

**Authority:** 50 U.S.C. app. 2401 et. seq.; 50 U.S.C. 1701 et. seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 14. In § 764.5 revise paragraph (c)(7) to read as follows:

**§ 764.5 Voluntary self-disclosure.**

\* \* \* \* \*

(c) \* \* \*

(7) *Where to make voluntary self-disclosures.* The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure may be submitted to: Director, Office of Export Enforcement, 1401 Constitution Ave., Room H4514, Washington, DC 20230, Tel: (202) 482-5036, Facsimile: (202) 482-5889.

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Dated: April 21, 2005.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

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**BILLING CODE 3510-33-U**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Part 203

RIN 1010-AD01

#### Technical Amendment to Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Relief or Reduction in Royalty Rates—Deep Gas Provisions

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule amends regulations to correct an unintended potential gap and administrative oversight in the original deep gas royalty rule by making leases located partly in water deeper than 200 meters and issued during lease sales held in 2001 and later years expressly eligible for royalty relief for drilling deep gas wells on leases not subject to deep water royalty relief.

**DATES:** *Effective date:* This rule is effective on April 29, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Marshall Rose, Chief, Economics Division, Minerals Management Service, at (703) 787-1536. E-mail:

*Marshall.Rose@mms.gov.* Address: Minerals Management Service, MS 4050, 381 Elden Street, Herndon, Virginia 20170.

**SUPPLEMENTARY INFORMATION:** Title 30 CFR part 203 regulates the reduction of

oil and gas royalty under 43 U.S.C. 1337(a)(3). Under section 1337(a)(3)(B), MMS may reduce, modify, or eliminate royalties on certain producing or non-producing leases or categories of leases to promote development or increased production or to encourage production of marginal resources, in the Gulf of Mexico (GOM) west of 87 degrees, 30 minutes West longitude. A final rule published January 26, 2004 (69 FR 3492), and amended April 30, 2004 (69 FR 24052), offered an incentive for certain lessees to explore for and develop deep well gas reserves more rapidly. The objective of the gas incentive is to increase the volume of natural gas production from the OCS by encouraging deep drilling on leases in the shallow water areas of the GOM, *i.e.*, water less than 200 meters deep.

One important subset of these leases was inadvertently not expressly included in this incentive: Those leases straddling the deep water/shallow water depth line issued between January 1, 2001, and April 1, 2004, that did not contain deep well drilling relief terms that the lessee would have to renounce under § 203.48 of the January 26, 2004, final rule. Those leases were intended to be included and were explicitly included and addressed in the preamble to the final rule published January 26, 2004. Briefly, § 203.40 provides deep gas royalty relief to leases meeting various combinations of vintage, location, and production conditions. One of the changes between the proposed and final rule addressed comments on the proposed rule by adding eligibility for certain leases straddling the 200 meter water depth line. MMS intended to allow the incentive for all the leases that straddle this depth line that existed on the date of the final rule and to future such leases that straddle this depth line issued while the temporary incentive period is in effect as long as they were not “double dipping” in incentive programs. The preamble to the final rule explains that change as follows:

For leases lying partly in deep water, MMS prefers to avoid a situation in which any such lease can obtain non-discretionary relief from more than one categorical royalty relief program, *e.g.*, deep water and deep depth drilling. The framework and parameters of each program were designed assuming no further categorical royalty relief would be provided. As of the summer of 2003, there were 132 leases issued before 2001, and lying partly in water depths greater than 200 meters eligible for case-by-case or categorical royalty relief under Sections 302 and 304 of the Deep Water Royalty Relief Act (DWRRA). Eighty-two of these leases were issued from 1996-2000, and are covered under the categorical royalty relief program under

section 304 of the DWRRA [43 U.S.C. 1337 note]. They are not eligible for the deep gas program. Fifty of the leases were issued before 1996, and are covered only by the discretionary royalty relief provisions of section 302 of the DWRRA, 43 U.S.C. 1337(a)(3)(c). MMS's final rule extends eligibility for deep gas drilling relief to these 50 leases, as well as to any lease issued from sales held in 2001, or thereafter, without DWRRA royalty relief eligibility and lying at least partly in less than 200 meters of water depth.

The last sentence in the above paragraph explains and confirms that MMS intended to offer deep gas royalty relief to leases straddling the 200 meter water depth line that did not have DWRRA section 304 non-discretionary royalty relief. Because non-discretionary deep water royalty relief has not been provided to leases in less than 400 meters of water since 2000, two kinds of leases meet those criteria—pre-DWRRA leases and leases issued in sales held in 2001-2004. As the preamble mentions, there were 50 leases in the former category, from lease sales held before enactment of the DWRRA that are still active. The latter category numbers 81 leases issued in lease sales held in 2001-2004. Additional such leases may be issued in lease sales held in the next several years. Modifications in the final rule explicitly made the 50 pre-DWRRA leases that meet those criteria eligible for royalty relief for drilling deep gas wells on leases not subject to deep water royalty relief (§ 203.40(a)(1) and (b)(2)).

Unfortunately, contrary to MMS's intent as expressed in the preamble to the final rule, the language in § 203.40(a)(2) does not make expressly eligible for deep gas royalty relief leases located partly in water less than 200 meters deep that were issued between January 1, 2001, and April 1, 2004. This is the case because such leases did not have any royalty incentives for deep well gas drilling included as part of their lease terms. Likewise, also contrary to MMS's intent as expressed in the preamble, language in § 203.40(a)(3) does not make similarly located leases issued on and after April 1, 2004, expressly eligible for deep gas relief. Under § 203.40(a)(2) and (a)(3), leases issued after 2001 need to exercise the option under § 203.48 to replace incentive terms in their original lease document with those in the regulation. However, leases have this option under § 203.48 only if they were issued with royalty relief provisions for deep well drilling. Leases located partly in water less than 200 meters deep were not issued with any royalty relief provisions for deep well drilling, and hence do not have any option to exercise. In fact, they do not need to have an option to

exercise since they are in the same situation as the lessee of a lease that has exercised its option, and our intent was to allow such leases to participate in the deep well program. This amendment makes that clear and adds that future leases in the same situation may be eligible for the incentive under the rule.

This amendment to the final rule issued on January 26, 2004, makes the rule language consistent with MMS's express intent as explained in the preamble by expressly authorizing royalty relief for drilling deep gas wells on all leases located partly in water less than 200 meters deep that are not subject to deep water royalty relief, regardless of when they were issued and regardless of whether the lease terms included royalty relief provisions. Lessees who read the preamble to the final rule and understood it to mean a lease straddling the boundary without a DWRRA incentive could participate in the deep gas incentive expected and may have relied on this explanation in the preamble. Without this amendment, leases similarly situated would not necessarily be treated the same.

#### **Procedural Matters**

##### *Public Comment Procedures*

Section 553 of the Administrative Procedures Act (5 U.S.C. 553) generally requires agencies to provide notice and an opportunity for public comment on substantive rules. The requirement does not apply, however, if the agency determines that notice and opportunity for public comment is "impracticable, unnecessary, or contrary to public interest." DOI finds that good cause exists for dispensing with notice and opportunity for public comment in issuing this amended rule because those procedures are unnecessary where, as here, the agency has already provided notice and comment in the previous rulemaking on this exact issue and addressed it explicitly in the earlier preamble. This final rule simply conforms the Code of Federal Regulations to correct an inadvertent error in the regulatory text and may express what the earlier rule implied and its Preamble explained. DOI finds good cause to make this rule immediately effective under 5 U.S.C. 553 (d)(3). Because it also relieves a restriction possibly imposed by the earlier rule, it also qualifies for an exception to the 30-day effective date under 5 U.S.C. 553(d)(1).

#### **Regulatory Planning and Review (Executive Order 12866)**

According to the criteria in Executive Order 12866, this rule is not a

significant regulatory action for which a Regulatory Analysis has been prepared. The Office of Management and Budget (OMB) has made that determination under Executive Order 12866.

(1) This amended final rule will not have an economic effect of \$100 million or more. Though we estimated that the original deep gas rule would have such an effect, this technical correction involves only 2 percent (81 of 3,500) of leases covered by the deep gas incentive. Further, the effect of the incentive on this small subset of leases was already included in the economic analysis of the original regulatory action.

The full economic analysis is available at <http://www.mms.gov/econ>. The deep gas incentive rule reduces royalties for lessees that drill and produce natural gas from deep wells in shallow water areas of the GOM. The royalty suspension volume (RSV) offered should increase deep drilling activity on existing leases over the period of the program and make additional resources economic. The deep gas royalty suspensions are likely to reduce net Federal royalty collections. MMS's best estimate of this reduction is from \$150 to \$220 million in net present value over a 16-year period, depending on gas price volatility.

(2) This amended rule will not create any inconsistencies with actions by other agencies because royalty relief is confined to leasing in Federal offshore waters that lie outside the coastal jurisdiction of State and other local agencies. Careful review of the lease sale notices, along with stringent leasing policies now in force, ensures that the Federal OCS leasing program, of which royalty relief is only a component, does not conflict with the work of other Federal agencies.

(3) This amended rule has no effect on entitlements, grants, user fees, loan programs, or their recipients.

(4) This rule raises no novel legal or policy issue. It only corrects an oversight that omitted a small subset of the leases from eligibility for the deep gas incentive.

#### **Regulatory Flexibility Act (RFA)**

A detailed analysis of the small business impacts and alternatives considered can be found in the economic analysis of the original version of this regulation available at <http://www.mms.gov/econ>. This amended rule does not alter the findings of that analysis because the original analysis already covered the special subset of leases that are the subject of this amendment. This amendment only

corrects an inconsistency between the original regulatory language and the intent expressed in the original rulemaking. No other changes are being made.

#### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This amended rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(1) Only clarifies and corrects an inadvertent omission of express language to include some 81 leases and any others similarly situated without any current lease term royalty relief incentives within the rule promulgated on January 26, 2004. These leases represent only a small fraction of the leases covered by the earlier rule and their effect was included in the estimated effect of the earlier rule.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The overall deep gas incentive should materially moderate expected gas prices by adding to the overall supply, and this amended rule will contribute only a very small part to that effect.

(3) Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Companies eligible for the deep gas royalty relief should produce more natural gas and earn more income while encountering no negative effects.

#### **Paperwork Reduction Act (PRA) of 1995**

The revision to 30 CFR part 203 regulations, refers to, but does not change, information collection (IC) requirements in current regulations. The rule proposes no new reporting or recordkeeping requirements, and an OMB form 83-1 submission to OMB under the PRA is not required. This rule corrects an unintended potential gap and administrative oversight to the rule and the IC requirements remain unchanged. 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 1010-0153, expiration 4/30/2006.

### Federalism (Executive Order (E.O.) 13132)

According to E.O. 13132, this rule does not have meaningful federalism implications. As noted above, it would have at most only a small effect relative to the original rule, which itself may have only a small consequence (\$1 to \$2 million a year) on Gulf Coast States in the form of reduced payments under section 8(g) of the OCSLA.

### Takings Implication Assessment (Executive Order 12630)

According to E.O. 12630, the rule does not have significant takings implications; therefore a Takings Implication Assessment is not required.

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

This amended rule is not a significant rule and is not subject to review by OMB under E.O. 12866. This amended rule does not have a significant adverse effect on energy supply, distribution, or use. This amended rule may slightly increase and accelerate the production of gas from deep wells in shallow waters of the GOM by providing for a RSV volume for successful deep production and a royalty suspension supplement for unsuccessful deep drilling efforts to a few more leases, so it has a positive effect on energy supply based on our regulatory analysis.

### Unfunded Mandates Reform Act (UMRA) of 1995

This amended 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 amended 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.

### Civil Justice Reform (Executive Order 12988)

According to E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the E.O.

### National Environmental Policy Act (NEPA) of 1969

This 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)

In accordance with E.O. 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 203

Continental shelf, Government contracts, Indian lands, Minerals royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Sulphur.

Dated: April 11, 2005.

**Chad Calvert,**

*Acting Assistant Secretary—Land and Minerals Management.*

■ For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR part 203 as follows:

### PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

■ 1. The authority citation for part 203 continues to read as follows:

**Authority:** 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

■ 2. Section 203.40 introductory text and paragraph (a) are revised to read as follows:

#### § 203.40 Which leases are eligible for royalty relief as a result of drilling deep wells?

Your lease may receive a royalty suspension volume under §§ 203.41 through 203.43, and may receive a royalty suspension supplement under §§ 203.44 through 203.46, if it:

(a) Was:

(1) In existence on January 1, 2001;

(2) Issued in a lease sale held after January 1, 2001, and before April 1, 2004, and either the lessee has exercised the option provided for in § 203.48 or the lease is located partly in water less than 200 meters deep and no deep water royalty relief provisions in statutes or lease terms apply to the lease; or

(3) Issued in a lease sale held on or after April 1, 2004, and either the lease terms provide for royalty relief under §§ 203.41 through 203.47 of this part or the lease is located partly in water less than 200 meters deep and no deep water

royalty relief provisions in statutes or lease terms apply to the lease;

\* \* \* \* \*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05–05–031]

RIN 1625–AA–09

### Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Virginia

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Norfolk Southern (NS) #5 Railroad Bridge across the Elizabeth River, Eastern Branch, at mile 1.1, in Norfolk, VA in May 2005. To facilitate extensive maintenance that is required at the bridge, the deviation allows the drawbridge to remain in the closed-to-navigation position for three daytime closure periods during May, each closure period lasting 2 to 4 days.

**DATES:** The deviation is effective from 8 a.m. on May 3 to 4:30 p.m. on May 19, 2005.

**FOR FURTHER INFORMATION CONTACT:** Bill Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

**SUPPLEMENTARY INFORMATION:** The Norfolk Southern Corporation, who owns and operates the NS #5 Railroad Bridge, has requested temporary deviations in May 2005 from the operating regulation to change out two sets of lift joints from the lift span of the bridge and to replace 504 bridge ties on the east bound main track.

To facilitate this extensive maintenance of the bridge, the lift-span will be locked in the closed-to-navigation position during the following closure periods: each day from 8 a.m. to 4 p.m., on May 3 and 4, 2005; each day from 8:30 a.m. to 12 p.m. and from 1 p.m. to 4:30 p.m. on May 9 to 12 and on May 16 to 19, 2005. During these stages, the work requires completely immobilizing the operation of the lift span in the closed-to-navigation position. At all other times, the bridge