

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Relief or Reduction in Royalty Under Certain Federal Oil and Gas Leases on the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (DOI), under authority granted in the Outer Continental Shelf Lands Act, is eliminating the royalty set forth in certain Federal offshore oil and gas leases on gas produced from certain deep wells on those leases between March 1 and May 2, 2004.

DATES: *Effective Date:* April 30, 2004.

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SUPPLEMENTARY INFORMATION: MMS published a final rule entitled "Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Relief or Reduction in Royalty Rates—Deep Gas Provisions" in the **Federal Register** on January 26, 2004 (69 FR 3492) ("January final rule"). That 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 for 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. 801-808 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 could not, by law, become effective before May 3, 2004. As a consequence, gas produced 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 of the final rule because the rule cannot take effect before May 3, 2004. The DOI published a Final Rule—Technical Amendments today changing the effective date of the January final rule and making associated amendments to relevant dates in the regulatory text.

Publishing the final rule on January 26, 2004, with a March 1, 2004, effective date created the expectation that lessees could begin applying the royalty relief prescribed in the January final rule to production beginning March 1, 2004. In the course of meetings with offshore producers, MMS learned that several lessees, in making project startup and investment decisions, acted in reliance on the March 1, 2004, date and the incentives provided in the January final rule. The statutory delay in the effective date of the January final rule and the reliance by some lessees on the March 1, 2004, date have created an unexpected and substantial disadvantage to these lessees with respect to the calculations on which they based their project startup and investment decisions.

Section 8(a)(3)(B) of the OCS Lands Act (OCSLA), 43 U.S.C. 1337(a)(3)(B) (as added by section 302(2) of the Deep Water Royalty Relief Act of 1995, Pub. L. No. 104-58, 109 Stat. 563, 565), provides in relevant part:

In the Western and Central Planning Areas of the Gulf of Mexico * * * the Secretary may, in order to—

(i) Promote development or increased production on producing or non-producing leases; or

(ii) Encourage production of marginal resources on producing or non-producing leases;

Through primary, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease(s). * * *

The Secretary of the Interior has delegated the authority to the MMS Director to exercise the royalty relief authority granted under the statute.

By this notice, the DOI eliminates the royalty on gas produced between March 1 and May 2, 2004, from wells drilled on or after March 26, 2003, with a

perforated interval the top of which is at least 15,000 feet TVD SS. This notice corrects the problem created by the agency's oversight regarding the January final rule's effective date, and corrects the negative effects of the lessees' reliance on the incentives provided for in the January final rule to promote development and production. This notice is published under the authority provided in 43 U.S.C. 1337(a)(3)(B). The relief granted by this notice will fulfill both the lessees' and MMS's expectations regarding the amount of royalty relief to which lessees would be entitled and for what period of time under the January final rule, and it corrects the inequity to the lessees that otherwise would result from MMS's error.

This relief is very limited. It applies to only a very few leases and the unusual circumstances originating with MMS's error that delayed the beginning of the royalty relief for these deep wells provided in the January final rule.

This action protects the integrity of an MMS commitment to OCS operators who acted in good faith on a deep drilling incentive. It avoids penalizing, because of an administrative error, those operators who acted expeditiously on the incentive. Such a penalty would be inconsistent with an incentive whose principal purpose is to accelerate deep drilling.

Because this royalty relief is granted outside the January final rule, the volume of production on which a lessee will not pay royalties as a result of this notice does not count against the royalty suspension volume for the lease under the January final rule (see 30 CFR 203.41). MMS acknowledges that the result of this notice is to grant lessees an additional 2 months of royalty relief above the level to which they were entitled in the January final rule, assuming that production levels prove to be high enough to equal or exceed the total royalty suspension volume provided for under the January final rule and this notice. However, MMS believes that this result is the most fair and equitable to the lessees in light of the purposes of the statutory grant of royalty relief authority and the fact that the problems are the fault of the government, not the lessees.

Dated: April 26, 2004.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

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