

reporting errors, MMS is proposing to amend § 216.40(b) and § 218.40(b) to include as assessable all reports that are submitted incorrectly, regardless of whether the report was received by the designated due date or was received late. Therefore, a report that is both late and incorrect would be subject to two assessments, one under § 216.40(a) or § 218.40(a) for being late and one under the amended subsection (b) for being incorrect.

The policy of the Department of the Interior (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 rule to the location identified in the ADDRESSES section of this preamble. Comments must be received on or before the day specified in the DATES section of this preamble.

Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this document is not a major rule under E.O. 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.). This rulemaking would compensate the Government for administrative costs incurred as the result of reporting errors and provide for consistency in MMS' practice for incorrect reporting assessments.

Executive Order 12630

The Department certifies that this 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."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2), of Executive Order 12278.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

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 paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 216

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

30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 216 and 218 are proposed to be amended as set forth below:

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 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. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (b) of § 216.40 is revised to read as follows:

§ 216.40 Assessments for incorrect or late reports and failure to report.

(b) An assessment of an amount not to exceed \$10 may be charged for each report which is incorrectly completed.

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

(1) The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 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. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (b) of § 218.40 is revised to read as follows:

§ 218.40 Assessments for incorrect or late reports and failure to report.

(b) An assessment of an amount not to exceed \$10 may be charged for each report which is incorrectly completed.

[FR Doc. 93-19747 Filed 8-16-93; 8:45 am]
BILLING CODE 4310-MR-M

30 CFR Part 218

RIN 1010-AB74

Collection of Royalties, Rentals, Bonuses, and Other Monies Due Under Federal and Indian Mineral Leases by Administrative Offset

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is proposing to amend its regulations at 30 CFR part 218 to add a new provisions governing collection by administrative offset of royalties, rentals, bonuses, and other amounts due under Federal and Indian oil, gas, and other mineral leases. This rule would implement provisions of the Debt Collection Act of 1982.

DATES: Comments must be received on or before October 18, 1993.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225-0165, Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rulemaking are Geoffrey Heath and Peter J. Schaumburg, Office of the Solicitor, Washington, DC.

I. Background

The MMS administers over 25,000 producing leases for oil, natural gas, coal, other minerals, and geothermal

steam underlying Federal lands, Indian tribal and allotted lands, and the Outer Continental Shelf (OCS). The MMS is responsible for the collection, accounting, and disbursement of over \$4 billion in bonus, rental, royalty, and other revenues derived from these leases each year. The MMS also is responsible for enforcement of royalty and other payment obligations under applicable statutes, regulations, and lease terms.

Most lessees, and parties who pay royalty on behalf of lessees, have interests in more than one lease. In many cases, a lessee or royalty payor may have an interest in hundreds (or, for some major producers, even thousands) of leases. All royalty payors submit reports of sales and royalty which separately report, by line, royalties according to each lease, product produced, and selling arrangement.

In some cases, royalty reports may reveal an underpayment. In most cases, underpayments cannot be detected from the information on the report and are discovered through MMS' regular audits. When evidence of underpayment is found, MMS will issue an order to pay the unpaid amounts.

Such orders may be appealed administratively to the MMS Director and the Interior Board of Land Appeals (IBLA). See 30 CFR part 290 and 43 CFR part 4. During such administrative appeals, orders to pay are suspended upon the posting of an adequate surety instrument (e.g. a bond or letter of credit) for the amounts in dispute under 30 CFR 243.2. Decisions of the IBLA, or of an Assistant Secretary, are final for the Department of the Interior (Department) and are subject to judicial review under the Administrative Procedure Act, 5 U.S.C. 701-706. During judicial review, the effectiveness of a departmental decision typically will be suspended if a surety instrument is continued in effect. See 5 U.S.C. 705.

In most instances, a payor will pay amounts owed after a decision or order, whether or not appealed, has become final and there is no further appeal. However, in some cases, the payor may refuse or be unable to pay. In that event, MMS will first seek to collect against an appeal bond, letter of credit, or other MMS-approved surety instrument, if the original order was appealed, or against the lease bond. Nevertheless, there are still some cases in which surety is not available.

In addition, a payor may refuse to pay and assert as a defense that the order allegedly is barred by the statute of limitations. However, the statute of limitations is a bar to a judicial remedy

and does not operate to nullify an underlying right.

In these and other cases, it is appropriate for MMS to collect unpaid royalties through other available means. Because most payors and lessees have interests in other leases, it is not uncommon that for some of those leases, there are overpayments, resulting from a variety of causes, for which a payor otherwise would claim a refund or credit. Because in such cases money would be owing from MMS to the payor, it is appropriate for the agency to exercise its right to administrative offset. The MMS believes that it should not allow credits or grant refunds when a payor or lessee owes money on other leases.

Administrative offset is recognized as a proper method to collect amounts owing if a judicial action otherwise would be barred by the statute of limitations. Additionally, in some cases, administrative offset may be a more efficient and less costly method than judicial litigation or imposing civil penalties.

The Debt Collection Act of 1982, Public Law 97-365, 96 Stat. 1449, applicable sections codified at 31 U.S.C. 3701, 3711, 3716, 3718, and 5 U.S.C. 5514 (DCA), specifically provides for an agency's exercise of administrative offset at 31 U.S.C. 3716, which also grants authority and instructs each agency to prescribe appropriate regulations. Additionally, the agency acts under standards which the Attorney General and the Comptroller General prescribe jointly. See 31 U.S.C. 3711(e)(2) and 4 CFR part 102. However, the authority proposed to be implemented in these regulations is not in derogation of this Agency's existing right to offset under other applicable law. Administrative offset is an available remedy even in the absence of the DCA.

In view of the specific provisions of the DCA, MMS is proposing new regulations, which MMS anticipates would be used in virtually all cases. The proposed regulations are discussed in section II below.

II. Discussion of Proposed Rule

The MMS is proposing to add a new subpart I entitled, "Collection by Administrative Offset," to its regulations at 30 CFR part 218 to implement the DCA provisions. One of the requirements of the DCA is that Federal agencies issue regulations consistent with the DCA and the Federal Claims Collection Standards (4 CFR, chapter II) to implement collecting claims by administrative offset under the DCA's provisions at 31 U.S.C. 3716.

The proposed new regulations are consistent with all of the requirements of 31 U.S.C. 3716 and 3720A and the joint General Accounting Office/ Department of Justice regulations at 4 CFR part 102. See proposed §§ 218.605, 218.608, 218.609, and 218.612.

Section 218.602 of the proposed regulations contains the definition of relevant terms. A "claim" is defined for purposes of these regulations as an amount which has been determined to be owing by a decision or order which is final for the Department, for which no action for judicial review is pending wherein the decision or order remains suspended. Specifically, the phrase "decision or order of an official of the Department of the Interior which is not subject to further administrative review within the Department" means a decision or order of:

(1) The Secretary, Deputy Secretary, an Assistant Secretary, the Director of the Office of Hearings and Appeals, or the IBLA (if no action for judicial review thereof is pending or if a decision or order has not been suspended pending disposition of an action for judicial review); or

(2) The MMS Director, if no appeal to the IBLA is filed within the time allowed under 30 CFR 290.7 and 43 CFR 4.22 and 4.411; or

(3) An officer of MMS, if no appeal to the MMS Director is filed within the time allowed under 30 CFR 290.3 and 290.5.

Proposed § 218.604 addresses the scope of administrative offset which would be available. The MMS would be able to collect a claim arising in connection with any onshore or offshore Federal lease or any Indian lease by withholding and applying to the claim any amount due to the payor in connection with any onshore or offshore Federal lease for which that payor makes payments.

The MMS recognizes that leases on different categories of Federal land, or on Federal land within different States, or on the OCS result in payment of portions of lease revenues to different recipients under various permanent indefinite appropriations. See, e.g., 30 U.S.C. 191, providing for the State in which a Federal mineral lease on the public domain is located to receive 50 percent (for Alaska, 90 percent) of the revenues derived from the lease; 30 U.S.C. 355, incorporating for purposes of mineral lease revenues the disbursement schemes applicable to other types of revenues derived from acquired Federal lands, of which there are several categories; and 43 U.S.C. 1337(g), providing for coastal States to receive 27 percent of the revenues

derived from certain leases within 3 nautical miles of the seaward boundary of the coastal State. For Indian leases, the tribal or allottee lessors on whose behalf MMS acts are entitled to all of the revenues derived from the lease. In many cases, overpayments made under other leases will have been distributed to these recipients pursuant to those appropriations or paid to Indian lessors.

When MMS exercises its right to administrative offset, the payments made to the recipients of permanent indefinite appropriations for Federal leases would be adjusted through recoupment of the proper amounts from the next regular distribution to that recipient, or, in the case of acquired lands, to the surface management agency if not paid directly by MMS, in the same manner as MMS presently does in correcting payment errors. That procedure would not apply to Indian leases.

Overpayments under Indian leases would not be available for offset to collect underpayments under Federal leases or under other Indian leases with different ownership interests. Overpayments under Federal leases, however, would be available for offset against underpayments under Indian leases. Amounts collected by administrative offset would be paid or distributed to the proper recipient in accordance with applicable law.

Proposed paragraphs (a)(1) and (b)(1) of § 218.604 also provide that amounts available for offset include both amounts which MMS owes directly to a payor as well as amounts due from MMS "to another person on behalf of that payor." The latter category would include amounts MMS owes to an operator or other designated royalty payor which pays royalties under other leases on behalf of the underpaid lessee or payor. It also would include a corporate marketing affiliate or wholly-owned corporate subsidiary.

Under long-settled applicable law and regulations (e.g., 30 U.S.C. 1721(a) and 30 CFR 218.54 for oil and gas leases), interest is owed on all underpayments of royalty. In addition, except as provided under a recent rule published on December 30, 1992, titled "Offsetting Incorrectly Reported Production between Different Federal or Indian Leases (Cross-Lease Netting)," 57 FR 62200, promulgating 30 CFR 218.42 and amending other provisions, overpayments on one lease are not credited against, and do not operate to stop the accrual of late payment interest on, underpayments on another lease not within the same unit. To the extent claims for underpayments on a particular lease later are satisfied by

administratively offsetting overpayments on a different lease or leases, interest will no longer accrue. Subsection (d) of the proposed § 218.604 clarifies that late payment interest continues to accrue until the administrative offset is actually effected and the amount withheld is applied to satisfy all or part of a claim.

In many cases, overpayments are not apparent from royalty reports or in situations where an audit has not yet been performed, and MMS therefore will not have specific knowledge of existing overpayments. When the payor finds such overpayments, however, it would usually submit a credit adjustment to recoup it, within the restrictions of applicable law. Therefore, under proposed § 218.605(g), MMS may issue a notice of intention to offset either:

- (1) When it knows of a specific overpayment, or
- (2) When it wants to offset any overpayments which may exist on some other set of leases and apply them to the underpayment, even though it does not specifically know whether and to what extent overpayments may in fact exist under the other leases.

In the latter event, under proposed § 218.606 the payor would be prohibited from reporting any credit adjustment with respect to any payment made in connection with any lease identified in the notice as a lease to which § 218.605(g)(2) applies. The payor must then report all credits which otherwise would have been reported as credit adjustments as a credit balance pursuant to MMS instructions. The MMS would then apply the reported credit balance to the amount of the underpayment until the underpayment is recovered. The MMS would then notify the payor to discontinue reporting a credit balance.

Many of the claims which MMS will seek to collect through administrative offset are claims for which the payor asserts a statute of limitations bars MMS from bringing a judicial action to collect. In lieu of collecting by administrative offset, MMS may be willing in many instances to accept the payor's agreement to waive and not assert a limitations defense against a judicial enforcement or collection action to the extent of the amount which would be collected by offset. The proposed § 218.610 allows the payor to request MMS to accept such an agreement.

Proposed §§ 218.611 and 218.612 pertain to requesting other Federal agencies to offset monies owed to a payor by the other agency, and to handling requests received from other

Federal agencies to offset monies which MMS owes to the payor to collect an amount which the payor owes to the other agency, respectively. Proposed § 218.613 would allow MMS to request the Internal Revenue Service to offset against any tax refund owed to a payor.

The MMS also is proposing to make the final rule effective as of the date that this proposed rule is published in the *Federal Register*. The MMS specifically would like comments on the proposed effective date.

The final rule would be applicable to excess payments that were made prior to the effective date of the rule that would be subject to offset after the effective date.

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 rule to the location identified in the ADDRESSES section of this preamble. Comments must be received on or before the date identified in the DATES section of this preamble.

Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this rulemaking 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 rulemaking would implement provisions of the DCA to provide for collection, by administrative offset, of claims owed to the United States Government by individual debtors. It does not add additional regulatory requirements for Federal and Indian lessees. It only permits the Federal Government to collect legitimate claims. There are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule.

Executive Order 12630

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."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

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 paragraph 2(C) of Section 102 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 218

Coal, Continental shelf, Electronic funds transfer, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public land-mineral resources, Reporting and recordkeeping requirements.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is proposed to be amended as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 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. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; 43 U.S.C. 1801 et seq.

2. A new subpart I is added to read as follows:

Subpart I—Collection by Administrative Offset

Sec.

218.601 Scope of regulations.

218.602 Definitions.

218.603 When administrative offset may be used.

218.604 Scope and method of administrative offset.

Sec.

218.605 Required notice and records inspection opportunity.

218.606 Prohibition against credit adjustments after receipt of notice of intention to offset; application of balance until claim is satisfied.

218.607 When use of mandated procedures is not required.

218.608 Time limitation on use of administrative offset.

218.609 Written agreements to repay in lieu of offset.

218.610 Waiver of statute of limitations defense in lieu of offsets.

218.611 Requests for administrative offset directed to other Federal agencies.

218.612 Requests for administrative offset received from other Federal agencies.

218.613 Reduction of tax refunds to satisfy claims.

Subpart I—Collection by Administrative Offset

§ 218.601 Scope of regulations.

(a) The provisions of this subpart apply to the collection by the Minerals Management Service (MMS) of claims, as defined in this subpart, for royalties, interest, and other amounts due in connection with any lease issued by the Secretary of the Interior (Secretary) under any law providing for the disposition under lease of oil, gas, coal, any other mineral, or geothermal steam, from any Federal land or interest in land, Indian tribal or allotted land, or from the Outer Continental Shelf, by administrative offset, as defined in 31 U.S.C. 3701(a)(1), under 31 U.S.C. 3716.

(b) The provisions of this subpart are supplemental to and not in derogation of:

(1) Any right to collect any amount due by means of offset which MMS may have by virtue of any other law or regulation or common law principle; and

(2) Any right to collect any amount due by any other means available to MMS under any law or regulation.

§ 218.602 Definitions.

For purposes of this subpart:

Administrative offset means withholding money payable by the United States, or held by the United States, to satisfy a debt a payor owes to the United States or owes to the United States as administrator on behalf of any Indian tribe or allottee.

Claim means any amount owed to the United States, or to the United States as administrator of any lease on behalf of any Indian tribe or allottee, as royalty, interest, or any other obligation arising in connection with any lease, or as civil penalties pursuant to 30 U.S.C. 1719 or 30 CFR part 241 or any successor regulation, or 43 U.S.C. 1350 or 30 CFR

part 250 subpart N or any successor regulation, which has been determined to be owing by a decision or order of:

(1) an official of the Department of the Interior which is not subject to further administrative review within the Department and with respect to which no action for judicial review is pending or, if such an action is pending, if the decision or order has not been suspended pending disposition of the action for judicial review; or

(2) any court of competent jurisdiction.

Lease means any lease issued by the Secretary under any law providing for the disposition under lease of oil, gas, coal, any other mineral, or geothermal steam, from any Federal land or interest in land, Indian tribal or allotted land, or from the Outer Continental Shelf.

Payor means a lessee or any person, as defined in 30 U.S.C. 1702(12), who makes royalty or other payments under any lease or who owes any civil penalty pursuant to 30 U.S.C. 1719 or 30 CFR part 241 or any successor regulation, or 43 U.S.C. 1350 or 30 CFR part 250 subpart N or any successor regulation

§ 218.603 When administrative offset may be used.

The MMS may use administrative offset, as provided in § 218.604, whenever a payor fails to pay any claim.

(a) The Assistant Secretary for Land and Minerals Management has determined that it is in the best interests of the United States to collect claims by administrative offset because of the decreased costs of collection and the acceleration in the payment of claims.

(b) If the 6-year period for bringing an action on a claim provided in section 2415 of Title 28, United States Code, has expired, the Director of his/her designee shall examine the claim to determine whether the likelihood of collecting such a claim and the best interests of the United States justify the use of administrative offset.

§ 218.604 Scope and method of administrative offset.

(a)(1) After giving notice as prescribed in § 218.605, MMS may collect any claim against a payor in connection with any onshore or offshore Federal lease by withholding any amount due from MMS to that payor, or payable to another person on behalf of that payor, in connection with any Federal onshore or offshore lease for which that payor makes payments, and applying that amount to the claim as an offset.

(2) If any portion of the amount due by MMS to the payor which is applied as an offset to an MMS claim previously had been paid or distributed to any non-

Federal recipient or to any specific fund in the United States Treasury before such offset, as prescribed by applicable law, MMS will recoup the amount previously distributed or paid from subsequent regular distributions or payments to that recipient or fund.

(b) (1) After giving notice as prescribed in § 218.605, MMS may collect any claim against a payor in connection with any Indian lease by withholding any amount due from MMS to that payor, or payable to another person on behalf of that payor, in connection with:

(i) Any Indian allotted or tribal lease for which that payor pays royalties with identical individual and proportionate beneficial ownership interests as the lease with respect to which the claim arose; or

(ii) Any Federal onshore or offshore lease for which that payor pays royalties, and applying that amount to the claim as an offset.

(2) If any portion of the amount due from MMS to the payor which is applied as an offset to a claim in connection with an Indian lease was originally paid to MMS in connection with any Federal onshore or offshore lease and had been paid or distributed to any non-Federal recipient or to any specific fund in the United States Treasury before such offset, as prescribed by applicable law, MMS will recoup the amount previously distributed or paid from subsequent regular distributions or payments to that recipient or fund.

(c) Any amount applied to a claim as an offset will be attributed to the underpaid lease and will be paid or distributed in accordance with applicable law.

(d) Late payment interest on underpayments owed under applicable law or regulations shall continue to accrue until an administrative offset is effected and the amount withheld is applied to satisfy all or part of a claim.

§ 218.605 Required notice and records inspection opportunity.

(a) Before collecting a claim by administrative offset under this part, the MMS Director or his/her designee shall give written notice by certified mail, return receipt requested, of the agency's intention to offset at least 30 days before effecting the offset. Such notice shall include a written explanation of the payor's rights under this section, as required by 31 U.S.C. 3716(a) and 4 CFR 102.3(b)(2). See 30 CFR 243.4 for regulations governing serving of official correspondence.

(b) Pursuant to 4 CFR 102.3(b)(2)(ii), the final decision or order pertaining to

the claim constitutes written notice of the type and amount of the claim as required by 31 U.S.C. 3716(a) and 4 CFR 102.3(b)(2).

(c) Pursuant to 4 CFR 102.3(b)(2)(ii), the available administrative appeals to the MMS Director from decisions or orders of MMS officers under 30 CFR part 290 and 30 CFR 250.201 through 250.205, and from the MMS Director to the Interior Board of Land Appeals under 30 CFR 290.7 and 43 CFR part 4 constitute the opportunity for agency review of the agency's decision related to the claim required by 31 U.S.C. 3716(a) and 4 CFR 102.3 (b)(2) and (c). The regulations in this subpart shall not be construed to provide a second opportunity for agency review of the merits of the claim.

(d) The written notice under paragraph (a) of this section shall advise the royalty payor of the payor's right to inspect and copy the agency's records regarding the claim, as required by 31 U.S.C. 3716(a) and 4 CFR 102.3(b)(2). The payor may inspect and copy such records at the office in which they are maintained any time within 30 days after receipt of the notice under paragraph (a) of this section upon a minimum of 5 days advance written notice to MMS. The MMS may charge the payor for any costs of copying.

For civil penalty proceedings under 30 CFR part 250 subpart N, the provisions of 30 CFR 250.201(c) constitute the required opportunity to inspect and copy the agency's records.

(e) The written notice under paragraph (a) of this section shall advise the payor of the payor's right to make a written agreement with MMS to repay the claim in lieu of collection by offset if the payor meets the conditions set forth in § 218.609.

(f) The written notice under paragraph (a) of this section is not administratively appealable within the Department of the Interior and constitutes the final action of the Department.

(g) The written notice under paragraph (a) of this section may notify the payor of either:

(1) MMS' intention to offset any specifically identified overpayment under any lease; or

(2) MMS' intention to offset overpayments which the payor otherwise would recoup by reporting credit adjustments under any lease or set of leases, through the procedure provided under § 218.606, or both.

§ 218.606 Prohibition against credit adjustments after receipt of notice of intention to offset; application of balance until claim is satisfied.

(a) After a payor has received a notice of intention to offset under § 218.605(a),

the payor shall not report any credit adjustment on a Form MMS-2014 or any other royalty report form with respect to any payment made in connection with any lease identified in the notice as a lease to which § 218.605(g)(2) applies.

(b) For all leases identified in the notice of intention to offset as leases to which § 218.605(g)(2) applies, the payor shall report all credits which otherwise would have been reported as credit adjustments as a credit balance pursuant to instructions which MMS shall issue in the MMS Oil and Gas Payor Handbook or otherwise. The payor shall not recoup the credit balance.

(c) Each month, MMS will apply the reported credit balance to the amount of the claim until the claim is satisfied. After the claim has been satisfied, MMS will notify the payor to discontinue reporting a credit balance.

§ 218.607 When use of mandated procedures is not required.

Pursuant to 4 CFR 102.3(b)(5), MMS may effect offset without the procedures required under this part if failure to effect an offset would substantially prejudice MMS' ability to collect the claim.

§ 218.608 Time limitation on use of administrative offset.

Pursuant to 31 U.S.C. 3716(c) and 4 CFR 102.3(b)(3), MMS shall not effect an administrative offset to collect a claim for money more than 10 years after the amount due became a claim within the meaning of this subpart.

§ 218.609 Written agreements to repay in lieu of offset.

(a) Pursuant to 4 CFR 102.3(b)(2)(i), MMS will balance the Government's interest in collecting the debt against fairness to the debtor in determining whether to accept a repayment agreement in lieu of collecting a claim by administrative offset. In all circumstances, the determination whether to accept a written repayment agreement is within the discretion of the MMS Director or his/her designee. Ordinarily, MMS will accept a written agreement to repay the amount of the claim in lieu of offset only when an offset would result in undue financial hardship to the royalty payor or would be against equity and good conscience.

(b) The MMS Director or his/her designee may require a payor to submit a bond or letter of credit or other appropriate surety in a form acceptable to MMS securing the amounts to be paid under a repayment agreement, including interest, as a condition of MMS accepting a written repayment agreement.

(c) Nothing in this section shall be construed to limit the Government's authority or discretion to enter into any settlement agreement or compromise regarding any claim or amount owed.

§ 218.610 Waiver of statute of limitations defense in lieu of offset.

If MMS, under § 218.605(a), has given a payor a notice of intention to collect by offset a claim for which the payor asserts a judicial collection action would be barred by any statute of limitations, the payor may request MMS to accept an agreement that the payor would waive and agree not to assert a limitations defense against collection or enforcement of that claim, to the extent of the amount MMS has proposed to collect by offset, in lieu of collecting the claim by offset.

§ 218.611 Requests for administrative offset directed to other Federal agencies.

(a) The MMS Director or his/her designee may request another Federal agency to administratively offset monies payable by that agency to a payor and transfer such funds to MMS for purposes of collecting a claim owed by that payor.

(b) In requesting such offset, MMS will provide the Federal agency holding the funds with a written certification:

- (1) That the payor owes the claim;
- (2) Of the amount and basis of the claim; and
- (3) That MMS has complied with § 218.605 and with the requirements of 4 CFR part 102.

§ 218.612 Requests for administrative offset received from other Federal agencies.

Any Federal agency may request that monies owed to a payor by MMS in connection with any Federal onshore or offshore lease be administratively offset and transferred to that agency for purposes of collecting a debt which the payor owes to that agency. The MMS shall effect the requested offset only after:

(a) Receipt of a written certification by the creditor agency:

- (1) That the payor owes the debt;
- (2) The amount and basis of the debt;
- (3) That the agency has promulgated regulations for the use of administrative offset; and

(4) That the agency has complied with its own regulations and the applicable provisions of 4 CFR part 102; and

(b) A determination by MMS that collection by offset against funds owed by MMS to the payor would be in the best interests of the United States under the circumstances of the particular case, and that such offset would not otherwise be contrary to law.

§ 218.63 Reduction of tax refunds to satisfy claims.

(a) Under 31 U.S.C. 3720A and 26 CFR 301.6402-6T, MMS may submit notice of any claim in excess of \$25, which has been owed for more than 3 months (but not more than 10 years), and which MMS is unable to collect by administrative offset against amounts owed to the royalty payor by MMS, to the Internal Revenue Service (IRS) for purposes of reducing any refund of Federal taxes owed to the royalty payor and payment of such reduction to MMS in full or partial satisfaction of such claim.

(b) Before submitting a notice to the IRS under paragraph (a) of this section, MMS shall notify the royalty payor by certified mail that it intends to take such action if the claim is not paid within 60 days, as required by 31 U.S.C. 3720A(b)(1). See 30 CFR 243.4 for regulations governing serving of official correspondence.

(c) In connection with MMS notices to the IRS for refund reductions, the available administrative appeals to the MMS Director from decisions or orders of MMS officers under 30 CFR part 290, and from the MMS Director to the Interior Board of Land Appeals under 30 CFR 290.7 and 43 CFR part 4 constitute:

(1) The opportunity for the royalty payor to present evidence that all or part of the debt which is the subject of the claim is not past due or is not legally enforceable; and

(2) The procedure for the Agency to consider any evidence presented by the royalty payor and determine whether the debt which is the subject of the claim is valid, past due and legally enforceable, as required by 31 U.S.C. 3720A(b)(2)-(4). The regulations in this subpart shall not be construed to provide a second opportunity for Agency determination regarding the validity or merits of the claim.

(d) All administrative charges incurred in connection with the referral of any claim to the IRS under 31 U.S.C. 3720A(d) and 26 CFR 301.6402-6T(i), including any fees charged to MMS by the IRS, shall be assessed on the claim and increase the amount of the offset.

[FR Doc. 93-19748 Filed 8-16-93; 8:45 am]

BILLING CODE 4310-MR-M

30 CFR Part 218

RIN 1010-AB73

Limitations on Credit Adjustments Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is proposing to amend its regulations at 30 CFR part 218 to prescribe time and other limitations on the reporting of credit adjustments to previous payments made under Federal onshore and Indian oil, gas, and other mineral leases. The proposed amendments also provide for similar limitations on the reporting of certain credit adjustments under Federal offshore leases.

DATES: Comments must be received on or before October 18, 1993.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225-0165, Attention: David S. Guzy, telephone (303) 231-3432.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rulemaking are Geoffrey Heath and Peter J. Schaumburg, Office of the Solicitor, Washington, DC.

I. Background

The MMS administers over 25,000 producing leases for oil, natural gas, coal, other minerals, and geothermal steam underlying Federal lands, Indian tribal and allotted lands, and the Outer Continental Shelf. The MMS is responsible for enforcement of royalty and other payment obligations under applicable statutes, regulations, and lease terms.

All royalty payors submit monthly reports of sales and royalty which separately list, by line, royalties according to each lease, product produced, and selling arrangement. When a payor discovers an overpayment, it usually submits a credit adjustment, i.e., a negative line to cancel the prior report line, together with a new line showing the corrected information. If the credit adjustment