PART 905—INDIAN HOUSING PROGRAMS

28. The authority citation for 24 CFR part 905 would be revised to read as follows:

Authority: 42 U.S.C. 1437aa–1437ee; 25 U.S.C. 450e(b); 42 U.S.C. 3535(d).

29. Section 905.302 would be added to subpart D to read as follows:

§ 905.302 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the IHA must notify the applicant of the applicant's right to submit tenant assistance information with the application. An IHA must accept as part of the application for admission tenant assistance information. However, an IHA may not require that an applicant provide tenant assistance information.

(b) An IHA must keep the tenant assistance information with the application. For any applicant who becomes a tenant or homebuyer, the IHA must keep the tenant assistance information as long as the tenant or homebuyer resides in the housing project. An IHA must update or change the tenant assistance information periodically if requested by the tenant or homebuyer.

(c) The purpose of collecting tenant assistance information is to assist an IHA in providing services or special care for such tenants or homebuyers, and in resolving issues that may arise during the tenancy of such tenants or homebuyers. An IHA must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an IHA may use to assist in providing any services or special care for the tenant or homebuyer, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant or homebuyer.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

30. The authority citation for 24 CFR part 960 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, and 1437n; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

31. Section 960.212 would be added to subpart A to read as follows:

§ 960.212 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the PHA must notify the applicant of the applicant's right to submit tenant assistance information with the application. A PHA must accept as part of the application for admission tenant assistance information. However, a PHA may not require that an applicant provide tenant assistance information.

(b) A PHA must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the PHA must keep the tenant assictance information as long as the tenant resides in the housing project. A PHA must update or change the tenant assistance information periodically if requested by the tenant.

(c) The purpose of collecting tenant assistance information is to assist a PHA in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. A PHA must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which a PHA may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

Dated: September 30, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–25108 Filed 10–14–93; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 230

RIN 1010–AB90

Offsets, Recoupments and Refunds of Excess Payments of Royalties, Rentals, Bonuses, or Other Amounts Under Federal Offshore Mineral Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is proposing to add new regulations establishing procedures for obtaining refunds and credits of excess payments made under Federal mineral leases on the Outer Continental Shelf (OCS) which are subject to section 10 of the Outer Continental Shelf Lands Act of 1953 (OCSLA). The proposed rules also describe the circumstances in which a person may recover certain payments that are not subject to section 10's requirements.

DATES: Comments must be received on or before December 14, 1993.

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

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

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Paul A. Knueven, Technical Compliance Branch, Division of Verification, Royalty Management Program, MMS, Lakewood, Colorado, and Peter J. Schaumberg, Office of the Solicitor, Washington, DC.

I. Background

(a) Reasons Why Excess Payments Occur on OCS Leases

Excess payments of royalties, rentals, bonuses, or other amounts made under OCS mineral leases may result for many reasons, including changes in factual circumstances, corrections of accounting or mechanical errors, and resolution of disputes. Changes in factual circumstances account for a major percentage of the excess payments that are made and often involve actions over which the payor has little or no control. Examples of these adjustments that frequently result in a decrease in royalties due include:

- Pricing changes attributable to "market-out" by the purchaser, settlement of contract disputes, well qualifications, etc;
- Changes in ownership or ownership percentages;
- Corrections of well-level allocations by producers;
- Corrections of sales volumes or quality adjustment factors by the purchaser;
- Federal Energy Regulatory Commission (FERC) approvals and orders.

Accounting errors cause a mall percentage of the excess payments that royalty payors make. Training and supervision minimize payor errors; but

considering the large volume of information that is submitted each month, some random accounting errors are unavoidable, such as:

- Multiple input of the same run ticket;
- Miscalculation of a sales price bulletin;
- Clerical errors when entering data; or
- Use of incorrect code(s).

Mechanical malfunctions cause another small percentage of excess payments. Malfunctions of meters at various points in the market stream (e.g., at the lease or at the gas plant) account for most of these errors. Also, computer problems can cause reruns which result in excess payments.

Resolution of disputes also may result in excess payments having been made. Litigation between purchasers and sellers, FERC litigation, and other disputes may be concluded in a manner such that the royalty payor initially paid royalty on a value that was too high.

(b) Section 10 of the Outer Continental Shelf Lands Act (OCSLA)

Section 10(a) of the OCSLA requires that a request for refund or credit of an excess payment made in connection with any lease issued under that Act be filed with the Secretary of the Interior (Secretary) within 2 years after the making of the payment. Section 10(b) of the Act requires that all refunds or credits which the Secretary proposes to approve be reported to Congress, and that the Secretary wait at least 30 days while Congress is in continuous session before making a refund payment or authorizing a credit. Any repayment made pursuant to the Act must be without interest.

In 1981, the Solicitor of the Department of the Interior issued a published opinion interpreting section 10. *Refunds and Credits Under the Outer Continental Shelf Lands Act M-36942*, 88 I.D. 1091 (December 15, 1981) ("1981 M-Opinion"). This 1981 M-Opinion reviewed the OCSLA's legislative history and addressed several fundamental issues involving section 10 including application of section 10 to both requests for refunds and credits (i.e., reducing a current month's royalty payment by the amount of a previous overpayment), the distinction between offsetting and crediting, and the meaning of section 10's 2-year limit. In 1993, the Solicitor issued a second M-Opinion.

Applicability of section 10 of the Outer Continental Shelf Lands Act, _____I.D. _____(Jan. 15, 1993) ("1993 M-Opinion"). This 1993 M-Opinion addressed transactions that are not subject to section 10's requirements.

The Interior Board of Land Appeals (IBLA) and the MMS Director also have issued decisions in administrative appeals construing section 10. Many different section 10 issues have been involved in these administrative appeals.

The purpose of these proposed regulations is to codify the Department's interpretation and application of section 10, incorporating the policies and decisions from the various legal opinions, administrative decisions, and administrative practice.

II. Section-by-Section Analysis

A section-by-section analysis of the proposed rule follows. Those provisions which are self-explanatory will not be discussed in detail.

Section 230.451. Scope

This section would explain that section 10 and the provisions of these rules apply only to Federal leases on the OCS. The procedures for recovering excess payments made with respect to onshore Federal and Indian leases are prescribed in an MMS Oil and Gas Payor Handbook and an MMS AFS Payor Handbook—Solid Minerals.

This section also would explain the long-established principle that the requirements of section 10 and these rules apply both to the refund requests and to credits, discussed in more detail below. The reasons why section 10 applies to both refunds and credits are explained in detail in the 1981 M-Opinion cited earlier.

Section 230.452. Definitions

This section of the proposed rule would provide that terms used in the rule would have the same meaning as in section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1702. Therefore, terms such as "lease," "person" and "royalty" have the same meaning as in FOGRMA.

In addition, § 230.452 would include certain definitions expressly for purposes of these rules. Some of these terms are self-explanatory and will not be discussed further. A definition of "audit" was included in the proposed rules to clarify that there is a difference between an audit and other MMS review actions that are far more limited in scope and which do not have the same effect as an audit under other parts of this rule. The MMS currently is in the process of developing comprehensive audit regulations that will further clarify this distinction.

The term "credit" would be defined as a reduction of a current or future royalty or other payment made in connection with an OCS lease as a result of reporting a "credit adjustment," another defined term. A credit adjustment would mean any adjustment on a Report of Sales and Royalty Remittance (Form MMS-2014) or any other royalty report form which reduces any royalty or other payment reported and paid in any previous period. Thus, if a royalty payor initially reports that it owed $150 in royalties on 1000 Mcf of gas production in January 1992, and 6 months later reports an adjustment reducing that report to $125, that is a credit adjustment. If the credit adjustment further results in reducing the royalties that the payor pays in the current month by $25, then the payor will have taken a credit. As explained in more detail below, not all credit adjustments result in credits. The reasons why section 10 applies to credits and certain credit adjustments are explained in the 1981 M-Opinion.

The term "offset" would mean to net or cancel previous overpayments against previous underpayments on the same OCS lease or unit. Thus, if a royalty payor discovered in March 1992 that it overpaid royalties on an OCS lease by $500 in November 1991 and underpaid by $700 in December 1991, the payor could offset the $500 overpayment against the $700 underpayment and only pay $200 additional royalty plus interest, with no implication under section 10. Limitations on offsets, an issue involving more than OCS leases, are addressed in a separate proposed rulemaking, "Limitations on Credit Adjustments Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases," (58 FR 43588), August 17, 1993.

The term "recoup" or "recoupment" would mean to recover a previous overpayment through a credit against a current or future royalty or other payment liability. In the example described above for "credit adjustments," the payor would be recouping its $25 overpayment.

The term "refund" would mean an actual repayment by the United States Treasury, usually by check or electronic funds transfer.

Section 230.453. Request for Refund or Credit

This section would establish the procedure a person must follow to recover an excess payment made in connection with an OCS lease unless an excess payment may be used as an offset pursuant to § 230.456, discussed below, or unless the transaction is not subject

to section 10, as provided in § 230.461, also discussed below.

Unless a transaction meets one of the other express exceptions in these rules paragraph (a) of § 230.453 would provide that no person may recover an excess payment he/she made in connection with an OCS lease unless:

- That person has made a request for refund or credit in accordance with § 230.453(b);
- The MMS has transmitted a report on the request for refund or credit to the President of the Senate and the Speaker of the House of Representatives, and 30 days from such submission has expired in accordance with section 10(b), 43 U.S.C. 1339(b) (i.e., if Congress goes out of session, the payment shall not be made or the credit may not be authorized until 30 days after the opening of the next session of Congress); and
- MMS gives the person notice that the request for refund is approved or a credit is authorized.

Paragraph (b) of § 230.453 would prescribe what a request for refund or credit must include, such as:

(1) The request must be in writing. An oral request would not be acceptable.

(2) The person must provide its MMS established payor code. This would ensure that the request for refund or credit is made by the person who has a legal right to a refund or recoupment.

(3) The person must identify the leases and sales months with respect to which the excess payments occurred.

(4) The person must identify the amount of the excess payment. MMS recognizes that in some situations it is not possible to determine an exact amount, for example, if there is a pending administrative or judicial proceeding that will establish the amount. In those situations, it would be acceptable to describe the class of payments that may be excess.

(5) The person must provide the reasons why a refund or credit is due. This requirement, together with the two previous requirements are intended to stop the practice of some payors of filing a "generic" refund request with every monthly royalty payment in the event they later determine that some part of their payment is excess. Such a nonspecific request would not be acceptable as a request for refund or credit under these rules.

(6) Because a request for refund or credit results in a reduction in revenues for the Treasury, MMS wants to ensure that such requests are not filed frivolously. Therefore, the proposed rules require that the person submitting the request for refund or credit must certify that, to the best of their knowledge or belief, the information on the request is accurate and complete.

Pursuant to paragraph (c) of § 230.453, if MMS determines that the request for refund or credit is not complete, the person who submitted the request would be given notice and allowed 30 days, or such time as MMS may specify, to supplement its request.

Under paragraph (d) of § 230.453, a credit adjustment reported on a Form MMS–2014 does not constitute a request for refund or credit; nor does it constitute an incomplete request for purposes of paragraph (c) of § 230.453. Therefore, as discussed further below, the filing of a credit adjustment would not stop or toll the running of the 2-year period in section 10. Moreover, if MMS discovers an unauthorized credit and more than 2 years had then passed since the making of the excess payment, the person will be required to repay the amount recouped plus interest, and will be time-barred from filing a proper request for refund or credit. Comments on the question of whether filing of a credit adjustment should toll the running of the 2-year period are requested below.

Payors also should be aware that if a credit is unauthorized, substantial sanctions may result because of the improper recoupment of monies. As explained below, MMS is proposing to establish assessments for each unauthorized credit. Further, in appropriate circumstances, MMS may consider assessment of civil penalties pursuant to section 109 of FOGRMA, 30 U.S.C. 1719, and MMS regulations of 30 CFR part 241. Civil penalties would be especially appropriate for persons who continue to take unauthorized credits following express notice from MMS that such a practice is unlawful.

Paragraph (e) of § 230.453 would provide that a person could amend its request if two conditions are met. First, the additional amount must be for a lease and sales month already covered by the initial request. Also, the reason for the excess payment for the additional amount must be the same as for the originally requested amount. These conditions are intended to prevent a person from circumventing the requirements of section 10 and these rules by filing a request for refund or credit to stop the running of the 2-year period and then continually amending it.

Paragraph (f) of § 230.453 would reflect the well-established principle that section 10(a) requires that MMS receive the request for refund or credit within 2 years of the date MMS received the excess payment. Royalty payors and other should understand that MMS always has construed this requirement strictly. Therefore, the request for refund or credit must be received within 2 years of the date the excess payment was received, not within 2 years of when some action, such as an administrative or judicial determination, occurred which made the payment excess. See, *Chevron U.S.A., Inc.* v. *United States*, 923 F.2d 830 (Fed. Cir. 1991), cert. denied sub nom. *Pennzoil Co.* v. *United States*, 112 S.Ct. 167 (1992).

As explained further below, the 2-year period does not limit offsetting. Also, there are certain actions which stop or toll the running of the 2-year period that are addressed in a later section of this preamble.

Paragraph (f)(1) of proposed § 230.453 provides the MMS address where the request for refund or credit must be received. If a request is sent to the wrong address MMS will not consider it "received" until it reaches the correct location. Under the proposed rules no grace period will be provided. Thus, it is the submitter's sole responsibility to ensure that the request is "received" at the proper MMS address within the prescribed time. Paragraph (f)(2) would clarify that if the last day of the 2-year period falls on a Saturday, Sunday, holiday or other non-business day (e.g., a snow day that closes the office), then the last day of the 2-year period is the next business day. Paragraph (f)(2) also would provide that requests received after 4 p.m. Mountain Time are next day receipts.

Section 230.454. Interest on Excess Payments

Section 10(a) provides that if a person makes an excess payment, "such excess shall be repaid without interest * * *" Section 230.454 would incorporate the statutory bar on interest payments in the regulations.

Section 230.455. Authorization of Refund or Credit and Subsequent Audit.

When a person requests a refund or credit, it is not possible or practicable for MMS immediately to conduct an audit to determine if the request is justified. MMS will verify that the amount sought to be recovered actually was paid before approving a request. MMS will review the propriety of requests for refund or credit when MMS reviews those transactions in the course of a regular audit cycle. If a later audit or other review results in a conclusion that a request for refund or credit was improper and should not have been approved, the person will be required to repay the previously recovered amount plus interest at the FOGRMA rate

pursuant to 30 CFR 218.150 from the date of the improper recoupment until the date of repayment.

Section 230.456. Offsets of Overpayments and Underpayments on the Same Lease (or Unit) by the Same Person

Section 230.452 defines "offset" as the netting or canceling of previous overpayments against previous underpayments. An offset is distinguished from a credit in that a credit reduces a current or future month's royalties due. In the 1981 M-Opinion, at p. 1103, the Solicitor recognized that offsetting overpayments against underpayments discovered during an audit to determine a net overpayment or underpayment, even where the overpayments were more than 2 years old, is not prohibited under section 10. See also, *Shell Oil Co.*, 52 IBLA 74 (1981). In the 1993 M-Opinion, the Solicitor again recognized that offsetting by a single person between past sales months on the same lease is not subject to section 10 to the extent the person is not recouping a net overpayment against current month's royalties due. See 1993 M-Opinion at section II.B and II.E. Consistent with these previous interpretations, the proposed rules provide that if a person makes an overpayment on an OCS lease (or unit) in a prior month, it may offset that overpayment against an underpayment that same person made in any prior month on that same lease (or unit) for the same or a different product without submitting a request for refund or credit, subject to certain limitations and conditions.

The overpayment may not be offset against an underpayment created as a result of a credit adjustment that was reported to recoup the amount of the overpayment, or against any other intentionally created underpayment. For example, assume a payor overpays on Lease A by $5,000 in January 1992 and then reports a credit adjustment (without MMS approval) for $5,000 in April 1992 to recoup the overpayment. When MMS discovers that credit adjustment and requires that it be repaid, the payor would not be permitted to assert the overpayment as an offset. Otherwise, section 10 would be rendered totally meaningless because every underpayment created by an unauthorized credit adjustment would be offset 100 percent by the previous overpayment sought to be recouped. Disallowing offsets of overpayments against underpayments created by unauthorized credit adjustments was recognized and adopted by the Secretary and the Office of Hearings and Appeals. (See, *Forest Oil Corp.*, 9 OHA 68 (1991); *Mesa Operating Limited Partnership*, MMS–88–0182–OCS, 98 I.D. 193 (1990).

Time and other limitations on offsets are addressed in a separate proposed rulemaking recently issued, titled "Limitations on Credit Adjustments Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases," (58 FR 43588), August 17, 1993.

Section 230.457. Offsets Among Different Persons Who Reported and Paid Royalties on a Lease for the Same Prior Sales Month

Proposed § 230.457 applies to situations where an operator's amended production report, or other circumstance, results in a reallocation of production for a prior sales month among the different persons who reported and paid royalty for that month on a lease or unit. However, this section would not apply to reallocations of production that result from the approval or amendment of a unit agreement subject to § 230.461(b), discussed below.

Paragraph (b) of § 230.457 would provide that, in the event of a reallocation, the respective affected payors generally could reconcile any royalty consequences among themselves without filing any reports or requests for refund or credit with MMS. However, any person who remained net overpaid after the reconciliation would be required to file a request for refund or credit with MMS to recover the overpayment. Similarly, if any person remained net underpaid after the reconciliation, that person would owe the deficiency plus interest.

By way of illustration, assume that for June 1992 an operator originally allocates 20 Mcf of gas to Payor A and 80 Mcf of gas to Payor B and royalty is paid on that basis. Six months later, the operator changes the allocation so that Payor A was entitled to 30 Mcf of gas and Payor B was entitled to 70 Mcf. It would not be necessary for Payor A to amend its royalty reports and pay royalty on the additional 10 Mcf plus interest and for Payor B to submit a request for refund or credit. Instead, Payor A could reimburse Payor B directly for the royalties already paid. No revised royalty report (MMS–2014) to MMS is required; however, the payors should document the transaction for the MMS auditors to verify later. Changes to production volumes must be reported in accordance with the regulations at 30 CFR part 216—Production Accounting.

If, in the above example, Payor B had a higher priced gas sales contract than payor A, then Payor B would have to submit a request for refund or credit within 2 years of making the original payment in order to recover the net overpayment. If Payor B's gas sales price was lower than Payor A's, then the additional royalties plus interest must be reported and paid to MMS.

Section 230.458. Unauthorized Credit Adjustments

This section would clarify for royalty payors and other persons the consequences of reporting a credit adjustment on a Form MMS–2014 to recoup an overpayment prior to MSS approval, unless the transaction is not subject to section 10, as explained below in the discussion of the proposed § 230.461.

If the unauthorized credit adjustment recouped an excess payment made more than 2 years before the date MMS receives the Form MMS-2014, which includes the unauthorized credit adjustment, then the person will be required to repay the amount recouped plus interest from the date of the recoupment to the date it is repaid. Since more than 2 years has passed since the making of the excess payment, the person will be barred from recovering the overpayment, unless that person had previously filed a separate request for refund or credit.

If the unauthorized credit adjustment was reported to MMS within 2 years of the date the excess payment was made, the amount recouped also must be repaid with interest. As explained further below, the report of the unauthorized credit adjustment would not be acceptable under these regulations as a request for refund or credit and would not stop the running of the 2-year period in section 10(a). Thus, the person would be required to file a request for refund or credit for the original excess payment which would only be subject to MMS review and approval if it is received within the 2-year period following the making of the excess payment.

Proposed § 230.458(b) imposes an assessment of $500 for each unauthorized credit adjustment reported to MMS on a Form MMS–2014. When a person takes an unauthorized credit adjustment, the MMS Royalty Management Program incurs costs to detect the credit adjustment and process the corrective actions. Those costs are not readily quantifiable. Thus, MMS is proposing the $500 assessment in the nature of a liquidated damage.

Section 230.459. Stopping or Tolling of the Section 10(a) 2-year Period

Section 10(a) requires that a request for refund or credit must be filed within

2 years of the making of the excess payment. This section describes the actions that will stop or toll the running of the 2-year period.

Obviously, a complete request for refund or credit will stop the running of the 2-year period. The rule also would provide that a "substantially complete" request, i.e., one for which the MMS would allow supplementation, as discussed above, is sufficient to toll the running of the 2-year period.

There are some circumstances where MMS will recognize that a pending administrative or judicial action could result in a large number of requests for refund or credit. In these situations, MMS could issue a notice, published in the **Federal Register** tolling the running of the 2-year period for the time specified in the notice. This action would eliminate the need for every payor to file a request for refund or credit or a tolling notice, described below, until the administrative or judicial action, or other action, is complete and the amounts of any excess payments can be determined.

A lessee or group of lessees may request MMS approval to form a unit or to modify a unit. The consequence of MMS approval, which is effective as of the application date, often is reallocation of production among the leases. So that the lessees will not be prejudiced in the event MMS takes more than 2 years to review and approve the lessees' request, MMS would treat the application as stopping the running of the 2-year period.

In some circumstances a person may become aware of a pending administrative or judicial action, or other action, that may affect its royalty obligation. However, the person cannot determine yet exactly what the impact will be. Paragraph (a)(4) of § 230.459 would allow that person to file a tolling notice with MMS setting forth sufficient detail regarding the affected leases, the estimated dollar impact, and the nature of the pending action.

Paragraph (b) of § 230.459 would provide that a request for refund or credit filed by one person who made an excess payment on a lease does not stop or toll the running of the 2-year period with respect to any excess payment made by any other person on the lease. Thus, if an operator discovered a metering error that caused it to overstate volumes produced on a lease, and if the several working interest owners on the lease each reported and paid royalties separately, then a request for refund or credit by one of those payors would not stop or toll the running of the 2-year period for the other payors on the lease.

As explained above, it is MMS's principal proposal that the filing of a credit adjustment on a Form MMS–2014 does not constitute a request for refund or credit or even an incomplete request for refund or credit. Consequently, the report would not, under the rule as proposed, stop or toll the running of the 2-year period. Thus, if more than 2 years passes between the time the payor made the excess payment and when MMS gives notice that the credit adjustment is unauthorized, the person would be required to repay the recouped amount plus interest and would be barred from recovering its excess payment because of section 10(a)'s 2-year limit. The MMS recognizes, that in some circumstances, this could result in large sums of excess payments never being recoverable. This result would occur even if the initial credit adjustment was filed within 2 years. The MMS therefore would like comment on whether the filing of a credit adjustment should be considered sufficient notice so as to at least toll the running of the 2-year period in section 10(a). The payor still would be required to repay the improperly recouped amount plus interest, but would not be prevented from thereafter filing supplemental information to complete its request for refund or credit to recover its excess payment.

Section 230.460. Lease Suspension

The MMS may suspend operations on an OCS lease pursuant to 30 CFR 250.10(b)(6). If a lease is suspended, rentals are not owed for the period of the suspension. Since rentals are paid in advance, the lessee is entitled to a refund of its overpaid rentals following suspension and could submit a request for refund or credit. If the request for refund or credit is filed more than 2 years after MMS received the excess rentals, the excess payment would not be subject to refund, recoupment, or credit against future rentals due on the same lease. The MMS recognizes that disallowing crediting against future rentals owed on the same lease is a departure from IBLA decisions in cases such as *Tenneco Oil Co.*, 117 IBLA 120, and *Shell Offshore, Inc.*, 117 IBLA 125 (1990). However, under the proposed rule, such a practice would be a credit. Therefore, section 10, including the 2-year limitation, would apply.

Section 230.461. Transactions Not Subject to Section 10

There are certain royalty and other payment-related transactions involving OCS leases that are not subject to section 10. Therefore, recovering an overpayment in these situations does not require following the section 10 process of filing a request for refund or credit and awaiting approval. For most of the transactions identified in proposed § 230.461, the reasons why section 10 is not applicable are discussed in substantial detail in the 1993 M-Opinion. Also, on December 10, 1991 and January 15, 1993, the MMS Director issued "Dear Payor" letters explaining that section 10 does not apply to these transactions.

Paragraph (a) of § 230.461 would provide that section 10 does not apply where a refiner/purchaser under a royalty-in-kind contract for royalty oil produced from an OCS lease makes an excess payment. Section 10 does not apply because the payment is made pursuant to the sales contract, not a lease.

Paragraph (b) of § 230.461 addresses the situation where MMS approves a unit agreement or a revision to a unit. It would provide that a person may reallocate production among its affected leases within the time period MMS prescribes. As explained in the 1993 M-Opinion, since the unit in effect supersedes the individual leases, the reallocation does not result in any overpayment on the "lease." It is merely a reporting issue. Of course, to the extent that the reallocation does result in a net reduction in the royalties previously paid, then the person must file a request for refund or credit. If more than 2 years has passed since the original payment was made, the refund or credit still would be allowed since, as noted above, MMS would treat the application for unitization as stopping the running of the 2-year period.

Paragraph (c) of § 230.461 would allow a person to adjust volume and royalty reports among OCS leases within a unit without filing a request for refund or credit. Again, the rationale is that the unit replaces the individual lease so that the adjustments are considered to be within a lease and there is no excess payment. The adjustment would not be limited to the same sales month since cross-month adjustments within a unit are "offset" to the same extent as offsets among past months within an individual lease.

Paragraph (d) of § 230.461 would provide that section 10 does not apply where a person pays more money than the total royalty due reported on a Form MMS–2014 accompanying the payment, where all amounts reported on the Form MMS–2014 are correct. As explained in the 1993 M-Opinion in section II. F., the excess payment cannot be associated with any specific lease, unless the payor is reporting for only one lease. So if the payor is reporting for more than one lease, it may request a refund of the

overpaid amount or the payor may contact MMS on how to apply the overpaid money to a subsequent royalty report. The payor cannot take a credit for the overpayment since the amount was not reported with respect to a lease.

Paragraph (e) of § 230.461 would provide that a person may reduce its MMS-established estimate balance for a lease product by requesting a refund or a credit that is not subject to section 10. See section II.G. of the 1993 M-Opinion for a complete explanation of why section 10 does not apply to this transaction.

Paragraph (f) of § 230.461 would provide that if adjustment of an estimated oil transportation allowance (30 CFR 206.105(e)), estimated gas transportation allowance (30 CFR 206.157(e)), or estimated gas processing allowance (30 CFR 206.159(e)) results in an overpayment for any sales month because the estimated transportation or processing costs were less than the actual costs, a person may request a refund or credit of the overpayment that is not subject to section 10. See section II. H. of the 1993 M-Opinion for the explanation of why section 10 is not applicable to this transaction.

However, if the payor makes an error in its original report of actual transportation or processing costs, any subsequent adjustment would be subject to section 10. For example, the payor estimates its oil transportation allowance at $.25 per barrel. When it submits its adjustment from estimate to actual, it reports an allowance of $.30 per barrel and recoups the $.05 per barrel without section 10 being applicable. If the payor discovers 6 months later that it made an error and that its actual transportation cost was $.40 per barrel, the recoupment of the additional $.10 per barrel would be subject to section 10 and the reporting and approval requirements of these rules.

Paragraph (g) of § 230.461 would provide that payment pending appeal or judicial review of an MMS order to pay does not implicate section 10 if the payor prevails. This is so because provisional payment pursuant to a disputed order is not an "excess payment" within the meaning of section 10 for reasons similar to those set forth in the 1993 M-Opinion with respect to estimated transportation and processing allowances.

Paragraph (h) of § 230.461 would provide a de minimis exception. MMS recognizes that in the process of reporting tens of thousands of lines of royalty data, minor adjustments necessarily occur. It is not worth MMS' efforts in terms of money or personnel to process section 10 filings for small amounts. Accordingly, MMS approval would not be required for an adjustment by any person to the amount reported for any lease for a report month that results in a credit of less than $25 per payor code. However, section 10's 2-year limit still is applicable. Thus, even if a payor used this exception to avoid section 10's reporting requirements, the most it could recover for any lease is $600 (24 months x $25).

The MMS would like comments on an alternative for a de minimis provision. Under the alternative, a person could not submit a request for refund or credit unless the aggregate amount sought to be refunded or credited exceeds $100. Thus, if a person found a $50 overpayment, it could not request a refund or credit of that amount unless there were additional overpayments, on the same or different leases, that in total exceeded $100.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESS** section of this preamble. Comments must be received on or before the date identified in the **DATE** section of this preamble.

Procedural Matters

The Regulatory Flexibility Act

The Department has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule will establish procedures to implement section 10 of the OCSLA and does not include any substantive change to procedures that have been followed by MMS relative to refund or credit of excess payments under OCS leases.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally-protected rights. Thus, a Taking Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

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

Paperwork Reduction Act of 1980

The information collection requirements of this rule are being submitted to the Office of Management and Budget for approval.

National Environment Policy Act of 1969

The Department has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321(2)(c)).

List of Subjects in 30 CFR Part 230

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

Dated: August 6, 1993.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 230 is proposed to be amended as follows:

PART 230—ROYALTY REFUNDS

1. The authority citation for part 230 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720 A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. A new subpart J is added under part 230 to read as follows:

Subpart J—Refunds and Recoupments of Overpayments Under Federal Leases on the Outer Continental Shelf; Implementation of Section 10 of the Outer Continental Shelf Lands Act

Sec.

Subpart J—Refunds and Recoupments of Overpayments Under Federal Leases on the Outer Continental Shelf; Implementation of Section 10 of the Outer Continental Shelf Lands Act

§ 230.451 Scope.

This subpart establishes the procedures that lessees and other persons who make royalty and other payments on Federal oil and gas leases on the Outer Continental Shelf (OCS) must follow to recover certain excess payments made in connection with their leases in accordance with section 10 of the Outer Continental Shelf Lands Act (section 10), 43 U.S.C. 1339. The requirements of this subpart apply to both requests for refund from the Treasury of excess payments and requests to recover excess payments by recouping the amount through a credit adjustment. This subpart applies only to Federal leases on the OCS.

§ 230.452 Definitions.

Terms used in this subpart shall have same meaning as in 30 U.S.C. 1702. In addition, the following definitions apply to this subpart:

Audit means a procedure for verifying for a prescribed time period whether financial reports and production reports and related items, such as elements, accounts, or funds, are fairly presented, whether financial information is presented in accordance with established or stated criteria, and whether the auditee has adhered to specific financial compliance requirements, including but not limited to those specified in lease terms, mineral leasing laws, regulations of the Department of the Interior, orders, and other applicable laws and regulations. An audit includes a review of internal controls and systems and both compliance and substantive testing.

Credit or *crediting* means reduction of a current or future royalty or other payment made in connection with a lease as a result of reporting a credit adjustment.

Credit Adjustment means any adjustment reported on a Report of Sales and Royalty Remittance (Form MMS–2014) or any other royalty report form which reduces any royalty or other payment made in connection with a lease which was reported and paid in any previous period.

Offset means to net or cancel previous overpayments against previous underpayments on the same OCS lease or across lease boundaries if all the individual leases are part of an approved unit agreement.

Overpayment means any payment made in excess of the amount that the lessee was lawfully required to pay.

Payment means money MMS receives in satisfaction of a lessee's royalty, rental, bonus, net profit share, or late payment interest obligation as established by statute, regulation, or the terms of a lease.

Recoup or *recoupment* means to recover a previous overpayment through a credit against a current or future royalty or other payment or liability under an OCS lease. A recoupment occurs whenever a payor reports a credit adjustment on a Form MMS–2014 or other royalty report form resulting in a net negative dollar value for the transaction and the credit is taken against the royalty or other payment or liability shown in the balance of the report.

Refund means a repayment by the United States Treasury to a person of any overpayment.

Unit means a area of 2 or more leases subject to an agreement for the consolidated development and recovery of oil and gas contained on the leases which are part of the agreement approved by MMS.

§ 230.453 Request for refund or credit.

(a) Except as otherwise provided in this subpart, no person may recover an excess payment it has made in connection with an OCS lease unless:

(1) That person has made a request for refund or credit in accordance with the provisions of this subpart;

(2) The MMS has transmitted a report on the request for refund or credit to the President of the Senate and the Speaker of the House of Representatives and 30 days from such submission has expired in accordance with section 10(b), 43 U.S.C. 1339(b); and

(3) The MMS notifies the person that its request for refund or credit is authorized and that the person may receive its refund for, or may report a credit adjustment to recoup, the excess payment.

(b) A request for refund or credit must:

(1) Be in writing;

(2) Provide the person's MMS-established payor code;

(3) Identify the leases and sales months with respect to which the excess payments occurred;

(4) Identify the amount of the excess payment or, with specificity, describe a class of payments that are, or as a result of an administrative or judicial decision or other identified contingency may become, excess payments;

(5) Provide the reasons why a refund or credit is due;

(6) Include a certification that, to the best of the person's knowledge or belief, the information provided in response to paragraphs (b)(2) through (b)(5) of this section is accurate and complete.

(c) If MMS determines that a request for refund or credit is incomplete, the person who submitted the request shall have 30 days, or such time as MMS may specify, following notice from MMS, to supplement the request for refund or credit.

(d) A credit adjustment reported on a Form MMS–2014 shall not constitute a request for refund or credit for purposes of this section, and shall not constitute an incomplete request for refund or credit for purposes of paragraph (c) of this section.

(e) A person who has filed a request for refund or credit pursuant to this section may amend that request to add an additional amount if:

(1) The additional amount is for the same lease and sales month; and

(2) The reason for the excess payment for the additional amount is the same as for the originally requested amount.

(f) Except as otherwise provided in this subpart, no request for a refund or credit shall be approved unless the request is received at MMS at the address provided in paragraph (f)(1) of this section within 2 years of the date that MMS received the excess payment.

(1) The request for refund or credit must be received at the following address:

(i) By mail: Minerals Management Service, Royalty Management Program, P.O. Box 173702, MS 3933, Denver, CO 80217–3702.

(ii) By express delivery or courier: Minerals Management Service, Section 10 Refund Requests, Building 85, Denver Federal Center, MS 3933, room A–212, Denver, CO 80225.

(2) If the last day of the 2-year period from the date MMS received the excess payment falls on a Saturday, Sunday, holiday or any other day that MMS is not open for business at the address specified in paragraph (f)(1) of this section, then the last day of the 2-year period shall be the next regular business day. Requests received at the specified MMS address after 4 p.m. Mountain Time are considered received the following business day.

§ 230.454 Interest on excess payments.

No person shall be entitled to interest on any excess payment made in connection with a lease that is refunded or recouped pursuant to this subpart.

§ 230.455 Authorization of refund or credit and subsequent audit.

The MMS may grant a refund or authorize a credit based upon satisfactory evidence that the payment subject to the request was made, and upon a determination that the payment was excess. An approved request for refund or credit may be subject to later review or audit by MMS. If, based upon later review or audit, MMS determines that the refund or recoupment should not have been granted or authorized, the person who requested the refund or credit shall repay the amount refunded or recouped plus interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the refund was made or the recoupment taken until the date it is repaid.

§ 230.456 Offsets of overpayments and underpayments on the same lease (or unit) by the same person.

If a person makes an overpayment on any OCS lease or unit in a prior month, it may offset that overpayment against an underpayment that same person made in any prior month on that same lease or unit for the same or a different product without submitting a request for refund or credit, if the underpayment was not created as a result of a credit adjustment to recoup the amount of the overpayment, or was not otherwise created intentionally to provide an underpayment against which to offset the overpayment, and subject to any limitations imposed by other applicable law or regulations.

§ 230.457 Offsets among different persons who reported and paid royalties on a lease for the same prior sales month.

(a) This section is applicable where an operator's amended production report or any other action results in a reallocation of production for a prior sales month among different persons who reported and paid royalty for that month on a lease or unit, except for reallocations of production that result from the approval or amendment of a unit agreement subject to § 230.461(b).

(b) In the event of a reallocation of production as described in paragraph (a) of this section, the respective persons who reported and paid royalty may reconcile any resulting differences in royalty payment obligations between themselves without submitting revised royalty reports or requests for refund or credit to MMS under this subpart, except that:

(1) Any person who paid any amount which remains as a net overpayment after such reconciliation must file a request for refund or credit in accordance with the requirements of this subpart to recover the excess payment;

(2) Any person whose royalty obligation remains underpaid after such reconciliation must report the additional royalties due for the prior sales month on a Form MMS–2014 and pay interest on the underpayment from the last day of the month following the sales month until the date the additional royalties are paid; and

(3) All persons involved in such reconciliation must retain all documents pertaining to the reallocation of production, calculation of royalties due, and the subsequent reconciliation among the persons involved together with other records pertaining to production from that lease during the prior sales month and the royalty due and paid thereon, and make such documents available for review and audit in the same manner as other records pertaining to the lease.

(c) If persons who reported and paid royalty do not reconcile between themselves any differences in royalty payment obligations arising as a result of a reallocation as provided in paragraph (b) of this section, each person who pays royalties for the lease must report and pay any additional royalties due, or file a request for refund or credit in accordance with the requirements of this subpart to recover the excess payment, as applicable. Any person who reports additional royalties due for the prior sales month must pay interest pursuant to 30 CFR 218.54 on the underpayment from the last day of the month following the sales month until the date the additional royalties are paid.

§ 230.458 Unauthorized credit adjustments.

(a) If a person reports a credit adjustment on Form MMS–2014 that results in a credit before MMS approves the recoupment pursuant to § 230.455, and if the credit adjustment does not qualify as one of the transactions not subject to section 10 as provided in § 230.461, then that person has taken an unauthorized credit adjustment.

(1) If the unauthorized credit adjustment recouped a payment that MMS received more than 2 years before the date MMS received the Form MMS–2014, which includes the unauthorized credit adjustment, the person shall repay the amount recouped plus late payment interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the unauthorized recoupment was taken until the date it is repaid. Unless the person filed a request for refund or credit pursuant to § 230.453 within 2 years of the making of the excess payment for which the unauthorized credit adjustment was reported, the excess payment shall not be subject to refund or recoupment.

(2) If the unauthorized credit adjustment recouped a payment that MMS received less than 2 years before the date MMS received the Form MMS–2014 with the unauthorized credit adjustment, the person shall be required to repay the amount recouped plus late payment interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the unauthorized recoupment was taken until the date it is repaid. The report of the unauthorized credit adjustment on the Form MMS–2014 does not constitute a request for refund or credit that tolls the 2-year period in section 10(a), 43 U.S.C. 1339(a). The person may file a request for refund or credit pursuant to § 230.453 for the payment for which the unauthorized credit adjustment was reported. The MMS will review the request pursuant to the requirements of this subpart only if the request for refund or credit is received within 2 years of the making of the original payment for which the unauthorized credit adjustment was reported.

(b) A person who reports an unauthorized credit adjustment to MMS on a Form MMS–2014 shall be assessed $500 for each unauthorized credit adjustment reported on the Form MMS–2014.

§ 230.459 Stopping or tolling of the section 10(a) 2-year period.

(a) The period of 2 years from the making of the excess payment, within which a request for refund or credit must be filed under section 19(a), 43 U.S.C. 1339(a), shall be:

(1) Tolled by MMS' receipt of a substantially complete request for refund or credit pursuant to § 230.453; or

(2) Tolled by a general tolling notice issued by MMS and published in the **Federal Register** in circumstances where MMS believes a substantial number of requests for refund or credit could result as a consequence of a pending administrative or judicial proceeding or other action. The running of the 2-year period shall be tolled for the time period specified in the notice; or

(3) Stopped by an application for unitization of OCS leases with respect to any excess payment that may result from the reallocation of production among leases after the unit is approved; or

(4) Tolled by a notice filed by a person at the address stated in § 230.453(f) stating that a specifically

identified action or proceeding may result in payments made on an OCS lease becoming excess payments. The notice must include:

(i) A list of affected leases and sales months;

(ii) The specific action or proceeding that could result in payments becoming excess;

(iii) An estimate of the amount that could be subject to a request for refund or credit; and

(iv) The person's MMS-established payor code.

(b) A request for refund or credit that is timely filed by a person who made an excess payment on an OCS lease shall not stop or toll the running of the 2-year period with respect to any excess payment made by any other person on that lease.

§ 230.460 Lease suspension.

If MMS suspends an OCS lease pursuant to 30 CFR 250.10(b)(6), a person who has made excess rental payments for the period of suspension, may request a refund or credit of any excess payments pursuant to this subpart. If the request for refund or credit is filed more than 2 years after MMS received the excess rentals, the excess payment shall not be subject to refund, recoupment, or credit against future rentals due on the same lease.

§ 230.461 Transactions not subject to section 10.

(a) A request for refund of, or any other action to recover, excess payments made by a refiner/purchaser under a royalty-in-kind contract for royalty oil produced from an OCS lease is not subject to section 10.

(b) If MMS approves a unit agreement on the OCS, or a revision to a unit, a person may file amended Forms MMS–2014 within the time period MMS prescribes, reallocating production among the affected leases. A person must file a request for refund or credit pursuant to this subpart only if, and to the extent that, there is a net reduction in the royalty that person previously paid for the leases committed to the unit as a result of the amendments.

(c) A person may amend its Form MMS–2014 to adjust volume and royalty reports among OCS leases within a unit within the same sales month without filing a request for refund or credit pursuant to this subpart, except that a request for refund or credit must be filed to the extent that there is a net reduction in the royalty previously paid for the leases committed to the unit as a result of the amendments.

(d) A person who pays more money than the total royalty due as reported on the Form MMS–2014 accompanying the payment, where all amounts reported on the Form MMS–2014 are correct, may submit a request for refund of the overpaid amounts. The request for refund is not subject to section 10's requirements unless the Form MMS–2014 includes reports for only one OCS lease. Any overpayment subject to this paragraph shall not be recovered by recoupment.

(e) A person may reduce an estimate balance, established for any lease product pursuant to MMS instructions, by submitting a credit adjustment on a Form MMS–2014, or a request for refund, for all or part of the established estimate balance. A credit adjustment or request for refund to recover all or part of an estimate balance authorized by this paragraph is not subject to the requirements of section 10.

(f)(1) If adjustment of an estimated oil transportation allowance or estimated gas transportation allowance pursuant to 30 CFR 206.105(e) and 206.157(e), respectively, results in an overpayment for any sales month because the estimated transportation costs were less than the actual costs, a person may submit a credit adjustment on a Form MMS–2014 to recoup, or may request a refund of, the overpayment. The credit adjustment or request for refund authorized by this paragraph is not subject to the requirements of section 10, and MMS approval is not required before reporting the credit adjustment.

(2) If adjustment of an estimated gas processing allowance pursuant to 30 CFR 206.159(e) results in an overpayment for any sales month because the estimated processing costs were less than the actual costs, a person may submit a credit adjustment on a Form MMS–2014 to recoup, or may request a refund of, the overpayment. The credit adjustment or request for refund authorized by this paragraph is not subject to the requirements of section 10, and MMS approval is not required before reporting the credit adjustment.

(3) If a person makes an error in its original report of actual transportation or processing costs pursuant to paragraphs (f)(1) or (f)(2) of this section, any subsequent adjustment to a report of an actual transportation or processing allowance that results in a credit is subject to section 10 and the requirements of this subpart.

(g) If a person pays pursuant to an MMS order and challenges the obligation to pay in an administrative appeal or judicial action, and if the person is successful in its challenge to all or part of the MMS order to pay, section 10 shall not apply to the refund or recoupment of the disputed payment or portion thereof.

(h) MMS approval is not required for an adjustment by any person to the amount reported for any lease for a report month that results in a credit of less than $25 per payor code. However, no adjustment may be reported more than 2 years after the date MMS received the Form MMS–2014 including the excess payment.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4790–2]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Seven Other Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period and correction to Regulatory Flexibility Act certification.

SUMMARY: On December 31, 1992 (57 FR 62608), EPA proposed standards to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes and seven other processes which are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). The period for receiving public comment on the proposed rule ended on April 19, 1993. Public comments were received requesting the comment period be reopened after proposal of the general provisions for implementing standards issued under section 112 of the Act. This action announces the reopening of the comment period to take comment on the general provisions, as they apply to the proposed rule for SOCMI and seven other processes. This action also describes, for public review and comment, five possible changes to the emissions averaging policy proposed in the HON. Finally, this action corrects the Regulatory Flexibility Act certification for the SOCMI and seven other processes proposed rule by providing a summary of the reasons for the certification. The rationale for the certification was not published in the notice of proposal.