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October 21, 2008

The Honorable Jeff Bingaman
Chairman
The Honorable Pete V. Domenici
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Nick J. Rahall II
Chairman
The Honorable Don Young
Ranking Minority Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Minerals Management Service: Royalty Relief for Deepwater Outer Continental Shelf Oil and Gas Leases—Conforming Regulations to Court Decision*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Minerals Management Service (MMS), entitled “Royalty Relief for Deepwater Outer Continental Shelf Oil and Gas Leases—Conforming Regulations to Court Decision” (RIN: 1010-AD29). We received the rule on October 3, 2008. It was published in the *Federal Register* as a final rule on October 7, 2008, with a stated effective date of November 6, 2008. 73 Fed. Reg. 58,467.

The final rule amends MMS regulations to conform with *Santa Fe Snyder Corp. v. Norton*, 385 F.3d 884 (5th Cir. 2004). In that case, the court found that prior MMS regulations were inconsistent with the Outer Continental Shelf Deep Water Royalty Relief Act, which the regulations were meant to implement. Pub. L. Law 104-58, title III, 109 Stat. 557, 563 (Nov. 28, 1995). With this final rule, MMS is replacing those prior regulations with regulations consistent with the statute and the court’s ruling. This final rule will not condition royalty relief of a new lease on whether the lease is part of a field that was producing before the enactment of the statute and will apply the statutory criteria to each lease, not jointly to all leases in a particular field.

The final rule has a stated effective date of November 6, 2008. 73 Fed. Reg. 58,468. The final rule also states that the rule is “effective immediately upon being published with retroactive effect to April 24, 1996.” *Id.* at 58,469. MMS explains making this final rule retroactive was necessary because, under *Santa Fe Snyder Corp.*, the prior rules were invalid from their inception. *Id.* MMS made this final rule retroactive to avoid having a gap in coverage and consequent ambiguity. *Id.* However, the Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Congress received the final rule on October 3, 2008. It was published in the *Federal Register* on October 7, 2008. Therefore, the notice does not have the required 60-day delay in its effective date.

Enclosed is our assessment of MMS’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, with the exception of the delay in the rule’s effective date, MMS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: C. Stephen Allred
Assistant Secretary, Land and
Minerals Management
Department of the Interior

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE INTERIOR,
MINERALS MANAGEMENT SERVICE
ENTITLED
"ROYALTY RELIEF FOR DEEPWATER
OUTER CONTINENTAL SHELF OIL AND GAS LEASES—
CONFORMING REGULATIONS TO COURT DECISION"
(RIN: 1010-AD29)

(i) Cost-benefit analysis

The Minerals Management Service (MMS) analyzed the costs and benefits of this final rule. MMS estimates the total royalty losses from 2000 to 2034 are between \$3.1 and \$10.3 billion in current-year dollars, depending on the outcome of ongoing litigation. MMS did not identify any benefits of this final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

MMS determined that this final rule will not have a significant effect on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

MMS determined that this final rule will not impose any unfunded mandates on state, local, or tribal governments, or the private sector of more than \$100 million per year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

MMS promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On December 21, 2007, Interior published a proposed rule, to which it received six comments, of which four were germane. 72 Fed. Reg. 72,652. Interior responded to the comments in this final rule and made three clarifying changes. 73 Fed. Reg. 58,468–69.

Paperwork Reduction Act, 44 U.S.C. §§ 3501–3520

This final rule does not contain any information collection requirements subject to the Act.

Statutory authorization for the rule

MMS promulgated this final rule under the authority of subchapter III, chapter 29 of title 43, United States Code. 43 U.S.C. §§ 1331–1356a.

National Environmental Policy Act, 42 U.S.C. §§ 4321–4370f

MMS determined that this final rule is not a major federal action significantly affecting the quality of the human environment; it meets the criteria for a categorical exclusion for two reasons. First, the rule is of an administrative, financial, legal, technical, or procedural nature and its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Second, the rule's impacts are limited to administrative, economic, or technological effects. MMS also determined that this final rule does not meet any of the criteria for extraordinary circumstances requiring an environmental impact statement.

Data Quality Act, 44 U.S.C. § 3516 note

MMS did not conduct or use a study, experiment, or survey requiring peer review under the Act.

Executive Order No. 12,866

MMS determined that this final rule is significant under the Order because it will have an annual effect on the economy of \$100 million or more. The rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

MMS determined that this final rule will not substantially and directly affect the relationship between the federal and state governments.

Executive Order No. 12,630 (Takings)

MMS determined that this final rule will not have significant takings implications under the Order.

Executive Order No. 12,988 (Civil Justice)

MMS determined that this final rule complies with the Order in that it was reviewed to eliminate errors and ambiguity, is written in clear language and to minimize litigation, and contains clear legal standards.

Executive Order No. 13,175 (Consultation with Indian Tribes)

MMS determined that this final rule will have no potential impact on federally recognized Indian tribes because there are no Indian or tribal lands on the outer continental shelf.

Executive Order No. 13,211 (Energy Supply)

MMS determined that this final rule is not a significant energy action and that a Statement of Energy Effects is not required under the Order.