which includes the Development and Unitization Section (281-873-1804). The physical and mailing addresses for these offices are: 16855 Northchase Drive, Houston, Texas 77060 and P.O. Box 60389, Houston, Texas 77205.

The Service Commingling Production Measurement Section office has moved to 19218 North 5th Street, Covington, Louisiana 70433; however, the MMS has requested that all required filings be sent to the Elmwood address. The Office of the Regional Supervisor Field Operations, Plants Section and Pipeline Section, and Office of the Regional Supervisor for Production and Development, Rate Control Section, are temporarily located at 990 Corporate Drive, New Orleans, Louisiana 70123; however, continue to send mail to the Elmwood address for such sections. The NTL advises that all MMS District Offices are now open.

The NTL requires that all applications and filings be submitted in accordance with MMS regulations, and the departures and/or waivers from requirements to file that were granted by previous hurricane NTLs are no longer in effect. The only exceptions are those filings made pursuant to platform approvals under the Office of Structural and Technical Support.

This NTL also reminds operators that major repairs of platform damage resulting from Hurricanes Katrina or Rita must be reviewed and approved by the MMS before they are performed. A list is provided on the type of platform installations, modifications, and repairs that may be performed before an operator receives formal approval from the MMS. Such list provides detailed requirements regarding the installation of new platforms, making major modifications and repairs to an existing platform, adding a well to an existing platform, converting a platform to a right-of-use and easement platform, and removing a platform and performing site clearance.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
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5100 Westheimer, Suite 200
Houston, Texas 77056
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Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

□ **NTL 2005-G20: Damage Caused by Hurricanes Katrina and Rita
[Effective October 24, 2005]**

This NTL describes the inspections an operator must conduct, and the plans and reports that must be prepared, because of the known and potential damage to facilities caused by Hurricanes Katrina and Rita. It supersedes NTL 2005-G16.

Level I surveys (above-water visual inspection) must be performed on all platforms that were exposed to hurricane force winds of 74 miles per hour or greater from Hurricanes Katrina and Rita. Level II surveys (general underwater visual inspection by divers or remotely operated vehicle) must be performed on all platforms when the Level I survey indicates that underwater damage may have occurred. Additionally, a Level II survey must be conducted of a platform after severe accidental loading, such as a large object (e.g. boat landing, sump, staircase) being knocked loose and potentially causing structural damage to the platform as it fell to the seafloor. Level III surveys (underwater visual inspection of areas of known or suspected damage) of a platform must be conducted when a Level II survey detects significant structural damage. Level IV surveys (underwater non-destructive testing of areas of known or suspected damages) must be conducted on platforms based on the results of a Level III survey.

Additionally, based upon the paths of Hurricanes Katrina and Rita, the MMS is requiring (a) Level I and II surveys for all platforms located east of a line drawn between the points of Longitude 92.5° West, Latitude 27.0° North, and Longitude 94.8° West, Latitude 29.8° North, (b) Level III underwater surveys for all platforms that experienced wave loading on the deck and all platforms where a Level II survey indicates a Level III survey is necessary, and (c) Level IV surveys where there is detection of significant structural damage during a Level III survey or if visual inspection alone cannot determine the extent of the damage.

The MMS requires that the operator make every attempt to complete the required underwater surveys before the platform is manned. If a Level II or Level III survey finds structural damage, then the platform may not be manned until a structural analysis is completed and the necessary repairs are performed. Approval is required from the MMS before any major repairs are made to the damage.

The MMS required that the following information be submitted by November 4, 2005: (a) a list of an operator's platforms and other structures that are required to be surveyed; (b) an initial inspection plan for each listed platform that generally describes the work that will be performed to determine the condition of the structure; and (c) a timetable to show how the inspections will be completed by the MMS deadline of May 5, 2006. The MMS will review the initial inspection plans and advise the operator concerning their acceptability. An

operator may submit amendments to the list and inspection plans. An amendment must be submitted when the results of a Level II survey require an operator to conduct a Level III survey. The MMS is encouraging operators to first inspect the older platforms located near the hurricane eye center tracks, and then inspect those platforms towards the outer limits of the described area. All surveys should be completed by May 5, 2006, and all work to correct any damage found during a platform survey should be completed by June 1, 2006. The inspection results and subsequent updates should be submitted to the MMS by the first Friday of each month as follows: December 2, 2005, January 6, 2006, February 3, 2006, March 3, 2006, April 7, 2006, and May 5, 2006.

The MMS is also requiring inspections of pipelines located east of a line drawn between the following two points: Longitude 92.5° West, Latitude 27.0° North, and Longitude 94.8° West, Latitude 29.8° North. Such inspections include pipeline tie-ins and crossings, pipeline risers, and pipeline steel catenary risers; and are dependant upon water depth. If the water depth range is 0 to 299 feet, then the operator should inspect all subsea tie-ins and pipeline crossings. For all water depths the operator should additionally inspect all risers, including steel catenary risers. If an operator suspects that an adrift Mobile Drilling Unit or other floating structure may have impacted any of its pipelines, the operator should conduct an underwater pipeline inspection regardless of water depth to determine whether the structure caused any damage to the pipeline. An operator should correct any damage found during a pipeline inspection before June 1, 2006. Before any repairs are conducted, an operator must submit a repair procedure for review and acceptance by the MMS Pipeline Section. For pipelines located east of the line described above, a leak test should be performed before returning the pipeline to service. Aerial surveillance must be performed for inspections of major oil pipelines while the testing is performed.

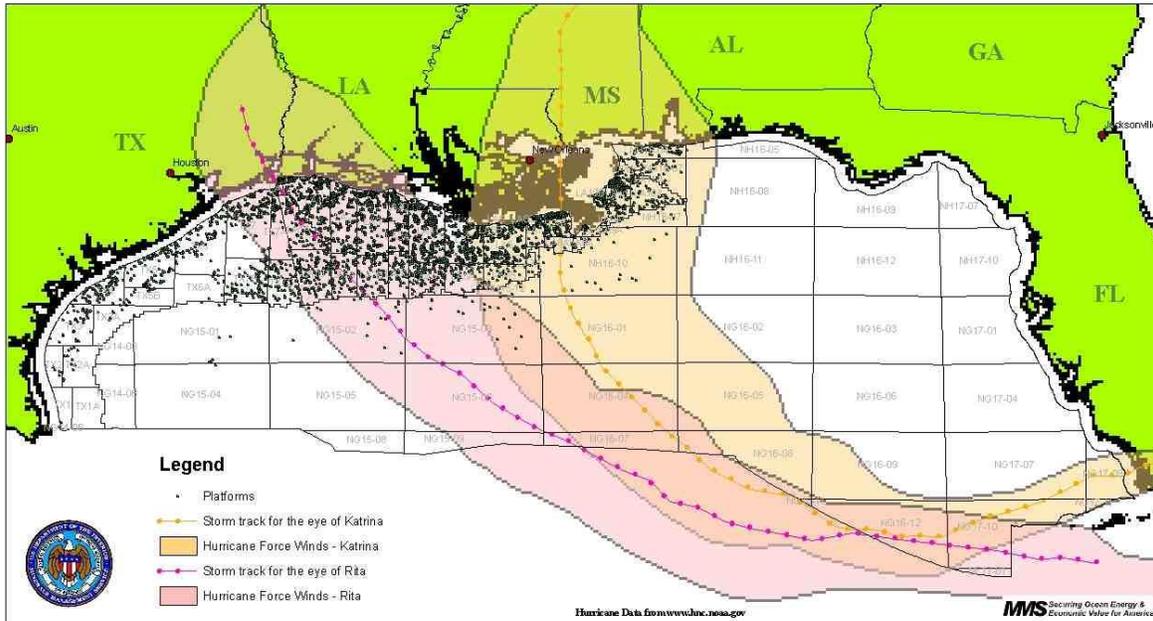
The following is a map provided by the MMS that shows the general areas affected by the paths of Hurricanes Rita and Katrina.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

Hurricanes Rita and Katrina, August - September 2005



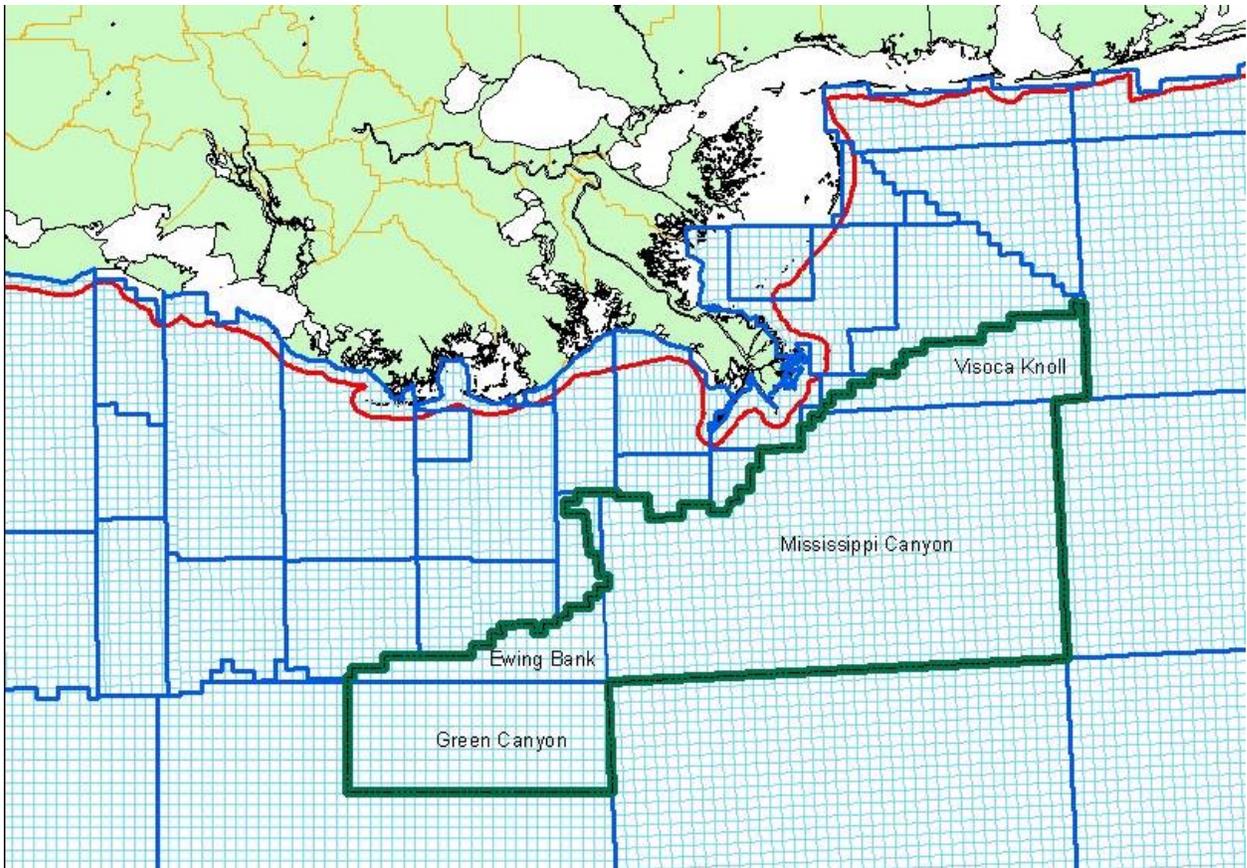
□ NTL 2005-G10: Revisions to List of OCS Blocks Requiring Archaeological Resource Surveys and Reports [Effective July 1, 2005]

This NTL supplements NTL No. 2005-G07 (see below) by adding deepwater blocks on the approach to the Mississippi River to the list of blocks that require archaeological resources surveys and archaeological reports. The addition of these blocks is the result of a MMS study that found more than 2,100 historic shipwrecks in the federal waters of the Gulf of Mexico. Among the areas with a high concentration of reported shipwrecks is the approach to the Port of New Orleans. Industry related activities, including recent pipeline surveys, have identified 12 historic wrecks located within the deepwater approaches to the Mississippi River. Below is a map prepared by the MMS that shows the additional deepwater blocks now requiring an archaeological survey and report.

701 Poydras Street, Suite 4800
 New Orleans, Louisiana 70139
 Telephone: 504-561-0400
 Facsimile: 504-561-1011
 Cellphone: 504-616-6176
 Email: laperouse@gllaw.com

Lambert M. Laperouse
 Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
 Houston, Texas 77056
 Telephone: 713-968-6555
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 Cellphone: 713-594-9500
 Email: laperouse@gllaw.com



□ **NTL No. 2005-G07: Archaeological Resources Surveys and Reports**
[Effective July 1, 2005]

This NTL supersedes NTL No. 2002-G01 and provides guidance on MMS regulations regarding archaeological discoveries, clarifies when an operator must report discoveries to the MMS, and reminds that the MMS may assess penalties for non-compliance. To determine whether an operator must conduct an archaeological resource survey and submit an archaeological resource report, an operator should review the list of affected blocks on the MMS website address:

www.gomr.mms.gov/homepg/regulate/environ/archaeological/surveyblocks.pdf.

The NTL provides guidelines for the types of pattern and data acquisition instrumentation to be used for the archaeological resource surveys. Note that the MMS will not approve requests to use 3-D seismic information as a substitute for high-resolution sidescan sonar data for archaeological surveys on blocks.

701 Poydras Street, Suite 4800
 New Orleans, Louisiana 70139
 Telephone: 504-561-0400
 Facsimile: 504-561-1011
 Cellphone: 504-616-6176
 Email: laperouse@gllaw.com

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 Gieger, Laborde & Laperouse, L.L.C.

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 Houston, Texas 77056
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If an operator discovers man-made debris that appears to indicate the presence of a shipwreck (e.g., a sonar image or visual confirmation of an iron, steel, or wooden hull, wooden timbers, anchors, concentrations of man-made objects such as bottles or ceramics, piles of ballast rock) within or adjacent to the lease area or pipeline right-of-way during a shallow hazard survey, diver inspection, or remotely operated vehicle inspection, then the operator must immediately halt operations, take steps to ensure that the site is not disturbed in any way, and contact the Regional Supervisor, Leasing and Environment, within 48 hours of the discovery. Failure to comply with the regulations can result in civil penalties under 30 CFR 250.1404.

□ **NTL No. 2004-G16: Suspensions of Operations (SOOs) for Drilling Ultra-Deep Wells Under Salt Sheets [Effective August 19, 2004]**

This NTL was issued pursuant to 30 CFR 250.175(b), which governs the granting of suspension of operations for expiration beneath or adjacent to salt sheets on leases that were issued with a primary term of five years, or with a primary term of eight years with a requirement to drill within five years.

The regulations at 30 CFR 250.175(b)(2) require that before the end of the third year of the primary term, the lessee or his predecessor in interest must have acquired and interpreted full 3-D depth migrated geophysical data beneath a salt sheet and over the entire lease area. Effective the date of the NTL, the MMS may grant departures to the three-year requirement under such 30 CFR 250.175(b)(2) and grant an SOO. For an operator to be eligible for such a departure, the following conditions must apply:

1. The lease must have been in its primary term on August 1, 2002;
2. The potential target involves drilling below 25,000 feet true vertical depth subsea;
3. The requirement contained in 30 CFR 250.175(b)(2) must be met before the end of the fifth year of the primary term; and
4. A reasonable schedule of work leading to the commencement of drilling must be submitted.

The Regional Supervisor for Production and Development will determine the length of the SOO and approve schedule of activities on a case-by-case basis.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
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Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

□ **Information to Lessees and Operators of Deepwater Federal Oil, Gas, and Sulfur Leases in the Outer Continental Shelf, Gulf of Mexico OCS Region [Dated August 8, 2005]**

This ITL addresses the decision by the United States Court of Appeals for the Fifth Circuit in Santa Fe Snyder Corp., et al. v. Norton, 385 F.3d 884 (5th Cir. 2004). The Court addressed the application of the mandatory royalty relief terms under the Deep Water Royalty Relief Act in the context of leases issued under Section 304 of such act (being those deepwater leases issued between November 1995 and November 2000).

This ITL informs that the MMS will publish a rule that will conform the regulations in the applicable sections of 30 CFR Parts 203 and 260 with the Santa Fe Snyder decision. In the meantime, the MMS will determine the lessee's royalty liability for leases issued under the Act in a manner consistent with the decision.

□ **NTL No. 2005-G04: Flaring and Venting Regulations [Effective March 1, 2005]**

This NTL clarifies the MMS policy regarding the continuous flaring or venting of small volumes of oil-well gas or gas-well gas.

In accordance with 30 CFR 250.1105(a)(1), lessees may flare or vent oil-well gas or gas-well gas without approval from the Regional Supervisor when gas vapors are flared or vented in small volumes from storage vessels or other low-pressure production vessels and cannot be economically recovered. To assist operators in determining what volumes the MMS considers to be small and uneconomic, the lessee does not need approval from the Regional Supervisor of Production and Development to flare or vent oil-well gas or gas-well gas at a facility when properly working equipment yields flash gas vapors, from storage vessels or other low-pressure production vessels, that do not exceed an average of 50 MCF of gas per day during any calendar month. If the facility flares or vents more than an average of 50 MCF of gas per day from storage vessels or other low-pressure production vessels, the lessee should present an evaluation to the Regional Supervisor demonstrating that it is uneconomic to capture this gas and, therefore, the flaring or venting is allowable under 30 CFR 250.1105(a). As an alternative to presenting an economic evaluation, the lessee may install the equipment necessary to capture the gas. As with all flared and vented gas, the volume flared or vented must be recorded on a daily basis in accordance with 30 CFR 250.1105(d).

□ **NTL No. 2003-G05: Procedures for Submission, Inspection and Selection of Geophysical Data and Information Collected Under a Permit and Processed or Reprocessed by a Permittee or a Third Party [Effective February 15, 2003]**

This NTL provides detailed procedures for the submission, inspection and selection of geophysical data and information collected under a permit in the GOM and processed or reprocessed by a permittee or a third party. A “third party” includes all persons who obtain data and information acquired under a permit from the permittee, or from another third party, by sale, trade, license agreement, or other means. This NTL supplements the regulations found at 30 CFR § 251.12 (2002) and its purpose is to ensure that the MMS has timely access to certain geophysical data and information for use in determining the adequacy of bids received at GOM OCS Lease Sales.

The NTL states that if a Final Notice of Sale contains a requirement that if you submit a bid, or participate as a joint bidder, you will be required to submit a Geophysical Data and Information Statement that identifies any processed or reprocessed pre- and post-stack depth migrated geophysical data and information in your possession or control and used in the evaluation of an OCS block upon which you participated as a bidder. The Final Notice of Sale for CGOM Sale 185 contains such a requirement.

The existence, extent (i.e., number of miles for 2D or number of blocks for 3D) and type of such data and information must be clearly identified in the statement. The statement must contain information regarding a contact person, most recent timeframes used for block evaluations, and must identify each block upon which a bidder participated in a bid, but for which it does not possess or control such depth data and information. The statement is to be submitted in a separate sealed envelope prior to bid submission, with the bidder’s name and qualification number on the outside. The statements will not be opened until after the public bid reading at the applicable lease sale and will be kept confidential in accordance with the terms of 30 CFR 251.14 and 30 CFR 252.3-252.7.

□ **NTL No. 2003-G02: Ultimate Recovery, Abandonment and Bypassing of Zones [Effective March 3, 2003]**

This NTL informs lessees and operators that the MMS will now perform economic and conservation evaluations of requests to abandon producing zones and to bypass a zone upon the initial completion or recompletion. This new requirement is to ensure

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

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Houston, Texas 77056
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Email: laperouse@gllaw.com

that economic zones are not prematurely abandoned and confirm that no significant hydrocarbon bearing zones are being bypassed to the detriment of ultimate recovery.

Before an operator recompletes a well to a new zone or abandons a zone, the operator must submit a form MMS-124, Application for Permit to Modify (APM), along with supporting information, to the MMS and then receive approval from the appropriate District Supervisor. A conservation evaluation will be performed by the MMS when the production data from the most recent three months of production shows the completion producing at averages rates of 50 BOPD or 300 MCFD.

The MMS must complete the conservation and economic evaluations before approving the APM, thus the MMS requests that the required information be submitted approximately 15 days prior to the date of the proposed operation. In situations where the operator encounters mechanical problems while downhole work is being performed, the District Supervisor will have the discretion to approve an uphole recompletion without the conservation review.

□ **NTL No. 2000-G22: Subsalt Lease Term Extension**
[Effective December 22, 2000]

This NTL explains a situation when the MMS will grant a lease term extension greater than 180 days. The MMS will grant an extension for a period of 1 year from the date of lease expiration if the applicant demonstrates a commitment of significant resources to reprocess existing geophysical data, and the MMS will grant an extension for a period of 2 years if the applicant plans to acquire and process additional geophysical data. To request such an extension: (1) the lease must have a 5-year primary term and be located in water depths of less than 400 meters; (2) a well must be commenced to a hydrocarbon objective during the primary term of the lease; (3) an application for a lease extension must have been submitted to the MMS at least 60 days prior to the lease expiration date, accompanied by appropriate geological and geophysical data, and (4) the MMS has determined that the applicant identified a potential subsalt hydrocarbon accumulation.

□ **NTL No. 2000-G17: Suspension of Production/Operations Overview**
[Effective September 1, 2000]

This NTL provides general guidelines on the implementation of the suspension program promulgated in 30 CFR §§ 250.168-177. A request for a Suspension of Production (SOP) should be sent to the MMS at least three weeks prior to the lease

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
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Houston, Texas 77056
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Email: laperouse@gllaw.com

expiration date. A request for a Suspension of Operations (SOO) may be sent to the MMS later in the lease term because an SOO request is the result of an unforeseen circumstance beyond the lessee's control. If the lease expires before the MMS can take action on the suspension request, then the lease must be treated as expired and the lessee can not conduct any operations on it until the MMS takes action on the suspension request. Rental or minimum royalty are required to be paid during the suspension period granted by the MMS. Such payments are not due when the suspension period is directed by the MMS.

For an SOP, the MMS requires that the lease has a well determined to be producing oil and/or gas in paying quantities. The MMS will not grant an SOP for exploration purposes. A lessee must demonstrate a firm commitment to develop and produce the proven reserves discovered by the well with a reasonable schedule of measurable milestones leading to the commencement of production. Generally, the MMS will not grant an SOP for a "Phased Development" which is described as a satellite discovery waiting on available production handling capacity at a host facility. The MMS usually grants SOPs for one year or less, but may grant an SOP for up to five years.

For an SOO, the MMS does not require that the lease has a well determined to be producing oil and/or gas in paying quantities. A SOO is of shorter duration and is granted when diligent efforts to commence drilling operations are delayed by unforeseen circumstances such as adverse weather, unavoidable accidents, or short delays in a pre-arranged rig release date. Note, that the drilling rig must be schedule to conduct operations before the lease expiration date.

□ **NTL No. 2000-G16: Guidelines for General Lease Surety Bonds
[Effective September 7, 2000]**

This NTL provides how the MMS will implement the requirements for General Lease Surety Bonds under 30 CFR § 256, Subpart I. See the topic on General and Supplemental Bonding elsewhere in this paper for more details.

□ **NTL 2000-G04: Well Producibility Determinations
[Effective January 28, 2000]**

This NTL provides information concerning filing procedures in obtaining a determination of well producibility, and subsequent placement of the applicable lease into a minimum royalty status (effective with the date of the determination).

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
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Cellphone: 713-594-9500
Email: laperouse@gllaw.com

□ **NTL 99-N01: Guidelines for Oil Spill Financial Responsibility for Covered Facilities [Effective January 6, 1999]**

Provides clarification, guidance, and information to operators in interpreting 30 CFR 253 regarding Oil Spill Financial Responsibility for Offshore Facilities (OSFR). See the topic on OSFR later in this paper for more details.

□ **NTL 98-18N: Supplemental Bond Procedures; NTL 98-18N (Addendum 1): Additional Guidance for Third-Party Guarantees [Effective December 28, 1998 and effective September 12, 2000]**

This NTL informs lessees how the MMS will implement the requirements for supplemental bonds. The MMS may require additional security(ies) in the form of a supplemental bond or bonds when the cost to meet all potential present and future lease obligations exceeds the amount of the general bond unless one of the current lessee(s) can demonstrate the financial capability to meet these obligations. These obligations include rents, royalties, and the amount of plugging and abandonment costs necessary to ensure performance of regulatory requirements. The addendum provides additional guidelines for third-party guarantees. See the topic on General and Supplemental Bonding in this paper for more details.

□ **NTL 97-16: Production Within 500 Feet of a Unit or Lease Line [Effective August 1, 1997]**

This NTL provides the guidelines for when the MMS will allow production from a well completion within 500 feet of a unit or lease line for which the unit, lease, or royalty interests are not the same. When the offset operator does not object, approval will be granted by the MMS if it can be demonstrated that the production will cause no harm to ultimate recovery from the reservoir. When the offset operator does object, the MMS will grant approval to produce if such location is necessary to maximize ultimate recovery or to protect correlative rights. Correlative rights means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, minerals from a common source. In order to protect correlative rights, the offset operator will be granted approval to drill its first well in the subject reservoir, even if it is within 500 feet of the unit or lease line, provided

that such well does not cause harm to ultimate recovery from the reservoir. Potential drainage of an offset lease is not sufficient reason to deny a request to produce within 500 feet of the lease line, unless such well has a completed interval greater than 150 feet, such as a horizontal completion. The MMS encourages operators to request approval prior to drilling of the well, and the MMS will make its decision to approve or deny the request regardless if the subject well has already been drilled. Note that MMS approval is not required when the offset block is not leased.

□ **NTL 96-08: Time Allowed for the Correction of Incidents of Noncompliance (INC's) and for the Return of Notification of INC Forms [Effective November 25, 1996]**

This NTL advises that the form of Notification of Incident of Noncompliance requires the operator to return the green copy of the form signed and dated to certify correction of the INC within 14 days from the date of issuance. However, the 14 days is not the time period allowed for the correction of the INC in question, only the time period allowed for the return of the green copy of the form.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

2. Recent Regulations

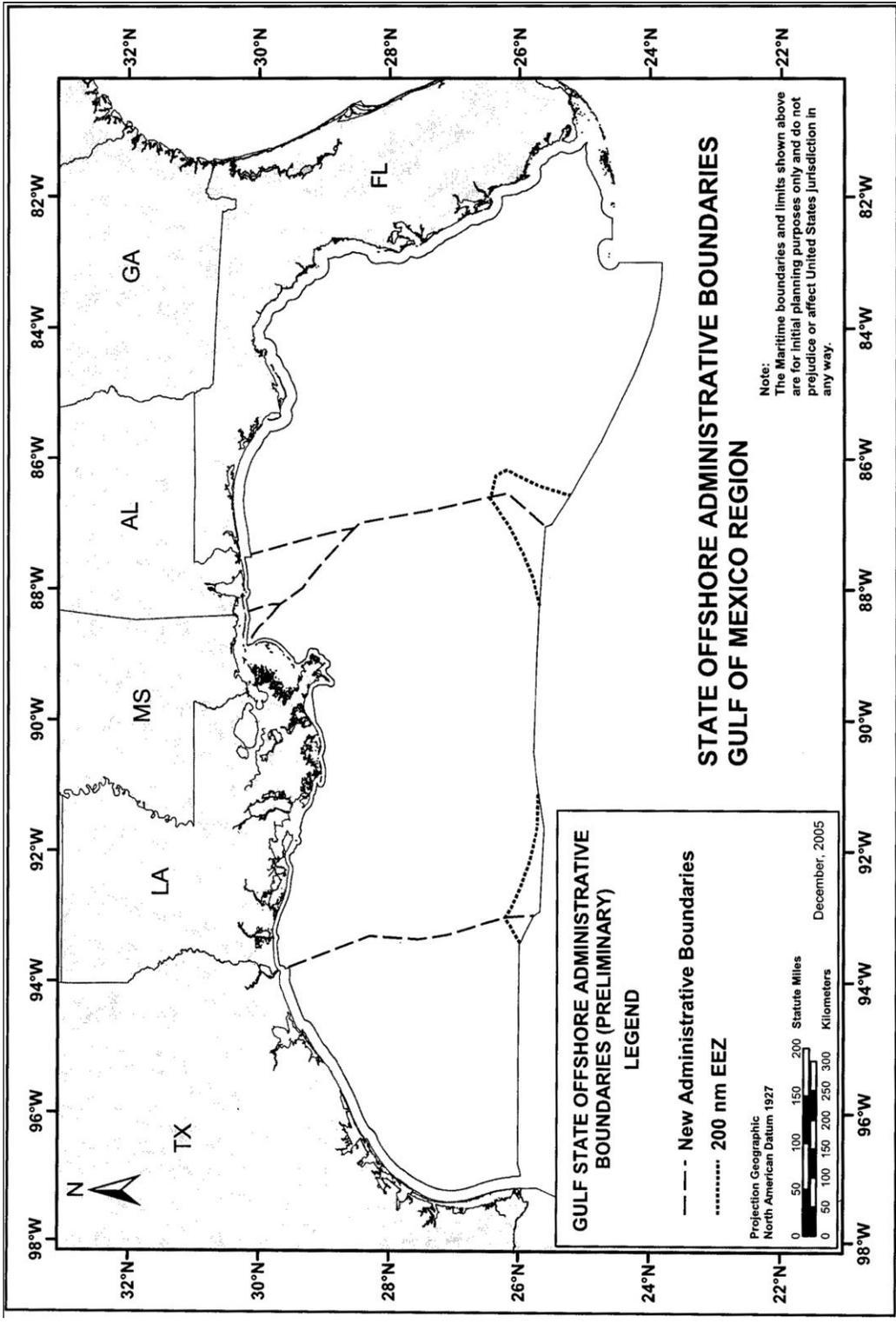
The MMS will issue Final Rules and Notices in the Federal Register. Below are some of the regulations recently published in the Federal Register that may be of interest to land professionals involved in the OCS.

Federal Outer Continental Shelf Administrative Boundaries Extending from the Submerged Lands Act Boundary Seaward to the Limit of the Outer Continental Shelf [71 Fed. Reg. 127 (2006)].

- This notice informs the public that the MMS has developed Federal offshore administrative boundaries from each adjoining coastal state. The MMS assumed this task due to the increasing number and type of both traditional and non-traditional energy, alternative energy-related, and other activities on the OCS, such as: sand and gravel dredging; liquefied natural gas handling facilities; wind, wave and current energy generation projects; and mariculture, as well as other innovative uses of the sea, seabed, existing oil and gas operations, and OCS oil and gas infrastructure that may be pursued in the future.

- The MMS applied the principle of equidistance to establish the boundaries. An equidistance line is one for which every point on the line is equidistant from the nearest point on the baseline being used. Therefore, to accomplish its task, the MMS used software that took a predetermined baseline and determined boundaries for states with an equidistant line for states that are adjacent or a median line for opposite states, based on geologic calculations.

- Please see the map below for a depiction of the extended equidistant lines from adjoining State baselines:



701 Poydras Street, Suite 4800
 New Orleans, Louisiana 70139
 Telephone: 504-561-0400
 Facsimile: 504-561-1011
 Cellphone: 504-616-6176
 Email: laperouse@gllaw.com

Lambert M. Laperouse
 Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
 Houston, Texas 77056
 Telephone: 713-968-6555
 Facsimile: 713-968-6554
 Cellphone: 713-594-9500
 Email: laperouse@gllaw.com

Oil and Gas and Sulphur Operations on the Outer Continental Shelf – Suspension of Operations for Ultra-Deep Drilling [70 Fed. Reg. 74659 (2005) to be codified at 30 CFR § 250.175)].

- This Final Rule allows the MMS to grant SOOs to lessees or operators who plan to drill ultra-deep wells, wells below 25,000 feet true vertical depth below the datum at mean sea level. This Final Rule replaces NTL 2004-G16 and allows the lessee or operator to request an SOO for ultra-deep exploration in areas where a salt sheet does not exist.
- The regulation allows the granting of an SOO if before the end of the fifth year of the primary term of the lease, the lessee or the lessee’s predecessor in interest has acquired and interpreted geophysical information that all or a portion of a potential hydrocarbon bearing formation lies below 25,000 feet TVD SS.
- The geophysical information must include full 3-D depth migration over the entire lease area.
- Before requesting the suspension, the lessee must have or be conducting additional data processing or interpretation of the geophysical information with the objective of identifying a potential hydrocarbon-bearing geologic structure or stratigraphic trap below 25,000 feet TVD SS.
- Lessee must demonstrate that additional time is necessary to: (i) complete current processing or interpretation of existing geophysical data or information; (ii) acquire, process, or interpret new geophysical or geological data; or (iii) drill a well below 25,000 feet TVD SS.

Oil, Gas and Sulphur Operations and Leasing in the Outer Continental Shelf – Recovery of Costs Related to the Regulation of Oil and Gas Activities on the OCS [70 Fed. Reg. 69118 (2005)].

- This regulation proposes the implementation of new service fees to process certain plans, applications, and permits to offset processing costs of the MMS. Please see the table below for a list of the services that the MMS is proposing a cost recovery fee for under this proposed rule:

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

Service: processing of the following...	Proposed fee	30 CFR citation
Exploration Plan (EP)	\$3,250 for each surface location	§ 250.211(d).
Development and Production Plan (DPP)/Development Operations Coordination Document (DOCD).	\$3,750 for each well proposed	§ 250.241.
Deepwater Operations Plan	\$3,150	§ 250.292.
Conservation Information Document	\$24,200	§ 250.296.
Application for Permit to Drill (APD; form MMS-123).	\$1,850 Initial applications only, no fee for revisions.	§ 250.410(d); § 250.411; § 250.460; § 250.513; § 250.515; § 250.1605; § 250.1617; § 250.1622.
Application for Permit to Modify (APM; form MMS-124).	\$110	§ 250.460; § 250.465; § 250.513; § 250.515; § 250.613; § 250.615; § 250.1618; § 250.1622; § 250.1704.
New Facility Production Safety System Application	\$4,750 (> 125 components). (Additional fee of \$12,500 will be charged if MMS deems it necessary to visit a facility offshore; and \$6,500 to visit a facility in a shipyard). \$1,150 (25-125 components). (Additional fee of \$7,850 will be charged if MMS deems it necessary to visit a facility offshore; and \$4,500 to visit a facility in a shipyard). \$570 (< 25 components).	§ 250.802(e).
Production Safety System Application – Modification.	\$530 (>125 components). \$190 (25-125 components). \$80 (<25 components).	§ 250.802(e).
Platform Application – Installation – under the Platform Verification Program.	\$19,900	§ 250.905(k).
Platform Application – Installation – Fixed Structure Under the Platform Approval Program.	\$2,850	§ 250.905(k).
Platform Application – Installation – Caisson/Well Protector.	\$1,450	§ 250.905(k).
Platform Application – Modification	\$3,400	§ 250.905(k).
New Pipeline Application – Lease Term	\$3,100	§ 250.1000(b).
Pipeline Application – Modification (Lease Term)	\$1,800	§ 250.1000(b).
Pipeline Application – Modification (ROW)	\$3,650	§ 250.1000(b).
Pipeline Repair Notification	\$340	§ 250.1008(e).
Complex Surface Commingling and Measurement Application.	\$3,550 (see proposed rule text)	§ 250.1204(a).
Simple Surface Commingling and Measurement Application.	\$1,200 (see proposed rule text)	§ 250.1204(a).
Application to Remove a Platform	\$4,100	§ 250.1727.
Application to Decommission a Pipeline (Lease Term).	\$1,000	§ 250.1751 and § 250.1752.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

Application to Decommission a Pipeline (ROW)	\$1,900	§ 250.1751 and § 250.1752.
Permit for Geological or Geophysical Exploration for Mineral Resources or Scientific Research on the OCS related to oil, gas and Sulphur.	\$1,900	§ 251.5 (form MMS-327).
Permit for Geological or Geophysical Prospecting for Mineral Resources or Scientific Research on the OCS Related to Minerals Other than Oil, Gas, and Sulphur.	\$1,900	§ 280.12 (form MMS-134).

Oil, Gas and Sulphur Operations and Leasing in the Outer Continental Shelf – Waiver of Fees [70 Fed. Reg. 61891 (2005)].

- This Final Rule waived the payment of certain MMS cost recovery fees until January 3, 2006, due to the interruption of operations of the MMS Gulf of Mexico Region caused by Hurricanes Katrina and Rita. All fees were waived for the following MMS filings:
 - Pipeline ROW grant application
 - Conversion of lease term pipeline to ROW pipeline
 - Pipeline ROW assignment
 - Record Title/Operating Rights transfer
 - Non-required document filing

Oil, Gas and Sulphur Operations and Leasing in the Outer Continental Shelf – Cost Recovery [70 Fed. Reg. 49871 (2005) (to be codified at 30 CFR Parts 250 and 256)].

- This Final Rule amends several existing MMS fees as well as implementing some additional service fees. Please see the table below for a list of fees and services affected by this regulation:

Service	Old Fee	Fee Amount	30 CFR citation
Change in Designation of Operator	None	\$150	§ 250.143
Suspensions of Operations/Suspensions of Production (SOO/SOP) Request	None	\$1,800	§ 250.171
* Pipeline Right-of-Way (ROW) Grant Application	\$2,350	\$2,350	§250.1015
Pipeline Conversion of Lease Term to ROW	\$300	\$200	§ 250.1015
Pipeline ROW Assignment	\$60	\$170	§ 250.1018
500 feet from Lease/Unit Line Production Request	None	\$3,300	§ 250.1101
Gas Cap Production Request	None	\$4,200	§ 250.1101

701 Poydras Street, Suite 4800
 New Orleans, Louisiana 70139
 Telephone: 504-561-0400
 Facsimile: 504-561-1011
 Cellphone: 504-616-6176
 Email: laperouse@gllaw.com

Lambert M. Laperouse
 Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
 Houston, Texas 77056
 Telephone: 713-968-6555
 Facsimile: 713-968-6554
 Cellphone: 713-594-9500
 Email: laperouse@gllaw.com

Downhole Commingling Request	None	\$4,900	§ 250.1106
Voluntary Unitization Proposal or Unit Expansion	None	\$10,700	§ 250.1303
Unitization Revision	None	\$760	§ 250.1303
Record Title/Operating Rights (Transfer)	\$185	\$170	§ 256.64
* Non-required Document Filing	\$25	\$25	§ 256.64

* Indicates no change to current amount.

Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government [70 Fed. Reg. 10111 (2005)].

- This regulation puts the public on notice that the MMS is considering an increase in base rentals and the use of sliding scale rentals in future Gulf of Mexico lease sales.
- The current base level rental amounts are \$5.00 per acre or fraction thereof for blocks in water depths of less than 200 meters and \$7.50 per acre or fraction thereof for blocks in water depths of 200 meters or greater. The MMS is considering raising these base levels to approximately \$6.25 per acre or fraction thereof for blocks in water depths of less than 200 meters and \$9.50 per acre or fraction thereof for blocks in water depths of 200 meters or greater in future Gulf of Mexico lease sales.
- In order to encourage exploration drilling in deepwater areas earlier in the lease term, MMS is considering using a sliding scale structure for blocks in water depths of 400 meters or greater. Please see the table below for a listing of the possible annual rental rates being considered for leases in water depths of 400 meters or deeper:

Year	Rental rate (per acre per year or fraction thereof)
1	\$9.50
2	\$9.50
3	\$9.50
4	\$9.50
5	\$9.50
6	\$10.50

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

7	\$12.00
8	\$13.75
9	\$15.50
10	\$17.50

- If a discovery in paying quantities is made, in water depths of 400 meters or greater, the rental rate will revert to \$9.50 per acre per year in years following the discovery regardless of the rental rate in effect before or at the time of discovery. For example, if a discovery in paying quantities is made in year 8, at the start of which the lease is paid a rental of \$13.75 per acre per year, then at the exploration of each lease year thereafter until the start of royalty-bearing production, the rental rate would be fixed at \$9.50 per acre per year.
- MMS will advise the public of its final decision regarding base rental rates and any sliding scale rental stipulations in a future Notice of Lease Sale.

Oil and Gas and Sulphur Operations in the Outer Continental Shelf – Relief or Reduction in Royalty Rates – Deep Gas Provisions [69 Fed. Reg. 3492 (2004) (codified at 30 CFR Part 203)], as amended by Technical Amendment to Oil and Gas and Sulphur Operations in the Outer Continental Shelf – Relief of Reduction in Royalty Rates – Deep Gas Provisions [70 Fed. Reg. 22250 (2005)].

- This Final Rule provides temporary incentives in the form of royalty suspension volumes for producing gas from certain deep wells (at least 15,000 feet below sea level). This Final Rule also provides a royalty suspension supplement for certain unsuccessful deep wells.
- A lease may be eligible for relief or reduction in royalty rates from a deep well producing gas if the lease was: (i) in existence on January 1, 2001; (ii) issued in a lease sale held after January 1, 2001 and before April 1, 2004, and either the lessee has exercised its option to substitute the deep gas royalty relief in the lease terms with the deep gas royalty relief terms of this Final Rule or the lease is located partly in water less than 200 meters deep and no deep water royalty relief provisions in statutes or lease terms apply to the lease; or (iii) issued in a lease sale held after April 1, 2004, and either the lease terms provide for royalty relief under

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

this regulation or the lease is located partly in water less than 200 meters deep and no deep water royalty relief provisions in statutes or lease terms apply to the lease.

- The lease must be located in the Gulf of Mexico wholly west of 87 degrees, 30 minutes West longitude and located entirely in water less than 200 meters deep, or partly in water less than 200 meters deep and no deep-water royalty relief provisions in statutes or lease terms apply to the lease.
- The lease must have not produced gas or oil from a deep well with a perforated interval the top of which is 18,000 feet TVD SS or deeper that commenced drilling before March 26, 2003.
- An eligible lease that has not produced from a deep well (15,000 TVD SS) that commenced drilling before March 26, 2003, may earn a royalty suspension volume shown in the following table:

If the lease has a qualified well that is...	Then the lease earns a royalty suspension volume on this amount of gas production
An original well with a perforated interval, the top of which is from 15,000 to less than 18,000 feet TVD SS.	15 BCF
A sidetrack with a perforated interval, the top of which is from 15,000 to less than 18,000 feet TVD SS.	4 BCF plus 600 MCF times sidetrack measured depth (rounded to the nearest 100 feet) but no more than 15 BCF.
An original well with a perforated interval, the top of which is 18,000 feet TVD SS or deeper.	25 BCF
A sidetrack with a perforated interval, the top of which is 18,000 feet TVD SS or deeper.	4 BCF plus 600 MCF times sidetrack measured depth (rounded to nearest 100 feet) but no more than 25 BCF.

- If an eligible lease has produced from a well with a perforated interval, the top of which is from 15,000 to less than 18,000 feet (regardless if the production was before or after March 26, 2003), and the lease subsequently has a qualified well with a perforated interval, the top of which is 18,000 feet TVD SS or deeper, then the following royalty suspension volumes are applicable

701 Poydras Street, Suite 4800
 New Orleans, Louisiana 70139
 Telephone: 504-561-0400
 Facsimile: 504-561-1011
 Cellphone: 504-616-6176
 Email: laperouse@gllaw.com

Lambert M. Laperouse
 Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
 Houston, Texas 77056
 Telephone: 713-968-6555
 Facsimile: 713-968-6554
 Cellphone: 713-594-9500
 Email: laperouse@gllaw.com

If the subsequent qualified well is ...	Then you earn a royalty suspension volume on this amount of gas production.
An original well or a sidetrack with a perforated interval, the top of which is from 15,000 to less than 18,000 feet TVD SS.	0 BCF
An original well with a perforated interval, the top of which is 18,000 feet TVD SS or deeper.	10 BCF
A sidetrack with a perforated interval, the top of which is 18,000 feet TVD SS or deeper.	4 BCF plus 600 MCF times sidetrack measured depth (rounded to the nearest 100 feet) but no more than 10 BCF.

- Production from all qualified wells, regardless of drilling depth category, may be applied toward the lease's royalty suspension volume. Production must commence from the well within 5 years following the effective date of this Final Rule.
- With the drilling of a certified unsuccessful well (see definition in final rule) to at least 18,000 feet TVD SS, a lease may earn a royalty suspension supplement shown in the table below:

If the certified unsuccessful well is...	Then the lease earns a royalty suspension supplement on this volume of oil and gas production.
An original well and the lease has not produced gas or oil from a deep well.	5 BCFE
A sidetrack (with a sidetrack measured depth of at least 10,000 feet) and the lease has not produced gas or oil from a deep well.	0.8 BCFE plus 120 MCFE times sidetrack measured depth (rounded to the nearest 100 feet) but no more than 5 BCFE.
An original well or a sidetrack (with a sidetrack measured depth of at least 10,000 feet) and the lease has produced gas or oil from a deep well with a perforated interval, the top of which is from 15,000 to less than 18,000 feet TVD SS.	2 BCFE

- Each lease is eligible for up to two royalty suspension supplements. Therefore, the total royalty suspension supplement for a lease cannot

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

exceed 10 BCFE. A single wellbore cannot earn more than one royalty suspension supplement.

- Lessees must pay royalties on production, which would otherwise be royalty free under this regulation, for any calendar year when the average daily NYMEX natural gas price exceeds the price threshold. The gas price threshold is \$9.34 per MMBTU for calendar year 2004 with an annual adjustment for inflation.
- This Final Rule provides a one-time option for lessees of shallow-water Gulf of Mexico leases issued as part of an OCS lease sale held after January 1, 2001, to replace the deep gas royalty relief terms in the lease instrument with the royalty relief terms in this regulation. Exercising the option is irrevocable.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

3. Liability of Assignors, Assignees and Co-Lessees

The issues of liability are often extensively negotiated when parties sell or exchange federal offshore leasehold interests. While the purchaser and seller of an OCS lease may agree upon the responsibility for plugging and abandonment liabilities, the MMS will rely on its regulations in determining liability should there be a default by the current lessee.

Prior to July 30, 1979, the regulations did not envision the problem of numerous small lessees becoming bankrupt and leaving the MMS vulnerable for the plugging and abandonment liability. Per 30 CFR ' 250.15 (1978) “[t]he supervisor ... shall require plugging and abandonment, in accordance with such plan as may be approved or prescribed by him, of any well no longer used or useful, and upon failure to secure compliance with such requirement, perform the work at the expense of the lessee, expending available public funds, and submit a report as may be needed to furnish a basis for appropriate action to obtain reimbursement.” The definition of Lessee under 30 CFR ' 250.2 (1978) was “[t]he party authorized by a lease, or an approved assignment thereof, to develop and produce the leased deposits in accordance with the regulations in this part.”

- In the Federal Register published on June 29, 1979 (Vol. 44, No. 127), the MMS stated its position on assignor liability with the Final Rule that came from the Outer Continental Shelf Land Act Amendments of 1978. The pertinent section on Assignment of Lease provided:
 - The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.
 - The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment and shall comply with all regulations issued under the act.
 - The section on Relinquishments provided that “[a] relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and the surety to make all payments due, including any accrued rentals, royalties and deferred bonuses and to abandon all wells and

condition or remove all platforms and other facilities on the land to be relinquished.” Thus the question arose as to whether the assignor’s accrued obligations were limited to monetary ones or included abandonment liabilities.

In the Federal Register published on August 27, 1993 (Vol. 58, No. 165) the MMS enacted the Final Rule on the surety bond provisions. In clarifying its position on assignor liability, the MMS stated in the comments to the Final Rule:

Current rules at ' 256.62 (d) provide that assignors remain liable for all obligations under the lease accruing prior to the approval of the assignment. These obligations, accrued but not yet due for performance, includes those of sealing wells, removing platforms and clearing the ocean of obstructions. These obligations accrue when a well is drilled or used, a platform is installed or used, or an obstruction is created and remain until the procedures specified in subpart G of part 250 are followed. The assignors continue to be jointly liable for the performance of these obligations with respect to wells or structures in existence and not plugged or removed at the time of the assignment.

- In a footnote to this Final Rule, the MMS acknowledges a letter dated June 6, 1988, which was sent to a producer stating the original lessee-assignor would not be liable for plugging and abandonment liabilities owed by of the subsequent lessee-assignee. The MMS states that this letter was based on a erroneous premise and that the lessee-assignor remains liable to the lessor for the performance of lease obligations unless expressly discharged.

The MMS’ position on assignor liability was supplemented by NTL 93-2N dated October 6, 1993, where the MMS stated because of “recent efforts by OCS lessees and operators seeking protection under Federal bankruptcy laws,” the obligation for plugging and abandonment liability accrued when the well was drilled or used and thus provided for the continuing liability of an assignor until the structure was removed. The NTL stated in part:

The obligations to plug and abandon wells, remove platforms and other facilities, and to clear the seafloor of obstructions accrue when a well is drilled or used, a platform or other facility is installed or used, or an obstruction is created. . . . Following MMS approval of the assignment . . . the assignor continues to be liable to DOI/MMS for the performance of these obligations with respect to wells, structures, or obstructions in existence and not plugged or removed at the time of the assignment.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

The assignor and assignee may enter into agreements assigning responsibility for performance of lease abandonment and clearance, but Federal regulations rather than such agreements govern responsibility to DOI/MMS.

NTL 93-2N was rescinded by the MMS per notice published in the Federal Register on November 10, 1998 (Vol. 63, No. 217). The reason for the rescission was the revised regulations and policies that eliminated the need for the NTL, as described in the Final Rule for Surety Bonds, published in the May 22, 1997 Federal Register (Vol. 62, No. 99). In the discussion and analysis of industry comments to the proposed Final Rule the MMS stated, in part:

[W]hile an assignee becomes responsible directly to the lessor for the performance of lease obligations, under contract law the assignor is not relieved of its obligations unless the lessor expressly discharges the assignor in writing. We do not discharge the assignor of its accrued obligations when we approve the assignment of record title in a lease.”

□ Some of the regulations modified by the Final Rule published in the May 22 1997 Federal Register (Vol. 62, No. 99) were:

➤ 30 CFR'250.8(b). Lessees and operating rights owners are jointly and severally responsible for performing non-monetary lease obligations, unless otherwise provided in the regulations in this chapter. If the designated operator fails to perform any obligation under the lease or the regulations in this chapter, the Regional Director may require any or all of the co-lessees and operating rights owners to bring the lease into compliance.

➤ In the comments, the MMS states that “every lessee or working interest owner who executes the designation of operator [form] . . . acknowledges its joint and several liability.”

➤ 30 CFR'250.110(b). Lessees must plug and abandon all wellbores, remove all platforms or other facilities, and clear the ocean of all obstructions to other users. This obligation;

(1) Accrues to the lessee when the well is drilled, the platform or other facility is installed, or the

obstruction is created; and

- (2) Is the joint and several responsibility of all lessees and owners of operating rights under lease at the time the obligation accrues, and of each future lessee or owner of operating rights, until the obligation is satisfied under the requirements of this part.

➤ In the comments to the Final Rule, the MMS states that “it is not our intention that this rule precludes private agreements concerning the allocation of liabilities between and among the affected parties. Nor does this rule specify against whom we will take enforcement action if we discover noncompliance. . . . The multiple lessees of a single tract need to make appropriate arrangements to provide for proper well abandonment and lease clearance. These arrangements may be in the form of a joint operating agreement that funds lease-specific abandonment accounts.”

➤ 30 CFR'256.62.

- (d) You, as assignor, are liable for all obligations that accrue under your lease before the date that the Regional Director approves your request for assignment of the record title in the lease. The Regional Director’s approval of the assignment does not relieve you of accrued lease obligations that your assignee, or a subsequent assignee, fails to perform.
- (e) Your assignee and each subsequent assignee are liable for all obligations that accrue under the lease after the date that the Regional Director approves the governing assignment.
- (f) If your assignee, or a subsequent assignee, fails to perform any obligation under the lease or regulations in this chapter, the Regional Director may require you to bring the lease into compliance to the extent that the obligation accrued before the Regional Director

approved the assignment of your interest in the lease.

The latest statement by the MMS on assignor liability is published in the December 28, 1999 Federal Register (Vol. 64, No. 248). The revision is similar to the intent behind the language in the prior 30 CFR ' 250.108 (b) title "Designation of Operator." The new language states:

- 30 CFR ' 250.146
- (a) When you are not the sole lessee, you and your co-lessee(s) are jointly and severally responsible for fulfilling your obligations under the provisions of 30 CFR parts 250 through 282, unless otherwise provided in these regulations.
 - (b) If your designated operator fails to fulfill any of your obligations under 30 CFR parts 250 through 282, the Regional Supervisor may require you or any or all of your co-lessees to fulfill those obligations or other operational obligations under the Act, the lease, or the regulations.
 - (c) Whenever the regulations in 30 CFR parts 250 through 282 require the lessee to meet a requirement or perform an action, the lessee, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for complying with the regulation.

While the new regulations provide for "joint and several" liability for non-monetary obligations, the enactment of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 provided that the liability for royalty payments is pro rata. The pertinent part of the act, 43 U.S.C. ' 1712(a) reads:

The person owning operating rights in a lease shall be primarily liable for its pro rata share of payment obligations under the lease. If the person owning legal record title in a lease is other than the operating rights owner, the person owning the legal record title shall be secondarily liable for its pro rata share of such payment obligations under the lease.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

In the Federal Register published on May 22, 1997 the MMS states in its response to an industry comment regarding the use of “indivisibility” drawn from the common law of torts:

MMS used the notion of “indivisibility” to explain its policy choice in treating nonmonetary obligations differently than monetary obligations were treated in the proposed payor liability rule and the Royalty Simplification and Fairness Act.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

4. General and Supplemental Bonding

The guidelines for **General Lease Surety Bonds** were modified by a Final Rule published in the Federal Register on May 22, 1997 (Vol. 62, No. 99), as amended on February 24, 1999, promulgated in 30 CFR ' 256, Subpart I. The Final Rule provides for a three-tier approach.

One of the reasons behind the revisions to the bond rules was the bankruptcies experienced by smaller operators in the Gulf of Mexico. As stated in the May 21, 1997 MMS News Release on Surety Bond Requirements:

The transfer of OCS leases from large producing companies to smaller producers, some of which are marginally financed, increases the risk that the current lessee will not be able to satisfy end-of-lease obligations.

A General Lease Surety Bond is required before the MMS will issue a new lease, approve a lease assignment, or approve an operational activity plan. Specifically, the GOMR will review bonding coverages upon requests for (i) a change in the designated operator of a lease, (ii) an initial Exploration Plan (EP), (iii) an initial Development and Production Plan (DPP), (iv) an initial Development Operations Coordination Document (DOCD), (v) a significant revision to an approved EP, DPP, or DOCD, or (vi) a request for an assignment of a lease with an approved EP, DPP, or DOCD.

The level of activity on the lease determines the amount of General Lease Surety Bond coverage. The GOMR will designate a lease as either No Operations, Exploration, or Development.

η No Operations: \$50,000 lease-specific or \$300,000 area-wide general lease surety bond for:

1. leases with no MMS-approved operational activity plan; or
2. leases under a MMS-approved operational activity plan but with no submittal to the MMS of an assignment or operational activity plans; however, a bond is not necessary if one has already been provided under one of the following higher requirements.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

η Exploration: \$200,000 lease specific or \$1,000,000 area-wide general lease surety bond for:

1. leases in a proposed EP or a significant revision to an approved EP; or
2. a proposed assignment of a lease with an approved EP; however, a bond is not necessary if one has already been provided under the following higher requirement.

η Development: \$500,000 lease-specific or \$3,000,000 areawide general lease surety bond for:

1. leases in a proposed DPP or DOCD or a significant revision to an approved DPP or DOCD; or
2. a proposed assignment of a lease with an approved DPP or DOCD.

When a lessee can demonstrate to the satisfaction of the MMS that wells and platforms can be abandoned and removed and the drilling and platform sites cleared of obstructions for less than the amount of required bond coverage, the MMS may accept a bond for less than the prescribed amount, but not less than the costs for abandonment, platform removal and site clearance.

The requirement to maintain a lease bond is satisfied if another record-title owner, or the operator, provides a lease bond in the required amount to guarantee compliance with all the terms and conditions of the lease. An areawide bond provided by the operator satisfies this bond obligation. However, all designated lease operators must have a minimum \$500,000 lease bond to operate, regardless of whether or not any one of the Lessees of record title also has a bond. Additionally, all designated pipeline rights-of-way operators must have a \$300,000 right-of-way bond to operator or hold a pipeline right-of-way. Where there are multiple lessees, the bond provided by a lessee or the operator protects against noncompliance by all lessees, operating rights owners, and operators. As stated in the comments to the Final Rule:

We agree that multiple lessees of a single tract should, as a matter of good business practice, police themselves in assuring the financial capability of each participant. The multiple lessees of a single tract need to make appropriate arrangements to provide for proper well abandonment and lease clearance. These arrangements may be in the form of a joint operating agreement that funds lease-specific

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

abandonment accounts.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

The MMS may allow you to submit the bond after the EP is submitted, but approval of drilling activities under the EP is dependent upon the submittal of the bond. The MMS may also allow you to submit the lease bond after the DPP or DOCD is submitted, but approval of the installation of a platform or commencement of drilling activities under the DPP or DOCD is dependent upon the submittal of the bond.

The MMS accepts bonds issued by a surety that is certified by the U.S. Department of the Treasury or U.S. Treasury securities that are negotiable at the time of submission for an amount of cash equal to the value of the required bond. On a case-by-case basis, the MMS will consider alternative instruments that provide the same degree of security as those listed previously.

If a party fails to replace a deficient bond or to provide additional bond coverage upon demand by the MMS, the MMS may assess penalties, suspend production and other operations on the lease, and initiate action to cancel the lease.

General lease surety bonds should be submitted to:

Adjudication Unit
Gulf of Mexico OCS Region
Minerals Management Service
1201 Elmwood Park Boulevard
Mail Stop 5421
New Orleans, LA 70123-5144

The effective date of the bond is the date when the GOMR Adjudication Unit receives the bond.

The guidelines for **Supplemental Bonding** were published in the Federal Register on May 22, 1997, promulgated under 30 CFR " 256.53(d), et seq., and clarified in NTL 98-18N. A supplemental bond may be required when the cost to meet all potential present and future lease obligations exceeds the amount of the general lease bond, unless one of the current lessees can demonstrate the financial capability to meet these obligations. These obligations include rents, royalties, and amounts of plugging and abandonment costs necessary to ensure performance of regulatory requirements.

The MMS may authorize the lessee to establish a lease-specific abandonment account in addition to a Supplemental Bond under 30 CFR 256.56; or lieu in of a Supplemental Bond, the MMS

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

may allow a company to obtain a third-party guarantee pursuant to 30 CFR 256.57, as supplemented by NTL 98-18N (Addendum 1).

Generally, the MMS will conduct an initial review of a lessee's general and supplemental bonds, cumulative liabilities and financial strength when a lessee submits an EP for approval. Subsequent MMS reviews will be conducted when approval is requested for:

1. an assignment of all or a portion of record title interest in a lease;
2. a significant revision to an approved EP;
3. a DDP or DOCD, or a significant to an approved DPP or DOCD; or,
4. an application for a pipeline right-of-way, modification to an existing pipeline right-of-way, assignment of pipeline right-of-way, or a significant revision to a pipeline right-of-way.

Additionally, at the MMS's option, reviews may be conducted:

- < periodically;
- < when there is a change in the financial strength of the company or its potential cumulative liability; or,
- < upon issuance of Notices of Incidents of Noncompliance for incidents related to safety, environmental, non-payment of royalty, or other violations of MMS regulations.

Factors the MMS will review in determining if a supplemental bond is warranted include: (i) the cumulative potential end-of-lease liability in comparison to the lessee's net worth; (ii) number of years of successful operation in the OCS or onshore oil and gas operations; (iii) record of compliance with current and previous governing laws, regulations, and lease terms; (iv) amount of production from the lessee's OCS leases; and (v) financial strength of the company as may be shown by an independent auditor's report, balance sheet, and profit/loss sheet.

The MMS determination of a company's financial strength is valid for one year; however, a determination can be extended for one year at a time if an independent accountant submits verification of the company's current financial capacity at least 60 days prior to the expiration of the determination and the company continues to meet the above factors.

As stated in NTL 98-18N, the MMS can still require a supplemental bond even if a lessee satisfies the listed factors:

We reserve the right to deny your request for a finding that submission and

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

maintenance of a supplemental bond is not necessary, even though an independent accountant provides an audit and certification that you meet the financial strength and performance criteria described herein....We may also require a supplemental bond on any leases, regardless of any prior determination under these requirements, if it is determined that the designated operator has not fully and consistently complied with our regulations.

A Proposed Rule on the termination of liability under surety bonds was published in the Federal Register on January 8, 2001 (Vol. 66, No. 5). As of October 1, 2001, a Final Rule has not been issued; however, a representative for the MMS stated that several comments were received on the Proposed Rule and were being considered before issuing the Final Rule. The Proposed Rule addresses the situation where the lessee appears to have met all of the lease-end requirements but the MMS later discovers that liabilities still exist. Examples provided in the Proposed Rule are an audit revealing that the lessee owes the MMS additional royalty or a plugged well begins to leak. Should the lessee fail to address the liability, the MMS would turn to the surety for performance. The Proposed Rule addresses how long a bond will be held before cancellation to assure availability to cover a problem that is discovered after the liability period on a bond has ended. The current regulation in 30 CFR § 256.58(b), listed in part below, is unclear regarding a limit on the period of time that the MMS may hold the surety responsible for a problem that occurs during the liability period.

The Regional Director's cancellation or release of a bond may include lease obligations that accrue before the effective date of the cancellation only when: (1) The Regional Director determines that there are no outstanding obligations; or (2) You furnish a replacement bond: (i) In which your new surety agrees to assume all outstanding liabilities under the bond that is to be canceled; and (ii) That is in an amount equal to or greater than the amount of the bond that is to be canceled.

The MMS is proposing a period of seven years during which the surety may be responsible for obligations that accrued during the period of liability. As stated in the proposed regulation; "Terminating the period of liability of a bond ends the period during which obligations continue to accrue but does not relieve the surety of the responsibility for obligations that accrued during the period of liability." During this seven-year period, the MMS would retain security or collateral pledged to the MMS in lieu of a surety. At the end of the seven-year period, the bond would be canceled and any other forms of security returned.

The seven year provision is to apply to all base bonds, unless the MMS finds the potential liability to be greater than the base bond, in which case the supplemental bond will be retained to

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

cover the difference. The revised language in part states;

At the time your lease expires or is terminated, the surety or sureties that issued the bond(s) covering the accrued obligations will continue to be responsible, and the Regional Director will retain other forms of security for the period of time and under the terms show in the following table:

For the type of bond below	The period of liability will end	Your bond will be cancelled
(1) Base Bonds submitted under ' 256.52(a), ' 256.53(a), or (b)	When the Regional Director determines that you have met all of your obligations under the lease.	Seven years after the completion of all bonded obligations, or at the conclusion of any appeals or litigation related to your bonded obligations, whichever is later. The Regional Director may: (1) determine that you need less than the full amount of the base bond to meet any possible future problems; and (ii) reduce the amount of your bond or return a portion of your security.
(2) Supplemental bonds submitted under ' 256.53(d).	When the Regional Director determines that you have met all your obligations covered by the supplemental bond.	When you meet your bonded obligations, unless the Regional Director: (i) determines that the future potential liability resulting from any undetected problems is greater than the amount of the base bond; and (ii) notifies the provider of the bond that the Regional Director will wait up to 7 years before canceling all or a part of the bond (or longer period as necessary to complete any appeals or judicial litigation related to your bonded obligations).

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

5. Suspensions of Operations and Production

In a Final Rule published in the Federal Register on December 28, 1999 (Vol. 64, No. 248), promulgated in 30 CFR " 250.168 - .177, the MMS revised the regulations pertaining to Suspension of Production (SOP) and Suspension of Operations (SOO) utilizing the “plain language” format.

By NTL No. 2000-G17, dated effective September 1, 2000, the MMS presented general guidelines and overview of the revised regulations on SOPs and SOOs. Some of the highlights of the NTL are as follows:

- Requests for an SOP should be received by the MMS approximately 3 weeks before the lease expiration date. A request for an SOO may be received later in the lease term if as the result of unforeseen circumstances. Extensions to suspension must be received by the MMS before the current suspension expires.
- A request for an SOP must include (1) a brief lease history demonstrating diligence, (2) a firm commitment to production, (3) a description of the proposed course of action to initiate or restore lease production, (4) a reasonable activity schedule with measurable milestones that lead to production, and (5) reservoir structure and isopach maps, with reserve estimates.
- An SOP may be granted under 30 CFR 250.172 or 30 CFR 250.174 for a lease that has a well determined to be capable of producing oil, gas or sulfur in paying quantities. An SOP will not be granted solely for exploration purposes. Note that a lease does not need a well capable of producing hydrocarbons in paying quantities for the MMS to grant an SOO.
- An SOP may be granted up to 5 years; however, most are granted for 1 year or less.
- An SOP may be granted for (1) a co-development of leases when each individual lease is in the “development” stage and there is a firm commitment to produce all the leases, (2) a phased development of a lease when hydrocarbons have been discovered by a satellite project and production capacity is not currently available from the host facility, or (3) a plan that incorporates a geophysical program that is

designed to efficiently select a location for an additional development well, locate an additional well needed to size production facilities properly, or assist in sizing development facilities. Note that the MMS does not generally approve suspensions for phase development. However, the MMS may allow exceptions for conserving the natural resource or preventing waste.

- An SOO is normally of shorter duration and is granted when diligent efforts to commence drilling operations are delayed by unforeseen circumstances such as adverse weather, unavoidable accidents, or short delays in a prearranged rig release date. The MMS does not require a well capable of producing in paying quantities on the lease in order to grant a SOO. Of importance to the MMS in granting the SOO is whether or not the particular drilling rig was scheduled to conduct operations before the lease expiration date.

- Rentals or minimum royalty are required for or during the granted suspension period. Such payments are not required if the MMS directs an SOO or SOP.

6. Oil Spill Financial Responsibility

The Final Rule for Oil Spill Financial Responsibility for Offshore Facilities was published August 11, 1998 in the Federal Register and codified in 30 CFR ' 253. The Final Rule was later supplemented by NTL 99-N01 dated effective January 6, 1999. The regulations implement the Oil Pollution Act of 1990 requirement for responsible parties to demonstrate they can pay for clean-up and damages caused by facility oil spills and became effective October 13, 1998. The Gulf of Mexico OCS Region serves as the national program manager for all OSFR applications.

As defined in ' 253.3, Oil Spill Financial Responsibility (OSFR) means the capability and means by which a responsible party for a covered offshore facility will meet removal costs and damages for which its is liable under Title I of the Oil Pollution Act of 1990, as amended (33 CFR 2701 et seq.), with respect to both oil-spill discharges and substantial threats of the discharge of oil.@

Landmen have become familiar with OSFR because of the requirements of updating certain forms under OSFR when submitting assignments to the MMS Adjudication Unit. As stated in the September 1, 1999 MMS Weekly Activity Report:

We are continuing to have assignments submitted without the associated OSFR Form 1017, or a statement in the application letter that the worse case spill is <1,000 barrels, and OSFR coverage is not applicable. We have been checking with Mr. Pat Clancy, the OSFR coordinator, and in most every case, the submitter has filed the Form 1017 directly with Mr. Clancy. Having to track down the forms is time consuming. To provide the best service we can to our customers, we will soon stop tracking down missing Form 1017, and return incomplete assignment submissions to the submitter. As a help to everyone, please review the message below concerning the OSFR NTL.

We wish to remind our customers to please specifically read in the OSFR NTL dated January 6, 1999, the section on “What effect will OSFR have on assignments of record title, operating rights, pipeline rights-of-way, name changes, or mergers on a leasehold basis.”

When making assignments, please submit your OSFR information with the assignment and NOT in a separate letter to Mr. Pat Clancy. The Adjudication Staff will separate the forms and send them to Mr. Clancy. This will help improve our service to you by speeding up verifying receipt of the required forms.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

The regulations apply to Covered Offshore Facilities (ACOF@). As defined under 30 CFR 253.3 a COF is “(1) any structure and all its components (including wells completed at the structure and the associated pipelines), equipment, pipeline, or device (other than a vessel . . .) used for exploring for, drilling for, or producing oil or for transporting oil from such facilities. . . (2) that is located (i) seaward of the coastline; or (ii) in any portion of a bay that is connected to the sea, either directly or through one or more other bays. . . (3) that has a worst case oil-spill discharge potential of more than 1,000 bbls or oil. . . .”

In the comments to the Final Rule, the MMS clarified that a single facility cannot constitute more than one COF: “Although an oil production facility may have several components each with a worst case oil-spill discharge potential of greater than 1,000 bbls, it is the facility, rather than its components, that is the COF.”

In determining the worst case oil-spill discharge potential, the regulations provide in 30 CFR 253.14(a) that the volume of the worst case oil-spill discharge for a producing well must be four times the uncontrolled volume that is estimated for the first 24 hours. The four day multiplier provides for an allowance of oil recovered during ongoing cleanup activities. For new wells, the MMS requires that the worst case oil spill discharge to be over 1,000 barrels. Section 253.14 provides other methods of worst case oil spill potential calculations for other COFs.

The OPA prescribes that all parties with an ownership or working interest in a lease are jointly and severally liable for oil-spill discharges from facilities on that lease. A designated applicant is the entity the responsible parties designate to demonstrate OSFR for a COF on a lease. A responsible party for a COF that is not a pipeline means either the lessee or permittee of the area in which the COF is located, or the holder of a right-of-use and easement granted under applicable state law or the OCSLA for the area in which the COF is located.

If there is more than one responsible party, those responsible parties must use Form MMS-1017 to select a designated applicant. The designated applicant must submit Form MMS-1016 and agree to demonstrate OSFR on behalf of all the responsible parties.

A designated applicant must demonstrate OSFR on a lease basis. A lessee, operator, or other approved person may be a designated applicant. However, if there is more than one operator for a COF, there is only one designated applicant who will demonstrate OSFR for that COF. Additionally, a designated applicant must submit and maintain a single OSFR demonstration for all of its COFs.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

The following are the general parameters for OSFR coverage:

If you are the designated applicant for:	Then you must demonstrate
Only one COF - - - - - -	The amount of OSFR that applies to the COF
More than one COF - - - - -	The highest amount of OSFR that applies to any one of the COFs.

For a COF located wholly or partially in the OCS a designated applicant must demonstrate the following OSFR coverage:

COF worst case oil-spill discharge volume:	Applicable amount of OSFR:
Over 1,000 bbls but less than 35,000 bbls	\$35,000,000
Over 35,000 bbls but less than 70,000 bbls	\$70,000,000
Over 70,000 bbls but less than 105,000 bbls	\$105,000,000
Over 105,000 bbls	\$150,000,000

For a COF not located in the OCS a designated applicant must demonstrate the following OSFR coverage:

COF worst case oil-spill discharge volume:	Applicable amount of OSFR:
Over 1,000 bbls but less than 10,000 bbls	\$10,000,000
Over 10,000 bbls but less than 35,000 bbls	\$35,000,000
Over 35,000 bbls but less than 70,000 bbls	\$70,000,000
Over 70,000 bbls but less than 105,000 bbls	\$105,000,000
Over 105,000 bbls	\$150,000,000

Additionally, the MMS may require a greater OSFR coverage amount than specified in the above tables based on the relative operational, environmental, human health, and other risks the COF

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com

poses. But, the MMS can not require an OSFR coverage that exceeds \$150,000,000.

As the designated applicant, one may satisfy OSFR coverage requirement by one or a combination of the following methods; (i) self-insurance under 30 CFR 253.21-28, (ii) insurance under 30 CFR 253.29, (iii) indemnity under 30 CFR 253.30, (iv) surety bond under 30 CFR 253.31, or (v) an alternative method approved by the MMS under 30 CFR 253.32.

If you fail to comply with the financial responsibility requirements of OPA or with the Final Rule, then you may be liable for a civil penalty of up to \$25,000 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

If a assignment of record title interest or operating rights involves a COF on which the entity relinquishing the interest (assignor) is the designated applicant, the assignor will submit a cover letter with the assignment which states whether they will continue to maintain OSFR coverage. If the assignor will continue to maintain coverage, then the assignee must submit a Form MMS-1017. If the assignor will not continue to maintain coverage, then the assignee must prepare Form MMS-1017 renaming the new Designated Applicant.

The new Designated Applicant must submit either (i) a complete OSFR application if Form MMS-1016 is not already on file with the MMS or (ii) Form MMS-1017 and Form MMS-1022 if an approved OSFR application is currently on file with the MMS. If an assignment involves a COF on which the assignor is not the Designated Applicant, the assignee must submit a Form MMS-1017 with the assignment.

If a Designation of Operator involves a COF and the designated operator is not already a Designated Applicant, it must submit Forms MMS-1016, MMS 1017, MMS-1021, and depending upon the combination of OSFR coverage used, one or more of Forms MMS-1018, MMS-1019, and MMS-1020.

If the new operator is already a Designated Applicant, it must submit Forms MMS 1017 and MMS-1019 (if the new operator uses insurance for OSFR coverage), and MMS-1022.

701 Poydras Street, Suite 4800
New Orleans, Louisiana 70139
Telephone: 504-561-0400
Facsimile: 504-561-1011
Cellphone: 504-616-6176
Email: laperouse@gllaw.com

Lambert M. Laperouse
Gieger, Laborde & Laperouse, L.L.C.

5100 Westheimer, Suite 200
Houston, Texas 77056
Telephone: 713-968-6555
Facsimile: 713-968-6554
Cellphone: 713-594-9500
Email: laperouse@gllaw.com