

SUMMARY: This document corrects a notice of proposed rulemaking (REG-108524-00) that was published in the **Federal Register** on Wednesday, May 18, 2005 (70 FR 28743). The document contains regulations providing guidance under section 1446 of the Internal Revenue Code relating to the circumstances under which a partnership may take partner-level deductions and losses into account in computing its withholding tax obligation with respect to a foreign partner's allocable share of effectively connected taxable income.

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing (REG-108524-00) that is the subject of these corrections are under section 1446 of the Internal Revenue Code.

Need for Correction

As published, REG-108524-00 contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG-108524-00), that was the subject of FR Doc. 05-9423, is corrected as follows:

1. On page 28743, column 1, in the preamble, under the caption **DATES:**, last line, the language "must be received by August 16, 2005." is corrected to read "must be received by September 12, 2005."
2. On page 28743, column 2, in the preamble, under the caption **FOR FURTHER INFORMATION CONTACT:**, line 3, the language "the hearing, Jacqueline Turner at (202)" is corrected to read "the hearing, Richard A. Hurst at (202)".
3. On page 28744, column 1, in the preamble, under the paragraph heading, "Comments and Public Hearing", third paragraph, line 8, the language "and eight (8) copies by August 16," is corrected to read "and eight (8) copies by September 12,".

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AD10

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Plans and Information—Protection of Marine Mammals and Threatened and Endangered Species

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would require lessees of federal oil and gas leases in the OCS to provide information on how they will meet the requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). It identifies environmental, monitoring, and mitigation information that lessees must submit with plans for exploration and development and production. This rulemaking clarifies our regulations about what information MMS needs to ensure compliance with the ESA and MMPA requirements. The proposed rule would assure that lessees conduct their activities in a manner consistent with the provisions of the ESA and MMPA.

DATES: MMS will consider all comments received by November 7, 2005. MMS will begin reviewing comments then and may not fully consider comments received after November 7, 2005.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods listed below. Please use the Regulation Identifier Number (RIN) 1010-AD10 in your message. See also Public Comment Procedure under Procedural Matters:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the Web site for submitting comments.

- E-mail MMS at rules.comments@mms.gov. Use 1010-AD10 in the subject line.

- Fax: 703-787-1093. Identify with 1010-AD10.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference "Plans and Information—Protection of Marine Mammals and Threatened and Endangered Species—AD10" in your comments.

You may also send comments on the information collection aspects of this

rule directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB Attention: Desk Officer for the Department of the Interior (1010-10) via OMB e-mail:

(OIRA_DOCKET@omb.eop.gov); or by fax (202) 395-6566; identify with 1010-AD10. Please also send a copy to MMS.

FOR FURTHER INFORMATION CONTACT: Judy Wilson, Endangered Species Coordinator, Environmental Division, (703) 787-1075.

SUPPLEMENTARY INFORMATION: The OCS Lands Act at 43 U.S.C. 1333, mandates

"The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands, and all installations and other devices

permanently or temporarily attached to the seabed * * * Those laws include the ESA and the MMPA. The OCS Lands Act, at 43 U.S.C. 1332, requires

"* * * expeditious and orderly development, subject to environmental safeguards * * *" MMS, as a Federal agency, has a duty to carry out agency actions and authorizations in a manner that is not likely to jeopardize species listed under the ESA, or have more than a negligible impact on marine mammals or the availability of marine mammals for subsistence use under the MMPA.

Section 7(a)(1) of the ESA, 16 U.S.C. 1536(a)(1), mandates that the "Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act." Therefore, it is the responsibility of MMS to require that lessees and operators conduct their activities in a manner that is consistent with the provisions of the ESA and MMPA.

For these reasons, MMS proposes to amend 30 CFR part 250, subpart B—Plans and Information, to require lessees to provide more environmental information concerning threatened or endangered species listed under the ESA and marine mammals protected under the MMPA. This information will be required when submitting plans for approval, and also while operating on the OCS, in the form of impact-monitoring data. MMS must often require mitigation measures and monitoring by lessees operating on the

OCS. Mitigation and monitoring may be non-discretionary under the ESA if operations that we permit are to be exempt from prohibitions of ESA section 9, which prohibits taking of listed species.

The ESA requires both monitoring and reporting. Monitoring programs resulting from ESA section 7 (interagency) consultations are designed to:

- Detect adverse effects resulting from a proposed action;
- Assess the actual level of incidental take in comparison with the level of anticipated incidental take documented in the biological opinion;
- Detect when the level of anticipated incidental take is exceeded; and
- Determine the effectiveness of reasonable and prudent alternatives and their implementing terms and conditions.

In addition, there can be no exemptions from ESA section 9 prohibitions regarding listed marine mammals until take of marine mammals has been authorized under the MMPA and/or its 1994 amendments. The MMPA has mitigation, monitoring and reporting requirements similar to the ESA.

In recent biological opinions, MMS has been required by National Oceanic and Atmospheric Administration (NOAA) through ESA section 7 consultations to adopt mitigation, monitoring and reporting requirements. These non-discretionary requirements are related to mitigating the effects of noise, vessel traffic, and marine trash and debris (MMS Notices to Lessees (NTLs) 2003-G10, 2003-G11, 2004-G01, and 2004-G06). The ESA implementing regulations at 50 CFR 402.14(i)(3) state that "In order to monitor the impacts or incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement." Thus, the reporting requirements from the ESA section 7 consultations require MMS to have OMB information collection approval before collecting and using that information. MMS has OMB information collection approval for the non-discretionary requirements identified above.

These proposed regulatory changes to subpart B will incorporate the general ESA information requirements for which MMS recently has received OMB information collection approval. (While monitoring and reporting are also required under MMPA regulations, NOAA has OMB approval for MMPA information collection.) The proposed revisions to subpart B require industry

to comply with these specific environmental laws in a general way. The proposed rule will assure that lessees mitigate for potential takes and monitor for potential takes to aid in assessing the actual level of take and the effectiveness of the mitigation.

The information collection requirements proposed under this rule will not substitute for a Letter of Authorization or Incidental Harassment Authorization. The reporting requirements do not authorize the taking of any marine mammal under the MMPA. This rule does not enable the MMS to make determinations under the ESA or MMPA on the level or significance of takings that could occur or otherwise substitute MMS judgment for the Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) of NOAA. The purpose of this rule is to assure that lessees describe how they will mitigate the potential for takes to occur, monitor for potential takes and report any takes, should they occur.

Procedural Matters

Public Comment Procedures

All submissions received must include the agency name and RIN for this rulemaking. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

MMS has determined that this proposed rule is not economically significant under Executive Order 12866 for the reasons stated below.

(1) This proposed rule would not have an effect of \$100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or

communities. The proposed rule is necessary for MMS to implement nondiscretionary terms and conditions to be exempt from prohibitions of the ESA, at section 9 of the ESA, which prohibits the taking of listed species. There are no new costs associated with this rulemaking and it would not cause an annual effect on the economy of \$100 million or more.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. MMS consulted with the FWS and NOAA. These agencies agree that the rule is consistent with their authorities and implementing regulations. The proposed rule does not affect how lessees or operators interact with other agencies. Nor does this proposed rule affect how MMS will interact with other agencies.

(3) This proposed rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This proposed rule does not raise novel legal or policy issues. The proposed rule is a clarification of existing regulations.

Regulatory Flexibility Act (RFA)

The DOI certifies that this proposed rule does not have a significant economic effect on a substantial number of small entities as defined under the RFA (5 U.S.C. 601 *et seq.*). No additional costs are associated with this rule because it clarifies requirements that already exist. This rule reduces the ambiguity in our regulations. Accordingly, no further RFA analysis is necessary.

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 actions of MMS, call 1-888-REG-FAIR (1-888-734-3247). 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 (DOI).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under the SBREFA, (5 U.S.C. 804(2)). This proposed 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 because the rule incorporates monitoring, mitigation and reporting requirements specified in current NTLs and lease stipulations.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises. All lessees and operators, regardless of nationality, must comply with the requirements of this rule. The proposed rule will not affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA) of 1995 (Executive Order 12866)

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 any Federal mandates; nor does the rule have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (Executive Order 12630)

This rule does not have significant takings implications. The proposed rule revises existing operation regulations. It does not prevent any lessee or operator from performing operations on the OCS, provided they follow the regulations. Thus, MMS did not need to prepare a Takings Implication Assessment according to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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

We have evaluated the rule in accordance with E.O. 13211 and have determined that this rule does not have a significant effect on energy supply, distribution, or use because the major purpose for this rule is the restructuring of the rule and clarifying regulatory language. The rule addresses the requirements and processes for submitting various plans and documents for MMS approval before a lessee or operator may explore, develop,

or produce oil and gas in the OCS and contains virtually all the same reporting and recordkeeping requirements and attendant costs as current regulations. There are a few new or expanded areas that have been incorporated. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Federalism (Executive Order 13132)

This rule does not have Federalism implications. This proposed rule does not substantially and directly affect the relationship between the Federal and State Governments. The proposed rule applies to lessees and operators that conduct activities on the OCS. This proposed rule does not impose costs on States or localities. Any costs will be the responsibility of the lessees and operators.

Civil Justice Reform (Executive Order 12988)

The Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (PRA) of 1995

The proposed revisions to 30 CFR part 250, subpart B, refer to, but do not change, information collection requirements in current regulations. The rule proposes no new reporting or recordkeeping requirements, and an OMB form 83-I submission to OMB under the PRA is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. OMB approved the referenced information collection requirements under OMB control number 1010-0151, expiration 7/31/08.

National Environmental Policy Act (NEPA) of 1969

The 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.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

This rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental Shelf, Environmental Impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur.

Dated: May 13, 2005.

James O. Ratliff,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 250.216 revise paragraph (a) to read as follows:

§ 250.216 What biological, physical, and socioeconomic information must accompany the EP?

* * * * *

(a) *Biological environment reports.* Site-specific information on chemosynthetic communities, federally listed threatened or endangered species, marine mammals protected under the Marine Mammal Protection Act, sensitive underwater features, marine sanctuaries, critical habitat designated under the Endangered Species Act, or other areas of biological concern.

* * * * *

3. In § 250.221 revise paragraph (a) to read as follows:

§ 250.221 What environmental monitoring information must accompany the EP?

* * * * *

(a) *Monitoring systems.* A description of any existing and planned monitoring systems that are measuring, or will measure, environmental conditions or will provide project-specific data or information on the impacts of your exploration activities. If there is a reason to believe that protected species may be incidentally taken by planned exploration activities, you must describe how you will monitor for incidental take of threatened and endangered species listed under the Endangered Species Act. You must also describe your monitoring program for incidental takes of marine mammals, as appropriate, if you have not already received authorization for incidental

take as may be required under the Marine Mammal Protection Act.

* * * * *

4. Revise § 250.223 to read as follows:

§ 250.223 What mitigation measures information must accompany the EP?

If you propose to use any measures beyond those required by the regulations in this part to minimize or mitigate environmental impacts from your proposed exploration activities, a description of the measures you will use must accompany your EP. If there is a reason to believe that protected species may be incidentally taken by planned exploration activities, you must include mitigation measures designed to avoid or minimize the incidental take of threatened and endangered species listed under the Endangered Species Act. You must also describe your mitigation measures for marine mammals, as appropriate, if you have not already received authorization for incidental take as may be required under the Marine Mammal Protection Act.

5. Revise paragraphs (a)(3) and (c)(1) in § 250.227 to read as follows:

§ 250.227 What environmental impact analysis (EIA) information must accompany the EP?

* * * * *

(a) * * *

(3) Be as detailed as necessary to assist the Regional Supervisor in complying with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and other relevant Federal laws such as the Endangered Species Act and the Marine Mammal Protection Act.

* * * * *

(c) * * *

(1) Analyze the potential direct and indirect impacts (including those from accidents, cooling water intake structures, and those identified in relevant Endangered Species Act biological opinions such as, but not limited to, noise, vessel collisions, and marine trash and debris) that your proposed exploration activities will have on the identified resources, conditions, and activities;

* * * * *

6. In § 250.247 revise paragraph (a) to read as follows:

§ 250.247 What biological, physical, and socioeconomic information must accompany the DPP or DOCD?

* * * * *

(a) *Biological environment reports.* Site-specific information on chemosynthetic communities, federally listed threatened or endangered species,

marine mammals protected under the Marine Mammal Protection Act, sensitive underwater features, marine sanctuaries, critical habitat designated under the Endangered Species Act, or other areas of biological concern.

* * * * *

7. In § 250.252 revise paragraph (a) to read as follows:

§ 250.252 What environmental monitoring information must accompany the DPP or DOCD?

* * * * *

(a) *Monitoring systems.* A description of any existing and planned monitoring systems that are measuring, or will measure, environmental conditions or will provide project-specific data or information on the impacts of your development and production activities. If there is a reason to believe that protected species may be incidentally taken by planned development and production activities, you must describe how you will monitor for incidental take of threatened and endangered species listed under the Endangered Species Act and for marine mammals, as appropriate, if you have not already received authorization for incidental take of marine mammals as may be required under the Marine Mammal Protection Act.

* * * * *

8. Revise § 250.254 to read as follows:

§ 250.254 What mitigation measures information must accompany the DPP or DOCD?

If you propose to use any measures beyond those required by the regulations in this part to minimize or mitigate environmental impacts from your proposed development and production activities, a description of the measures you will use must accompany your DPP or DOCD. If there is a reason to believe that protected species may be incidentally taken by planned development and production activities, you must include mitigation measures designed to avoid or minimize that incidental take of threatened and endangered species listed under the Endangered Species Act. You must also describe your mitigation measures for marine mammals, as appropriate, if you have not already received authorization for incidental take as may be required under the Marine Mammal Protection Act.

9. Revise paragraphs (a)(3) and (c)(1) in § 250.261 to read as follows:

§ 250.261 What environmental impact analysis (EIA) information must accompany the DPP or DOCD?

* * * * *

(a) * * *

(3) Be as detailed as necessary to assist the Regional Supervisor in complying with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and other relevant Federal laws such as the Endangered Species Act and the Marine Mammal Protection Act.

* * * * *

(c) * * *

(1) Analyze the potential direct and indirect impacts (including those from accidents, cooling water intake structures, and those identified in relevant Endangered Species Act biological opinions such as, but not limited to, those from noise, vessel collisions, and marine trash and debris) that your proposed development and production activities will have on the identified resources, conditions, and activities;

* * * * *

10. Revise the introductory paragraph to § 250.282 to read as follows:

§ 250.282 Do I have to conduct post-approval monitoring?

After approving your EP, DPP, or DOCD, the Regional Supervisor may direct you to conduct monitoring programs, including monitoring in accordance with the Endangered Species Act and the Marine Mammal Protection Act. You must retain copies of all monitoring data obtained or derived from your monitoring programs and make them available to MMS upon request.

The Regional Supervisor may require you to:

* * * * *

[FR Doc. 05-17543 Filed 9-2-05; 8:45 am]

BILLING CODE 4310-MR-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket ID #: R10-OAR-2005-OR-0001; FRL-7964-7]

Approval and Promulgation of State Implementation Plans: Oregon; Portland Carbon Monoxide Second 10-Year Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the second 10-year maintenance plan for carbon monoxide (CO) for the Portland, Oregon CO Attainment Area. Specifically, in this action EPA