feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(2) * * *

(i) * * *

(A) An oral 90–day subchronic toxicity test shall be conducted with chloroethane and 1,3,5-trimethylbenzene in accordance with §798.2650 of this chapter except for the provisions in §798.2650(e)(3), (7)(i), and (11)(v). The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(d) * * * (1) This section is effective on December 27, 1993, except for paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A). Paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A) are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO–610–00–4110–2411]

RIN 1004–AC26

Promotion of Development, Reduction of Royalty on Heavy Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this proposed rule to amend the regulations relating to the waiver, suspension, or reduction of rental, royalty, or minimum royalty. This amendment would establish the conditions under which the operators of properties that produce ''heavy oil'' (crude oil with a gravity of less than 20 degrees) can obtain a reduction in the royalty rate. This action is being taken to encourage the operators of Federal heavy oil leases to place marginal or uneconomical shut-in oil wells back in production, provide an economic incentive to implement enhanced oil recovery projects, and delay the plugging of these wells until the maximum amount of economically recoverable oil can be obtained from the reservoir or field. The BLM believes that this amendment will result in substantial additional revenue for the States and Federal Government, increase the cumulative amount of domestic oil production from existing wells, increase the percentage of oil recovery from presently developed reservoirs, minimize the necessity of drilling new wells with their additional environmental impacts, assist in reducing the national balance of trade deficit, and help promote stability in the jobs and services related to the domestic oil industry.

DATES: Comments should be submitted by June 9, 1995. Comments postmarked after this date may not be considered as part of the decisionmaking process in issuance of a final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Bebout, Bureau of Land Management, (202) 452–0340.

SUPPLEMENTARY INFORMATION: Existing section 3103.4–1 of Title 43, Code of Federal Regulations, provides two forms of Federal oil and gas royalty reduction: on a case-by-case basis upon application, and for stripper wells. In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that it is necessary to promote development, or that a lease cannot be successfully operated under the terms provided therein, may reduce the royalty on an entire leasehold or any portion thereof. The provision concerning stripper well properties allows royalty reduction for properties that produce an average of less than 15 barrels of oil per eligible well per well-day.

The Bureau of Land Management (BLM) has reason to believe that additional royalty relief for producers of heavy crude oil may be necessary to maintain current levels of development, promote investment in enhanced recovery efforts, and encourage maximum recovery of the resource, thus warranting royalty reduction under Section 39 of the Mineral Leasing Act (30 U.S.C. 209).

Fluctuating oil prices, combined with high production costs, have resulted in an uncertain economic future for producers of low gravity crude oil. As recently as last January, California producers of heavy crude were spending between $9 and $10 to produce a barrel of crude oil that was typically selling for between $8.50 and $9 per barrel (from data provided by the Conservation Commission of California Oil and Gas Producers). When depreciation, depletion, and amortization costs were considered, nearly 69% of the state's production was uneconomic and more than 13,000 industry and industry-related jobs were at risk (California Independent Petroleum Association).

Heavy crude oil prices have recently risen to the point that the immediate crisis in California has passed. Many of the heavy oil properties remain only marginally economic, however, and are vulnerable to future down-turns in oil prices. As many as two-thirds of the marginal properties could be lost during a period of sustained low oil prices (National Petroleum Council Committee on Marginal Wells/Executive Summary—Draft). The danger in losing these wells is that, although production from individual wells may be small, their collective loss would be significant. The United States would lose the opportunity to take advantage of new technologies being developed by the Department of Energy (DOE) and industry, and the remaining recoverable reserves would be lost.

This proposed rule would preserve the contribution of marginal producers of heavy crude oil to the national reserve base. As a result of this relief, more wells should stay on line (even in periods of depressed oil prices), fewer recoverable reserves should be lost, and there will be less adverse economic impact on States and local communities.

The DOE has modeled the BLM's proposed royalty rate reduction for heavy crude oil. It is DOE's conclusion that the proposal will benefit all producers of heavy oil while remaining revenue neutral to all oil producing States except California (California contains the majority of the nation's heavy oil reserves). Assuming a West Texas Intermediate Crude oil price of $20 per barrel—a price consistent with recent oil markets—the proposal can be expected to increase recoverable reserves in California by around 72 percent, from 132.8 million barrels to 228.5 million barrels.

A provision of the proposed rule provides for the termination of individual royalty reductions should the average price of West Texas Intermediate Crude oil rise to a level greater than $24 per barrel for a period of at least 6 consecutive months. This provision is intended to ensure that royalty relief is only provided during periods of low market prices.

The proposed rule establishes a sliding scale royalty rate for qualifying heavy-oil-producing properties. The sliding scale is intended to somewhat offset the reduced prices paid for oil as oil gravity decreases. The reduced royalty rate applies to qualifying heavy oil properties rather than individual wells, because production is normally not measured for individual oil wells, and is based on the average gravity of the oil weighted by the production of heavy oil from each well within the property. A weighted average gravity is used to prevent gravity manipulation by selectively producing wells on a property with heavier gravity crude. Using a weighted average of oil gravity encourages maximum recovery from all wells within a property by removing the economic advantage of selective production.

The rule provides that either the operator (as defined at 43 CFR 3100.0–5) or the payor (as defined at 30 CFR 208.2) must calculate the weighted average gravity of the oil—measured on the American Petroleum Institute (API) scale—produced from a property every 12 months to determine the appropriate royalty rate. In no case, however, would the royalty rate exceed the rate established by the terms of the lease.

The section amended by this proposed rule also provides for royalty rate reductions for stripper oil wells. Many provisions of this proposed rule are essentially the same as the provisions of the existing regulations that pertain to stripper wells, except that references to ''stripper well'' have been replaced with ''heavy oil well.'' The similarity between the existing provisions pertaining to stripper wells and the provisions of this proposed rule could allow for some restructuring of section 43 CFR 3103.4–1 to reduce the overall regulatory text and to increase clarity. The public is invited to comment on whether reorganizing 43 CFR 3103.4–1 should be considered in preparing the final heavy oil royalty reduction rule.

The principal author of this proposed rule is Dr. John W. Bebout, Senior Technical Specialist, Fluids Group, assisted by the Regulatory Management Team, Bureau of Land Management.

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

This rule has been reviewed under Executive Order 12866.

The BLM has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This is because the proposed royalty rate reduction is voluntary, requires no additional paperwork, and applies to all operators regardless of size. Additionally the BLM has determined, under Executive Order 12630, that the rulemaking will not cause a taking of private property.

The BLM has certified that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirements of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1010–0090 and 1004–0145.

List of Subjects for 43 CFR Part 3100

Land Management Bureau, Public Lands—mineral resources, Oil and gas production, Mineral royalties.

On March 30, 1995, an outdated version of this proposed rule was published in the **Federal Register** (60 FR 16424) by mistake. That proposed rule publication is hereby withdrawn, and this version is published in its place.

For the reasons stated in the preamble, and under the authorities cited below, Part 3100, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 3100—OIL AND GAS LEASING

1. The authority citation for part 3100 continues to read as follows:

Authority: 30 U.S.C. 181, *et seq.*, 30 U.S.C. 351–359.

Subpart 3103—Fees, Rentals and Royalty

2. Section 3103.4–1 is amended by revising paragraph (b)(1), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

§ 3103.4–1 Waiver, suspension, or reduction of rental, royalty or minimum royalty.

* * * * *

(b)(1) An application for the benefits under paragraph (a) of this section on other than stripper oil well leases or heavy oil properties must be filed by the operator/payor in the proper BLM office. It must contain the serial number of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

* * * * *

(e)(1) A heavy oil well property is any Federal lease or portion thereof segregated for royalty purposes, a communitization area, or a unit participating area, operated by the same operator, that produces crude oil with a weighted average gravity of less than 20 degrees as measured on the American Petroleum Institute (API) scale.

(2) An oil completion is a completion from which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including the entrained liquefiable hydrocarbons) or any completion producing oil and less than 60 MCF of gas per day.

(f) Heavy oil well property royalty rate reductions will be administered according to the following requirements and procedures.

(1) The Bureau of Land Management requires no specific application form for the benefits under paragraph (a) of this section for heavy oil well properties. However, the operator/payor must notify, in writing, the proper BLM office that it is seeking a heavy oil royalty rate reduction. The letter must contain the serial number of the affected leases (or, as appropriate, the communitization agreement number or the unit agreement name); the names of the operators for each lease; the calculated new royalty rate as determined under paragraph (f)(2) of this section; and copies of the Purchaser's Statements (sales receipts) to document the weighted average API gravity for a property.

(2) The operator must determine the weighted average API gravity for a property by averaging (adjusted to rate of production) the API gravities reported on the operator's Purchaser's Statement for the last 3 calendar months preceding the operator's written notice of intent to seek a royalty rate reduction, during each of which at least one sale was held. This is shown in the following 3 illustrations:

(i) If a property has oil sales every month prior to requesting the royalty rate reduction in October of 1994, the operator must submit Purchaser's Statements for July, August, and September of 1994;

(ii) If a property has sales only every 6 months, during the months of March and September, prior to requesting the rate reduction in October of 1994, the operator must submit Purchaser's Statements for the months of September 1993, and March and September 1994; and

(iii) If a property has multiple sales each month, the operator must submit Purchaser's Statements for every sale for the 3 entire calendar months immediately preceding the request for a rate reduction.

(3) The following equation must be used by the operator/payor for calculating the weighted average API gravity for a heavy oil well property:

$$\frac{(V_1 \times G_1)+(V_2 \times G_2)+(V_n \times G_n)}{V_1 + V_2 + V_n} = \text{Weighted Average API gravity for a property}$$

Where:

V_1 = Average Production (bbls) of Well #1 over the last 3 calendar months of sales

V_2 = Average Production (bbls) of Well #2 over the last 3 calendar months of sales

V_n = Average Production (bbls) of each additional well (V_3, V_4, etc.) over the last 3 calendar months of sales

G_1 = Average Gravity (degrees) of oil produced from Well #1 over the last 3 calendar months of sales

G_2 = Average Gravity (degrees) of oil produced from Well #2 over the last 3 calendar months of sales

G_n = Average Gravity (degrees) of each additional well (G_3, G_4, etc.) over the last 3 calendar months of sales

Example: Lease ''A'' has 3 wells producing at the following average rates over 3 sales months with the following associated average gravities: Well #1, 4,000 bbls, 13° API; Well #2, 6000 bbls, 21° API; Well #3, 2,000 bbls, 14° API. Using the equation above—

$$\frac{(4{,}000 \times 13)+(6{,}000 \times 21)+(2{,}000 \times 14)}{(4{,}000 + 6{,}000 + 2{,}000)} = \begin{array}{l}\text{17.2 Weighted Average}\\ \text{API gravity for property}\end{array}$$

(4) For those properties subject to a communitization agreement or a unit participating area, the weighted average API oil gravity for the lands dedicated to that specific communitization agreement or unit participating area must be determined in the manner prescribed in paragraph (f)(3) of this section and assigned to all property subject to Federal royalties in the communitization agreement or unit participating area.

(5) The operator/payor must use the following procedures in order to obtain a royalty rate reduction under this section:

(i) Qualifying royalty rate determination.

(A) The operator/payor must calculate the weighted average API gravity for the property proposed for the royalty rate reduction in order to verify that the property qualifies as a heavy oil well property.

(B) Properties that have removed or sold oil less than 3 times in their productive life may still qualify for this royalty rate reduction. However, no further reductions will be granted until the property has a sales history of at least 3 production months (see paragraph (f)(5)(iii) of this section).

(ii) *Calculating the qualifying royalty rate.* If the Federal leases or portions thereof (e.g., communitization or unit agreements) qualify as heavy oil property, the operator/payor must use the weighted average API gravity rounded down to the nearest whole degree (e.g., 11.7 degrees API becomes 11 degrees), and determine the appropriate royalty rate from the following table:

ROYALTY RATE REDUCTION FOR HEAVY OIL

Weighted average API gravity (degrees)	Royalty rate (percent)
6	0.5
7	1.4
8	2.2
9	3.1
10	3.9
11	4.8
12	5.6
13	6.5
14	7.4
15	8.2
16	9.1
17	9.9
18	10.8
19	11.6
20	12.5

(iii) *New royalty rate effective date.* The new royalty rate will be effective on the first day of production 2 months after BLM receives notification by the operator/payor. The rate will apply to all oil production from the property for the next 12 months. If the API oil gravity is 20 degrees or greater, the royalty rate will be the rate in the lease terms.

(iv) *Royalty rate determinations in subsequent years.* (A) At the end of each 12-month period, beginning on the first day of the calendar month the royalty rate reduction went into effect, the operator/payor must determine the weighted average API oil gravity for the property for that period. The operator/payor must then determine the royalty rate for the following year using the table in paragraph (f)(5)(ii) of this section.

(B) The operator/payor must compare the newly determined royalty rate to the initial qualifying royalty rate. The operator/payor must notify BLM of its determinations under this paragraph and paragraph (A) of this § 3103.1–4(f)(5)(iv). The new royalty rate will not become effective until the first day of the second month after BLM receives notification, and will remain effective for 12 calendar months. Notification must include copies of the Purchaser's Statements (sales receipts) and be mailed to the proper BLM office. If the operator does not notify the BLM of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the heavy oil well property will return to the rate in the lease terms.

(v) *Prohibition.* Any heavy oil property reporting an API average oil gravity determined by BLM to have resulted from any manipulation of normal production or adulteration of oil sold from the property will not receive the benefit of a royalty rate reduction under this paragraph (f).

(vi) *Certification.* The operator/payor must use the applicable royalty rate when submitting the required royalty reports/payments to the Minerals Management Service (MMS). In submitting royalty reports/payments using a royalty rate reduction authorized by this paragraph (f), the operator/payor must certify that the API oil gravity for the initial and subsequent 12-month periods was not subject to manipulation or adulteration and the royalty rate was determined in accordance with the requirements and procedures of this paragraph (f).

(vii) *Agency action.* If an operator/payor incorrectly calculates the royalty rate, the BLM will determine the correct rate and notify the operator/payor in writing. Any additional royalties due are payable immediately upon receipt of this notice. The BLM will assess late payment or underpayment charges in accordance with 30 CFR 218.102. The BLM will terminate a royalty rate reduction for a property if BLM determines that the API oil gravity was manipulated or adulterated by the operator/payor. Terminations of royalty rate reductions for individual properties will be effective on the effective date of the royalty rate reduction resulting from a manipulated or adulterated API oil gravity so that the termination will be retroactive to the effective date of the improper reduction. The operator/payor must pay the difference in royalty resulting from the retroactive application of the non-manipulated rate. The BLM will assess late payment or underpayment charges in accordance with 30 CFR 218.102.

(6) The BLM may suspend or terminate all royalty reductions granted under this paragraph (f) upon 6 month's notice in the **Federal Register** when BLM determines that—

(i) The average oil price remains above $24 per barrel over a period of 6 consecutive months (based on the West Texas Intermediate Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year), or

(ii) After September 10, 1997, the royalty rate reductions authorized by this paragraph (f) have not been effective in reducing the loss of otherwise recoverable reserves. This will be determined by evaluating the expected versus the actual abandonment rate, the number of enhanced recovery projects, and the amount of operator reinvestment that can be attributed to this rule.

(7) The heavy oil well property royalty rate reduction applies to all Federal oil produced from a heavy oil property.

(8) If the lease royalty rate is lower than the benefits provided in this heavy oil well property royalty rate reduction program, the lease rate prevails.

(9) If the property qualifies for a stripper well property royalty rate reduction, as well as a heavy oil well property reduction, the lower of the two rates applies.

(10) The operator/payor must separately calculate the royalty for gas production (including condensate produced in association with gas) for oil completions using the lease royalty rate.

(11) The minimum royalty provisions of § 3103.3–2 will continue to apply.

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Dated: April 4, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

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