imposed under subtitle A of the Internal Revenue Code on the income earned by the assets of the nuclear decommissioning fund.

(b) * * *

(3) A deduction is allowed for the amount of an otherwise deductible loss that is sustained by the nuclear decommissioning fund in connection with the sale, exchange or worthlessness of any investment. A loss is otherwise deductible for purposes of this paragraph (b)(3) if such loss would be deductible by a corporation under section 165 (f) or (g) and sections 1211(a) and 1212(a).

* * * * *

(c) * * *

(4) *Other corporate taxes inapplicable.* Although the modified gross income of a nuclear decommissioning fund is subject to tax at the rate specified by section 468A(e)(2) and paragraph (a) of this section, a nuclear decommissioning fund is not subject to the other taxes imposed on corporations under subtitle A of the Internal Revenue Code. For example, a nuclear decommissioning fund is not subject to the alternative minimum tax imposed by section 55, the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, and the alternative tax imposed on a corporation under section 1201(a).

(d) * * *

(5) * * *

(ii) The taxable income with respect to which the nuclear decommissioning fund's status as a "large corporation" is measured is "modified gross income" (as defined by paragraph (b) of this section).

Par. 7. Section 1.468A–5 is amended as follows:

1. Paragraph (a)(1)(i)(B) is revised.
2. Paragraph (a)(1)(iii) is removed.
3. Paragraph (a)(1)(v) is redesignated as (a)(1)(iii).
4. Paragraph (a)(1)(iv) is revised.
5. Paragraph (a)(3)(i)(C) is revised.
6. Paragraph (a)(3)(ii) is revised.
7. The added and revised provisions read as follows:

§ 1.468A–5 Nuclear decommissioning fund qualification requirements; prohibitions against self-dealing; disqualification of nuclear decommissioning fund; termination of fund upon substantial completion of decommissioning.

(a) * * *

(1) * * *

(i) * * *

(B) One or more funds that are to be used for the decommissioning of a nuclear power plant and that do not qualify as nuclear decommissioning funds under this paragraph (a) can be established and maintained pursuant to a trust agreement that governs one or more nuclear decommissioning funds.

* * * * *

(iv) If assets of a nuclear decommissioning fund are (or will be) invested through an unincorporated organization, within the meaning of § 301.7701–2 of this chapter, the Internal Revenue Service will rule, if requested, whether the organization is an association taxable as a corporation for federal tax purposes. A request for a ruling may be made by the electing taxpayer as part of its request for a schedule of ruling amounts.

* * * * *

(3) * * *

(i) * * *

(C) To the extent that the assets of the nuclear decommissioning fund are not currently required for the purposes described in paragraph (a)(3)(i) (A) or (B) of this section, to make investments.

(ii) *Definition of administrative costs and expenses.* For purposes of paragraph (a)(3)(i) of this section, the term "administrative costs and other incidental expenses of a nuclear decommissioning fund" means all ordinary and necessary expenses incurred in connection with the operation of the nuclear decommissioning fund. Such term includes the tax imposed by section 468A(e)(2) and § 1.468A–4(a), any State or local tax imposed on the income or the assets of the fund, legal expenses, accounting expenses, actuarial expenses and trustee expenses. Such term does not include decommissioning costs. Such term also does not include the excise tax imposed on the trustee or other disqualified person under section 4951 or the reimbursement of any expenses incurred in connection with the assertion of such tax unless such expenses are considered reasonable and necessary under section 4951(d)(2)(C) and it is determined that the trustee or other disqualified person is not liable for the excise tax.

* * * * *

Par. 8. Section 1.468A–8 is amended by adding paragraph (b)(11) to read as follows:

§ 1.468A–8 Effective date and transitional rules.

* * * * *

(b) * * *

(11) *Nuclear decommissioning fund qualification requirements.* For tax years beginning prior to January 1, 1995, the Service will not assert that an unincorporated organization referred to in § 1.468A–5(a)(1)(iv), established prior to January 1, 1993, through which the assets of a nuclear decommissioning fund are invested, is an association taxable as a corporation for federal tax purposes.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by revising the entries for § 1.468A–3 and § 1.468A–8 to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified or described	Current OMB control No.
. . . . .	.
1.468A–3	1545–1269
. . . . .	.
1.468A–8	1545–1269
. . . . .	.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: December 14, 1992.

Alan J. Wilensky,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 92–31057 Filed 12–29–92; 8:45 am]

BILLING CODE 4830–01–M

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: Final rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is amending its regulations to allow payors to correct reporting errors under certain limited circumstances by offsetting production incorrectly reported and attributed to a Federal or Indian Tribal lease or leases against underreported production on a different Federal or Indian Tribal lease or leases to which it should have been attributed (hereafter referred to as

"cross-lease netting"). The rulemaking, under specified conditions, allows cross-lease netting for purposes of determining whether an underpayment exists on which interest is owed on any Federal or Indian tribal mineral lease or leases. Also, the rulemaking allows cross-lease netting for purposes of determining whether an overpayment exists on a Federal offshore mineral lease or leases which is subject to the filing and reporting requirements of section 10 of the Outer Continental Shelf Lands Act of 1953.

EFFECTIVE DATE: February 1, 1993.

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

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Mr. Donald T. Sant, Deputy Associate Director for Valuation and Audit, Mr. Peter Schaumberg and Mr. Geoffrey Heath, Office of the Solicitor, Washington, DC.

I. 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 (OCSLA), 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, 1909, 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, 216, 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 has ordinarily resulted in an assessment for late-payment interest due on the originally underpaid lease. The assessments are issued through the MMS' Auditing and Financial System (AFS) exception processing. Similar corrections made as a result of an MMS audit have also resulted 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(g) 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 adjacent OCS leases which is commingled into a common pipeline, where the total volume of

production is correct and royalty is timely paid thereon; and subsequently corrections are submitted 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 the leases involved 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, the leases involved 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 on the OCS (and, if within the 8(g) zone, are within the 8(g) zone and are offshore of the same coastal state), or are owned by the same Indian lessor. These examples may occur in the context of determining underpayments on which late-payment interest is due or 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 amending the regulations to allow royalty payors to offset royalty overpayments for a lease or leases against underpayments for a different lease or leases, 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 amending the regulations to allow payors to offset royalty underpayments for an offshore lease or leases against overpayments for a different offshore lease or leases, 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 will be allowed only under the specified conditions. In all other situations, the law as established by the previously cited IBLA decisions will remain unchanged.

II. Comments on Proposed Rule

The proposed rulemaking (56 FR 31891, July 12, 1991) provided for a 60-day public comment period, which ended September 10, 1991. The public comment period was subsequently extended (56 FR 46396, September 12, 1991) to September 30, 1991. Seventeen commenters submitted written comments during this period. The comments are addressed in this section.

General Comments

(a) Some commenters requested that MMS state in the preamble of the rulemaking that the cross-lease netting procedure is only voluntary and does not diminish any of the other rights of lessees to effect offsets within leases under existing law. These commenters stated that the rule should be seen as an option for the lessee to minimize the unfair imposition of late-payment penalties and to streamline offshore royalty reporting. In their view, it should not be a requirement.

Response: The rule as adopted operates to the lessee's benefit. If the lessee does not wish to avail itself of the rule's advantages, it is not required to do so. The rule therefore is already "voluntary." The rule does not govern and does not purport to address issues regarding offsets within a single lease account.

(b) The proposed rulemaking applied to all Federal leases and to all Indian leases. In the proposed rulemaking, MMS requested comments on whether Indian tribal and/or allotted leases should be excluded from the rulemaking. Several commenters from industry objected to excluding Indian leases from the rulemaking. They argued that harmless errors should be corrected on Indian leases as contemplated by the proposed rule. One commenter stated that there are tribes and individual allottees owning numerous leases where the rule could apply and offer fairness and cost-effectiveness. On the other hand, a commenter from an Indian tribe objected to the rule stating that lease contracts between tribes and the companies create an independent property interest. They argued that failure to maintain separate lease accountability would result in the taking of the Tribe's property interest.

Response: The MMS has reviewed all comments and believes that there is no basis to exclude Indian tribal leases in the rulemaking. Indian allotted leases are excluded from the final rulemaking because there are minimal cases where the individual allottee (lessor) (or the proportion of interests held by more than one individual allottee) is the same for the leases involved. On the other hand, like Federal leases, MMS believes there will be cases where the Indian tribe (lessor) is the same for the leases involved. The rule should apply to all Federal and Indian tribal leases, since under the criteria in the rulemaking, there would be no harm to the lessor.

(c) Several commenters recommended that the rulemaking be expanded to cover lease rental payments. They argue that reporting errors can occur for rental payments and should be covered under the cross-lease netting rulemaking.

Response: The MMS does not agree with the recommendation. The scope of the rulemaking is limited to reporting errors covering production. Failure to pay rental due may result in termination of a lease, and the rental requirements must be strictly construed.

(d) One commenter supported the rule and recommended that the rule be applied retroactively.

Response: The MMS is not making this rule effective retroactively. However, there are many open cases which involve this issue and MMS will apply the policy adopted in this rule as necessary.

(e) One commenter requested that the rule be expanded to include value/price differences.

Response: The rule does not require that the royalty value of the volume erroneously attributed to an incorrect lease be the same under the correct lease as it originally was reported under the incorrect lease. For example, as a result of the same reporting error which caused the production to be attributed to the wrong lease, an incorrect price similarly may have been applied if

production from the two leases was subject to different prices under a sales contract. However, any deficiency owed when the volume is reported for the correct lease will be subject to late payment interest assessments under existing law and regulations.

(f) Several commenters argued that MMS needs to recognize that special problems can occur relative to unit or communitization allocations or adjustments that may involve different payors, different leases, and unequal volumes. Where the payor can prove that adjustments need to be made and that there would be no harm to the lessor, MMS should be able to approve these net adjustments on a case-by-case basis. The regulations should be revised to include such a provision.

Response: Offset of overpayments and underpayments between leases where the leases involved in the adjustment are included in the same unitization or communitization agreement are already permitted under existing MMS procedures.

(g) Some state representatives argued that MMS has only imposed erroneous reporting assessments for errors that prevent timely distribution of royalty revenues. The reporting errors that MMS would allow for purposes of cross-lease netting do not fall within this category. Thus, they concluded that the cross-lease netting rule will encourage, rather than discourage incorrect reporting.

Response: The MMS disagrees with the comments. Payors making cross-lease netting corrections will be subject to late or erroneous reporting assessments under 30 CFR 218.42(d).

Specific Comments

(a) In the preamble to the proposed rule, MMS stated with respect to proposed § 218.42(b): "Therefore, cross-lease netting would be allowed only under all the following conditions • • •" 56 FR 31892. Several commenters recommended that MMS make it clear that cross-lease netting would be allowed if all of the following conditions are met.

Response: The MMS agrees with the comment, and it is MMS' intent to allow cross-lease netting in all situations where all the conditions listed in the rule are met.

(b) Several commenters requested MMS to modify 30 CFR 218.42(b) and 230.51(b) regarding the requirement that an error resulting in the wrong payment between two leases must be in the same production month. The commenters argued that royalty attributable to production from one lease may be inadvertently applied to another lease and mistakenly to another production month. The rule as proposed would prohibit the netting out of these errors, when in fact, it is the same kind of harmless error that may be corrected under the rulemaking if the right month were used. They contend that the proposed restriction to use only the same production month limits the usefulness of the cross-lease netting procedure for harmless errors.

Response: The MMS agrees with the comment. The rule has been changed accordingly.

(c) Some commenters requested that MMS clarify § 218.42(b)(3) and § 230.51(b)(3) regarding the requirement that the payor submit production reports and other documentary evidence pertaining to the reporting error involving specific production. To avoid unnecessary administration, the commenter suggested that the requirement should be that additional documentation be required only on request by MMS where errors cannot be readily substantiated by the data submitted.

Response: The MMS believes that the burden of proof must be on the payor to substantiate the reporting error and assure that any correction qualifies under the cross-lease netting procedure. Therefore, information must be provided to MMS to verify the reporting error at the time of the request for the adjustment.

(d) One commenter contended that for onshore leases, the requirement that the ultimate recipient of royalty revenues be the same where cross-lease netting is contemplated unduly limits the benefits of the proposed rule and should be eliminated in 30 CFR 218.42(b)(5) and 230.51(b)(5). It argued that the recipient is paid by the Federal Government on a periodic, lump-sum basis and the limitation is not necessary because of no harmful effect.

Response: The MMS disagrees with the comments. Revenues from onshore leases are distributed to designated recipients on a monthly basis. Cross-lease netting in situations involving different recipients or permanent definite appropriations plainly would change the disbursement of revenues under those appropriations. In addition, under current law, late-payment interest paid by lessees is paid to the same recipients as the principal royalty revenues. 30 U.S.C. 191, as amended (public domain leases), 30 U.S.C. 191a (all other leases). The MMS believes that as a matter of policy, if one recipient has been deprived of funds, which it otherwise would have received earlier, because of a reporting error which caused an underpayment with respect to the lease for which the production should have been reported, it is appropriate to continue to require the payor to pay late-payment interest, as provided under existing law and rules, which is then shared proportionately with that recipient.

(e) Some commenters recommended that the requirement to have MMS approval before effecting an offset for a reporting error be eliminated in 30 CFR 230.51(b). The commenter argued that through new accounting codes, any correction on the Report of Sales and Royalty Remittance—Oil and Gas (Form MMS–2014) could be reported and tracked to assure proper internal control. The payor would still be required to maintain sufficient documentation to support the adjustment which could be verified periodically through MMS audit.

Response: The MMS disagrees with the comments. The MMS does not want to add this verification function to the audit function because of the volume of transactions being reported each month. Companies should be required to submit documentation of erroneous reporting at the time of correction of the reports. Prior approval of the adjustments will assure effective internal control, and is not overly burdensome to the payor.

(f) One commenter suggested that if prior approval is required as stated in 30 CFR 230.51(b), then MMS should make a commitment to respond within 60–90 days from receipt of the request for authorization for cross-lease netting. The commenter stated that timely action is important in considering the impact of the accruing late-payment interest expense.

Response: The MMS agrees that the review of the request for cross-lease netting should be timely. The MMS review should be completed within 90 days if the documentation submitted for approval is complete. When a cross-lease netting request meets all of the criteria of this rulemaking, late-payment interest will be assessed only on any net underpayment. However, if cross-lease netting between offshore leases results in a net overpayment on a lease, a refund or credit of the net amount is subject to OCSLA section 10 requirements which cannot be waived.

(g) One commenter objected to the requirement that reporting errors must result in equal volumes between leases in 30 CFR 218.42(b)(1) and 230.51(b)(1). They argue that the sections recognize and accept that valuation may be different, therefore, volume differences should also be acceptable when all other conditions are met and there is no harm caused by the cross-lease netting adjustment.

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Response: The MMS disagrees with the comment. The requirement remains that the total volume erroneously reported on the incorrect lease(s) must equal the total volume attributed to the correct lease(s) in the cross-lease netting adjustment, such that the payor can demonstrate that the initial underreporting and overreporting resulted from the same error. The rulemaking is amended to clarify that several leases can be involved in a cross-lease adjustment if all the other conditions are met.

(h) Several commenters objected to the requirement that the payor be the same for leases involved in the cross-lease netting adjustment under 30 CFR 218.42(b)(2) and 230.51(b)(2). They contend that whether or not the payments were by the same payor should not be a controlling factor if there is no harm to the lessor.

Response: The MMS disagrees with the comments. The cross-lease netting requirements are intended to cover reporting errors by one payor. Adjustments between payors are not reporting errors which should be reconciled by MMS. To expand the requirements to cover adjustments between multiple payors is beyond the scope and purpose of the rulemaking.

III. Summary and Discussion of Final Rule

(a) For Calculation of Late-Payment Interest:

The MMS final rule will add a new provision to the regulations at 30 CFR part 218, to be designated 30 CFR 218.42, which allows cross-lease 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 will be allowed only if all of the following conditions are met:

(1) The error results from attributing and reporting an equal volume of production produced form a lease or leases during a particular production month to a different lease or leases from which it was not produced for that same or another 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 unrelated 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 does not require that the same value of production be involved when the production is re-attributed to the correct lease or leases. Ascribing a particular volume of production to the wrong lease or leases may result in a royalty value under that lease or leases which is different from the correct royalty value when the production is reported under the correct lease or leases. If the royalty attributable to the value of production as reported under the wrong lease or leases is greater than the royalty attributable to the value of production under the correct lease or leases, 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 or leases is less than the royalty attributable to the value of production under the correct lease or leases, the lessee or payor owes 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 the leases involved. This condition is necessary for practical administration. While an allocation error by a pipeline operator, for example, could result in overreporting production on a lease(s) and underreporting an equal volume of production on another lease(s) which has a different payor and where all other necessary conditions are met, MMS believes this is not a reporting error which should be reconciled by MMS.

(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, when in fact that was not the case.

(4) The lessor is the same for the leases involved (in the case of Indian tribal leases, the same tribe is the lessor of both leases). This requirement is necessary to ensure that offsetting is not permitted where one lessor has had the advantage of the time value of the overpayment on the wrong lease while a different lessor 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, the leases involved. 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), 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. 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 cross-lease netting in that circumstance.

It is the payor's burden to show by satisfactory documentation that each of these conditions has been met. A payor may make that showing either through the administrative appeals procedure of 30 CFR part 290 after receiving an invoice for late-payment interest due, or may 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 will be canceled.

The final rule applies to all Federal leases, onshore and offshore, and to all Indian tribal leases, for all minerals (oil, gas, coal, other solid minerals, and geothermal steam). As a matter of conforming amendments, MMS is amending 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

Consistent with cross-lease netting for late-payment interest purposes (see section II(a) above of this preamble), MMS is also amending the regulations 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 OCSLA section 10.

The MMS is requiring that the same general requirements for cross-lease netting apply for OCSLA section 10 purposes as are required for late-payment interest purposes. Similar to the conditions identified for late-payment interest purposes, conditions identified for OCSLA 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 final rule at 30 CFR 230.51, cross-lease netting for OCSLA section 10 purposes will be allowed only upon the payor's submission of a written request to MMS for its approval for the payment offset. The payor will be required to provide adequate documentation to show that all the following conditions have been met before MMS will allow cross-lease netting:

(1) The error results from attributing and reporting an equal volume of production produced from a lease or leases during a particular production month to a different lease or leases from which it was not produced for that same or another 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 unrelated 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 the royalty difference. The entire royalty attributed to the wrong lease would be offset and no OCSLA section 10 requirements would apply.

(2) The payor is the same for the production attributable to the leases involved. 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, when in fact that was not the case, and thereby effectively nullify the OCSLA 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 III(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 is required to submit an adjusting royalty report (Form MMS–2014) to correct its reporting to MMS' AFS. Royalties attributed to an incorrect lease under the conditions specified above and for which offset is approved by MMS are not, under the final rule, subject to the filing and reporting requirements of OCSLA 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 final 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).

IV. 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 this 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 of the Interior (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."

Executive Order 12778

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

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 in 30 CFR Parts 218 and 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 19, 1992.

Daniel Talbot,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 218 and 230 are 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. 1331 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 or leases (onshore or offshore) and on any Indian tribal mineral lease or leases for any production month shall not be reduced by offsetting against that underpayment any overpayment made by the payor on any other lease or leases, except as provided in paragraph (b) of this section. Interest due from a payor or any underpayment on any Indian allotted lease shall not be reduced by offsetting against any overpayment on any other Indian allotted lease under any circumstances.

(b) Royalties attributed to production from a lease or leases which should have been attributed to production from a different lease or leases may be offset to determine whether and to what extent an underpayment exists on which interest is due if the following conditions are met:

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

(2) The payor is the same for the lease or leases to which production was attributed and the lease or leases 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 the leases involved (in the case of Indian tribal leases, the same tribe is the lessor); 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, the 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 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 a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42.

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 a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42.

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 a lease or leases, excluding rental payments, may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is

due pursuant to conditions specified in § 218.42.

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 a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42.

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

§ 218.302 Late payment or underpayment charges.

* * * * *

(f) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42.

PART 230—RECOUPMENTS AND REFUNDS

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

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

(b) Royalties attributed to production from a lease or leases governed by the OCSLA, which should have been attributed to production from a different lease or leases 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 Minerals Management Service (MMS), Fiscal Accounting Division, for its approval of the correction and provides adequate documentation to show that the following conditions exist and are met:

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

(2) The payor is the same for the lease or leases to which the production was attributed and the lease or leases 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 to correct its reporting to the Auditing and Financial 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 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]

[FR Doc. 92-31631 Filed 12-29-92; 8:45 am]
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Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program

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

ACTION: Final rule; Approval of amendment.

SUMMARY: OSM is announcing the approval of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments (Program Amendments Number 91-1 and 91-8, and amendments transferred from 91-7C) consist of proposed changes to the Indiana Surface Mining Statute (IC 13-4.1) and Indiana Surface Mining Rules (310 IAC 12) concerning archaeology and historic preservation. The amendments are intended to provide cultural and historic resources protection provisions which are no less effective than the corresponding Federal requirements.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of