prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of proposed regulations (GL-707-88), which was the subject of FR Doc. 91-14912, is corrected as follows:

§ 301.7433-1 [Corrected]

1. On page 28845, column 2, § 301.7433-1, second line from the bottom of paragraph (h), the language "paragraph (f) of this section, are not" is corrected to read "paragraph (e) of this section, are not".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-16558 Filed 7-11-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218 and 230

RIN 1010-AB58

Offsetting Incorrectly Reported Production Between Different Federal or Indian Leases (Cross-Lease Netting)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is proposing to amend its regulations to allow payors to correct reporting errors under certain limited circumstances by offsetting production incorrectly reported and attributed to one lease against underreported production on a different lease to which it should have been attributed (hereafter referred to as "cross-lease netting"). The proposed rulemaking would, under specified conditions, allow crosslease netting for purposes of determining whether an underpayment exists on which interest is owed on any Federal or Indian mineral lease and also for purposes of determining whether an overpayment exists on a Federal offshore mineral lease which is subject to the filing and reporting requirements of section 10 of the Outer Continental Shelf Lands Act of 1953.

DATES: Comments must be received on or before September 10, 1991.

ADDRESSES: Written comments may be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch at (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Mr. Peter Schaumberg and Mr. Geoffrey Heath, Office of the Solicitor, Washington, DC.

1. Background

Under the laws, regulations, and lease terms governing the leasing of Federal and Indian lands and the Outer Continental Shelf (OCS) for mineral production, royalty is due and reported based on the particular lease from which oil, gas, or other minerals are produced. See, e.g., the Mineral Leasing Act of 1920, as amended (MLA), 30 U.S.C. 181, et. seq.; the Outer Continental Shelf Lands Act of 1953, as amended, 43 U.S.C. 1331, et. seq.; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351, et. seq.; the Geothermal Steam Act of 1970, 30 U.S.C. 1001, et seq.; the Act of March 3, 190C, 25 U.S.C. 396; the Act of May 11, 1938, 25 U.S.C. 396a, et seq.; and regulations at 30 CFR parts 202, 206, 210 212, and 218, and 25 CFR parts 211 and 212.

Under statutes and regulations, MMS assesses interest on late payments and underpayments of royalties for lease production. See section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1721(a), and regulations at 30 CFR 218.54, 218.102, 218.150(d), 218.202, and 218.302. If a royalty payment is attributed to production from a different lease when payment is initially made, and therefore reported as paid for the incorrect lease, a later correction to reduce the reported royalty for the incorrect lease and increase the royalty paid on the correct lease ordinarily will result in an assessment for late-payment interest due on the originally underpaid lease. The assessments are issued through the MMS's Auditing and Financial System (AFS) exception processing. Similar corrections made as a result of an MMS audit will also result in an assessment for late-payment interest due for the lease for which the royalty should have been reported.

In the case of offshore leases, an additional requirement is involved. Under section 10(a) of the OCSLA, 43 U.S.C. 1339(a), no refund or credit for an overpayment of royalty for an offshore lease may be made unless such refund or credit is requested within 2 years of the date the payment is made and certain procedural requirements are followed. Correction of errors such as those previously described involves such a credit for the lease for which the royalty was initially and incorrectly reported as paid. Therefore, such corrections are subject to section 10's procedural requirements and the allowed 2-year period.

Because royalty obligations are determined on a lease basis, an overpayment under one lease does not negate the existence of an underpayment under another lease for purposes of determining late-payment interest owed for the underpaid lease. Similarly, in the context of OCSLA section 10, an underpayment under one offshore lease does not negate the existence of an overpayment under another lease for purposes of submitting required requests for refund or credit under OCSLA section 10(a).

The Interior Board of Land Appeals (IBLA) has consistently upheld this principle in both contexts. Overpayments and underpayments for different production months within a single lease account will be offset during an audit by MMS or other authorized audit agencies to determine underpaid amounts on which late-payment interest is due or overpaid amounts for which a request for refund or credit must be submitted under OCSLA section 10. See *Shell Oil Co.*, 80 IBLA 634 (1981). However, IBLA has consistently held, in cases involving both late-payment interest calculations and required refund or credit requests under OCSLA section 10, that such offsetting may only occur within a single lease account during an audit period, and not between leases. Under existing MMS procedures, offsetting of overpayments and underpayments between leases is not permitted (except where both leases are included in the same unitization or communitization agreement). In the late-payment interest context, see *Mesa Petroleum Co.*, 108 IBLA 149 (1989); *Mesa Petroleum Co.*, 111 IBLA 201 (1989); *FMP Operating Co.*, 111 IBLA 377 (1989); and *Mesa Operating Limited Partnership*, No. IBLA 87-753 (Order issued June 13, 1990). In the OCSLA section 10 context, see *Sun Exploration and Production Co.*, 106 IBLA 300 (1989); *Union Oil Co. of California*, 110 IBLA 62 (1989); *Chevron USA, Inc.*, 111 IBLA 92 (1989); and *Union Exploration Partners, Ltd.*, 113 IBLA 186 (1990).

Allowing offsetting of overpayments and underpayments between leases as a matter of course and on the initiative of the lessee or royalty payor is not feasible given the more than 20,000 leases, many of which have multiple payors, which MMS administers.

Permitting offsetting on that basis effectively would require a review of all of that payor's leases (in the case of requests for refund or credit under OCSLA section 10, all of the payor's OCS leases), at least for the production month for which the offset is claimed, before an offset could be allowed. Otherwise, there would be no way of ascertaining whether the payor in fact was overpaid or underpaid, and the system would be subject to the payor's arbitrary selectivity. Such a reconciliation capability is not possible.

Moreover, allowing offsetting between leases as a matter of course could have substantial effects on ultimate recipients of royalty revenue from different categories of leases under established permanent indefinite appropriations. For example, under the MLA, each State receives 50 percent of royalties and other lease revenues (90 percent for Alaska) from leases on the Federal public domain within its boundaries. See 30 U.S.C. 191. Coastal States receive 27 percent of revenues from certain offshore leases located within the zone defined and governed by section 8(g) of OCSLA, 43 U.S.C. 1337(g) (the "8(9) zone"). Other recipients receive various portions of revenues from leases issued under other laws; e.g., the Mineral Leasing Act for Acquired Lands, See 30 U.S.C. 355. Allowing offsetting between leases without restriction as a matter of course may affect the distribution of royalty revenues to the proper recipients.

The MMS recognizes, however, that because many royalty payors report and pay for hundreds and sometimes thousands of leases, some situations arise in which a royalty payment which is otherwise correct and timely is incorrectly reported as attributed to production from one lease, when it should have been reported as attributed to production from a different lease. For example, a lessee may receive from an operator incorrect allocation figures for production from two adjacent OCS leases which is commingled into a common pipeline, where the total volume of production is correct and royalty is timely paid thereon, which are then corrected to revise the allocation of that total between the individual leases.

As another example, a royalty payor may inadvertently invert digits in the lease number for which royalty is being reported, but otherwise pay the royalty correctly and timely. If the incorrect lease number is in fact the number of another valid lease, the royalty report may clear the AFS system edits and the error be discovered only upon later checks or review.

These examples may occur under circumstances where the lessor/royalty owner is the same for both leases and the total royalty distribution to recipients of permanent indefinite appropriations is the same regardless of which lease the royalty payment is attributed to. In other words, both leases are within the same State in the case of onshore MLA leases (or are in the same county in the case of some leases on acquired lands), or are both on the OCS (and, if within the 8(g) zone, are both within the 8(g) zone and are offshore of the same coastal state), or are owned by the same Indian lessor. They also occur in the context of both determining underpayments on which late-payment interest is due and determining overpayments for which a request for refund or credit must be submitted under OCSLA section 10.

These and other examples which could be cited have certain common characteristics which distinguish them from most royalty payment deficiencies. First, the mistake is in the nature of a reporting error rather than a substantively incorrect royalty payment or an untimely royalty payment in the first instance. Second, there is no ultimate loss of time value of money to the lessor when the reporting error is corrected. In addition, one error is the common source of both the overpayment and the underpayment for the respective leases. Moreover, there is no ultimate effect on the distribution of royalty revenues under permanent indefinite appropriations established by law; thus, there is no time value of money loss to these recipients either. Finally, the circumstances are such that the nature of the error can be proven by reliable documentary evidence. Thus, after correcting the reporting error, affected parties would be in the same financial position as if the error had not been committed. Under these circumstances, MMS does not believe that assessing late-payment charges for the underpaid lease, or disallowing a refund or credit, is justified.

The MMS therefore is proposing to allow royalty payors to offset royalty overpayments for one lease against underpayments for a different lease, for purposes of determining the size of an underpayment on which late-payment interest is due, under limited conditions described in the next section of this preamble. Similarly, MMS is proposing to allow payors to offset royalty underpayments for one offshore lease against overpayments for a different offshore lease, for purposes of determining whether and to what extent an overpayment exists for which a refund or credit must be requested, under similar, limited conditions described below. (Allowed offsetting is referred to as "cross-lease netting" in both contexts.) Cross-lease netting would be allowed only under the specified conditions. In all other situations, the law as established by the previously cited IBLA decisions would remain unchanged.

II. Proposed Allowable Cross-Lease Netting

(a) For Calculation of Late-Payment Interest

The MMS proposes to add a new provision to the regulations at 30 CFR part 218, to be designated 30 CFR 218.42, which would allow crosslease netting for purposes of determining an underpayment upon which late-payment interest is due, under certain conditions where the payor can demonstrate a plain reporting error which does not result in any ultimate loss of time value of money to a Federal or Indian lessor and which has no consequence for the ultimate recipients of royalty revenues. Therefore, cross-lease netting would be allowed only under all the following conditions:

(1) The error results from attributing and reporting an equal volume of production produced from one lease during a particular production month to a different lease from which it was not produced for that same production month. This condition is necessary to ensure that offsetting will be allowed only when a genuine reporting error has occurred, as opposed to an ordinary royalty underpayment. If different volumes of production from different leases could be offset, particularly if different production months were involved, there would be no practical way to verify that only a reporting error of the type described is involved or to limit allowed offsets to situations involving such reporting errors. There would be nothing to prevent a lessee or payor from using many royalty overpayments as offsets against other unrelated royalty underpayments on other leases and manipulating corrections to its reports to avoid interest liability.

This condition would not require that the same value of production be involved when the production is reattributed to the correct lease. Ascribing a particular volume of production to the wrong lease may result in a royalty value under that lease which is different from the correct royalty value when the production is reported under the correct lease. If the

royalty attributable to the value of production as reported under the wrong lease is greater than the royalty attributable to the value of production under the correct lease, the lessor has not suffered any loss of time value. (The difference is an overpayment which may be credited or refunded, but subject to OCSLA section 10 limitations for offshore leases.) If the royalty attributable to the value of production under the wrong lease is less than the royalty attributable to the value of production under the correct lease, the lessee or payor would owe the difference as additional royalty, plus appropriate late-payment interest on that royalty difference.

(2) The payor is the same for the production attributable to both leases. This condition is necessary for practical administration. While an allocation error by a pipeline operator, for example, could result in overreporting production on one lease and underreporting an equal volume of production on another lease which has a different payor and where all other necessary conditions are met, MMS believes it is impractical at this time to try to correlate data from more than one payor to resolve reporting errors.

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information. This condition is necessary to limit allowed offsets to the type of reporting error situations previously described by requiring reliable documentary evidence which demonstrates the reporting error. In the absence of this requirement, a payor easily could manipulate corrections to royalty reports and claim that some portion of an overpayment on a particular lease was due to misreporting production which should have been reported on an underpaid lease.

(4) The lessor is the same for both leases (or, in the case of Indian allotted leases with more than one allottee-lessor, the same allottees are the lessors of both leases and hold the same percentage interests in both leases). This requirement is necessary to ensure that offsetting is not permitted where one lessor; e.g., a state, a private party, a particular Indian tribe or allottee or group of allottees, has had the advantage of the time value of the overpayment on the wrong lease while a different lessor; i.e., the United States, a different Indian tribe, or a different allottee or group of allottees, has lost the time value of the underpayment on the correct lease. In such situations, the payor should be required to pay appropriate late-payment interest to the lessor who should have had the benefit of the funds had the error not occurred and the royalty payment been made correctly.

(5) The ultimate recipients of royalty revenues under permanent indefinite appropriations are the same for, and receive the same percentage of revenue from, both leases. The permanent indefinite appropriations referred to include the States' 50 percent share (90 percent for Alaska) of royalties from onshore MLA leases under 30 U.S.C. 191; coastal States' 27 percent share of royalties from offshore leases within the 8(g) zone under 43 U.S.C. 1337(g); counties' 25 percent share of royalties from leases on acquired national grasslands under 30 U.S.C. 355 (incorporating the formula of 7 U.S.C. 1012) (as one example of payments made to States or counties from royalties from leases of acquired land under 30 U.S.C. 355, incorporating the formula applicable to the particular category of acquired land); and the States' 90 percent share of royalties from leases on State selected lands under 43 U.S.C. 852(a)(4) (as one example of payments made under certain specialized statutes providing for mineral leasing of a particular category of lands). While interest on late payments or underpayments of royalty is owed to the lessor (the United States or an Indian tribe or allottee, as addressed in the previous paragraph), not to a derivative recipient of royalty revenues under a permanent indefinite appropriation who does not own a property interest in the lease, this condition is appropriate to avoid an analogous inequity to the ultimate recipients of royalty revenues. Particularly since late-payment interest is shared with the ultimate recipient of royalty revenue in the same proportion as the principal royalties (see 30 U.S.C. 191 and Pub. L. No. 100-524, section 7, 102 Stat. 2607, 30 U.S.C. 191a), if the misreporting of production between different leases resulted in a delay in receipt of revenues by the correct recipient, it is appropriate to prohibit crosslease netting in that circumstance.

It would be the payor's burden to show by satisfactory documentation that each of these conditions had been met. A payor could make that showing either through the administrative appeals procedure of 30 CFR part 290 after receiving an invoice for late-payment interest due, or could submit such documentation to MMS informally to avoid unnecessary clogging of the appeals process where there is no real necessity for a written decision by the MMS Director. In either case, if the documentation submitted is sufficient, the late-payment interest assessment would be cancelled.

The proposed regulation would apply to all Federal leases, onshore and offshore, and to all Indian leases, for all minerals (oil, gas, coal, other solid minerals, and geothermal steam). However, MMS would like comment on whether Indian tribal and/or allotted leases should be excluded from this rulemaking. Particularly for Indian allotted leases, MMS does not expect that there would be many situations which would meet all the requirements of the proposed rule.

As a matter of conforming amendments, MMS proposes to amend the existing provisions at 30 CFR 218.54, 218.102, 218.150, 218.202, and 218.302 to reference the new regulation.

(b) Calculation of Overpayments Under Offshore Leases Subject to OCSLA Section 10 Credit or Refund Requests and 2-Year Allowed Period.

In accordance with the current practice of limiting offsetting of overpayments and underpayments to a single lease, if a payor incorrectly reports royalty payments for a wrong offshore lease, the payor is required to file a request for refund of the overpayment in accordance with OCSLA section 10. If the request for repayment is not filed within the allowed 2-year period, MMS cannot authorize a refund or recoupment of the overpayment. Consistent with proposed cross lease netting for late-payment interest purposes (see section II(a) above of this preamble), MMS is also proposing to allow cross-lease netting in limited circumstances for purposes of determining whether overpayments exist on offshore leases that are subject to the filing and reporting requirements of section 10.

The MMS is proposing that the same general requirements for crosslease netting apply for section 10 purposes as are proposed for late-payment interest purposes. Similar to the conditions proposed for late-payment interest purposes, conditions proposed for section 10 purposes are intended to restrict allowable cross-lease netting to situations where the payor can demonstrate a plain reporting error, rather than an overpayment which must be balanced by granting a refund or credit, and where the correction does not result in any ultimate loss of the time value of money to the Federal lessor and which has no consequence for any ultimate recipient of royalty

revenues. Thus, both of the mineral leases must be outside the 8(g) zone, or if they are in the 8(g) zone, they must be offshore of the same coastal State.

Under the proposed new rule at 30 CFR 230.51, cross-lease netting for section 10 purposes would be allowed only upon the payor's submission of a written request to MMS for its approval for the payment offset. The payor would be required to provide adequate documentation with its request to show that all the following conditions had been met before MMS would allow cross-lease netting:

(1) The error results from attributing and reporting an equal volume of production produced from one lease during a particular production month to a different lease from which it was not produced for that same production month. This condition is necessary for reasons similar to those for the identical condition for offsetting in the late-payment interest context explained above; i.e., to ensure that offsetting will be allowed only when a genuine reporting error has occurred, as opposed to an ordinary royalty overpayment for which a request for refund and the prescribed procedures are required under OCSLA section 10. If different volumes of production from different leases could be offset, particularly if different production months were involved, there would be no practical way to verify that only a reporting error of the type described is involved or to limit allowed offsets to situations involving such reporting errors. There would be nothing to prevent a lessee or payor from using many royalty underpayments as offsets against other unrelated royalty overpayments on other leases and manipulating corrections to its reports to avoid having to submit requests for refund or credit.

This condition again would not require that the same value of production be involved when the production is reattributed to the correct lease. If the royalty attributable to the production as reported under the wrong lease is greater than the royalty attributable to the production under the correct lease, the payor has not made an excess payment for which a refund or credit would be appropriate to the extent of the royalty owed under the correct lease. The difference is an overpayment which may be credited or refunded; however, the section 10 requirements would apply to that increment. If the royalty as reported under the wrong lease is less than the royalty reported under the correct lease, the lessee or payor would owe the difference as additional royalty, plus appropriate late-payment interest on that royalty difference. The entire royalty attributed to the wrong lease would be offset and no section 10 requirements would apply.

(2) The payor is the same for the production attributable to both leases. This condition is necessary for practical administration for reasons similar to those for the identical condition explained above in the late-payment interest context.

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information. This condition is necessary to limit allowed offsets to the type of reporting error situations previously described by requiring reliable documentary evidence which demonstrates the reporting error. In the absence of this requirement, a payor easily could manipulate corrections to royalty reports and claim that some portion of an overpayment on a particular lease was due to misreporting production which should have been reported on an underpaid lease, and thereby effectively nullify the section 10 requirements.

(4) In the case of leases which are within the zone defined and governed by section 8(g) of the OCSLA, as amended, 43 U.S.C. 1337(g), the leases are located off the coast of the same State. (There is no necessity for an express condition that the lessor is the same for both leases in this context; the United States is the lessor for all leases on the OCS.) This condition is necessary for reasons similar to those in the late-payment interest context. See paragraph II(a)(5) above of this preamble. It ensures that the ultimate recipients of royalty revenues under OCSLA section 8(g)'s permanent indefinite appropriation are the same for both leases. All coastal States receive the same share, 27 percent, under section 8(g) uniformly. It is appropriate to prohibit cross-lease netting where different coastal States are involved to avoid inequity to the ultimate recipient of a portion of the royalty revenues.

If MMS approves a payor's request for a payment offset, the payor would be required to submit an adjusting royalty report (Form MMS-2014) and an adjusting production report (Form MMS-4054) to correct its reporting to MMS's AFS and the Production Accounting and Auditing System. Royalties attributed to an incorrect lease under the conditions specified above and for which offset is approved by MMS would not, under the proposed rule, be subject to the filing and reporting requirements of section 10.

(c) Other Matters.

The submission of false production data or other evidence in an attempt to improperly invoke the exception set forth in the proposed regulations at 30 CFR 218.42 and 230.51, to avoid requesting a refund or credit as required by section 10 of OCSLA, or to avoid payment of late payment interest due, potentially could result in the assessment of a civil or criminal penalty for intentional violation under section 109(d) of FOGRMA, 30 U.S.C. 1719(d), and 30 CFR 241.51(b)(1) (ii) or (iii).

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

III. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

This rulemaking may result in a loss of some revenue to royalty recipients from interest charges currently billed and collected from payors on underpayments on a lease that could be offset against overpayments on a different lease under the proposed rule. However, this rulemaking does not result in a major increase in costs for any Federal, State, or local government agency or any individual industry or have any adverse effects on competition, employment, or productivity. Accordingly, the Department has determined that this rule is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq).

Executive Order 12630

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

Paperwork Reduction Act of 1980

The collection of information contained in this rule on Forms MMS-2014 and MMS-4054 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1010-0022 and 1010-0040.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 218

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

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 recordkeepinging requirements.

Dated: May 3, 1991.

Jennifer A. Salisbury,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 218 and 230 are proposed to be amended as set forth below:

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

1. The authority citation for part 218 continues 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. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1301 et seq.; and 43 U.S.C. 1801 et seq.

2. A new § 218.42 is added under Subpart A—General Provisions, to read as follows:

§ 218.42 Cross-lease netting in calculation of late payment interest.

(a) Interest due from a payor on any underpayment for any Federal mineral lease (onshore or offshore) and on any Indian mineral lease for any production month shall not be reduced by offsetting against that underpayment any overpayment made by the payor on any other lease, except as provided in paragraph (b) of this section.

(b) Royalties attributed to production from one lease which should have been attributed to production from another lease may be offset to determine whether and to what extent an underpayment exists on which interest is due only if:

(1) The error results from attributing and reporting an equal volume of production, produced from one lease during a particular production month, to a different lease from which it was not produced for that same production month;

(2) The payor is the same for both the lease to which production was attributed and the lease to which it should have been attributed;

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information;

(4) The lessor is the same for both leases (or in the case of Indian allotted leases with more than one allottee lessor, the same allottees are the lessors of both leases and hold the same percentage interests in both leases); and

(5) The ultimate recipients of any royalty or other lease revenues under any applicable permanent indefinite appropriations are the same for, and receive the same percentage of revenue from, both leases.

(c) If MMS assesses late-payment interest and the payor asserts that some or all of the interest assessed is not owed pursuant to the exception set forth in paragraph (b) of this section, the burden is on the payor to demonstrate that the exception applies in the specific circumstances of the case.

(d) The exception set forth in paragraph (b) of this section shall not operate to relieve any payor of liability imposed by statute or regulation for late or erroneous reporting.

3. A new paragraph (e) is added to § 218.54 under Subpart B—Oil and Gas, General, to read as follows:

§ 218.54 Late payments.

* * * * *

(e) An overpayment on one lease may be offset against an underpayment on another lease to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42 of this part.

4. A new paragraph (d) is added to § 218.102 under Subpart C—Oil and Gas, Onshore, to read as follows:

§ 218.102 Late payment or underpayment charges.

* * * * *

(d) An overpayment on one lease may be offset against an underpayment on another lease to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42 of this part.

5. A new paragraph (e) is added to § 218.150 under Subpart D—Oil, Gas and Sulfur, Offshore, to read as follows:

§ 218.150 Royalties, net profit shares, and rental payments.

* * * * *

(e) An overpayment on one lease may be offset against an underpayment on another lease to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42 of this part.

6. A new paragraph (f) is added to § 218.202 under Subpart E—Solid Minerals—General, to read as follows:

§ 218.202 Late payment or underpayment charges.

* * * * *

(f) An overpayment on one lease may be offset against an underpayment on another lease to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42 of this part.

7. A new paragraph (f) is added to § 218.302 under Subpart F—Geothermal Resources, to read as follows:

§ 218.302 Late Payment and underpayment charges.

* * * * *

(f) An overpayment on one lease may be offset against an underpayment on another lease to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42 of this part.

PART 230—ROYALTY REFUNDS

1. Part 230, previously reserved, is amended by revising the part heading and by adding text to read as follows:

PART 230—RECOUPMENTS AND REFUNDS

Subpart A—General Provisions

Sec.

230.51 Cross-lease netting in calculation of overpayments under section 10 of the OCSLA.

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

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

Subpart I—OCS Sulfur—[Reserved]

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. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq. :

Subpart A—General Provisions

§ 230.51 Cross-lease netting in calculation of overpayments under section 10 of the OCSLA.

(a) The amount of any refund or credit for any overpayment for any lease governed by the Outer Continental Shelf Lands Act (OCSLA) for any production month shall not be reduced by offsetting against that overpayment any reported underpayment by the payor on any other lease, except as provided in paragraph (b) of this section.

(b) Royalties attributed to production from one lease governed by the OCSLA which should have been attributed to production from another lease governed by the OCSLA may be offset without regard to the provisions of OCSLA section 10, 43 U.S.C. 1339, only if the payor submits a written request to MMS for its approval of the correction and provides adequate documentation to show that the following conditions exist:

(1) The error results from attributing and reporting an equal volume of production, produced from one lease during a particular production month, to a different lease from which it was not produced for that same production month;

(2) The payor is the same for both the lease to which the production was attributed and the lease to which it should have been attributed;

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information; and

(4) In the case of leases which are within the zone defined and governed by section 8(g) of the OCSLA, as amended, 43 U.S.C. 1337(g), the leases are located off the coast of the same State.

(c) If MMS approves a correction pursuant to paragraph (b) of this section, the payor is required to submit an adjusting royalty report (Form MMS-2014) pursuant to 30 CFR part 210 and an adjusting production report (Form MMS-4054) pursuant to 30 CFR part 216 to correct its reporting to the Auditing and Financial System and the Production Accounting Auditing System.

(d) If MMS requires a repayment of principal royalties or assesses late-payment interest as a result of the payor having improperly offset any underpayment against an overpayment and, therefore, having failed to request a refund or credit as required by section 10 of the OCSLA, 43 U.S.C. 1339, and the payor asserts pursuant to 30 CFR part 290 that some or all of the royalties or interest assessed is not owed pursuant to the exception set forth in paragraph (b) of this section, the burden is on the payor to demonstrate that the exception applies in the specific circumstances of the case.

(e) The exception set forth in paragraph (b) of this section shall not operate to relieve any payor of any liability imposed by statute or regulation for late or erroneous reporting.

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

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

Subpart I—OCS Sulfur—[Reserved]

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Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule and the Ohio Revised Code

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 43 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed further revisions to one rule in the Ohio Administrative Code and one section of the Ohio Revised Code which are intended to make the rule and law as effective as the corresponding Federal regulations concerning the definition of "road." Ohio has also submitted administrative record documents that identify and provide justification for design criteria which are proposed for use in lieu of compaction testing to ensure compliance with the 1.3 minimum safety factor for certain impoundments and primary road embankments.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on August 12, 1991. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on August 6, 1991. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. July 29, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge,