

**DEPARTMENT OF THE INTERIOR****Minerals Management Service****30 CFR Part 230**

RIN 1010—AB90

**Offsets, Recoupments and Refunds of Excess Payments of Royalties, Rentals, Bonuses, or Other Amounts Under Federal Offshore Mineral Leases****AGENCY:** Minerals Management Service, Interior.**ACTION:** Final rule.

**SUMMARY:** The Royalty Management Program of the Minerals Management Service (MMS) is amending its regulations establishing procedures for obtaining refunds and credits of excess payments made under Federal mineral leases on the Outer Continental Shelf (OCS) which are subject to section 10 of the Outer Continental Shelf Lands Act of 1953 (OCSLA section 10). The rules also describe the circumstances in which a person may recover certain payments that are not subject to section 10's requirements.

**EFFECTIVE DATE:** August 29, 1994.**FOR FURTHER INFORMATION CONTACT:** David S. Guzy, Chief, Rules and Procedures Staff, at (303) 231-3432.**SUPPLEMENTARY INFORMATION:** The principal authors of this proposed rule are Paul A. Knueven, Technical Compliance Branch, Division of Verification, Royalty Management Program, MMS, Lakewood, Colorado, and Peter J. Schaumberg, Office of the Solicitor, Washington, DC.**I. Background**

Excess payments of royalties, rentals, bonuses, or other amounts made under OCS mineral leases result from a variety of reasons (discussed in detail in the preamble to the Notice of Proposed Rulemaking (NOPR) at 58 FR 53470-53471, October 15, 1993). Section 10(a) requires that a request for refund or credit of an excess payment made in connection with any lease issued under that Act be filed with the Secretary of the Interior (Secretary) within 2 years after making the payment. Section 10(b) requires that all refunds or credits which the Secretary proposes to approve be reported to Congress, and that the Secretary wait at least 30 days while Congress is in continuous session before making a refund payment or authorizing a credit. Any repayment made pursuant to the Act must be without interest.

The purpose of these regulations is to codify the Department's interpretation and application of section 10.

incorporating the policies and decisions for the various legal opinions, administrative decisions, and administrative practice which are discussed in detail in the preamble to the NOPR.

## II. Comments on Proposed Rule

The proposed rulemaking (58 FR 53470, October 15, 1993) provided for a 60-day public comment period, which ended December 14, 1993. Eleven commenters submitted written comments during this period. The principal comments are addressed in this section.

### General Comments

(a) Several commenters requested that MMS revisit the reasoning and legal arguments contained in the 1981 M-opinion Refunds and Credits Under the Outer Continental Shelf Lands Act M-36942, 88 I.D. 1091 (December 15, 1981) ("1981 M-Opinion"). One commenter proposed that MMS not permit offsetting as a means to recover an overpayment for one production month to the extent underpayments exist on the same lease for another month. Another commenter requested MMS to reconsider the operation of the 2-year period for requesting refund or credit, insisting that it could start later than the actual payment in specific circumstances. This same commenter also suggested that section 10 should be construed to apply only to refunds, with credit adjustments not subject to section 10's limitation.

*Response:* MMS disagrees with these comments. The 1981 M-Opinion, and a second M-Opinion, Applicability of section 10 of the Outer Continental Shelf Lands Act M-36977 (Jan. 15, 1993) ("1993 M-Opinion"), reflect the Department's interpretation of section 10's requirements. The Department is not convinced that its legal view is wrong. Therefore, the purpose of the rulemaking is to codify the Department's existing interpretation and application of section 10.

(b) A commenter suggested that the regulations should require the Government to act on a refund request within 90 days. Absent such action the lessee should automatically be authorized to process a credit adjustment.

*Response:* Section 10 is specific in the procedures that must be followed for approval of a refund or credit. Unless the preconditions are satisfied, MMS does not have the legal authority to approve a refund or credit to be processed. The MMS has recognized the obvious importance of approving refund requests quickly by changing

procedures to expedite the process. For example, the purpose of approval subject to audit at § 230.455 is to eliminate the audit time delay required for recoupment authorizations. Such audits will still be required for certain cash refunds.

(c) Several commenters stated that MMS should make any new rules prospective, with an effective date on or after the date of publication.

*Response:* With one exception, the rulemaking codifies the Department's current interpretation and application of section 10. That exception is § 230.458(b), which imposes an assessment of \$500 for each unauthorized credit adjustment. This assessment will apply only to transactions filed after the effective date of the regulations.

### Specific Comments

(a) Most of the commenters objected to the inclusion of the definition of audit in § 230.452. These commenters questioned the need to define a term that is used so little in the body of the regulations. One commenter pointed out that the word "audit" appears only three times in the rule (except in a section heading), and then only in conjunction with the word "review." Accordingly, it is suggested that the definition adds nothing to the comprehension of the regulations.

*Response:* MMS agrees with the comments and the definition of audit has been removed from the final regulations.

(b) Several commenters objected to the provisions of § 230.453 (a)(3) which require MMS notification to the lessee that its request for refund or credit is authorized before a recoupment can be filed. Once MMS reviews the request, transmits it to Congress and the Congressional review period is satisfied, these commenters argue that they should be permitted to recoup. These commenters claim MMS is exceeding its authority by conditioning the lessee's right to a timely filed legitimate credit or refund on the receipt of a notice from the MMS.

*Response:* MMS disagrees with these comments. First, it is the Government's responsibility to assure that the technical requirements of section 10, including the 30-day congressional review period, have been satisfied before a recoupment is effected. Second, the requirement for MMS to give final approval allows for proper control. After MMS approves a recoupment, then it will know that when a credit adjustment appears on a Form MMS-2014, that credit adjustment is authorized. Further, there may be circumstances where a

request for refund or credit is approved, but MMS may not allow the recoupment to be effected. MMS recently proposed rules related to administrative offset and to credit adjustments generally (58 FR 43582, August 17, 1993). There may be circumstances where a lessee owes money to MMS and MMS would want to retain the otherwise approved request for refund or credit as an offset. Thus, recoupments will not be permitted until MMS provides approval.

(c) Several commenters objected to the requirements of § 230.453 (b)(5) that lessees certify the accuracy of the data submitted in the refund request. One commenter noted that there is no necessity for the certification since the provisions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) already contain adequate protection of the Federal lessor. According to this commenter, the certification adds nothing but additional paperwork to the process.

*Response:* MMS disagrees with these comments. It has been a long standing practice of MMS to require the certification as a condition of processing the refund. This is not a new requirement. Most lessees have long made the certification part of their refund request form letter so no additional burden will be imposed by this requirement.

(d) The provisions of § 230.453 (c) specifically state that the submission of a credit adjustment on a Report of Sales and Royalty Remittance, Form MMS-2014, will not constitute a refund request, or a partially completed refund request as discussed in § 230.453(c). Additionally, § 230.459 does not include the filing of a Form MMS-2014 as a reason the 2-year period of section 10 will be tolled. MMS requested comment on this issue.

Eight responders offered comments on the status of a Form MMS-2014 as a section 10 refund request and if such filing should toll the 2-year limit. Four commenters stated that the Form MMS-2014 should toll the 2-year period since it includes nearly all elements of a properly completed refund request. Another commenter proposed that the Form MMS-2014 should serve as a conditional refund request. If during later audit it was judged valid, MMS should process the request for congressional review. If invalid, the lessee would be required to repay the amount of the credit with interest and apply for a refund. When more than 2 years had passed since making payment, the lessee would be time-barred from recovering the funds. It was urged that these procedures would serve as an incentive for lessees to only file credits

in which they had a high level of confidence in their validity.

While noting that tolling the 2-year period by filing a Form MMS-2014 would not benefit them, the sixth commenter observed that it would encourage lessees to file unauthorized recoupments on questionable properties "just in case."

The last two commenters noted that most of the unauthorized recoupments filed in the past resulted from MMS' failure to issue formal guidance on the application of section 10. They recognized that this rulemaking resolves that problem, and they see no value to lessees in the future to toll the 2-year period by filing an unauthorized credit adjustment. With the publication of these rules, the commenters stated that lessees will know what adjustments are and are not subject to section 10.

*Response:* MMS disagrees with the first four commenters. While Form MMS-2014 filings contain most of the information required for a refund request, they do not include the information necessary to constitute a proper request for refund or credit. Moreover, these credit adjustments do not request recoupments, instead they effect recoupments and thereby reduce Government receipts. Section 10 requires MMS and congressional review before the funds are recovered. The conditional refund request suggestion also would not meet this requirement.

MMS agrees with the last three commenters. Accepting Form MMS-2014 filing as tolling the 2-year period could increase the submission of unauthorized credit adjustments and increase review costs. Additionally, there is no logical reason to toll the section 10 2-year period by filing a Form MMS-2014 credit adjustment after the rules have been published.

(e) One commenter questioned the limited refund amendment rights provided by § 230.453(e)(1). This commenter stated that inadvertent errors of notation related to the lease or any particular month should be amendable,

*Response:* MMS disagrees with this commenter. Permitting exceptions to the rule in an effort to be fair usually has the opposite effect. In this case, MMS would be required to judge an "inadvertent error" exactly the same in every case, an impossible task. To assure clear understanding and equal application to all lessees, the rule provides for no exceptions and will be strictly applied.

(f) Several commenters questioned the approval of refund requests subject to later audit contained in § 230.455.

*Response:* The purpose of this section is to eliminate the time delay required to complete an audit prior to the lessee's recovery of the overpayment (see discussion of general comment (b) above). Without an analysis of the lessee's records, MMS cannot determine the validity of the refund request. Accepting refund requests as valid subject to audit provides the lessees more timely use of funds, and provides for MMS' recovery in the event the requests were improper.

(g) One commenter stated that MMS should clearly indicate that the 2-year requirement of section 10 does not apply to offsets described at § 230.456.

*Response:* Since section 10 does not apply to offsets, the 2-year requirement of section 10 does not apply.

(h) One commenter stated that MMS should clearly define the word "intentional" within the meaning of § 230.456, to protect lessees. This commenter expressed concern that if this determination were based upon the subjective judgment of the auditor, offsets would almost certainly be applied inequitably.

*Response:* MMS disagrees with this comment. To develop a finding of intentional underpayment for the purpose of § 230.456, an auditor would have to demonstrate that the lessee's policy is to recover overpayments by filing subsequent underpayments. This finding would not be a subjective audit determination.

(i) Three commenters objected to the provisions of § 230.458(b) which impose an assessment of \$500 for each unauthorized credit adjustment. Because MMS often discovers the unauthorized recoupment more than 2 years after payment, one commenter stated that the recovery of the improperly taken credit with interest already exceeds the actual amounts required by lease terms. An additional penalty appears harsh to this commenter. Another commenter argued that if it costs MMS \$500 to research and approve refunds, then all amounts less than that should be allowed without following § 230.453 procedures. The third commenter stated that the amount is arbitrary and excessive because unauthorized recoupments are generally unintentional and are incurred when attempting to make internal accounting adjustments. Since proposed Form MMS-2014 line entries must be submitted with a refund request, it is often necessary and more expedient to process accounting corrections, allow the MMS-2014 credit lines to be generated, and then eliminate those credit entries prior to the normal monthly royalty payment. If the

adjustments are numerous or complex, a credit entry may fail to be pulled, resulting in an inadvertent unauthorized adjustment. This commenter further argued that the time delays in the process, both before the overpayment is discovered and after the refund request is filed and authorization issued, result in the Government receiving the time value of the funds at the expense of the lessees.

*Response:* MMS disagrees with these comments. First, the review of unauthorized recoupments with MMS is now an automated process. Once these regulations are effective MMS will begin reviewing for such recoupments on a current basis. The MMS plans to discover unauthorized recoupments in time for the lessee to file a refund request before the 2-year period after payment has expired. Without the penalty, lessees will incur no material costs as a consequence of filing an unauthorized recoupment. In such an environment some lessees may decide not to establish internal controls to prevent unauthorized recoupments, but rely instead on the Government. This reliance would shift the costs from the lessees and provide protection from the effects of missing the 2-year limit. The MMS would not be properly enforcing section 10 if it allowed such a result. Moreover, even with the penalty, many lessees will incur less costs than with the less timely Government review that has occurred in the past.

The penalty is not established to recover the costs of refund request processing. Rather, MMS is recovering the costs of review recoupments and comparing them with approved refunds. Since MMS cannot determine the effect publishing these rules will have on the rate of unauthorized recoupments, the cost per incident is not quantifiable.

The concerns of the third commenter related to production and filing of proposed Forms MMS-2014 being eliminated when the regulations are effective, since the forms are not required by §230.453.

(j) One commenter noted that the purpose of § 230.459(a)(3) as explained in the section-by-section analysis would be better served by changing the date of tolling from the date of "application" for unitization to the effective date of the unit. The commenter also noted that unit revisions should be added as covered by this section.

*Response:* MMS disagrees that the date of tolling should be changed to the effective date of the unit. As noted in the discussion of this commenter, the effective date is subject to the judgment of the Regional Supervisor. In contrast, the date of application is a fixed event.

Unit revisions are included in the section of § 230.459 (a)(3), as discussed in the proposed rule preamble.

(k) One commenter expressed concern that it may be impossible to comply with the requirements of § 230.459 (a)(4). This section provides that to toll the 2-year period, lessors must specifically identify an action or proceeding that could result in payments becoming excess, the lease(s) and sales months affected, and an estimated of the amount that could be subject to refund or credit.

*Response:* When a person becomes aware of a pending administrative or judicial action, or other action that may affect its royalty obligation, prudence would require a complete analysis. While MMS realizes the exact impact may not be determinable, a list of all leases and sales months within those lease accounts which could possibly be affected can be compiled. Paragraph (a)(4) of § 230.459 requires only an estimated dollar impact. The 2-year period for leases and/or sales months not included in the tolling request will not be tolled. The purpose of this strict construction is to minimize subjective judgments in applying section 10 requirements.

(l) Two commenters objected to the revisions of § 230.460 which repeal the special treatment of advanced rental payments when leases are later subject to suspensions.

*Response:* The IBLA rulings discussed with the preamble (58 FR 53474) were issued prior to any regulations governing section 10. These cases concluded that under the unique fact situations presented, excess rental payments which otherwise were not subject to refund or credit under section 10 could be credited against future rentals. Upon review, MMS still concludes that IBLA's conclusion is not consistent with the Department's interpretation of section 10. Thus, after this rule is effective, the IBLA decision will not be followed. However, these cases are exactly the type of situation envisioned for tolling the 2-year limit by filing a request pursuant to § 230.459(a)(4).

(m) One commenter questioned the requirement of § 230.461(d) which disallows the recoupment of a payment amount that exceeds the reported amount. This commenter stated that if the overpayment is not subject to section 10, then the payor should not be required to file a refund request.

*Response:* In those cases to which § 230.461 (d) applies, the payor may recover its funds without a section 10 refund request. A payment amount exceeding the total reported for more

than one lease is not a payment "in connection with any lease." (See the detailed discussion in the 1993 M-Opinion). Such an amount cannot be recouped by reporting a credit entry for a specific lease since the funds were not applied to any lease. After the Form MMS-2014 lines are processed, amounts in excess of the total reported remain as an unapplied credit in the payor's account. The MMS accountants would then contact the payor for direction as to how the funds should be applied. In most cases, the payor could reduce the next payment by an equal amount to balance its payor account. In other situations the funds could be applied to an underpaid invoice or other Forms MMS-2014. If these situations did not apply, the payor could request a non-section 10 cash refund as outlined in the MMS "Oil and Gas Payor Handbook" (1986), Volume II, page 4 - 25.

(n) One commenter stated that the provisions of § 230.461(g) which would not require a section 10 refund request after a successful challenge of an MMS order to pay, would be more useful if MMS specifies how such funds would be recovered.

*Response:* The overpayments may be recovered as explained in the response to comment (m).

(o) Seven commenters submitted responses to the proposed *de minimis* exception of § 230.461(h). One commenter stated that MMS does not have authority under the interpretations contained in the 1981 M-Opinion to establish such a provision. Another commenter stated that the amount should be set at ½ percent of the normal monthly payment to be meaningful. No support was received for the alternative of limiting section 10 refund requests to \$100 or more.

The other five commenters supported the *de minimis* idea, but suggested the limit be increased from \$25 to \$100 per payor code per month.

*Response:* After considering the comments, MMS has concluded that instead of a fixed amount for the *de minimis* exception, MMS will periodically review the matter and establish a *de minimis* amount. Accordingly, the final regulations provide that a limit will be published periodically in the Federal Register. This limit will be based on the cost incurred to process a section 10 refund request. Based on the cost experience for fiscal year 1993, the initial limit is established at \$250. Under these procedure, payors will be able to file credits for OCS leases totalling less than \$250 for each reporting month, provided the payments subject to adjustment

were made within 2 years of the date of the adjustments. Thus, even if a payor used this exception to avoid section 10's reporting requirements, the most it could recover for any lease is \$6,000 (24 months x \$250).

### III. Summary of Final Rule

The MMS is adding new regulations at 30 CFR 230.451 through 230.461, which codify MMS' policy regarding the requirements of OCSLA section 10, 43 U.S.C 1339. Except for the changes to the rules discussed above in response to the comments, MMS is adopting the rule as proposed with some minor working changes. A detailed discussion of each section is included in the preamble to the proposed rules, 58 FR 53470, explaining the purpose and effect of each section.

### 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.). There are not many small entities involved in offshore oil and gas operations.

#### *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 the rule meets 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 contain information collection requirements which have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 et seq., and assigned approval number 1010-0094.

#### *National Environment 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 230

Coal, Continental shelf, Electronic Funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public land—mineral resources, Reporting and recordkeeping requirements.

Dated: June 24, 1994

#### Bob Armstrong

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 230 is amended as follows:

### PART 230—ROYALTY REFUNDS

1. The authority citation for part 230 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. 801 et seq.

2. A new subpart J is added under part 230 to read as follows:

#### Subpart J—Refunds and Recoupments of Overpayments Under Federal Leases on the Outer Continental Shelf; Implementation of Section 10 of the Outer Continental Shelf Lands Act

Sec.

- 230.451 Scope.
- 230.452 Definitions.
- 230.453 Request for refund or credit.
- 230.454 Interest on excess payments.
- 230.455 Authorization of refund or credit and subsequent audit.
- 230.456 Offsets of overpayment and underpayments on the lease (or unit) by the same person.
- 230.457 Offsets among different persons who reported and paid royalties on a lease for the same prior sales month.
- 230.458 Unauthorized credit adjustments.
- 230.459 Stopping or tolling of the section
  - 10(a) 2-year period.
- 230.460 Lease suspension.
- 230.461 Transactions not subject to section 10.

#### Subpart J—Refunds and Recoupments of Overpayments Under Federal Leases on the Outer Continental Shelf; Implementation of Section 10 of the Outer Continental Shelf Lands Act

##### § 230.451 Scope.

This subpart establishes the procedures that lessees and other

persons who make royalty and other payments on Federal oil and gas leases on the Outer Continental Shelf (OCS) must follow to recover certain excess payments made in connection with their leases in accordance with section 10 of the Outer Continental Shelf Lands Act (section 10), 43 U.S.C. 1339. The requirements of this subpart apply to both requests for refund from the Treasury of excess payments and requests to recover excess payments by recouping the amount through a credit adjustment. This subpart applies only to Federal leases on the OCS.

##### § 230.452 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702. In addition, the following definitions apply to this subpart:

*Credit or crediting* means reduction of a current or future royalty or other payment made in connection with a lease as a result of reporting a credit adjustment.

*Credit Adjustment* means any adjustment reported on a Report of Sales and Royalty Remittance (Form MMS-2014) or any other royalty report form which reduces any royalty or other payment made in connection with a lease which was reported and paid in any previous period.

*Offset* means to net or cancel previous overpayments against previous underpayments on the same OCS lease or across lease boundaries if all the individual leases are part of an approved unit agreement.

*Overpayment* means any payment made in excess of the amount that the lessee was lawfully required to pay.

*Payment* means money MMS receives in satisfaction of a lessee's royalty, rental, bonus, net profit share, or late payment interest obligation as established by statute, regulation, or the terms of a lease.

*Recoup or recoupment* means to recover a previous overpayment through a credit against a current or future royalty or other payment or liability under an OCS lease. A recoupment occurs whenever a payor reports a credit adjustment on a Form MMS-2014 or other royalty report form resulting in a net negative dollar value for the transaction and the credit is taken against the royalty or other payment or liability shown in the balance of the report.

*Refund* means a repayment by the United States Treasury to a person of any overpayment.

*Unit* means an area of 2 or more leases subject to an agreement for the consolidated development and recovery of oil and gas contained on the leases

which are part of the agreement approved by MMS.

##### § 230.453 Request for refund of credit.

(a) Except as otherwise provided in this subpart, no person may recover an excess payment it has made in connection with an OCS lease unless:

(1) That person has made a request for refund or credit in accordance with the provisions of this subpart;

(2) MMS has transmitted a report on the request for refund or credit to the President of the Senate and the Speaker of the House of Representatives and 30 days have expired since the submission in accordance with section 10(b), 43 U.S.C. 1339(b); and

(3) MMS notifies the person that its request for refund or credit is authorized and that the person may receive its refund for, or may report a credit adjustment to recoup, the excess payment.

(b) A request for refund or credit must:

(1) Be in writing;

(2) Provide the person's MMS-established payor code;

(3) Identify the leases and sales months with respect to which the excess payments occurred;

(4) Identify the amount of the excess payment or, with specificity, describe a class of payments that are, or as a result of an administrative or judicial decision or other identified contingency, may become excess payments;

(5) Provide the reasons why a refund or credit is due;

(6) Include a certification that, to the best of the person's knowledge or belief, the information provided in response to paragraphs (b)(2) through (b)(5) of this section is accurate and complete.

(c) If MMS determines that a request for refund or credit is incomplete, the person who submitted the request will have 30 days, or such time as MMS may specify, following notice from MMS, to supplement the request for refund or credit.

(d) A credit adjustment reported on a Form MMS-2014 does not constitute a request for refund or credit for purposes of this section, and does not constitute an incomplete request for refund or credit for purposes of paragraph (c) of this section.

(e) A person who has filed a request for refund or credit pursuant to this section may amend that request to add an additional amount if:

(1) The additional amount is for the same lease and sales month; and

(2) The reason for the excess payment for the additional amount is the same as for the originally requested amount.

(f) Except as otherwise provided in this subpart, no request for a refund or

credit will be approved unless the request is received at MMS at the address provided below within 2 years of the date that MMS received the excess payment.

(1) The request for refund or credit must be received at the following address:

(i) By mail: Minerals Management Service, Section 10 Refund Requests, P.O. Box 173702, Denver, CO 80217-3702.

(ii) By express delivery or courier: Minerals Management Service, Section 10 Refund Requests, Building 85, Denver Federal Center, Room A-212, Denver, CO 80225.

(2) If the last day of the 2-year period from the date MMS received the excess payment falls on a Saturday, Sunday, holiday or any other day that MMS is not open for business at the address specified in paragraph (f)(1) of this section, then the last day of the 2-year period will be the next regular business day. Requests received at the specified MMS address after 4 p.m. Mountain Time are considered received the following business day.

#### **§ 230.454 Interest on excess payments.**

No person is entitled to interest on any excess payment made in connection with a lease that is refunded or credited pursuant to this subpart.

#### **§ 230.455 Authorization of refund or credit and subsequent audit.**

MMS may grant a refund or authorize a credit based upon satisfactory evidence that the payment for which a refund or credit is requested was made, and upon a determination that the payment was excess. An approved request for refund or credit may be subject to later review or audit by MMS. If, based upon later review or audit, MMS determines that the refund or credit should not have been granted or authorized, the person who requested the refund or credit must repay the amount refunded or recouped plus interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the refund was made or the recoupment taken until the date it is repaid.

#### **§ 230.456 Offsets of overpayments and underpayments on the same lease (or unit) by the same person.**

If a person makes an overpayment on any OCS lease or unit in a prior month, it may offset that overpayment against an underpayment that same person made in any prior month on that same lease or unit for the same or a different product without submitting a request for refund or credit. This offset is permitted only if the underpayment was not

created as a result of a credit adjustment to recoup the amount of the overpayment or was not otherwise created intentionally to provide an underpayment against which to offset the overpayment. This offset also is subject to any limitations imposed by other applicable law or regulations.

#### **§ 230.457 Offsets among different persons who reported and paid royalties on a lease for the same prior sales month.**

(a) This section applies to any reallocation of production for a prior sales month among different persons who reported and paid royalty for that month on a lease or unit, except for reallocations of production that result from the approval or amendment of a unit agreement subject to § 230.461(b).

(b) In the event of a reallocation of production as described in paragraph (a) of this section, the respective persons who reported and paid royalty may reconcile any resulting differences in royalty payment obligations between themselves without submitting revised royalty reports or requests for refund or credit to MMS under this subpart, except that:

(1) Any person who paid any amount which remains as a net overpayment after such reconciliation must file a request for refund or credit in accordance with the requirements of this subpart to recover the excess payment;

(2) Any person whose royalty obligation remains underpaid after such reconciliation must report the additional royalties due for the prior sales month on a Form MMS-2014 and pay interest on the underpayment from the last day of the month following the sales month until the date the additional royalties are paid; and

(3) All persons involved in such reconciliation must retain all documents pertaining to the reallocation of production, calculation of royalties due, and the subsequent reconciliation among the persons involved together with other records pertaining to production from that lease during the prior sales month and the royalty due and paid thereon, and make such documents available for review and audit in the same manner as other records pertaining to the lease.

(c) If persons who reported and paid royalty do not reconcile between themselves any differences in royalty payment obligations arising as a result of a reallocation as provided in paragraph (b) of this section, each person who pays royalties for the lease must report and pay any additional royalties due, or file a request for refund or credit in accordance with the

requirements of this subpart to recover the excess payment, as applicable. Any person who reports additional royalties due for the prior sales month must pay interest pursuant to 30 CFR 218.54 on the underpayment from the last day of the month following the sales month until the date the additional royalties are paid.

#### **§ 230.458 Unauthorized credit adjustments.**

(a) If a person reports a credit adjustment on Form MMS-2014 that results in a credit before MMS approves the recoupment pursuant to § 230.455, and if the credit adjustment does not qualify as one of the transactions not subject to section 10 as provided in § 230.461, then that person has taken an unauthorized credit adjustment.

(1) If the unauthorized credit adjustment recouped a payment that MMS received more than 2 years before the date MMS received the Form MMS-2014 which includes the unauthorized credit adjustment, the person must repay the amount recouped plus late payment interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the unauthorized recoupment was taken until the date it is repaid. Unless the person filed a request for refund or credit pursuant to § 230.453 within 2 years of the making of the excess payment for which the unauthorized credit adjustment was reported, the excess payment is not subject to refund or recoupment.

(2) If the unauthorized credit adjustment recouped a payment that MMS received less than 2 years before the date MMS received the Form MMS-2014 with the unauthorized credit adjustment, the person must repay the amount recouped plus late payment interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the unauthorized recoupment was taken until the date it is repaid. The report of the unauthorized credit adjustment on the Form MMS-2014 does not constitute a request for refund or credit that tolls the 2-year period in section 10(a), 43 U.S.C. 1339(a). The person may file a request for refund or credit pursuant to section 230.453 for the payment for which the unauthorized credit adjustment was reported. MMS will review the request pursuant to the requirements of this subpart only if the request for refund or credit is received within 2 years of the making of the original payment for which the unauthorized credit adjustment was reported.

(b) A person who reports an unauthorized credit adjustment to MMS on a Form MMS-2014 will be assessed

\$500 for each unauthorized credit adjustment reported.

**§ 230.459 Stopping or tolling of the section 10 (a) 2-year period.**

(a) The period of 2 years from the making of the excess payment, within which a request for refund or credit must be filed under section 10(a), 43 U.S.C. 1339(a), will be:

(1) Tolloed by MMS's receipt of a substantially complete request for refund or credit pursuant to § 230.453; or

(2) Tolloed by a general tolling notice issued by MMS and published in the Federal Register in circumstances when MMS believes a substantial number of request for refund or credit could result as a consequence of a pending administrative or judicial proceeding or other action. The running of the 2-year period will be tollod for the time period specified in the notice; or

(3) Stopped by an application for unitization of OCS leases with respect to any excess payment that may result from the reallocation of production among leases after the unit or revision is approved; or

(4) Tolloed by a notice filed by a person at the address stated in § 230.453(f) stating that a specifically identified action or proceeding may result in payments made on an OCS lease becoming excess payments. The notice must include:

(i) A list of affected leases and sales months;

(ii) The specific action or proceeding that could result in payments becoming excess;

(iii) An estimate of the amount that could be subject to a request for refund or credit; and

(iv) The person's MMS-established payor code.

(b) A request for refund or credit that is filed timely by a person who made an excess payment on an OCS lease does not stop or toll the running of the 2-year period with respect to any excess payment made by any other person on that lease.

**§ 230.460 Lease suspension.**

If MMS suspends an OCS lease pursuant to 30 CFR 250.10(b)(6), a person who has made excess rental payment for the period of suspension may request a refund or credit of any excess payments pursuant to this subpart. If the request for refund or credit is filed more than 2 years after MMS received the excess rentals, the excess payment will not be refunded, recouped, or credited against future rental due on the same lease.

**§ 230.461 Transactions not subject to section 10.**

(a) A request for refund of, or any other action to recover, excess payments made by a refiner/purchaser under a royalty-in-kind contract for royalty oil produced from an OCS lease is not subject to section 10.

(b) If MMS approves a unit agreement on the OCS, or a revision to a unit, a person may file amended Forms MMS-2014 within the time period MMS prescribes, reallocating production among its affected leases. A person must file a request for refund or credit pursuant to this subpart only if, and to the extent that, there is a net reduction in the royalty that person previously paid for the leases committed to the unit as a result of the amendments.

(c) A person may amend Form MMS-2014 to adjust volume and royalty reports among OCS leases within a unit within the same sales month without filing a request for refund or credit pursuant to this subpart, except that a request for refund or credit must be filed to the extent that there is a net reduction in the royalty previously paid for the leases committed to the unit as a result of the amendments.

(d) A person who pays more money than the total royalty due as reported on the Form MMS-2014 accompanying the payment, where all amounts reported on the Form MMS-2014 are correct, may submit a request for refund of the overpaid amounts. The request for refund is not subject to section 10's requirements unless the Form MMS-2014 includes reports for only one OCS lease. Any overpayment subject to this paragraph may not be recovered by recoupment.

(a) A person may reduce an estimate balance, established for any lease product pursuant to MMS instructions, by submitting a credit adjustment on a Form MMS-2014, or a request for refund, for all or part of the established estimate balance. A credit adjustment or request for refund to recover all or part of an estimate balance authorized by this paragraph is not subject to the requirements of section 10.

(f)(1) If adjustment of an estimated oil transportation allowance or estimated gas transportation allowance pursuant to 30 CFR 206.105(e) and 206.157(e), respectively, result in an overpayment for any sales month because the estimated transportation costs were less than the actual costs, a person may submit a credit adjustment on a Form MMS-2014 to recoup, or may request a refund of, the overpayment. The credit adjustment or request for refund authorized by this paragraph is not subject to the requirements of section

10, and MMS approval is not required before reporting the credit adjustment.

(2) If adjustment of an estimated gas processing allowance pursuant to 30 CFR 206.159(a) results in an overpayment for any sales month because the estimated processing costs were less than the actual costs, a person may submit a credit adjustment on a Form MMS-2014 to recoup, or may request a refund of, the overpayment. The credit adjustment or request for refund authorized by this paragraph is not subject to the requirements of section 10, and MMS approval is not required before reporting the credit adjustment.

(3) If a person makes an error in the report of actual transportation or processing costs pursuant to paragraphs (f)(1) or (f)(2) of this section, any subsequent adjustment to the report that results in a credit is subject to section 10 and the requirements of this subpart.

(g) If a person pays pursuant to an MMS order and challenges the obligation to pay in an administrative appeal or judicial action, and if the person is successful in a challenge to all or part of the MMS order to pay, section 10 does not apply to the refund or recoupment of the disputed payment or portion thereof.

(h) MMS approval is not required for an adjustment by any person to the amount reported for a report month that results in a credit of not more than an amount established periodically by MMS and published in the Federal Register. However, no adjustment may be reported more than 2 years after the date MMS received the Form MMS-2014 including the excess payment.

[FR Doc. 94—18395 Filed 7-27-94; 8:45 am]  
BILLING CODE 4315-MR-M