equivalents imported in 1986, 1987, and 1988 were the same as those used in establishing the original Board. The recommended new importer representation is based on a three-year average of 1986, 1987, and 1988 data to be consistent with the procedures used for domestic representation.

The Board's recommended reapportionment plan would reduce the number of representatives on the Board for four units by one member each and one member increase for the importer unit. The States or units affected by the reapportionment plan and the current and proposed member representation per unit are as follows:

	Current representation	Proposed representation
1. Indiana	2	1
2. Nebraska	6	5
3. Oregon	2	1
4. Tennessee	3	2
5. Import unit	5	6

The 1989 nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment as proposed by this rulemaking would be effective if adopted, with the 1990 nominations and appointments.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Beef and beef products.

For reasons set forth in the preamble, it is proposed that 17 CFR part 1260 be amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 et seq.

2. Section 1260.141 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1260.141 Membership of Board.

(a) For Board nominations and appointments beginning with those in 1990, the United States shall be divided into 41 geographical units and one unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES[1]

Unit	(1,000 head)	Directors
1. Alabama	1,800	2
2. Arizona	947	1
3. Arkansas	1,813	2
4. California	4,700	5
5. Colorado	2,683	3
6. Florida	2,045	2
7. Georgia	1,557	2
8. Idaho	1,580	2
9. Illinois	2,083	2
10. Indiana	1,373	1
11. Iowa	4,683	5
12. Kansas	5,893	6
13. Kentucky	2,467	2
14. Louisiana	1,120	1
15. Michigan	1,258	1
16. Minnesota	2,997	3
17. Mississippi	1,371	1
18. Missouri	4,500	5
19. Montana	2,367	2
20. Nebraska	5,450	5
21. Nevada	513	1
22. New Mexico	1,343	1
23. New York	1,713	2
24. North Carolina	875	1
25. North Dakota	1,767	2
26. Ohio	1,793	2
27. Oklahoma	5,167	5
28. Oregon	1,383	1
29. Pennsylvania	1,930	2
30. South Carolina	617	1
31. South Dakota	3,527	4
32. Tennessee	2,333	2
33. Texas	13,567	14
34. Utah	767	1
35. Virginia	1,743	2
36. West Virginia	517	1
37. Wisconsin	4,207	4
38. Wyoming	1,307	1
39. *Northwest*		2
Washington	1,297	
Alaska	9	
Hawaii	201	
Total	1,507	
40. *Northeast*		1
Massachusetts	75	
Maine	113	
Vermont	306	
New Hampshire	57	
Total	551	
41. *Mid-Atlantic*		1
Maryland	326	
Delaware	30	
Rhode Island	7	
Connecticut	78	
New Jersey	81	
District of Columbia	0	
Total	522	
42. Importer	5,934	6

[1] 1987, 1988, and 1989 average.

* * * * *

3. Section 1260.141 is amended by revising paragraph (c) to read as follows:

§ 1260.141 Membership of Board

* * * * *

(c) At least every three (3) years, and not more than every two (2) years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to best reflect the geographic distribution of cattle production volume in the United States and the volume of imported cattle, beef, or beef products into the United States.

Done at Washington, DC, on February 15, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-4020 Filed 2-22-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 243

RIN 1010-AB13

Effectiveness of Decisions and Orders Pending Appeal

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) of the Department of the Interior is proposing to amend its regulations governing administrative appeals from decisions and orders issued by its Royalty Management Program (RMP). The proposed changes address effectiveness of decisions and orders pending administrative appeal, the types of sureties which would be acceptable to MMS, and related issues.

DATES: Comments must be received on or before April 24, 1990.

ADDRESSES: Written comments, suggestions, or objections regarding the proposed amendments 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 Connie G. Bartram of the Royalty Management Program, Fiscal Accounting Division, Lakewood, Colorado.

I. Background

The MMS's RMP issues decisions and orders that are subject to administrative appeal to the Director of MMS pursuant to 30 CFR part 290. These decisions and orders relate to royalties and other payments due on oil and gas, geothermal, coal, and other solid mineral leases on Federal and Indian lands. These decisions and orders include orders for payments of royalty deficiencies, rentals, bonuses, interest, penalties, royalty-in-kind contract payments, or other assessments. Some of these decisions or orders are issued by RMP's Royalty Valuation and Standards Division regarding valuation issues. Others are issued by RMP's Fiscal Accounting Division to collect underpayments and its Royalty Compliance Division to enforce compliance with regulations. In some instances, the MMS Director will issue or concur in RMP decisions or orders.

The MMS currently has regulations at 30 CFR 243.2 addressing the effectiveness of RMP decisions or orders pending administrative appeal. That regulation provides:

Compliance with any orders or decisions, issued by RMP after August 12, 1983, including payments of additional royalty, rentals, bonuses, penalties or other assessments, shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the Director, MMS, (or by the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved), and then only upon a determination, at the discretion of the Director or Deputy Associate Secretary for Indian Affairs, that such suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

At the time the rule was issued in 1984, it was MMS's interpretation that most decisions and orders would not be suspended pending administrative appeal. In other words, lessees generally were required to pay disputed amounts pending the administrative appeal process, subject to refund if the lessee prevailed. However, in 1986, the Interior Board of Land Appeals (IBLA) construed 30 CFR 243.2 to mean that unless there were special circumstances resulting in detriment to the lessor, the Director was required to stay effectiveness of decisions and orders pending appeal, provided the appellant posted adequate surety (*Marathon Oil Company*, 90 IBLA 236 (1986)). The MMS has followed IBLA's interpretation since 1986 and, upon request from appellants, has stayed orders that otherwise would have required payment of hundreds of millions of dollars in royalty and other payments during the appeal process. The purpose of this proposed rulemaking is to clarify the regulations regarding suspension of RMP decisions and orders pending appeal.

II. Proposed Changes

The MMS is proposing to amend 30 CFR 243.2 to reflect clearly how RMP decisions and orders will be stayed pending administrative appeal, provided the appeal is timely filed and the appellant submits a surety. The rule would provide that decisions and orders issued by RMP, including, but not limited to, orders for payments of additional royalty, rentals, bonuses, interest, penalties, royalty-in-kind contract payments, or other assessments, will be suspended by reason of an appeal having been taken pursuant to 30 CFR part 290 unless the Director, or the Director's delegate, notifies the appellant in writing that the decision or order will not be suspended pending appeal. Under the proposed rule, MMS would continue its current practice and stay RMP decisions and orders pending appeal unless there are unusual circumstances. A situation where MMS might not stay an order to pay is where an Indian lessor would suffer substantial hardship if payment were not made for an extended period of time. The MMS anticipates that these situations would be unusual.

The proposed regulation would provide further that suspension of a decision or order requiring the payment of a specified amount of money is contingent upon the appellant's submission, within the time period MMS prescribes, of an MMS-specified surety. For example, an order to a lessee to pay a specified amount of underpaid royalties could not be suspended unless the lessee posted an adequate surety. Of course, an appellant also could pay the disputed amount pending appeal, subject to refund without interest in accordance with MMS refund procedures.

Some RMP orders direct a lessee to review its records regarding a particular issue, for example, where MMS identifies a systemic error (i.e., an error which is regularly repeated over a period of time). These orders then require the lessee to recalculate and pay additional royalties. In these situations, if the lessee appeals the order to the MMS Director, the order to review records and recalculate royalties normally would be stayed. For these orders, some surety is required to protect the interests of the lessor during the administrative appeal process. Therefore, in situations where an order requires a lessee or payor to recompute and then pay additional royalties or other amounts due, MMS would estimate the obligation it expects would be due; the appellant would be required to post that amount as surety.

Suspension of decisions and orders would be contingent upon submission of an "MMS-specified surety." In paragraph (b) of § 243.2, MMS is proposing to define an "MMS-specified surety" as including an MMS-specified "administrative appeal bond" or an MMS-specified irrevocable letter of credit. An MMS-specified "administrative appeal bond" continues MMS's current practice by requiring the use of a Form MMS–4326. The bond must be issued by a qualified surety company and approved by the Department of the Treasury. A copy of a letter of credit, which is acceptable to MMS, may be obtained from the person named in the **FOR FURTHER INFORMATION CONTACT** section of this Notice. Some appellants have requested other means of securing their potential liability such as establishing interest-bearing escrow accounts at financial institutions or submitting U.S. Treasury securities to be held by MMS. The MMS is not proposing these alternatives at this point in time but MMS is currently studying the use of alternative sureties and would like comments on the feasibility of these or any other alternatives.

Alternatively, MMS would like comments on whether it should limit sureties to bonds. A bond is the easiest form of surety for MMS to administer and would decrease the costs and burdens of administration.

Pursuant to proposed paragraph (d) of § 243.2, if an appellant fails either to pay the disputed amount, or post the surety as required by proposed § 243.2(a), or to amend the surety as required by proposed § 243.2(c), then the Director will dismiss the appeal. The MMS does not consider it appropriate to continue consideration of an administrative appeal if the appellant is unwilling to abide by the requirements for maintaining that appeal. If the appeal is dismissed, the RMP decision or order would be deemed final, and any monies demanded would be due and payable with no further right of administrative review pursuant to either 30 CFR part 290 or 43 CFR part 4. The MMS believes that such willful failure to abide by the administrative requirements for appeal would normally constitute a failure to exhaust administrative remedies, limiting judicial review.

Proposed paragraph § 243.2(c) would provide that the bond or letter of credit must be adequate to cover the amount owed plus interest accrued to date, as well as the interest that will accrue for 1 additional year. If the administrative appeal process continues more than 1 year, then the appellant would be required to increase the surety and renew it, if applicable. This paragraph would continue existing MMS practice.

These regulations would clarify the Department's intent that, in the usual case, a lessee or other payor receiving an RMP decision or order is required to pursue an administrative appeal to the MMS Director and then to IBLA before seeking judicial review. Under the Department's rules in 43 CFR part 4, RMP decisions or orders would continue to be stayed pending review of the matter by IBLA unless MMS's regulations provide otherwise. Proposed paragraph § 243.2(e) would provide that generally RMP decisions and orders would continue to be stayed pending IBLA review provided by appellant maintains adequate surety. This paragraph would apply the surety requirements of § 243.2 to appeals to IBLA. In some situations, as discussed above, the MMS Director could deny a stay pending IBLA administrative review provided that the Director so notifies the appellant in writing. Under proposed paragraph § 243.2(e), if the Director makes a decision or order immediately effective, then the appellant's rights to such further administrative review or judicial review are prescribed in 43 CFR part 4.

The MMS is also proposing to add a new § 243.3 to restate that recipients of orders generally must exhaust their administrative remedies before seeking judicial review of MMS orders. If the Director, pursuant to § 243.2, or if IBLA, pursuant to 43 CFR 4.21, does not suspend an order pending appeal, then the recipient may seek either further administrative review or immediate judicial review of that order. No further exhaustion of administrative remedies is required. Since orders approved by Secretarial officers also are final for the Department, as discussed above, they too are subject to immediate judicial review. However, § 243.3 would clarify that if an MMS order may be appealed either to the MMS Director or to IBLA, and that order is not made effective pending appeal, then that order must be appealed administratively before seeking judicial review. This is in accord with well-established case law and corresponds with IBLA's rules at 43 CFR 4.21(b) (see *McKart* v. *United States*, 395 U.S. 185 (1969)).

III. Other Issues

(a) Decisions by the MMS Director or Secretarial Officers

While most RMP decisions and orders are subject to review by the MMS Director and then IBLA, there are exceptions. The regulations at 30 CFR part 290 provide that if the MMS Director issues or expressly approves an RMP decision or order, then the matter is not subject to appeal to the Director and must go to IBLA for administrative review. In those situations, proposed § 243.2(e) would establish the applicable criteria for suspension of the decision or order pending IBLA review.

Some RMP decisions or orders may be issued or approved by a Secretarial Officer such as the Assistant Secretary for Land and Minerals Management. In those situations, the decision or order is final for the Department and not subject to administrative review within the Department (BLue Star, Inc., 41 IBLA 333 (1979); Marathon Oil Co., 108 IBLA 177 (1989)). A lessee or other payor is required to comply with a final departmental order. If that person seeks judicial review of the order, then the stay issue is governed by the Administrative Procedure Act, 5 U.S.C. 551 704 and 705.

(b) Indian Leases

Under the existing rules in § 243.2, suspensions of decisions and orders involving Indian leases are issued by the Assistant Secretary for Indian Affairs (AS/IA). Because suspensions now are routinely issued, the proposed rules would provide for MMS to suspend decisions or orders involving Indian leases. As noted above, MMS might deny suspension in appropriate circumstances for Indian leases and would continue to consult with AS/IA on matters involving Indian leases.

IV. Procedural Matters

Executive Order 12291 and Regulatory Flexibility Act

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

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 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 which require approval of 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 243

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources.

Dated: November 29, 1989.

Scott Sewell,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 243 is proposed to be amended as set forth below:

TITLE 30—MINERAL RESOURCES

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—ROYALTY MANAGEMENT

PART 243—APPEALS, ROYALTY MANAGEMENT PROGRAM

Subpart A—General Provisions

1. The authority citation for part 243 is added and the authority citations following §§ 243.1 and 243.2 are removed 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 243.2 under subpart A is revised to read as follows:

§ 243.2 Effectiveness of orders or decisions pending appeal.

(a) Compliance with any orders or decisions issued by the Royalty Management Program of the Minerals Management Service (MMS), including orders for payments of royalty deficiencies, rentals, bonuses, interest, penalties, royalty-in-kind contract payments, or other assessments, shall be suspended by reason of an appeal

having been taken pursuant to 30 CFR part 290 unless the Director, MMS, notifies the appellant in writing that the decision or order shall not be suspended pending appeal. Suspension of an order or decision requiring the payment of a specified amount of money shall be contingent upon the appellant's submission within a time period to be prescribed by MMS of an MMS-specified surety deemed adequate to indemnify the lessor from loss or damage. If a decision or order does not require payment of a specific amount of money, but requires recalculation of an obligation followed by payment, suspension of the decision or order is contingent upon the appellant's submission, within the time period prescribed by MMS, of an MMS-specified surety in an amount MMS determines to reasonably approximate the amount deemed to be owed. Nothing in this paragraph shall be construed to prohibit an appellant from paying any demanded amount pending appeal. If the appeal is granted in whole or in part, the appellant will be entitled to a refund of the amount paid, without interest, in accordance with MMS refund procedures.

(b) For purposes of this section, an "MMS-specified surety" means either an MMS-specified "administrative appeal bond" or an MMS-specified "irrevocable letter of credit." A bond must be issued by a qualified surety company which has been approved by the Department of the Treasury, and a letter of credit must be from a financial institution acceptable to MMS with a minimum 1-year period of coverage. The MMS will not accept any other type of surety.

(c) The bond or letter of credit amount will be determined by MMS and will include the principal amount owed plus any accrued interest owed and projected interest for a 1-year period. If a decision on the appeal is not made within 1 year, appellants who submitted a bond will be required to amend the bond amount to cover additional interest for another 1-year period. Appellants who submitted a letter of credit will be required to submit, prior to the expiration date of the letter of credit, a new letter of credit for an additional 1-year period of time with an increase in the amount to cover interest for a 1-year period. In either case, MMS will determine the additional projected interest and amended surety amount. If a new letter of credit is not submitted at least 10 working days prior to the expiration date of the letter of credit, MMS will make a demand against the letter of credit prior to the expiration date. The amount demanded against the letter of credit will include the principal amount owed plus accrued interest.

(d) An appeal from an order or decision requiring payment of money shall be dismissed by the Director, MMS, or the Assistant Secretary for Indian Affairs, if the appellant fails to make the required payment or; fails to submit adequate surety in accordance with paragraph (a) of this section or; fails to submit a bond revision or to renew a letter of credit in accordance with paragraph (c) of this section within the time period prescribed by MMS. If an appeal is dismissed pursuant to this paragraph, the decision or order shall be deemed final and any monies owed will be due and payable with no further right of administrative review pursuant to 30 CFR part 290 or 43 CFR part 4.

(e) An MMS decision or order that is appealed to the Interior Board of Land Appeals, or to the Assistant Secretary for Indian Affairs when Indian lands are involved, pursuant to 30 CFR part 290 and 43 CFR part 4 shall be suspended pending appeal if the appellant submits or maintains an MMS-specified surety in accordance with the provisions of this section, unless the MMS Director notifies the appellant in writing that the decision or order shall not be suspended pending appeal.

3. A new § 243.3 is added under subpart A to read as follows:

§ 243.3 Exhaustion of administrative remedies.

An MMS order which may be appealed pursuant to 30 CFR part 290 either to the Director, MMS, the Assistant Secretary for Indian Affairs, or to the Interior Board of Land Appeals, must be appealed in order to exhaust administrative remedies unless the order has been made effective by the Director, MMS, or the Assistant Secretary for Indian Affairs pursuant to § 243.2(c), or by the Interior Board of Land Appeals pursuant to 43 CFR part 4.

[FR Doc. 90-4133 Filed 2-22-90; 8:45 am]
BILLING CODE 4310-MR-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 90-55; FCC 90-62]

Amateur Service Rules to Establish a Codeless Class of Amateur Operator License

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the amateur service rules to establish a codeless class of amateur operator license to be called the Communicator Class. The proposal is necessary so that technically-oriented persons, who are not interested in Morse code, can become involved in the amateur service. The effect of the proposal is to establish an entry level codeless license for persons who find the telegraphy requirement a barrier to pursuing the purposes of the amateur service.

DATES: Comments are due on or before August 6, 1990. Reply comments are due on or before September 7, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, adopted February 8, 1990, and released February 16, 1990. The complete text of this notice of proposed rule making, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239) 1919 M Street, NW., Washington, DC. The complete text of this notice of proposed rule making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Commission's proposal, in response to twelve petitions for rule making, would amend the amateur service rules by establishing a codeless class of amateur operator license to be called the Communicator Class. A knowledge of Morse code telegraphy would not be required in order to qualify for a Communicator Class operator license.

2. Communicator Class licensees would be authorized all emission privileges on the 1.25 meter (m) and shorter wavelength bands. Stations with Communicator Class control operators would not be permitted to transmit on the 2 and 6 meter VHF bands and the HF bands. A Communicator Class licensee, however, who passes or receives credit for a telegraphy examination would be authorized the