be effective from January 1, 1995, through March 31, 1995. This rate represents an increase of .75 percent from the rate in effect for the fourth quarter of 1994. This rate is based on the prime rate in effect on December 15, 1994.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects in 29 CFR Part 2644**

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

## PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table a new entry to read as follows:

**Appendix A to Part 2644—Table of Interest Rates**

* * * * *

| From | To | Date of quotation | Rate (percent) |
|---|---|---|---|
| * | * | * | * |
| 1/01/95 | 3/31/95 | 12/15/94 | 8.50 |

Issued in Washington, DC, on this 10th day of January 1995.

**Martin Slate,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 95–967 Filed 1–12–95; 8:45 am]

BILLING CODE 7708–01–M

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 218

**RIN 1010–AB40**

## Regulations Governing Recoupment of Overpayments on Indian Mineral Leases

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** The Minerals Management Service (MMS) is amending its Royalty Management Program regulations to codify longstanding policy with respect to recoupment of overpayments made by lessees and other payors on Indian mineral leases. The established policy is that recoupments cannot exceed 50 percent of the reported revenues in the current month on an allotted lease or 100 percent of the reported revenues in the current month on a tribal lease.

**EFFECTIVE DATE:** February 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** David S. Guzy, Chief, Rules and Procedures Staff at (303) 231–3432, FAX (303) 231–3194.

**SUPPLEMENTARY INFORMATION:** The principal author of this final rule is Marvin D. Shaver of the Royalty Management Program, Rules and Procedures Staff, Lakewood, Colorado.

### I. Background

In the Notice of Proposed Rulemaking (55 FR 3232, January 31, 1990), MMS described the current policy regarding recoupment of overpayments made by lessees and other payors on Indian mineral leases. As stated in the proposed rule, royalty payments on production from mineral leases are a major source of income to many Indian allottees and tribes and, for some allottees, the only source.

The current policy permits lessees and payors to recoup overpayments as a credit against future rental or royalty accruals due to Indian tribes or allottees. Lessees and operators were instructed to follow the recoupment policy in ''Notice to Lessees and Operators of Indian Oil and Gas Leases No. 1A'' (NTL–1A), issued by the Conservation Division of the U.S. Geological Survey in 1977. Section IX of NTL–1A provided that in the case of tribal leases the credit must be against the same lease or, with approval of the tribe, against amounts due under other tribal leases. In the case of allotted leases, such credits were limited to the lease on which the overpayments were made with recovery of the overpayment prorated over a period of time necessary to prevent an allottee's current monthly revenue being reduced by more than 50 percent. This recoupment policy was adopted by MMS and instructions were included in Volume II of the MMS ''Oil and Gas Payor Handbook'' by Addendum No. 12, effective December 1, 1983. Also, instructions were included in the revised MMS ''Oil and Gas Payor Handbook'' issued in December 1986 (Section 3.7, ''Reporting Indian Overpayment Recoupments''). The instructions are also included in the MMS ''AFS Payor Handbook—Solid Minerals'' issued in September 1984 (Chapter 5, ''Recoupments on Indian Leases''). These payor handbooks have been provided to all royalty payors on Federal and Indian leases for specific guidance with respect to reporting requirements on oil and gas and solid mineral leases.

MMS published in the **Federal Register** revised final oil and gas product valuation regulations at 30 CFR Part 206 on January 15, 1988, effective March 1, 1988 (53 FR 1184 and 53 FR 1230). Paragraph 206.150(e)(2) of the revised regulations terminated NTL–1A. However, MMS' policy and procedure remained in the payor handbooks.

Although the Indian lease overpayment recoupment policy has been the same for many years, MMS has determined that its regulations should state the policy. Consequently, MMS published the January 31, 1990, proposed rulemaking to codify the policy and procedure. In response to the proposed rule, MMS received comments from four lessees/payors and other interested parties. All of these comments were considered in the final rule and are discussed in Section II below. The final rule is summarized in Section III below.

**II. Comments Received on Proposed Rule**

The proposed rule provided for a 30-day public comment period, which ended March 2, 1990. Four commenters (three industry and one Indian representative) submitted comments during the comment period which are addressed in this section.

*Comment:* The Indian representative objected to the proposed requirement that BIA approval be obtained before lessees and payors could recoup more than 50 percent of the monthly reported revenues on an individual allotted lease. This objection was based on the commenter's opinion that BIA is ill-equipped to make an independent determination of the propriety of any claimed overpayment. Because there is an obvious adverse impact on allottees subject to recoupment, this commenter recommended that the final rule require prior consultation and concurrence of the affected allottee regarding requests from lessees and payors to recoup more than 50 percent of reported revenues in an individual month.

*Response:* MMS agrees with the commenter's recommendation with respect to affected Indian allottees. However, in many situations, it may be impractical to obtain concurrence for more than a 50 percent recoupment from all affected Indians in a timely manner. Therefore, the final regulation was changed and no longer provides for such an exception to the 50 percent recoupment limitation on allotted leases.

*Comment:* One industry commenter agreed with the proposed recoupment procedure and in general with the proposed limitation. However, the commenter expressed concern regarding the need for expeditious handling of requests for recoupments in excess of the limitation. The commenter emphasized that it was important that the request for any recoupment above the limitation be processed timely, unless interest could be recovered by the lessee on the overpayment.

*Response:* Since the final regulation no longer provides for recoupments in excess of the limitations, expeditious handling of such requests is a moot point. In regard to interest on overpayments, MMS does not have legal authority to pay interest on overpayments made by lessees and payors.

*Comment:* Another industry commenter agreed that MMS regulations should establish the recoupment policy. However, this commenter questioned the necessity for the requirement that written permission be obtained from a tribe before overpayments made on one lease could be recouped from a different tribal lease. In this commenter's opinion, a lessee or payor should be able to take a credit and recoup any overpayment against any and all of its producing leases with that tribe without requiring that tribe's approval, because the tribe's revenue is generally not limited to a single lease.

*Response:* Royalty payments on production from mineral leases are a major source of income to many tribes. When a lessee or payor can recoup an overpayment against payments due on all producing tribal leases without permission, the tribe cannot plan the distribution of royalty revenues with reasonable accuracy.

In order that the tribe may plan for decreases in royalty revenues, MMS has determined that a payor must obtain written permission from the tribe to recoup overpayments made on one tribal lease from a different tribal lease. Paragraphs 218.53(b) and 218.203(b) of the final rule require that the payor provide MMS with a copy of the tribe's written permission in accordance with instructions provided in the ''Oil and Gas Payor Handbook'' and the ''AFS Payor Handbook—Solid Minerals''.

*Comment:* A different industry commenter who was in general support of the proposed rule stated that a strict application of the policy may, in some cases, be inequitable. For example, if a lessee or payor is required to make a payment to an Indian allottee on a Bill for Collection that is under appeal and the lessee or payor prevails on the appeal, the lessee/payor may not be able to recoup if the company is no longer the payor on the lease or the level of production on the lease has declined to a point where recoupment is not an adequate remedy. In this commenter's opinion, it would not be good policy in these situations to allow an allottee to keep the payment and prevent the lessee from otherwise obtaining a refund. The commenter recommended that the final rule allow lessees to obtain a cash refund when recoupment is an inadequate remedy.

*Response:* MMS recognizes the merit of this commenter's concerns. However, this situation can be avoided if the payor, in accordance with 30 CFR 243.2, elects to post a surety pending a decision on the appeal rather than submitting payment. If the appellant prevails on its appeal, the surety would be returned and recoupment or refund of a payment would not be necessary. If the payor elects to submit payment and is not able to recoup the payment, MMS does not have legal authority to refund the payment from general funds, but can seek a special congressional appropriation for the amount of any refund due to the payor.

*Comment:* One industry commenter state that any rulemaking that would deny or delay recovery of any overpayment, other than under a strict statute of limitations imposed equitably on both the Indian(s) and lessee, would be a violation of Executive Order 12630, ''Government Actions and Interference with Constitutionally Protected Property Rights.''

*Response:* A continuing payor with sufficient recoupable balances would not be denied recoupment of any overpayment under the proposed or final rule. MMS has determined that the procedures set forth in the proposed or final rule do not violate E.O. 12630.

**III. Summary of Final Rule**

This final rulemaking codifies MMS' longstanding policy with respect to recoupment of overpayments made by lessees and other royalty payors on Indian mineral leases by the addition of new sections at 30 CFR 218.53 (previously reserved) and 30 CFR 218.203. Overpayments subject to recoupment under the adopted rule include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by statute, regulation, order, or terms of an Indian mineral lease.

The final rule permits lessees and payors to recoup overpayments as credits against reported revenues due to Indian tribes or allottees in the current month on the same lease. Specifically, the final rule allows recoupment of overpayments not to exceed 50 percent of reported revenues in that month on an allotted lease or 100 percent of the reported revenues in that month on a tribal lease. A payor may recoup an overpayment made on one tribal lease from a different tribal lease only if written permission is authorized by tribal statute or resolution.

The final rule also provides that MMS may issue an order to a payor prohibiting recoupment of any amount for a reasonable period of time as MMS may need to review the nature and amount of any overpayment. Situations may arise in which a payor believes it has made an overpayment and is entitled to recoup the overpaid amount. However, the payor in fact may not have overpaid, and should not be allowed to recoup since recoupments reduce the Indian lessor's expected revenues. The authority in paragraph (d) of both § 218.53 and § 218.203 allows MMS to prevent the payor from taking the recoupment until the fact that the payor has overpaid and the amount of the

overpayment have been reviewed. MMS expects to use this authority only in limited circumstances, such as when there is information suggesting there has been no overpayment, or where the proposed recoupment would be extraordinarily large and result in reduced revenues for a long period of time to the Indian lessor.

## IV. Procedural Matters

*The Regulatory Flexibility Act*

The Department certifies that this rule 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 rule is needed to conform regulations to existing policy and practice.

*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 under 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.

*Executive Order 12866*

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

*Paperwork Reduction Act of 1980*

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0022.

*National Environmental Policy Act of 1969*

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) 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 transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: November 28, 1994.

**Bob Armstrong,**

*Assistant Secretary—Land and Minerals Management.*

For the reasons set out in the preamble, 30 CFR part 218 is amended as set forth below:

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

1. The authority citation for Part 218 continues to read as follows:

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

2. Section 218.53 (previously reserved) under Subpart B (Oil and Gas, General) is added to read as follows:

**§ 218.53 Recoupment of overpayments on Indian mineral leases.**

(a) Whenever an overpayment is made under an Indian oil and gas lease, a payor may recoup the overpayment through a recoupment on Form MMS–2014 against the current month's royalties or other revenues owed on the same lease. However, for any month a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month under an individual allotted lease or more than 100 percent of the royalties or other revenues owed in that month under a tribal lease.

(b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe's written permission must be furnished to MMS pursuant to instructions for reporting recoupments in the MMS ''Oil and Gas Payor Handbook.'' See 30 CFR 210.53. Recouping overpayments on one allotted lease from royalties paid to another allotted lease is specifically prohibited.

(c) Overpayments subject to recoupment under this section include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by statute, regulation, order, or terms of an Indian mineral lease.

(d) The MMS Director or his/her designee may order any payor to not recoup any amount for such reasonable period of time as may be necessary for MMS to review the nature and amount of any claimed overpayment.

3. A new § 218.203 under Subpart E (Solid Minerals, General) is added to read as follows:

**§ 218.203 Recoupment of overpayments on Indian mineral leases.**

(a) Whenever an overpayment is made under an Indian solid mineral lease, a payor may recoup the overpayment through a recoupment on Form MMS–2014 against the current month's royalties or other revenues owed on the same lease. However, for any month a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month under an individual allotted lease or more than 100 percent of the royalties or other revenues owed in that month under a tribal lease.

(b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe's written permission must be furnished to MMS pursuant to instructions for reporting recoupments in the ''AFS Payor Handbook—Solid Minerals.'' See 30 CFR 210.204. Recouping overpayments on one allotted lease from royalties paid to another allotted lease is specifically prohibited.

(c) Overpayments subject to recoupment under this section include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by statute, regulation, order, or terms of an Indian mineral lease.

(d) The MMS Director or his/her designee may order any payor to not recoup any amount for such reasonable period of time as may be necessary for MMS to review the nature and amount of any claimed overpayment.

[FR Doc. 95–854 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–MR–M

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### 32 CFR Part 323

**[Defense Logistics Agency Reg. 5400.21]**

### Privacy Act; Implementation

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Defense Logistics Agency adopts an exemption to a system of