

and Procedures Branch, Lakewood, Colorado.

I. Background

Royalty payments on production from mineral leases are a major source of income to many Indian allottees and, in some instances, the only source. Consequently, it has been a longstanding Department of the Interior policy that overpayments made by lessees and other royalty payors to Indians cannot be recovered by refund. This policy was established to prevent an undue financial burden on Indian allottees who may have limited financial means to refund the overpayment.

However, the current policy permits lessees and payors to recoup overpayments as a credit against future rental or royalty accruals due to Indian tribes or allottees. Lessees and operators were instructed to follow this recoupment policy in "Notice to Lessees and Operators of Indian Oil and Gas Leases No. 1A" (NTL-1A), issued by the Conservation Division of U.S. Geological Survey in 1977. Section IX of NTL-1A provides that in the case of tribal leases the credit must be against the same lease or, with approval of the tribe, accruals due under other tribal leases. In the case of allotted leases, such credits were subject to prior approval of the Bureau of Indian Affairs (BIA), with recovery of the overpayment pro rated over a period of time necessary to prevent an allottee's current monthly revenue being reduced by more than 50 percent.

This recoupment policy was adopted by MMS and included in Volume II of the Oil and Gas Payor Handbook by Addendum No. 12, effective December 1, 1983, and was also included in the revised Oil and Gas Payor Handbook issued in December 1986 (section 3.7, "Reporting Indian Overpayment Recoupments"). The policy is also included in the Solid Minerals Payor Handbook issued in September 1984 (chapter 5, "Recoupments on Indian Leases"). These payor handbooks have been provided to all royalty payors on Federal and Indian leases for specific guidance with respect to reporting requirements on oil and gas and solid minerals leases.

The MMS published revised final oil and gas product valuation regulations at 30 CFR part 206 on January 15, 1988 (53 FR 1184 and 53 FR 1230), effective March 1, 1988. Paragraph 206.150(e)(2) of the revised regulations terminated NTL-1A. However, the MMS policy and procedure remained in the payor handbooks.

II. Proposed Amendments

Although the Indian lease overpayment recoupment policy has been the same for many years, MMS believes that its regulations should state the policy. Consequently, MMS proposes to add new sections at 30 CFR 218.53 (previously reserved) and 30 CFR 218.203 to codify the policy and procedure described above. There may be situations where it would be desirable to recoup more than 50 percent of the net monthly revenues reported on an allotted lease. Therefore, the adopted amendments provide for the recoupment of more than 50 percent of the reported net monthly revenues with the approval of MMS and the concurrence of BIA.

The proposed rule would permit MMS to approve exceptions to the limitation on recoupments, for example, on leases where royalty payments are high, and where allowing larger recoupments would not be a financial burden to a particular Indian lessor. MMS expects to authorize this exception only in unusual circumstances. However, without the exception, there would be no flexibility in the rule to accommodate unexpected situations.

The proposed amendments are intended to provide more security for the Indian community and to provide MMS with regulatory authority for limiting the amount of authorized recoupments.

The Department's policy 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 day specified in the DATE section of the preamble.

III. Procedural Matters

Executive Order 12291 and Regulatory Flexibility Act

The Department has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment need not be

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

RIN 1010-AB40

Regulations Governing Recoupment of Overpayments on Indian Leases

October 24, 1989.

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 codify longstanding policy restrictions with respect to recoupment of overpayments made by lessees and other payors on Indian leases. The established policy is that recoupments cannot exceed 50 percent of the current month's royalty revenues on allotted leases or 100 percent of the current month's royalty revenues on tribal leases.

DATES: Comments must be received on or before March 2, 1990.

ADDRESSES: Written comments regarding the proposed amendment should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

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

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Marvin D. Shaver of the Royalty Management Program, Rules

prepared pursuant to Executive Order 12630. "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

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

National Environmental 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. 4332(2)(C)).

List of Subjects in 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 recordkeeping requirements.

Dated: November 29, 1989.

Scott Sewell,

Deputy Assistant Secretary, Land and Minerals Management

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

SUBCHAPTER A—ROYALTY MANAGEMENT

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 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.*

2. Section 218.53 (previously reserved) under subpart B (Oil and Gas—General) is added to read as follows:

§ 218.53 Recoupment of overpayments on Indian leases.

Whenever an overpayment is made on an Indian lease, a payor may recoup the overpayment through a recoupment on Form MMS-2014. However, for any month a payor cannot recoup more than 50 percent of the net revenues reported in that month on an individual allotted lease, except as otherwise approved by MMS with the concurrence of BIA, or more than 100 percent of the net

revenues reported in that month on a tribal lease. A payor may request written permission from an overpaid tribe to recover monies against other leases owned by that tribe. MMS may approve a larger recoupment upon application from the payor. Proper procedures, as outlined in the MMS Oil and Gas Payor Handbook, are to be followed for reporting recoupments.

3. A new § 218.203 under Subpart E Solid Minerals—General is added to read as follows:

§ 218.203 Recoupment of overpayments on Indian leases.

Whenever an overpayment is made on an Indian lease, a payor may recoup the overpayment through a recoupment on Form MMS-4014. However, for any month a payor cannot recoup more than 50 percent of the net revenues reported in that month on an individual allotted lease, except as otherwise approved by MMS with the concurrence of BIA, or more than 100 percent of the net revenues reported in that month on a tribal lease. A payor may request written permission from an overpaid tribe to recover monies against other leases owned by that tribe. MMS may approve a larger recoupment upon application from the payor. Proper procedures, as outlined in the MMS Solid Minerals Payor Handbook, are to be followed for reporting recoupments.

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