

DEPARTMENT OF THE INTERIOR**Minerals Management Service****30 CFR Part 208****RIN 1010-AC70****Small Refiner Administrative Fee**

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) proposes to eliminate the fees it recovers from small refiners participating in the small refiner royalty-in-kind (RIK) program. MMS believes that the fees are no longer justified under the requirements of Office of Management and Budget (OMB) Circular No. A-25.

DATES: Comments must be submitted on or before November 27, 2000.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225-0165. You may also comment via the Internet to RMP.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1010-AC70" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact David S. Guzy, MMS, RMP, at (303) 231-3432. Finally, you may hand-deliver comments to Building 85, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225-0165; telephone (303) 231-3432; FAX (303) 231-3385; e-mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Larry Cobb of the Royalty Management Program (RMP), MMS, and Sarah L. Inderbitzin of the Office of the Solicitor, Department of the Interior.

I. Background

Congress established the small refiner royalty-in-kind (RIK) program to ensure a diversified refining base essential for the national interest and defense.

Regulations at 30 CFR Part 208 define the MMS process for awarding RIK volumes to small refiners.

Small refiner eligibility requirements for onshore leases are defined in 30 CFR part 208 and are based on the Emergency Petroleum Allocation Act, and by regulations of the Small Business Administration for offshore leases. Under the small refiner program, MMS takes its royalty portion of production from one or more Federal leases "in kind" (as opposed to taking the royalty "in value" or cash) and sells it to a qualifying small refiner under an RIK contract. The goal of the program is to keep small refiners economically viable by providing:

1. Access to a crude oil marketplace where integrated oil companies and larger refiners account for the majority of the crude oil traded;
2. A stable source of supply at equitable prices to sustain operations at or near normal operating capacity; and
3. A vital source of trade stock, thereby creating the opportunity to "exchange" royalty oil for the quality or type of crude oil feed stock needed to sustain their mix of refined products.

Before recent program changes, small refiners took delivery of the royalty oil MMS had awarded them from designated Federal lessees/producers. After the lessees reported to MMS the value of the crude oil they had supplied, MMS then billed the small refiners according to those values.

If MMS later determined that the values lessees reported understated the market value of the oil, MMS billed the small refiners for additional payments. This process created much uncertainty for both MMS and the small refiners and, in some cases, threatened the financial solvency of the small refiners when they received large bills from MMS.

MMS required small refiners to pay a cost recovery fee to cover MMS's direct and indirect costs of running the small refiner program. In 1999, small refiners paid about \$430,000 to cover the Government's costs. Because fewer refiners participated in the program in 1999 than in previous years, their individual shares of the full cost increased to cover the entire program.

Small refiners had said they were dropping out of the program as a result of the pricing liabilities. Participation in the program declined from 13 refiners in 1995 to only five in 1999. Refiners cited the great uncertainty about the ultimate price of the RIK oil as a major impediment to the effective operation of their businesses.

MMS now conducts a competitive bidding process for all eligible small

refiners. Small refiners must bid on the oil using market-based prices, and MMS selects the highest bidders (highest offered prices) for each RIK sale. The market-based prices are applicable spot market prices, with appropriate location, quality, and market-value adjustments for a particular area.

The revised program procedures greatly streamline royalty-in-kind oil sales resulting in a more efficient, business-like approach. The process assures that MMS receives market value for its in-kind production, provides small refiners with greater pricing certainty by avoiding the potential for retroactive charges, and eliminates the administrative burdens of value auditing and billing.

II. Explanatory Information

Because of the new competitive procedures for selling RIK oil, MMS receives market value for the oil and, therefore, believes the cost recovery fee under 30 CFR 208.4(b)(4) is no longer justified under the requirements of OMB Circular No. A-25. Therefore, in this rulemaking MMS is proposing to remove the fee provision from the regulations.

OMB Circular No. A-25 (July 8, 1993) established guidelines for Federal agencies to assess fees under the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701, to cover the costs of Government-provided services or benefits beyond those accruing to the general public. In determining the amount of user fees to assess, section 6a.2.(b) of OMB Circular No. A-25 states:

Except as provided in Section 6c, user charges will be based on market prices (as defined in Section 6d) when the Government, not acting in its capacity as sovereign, is leasing or selling goods or resources, or is providing a service (e.g., leasing space in federally owned buildings). Under these business-type conditions, user charges need not be limited to the recovery of full cost and may yield net revenues.

Section 6.d.2. describes market price as the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service. Under the current RIK program, MMS: (1) Is not acting in its capacity as a sovereign in the sale of RIK oil, and (2) is receiving market prices for the oil. When disposing of the RIK production under a contractual agreement in the market place, MMS acts in the same manner as other entities selling production in the marketplace. That is, MMS's role as a seller of RIK production to small refiners is divorced

from its role as lessor in receiving RIK production from Federal lessees.

Further, OMB Circular No. A-25 states that when a substantial competitive demand exists for a good, resource, or service its market price will be determined using commercial practices, for example:

(1) competitive bidding; or

(2) by reference to prevailing prices in competitive markets for goods, resources, or services that are the same or similar to those provided by the Government * * * with adjustments as appropriate that reflect demand, level of service, and the quality of the good or service.

OMB guidelines do not limit Federal agencies to the recovery of actual costs when disposing of goods that have market value. Under procedures now in place, by receiving market value, MMS will not only recover the value of the oil sold but also the direct and indirect costs of conducting the sale. Therefore, MMS is in compliance with OMB guidelines and does not need to assess a separate cost recovery fee for the small refiner program.

Accordingly, MMS proposes to discontinue assessing the cost recovery fees currently recovered under 30 CFR 208.4(b)(4) by removing that paragraph in the regulation.

III. Procedural Matters

1. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet site at www.rmp.mms.gov. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

2. Summary Cost and Benefit Data

We have summarized below the economic impacts of this rule to the three affected groups: industry, State and local governments, and the Federal Government. This cost and benefit

information in this Item 2 of Procedural Matters is used as the basis for the Departmental certifications in Items 3-11.

A. Industry

The revised small refiners royalty-in-kind program and this associated rule will benefit small refiners by—

- Eliminating the separate cost recovery fee;
- Providing certainty in the prices they will pay for the royalty oil; and
- Reducing administrative costs due to a more efficient, commercial-like sales procedure.

B. State and Local Governments

Currently, only oil produced from offshore leases is offered for sale in the small refiner RIK program. States are unaffected by the offshore RIK program because only those offshore leases where 100 percent of the royalty revenues belongs to the Federal Government are designated for inclusion in the program. Should the small refiner program be expanded to onshore leases, States will incur their pro rata share of the cost of administering the onshore portion of the RIK program and will receive their share of royalties, per applicable revenue distribution formulas.

C. Federal Government

With the changes to the RIK program that created the need for this rule, MMS will no longer have to rely on prices reported by third-parties and impose separate cost recovery fees because it will receive full market value for its royalty oil. Moreover, because it will now recover market value, MMS believes that the financial impact to the government of the elimination of the cost recovery fee, if any, will be nominal.

Also, MMS will achieve administrative savings because it will no longer have to take action to collect the additional monies owed by small refiners when later audits show that prices quoted by lessees understated the oil's market value.

3. Regulatory Planning and Review (E.O. 12866)

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

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

4. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant adverse effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Alternatively, the small refiner program provides noteworthy benefits to eligible small refiners including:

- Access to a crude oil marketplace where the major integrated oil companies and large refiners account for the majority of the crude oil traded;
- A stable source of supply at equitable market-based prices which helps the small refiner sustain operations at or near normal operating capacity; and
- A vital source of trade stock, thereby creating the opportunity to "exchange" royalty oil for the quality or type of crude oil feed stock needed to sustain their mix of refined products.

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1-888-734-3247.

5. Small Business Regulatory Enforcement Act (SBREFA)

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

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

6. Unfunded Mandates Reform Act

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

7. Takings (E.O. 12630)

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. This rule does not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

8. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this proposed rule does not have Federalism implications. This rule does not substantially or directly affect the relationship between the Federal and State governments or impose costs on States or localities.

9. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

10. Paperwork Reduction Act of 1995

This proposed rule does not contain an information collection, as defined by the Paperwork Reduction Act, and the submission of Office of Management and Budget Form 83-I is not required.

11. National Environmental Policy Act

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

List of Subjects

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources.

Dated: September 18, 2000.

Sylvia V. Baca,

Assistant Secretary—Land and Minerals Management.

For reasons set forth in the preamble, MMS proposes to amend 30 CFR part 208 as follows:

PART 208—SALE OF FEDERAL ROYALTY OIL

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

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

2. In § 208.4, remove paragraph (b)(4).

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BILLING CODE 4310-MR-P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

36 CFR Part 1600

RIN 3320-AA02, 3320-AA00

Public Availability of Information and the Privacy Act; Implementation

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation.

ACTION: Proposed rule.

SUMMARY: This document sets forth the proposed implementation regulations of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (the Foundation) under the Freedom of Information Act (FOIA) and Privacy Act.

DATES: Submit comments on or before October 26, 2000.

ADDRESSES: Address all comments concerning this proposed rule to General Counsel, Morris K. Udall Foundation, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701-1650.

FOR FURTHER INFORMATION CONTACT: Ellen K. Wheeler, General Counsel, at (520) 670-5299.

SUPPLEMENTARY INFORMATION: These proposed regulations implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231), and the Privacy Act of 1974, 5 U.S.C. 552a. They apply to all Foundation programs, including the U.S. Institute for Environmental Conflict Resolution (USIECR). The Foundation proposes the following set of regulations to discharge its responsibilities under the FOIA and Privacy Act. The FOIA establishes: Basic procedures for public access to agency records and guidelines for waiver or reduction of fees the agency would otherwise assess for the response to the records request; categories of

records that are exempt for various reasons from public disclosure; and basic requirements for federal agencies regarding their processing of and response to requests for agency records. The Privacy Act establishes: Basic procedures for individuals' access to all records in systems of records maintained by the Foundation that are retrieved by an individual's name or personal identifier. These proposed rules describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Foundation. The Foundation invites comments from interested groups and members of the public on these proposed regulations.

Regulatory Flexibility Act

The Foundation, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Foundation will be nominal. Further, the "small entities" that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 36 CFR Part 1600

Administrative practice and procedure, Freedom of information, Privacy.

For the reasons set forth in the preamble, the Morris K. Udall Foundation proposes to amend Title 36 CFR by adding a new Chapter XVI consisting of Part 1600 to read as follows: