

DEPARTMENT OF EDUCATION

34 CFR Part 628

Endowment Grant Program

AGENCY: Department of Education.

ACTION: Final regulations with comments invited; amendments.

SUMMARY: The Secretary issues final regulations amending regulations for the Endowment Grant Program. The Secretary takes this action in order to correct the text of previously published regulations. The regulations are necessary to implement the Endowment Grant Program, authorized by section 333 of Title III of the Higher Education Act of 1965 (HEA), as amended by the Challenge Grant Amendments of 1983, Pub. L. 98-95.

DATES: *Effective Date:* These regulations take effect either November 5, 1984 or later if the Congress takes certain adjournments. If you want to know the effective date of the regulations, call or write the Department of Education contact person.

Comments on these amendments postmarked on or before October 22, 1984.

ADDRESS: Comments should be sent to Mr. Thomas Keyes, Institutional Aid Program, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Keyes, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20024. Telephone: (202) 245-2384.

SUPPLEMENTARY INFORMATION: On July 12, 1984, at 49 FR 28520, the Secretary published final regulations with comments invited for the Endowment Grant Program. The Secretary publishes these amendments to correct and clarify the formula in the selection criteria in § 628.31(a)(4) of the final regulations and to clarify the duration of the period a grantee has to raise matching funds.

In accordance with section 431(b)(2)(A) of the General Education

Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations.

The Secretary published a notice of proposed rulemaking for the Endowment Grant Program on March 5, 1984 (49 FR 8184). The comments and the Secretary's responses were summarized in an appendix to the final regulations with comments invited, which was published on July 12, 1984.

An error was contained in the revised formula in § 628.31(a)(4) of the final regulations. Since this error would affect the manner in which the Secretary awards points to an applicant for an endowment grant, it is essential that the Secretary immediately correct the error.

In the preamble to the final regulations, the Secretary explained that the Administration had submitted proposed legislation to the Congress to permit funds appropriated for the Endowment Grant Program to remain available until expended. This was done to allow a grantee eighteen months, from the time it is selected to receive a grant, to raise the required matching funds. Because the Congress has not granted authority for these funds to remain available until expended, the Secretary must change the language in § 628.41(b) to clarify how long the period for raising matching funds may be.

Due to the technical nature of these amendments, the brief time period remaining for application and selection, and previous opportunities afforded for public comment, the Secretary has determined that public comment on these amendments is impracticable, unnecessary, and contrary to the public interest and is not required under 5 U.S.C. 553(b)(B). However, comments on these amendments will be considered along with other comments on the final regulations.

List of Subjects in 34 CFR Part 628

Colleges and universities, Education, Grant Programs—Education.

Dated: September 14, 1984.

T.H. Bell,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.031 Institutional Aid Programs)

The Secretary amends Part 628 of Title 34 of the Code of Federal Regulations as follows:

PART 628—ENDOWMENT GRANT PROGRAM

1. Identical corrections are made in §§ 628.31(a)(4)(i) and 628.31(a)(4)(ii), appearing in the first column of 49 FR 28523 (July 12, 1984), as follows:

§ 628.31 What selection criteria does the Secretary use in evaluating an application for an endowment grant?

a. The words "change in" in the first line of each paragraph are changed to "amount of".

b. The words "for the four-year period" in the second and third lines of each paragraph are deleted.

c. In the third line of each paragraph, "(i)" is inserted between "(3)" and "of".

d. Following the authority citation insert "(Approved by the Office of Management and Budget under control number 1840-0531.)"

2. In § 628.41 paragraph (b) introductory text is revised to read as follows:

§ 628.41 What are the obligations of an institution that the Secretary selects to receive an endowment grant?

* * * * *

(b) Before the Secretary disburses grant funds and not later than a date established by the Secretary through a notice in the *Federal Register* (which date may not be later than the earlier of the last day of availability of appropriations or eighteen months after an institution has been notified that it has been selected to receive a grant), an institution shall—

* * * * *

[FR Doc. 84-24955 Filed 9-20-84; 8:45 am]

BILLING CODE 4000-01-M

REMARKS ON EXERCISE

Exercise is a necessary part of a healthy life. It helps to keep the body strong and the mind clear. Regular exercise can prevent many diseases and keep you feeling good. There are many different ways to exercise, and you should find one that you like. Walking, running, swimming, and dancing are all good choices. You should exercise at least three times a week for about 30 minutes each time. If you are new to exercise, start slowly and build up your strength over time. It is important to listen to your body and stop if you feel pain or tired. Exercise is a great way to stay healthy and happy.

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Environmental Protection Agency

Friday
September 21, 1984

Part VI

**Environmental
Protection Agency**

40 CFR Part 60

**Standards of Performance for New
Stationary Sources; Petroleum Dry
Cleaners; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2494-7]

Standards of Performance for New Stationary Sources; Petroleum Dry Cleaners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for petroleum dry cleaners were proposed in the *Federal Register* on December 14, 1982 (47 FR 56118). This action promulgates standards of performance for petroleum dry cleaners. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that petroleum dry cleaners cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed petroleum dry cleaner facilities to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: September 21, 1984.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Petroleum Dry Cleaners-Background Information for Promulgated Standards" (EPA-450/3-82-012b). The BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. A docket, number A-80-2, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

SUPPLEMENTARY INFORMATION:

The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

* * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

For convenience this will be referred to as "best demonstrated technology".

The best demonstrated technology for petroleum dry cleaners is a combination of work practices and equipment. A performance standard for this source category is not practical due to economic limitations. The instrumentation and procedures for measuring emissions from the affected facilities are well demonstrated; however, the cost of these measurements precludes their use as a compliance provision in regulating the relatively small plants common to the petroleum dry cleaning industry.

The standards require the installation and use of solvent recovery dryers when dryers are installed at affected petroleum dry cleaning plants. In addition, the standards require the use of cartridge filters for each affected plant installing solvent filtration systems, and used filter cartridges must be drained for at least 8 hours in their closed housing prior to disposal.

The standards do not apply to small petroleum dry cleaning plants. To determine whether petroleum solvent washers, dryers, filters, settling tanks, and vacuum stills are subject to these standards, the total dryer capacity of the plant is calculated by adding the manufacturer's rated dryer capacity (kilograms or pounds of clothing articles per load, dry weight) for each existing

and proposed new dryer that will be in service after the proposed equipment commences operation. If the total manufacturer's rated dryer capacity is less than 38 kilograms (84 pounds), the proposed new, modified, or reconstructed dry cleaning equipment is exempt from the requirements of the standard.

The owner or operator of an affected recovery dryer is required to conduct an initial 2-week test to demonstrate that the recovered solvent flow rate from the solvent recovery dryer is 0.05 liters per minute or less at the termination of the recovery cycle. The owner or operator also is required to maintain a record of this test. No emission tests are required.

Summary of Environmental, Energy, and Economic Impacts

The standards will reduce the cumulative nationwide VOC emissions from petroleum dry cleaners through the first 5 years following promulgation of the standards by an average of 22,700 megagrams (25,000 tons) or 41 percent, relative to baseline emissions (i.e., emissions in the absence of the standards). In the fifth year following promulgation of the standards, the average reduction in nationwide VOC emissions resulting from the standards will be 7,600 megagrams (8,400 tons). The standards will result in negligible adverse water, noise, radiation, and solid waste impacts.

The standards will reduce the steam and electrical energy consumption at dry cleaning plants affected by the standards by about 187 terajoules (175 billion Btu's) in the fifth year following promulgation of the standards. This reduction in plant energy consumption results from the lower steam and electrical demands of the solvent recovery dryer as compared to those of conventional dryers.

The capital costs for the petroleum dry cleaning industry will increase by \$1.6 million in the fifth year following promulgation of these standards. The cumulative capital cost attributable to the standard for all affected facilities constructed through the first 5 years following promulgation will be \$8.2 million. The annualized costs for the industry will decrease by \$3.6 million in the fifth year following promulgation, as a result of the savings due to the value of the petroleum solvent recovered by the recovery dryer. The 5 year cumulative annualized cost will be a savings of \$10.9 million. No adverse economic impacts are expected to result from the promulgated standards.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the *Federal Register* (46 FR 55000, November 5, 1981) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the Petroleum Dry Cleaning standards recommended for proposal. This meeting was held on December 2, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed in the *Federal Register* on December 14, 1982 (47 FR 56118). The preamble to the proposed standards discussed the availability of the background information document (BID), "Petroleum Dry Cleaners—Background Information for Proposed Standards," (EPA-450/3-82-012a), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. The preamble to the proposed regulation provided notice of opportunity for public hearing to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards. No request for public hearing was received. The public comment period was from December 14, 1982 to February 14, 1983.

Four comment letters were received concerning issues relative to the proposed standards of performance for the petroleum dry cleaning industry. The comments have been carefully considered and, where determined to be appropriate, changes have been made in the proposed standards.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from the petroleum dry cleaning industry, State and local air pollution control agencies, and industry trade associations. A detailed discussion of these comments and responses can be found in the background information document (BID), which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble under the following headings:

Format for the Exemption, and Leak Detection and Repair.

Safety of Solvent Recovery Dryers

One commenter representing three dry cleaning industry trade associations questioned the safety of solvent recovery dryers, which are required by the standard to control emissions of volatile organic compounds (VOC) from dryers. He acknowledged that the question had been investigated early in the standard development process. At that time, the safety of the recovery dryer was adequately demonstrated by industry operating experience and Factory Mutual Research Corporation's certification that the technology conformed to the National Fire Protection Association's (NFPA) guidelines. However, since proposal of the standard, two explosions of solvent recovery dryers have occurred. The commenter requested, therefore, that no action to finalize the standard be taken until these incidents were fully investigated.

The use of both solvent recovery and conventional dryers presents risks of explosions or fires because petroleum solvent is a highly flammable liquid. Petroleum dry cleaners minimize these incidents by removing metal articles and other objects that might ignite the solvent from clothes prior to dry cleaning. However, when the solvent does ignite, fires tend to occur in conventional dryers while minor explosions tend to occur in solvent recovery dryers. This later tendency led to a careful evaluation of solvent recovery dryer safety before the standards of performance were proposed. The investigation identified 19 cases of solvent recovery dryer explosion. However, in each of these cases the safety features designed into the solvent recovery dryer had safely vented the explosion with only minor damage to the dryer itself.

Factory Mutual Research Corporation's certification for insurance underwriting that solvent recovery dryers complied with the NFPA code in combination with industry operating experience indicated that the safety of solvent recovery dryers was adequately demonstrated to consider them as a basis for standards of performance. As discussed in the *Federal Register* at proposal, however, decisions concerning safety are in the hands of safety officials, and standards of performance will not require the use of any device safety officials consider unsafe.

Since proposing the standard, two explosions of solvent recovery dryers have occurred (see Docket Items IV-B-1 and IV-B-2). These incidents differ from

those investigated before proposal of the standards because the force of these explosions reportedly caused the loading door assembly panel to break away from the dryer. The detached panels, weighing about 300 to 400 pounds, were found at a distance of 8 to 10 feet from the dryers.

The domestic recovery dryer manufacturer and Factory Mutual Research Corporation were asked to investigate these explosions and to comment on whether their previous judgments concerning the safety of solvent recovery dryers have changed in light of their new findings. Both the manufacturer and Factory Mutual Research Corporation agreed to do so.

After its investigation, the manufacturer developed a front panel restraining device for use on both existing and new solvent recovery dryers. Factory Mutual tested the modified dryer and concluded that the dryer meets both the NFPA and Factory Mutual's safety codes. As a result, both the manufacturer and Factory Mutual consider that the safety of solvent recovery dryers has been adequately established. Therefore, the basis of the promulgated standard remains the use of a solvent recovery dryer. Further, since the issue of safety of recovery dryers has been resolved through the safety review procedures, no reason exists to delay action on the standard.

Format of the Exemption Level

One commenter requested that the small plant exemption level incorporated into the definition of an affected facility be expressed in terms of dryer capacity rather than solvent consumption as in the proposed standards. The commenter felt that the dryer capacity format would be simpler and easier to apply.

The solvent consumption format for the exemption level in the proposed standards was established in response to industry comments received at the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) meeting in December 1981. As expressed at that time, the primary concerns of the industry were that the exemption level should be: easily understood, unambiguous, and based on a parameter that already exists at the plants rather than a parameter that requires additional monitoring and recordkeeping. The industry felt that annual solvent consumption met these requirements and, as a result, recommended the use of an exemption expressed in terms of annual solvent consumption.

It is clear, however, that an exemption expressed in terms of dryer capacity is better than one expressed in terms of annual solvent consumption. Compared with solvent consumption, dryer capacity requires substantially fewer recordkeeping requirements. The manufacturer's rated capacity is either stamped on the name plate of each individual piece of equipment or readily available from the equipment specifications provided by the manufacturer. The determination of whether the standard applies to a particular facility is made by simple comparison of the rated capacity for the proposed unit (or collective capacities for proposed multiple unit installations) to the applicability criterion. The approach is straightforward and easily verifiable. It also is simpler because no projection of expected future solvent use is required as with solvent consumption. For these reasons, the exemption contained in the final standard is structured in terms of dryer capacity.

The exemption level is 38 kilograms (84 pounds) of manufacturer's rated dryer capacity. This capacity is derived directly from the 60,000 kilograms (132,170 pounds) of clothes cleaned per year breakeven level established in the economic analysis (see derivation in Docket Item No. IV-B-3) and is equivalent to the 17,800 liters (4,700 gallons) per year solvent consumption exemption level in the proposed standard.

The derivation involves assumptions about average or typical operating schedules and load factors (i.e., days per year, loads per day, and the ratio of actual load weight to rated capacity). However, because the economic breakeven analysis incorporates a number of conservative assumptions (including the use of a 5-year amortization period) the standard will not endanger the economic viability of affected dry cleaners. It is important to remember that, at the breakeven point, a dry cleaner that purchases and operates a solvent recovery dryer will have net annualized costs exactly equal to those of purchasing and operating the much less expensive conventional dryer. Moreover, plants with throughput levels near the breakeven level would have essentially the same financial conditions as would plants at the breakeven level. For example, a plant with a throughput of 2,270 kilograms (5,000 pounds) below the 60,000 kilograms (132,170 pound) breakeven level would have a cost increase of \$200 compared to the breakeven level. This difference represents less than 1 percent of the plant's earnings. Selection of the 38

kilogram (84 pound) manufacturers' rated dryer capacity criterion, therefore, is reasonable and sufficient to mitigate any adverse economic impacts that could result from the new source performance standard.

The total manufacturers' rated capacity was selected as the basis for the small plant exemption because it is a readily identifiable parameter that is indicative of the actual quantity of clothes cleaned at a particular dry cleaning establishment (i.e., the clothes throughput). The exemption is incorporated into the standard to avoid potential adverse economic impacts on small commercial dry cleaning plants that may not have sufficient revenues to obtain financing for the solvent recovery dryers required by the standard. Because the total manufacturers' rated dryer capacity is an indicator of the clothes throughput level, it is an indicator of the revenues generated by a particular plant and therefore the plant's ability to finance recovery dryers. Because the total plant throughput determines the revenues generated by the plant, it is the total dryer capacity of the plant that has been made the basis for the exemption level. Provisions have been added to the regulation promulgated in today's *Federal Register* to clarify which dryers are considered in determining the total manufacturers' rated dryer capacity.

For a proposed new plant the applicability determination is simple. The total manufacturers' rated dryer capacity is the summation of the name plate capacities of each proposed new dryer. When an existing plant is expanding, the total manufacturers' rated dryer capacity is the summation of the name plate capacities of each proposed new dryer and each existing dryer that will remain in service after the proposed expansion commences operation. In the situation where existing dryers are being replaced, the same "in service" rule applies for the determining applicability. Since the dryer that is being replaced is to be removed from service, its capacity is not included in determining the total manufacturers' rated capacity of the plant.

An existing dryer clearly cannot be in service if it is sold or destroyed. Similarly, an existing dryer should be considered to be out of service if it cannot be repaired. The intent is to include in the calculation of the total manufacturers' rated dryer capacity those dryers that will or could contribute to the plant's overall capacity to dry clean clothes and thereby generate revenues.

The change in the format of the exemption decreases the recordkeeping burden of the standard. To determine whether a facility is qualified for an exemption under the solvent throughput criterion in the proposed standard, the owners or operators were required to maintain records of solvent purchases. Since the format of the exemption has been changed in the final standard to the total manufacturers' rated dryer capacity, the unnecessary solvent purchase recordkeeping requirement has been removed from the standard. Because the manufacturer's rated dryer capacity can be read from the dryer name plate(s) or is readily available from the manufacturer, no special recordkeeping requirement is needed in the final standard.

Leak Detection and Repair

The proposed standard included a provision for periodic inspections of affected facilities and prompt repair of identified petroleum solvent leaks (Reference: Proposed 40 CFR 60.622(c); 47 FR 56127). However, in their review of the standard under Executive Order 12291, OMB found the leak detection and repair provision to be inconsistent with the objectives of the Executive Order. Specifically, OMB suggested that there are sufficient economic incentives for dry cleaners to recover leaking solvent and that a mandatory inspection cycle is unnecessary. While the Agency agrees with OMB that there is a natural economic incentive for inspection and leak repair, some dry cleaners may nonetheless allow leaks to go undetected and unrepaired for longer than economically and environmentally desirable. Consequently, the Agency has replaced the requirement for mandatory inspection every 15 days with a requirement that equipment manufacturers inform equipment purchasers that the EPA recommends frequent inspections and prompt repair of leaks. This provision requires that the manufacturers of each affected dryer, washer, filter, still, and settling tank constructed after promulgation specify in the operating instructions, and in a conspicuous location on the equipment itself, suggested procedures for inspecting equipment on a 15-day schedule and for repairing identified petroleum solvent liquid and vapor leaks within 15 working days. In addition, the EPA urges State and local air quality regulatory authorities to require 15-day petroleum solvent leak detection and repair for owners and operators of affected facilities under their jurisdiction. The EPA believes that the manufacturers' labeling requirement

along with leak detection and repair requirements by the State and local air quality regulatory authorities are adequate to ensure the prompt detection and repair of petroleum solvent leaks and the corresponding reduction in emissions of volatile organic compounds.

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review except for interagency review materials [Section 307(d)(7)(A)].

Miscellaneous

The effective date of this regulation is September 21, 1984. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal, December 14, 1982.

As prescribed by Section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that dry cleaning contributes significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment

was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining the best demonstrated technology. The economic impact assessment is included in the BID for the proposed standards.

In addition to economics, the cost effectiveness of alternative standards were also evaluated in order to determine the least costly way to reduce emissions and to assure that the controls required by this rule are reasonable relative to other VOC regulations. In this case, the proposed and promulgated standards would reduce the dry cleaners' operating costs and produce an average 5 year total cost effectiveness savings of \$470 per megagram of VOC emission reduction. Additional detail on costs can be found in the BID.

Information collection requirements associated with this regulation (those included in 40 CFR Part 60, Subpart A and Subpart JJJ) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060-0079.

Under Executive Order 12291, the EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." Because the recommended control equipment results in the recovery of solvent which would otherwise be lost, the effect of this regulation is to reduce costs. No increase in the price of dry cleaning services attributable to implementation of these proposed standards is expected. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Determination of the need to perform a Regulatory Flexibility Analysis is based upon the consideration of three factors: (1) The maximum size of a small business, (2)

the number of small businesses affected, and (3) the expected economic impacts.

The Small Business Administration has several definitions for small businesses. In the case of service industries such as petroleum dry cleaners, "small" is defined as having revenues less than or equal to \$2 million. Almost all petroleum dry cleaners qualify as small businesses under this definition, except for large industrial plants.

However, as previously discussed, only dry cleaning plants with annual dry cleaning throughputs less than or equal to 62,700 kilograms (138,000 pounds) of articles would have difficulty financing the equipment requirements of these standards. These dry cleaning plants are exempt from the standards. Dry cleaning plants with throughputs above this level would have lower costs and higher profits as a result of the standards. Therefore, because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic Fibers.

Dated: September 6, 1984.

William D. Ruckelshaus,
Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

The Code of Federal Regulations Title 40, Part 60 is amended by adding a new Subpart JJJ as follows:

Subpart JJJ—Standards of Performance for Petroleum Dry Cleaners

Sec.

60.620 Applicability and designation of affected facility.

60.621 Definitions.

Sec.

60.622 Standards for volatile organic compounds.

60.623 Equivalent equipment and procedures.

60.624 Test methods and procedures.

60.625 Recordkeeping requirements.

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411, 7601(a)], and additional authority as noted below.

Subpart JJJ—Standards of Performance for Petroleum Dry Cleaners

§ 60.620 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 38 kilograms (84 pounds): Petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks.

(1) When the affected facility is installed in an existing plant that is not expanding the manufacturers' rated capacity of its petroleum solvent dryer(s), the total manufacturers' rated dryer capacity is the summation of the manufacturers' rated capacity for each existing petroleum solvent dryer.

(2) When the affected facility is installed in a plant that is expanding the manufacturers' rated capacity of its petroleum solvent dryers, the total manufacturers' rated dryer capacity is the summation of the manufacturers' rated dryer capacity for each existing and proposed new petroleum solvent dryer.

(3) When the affected facility is installed in a new plant, the total manufacturers' rated dryer capacity is the summation of the manufacturers' rated dryer capacity for each proposed new petroleum solvent dryer.

(4) The petroleum solvent dryers considered in the determination of the total manufacturers' rated dryer capacity are those new and existing dryers in the plant that will be in service at any time after the proposed new source or modification commences operation.

(b) Any facility under paragraph (a) of this section that commences construction or modification after December 14, 1982, is subject to the requirements of this part.

§ 60.621 Definitions.

As used in this subpart, all terms not defined herein shall have the same meaning given them in the Act and in subpart A of this part.

"Cartridge filter" means a discrete filter unit containing both filter paper

and activated carbon that traps and removes contaminants from petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Dryer" means a machine used to remove petroleum solvent from articles of clothing or other textile or leather goods, after washing and removing of excess petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Manufacturers' rated dryer capacity" means the dryer's rated capacity of articles, in pounds or kilograms of clothing articles per load, dry basis, that is typically found on each dryer on the manufacturer's name-plate or in the manufacturer's equipment specifications.

"Perceptible leaks" means any petroleum solvent vapor or liquid leaks that are conspicuous from visual observation or that bubble after application of a soap solution, such as pools or droplets of liquid, open containers or solvent, or solvent laden waste standing open to the atmosphere.

"Petroleum dry cleaner" means a dry cleaning facility that uses petroleum solvent in a combination of washers, dryers, filters, stills, and settling tanks.

"Settling tank" means a container that gravimetrically separates oils, grease, and dirt from petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Solvent filter" means a discrete solvent filter unit containing a porous medium that traps and removes contaminants from petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Solvent recovery dryer" means a class of dry cleaning dryers that employs a condenser to condense and recover solvent vapors evaporated in a closed-loop stream of heated air, together with the piping and ductwork used in the installation of this device.

"Still" means a device used to volatilize, separate, and recover petroleum solvent from contaminated solvent, together with the piping and ductwork used in the installation of this device.

"Washer" means a machine which agitates fabric articles in a petroleum solvent bath and spins the articles to remove the solvent, together with the piping and ductwork used in the installation of this device.

§ 60.622 Standards for volatile organic compounds.

(a) Each affected petroleum solvent dry cleaning dryer that is installed at a petroleum dry cleaning plant shall be a solvent recovery dryer. The solvent

recovery dryer(s) shall be properly installed, operated, and maintained.

(b) Each affected petroleum solvent filter that is installed at a petroleum dry cleaning plant shall be a cartridge filter. Cartridge filters shall be drained in their sealed housings for at least 8 hours prior to their removal.

(c) Each manufacturer of an affected petroleum solvent dryer shall include leak inspection and leak repair cycle information in the operating manual and on a clearly visible label posted on each affected facility. Such information should state:

To protect against fire hazards, loss of valuable solvents, and emissions of solvent to the atmosphere, periodic inspection of this equipment for evidence of leaks and prompt repair of any leaks is recommended. The U.S. Environmental Protection Agency recommends that the equipment be inspected every 15 days and all vapor or liquid leaks be repaired within the subsequent 15 day period.

§ 60.623 Equivalent equipment and procedures.

(a) Upon written application from any person, the Administrator may approve the use of equipment or procedures that have been demonstrated to his satisfaction to be equivalent, in terms of reducing VOC emissions to the atmosphere, to those prescribed for compliance within a specified paragraph of this subpart. The application must contain a complete description of the equipment or procedure; the testing method; the date, time and location of the test; and a description of the test results. Written applications shall be submitted to the Administrator, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(b) The Administrator will make a preliminary determination of whether or not the application for equivalency is approvable and will publish a notice of these findings in the Federal Register. After notice and opportunity for public hearing, the Administrator will publish the final determination in the Federal Register.

§ 60.624 Test methods and procedures.

Each owner or operator of an affected facility subject to the provisions of § 60.622(a) shall perform an initial test to verify that the flow rate of recovered solvent from the solvent recovery dryer at the termination of the recovery cycle is no greater than 0.05 liters per minute. This test shall be conducted for a duration of no less than 2 weeks during which no less than 50 percent of the dryer loads shall be monitored for their final recovered solvent flow rate. The suggested point for measuring the flow rate of recovered solvent is from the

outlet of the solvent-water separator. Near the end of the recovery cycle, the entire flow of recovered solvent should be diverted to a graduated cylinder. As the recovered solvent collects in the graduated cylinder, the elapsed time is monitored and recorded in periods of greater than or equal to 1 minute. At the same time, the volume of solvent in the graduated cylinder is monitored and recorded to determine the volume of recovered solvent that is collected during each time period. The recovered solvent flow rate is calculated by

dividing the volume of solvent collected per period by the length of time elapsed during the period and converting the result with appropriate factors into units of liters per minute. The recovery cycle and the monitoring procedure should continue until the flow rate of solvent is less than or equal to 0.05 liter per minute. The type of articles cleaned and the total length of the cycle should then be recorded.

(Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414))

§ 60.625 Recordkeeping requirements.

Each owner or operator of an affected facility subject to the provisions of this subpart shall maintain a record of the performance test required under § 60.624.

(Approved by the Office of Management and Budget under the Control Number 2060-0079.) (Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414))

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Friday
September 21, 1984

Part VII

Department of the Interior

Minerals Management Service

30 CFR Parts 210, 212, 217, 218, 219,
228, 229, 241, and 243

Implementation of the Federal Oil and
Gas Royalty Management Act of 1982;
Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 210, 212, 217, 218, 219, 228, 229, 241, and 243

Implementation of the Federal Oil and Gas Royalty Management Act of 1982

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule implements in part the Department of the Interior's authorities under the Federal Oil and Gas Royalty Management Act of 1982, which was enacted to ensure that all oil and gas produced on Federal and Indian lands is properly accounted for and that all revenues resulting from that production are collected and distributed properly. This rulemaking applies only to those sections of that Act that establish the duties and responsibilities of the Minerals Management Service Royalty Management Program.

EFFECTIVE DATE: October 22, 1984.

ADDRESS: Any inquiries should be sent to: Deputy Associate Director for Royalty Management Policy, Minerals Management Service (MS 660), 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Orle L. Kelm (703) 860-7511, (FTS) 928-7511.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Robert E. Boldt, Associate Director for Royalty Management, MMS.

I. Background

In mid-1981, the Secretary of the Interior appointed the Commission on Fiscal Accountability of the Nation's Energy Resources (Commission) which produced a report in January 1982 making 60 specific recommendations for improvement to DOI's royalty management effort, including improved accounting, stricter penalty provisions for noncompliance, enhanced site security requirements on Federal and Indian leases, and new methods of seeking out and preventing potential oil theft. The Commission recommended in its final report that the Administration introduce legislation to implement those Commission recommendations which were not authorized by law and to update those statutory provisions which had become outmoded over the years. The Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 97-451, 30 U.S.C. 1701 *et seq.*, and subsequently referred to herein as "the Act") serves as the culmination of the efforts of the

Department of the Interior to improve the processes by which it collects and accounts for bonuses, rents, and royalties on Federal and Indian oil and gas leases.

On September 20, 1983 (40 FR 42902), the MMS issued proposed regulations to implement its new authorities under the Act. Prior to publishing this proposed rule, the MMS held extensive informal meetings with producers, States, Indian tribes, and other affected groups to receive the maximum possible input on the form of the regulations. In response to the proposed rulemaking, the MMS received comments from 29 lessees and other interested persons. All of these comments were considered carefully in preparing these final regulations. Included in this preamble is a discussion of the important comments on a section-by-section basis.

These rules are not the only rules to be issued under the Act. As the MMS gains experience with compliance problems under the new Auditing and Financial System (AFS) and the Production Accounting and Auditing System (PAAS), it intends to propose additional enforcement and penalty regulations. Other changes to the rules implemented today also may be necessary.

Moreover, the MMS is not the only part of DOI with responsibilities under the Act. The MMS regulations concern royalty on oil and gas production and the collection, accounting, and distribution of royalty and rental payments from Federal and Indian lands. Regulations dealing with other topics within the Act (e.g. lease management and site security) are issued by other offices of DOI. On September 16, 1983 (48 FR 41738), the Bureau of Land Management (BLM) issued proposed rules pertaining to its responsibilities under the Act. Final rules are being issued concurrently with these rules.

II. Summary of Rules Adopted

The following sections summarize the most significant provisions of the regulations being adopted today. Most of the rules being adopted are substantially the same as the proposed rules. Therefore, much of the discussion in the preamble to the proposed rules applies to the final rules. Where significant changes are being made to the final rules, they are discussed in this preamble.

Part 212. The provisions of Part 212, authorized by Section 103 of the Act, reaffirm required recordkeeping, including requirements for the submission of certain data to MMS.

This part indicates the types of records which must be maintained by the lessee, operator, revenue payor, or other person, establishing that these records must be maintained for a 6-year period. A further requirement of this Part is that records be maintained in paper or in a reproducible form such as microfilm, microfiche, or electronic imagery, and be available for inspection and review on a ready basis. Records to be maintained also include computer programs, automated files and systems support documentation.

Part 217. This part is authorized by Section 101 of the Act and establishes the authority of the Secretary to carry out audits on all aspects of the performance of lessees, operators, revenue payors, and other persons (including third parties) under the terms of Federal and Indian oil and gas leases. The part also establishes priority for the reconciliation of all lease accounts specifically identified by a State or Indian tribe as having a significant potential for underpayment.

Part 218. The provisions of Part 218, authorized by Sections 102, 103, and 111 of the Act, deal with the timing and method of royalty payments and establishment of regulations for the submission of royalty payments under the new Auditing and Financial System (AFS) being operated by MMS at its Royalty Management Accounting Center (RMAC) in Lakewood, Colorado.

In addition, this part establishes provisions for the payment of interest charges for late or underpaid royalty payments and identifies the way in which such interest charges will be calculated.

A charge of \$10.00 may be assessed for reports not received by MMS by the designated due date. A charge of \$10.00 may also be assessed for reports that are received by the due date but are incorrect. For purposes of the Auditing and Financial System (AFS), a report is defined as each individual required transaction code for each Accounting Identification Number (AID), Product Code, and Selling Arrangement.

This part further indicates that States will be exempted from interest or penalties found to be payable by the DOI to small refiners if it is determined that DOI failed to comply with the Emergency Petroleum Allocation Act of 1973 with respect to crude oil taken by the Secretary as in-kind royalty oil and then sold to small refiners under the provisions of the Mineral Leasing Act or the Outer Continental Shelf Lands Act.

This part further clarifies that when the Department, as a result of litigation or a negotiated settlement, pays a claim

resulting from alleged failure to comply with the Emergency Petroleum Allocation Act of 1973, as amended, the portion of that claim which can be identified as having been paid to a State under the shared royalty provisions of the Mineral Leasing Act of 1920 will be deducted from future share revenues to be paid to the State until the State's share of that claim has been satisfied.

Part 219. The regulations for this part, authorized by Sections 104 and 105 of the Act, deal with the timing and payment to States and Indian tribes of their share of MMS collected royalties, rents, and bonuses, and establish the terms under which interest will be paid to a State if mineral revenues are not disbursed promptly, by MMS, in accord with the Act.

This part also describes the types of reports which will be provided to States and Indian tribes, identifying the source of and amounts distributed to the States and Indian tribes on a monthly basis.

Part 228. This part, authorized by Section 202 of the Act, establishes provisions by which States and Indian tribes may enter into cooperative agreements with DOI to conduct audit activities. Under the provisions of the regulations, 50 percent of the cost of cooperative activities carried out under this part would be reimbursed by the Department. The 50 percent share provided by the State or Indian tribes can be provided in cash or in the way of in-kind contributions as defined in normal Government accounting practices.

Under these regulations, a cooperative agreement is for a period of 3 years with a possible extension of an additional 3 years if mutually agreed to by both parties. The regulations also indicate that a State may concurrently carry out activities under both Sections 202 and 205 of the Act.

The proposed rulemaking contained a provision allowing the Secretary to increase funding to a level of 100% for cooperative agreements with certain Indian tribes showing extreme need. Upon reflection, it was decided that the needs to administer such a provision would create an administrative nightmare which would be self-defeating to the cooperative provisions of the Act.

Discussion with representatives of Indian tribes who have indicated an interest in pursuing cooperative agreements under this part indicate willingness to participate at the 50% level assuming the acceptance of in-kind contributions which are authorized by other provisions of this part. Therefore, the provisions authorizing 100% funding has been dropped from the final regulations.

These regulations also indicate, as provided in Section 206 of the Act, that 50 percent of any civil penalty collected by MMS under the activities authorized by Sections 202 and 205 of the Act will be shared with States or Indian tribes. However, the amount of that civil penalty will be deducted from the Federal share of any funding provided for in a cooperative agreement with a State of Indian tribe or a delegation of authority to a State.

These regulations also establish that funding under the provisions of Sections 202 and 205 of the Act is subject to the availability of appropriations.

Part 229. This part, authorized by Section 205 of the Act, establishes regulations dealing with the delegation of certain authorities to the States to conduct investigations and audits with respect to all Federal lands within a State and to those Indian lands for which the State has received specific delegation of authority from the tribe or from individual Indian allottees.

These regulations establish requirements for factfinding and hearings on the part of the Department before a delegation is made to a particular State. These regulations specify that the term of delegation is for a period of 3 years with a possible extension for an additional 3 years on the mutual agreement of both parties. Requirements for recordkeeping and reporting from States involved in a delegation are also included as well as a provision for an annual audit of the State's activities carried out under the provisions of the delegation.

As required by the Act, allowable costs incurred by the State under the delegation of authority will be reimbursed 100 percent by the Federal Government.

Parts 228 and 229. Section 203 of the Act authorizes regulations establishing the types of information which can be provided to States and Indian tribes under a cooperative arrangement dealing with the sharing of trade secrets and proprietary and confidential information.

Part 241. The regulations for Part 241, authorized by Section 109 of the Act, establish the process for the assessment and collection of civil penalties.

The primary intent of the penalty process is to elicit, to the greatest extent possible, voluntary compliance with MMS paying and reporting requirements as reflected by low error rates and timely paying and reporting.

Part 243. The purpose of this section is to provide an appeal mechanism for any MMS Royalty Management Program order or directive.

Sections of the Act for which regulations have not been formulated. There are a number of provisions of the Act for which specific regulations have not been formulated because the statutory language itself is self-explanatory or the language of the Act is advisory and does not require regulatory language to implement it. In other instances, the Department will reference an existing regulation as meeting the requirements of the Act.

Relationships to other statutes and regulations. Regulations are being issued by two separate bureaus of DOI; therefore, certain provisions of the Act will ultimately be implemented by regulations found in 43 CFR and 30 CFR Subchapter B (the offshore operating regulations) as well as in this Subchapter A of 30 CFR which, when fully completed, will provide a compendium of regulations relating to the royalty management process.

The subpart letter designations of the regulations indicate applicability to onshore or offshore matters, or both.

III. Comments Received on Proposed Rules—General

The proposed rulemaking published September 20, 1983, provided for a 30-day public comment period which ended October 20, 1983. All comments received during that time period are addressed in this section, and the text of these regulations has been changed to reflect comments as appropriate.

Two commentators felt that the 30-day comment period was too short. Since the MMS conducted extensive informal discussions with many interested parties prior to formulating the proposed rules, a longer formal public comment period was not considered necessary.

One commentator stated that the regulations should be prospective rather than retroactive.

The MMS agrees and the regulations are prospective with the exception of audits and certain appeals procedures. Audits, by their very nature, must involve looking back at historical records. See preamble § 243.2 for explanation of retroactive application to appeals.

One commentator objected to the burden that the rules will place on small nonoperating lessees and royalty payors, particularly the reporting and paying requirements.

Lessees and royalty payors may elect to have the operator or purchaser submit the required payments and reports to MMS. However, as required by the Act, those assuming paying and reporting obligations must comply with MMS reporting and paying requirements.

Further, the lessee will remain ultimately responsible for all payments and reports from the lease.

IV. Comments Received on Proposed Rules—Specific by Section

Part 210—Forms and Reports

Section 210.51 Payor information forms. Ten commentors found difficulty with the timing of reporting requirements (submission of Form MMS-4025). Most of these commentors noted that the requirement for submission within 30 days after issuance of a new lease or a change in the paying responsibilities of the lease conflicts with § 218.52 which requires notification within 60 days rather than 30 days. All commentors favored the longer 60-day period.

The MMS's new computerized Auditing and Financial System (AFS) cannot properly track payment responsibilities without current and accurate Form MMS-4025 data. Consequently, the MMS must receive these forms within 30 days as required at § 210.51. The MMS understands that all the data required on Form MMS-4025 cannot always be provided within 30 days, especially in the case of newly issued leases. Nevertheless, the MMS will require the submittal of that form with the best data available at the time of submittal (at a minimum, MMS must be told who is to be the interim designated payor). An amended resubmittal should be made at a later date when lessee/payor responsibilities are changed. Section 218.52 has been revised from 60 days to 30 days to conform with § 210.51.

Section 210.52 Report of sales and royalty remittance. Four commentors suggested that changes be made to this section to permit early payments.

The MMS agrees and this has been done.

One commentor suggested that the requirement for payment and reporting by the end of the second month be extended to the first business day of the following month, when the last day of the month falls on a weekend or holiday.

The MMS had to revise this section to eliminate the confusion that was associated with different time requirements for payment and payor information forms. The revised § 210.52 now requires payment by the end of the month following the production month. No extension to the succeeding month will be permitted.

One commentor recommended changing the section to restrict its applicability to rentals from MMS-managed leases and to exclude former

BLM leases from Form MMS-2014 and electronic funds transfer requirements.

The MMS agrees in principle with the comment. In April 1984, MMS assumed responsibility for the collection of rentals on nonproducing onshore Federal leases. A new accounting system, the Bonus and Rental Accounting Support System (BRASS), was developed to account for all nonproducing leases. Eventually, most nonproducing leases on which rentals are being paid will be moved to the BRASS system, eliminating the need for the submission of the Form MMS-2014 for rentals from nonproducing leases. In the interim, those nonproducing leases maintained in the AFS will require the submission of Form MMS-2014. Electronic Funds Transfer (EFT) will not be required for the payment of rentals, except for first year rentals paid with the four-fifths portion of the offshore lease bonus bids.

One commentor stated that, contrary to this regulation, payments must continue to be made by the end of the first month following the production month due to the terms of existing leases.

The MMS has revised this part to require payment by the end of the first month following the production month.

One commentor stated that Form MMS-2014 reporting requirements should be expanded to permit submission of the data via magnetic tape.

MMS agrees and the required wording change has been made.

Part 212—Records and Files Maintenance

Section 212.50 Required recordkeeping and reports. Three commentors addressed the 6-year requirement for recordkeeping. One favored it; a second objected to it as being too long; and the third suggested that MMS not have a policy to audit back more than 2 years since older records would be burdensome to retrieve.

The 6-year recordkeeping requirement is provided by Section 103(b) of the Act. A 2-year limitation is impractical and incompatible with statute of limitation requirements found in Federal and State law.

Section 212.51 Records and files maintenance. One commentor stated that NTL-1, 1A, and 5 and the Act as shown in paragraph (a) should not be referenced for recordkeeping requirements. Rather, the commentor states the recordkeeping requirements given at those locations should be fully spelled out in these regulations.

Subsequent changes to the Royalty Management regulations will incorporate the records and files maintenance requirements of existing orders and notices.

One commentor responded favorably to the provision in paragraph (b) that lessees and operators are only required to retain payment records for the period that the recordholders have paying or operating responsibility on the lease. A second objected to this provision stating that lessees should always be responsible for complete recordkeeping for the full 6-year period and also that operators or other persons required to keep records generated during the time they had paying or operating experience be required to keep records for the full 6-year retention period.

Upon reexamination of the wording of paragraph (b), MMS has changed the text of the final regulation. All records pertaining to the lease must be retained for a period of 6 years even if paying or operating responsibilities have ceased. However, the lessee or operator remains responsible only for the records generated during its period of operating or paying responsibility. The text of the subsection has been revised accordingly. MMS has also changed paragraph (c) by adding the term "revenue payor" to make clear that any person or entity who makes mineral revenue payments to MMS, but has no other obligations under the lease, is covered by these regulations.

Three commentors stated that a reasonable period of time should be permitted for producing records since historical records are often stored offsite.

MMS agrees and the wording has been changed accordingly in paragraph (c) of § 212.51.

Part 217—Audits and Investigations

Section 217.50 Audits of records. Three commentors stated that words should be added to this section indicating that no more than one auditing or investigating entity should be conducting an audit at the same time as required by Section 301 of the Act.

Section 301 of the Act "recommends" that care be taken to prevent multiple audits by different entities (MMS, States, OIG, etc.) from taking place concurrently. However, it does not prohibit such concurrent audits. In conformity with the Act, it is the policy of MMS to avoid concurrent or uncoordinated audits, if possible. MMS feels it is unnecessary to state this in the regulations.

One commentor suggested that MMS consider a policy of auditing lease

records within 24 months after the end of the reporting period to be audited. It was claimed that audits going back more than 2 years are too burdensome, especially respecting records retrieval.

MMS will make the audits as current as possible but the 6-year audit cycle is in keeping with standard industry and Government auditing practices.

One commentator suggested adding the words "during the time period set out in § 212.50," to the end of the paragraph to clarify that audits will not look back further than the recordkeeping requirements.

The MMS will not audit further back than records are required to be maintained unless the recordholder has been notified in writing of a continued investigation or audit which requires that the records be maintained for a longer period of time. Paragraph (b) of § 212.51 gives sufficient clarification.

One commentator stated that audits should be final so that reaudits would be neither necessary nor authorized by MMS.

MMS agrees that normal practice does not require reaudits, but cannot state that there will never be reaudits.

One commentator stated that 180-days' notice of audit should be given along with information about what specific items will be audited.

A 6-month notice requirement of an impending audit is unreasonable. MMS will give reasonable time for furnishing records, depending on the circumstances of each audit.

Section 217.51 Lease account reconciliation. One commentator stated that the same time constraints should apply to MMS for lessee overpayments as apply to lessees for underpayments in regard to reconciliation of lease accounts.

MMS has a program for reconciling all lease accounts with open balances within a specified period of time. All overpayments, as well as underpayments, will be resolved as a result of that program.

See comments on § 218.54 for further discussion.

Part 218—Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government

Section 218.50 Timing of payment. A total of 20 comments were received concerning this issue in paragraph (a). Nineteen commentators supported the proposed change to 60 days in the payment cycle and suggested that the 60-day cycle be made applicable to all Federal and Indian oil and gas leases. One commentator objected to the extension of time from 30 to 60 days for payments on leases.

The commentators in favor of the 60-day payment period would all benefit financially from such an extension. The Federal Government, States and Indian tribes would suffer a loss of substantial revenues. The Government's original proposal to extend the payment period was prompted by its desire to obtain more accurate reporting and payment data from lessees/payors. This was consistent with the recommendations of the Commission on Fiscal Accountability of the Nation's Energy Resources. However, because the huge loss of revenue to the Federal Government, States, and Indian tribes would be so significant as compared to an unknown higher degree of accounting accuracy, the MMS will not extend the payment due date as proposed. The MMS will rely on a system of assessments for incorrect or late reporting and paying. This final regulation is in agreement with present lease payment terms.

One commentator stated that § 218.50(b) was not clear as to whether separate royalty checks or EFT payments would be required for Indian allotted leases and for Indian tribal leases.

MMS has made the required clarifying change now found at § 218.51(f).

One commentator stated that the word "payment" should be inserted instead of "royalty" at subparagraph (b)(2) of § 218.50, because Indian tribes receive payments other than royalties.

MMS agrees and this has been done and moved to paragraph (f) of § 218.51.

One commentator questioned if the term "format" included in subparagraph (b)(3) refers to Form MMS-2014.

The word "format" as used in this subparagraph (now § 218.51(f)(2)) does refer to Form MMS-2014.

Section 218.51 Method of payment. Three commentators requested a change in the text of paragraph (a). Specifically, they asked that we delete the proposed language which was in parentheses: "(OCS bonuses . . . of the Part)" and replace it with a new § 218.51(c) referencing 30 CFR 218.155 (formerly 30 CFR 256.13) which would clarify that payments on nonproducing leases are not required to be made by EFT.

MMS has made a clarifying change. However, a new subsection (c) for this purpose was not deemed necessary.

Two commentators were confused about rental payments for onshore non-producing leases. One contended that they are to be made to BLM (as required by lease terms) and the other was not sure whether they were to be made to BLM or to MMS and, if to MMS, to which MMS office.

Changes that have been made to the section should eliminate that confusion.

Beginning in April 1984, all rental payments on *all* nonproducing Federal leases, except first year rentals and bonuses for onshore leases and except for the six excepted land categories listed below, will be paid to MMS-RMAC at Lakewood, Colorado. The six excepted land categories are: Coos Bay—Wagon Road; Oregon and California Grant Lands; Alaska National Petroleum Reserve; Taylor Grazing Act Districts; BLM National Grasslands; and South half of the Red River—Oklahoma Lands.

One commentator suggested that nonproducing lease rental payments be excluded from the EFT requirements.

This has been done. However, such payments can be made by EFT at the option of the payor, if approval is obtained prior to use of EFT from the MMS-RMAC in Lakewood, Colorado.

One commentator stated that there was confusion about the payment level for determining the \$50,000 threshold for making payment by EFT. Another commentator objected to combining multiple lease payments to reach an aggregate amount.

Payment level is to be determined by payor number. Whenever the aggregate amount of royalties due on a given day for a single payor (any entity assigned a payor number by MMS) equals or exceeds \$50,000, the payment *must* be made by EFT.

One commentator stated that the amount triggering the EFT payment requirement should be \$100,000 not \$50,000. Another commentator stated that all payors should be allowed to make payments by any payment method they choose providing the payment is timely and in the proper amount.

Neither of the above two comments are acceptable to MMS since the intent of requiring payment of amounts of \$50,000 or more by EFT is to ensure the earliest availability of funds to the U.S. Treasury.

Two commentators recommended that the list of alternative methods for remittance of less than \$50,000 in paragraph (b) include payment by means of EFT.

The MMS agrees and payment by EFT has been included as an alternative optional method for amounts under \$50,000.

One commentator stated that paragraph (b) is unclear as to whether payments could include combined payments from more than one lease.

Payments could include combined payments from more than one lease. See paragraph (f)(2) of § 218.51 of the final rule.

Section 218.52 Designated payor. Five commentors noted that the proposed 60-day period for notifying MMS of paying responsibility or any change in paying responsibility conflicts with the 30 day reporting period at § 210.51.

This section has been amended to 30 days to conform to § 210.51 requirements. For an explanation of the 30-day requirement, see the discussion of comments on § 210.51 given above.

One commentor contended that in the case of joint lessees, no single lessee must be assigned as the "designated payor."

The MMS must have a "payor" or "payors" assigned for the proper operation of its new computerized accounting system.

Section 218.53 Division of interest. Eight commentors stated that MMS should change the provision that division of interest documents be submitted at the end of the second month following the "date of the contract" to the end of the second month following the "date of the first production or sale," since industry practice is not to prepare such documents until production is imminent, particularly in the case of gas.

Four commentors suggested that the time period be extended from 60 days (end of second month) to 120 days for submission of division of interest documents to allow time to resolve problems of title documentation.

One commentor felt that the reference relating division orders to "contracts for sale of products" is misleading. "Contracts for sale of products," the commentor states, are not always identical to division orders describing the leaseholders' interest in the lease. This commentor also felt that the submission of Form MMS-4025 under § 210.51 should provide sufficient information and make the submission of division of interest documents unnecessary.

Four commentors stated that all State laws do not require division of interest documents.

In view of comments received on this issue, MMS will not include the specific requirements for submission of Division of Interest Documents in this rulemaking.

Section 218.54 Late payments and underpayments. One commentor suggested that the regulations be modified to specify that late payments and underpayments be determined at the Accounting Identification Number (AID) level.

MMS disagrees; late payments and underpayments are assessed at the AID, product code, and selling arrangement

levels. If all lines on a Form MMS-2014 are paid late, then the late payment billing is rolled up to reflect that the entire Form MMS-2014 is late, rather than identifying every line as being late. In those instances where only certain lines on Form MMS-2014 are reported and paid late, the late payment billing identifies each late line.

Two commentors stated that the same rules and interest rates should apply to overpayments as to underpayments. One other commentor suggested that overpayments be credited against underpayments before assessing any penalties or interest.

In those instances where estimated payments exist, a payor's reported royalties are compared with estimated payments an interest is billed where royalties exceed estimate. In that process, overpayments and underpayments are netted at the payor level for Federal leases and at the lease level for Indian leases prior to calculating interest. In those instances where estimates do not exist, however, each AID is independently reviewed for late payment. There is no offsetting in that case.

One commentor suggested that the interest not be assessed on late payment or underpayments when they are not the fault of the lessee.

MMS agrees. If a late payment or underpayment is not the fault of the lessee in the judgment of MMS, assessment of interest will be waived.

One commentor suggested that the word "daily" be added after the word "computed" in paragraph (c) of the proposed rule.

MMS agrees that daily compounding of interest for late payments and underpayments is required by Section 6621 of the Internal Revenue Code.

Section 218.55 Interest payments to Indians. One commentor stated that since Indians will be receiving payments other than royalties, the term "monies" should replace the term "royalties" in paragraph (a) of § 218.55.

Revised paragraph (a) reads: "All interest collected from late payments on Indian tribal or allotted leases will be paid to the tribe or allottee."

Section 218.56 Assessments for incorrect or late reports and failure to report. Eight comments concerning proposed paragraphs (a) and (b) stated that the penalties were too severe because of the line-by-line cumulative/additive nature of the proposed system. One comment stated that the penalties were too small at \$10.00 per day and that they should be increased to \$50.00 per day and be made mandatory, not discretionary.

The MMS has decided to retain the rule as proposed except for nomenclature changes believing that conscientious payors will not commit sufficient errors to become unduly burdened by assessments while careless payors will be encouraged to improve their paying and reporting by the levying of assessments in a consistent and progressive manner. The commentor believing the assessments were too small apparently failed to note the line-by-line cumulative/additive nature of the system.

Four commentors stated that this section should be deleted because any civil penalty authority of the Secretary related to royalty payment and accounting has been subsumed into and/or preempted by Section 109 of the Act.

MMS disagrees with this interpretation of the Act. Section 304(a) of the Act provides that the penalties and authorities of the Act are supplemental to, and not in derogation of, any penalties or similar authorities in other laws. The Secretary's authority for the assessments provided by § 218.56 is derived not from the Act, but from the Secretary's responsibilities to administer the Mineral Leasing Act, the Outer Continental Shelf Lands Act, and other mineral leasing laws.

Section 218.103 Payments to States. One commentor stated it is not clear who is to pay the interest charge to the State. Would it be the entity disputing the monies held in suspense?

MMS has responsibility for paying interest on suspended amounts to the State.

One commentor stated that interest on suspended amounts should be calculated beginning at the time of deposit of the suspended amounts and not beginning on the calendar day that such amounts would normally have been paid to the States as shown in paragraph (c).

MMS disagrees. The Act (Section 104) is clear that interest accrues only after a payment is deemed late under the provisions of the legislation dealing with timely payments to the States and tribes.

Section 218.104 Exemption of States from certain interest and penalties. One commentor said the middle sentence of paragraph (b) as proposed should be deleted because it conflicts with § 111(e) of the Act.

The commentor has misread § 111(e). The first sentence of that section deals only with interest or penalties, e.g., treble damages, which might be assessed against the Government. The second sentence of § 111(e) clearly

states that the State share in any refunds of overpayments, whether a result of settlement or pursuant to a judicial or administrative order. Paragraph (c) of § 218.104 carries out the intent of the Act in that regard.

Part 219—Distribution and Disbursement of Royalties, Rentals, and Bonuses

Section 219.100 Timing of payment to States. One commenter objected to the definition of the last business day of the month as including the first working day of the succeeding month when the month ends on a weekend or holiday. The commenter contends this is contrary to Section 104(a) of the Act.

The MMS agrees and paragraph (b) has been deleted.

Section 219.101 Receipts subject to an interest charge. Implementation of the provisions of this section is dependent upon the availability of appropriated funds.

One commenter stated that paragraph (a) should be clarified by adding a new paragraph (c) to read as follows:

"(c) Included in paragraph (a) are revenues which cannot be disbursed to the State because the payor/lessee provided incorrect, inadequate, or incomplete information to MMS, which prevented MMS from properly identifying the payment to the proper recipient."

MMS agrees. Paragraph "(c)" has been added accordingly.

One commenter stated that the lessee should not have to pay such interest since it will already have been paid to MMS.

This section does not apply to lessees or royalty payors.

Section 219.103 Payments to Indian accounts. One commenter claimed that the proposed "inequitable" changes in payment date (§ 218.50(a)) are compounded by the wording of this section giving the Government an entire month after warranting of funds by the Treasury to effect the distribution of funds to Indian accounts. This commenter contends further that this is contrary to the Act (30 U.S.C. 1714), Section 104(b).

It is the MMS policy to follow the intent of Section 104(b) of the Act which states that "Deposits of any royalty funds derived from the production of oil or gas from, or allocated to, Indian lands shall be made by the Secretary to the appropriate Indian account at the earliest practicable date after such funds are received by the Secretary but in no case later than the last business day of the month in which such funds are received." Section 219.103 reflects this change.

Section 219.104 Explanation of payments to States and Indian tribes. One commenter stated that MMS should provide Indian tribes the same information that MMS is providing to the BIA. That commenter also recommended that the language used should track with that of Section 219.104(a) by reading as follows:

"Explanation of payment reports shall be provided to BIA on behalf of tribes and individual Indian allottees, and directly to tribes, not later than the last business day of the month in which MMS disburses the Indian share of the royalties and related monies."

Where the BIA has a direct trust responsibility for a tribe or allottee, MMS provides data to BIA to support mineral leasing payments. To duplicate this information would create an unnecessary burden on MMS and in some instances on royalty payors. The information is readily available to tribes and allottees from BIA.

Part 228—Cooperative Activities With States and Indian Tribes

Section 228.5 Delegation of authority. One commenter felt that these sections are ambiguous and might permit States or Indian tribes to assess penalties directly instead of MMS.

MMS does not intend to delegate penalty assessment authority to States or Indian tribes.

One commenter expressed concern about the problem of dual or even triple oversight of lessees' activities. The commenter recommended MMS exercise ultimate authority when the overseeing entities are in disagreement.

MMS agrees with this comment and has ultimate responsibility for minimizing duplication. However, MMS does not have responsibility for audits being performed by the Office of the Inspector General.

Section 228.6 Definitions. One commenter stated that specific language should be added to the definition of the word "audit" to clarify the ability of a State to extend the audit process to review the accounting transaction involved in the recording and distribution of Federal mineral royalties, bonuses, and rentals.

MMS disagrees. MMS is subject to audit only by the properly authorized entities established by Congress and the Executive Branch.

One commenter stated that the reconciliation of leases prior to conversion to AFS should be closed for leases previously reported to Los Angeles, Metairie, and Tulsa. Another commenter stated that audits should not be applied retroactively.

MMS agrees in part with the first comment but disagrees with the second. Account reconciliations for accounts formerly managed by Los Angeles, Metairie, and Tulsa have been completed and all accounts reconciled. These leases as well as all other Federal leases will continue to be subject to audit for a 6-year period for other potential audit issues, other than account balances, that may be found.

Section 228.100 Entering into an agreement. Two commenters expressed concern that audits conducted by States or Indian tribes would not be properly regulated by MMS.

MMS believes that adequate controls do exist and that MMS will provide the required oversight. Section 228.104 of the proposed rule is now contained at § 228.100 of the final rule.

Section 228.101 Terms of agreement. This section which was § 228.100 of the proposed rule is now at § 228.101 in the final rule.

Three commenters discussed paragraph (d): One commenter stated that any in-progress audit activity should be completed prior to termination by MMS of a cooperative agreement in order to avoid duplication of effort later.

MMS would endeavor to follow this advice whenever possible but cannot guarantee that it can be accomplished in every situation. Care will be taken to avoid duplication of effort.

One commenter stated that there should be provisions for "emergency" termination of cooperative agreements by MMS in a timeframe shorter than 120 days.

MMS feels that any such provisions would be unfair to States or Indian tribes insofar as MMS had previously determined that they were eligible and able to conduct audits and investigations under the cooperative agreement.

One commenter recommended changing the word "the" in the proposed rule to "any" in the last sentence of paragraph (d) of § 228.101. The commenter suggested this change to provide for the instance where no submission has been made.

MMS agrees and has made the suggested change in paragraph (d) of § 228.101 of the final rule.

Section 228.102 Establishment of standards. This section which was § 228.101 of the proposed rule is now at § 228.102 in the final rule.

Two commenters suggested that a sentence be added to read: "Where an auditor is permanently assigned to a lessee/payor, contact by the State and Indian tribal auditors with the lessee/

payor shall be through the auditor in residence."

MMS agrees. The sentence is added. One commentor stated support for the provision that State and Indian tribe standards must not be more stringent than those of MMS.

MMS agrees. All audit work performed under cooperative audits will follow MMS established standards.

One commentor suggested that draft standards established under this section be published in the *Federal Register* for public comment.

MMS intends to publish the standards for public comment.

Section 228.103 Maintenance of records. This section, which was § 228.102 of the proposed rule, is now at § 228.103 final rule.

One commentor contends that State requirements for recordkeeping must not be more stringent than MMS requirements.

MMS requirements will cover all cooperative audit activities.

Section 228.104 Availability of information. This section, which was § 228.103 of the proposed rule, is now at § 228.104 in the final rule.

Two commentors endorsed the wording of this section. Another commentor suggested it be reworded to more closely conform to the wording of the Act since there is potential for abuse.

The MMS has not changed the wording.

Section 228.105 Funding of cooperative agreements. One commentor requested that MMS put words in this section binding MMS to request budget appropriations for funding cooperative agreements. Another commentor believed that such funding could significantly increase the costs of Government management and that such increases should be avoided. A third commentor believed that the funding limitation of 50 percent should be eliminated in favor of 100 percent Federal funding.

MMS disagrees with these three comments. The Act does not specifically establish a level of funding, and MMS feels that 50 percent of the total cost of a cooperative program supports the cooperative nature of activity, particularly since States share in the revenue derived from the audit. MMS cannot be bound to seek funding for activity as part of the annual budget process. MMS must follow the guidelines established by OMB and the Department in seeking appropriations, a process that cannot be interdicted by regulation.

Section 228.107 Eligible cost of activities. One commentor felt that

under paragraph (a) the cost of services or activities that cannot be directly related to the support of the cooperative agreement should not be eligible for funding for Indian tribes.

The rule section already indicates this; no change is required.

Part 229—Delegation to States

Subpart A—General Provisions

One commentor submitted a number of general statements expressing concerns that the States may perform unnecessary, repetitious, and costly audits, unless properly monitored by MMS.

The MMS will regularly monitor the audit work being conducted by a State under the delegation of authority and, if it is found that a State has been abusing its authority, that authority can be revoked by MMS.

Section 229.100 Petition for delegation. Two commentors stated the regulation should use the term "Indian tribe and allottee" rather than "Indian tribe or allottee," since any delegation of authority by the Federal Government over Indian lands must have the approval of the tribal governing body. MMS agrees. This change has been implemented.

Section 229.103 Terms of delegation. One commentor stated that renewals of the delegations of authority must be the subject of public review.

MMS agrees. A renewal of a delegation would require the same public comment period and hearing process as that which accompanied an original petition for delegation of authority.

Section 229.105 Recordkeeping requirements. One commentor stated that recordkeeping requirements under the delegation to the State must be no more extensive than when these matters are directly under MMS jurisdiction.

All directives affecting recordkeeping during a State-conducted audit will be in compliance with MMS regulations and standards.

Section 229.106 Standards for carrying out delegated authority. One commentor stated that the MMS prescribed standards used for a State to carry out a delegation of authority must be made the subject of public review.

The standards will be published in a rulemaking for public review and comment before authority is delegated to a State.

Section 229.107 Reports from States. One commentor recommended that paragraph (b) of the proposed rule be deleted because it was the intention of Congress to have the Federal jurisdiction, and not the State, handle enforcement actions.

MMS agrees. Enforcement actions are not delegated. Paragraph (b) as proposed has been eliminated.

Section 229.109 Reimbursement for costs incurred by a State under the delegation of authority. Two commentors recommended that this rule include language binding the MMS to request appropriations specifically designated for delegations of authority.

MMS disagrees. See comments made on §§ 228.105 and 228.106.

Section 229.120 Withdrawal of Indian lands from delegated authority. One commentor stated that if an Indian tribe or Indian allottee withdraws its delegation of authority to a State, it may cause an undue burden on industry and subsequently cause a duplication of audit work.

MMS will utilize audit workpapers and reports submitted to the date of termination and will make every effort to avoid duplication.

Part 241—Civil Penalties

Many comments were received on this proposed civil penalties part which suggested that MMS should revise the proposed language for consistency and clarity. More detail was suggested regarding the establishment of penalty amounts and the procedures for creation of a record. Although the penalty provisions are extensively prescribed by Section 109 of the Act, MMS has made revisions to the proposed regulations to provide more detail on notice procedures, penalty assessments, and hearings.

Subpart A—General Provisions

Section 241.20 Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982. Section 241.20 was originally proposed as § 241.50 and remains unchanged except for the elimination of suspension of operations as a possible penalty. Upon reevaluation it was concluded that such an action would be detrimental not only to the lessee/operator but also to the government. This section authorizes the MMS to impose civil penalties for royalty management violations under the authority of the MLA, OCSLA, and other mineral leasing authorities. These authorities existed prior to the Act and continue to exist as an alternative and additional means of enforcement to the civil and criminal penalties in the Act. Assessment of penalties under these other statutes are subject to less rigorous procedural requirements than those prescribed by the Act. The designation of this section as § 241.20 of Subpart A should clarify that these

penalties are not penalties prescribed by the Act. It is not MMS's intention, in most cases, to apply penalties authorized under this section concurrently or in addition to penalties authorized in succeeding sections of this part. These penalties could be used as an alternative or in situations where FOGMA penalties under § 241.51 do not apply by law, e.g., solid minerals.

Subpart B—Oil and Gas, General

Section 241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.

Section 241.51 provides regulations implementing the more complicated civil penalty provisions of the Act. Pursuant to subsection (a), when MMS believes that any person has committed a violation, it will issue a notice of noncompliance specifying the nature of the violation and how it should be corrected. This is the notice required by Section 109(a) of the Act. Service of the notice will be by personal service or registered mail and will be deemed to occur when received or 5 days after mailing, whichever is earlier. As specified in Section 109 of the Act, unless the violation is corrected within 20 days (or such longer period as specified in the notice) from the date of service, the person is liable for a penalty of up to \$500 per day for each violation, dating from the date the notice was served. If the violation is not corrected within 40 days, the liability increases to a maximum of \$5,000 per day per violation, dating from the date the notice was served.

The regulations provide in paragraph (a)(3)(iii) that if the person served with the notice does not correct the violation within 20 days (or as specified in the notice), he may request a hearing on the record, as provided by the Act, by filing a request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior. However, if the violation is corrected within the prescribed period, under the regulations no penalties may be assessed under Section 109(a) of the Act. Consequently, no hearing on the record need be provided. Accordingly, if the violation is corrected, the only available appeal will be to the MMS Director and then the Board of Land Appeals, in accordance with the appeals procedures in 30 CFR Part 243.

Subsection (b) of new § 241.51 provides for issuance of a notice of noncompliance for intentional violations. In such circumstances, penalties are increased to \$10,000 per day and no period for correction need be provided before liability begins. Pursuant to the Act, penalties accrue

from the date the violation began, not the date the notice is served.

If the person who received a notice of noncompliance does not correct the violation within the prescribed period, or if a notice of noncompliance is issued for an intentional violation, then the person is liable for penalties. Pursuant to § 241.51(c), MMS will issue a penalty notice setting forth the amount of penalty applicable for each violation. By way of illustration, if the maximum penalty for a violation is \$500 for the first 20 days, and later increases to \$5,000 retroactive to the first day of the notice of noncompliance for failure to correct the violation within 40 days, MMS may elect in the penalty notice to set the actual penalty for the particular violation below those maximums. MMS will determine the applicable penalty by taking into account the severity of the particular violation and violator's noncompliance history. Persons who consistently violate the applicable rules will receive higher penalties.

Subsection (d) of § 241.51 has been added to make it clear that any penalties assessed under § 241.51 will be in addition to interest which is owed on any nonpayment or underpayment of royalties and in addition to assessments for late or incorrect reporting. The interest and late or incorrect reporting provisions are in Part 218 which is also incorporated in this rulemaking.

If a person served with a notice of noncompliance requests a hearing, subsection (e) provides that liability for penalties will continue to accrue on a daily basis until the person corrects the violation set forth in the notice of noncompliance. For example, if the violations were nonpayment of royalties on an oil and gas lease, penalties would continue to accrue until the royalties in dispute were received by MMS.

Subsection (e) provides further that the Director, MMS, may in certain circumstances suspend the requirement to correct the violations during appeal and accept a bond in lieu of payment. Such a suspension is at the discretion of the Director and will be granted only if the Director determines that suspension will not be detrimental to the lessor and if the lessee submits and MMS accepts a suitable bond. The bond amount must be sufficient to cover the underlying violations, penalties accrued up to the date the bond is accepted, and interest.

MMS may require the bond to be increased when there are increases in the amount of the underlying obligation, penalties or interest. In most instances, MMS will not grant suspensions since the effectiveness of MMS's royalty collection efforts is premised on

compliance with its orders during appeal. See also the discussion of § 243.2 in a later section of this preamble.

Subsection (f) sets forth the applicable procedures when a hearing on the record is requested. The hearing will be conducted by an Administrative Law Judge (ALJ) of DOI's Office of Hearings and Appeals, who will issue a decision in accordance with the evidence presented and applicable law. The ALJ's decision may be appealed to the Interior Board of Land Appeals. If the ALJ's decision is not appealed, it becomes a final order. If there is an appeal to the Board, its decision becomes a final order which may be appealed to the District Courts in accordance with subsection (i).

Subsection (g) applies to situations where the person who has received a notice of noncompliance has not paid pursuant to the MMS order which initiated the notice and has not requested a hearing on the record. Pursuant to section 109(e) of the Act, that person has been "given the opportunity for a hearing on the record" and penalties may be assessed. The assessment will be in the form of an order issued by the MMS Director, with the applicable penalties determined in accordance with the penalty notice previously issued. The penalty assessment will be a final order and, pursuant to the terms of the Act, no further appeal is available since a hearing was not requested when the opportunity was provided. Accordingly, failure to pay the assessment will subject the person to collection action pursuant to Section 109(k) of the Act and subsection (j) of § 241.51 and any other remedies MMS may have available.

Subsection (h) authorizes the Secretary to compromise or reduce civil penalties, as provided in Section 109(g) of the Act.

Section 241.51(i) and (j) set forth the procedures for judicial review and court enforced collection of assessments. The regulations follow the detailed provisions of Section 109(j) and (k) of the Act.

Section 241.52 implements Section 110 of the Act. Any person who commits an act for which a penalty is authorized by Section 109(d) of the Act also will be subject to criminal penalties.

Part 243—Appeals-Royalty Management Program

Section 243.1 Procedures. This section provides that most decisions and orders of the Royalty Management Program may be appealed in accord

with the appeal procedures in 30 CFR Part 290. The exception is appeals from FOGMA penalty assessment orders which must be appealed with the specific appeal procedures of Part 241.

Section 243.2 Effectiveness of Orders or Decision Pending Appeals. This section continues MMS's long-standing practice that compliance with its decisions and orders is not suspended by reason of an appeal being taken. The MMS Director (or the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved) may grant a suspension of an order pending appeal, when, in his or her discretion, it is determined that suspension will not be detrimental to the lessor and the recipient of the order has provided an acceptable bond or other surety adequate to protect MMS. In almost all instances MMS will not grant suspensions, since the effectiveness of MMS's royalty collection efforts is premised on compliance with orders during appeal. Only in the unusual circumstance will MMS grant suspension pending the appeal process.

This provision is being made retroactive to orders and decisions issued by the Royalty Management Program after August 12, 1983. The retroactive effectiveness is necessary for consistent application of MMS's procedure because on that date 30 CFR Section 221.66, the predecessor to new Section 243.2, was unintentionally removed from MMS's regulations along with other rules which were removed by virtue of the transfer of MMS's onshore operational program to the Bureau of Land Management (48 FR 36582, August 12, 1983).

Executive Order 12291

The Department has determined that this rule is not a major action and does not require the preparation of a regulatory impact analysis under Executive Order 12291.

Cooperative agreements and delegations to States have minimal economic effect, as this arrangement primarily addresses who will perform the functions, i.e. the Secretary, State, or Indian tribe.

The cost to the Government in light of the additional mineral revenues generated as a result of audit recoveries has, based on experience, been proven to be cost beneficial and is expected to be so under the provisions of these regulations.

Regulatory Flexibility Act

The Department has determined that this rule will not have a significant economic effect on a substantial number of small entities and does not, therefore,

require a small entity flexibility analysis under the Regulatory Flexibility Act. Although the rule establishes certain penalties, if the lessee operator or royalty payor complies with the rules, there will be no penalties. The cost or economic effect of this regulation is solely in the hands of the lessee.

Paperwork Reduction Act of 1980

Although information collection requirements are noted in several parts of this rule, it is done so only for reaffirmation. The purpose of the Act is stated to be, in part, to clarify, reaffirm, expand, and to define the responsibilities and obligations of lessors, operators, and other persons involved in transportation or sale of oil and gas from the Federal and Indian lands and the Outer Continental Shelf.

The information collection requirements noted in this rule have been previously authorized or there is no need for authorization as discussed by part/section as follows:

Section 210.51. The information collection requirements contained in this section has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1010-0033.

Section 210.52. The information collection requirement contained in § 210.52 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010-0022.

Sections 212.50 and 212.51. In the preamble to the proposed rule, these information collection requirements were incorrectly included as being approved under OMB clearance number 1010-0033. The information collection requirements for §§ 212.50 and 212.51 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1010-0022 and 1010-0040.

Sections 228.10 and 229.10. The information collection requirements contained in Parts 228 and 229 will involve fewer than ten (10) respondents annually and consequently do not require approval by the Office of Management and Budget under U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. No detailed statement in accord with Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subjects

30 CFR Part 210

Government contracts, Reporting requirements, Mineral royalties, Continental shelf, Public lands-mineral resources, Geothermal energy.

30 CFR Part 212

Coal, Reporting requirements, Government contracts, Mineral royalties, Public lands-mineral resources.

30 CFR Part 217

Coal, Government contracts, Mineral royalties, Reporting requirements.

30 CFR Part 218

Government contracts, Mineral royalties, Continental shelf, Public lands-mineral resources, Coal, Geothermal energy.

30 CFR Part 219

Mineral royalties, Intergovernmental relations, Penalties.

30 CFR Part 228

Freedom of information, Intergovernmental relations, Investigations, Mineral royalties.

30 CFR Part 229

Intergovernmental relations, Investigations, Mineral royalties.

30 CFR Part 241

Government contracts, Reporting requirements.

30 CFR Part 243

Appeals—Royalty Management Program.

Title 30, Chapter II, of the Code of Federal Regulations is amended as set forth below.

Dated: September 14, 1984.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

PART 210—FORMS AND REPORTS

1. The authority for Part 210 reads as follows:

Authority: The Act of February 25, 1920 (30 U.S.C. 181, *et seq.*), as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919

(25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

2. 30 CFR Part 210, Subpart A, § 210.10 is amended by revising the filing date for Form MMS-2014, as given in the "table of forms" from " * * *—due by the end of second month following production month * * * " to " * * *—due by the end of first month following production month * * * ".

3. 30 CFR Part 210, Subpart B, is amended by adding §§ 210.50, 210.51, 210.52, and 210.53, to read as follows:

Subpart B—Oil and Gas, General

- Sec.
210.50 Required recordkeeping.
210.51 Payor information form.
210.52 Report of sales and royalty remittance.
210.53 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).

Subpart B—Oil and Gas, General

§ 210.50 Required recordkeeping.

Information required by the MMS shall be filed using the forms prescribed in this Subpart, which are available from MMS. Records may be maintained in microfilm, microfiche, or other recorded media that is easily reproducible and readable.

§ 210.51 Payor information form.

The Payor Information Form (Form MMS-4025) must be filed for each Federal or Indian lease on which royalties are paid. Where specifically determined by MMS, Form MMS-4025 is also required for all Federal leases on which rent is due. The completed form must be filed by the party who is making the rent or royalty payment (payor) for each revenue source. Form MMS-4025 must be filed no later than 30 days after issuance of a new lease or a modification to an existing lease which changes the paying responsibility on the lease.

§ 210.52 Report of sales and royalty remittance.

A completed Report of Sales and Royalty Remittance (Form MMS-2014)

must accompany all payments to MMS for royalties and, where specified, for rents on nonproducing leases. Payors who submit Form MMS-2014 data on magnetic tape will not be required to submit the form itself. Completed Form MMS-2014's (or magnetic tape) for royalty payments including those covering payments by electronic funds transfer, are due by the end of the month following the production month. Where applicable, completed Form MMS-2014's for rental payments are due no later than the anniversary date of the lease. This section does not prohibit payors from making early payments voluntarily.

§ 210.53 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

PART 212—RECORDS AND FILES MAINTENANCE

4. 30 CFR Part 212, Subpart B, is amended by adding §§ 212.50, 212.51, and 212.52, to read as follows:

Subpart B—Oil and Gas, General

- Sec.
212.50 Required recordkeeping and reports.
212.51 Records and files maintenance.
212.52 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).

Subpart B—Oil and Gas, General

§ 212.50 Required recordkeeping and reports.

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.

§ 212.51 Records and files maintenance.

(a) *Records.* 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 include 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) *Period for keeping records.*

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.

(c) *Inspection of records.* The lessee, operator, revenue payor, or other person required to keep shall be responsible for making the records available for inspection. Records shall be provided at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be given a reasonable period of time to produce historical records.

§ 212.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

PART 217—AUDITS AND INSPECTIONS

5. 30 CFR Part 217 Subpart B, is amended by adding § 217.50 and § 217.51 and 217.52, to read as follows:

Subpart B—Oil and Gas, General

- Sec.
217.50 Audits of records.
217.51 Lease account reconciliation.
217.52 Definition.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).

Subpart B—Oil and Gas, General

§ 217.50 Audits of records.

The Secretary, or his/her authorized representative, shall initiate and conduct audits relating to the scope,

nature and extent of compliance by lessees, operators, revenue payors, and other persons with rental, royalty, net profit share and other payment requirements on a Federal or Indian oil and gas lease. Audits also will relate to compliance with applicable regulations and orders. All audits will be conducted in accordance with the notice and other requirements of 30 U.S.C. 1717.

§ 217.51 Lease account reconciliation.

Specific lease account reconciliations shall be performed with priority being given to reconciling those lease accounts specifically identified by a State or Indian tribe as having significant potential for underpayment.

§ 217.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

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

6. The authority for Part 218 reads as follows:

Authority: The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.) as amended; the National Environmental Policy Act of 1969 (42 U.S.C., 4321, et seq.) as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.) as amended; the Geothermal Act of 1970 (30 U.S.C. 1001, et seq.) as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3067, as amended.

7. 30 CFR Part 218, Subpart B, is amended by adding §§ 218.50, 218.51, 218.52, 218.53, 218.54, 218.55, 218.56, and 218.57, to read as follows:

Subpart B—Oil and Gas, General

Sec.

- 218.50 Timing of payment.
- 218.51 Method of payment.
- 218.52 Designated payor.
- 218.53 Division of interests. [Reserved]
- 218.54 Late payments and underpayments.
- 218.55 Interest payments to Indians.

Sec.

- 218.56 Assessments for incorrect or late reports and failure to report.
- 218.57 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).

Subpart B—Oil and Gas, General

§ 218.50 Timing of payment.

(a) Royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday. In such cases, payments are due on the first business day of the succeeding month. Rental payments are due as specified by the lease terms.

(b) Payments made on a Bill for Collection (Form DI-1040b) are due as specified by the Bill. Bills for Collection will be issued and payable as final collection actions.

(c) All payments to MMS are due as specified and are not deferred or suspended by reason of an appeal having been filed unless such deferral or suspension is approved in writing by an authorized MMS official.

§ 218.51 Method of payment.

(a) *Payment of royalties.* (1) All payors whose aggregated royalty liability to the MMS on the payment due date totals \$50,000 or more, must make payment by electronic funds transfer (EFT), utilizing the Federal Reserve Communications System link to the Treasury Financial Communications System, unless otherwise directed by the Secretary. Early payment by other than EFT of a portion of the aggregated royalty liability to avoid remittance by EFT on the payment due date is not permitted. Such early payments are permitted regardless of amount but must be remitted by EFT. Payments to MMS by EFT shall begin only after the payor has received instructions from the MMS Royalty Management Accounting Center (RMAC) in Lakewood, Colorado.

(b) Each payor, whose aggregated remittance for royalties on payment due date is less than \$50,000, must use one of the following payment instruments:

- (1) Federal Reserve check.
- (2) Commercial check.
- (3) Money Order.
- (4) Bank Draft.
- (5) Cashier's check.
- (6) Certified check.
- (7) Electronic Funds Transfer.

(c) All payment instruments except EFT should be inscribed payable to "Department of the Interior—MMS."

(d) *Payment of rentals.* (1) Payment of rentals to MMS—RMAC (other than the first year rentals) must be made by one

of the methods shown in paragraph (b) of this section. First year rentals from offshore leases are paid in accordance with § 218.155.

(e) *Where to pay.* (1) The mailing address for Form MMS-2014 and the applicable payment is: Royalty Management Program, Minerals Management Service P.O. Box 5810 T.A. Denver, Colorado 80217. Use P.O. Box 5640 T.A. with the above address to send payments for Federal non-producing leases not required to be reported on the Form MMS-2014 report.

(2) Payments received after 4:00 p.m. mountain time, are considered next day receipts.

(f) *General payment information.* (1) Payments for offshore and onshore Federal leases shall be segregated from payments for Indian leases. All payments shall be made by one of the methods shown in paragraph (b) of this section. For payments made by EFT, the deposit message shall include information as prescribed by the RMAC.

(2) For Indian payments by check, the following instructions are applicable:

(i) For Indian allotted leases, payments shall be aggregated and identified on a single check for each respective BIA agency/area office having jurisdiction over the lease(s) for which the payment is made.

(ii) For Indian tribal leases, payments shall be aggregated and identified for each respective Indian tribe for whom the royalty is owed.

(iii) When payments are made on an aggregated basis (single check), the payment identification required in paragraphs (f)(2) (i) and (ii) of this section shall be provided in a format to be specified by MMS.

§ 218.52 Designated payor.

(a) When the lessee or revenue payor assigns any paying responsibility to any other entity, MMS must be notified within 30 days of the assignment.

(b) MMS may, by order, designate a lessee or revenue payor on a lease as the single payor for all revenues due and owing from that lease.

§ 218.53 Division of interests. [Reserved]

§ 218.54 Late payments and underpayments.

(a) An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due.

(b) The interest charge on late payments and underpayments shall be at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(c) Interest will be charged only on the amount of the payment not received.

Interest will be charged only for the number of days the payment is late.

(d) A portion of the interest collected will be paid to a State where the State shares in mineral revenues from Federal leases.

§ 218.55 Interest payments to Indians.

(a) All interest collected from unpaid or underpayments on Indian tribal or allotted leases will be paid to the tribe or allottee.

(b) Any disbursement of Indian mineral revenues not made by the due date as required in § 219.103 of this chapter shall accrue interest.

(c) Interest shall be computed at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(d) The interest shall be payable only for the number of days the disbursement is late.

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

(a) An assessment of \$10.00 per day may be charged for each report not received by MMS by the designated due date.

(b) An assessment of \$10.00 per day may be charged for each report received by the designated due date but which is incorrectly completed.

(c) For purposes of reports required for the Auditing and Financial System (AFS), a report is defined as each line item on a Form MMS-2014. The line item consists of the various information, such as Product Code or Selling Arrangement Code, relating to each Accounting Identification Number (AID).

(d) [Reserved.]

(e) An assessment under this section shall not be shared with a State, Indian tribe, or Indian allottee.

§ 218.57 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

§ 218.102 [Amended]

8. 30 CFR Part 218, Subpart C, is amended by removing paragraphs (c) and (d) of § 218.102 and by redesignating paragraph (e) as paragraph (c) of that section.

9. 30 CFR Part 218, Subpart C, is amended by adding § 218.103, 218.104, and 218.105, to read as follows:

Subpart C—Oil and Gas, Onshore

§ 218.103 Payments to States.

(a) Any amount that is payable by MMS to a State but is not paid on the due date, as specified in § 219.100 of this chapter, or that is held in a suspense account pending resolution of a dispute as specified in § 219.101 of this chapter,

shall accrue interest payable to the State.

(b) Interest shall be computed at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(c) Interest shall be computed only for the number of days the disbursement is late. In the case of suspended amounts subject to interest, it shall be computed beginning with the calendar day following the day that the monies normally would have been paid to the State had they not been in suspense.

§ 218.104 Exemption of States from certain interest and penalties.

(a) States are exempt from being assessed for any interest or penalties found to be due against the Department of the Interior for failure to comply with the Emergency Petroleum Allocation Act of 1973, as amended, or any regulation issued by the Secretary of Energy thereunder concerning the certification or processing of crude oil taken in-kind as royalty by the Secretary.

(b) Any State shall be assessed for its share of any overcharge resulting from a determination that DOI failed to comply with the Emergency Petroleum Allocation Act of 1973, as amended. Each State's share shall be assessed against monies owed to the State. Such assessment shall be first against monies owed to such State as a result of royalty audits prior to January 12, 1983, the enactment date of the Federal Oil and Gas Royalty Management Act of 1982, then against other monies owed. The State shall be liable for any balance.

(c) A State's liability for repayment of an overcharge under this section shall exist for any amounts resulting from a judgment in a civil suit or as the result of settlement of a claim through a negotiated agreement. State liability would be offset against future mineral revenue distributions to the State.

§ 218.105 Definitions.

Terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

§ 218.150 [Amended]

10. 30 CFR Part 218, Subpart D, is amended by removing paragraphs (d) and (e) of § 218.150, and by redesignating paragraph (f) as paragraph (d) of that section.

11. 30 CFR Part 219 is amended by adding Subparts A, B, C, and §§ 219.100, 219.101, 219.102, 219.103, 219.104, and 219.105, to read as follows:

PART 219—DISTRIBUTION AND DISBURSEMENT OF ROYALTIES, RENTALS, AND BONUSES

Subpart A—General Provision [Reserved]

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

Sec.

219.100 Timing of payment to States.

219.101 Receipts subject to an interest charge.

219.102 Method of payment.

219.103 Payments to Indian accounts.

219.104 Explanation of payments to States and Indian tribes.

219.105 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart A—General Provisions—[Reserved]

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

§ 219.100 Timing of payment to States.

A State's share of mineral leasing revenues shall be paid to the State not later than the last business day of the month in which the United States Treasury issues a warrant authorizing the disbursement, except for any portion of such revenues which is under challenge and placed in a suspense account pending resolution of a dispute.

§ 219.101 Receipts subject to an interest charge.

(a) Subject to the availability of appropriations, the Minerals Management Service (MMS) shall pay the State its proportionate share of any interest charge for royalty and related monies that are placed in a suspense account pending resolution of matters which will allow distribution and disbursement. Such monies not disbursed by the last business day of the month following receipt by MMS shall accrue interest until paid.

(b) Upon resolution, the suspended monies found due in paragraph (a) of this section, plus interest, shall be disbursed to the State under the provisions of § 219.100.

(c) Paragraph (a) of this section shall apply to revenues which cannot be disbursed to the State because the payor/lessee provided incorrect, inadequate, or incomplete information to MMS which prevented MMS from properly identifying the payment to the proper recipient.

§ 219.102 Method of payment.

The MMS shall disburse monies to a State either by Treasury check or by Electronic Funds Transfer (EFT). Should the State prefer to receive its payment by EFT, it should request this payment method in writing to the Minerals Management Service, P.O. Box 5760, Denver, Colorado 80217.

§ 219.103 Payments to Indian accounts.

Mineral revenues received from Indian leases shall be transferred to the appropriate Indian accounts managed by the Bureau of Indian Affairs (BIA) for allotted and tribal revenues. These accounts are specifically designated Treasury accounts. Revenues shall be transferred to the Indian accounts at the earliest practicable date after such funds are received, but in no case later than the last business day of the month in which revenues are received by the MMS.

§ 219.104 Explanation of payments to States and Indian tribes.

(a) Payments to States and BIA on behalf of Indian tribes or Indian allottees discussed in this part shall be described in *Explanation of Payment* reports prepared by the MMS. These reports will be at the lease level and shall include a description of the type of payment being made, the period covered by the payment, the source of the payment, sales amounts upon which the payment is based, the royalty rate, and the unit value. Should any State or Indian tribe desire additional information pertaining to mineral revenue payments, the State or tribe may request this information from the MMS.

(b) The report shall be provided to: (1) States not later than the 10th day of the month following the month in which MMS disburses the State's share of royalties and related monies; (2) the BIA on behalf of tribes and Indian allottees not later than the 10th day of the month following the month the funds are disbursed by MMS.

(c) Revenues that cannot be distributed to States, tribes, or Indian allottees because the payor/lessee provided incorrect, inadequate, or incomplete information, preventing MMS from properly identifying the payment to the proper recipient, shall not be included in the reports until the problem is resolved.

§ 219.105 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

12. 30 CFR Part 228 is amended by adding Subparts A, B, C, and §§ 228.1, 228.2, 228.4, 228.5, 228.6, 228.10, 228.100,

228.101, 228.102, 228.103, 228.104, 228.105, 228.107, and 228.108, to read as follows:

PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES**Subpart A—General Provisions****Sec.**

228.1 Purpose.

228.2 Policy.

228.4 Authority.

228.5 Delegation of authority.

228.6 Definitions.

228.10 Information collection requirements.

Subpart B—Oil and Gas, General [Reserved]**Subpart C—Oil and Gas, Onshore**

228.100 Entering into an agreement.

228.101 Terms of agreement.

228.102 Establishment of standards.

228.103 Maintenance of records.

228.104 Availability of information.

228.105 Funding of cooperative agreements.

228.107 Eligible cost of activities.

228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.

Authority: Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart A—General Provisions**§ 228.1 Purpose.**

It is the purpose of cooperative agreements to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system as indicated at 30 U.S.C. 1701.

§ 228.2 Policy.

It shall be the policy of DOI to enter into cooperative agreements with States and Indian tribes to carry out audits and related investigations and enforcement actions whenever a State or tribe initiates a request to enter into an agreement and a finding is made that a State or tribe has the ability to carry out cooperative activities in a timely and efficient manner.

§ 228.4 Authority.

The Secretary of the Interior is authorized to enter into cooperative agreements with States and Indian tribes (30 U.S.C. 1732) to share oil or gas royalty management information, and to carry out auditing and related investigation or enforcement activities in cooperation with the Secretary.

§ 228.5 Delegation of authority.

(a) Authority to enter into cooperative agreements to carry out audit and related investigation and enforcement activities with State and tribal

governments has been delegated to the Director of the Minerals Management Service (MMS).

(b) Authority to enter into cooperative agreements with State and tribal governments to carry out inspection and related investigation and enforcement activities has been delegated to the Director of the Bureau of Land Management (BLM) and is not covered by this part.

(c) The entry into a cooperative agreement with either MMS or BLM will not affect the ability of a State or Indian tribe to choose to enter into such an agreement with the other agency. A State may enter into a delegation agreement (30 U.S.C. 1735) with MMS to perform certain functions without affecting its ability to enter into a cooperative agreement with either MMS or BLM, or both, to cooperate in the performance of those functions which are not delegated in this part.

§ 228.6 Definitions.

For the purposes of this part, terms shall have the same meaning as in 30 U.S.C. 1702. In addition, the following definition shall apply:

Audit means an examination of the financial accounting and lease related records of the lessee and other interest holders, who by lease or contract pay royalties or are obligated to pay royalties, rents, bonuses or other payments on Federal or Indian leases. An examination is to be conducted in accordance with generally accepted audit standards as adopted by the American Institute of Certified Public Accountants. Activities to be examined which are considered to be an audit function include reconciliation of lease accounts under the Royalty Accounting System; records of lease activities related to Federal leases located within the boundaries of the State entering into a cooperative agreement; records of lease activities related to leases located on Indian lands, and the review and resolution of exceptions processed by the Auditing and Financial System and the Production Accounting and Auditing System, the official accounting systems for royalty reporters and payors maintained by the MMS.

§ 228.10 Information collection requirements.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than ten respondents annually.

**Subpart B—Oil and Gas, General
[Reserved]****Subpart C—Oil and Gas, Onshore****§ 228.100 Entering into an agreement.**

(a) A State or Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from the governor, tribal chairman, or other appropriate official with delegation authority, to the Director of MMS.

(b) The request for an agreement shall be in a format prescribed by MMS and should include at a minimum the following information:

- (1) Type of eligible activities to be undertaken.
- (2) Proposed term of the agreement.
- (3) Evidence that the State or Indian tribe meets, or can meet by the time the agreement is in effect, the standards established by the Secretary for the types of activities to be conducted under the terms of the agreement.
- (4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms of the cooperative agreement for activities to be conducted on tribal or allotted land.

§ 228.101 Terms of agreement.

(a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable or additional consecutive 3-year periods upon request of the State or Indian tribe which is a party to the agreement.

(b) An agreement may be terminated at any time by mutual agreement and upon any terms and conditions as agreed upon by the parties.

(c) A State or Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate.

(d) The MMS may commence termination of an agreement by giving a 120-day written notice of intent to terminate. MMS shall provide the State or Indian tribe with the reasons for the proposed termination in writing if the termination is proposed because of alleged deficiencies by the State or Indian tribe in carrying out the provisions of the agreement. The State or Indian tribe will be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies. No final action on termination shall be taken until any submission of the State or Indian tribe provided within the above prescribed 60

days has been reviewed by MMS for content or merit.

(e) Termination of a cooperative agreement shall not bar a later request by a State or Indian tribe to enter into a subsequent cooperative agreement.

§ 228.102 Establishment of standards.

The MMS, after consultation with States and Indian tribes, shall establish standards for carrying out the activities under the provisions of this part. The standards will be incorporated into the agreement and shall be no more stringent than those applicable to similar activities of the MMS. The States and Indian tribes shall coordinate their planned auditing activities with MMS. Where an MMS audit team is permanently assigned to a lessee/payor, contact by State and Indian tribal auditors with the lessee/payor shall be through the MMS auditor in residence.

§ 228.103 Maintenance of records.

The State or Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup materials for a period specified by MMS. All records and support materials must be available for inspection and review by appropriate personnel of DOI including the Office of the Inspector General.

§ 228.104 Availability of information.

(a) Under the provisions of this part, information necessary to carry out the activities authorized under the terms of a cooperative agreement will be provided by DOI to the States and Indian tribes entering into such agreements. The information will consist of data provided from all relevant sources on a lease level basis for leases located within the boundaries of the State or Indian tribe which has entered into the agreement. This information will include any records or data held by the lessee or other person that have not been submitted to MMS, but that affect Federal lease interests and could be required to be submitted under the lease terms or Federal regulations.

(b) None of the provisions of this subpart should be construed as limiting information already being provided to Indian tribes and allottees regarding their lease interests.

(c) Information will be provided by MMS on a monthly basis and will include data on royalties, rents, and bonuses collected on the lease, volumes produced, sales made, value of products disposed of as a sale and used as a basis for royalty calculation, and other information necessary to allow the State or tribe to carry out its responsibilities under the cooperative agreement.

(d) Proprietary data that is made available to a State or tribe under provisions of 30 U.S.C. 1733 shall be subject to the constraints of 18 U.S.C. 1905. To receive proprietary data, the State or tribe must—

(1) Demonstrate what audit, investigation, or litigation under provisions of 30 U.S.C. 1734 is planned for or underway for which this data is essential;

(2) Demonstrate why this particular data is necessary; and

(3) Agree to safeguard proprietary data as provided.

§ 228.105 Funding of cooperative agreements.

(a) The Federal share of funding eligible activities under a cooperative agreement will be limited to not more than 50 percent share of the cost of eligible activities under the terms of the cooperative agreement. The State or tribe may provide its 50 percent share either in cash or in kind. In kind contributions must be found eligible under the terms of the agreement and are subject to examination and evaluation by the Department.

(b) All cooperative agreements under this part are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

§ 228.107 Eligible cost of activities.

(a) Only costs directly associated with eligible activities undertaken by the State or Indian Tribe under the terms of a cooperative agreement will be eligible for sharing. Costs of services or activities which cannot be directly related to the support of the cooperative agreement will not be eligible for Federal funding or for inclusion in the State's 50 percent share or in the Indian Tribe's share.

(b) Eligible costs are the cost of salaries and benefits associated with technical, support, and clerical personnel engaged in eligible activities; direct cost of travel, rentals, and other normal administrative activities in direct support of the project or projects; basic and specialized training for State and tribal participants; and cost of any contractual services which can be shown to be in direct support of the activities covered by the agreement. Each cooperative agreement shall contain detailed schedules identifying those activities and costs which qualify for funding and the procedures, timing, and mechanics for implementing Federal funding.

§ 228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.

As provided at 30 U.S.C. 1736, 50 percent of any civil penalty collected as a result of activities under a cooperative agreement will be shared with the State or Indian tribe performing the cooperative agreement; however, the amount of the civil penalty shared will be deducted from any Federal funding owed under that cooperative agreement. MMS shall maintain records of civil penalties collected and distributed to the States and tribes involved in cooperative agreements. Each quarterly payment of the Federal share of a cooperative agreement will be reduced by the amount of the civil penalties paid to the State or tribe during the prior quarter.

13. 30 CFR Part 229 is amended by adding Subparts A, B, C, and §§ 229.1, 229.2, 229.4, 229.6, 229.10, 229.100, 229.101, 229.102, 229.103, 229.104, 229.105, 229.106, 229.107, 229.108, 229.109, 229.110, and 229.120 to read as follows:

PART 229—DELEGATION TO STATES

Subpart A—General Provisions

Sec.

- 229.1 Purpose.
- 229.2 Policy.
- 229.4 Authority.
- 229.6 Definitions.
- 229.10 Information collection requirements.

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

- 229.100 Petition for delegation.
- 229.101 Fact-finding and hearings.
- 229.102 Hearings.
- 229.103 Terms of delegation.
- 229.104 Evidence of Indian agreement to delegation.
- 229.105 Recordkeeping requirements.
- 229.106 Standards for carrying out delegated authority.
- 229.107 Reports from States.
- 229.108 Examination of the State activities under delegation.
- 229.109 Reimbursement for costs incurred by a State under the delegation of authority.
- 229.110 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.
- 229.120 Withdrawal of Indian lands from delegated authority.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart A—General Provisions

§ 229.1 Purpose.

The purpose of this part is to promote the effective utilization of the capabilities of the States in developing

and maintaining an efficient and effective Federal royalty management system.

§ 229.2 Policy.

It shall be the policy of the Department of the Interior (DOI) to honor any properly made petition from the Chief Executive or other appropriate official of a State seeking delegation of authority under the provisions of 30 U.S.C. 1735 and to make a delegation to conduct audits and related investigations when the Secretary finds that the provisions of 30 U.S.C. 1735 have been complied with or can be complied with by a State seeking the delegation.

§ 229.4 Authority.

The Secretary of the DOI is authorized under provisions of 30 U.S.C. 1735 to delegate authority to States to conduct audits and related investigations with respect to all Federal lands within a State, and to those Indian lands to which a State has received permission from the respective Indian tribe(s) or allottee(s) to carry out audit activities under a delegation from the Secretary.

§ 229.6 Definitions.

The definitions contained in 30 U.S.C. 1702 and in Part 228 of this chapter apply to the activities carried out under the provisions of this part.

§ 229.10 Information collection requirements.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

Subpart B—Oil and Gas, General—[Reserved]

Subpart C—Oil and Gas, Onshore

§ 229.100 Petition for delegation.

(a) The governor or other authorized official of any State which contains Federal oil and gas leases, or Indian oil and gas leases where the Indian tribe and allottees have given the State an affirmative indication of their desire for the State to undertake certain royalty management-related activities on their lands, may petition the Secretary to assume responsibilities to conduct audits and related investigations of royalty related matters affecting Federal or Indian oil and gas leases within the State.

(b) A State may enter into a delegation of authority under this part without affecting a State's ability to enter into a cooperative agreement under Part 228 of this chapter.

(c) The Secretary shall carry out all factfinding and hearings he may decide are necessary in order to approve or disapprove the petition.

(d) In the event that the Secretary denies the petition, the Secretary must provide the State with the specific reasons for denial of the petition. The State will then have 60 days to either contest or correct specific deficiencies and to reapply for a delegation of authority.

(e) No petition may be acted upon by the Secretary until the regulation requirement of § 229.106 of the subpart is effective.

§ 229.101 Fact-finding and hearings.

(a) Upon receipt of a petition for delegation from a State, the Secretary shall appoint a representative to conduct a hearing or hearings to carry out factfinding and determine the ability of the petitioning State to carry out the delegated responsibilities requested in accordance with the provisions of this part.

(b) The Secretary's representative, after proper notice in the **Federal Register** and other appropriate media within the State, shall hold one or more public hearings to determine whether:

(1) The State has an acceptable plan for carrying out delegated responsibilities and if it is likely that the State will provide adequate resources to achieve the purposes of this Part (30 U.S.C. 1735);

(2) The State has the ability to put in place a process within 60 days of the grant of delegation which will assure the Secretary that the functions to be delegated to the State can be effectively carried out;

(3) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary in accordance with the requirements at 30 U.S.C. 1735;

(4) The State's plan to carry out the delegated authority will be in accordance with the MMS standards; and

(5) The State's plan to carry out the delegated authority will be coordinated with MMS and the Office of Inspector General audit efforts to eliminate added burden on any lessee or group of lessees operating Federal or Indian oil and gas leases within the State.

§ 229.102 Hearings.

A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.

§ 229.103 Terms of delegation.

(a) Delegations of authority shall be valid for a period of 3 years and may be renewable for an additional consecutive 3-year period upon request of the State and after the appropriate factfinding required in § 229.101. Delegations are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

(b) A delegation of authority may be terminated at any time and upon any terms and conditions as mutually agreed upon by the parties.

(c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.

(d) The Department may terminate a delegation of authority when it is determined, after opportunity for a hearing, that the State has failed to substantially comply with the provisions of the delegation of authority.

(e) No action to initiate formal hearing proceedings for termination shall be taken until the Department has notified the State in writing of alleged deficiencies and allowed the State 120 days to correct the deficiencies.

(f) Termination of a delegation shall not bar a subsequent request by a State to regain a delegation of authority.

§ 229.104 Evidence of Indian agreement to delegation.

In the case of a State seeking a delegation of authority for Indian lands as well as Federal lands, the State petition to the Secretary must be supported by an appropriate resolution or resolutions of tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.

§ 229.105 Recordkeeping requirements.

The State shall maintain all records, working papers, reports, and correspondence of individual lessees, operators, and interest holders for review and inspection by representatives of the Secretary including the Office of the Inspector General. All materials must be maintained for a period specified by the Department and shall be maintained by the State in a separate record or file maintenance system in a safe and secure fashion.

§ 229.106 Standards for carrying out delegated authority.

The Department, after proper rulemaking procedure, shall establish uniform minimum acceptable standards for carrying out activities under the provisions of this part. The standards shall be no more stringent than those applicable to similar activities of the Department. Standards shall be promulgated by rule as soon as practicable after the effective date of final issuance of these regulations.

§ 229.107 Reports from States.

The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. The report shall include:

(a) A statistical summary of the activities carried out, e.g., number of audits performed, accounts reconciled, and other actions taken;

(b) A summary of costs incurred during the previous quarter for which the State is seeking reimbursement; and

(c) A schedule of changes which the State proposes to make from its approved plan.

§ 229.108 Examination of the State activities under delegation.

(a) The Department will carry out an annual examination of the State's delegated activities undertaken under the delegation of authority.

(b) The examination required by this section will consist of a management review and a fiscal examination and evaluation to determine—

(1) That activities being carried out by the State under the delegation of authority meet the standards established by the Department and in particular the provisions of 30 U.S.C. 1735; and

(2) That costs incurred by the State under the delegation of authority are eligible for reimbursement by the Department.

§ 229.109 Reimbursement for costs incurred by a State under the delegation of authority.

(a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI, on a quarterly basis, a summary of costs incurred for which the State is seeking reimbursement. Only costs as defined under the provisions of

30 U.S.C. 1735 are eligible for reimbursement.

(b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.

§ 229.110 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.

Fifty percent of any civil penalty resulting from activities under a delegation of authority shall be shared with the delegated State. However, the amount of the civil penalty shared will be deducted from any Federal funding owed under a delegation of authority under the provisions of 30 U.S.C. 1735. MMS shall maintain records of civil penalties collected and distributed to the States involved in 30 U.S.C. 1735 delegations. Each quarterly payment will be reduced by the amount of the civil penalties paid to the delegated State or tribe during the prior quarter.

§ 229.120 Withdrawal of Indian lands from delegated authority.

If at any time an Indian tribe or an individual Indian allottee determines that it wishes to withdraw from the State delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State. Once the petition has been received, the State shall within 30 days cease all activities being carried out under the delegation of authority on the lands covered by the petition for the tribe or allottee.

PART 241—PENALTIES

14. The authority for Part 241 reads as follows:

Authority: The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1961 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), as amended; section 2 of Reorganization Plan

No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

15. 30 CFR Part 241 Subpart A is amended by adding § 241.20 to read as follows:

§ 241.20 Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.

(a) Whenever a lessee, operator, revenue payor, or other authorized person fails to comply with any regulations, orders or notices, the appropriate MMS official shall give the lessee, operator, revenue payor, or other authorized person notice in writing to remedy any violations.

(b) Failure by the lessee, operator, revenue payor, or other authorized person, or other party to complete the necessary remedial action within the time and in the manner prescribed by the notice may subject the lease to cancellation proceedings pursuant to 30 CFR 250.12 for offshore leases, 43 CFR Subpart 3163 and 3108 for Federal onshore leases, or provisions of 25 CFR Indian leases.

(c) The lessee, operator, revenue payor, or other authorized person, shall be subject to a penalty of not more than \$500 per day for each day the violation specified in the notice continues beyond the date specified in the notice, not to exceed 60 days. In addition to this penalty or in lieu thereof, MMS can take steps to cancel the lease.

(d) No penalty under this section shall be assessed until the person charged with a violation has been given the opportunity for a hearing.

Hearings shall be held by the appropriate MMS official whose findings shall be conclusive unless an appeal is taken pursuant to 30 CFR Part 243.

16. 30 CFR Part 241 Subpart B is amended by adding §§ 241.50, 241.51, and 241.52 to read as follows:

Subpart B—Oil and Gas, General

Sec.

241.50 Definitions.

241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.

241.52 Criminal penalties.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart B—Oil and Gas, General

§ 241.50 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

§ 241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.

(a)(1) *Notice of noncompliance.* If the MMS believes that any person has failed or refused to comply with any statute, regulation, rule, order, lease, or permit governing the determination and collection of royalties on Federal or Indian lands or on the Outer Continental Shelf, the MMS may issue a notice of noncompliance which shall set forth the nature of the violation and the remedial action required.

(2) The notice of noncompliance shall be served by personal service by an authorized representative of the MMS or by registered mail. Service by registered mail shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier.

(3) When a notice of noncompliance is issued by the MMS under this section:

(i) Unless the violation is corrected within 20 days (or such longer time as specified in the notice) from the date that the notice is served, the person upon whom the notice is served shall be liable for a penalty of up to \$500 per violation for each day such violation continues, dating from the date of service of the notice;

(ii) Unless the violation is corrected within 40 days (or such longer time as specified in the notice) from the date that the notice is served, the person upon whom the notice is served shall be liable for a penalty of up to \$5,000 per violation for each day such violation continues;

(iii) If the person upon whom the notice is served does not correct the violation within 20 days (or such longer time as specified in the notice) from the date that the notice is served, such person may, by that date, request a hearing on the record by filing a written request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(4) If the person upon whom a notice of noncompliance has been served pursuant to paragraph (a)(3) of this section corrects the violations within 20 days (or such longer time as specified in the notice) from the date that the notice is served, no penalties shall be assessed by the MMS under this section and the person shall not be entitled to a hearing on the record provided for in paragraph (a)(3)(iii) of this section. The person may appeal the notice of noncompliance or other disputed MMS decision or order in accordance with the appeals procedures in 30 CFR Part 243.

(b)(1) *Notice of noncompliance for intentional violations.* In addition to the

provisions of paragraph (a) of this section, the MMS may issue a notice of noncompliance for intentional violations, which shall set forth the nature of the violation and the remedial action required, to any person who—

(i) Knowingly or willfully fails to make any payment due by the date as specified by statute, regulation, order, or terms of the lease;

(ii) Knowingly or willfully fails to submit or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;

(iii) Knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information.

(2) A person served with a notice of noncompliance for an intentional violation under this paragraph shall be liable for a penalty of up to \$10,000 per violation for each day such violation continues.

(3) The notice of noncompliance for intentional violation shall be served in accordance with paragraph (a)(2) of this section.

(4) A person who has been served with a notice of noncompliance for intentional violation issued pursuant to this subsection shall have 20 days from the date of service to file a written request for a hearing on the record with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(c) *Penalty notice.* The MMS shall issue a penalty notice to any person subject to penalties under this section. The penalty notice shall set forth the amount of the penalty applicable for each day that the violation continues. The penalty amount shall be determined by MMS taking into account the severity of the violation and the person's history of noncompliance. The penalty for each day that a violation continues shall not exceed the amounts specified in paragraphs (a) and (b), of this section as applicable.

(d) Penalties imposed under this section shall be in addition to interest assessed on payments not received by the MMS by the due date and assessments for later or incorrect reporting pursuant to Part 218 of this Chapter.

(e) If the person served with a notice of noncompliance requests a hearing on the record pursuant to paragraph (a)(3)(iii) or subparagraph (b)(4) of this section, penalties shall accrue each day until the person corrects the violations set forth in the notice of noncompliance.

The Director, MMS, may suspend the requirement to correct the violations pending completion of the hearings provided by this section, but only if the Director, MMS, suspends the obligation in writing, and then only upon a determination, at the discretion of the Director, that such suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage. The amount of the bond must be sufficient to cover any disputed amounts plus accrued penalties and interest. The MMS may require, at any time, adjustment in the amount of the bond for increases in the amount of the underlying obligations determined by MMS to be due, for penalties or for interest.

(f) *Hearing.* If a person served with a notice of noncompliance has requested a hearing on the record in accordance with subparagraphs (a)(3)(iii) or (b)(4) of this section, the hearing shall be conducted by an Administrative Law Judge (Departmental), Office of Hearings and Appeals. After the hearing, the Administrative Law Judge shall issue a decision in accordance with the evidence presented and applicable law. Any party to a case adversely affected by a decision of the Administrative Law Judge may appeal that decision to the Interior Board of Land Appeals in accordance with the procedures set forth in 43 CFR Part 4. A decision by the Interior Board of Land Appeals shall be a final order which may be appealed in accordance with paragraph (i) of this section.

(g) The Director of the MMS shall issue an order assessing the penalty, in accordance with the penalty notice, against any person subject to penalties under paragraphs (a) or (b) of this section who does not request a hearing on the record as provided in paragraphs (a)(3)(iii) or (b)(4) of this section. The penalty assessment must be paid within

30 days of its issuance and shall be a final order subject to collection pursuant to the provisions of paragraph (j) of this section.

(h) On a case-by-case basis the Secretary, or his/her authorized representative, may compromise or reduce civil penalties under this section. The amount of any penalty under this section, as finally determined, may be deducted from any sums owing by the United States to the person charged.

(i) Any person who has requested a hearing in accordance with paragraph (a) or (b) of this section within the time prescribed for such a hearing and who is aggrieved by a final order may seek review of such order in the United States District Court for the judicial district in which the violation allegedly took place. Review by the District Court shall be only on the administrative record and not *de novo*. Such action shall be barred unless filed within 90 days after the final order.

(j) If any person fails to pay an assessment of a civil penalty under this section after the order making the assessment has become a final order, and if such person has not filed a petition for judicial review in accordance with paragraph (i) of this section, or, after a court, in an action brought under this section, has entered a final judgment in favor of the Secretary, the Court shall have jurisdiction to award the amount assessed plus interest assessed from the date of the expiration of the 90-day period referred to in paragraph (i) of this section. The amount of any penalty, as finally determined, may be deducted from any sum owing by the United States to the person charged.

§ 241.52 Criminal penalties.

Any person who commits an act for which a civil penalty is provided at 30 U.S.C. 1719 shall be subject to criminal penalties as provided at 30 U.S.C. 1720.

PART 243—APPEALS—ROYALTY MANAGEMENT PROGRAM

17. 30 CFR Part 243 is amended by adding Subpart A to read as follows:

Subpart A—General Provisions

Sec.

243.1 Procedure.

243.2 Effectiveness of orders or decisions pending appeal.

Authority: R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; section 32, 41 Stat. 450, 30 U.S.C. 189; section 5, 44 Stat. 1058, 30 U.S.C. 285; section 10, 61 Stat. 915, 20 U.S.C. 359; § 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; section 24, 84 Stat. 1573, 30 U.S.C. 1023, 30 U.S.C. 1701 *et seq.*

§ 243.1 Procedure.

Except as may otherwise be provided in Part 241 hereof, an order or decision issued under regulations administered by the Royalty Management Program may be appealed in accordance with the provisions of Part 290 of this Chapter.

§ 243.2 Effectiveness of orders or decisions pending appeals.

Compliance with any orders or decisions, issued by the Royalty Management Program after August 12, 1983, including payments of additional royalty, rents, bonuses, penalties or other assessments, shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the Director, MMS, (or by the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved), and then only upon a determination, at the discretion of the Director or Deputy Associate Secretary for Indian Affairs, that such suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

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