

Par. 10. Section 1.61-3 is amended by adding a new sentence at the end of paragraph (a) to read as follows:

§ 1.61-3 Gross income derived from business.

(a) * * * Thus, for example, an amount cannot be taken into account in the computation of cost of goods sold any earlier than the taxable year in which economic performance occurs with respect to the amount (see § 1.446-1(c)(1)(ii)).

Par. 11. Section 1.263(a)-1 is amended by adding new text to the end of paragraph (b) to read as follows:

§ 1.263(a)-1 Capital expenditures; in general.

(b) * * * An amount referred to in paragraph (a) of this section is a capital expenditure that is taken into account through inclusion in inventory costs or a charge to capital accounts or basis no earlier than the taxable year during which the amount is incurred within the meaning of § 1.446-1(c)(1)(ii). Capital expenditures are subsequently recovered through depreciation, amortization, cost of goods sold, as an adjustment to basis, or otherwise, at such time as the property to which the amount relates is used, sold, or otherwise disposed of by the taxpayer, in accordance with applicable Code sections and guidance published by the Secretary.

Par. 12. Section 1.263A-1T is amended by adding a new sentence to the end of paragraph (a)(5)(i) to read as follows:

§ 1.263A-1T Capitalization and inclusion in inventory costs of certain expenses (temporary).

(a) * * *
(5) * * *

(i) * * * However, the amount of any cost required to be capitalized may not be included in inventory or charged to capital accounts or basis beginning any earlier than the taxable year during which the amount is incurred within the meaning of § 1.446-1(c)(1)(ii).

Par. 13. Section 1.451-3 is amended by adding a new paragraph (a)(8) to read as follows:

§ 1.451-3 Long-term contracts.

(a) * * *
(8) *Incurred.* For purposes of this section, the term "incurred" has the

same meaning as in § 1.446-1(c)(1)(ii).

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.
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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 220

RIN 1010-AB46

Extension of Time Period for Maintaining Records on Outer Continental Shelf Net Profit Share Oil and Gas Leases

February 15, 1990.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its regulations to extend to 6 years, from 36 months, the period an offshore Net Profit Share Lease (NPSL) lessee must maintain records and all other documentation pertaining to the lease capital account. The proposed 6-year period is in accordance with applicable statutory provisions. The MMS is also proposing to remove audit regulations available to NPSL's since these regulations are duplicative and, in some cases, inconsistent with MMS's general audit rules for oil and gas leases.

DATES: Written comments must be received on or before July 9, 1990.

ADDRESSES: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225. Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch. (303) 231-3432. (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are L. Renee Boulette and David A. Hubbard of the MMS Royalty Management Program, Royalty Valuation and Standards Division, Lakewood, Colorado.

I. Background

Regulations regarding accounting procedures for NPSL's on the Outer Continental Shelf were published by the Department of Energy (DOE) on May 30, 1980 (10 CFR part 390). The authority for

administering the NPSL accounting regulations was revested in the Secretary of the Interior (Secretary) in December 1981 (Pub. L. 97-100). On January 11, 1983 (48 FR 1182), these regulations were transferred to the Department of the Interior, MMS, and redesignated as 30 CFR part 261. On August 5, 1983, 30 CFR part 261 was renumbered 30 CFR part 220 (48 FR 35642).

Other than minor administrative changes, MMS's version of the NPSL accounting regulations in 30 CFR part 220 is identical to DOE's original rules in 10 CFR part 390. Both provide that ledger cards showing the charges and credits to the NPSL capital account must be maintained until 36 months after the cessation of NPSL operations by the lessee, that all other documents, journals, and records must be maintained for 36 months from the due date or date of mailing of the statement of account on an NPSL, whichever comes later, and that the Department has the right to initiate an audit any time within 36 months of the due date of the statement to be audited or the date it was mailed, whichever is later.

The time periods for record maintenance in the rules originally issued by DOE and later transferred to the Department are inconsistent with statutory requirements for record maintenance on all Federal and Indian oil and gas leases, including leases on the Outer Continental Shelf. Section 103 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1713 "Required Recordkeeping," states:

(a) A lessee, operator, or other person directly involved in developing, producing, transporting, purchasing, or selling oil or gas subject to this Act through the point of first sale or the point of royalty computation, whichever is later, shall establish and maintain any records, make any reports, and provide any information that the Secretary may, by rule, reasonably require for the purposes of implementing this Act or determining compliance with rules or orders under this Act. Upon the request of any officer or employee duly designated by the Secretary or any State or Indian tribe conducting an audit or investigation pursuant to this Act, the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee, State, or Indian Tribe.

(b) Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be

maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records.

These provisions of FOGRMA apply to records generated with respect to NPSL's. Section 3(5) of FOGRMA, 30 U.S.C. 1702, defines the term "lease" to include "any . . . profit share arrangement . . . issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil and gas."

The MMS regulations at 30 CFR 212.50, "Required recordkeeping and reports," issued after FOGRMA's enactment, state:

All records pertaining to offshore and onshore Federal and Indian oil and gas leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released by written notice of the obligation to maintain records.

Paragraphs (a) and (b) of MMS regulations at 30 CFR 212.51 "Records and files maintenance" state:

(a) Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, net profit shares, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders. Records covered by this section includes those specified by lease terms, notices and orders, and by the various parts of this chapter. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tape submitted to the Minerals Management Service (MMS) for use in its Auditing and Financial System (AFS) and Production Accounting and Auditing System (PAAS).

(b) Lessees, operators, revenue payors, or other persons required to keep records under this section shall maintain and preserve them for 6 years from the day on which the relevant transaction recorded occurred unless the Secretary notifies the record holder of an audit or investigation involving the records and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released in writing from the obligation to maintain the records. Lessees, operators, revenue payors, or other persons shall maintain the records generated during the period for which they have paying or operating responsibility on the lease for a period of 6 years.

II. Proposed Rule

The NPSL accounting procedures were developed by DOE prior to the

passage of FOGRMA and the implementation of regulations concerning related recordkeeping requirements. Therefore, MMS is proposing to amend its regulations at 30 CFR 220.030 to conform the record maintenance requirements with FOGRMA's provisions. Accordingly, the proper period of time for maintaining records on NPSL's would be 6 years and 30 CFR 220.030 is proposed to be amended correspondingly. Further, the wording of 30 CFR 220.030 is proposed to be modified to conform with the recordkeeping language of FOGRMA and 30 CFR 212.50 and 212.51.

Likewise, the existing language at 30 CFR 220.033 (Audits) conflicts with the recordkeeping requirements of FOGRMA and the corresponding regulations at 30 CFR 212.50 and 212.51. Many other modifications would also be needed to make the language of 30 CFR 220.033 consistent with general Department and MMS audit policy and procedure. Rather than make such detailed changes at this time, MMS is proposing to delete 30 CFR 220.033 in its entirety because 30 CFR 217.50 already is applicable to all oil and gas audits, including audits of NPSL's. Further, 30 CFR part 217, Audits and Inspections, currently is being rewritten in its entirety, and the audit requirements for NPSL's will be incorporated therein.

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the location identified in the ADDRESSES section of the preamble. Comments must be received before the day specified in the DATES section of this preamble.

III. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The rule is necessary to make the regulations comply with the provisions of FOGRMA. Therefore, the Department has determined that this rulemaking is not a major rule under Executive Order 12291 and certifies that this document 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.*).

Executive Order 12630

Because the rule has no cost impact, the Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication

Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010-0073.

The public reporting burden for this collection of information is estimated to be about 16 hours for each annual and monthly lease report, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Mail Stop 2300, Minerals Management Service, 381 Eldon Street, Herndon, VA 22070; the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 1010-0073, Washington, DC 20503.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 220

Accounting, Coal, Continental shelf, Geothermal energy, Government contracts, Minerals royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: April 24, 1990.

James M. Hughes,
Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in preamble, 30 CFR part 220 is proposed to be amended as follows:

PART 220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES

1. The authority citation for part 220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95-372, 92 Stat. 643 (43 U.S.C. 1337).

2. Paragraph (b) of § 220.030 is revised to read as follows:

§ 220.030 Maintenance of records.

(b) All records pertaining to NPSL capital accounts shall be maintained by a lessee for 6 years after the records are generated unless the Secretary of the Interior (Secretary) or designee notifies the record holder that MMS has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case, when an audit or investigation is underway, records shall be maintained until the Director releases the record holder of the obligation to maintain such records.

§ 220.033 [Removed; new § 220.033 redesignated from § 220.034]

3. The existing § 220.033 is removed.

§ 220.034 [Redesignated as § 220.033]

4. Section 220.034 is redesignated as a new § 220.033.

5. Paragraph (a) of the new § 220.033 (redesignated from § 230.034) is revised to read as follows:

§ 220.033 Redetermination and appeals.

(a) If, as a result of an inspection of records or an audit, the Director or designee determines that there is an error in the NPSL capital account or an error in calculating the net profit share payment, whether in favor of the Government or the lessee, the Director or designee shall redetermine the net profit share base and recalculate the net profit share payment due the United States and notify the lessee of the recalculation.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 90-018]

Safety Zone: East Passage, Lower Narragansett Bay

AGENCY: Coast Guard, DOT

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish two temporary safety zones on Saturday September 15, 1990 in the East Passage of lower Narragansett Bay. These temporary Safety Zones will only be in

effect while an around-the-world single-handed yacht race, the BOC Challenge, is commencing. The BOC Challenge is a 27,000 mile single-handed around-the-world yacht race. Entry into these two safety zones is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

DATES: Comments must be received on or before July 23, 1990.

ADDRESSES: Comments should be mailed to Captain of the Port U.S. Coast Guard Marine Safety Office, John O. Pastore Fed. Bldg., Providence, RI 02903-1790. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT. M.P. O'Malley, USCG, C/O Captain Of The Port, U.S. Coast Guard Marine Safety Office, John O. Pastore Fed. Bldg., Providence, R.I. 02903-1790, telephone (401) 528-5335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice by (CGD1 90-018) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LIEUTENANT M.P. O'MALLEY, project officer for the Captain of the Port, and LIEUTENANT R.E. KORROCH, project attorney, for the First Coast Guard District Legal Office.

Discussion of Proposed Regulations

On September 15, 1990 the Captain of the Port Providence, RI is considering establishing a temporary safety zone in the East Passage of lower Narragansett Bay in the vicinity west of Fort Adams, Newport RI, to Bull Pt., Jamestown RI, from 10 a.m. to 1:30 p.m. An additional temporary moving safety zone is being

considered for the vicinity around participating vessels south of Castle Hill, Newport, R.I. to Brenton Reef Tower from 12 p.m. to 2 p.m. These safety zones will be in effect only while the vessels involved in the BOC Challenge are starting the around-the-world race. These safety zones are intended to protect the public and the participants from hazards associated with the start of the race.

Entry into these zones will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.T01-04 is added to read as follows:

§ 165.T01-04 Safety Zone: East Passage, Lower Narragansett Bay.

(a) *Location:* The following areas are established as temporary safety zones:

(1) For the BOC Challenge the waters of Narragansett Bay in the vicinity west of Fort Adams, Newport R.I. to Bull Point, Jamestown, R.I. bounded by a line connecting the following points: