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August 6, 2010

VIA ELECTRONIC FILING

Hyla Hurst, Regulatory Specialist
Minerals Management Service
Minerals Revenue Management
Docket No. MMS–2009–MRM–0005
P.O. Box 25165, MS61013B
Denver, Colorado 80225

RE: Comments of the American Petroleum Institute on Proposed Rulemaking for Debt Collection and Administrative Offset for Monies Due the Federal Government Federal Register 75, No. 109, Tuesday, June 8, 2010 - Docket No. MMS–2009–MRM–0005

Dear Ms. Hurst,

The American Petroleum Institute (API) appreciates the opportunity to provide attached comments on the proposed rulemaking for Debt Collection and Administrative Offset for Monies Due the Federal Government published in the June 8, 2010 *Federal Register*.

API is a national trade association representing more than 400 member companies involved in all aspects of the oil and natural gas industry. Those members include producers, refiners, suppliers, pipeline operators and marine transporters, as well as service and supply companies that support all segments of the industry. API member companies work daily to accurately report and provide payment on royalties to the federal, state and tribal governments, as well as other parties of interest. Therefore, we have direct interest in this rulemaking.

API understands the importance of procedural clarity for debt collection and referral to Treasury when imminent. However, our members share several concerns regarding debt notification and communication related to a notice of debt before Treasury referral becomes necessary. Attached please find comments addressing our concerns.

If you have any questions concerning API's position, please contact Allison Nyholm at (202)682-8453. Thank you for consideration of these comments.

Sincerely,

Erik Milito

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Comments of the American Petroleum Institute on Proposed Rulemaking for Debt Collection and Administrative Offset for Monies Due the Federal Government Federal

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The proposed rules would codify the current practices and supplement the Federal Claims Collection Standards regulations promulgated by the departments of Treasury and Justice by prescribing procedures necessary and appropriate for the former Minerals Management Service, now Bureau of Ocean Energy Management, Regulatory Enforcement (BOEMRE). Promulgation of regulations outlining BOEMRE's debt collection and referral procedures to Treasury will be useful to regulated companies, and API hopes through our comments to help the bureau achieve clear and effective guidance. Our concerns are included in the following points:

- A bill or demand letter may be received for many reasons, including that the original invoice was misdirected or never received, or the original charge could have been for another company but the operating rights owner received the bill. After significant research, some bills are found to have been paid. Better communication would ensure early resolution of demand letters. Additionally, these items could be cleared earlier in the process if the information provided by industry was addressed in a more timely manner.

- The claimed "nonpayment" referred to Treasury has sometimes been caused by errors on BOEMRE's part, such as misapplying payments or generating duplicate interest bills. We encourage BOEMRE to dedicate time and resources to accuracy of its internal accounting.

- Treasury has sometimes duplicated offsets, so that it has collected the same debt twice. When this occurs, BOEMRE can refund the duplicate payment, but the duplicate fee charged by Treasury cannot be recovered. Treasury should be given authority to remit the duplicate fee charged.

- Limited detail is provided on demand notices making it difficult to respond, thus collection efforts escalate. Better information is needed to resolve collections in a timely manner. It is our understanding that additional information exists in the *Statement of Account* system that could assist in resolving debt. Access to the additional information from the *Statement of Account* should be provided to the payor for timely bill resolution.

- Before a "Potential Treasury Recovery" notice is sent, every effort should be made by the BOEMRE to resolve the debt collection before turning over the bill to the U.S. Treasury.

- Electronic notification of indebtedness should be provided via e-mail to facilitate timely resolution of debts and decrease billing errors.

Currently, the Bureau of Ocean Energy Management, Regulatory Enforcement applies an administrative offset policy to debt collection not paid within the allotted time. Amounts are offset on a payment or refund that the federal government may owe. In such cases it is difficult to know where the offset occurs, increasing the potential for cascading debt collection notices due to differing accounting and reporting records of affected companies and the federal government once an administrative offset occurs. In this case, a company may believe that their records are reconciled while the federal government continues to impose fines and fees for unknown debts. No system is identified in this notice to reconcile records.

Our comments specific to sections of the proposed rules are the following:

- Although Section II (Explanation of Proposed Amendments) of Supplementary Information states BOEMRE's intent to broaden the definition of "lessee" definition broader under 30 CF Part 218 from Part 290, different definitions under the Parts would create the potential for confusion, ambiguity and inconsistent results. The definition in 30 CFR 218 should not expand the potential liability of a party's debts of another owner in the same property. Regulations regarding the underpayment or nonpayment of royalties by a responsible party should not deviate from definitions set forth in the Royalty Simplification and Fairness Act.

- 218.702(b) refers to "other agreements" but does not provide a definition or illustration of agreements not otherwise identified in this subpart.

- 218.702(b) would provide that BOEMRE will refer to Treasury "any past due, legally enforceable nontax debt that is delinquent." The term "past due" is not defined. It would appear to be covered by the definition of "delinquent," so it may be appropriate to simply delete "past due." Alternatively, adding a definition for "past due" would support BOEMRE's stated goal of prescribing procedures specifically applicable to BOEMRE operations.

- 218.702(b) would provide that BOEMRE will refer these accounts to Treasury "within 180 days from" the date the debt became delinquent. We interpret this to mean that BOEMRE could refer the debt much sooner than 180 days. This creates confusion when compared to 218.703(a) (6) and (8), which describe situations in which enforced collection can be avoided. It also creates confusion when read with 218.704(b), which says that penalties will not be assessed until the debt is 90 days old, and that they will be assessed at the time the debt is referred to Treasury. It is unclear if BOEMRE intends to refer debts to Treasury before they are 90 days old.

- A revision of the draft regulation so that it shows the chronological order of the process BOEMRE intends to follow would help to clarify these questions.

- 218.704 (b) refers to penalties of 6% per year. The existing regulation at 31 CFR 901.9(d) says penalties “not to exceed 6%”. The “not to exceed” language is preferable because it gives the bureau flexibility to adjust penalties to the nature of the specific situation.

- 218.705 indicates that a payor may have its ability to engage in leasing either suspended or revoked if it “inexcusably or willfully” fails to pay. “Inexcusably” is not defined, and is a subjective term subject to interpretation. Given that revoking or suspending a payor’s ability to engage in leasing is a harsh remedy, we would suggest that the term “inexcusably” be either deleted or carefully defined.

- 218.705 states that when BOEMRE recommends to BIA or BLM that a debtor’s lease be suspended, they will recommend that the suspension “should only last as long as the debtor’s indebtedness”. We agree with that limitation, but would point out that the regulation does not apply that limitation to federal OCS leasing. Thus, we suggest that the concept that that the suspension “should only last as long as the debtor’s indebtedness” be added to the first sentence of 218.705.

- 218.705 states that a payor is barred from engaging in federal OCS leasing, licensing, etc in the event of “inexcusably or willfully” failing to pay. With such a harsh penalty, this section should clearly state the payor’s appeal rights and reference applicable appeal regulations. Further, the payor should have a right to not only file an APA challenge, but also seek relief through the judicial appeals process. To accomplish this end, the decision to bar from leasing, licensing, etc. should be made by an assistant secretary of the Department of Interior.

Overall, before an additional $436 administrative fee is imposed on an uncollected bill or notice, the bureau should use every means to resolve the debt collection and minimize the notices of referral to the U.S. Treasury; we welcome the opportunity to work collaboratively to achieve this end. Improved communications will reduce the administrative effort and the time needed to resolve these issues promptly.