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TELECOPY COVER LETTER

November 6, 1997

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November 6, 1997

Mr. David S. Guzy
Chief, Rules and Procedures Staff
Mineral Management Service
Royalty Management Program
P.O. Box 25165 MS3021
Denver, CO 80225-0165

Re: Comments on Interim Final Rule - Designation of Payor Recordkeeping (62 F.R. 42062).

Dear Mr. Guzy:

The undersigned companies are pleased to have the opportunity to comment on the MMS interim final rule concerning Designation of Payor Recordkeeping, (62 F.R. 42062) published August 5, 1997.

These companies represent lessees and designees who pay and report federal royalties. As such, they are impacted by the Interim final rule. Generally speaking, these companies agree with MMS as to the necessity for lessees to submit designations pursuant to the Federal Oil and Gas Royalty Simplification and Fairness Act (FOGRSFA). They do, however, take issue with MMS's overall approach to implementing the designee provisions of FOGRSFA. Specifically, they object to the need for MMS to collect some of the information sought, the level of detailed information required by this rule, the burdensomeness of information required and the ability of the MMS and the BLM to utilize information that these bureaus already have and maintain. Further, they take issue with MMS' authority to collect the information required under the rule from designees (payors).

The purpose of the interim final rule is the implementation of the provision of FOGRSFA which states *"A lessee may designate a person to make all or part of the payments due under a lease on the lessee's behalf and shall notify the Secretary or the applicable delegated State in writing of such designation, in which event said designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lessee."* With respect to this provision, MMS has stated that, based upon its outreach meetings, there was "general agreement to the specifics of this information collection". While there have been productive, informative exchanges of information during outreach meetings between MMS and industry, it cannot be said that there was agreement as to the provisions and requirements published in the interim final rule. When MMS met with state and industry representatives, those discussions occurred without knowing with any certainty, what kind of cost burden would be imposed on payors. Specifically, at those meetings, industry requested that MMS clearly delineate the circumstances under which it would need and utilize information contained in a lessee designation form as it relates to both computer generated and audit based orders to pay. Secondly, and importantly, industry requested that MMS carefully review the number of orders within each category issued on an annual basis. It was believed that implementation could occur most efficiently and effectively only after these questions were thoroughly analyzed and answered. During the latest meeting which occurred on September 4, 1997, MMS did not articulate its analysis or the answers to these questions.

In its Interim final rule, MMS states it does not maintain information on the relationship between a lessee and a payor who is paying royalties on behalf of that lessee, nor does the BLM maintain this information. MMS states this is because RMP does not maintain information on lessees or working interest owners.

Specifically, MMS has stated to the Office of Management and Budget:

> *While the Bureau of Land Management and the Offshore Minerals Management program of MMS require, for federal onshore and offshore leases respectively, that operating rights owners and lease record title owners file with them, there is no information collected by any other agency which links payors and lessees.*

MMS states that neither of these agencies is able to combine the information in these databases to achieve the result that they seek in this rule.

Further, MMS states its reasons for the rulemaking as follows:

> ***We are requiring each payor to provide us information regarding the lessee on whose behalf they are paying because we need to know who all the lessees are in order to inform them of their obligation to designate a payor to be their lawful designee by a written instrument filed with the Secretary.***

As to the burden associated with the Interim final rule, MMS estimates the following:

> ***The hour burden for approximately 2,500 payors to respond to this collection of information is estimated at 60,000 hours. Payors have told us that to gather, collate, and enter required MMS data, line-by-line on a report or computer generated file, takes them approximately ½ hour per data line. The following is the required MMS data: payor number, payor Taxpayer Identification Number (TIN), Accounting Identification Number (AID), product code, responsibility type, lessee/designee indicator, lessee name, lessee Taxpayer Identification Number (TIN), lessee contact, lessee address, lessee phone number, designee/lessee relationship start and end dates. An average payor will have approximately 48 original data lines (one original line of data will result in multiple lines of data when the payor is the designee and is reporting for multiple lessees). We estimate that we will receive 120,000 original data lines. 2,500 payors x 48 original data lines x ½ hour per data line = 60,000 burden hours.***

Finally, MMS states:

> ***The total annualized cost to the Federal government is approximately $625,000. The annualized cost includes approximately $585,000 for personnel costs and an additional $40,000 for programming support. The personnel costs are for eight full time employees at an hourly rate of $35 (2,087 hours x 8 employees x $35 per hour = $584,360).***

With respect to the costs and burdens imposed by the rule, Congress included provisions in the passage of the Royalty Simplification and Fairness Act (FOGRSFA) that were meant to reduce and eliminate the very burdens that the MMS now seeks to impose upon lessees and payors. Section 4 of the FOGRSFA states that:

> *In connection with any hearing, administrative proceeding, inquiry, investigation or audit by the Secretary or a delegated State under this Act, the Secretary or delegated State shall minimize the submission of multiple or redundant information and make a good faith effort to locate records previously submitted by a lessee or a designee to the Secretary or the delegated State, prior to requiring the lessee or the designee to provide such records.*

This rulemaking is clearly at odds with the congressional mandate that it purports to be fulfilling.

Further, the Paperwork Reduction Act (PRA) mandates no submission of information that government already has in its possession. The PRA does not limit the submission to information in a format that the agency requires. Submission of information that is readily translatable into an existing database is not required by FOGRSFA or permitted by the PRA.

Because extensive information currently is reported and is available for use or potentially available for use, these commenters have serious concerns about requiring additional reporting when it appears the MMS and the BLM have not attempted to make efforts to locate and retrieve the information that has already been provided to them. What the Interim rule demonstrates is the unwillingness of the federal agencies to create their own database from information existing within the Department of Interior files by linking the MMS payor lease number reference with the BLM's lessee/working interest owner/lease number reference data. In many aspects, this information is duplicative of information maintained by both agencies.

The complex information that the MMS seeks will necessitate substantial cost to industry to obtain and report and substantial expense to the MMS to maintain. There is reason to believe that the cost estimate performed by MMS substantially understates the burden of collecting and maintaining the information required by this rule. The

commenters have serious doubts about the agency's ability to maintain a current, accurate, working database of the detailed information required by the rule. At the very least, the MMS and the BLM should work together to compile information they have in their possession and verify the accuracy of that information with lessees before requiring duplicative, burdensome efforts.

Ownership information in some instances is kept by payors on a unit level basis, not a tract level basis. Thus, some payors will only be able to respond and gather information manually because of their accounting systems. Also, payors will likely not have access to certain information, particularly contact person, TIN and whether the party on whose behalf royalty payments are made is a lessee or a Working Interest Owner. The MMS must take into account these situations of varied ownership in the formulation and maintenance of its database. The paperwork burdens associated with the requirements placed on payors by the interim final rule clearly do not comport with the requirements of simplicity and fairness mandated by the FOGRSFA.

As a general matter, the rule contains some internal inconsistencies. For example, if the reason for requiring payors to report information is to enable MMS to assist lessees in making designations, why does Section 210.55(b)(6)(iii) require the payor to attach a copy of the written designation? In addition Section 218.52 requires a lessee's notice of designation to include the AID (which contains revenue source information only available to the payor) and a copy of the written designation. All such inconsistencies should be removed.

With respect to information requested from payors, it is impossible to determine all the burdens associated with the rule because the rule lacks specifics on when information required by the rule will be sought. MMS has requested an initial set of data from payors. An important question remains as to how often MMS will require information from payors to update its database. Will MMS be asking for the same information every six months or even once a year to update its database? The frequency and amount of information requested could impose onerous administrative burdens.

With respect to lessees, in Section 218.52, MMS outlines how a lessee can designate a designee. It requires information under (4) (i) and (ii) as to whether the party is a lessee of record (record title owner) or operating rights owner (working interest owner) and "*the percentage of record title or operating rights ownership.*" This

requirement is not included in the Federal Oil and Gas Royalty Simplification and Fairness act and should be deleted. In fact, the designation form MMS has provided does not include a section which requires this information. To require the submission of percentage of ownership information would result in the necessity to update the information each time ownership changes. The burden resulting from this would be clearly contrary to the goals of FOGRSFA.

Section 210.55 further gives MMS the authority to require special reports and information by lessees "and other persons who report and pay royalties" necessary for MMS to assure lessees properly designate their designee "in a form that MMS can use in its database." This is rather open ended and appears to give MMS carte blanche to require whatever information (including division of interest) it believes it needs from payors or lessees to maintain and update its database. This language should be deleted.

The interim rule states that the MMS believes advance notice and comment are unnecessary. MMS states that to comply with the formal APA rulemaking requirements would delay the implementation of the FOGRSFA. If one applies this rationale to all agency decisions, what is the purpose of having the protections of the APA?

Implicit in MMS' approach is the idea that it is sufficient for PRA that this rulemaking merely mimics the January, 1997 and August, 1997 "Dear Payor" letters, thus relieving the MMS of its burdens under the APA. (Actually, this rule requires much more information than the "Dear Payor" letters.) The issuance of a "Dear Payor" letter and the rulemaking in this case are not one in the same. Duplication of a "Dear Payor" letter does not relieve a governmental agency of its burden under the APA. Further, MMS states it will be publishing a NOPR prior to the end of 1997 to make a more permanent process for collecting this information. If MMS intends to amend and change this rulemaking, what is the emergency that would mandate an interim final rule?

In conclusion, the undersigned commenters object to MMS building a complex, complicated, expensive and unnecessary database to capture not only lessee designations but information from payors as well. With the extensive level of detail required by the Interim final rule, such a database will impose substantial costs on MMS and industry to update and maintain. Such a database may well prove totally

unworkable and is unnecessary for the agency to properly implement FOGRSFA. The undersigned commenters urge MMS to consider the most efficient and cost effective method of implementing the lessee/designee provisions of FOGRSFA by first defining the circumstances and time frames under which designee/lessee information is needed and will be utilized. For example, a mechanism must be in place for the termination of designations beyond end dating the PIF form. This is especially true if a PIF form is not used.

Further, if such a database is created by MMS, pursuant to this proposed rule, it should be made available for review on the internet so that parties can confirm the status of leases and other relevant information.

Finally, the undersigned commenters request that the MMS delay further decision on this matter until it has had time to properly review the comments submitted as well as those to be forthcoming from the Royalty Policy Committee subcommittee created to review this issue.

The undersigned commenters appreciate the opportunity to comment on this rule and look forward to working with the MMS to satisfy the objective of FOGRSFA.

Sincerely,

Patricia Dunmire Bragg
on behalf of:

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA
ROCKY MOUNTAIN OIL AND GAS ASSOCIATION

AMOCO PRODUCTION COMPANY
ANADARKO PETROLEUM CORPORATION
BURLINGTON RESOURCES
CHEVRON USA PRODUCTION COMPANY
CONOCO INC.
DEVON ENERGY CORPORATION
DUGAN PRODUCTION COMPANY

THE LOUISIANA LAND & EXPLORATION COMPANY
MARATHON OIL COMPANY
ORYX ENERGY COMPANY
OXY USA, INC.
PHILLIPS PETROLEUM COMPANY
TEXACO, INC.
VASTAR RESOURCES