

(c) Nothing in this section shall be construed to limit the Government's authority or discretion to enter into any settlement agreement or compromise regarding any claim or amount owed.

§ 218.610 Waiver of statute of limitations defense in lieu of offset.

If MMS, under § 218.605(a), has given a payor a notice of intention to collect by offset a claim for which the payor asserts a judicial collection action would be barred by any statute of limitations, the payor may request MMS to accept an agreement that the payor would waive and agree not to assert a limitations defense against collection or enforcement of that claim, to the extent of the amount MMS has proposed to collect by offset, in lieu of collecting the claim by offset.

§ 218.611 Requests for administrative offset directed to other Federal agencies.

(a) The MMS Director or his/her designee may request another Federal agency to administratively offset monies payable by that agency to a payor and transfer such funds to MMS for purposes of collecting a claim owed by that payor.

(b) In requesting such offset, MMS will provide the Federal agency holding the funds with a written certification:

- (1) That the payor owes the claim;
- (2) Of the amount and basis of the claim; and
- (3) That MMS has complied with § 218.605 and with the requirements of 4 CFR part 102.

§ 218.612 Requests for administrative offset received from other Federal agencies.

Any Federal agency may request that monies owed to a payor by MMS in connection with any Federal onshore or offshore lease be administratively offset and transferred to that agency for purposes of collecting a debt which the payor owes to that agency. The MMS shall effect the requested offset only after:

(a) Receipt of a written certification by the creditor agency:

- (1) That the payor owes the debt;
- (2) The amount and basis of the debt;
- (3) That the agency has promulgated regulations for the use of administrative offset; and

(4) That the agency has complied with its own regulations and the applicable provisions of 4 CFR part 102; and

(b) A determination by MMS that collection by offset against funds owed by MMS to the payor would be in the best interests of the United States under the circumstances of the particular case, and that such offset would not otherwise be contrary to law.

§ 218.63 Reduction of tax refunds to satisfy claims.

(a) Under 31 U.S.C. 3720A and 26 CFR 301.6402-6T, MMS may submit notice of any claim in excess of \$25, which has been owed for more than 3 months (but not more than 10 years), and which MMS is unable to collect by administrative offset against amounts owed to the royalty payor by MMS, to the Internal Revenue Service (IRS) for purposes of reducing any refund of Federal taxes owed to the royalty payor and payment of such reduction to MMS in full or partial satisfaction of such claim.

(b) Before submitting a notice to the IRS under paragraph (a) of this section, MMS shall notify the royalty payor by certified mail that it intends to take such action if the claim is not paid within 60 days, as required by 31 U.S.C. 3720A(b)(1). See 30 CFR 243.4 for regulations governing serving of official correspondence.

(c) In connection with MMS notices to the IRS for refund reductions, the available administrative appeals to the MMS Director from decisions or orders of MMS officers under 30 CFR part 290, and from the MMS Director to the Interior Board of Land Appeals under 30 CFR 290.7 and 43 CFR part 4 constitute:

(1) The opportunity for the royalty payor to present evidence that all or part of the debt which is the subject of the claim is not past due or is not legally enforceable; and

(2) The procedure for the Agency to consider any evidence presented by the royalty payor and determine whether the debt which is the subject of the claim is valid, past due and legally enforceable, as required by 31 U.S.C. 3720A(b) (2)-(4). The regulations in this subpart shall not be construed to provide a second opportunity for Agency determination regarding the validity or merits of the claim.

(d) All administrative charges incurred in connection with the referral of any claim to the IRS under 31 U.S.C. 3720A(d) and 26 CFR 301.6402-6T(i), including any fees charged to MMS by the IRS, shall be assessed on the claim and increase the amount of the offset.

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30 CFR Part 218

RIN 1010-AB73

Limitations on Credit Adjustments Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is proposing to amend its regulations at 30 CFR part 218 to prescribe time and other limitations on the reporting of credit adjustments to previous payments made under Federal onshore and Indian oil, gas, and other mineral leases. The proposed amendments also provide for similar limitations on the reporting of certain credit adjustments under Federal offshore leases.

DATES: Comments must be received on or before October 18, 1993.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225-0165, Attention: David S. Guzy, telephone (303) 231-3432.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rulemaking are Geoffrey Heath and Peter J. Schaumburg, Office of the Solicitor, Washington, DC.

I. Background

The MMS administers over 25,000 producing leases for oil, natural gas, coal, other minerals, and geothermal steam underlying Federal lands, Indian tribal and allotted lands, and the Outer Continental Shelf. The MMS is responsible for enforcement of royalty and other payment obligations under applicable statutes, regulations, and lease terms.

All royalty payors submit monthly reports of sales and royalty which separately list, by line, royalties according to each lease, product produced, and selling arrangement. When a payor discovers an overpayment, it usually submits a credit adjustment, i.e., a negative line to cancel the prior report line, together with a new line showing the corrected information. If the credit adjustment

recoups the overpayment by reducing the current royalty paid, otherwise allowed under applicable law then the credit adjustment has resulted in a "credit." Under section 10 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1339 (Section 10), a lessee or payor under an offshore lease must first submit a request for the credit to MMS, which must then report it to Congress and wait a statutorily prescribed period before allowing the credit. Further, the payor must make the request within 2 years of the date of the original payment. MMS plans to issue proposed regulations applicable to refunds and credits under Section 10 in the near future.

Current statute law does not provide for a time limitation on credit adjustments under onshore Federal or Indian leases analogous to that provided in the OCSLA. Therefore, there have been many instances in which payors have reported credit adjustments many years after the original payment, including for time periods for which the payor may be no longer required to maintain records.

II. Discussion of Proposed Rule

The MMS believes that it is appropriate to require specific notice of and express authorization for the above described credit adjustments after several years have passed.

Consequently, MMS is proposing to add a new subpart H, entitled "Limitations on Credit Adjustments," to its regulations at 30 CFR part 218 to establish new regulations governing the reporting of adjustments to previous royalty payments and other amounts paid in connection with any Federal or Indian mineral lease. The proposed new regulations are discussed below.

Section 218.500 Scope of Regulations

This section describes the scope of the proposed regulations under subpart H of 30 CFR part 218. These rules would apply to the reporting of adjustments to previous royalty payments and certain other payments made in connection with Federal and Indian leases. The rules would not apply to adjustments to MMS interest assessments or reporting assessments such as those under 30 CFR 218.40.

Section 218.501 Definitions

This section establishes definitions for purposes of the proposed regulations under subpart H of 30 CFR part 218.

A "credit adjustment" is an adjusting royalty report line which reduces a royalty or other payment reported and paid in a previous period. If a credit adjustment results in a reduction of a

current or future royalties, the payor has taken a "credit." An "offset" is a netting or cancelling of previous overpayments against previous underpayments on the same lease or across lease boundaries if all the individual leases are part of an approved unit or communitization agreement.

Section 218.502 General Time Limits on Credit Adjustments for Onshore Federal and Indian Leases

For onshore Federal and Indian leases, this section would restrict credit adjustments without prior authorization to royalty or other payments due within 5 years before the date of the adjustment, unless otherwise limited by applicable regulation or MMS order. An example, of such a limitation is the coal valuation rules at 30 CFR 206.257(i), which provide that contract revisions or amendments may be applied retroactively to value for royalty purposes for periods no longer than 2 years, unless MMS approves otherwise.

Otherwise allowable credit adjustments could be reported with respect to royalty or other payments made more than 5 years but less than 10 years before the date of the adjustment only after receiving approval from MMS. Credit adjustments with respect to any payment made more than 10 years before the date of the adjustment would be prohibited, with one class of exceptions. A payor, with prior MMS approval, may report a credit adjustment to offset an overpayment against an underpayment on a lease, to the extent the offset does not result in a credit, where the overpayment and underpayment both occur within either the same audit period or the same time period covered by an MMS order to perform a restructured accounting which began more than 10 years before the date that MMS receives the report of the offset and ended within 10 years of that date.

MMS requests comments on the proposed 5- and 10-year time period. MMS specifically requests comments on whether the periods for recoupment on Indian leases should be different than for Federal leases. Comments should include an explanation of the justification for the periods suggested.

Section 218.503 General Time Limits on Credit Adjustments Resulting in Offsets for Federal Leases on the Outer Continental Shelf

Section 10 governs credits and refunds of excess payments under OCS leases. MMS will issue separate regulations applicable to credit adjustments that result in credits on OCS leases. However, offsets of

overpayments against underpayments under a single OCS lease which do not result in credits against current or future royalties due are not subject to Section 10, unless an underpayment was created as a result of a credit adjustment to recoup an overpayment, or was otherwise created intentionally to provide an underpayment against which to offset an overpayment. The reasons why Section 10 does not apply to offsets are explained in two Solicitor's opinions, Refunds and Credits Under the Outer Continental Shelf Lands Act, Sol. Op. M-36942, 88 I.D. 1091 (December 15, 1981), and Applicability of Section 10 of the Outer Continental Shelf Lands Act, Sol. Op. M-36977, _____ I.D. _____ (Jan. 15, 1993).

Therefore, proposed § 218.503 establishes time limits on credit adjustments for OCS leases which result in offsets and not in credits, and which are consistent with the provisions for onshore Federal and Indian leases.

A payor would be allowed to report credit adjustments which result only in offsets without MMS approval for an overpayment which MMS received within 10 years of the date MMS receives the report of the offset. The payor, with prior MMS approval, also may offset an overpayment and an underpayment which both occur within either the same audit period or the same time period covered by an MMS order to perform a restructured accounting which began more than 10 years before the date that MMS receives the report of the offset and ended within 10 years of that date.

MMS again requests comments on the proposed time period. Comments should include an explanation of the justification for any different periods suggested.

Section 218.504 Other Exceptions to Time Limits for Reporting Credit Adjustments for Federal Onshore, Indian, and OCS Leases

This section proposes first that notwithstanding the proposed §§ 218.502 and 218.503, a payor would be prohibited from reporting any credit adjustment for any payment made within a period for which MMS had audited that payor's royalty payments and notified the payor in writing that the audit period was closed, unless the payor obtained MMS approval for reporting the credit adjustment. MMS anticipates that it would not routinely grant such approval. When an audit period is formally closed in writing, transactions within that period normally are regarded as concluded. An exception where approval may be granted would include a situation where

the audit closure specifically reserved one issue as open which was later resolved.

Another example where approval could be granted is if ongoing litigation resulted in changes to transactions within an otherwise closed audit period.

Second, this section proposes that also notwithstanding the proposed §§ 218.502 and 218.503, a payor may report a credit adjustment for a payment made within a period for which that payor is currently being audited only after notifying MMS that it is reporting the credit adjustment. This is necessary to ensure that MMS auditors have current information regarding the effect of subsequent actions by the payor on transactions within the period under audit.

To ensure compliance with this requirement, this section also proposes that if payor fails to notify MMS of the credit adjustment beforehand, MMS has the authority to disallow the credit adjustment and require repayment of any amount recouped with interest.

Proposed audit regulations which MMS is developing will further address a payor's obligation to notify MMS of credit adjustments and other actions it may take affecting a period currently under audit.

Section 218.503 Authority of MMS to Prohibit Credit Adjustments and Related Matters

For all categories of leases, many lessees have asserted that various MMS orders to pay issued in the last few years allegedly are barred by the statute of limitations. Because MMS may administratively offset overpayments under other leases against underpayments under a particular lease for which a judicial action to collect otherwise would be barred, it is appropriate to prohibit recoupments of overpayments to the extent necessary to enable MMS to effectuate such an offset. Thus, under this proposed section, if a payor alleges in an administrative or judicial proceeding that MMS is time-barred from collecting any amount due within 10 years before the date of an MMS order to pay, MMS may prohibit the payor from reporting any credit adjustment which results in a credit, and may disallow any refund request, with respect to any payments made in connection with any other lease for which it paid royalties within the previous 10 years. Thereafter, the payor may not report any credit adjustment which would result in a credit with respect to any payment made in connection with the identified lease without prior MMS approval.

The payor must then report as a credit balance all credit adjustments which otherwise would have resulted in credits, until the aggregate of the credit balances equals the amount which the payor claims is time-barred, together with interest on the amount claimed by MMS. MMS would issue instructions, in the *MMS Payor Handbook* or otherwise, regarding specific procedures. After the aggregate credit balance equals the amount specified, the payor may resume reporting otherwise allowable credit adjustments without further MMS approval, except that MMS may require that the credit balance be increased to reflect increased interest accruals. The MMS would not apply the aggregate credit balance against the amount which the payor claims is time-barred through administrative offset until the amount becomes a "claim" as defined in 30 CFR 218.602 of proposed new regulations governing collection of royalties, interest, and other amount due under Federal and Indian mineral leases by administrative offset as provided under the Debt Collection Act of 1982. Those proposed regulations are published elsewhere in this issue of the *Federal Register*.

If MMS issues an order to a payor pursuant to proposed § 218.505(a) directing the payor not to report certain credit adjustments, and if the payor reports adjustments in contravention of that order, then MMS may issue a Notice of Noncompliance for civil penalties pursuant to 30 CFR part 241 and 30 U.S.C. 1719.

Paragraph (b) of this section would provide that in lieu of prohibiting credit adjustments and recoupments, MMS may be willing in many instances to accept the payor's agreement to waive and not assert a limitations defense against a judicial enforcement or collection action of the amount which the payor claims is time-barred, together with interest on the amount claimed by MMS. The proposed subsection 218.503(b) allows the payor to request MMS to accept such an agreement.

Under paragraph (c) of this section, MMS could establish threshold amounts for any category of leases, above which a payor may not report a credit adjustment which results in a credit without prior MMS approval. The MMS also could require a payor to refrain from reporting a credit adjustment for any amount submitted for approval for a reasonable period of time as MMS may need to verify the nature and amount of any overpayment.

Section 218.506 Effect of Time-Bar Defenses on Audit Practice

Paragraph (a) of this section clarifies the law and current practice that MMS may apply any overpayments made in connection with an underpaid lease, which are discovered upon audit, to satisfy the allegedly time-barred underpayment.

Paragraph (b) of this section clarifies that MMS will first offset a payor's overpayments and underpayments on the same lease which occurred within the same audit period or within 10 years of the date MMS asserts the offset, whichever is longer, beginning with the oldest underpayment first, before holding any net overpaid amount for application to underpayments under any other lease through administrative offset. For example, if there is an underpayment which was discovered during the audit of a prior period and which occurred within ten years of the date MMS asserts an offset, and the payor alleges that MMS is time-barred from recovering such underpayment, if MMS discovers a larger overpayment in the audit of the current period, MMS will offset first against the underpayment on the same lease.

Similarly, if the payor previously had been instructed not to report any credit adjustments for its overpayments on that lease and had established a credit balance under § 218.503, all or part of the credit balance would be applied first to any net underpayment by the payor on the same lease. If, after such application, the payor still is net overpaid, MMS may then hold the balance to be applied to underpayments on other leases through administrative offset.

Paragraph (c) of the proposed § 218.506 would provide two exceptions to this priority. The first is that MMS would offset overpayments and underpayments occurring in consecutive months, where both the overpayment and the underpayment arise because a volume of production reported for one production month should have been reported for the immediately preceding or immediately succeeding production month, before applying the rule of paragraph (b). The purpose of this exception is that MMS recognizes that on many occasions, production is inadvertently reported for the immediately preceding production month or the immediately succeeding production month and royalties have otherwise been paid correctly. Such reporting errors should be corrected before offsetting an overpayment against an unrelated underpayment.

The second exception is the analog of the first exception when the error occurs in the "cross-lease netting" context. Recently promulgated regulations at 30 CFR 218.42(b) (57 FR 62200 (Dec. 30, 1992)) address this situation. If a reporting error falls within that regulation, the allowed cross-lease offset should be reported before an overpayment is applied to an unrelated underpayment on the same lease.

Section 218.507 Relationship of Credit Adjustments to Known Underpayments

Payors have continued to report credit adjustments to recoup overpayments occurring in particular months even though known underpayments from other (particularly earlier) periods under the same lease are still outstanding and unpaid, including known underpayments with respect to which the payor claims MMS is barred by a statute of limitations from collecting. Proposed § 218.507 addresses this situation. In the event there are known underpayments from any other period under the same lease, it requires the payor to apply the amount which would have been recouped from current month's royalties as a result of a credit adjustment (or for which the payor would have requested a refund) to underpayments on the same lease, including, but not limited to, underpayments which the payor asserts MMS is time-barred from collecting, and to revise its royalty reports for the underpaid period accordingly.

The payor would be required to offset the overpayment against the oldest known underpayments first, including interest owed thereon, which occurred within a defined period. Underpayments subject to such offset would be those which occurred either (1) within 10 years of the date MMS receives the report of the offset (or the date MMS should have received the report of the offset if the payor had acted diligently after discovery of the overpayment and underpayment), or (2) within either the same audit period or the same time period covered by an MMS order to perform a restructured accounting as the overpayment occurred, if that period began more than 10 years before the date MMS receives the report of the offset and ended within 10 years of that date.

There would be two exceptions to this priority similar to those applicable under the proposed § 206.506. Notwithstanding the general rule, a payor should first offset overpayments and underpayments occurring in consecutive months, where both the overpayment and the underpayment arise because a volume of production

reported for one production month should have been reported for the immediately preceding or immediately succeeding production month. A payor also should first offset related overpayments and underpayments subject to the "cross-lease offsetting" regulation at 30 CFR 218.42(b).

The requirements of this proposed section would not apply to situations where the MMS has alleged that the payor has underpaid but the payor disputes the liability in an administrative appeal or judicial proceeding (on grounds other than time bar), and has posted an adequate surety instrument for amounts due which have been calculated. This provision reflects current MMS practice and is consistent with a recent decision of the Assistant Secretary for Land and Minerals Management, *Office of the State Controller of California*, MMS-92-0278-O&G (Jan. 15, 1993).

Section 218.508 Effect of Offsets on Late Payment Interest

This section specifies that in cases where overpayments have been offset against underpayments, late payment interest charges under applicable law and regulations will be assessed only on the net underpayment, if any, remaining after offset.

Section 218.509 Exceptions

This section specifies that adjustments resulting from any of the following are not within the limitations prescribed under the proposed rule:

- (a) The retroactive effect of a unitization or communitization agreement; and
- (b) Changes in allowed estimated payments;

The MMS also is proposing to make the final rule effective as of the date that this proposed rule is published in the *Federal Register*. The MMS specifically would like comments on the proposed effective date.

The final rule would apply to credits or proposed credits that would be subject to reporting after the effective date of the rule but that would apply to royalty and other payments for production months prior to the date of the rule.

The policy of the Department of the Interior (Department) is, whenever practicable, to afford 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 ADDRESSES section of this preamble. Comments must be received on or before the date

identified in the DATES section of this preamble.

Procedural matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rulemaking would establish time limitations on the reporting of credit adjustments to previous payments made under Federal onshore and Indian oil, gas, and other mineral leases. There are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfer, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral

resources, Reporting and recordkeeping requirements.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is proposed to be amended as follows:

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

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

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

2. A new subpart H is added to read as follows:

Subpart H—Limitations on Credit Adjustments

Sec.

- 218.500 Scope of regulations.
- 218.501 Definitions.
- 218.502 General time limits on credit adjustments for onshore Federal and Indian leases.
- 218.503 General time limits on credit adjustments resulting in offsets for Federal leases on the Outer Continental Shelf.
- 218.504 Other exceptions to time limits for reporting credit adjustments for Federal onshore, Indian, and OCS leases.
- 218.505 Authority of MMS to prohibit adjustments credits and related matters.
- 218.506 Effect of time-bar defenses on audit practice.
- 218.507 Relationship of credit adjustments to known underpayments.
- 206.508 Effect of offsets on late payment interest.
- 218.509 Exceptions.

Subpart H—Limitations on Credit Adjustments

§ 218.500 Scope of regulations.

The provisions of this subpart apply to the reporting of adjustments to previous royalty payments and other amounts, excluding interest and reporting assessments, paid in connection with any lease issued by the Secretary under any law providing for the disposition under lease of oil, gas, coal, any other mineral, or geothermal steam, from any onshore Federal land or interest in land onshore or Indian tribal or allotted land, in which result either in credits against current royalty payments or refunds, or in offsets of

previous overpayments against previous underpayments on the same lease or unit. In addition, §§ 218.503 through 218.509 also apply to offsets of overpayments and underpayments on leases on the Outer Continental Shelf (OCS). Credits and refunds of excess payments made under Federal leases on the OCS are governed by section 10 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1339 (Section 10) and not the rules in this subpart.

§ 218.501 Definitions.

For the purpose of this subpart:

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

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

Lease means any lease issued by the Secretary under any law providing for the disposition under lease of oil, gas, coal, any other mineral, or geothermal steam, from any Federal land or interest in land or Indian tribal or allotted land, or, for purposes of §§ 218.503 through 218.509 only, from the Outer Continental Shelf. For purposes of this subpart, the term "lease" also applies to a unit where reporting is done on a unit basis.

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

Payor means any person, as defined in 30 U.S.C. 1702(12), who pays royalty or other payments under any lease, and includes the payor's predecessors in interest and successors in interest.

§ 218.502 General time limits on credit adjustments for onshore Federal and Indian leases.

Subject to other provisions of this subpart, and subject to the limitations of subpart I of this part, payors under onshore Federal and Indian leases:

(a) may report otherwise allowable credit adjustments with respect to payments made within 5 years before the date of the adjustment without advance approval of MMS, unless otherwise limited by applicable regulations or MMS order;

(b) may report otherwise allowable credit adjustments with respect to

payments made more than 5 years but less than 10 years before the date of the adjustment only after receiving MMS approval; and

(c) shall not report any credit adjustment with respect to any payment made more than 10 years before the date of the adjustment, except that a payor, after receiving MMS approval, may report a credit adjustment to offset an overpayment against an underpayment which both occur within either the same audit period or the time period covered by an order to perform a restructured accounting, the beginning of which is more than 10 years before the date that MMS receives the Form MMS-2014 that includes the report of the offset and the end of which is within 10 years of that date, to the extent such offset does not result in a credit.

§ 218.503 General time limits on credit adjustments resulting in offsets for Federal leases on the Outer Continental Shelf.

A payor may offset an overpayment made on any OCS lease (or unit) against an underpayment made in any prior month on that same lease or unit for the same or a different product without submitting a request for refund or credit under Section 10, to the extent that reporting a credit adjustment does not result in a credit, if the underpayment was not created as a result of a credit adjustment to recoup the amount of the overpayment, or was not otherwise created intentionally to provide an underpayment against which to offset the overpayment, and either—

(a) MMS received the overpayment within 10 years of the date that MMS receives the Form MMS-2014 that includes the report of the offset; or

(b) the overpayment and underpayment occurred within either the same audit period or the time period covered by an order to perform a restructured accounting, the beginning of which is more than 10 years before the date that MMS receives the Form MMS-2014 that includes the report of the offset and the end of which is within 10 years of that date, and the payor receives MMS approval to report the offset.

§ 218.504 Other exceptions to time limits for reporting credit adjustments for Federal onshore, Indian, and OCS leases.

(a) Notwithstanding the provisions of §§ 218.502 and 218.503, a payor shall not report any credit adjustment for any payment made within a period for which MMS had audited that payor's royalty payments and notified the payor in writing that the audit period was closed, without MMS approval.

(b) Notwithstanding the provisions of §§ 218.502 and 218.503, a payor may

report a credit adjustment for a payment made within a period for which MMS is currently auditing that payor's payments only after notifying MMS that it is reporting the credit adjustment. If a payor fails to notify MMS of the credit adjustment, MMS may disallow the credit adjustment and require that any amount recouped be repaid with interest computed in accordance with 30 CFR part 218.

§ 218.505 Authority of MMS to report credit adjustments credits and related matters

(a) (1) Following any allegation by any payor in any administrative or judicial proceeding that MMS is time-barred from collecting any amount from that payor which was due within 10 years before the date of an MMS order to pay the amounts due, MMS may issue an order prohibiting the payor from reporting any credit adjustment which results in a credit with respect to any payment made in connection with any lease for which that payor paid royalties or other payments within 10 years before the date of such order, and may disallow any refund request with respect to any such lease. After a payor has received such an order, the payor shall not report any credit adjustment which results in a credit on a Form MMS-2014 or any other royalty report form with respect to any payment made in connection with any lease identified in the order without prior MMS approval.

(2) For all leases identified in the order issued under paragraph (a)(1) of this section, the payor shall, pursuant to instructions which MMS shall issue in the "MMS Payor Handbook" or otherwise, report as a credit balance all credit adjustments which otherwise would have resulted in credits. The payor shall not recoup the credit balance.

(3) The payor shall continue to report credit balances pursuant to paragraph (a)(2) of this section until the aggregate of the credit balances equals the amount which the payor claims is time-barred, together with interest thereon through the date of the order issued under paragraph (a)(1) of this section and for 1 year in advance, as specified in such order.

(4) After the aggregate credit balance established pursuant to paragraph (a)(2) of this section equals the amount specified in the order, the payor may resume reporting otherwise allowable credit adjustments which result in credits without further MMS approval, except that MMS may periodically require that the credit balance be increased through the procedure provided in paragraphs (a)(1) through

(a)(3) of this section to reflect increased interest accrued.

(5) The MMS will not apply the aggregate credit balance against the amount which the payor claims is time-barred by way of administrative offset until the amount which MMS alleges the payor owes becomes a "claim" as defined in 30 CFR 218.602.

(b) If MMS have issued an order under paragraph (a) of this section prohibiting the payor from reporting any credit adjustment which results in a credit with respect to any payment made in connection with any lease, MMS may limit or remove the prohibition if the payor agrees in writing that the payor waives and agrees not to assert a limitations defense against collection or enforcement of the amount which the payor claims is time-barred, together with interest on the amount MMS claims.

(c) The MMS Director or his/her designee may:

(1) by notice published in the Federal Register or through amendment to the MMS payor handbooks, or otherwise by order establish threshold amounts for any lease or category of leases, above which a payor may not report a credit adjustment to any previous payment made for any production month under any lease which results in a credit without prior MMS approval, under such procedures as may be prescribed; and

(2) order any payor to not recoup or report a credit adjustment which results in a credit for any amount submitted for approval for such reasonable period of time as may be necessary for MMS to verify the nature and amount of any overpayment. A payor may not divide the amount of any prior payment for any production month under any lease to be recouped through use of a credit adjustment into smaller increments to be recouped or reported as successive credit adjustments in successive months for purposes of avoiding the requirements of this subpart.

§ 218.506 Effect of time-bar defenses on audit practice.

(a) Following any allegation by any payor in any administrative or judicial proceeding that MMS is time-barred from collecting any amount due from that payor with respect to any lease, MMS may apply any overpayments, determined in accordance with paragraph (b) of this section, made in connection with that lease by that payor which are discovered upon audit to satisfy the allegedly time-barred underpayment.

(b) If a payor has made an overpayment with respect to a lease,

MMS first will offset that overpayment against that payor's underpayments on the same lease, which occurred within the same audit period or within 10 years of the date MMS asserts the offset, whichever is longer, beginning with the oldest underpayment first. Any net overpayment remaining after such offset may be held for application to any claim resulting from an underpayment under any other lease through administrative offset.

(c) (1) Notwithstanding paragraph (b) of this section, MMS will first offset overpayments and underpayments occurring in consecutive months where both the overpayment and the underpayment arise because a volume of production reported for one production month should have been reported for the immediately preceding or immediately succeeding production month.

(2) Notwithstanding paragraph (b) of this section, if a payor demonstrates that an overpayment which MMS has used to offset against underpayments on a lease pursuant to paragraph (b) would be subject to offsetting against a related underpayment on a different lease pursuant to 30 CFR 218.42(b), MMS will first account for the allowed cross-lease offset before applying the overpayment to an underpayment on the same lease.

§ 218.507 Relationship of credit adjustments and refund requests to known underpayments.

(a) If a payor otherwise would report a credit adjustment which would result in a credit, or otherwise would request a refund of an amount previously paid, under circumstances where there are known underpayments occurring in any other period under the same lease, the payor shall apply the amount which otherwise would have been recouped from current month's royalties, or for which a refund would have been requested, as an offset against any known underpayment under that lease (including, but not limited to, underpayments which the payor asserts MMS may not collect because of a statute of limitations) as prescribed in paragraph (b) of this section.

(b)(1)(i) Any overpayment shall be offset first against the oldest known underpayments, including interest owed thereon, occurring on the same lease:

(A) within 10 years of the date that MMS receives the Form MMS-2014 that includes the report of the offset, or the date that MMS should have received the report of the offset if the payor had acted diligently after discovery of the overpayment and underpayment; or

(B) within either the same audit period or the same time period covered

by an MMS order to perform a restructured accounting as the overpayment occurred, the beginning of which is more than 10 years before the date that MMS receives the Form MMS-2014 that includes the report of the offset and the end of which is within 10 years of that date.

(ii) The payor shall revise its royalty report for the underpaid period accordingly.

(2)(i) Notwithstanding paragraph (b)(1) of this section, a payor shall first offset overpayments and underpayments occurring in consecutive months where both the overpayment and the underpayment arise because a volume of production reported for one production month should have been reported for the immediately preceding or immediately succeeding production month.

(ii) Notwithstanding paragraph (b)(1) of this section, a payor shall first offset an overpayment subject to offsetting against a related underpayment on a different lease pursuant to 30 CFR 218.42(b), before applying the overpayment to an underpayment on the same lease.

(c) This section does not apply in any case where the MMS has alleged that the payor has underpaid but the payor disputes the liability for additional royalties (on grounds other than time bar) in an administrative appeal or judicial proceeding, and has posted an adequate surety instrument under part 243 of this title or other applicable law for amounts due which have been calculated.

§ 218.508 Effect of offsets on late payment interest.

If a payor offsets overpayments against underpayments pursuant to this subpart, late payment charges pursuant to 30 U.S.C. 1721(a) or 30 CFR part 218 shall be assessed each month only on the net amount of underpayment, if any, remaining after the offset.

§ 218.509 Exceptions.

Adjustments in reporting resulting from any of the following shall not be considered to be credit adjustments within the meaning of this subpart:

(a) The retroactive effect of a unitization or communitization agreement;

(b) Changes in allowed estimated payments.

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Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840, 842 and 843

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; State Inspection and Enforcement Authority, Federal Inspection and Enforcement Authority

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability of a petition to initiate rulemaking and request for comment.

SUMMARY: OSM is seeking comments concerning the rule changes suggested in a petition submitted pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The petitioners seek to revise the regulations addressing the oversight role and responsibilities of OSM in States, which have been delegated primary responsibility over the regulation of surface coal mining and reclamation operations by the Secretary of the Interior. The petition focuses on the treatment of citizen complaints alleging violations at surface coal mining operations and citizen complaints alleging that a State permitting decision does not conform to applicable requirements. The petition suggests OSM amend its regulations at 30 CFR parts 840, 842 and 843 relating to the issuance of Federal ten-day notices of States, handling by OSM of potentially improvidently issued or allegedly deficient permits, and processing of citizen complaints that allege either on-the-ground violations or defects in State-issued permits. Comments will assist the Director of OSM in making the decision whether to grant or deny the petition.

DATES: OSM will accept written comments on the petition until 5 p.m. Eastern time on September 16, 1993.

ADDRESSES: Mail comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660-NC, 1951 Constitution Avenue, NW., Washington, DC. 20240; or hand-deliver the comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Stocker, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington,

D.C. 20240; Telephone (202) 208-2550 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background and Substance of Petition
- III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the suggested change should be specific, should be confined to issues pertinent to the proposed revision, and should explain the reason for the comment. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see DATES) or delivered to an address other than those listed (see ADDRESSES) may not necessarily be considered or included in the Administrative Record on the petition.

Availability of Copies

Additional copies of the petition, copies of 30 CFR parts 840, 842, and 843, and other OSM regulations are available for inspection and may be obtained at the location listed under ADDRESSES.

Public Hearings

OSM will not hold public hearings on the proposed revision, but OSM personnel will be available to meet with the public during business hours 9 a.m. to 5 p.m. during the comment period. In order to arrange such a meeting, call or write to the person identified under FOR FURTHER INFORMATION CONTACT.

II. Background and Substance of Petition

OSM received a letter dated July 16, 1992, from Gregory E. Conrad transmitting a petition for rulemaking on behalf of the Interstate Mining Compact Commission, a multi-State governmental organization representing 17 eastern and midcontinent States. The petitioners requested that 30 CFR parts 840, 842 and 843 be amended to address the oversight role of OSM in States where a State regulatory program is in effect. The petition focuses on the treatment of citizen complaints alleging violations at surface coal mining operations and citizen complaints alleging that a State permit decision does not conform to applicable requirements. The text of the petition appears at the end of this notice.

Under section 201(g) of SMCRA, any person may petition Director of OSM to initiate a proceeding for the issuance amendment, or repeal of any of the regulations implementing SMCRA.