

**[4310-MR]
DEPARTMENT OF THE INTERIOR**

Minerals Management Service (MMS)

Notice of Revision of Form MMS-2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act

Agency: Minerals Management Service

Action: Notice

Summary: MMS has determined that Form MMS-2005, the lease document, needs revision due to changes in regulations since it was last reviewed in 1986. MMS has revised the form to reflect plain language and has rewritten it for clarity and organization. To reduce the need for future revisions to the document due to changes in regulations, MMS refers the Lessee to applicable laws, and rules and regulations of the Department. Much of the wording of existing Form MMS 2005 that specifically cites, incorporates by reference, or restates statutory and regulatory requirements is therefore deleted from the proposed revision.

Dates: MMS will accept comments on this document on or before December 24, 1998, and will schedule a workshop during the comment period.

For Further Information Contact: Ms. Terry Holman, 202-208-3822 or e-mail to Terry.Holman@mms.gov.

Address: Comments may be sent to Terry Holman, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, D.C. 20240.

SUPPLEMENTAL INFORMATION:

The Lease Sale Document form MMS-2005, is the written contract between the U.S. Government and those wishing to lease the submerged lands of the Outer Continental Shelf for exploration, development and production of oil and natural gas resources. Section 1 explicitly states that the lease is subject to the Notice of Lease Sale, the Outer Continental Shelf Lands Act, and all applicable rules and regulations of the Secretary of the Interior and Executive Orders issued by the President. Provisions that restate regulations have been deleted from the document. A section-by-section description of the proposed changes is presented below.

OLD FORM

NEW FORM

Top of the form above the double line

The statement concerning information collection has been revised to indicate that the form contains information collection requirements that have been approved by the Office of Management and Budget. Headings

in the upper right are revised for clarity. The *Net Profit Share* heading is replaced with *Other* to accommodate the recording of a broader range of special terms that might pertain to a lease.

Section 1: Statutes and Regulations

This section was rewritten to clarify that the lease is subject to the OCS Lands Act, the Lease Sale Notice, and all applicable laws, rules, regulations, and Executive Orders issued by the President as of the date of the lease and in the future. The revised section contains a specific reference to the Notice of Sale which was not included in the previous version of the document. Since many sections have been removed from the lease document because the requirements exist in various regulations, this statement affirms that the lessee remains responsible for elements not expressly stated in the lease.

Section 2: Rights of Lessee

Retitled **Rights Granted to the Lessee**.
Rewritten in plain language.

Section 3: Term

Rewritten in plain language.

Section 4: Rental

Four sections combined in one renumbered and retitled **Section 7 Payment of Rent and Royalty**. Provisions deleted because they are redundant of 43 USC 1337; 30 CFR 206, Subpart C, 30 CFR 202.100; and 30 CFR 218, Subparts B and D. Rewritten in plain language.

Section 5: Minimum Royalty

See note on section 4 above.

Section 6: Royalty on Production

See note on section 4 above.

Section 7: Payments

See note on section 4 above. Clarifies when payments are due and how value of production is calculated. We added additional language to make express the existing implied covenant to market production for the mutual benefit of the Lessee and the Lessor. We also added that delivery of resources taken in kind

shall be made to a point designated by the Lessor.

Section 8: Bonds

Provision deleted because it is redundant of 30 CFR 256, Subpart I.

Section 9: Plans

Provision deleted because it is redundant of 30 CFR 250, subpart B.

Section 10: Performance

Renumbered and retitled **Section 8 Diligent Operations**. Rewritten in plain language.

Section 11: Directional Drilling

Provision deleted because it is redundant of 30 CFR 256.71.

Section 12: Safety Requirements

Provision deleted because it is redundant of 30 CFR 250.120-122 and 43 USC 1347 and 1348.

Section 13: Suspension and Cancellation

Provision deleted because it is redundant of 30 CFR 250.110, 250.112 and 43 U.S.C. 1334.

Section 14: Indemnification

Renumbered section 4. Rewritten in plain language. Clarifies that only successful appeal of an MMS order, not mere pursuit of an appeal, could exempt the lessee from liability for loss or damage to property or injury to persons resulting from compliance with the order.

Section 15: Disposition of Production

Provision deleted because it is redundant of 43 U.S.C. 1353 and 43 U.S.C. 1337.

Section 16: Unitization, Pooling, and Drilling Agreements

Provision deleted because it is redundant of 30 CFR 250, Subpart M.

Section 17: Equal Opportunity Clause

Provision deleted because it is redundant of 41 CFR 6--1.4(a) and Executive Order 11246.

Section 18: Certification of Nonsegregated Facilities

Effective September 18, 1997, the Labor Department amended its regulations and 41 CFR 60-1.8 (b) has been deleted. (See rulemaking at 62 FR 44174 (Aug. 19, 1997)). The amended 60-1.8 requires the contractor maintain a non-segregated workplace, but no

longer relies on certifications of the contractor.

Section 19: Reservations to Lessor

Renumbered section 6. Rewritten in plain language.

Section 20: Transfer of Lease

Provision deleted because it is redundant of 30 CFR 256, Subpart J and 43 U.S.C. 1334.

Section 21: Surrender of Lease

Provision deleted because it is redundant of 30 CFR 256.76 and 43 U.S.C. 1334.

Section 22: Removal of Property on Termination of Lease

Renumbered section 9. Rewritten to specify time for submission of a plan for well abandonment and platform removal (within 3 months of lease termination). Also would authorize lessor to take title to property not removed within the prescribed time.

Section 23: Remedies in Case of Default

Renumbered section 10 and retitled **Remedies for Lessee Non-Compliance**. Rewritten in plain language.

Section 24: Unlawful Interest

Provision deleted because it is redundant of 41 U.S.C. 22 and 18 U.S.C. 431- 433.

Section 5 Access to Records is a new section. It implements and clarifies the requirements of 30 CFR 207.5, 212.51 and 250.121 and implements section 103 of the Federal Oil and Gas Royalty Management Act. In particular, it would require disclosure to authorized representatives of the lessor of documents in the possession of "affiliates," which have been found to be covered "other persons" under 30 CFR 212.51 in Shell Oil Co. v. Babbitt, 125 F.3d 172 (3rd Cir. 1997), affirming 945 F.Supp. 792, and Santa Fe Mineral v. McCutcheon, 90 F.3d 409 (10th Cir. 1996).

The revised form is included below.

Office

Serial Number

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Cash Bonus

Rent per acre or fraction thereof _____
Rent per hectare or fraction thereof _____

\$

**OIL AND GAS LEASE OF
SUBMERGED LANDS UNDER THE
OUTER CONTINENTAL SHELF LANDS ACT**

Minimum royalty rate per acre or fraction thereof _____

Royalty Rate

Other

Minimum royalty rate per hectare or fraction thereof _____

This form contains information collection requirements that have been approved by the Office of Management and Budget. These approvals are found at 30 CFR 210.10, and 30 CFR 250.100.

_____ This lease contains approximately _____ acres _____ hectares (the "leased area"), described as follows:

It is effective as of _____ (the "Effective Date") and will continue for an initial period of _____ years (the "Initial Period") by and between the United States of America (the "Lessor"), by the Minerals Management Service ("MMS"), its authorized officer, and

(the "Lessee"). In consideration of any payment made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, and covenants contained herein, including the attached Stipulation(s) numbered _____, the Lessee and Lessor agree as follows:

Sec. 1. Statutes and Regulations. This lease is issued under the Outer Continental Shelf Lands Act 43 U.S.C. 1331 et seq., as amended (the "Act"), and the Notice of Sale _____ dated _____.

This lease is subject to the terms of that Notice, the Act, all applicable laws, and the rules and regulations of the Secretary of the Interior now or hereafter in effect, when not inconsistent with any express provision of this lease. This lease is also subject to all applicable Executive Orders issued by the President now or hereafter in effect.

Sec.2. Rights Granted to the Lessee. The Lessor grants to the Lessee the exclusive right to explore for, develop, and produce oil and gas resources, except helium gas, in the submerged lands of the Outer Continental Shelf. This right is subject to the Lessor's approval of plans and permits required under the Act and regulations.

The Lessee also has the following rights:

(a) the nonexclusive right to conduct geological and geophysical explorations according to applicable regulations;

(b) the nonexclusive right to drill water wells, except wells in geopressured-geothermal and other geothermal reservoirs, and to use the water produced for operations under the Act free of cost. Drilling must be conducted according to procedures approved by the Lessor.

(c) the right to construct and maintain devices and structures necessary to the full exercise of rights under the lease, subject to compliance with applicable laws and regulations.

Sec. 3. Term. This lease will continue from the Effective Date of the lease for the Initial Period and as long as oil or gas is produced from the leased area in paying quantities, or drilling or well reworking operations (as approved by the Lessor) are conducted, or as otherwise extended under regulation.

Sec. 4. Indemnification. The Lessee must indemnify the Lessor for any claim, including claims for loss or damage to property or injury to persons resulting from any operation on the leased area conducted by or on behalf of the Lessee. However, the Lessee is not responsible to the Lessor under this section for any loss, damage, or injury caused by or resulting from:

(a) the Lessor's negligence, other than the commission or omission of a discretionary function or duty, or

(b) the Lessee's compliance with an order of the Lessor against which the Lessee filed an administrative appeal if the appeal is filed before the cause of action for the claim arose and if the Lessee prevails in the administrative appeal or subsequent action for judicial review.

Sec. 5. Access to Records. In accordance with regulations, if requested by the Lessor, the Lessee agrees to provide within a reasonable time to any authorized representative of the Department of the Interior all books, accounts, maps and any other records in the possession or under the control of the Lessee, its affiliates, or agents, that are relevant to operations, payments, disposition of the production, or any other activity occurring under this lease. The Lessee also agrees to keep these records open for inspection by any authorized representative at all reasonable times. This clause applies regardless of whether the records were prepared by or are under the control of the Lessee, or its affiliates, or agents. Information regarding disposition of the production includes, but is not limited to, all records regarding the sale or other disposition of oil or gas produced from the leased area by the Lessee or any of its affiliated or related entities.

Sec. 6. Reservations to Lessor. All rights in the leased area not expressly granted to the Lessee by the Act, the regulations, or this lease are reserved to the Lessor. Reserved rights include, but are not limited to:

(a) authorizing geological and geophysical exploration in the leased area which does not

unreasonably interfere with or endanger actual operations under this lease;

(b) granting easements or rights-of-way;

(c) granting leases for any minerals other than oil and gas, provided that operations under such leases do not unreasonably interfere with or endanger operations under this lease; and

(d) suspending operations under this lease during war or national emergency as provided in section 12(c) or 12(d) of the Act. If the Lessor suspends operations or restricts activities under those sections of the Act, rent and royalty payments will be suspended and the term of this lease will be extended by adding the suspension period. The Lessor will pay the Lessee just compensation for such suspension as provided by the Act.

Section 7. Payment of Rent and Royalty. The Lessee must pay the rent, minimum royalty, or royalty on the value of production saved, removed or sold at the rate specified on the face of this lease. The Lessor may require payment of the royalty in kind. Payment must comply with applicable regulations and the following provisions:

(a) The Lessee must pay rent for each lease year which begins before determination of oil or gas in paying quantities in the leased area. Rent for the first year is due by the eleventh business day after receipt of this lease, and for subsequent years is due on or before the anniversary date of this lease.

(b) The Lessee must pay minimum royalty for each year which begins after a determination of oil or gas in paying quantities on the lease area is made by the Lessor. Minimum royalty is due by the day before the next anniversary of the lease. If production occurs, the Lessee must pay the greater of minimum royalty or royalty.

(c) The Lessor reserves authority to establish reasonable value of all production for royalty purposes. To establish the value of production, the Lessor may use dispositions by the Lessee, its affiliates, and others related to the Lessee, or the Lessor may use other considerations specified under applicable regulations.

(d) The Lessee must place production in marketable condition and market the production at no cost to the Lessor.

(e) The Lessee shall deliver royalty oil and gas resources taken in kind to a delivery point designated by the Lessor.

Sec. 8. Diligent Operations. The Lessee must properly and timely develop and produce this lease. Under normal conditions, the Lessee will explore and commence development within the primary term of this lease. After due notice in writing from the Lessor, the Lessee must drill such wells and produce at such rates consistent with sound operating principles as the Lessor may require.

Sec. 9. Removal of Property on Termination of Lease. In accordance with regulations, the Lessee must submit for approval a plan for well abandonment and platform decommissioning within three months after termination in whole or in part unless the Lessor approves a longer period. The Lessee must provide for the removal of all devices, works, and structures from the premises no longer subject to the lease, according to applicable regulations and orders of the Lessor. All abandonment and removal operations must be completed within one year after termination of this lease unless otherwise approved by the Lessor. Failure to comply will result in penalties under the regulations. The Lessor may take title to any property not removed within such time. With the written approval of the Lessor under a right of use and easement, the Lessee may continue to maintain devices, works, and structures on the leased area for drilling or producing on other leases or for other purposes.

Sec. 10. Remedies for Lessee Non-Compliance.

(a) Whenever the Lessee fails to comply with any provisions of the Act, the regulations issued under the Act, or the terms of this lease, the Lessor's remedies include, but are not limited to:

- (1) Penalties under section 24 of the Act;
- (2) Suspension or cancellation under Section 5 of the Act;
- (3) Demands for payment or forfeiture of bond; or
- (4) Other remedies for nonperformance of a contract available under common law or statutes.

(b) The Lessor's nonenforcement of a remedy for any violation does not prevent the Lessor from exercising any other remedies for any other violation or from exercising any other remedies for the same violation occurring at any other time.

(Lessee)

THE UNITED STATES OF AMERICA, Lessor

(Signature of Authorized Officer)

(Signature of Authorized Officer)

(Name of Signatory)

(Name of Signatory)

(Title)

(Title)

(Date)

(Date)

(Address of Lessee)

If this lease is executed by a corporation, it must bear the corporate seal.

Cynthia Quarterman /s/

November 2, 1998

Cynthia Quarterman
Director

Date

bc: MMS Gen. File

AS/LM

Official File

PMI R/F

LMS:PMI:WASH.DIV.:THOLMAN:06/21/98

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