file a return on the due date. The Service does not believe that a non-military individual on short term assignment outside the United States and Puerto Rico would encounter hardships as significant as those faced by individuals to whom the above provisions apply in filing a return by the due date or requesting an extension of time to file. Therefore, the regulations have not been amended to reflect this comment.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Peter J. Hanley, formerly of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.6001-1 through 1.6109-2

Income taxes, Administration and procedure, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 1.6081-4T [Removed]

Par. 2. Section 1.6081-4T is removed.

Par. 3. New § 1.6081-5 is added to read as follows:

§ 1.6081-5 Extensions of time in the case of certain partnerships, corporations and U.S. citizens and residents.

(a) The rules in paragraphs (a) through (e) of this section apply to returns of income due after April 15, 1988. An extension of time for filing returns of income and for paying any tax shown on the return is hereby granted to and including the fifteenth day of the sixth month following the close of the taxable year in the case of:

(1) Partnerships which are required under § 1.6031-1(e)(2) to file returns on the fifteenth day of the fourth month following the close of the taxable year of partnership, and which keep their records and books of account outside the United States and Puerto Rico;

(2) Domestic corporations which transact their business and keep their records and books of account outside the United States and Puerto Rico;

(3) Foreign corporations which maintain an office or place of business within the United States;

(4) Domestic corporations whose principal income is from sources within the possessions of the United States;

(5) United States citizens or residents whose tax homes and abodes, in a real and substantial sense, are outside the United States and Puerto Rico; and

(6) United States citizens and residents in military or naval service on duty, including non-permanent or short term duty, outside the United States and Puerto Rico.

(b) In order to qualify for the extension under this section, a statement must be attached to the return showing that the person for whom the return is made is a person described in paragraph (a) of this section.

(c) For purposes of paragraph (a)(5) of this section, whether a person is a United States resident will be determined in accordance with section 7701(b) of the Code. The term "tax home," as used in paragraph (a)(5), will have the same meaning which it has for purposes of section 162(a)(2) (relating to travel expenses away from home). If a person does not have a regular or principal place of business, that person's tax home will be considered to be his regular place of abode in a real and substantial sense.

(d) In order to qualify for the extension under paragraph (a)(6), the assigned tour of duty outside the United States and Puerto Rico must be for a period that includes the entire due date of the return.

(e) A person otherwise qualifying for the extension under paragraph (a)(5) or paragraph (a)(6) shall not be disqualified because he is physically present in the United States or Puerto Rico at any time, including the due date of the return.

(f) With respect to income tax returns due on April 15, 1988, an extension of time for filing a return of income and for paying any tax shown on that return is hereby granted to and including the fifteenth day of the sixth month following the close of the taxable year in the case of citizens or residents of the United States who are traveling outside the United States and Puerto Rico. A taxpayer will be considered to be traveling outside the United States and Puerto Rico only if the period of travel outside the United States and Puerto Rico is a period of at least fourteen days continuous travel that includes all of April 15, 1988. For returns due after April 15, 1988, no extension will be granted to taxpayers traveling outside the United States and Puerto Rico.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: July 27, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90-21107 Filed 9-7-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

RIN 1010-AB32

Interest Rate Applicable to Late Payment of Monies Due the Government and Paid on Late Disbursement of Revenues to States and Indians

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations governing the rate of interest charged to lessees and other royalty payors on late payment of royalties and other monies due the Federal Government. The MMS also is amending its regulations governing the rate of interest paid by MMS on late disbursements of an Indian tribe's or allottee's royalty or a State's share of royalty revenues. Under the new rule, the same interest rate will be used for late payments and late disbursements. This change is necessary because the Tax Reform Act of 1986 amended section 6621 of the Internal Revenue Code 1954, which provides the rate at which interest is calculated.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, P.O. Box 25165, Mail

Stop 3910, Denver, Colorado 80225, (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rule is Marvin D. Shaver of the Rules and Procedures Branch, Royalty Management Program, Minerals Management Service, Lakewood, Colorado.

I. Background

In the Notice of Proposed Rulemaking (*54 FR 14364, April 11, 1989*), MMS explained in detail how section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1721, requires the Secretary of the Interior to: (a) Charge interest on royalty payments from Federal and Indian oil and gas leases that are paid late (section 111(a), 30 U.S.C. 1721(a)); (b) pay interest to States on disbursements which are not made by the time prescribed under 30 U.S.C. 191, as amended by FOGRMA section 104(a), 30 U.S.C. 1714 (section 111(b), 30 U.S.C. 1721(b)); and (c) pay interest to Indian tribes and allottees if royalty revenues are not disbursed by the date prescribed in FOGRMA section 104(b), 30 U.S.C. 1714 (section 111(d), 30 U.S.C. 1721(d)).

Sections 111 (a), (b), and (d) of FOGRMA each provide that interest shall be "at the rate applicable" under Section 6621 of the Internal Revenue Code of 1954 (IRC) (26 U.S.C. 6621). Section 6621 establishes the rate of interest that must be applied to late payment of taxes under 26 U.S.C. 6601(a), and to refunds of overpayment of taxes under 26 U.S.C. 6611(a).

After FOGRMA's enactment, section 6621 was modified. Prior to its amendment by the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2744, section 6621 contained a single rate of interest, 26 U.S.C. 6621 (1982). Thus, FOGRMA interest provisions originally imposed the same rate of interest to both late payments of royalty and to late disbursements of monies to the States and Indians. As amended, however, section 6621 provides for two rates. For late payments of tax, the rate is a "short-term Federal rate" plus 3 percentage points, 26 U.S.C. 6621(a)(2) (Supp. 1986). For refunds of overpayments, the rate is the same "short-term Federal rate" plus 2 percentage points, 26 U.S.C. 6621(a)(1) (Supp. 1986). Thus, under section 6621, as amended, late payments of taxes have a rate of interest charged to them that is 1 percentage point higher than the rate the Government pays on refunds of overpayments of taxes. The effect of this two-rate provision is to impose a higher interest burden on taxpayers who pay taxes late than the Government pays when it refunds overpayments of taxes.

The FOGRMA interest provisions invoke the rates established by section 6621 without qualification, and were not amended either in conjunction with or subsequent to the amendment of section 6621 in 1986. Consequently, there is some ambiguity as to which of the two rates under section 6621 should be applied for FOGRMA payors. At the time FOGRMA became law, there was only one interest rate reference in section 6621. Consequently, there is nothing in FOGRMA's legislative history to provide guidance for the present situation. The FOGRMA legislative history (H.R. Rep. No. 859, 97th Cong., 2d Sess. 36 (1982), reprinted in 1982 *U.S. Code Cong. and Admin. News* 4268, 4290), discusses only the following reasons for using the rate from IRC:

> *Imposition of such high penalties against* those owing money to the United States is to remove the incentives such persons may have to hold the money owed and invest it rather than pay it on time to the MMS. Also, the high penalty required of the United States should be a strong incentive to the MMS to disburse moneys under the mineral leasing laws of 1920 promptly.

Since a rate from section 6621 must be applied under section 111 (a), (b), and (d) of FOGRMA, 30 U.S.C. 1721 (a), (b), and (d), MMS described, in the Notice of Proposed Rulemaking, the four possible options. First, the lower rate for refund of overpayments in section 6621(a)(1) could be applied uniformly under FOGRMA section 111 (a), (b), and (d). Second, the higher rate for late payment of taxes in section 6621(a)(2) could be applied uniformly under FOGRMA section 111(a), (b), and (d). Third, the rate for refund of overpayments could be applied under FOGRMA section 111(a) (late payment of royalty) and the rate for late payment of taxes could be applied under FOGRMA section 111 (b) and (d) (late disbursement to the States and Indians). Fourth, the rate for refund of overpayments could be applied under FOGRMA section 111 (b) and (d) and the rate for late payments could be applied under FOGRMA section 111(a).

In the Notice of Proposed Rulemaking MMS solicited comments on the four options as to which of the two interest rates in the amended section 6621 should be applied under the various FOGRMA provisions referring to that section. Under MMS's existing rules, which refer only to section 6621, there is an ambiguity as to which of the two section 6621 rates apply. The MMS's principal proposal was that the higher interest rate in IRC 6621(a)(2) should apply to late payments of monies due the Government, while the lower rate in IRC 6621(a)(1) should apply to late disbursements by MMS of royalty revenues to the States and Indians.

II. Comments Received on Proposed Rule

As stated above, MMS published a Notice of Proposed Rulemaking in the Federal Register on April 11, 1989 (54 FR 14364). The proposed rule provided as the principal proposal that the higher interest rate in IRC 6621(a)(2) should apply to late payments of monies due the Government while the lower rate in IRC 6621(a)(1) should apply to late disbursements by MMS of royalty revenues to the States and Indians. In addition, as described above, the three other options were outlined in the preamble and comments were specifically requested on all three options.

The proposed rulemaking provided for a 30-day public comment period which ended May 11, 1989. Six commenters (five industry and one State) submitted comments during the comment period which are addressed in this section. No comments were received from Indian representatives.

One commenter expressed concern that the proposed rule, with respect to payments to Indians, does not comport with the wording of section 111(c) of FOGRMA, 30 U.S.C. 1721(c), when the Indian lessee is charged interest for failure to timely pay the correct amount of royalty on an Indian lease. (Section 111(c) of FOGRMA requires that all interest charges collected under FOGRMA or under other applicable laws because of late payment of royalties due and owing an Indian tribe or an Indian allottee must be deposited in the same account as the royalty payments on the lease).

Response: This comment did not address the correct issue addressed in the proposed rule. The proposed rule did not purport to alter the existing practice, which is in accordance with section 111(c) of FOGRMA, that interest charges collected on payments from Indian leases be deposited in the same Treasury account as the royalty payment.

Another commenter stated that MMS's attempt to justify its proposal on the grounds that it is a "service" entity acting as a passive "conduit for funds" is not supportable. This commenter stated further that the fact that MMS is "burdened with the administrative costs necessary to clear and process the funds" is irrelevant to the issue of its interest obligation.

The State commenter agreed with MMS's proposal to charge lessees and other payors at the higher underpayment rate (section 6621(a)(2)). However, this commenter argued that there is no basis under statute, legislative history, MMS practice, or simple logic that supports the proposal to compute the interest owed to the States at the lower rate (section 6621(a)(1)).

Response: As explained more fully below, the concerns of this commenter are resolved by the final rule, which provides that the higher underpayment rate in section 6621(a)(2) be applied uniformly under FOGRMA sections 111 (a), (b) and (d).

One commenter, opposing the proposed interest rate on charges to lessees and royalty payors, stated that lessees/payors should not be required to subsidize MMS administrative costs through interest charges. The commenter also stated that lessees/payors should not pay interest that is not shared with the States and Indians.

Response: Regardless of the interest rate, there is no subsidy for MMS. Any interest collected for onshore Federal leases is shared with the States or other recipients in the same proportion as the royalties collected for those leases. All other interest revenues, including interest payments owed on Federal offshore leases, are deposited into U.S. Treasury accounts, and do not result in an increase in MMS's budget.

Most commenters recommended the use of a single interest rate that was most advantageous to them. The industry commenters stated that a lower interest rate was sufficient to discourage the withholding of payments to MMS. Four of the industry commenters recommended the lower overpayment rate provided by section 6621(a)(1) of IRC. Another industry commenter recommended that the single rate be the rate specified in section 6621 of IRC on the date that FOGRMA was enacted. This commenter argued that there is nothing in the Tax Reform Act (TRA) of 1986 or its legislative history to suggest that Congress intended to modify FOGRMA as the result of modifications of IRC. In this commenter's opinion, any changes to FOGRMA governing interest rates is a subject that should be considered by Congress rather than by MMS.

Response: The MMS agrees that there is no reason to believe Congress intended to modify FOGRMA through the TRA of 1986. The rate for refunds of overpayments of the amended section 6621 is 1 percentage point lower than the rate prescribed by section 6621 prior to amendment. Thus, if this rate were applied to FOGRMA interest collections, the interest assessment would be less than it was prior to the amendment. This is not consistent with Congress' purpose. Furthermore, the amount of payor assessed interest collected by MMS (more than $25 million in FY 1989) casts doubt on industry's assertion that a lower rate would be sufficient to discourage late payments of royalty. Maintaining the higher rate formula specified in section 6621 on the date FOGRMA was enacted is most consistent with FOGRMA's terms. The FOGRMA still refers to "the rate applicable" under section 6621, so the rate will generally change with changes in interest rates.

One commenter expressed an opinion that MMS should pay interest to lessees on refunds of royalty overpayments just as it assesses interest on a late royalty payment by the lessee.

Response: The MMS does not have statutory authority to pay interest on refunds of royalty overpayments. With respect to onshore leases, no statute authorizes MMS to pay interest on refunds. With respect to offshore leases, section 10 of the Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1339, specifically states that authorized refunds of excess payments shall be repaid without interest.

III. Rule Adopted

After consideration of comments received on the proposed rulemaking, MMS is adopting a single rate for application in both situations. This final rule amends 30 CFR 218.54, 218.55, and 218.103 to provide that the higher rate in IRC 6621(a)(2) will apply uniformly to late payments of monies due to MMS pursuant to FOGRMA section 111(a) and also to late disbursements to the States and Indians pursuant to FOGRMA section 111 (b) and (d).

The change in MMS's position is the result of MMS's concurrence with arguments presented by several commenters. First, FOGRMA's intent was that States and Indians are entitled to receive the same interest rate on the payments that they received late from MMS as the interest rate that MMS receives on late payments from lessees and other payors. Second, there is no indication that Congress intended to modify FOGRMA, which was passed when "the rate applicable" was the short-term Federal rate plus 3 percentage points.

The adoption of the higher underpayment rate provided under IRC 6621(a)(2) for late disbursements to the States and Indians is a change from MMS's existing practice. See paragraph IV below of this preamble for a discussion of the effective date of this final rule.

As stated in the Notice of Proposed Rulemaking, regulations governing solid mineral and geothermal resource leases provide for late payment charges to be calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate." See 30 CFR 218.202(c) and 30 CFR 218.301(c). Because the interest rate provided for in section 6621 does not apply to solid mineral or geothermal resource leases, this rulemaking does not apply to solid mineral or geothermal resource leases.

The adopted rule also includes an administrative amendment to subpart B of 30 CFR part 218 to remove the authority citation included therein. The authority citation for part 218 is included directly after the table of contents and before the regulatory text and therefore is not required under the subpart.

IV. Effective Date of Final Rule

The MMS will begin paying interest to the States and Indians at the higher underpayment rate established in IRC 6621(a)(2) beginning with disbursements made during the second month following the date of publication of this final rule in the Federal Register. At that time, the States and Indians will begin receiving a 1 percentage point increase in the rate of interest from MMS on its late disbursement of royalties and other monies.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The sole effect of the rulemaking is a small increase of approximately $10,000 annually in the amount of interest paid to the States and Indians by MMS on its late disbursements of royalty revenues. Therefore, the Department has determined that this document 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

This rulemaking clarifies an ambiguity in existing regulations and will result in an increase in interest paid by MMS to the States and Indians. There is no change in the interest rate paid by lessees and other payors for late

payment of interest. Therefore, 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."

Paper Reduction Act of 1980

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

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment; 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 in 30 CFR Part 218

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

Dated: July 26, 1990.

James M. Hughes,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is 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 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. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

Subpart B—[Amended]

2. Subpart B—Oil and Gas, General is amended by removing the authority citation following the subpart heading.

3. Section 218.54 under Subpart B—Oil and Gas, General is amended by revising the section heading and paragraph (b) to read as follows:

§ 218.54 Late payments.

* * * * *

(b) The interest charge on late payments shall be at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

* * * * *

4. Paragraph (c) of § 218.55 under subpart B—Oil and Gas, General is revised to read as follows:

§ 218.55 Interest payments to Indians.

* * * * *

(c) Interest shall be computed at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

* * * * *

5. Paragraph (b) of § 218.103 under subpart C (Oil and Gas, Onshore) is revised to read as follows:

§ 218.103 Payments to States.

* * * * *

(b) Interest shall be computed at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

* * * * *

[FR Doc. 90-21076 Filed 9-7-90; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3827-9]

RIN 2060-AC68

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects errors and makes clarifications in the regulatory text of the final rule on National Emission Standard for Benzene Waste Operations which appeared in the Federal Register on March 7, 1990 (55 FR 8292).

EFFECTIVE DATE: March 7, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Janet Meyer at (919) 541-5254, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On March 7, 1990 (55 FR 8292), EPA promulgated regulations limiting benzene emissions from benzene waste operations and benzene transfer operations. A few editorial corrections to clarify the intent of the National Emission Standard for Benzene Waste Operations are being made by this document.

Inquiries have been received requesting clarification of the applicability of the benzene waste operations standard to facilities that treat, store, or dispose of benzene wastes generated by chemical plants, coke by-product recovery plants, or petroleum refineries. The applicability section of the rule, as written, inadvertently applies more broadly than the intent expressed in the preamble to the rule (March 7, 1990, 55 FR 8292) or in the December 15, 1989, **Federal Register** notice of clarification of the proposed rule (54 FR 51423). Therefore, paragraph *(b) of § 61.340 is being revised: (1) To* clarify that the subpart applies to offsite hazardous waste treatment, storage, and disposal facilities (TSDF) which are facilities that must obtain a hazardous waste management permit under subtitle C of the Solid Waste Disposal Act and (2) to clarify that the rule only applies to benzene-containing wastes. It should be noted that recent revisions to 40 CFR part 261, the toxicity characteristic (March 29, 1990, 55 FR 11798), will require most facilities receiving wastes with greater than 0.5 parts per million (ppm) benzene to be permitted as hazardous waste TSDF. The primary effects of the correction are to clarify that the rule does not apply to hazardous wastes from other industries and the rule generally does not apply to publicly owned treatment works and municipal solid waste landfills.

An editorial correction is being made to paragraph (b)(2)(ii)(A) of § 61.346 to clarify that the example location for water seal control is on the junction box rather than on the junction box vent pipe. This clarification is being made to prevent possible misinterpretations of the alternative standard for individual drain systems. This alternative standard is applicable only in those cases where there are no routine changes in liquid level in the junction box and no flow from the junction box vent pipe. Paragraph (b)(2)(ii)(B) of § 61.348 is being modified to clarify the meaning of enhanced biodegradation and to make the rule consistent with the information used as a basis for the final rule.