

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010-AD01

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Relief or Reduction in Royalty Rates—Deep Gas Provisions

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule—technical amendments.

SUMMARY: The effective date of the final rule originally published January 26, 2004 (69 FR 3492) entitled "Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Relief or Reduction in Royalty Rates—Deep Gas Provisions" ("January final rule"), with an effective date of March 1, 2004, is changed to May 3, 2004, to ensure compliance with the 60-day review period for final rules required by applicable statute. The January final rule will become effective May 3, 2004. This final rule also promulgates related amendments to dates prescribed in the January final rule as originally published that follow from the change in the effective date.

DATES: The effective date of the rule published on January 26, 2004 (69 FR 3492) is changed from March 1 to May 3, 2004. The changes published in this rule are effective on April 30, 2004.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, Minerals Management Service, at (703) 787-1536. E-mail: Marshall.Rose@mms.gov. Address: Minerals Management Service, MS 4050, 381 Elden Street, Herndon, Virginia 20170.

SUPPLEMENTARY INFORMATION: The January final rule provided for (1) temporary incentives in the form of royalty suspension volumes for producing gas from certain deep wells (at least 15,000 feet true vertical depth below the datum at mean sea level (TVD SS)); (2) a royalty suspension supplement for drilling certain unsuccessful deep wells; and (3) price thresholds that may result in discontinuation of the royalty relief. The effective date of the January final rule as originally published was March 1, 2004.

However, 5 U.S.C. 801(a)(1)(A) provides that before a rule can take effect, the Federal agency promulgating the rule must submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule, a concise general statement

relating to the rule, including whether it is a major rule, and the proposed effective date of the rule. Section 801(a)(3) then provides:

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

(A) The later of the date occurring 60 days after the date on which—

(i) The Congress receives the report submitted under paragraph (1); or

(ii) The rule is published in the **Federal Register**, if so published.

The January final rule is a major rule under 5 U.S.C. 804(2) because it has an annual effect on the economy of \$100 million or more. In the case of the January final rule, the Congress did not receive the rule until March 4, 2004. Therefore, the January final rule cannot become effective before May 3, 2004. As a consequence, gas produced from qualifying wells between March 1 and May 2, 2004, that would have been subject to a royalty suspension volume under the January final rule as published will not be subject to the royalty suspension provisions because the January final rule cannot take effect before May 3, 2004. This change does not require public comment under 5 U.S.C. 552(b)(3)(B) and is published as a final rule—technical amendments because the applicable statute compels changing the effective date to a date that complies with its terms.

MMS recognizes that this is contrary to expectations of lessees who had based operational and investment decisions on the original effective date published in January 2004. The resulting inequity is addressed in a simultaneous notice published in the **Federal Register** today.

The change in the effective date from March 1 to May 3, 2004, necessitates corresponding changes to various sections of the January final rule that refer to March 1, 2004, and other dates that are either 3 months after that date or 5 years after that date. Each reference to March 1, 2004, in the January final rule is changed to May 3, 2004. Each reference to June 1, 2004, in the January final rule is changed to August 3, 2004. Each reference to March 1, 2009, in the January final rule is changed to May 3, 2009. These changes also do not require public comment under 5 U.S.C. 552(b)(3)(B) and are promulgated here as a final rule—technical amendments because they are a necessary consequence of the change in the effective date compelled by statute.

Under 5 U.S.C. 552(b)(3)(B) and 5 U.S.C. 552(d)(3), MMS has determined for good cause that notice and public comment before making these technical amendments final is impracticable,

unnecessary, or contrary to the public interest, and that good cause exists for making this rule immediately effective. As explained above, this final rule—technical amendments corrects MMS's administrative error in failing to comply with 5 U.S.C. 801(a)(3).

Procedural Matters*Regulatory Planning and Review (Executive Order 12866)*

According to the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, jobs, the environment, or other units of government. As of mid-April, 2004, MMS has been notified of six qualified deep wells that are on production. They have an average well flow rate of 10 MMcf per day. MMS is aware of 16 others that are being drilled and could conceivably qualify and come onto production before May 3, 2004. Because of the high risk and startup time involved, we assume that only 3 of the 16 pending deep wells qualify and produce on average for one of the months covered by this rule. Thus, we estimate that about 6.5 Bcf might be produced by qualified wells between March and June, 2004 (with a somewhat lesser volume produced between March 1 and May 2, 2004). The associated royalty liability on the part of the lessees would total between \$5 million and \$6 million (with a somewhat lesser amount for the period between March 1 and May 2, 2004), assuming a gas price of \$5/Mcf.

b. This rule will not create inconsistencies with other agencies' actions because there are no changes in requirements from the existing rule.

c. This rule is an administrative change that will not affect entitlements, grants, user fees, loan programs, or their recipients. This rule has no effect on these programs or rights of the programs' recipients.

d. This rule will not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The provisions of this rule will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The rule corrects an administrative error.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734-3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Leasing on the United States OCS is limited to residents of the United States or companies incorporated in the United States. This rule does not change that requirement, so it does not change the ability of United States firms to compete in any way.

Paperwork Reduction Act (PRA)

The revisions do not contain any information collection requirements subject to the PRA. We will not submit a form OMB 83-I to OMB for review and approval under section 3507(d) of the PRA.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. This rule does not impose costs on States or localities. States and local governments play no part in the administration of the deep gas royalty relief program.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant takings implications. A Takings

Implication Assessment is not required because the rule would not take away or restrict a bidders right to acquire OCS leases.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. This clarification rule does not have a significant effect on energy supply, distribution, or use.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments. A statement containing additional UMRA (2 U.S.C. 1531 *et seq.*) information is not required.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship With Tribes

According to the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, MMS has determined that there are no effects from this action on Federally recognized Indian tribes.

List of Subjects for 30 CFR Part 203

Continental shelf, Government contracts, Mineral Royalties, Oil and gas exploration, Public lands-mineral resources, Reporting requirements, Royalty suspension.

Dated: April 26, 2004.

Patricia E. Morrison,

Acting Assistant Secretary—Land and Minerals Management.

■ For the reasons explained in the preamble, MMS amends 30 CFR part 203 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

■ 1. The authority citation for Part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

■ 2. In § 203.0, the introductory text and paragraph (1) of the definition of "certified unsuccessful well" and the definition of "qualified well" are revised to read as follows:

§ 203.0 What definitions apply to this part?

* * * * *

Certified unsuccessful well means an original well, or a sidetrack with a sidetrack measured depth of at least 10,000 feet, on your lease that:

- (1) You begin drilling on or after March 26, 2003, and before May 3, 2009, and before your lease produces gas or oil from a deep well with a perforated interval the top of which is at least 18,000 feet true vertical depth below the datum at mean sea level (TVD SS);

* * * * *

Qualified well means a deep well:

- (1) For which drilling begins on or after March 26, 2003;
- (2) That produces natural gas (other than test production), including gas associated with oil production, before May 3, 2009; and
- (3) For which you have met the requirements prescribed in § 203.43.

* * * * *

■ 3. In § 203.41, the first two sentences of paragraphs (b) and the first two sentences of paragraph (d) are revised to read as follows:

§ 203.41 If I have a qualified well, what royalty relief will my lease earn?

* * * * *

(b) We will suspend royalties on gas volumes produced on or after May 3, 2004, reported on the Oil and Gas Operations Report, Part A (OGOR-A) for your lease under § 216.53, as and to the extent prescribed in § 203.42. All gas production from qualified wells reported on the OGOR-A, including production that is not subject to royalty (except for production to which a royalty suspension supplement under §§ 203.44 and 203.45 applies), counts toward the lease royalty suspension volume.

* * * * *

(d) We will suspend royalties on gas volumes produced on or after May 3, 2004, reported on the Oil and Gas Operations Report, Part A (OGOR-A) for your lease under § 216.53, as and to the

extent prescribed in § 203.42. All gas production from qualified wells reported on the OGOR-A, including production that is not subject to royalty (except for production to which a royalty suspension supplement under §§ 203.44 and 203.45 applies), counts toward the lease royalty suspension volume.

* * * * *

■ 4. In § 203.42, paragraph (a)(1) and the introductory text of paragraph (b) are revised to read as follows:

§ 203.42 To which production do I apply the royalty suspension volume earned from qualified wells on my lease?

* * * * *

(a)(1) Occurring on and after the later of May 3, 2004, or the date that the first qualified well that earns your lease the royalty suspension volume begins production (other than test production);

* * * * *

(b) This paragraph applies to any lease all or part of which is within an MMS-approved unit. If your lease has a qualified well, a share of the production from all the qualified wells in the unit participating area will be allocated to your lease each month according to the participating area percentages. Subject to the requirements of §§ 203.40, 203.41, 203.43, 203.44, and 203.47, you must apply the royalty suspension volume to the earliest gas production occurring on and after the later of May 3, 2004, or the date that the first qualified well that

earns your lease the royalty suspension volume begins production (other than test production):

* * * * *

■ 5. In § 203.43, paragraph (d) and the introductory text of paragraph (e) are revised to read as follows:

§ 203.43 What administrative steps must I take to use the royalty suspension volume?

* * * * *

(d) If you produced from a qualified well before May 3, 2004, you must provide the information in paragraph (b) of this section no later than August 3, 2004.

(e) If you cannot produce from a well that otherwise meets the criteria for a qualified well before May 3, 2009, the MMS Regional Supervisor for Production and Development may extend the deadline for beginning production for up to 1 year, based on the circumstances of the particular well involved, provided you demonstrate that:

* * * * *

■ 6. In § 203.44, the first two sentences of paragraph (b) and the introductory text of paragraph (e) are revised to read as follows:

§ 203.44 If I drill a certified unsuccessful well, what royalty relief will my lease earn?

* * * * *

(b) We will suspend royalties on oil and gas volumes produced on or after May 3, 2004, reported on the Oil and

Gas Operations Report, Part A (OGOR-A) for your lease under § 216.53, as and to the extent prescribed in § 203.45. All oil and gas production reported on the OGOR-A, including production that is not subject to royalty (except for production to which a royalty suspension volume under §§ 203.41 and 203.42 applies), counts toward the lease royalty suspension supplement.

* * * * *

(e) If the same wellbore that earns a royalty suspension supplement as a certified unsuccessful well later produces from a perforated interval the top of which is 15,000 feet TVD SS or deeper before May 3, 2009, it will become a qualified well subject to the following conditions:

* * * * *

■ 7. In § 203.46, paragraph (c) is revised to read as follows:

§ 203.46 What administrative steps do I take to obtain and use the royalty suspension supplement?

* * * * *

(c) If you commenced drilling a well that otherwise meets the criteria for a certified unsuccessful well on or after March 26, 2003, and finished it before May 3, 2004, provide the information in paragraph (b) of this section no later than August 3, 2004.

* * * * *