

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Part 3100**

[LLWO310000.L13100000.PP0000-241A.00]

RIN 1004-AE04

**Promotion of Development, Reduction of Royalty Rates for Stripper Well and Heavy Oil Properties****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) is removing portions of two regulations in order to characterize accurately the current status of two programs that have been terminated. In the past, the programs reduced royalty rates for stripper well properties and for heavy oil properties, so that Federal lessees would have incentives to keep economically marginal oil wells in production. This rule provides for record retention and correction of errors in calculation of royalties requirements that enable the Office of Natural Resources Revenue (ONRR) to continue to verify that royalties associated with past production were correctly paid.

**DATES:** Effective October 6, 2010.**ADDRESSES:** You may mail suggestions or inquiries to the Bureau of Land Management, Division of Fluid Minerals, WO-310, 1849 C Street, NW., Washington, DC 20240-0001.**FOR FURTHER INFORMATION CONTACT:** Rudy Baier, Bureau of Land Management, 202-912-7146.**SUPPLEMENTARY INFORMATION:**

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**I. Background***A. Basics*

Section 39 of the Mineral Leasing Act authorizes the Secretary of the Interior to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, for the purpose of encouraging the greatest ultimate recovery of oil, gas, and other minerals, and in the interest of conservation of natural resources (1) whenever, in his judgment, it is necessary to do so in order to promote development; or (2) whenever, in his judgment, the leases

cannot be successfully operated under the terms provided therein (30 U.S.C. 209).

The BLM's regulations at 43 CFR 3103.4 include a provision authorizing royalty relief on a case-by-case application basis (43 CFR 3103.4-1), as well as provisions establishing categorical royalty reductions for two categories of oil-producing properties: Stripper wells (43 CFR 3103.4-2) and heavy oil (43 CFR 3103.4-3). The BLM promulgated the latter two provisions in 1992 and 1996, respectively (57 FR 35973 (Aug. 11, 1992); 61 FR 4750 (Feb. 8, 1996)).

A stripper well property, within the meaning of section 3103.4-2, is any Federal lease or portion thereof segregated for royalty purposes, a communitization agreement, or a participating area of a unit agreement, operated by the same operator, that produces an average of less than 15 barrels of oil per eligible well per well-day for the qualifying period (43 CFR 3103.4-2(a)(1)).

A heavy oil property, within the meaning of section 3103.4-3, 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 scale (43 CFR 3103.4-3(a)(1)).

*B. Termination*

Sections 3103.4-2 and 3103.4-3 include a total of four provisions (two in each regulation) that authorize termination of the royalty reduction programs for stripper well properties and heavy oil properties. The provision for heavy oil properties (43 CFR 3103.4-3(b)(6)(ii)) and the analogous provision for stripper well properties (43 CFR 3103.4-2(b)(5)) state that royalty reduction benefits may be terminated if the Secretary determines that royalty rate reductions have not been effective.

In addition, both sections authorize termination if oil prices exceed specific thresholds. Section 3103.4-2(b)(4) (describing the royalty reduction program for stripper well properties) states that upon 6 months' notice in the **Federal Register**, the BLM may terminate royalty rate reduction benefits after a determination that the oil price, adjusted for inflation by the BLM and the ONRR, using the implicit price deflator for gross national product with 1991 as the base year, remains on average above \$28 per barrel, based on West Texas Intermediate crude average posted price for a period of 6

consecutive months. A generally analogous provision for heavy oil properties sets the threshold price for termination or suspension at \$24 per barrel with 1991 as the base year (43 CFR 3103.4-3(b)(6)(i)).

Exercising its authority under the "price-threshold" provisions described above, the BLM terminated the program for stripper well properties (70 FR 42093 (July 21, 2005)). The BLM suspended and subsequently terminated the program for heavy oil properties (70 FR 21810 (April 27, 2005); 72 FR 60691 (Oct. 25, 2007)). The effective dates of the terminations were February 1, 2006, for stripper well properties and May 1, 2008, for heavy oil properties.

*C. Energy Policy Act*

Section 343 of the Energy Policy Act is titled, "Marginal Property Production Incentives," and generally defines "marginal property" as an onshore, gas- or oil-producing Federal property with an average daily production of less than 15 barrels of oil per well, or less than 90,000,000 British thermal units of natural gas per well. Average daily production is to be based only on wells that produce on more than half of the days during the 3 most recent production months (42 U.S.C. 15903(a)).

Section 343 also states that, until such time as the Secretary issues regulations that prescribe different standards or requirements, the Secretary shall reduce the royalty rate on (1) oil production from marginal properties if the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, is, on average, less than \$15 per barrel (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days; and (2) gas production from marginal properties if the spot price of natural gas delivered at Henry Hub, Louisiana, is, on average, less than \$2.00 per million British thermal units (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days (42 U.S.C. 15903(b)).

The BLM has issued a notice explaining that Section 343 of the Energy Policy Act has taken the place of the royalty reduction program for stripper well properties until the Secretary of the Interior issues regulations prescribing different relief (71 FR 71187 (Dec. 8, 2006)).

## II. Discussion of the Final Rule

The purpose of this rule is to avoid confusion regarding the continued availability of royalty relief under the BLM's regulations. Categorical royalty relief pursuant to the existing codified regulations is no longer available for current production, since the BLM has terminated the regulatory programs that established royalty relief and Congress has enacted a superseding relief program for marginal wells. The current regulations provide for royalty relief on a case-by-case basis.

However, it is inappropriate to rescind all of the provisions of the regulations that provide for royalty relief. While royalty relief is no longer available for current production, prior production continues to be subject to audits and, when appropriate, corrective actions. The Federal Oil and Gas Royalty Simplification and Fairness Act (30 U.S.C. 1701, *et seq.*) provides for a 7-year statute of limitations for the ONRR to pursue a demand for royalty following the date the obligation became due, i.e., the month in which oil or gas is produced (30 U.S.C. 1724(b)(1)). As a result, the ONRR continues to verify that royalties associated with the stripper well and heavy oil royalty rate reduction programs were correctly paid, and the BLM may still terminate relief retroactively if such relief was based on manipulation of normal production or adulteration of oil sold. Since the ONRR and cooperating State auditors continue to perform audits, recalculate royalty rates improperly calculated, and, together with the BLM, take compliance actions for production manipulation, the substance of existing 43 CFR 3103.4-2(b)(3)(v), (vi), and (vii) as well as 43 CFR 3103.4-3(b)(5)(vi) and (vii) is retained and redesignated. This will avoid any dispute over the continuing obligation to maintain records for BLM or ONRR inspection and to pay, upon demand, any underpaid royalties with interest or receive credits for overpaid royalties with interest.

Besides removing provisions referring to royalty relief for stripper well properties and heavy oil properties, this rule updates 43 CFR 3100.0-9(b) to remove a reference to 43 CFR 3103.4-1(d), which was removed in a previous rulemaking. The remainder of 43 CFR 3100.0-9(b) provides for information collection by the ONRR and is otherwise unchanged so that the ONRR will be able to verify that royalties associated with past production were correctly paid. In addition, this rule: (1) Corrects a typographical error in existing 43 CFR 3103.4-2(b)(v) (redesignated as 43 CFR 3103.4-2(a)), and (2) removes from

existing 43 CFR 3103.4-3(b)(5)(vi) two references to existing paragraph (b) that will be confusing once that paragraph is redesignated as 43 CFR 3103.4-3(a).

This rule may be issued without first publishing a proposed rule for public comment. Pursuant to 5 U.S.C. 553(b)(3)(B), the BLM for good cause finds that notice and public procedure are unnecessary, since the royalty relief programs for stripper wells and heavy oil properties already are terminated, and the Energy Policy Act of 2005 took the place of the royalty reduction program for stripper well properties until regulations governing this area are promulgated. Additionally, the BLM for good cause finds under 5 U.S.C. 553(d)(3) that this removal may properly take effect upon publication since it does not require any change in conduct by any regulated party.

## III. Procedural Matters

### *Executive Order 12866, Regulatory Planning and Review*

The BLM has determined that this rule is not a "significant regulatory action" within the meaning of Executive Order 12866.

- This rule will not have an annual effect on the economy of \$100 million or more, and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not have an impact on the economy because it is a ministerial action.

- This rule will not create inconsistencies with other agencies' actions. No other agency has jurisdiction over the rate of royalty for minerals produced on Federal lands. The BLM has coordinated this rulemaking with the ONRR, the agency that is responsible for enforcing royalty payment requirements.

- This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients.

- This rule will not raise novel legal or policy issues because it only removes from the regulations royalty rate reduction programs that are not in effect and will not be reinstated.

### *Regulatory Flexibility Act*

This rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the relief programs have been terminated and replaced by a new statute. Accordingly, a final Regulatory Flexibility Analysis is not required, and

a Small Entity Compliance Guide is not required.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

- This rule will not have an annual effect on the economy of \$100 million or more.

- This rule will not materially alter current BLM policy.

- This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

- This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

### *Unfunded Mandates Reform Act*

In accordance with the criteria in the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the BLM has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The BLM has also determined that this rule does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to State, local, and tribal governments in the aggregate, or to the private sector. Accordingly, the BLM is not required to prepare a budgetary impact statement or a plan for providing notice to any small governments.

### *Executive Order 12630, Takings*

The BLM has determined that this rule does not have takings implications. A takings implication assessment is not required.

### *Executive Order 13132, Federalism*

The final rule will not have a substantial direct effect on the States, on the relationship between the National and State Governments, or on the distribution of power and responsibilities among the various levels of government. Therefore, the BLM has determined that this final rule does not warrant preparation of a Federalism Assessment.

### *Executive Order 12988, Civil Justice Reform*

The BLM has determined that this rule meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988, and therefore does not unduly burden the judicial system.

*Paperwork Reduction Act*

This rule does not initiate any new information collection requirements. This rule does not affect any existing information collection requirements which are assigned the clearance number 1010-0090 and are administered by the ONRR. Accordingly, no analysis or action is necessary under the Paperwork Reduction Act.

*National Environmental Policy Act*

The BLM has determined that this rule is not a major Federal action within the meaning of 40 U.S.C. 4332(2)(C). This rule removes regulations that established two programs that have been terminated. The removal of the regulations merely clarifies the programs' current status, and is thus a ministerial act. No analysis is required under the National Environmental Policy Act.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

The BLM has determined that this rule does not have "tribal implications" within the meaning of Executive Order 13174.

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Under Executive Order 13211, a "significant energy action" is one that is "significant" under Executive Order 12866 and is likely to have a significant adverse energy effect. The BLM has determined that this rule is not "significant" within the meaning of Executive Order 12866. Moreover, the BLM has determined that this rule is not likely to have a significant adverse energy effect, in view of the price data that led to the termination of royalty reduction benefits for stripper well properties and heavy oil properties. Accordingly, the BLM has determined that this rule is not a "significant energy action" requiring a "Statement of Energy Effects" within the meaning of Executive Order 13211.

*Author*

The principal author of this final rule is Rudy Baier, Minerals and Realty Management, with the assistance of Jean Sonneman of the Division of Regulatory Affairs, Bureau of Land Management, Washington, DC.

**List of Subjects in 43 CFR Part 3100**

Mineral royalties, Oil and gas exploration and production, Public lands—mineral resources, Reporting

and recordkeeping requirements, and Surety bonds.

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

**Ned Farquhar,**

*Deputy Assistant Secretary, Land and Minerals Management.*

**PART 3100—OIL AND GAS LEASING**

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

**Authority:** 30 U.S.C. 189 and 359; 43 U.S.C. 1732(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

**Subpart 3103—Fees, Rentals and Royalty****§ 3103.4-1 [Amended]**

■ 2. Section 3103.4-1(b)(1) is amended by removing the phrase "on other than stripper oil well leases or heavy oil properties" and the sentence "(Royalty reductions specifically for stripper oil well leases or heavy oil properties are discussed in § 3103.4-2 and § 3103.4-3 respectively.)".

**§ 3103.4-2 [Amended]**

■ 3. Section 3103.4-2 is amended as follows:

■ a. Remove paragraph (a), the introductory text of paragraph (b), paragraphs (b)(1) and (b)(2), the introductory text of paragraph (b)(3), and paragraphs (b)(3)(i), (b)(3)(ii), (b)(3)(iii), (b)(3)(iv), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), and (b)(10).

■ b. Redesignate paragraphs (b)(3)(v), (b)(3)(vi), and (b)(3)(vii) as paragraphs (a), (b), and (c).

■ c. Amend redesignated paragraph (a) by removing the term "MSS" and adding in its place the term "ONRR".

**§ 3103.4-3 [Amended]**

■ 4. Section 3103.4-3 is amended as follows:

■ a. Remove paragraph (a), the introductory text of paragraph (b), paragraphs (b)(1), (b)(2), (b)(3), and (b)(4), the introductory text of paragraph (b)(5), and paragraphs (b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), (b)(5)(v), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), and (b)(11).

■ b. Redesignate paragraphs (b)(5)(vi) and (b)(5)(vii) as paragraphs (a) and (b).

■ c. Amend redesignated paragraph (a) by removing the phrases "authorized by this paragraph (b)," and "of this paragraph (b)".

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**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Part 395**

[Docket No. FMCSA-2010-0230]

**Hours of Service; Limited Exemption for the Distribution of Anhydrous Ammonia in Agricultural Operations**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition; granting of exemption.

**SUMMARY:** FMCSA grants a 2-year, limited exemption from the Federal hours-of-service (HOS) regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point. This exemption extends the agricultural operations exemption established by section 345 of the National Highway System Designation Act of 1995, as amended by sections 4115 and 4130 of the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU), to certain drivers and motor carriers engaged in the distribution of anhydrous ammonia during the planting and harvesting seasons, as defined by the States in which the carriers and drivers operate. The Agency believes that the exemption will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, based on the terms and conditions imposed. The exemption preempts inconsistent State and local requirements applicable to interstate commerce.

**DATES:** The exemption is effective October 6, 2010. The exemption will remain in effect until October 9, 2012 unless revoked earlier by FMCSA.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

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**SUPPLEMENTARY INFORMATION:****Legal Basis**

Section 4007(a) of the Transportation Equity Act for the 21st Century (TEA-