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**DEPARTMENT OF THE INTERIOR****Minerals Management Service****30 CFR Parts 216 and 218**

RIN 1010-AB82

**Amendment of Regulations Governing Assessments for Incorrect Reporting****AGENCY: Minerals Management Service, Interior.****ACTION: Final rule.**

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**SUMMARY:** The Minerals Management Service (MMS) is amending its Royalty Management Program (RMP) regulations governing assessments for incorrect reports submitted by royalty reporters, payors, lease operators, lessees, or other parties. The amendment will authorize MMS to assess reporters and payors submitting incorrect reports after the designated due date in the same manner currently applied to incorrect reports received by the designated due date. Thus, this rule will provide consistency in MMS' practice for incorrect reporting assessments.

**EFFECTIVE DATE:** August 31, 1994.**FOR FURTHER INFORMATION CONTACT:**

David S. Guzy, Chief, Rules and Procedures Staff (303) 231-3432, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225-0165.

**SUPPLEMENTARY INFORMATION:** The principal authors of this rule are Philip Wilson of the Reports and Payments Division and David Steiber of the Compliance Verification Division, RMP, MMS, Lakewood, Colorado.

**I. Background**

Paragraphs 216.40(b) and 218.40(b) of title 30 of the Code of Federal Regulations (30 CFR) authorize MMS to assess an amount not to exceed \$10 for each incorrectly completed report received by the designated due date.

These paragraphs do not authorize assessments, for incorrectly completed reports received after the designated due date. The assessments apply to reports submitted by royalty reporters, payors, lease operators, lessees or other parties in accordance with statutes, regulations, contracts, orders, or terms of Federal or Indian mineral leases. The assessments compensate the Government for the costs of researching and resolving reporting errors. Under §216.40 (c) and (d), a report is defined as each line item on a Monthly Report of Operations (Form MMS-3160), an Oil and Gas Operations Report (Form MM-4054), a Gas Analysis Report (Form MMS-4055), a Gas Plant Operations Report (Form MMS-4056), a Production Allocation Schedule Report (Form MMS-4058), a Solid Minerals Operations Report (Form MMS-4059), or a Solid Minerals Facility Report (Form MMS-4060). Under § 218.40(c), a report is defined as each line item on a Report of Sales and Royalty Remittance (Form MMS-2014). This amendment authorizes MMS to assess reporters and payors submitting incorrect reports after the designated due date, in the same manner currently applied, to incorrect reports received by the designated due date.

In response to the proposed rulemaking, MMS received comments from four parties representing independent oil and natural gas producers, royalty owners, industry consultants, and service/supply companies and other interested parties. The comments were considered in preparing this final rulemaking and are discussed in detail in Section II below. The final rule is summarized and discussed at the end of Section II.

**II. Comments Received on Proposed Rule**

All commenters expressed opposition to the proposed rule. The comments received are discussed below:

(1) Three commenters argued that the proposed rule would increase costs and place an even greater financial burden on small, independent producers.

*Response:* The rule is not intended to place a greater financial burden on small, independent producers. Rather, the intent is to provide consistency in MMS' assessments of incorrect reports by amending 216.40 (b) and 218.40 (b) to authorized assessments of all reports that are submitted incorrectly, regardless of whether the report was received timely or late.

(2) Three commenters suggested that MMS is attempting to raise revenue through greater administrative penalties on small entities when MMS should be encouraging producers to lease more

Federal land and drill for and produce more Federal oil and gas.

*Response:* The purpose of this rule is not to raise revenue. As currently structured, MMS regulations provide for assessments on incorrect reports received by the designated due date but authorize no assessment for incorrect reports received late. The costs of researching and resolving reporting errors are the same whether the report is received timely or late. Therefore, MMS is implementing this rulemaking to encourage accurate reporting and to begin to assess reports consistently whether they are received timely or late. This rule applies to reporting accuracy and is not intended to encourage or discourage oil and gas exploration and production on Federal land.

(3) Two commenters stated that if the proposed rule is intended to ensure that administrative costs are similarly addressed for similar situations, then a single \$10 assessment would accomplish this objective, whether the report was timely submitted or not. The MMS currently assesses for late reporting as authorized under 30 CFR paragraphs § 216.40(a) and 218.40(a). The commenters suggest that MMS' proposal represents "double-dipping" on late reports serving as a penalty and not as compensation for administrative costs.

*Response:* The intent of this rule is to recover the costs of resolving reporting errors and to make the regulations consistent for incorrect reporting. The MMS is aware that reporters and payors may be assessed for both late and incorrect reports. This rulemaking will encourage accurate reporting. The MMS will review the late assessment issue at a later date.

(4) All commenters argued that this proposed rule should be dropped because:

- Aside from unsubstantiated need to recover administrative costs, the proposed rule provides no justification for increasing penalties on small businesses; and

- Most of the errors are the result of MMS or Bureau of Land Management (BLM) actions or are beyond the control of lessees thus making the proposed fines counterproductive.

*Response:* The rule is intended to apply to all reporters and payors equally. It is designed to recover the costs of resolving reporting errors and not impose a sanction on small businesses. The MMS practice is to assess for errors that are caused by reporters and payors when completing required MMS reports. Reporters and payors are not assessed for errors that are the result of MMS/BLM miscommunications.

This final rule will be included in MMS regulations at 30 CFR 216.40 (b) and 218.40 (b). The final rule is summarized and discussed below:

Current MMS regulations provide for an assessment on incorrect reports received on or before the designated due date. However, the costs incurred by MMS to research and resolve reporting errors are identical whether the report is received timely or late. So that MMS may be compensated for all costs incurred due to reporting errors, MMS is amending §216.40(b) and §218.40(b) to include as assessable all reports that are submitted incorrectly, regardless of whether the report was received by the designated due date or was received late. Therefore, a report that is both late and incorrect may be subject to two assessments, one under 216.40(a) or 218.40(a) for being late and one under the amended subsection (b) for being incorrect.

### III. 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.*). This rulemaking would compensate the Government for costs incurred as the result of reporting errors and provide for consistency in MMS practice for incorrect reporting assessments.

#### *Executive Order 12630*

The Department certifies that this 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 proposed 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 requiring review by the Office of Management and Budget.

#### *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 § 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

### List of Subjects

#### *30 CFR Part 216*

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

#### *30 CFR Part 218*

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

Dated: July 22, 1994.

Bob Armstrong,

*Assistant Secretary—Land and Minerals Management,*

For the reasons set out in the preamble, 30 CFR parts 216 and 218 are amended as set forth below:

### PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*, 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3716, 3720A, 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

2. Paragraph (b) of §216.40 under Subpart A, General Provisions, is revised to read as follows:

#### **§ 216.40 Assessments for incorrect or late reports and failure to report.**

(b) An assessment of an amount not to exceed \$10 may be charged for each incorrectly completed report.

### PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 356 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3716, 3720A, 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

2. Paragraph (b) of § 218.40 under Subpart A, General Provisions, is revised to read as follows:

**§ 218.40 Assessments for incorrect or late reports and failure to report.**

(b) An assessment of an amount not to exceed \$10 may be charged for each incorrectly completed report.

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