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January 28, 2000

Mr. David S. Guzy
Chief, Rules and Publication Staff
Minerals Management Service
Royalty Management Program
P. O. Box 25165, MS 3021
Denver, CO 80225-0165

Dear Mr. Guzy:

RE: Comments on Minerals Management Service Further Supplementary Proposed Rule for Establishing Oil Value for Royalty Due on Federal Leases, 30 CFR 206, 64 FR 73820 (December 30, 1999)

Conoco Inc. ("Conoco") welcomes this opportunity to submit comments to the Minerals Management Service ("MMS") with respect to the above referenced Further Supplementary Proposed Rule.

Conoco is an integrated oil and gas company with operations in over 40 countries worldwide. In 1999, Conoco's worldwide production of crude oil, condensate, and natural gas liquids averaged 423,000 barrels per day and its worldwide natural gas production averaged 1,660 million cubic feet per day. During the five-year period ending December 31, 1999, Conoco remitted Royalty payments to the MMS in excess of $360 million.

Conoco adopts by reference the joint comments filed by the industry coalition consisting of the American Petroleum Institute, Independent Producers Association of America, Domestic Petroleum Council, and the United States Oil and Gas Association. Further, Conoco adopts by reference the comments filed by the Council of Petroleum Accountants Societies. Conoco has also submitted comments on the various iterations of the proposed oil valuation rulemaking since the original proposed rules were first noticed in the Federal Register on January 24, 1997. Instead of restating our previous comments, we hereby incorporate them by reference.

If you have any questions concerning the attached comments, please contact John Clark at the above address or at (580) 767-5044.

Sincerely,

John E. Clark

John E. Clark

mdb
Enc

cc:
Mr. Bruce Connell, Houston, TX
Mr. Ralph Conner, Ponca City, OK
Mr. John Haley, Houston, TX

BEFORE THE
UNITED STATES OF AMERICA
DEPARTMENT OF INTERIOR
MINERAL MANAGEMENT SERVICE

Establishing Oil Value for Royalty Due on Federal Leases
(Further supplementary proposed rule.)

Comments of

Conoco Inc.

January 31, 2000

On December 30, 1999 the Minerals Management Service ("MMS") of the Department of Interior issued a further supplementary proposed rule *Establishing Oil Value for Royalty Due on Federal Leases* with comments requested on or before January 31, 2000 [64 Fed. Reg. 73820].

I. Introduction

In the current proposal, MMS has made some minor changes to its original proposed federal oil valuation regulations issued January 27, 1997. Some of these changes are welcomed by Conoco Inc. ("Conoco"), for example the elimination of MMS Form 4415. Nonetheless, MMS has ignored a fundamental request for federal crude oil valuation by Conoco and other members of the petroleum industry. This fundamental request is that the MMS permit the optional use of competitive bidding (defined as "tendering" by the MMS) in all areas of the United States. This would simplify compliance and allow lessees to identify the reasonable value of federal lease production at the lease -- ***stated goals of the MMS***. The MMS also maintains its misguided belief that a lessee's so-called ***duty to market*** extends downstream of the lease. Conoco commented on this issue when responding to the original proposed rule and offers further comments herein.

II. Competitive Market versus Price Transparency

In the MMS' preamble to the proposed rule, the MMS provides its rationale as to the reasons they believe that a new rule is necessary. The MMS discusses at length that they are concerned that a lack of price transparency at the lease has evolved over the past decade and thus they are faced with a problem of determining what is a reasonable and representative market value at the lease. The MMS conjures up an argument that a "competitive market" does not exist at the lease. This faulty assumption drives MMS to the conclusion that an index netback scheme is the only method that can possibly render a reasonable and representative value at the lease [outside the Rocky Mountain Region).

The MMS alleges that there have been no "comments submitted throughout this nearly four-year rulemaking effort [that] demonstrates that as a general rule a competitive market exists at the lease." The MMS knows this is not true. The only way MMS can even make such a claim is by the use a textbook definition of "competitive market" which defines a ***perfect*** competitive market. By using such a narrow and utopian definition of what constitutes a competitive market they claim that the very active and real competitive markets at the lease level are somehow "artificial" and do not represent true lease market value. The MMS obviously decided over three years ago that they wanted to impose an index netback scheme on lessees. To accomplish that result they have set an ***unreasonable*** standard of what constitutes a "competitive market" in order to get past the ***fact*** that a true market value exists at the lease.

Conoco has commented extensively that there is a real and active market for lease production ***at the lease*** in response to previous requests for comments. For decades Conoco has been an active participant in the lease crude oil market in many parts of the United States. Our ***arm's-length*** purchases of crude from ***third party*** producers ***at the lease*** have often exceeded 120,000 BPD. (This high level of arm's length lease purchases does not include any Conoco equity or associated production.) Additionally, Conoco, among others, in response to the original notice of proposed rulemaking on January 27, 1997, asked Dr. Joseph P. Kalt, the Ford Foundation Professor of International Political Economy at Harvard University's John F. Kennedy School of Government to comment on this active and competitive lease market based on his extensive study of crude oil markets at the lease. We direct the MMS to ***once again*** read Dr. Kalt's comments submitted on May 27, 1997. Conoco's position is that the MMS presumption that there is not a competitive lease market (outside the Rocky Mountain Region) for crude oil is ***factually incorrect and based on false assumptions.***

In addition to submitting many pages of comments to the various iterations of the proposed oil valuation rules, Conoco has made several presentations to the MMS regarding the ***fact*** that there is an active and vibrant lease market. Conoco has commented at various MMS workshops and public meetings over the past three years regarding the active market at the lease. Also on May 18, 1999 in Lakewood, Colorado Conoco presented to the MMS , in detail, Conoco's Competitive Bid program. This program has been in effect for over three years and clearly demonstrates with actual information and records that such a competitive market ***does exist*** and that crude oil value produced from such programs indeed does yield reasonable competitive market value at the lease.

Conoco understands the MMS' concern with the lack of price transparency. However, the MMS' ***index netback*** remedy misses the mark. The use of an index netback scheme as designed by the MMS is not the best way to determine market value at the lease. The MMS proposed index netback scheme ***forces*** a proxy value at the lease but this value is not representative of actual lease value of crude oil.

The MMS begins with a ***spot*** price at an arbitrary trade center, despite the fact that typically the sale of lease production is done on a ***term*** basis by the industry. It is unknown if any crude is actually traded at these "spot" reported prices. Limited adjustments are then made to this spot price to yield a "netback" value that is supposed to be lease value. However, as we have stated over and over again, the MMS allows lessees to make only minor adjustments from these spot prices. These adjustments certainly do not reflect the true cost which the lessee incurs to physically deliver the federal lease production from the lease to the trade center. To illustrate this point, if the MMS were to take their federal royalty production "in-kind" at the lease the government would have to pay ***commercial transportation costs*** to get the production to the ultimate market (FERC tariffs in most cases) ***plus all the other costs associated with this mid-stream business <u>including</u> marketing costs***. The MMS should not be allowed to be unjustly benefited solely because they elected to take cash versus the physical barrel. The MMS' interpretation of the obligation of the lessee to "market" the production at "no cost to the government" downstream of the lease is wrong and contrary to the lease contract. The proper interpretation is limited to a duty to market production **at or near the lease** at no cost to the government.

The best method to determine "market value" is to actually sell the production into a competitive market at the lease. This produces the true market value of the production at the lease and does not require downstream assumptions, adjustments or legal disputes between the lessee and the MMS. This is exactly what Conoco has done with our Competitive Bid Program for over three (3) years. To insure that our program was fair and reasonable, Conoco had its program reviewed and validated by noted energy economists who agreed that it produces a fair and reasonable market value at the lease.

III. <u>Duty to Market</u>

<u>Commercial Discussion:</u>

The MMS goes to great length in the preamble of the current proposed rule to try to justify their position that the lessee has a "duty to market" for the mutual benefit of both lessee and lessor, ***"at no cost to the government"***. What they cannot overcome in their presentation is that if an obligation is to be carried out for the "<u>mutual</u> benefit" of two parties, how can one party get essentially a free ride? Their assertion is an oxymoron. How does a lessee benefit by being forced to pay the government's share involved with moving the government's crude oil to a market away from the lease? Indeed the terms of the lease does not include the phrase ***"at no cost to the government."*** The implied duty to market at no cost to the lessor is limited to the lease — it does not extend to downstream markets. See legal discussion below. This is an unsupported construction by the MMS. The government benefits from such a construction by forcing the lessee to pay for essentially all the mid-stream costs to get the federal crude oil barrel to a trade center. The government wants to garner the supposed higher value of the crude at the trade center but not have to pay the associated reasonable mid-stream commercial costs of moving the crude oil barrel from the lease to the trade center. The costs in question are exactly the same costs that the government would have to pay if they took their production "in-kind" at the lease and through their own efforts moved the crude oil barrel to the trade center. The MMS is unlawfully attempting to gain an unjustified benefit by regulatory fiat. Their conduct in attempting to expand the lessee's obligation to place crude oil in "marketable condition" to mean that the lessee has a duty to market downstream of the lease ***"at no cost to the government"*** is egregious.

Legal Discussion:

MMS Has Misinterpreted The Implied Covenant Of The Duty To Market

MMS' proposed rules would expand the duty to market **at the lease** to a duty to market at some downstream market. This is inconsistent with the express terms of the lease, the existing regulations, agency precedence and jurisprudence. State and federal courts and agencies have long held that a lessee has a duty to reasonably market the lessor's royalty share of oil and gas production at the lease, unless the lessor has elected to take its royalty share in-kind. See, for example, *Amoco Production Co. v. Alexander*, 622 S.W. 2d 563 (Tex. 1981), and *Walter Oil and Gas Corp.*, 111 IBLA 260 (1989). Conoco readily accepts its implied duty to market at or near the lease and firmly believes that its tendering program represents an affirmative, proactive satisfaction of that duty. Moreover, Conoco's tendering program establishes a viable, market price at or near the lease.

MMS relies on a natural gas case, *Marathon Oil Co. v. United States*, 604 F.Supp. 1375 (D. Alaska 1985), aff'd, 807 F.2d 759 (9th Cir. 1986), cert. denied, 480 U.S. 940 (1987), for the proposition that valuation based upon a downstream sale or disposition of production has been commonplace for many years. [64 Fed. Reg. 73823]. However, upon closer examination of this case, the court takes quite the opposite position, quoting the MMS' own regulations.

In the absence of good reason to the contrary, value computed on the basis of the highest price per ...thousand cubic feet ... paid or offered at the time of production in a fair and open market for the major portion of like-quality ... gas ... produced and sold from the field or area where the leased lands are situated will be considered to be a reasonable value." (emphasis added)[Lexis 22448 @ 34-35]

* * * * * * * *

Is MMS' net back method consistent with the regulatory language directing the agency to determine the "value of production" for royalty purposes? Marathon argues that this language requires that royalties be based on the value of production at the lease. I agree with this basic premise. (footnote omitted) (emphasis added) [Lexis 22448 @ 38]

Even MMS' current regulations undermine its contention that downstream market valuation is "commonplace". See, for example, 30 CFR §206.102 (1999) which uses the phrase "for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area)" [emphasis added] throughout its provisions for the calculation of royalties. In fact, the first four benchmarks use this phrase or a similar concept. For MMS to claim that use of a market downstream of the lease is commonplace or to infer that it is the preferred method is, at best, disingenuous.

The courts have acknowledged and affirmed the government's longstanding and consistent interpretation of the governing statutes as requiring royalty valuation to be computed at the lease. In *General Petroleum Corp., [infra, @ 235,257]*, the courts held that the term "value of production" under the Mineral Lease Act referred to the value of oil and gas at the wellhead. Clearly, the government's royalty interest is properly limited to the value of production at the lease, not in value enhancements resulting from downstream activities. Nor is the government entitled to proceeds received by lessees attributable to matters other than the production of oil and gas itself. See *Diamond*

Shamrock Exploration Co. v. Hodel, 853 F.2d 1159,1165 (5th Cir. 1988), rejecting MMS' claim for royalty from take-or-pay proceeds.

MMS' Interpretation Of The Implied Duty To Market Conflicts With Express Terms Of The Lease Agreement

Moreover, it should be noted that an implied duty cannot be inconsistent with an express duty. To the extent any inconsistency exists, the express terms control. See, for example, *Amoco Production Co. v. First Baptist Church of Pyote*, 611 S.W. 2d 619 (Tex. 1980) and *Viersen & Cochran*, 134 IBLA 155, 164 n.8 (1995) in which the IBLA rejected the applicability of implied duties under Federal oil and gas leases. The legal relationship between lessor and lessee is created by the lease agreement. The subject matter of that agreement is production from the subject mineral rights underlying the specified property. Thus, the duty to market is lease specific and it is unreasonable to require the lessee to market production miles from the lease. The most reasonable location is at the lease or, if a market does not exist at the lease, at the closest market to the lease. The lessor should not be allowed to "second-guess" lessee's market choice. It is wholly inconsistent with the express take-in-kind provisions of the lease to allow the lessor to use the implied covenant to market to require the lessee to value royalty on the basis of a downstream market when a viable market exists at or near the lease. To hold otherwise would be unconscionable.

It is inequitable to allow the lessor to choose a market price downstream of the lease for calculation of royalties. If lessor wishes to employ prices from a market further downstream, it should be required to implement the specific lease language permitting the lessor to take its royalty share of production in-kind. To attempt to circumvent the express terms of the lease through the guise of a rulemaking is clearly an abuse of the MMS administrative powers.

To The Extent The Lease Is Ambiguous, It Should Be Interpreted In Favor Of The Lessee

Even assuming, *arguendo*, that the implied duty to market downstream of the lease was not inconsistent with express provisions of the lease, under the contractual interpretation doctrine of *contra proferentem,* any ambiguities must be interpreted against the lease drafter – in this case the Federal government. Under this doctrine, a contract should be construed most strongly against the drafter. Federal leases are no different. In fact, the doctrine is more stringently applied when the Federal government dictates the terms of the agreement. See *United States v. Seckinger,* 397 US 203, 216 (1970) and *Peter Kiewit Sons' Co. v. United States*, 109 Ct. Cl. 390, 418 (1948).

Some courts have held that if the Federal government wishes to impose a contractual duty, it must expressly do so, or the duty will not be imposed on the private contractor by implication.

> [Contra proferentem] puts the risk of ambiguity, lack of clarity, and absence or proper warning on the drafting party which could have forestalled the controversy; it pushes the drafter toward improving contractual forms; and it saves contractors from hidden traps not of their own making. *Sturm v. United States*, 421 F.2d 723,727 (Ct.Cl.1970)

The lessee, after out-bidding competitors for a lease, is provided a non-negotiable lease form to execute. The lessee has paid lessor an up-front bonus for the "right" to assume all of the risks and costs of exploration, development and production (at no cost to the lessor), executed a one-sided, non-negotiable lease, and is now expected to take on unreasonable *ex post facto* downstream marketing obligations. When the Federal government enters into a contract as a commercial lessor the lease "becomes a private, contractual matter" and "the government's role is taken to be no different from that of any private lessor ..." *United States v. General Petroleum Corp.* , 73 F.Supp 225, 240 (S.D.Cal. 1946), aff'd sub nom. *Continental Oil Co. v. United States*, 184 F. 2d 802 (9th Cir. 1950). In addition, the Federal government is precluded from unilaterally modifying the terms of an agreement by regulatory or statutory fiat. See *Conoco Inc. v. United States*, 35 Fed. Cl. 309, rev'd on other grounds sub. nom., *Marathon Oil Co. v. United States*, 158 F.3d 1253 (Fed. Cir. 1998), cert. granted, _U.S._, 120 S.Ct. 494 (1999) and *United States v. Winstar Corp.*, 64 F.3d 1531 (Fed. Cir. 1995). Such action would constitute an unjust taking, contrary to the Fifth Amendment of the U.S. Constitution.

MMS Cannot Use The Marketable Condition Rule to Expand The Duty To Market

In *Beartooth Oil & Gas Co. v. Lujan*, Cause No.CV92-99-BLG-RWA (D.Wyo. 1993) the court relied on *Marathon [supra]* finding that the marketable condition rule does not require the lessee to condition production so that it is suitable for markets downstream of the wellhead. The duty to put production into marketable condition requires only that the lessee condition the gas so that it is acceptable to the buyer under terms typical for the field. The court recognized that many downstream markets exist and that production has increasing value at each further downstream market. However, the court held that no royalty value attaches to these higher values. Accordingly, the court found that there is no statutory support for the MMS' position that a producer must condition production into a state suitable for downstream markets, but rather, only for the market at (or near) the wellhead. The obvious corollary is that the MMS cannot require the lessee to either market production at a downstream market or place production into a state suitable for downstream markets, at no cost to the government.

IV Comments Regarding Specific Aspects of the Proposed Rule

This section is designed to address specific aspects of the proposed rule that we believe need correction, clarification or further explanation. These comments do not take precedence over the comments provided in Sections I, II and III above but are provided assuming that the MMS will not take heed of our comments and will move forward to publish a final rule without the fundamental changes recommended above.

1. **Definition of "area".** "Area means a geographic region at least as large as the limits of an oil field, in which oil has similar quality, economic, and legal characteristics."

This definition is ambiguous and subjective and it provides little, if any, guidance to either the lessor or lessee. Under this definition, an area is what MMS says it is; consequently, we recommend that MMS specifically define the areas they are contemplating.

2. <u>Definition of "exchange agreement".</u> We recommend the deletion of the "exchanges of produced oil for futures contracts (Exchanges for Physical, or EFP)" and also "exchanges of produced oil for similar oil produced in different months (Time Trades)". Neither of these add anything to understanding or compliance with the regulations as proposed. An EFP is in reality an outright sale or an outright purchase and there is no differential for location or quality or anything else. Similarly, a Time Trade may have a differential but that differential would apply to the value of a crude in one month versus its agreed value in a later month. Time Trade differentials, if any, typically only represent the time value of money between two different periods. Under the proposed rule value is determined during the production month. Therefore Time Trades have no impact on federal royalty valuation. Also, we recommend that it be made perfectly clear that transportation exchanges (exchanges entered into to physically transport the oil from point A to point B) be specifically exempted from the definition of exchange agreement.

3. <u>Rocky Mountain Region (Tendering).</u> Conoco strongly supports the use of tendering programs throughout the Continental United States. MMS has not provided any supportable rationale to disallow the use of tendering programs outside the Rocky Mountain region. Conoco further believes that the use of a 30% minimum is unreasonable. MMS has calculated this minimum on the basis of its 1/8 royalty plus the <u>highest</u> state severance tax rate it could find. The use of any severance tax rate is irrelevant. Severance taxes are unrelated to MMS royalty valuation which is unburdened by severance tax and, moreover, are clearly outside the jurisdiction and purview of the MMS. Use of the highest severance tax rate only underscores the unreasonableness of MMS' position. MMS' real concern may be that lessees will use their tendering programs only to value the royalty portion of production. Aside from being an unsupported assumption, it is an illogical conclusion. Nonetheless, Conoco would support a minimum

level of 20% to ensure lessee equity participation. MMS' requirement of a 30% minimum is arbitrary, capricious and unsupported by the record.

Conoco also takes issue with the requirement that the lessee must receive three bids from companies that do not have a tendering program. Again, MMS does not provide support for this requirement. If MMS is concerned that parties with tendering programs will somehow conspire to engage in low-balling bids, the audits and potential penalties as well as antitrust laws will serve to police lessees' actions. MMS' requirement is arbitrary, capricious and unsupported by the record.

We also recommend that the reasonable value be the volume weighted price of the actual third party sales value of the 30+% under the program. If bids are volume limited and more than one bid has to be accepted to reach the 30% sales threshold then the MMS should allow the lessee to use the weighted average price of the ACTUAL sales under the program to determine value under the regulation, just as they would if these were arms-length sales under the gross proceed rule. A simple example demonstrates the inequity of MMS' position. Assume 100,000 barrels are produced from a field. One bidder has a critical need at that location for a very small portion of the production, say 2,000 barrels and is willing to bid $30. The remaining 98,000 barrels are sold at the wellhead market price of $20. The lessee receives a weighted average price of $20.20, but MMS would demand royalty payments on the basis of $30.00. Such an interpretation is over-reaching and cannot be supported under either a gross proceeds or value analysis. Moreover, MMS' position is arbitrary, capricious and unsupported by the record.

We would also recommend under benchmark 2 that the lessee have the option of tracing their sales or going directly to benchmark 3.

4. __Starting Point for Value – Index Method.__ Conoco agrees with the Marathon recommendation made at the January 2000 MMS public workshops that the starting point for royalty calculation purposes be a published value for crude of similar quality regardless of where the crude is in the United State or Canada. This concept should be applied throughout the United States. For many crudes it may be all but impossible to determine a reasonable relationship between WTI (domestic sweet) crude at Cushing, Oklahoma. For example, in Utah alone there are unique crudes in Northeast Utah, such as Altamont-Bluebell and Yellow Wax that would be almost impossible to relate to WTI.

As a further example let us assume that Conoco transports oil from the Elk Basin Unit in Wyoming to our refinery in Commerce City, Colorado. Under the provisions of the proposed rule we would value the oil at the WTI mean spot price in Cushing and we could deduct our actual transportation cost to the refinery. This valuation is grossly unfair. MMS is well aware, or at least should be, that the Cushing spot price is not relevant to the Rocky Mountain Region. Our only alternative in this situation is to ask for approval or seek a differential from MMS. To get a differential, we must provide to MMS data related to the cost of crude at the refinery. We fail to see how the cost of crude at the refinery equates in any form to the value of Elk Basin crude at the lease. It appears that MMS is attempting to gain value by regulation that they would have no chance of getting in the market place.

5. **<u>San Juan Basin Valuation</u>**. The current rule would value some crude from the San Juan Basin one way if it is produced from surface wells in New Mexico or Arizona and another way if it is produced from surface wells in Utah or Colorado. Conoco would recommend that the Four Corners oil producing basins (San Juan, Aneth, etc) be treated consistently for valuation purposes because they are generally sold into the same market.

6. **<u>Transportation Issues</u>**. There are situations that MMS has not spoken to in this proposed rule under section 206.111. As an example, Conoco transports condensate from the Patterson Terminal by barge to our Lake Charles, La, refinery. These barges have never been depreciated for MMS purposes. The proposed rules focus on transportation by pipeline, but not by other modes. Issues for clarification include:

1. How is this transportation system going to be treated by MMS?
    a. What criteria would be used to determine whether such a system is a "new system" for MMS purposes?
    b. How would total investment (or the 10% depreciation floor) be determined if many of the original records could not be located?

Conoco recommends that part 206.111 be clarified to provide guidance to the lessee in the above situations.

7. **Administrative Burden.** We believe that the MMS has significantly under-estimated the increased administrative and system cost associated with implementing the new rule for the industry. Conoco recently invested $25MM in computer systems for upstream and midstream, none of which anticipated tracing lease volumes downstream of the lease to determine a netback wellhead or lease price. The production business and refinery supply business have historically been separated for accounting purposes. Because of state production reporting requirements, severance tax requirements, and meeting federal and private royalty owner lease term provisions, settlement accounting is required to close much earlier in the accounting cycle than does refinery supply accounting. Significant new system modifications would be required to meet the MMS proposed regulations. This would require significant time, resources, and expenditures, as well as adding additional personnel to assure compliance.

In addition, the proposal would result in having to make estimated payments on a current basis and adjusting to actual on a one/two month lag. This will also add a significant complexity and administrative cost not adequately addressed or considered in the MMS proposal.

8. **Effective date**. It is our understanding that MMS intends to publish a final rule March 15, 2000 with an effective date of June 1, 2000. MMS is not providing sufficient time between the publication of the final rule and the effective date to properly implement the rule. Besides the administrative work the rule requires, we must evaluate the work load increase, hire and train new employees, and effect the system changes discussed above. Conoco believes a more appropriate effective date would be January 1, 2001.

V. Conclusion.

In conclusion, Conoco recommends that a joint MMS/Industry/State task force be assembled to draft a more practical, reasonable rule. The MMS has made too many incorrect assumptions as the basis for this proposed rule and it will lead to protracted litigation. As proposed, the rule provides fertile ground for False Claims Act charges because it is unworkable and ambiguous. Many lessees will be forced under this rule to build costly new computer systems in an attempt to correctly value federal crude oil for different parts of the country and hire additional staff to trace crude movements off federal leases through a maze of trades in an attempt to determine the market value for the ultimate "buyer" of the crude. Our experience is that the more complexity that goes into a reporting system or procedure, the more likely it is that the end result will spawn further litigation. Conoco suggests the MMS follow Occam's razor and recognize that since competitive bidding is a simpler, known solution to lease value determination that it is preferable to the complex index netback scheme offered by the MMS in the proposed rule. On the other hand, if MMS is of the opinion that lessees cannot be trusted, then the government should take all of its production in-kind and market it as it sees fit.