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Minerals Management Service

30 CFR Parts 208, 241, 242, 243, 250, and 290 and 43 CFR Part 4
Appeals of MMS Orders; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

Minerals Management Service

30 CFR Parts 208, 241, 242, 243, 250, and 290

43 CFR Part 4

RIN 1010–AC21

Appeals of MMS Orders

AGENCIES: Office of Hearings and Appeals (OHA) and Minerals Management Service (MMS), Interior.

ACTION: Final rulemaking.

SUMMARY: OHA and MMS are amending their rules governing the appeal of orders from MMS's Royalty Management Program and MMS's Offshore Minerals Management. This rule makes final parts of the proposed rule published on January 12, 1999. The rule also: implements certain provisions of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 governing how appellants in royalty appeals may demonstrate financial solvency instead of posting a surety, and provides for new regulations to collect processing fees in appeals from Offshore Minerals Management orders.

EFFECTIVE DATES: Effective on May 13, 1999, except that the amended provisions of 30 CFR parts 208, 241, and 243 will be effective June 14, 1999.

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SUPPLEMENTARY INFORMATION: The rule provides that 30 CFR parts 250 and 290 and 43 CFR subpart J will be effective immediately upon publication. Under the Administrative Procedure Act at 5 U.S.C. 553(d), an agency must find good cause to make a substantive rule effective sooner than 30 days after the date of publication. There are certain administrative appeals pending before the Department in which, under 30 U.S.C. 1724(h)(1), the Secretary must issue a final decision before May 13, 1999, which is less than 30 days after publication of this rule. (May 13, 1999, is 33 months after the date of enactment of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, which enacted 30 U.S.C. 1724(h).) If there is no final departmental decision by that date, 30 U.S.C. 1724(h)(2) imposes a statutory rule of decision in those cases. Title 43 CFR part 4 subpart J resolves various issues involved in implementing the requirements of 30 U.S.C. 1724(h)(1) and (2). Its provisions apply to those cases in which the Secretary must issue a final decision by May 13, 1999, and the effect of the statutory rule of decision if the Department does not issue a final decision by that deadline. Title 30 CFR parts 250 and 290 contain provisions regarding appeals of orders that are part of the integrated changes to the orders and appeals scheme that includes the new 43 CFR part 4 subpart J. The Department therefore finds that good cause exists to make these provisions effective immediately upon publication. The remainder of this rule will be effective 30 days after publication.

I. Background

In May 1994, MMS began a comprehensive review of its administrative appeals process. As part of that review, MMS held several informal meetings with State, tribal, and industry representatives to discuss the problems and possible solutions regarding the appeals process. The principal problems identified included the length of the appeals process—sometimes taking several years to resolve a case—and the excessive costs of the process to both MMS and appellants.

In 1995, the Department of the Interior (DOI) established a Royalty Policy Committee (RPC) under the Minerals Management Advisory Board. At its first meeting in September 1995, the RPC established the Appeals and Alternative Dispute Resolution (ADR) Subcommittee. The Appeals and ADR Subcommittee was created to make recommendations to the RPC to improve the appeals and ADR processes. Membership in the Appeals and ADR Subcommittee included 11 representatives from industry, 5 representatives from States, and 2 representatives from Indian tribes. The Subcommittee agreed that the principal purpose of the MMS administrative appeals process should be the expeditious and independent review of appeals. The RPC made a recommendation (RPC Report) and submitted that recommendation to the Secretary of the Interior. The primary recommendation was to change the current two-step appeals process into a one-stage Interior Board of Land Appeals (IBLA) administrative appeal process. On September 22, 1997, the Secretary accepted the RPC report for consideration and proposal with some changes and clarifications.

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. 104–185, as corrected by Pub. L. 104–200 (RSFA). RSFA amended portions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.* Before enactment of RSFA, there was no time limit on when DOI must issue decisions in appeals of orders involving royalty and other payments for Federal oil and gas leases. RSFA added a new FOGRMA section 115(h), 30 U.S.C. 1724(h), governing the time frame for DOI to process appeals of MMS orders or decisions involving royalties and other payments due on Federal oil and gas leases. For appeals involving Federal oil and gas leases covered by this new provision, DOI has 33 months from the date a proceeding is commenced to complete all levels of administrative review. If DOI does not decide the appeal within 33 months, the appeal is deemed decided either for or against DOI, depending on the type of order and the monetary amount at issue in the appeal. The 33-month deadline does not apply to appeals involving Indian leases or Federal leases for minerals other than oil and gas.

As a result of the MMS review of the appeals process and RSFA, MMS announced a proposed rule in the **Federal Register** on October 28, 1996 (61 FR 55607). The proposed regulation provided for amendments to the MMS appeals process at 30 CFR part 290. On December 31, 1997, MMS announced that it intended to withdraw the October 28, 1996, proposed rule when it published a revised notice of proposed rule (62 FR 68244). Accordingly the October 28, 1996, proposed rule was withdrawn when MMS proposed a revised appeals process on January 12, 1999 (64 FR 1930) that included most of the RPC Report recommendations.

Two portions of the proposed rule would have implemented the RPC recommendations. First, the new proposed 43 CFR part 4, subpart J, would have established a new procedure for appeals of royalty orders. That section would have replaced the current regulations at 30 CFR part 290 and 43 CFR part 4, subpart E, as they relate to appeals of royalty orders initially to the MMS Director and then to the IBLA. Second, the new proposed 30 CFR part 242, subpart B, would have established procedures for orders issued by MMS and delegated States. That subpart would have incorporated certain RSFA provisions regarding orders and orders to perform restructured accounting and for service of orders on lessees when orders are sent to their designees. In addition, subpart C of proposed part 242 would have established procedures for Indian lessors to formally request that MMS

take actions. Finally, subpart D of part 242 would have included the service requirements that currently are found at 30 CFR part 243.

We have decided not to go forward at this time with the entire appeals process that we proposed on January 12, 1999, for two major reasons. One, we received numerous negative written and oral comments regarding the proposed process. Two, the necessity to publish before May 13, 1999, a final rule implementing the RSFA appeals adjudication time requirements and the associated rule of decision under 30 U.S.C. 1724(h) for cases in which there is no final Departmental decision prevents us from conducting a thorough and reasoned review of all the comments we received on the appeals process. One commenter suggested that we withdraw the proposed rule, leave the current process in place, and only publish the portions of the proposed rule necessary to implement RSFA. Rather than withdrawing the proposed rule, we are making final only those portions of the proposed rulemaking necessary to implement RSFA, and the portions of the proposed rule which received few, if any, comments. Those portions of the rule that are part of this final rulemaking are as follows:

(1) The sections of proposed 43 CFR part 4, subpart J, necessary to implement the 33-month time period at 30 U.S.C. 1724(h), and allow joinder for lessees who receive notice of an order issued to their designee as required under 30 U.S.C. 1712(a);

(2) Proposed 30 CFR part 243, regarding stays pending appeal and bonding, and implementing 30 U.S.C. 1724(l) which allows lessees to demonstrate financial solvency in lieu of posting a bond or other surety instrument pending an administrative or judicial proceeding;

(3) Proposed 30 CFR part 290 regarding appeals of MMS Offshore Minerals Management Program (OMM) orders and related changes to 30 CFR part 250;

(4) Proposed 30 CFR part 241 regarding civil penalties authorized by FOGRMA; and

(5) Proposed changes to definitions in 30 CFR 208.2 and to 30 CFR 208.16 regarding appeals of contracting officers' decisions by purchasers of Federal royalty oil.

Because we are not finalizing the entire proposed rule, we will continue to require appellants to use the appeals procedures for royalty orders found at 30 CFR part 290 and 43 CFR part 4, subpart E, until we can publish a final rule on the appeals process. However, for royalty-related appeals to the MMS Director, the rules are now located at 30 CFR part 290, subpart B. That subpart is revised to contain appropriate headings and provisions of the proposed rule necessary to implement RSFA. Subpart A contains the procedures in the proposed rule for OMM appeals.

II. Comments on Proposed Rule

The proposed rulemaking provided a 60-day public comment period which ended March 15, 1999. On February 16, 1999, DOI held a public hearing in Houston, Texas, to receive oral comments on the proposed rule. That public hearing was announced in the **Federal Register** (64 FR 3262, January 21, 1999). Those attending included representatives of natural gas, oil, and coal producers, including representatives both of large integrated producers and of smaller independent producers. Participants in the public hearing had the opportunity to ask specific questions about the proposed rule and to provide comments on the proposed rule.

MMS received written comments from 13 commenters during the comment period. Two additional commenters submitted late comments, which we also accepted and considered. Thus, a total of 15 comments were accepted for review. One of the comments was from the State of California, 1 was from a mining association, 3 were from oil and gas trade associations, 8 were from industry, 1 was from an Administrative Law Judge and Attorney-Advisor, from the DOI Salt Lake City Office of the Hearings Division, Office of Hearings and Appeals, and 1 was from a law firm.

We reviewed and analyzed all of the comments pertaining to the sections that are part of this final rulemaking and, in some instances, revised the language of the final rule based on these comments. The following is a discussion of the specific comments we received and our response by section number.

III. Section-by-Section Analysis, 30 CFR Part 208

Comment—We received no comments on the proposed amendments to part 208.

Response—Although we received no comments regarding this part, we made some minor changes necessary to reflect that we are not making the entire proposed rule final at this time.

IV. Section-by-Section Analysis, 30 CFR Part 241 Civil Penalties

While the focus of the comments to this proposed rulemaking concerned the provisions of 43 CFR part 4, subpart J, several comments were received with reference to this part. Most of the comments concern sections of the rule in which no substantive change is proposed—where MMS has simply attempted to restate in plain language the rule under which MMS has operated for approximately 15 years. All comments received concerning this part were received from an association of oil and gas producers. Where we received more than one comment, the additional comments came from an individual oil and gas producer.

Section 241.50 What Definitions Apply to This Subpart?

Comments—We received two comments, which noted that the proposed rule has not defined ''violation.'' Specifically they inquired whether, for example, when a company fails to report, is each line that should have been reported a violation or is it one violation for the entire report?

Response—MMS has operated under the current regulations for 15 years without a regulatory definition of violation. Any attempt to define the term to meet all possible circumstances would require an impractically exhaustive list. Violations could be any failure to comply with statutes, rules, lease terms or orders.

In response to the specific question asking whether each line would be a separate violation, MMS has always considered that each failure to report, or wrongly reporting a line that is required to be reported, is a violation. For example, if a company fails to report its production of natural gas, each line for which natural gas should have been reported on the production report is a violation, and each month and each lease for which it should have been reported constitutes an additional violation.

Section 241.51 What May MMS Do if I Violate a Statute, Regulation, Order, or Lease Term Relating to a Federal or Indian Oil and Gas Lease?

Comment—One commenter noted that this section does not provide for the appointment of an agent to receive service. It also believes that the Department is obligated to allow this designation under 30 U.S.C. 1719(h). In addition, the commenter also believes that the statute only allows notice by personal service or registered mail. However, it believes that although express mail and certified mail are not permitted, they should be.

Response—We agree that this section, as proposed, does not allow specifically for the appointment of an agent to receive service. However, it proposed to use the proposed provisions of 30 CFR

242.304 and 242.305, which provide for service to designated persons. For violations concerning a royalty report (Form MMS–2014), MMS will send the notice to the individual named by the lessee, designee, reporter or payor as the person to whom to direct correspondence. A similar provision was included for violations concerning production reports and audits. The proposed rule did not provide for designations of persons to be served with notices of violations committed by payors or designees of which the lessee receives notice. MMS has not traditionally sent notices of noncompliance to lessees that are not acting as reporters, designees or payors. For this reason, we did not consider this possibility when proposing these rules. We have now added provisions to section 241.51 clearly allowing the designation of an agent for the receipt of notices of noncompliance and civil penalty notices.

We also agree that we are limited in how we may serve notices under 30 U.S.C. 1719(h). While we also agree that we should be able to use other forms of service, we have clarified that service must be by registered mail or personal service, both in this section and in section 241.61.

Section 241.52 What If I Correct the Violation?

Comment—One comment was received, to the effect that this section conflicts with section 241.54, by implying that no review was possible in the case of a company that has complied with a notice of noncompliance within the statutory 20-day period to correct the violation.

Response—We believe that the language in proposed section 241.54 that allowed review ''regardless of whether you correct the violations,'' clearly means that a party may seek a hearing on the record even if it complied with requirements stated in a notice of noncompliance. However, we have no record of any past case in which a violator corrected a violation and then requested a hearing.

Section 241.53 What If I Do Not Correct the Violation?

Section 241.54 How May I Request a Hearing on the Record on a Notice of Noncompliance?

Section 241.55 Does My Request for a Hearing on the Record Affect the Penalties?

Comments—We received two comments concerning these sections. These commenters believed that the rule should provide for: (1) a longer than 20-day period for the recipient of a notice to file its request for a hearing (preferably 40 days); (2) a separate opportunity for a hearing, even if no request for a hearing is made from the notice of noncompliance; (3) a mechanism for expedited review when there is a request for a stay to allow substantive review without the risk of incurring penalties; and (4) more specific regulatory criteria for determining the amount of penalties. The commenters reasoned that the purposes of 30 U.S.C. 1719, as well as all of FOGRMA, are to encourage voluntary compliance, and imply that the rule, as proposed, violates due process.

Response—Starting with how we determine the amount of penalties, we do not believe that it is necessary to provide the detailed standards for setting penalty amounts in regulatory form. MMS has written guidelines which set out, in ranges, appropriate penalties for a variety of circumstances. We do not believe it is possible to set out all the standards in advance in a permanent fashion by rule. FOGRMA requires only that ''In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations.'' 30 U.S.C. 1719(i). This subsection neither requires, nor implies, that the determination be made through regulation, which would limit the flexibility of DOI in setting penalty amounts appropriate to the wide variety of possible circumstances that should be considered. However, to assist potential recipients of notices of noncompliance, the following table shows the current non-binding guidelines MMS uses:

Violation	Company size		
	Minor	Moderate	Major
Failure to report	$0–10	$0–25	$5–500
Failure to pay	0–20	2–50	10–500
Failure to provide information	0–100	2–200	20–500
Failure to comply with order to perform restructured accounting	0–15	2–35	10–500

Note: Amounts in Dollars per violation per month.

We also believe that the current regulations of the Hearings Division of the Office of Hearings and Appeals at 43 CFR 4.21 have proven more than adequate when an appellant petitions for a stay. We have used these procedures for 15 years without any complaints about an appellant's inability to have its petition timely and fairly reviewed by the Hearings Division. We therefore will not change the procedures to mandate a faster review of requests for stays of accrual of penalties.

As to the commenter's first two requests, FOGRMA grants the Secretary the discretion to set the time limits for an appellant to request a hearing. MMS has operated under rules requiring hearings to be requested within 20 days of the date of receipt of the notice of noncompliance for more than 15 years without complaint. In spite of this history, in the interests of increasing a violator's ability to request hearings, we have changed the proposed rule to allow 30 days from the date of receipt of the notice of noncompliance for an appellant to request a hearing on the record. MMS has a long history of using a 30-day period in other contexts (specifically for appeals from MMS orders), which allows ample time for appellants to decide whether to seek review in those cases.

We agree with the comment that the violator may still have need for redress concerning the amount of a civil penalty even though that violator did not contest the notice of noncompliance. We therefore have added new sections 241.56 and 241.64 that allow a violator, who did not request a hearing on the record on a notice on noncompliance, 10 days from the receipt of the Notice of Civil Penalty to request a hearing on the record limited to the issue of the amount of the penalty only. By not requesting a hearing on the record on the notice of noncompliance, the recipient waived the right to contest the underlying liability for penalties.

Section 241.60 May I Be Subject to Penalties Without Prior Notice and an Opportunity to Correct?

Section 241.61 How Will MMS Inform Me of Violations Without a Period To Correct?

Section 241.62 How May I Request a Hearing on the Record on a Notice of Noncompliance Regarding Violations Without a Period To Correct?

Section 241.63 Does My Request for a Hearing on the Record Affect the Penalties?

Comments—We received one set of comments that addressed these sections concerning penalties that may begin without a period to correct. The first issue involves the definition of violation. The commenter referred to FOGRMA, which provides for an

assessment of $25,000 per day for each day such violation continues. The commenter believes that MMS has been inconsistent by specifying a penalty calculated at $25,000 per day for each violation. The second issue is similar to the comments on sections 241.52 through 241.54 in that no separate right of review is granted as to the amount of the penalty and that the time to seek review is too short.

We also received one comment that addressed a statement in the preamble that MMS believes that the statutory provision for assessing penalties for ''failure to permit entry, inspection or audit'' applies to failure to provide MMS with documents that MMS has requested under authority of FOGRMA, the regulations or the leases. The commenter noted that MMS has argued in court that audit requests are voluntary and, for that reason, that they are not appealable agency actions. The commenter continued by saying that argument is inconsistent with making lessees subject to FOGRMA penalties without opportunity to correct for not complying with audit requests.

Response—As we explained in the response to comments on section 241.50, we believe MMS has been very clear over the past decade and one-half that each failure to comply with the mandates of law is a separate violation. We believe that while FOGRMA uses the word ''such'' rather than ''each,'' their meaning is identical in the context of this regulation. ''Such is a demonstrative word used to indicate the quality or quantity of a thing * * *.'' The definition of ''each'' is ''Every (individual of a number) regarded or treated separately.'' The Compact Edition of the Oxford English Dictionary 823 Vol I and 3136, Vol. II (1971). In both cases the word signifies a quantity. In the context of FOGRMA, there is a separate violation, and thus a separate penalizable act with a separately accruing penalty, for each such violation. The regulation's meaning is identical to the statute's meaning.

As to the potential problem with a person wanting to appeal only the amount of the penalty, we have added a provision at section 241.64 allowing a hearing on that issue alone, paralleling the new section 241.56.

We continue to believe there are circumstances where a refusal to provide MMS, or a delegated State, or a Tribe operating under a cooperative agreement (or under a self-determination contract or compact), with documents during an audit would amount to a failure to permit lawful audit. The exact circumstances under which MMS may use this provision will be addressed in future proceedings when MMS believes an appropriate case has arisen.

Section 241.70 How Does MMS Decide What the Amount of the Penalty Should Be?

Comment—One comment was received that complained that the criteria articulated for determining the quantum of civil penalty are inadequate. The commenter demanded that more specific criteria be articulated to provide a reviewing officer and a court more objective criteria for determining the exercise of the agency's authority.

Response—MMS has operated under provisions similar to these for 15 years without complaint. Neither Administrative Law Judges, the Interior Board of Land Appeals, nor the Federal courts found any need for guidance in the form of a regulation. Indeed, FOGRMA only requires ''In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations.'' 30 U.S.C. 1719(i). As mentioned in the response to sections 241.53, 241.54 and 241.55, we intend to continue to articulate our reasons as part of the administrative record rather than attempting to do so in a rule.

Section 241.74 May I Seek Judicial Review of the Decision of the Interior Board of Land Appeals?

Comment—One comment was received to the effect that the regulation should include the 30 U.S.C. 1719(j) requirement that judicial review must be taken in the United States District Court for the judicial district in which the violation allegedly took place.

Response—We do not have the ability to determine jurisdiction or venue, or other rules concerning review by Federal courts. We have therefore simplified the regulation by making it a mere pointer to the proper section of the United States Code. We have retained the sentence informing the reader of the time limit to make it easier for readers of these regulations to comply within the statutory time limit.

Section 241.75 When Must I Pay the Penalty?

Comment—One comment was received repeating the request for separate review of the amount of the penalty.

Response—As mentioned above, we have added provisions allowing for hearings on the record limited to the amount of penalty assessed. Therefore, the paragraph within this section as proposed that prohibited such reviews has been removed.

Section 241.77 How May MMS Collect the Penalty?

Comment—One comment was received that complained that MMS has no statutory authority under FOGRMA for execution against a lease surety or to offset amounts the United States owes to the violator.

Response—FOGRMA specifically provides for offset: ''The amount of any penalty under this section, as finally determined may be deducted from any sums owing by the United States to the person charged.'' 30 U.S.C. 1719(f). There is no specific statutory authority regarding collecting against lease sureties. They fall under the plenary regulatory authority of the Secretary under the mineral leasing laws. This regulation is sufficient authority under those provisions.

V. Section-by-Section Analysis, 30 CFR Part 242

We have decided not to finalize part 242 as proposed on January 12, 1999, at this time. However, we have reserved this part for future publication.

VI. Section-by-Section Analysis for 30 CFR Part 243 Suspensions Pending Appeal and Bonding—Royalty Management

General comments—We received two sets of comments that addressed this rule, one from an oil and gas producer and one from an association of oil and gas companies. The producer's comments were favorable to the proposed rule and referred to the association's comments for specific suggestions.

The association also welcomed the proposed rule and MMS's proposal to apply the rules even to situations where they are not mandated by RSFA, such as production from periods prior to September 1996 and to leases for minerals other than oil and gas. The commenter also responded to the question about whether the rules should apply to Indian leases as well as to Federal leases. That commenter stated that it believed that the rules should apply to all appeals, because Indian lessors as well as the Federal Government would be protected by the financial solvency provisions.

Response—We appreciate the favorable comments on the proposal. Upon considering the comment that the financial solvency provisions of the proposed rule should apply to Indian as well as Federal leases, we have decided that there are important reasons for having different sets of rules for Indian

and Federal leases. First, Indian lessors are not in a comparable position to the United States in their ability to absorb the risk of default by a person believed to be financially solvent but who later defaults on an appealed obligation. Indian lessors are much smaller, less diversified in their portfolio of risks than the United States, and are in a significantly less advantageous position than the United States. Second, the standards that we apply, and must apply, to Indian leases are different from those applied to Federal leases. We have a trust responsibility to Indian lessors and believe that requiring the protection of sureties for appeals of obligations on Indian leases is appropriate. Finally, Congress declined to extend the benefit of self-bonding by demonstration of financial solvency to lessees on Indian lands. For these reasons, we will keep the separation between Indian and Federal leases as it was in the proposed rule.

Section 243.3 What Definitions Apply to This Part?

Section 243.4 How Do I Suspend Compliance With an Order?

Comment—One commenter requested that definitions follow the RSFA definitions. In particular, ''order'' does not appear to include anything other than orders to pay monetary obligations. Therefore the rules seem only to permit the suspension of these orders.

Response—The purpose of the use of the word ''order'' in this part is to refer to the proper parts under which an appeal may be taken for which compliance may be suspended under this part. To avoid confusion we have deleted the reference to monetary obligation. We have clarified section 243.4 to provide that appeals of orders that do not require the making of a payment may be suspended without posting a surety or demonstrating financial solvency.

Section 243.5 May Another Person Post a Bond or Other Surety Instrument or Demonstrate Financial Solvency on My Behalf?

Comment—One commenter responded to our request for comments on whether any limitations are needed on who may post surety or demonstrate financial solvency on behalf of an appellant. That commenter does not believe any limitations are appropriate.

Response—We appreciate the comment, and we believe that the phrase ''any other person'' clearly places no limitation on who may post surety or demonstrate financial solvency on a lessee's behalf. Therefore, we have decided to leave the rule as proposed.

Section 243.6 When Must I or Another Person Meet the Bonding or Financial Solvency Requirements Under This Part?

Comment—One commenter believes this section should be amended to make it clear that only one bond or demonstration of financial solvency is required for any particular liability. The commenter does not believe MMS should require sureties from a lessee and its designee for the same liability. While the commenter believes, from our explanation in the preamble to the proposed rule, that only one guarantee is intended, it believes the rule itself should make clear that either the lessee or the designee, but not both, is required to post surety or demonstrate financial solvency.

Response—We have inserted the word *either* in this section to clarify that only one surety is required, regardless of the identity of the person or persons posting the surety or sureties.

Section 243.8 When Will MMS Suspend My Obligation To Comply With an Order?

Comment—One commenter applauded MMS's proposal to increase the minimum amount under appeal for which no bond or demonstration of financial solvency is required. It urged that the same rules apply to appeals with respect to Federal and Indian lands.

Response—As explained above, we believe it is appropriate to have different standards with respect to Federal and Indian lands, and we decline to change the standards here.

Section 243.10 When Will MMS Initiate Collection Actions Against a Bond or Other Surety Instrument or a Person Demonstrating Financial Solvency?

Comment—One commenter noted that the time period for MMS to initiate collection actions against the bond or other surety is inconsistent with the Mineral Leasing Act, 30 U.S.C. 226–2, which allows 90 days for an appellant to seek judicial review of an adverse decision by the Department. The proposed rule, by contrast, allowed MMS to call on the surety within 30 days of such an adverse decision.

Response—We agree that the proposed rule should track the time period in the Mineral Leasing Act with respect to oil and gas leases for cases in which there is a decision of the IBLA or an Assistant Secretary that is subject to judicial review. We therefore have increased the time to 90 days in the final rule for those cases.

Section 243.11 May I Appeal the MMS Bond-Approving Officer's Determination of My Surety Amount or Financial Solvency?

Comment—One commenter noted that it did not object to the proposal that there would be no administrative review of determinations of the Bond-Approving Officer, but requested that we clarify that the determinations are judicially reviewable.

Response—Whether a court would have jurisdiction to review these determinations is a matter of statute rather than regulation. Therefore, we are not amending the rule to specifically provide for judicial review.

Section 243.12 May I Substitute a Demonstration of Financial Solvency for a Bond Posted Before the Effective Date of this Rule?

Comment—One commenter urged that this section be amended to allow an appellant to replace a surety with a self-bond at any time, not just ''when the surety instrument is due for renewal.'' The commenter's reason was that an appellant may have many bonds due for renewal at different times. ''Depending on the circumstances, it may be more administratively convenient * * * to replace all of its bonds with a demonstration of financial solvency at the same time.''

Response—It was not our intent to prevent an appellant from choosing between replacing its sureties individually as they expire, or replacing all sureties at once. To avoid confusion, we have amended this section to allow replacement of sureties at administratively convenient times.

Section 243.200 How Do I Demonstrate Financial Solvency?

Comment—One commenter noted that the proposed rule appears inconsistent with the preamble. The preamble noted that MMS could require updated financial statements to monitor demonstrations of financial solvency if the demonstrator files for bankruptcy. The regulatory language allows MMS to require updated financial statements upon request. The commenter urged MMS to specify the circumstances, other than bankruptcy filings, that might justify an appellant to redemonstrate financial solvency.

Response—We did not intend to narrow the rule by the preamble. The broader requirements of the rule will remain unchanged. We expect MMS to very rarely request an updated financial statement, but we believe the flexibility

is needed for circumstances that we cannot currently foresee.

VII. Section-by-Section Analysis 30 CFR Part 250

Comment—No comments were received on the proposed amendments to part 250.

VIII. Section-by-Section Analysis 30 CFR Part 290

Subpart A—Offshore Minerals Management Appeals Procedures

Section 290.2 Who May Appeal?

Comment—One commenter asked if an appeal from an order issued by an MMS Offshore Minerals Management (OMM) official would be appealable under the new 43 CFR part 4 subpart J, which is designed for appeals from orders issued by MMS Royalty Management Program (RMP) officials. Another commenter asked if we could do away with the exclusions listed in section 290.2.

Response—An order issued by an MMS OMM official is not appealable under the new 43 CFR part 4 subpart J. To clarify this matter, section 290.2 will specify that your appeal to IBLA is under 43 CFR part 4 subpart E. Adding the reference to subpart E is consistent with section 290.8(a) and should clarify the fact that appeals from orders issued by MMS OMM officials are appealed to IBLA under 43 CFR part 4 subpart E. The RSFA rule of decision provisions made final in 43 CFR part 4 subpart J do not apply to appeals of OMM orders.

Also, because we are not publishing a final rule on a new royalty appeals process at this time, we are dividing part 290 into two subparts to distinguish between appeals from orders issued from MMS's RMP and orders issued from MMS's OMM Program. Appeals of OMM orders will be under the rule at 30 CFR part 290 subpart A. Appeals of RMP orders will be under 30 CFR part 290 subpart B.

As for doing away with the exclusions listed in section 290.2, the exceptions listed for decisions concerning lease bids and deep water field determinations are based on current requirements in other sections of our rules (the sections were referenced in the proposed rule). The changes proposed to the current OMM appeals process were aimed at streamlining and simplifying the appeals process and do not affect any other MMS rules or requirements.

Section 290.5 How do I Pay My Processing Fee?

Section 290.6 How Will MMS Notify Me of Its Action on my Request?

Section 290.7 What is the Filing Date for My Appeal?

Comment—We received numerous comments criticizing the complexity of the proposed appeals rule.

Response—We believe it would be desirable to simplify this OMM appeals rule by removing the provisions in sections 290.5, 290.6 and 290.7 of the proposed rule.

We are deleting the requirement to pay the processing fee by electronic funds transfer, based upon conversations with officials in the Treasury Department. Therefore, you may pay by following the procedures in place at 30 CFR 218.51. We are also removing the parts dealing with a waiver of the $150 processing fee imposed on each appeal. The operators on the Outer Continental Shelf (OCS) are large enough that they would not be able to justify the need for a waiver of a $150 processing fee for their appeal. Also, because the amount of the fee is nominal, the waiver provision in the proposed rule is not needed to meet the requirements of the Small Business Regulatory Enforcement and Fairness Act or the Regulatory Flexibility Act.

The date the appeal is filed will continue to be, as in the past, the date the Notice of Appeal is received in the OMM office. The processing fee will be paid by check with the Notice of Appeal.

Subpart B—Appeals of Royalty Management Program and Delegated State Orders

Comments—We received no comments on this subpart because it was not separately proposed. The revisions made in this subpart incorporate portions of the proposed appeals rule that are necessary to implement certain provisions of RSFA, and to separate appeals of royalty-related orders from appeals of Offshore Minerals Management Program orders. The OMM-related appeals are few in number and under the new subpart A will go directly to the IBLA. We did receive comments on some of the definitions in the proposed appeals rule that are contained in this part. The revisions made in this subpart also rewrite the headings in former part 290 in ''plain language,'' and clarify portions of former part 290.

In addition, we deleted former section 290.4 titled ''Oral Argument'' because they were rarely requested and rarely granted. This is also consistent with the proposed rule which did not provide for appellants to request oral argument before the IBLA.

Section 290.100 What is the Purpose of This Subpart?

Comments—We did not receive any comments on this section.

Response—The purpose of this subpart is to provide the procedures to appeal MMS or delegated State orders concerning reporting to the MMS's RMP and the payment of royalties and other payments due under leases subject to this subpart. Subpart A of this part applies to appeals of MMS's OMM program actions.

Section 290.101 What Leases Are Subject to This Subpart?

Comments—We received no comments on this subpart.

Response—This section is the same as proposed 43 CFR 4.902. We specifically note that the scope of this subpart is not limited to those orders that are subject to RSFA time of decision requirements in 30 U.S.C. 1724(h). This subpart covers all appeals of RMP or delegated State orders, including orders concerning Federal leases for minerals other than oil and gas, all Indian leases, orders to provide information, produce documents, etc., and is not limited to Federal oil and gas leases. Included in this subpart are some provisions specific to orders that RSFA covers.

Section 290.102 What Definitions Apply to This Subpart?

Comments—This section contains definitions that are similar to those found in proposed 43 CFR 4.903, for which we received comments to which we respond in our preamble discussion of 43 CFR part 4 subpart J in this final rulemaking. Please refer to the comments and responses to definitions in that subpart in this preamble. There are some differences in definitions because 43 CFR part 4 subpart J applies only to orders that are subject to RSFA time of decision and rule of decision requirements. The coverage of this subpart, in contrast, is broader. Those differences are apparent from the text of the definitions. For definitions included in this part that are not in 43 CFR part 4 subpart J there were no comments.

Section 290.103 Who May File an Appeal?

Comments—We received no comments on this section.

Response—We retained the requirement formerly found at 30 CFR 290.2 that you may appeal an order you receive if it adversely affects you or your lessee. We also added the provision

proposed as 43 CFR 4.904(b) allowing lessees that receive a Notice of Order to either appeal the order or join in their designee's appeal under § 290.106.

Section 290.104 What May I Not Appeal Under This Subpart?

Comments—We received no comments on this section.

Response—This addition to this subpart was proposed as 43 CFR 4.905(a) and (c).

Section 290.105 How Do I Appeal an Order?

Comments—We received no comments on this section.

Response—We combined the requirements found in former 30 CFR 290.3, 290.5 and 290.6, and rewrote them in plain language. We also eliminated 30 CFR 290.3(b) which required a field report. This is consistent with the agency's and industry's desire to accelerate the appeals process.

Section 290.106 How Do Lessees Join a Designee's Appeal and What is the Effect of Joinder?

Comments—We received no comments on this section.

Response—This section was proposed as 43 CFR 4.908. We made minor changes necessary to reflect that the appeal is to the MMS Director under this part, not the Office of Hearings and Appeals.

Section 290.107 Where are the Rules Concerning the Effect of the Department Not Issuing a Decision in My Appeal Within the Statutory Time Frame?

Comments—We received no comments on this section.

Response—This section was necessary to direct appellants to the rules concerning the effect of DOI not issuing a decision in your appeal within the 33-month period prescribed under 30 U.S.C. 1724(h). Those rules are located in 43 CFR part 4 subpart J.

Section 290.108 How Do I Appeal to the IBLA?

Comments—We received no comments on this section.

Response—This section was the former 30 CFR 290.7. We added a provision that directs appellants to 43 CFR part 4 subpart E.

Section 290.109 How Do I Request an Extension of Time?

Comments—See preamble discussion of 43 CFR 4.909.

Response—See preamble discussion of 43 CFR 4.909. This section was proposed as 43 CFR 4.958. We made minor changes necessary to reflect that the appeal is to the MMS Director under this part, not OHA, and to differentiate those appeals that involve extensions of the RSFA time of decision requirements from those that do not.

Department Hearings and Appeals Procedures

IX. Section-by-Section Analysis, 43 CFR Part 4—

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

Section 4.901 What Is the Purpose of This Subpart?

Comments—We did not receive any comments on this section.

Response—Even though we did not receive any comments on this section, we must amend the text because we are not finalizing the entire proposed rule at this time. The purpose of this subpart is revised to explain how the time limits of 30 U.S.C. 1724(h) apply to appeals subject to this subpart.

Section 4.902 What Appeals are Subject to This Subpart?

Comments—In the proposed rule, this section heading read, ''What leases are subject to this subpart?'' We received no comments on that section.

Response—Even though we did not receive any comments on this section, we must amend the text because we are not finalizing the entire proposed rule at this time. The section heading is changed to read, ''What appeals are subject to this subpart?'' We had to change the heading and content of this section to make clear what appeals this subpart applies to because the sole purpose of this subpart is to implement the time limits and rule of decision of 30 U.S.C. 1724(h). Because section 1724(h) only applies to appeals of orders involving Federal oil and gas leases, this section will state that the subpart applies only to appeals of orders or portions of orders involving the payment of royalties and other payments due, and the taking or delivery of royalty in kind, under Federal oil and gas leases. Moreover, it would make clear that its provisions apply to appeals to the MMS Director under 30 CFR part 290 before this rule became effective, appeals to the MMS Director under new 30 CFR part 290 subpart B after this rule became effective, and appeals to the IBLA under 43 CFR part 4 subpart E, both before and after the effective date of this rule. This section further specifies that this subpart does not apply to appeals of orders (or portions of orders) that involve Indian leases or Federal leases for minerals other than oil and gas, or that relate to Federal oil and gas leases but do not involve a monetary or nonmonetary obligation.

Section 4.903 What Definitions Apply to This Subpart?

Comments—We received several comments that the definition of ''lessee'' in the proposed rule should quote the definition in RSFA. The commenters believed that it was inconsistent with RSFA to define lessees to include persons to whom a lease interest is assigned.

Response—In the proposed rule, we decided not to quote the exact definition of ''lessee'' found in RSFA because the proposed rule applied to more than oil and gas leases subject to RSFA. Moreover, we do not believe that the additional language in the proposed rule is inconsistent with RSFA. The RSFA definition states that ''lessee'' includes ''any person to whom operating rights have been assigned.'' The proposed rule defines ''lessee'' to include ''any person to whom all or part of the lessee's interest or operating rights in a lease subject to this subpart has been assigned.'' We do not believe that it is inconsistent with RSFA, or any law, to define a ''lessee'' as a person to whom all or part of the lessee's interest has been ''assigned,'' or, in other words, to whom all or part of the lessee's interest has been sold. To the contrary, it would be inconsistent with RSFA and prevailing law and regulations to state that assignees of leases are not lessees. Therefore, we are not changing the definition of ''lessee'' in the proposed rule.

Comments—We received several comments on the definition of ''monetary obligation'' in the proposed rule. Commenters for the State of California Controller's Office felt that the proposed definition ''invited dispute'' over what an ''issue'' is, because ''a particular underpayment may be attributable to overlapping regulatory violations.'' Thus, the California Controller's Office suggested that it would be more administratively efficient if a monetary obligation was defined as the total amount stated or estimated in the order. Another commenter stated that the plain meaning of monetary is ''payable in money,'' and by including orders to recalculate royalties, DOI is ''attempting to circumvent'' the default decision provisions of 30 U.S.C. 1724(h). Finally, two commenters believe that RSFA requires us to define monetary obligation as ''the principal amount due on each lease for each month'' because

that is what is required under the RSFA definition of an ''order to pay.''

Response—With respect to the California Controller's Office's comment that ''monetary obligation'' should be defined as the total amount of underpayments in an order, we do not believe that the definition was confusing. We believe that because orders identify the specific regulatory violation and the associated underpayment, there should be no confusion. For example, if an order stated an underpayment amount attributable to a lessee's failure to include tax reimbursements in its gross proceeds, and stated another underpayment amount attributable to an improper deduction from the lessee's gross proceeds, we believe it is clear that although both violations involve the gross proceeds rule, they stem *from different issues* and involve separate underpayments, and thus it is reasonable to consider them to be separate obligations.

We disagree with the inference drawn by the commenter who asserted that the only interpretation of ''monetary'' is ''payable in money.'' We are not attempting to circumvent the default decision provisions of section 1724(h) by including orders to recalculate and pay in the definition of monetary obligation. First, as we stated in the preamble to the proposed rule, Congress did not define ''monetary.'' However, both Webster's Dictionary and Black's Law Dictionary define monetary as ''related to'' money. We believe that orders to recalculate and pay are clearly related to money, and include a requirement to pay money, and as such are ''monetary'' in nature. Second, the only ''obligation'' of a lessee under RSFA that is *nonmonetary*, and not ''related to money'' is a lessee's duty to deliver royalty in kind. Therefore, we are not amending this definition to state that monetary obligations do not include orders to recalculate and pay.

We also disagree with the comments that because RSFA defines an ''order to pay'' as a written order that ''specifically identifies the obligation by lease, production month and monetary amount of such obligation'' we must define monetary obligation the same way. As stated above, Congress did not define monetary obligation. Congress did, however, define ''obligation.'' Under RSFA, an ''obligation'' is a specified lessee duty ''which arises from or relates to any lease * * * or any mineral leasing law * * * *'' 30 U.S.C. 1702(25)(B). Therefore, we disagree with the commenters that an obligation must be limited to one lease. We also do not agree that an obligation must be limited to one month. Rather, RSFA implies that an ''obligation'' may be issue-specific (''related to any mineral leasing law,'' which includes regulations). Accordingly, we are not changing the proposed definition of monetary obligation in the manner the commenter requests.

We are revising the definition of monetary obligation as proposed to clarify that monetary obligation also includes the Secretary's duty to pay, refund, offset, or credit the amount of any obligation that a lessee, designee, or payor has asserted in a request for payment, refund, offset, or credit that MMS or a delegated State has denied. This follows from the definitions of ''demand'' and ''obligation'' in the new 30 U.S.C. 1702(23)(B) and (25)(A)(ii) as added to FOGRMA by RSFA section 2, 110 Stat. 1701. Administrative appeals of denials of requests by lessees, designees, or payors for refund, offset, credit, etc., are subject to the RSFA time of decision and rule of decision requirements of 30 U.S.C. 1724(h), which covers both ''demands'' and ''orders issued by the Secretary or a delegated State'' that are ''subject to administrative appeal in accordance with the regulations of the Secretary.''

Comments—Several commenters objected to our decision to include subsection (2)(i) in the definition of ''order'' which states that orders do not include nonmandatory valuation determinations. Some commenters felt that defining a valuation determination that does not have mandatory or ordering language to not be an appealable ''order'' conflicts with other sections of MMS valuation regulations that allow lessees to request valuation determinations, such as 30 CFR 206.257(f). The commenters felt that under the current regulations, all valuation determinations must be mandatory. One commenter stated that the definition creates ''two types of valuation determinations, those that contain mandatory or ordering language and those that do not. Only those that contain mandatory or ordering language would be appealable.'' We received similar comments regarding our proposal to make nonmandatory policy determinations non-appealable. One commenter stated that subpoenas that do not meet the requirements of 30 U.S.C. 1724(d)(2) should be appealable.

Response—We have provided that an order is appealable only when the document ''contains mandatory or ordering language''—in other words, when the disputed legal issues and the facts involved are sufficiently definite to allow for meaningful adjudication. As we stated in the proposed rule, we do not consider advice or guidance contained in a nonmandatory valuation determination to be an ''order'' because it does not compel anyone to take particular action. Likewise, general policy guidance contained in a letter to payors does not contain mandatory language requiring lessees to do anything. If the advice or guidance does not require the lessee to do anything, there is nothing to appeal.

For example, it is possible for a lessee to first receive a ''Dear Payor'' letter or valuation determination with general advice, next a request or subpoena for documents that would enable the Government to evaluate whether the lessee has followed that advice, and, finally, an order applying the Government's understanding of the law and facts that could be tested in an administrative appeal. Lastly, we do not believe that making nonmandatory valuation determinations non-appealable conflicts with other valuation regulations. Those regulations allow lessees to *request* a valuation determination. If MMS issues a binding determination under those rules in response to the request, then such a determination is appealable. Therefore, for the reasons explained above, we are not changing the definition of order to make nonmandatory advice and guidance appealable.

We disagree with the comment that we should define subpoenas as being appealable orders. As we stated in the preamble, subpoenas are enforceable directly by the United States Government in Federal district court under 30 U.S.C. 1717(b), and are not subject to administrative appeal. Nothing in section 1724(d)(2) changes that fact. Therefore, they also are not appealable ''orders,'' and we are not changing the rule as the commenter suggested.

Because the purpose of this subpart is to implement the RSFA decision deadlines and rules of decision in 30 U.S.C. 1724(h)(1) and (2), and is not part of a general appeals provision as proposed, we have narrowed the definition of ''order'' for purposes of this subpart only. That definition makes clear that orders under this subpart are only those orders that involve either monetary obligations or nonmonetary obligations under Federal oil and gas leases and therefore subject to 30 U.S.C. 1724(h)(1) and (2) as enacted by RSFA.

We also have revised the proposed definition of order to clarify that order does not include a Notice of Noncompliance or Notice of Civil Penalty issued under the provisions of FOGRMA section 109, 30 U.S.C. 1719, and implementing regulations at 30 CFR

part 241. Nor does order include a decision of an administrative law judge following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty under FOGRMA section 109(e), 30 U.S.C. 1719(e), and associated regulations. Likewise, order does not include a decision of the IBLA on appeal from a decision of an administrative law judge following a hearing on the record. This follows from the first sentence of 30 U.S.C. 1724(h)(1), which establishes that the RSFA time of decision and rule of decision requirements cover ''demands or orders issued by the Secretary or a delegated State'' that are ''subject to administrative appeal in accordance with the regulations of the Secretary.'' FOGRMA civil penalty assessments result from an entirely different process that is prescribed separately by statute.

Civil penalty assessments do not result from administratively appealable MMS or delegated State orders. Instead, FOGRMA section 109(e) prescribes that no civil penalty may be assessed until a person has been given an opportunity for a ''hearing on the record''—*i.e.*, a formal trial-type hearing before an administrative law judge, which must be conducted under Administrative Procedure Act provisions at 5 U.S.C. 554, 556, and 557. The rules at 30 CFR part 241 implement the statutory requirements of those sections regarding adjudication and agency review.

It appears plain that Congress did not intend for the RSFA time of decision and rule of decision requirements to cover FOGRMA civil penalty proceedings. RSFA itself is primarily an amendment to FOGRMA with respect to Federal leases. Had Congress intended to change the statutory civil penalty procedures, it knew how to do so and could have done so. There is no mention of any intent to include civil penalty proceedings within the 30 U.S.C. 1724(h) requirements. Moreover, the purpose of section 1724(h) was to address perceived problems with MMS's administrative appeal process that are unrelated to civil penalty proceedings.

Comment—We did not receive any comments on the definition of ''party.''

Response—Even though we did not receive any comments, we revised the definition of ''party'' to delete the reference to persons who file intervention briefs and to make other changes necessary to reflect that we are not finalizing the entire proposed rule at this time.

Comments—We did not receive any comments on the definition of ''notice of an order.''

Response—Even though we did not receive any comments, we revised the definition of ''notice of an order'' to delete the reference to 30 CFR part 242 because we are not finalizing that part of the proposed rule at this time.

Comments—We received comments stating that we should include the RSFA definition of ''demand'' in our final rule.

Response—We disagree. The portions of the proposed rule that we are making final do not use the term ''demand.'' The substance of what RSFA defines as a ''demand'' is encompassed within orders that are subject to this subpart. Therefore, it is not necessary to define ''demand'' separately in this rule.

Section 4.904 When Does My Appeal Commence and End?

Comments—Several commenters suggested that an appeal should commence, for purposes of calculating the beginning of the 33-month period under section 1724(h)(1), on the date an MMS order is received by the recipient. Some commenters stated that they believe that under administrative law principles, an agency order that directs a person to take action starts the person's appellate rights. Thus, they argue that our definition of ''commence'' discourages an appellant from exercising those rights and compromises administrative due process in order to delay commencement of an appeal until we receive all of the items required in the proposed rule. One commenter believes that the definition for ''commencement'' under RSFA applies to the appeals process.

Response—Although we are not finalizing the section of the proposed rule that these comments were directed to at this time, the comments are equally applicable to this section, which was proposed as section 4.971. We recognize both that the MMS order is effective when it is received and that a recipient may have to wait more than 33 months from that date for a decision by DOI because an appeal will not commence under this rule until MMS receives the notice of appeal and statement of reasons under former 30 CFR part 290, before the new revised 30 CFR part 290 subpart B, promulgated with this rulemaking, became effective. It is the recipient of the order who ''commences'' an appeal, not DOI. Until DOI has received a Notice of Appeal, there is no dispute to be adjudicated, and until DOI has received a Statement of Reasons giving some reasons for the appellant's disagreement with the order, it cannot evaluate whether the appellant's disagreement has any merit. Because the recipient of the order controls when these items are submitted, we believe it is a reasonable interpretation of section 1724(h)(1) that the 33-month period begins to run when MMS has received at least minimally sufficient documentation to begin the process of deciding the appeal. We also believe that this interpretation enhances the decision-making process.

We have remedied this problem under the new 30 CFR part 290 subpart B in section 290.109(b) and (c). Under the new subpart B, you may request an extension of time to file your statement of reasons if you agree to extend the RSFA time of decision requirement under 30 U.S.C. 1724(h)(1). (Under 30 CFR 290.105(b), there is no extension of time to file a notice of appeal.) MMS recognizes that different amounts of time may be necessary for appellants to prepare their written submissions in different cases, depending on the number and complexity of issues, the time needed to compile relevant facts and documents, etc. However, MMS believes that additional time needed in more complicated cases should not operate to the agency's prejudice. At the same time, it is in the interest of all parties to know relatively early if a lessee or designee plans to contest an order, and to provide a ''bright line'' for commencement of the appeal. Hence, after the effective date of the new 30 CFR part 290 subpart B and this section, your appeal commences for purposes of section 4.906 and 30 U.S.C. 1724(h) when you file your notice of appeal. If you then need further time to prepare your statement of reasons or briefs, you must agree to extend the 33-month period prescribed in 30 U.S.C. 1724(h)(1).

Before the adoption of this rule, however, MMS received numerous appeals in which various extensions of time to file statements of reasons were granted, but in which a corresponding agreement by the appellant to extend the RSFA 33-month period was not required and was not automatic. Hence, for the reasons described above, MMS believes the best reading of congressional intent is to regard the appeal as having commenced for RSFA purposes at the later of the date the notice of appeal was filed or the date the initial statement of reasons was received.

If MMS were to adopt the commenters' suggestion that an appeal ''commenced'' when the order was received, several weeks, or even months, of the 33-month period could be consumed without DOI being able to either decide the order was correct or grant relief if it decided otherwise. Especially in complicated cases, this

loss of time could seriously disadvantage DOI's ability to consider the merits of the appeal.

Moreover, we believe the commenter has misconstrued RSFA's definition of ''commencement.'' As explained in the preamble to the proposed rule, RSFA did not define ''commencement'' for purposes of the time of decision requirement in 30 U.S.C. 1724(h)(1) applicable to ''administrative proceedings.'' RSFA did define ''commence'' ''with respect to a judicial proceeding'' and ''with respect to a demand.'' 30 U.S.C. 1702(20). However, the definition of ''commence'' under 1702(20) clearly does not encompass ''administrative proceedings'' under 30 U.S.C. 1724(h) or 1702(18). Rather, ''commence'' under section 1702(20) deals with the ''commencement'' of judicial proceedings or demands for purposes of the RSFA 7-year limitations period under section 4(a), 30 U.S.C. 1724(b). Accordingly, it is necessary for us in this proposed rule to define when your appeal ''commenced'' for purposes of section 1724(h).

We have therefore decided not to adopt the commenters' position.

Section 4.906 What If the Department Does Not Issue a Decision by the Date My Appeal Ends?

Comments—The only comments received regarding this section as proposed (section 4.956) (other than the comments regarding ''commenced'' and the definition of ''monetary obligation'' discussed above) were from the solid minerals industry. The trade association commenter and individual companies again requested that DOI make the RSFA rule of decision in this section applicable to appeals involving solid mineral leases.

Response—For the reasons set forth in the preamble to the proposed rule, we have decided not to make this section applicable to solid mineral leases. We do not believe that there is any benefit in imposing a mandatory decision where DOI has not been statutorily directed to do so.

We have, however, made changes necessary to reflect the fact that we are not publishing the proposed rule in its entirety at this time. Those changes would include provisions that refer to appeals to the MMS Director under 30 CFR part 290 before 30 CFR part 290 subpart B became effective, appeals to the MMS Director under the new 30 CFR part 290 subpart B (after this subpart became effective) and appeals to the IBLA under 43 CFR part 4 subpart E, both before and after the effective date of this subpart.

Section 4.908 What Is the Administrative Record for My Appeal If It Is Deemed Decided?

Comments—We received no comments on this section.

Response—Even though we did not receive any comments, we made changes necessary to reflect the fact that we are not finalizing the entire proposed rule at this time. Those changes would include provisions that refer to the record in appeals to the MMS Director under 30 CFR part 290 before 30 CFR part 290 subpart B became effective, appeals to the MMS Director under the new 30 CFR part 290 subpart B and the record in appeals to the IBLA under 43 CFR part 4 subpart E, both before and after the effective date of this rule.

Section 4.909 How Do I Request an Extension of Time?

Comments—We received one comment on this section (proposed section 4.958) from an industry representative and one from a trade association. The industry commenter felt that the rule should grant requests for extensions of time automatically, rather than leave it to the discretion of the official to whom the request is submitted. The trade association commenter felt that DOI should ''freely'' grant requests. The commenter also felt that we should make clear that parties could ask for extensions of time for any reason, including the filing of pleadings.

Response—We agree that parties should be able to request extensions of time for any reason, including for submissions of pleadings. It was not our intent in the proposed rule to restrict such requests. Therefore, to clarify that parties may request extensions for any purpose, we modified this section by eliminating the language in proposed paragraph (a) that stated parties could request an extension ''to meet any filing requirement under this subpart, or for DOI to issue a final decision in your appeal.'' Section (a) now states:

> If you are a party to an appeal subject to this subpart before the IBLA, and you need additional time after an appeal commences for any purpose, you may obtain an extension of time under this section.

With respect to the comment about automatic extensions, although we expect that we will grant these requests liberally, we are not going to bind future officials to granting automatic extensions by rule. RSFA states that the 33-month period may be extended if the Secretary and appellant agree in writing. We do not know what circumstances may exist in any particular case that would lead us to not agree to a requested extension.

IX. Procedural Matters

Regulatory Planning and Review E.O. 12866

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule does not require the payment of additional revenues. This rule sets out how the Department will review MMS's implementation of royalty and OCS operations policy.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The primary functions of appealable MMS orders are collecting royalties from the minerals industry and regulating operations of mineral leases on the OCS. Other agency functions do not cover these areas.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The administrative appeals process has no impact on or relation to grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) This rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. This rule was developed in consultation with States, tribes, and industry.

Regulatory Flexibility Act

The Department of the Interior 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.*). Accordingly, a Small Entity Compliance Guide is not required.

This rule will affect three groups of individuals or companies: (1) Indian lessors, (2) lessees and operators on offshore leases, and (3) lessees, payors, and designees on Federal and Indian leases (onshore and offshore). Indian lessors are either tribes or individuals. However, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act, and individuals do not fit the definition of small entities. As for the remaining groups, the majority of lessees, designees, payors, and operators on Federal and Indian onshore leases would be classified as small businesses

according to the definitions in the Small Business Administration Standard Industry Code (SIC). Changes in the rule that could have an economic effect on these groups are the establishment of processing fees for filing a Notice of Appeal and a Statement of Reasons (to the extent that any small businesses are operating on the OCS), posting a bond, and an increase in the maximum civil penalty to $25,000.

Bonding or payment is mandatory for appealed amounts above $10,000 on Federal leases and $1,000 for Indian leases. Appealed amounts less than $10,000 for Federal and $1,000 for Indian leases do not require bonding which typically provides relief to small entities. The ability to demonstrate financial responsibility provides relief of credit charges from surety companies.

The rule changes the maximum civil penalty to up to $25,000 per day for those acts for which FOGRMA allows such a penalty. A larger penalty should not have significant economic impacts because MMS assesses penalties only when business operations have reached a very poor level of conduct. Lessees and other payors may use a variety of remedies including ADR before the assessment of a penalty.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This is an administrative review process; there is no impact on these things. The rule sets a time limit on when an appealed issue must be resolved or decided, and gives relief from maintaining bonds in many instances.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. This rule does not change the relationship between MMS, IBLA, and State, local, or tribal governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule would not take away or restrict an entity's right to appeal or bond orders received from MMS or a delegated State. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The rule does not change the role or responsibilities among Federal, State, and local governmental entities. The rule does not relate to the structure and role of States and will not have direct, substantive, or significant effects on States. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order. The rule has been reviewed and describes in clear language what is allowed and what is prohibited. The IBLA and MMS have drafted this rule in plain language and have consulted with the Department of the Interior's Office of the Solicitor, RPC Subcommittee, States, and tribes throughout the rulemaking process.

Paperwork Reduction Act

The Office of Management and Budget (OMB) approved the information collection requirements contained in this rule under 44 U.S.C. 3501 *et seq.*, and assigned OMB Control Numbers 1010–0121 and 1010–0122. The burden hours for the reporting requirements in 30 CFR part 290 are approved under OMB Control Number 1010–0121. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. You may obtain a copy of the information collections by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with this clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example § 4.904.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

List of Subjects

30 CFR Part 208

Continental shelf, Government contracts, Mineral royalties, Petroleum, Public lands—Mineral resources, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

30 CFR Part 241

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

30 CFR Part 243

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

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Natural gas, Oil and gas development and production, Oil and gas exploration,

Oil and gas reserves, Penalties, Petroleum, Pipelines, Public lands—Mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 290

Administrative practice and procedure.

43 CFR Part 4

Administrative practice and procedures, Continental Shelf, Mineral royalties, Natural Gas, Petroleum, Public Lands—mineral resources.

Sylvia V. Baca,

Acting Assistant Secretary—Land and Minerals Management.

John Berry,

Assistant Secretary for Policy, Management and Budget.

Kevin Gover,

Assistant Secretary for Indian Affairs.

For the reasons set out in the preamble, MMS and OHA are amending 30 CFR Parts 208, 241, 243, 250, and 290; reserving 30 CFR part 242 and adding 43 CFR part 4, subpart J as follows:

TITLE 30—MINERAL RESOURCES

PART 208—SALE OF FEDERAL ROYALTY OIL

1. The authority citation for part 208 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 41 U.S.C. 601 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. In § 208.2, new definitions are added in alphabetical order to read as follows:

§ 208.2 Definitions.

* * * * *

Contracting officer means the Director, his or her delegate, or the person designated under a royalty oil purchase contract.

* * * * *

Contracting officer's decision means an MMS order or decision that a contracting officer issues under this part to a purchaser of oil under a royalty oil purchase contract.

* * * * *

3. Section 208.16 is revised to read as follows:

§ 208.16 How to appeal a contracting officer's decision that you receive.

If you receive a contracting officer's decision, you may:

(a) Appeal that decision to the Board of Contract Appeals in the Office of Hearings and Appeals, Office of the Secretary, in accordance with the procedures provided in 43 CFR part 4, subpart C; or

(b) File an action in the United States Court of Federal Claims.

PART 241—PENALTIES

4. The authority citation for part 241 continues to read 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.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*;

§ 241.20 [Removed]

5. Section 241.20 is removed and subpart A is reserved.

6. Subpart B is revised to read as follows:

Subpart B—Penalties for Federal and Indian Oil and Gas Leases

Definitions

Penalties after a Period To Correct

Penalties Without a Period To Correct

General Provisions

Criminal Penalties

Subpart B—Penalties for Federal and Indian Oil and Gas Leases

Definitions

§ 241.50 What definitions apply to this subpart?

The terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

Penalties After a Period To Correct

§ 241.51 What may MMS do if I violate a statute, regulation, order, or lease term relating to a Federal or Indian oil and gas lease?

(a) If we believe that you have not followed any requirement of a statute, regulation, order, or terms of a lease for any Federal or Indian oil or gas lease, we may send you a Notice of Noncompliance telling you what the violation is and what you need to do to correct it to avoid civil penalties under 30 U.S.C. 1719(a) and (b).

(b) We will send the Notice to your address of record as shown in the following table:

For notices of noncompliance to—	The addressee of record is—	And—
(1) A refiner or other party involved in disposition of Federal royalty taken in kind.	The position title, department name and address, or individual name and address in the executed royalty sale contract; or a different position title, department name and address, or individual name and address that the refiner or other party under the executed royalty sale contract identifies in writing for billing purposes; or an agent designated in writing to receive notices of noncompliance.	The refiner or other party must notify MMS in writing of all addressee changes.

For notices of noncompliance to—	The addressee of record is—	And—
(2) Any person required to report oil or gas removed from Federal or Indian leases to the RMP Production Accounting and Auditing System.	The most recent position title, department name and address, or individual name and address that RMP has in its records for the reporter/payor; or an agent designated in writing to receive notices of noncompliance.	The reporter/payor must notify RMP, in writing, of any addressee changes.
(3) A lessee, designee, reporter or payor whose records are subject to audit.	The position title, department name and address, or individual name and address the lessee, designee, reporter or payor identifies in writing at the initiation of the audit; or the most recent addressee that the lessee, designee, reporter or payor specified in writing; or an agent designated in writing to receive notices of noncompliance.	The lessee, designee, reporter or payor must notify MMS of any addressee changes.
(4) A reporter reporting on the ''Report of Sales and Royalty Remittance'' (Form MMS–2014).	The most recent position title, department name and address, or individual name and address that the lessee, designee, reporter or payor identifies in writing; or an agent designated in writing to receive notices of noncompliance.	The lessee, designee, reporter or payor is responsible for notifying RMP in writing of any addressee changes.
(5) A lessee, designee, reporter or payor who remits rental and bonuses from nonproducing Federal leases.	The most recent position title, department name and address, or individual name and address maintained in RMP records; or an agent designated in writing to receive notices of noncompliance.	The lessee, designee, reporter or payor is responsible for notifying RMP in writing of any addressee changes.

(c) We will serve Notices of Noncompliance by using registered mail or personal service.

§ 241.52 What if I correct the violation?

The matter will be closed if you correct all of the violations identified in the Notice of Noncompliance within 20 days after you receive the Notice (or within a longer time period specified in the Notice).

§ 241.53 What if I do not correct the violation?

(a) We may send you a Notice of Civil Penalty if you do not correct all of the violations identified in the Notice of Noncompliance within 20 days after you receive the Notice of Noncompliance (or within a longer time period specified in that Notice). The Notice of Civil Penalty will tell you how much penalty you must pay. The penalty may be up to $500 per day, beginning with the date of the Notice of Noncompliance, for each violation identified in the Notice of Noncompliance for as long as you do not correct the violations.

(b) If you do not correct all of the violations identified in the Notice of Noncompliance within 40 days after you receive the Notice of Noncompliance (or 20 days following the expiration of a longer time period specified in that Notice), we may increase the penalty to up to $5,000 per day, beginning with the date of the Notice of Noncompliance, for each violation for as long as you do not correct the violations.

§ 241.54 How may I request a hearing on the record on a Notice of Noncompliance?

You may request a hearing on the record on a Notice of Noncompliance by filing a request within 30 days of the date you received the Notice of Noncompliance with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. You may do this regardless of whether you correct the violations identified in the Notice of Noncompliance.

§ 241.55 Does my request for a hearing on the record affect the penalties?

(a) If you do not correct the violations identified in the Notice of Noncompliance, the penalties will continue to accrue even if you request a hearing on the record.

(b) You may petition the Hearings Division (Departmental) of the Office of Hearings and Appeals, to stay the accrual of penalties pending the hearing on the record and a decision by the Administrative Law Judge under § 241.72.

(1) You must file your petition within 45 calendar days of receiving the Notice of Noncompliance.

(2) To stay the accrual of penalties, you must post a bond or other surety instrument using the same standards and requirements as prescribed in 30 CFR part 243, subpart B, or demonstrate financial solvency using the same standards and requirements as prescribed in 30 CFR part 243, subpart C, for the principal amount of any unpaid amounts due that are the subject of the Notice of Noncompliance, including interest thereon, plus the amount of any penalties accrued before the date a stay becomes effective.

(3) The Hearings Division will grant or deny the petition under 43 CFR 4.21(b).

§ 241.56 May I request a hearing on the record regarding the amount of a civil penalty if I did not request a hearing on the Notice of Noncompliance?

(a) You may request a hearing on the record to challenge only the amount of a civil penalty when you receive a Notice of Civil Penalty, if you did not previously request a hearing on the record under § 241.54. If you did not request a hearing on the record on the Notice of Noncompliance under § 241.54, you may not contest your underlying liability for civil penalties.

(b) You must file your request within 10 days after you receive the Notice of Civil Penalty with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Penalties Without a Period To Correct

§ 241.60 May I be subject to penalties without prior notice and an opportunity to correct?

The Federal Oil and Gas Royalty Management Act sets out several specific violations for which penalties accrue without an opportunity to first correct the violation.

(a) Under 30 U.S.C. 1719(c), you may be subject to penalties of up to $10,000 per day per violation for each day the violation continues if you:

(1) Knowingly or willfully fail to make any royalty payment by the date specified by statute, regulation, order or terms of the lease;

(2) Fail or refuse to permit lawful entry, inspection, or audit; or

(3) Knowingly or willfully fail or refuse to notify the Secretary, within 5 business days after any well begins production on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off

production for more than 90 days, of the date on which production has begun or resumed.

(b) Under 30 U.S.C. 1719(d), you may be subject to civil penalties of up to $25,000 per day for each day each violation continues if you:

(1) Knowingly or willfully prepare, maintain, or submit false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;

(2) Knowingly or willfully take or remove, transport, use or divert any oil or gas from any lease site without having valid legal authority to do so; or

(3) Purchase, accept, sell, transport, or convey to another person, any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted.

§ 241.61 How will MMS inform me of violations without a period to correct?

We will inform you of violations without a period to correct by issuing a Notice of Noncompliance explaining what the violation is and how to correct it. We also will send you a Notice of Civil Penalty stating the amount of the penalty. The Notice of Noncompliance and Notice of Civil Penalty may be issued simultaneously. We will send the Notice of Noncompliance and the Notice of Civil Penalty to your address of record under § 241.51(b) using the means of service specified under § 241.51(c).

§ 241.62 How may I request a hearing on the record on a Notice of Noncompliance regarding violations without a period to correct?

You may request a hearing on the record of a Notice of Noncompliance regarding violations without a period to correct by filing a request within 30 days after you receive the Notice of Noncompliance with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. You may do this regardless of whether you correct the violations identified in the Notice of Noncompliance.

§ 241.63 Does my request for a hearing on the record affect the penalties?

(a) If you do not correct the violations identified in the Notice of Noncompliance regarding violations without a period to correct, the penalties will continue to accrue even if you request a hearing on the record.

(b) You may ask the Hearings Division (Departmental) to stay the accrual of penalties pending the hearing on the record and a decision by the Administrative Law Judge under § 241.72.

(1) You must file your petition within 45 calendar days after you receive the Notice of Noncompliance.

(2) To stay the accrual of penalties, you must post a bond or other surety instrument using the same standards and requirements as prescribed in 30 CFR part 243, subpart B, or demonstrate financial solvency using the same standards and requirements as prescribed in 30 CFR part 243, subpart C, for the principal amount of any unpaid amounts due that are the subject of the Notice of Noncompliance, including interest thereon, plus the amount of any penalties accrued before the date a stay becomes effective.

(3) The Hearings Division will grant or deny the petition under 43 CFR 4.21(b).

§ 241.64 May I request a hearing on the record regarding the amount of a civil penalty if I did not request a hearing on the Notice of Noncompliance?

(a) You may request a hearing on the record to challenge only the amount of a civil penalty when you receive a Notice of Civil Penalty regarding violations without a period to correct, if you did not previously request a hearing on the record under § 241.62. If you did not request a hearing on the record on the Notice of Noncompliance under § 241.62, you may not contest your underlying liability for civil penalties.

(b) You must file your request within 10 days after you receive Notice of Civil Penalty with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

General Provisions

§ 241.70 How does MMS decide what the amount of the penalty should be?

We determine the amount of the penalty by considering the severity of the violations, your history of compliance, and if you are a small business.

§ 241.71 Does the penalty affect whether I owe interest?

(a) The penalties under this part are in addition to interest you may owe on any underlying underpayments or unpaid debt.

(b) If you do not pay the penalty by the date required under § 241.75(d), MMS will assess you late payment interest on the penalty amount at the same rate interest is assessed under 30 CFR 218.54.

§ 241.72 How will the Office of Hearings and Appeals conduct the hearing on the record?

If you request a hearing on the record under §§ 241.54, 241.56, 241.62 or 241.64, the hearing will be conducted by a Departmental Administrative Law Judge from the Office of Hearings and Appeals. After the hearing, the Administrative Law Judge will issue a decision in accordance with the evidence presented and applicable law.

§ 241.73 How may I appeal the Administrative Law Judge's decision?

If you are adversely affected by the Administrative Law Judge's decision, you may appeal that decision to the Interior Board of Land Appeals under 43 CFR part 4, subpart E.

§ 241.74 May I seek judicial review of the decision of the Interior Board of Land Appeals?

Under 30 U.S.C. 1719(j), you may seek judicial review of the decision of the Interior Board of Land Appeals. A suit for judicial review in the District Court will be barred unless filed within 90 days after the final order.

§ 241.75 When must I pay the penalty?

(a) You must pay the amount of the Notice of Civil Penalty issued under §§ 241.53 or 241.61, if you do not request a hearing on the record under § 241.54, § 241.56, § 241.62, or § 241.64.

(b) If you request a hearing on the record under § 241.54, § 241.56, § 241.62, or § 241.64, but you do not appeal the determination of the Administrative Law Judge to the Interior Board of Land Appeals under § 241.73, you must pay the amount assessed by the Administrative Law Judge.

(c) If you appeal the determination of the Administrative Law Judge to the Interior Board of Land Appeals, you must pay the amount assessed in the IBLA decision.

(d) You must pay the penalty assessed within 40 days after:

(1) You received the Notice of Civil Penalty, if you did not request a hearing on the record under either § 241.54, § 241.56, § 241.62, or § 241.64;

(2) You received an Administrative Law Judge's decision under § 241.72, if you obtained a stay of the accrual of penalties pending the hearing on the record under § 241.55(b) or § 241.63(b) and did not appeal the Administrative Law Judge's determination to the IBLA under § 241.73;

(3) You received an IBLA decision under § 241.73 if the IBLA continued the stay of accrual of penalties pending its decision and you did not seek judicial review of the IBLA's decision; or

(4) A final non-appealable judgment of a court of competent jurisdiction is entered, if you sought judicial review of the IBLA's decision and the Department or the appropriate court suspended compliance with the IBLA's decision pending the adjudication of the case.

(e) If you do not pay, that amount is subject to collection under the provisions of § 241.77.

§ 241.76 Can MMS reduce my penalty once it is assessed?

Under 30 U.S.C. 1719(g), the Director or his or her delegate may compromise or reduce civil penalties assessed under this part.

§ 241.77 How may MMS collect the penalty?

(a) MMS may use all available means to collect the penalty including, but not limited to:

(1) Requiring the lease surety, for amounts owed by lessees, to pay the penalty;

(2) Deducting the amount of the penalty from any sums the United States owes to you; and

(3) Using judicial process to compel your payment under 30 U.S.C. 1719(k).

(b) If the Department uses judicial process, or if you seek judicial review under § 241.74 and the court upholds assessment of a penalty, the court shall have jurisdiction to award the amount assessed plus interest assessed from the date of the expiration of the 90-day period referred to in § 241.74. The amount of any penalty, as finally determined, may be deducted from any sum owing to you by the United States.

Criminal Penalties

§ 241.80 May the United States criminally prosecute me for violations under Federal and Indian oil and gas leases?

If you commit an act for which a civil penalty is provided at 30 U.S.C. 1719(d) and § 241.60(b), the United States may pursue criminal penalties as provided at 30 U.S.C. 1720, in addition to any authority for prosecution under other statutes.

8. The heading of part 242 is revised to read as follows.

PART 242—ORDERS [RESERVED]

9. Part 243 is revised to read as follows:

PART 243—SUSPENSIONS PENDING APPEAL AND BONDING—ROYALTY MANAGEMENT PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Bonding Requirements

Subpart C—Financial Solvency Requirements

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. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart A—General Provisions

§ 243.1 What is the purpose of this part?

This part applies to you if you are a lessee or recipient of an order. This part explains:

(a) How you may suspend compliance with an order that you (or your designee if you are a lessee) have appealed under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, or under 30 CFR part 290, subpart b; and

(b) When you or another person acting on your behalf must submit a bond or other surety or demonstrate financial solvency.

§ 243.2 What leases are subject to this part?

This part applies to all Federal mineral leases onshore and on the Outer Continental Shelf (OCS), and to all federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands.

§ 243.3 What definitions apply to this part?

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

Designee means the person designated by a lessee under § 218.52 of this chapter to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

Lessee means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease, or any person to whom all or part of the lessee's interest or operating rights in a lease has been assigned.

MMS bond-approving officer means the Associate Director for Royalty Management or an official to whom the Associate Director delegates that responsibility.

MMS-specified surety instrument means an MMS-specified administrative appeal bond, an MMS-specified irrevocable letter of credit, a Treasury book-entry bond or note, or a financial institution book-entry certificate of deposit.

Notice of order means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

Order means an order appealable under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, under 30 CFR part 290 subpart B, or under 30 CFR part 208.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture.

§ 243.4 How do I suspend compliance with an order?

(a) If you timely appeal an order, and if that order or portion of that order:

(1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency under this part, except as provided in paragraph (b) of this section; or

(2) Does not require you to make a payment, compliance with that order is

suspended when you meet all requirements to file that appeal.

(b) You need not meet the requirements of paragraph (a) of this section if:

(1) The order is an assessment; or

(2) Another person agrees to fulfill these requirements on your behalf under § 243.5.

§ 243.5 May another person post a bond or other surety instrument or demonstrate financial solvency on my behalf?

Any other person, including a designee, payor, or affiliate, may post a bond or other surety instrument or demonstrate financial solvency under this part on behalf of an appellant required to post a bond or other surety instrument under § 243.4(a)(1).

§ 243.6 When must I or another person meet the bonding or financial solvency requirements under this part?

If you must meet the bonding or financial solvency requirements under § 243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order.

§ 243.7 What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant?

If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency under § 243.5, you:

(a) Must notify MMS in writing at the address specified in § 243.200(a) that you are assuming the appellant's responsibility under this part;

(b) May not assert that you are not otherwise liable for royalties or other payments under 30 U.S.C. 1712(a), or any other theory, as a defense if MMS calls your bond or requires you to pay based on your demonstration of financial solvency; and

(c) May end your voluntarily-assumed responsibility for posting a bond or other surety instrument only after the appellant under this part either:

(1) Pays or posts a bond or other surety instrument; or

(2) Demonstrates financial solvency.

§ 243.8 When will MMS suspend my obligation to comply with an order?

(a) *Federal leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Federal mineral leases onshore or on the Outer Continental Shelf (OCS), and:

(1) If the amount under appeal is less than $10,000 or does not require payment of a specified amount, MMS will suspend your obligation to comply with the order. MMS will use the lease surety posted with the Bureau of Land Management for onshore leases, and MMS for OCS leases, as collateral for the obligation; or

(2) If the amount under appeal is $10,000 or more, MMS will suspend your obligation to comply with that order if you:

(i) Submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes; or

(ii) Demonstrate financial solvency under subpart C.

(b) *Indian leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Indian mineral leases subject to this part, and:

(1) If the amount under appeal is less than $1,000 or does not require payment, MMS will suspend your obligation to comply with the order. MMS will use the lease surety posted with the Bureau of Indian Affairs as collateral for the obligation; or

(2) If the amount under appeal is $1,000 or more, MMS will suspend your obligation to comply with that order if you submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes.

(c) Nothing in this part prohibits you from paying any demanded amount or complying with any other requirement pending appeal. However, voluntarily paying any demanded amount or otherwise complying with any other requirement when suspension of an order is otherwise available under these rules does not create judicially reviewable final agency action under 5 U.S.C. 704.

(d) Regardless of the amount under appeal, MMS may inform you that it will not suspend your obligation to comply with the order under paragraph (a) or (b) of this section because suspension would harm the interests of the United States or the Indian lessor.

§ 243.9 Will MMS continue to suspend my obligation to comply with an order if I seek judicial review in a Federal court?

(a) If you seek judicial review of an IBLA decision or other final action of the Department of the Interior regarding an order, MMS will suspend your obligation to comply with that order pending judicial review if you continue to meet the requirements of this part.

(b) Notwithstanding the provisions of paragraph (a) of this section, MMS may decide that it will not suspend your obligation to comply with an order. MMS will notify you in writing of that decision and the reasons for it.

§ 243.10 When will MMS collect against a bond or other surety instrument or a person demonstrating financial solvency?

(a) This section applies to you if, for an appeal of an order under this part, you:

(1) Maintain a bond or an MMS-specified surety instrument on your own behalf or for another person; or

(2) Have demonstrated financial solvency on your own behalf or for another person.

(b) MMS may initiate collection against the bond or other surety instrument or the person demonstrating financial solvency:

(1) If the MMS Director or the Deputy Commissioner of Indian Affairs decides your appeal adversely to you and you do not pay the amount due or appeal that decision to the IBLA under 43 CFR part 4, subpart E;

(2) If the IBLA, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides your appeal adversely to you, and you do not pay the amount due or pursue judicial review within 90 days of the decision;

(3) If a court of competent jurisdiction issues a final non-appealable decision adverse to you, and you do not pay the amount due within 30 days of the decision;

(4) If you do not increase the amount of your bond or other surety instrument as required under § 243.101(b), or otherwise fail to maintain an adequate surety instrument in effect, and you do not pay the amount due under the order within 30 days of notice from MMS under § 243.101(b);

(5) If the obligation to comply with an order or decision is not suspended under § 243.8 or § 243.9 and you do not pay the amount required under the order or decision; or

(6) If the MMS bond-approving officer determines that you are no longer financially solvent under § 243.202(c), and you do not pay the order amount or post a bond or other MMS-specified surety instrument under subpart B within 30 days of that determination.

§ 243.11 May I appeal the MMS bond-approving officer's determination of my surety amount or financial solvency?

Any decision on your surety amount under subpart B or your financial solvency under subpart C is final and is not subject to appeal.

§ 243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?

If you appealed an order before June 14, 1999 and you submitted an MMS-specified surety instrument to suspend compliance with that order, you may replace the surety with a demonstration of financial solvency under this part at an administratively convenient time, such as when the surety instrument is due for renewal.

Subpart B—Bonding Requirements

§ 243.100 What standards must my MMS-specified surety instrument meet?

(a) An MMS-specified surety instrument must be in a form specified in MMS instructions. MMS will give you written information and standard forms for MMS-specified surety instrument requirements.

(b) MMS will use a bank-rating service to determine whether a financial institution has an acceptable rating to provide a surety instrument adequate to indemnify the lessor from loss or damage.

(1) Administrative appeal bonds must be issued by a qualified surety company which the Department of the Treasury has approved.

(2) Irrevocable letters of credit or certificates of deposit must be from a financial institution acceptable to MMS with a minimum 1-year period of coverage subject to automatic renewal up to 5 years.

§ 243.101 How will MMS determine the amount of my bond or other surety instrument?

(a) The MMS bond-approving officer may approve your surety if he or she determines that the amount is adequate to guarantee payment. The amount of your surety may vary depending on the form of the surety and how long the surety is effective.

(1) The amount of the MMS-specified surety instrument must include the principal amount owed under the order plus any accrued interest we determine is owed plus projected interest for a 1-year period.

(2) Treasury book-entry bond or note amounts must be equal to at least 120 percent of the required surety amount.

(b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually on the date your appeal was filed. We will determine the additional estimated interest and notify you of the amount so you can amend your surety instrument.

(c) You may submit a single surety instrument that covers multiple appeals. You may change the instrument to add new amounts under appeal or remove amounts that have been adjudicated in your favor or that you have paid if you:

(1) Amend the single surety instrument annually on the date you filed your first appeal; and

(2) Submit a separate surety instrument for new amounts under appeal until you amend the instrument to cover the new appeals.

Subpart C—Financial Solvency Requirements

§ 243.200 How do I demonstrate financial solvency?

(a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the MMS bond-approving officer, up to 3 years of tax returns to the MMS, Debt Collection Section using:

(1) The U.S. Postal Service or private delivery at P.O. Box 5760, MS 3031, Denver, CO 80217–5760; or

(2) Courier or overnight delivery at MS 3031, Denver Federal Center, Bldg. 85, Room A–212, Denver, CO 80225–0165.

(b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date MMS first determined that you demonstrated financial solvency as long as you have active appeals, or whenever MMS requests.

(c) If you demonstrate financial solvency in the current calendar year, you are not required to redemonstrate financial solvency for new appeals of orders during that calendar year unless you file for protection under any provision of the U.S. Bankruptcy Code (Title 11 of the United States Code), or MMS notifies you that you must redemonstrate financial solvency.

§ 243.201 How will MMS determine if I am financially solvent?

(a) The MMS bond-approving officer will determine your financial solvency by examining your total net worth, including, as appropriate, the net worth of your affiliated entities.

(b) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is greater than $300 million, you are presumptively deemed financially solvent, and we will not require you to post a bond or other surety instrument.

(c) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than $300 million, you must submit the following to the MMS Debt Collection Section by one of the methods in § 243.200(a):

(1) A written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and

(2) A nonrefundable $50 processing fee:

(i) You must pay the processing fee to us following the requirements for making payments found in 30 CFR 218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments;

(ii) You must submit the fee with your request under paragraph (c)(1) of this section, and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency under paragraph (a) of this section and you have active appeals.

(d) If you request that we consult a business-information or credit-reporting service or program under paragraph (c) of this section:

(1) We will use criteria similar to that which a potential creditor would use to lend an amount equal to the bond or other surety instrument we would require under subpart B;

(2) For us to consider you financially solvent, the business-information or credit-reporting service or program must demonstrate your degree of risk as low to moderate:

(i) If our bond-approving officer determines that the business-information or credit-reporting service or program information demonstrates your financial solvency to our satisfaction, our bond-approving officer will not require you to post a bond or other surety instrument under subpart B;

(ii) If our bond-approving officer determines that the business-information or credit-reporting service or program information does not demonstrate your financial solvency to our satisfaction, our bond-approving officer will require you to post a bond or other surety instrument under subpart B or pay the obligation.

§ 243.202 When will MMS monitor my financial solvency?

(a) If you are presumptively financially solvent under § 243.201(b), MMS will determine your net worth as described under §§ 243.201(b) and (c) to evaluate your financial solvency at least annually on the date we first determined that you demonstrated financial solvency as long as you have

active appeals and each time you appeal a new order.

(b) If you ask us to consult a business-information or credit-reporting service or program under § 243.201(c), we will consult a service or program annually as long as you have active appeals and each time you appeal a new order.

(c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other MMS-specified surety instrument under subpart B.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

10. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

10a. Section 250.1409 is revised to read as follows:

§ 250.1409 What are my appeal rights?

(a) When you receive the Reviewing Officer's final decision, you have 60 days to either pay the penalty or file an appeal in accordance with 30 CFR part 290, subpart A.

(b) If you file an appeal, you must either:

(1) Submit a surety bond in the amount of the penalty to the Regional Adjudication Office in the Region where the penalty was assessed, following instructions that the Reviewing Officer will include in the final decision; or

(2) Notify the Regional Adjudication Office, in the Region where the penalty was assessed, that you want your lease-specific/area-wide bond on file to be used as the bond for the penalty amount.

(c) If you choose the alternative in paragraph (b)(2) of this section, the Regional Director may require additional security (*i.e.*, security in excess of your existing bond) to ensure sufficient coverage during an appeal. In that event, the Regional Director will require you to post the supplemental bond with the regional office in the same manner as under §§ 256.53(d) through (f) of this chapter. If the Regional Director determines the appeal should be covered by a lease-specific abandonment account then you must establish an account that meets the requirements of § 256.56.

(d) If you do not either pay the penalty or file a timely appeal, MMS will take one or more of the following actions:

(1) We will collect the amount you were assessed, plus interest, late payment charges, and other fees as provided by law, from the date you received the Reviewing Officer's final decision until the date we receive payment;

(2) We may initiate additional enforcement, including, if appropriate, cancellation of the lease, right-of-way, license, permit, or approval, or the forfeiture of a bond under this part; or

(3) We may bar you from doing further business with the Federal Government according to Executive Orders 12549 and 12689, and section 2455 of the Federal Acquisition Streamlining Act of 1994, 31 U.S.C. 6101. The Department of the Interior's regulations implementing these authorities are found at 43 CFR part 62, subpart D.

11. Part 290 of subchapter C is revised to read as follows:

PART 290—APPEAL PROCEDURES

Subpart A—Offshore Minerals Management Appeal Procedures

Subpart B—Appeals of Royalty Management Program and Delegated State Orders

Authority: 5 U.S.C. 301 *et seq.;* 43 U.S.C. 1331 *et seq.*

Subpart A—Offshore Minerals Management Appeal Procedures

§ 290.1 What is the purpose of this subpart?

The purpose of this subpart is to explain the procedures for appeals of Minerals Management Service (MMS) Offshore Minerals Management (OMM) decisions and orders issued under subchapter B.

§ 290.2 Who may appeal?

If you are adversely affected by an OMM official's final decision or order issued under 30 CFR chapter II, subchapter B, you may appeal that decision or order to the Interior Board of Land Appeals (IBLA). Your appeal must conform with the procedures found in this subpart and 43 CFR part 4, subpart E. A request for reconsideration of an MMS decision concerning a lease bid, authorized in 30 CFR 256.47(e)(3) and 281.21(a)(1), or a deep water field determination, authorized in 30 CFR 203.79(a) and 30 CFR 260.110(d)(2), is not subject to the procedures found in this part.

§ 290.3 What is the time limit for filing an appeal?

You must file your appeal within 60 days after you receive OMM's final decision or order. The 60-day time period applies rather than the time period provided in 43 CFR 4.411(a). A decision or order is received on the date you sign a receipt confirming delivery or, if there is no receipt, the date otherwise documented.

§ 290.4 How do I file an appeal?

For your appeal to be filed, MMS must receive all of the following within 60 days after you receive the decision or order:

(a) A written Notice of Appeal together with a copy of the decision or order you are appealing in the office of the OMM officer that issued the decision or order. You cannot extend the 60-day period for that office to receive your Notice of Appeal; and

(b) A nonrefundable processing fee of $150 paid with the Notice of Appeal.

(1) Identify the order you are appealing on the check or other form of payment you use to pay the processing fee.

(2) You cannot extend the 60-day period for payment of the processing fee.

(3) You must pay the processing fee to MMS following the requirements for making payments found in 30 CFR 218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments.

§ 290.5 Can I obtain an extension for filing my Notice of Appeal?

You cannot obtain an extension of time to file the Notice of Appeal. See 43 CFR 4.411(c).

§ 290.6 Are informal resolutions permitted?

(a) You may seek informal resolution with the issuing officer's next level supervisor during the 60-day period established in § 290.3.

(b) Nothing in this subpart precludes resolution by settlement of any appeal or matter pending in the administrative process after the 60-day period established in § 290.3.

§ 290.7 Do I have to comply with the decision or order while my appeal is pending?

(a) The decision or order is effective during the 60-day period for filing an appeal under § 290.3 unless:

(1) OMM notifies you that the decision or order, or some portion of it, is suspended during this period because there is no likelihood of immediate and irreparable harm to human life, the environment, any mineral deposit, or property; or

(2) You post a surety bond under 30 CFR 250.1409 pending the appeal challenging an order to pay a civil penalty.

(b) This section applies rather than 43 CFR 4.21(a) for appeals of OMM orders.

(c) After you file your appeal, IBLA may grant a stay of a decision or order under 43 CFR 4.21(b); however, a decision or order remains in effect until IBLA grants your request for a stay of the decision or order under appeal.

§ 290.8 How do I exhaust my administrative remedies?

(a) If you receive a decision or order issued under chapter II, subchapter B, you must appeal that decision or order to IBLA under 43 CFR part 4, subpart E to exhaust administrative remedies.

(b) This section does not apply if the Assistant Secretary for Land and Minerals Management or the IBLA makes a decision or order immediately effective notwithstanding an appeal.

Subpart B—Appeals of Royalty Management Program and Delegated States Orders

§ 290.100 What is the purpose of this subpart?

This subpart tells you how to appeal Minerals Management Service (MMS) or delegated State orders concerning reporting to the MMS Royalty Management Program (RMP) and the payment of royalties and other payments due under leases subject to this subpart.

§ 290.101 What leases are subject to this subpart?

This subpart applies to:

(a) All Federal mineral leases onshore and on the Outer Continental Shelf (OCS); and

(b) All federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands, regardless of the statutory authority under which the lease was issued or maintained.

§ 290.102 What definitions apply to this subpart?

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

Delegated State means a State to which MMS has delegated authority to perform royalty management functions under an agreement or agreements under regulations at 30 CFR part 227.

Designee means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

IBLA means the Interior Board of Land Appeals.

Indian lessor means an Indian tribe or individual Indian mineral owner with a beneficial or restricted interest in a property that is subject to a lease issued or administered by the Secretary on behalf of the tribe or individual Indian mineral owner.

Lease means any agreement authorizing exploration for or extraction of any mineral, regardless of whether the instrument is expressly denominated as a ''lease,'' including any:

(1) Contract;

(2) Net profit share arrangement;

(3) Joint venture; or

(4) Agreement the Secretary approves under the Indian Mineral Development Act, 25 U.S.C. 2101 *et seq.*

Lessee means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease subject to this subpart, or any person to whom all or part of the lessee's interest or operating rights in a lease subject to this subpart has been assigned.

Notice of Order means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

Obligation means:

(1) A lessee's, designee's or payor's duty to:

(i) Deliver oil or gas royalty in kind; or

(ii) Make a lease-related payment, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, civil penalty, or assessment; and

(2) The Secretary's duty to:

(i) Take oil or gas royalty-in-kind; or

(ii) Make a lease-related payment, refund, offset, or credit, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, or interest.

(3) The obligations identified in paragraphs (1)(i) and (2)(i) of this definition are nonmonetary obligations. The obligations identified in paragraphs (1)(ii) and (2)(ii), including the requirement to compute the amount of such obligations, are monetary obligations.

Order for purposes of this subpart only, means any document issued by the MMS Director, MMS RMP, or a delegated State that contains mandatory or ordering language that requires the recipient to do any of the following for any lease subject to this subpart: report, compute, or pay royalties or other obligations, report production, or provide other information.

(1) Order includes:

(i) An order to pay or to compute and pay; and

(ii) An MMS or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee or payor.

(2) Order does not include:

(i) A non-binding request, information, or guidance, such as:

(A) Advice or guidance on how to report or pay, including a valuation determination, unless it contains mandatory or ordering language; and

(B) A policy determination;

(ii) A subpoena;

(iii) An order to pay that MMS issues to a refiner or other person involved in disposition of royalty taken in kind; or

(iv) A Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 241, or a decision of an administrative law judge or of the IBLA following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty.

Party means MMS, any person who files a Notice of Appeal, and any person who files a Notice of Joinder in an appeal under this subpart.

§ 290.103 Who may file an appeal?

(a) If you receive an order that adversely affects you or your lessee, you may appeal that order except as provided under § 290.104.

(b) If you are a lessee and you receive a Notice of Order, and if you contest the order, you may either appeal the order

or join in your designee's appeal under § 290.106.

§ 290.104 What may I not appeal under this subpart?

You may not appeal:

(a) An action that is not an order, as defined in this subpart; or

(b) A determination of the surety amount or financial solvency under 30 CFR part 243, subparts B or C.

§ 290.105 How do I appeal an order?

(a) You may appeal an order to the Director, Minerals Management Service (MMS Director), by filing a Notice of Appeal in the office of the official issuing the order within 30 days from service of the order.

(1) Within the same 30-day period, you must file in the office of the official issuing the order a statement of reasons or written arguments or briefs that include the arguments on the facts or laws that you believe justify reversal or modification of the order.

(2) If you are a designee, when you file your Notice of Appeal you must serve your Notice of Appeal on the lessees for the leases in the order you appealed.

(b) You may not request and will not receive an extension of time for filing the Notice of Appeal.

(c) If the office of the official issuing the order does not receive the Notice of Appeal within the time provided in paragraph (a) of this section, the Notice of Appeal will be considered timely if the office of the official issuing the order receives:

(1) The Notice of Appeal not later than 10 days after the required filing date; and

(2) The officer with whom the Notice of Appeal must be filed determines that the Notice of Appeal was transmitted to the proper office before the filing deadline in paragraph (a) of this section.

(d) If the Notice of Appeal is filed after the grace period provided in paragraph (c) of this section and was not transmitted to the proper office before the filing deadline in paragraph (a) of this section, the MMS Director will not consider the Notice of Appeal and the case will be closed.

(e) The officer with whom the Notice of Appeal is filed will send the appeal and accompanying papers to the MMS Director.

(f) The MMS Director will review the record and render a decision in the case.

(g) If an order involves Indian leases, the Deputy Commissioner of Indian Affairs will exercise the functions vested in the MMS Director.

§ 290.106 How do lessees join a designee's appeal and how does joinder affect the appeal?

(a) If you are a lessee, and your designee files an appeal under § 290.103, you may join in that appeal within 30 days after you receive your designee's Notice of Appeal under § 290.105(a)(2) by filing a Notice of Joinder with the office or official that issued the order.

(b) If you join in an appeal under paragraph (a) of this section, you are deemed to appeal the order jointly with the designee, but the designee must fulfill all requirements imposed on appellants under this subpart and 43 CFR part 4, subparts E and J. You may not file submissions or pleadings separately from the designee.

(c) If you are a lessee and you neither appeal nor join in your designee's appeal under this section, your designee's actions with respect to the appeal and any decisions in the appeal bind you.

(d) If you are a designee and you decide to discontinue participation in the appeal, you must serve written notice within 30 days before the next submission or pleading is due on:

(1) All lessees who have joined in the appeal under paragraph (a) of this section;

(2) The office or officer with whom any subsequent submissions or pleadings must be filed, including the IBLA; and

(3) All other parties to the appeal.

(e) If you have joined in the appeal under paragraph (a) of this section, and if the designee notifies you under paragraph (d) of this section that it declines to further pursue the appeal, you become an appellant and must then meet all requirements of this subpart and 43 CFR part 4, subparts E and J, as the appellant.

§ 290.107 Where are the rules concerning the effect of the Department not issuing a decision in my appeal within the statutory time frame?

If your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, the rules concerning the effect of the Department not issuing a final decision in your appeal within the 33-month period prescribed under 30 U.S.C. 1724(h) are located in 43 CFR part 4, subpart J.

§ 290.108 How do I appeal to the IBLA?

Any party to a case adversely affected by a final decision of the MMS Director or the Deputy Commissioner of Indian Affairs under this subpart shall have a right of appeal to the IBLA under the procedures provided in 43 CFR part 4, subpart E.

§ 290.109 How do I request an extension of time?

(a) If you are a party to an appeal under this subpart, and you need additional time after the appeal commences under 43 CFR 4.904 for any purpose:

(1) You may obtain an extension of time under this section; and

(2) You must submit a written request for an extension of time to:

(i) The office or official with whom you must file a document before the required filing date; or

(ii) If you are not seeking an extension of time to file a document, to the office or official before whom the appeal is pending.

(b) If you are an appellant, and if your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, you must agree in writing in your request to extend the period in which the Department must issue a final decision in your appeal under 30 U.S.C. 1724(h) and 43 CFR 4.906, by the amount of time for which you are requesting an extension.

(c) If you are any other party to an appeal involving monetary or nonmonetary obligations under Federal oil and gas leases, the office or official with whom you must file the request may require you to submit a written agreement signed by the appellant to extend the period in which the Department must issue a final decision in the appeal under 43 CFR 4.906, by the amount of time for which you are requesting an extension.

(d) The office or official with whom you must file your request may decline any request for an extension of time.

(e) You must serve your request on all parties to the appeal.

43 CFR PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

13. The authority citation for part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

14. In 43 CFR part 4, subpart J is added to read as follows.

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

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 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

§ 4.901 What is the purpose of this subpart?

This subpart tells you how the time limits of 30 U.S.C. 1724(h) apply to appeals subject to this subpart.

§ 4.902 What appeals are subject to this subpart?

(a) This subpart applies to appeals under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, 30 CFR part 290 subpart B, and 43 CFR part 4, subpart E, of Minerals Management Service (MMS) or delegated State orders or portions of orders concerning payment (or computation and payment) of royalties and other payments due, and delivery or taking of royalty in kind, under Federal oil and gas leases.

(b) This subpart does not apply to appeals of orders, or portions of orders, that

(1) Involve Indian leases or Federal leases for minerals other than oil and gas; or

(2) Relate to Federal oil and gas leases but do not involve a monetary or nonmonetary obligation.

§ 4.903 What definitions apply to this subpart?

For the purposes of this subpart only:

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

Delegated State means a State to which MMS has delegated authority to perform royalty management functions under an agreement or agreements under 30 CFR part 227.

Designee means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

IBLA means the Interior Board of Land Appeals.

Lease means any agreement authorizing exploration for or extraction of any mineral, regardless of whether the instrument is expressly denominated as a ''lease,'' including any:

(1) Contract;

(2) Net profit share arrangement; or

(3) Joint venture.

Lessee means any person to whom the United States issues a Federal oil and gas lease, or any person to whom all or part of the lessee's interest or operating rights in a Federal oil and gas lease has been assigned.

Monetary obligation means a lessee's, designee's or payor's duty to pay, or to compute and pay, any obligation in any order, or the Secretary's duty to pay, refund, offset, or credit the amount of any obligation that is the subject of a decision by the MMS or a delegated State denying a lessee's, designee's, or payor's written request for the payment, refund, offset, or credit. To determine the amount of any monetary obligation, for purposes of the default rule of decision in § 4.906 and 30 U.S.C. 1724(h):

(1) If an order asserts a monetary obligation arising from one issue or type of underpayment that covers multiple leases or production months, the total obligation for all leases or production months involved constitutes a single monetary obligation;

(2) If an order asserts monetary obligations arising from different issues or types of underpayments for one or more leases, the obligations arising from each separate issue, subject to paragraph (1) of this definition, constitute separate monetary obligations; and

(3) If an order asserts a monetary obligation with a stated amount of additional royalties due, plus an order to perform a restructured accounting arising from the same issue or cause as the specifically stated underpayment, the stated amount of royalties due plus the estimated amount due under the restructured accounting, subject to paragraphs (1) and (2) of this definition, together constitutes a single monetary obligation.

Nonmonetary obligation means any duty of a lessee or its designee to deliver oil or gas in kind, or any duty of the Secretary to take oil or gas royalty in kind.

Notice of Order means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

Obligation means:

(1) A lessee's, designee's or payor's duty to:

(i) Deliver oil or gas royalty in kind; or

(ii) Make a lease-related payment, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, civil penalty, or assessment; and

(2) The Secretary's duty to:

(i) Take oil or gas royalty in kind; or

(ii) Make a lease-related payment, refund, offset, or credit, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, or interest.

Order means any document or portion of a document issued by the MMS Director, MMS RMP, or a delegated State, that contains mandatory or ordering language regarding any monetary or nonmonetary obligation under any Federal oil and gas lease or leases.

(1) Order includes but is not limited to the following:

(i) An order to pay;

(ii) A MMS or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee or payor.

(2) Order does not include:

(i) A non-binding request, information, or guidance, such as:

(A) Advice or guidance on how to report or pay, including valuation determination, unless it contains mandatory or ordering language; and

(B) A policy determination;

(ii) A subpoena;

(iii) An order to pay that MMS issues to a refiner or other person involved in disposition of royalty taken in kind; or

(iv) a Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 241, or a decision of an administrative law judge or of the IBLA following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty.

Party means MMS, any person who files a Notice of Appeal under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, 30 CFR part 290 subpart B, or 43 CFR part 4, subpart E, and any person who files a Notice of Joinder in an appeal under 30 CFR part 290, subpart B.

Payor means any person responsible for reporting and paying royalties for Federal oil and gas leases for production before September 1, 1996.

§ 4.904 When does my appeal commence and end?

For purposes of the period in which the Department must issue a final decision in your appeal under § 4.906:

(a) If you filed your Notice of Appeal and initial Statement of Reasons with MMS before August 13, 1996, your appeal commenced on August 13, 1996;

(b) If you filed your Notice of Appeal or initial Statement of Reasons with MMS after August 13, 1996, under 30 CFR part 290, in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition, revised as of July 1, 1998, your appeal commenced on the date MMS received your Notice of Appeal, or if later, the date MMS received your initial Statement of Reasons;

(c) If you filed your Notice of Appeal under 30 CFR part 290, subpart B, your appeal commenced on the date MMS received your Notice of Appeal.

(d) Your appeal ends on the same day of the month of the 33rd calendar month after your appeal commenced under paragraph (a), (b), or (c) of this section, plus the number of days of any applicable time extensions under § 4.909 or 30 CFR 290.109. If the 33rd calendar month after your appeal commenced does not have the same day of the month as the day of the month your appeal commenced, then the initial 33-month period ends on the last day of the 33rd calendar month.

§ 4.905 What if a due date falls on a day the Department or relevant office is not open for business?

If a due date under this subpart falls on a day the relevant office is not open for business (such as a weekend, Federal holiday, or shutdown), the due date is the next day the relevant office is open for business.

§ 4.906 What if the Department does not issue a decision by the date my appeal ends?

(a) If the IBLA or an Assistant Secretary (or the Secretary or the Director of OHA) does not issue a final decision by the date an appeal ends under § 4.904(d), then under 30 U.S.C. 1724(h)(2), the Secretary will be deemed to have decided the appeal:

(1) In favor of the appellant for any nonmonetary obligation at issue in the appeal, or any monetary obligation at issue in the appeal with a principal amount of less than $10,000;

(2) In favor of the Secretary for any monetary obligation at issue in the appeal with a principal amount of $10,000 or more.

(b)(1) If your appeal ends before the MMS Director issues a decision in your appeal, then the provisions of paragraph (a) of this section apply to the monetary and nonmonetary obligations in the order that you contested in your appeal to the Director.

(2) If the MMS Director issues a decision in your appeal before your appeal ends, and if you appealed the Director's decision to IBLA under 43 CFR part 4, subpart E, then the provisions of paragraph (a) of this section apply to the monetary and nonmonetary obligations in the Director's decision that you contested in your appeal to IBLA.

(3) If the MMS Director issues a decision in your appeal, and if you did not appeal the Director's decision to IBLA within the time required under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998 (for appeals filed before May 13, 1999 or 30 CFR part 290 subpart B (for appeals filed on or after May 13, 1999 and 43 CFR part 4, subpart E, then the MMS Director's decision is the final decision of the Department and 30 U.S.C. 1724(h)(2) has no application.

(c) If the IBLA issues a decision before the date your appeal ends, that decision is the final decision of the Department and 30 U.S.C. 1724(h)(2) has no application. A petition for reconsideration does not extend or renew the 33-month period.

(d) If any part of the principal amount of any monetary obligation is not specifically stated in an order or MMS Director's decision and must be computed to comply with the order or MMS Director's decision, then the principal amount referred to in paragraph (a) of this section means the principal amount MMS estimates you would be required to pay as a result of the computation required under the order, plus any amount due stated in the order.

§ 4.907 What if an IBLA decision requires MMS or a delegated State to recalculate royalties or other payments?

(a) An IBLA decision modifying an order or an MMS Director's decision and requiring MMS or a delegated State to recalculate royalties or other payments is a final decision in the administrative proceeding for purposes of 30 U.S.C. 1724(h).

(b) MMS or the delegated State must provide to IBLA and all parties any recalculation IBLA requires under paragraph (a) of this section within 60 days of receiving IBLA's decision.

(c) There is no further appeal within the Department from MMS's or the State's recalculation under paragraph (b) of this section.

(d) The IBLA decision issued under paragraph (a) of this section together with recalculation under paragraph (b) of this section are the final action of the Department that is judicially reviewable under 5 U.S.C. 704.

§ 4.908 What is the administrative record for my appeal if it is deemed decided?

If your appeal is deemed decided under § 4.906, the record for your appeal consists of:

(a) The record established in an appeal before the MMS Director;

(b) Any additional correspondence or submissions to the MMS Director;

(c) The MMS Director's decision in an appeal;

(d) Any pleadings or submissions to the IBLA; and

(e) Any IBLA orders and decisions.

§ 4.909 How do I request an extension of time?

(a) If you are a party to an appeal subject to this subpart before the IBLA, and you need additional time after an appeal commences for any purpose, you may obtain an extension of time under this section.

(b) You must submit a written request for an extension of time before the required filing date.

(1) You must submit your request to the IBLA at Interior Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, using the U.S. Postal Service, a private delivery or courier service, hand delivery or telefax to (703) 235–8349;

(2) If you file a document by telefax, you must send an additional copy of your document to the IBLA using the U.S. Postal Service, a private delivery or courier service or hand delivery so that it is received within 5 business days of your telefax transmission.

(c) If you are an appellant, in addition to meeting the requirements of paragraph (b) of this section, you must agree in writing in your request to extend the period in which the Department must issue a final decision in your appeal under § 4.906 by the amount of time for which you are requesting an extension.

(d) If you are any other party, the IBLA may require you to submit a written agreement signed by the appellant to extend the period in which the Department must issue a final decision in the appeal under § 4.906 by the amount of time for which you are requesting an extension.

(e) The IBLA has the discretion to decline any request for an extension of time.

(f) You must serve your request on all parties to the appeal.

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