

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 218

RIN 1010—AB83

**Interest Rate Applicable to Late Payment or Underpayment of Monies Due on Solid Minerals and Geothermal Leases**

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

**SUMMARY:** This final rule amends the interest rate applicable to late payments or underpayments of royalties and other monies due under solid minerals and geothermal leases to require the same interest rates and calculation methodology used for oil and gas leases. The MMS believes consistency for late payment and underpayment charges for all mineral leases at the rate applicable under section 6621 of the Internal Revenue Code of 1954 is appropriate and serves as an effective deterrent to discourage late and underpayment.

EFFECTIVE DATE: April 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225-0165, telephone (303) 231-3432

**SUPPLEMENTARY INFORMATION:** The proposed rulemaking published on June 17, 1993, 58 FR 33413, provided for a 60-day public comment period which ended August 16, 1993. All comments received during that time period are addressed in this section. The principal author of this rule is Dennis C. Whitcomb, Office of the Deputy Associate Director for Audit, Royalty Management Program, Minerals Management Service.

Comments were received from two coal companies, two industry associations as joint commenters, and the State and Tribal Royalty Audit Committee. In general, the comments were not in favor of increasing the interest rate.

(a) Two comments were critical of the lengthy administrative appeals process which results in the lessee owing more interest when the appellant posts a surety in lieu of payment and does not prevail in its appeal.

*Response:* This issue is beyond the scope of this rulemaking. However, currently the MMS is streamlining and improving its appeal procedures to shorten the time required for appeals to

the MMS Director. The appeals streamlining includes a common tracking system, simplified review and surname of field reports, definitive time frames for appeal processing, standardized language and formats for field reports, and establishing appeals coordinators in each MMS division.

When the MMS decision is appealed, the MMS has no control over the Interior Board of Land Appeals process.

(b) Two other commenters on the appeals process observed that MMS does not pay interest on monies refunded when an appellant prevails in its appeal.

*Response:* In the absence of a statute or contract, the United States cannot pay interest on overpayments. *United States v. Louisiana*, 446 U.S. 253(1980). The MMS has not been given statutory authority to pay interest on any overpayments made by appellants. However, the MMS now accepts surety instruments for amounts under appeal which bear interest in the appellant's favor. For complete information refer to 57 FR 44991, September 30, 1992, codified at 30 CFR 243.2 (1993).

(c) Two commenters stated that the application of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) rate to solid minerals would be illegal. One comment stated the Debt Collection Act does not authorize MMS to charge the higher Internal Revenue Service (IRS) rate.

*Response:* As explained in the preamble to the proposed rule, this rule is not being promulgated under FOGRMA or the Debt Collection Act, but under the Secretary of the Interior's (Secretary) plenary authority to establish necessary and appropriate rules pursuant to the Mineral Leasing Act of 1920 (30 U.S.C. 189), Mineral Leasing Act for Acquired Lands (30 U.S.C. 359), the Geothermal Steam Act of 1970 (30 U.S.C. 1023), and the Indian mineral leasing laws (25 U.S.C. 396, and 25 U.S.C. 396 a-g). The rate proposed is the same as that authorized by FOGRMA, i.e., the rate applicable under section 6621(a)(2) of the Internal Revenue Code of 1986 as amended. The MMS considers the increase in the interest rate to be justified to fairly compensate the Federal Government or Indian lessor for the lost time value of money. The MMS believes this rate is necessary to encourage the prompt and proper payment of royalties.

(d) Several commenters stated that the proposed rule is short-sighted, displays unreasonable punishment for trustworthy reporters, will unduly penalize marginal and temporary underpayments, does not demonstrate a higher rate will assure timely collection

of royalty, and seeks merely to generate additional revenue.

*Response:* The MMS regulations that assess interest on late and underpayments are not punitive, but account for the lost time value of money. Late payments from payors cause States, Indian tribes and allottees, and other recipients to receive monies due to them later than they would be paid if the lessee had paid on time. Thus, these recipients also are compensated for the lost time value of money because late payment interest is shared with those recipients in the same manner as principal lease revenues.

(e) Two commenters suggested that MMS should offer discounts for prompt payment and should not charge interest if a payment is within 5 percent of a final amount due.

*Response:* The MMS is not authorized to offer discounts on royalty due for prompt payment nor allow any variation of gross proceeds accruing to the Government. The various mineral leasing laws and lease terms require that royalty shall not be less than a certain percentage of the value. If a discount were offered for prompt payment, MMS would receive royalties below the amount provided for by statute and lease term. Thus, MMS does not have authority to provide for such discounts.

The MMS also believes that waiving the interest charge for small underpayments would foster incorrect payment. Thus, this proposal has not been adopted. The MMS mission is to timely and properly collect and distribute all royalty, rent, and other payments due on Federal and Indian leases.

(f) One commenter stated that the MMS should follow IRS timetables if it charges IRS interest rates. The commenter pointed out the IRS deadlines for filing tax returns after the taxable year ends.

*Response:* The MMS will not accept this proposal because it is inconsistent with existing regulations and lease terms. If this comment were followed, the result would be a loss of millions of dollars in time value of money for the United States, States and Indian tribes and allottees. The reporting and payment cycle for royalties established in the leases generally is monthly which also reflects industry accounting practice. In contrast to Federal income taxes, lease royalty payments and reports are due at the end of the month following the month of production unless the lease terms expressly provide otherwise.

(g) One commenter stated that no compelling governmental interest exists

that would justify charging the higher rate.

*Response:* The MMS is following the guidance found in the Federal Claims Collection Standards at 4 CFR 102.13 (c) which states "An agency may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States." Congress believed that for late royalty payments for oil and gas leases, the IRS 6621(a)(2) rate was appropriate. There is no reason to establish any lower rate for solid minerals or geothermal leases.

(h) The same commenter stated MMS has not met its threshold burden of proving that assessing the higher rate is necessary to deter underpayments and assure the timely collection of royalties.

*Response:* Under the various mineral leasing laws the Secretary may prescribe rules and regulations necessary to carry out the requirements of accounting for and collecting royalty. The MMS believes the increased rate is neither arbitrary nor inconsistent with the statutes or statutory purposes.

(i) The same commenter stated MMS misidentifies the reasons for outstanding payments and its proposed solution is counterproductive to administrative efficiency.

*Response:* The MMS does not agree because experience indicates MMS's policies have proven effective. The rule provides for fair and consistent compensation for the lost time value of money.

(j) One commenter stated that MMS used excessive interpretation of the agency's general rulemaking authority that is contrary to law and existing constitutional principles. The commenter believes that FOGRMA expands the authorities and responsibilities of the Secretary only for Federal oil and gas management.

*Response:* The MMS may promulgate necessary and appropriate rules and regulations for royalty collection under 30 U.S.C. 189 and 1023 and other mineral leasing laws for all minerals to meet its responsibilities to disburse royalties timely to States and Indian tribes and allottees.

(k) One commenter stated that the interest rate is too high because MMS says that the revenue gains from a higher rate would be small.

*Response:* The rule is not intended to increase revenue but to encourage the prompt and proper payment of revenues and to provide compensation for the lost time value of money. In fact, under a perfect system, all royalties would be timely paid, and MMS would not receive any monies pursuant to the late payment charge regulations.

(l) Two commenters (based on an OIG report entitled "Assessments on Late and Underpaid Royalties for Solid Minerals and Geothermal Leases") stated that the OIG concludes that the present rules provide an incentive for companies to underpay and that the proposed rule is based on fallacious conclusions in the OIG report.

*Response:* The OIG's conclusions are consistent with this rulemaking, but the OIG's report is not the authority for the rule. However, the OIG's conclusion that the current interest rate for solid minerals royalty late payments made it more attractive not to pay in some circumstances appears to be reasonable, and nothing in the comments demonstrates otherwise.

(m) Two commenters stated that virtually all coal and solids royalties are paid timely and rarely are coal companies in an underpayment status with MMS.

*Response:* As of August 31, 1993, MMS had 249 outstanding Bills for Collection for solid mineral payors in the amount of \$81,249,067.78. Therefore, the increase in the interest rate is justified to compensate for the lost time value of monies at a fair rate.

(n) The State and Tribal Royalty Audit Committee supports the rule as proposed. They endorsed the proposed rule as governmental action which will adequately protect the interests of all citizens and sustain the efficient conduct of private enterprise for the benefit of all concerned.

*Response:* The MMS is adopting the rule as proposed to increase the interest rate applicable to underpayment on solid mineral and geothermal leases. The rate will be the same as that applicable for underpayment on oil and gas leases—under section 6621(a)(2) of the Internal Revenue Code.

The effective date of April 1, 1994, is appropriate inasmuch as interest rates are normally updated at the beginning of calendar quarters by both the IRS and the U.S. Treasury.

Pursuant to 5 U.S.C. 553(d)(3), the United States Department of the Interior finds that there is good cause to make this rule effective April 1, 1994.

On all payments due MMS prior to March 31, 1994, interest will be calculated at the Current Value of Funds Rate (CVF) through March 31, 1994, and the IRS rate from April 1, 1994, through the date paid. The IRS rate is compounded daily, as contrasted to the CVF rate which is calculated as simple interest. For example, if a payment was due February 28, 1994, and was not paid until April 30, 1994, then late payment interest would be calculated on the principal for 31 days (March

1994) at the CVF rate and calculated on the principal plus accrued interest for 30 days (April 1, 1994) at the IRS rate. The new rate is applicable to any and all outstanding amounts on the effective date.

## Procedural Matters

### *The Regulatory Flexibility Act*

The Department certifies that this rule 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.).

The rule is necessary to provide consistency in the existing regulations in applying the same interest rate for late payment or underpayment of monies due on solid minerals, geothermal, and oil and gas mineral leases.

### *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 under 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.

### *Executive Order 12866*

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

### *Paperwork 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 and a detailed statement pursuant to paragraph (2)(C) of section 102 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 transfers, Geothermal energy,

Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—Mineral resources, Reporting and recordkeeping requirements.

be charged only for the number of days the payment is late. \*

[FR Doc. 94—7302 Filed 3-28-94; 8:45 am]  
BILLING CODE 4310-MR-M

Dated: February 18, 1994.  
Bob Armstrong,  
*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, BONUSSES, 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. 3716; 31 U.S.C. 3720A; 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 E—Solid Minerals—General**

2. Section 218.202 is amended by revising paragraphs (c) and (d) to read as follows:

**§218.202 Late payment or underpayment charges.**

\* \* \* \*

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

(d) Interest will be charged only on the amount of the payment not received by the designated due date. Interest will be charged only for the number of days the payment is late.  
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**Subpart F—Geothermal Resources**

3. Section 218.302 is amended by revising paragraphs (c) and (d) to read as follows:

**§218.302 Late payment or underpayment charges.**

\* \* \* \*

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

(d) Interest will be charged only on the amount of the payment not received by the designated due date. Interest will