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Minerals Management Service

30 CFR Parts 208 and 209
Sale of Royalty-In-Kind Crude Oil; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 208 and 209

Sale of Royalty-in-Kind Crude Oil

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rule.

SUMMARY: The Minerals Management Service (MMS) proposes to consolidate and revise existing regulations governing the sale of onshore and offshore royalty oil to establish uniformity within the regulatory text, provide industry with a more efficient and responsive Royalty-In-Kind (RIK) Program, and improve the Federal Government's administration of the program. The existing regulations were developed from different statutory bases and, consequently, contain conflicting and overlapping requirements and impose unnecessary administrative burdens on producers, refiners, and the Federal Government. The proposed rule, combined with selective administrative changes, would ease the burden on all participants and improve the Federal Government's administration of the program.

DATE: Comments must be received on or before February 19, 1987.

ADDRESS: Written comments on this proposed rule should be mailed or delivered to Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, P.O. Box 25165, Mail Stop 628, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: John W. Vidrik at (303) 231-3608 or James A. McNamee at (303) 231-3605 in Lakewood, Colorado.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are James H. Mikelson, John W. Vidrik, and James A. McNamee of the Minerals Management Service, Lakewood, Colorado.

The policy of the Department of the Interior (DOI), is whenever practicable, to allow the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the Address section of this preamble.

I. Background

Section 36 of the Mineral Leasing Act of 1920 (commonly referred to as the Act of February 25, 1920), as amended (30 U.S.C. 192), and sections 5 and 27 of the Outer Continental Shelf Lands Act (OCSLA) of August 7, 1953, as amended (43 U.S.C. 1334, 1353), authorize the Secretary of the Interior to sell royalty oil accruing to the United States under oil and gas leases issued pursuant to those Acts.

The MMS was established by Secretarial Order No. 3071 on January 19, 1982. Under that order and its subsequent amendments on May 10 and May 26, 1982, MMS was assigned responsibility for the RIK Program.

A detailed review of the program was initiated by MMS in September 1982. The review highlighted areas where changes should be considered and improvements could be made. One area identified as in need of revision was the regulations governing the sale of royalty oil in 30 CFR Parts 225, 225a, and 262 (subsequently recodified as 30 CFR Parts 208 and 209; see below). These regulations contain conflicting, overlapping, and unduly burdensome requirements which MMS is proposing to revise and/or eliminate.

In developing these proposed RIK regulations, the principal objective was to establish one set of regulations for all royalty oil offered for sale under the program. The existing RIK regulations consist of one set of regulations governing the sale of onshore royalty oil at 30 CFR Part 208 [formerly 30 CFR Part 225, which was recodified on August 5, 1983 (48 FR 35639)], issued pursuant to the authority in the Mineral Leasing Act of February 25, 1920, and a second set of regulations governing the sale of offshore royalty oil. The offshore regulations originally were issued by the DOI at 30 CFR Part 225a, pursuant to the authority of the OCSLA. However, section 302(b) of the Department of Energy Organization Act, 42 U.S.C. 7152(b), transferred certain regulatory authorities over the sale of royalty oil to the Department of Energy (DOE), which issued regulations at 10 CFR Part 391.

Congressional repeal of section 302(b) of the DOE Organization Act in Pub. L. 97-100 and in Pub. L. 97-257 transferred the regulatory authority back to the DOI from DOE. The DOE's 10 CFR Part 391 regulations were redesignated as the DOI's 30 CFR Part 262 (48 FR 1181, January 11, 1983), and then redesignated as 30 CFR Part 209 (48 FR 35639, August 5, 1983).

The evolution of these regulations from different statutory bases, and from the different program objectives of two Federal agencies, has adversely affected the wording of the text and the application of the regulations. These inconsistencies, if left to continue, would eventually lead to further confusion and disruption in MMS's management of, and industry's participation in, the RIK Program.

In addition to the regulatory revisions currently being contemplated, there are a number of administrative procedures which MMS has under review. Improvements would be made to these procedures in order to streamline and simplify administrative functions within the program and make them more manageable for the Federal Government and less burdensome for industry. These proposed changes are discussed in detail in a later section of this preamble.

Notice of MMS's intent to revise the RIK regulations and make administrative improvements was first published in the Federal Register on November 10, 1982 (47 FR 50924), and comments were invited for 60 days ending January 10, 1983. Thirty-three (33) responses were received by MMS from producers, refiners, and others interested in the royalty oil program. The responses covered many topics but the majority of the comments dealt with either (1) refiner eligibility requirements, (2) transportation or delivery issues, or (3) administrative fees.

On January 14, 1983, MMS also announced in the Federal Register (48 FR 1833) its intent to change the time periods for the sales of royalty oil. Some comments were also received from industry on this topic, although MMS had not solicited any at the time.

II. Section-by-Section Discussion of Proposed Revisions

A. Regulatory Changes

The proposed regulations would remove 30 CFR Parts 208 and 209 and consolidate and revise those regulations with a unified set of rules in 30 CFR 208 governing the sale of all royalty oil. The major changes being proposed are discussed below.

Section 208.1 General.

This would be an introductory section which would specify that the regulations in 30 CFR Part 208 govern the sale of royalty oil by the United States to certain eligible refiners. This one set of regulations would apply to sales of both onshore royalty oil and royalty oil from the Outer Continental Shelf (OCS).

Section 208.2 Definitions.

This section would include definitions of terms used in other sections of the regulations. Many of the terms are self-explanatory and are taken from the existing rules in 30 CFR 208.2 and 209.102 (formerly 30 CFR 225.2 and 262.102). Other terms are proposed to be modified significantly in the new regulations.

One term which is proposed to be modified is "eligible refiner." Basically, eligible refiners are those small refiners that would be entitled to special preference, as provided in 30 U.S.C. 192 and 43 U.S.C. 1353, when it is determined that adequate supplies of crude oil are not available in the open market. To date, royalty oil sales generally have been limited to this group of refiners. In the existing regulations for onshore royalty oil, 30 CFR 208.2, eligible refiner is defined as follows:

"Eligible refiners" under the Act of July 13, 1946, shall be owners of existing refineries (including refineries not in operation) who qualify as a small business enterprise under the rules of the Small Business Administration (SBA) and who are unable to purchase in the open market an adequate supply of crude oil to meet the needs of their existing refinery capacities.

In *Plateau, Inc.* v. *DOI*, 603 F.2d 161 (10th Cir. 1979), the Court of Appeals held that, for sales of onshore royalty oil pursuant to the Act of February 25, 1920, the DOI could not limit eligible refiners to those that meet the SBA criteria. However, the Court of Appeals, in reviewing the legislative history of 30 U.S.C. 192, did indicate that the proper scope of the limitation should be:

In explaining the purpose of the bill, the Senator [O'Mahoney] identified "small refiners" as those "who do not own and operate their own producing leases." [91 Cong. Rec. 1780 (1945)]. . . . The Secretary of the Interior, in expressing his views on the bill to the committee, had objected to the word "smaller" as being too indefinite. . . . The basic distinction drawn by the Secretary echoed the one recognized by Senator O'Mahoney: The Secretary differentiated between "integrated companies" and refiners "not having their own source of supply for oil. . . ." The version of the bill ultimately enacted defined the targeted refineries as those "not having their own source of supply for crude oil." [603 F.2d at 163.]

The court concluded that "the amendment itself identifies the refiners it is intended to benefit."

The MMS believes that by limiting eligible refiners for onshore royalty oil sales to firms that qualified as independent refiners under the definition of that term in section 3(3) of the Emergency Petroleum Allocation Act (EPAA), (15 U.S.C. 751, et seq.), it would be defining the class in accordance with the intent of the Mineral Leasing Act of February 25, 1920 and consistently with the *Plateau* decision. These firms are not large, integrated refiners and generally are the small refiners that do not have their own source of supply for crude oil.

The MMS specifically requests comments on an alternative definition for eligible refiner which would limit the class to "small refiners" as that term was defined in section 3(4) of the EPAA; i.e., those refiners with less than 175,000 barrels per day of refining capacity. Comments suggesting other reasonable limitations on the class of eligible refiners also are invited.

With respect to sales of offshore royalty oil, eligible refiners would be limited to those firms that qualify as small business enterprises under the SBA rules. This limitation is the same as the existing rules in 30 CFR 209.102 and 209.110 adopted in accordance with 43 U.S.C. 1353 (b) and (e).

Another new definition in the regulations would be for the term "exchange agreement." The purpose of this proposed definition is to clarify what is meant by the term, because resales of royalty oil other than for exchange agreements specifically would be prohibited in the proposed rule. It is MMS's intent that the term "exchange agreement" be consistent with existing industry meaning and that it include *matching purchase and sale agreements*.

The MMS intends to exclude the definitions of "market value" and "fair market value" from the revised regulation. Under the existing regulations, offshore royalty oil is to be valued at not less than the fair market value as defined in 30 CFR 209.102, and onshore royalty oil is to be valued at not less than the market price as defined in 30 CFR 206.2. It is MMS's opinion that all royalty oil should be valued the same, whether it is taken in kind or paid in value from either onshore or offshore leases. Accordingly, under the proposed rule, all royalty oil taken in kind would be valued in accordance with the royalty oil valuation regulations (30 CFR Part 206)(, which are in the process of being revised. Consistency in valuing all royalty oil, whether in value or in kind, should eliminate complaints from small refiners in the RIK Program that they are being discriminated against in those instances where the contract price is more than the value for royalty purposes. Small refiners should not have to pay more for royalty oil than other purchasers are paying for oil.

The remaining definitions in the proposed rule are either substantially the same as in the existing regulations or are self-explanatory.

Section 208.3 Information Collection.

This section identifies information collection requirements used to determine a refiners eligibility to purchase royalty oil and to timely and accurately account for such purchases.

Section 208.4 Royalty oil sales to eligible refiners.

This section would set forth the conditions under which royalty oil sales would be held and the criteria for participation as an eligible refiner.

The decision whether to take royalty oil in kind for sale to refiners is one which is completely at the discretion of the Secretary. Prior to any royalty oil sale, the DOI will survey existing market conditions to determine whether eligible refiners have access to adequate supplies of crude oil at equitable prices. Such a determination is required by 43 U.S.C. 1353(b) before royalty oil sales may be limited to eligible refiners as opposed to a broader class of purchasers. Although 30 U.S.C. 192 does not specifically require a finding that eligible refiners do not have access to adequate crude supplies *at equitable prices* before sales of royalty oil may be limited to such refiners, it is MMS's view that such a limitation is consistent with the Mineral Leasing Act of February 25, 1920 because crude oil would normally be available to a refiner at higher than equitable prices.

The proposed rule would require that the Secretary's finding be published in the Federal Register concurrent with or included in the Notice of Availability of Royalty Oil which would be required to be published prior to a royalty oil sale.

Under the proposed regulations, when the determination is made for an onshore or offshore sale that eligible refiners, as a class, do not have access to adequate supplies of crude of oil at equitable prices, MMS would not be required to make the same determination specifically for each refiner. Individual determinations would be time consuming, unnecessary, and burdensome to both the DOI and the refining industry.

Pursuant to paragraph (b)(1), if the Secretary determines that eligible refiners do not have access to adequate crude oil supplies, the DOI would take in kind some or all of the royalty oil accruing to the United States from oil and gas leases in the regions or areas specified by the Secretary. The volume of oil to be taken in kind and offered for sale would be available only to eligible refiners. The refiners would be required to use the royalty oil (or crude oil exchangd for the royalty oil) in their refineries. Refiners specifically would be prohibited from taking royalty oil and reselling it. Violation of this requirement could result in the imposition of civil penalties pursuant to 30 U.S.C. 1719 and regulations at 30 CFR Part 241.

Paragraph (b)(2) would specify that sales of royalty oil, whether onshore or offshore, will be made at the value specified in the regulations at 30 CFR Part 206 when they are revised. For sales of offshore royalty oil, the value would include an amount for transportation costs to the designated point of delivery, if applicable. The transportation costs would be determined in accordance with the provisions of the revised transportation allowance regulations at 30 CFR Part 206.

Paragraph (b)(2) also would include certain other conditions for the royalty oil sale. An eligible refiner would be required to have a representative present at the sale in order to participate. This paragraph also would clearly establish the DOI's authority to establish purchase limitations and to withhold any royalty oil from the offering. Specific restrictions applicable to a sale also would be included in the sale notice.

Paragraph (b)(3) would provide for administrative charges to be paid to MMS by refiners purchasing royalty oil to recover the costs of administering the RIK Program. The charges will consist of an up-front nonrefundable contract fee and a monthly variable charge based on the number of leases under contract. The contract fee will be determined prior to a sale and specified in the Notice of Sale. The contract fee will be payable in two equal installments due at the end of the first and second months of the contract. The contract fee will be applied against the annual costs to run the program wit the remainder of the administrative costs recovered through the monthly variable charges per lease. The rate per lease would be determined by dividing the recoverable administrative costs by the total number of leases under contract. The rate could change depending upon whether total administrative costs changed and/or whether the number of leases from which royalty is taken in kind changed from one month to another. In instances where production from a lease is sold on a percentage basis to two or more refiners, each percentage portion of the lease would be considered a separate lease for purposes of administrative fee determination. For these reasons, a fixed monthly rate would not be specified in this regulation. This procedure would spread the burden of the costs more equitably among all contracts.

Title 30 CFR 209.110 presently allows the Secretary to auction royalty oil where a finding is made that eligible refiners do not have access to adequate supplies of crude oil at equitable prices. The DOI is considering using the auction technique for disposing of royalty oil but limiting participation in the auction to small and independent refiners as defined in other parts of these regulations. Using this approach, DOI would continue the focus of the program toward the small and independent refiners by restricting participation in the auction to these refiners, making royalty oil available without the necessity for a Secretarial finding of program necessity. At the same time, the Department would obtain maximum return for its royalty oil through the auction process. Comments are specifically requested on this proposal.

Section 208.5 Notice of royalty oil sale.

This section would provide that, after a determination is made by the Secretary to take royalty oil in kind for sale to eligible refiners, MMS would issue a Notice of Availability of Royalty Oil. This Notice would be published in the Federal Register and other media to ensure distribution to interested parties. The Notice would specify how the royalty oil sale would be effected, the quantity of oil to be offered, information required in an application, the closing date for rceipt of applications, and other general information concerning the application, allocation, and contract award process. The Notice would also contain guidelines for reallocation procedures in the event substantial quantities of royalty oil sold in that specific sale were subsequently turned back to MMS. Only those refiners that hold ongoing contracts from that specific sale would be allowed to participate in any reallocation, and then only if they continued to meet eligibility requirements as set forth in the proposed rule.

The MMS is proposing to continue the geographic preference in determining eligibility for receiving onshore royalty oil. Although a geographic eligibility preference does not exist for offshore oil, MMS is considering establishing such a preference. The MMS requests comments on whether the final rule should include provisions for preference eligibility for onshore and offshore royalty oil and whether this would be in the national interest.

Section 208.6 General application procedures.

This section would provide authority for the inclusion of certain information in an application for royalty oil in addition to any other information specifically required in the Notice of Availability of Royalty Oil. This section includes most of the requirements previously in 30 CFR 225a.6 and currently in 30 CFR 209.140.

Section 208.7 Determination of eligibility.

This section would provide the procedures by which MMS would determine eligibility for purchase of royalty oil. Paragraph (a) would provide that MMS could request additional information from any applicant to determine eligibility. Any application or additional information received after the close of business on the specified due date would be rejected.

Paragraph (b) would provide general authority to MMS to determine which eligible refiners would be permitted to participate in the royalty oil sale and the amount of royalty oil each would be entitled to purchase. For example, in previous sales MMS has exluded eligible refiners who have unpaid balances from previous contracts.

Paragraph (c) would provide that, if two or more eligible refiners apply for the same oil, MMS would allocate the available oil on an equitable basis. This paragraph is similar to existing 30 CFR 209.11(b)(4). Because of the large number of refiners participating in the royalty oil program when there is a sale, all sales likely would involve an allocation.

Paragraph (d) would provide a limitation on royalty oil allotments equal to 60 percent of the combined refinery capacity of the eligible refiner. This same provision is currently found at 30 CFR 209.110(b)(4).

Paragraph (e) would allow MMS to exclude from royalty oil sales royalty oil from offshore section 6 leases. It currently is MMS's practice to exclude such leases frrom the RIK Program because section 6 lease terms typically do not provide for payment of royalties in kind to the lessor.

Paragraph (f) is a new provision which would limit two or more refiners to only one allotment in an allocation of royalty oil if those refiners are related. In recent royalty oil sales, MMS has been confronted with the problem of separate applications for an allotment being submitted by two refiners where there is some relationship between the companies. The MMS would make it explicit in the rules that related firms would receive only one allotment under an allocation of royalty oil. The test being proposed is that two or more firms would be considered related if they have common ownership or control. The MMS specifically requests comments on alternative tests for common ownership which would preclude any firm from receiving multiple allotments.

Another problem encountered by MMS in recent royalty oil sales is the receipt of applications from refiners whose refineries are not operating. Because the proposed rule requires a purchaser of royalty oil to use that oil in its refinery, and because resales of royalty oil except for purposes of an exchange are prohibited, MMS does not want to allocate any oil during a royalty oil sale to a refinery which will not be operating. Therefore, MMS is proposing that any refiner whose refinery is not in operation during the 60-day period prior to the date of the royalty oil sale would be excluded from the sale. Because some refiners may be planning to use the royalty oil to resume or begin operations, an exception to the prohibition would be made if the refiner demonstrates that it will begin operations during the month in which oil becomes available under a royalty oil contract. If operations do not actually begin by that month, the regulation would permit MMS to immediately terminate the contract.

Section 208.8 Transportation and delivery.

This section would provide the general rules governing transportation and delivery of crude oil. Paragraph (a) would pertain to onshore royalty oil and would require royalty oil to be delivered at a point of delivery to be designated by MMS. Similarly, paragraph (b) would require that royalty oil from section 8 offshore leases be delivered at a point of delivery to be designated by MMS if the lease was issued after September 1969. Leases issued prior to October 1969 allow the lessee to designate the point of delivery if royalty oil is taken in kind.

Paragraph (c) would be applicable to both onshore and offshore royalty oil. This paragraph would provide that if the point of delivery is on or immediately adjacent to the lease, the lessee would be responsible for any transportation costs to the delivery point. However, if the delivery point is not on or immediately adjacent to the lease, as is often the situation with offshore leases, the lessee would be entitled to reasonable transportation costs. The regulations would provided that the transportation costs would be reimbursed to the lessee by the United States. The eligible refiner purchasing the royalty oil would not be required to pay to the lessee any transportation costs to the point of delivery. This would be a change from existing regulations (30 CFR 209.120). The transportation costs would require approval by the MMS, and they would be included by the MMS in the value of the royalty oil sold to the eligible refiners/purchasers. For further clarification, see the oil valuation and transportation allowance regulations, 30 CFR Part 206, which are currently being revised.

Paragraph (d) would set forth certain requirements regarding delivery of royalty oil which are self-explanatory.

Paragraph (e) would provide that, if a purchaser does not have access to its allotment of royalty oil at the designated delivery point, the operator must designate an alternative delivery point. This could occur because some producers operate closed systems where access by others would be very limited. The operator would not be permitted to impose additional costs on the purchaser and would be required to get MMS approval of the alternative delivery point.

This section would also provide that, when a royalty oil contract is terminated, the transportation allowance and delivery point designation applicable to the royalty oil also would terminate. Royalties would revert to payment in value unless the royalty oil was taken in kind under another contract.

Section 208.9 Agreements.

This section would be a revision of existing regulations in 30 CFR 208.4 and 209.130. Eligible refiners would be required to submit to MMS two copies of any written third-party agreements, or two copies of a written explanation of any oral agreements, relating to methods and costs of delivering the royalty oil to the refiner, including any exchange agreements. These agreements would not require approval by MMS.

Paragraph (b) would contain an explicit prohibition against resales of royalty oil. Exchanges, including matching sale and purchase agreements, would be permitted since the agreements often are necessary to move royalty oil purchases to the refinery, or to obtain the appropriate quality of oil for the refinery.

Paragraph (c) would require that royalty oil, or crude oil exchanged for the royalty oil, must be processed in the eligible refiner's refineries. Processing agreements would not be permitted. In the interest of fulfilling the objectives of the royalty oil program, MMS specifically invites comments from the industry and other interested parties on what properly constitutes "processing" of crude oil by a refiner.

Section 208.10 Notices.

This section would replace existing regulations at 30 CFR 208.8 and 209.51 and would include the requirements regarding notices to affected parties when royalty is taken in kind from a lease. Paragraph (a) would require MMS to notify the lessee, or actual operator, at least 45 days in advance of the effective date of delivery. This is 15 days earlier than in the existing rules and is a change requested by the operators.

Paragraphs (b) and (c) are self-explanatory. Paragraph (d) would include a new requirement that, as soon as practicable after the date of each royalty oil sales, MMS must publish in the Federal Register notice of the leases from which royalty oil would be taken, the purchasers of that royalty oil, and leases from which royalty oil deliveries would be discontinued. This requirement, together with the requirement that the lessee notify each working interest owner, should give adequate notice to all affected parties that roaylty oil is being taken or that deliveries are being terminated.

Paragraph (e) would require that a refiner receive written approval from MMS before selling or assigning its rights under a royalty oil contract. Failure to get such consent, including approval for a change in ownership, would result in termination of the royalty oil contract.

Section 208.11 Surety requirement.

This section would include the requirement for a surety which must be furnished by the refiners/purchasers. Pursuant to paragraph (a), the refiners/purchasers must provide a surety equivalent to the estimated value of 99 days of purchases and the related administrative charges. The MMS would be able to increase the surety requirement if necessary. The MMS also could decrease the amount of the surety, if warranted by significant historical data and requested by the refiner/purchaser, provided that the interests of the Federal Government would be protected.

If the refiner furnishes a letter of credit as the surety, paragraph (b) would require that it be effective for a 9-month period beginning the first day the royalty oil contract is effective, with a clause providing for automatic renewal monthly for a new 9-month period. The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of the intent to not renew at least 30 days prior to the anniversary date. The MMS may grant the purchaser 45 days to obtain a new surety. If no replacement surety is provided, the MMS will terminate the contract effective at least 6 months prior to the expiration date of the letter of credit.

Any surety provided by the refiner must be acceptable to MMS and MMS may specify other requirements necessary to protect the Government's interests.

Section 208.12 Payment requirements.

This section would impose certain requirements for payments by refiners/purchasers and payors. The refiners/purchasers and payors would be required to tender all payments to MMS in accordance with 30 CFR 218.51. That regulation currently requires that all payments that, on the payment due date, total $50,000 or more be made by Electronic Funds Transfer (EFT). The MMS is in the process of amending 30 CFR 218.51 to lower the EFT threshold to $10,000.

Paragraph (b) would impose interest charges for late payments for royalty oil by refiners/purchasers including adjustments billed for oil which was delivered to refiners/purchasers but not billed in a timely manner. Although such subsequent adjustments would normally be the result of erroneous reporting by the Federal lease payor(s), MMS is of the opinion that interest for the late payment of royalties should be borne by the refiners/purchasers in those instances where it had the benefit of royalty deliveries without the associated payment. If the adjusted volume was delivered late, the payor(s) would be held liable for accrued interest to the delivery date. Section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1721, authorizes MMS to collect interest on late payments at the rate applicable under 6621 of the Internal Revenue Code.

Paragraph (c) would provide, in cases where payment is late, that MMS issue a notice of nonreceipt of payment. If payment is then not received within 15 days of the Notice, MMS could cancel the contract and collect under the surety. In some cases, civil penalties pursuant to 30 U.S.C. 1719 also may be applied.

Paragraph (d) would provide that if a purchaser disagrees with the amount due on a billing, it must pay the amount as computed by MMS, subject to subsequent adjustment if the amount in dispute is determined to be in error.

Section 208.13 Reporting requirements.

This section would require the lessee/operator to provide to MMS a semiannual report, by lease, of the monthly entitlements and actual deliveries of royalty oil to eligible refiners. This report would be used by MMS to reconcile billings to a purchaser under a royalty oil contract. Payors should also reconcile the data provided on the Forms MMS-2014 which they have submitted to ensure accuracy. Because MMS relies on data reported by payors when billing purchasers of royalty oil, MMS would hold a payor liable for unrecoverable amounts under a contract when incorrect billing were caused by reporting errors or omissions. The payor also would be liable for interest for the time period that the royalty oil payment was delayed as a consequence of the payor's late or incorrect report.

Section 208.14 Civil and criminal penalties.

In addition to any civil penalties which may be imposed upon a lessee or refiners/purchasers for failure to abide by the proposed regulations, sections 109 and 110 of FOGRMA impose additional civil and criminal penalties. Regulations at 30 CFR Part 241 implementing this authority have been issued by MMS. The MMS intends to impose all available penalties for failure to abide by MMS regulations governing RIK oil.

Section 208.15 Audits.

This section would give MMS the authority to conduct audits of lessees/operators, payors, and/or purchasers of royalty oil taken in kind for compliance with applicable statutes, regulations, and royalty oil contracts.

Section 208.16 Appeals.

This section would provide that all decisions or orders issued under authority of this new part would be appealable under the procedures set forth in 30 CFR Part 290. The regulations specifically provide that compliance with any such order or decision would not be suspended if an appeal is taken unless suspension is authorized by MMS. The MMS would not authorize suspension unless it is determined that suspension would not be detrimental to the Government's interest or upon submission of an acceptable surety.

Section 208.17 Suspensions for national emergencies.

In the event of a national emergency, it could be necessary for MMS to suspend royalty oil contracts and take all royalty oil for the national defense. This section would provide the criteria by which such a suspension would occur.

B. Administrative Changes

In addition to the changes in the proposed regulations, MMS is contemplating a number of administrative changes. These are being considered in an effort to make the RIK Program more manageable for MMS and less burdensome and confusing for industry. The principal changes being considered concern the following areas and comments are invited on the proposals:

Sale Offerings—An MMS notice of intent to revise the timing of royalty oil sales was first published in the Federal Register (48 FR 1833) on January 14, 1983. As that notice stated, the long-range intent of MMS is to continue the practice of issuing sales contracts for 3-year periods. In order to make the RIK Program more manageable for the Government and royalty oil more regularly available for industry, MMS has divided the total available royalty oil into three offerings based on geographical areas, so that one of the three offerings would be available each year. Contracts for royalty oil from any one of the three offerings would generally be for a duration of 3 years.

Interim Sales.—The MMS proposes to establish a general policy of not holding interim sales. However, interim sales may be held at the discretion of the Secretary if substantial additional royalty oil becomes available. The small/independent refiners individually, or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. Although sufficient documentation must be submitted, it is not mandatory for each small/independent refiner to participate in a submission of such documentation to be determined eligible. The study documentation must be submitted to the Secretary for his/her review and determination as to whether an interim sale is needed.

Data Criteria—For identification and notification purposes, MMS plans to establish and maintain a complete and current listing of lease locations, operator names and addresses, and historical production statistics.

Sale Notification Requirements—The MMS does not maintain a complete and current name and address listing of all eligible refiners which would be required for direct notification of royalty oil sales. Therefore, MMS plans to advertise the offerings with the approximate volume of royalty oil available, if known, in the Federal Register and some other printed media, such as newspaper or magazine of general or specialized circulation. A presale information package will be assembled by MMS in advance of each offering. This information package, to be provided to interested refiners, will

include all pertinent data related to the offering (locations, quality, quantity, place and date of sale, etc.).

Application Procedures.—Rather than the letter format used in the past, a standard application form (Form MMS-4070) will be required of each refiner who wants to participate in a royalty oil sale. This form will require the certified reporting of certain information to permit MMS to evaluate the refiner's eligibility and allocate available royalty oil among the refiners participating in the sale. The refiner will also be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the RIK royalty oil for which it is applying. The letter of intent must be submitted with Form MMS-4070.

Allocation Procedures—An eligible refiner must have a representative present at a sale in order to participate. The factors that would be considered in the allocation procedure include the following:

- Availability of royalty oil.
- Number of qualified applicants.
- Shortfall of applicants (refinery capacity less average quantity processed during past 12 months).
- Quantities of royalty oil requested by each applicant.
- Quantity of royalty oil currently under contract by the applicant.
- Order/method of selection.

Billing/Payment Method—Several billing/payment methods previously existed for purchasers of RIK oil. Each of these methods involved estimated billings that required subsequent adjustment after the receipt of actual data. This required several accounting entries every month; i.e., the reversal of the previous month's estimate, entry of the previous month's actual, and entry of the current month's estimate.

The MMS has adopted a "Delayed Actual Billing" payment method. Under this method, the purchaser's first billing would be on the first day of the second month of the contract period, and it would be equivalent to an estimate of the first 30 day's entitlements. The purchaser would be billed for payment of actual entitlements 45 days after the close of the month of entitlement. When the bill for the first 30 days of actual entitlements was issued (45 days after the close of the first month of entitlement), the initial estimated payment would "roll forward" to cover the second 30 days of estimated entitlements. The same "roll forward" concept would apply monthly until contract closeout or termination, when the initial payment would be credited against the last actual payment. The "estimated payment" would be subject to periodic adjustment, as deemed necessary, to reflect the current estimated value of the preceding 30 days' entitlements.

Delivery Requirements—The MMS proposes to bill purchasers based on entitlements as reported by the lease operator. As a condition of the lease, the lease operator is required to make royalty oil available to a purchasing refiner. The lessee will make available and the purchaser will accept delivery of the royalty oil no later than the last day of the calendar month next following the calendar month in which the oil was produced. The MMS will consider any deliveries to purchasers in excess of entitlements as a transaction between the lease operator and the purchaser. In addition, any differences between the quality of oil at the point of measurement as reported to MMS by the Federal lease payor and the quality of oil delivered to the refiners/purchasers will be considered to be a transaction between the payor and the purchaser, and MMS will not be liable for any such differences.

Suspensions—Suspensions in the deliveries of royalty entitlements, at the request of the purchaser, create an administrative burden for the lessee/operator and the Government. Therefore, MMS proposes to prohibit any suspensions except for the convenience of the Government. In addition, MMS proposes to not reinstate terminated contracts for any reason.

Interpretation Authority/Appeals—The Chief, Fiscal Accounting Division, Royalty Management Program, as the Secretary's designated official, will have the authority to execute and administer the contract and to interpret regulations and contract provisions. Orders or decisions issued under the regulations by the designated official may be appealed as provided for in the proposed regulations.

Use of Certified Mail—Important documents associated with the royalty oil program, such as contract agreements, have in the past been mailed via registered mail. The use of registered mail, however, requires that the document be "controlled" from the point of issuance to the point of delivery and imposes security requirements on the purchaser and the Government. The MMS, in order to eliminate unnecessary security requirements, has been using and proposes to continue using certified mail rather than registered.

Accounting Procedures—The RIK billing and collection procedures were previously designed for manual accounting systems. The MMS has implemented a computerized Auditing and Financial System (AFS). Refiners and producers will be required to comply with requirements of the AFS.

III. Procedural Matters

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and 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.). The impact of the proposed rule is primarily limited to a small portion of the oil industry and does not, therefore, have any significant economic impact on a substantial number of the Nation's small entities.

In addition, the proposed rule primarily consolidates and clarifies existing regulations and, although some changes are being proposed, they have a minor economic effect.

Paperwork Reduction Act of 1980

The information collection requirements contained in 30 CFR 208.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and have been assigned clearance number 1010-0042.

National Environmental Policy Act of 1969

The Department of the Interior has determined that this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)]. The exclusion is found in the Department's Manual at 516 DM6, Appendix 2, Part 2.4B(1)(a), (b), and (k).

List of Subjects

30 CFR Part 208

Government contracts, Mineral royalties, Petroleum, Public lands-mineral resources, Small businesses.

30 CFR Part 209

Continental shelf, Government contracts, Mineral royalties, Petroleum allocation, Public lands-mineral resources, Small businesses.

Dated: December 3, 1986.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

SUBCHAPTER A—ROYALTY MANAGEMENT

For the reasons set out in the preamble, the following revisions are proposed to 30 CFR Parts 208 and 209.

Part 208 is proposed to be revised to read as follows:

PART 208—SALE OF ROYALTY-IN-KIND CRUDE OIL

Subpart A—General Provisions

Sec.
208.1 General.
208.2 Definitions.
208.3 Information collection.
208.4 Royalty oil sales to eligible refiners.
208.5 Notice of royalty oil sale.
208.6 General application procedures.
208.7 Determination of eligibility.
208.8 Transportation and delivery.
208.9 Agreements.
208.10 Notices.
208.11 Surety requirements.
208.12 Payment requirements.
208.13 Reporting requirements
208.14 Civil and criminal penalties.
208.15 Audits.
208.16 Appeals.
208.17 Suspensions for national emergencies.

Authority: 30 U.S.C. 181, *et seq.*; 30 U.S.C. 351, *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.

Subpart A—General Provisions

§ 208.1 General.

The regulations in this Part govern the sale of royalty oil by the United States to eligible refiners. The regulations apply to royalty oil from leases on Federal lands and the Outer Continental Shelf (OCS).

§ 208.2 Definitions.

Allotment means the quantity of royalty oil that the DOI determines is available to each eligible refiner who has applied for a portion of the total volume of royalty oil offered in a given royalty oil sale.

Application means the formal written request to the DOI on Form MMS-4070 by an eligible refiner interested in purchasing a quantity of crude oil from the approximate volume announced by the DOI in a given "Notice of Availability of Royalty Oil."

Area or *Region* means the geographic territory having Federal oil and gas leases over which the MMS designated official has jurisdiction, unless the context in which those words are used indicates that a different meaning is intended.

Designated official means any representative of the DOI acting on behalf of the Secretary of the DOI or the Director of the MMS.

Director means the Director of the MMS who is responsible for its overall direction, or his/her delegates.

DOI means the Department of the Interior, including the Secretary of the Interior, or any of his/her delegates.

Eligible refiner means a refiner of crude oil that meets the following criteria for eligibility to purchase royalty oil:

(1) For the purchase of royalty oil from onshore leases, it means a refiner that qualifies as an independent refiner as that term is defined in section 3(3) of the Emergency Petroleum Allocation Act, 15 U.S.C. 751 et seq.;

(2) For the purchase of royalty oil from leases on the OCS, it means a refiner that qualifies as a small business enterprise under the rules of the Small Business Administration (13 CFR 121.3-9(a)(1)).

Entitlement means the Federal Government's share of production from a Federal lease.

Exchange Agreement means a written agreement between the purchaser and another person for the exchange of royalty oil purchased under this part for other oil on the basis of an equivalent volume or equivalent value.

Federal lease means a contractual agreement with the Federal Government which authorizes the exploration, development, and production of oil and gas on Federal lands or on the OCS.

Interim sale means a sale conducted as a result of substantial additional royalty oil becoming available in a specific area prior to the scheduled expiration date of royalty oil contracts in effect in that area.

Lessee means any person to whom the United States issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease.

MMS means the Minerals Managment Service of the DOI.

Notice of Availability of Royalty Oil means a notice published by the DOI in the Federal Register and in other printed media when appropriate, such as a newspaper or magazine of general or specialized circulation, to advise interested parties (1) that royalty oil is being made available for purchase by eligible refiners and (2) of the approximate volume of royalty oil that will be available to the applicants.

OCS means the Outer Continental Shelf, as defined in 43 U.S.C. 1331(a).

OCSLA means the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq., as amended by 43 U.S.C. 1801 et seq.).

Oil means crude petroleum or other mixtures of hydrocarbons that exist in liquid or gaseous phases in underground reservoirs and that remain or become liquid at atmospheric pressure after passing through surface separating facilities, including condensate recovered by means other than a manfacturing process.

Operator means any person, including a lessee, who has control of or who manages operations on an oil and gas lease site on Federal or Indian lands or on the OCS.

Payor means any person responsible for reporting royalties from a Federal lease or leases on Forms MMS-2014.

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

Point of delivery means the place where a given amount of royalty oil or the quantity thereof in a commingled stream is delivered by the lessee/operator to the Federal Government, at which time ownership of that royalty oil simultaneously passes from the Federal Government to the purchaser.

Purchaser means anyone who acquires royalty oil sold by the Federal Government and who has a contractual obligation under an agreement to purchase royalty oil.

Reallocation means an offering of royalty oil previously allocated in a specific sale, but subsequently turned back to MMS. A reallocation would only be made if substantial amounts of royalty oil are turned back.

Royalty oil means that amount of oil that the DOI takes in kind in satisfaction of a lessee's royalty or net profit share obligations as determined by whatever lease interest the lessee holds under an applicable minerals law.

Secretary means the Secretary of the Interior, or his/her delegates.

Section 6 lease means an oil and gas lease originally issued by any State and currently maintained in effect pursuant to section 6 of the OCSLA.

Section 8 lease means an oil and gas lease originally issued by the United States pursuant to section 8 of the OCSLA.

§ 208.3 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The forms and approved OMB clearance numbers are as follows:

Form No.	Name and filing date	OMB No.
MMS-4070	Application for the Purchase of Royalty Oil (due prior to the date of sale in accordance with the instructions in the Notice of Availability of Royalty Oil).	1010-0042
MMS-4071	Semiannual Report of Royalty-In-Kind Oil Entitlements and Deliveries (due from the lease operator 7 months after the first month of sale and semiannually thereafter).	1010-0042

The information is being collected by the DOI to meet its congressionally mandated accounting and auditing

responsibilities relating to Federal mineral royalty management. The information will be used to determine a refiner's eligibility to purchase royalty oil and to timely and accurately account for such purchases. Form MMS-4070 is required to obtain a benefit and Form MMS-4071 is mandatory.

§ 208.4 Royalty oil sales to eligible refiners.

(a) *Determination to take royalty in kind.* The Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such crude oil is available to eligible refiners at equitable prices. The determination by the Secretary shall be published in the Federal Register concurrent with or included in the Notice of Availability of Royalty Oil required by 30 CFR 208.5.

(b) *Sale to eligible refiners.* (1) Upon a determination by the Secretary under paragraph (a) of this section that eligible refiners do not have access to adequate supplies of crude oil at equitable prices, the Secretary, at his/her discretion, may elect to take in kind some or all of the royalty accruing to the United States from oil and gas leases on Federal lands onshore and on the OCS. The DOI may offer royalty oil for sale to eligible refiners only for use in their refineries and not for resale (other than under an exchange agreement).

(2) All sales of royalty oil will be made at not less than the royalty value determined pursuant to 30 CFR Part 206. An eligible refiner must have a representative at a sale in order to participate. The Secretary may, at his/her discretion, establish purchase limitations and withhold any royalty oil from any offering.

(3) The MMS will recover the administrative costs of the RIK Program through the collection of administrative fees. The fees will consist of an initial non-refundable contract fee for each executed contract and a monthly variable charge applied to each lease under contract. The amount of the initial contract fee shall be determined prior to a sale and published in the Notice of Sale. The fee will be payable in equal installments due at the end of the first and second months of the contract. These contract fees will be applied against the program's administrative costs, and the remainder of the administrative costs will be recovered through the monthly variable charges per lease. The rate per lease will be determined by dividing the remaining recoverable adminstrative costs by the total number of leases under contract. The rate may change depending upon whether total administrative costs change and/or whether the number of leases taken in kind changes from one month to another. In instances where production from a lease is sold on a percentage basis to two or more refiners, each percentage portion of the lease will be considered a separate lease for purposes of administrative fee determination.

(c) Upon a determination by the Secretary under paragraph (a) of this section that eligible refiners do have access to adequate supplies of crude oil at equitable prices, the DOI will not take royalty in kind from oil and gas leases exclusively for sale to small/independent refiners.

(d) *Interim sales.* The MMS generally will not conduct interim sales. However, interim sales may be held at the discretion of the Secretary if substantial additional royalty oil becomes available. The small/independent refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. Although sufficient documentation must be submitted, it is not mandatory for each small/independent refiner to participate in a submission of such documentation to be determined eligibile. The documentation must be submitted to the Secretary of the Interior for his/her review and determination as to whether an interim sale is needed.

§ 208.5 Notice of royalty oil sale.

If the Secretary decides to take royalty oil in kind for sale to eligible refiners, MMS will issue a Notice of Availability of Royalty Oil specifying the manner in which the sale is to be effected, the approximate quantity of royalty oil to be offered, information required in applications, the closing date for the receipt of applications for royalty oil, and other general administrative details concerning the application, allocation, and contract award process for the royalty oil. The Notice will describe generally the terms under which the royalty oil contracts will be awarded. The Notice will also contain guidelines for reallocation procedures in the event substantial quantities of royalty oil sold in that specific sale are subsequently turned back to MMS. Only those refiners that hold ongoing contracts from that specific sale will be allowed to participate in any reallocation, and then only if they continue to meet eligibility requirements as set forth in 30 CFR 208.2 and 208.7.

§ 208.6 General application procedures.

To apply for the purchase of royalty oil, an applicant must file a Form MMS-4070 with the designated official in accordance with the instructions in the Notice of Availability of Royalty Oil and in accordance with any instructions issued by MMS for the completion of Form MMS-4070. The refiner will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the RIK royalty oil for which it is applying. The letter of intent must be submitted with Form MMS-4070. In addition to any other application requirements specified in the Notice, the following information is required on Form MMS-4070 at the time of application:

(a) Name and address of the applicant, the location of the applicant's refinery or refineries, and disclosure of the applicant's affiliation with any other persons.

(b) The capacity of the applicant's refineries in barrels of crude oil throughput per calendar day and a tabulation for the past 12 months of oil processed for each refinery, identified as to source (from own production or from other sources).

(c) Identification of any Government royalty oil contracts under which the applicant is currently receiving royalty oil.

(d) Identification of the locations (area/region and State) where the applicant proposes to purchase royalty oil, the volume of oil requested, and the specific refineries in which the oil will be refined.

(e) A certification from the applicant that it is an eligible refiner for the purchase of Government royalty oil, as defined in 30 CFR 208.2

§ 208.7 Determination of eligibility.

(a) The MMS will examine each application and may request additional information if the information in the application is inadequate. An application received after the close of the application period will be rejected. If additional information is requested by MMS, it must be received by the time specified or the application will be rejected.

(b) After the close of the application period and the receipt of any additional requested information, MMS will determine which eligible refiners may participate in the royalty oil sale and the

quantity of royalty oil which each refiner is authorized to purchase.

(c) When applications are filed by two or more eligible refiners for the same royalty oil, the oil will be allocated among such applicants on an equitable basis as determined by the designated official.

(d) No eligible refiner shall be awarded contracts for volumes of royalty oil that, when added to volumes of other Federal royalty oil being received, are in excess of 60 percent of the combined refinery capacity of that refiner.

(e) The MMS may exclude from a royalty oil sale royalty oil from Section 6 offshore leases.

(f) If two or more eligible refiners are related through common ownership or control or otherwise affiliated, only one of them shall be entitled to an allotment of royalty oil.

(g) Any refiner whose refinery is not in operation during the 60-day period prior to the date of the royalty oil sale shall not be entitled to participate in the sale unless such refiner self-certifies and demonstrates to the satisfaction of the designated official that it will begin operations by the first month in which oil becomes available under a royalty oil contract. If operations do not begin by that month, MMS will terminate the contract.

§ 208.8 Transportation and delivery.

(a) Royalty oil from onshore leases shall be delivered by the lessee at a point of delivery to be designated by MMS.

(b) Royalty oil from section 8 offshore leases on the OSC issued after September 1969 shall be delivered by the lessee at a point of delivery to be designated by MMS. Royalty oil from section 8 offshore leases issued before October 1969 shall be delivered by the lessee at a point of delivery to be designated by the lessee.

(c) If the point of delivery is on or immediately adjacent to the lease, the crude oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by MMS. If the point of delivery is not on or immediately adjacent to the lease, the United States will reimburse the lessee for the reasonable cost of transportation to the point of delivery in an amount not to exceed the cost of transportation approved by MMS pursuant to 30 CFR Part 206. Such transportation costs will be included by the MMS in the royalty value of the oil taken in kind if necessary to reflect that value at the point of delivery.

(d) Crude oil shall be delivered by the lessee in marketable condition at pipeline connections or other facilities designated by MMS. The lessee will deliver the royalty oil to the eligible refiners/purchasers during normal operating hours and in reasonable quantities and intervals. The lessee will make available and the eligible refiners/purchasers will accept delivery of the royalty oil entitlement no later than the last day of the calendar month immediately following the calendar month in which the oil was produced. Failure to accept deliveries shall constitute grounds for the termination of the contract.

(e) If the eligible refiners/purchasers do not have access to their allotment of royalty oil at the designated delivery point, the operator of the lease must designate an alternate delivery point at no additional cost to the eligible refiners/purchasers or the Government. The alternate delivery point must be approved by MMS.

(f) Upon termination of deliveries under a royalty oil contract, the transportation allowance and delivery point designation authorized by this section no longer will remain in effect.

§ 208.9 Agreements.

(a) An eligible refiner/purchaser must submit to MMS two copies of any written third-party agreements, or two copies of a full written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, to the eligible refiners/purchaser's refinery.

(b) An eligible refiner/purchaser may not sell royalty oil which it purchases pursuant to this Part except for purposes of an exchange for other crude oil on an equivalent volume or equivalent value basis.

(c) Royalty oil purchased by an eligible refiner, or crude oil received in exchange for such royalty oil, must be processed in the eligible refiner's refineries.

§ 208.10 Notices.

(a) The designated official shall notify each lessee of the DOI's decision to take royalty oil in kind at least 45 days in advance of the effective date of delivery.

(b) Deliveries of royalty oil may be partially terminated only with the written approval of the Director or his/her designated official.

(c) Before terminating the delivery of royalty oil taken in kind, the designated official, if possible, will notify each lessee of the change in requirements at least 30 days in advance of the effective date.

(d) After notification by the DOI that royalty will be taken in kind, the lessee shall be responsible for notifying each working interest on the Federal lease. As soon as practicable after the date of each royalty oil sale, MMS will publish in the Federal Register a notice of the leases from which royalty oil will be taken, the purchasers of the royalty oil, and the leases from which royalty oil deliveries will be discontinued on terminated contracts.

(e) An eligible refiner/purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval by the Director or designated official. If the eligible refiner/purchaser changes ownership or its assets are sold or liquidated for any reason, it cannot transfer, assign, or sell its rights or interest in the royalty oil contract without written approval of the Director or designated official. Without express written consent from MMS for a change in ownership, the royalty oil contract shall be terminated. The successor company must meet the definition of an eligible refiner in 30 CFR 208.2 for MMS to consider assignment of the royalty oil contract.

§ 208.11 Surety requirements.

(a) The eligible refiners/purchasers, prior to execution of the contract, shall furnish the designated official a surety, acceptable to the designated official, in an amount equal to the estimated value of royalty oil which could be taken by the purchaser in a 99-day period plus related administrative charges. The designated official may increase the amount of the surety when necessary to protect the Government's interests, or may decrease the amount of the surety where necessary or appropriate to further the purposes of the Royalty Oil Program.

(b) If a letter of credit is furnished as surety, it must be effective for a 9-month period beginning the first day the royalty oil contract is effective, with a clause providing for automatic renewal monthly for a new 9-month period. The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of the intent to not renew at least 30 days prior to the anniversary date. The MMS may grant the purchaser 45 days to obtain a new surety. If no replacement surety is provided, the MMS will terminate the contract effective at least 6 months prior to the expiration date of the letter of credit.

(c) All sureties must be in a form acceptable to the designated official and must include such other specific requirements as the designated official may require to adequately protect the Government's interests.

(d) Sureties under this Part must be either surety bonds or an irrevocable letter of credit from a financial institution acceptable to the designated official.

§ 208.12 Payment requirements.

(a) All payments to MMS by purchasers of royalty oil entitlements will be due on the date and at the location specified in the contract, or, if there is no contractual provision, as specified by the designated official. The refiners/purchasers shall tender all payments to MMS in accordance with 30 CFR 218.51. Payments made by payors pursuant to the requirements of paragraph (b) of this section and paragraph (b) of § 208.13 shall also be tendered in accordance with 30 CFR 218.51.

(b) Payments not received by MMS when due, or that portion of the payment less than the full amount due, will be subject to a late payment charge equivalent to an interest assessment on the amount past due for the number of days that the payment is late. In addition, MMS may assess a purchaser interest on adjustments to billings for royalty oil when such oil was delivered to a purchaser but not billed in a timely manner. If the oil was delivered late, MMS would assess the payor(s) for interest accrued to the delivery date. The interest rate for such charges will be determined under Section 6621 of the Internal Revenue Code.

(c) If payment for royalty oil is not received by the due date specified in the contract, a notice of nonreceipt will be sent to the purchaser by certified mail. If payment is not received by MMS within fifteen (15) days from the date of such notice, MMS may cancel the contract and collect under the surety.

(d) If the eligible refiner/purchaser disagrees with the amount of payment due, it must pay the amount due as computed by MMS, subject to subsequent adjustment if the amount in dispute is determined to be in error.

§ 208.13 Reporting requirements.

(a) In addition to any other applicable royalty reporting requirements, the lessee/operator shall provide to the designated official a semiannual report, by lease, of the monthly entitlements and actual deliveries of royalty oil to eligible refiners/purchasers on Form MMS-4071, Semiannual Report of RIK Oil Entitlement and Deliveries.

(b) If MMS underbills a purchaser under a royalty oil contract because of erroneous reports or failure to report on Forms MMS-2014 (30 CFR 210.52), the payor will be liable for payment of such underbilled amounts if they are unrecoverable from the purchaser or the surety related to the contract. The payor also shall be liable for interest for such period that any payment for royalty oil was delayed because of a failure to report or underreporting by the payor.

§ 208.14 Civil and criminal penalties.

Failure to abide by the regulations in this Part may result in civil and criminal penalties being levied on that person as specified in sections 109 and 110 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1719-20, and regulations at 30 CFR Part 241. Civil penalties applicable under the OCSLA and the Mineral Leasing Act of 1920 may also be imposed.

§ 208.15 Audits.

Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at such other times as may be directed by a designated official. Such audits will be for the purpose of determining compliance with applicable statutes, regulations, and royalty oil contracts.

§ 208.16 Appeals.

Orders or decisions issued under the regulations in this Part may be appealed as provided in 30 CFR Part 290. Except as provided in 30 CFR 208.12(d), compliance with any such order or decision shall not be suspended by reason of an appeal having been taken unless suspension is authorized in writing by the Director, and then only upon a determination that such suspension will not be detrimental to the Government or upon submission and acceptance of a bond deemed adequate to indemnify the Government from loss or damage.

§ 208.17 Suspensions for national emergencies.

The Secretary of the Interior, upon a recommendation by the Secretary of Defense or the Secretary of Energy and with the approval of the President, may suspend operations under these regulations and suspend royalty oil contracts during a national emergency declared by the Congress or the President.

PART 209—[REMOVED]

30 CFR Part 209 is proposed to be removed.

[FR Doc. 87-1108 Filed 1-16-87; 8:45 am]

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