

DEPARTMENT OF THE INTERIOR**Minerals Management Service****30 CFR Part 218**

[Docket No. MMS-2009-MRM-0005]

RIN 1010-AD36

Debt Collection and Administrative Offset for Monies Due the Federal Government**AGENCY:** Minerals Management Service (MMS), Interior.**ACTION:** Proposed rule.

SUMMARY: The MMS is proposing to promulgate regulations establishing procedures to implement the provisions governing collection of delinquent royalties, rentals, bonuses, and other amounts due under leases and other agreements for the production of oil, natural gas, coal, geothermal energy, other minerals, and renewable energy from Federal lands onshore, Indian tribal and allotted lands, and the Outer Continental Shelf (OCS). The MMS also is responsible for enforcement of royalty and other payment obligations under applicable statutes, regulations, leases, agreements, and contracts.

DATES: Comments must be submitted on or before August 9, 2010.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010-AD36 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the entry titled “Enter Keyword or ID,” enter MMS-2009-MRM-0005, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. The MMS will post all comments.

- Mail comments to Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 61013B, Denver, Colorado 80225.

- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For comments or questions on procedural issues, contact Hyla Hurst, Regulatory Specialist, Minerals Revenue

Management (MRM), MMS, telephone (303) 231-3495. For questions on technical issues, contact Sarah Inderbitzin, Office of Enforcement, MRM, MMS, telephone (303) 231-3748.

SUPPLEMENTARY INFORMATION:**I. Background**

The MMS is responsible for the collection, accounting, and disbursement of billions of dollars per year in bonus, rental, royalty, and other revenues derived from leases and other agreements for the production of oil, natural gas, coal, geothermal energy, other minerals, and renewable energy from Federal lands onshore, Indian tribal and allotted lands, and the Outer Continental Shelf (OCS). The MMS also is responsible for enforcement of royalty and other payment obligations under applicable statutes, regulations, leases, agreements, and contracts.

The MMS undertakes current debt collection activities under the DCA (Pub. L. 97-365), as amended by the DCIA (Pub. L. 104-134), (codified at 31 U.S.C. 3711, 3716-18, and 3720A). The DCIA was enacted primarily to increase collection of nontax debts owed to the Federal Government. Among other provisions, the DCIA centralized the administrative collection of most delinquent nontax debt at the U.S. Department of the Treasury’s Financial Management Service to increase the efficiency of collection efforts. Government agencies are now required to transfer nontax debt that has been delinquent for 180 days or less to Treasury for further collection action, including administrative offset.

This proposed rule is intended to implement statutory provisions of the DCA and DCIA, and to adopt the Government-wide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS) (31 CFR parts 900-904). This proposed rule would supplement the FCCS by prescribing procedures necessary and appropriate for MMS operations. The DCIA grants MMS discretionary authority in many aspects of debt collection, and this proposed rule would define the parameters of this authority.

Under current debt collection practice:

- For Federal and Indian delinquent debts and civil penalty notices, MMS sends a written notice to debtors either (1) With an invoice; (2) after the due date of an invoice; or (3) after the receipt date of an unpaid Form MMS-2014, Report of Sales and Royalty Remittance (OMB Control Number 1010-0140).

- For Federal oil and gas leases, if MMS sends a written notice to the payor, then MMS also sends written notice to the lessees and operating rights owners.

The MMS allows the debtor 60 days from the date of the written notification to either pay the debt or enter into a payment agreement with MMS. A debtor may also appeal the debt to MMS under 30 CFR part 290 or part 241. If the debtor fails to take one of these actions, MMS refers the delinquent debt to Treasury within 180 days of when the debt became delinquent.

II. Explanation of Proposed Amendments

Before reading the explanatory information below, please turn to the proposed rule language, which immediately follows the List of Subjects in 30 CFR part 218 and signature page in this proposed rule. This language will be codified in the Code of Federal Regulations (CFR) if this rule is finalized as written.

After you have read the proposed rule language, please return to the preamble discussion below. The preamble contains additional information about the proposed rule, such as why we defined a term in a certain manner, why we chose a certain procedure, and how we interpret the laws this rule implements.

We are proposing to add a new subpart to codify and enhance current MMS debt collection practices. The new subpart is proposed at 30 CFR part 218, subpart J—Debt Collection and Administrative Offset. Following is a section-by-section explanation of the new subpart (omitting sections that require no further explanation):

A. 30 CFR 218.700 What definitions apply to the regulations in this subpart?

Subsection (a) would define “administrative offset” in a manner essentially identical to its definition in the DCIA (31 U.S.C. 3701(a)(1)).

Subsection (b) would define “agency” in a manner essentially identical to its definition in the DCIA (31 U.S.C. 3701(a)(4)).

Subsection (e) would clarify that “day” means a calendar day. The MMS further clarifies that, in determining the ending date for a particular period of time, the last day of the period must be counted unless it is a Saturday, Sunday, or Federal holiday.

Subsection (f) would define “debt” and “claim” in a manner similar to the definition in the DCIA (31 U.S.C. 3701(b)). However, subsection (f) omits the examples of types of debts or claims included in 31 U.S.C. 3701(b) as

unnecessary and potentially confusing. It is our intention that “debt” and “claim” be read synonymously and broadly to encompass any and all amounts that are determined to be due the United States from any entity, other than a Federal Agency. For example, “debt” or “claim” would include, but is not limited to, royalties and other lease revenues and monies due under (1) A royalty-in-kind purchase agreement; (2) a Bureau of Land Management (BLM) storage agreement; or (3) a Department of Interior (DOI) contract, agreement, license, easement, permit, or right-of-way. With two changes, subsection (f) essentially would adopt verbatim the 31 U.S.C. 3701(b)(2) definition of “debt” or “claim” in relation to administrative offsets. The word “money” would be included in subsection (f) to ensure that the scope of definition of “debt” and “claim” is not inadvertently limited by 31 U.S.C. 3701(b)(2)’s reference only to “funds or property.” The phrase “by a person” would be struck from this portion of subsection (f) because it is redundant and potentially limiting to the first sentence of subsection (f).

Subsection (g) would broadly define “debtor.” Thus, subsection (g) would encompass not only lessees and payors, but also any entity covered by the definition of “person” in subsection (s), and any contractor or other entity that owes a debt to the Department related to Federal or Indian energy or mineral resources.

Subsection (n) would define “legally enforceable” to mean that there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset consistent with the definition at 31 CFR 285.5. A final agency determination may include, but is not limited to, a bill, order, MMS Director’s decision, or Interior Board of Land Appeals decision that you neither pay nor appeal.

Subsection (o) would broadly define “lessee” to cover any record title holder, assignee, operating rights owner, or any other person or entity who holds an interest in a lease, easement, right-of-way, contract, or other agreement, regardless of form, for the development or use of Federal or Indian minerals or other resources for which MMS collects monies or other compensation. The definition in subsection (o) is broader than the definition of “lessee” in 30 CFR part 206 because it is intended to apply to holders of leases and other contracts and agreements for any type of Federal and Indian minerals and resources.

Subsection (r) would include “payors” within the scope of debtors subject to this rulemaking. Therefore, subsection

(r) would define a “payor” as a person responsible for payment obligations on all Indian mineral leases, as well as Federal solid and geothermal leases, regardless of whether the payor is also a lessee.

Subsection (s) would broadly define “person” as, effectively, any person or entity of any kind that owes a debt to the United States, other than the United States.

Subsection (t) would define “tax refund offset.” The DCA authorizes this type of offset under 31 U.S.C. 3720A. Section 3720A allows an agency to notify Treasury of certain delinquent debts and have the amount of the debt withheld from any tax refund to which the debtor would otherwise be entitled.

B. 30 CFR 218.701 What is MMS’s authority to issue these regulations?

Subsection (a) would identify and cite the statutory and regulatory authority for this proposed regulation.

Subsection (b) would specifically adopt the FCCS and would clarify that this proposed regulation supplements the FCCS. Supplementation is necessary to adapt portions of the FCCS to better meet the needs of MMS, to comply with certain provisions of the FCCS requiring agency-specific regulation (i.e., 31 CFR 901.9(h)), and to exercise certain discretionary authorities granted MMS by the DCIA and FCCS. To the degree that a matter is addressed in both the FCCS and this proposed regulation, we will follow this proposed regulation in lieu of the FCCS parallel provision.

C. 30 CFR 218.702 What happens to delinquent debts a debtor owes MMS?

Subsection (a) specifies that MMS would follow the procedures contained in this proposed regulation in its debt collection activities. Subsection (a) is not intended to imply that the proposed rule would be the sole source of debt collection procedures available to MMS. As noted above and in proposed section 218.701(b), MMS adopts the provisions of the FCCS and is governed by the FCCS collection standards to the extent that one of those standards is not specifically addressed in this proposed regulation.

Subsection (b) would implement 31 U.S.C. 3711(g)(1), which requires Federal agencies to transfer nontax delinquent debt to Treasury within 180 days of when the debt becomes delinquent. This would allow Treasury to take appropriate action to collect the debt or terminate the collection action in accordance with 5 U.S.C. 5514, 26 U.S.C. 6402, 31 U.S.C. 3711 and 3716, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

Transferring debts to Treasury advances the statutory goal of the DCIA to centralize the administrative collection of nontax debt with Treasury’s Financial Management Service. This centralization allows us to focus our efforts on collecting more recent debt and on working with willing debtors to reach agreements to repay their debts. It also ensures consistent application of debt collection procedures regardless of which Federal Agency is owed the debt.

D. 30 CFR 218.703 What notice will MMS give to a debtor of our intent to collect a debt?

Subsection (a) would implement 31 U.S.C. 3716(a), under which an agency must give notice to the debtor of certain matters before collecting a claim by administrative offset. Subsection (a) would explain that we will (1) Provide notice to a debtor of the type and amount of the claim, the methods of offset we may employ, and the availability of opportunities for the debtor to inspect and copy records related to the debt; (2) obtain internal agency review of our decision regarding the debt; and (3) describe how the debtor may request to enter into a written agreement with MMS to repay the debt.

Subsection (a) also would explain that the notice we send the debtor will include (1) our policy concerning the interest, penalty charges, and administrative costs MMS may assess against the debtor; and (2) the date by which the debtor must pay the debt to avoid added late charges and enforced collection activities. In addition, subsection (a) would explain that the notice MMS gives the debtor will provide contact information for the appropriate MMS employee or office for the debtor to contact regarding the debt. It is our intent to provide the debtor with notice of these additional factors to ensure the debtor is fully informed of the financial consequences of continued failure to pay. It is further intended that, by providing the debtor with contact information for the appropriate personnel and office, the debtor will be encouraged to work with us voluntarily to pay the debt, and thus to lessen the need to refer debt to Treasury for administrative offset and additional collection activities.

Subsection (b) would clarify that 218.703(a)(8) does not allow a debtor to reopen matters pertaining to orders and demands, notices of violations, or civil penalties, which are subject to MMS appeals regulations at 30 CFR part 290 or part 241. The procedures under part 290 and part 241, and the

complementary procedures specified in 43 CFR part 4, establish a comprehensive system by which certain MMS decisions may be appealed to the MMS Director, Interior Board of Land Appeals, or Office of Hearings and Appeals Hearings Division. This system includes time limits for filing an appeal and an explanation of when a party has exhausted its administrative remedies. These provisions are essential to establishing when an MMS decision becomes final and determining the legal rights of both MMS and the entity that is the subject of our decision. By including subsection (b), we ensure part 290 and part 241, and the important purposes they serve, are not circumvented by an appeal of an MMS decision on debt.

E. 30 CFR 218.704 What is MMS's policy on interest, penalty charges, and administrative costs?

Subsection (a)(1) would ensure conformance with 31 U.S.C. 3717(a)(1) and 31 CFR 901.9(a), both of which require Federal agencies to charge interest on all outstanding debts owed to the United States.

Subsection (a)(2) would clarify 31 CFR 901.9(b)(1), which specifies that “[i]nterest shall accrue from the date of delinquency, or as otherwise specified by law.” We are specifying that interest begins to accrue from the date that the debt becomes delinquent unless otherwise specified by law or lease terms. Our intent in including this language is to assure that we comply with the unique requirements of law, such as the interest provisions of the Royalty Simplification and Fairness Act (RSFA), which states that a royalty obligation on Federal oil and gas leases becomes due the end of the month after the month of production (30 U.S.C. 1724(c)(2)). In such instances, although the principal royalties may be due 60 days after the order is issued, interest would accrue from the end of the month following the month of production until the debt is paid, not from 60 days after the order until the debt was paid. The same holds true for all mineral leases, which may have unique interest requirements that would dictate when interest begins to accrue.

Subsection (a)(3) specifies that MMS would use the interest and late payment charge calculation and other provisions contained in 30 CFR 218.54 and 218.102 to assess interest due on debts involving Federal and Indian oil and gas leases. However, the rule would provide that this is the case unless otherwise specified by lease terms because some non-standard mineral leases have unique interest requirements. In such

cases, the lease terms regarding interest would apply.

Subsection (a)(4) explains that MMS would apply the interest provisions for Federal and Indian solid mineral (including coal) and geothermal leases found in 30 CFR 218.202 and 218.302.

Subsection (b) explains that MMS would assess a penalty of 6 percent on any delinquent debt that is more than 90 days from the date of delinquency that it refers to Treasury consistent with the DCIA (31 U.S.C. 3717(e)(2)) and FCCS (31 CFR 901.9(d)). The penalty would accrue from the date of delinquency through the date MMS refers the debt to Treasury. It is important to note that penalties and interest will continue to accrue on any debt referred to Treasury. However, Treasury will assess and collect those amounts.

The penalty would accrue not only on the delinquent debt, but also on any interest accrued through the date of referral and on the \$436 in administrative costs we would assess under paragraph (c) of this section explained below. For example, assume you receive an order to pay \$1,000 in additional royalties due on Federal oil and gas leases, and the order gives you 60 days to pay the bill (due date), but you do not pay. Assuming accrued interest is \$100 on the day the debt is referred to Treasury, we will refer \$1,628 to Treasury, calculated as follows:

$$\begin{aligned} \$1,000 \text{ royalties} + \$100 \text{ interest} + \\ \$436 \text{ administrative costs} = \$1,536 + \\ \$92 \text{ penalty charge (6 percent} \times \\ \$1,536 = \$92.16, \text{ rounded to } \$92) = \\ \$1,628. \end{aligned}$$

Like Federal Oil and Gas Royalty Management Act (FOGRMA) civil penalties (30 U.S.C. 1719), the DCIA does not designate where MMS should deposit penalties collected. Therefore, as in the case of FOGRMA civil penalties, MMS would deposit such monies in the Treasury General Fund. Unlike FOGRMA, the DCIA does not provide that civil penalties can be shared with states and tribes in certain circumstances (30 U.S.C. 1736). Because we have no such statutory authority, we will not share penalties collected under this rule with any state, county, or tribe.

Subsection (c) explains that MMS would assess \$436 in fees for administrative costs for each referral of debt to Treasury incurred because of the debtor's failure to pay the debt. Consistent with the FCCS (31 CFR 901.9(c)), we calculated the \$436 administrative cost we propose to assess in this rule based on our estimate of the average actual costs we incur to refer debts to Treasury. Administrative costs include (1) the cost of providing a copy

of the file to the debtor; and (2) the costs incurred in processing and handling the debt because it became delinquent; e.g., costs incurred in obtaining a credit report or in using a private collection contractor or service fees charged by a Federal Agency for collection activities undertaken on our behalf.

The debt referral tasks are currently performed by employees paid at the United States 2009 General Schedule, Grade 12 pay-scale level, and at the Grade 13 pay-scale level. On average, the current time it takes for these employees to refer debts to Treasury is an MMS burden of 2 hours for the Grade 13 employee, plus 5 hours for the Grade 12 employee(s) for each referral. The hourly labor cost is calculated as follows:

$$\begin{aligned} \$39.35 \text{ per hour (2009 GS-12, Step 5)} \\ \times 1.5 \text{ (benefits factor)} = \$59.03; \text{ and} \\ \$46.80 \text{ per hour (2009 GS-13, Step 5)} \\ \times 1.5 \text{ (benefits factor)} = \$70.20. \end{aligned}$$

We calculated the estimated administrative costs proposed under this rule as follows:

$$\begin{aligned} 5 \text{ hours} \times \$59.03 \text{ (GS-12, Step 5)} + 2 \\ \text{hours} \times \$70.20 \text{ (GS-13, Step 5)} = \\ \$435.55, \text{ rounded to } \$436 \text{ (which} \\ \text{includes the benefits factor), per} \\ \text{referral.} \end{aligned}$$

Because our administrative costs will increase with time, paragraph (c) would also provide that MMS may publish a notice of any such increase in the *Federal Register*.

Subsection (d) would meet the requirement of 31 CFR 901.9(h), that agency regulations address the imposition of interest and related charges during periods in which debts are under appeal. Subsection (d) does so by specifying that an appeal would not toll the accrual of interest, penalties, or administrative costs.

Subsection (e) explains how MMS would apply partial or installment payments a debtor makes on delinquent debts sent to Treasury. We would apply any such partial or installment payments first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

Subsection (f) would remove any ambiguity regarding our authority and intent to impose interest, penalty charges, and administrative costs for debt not subject to 31 U.S.C. 3717. We impose a variety of charges on outstanding obligations under other statutory or regulatory authority.

Subsection (g) would implement and define the discretionary authority granted to MMS in 31 U.S.C. 3717(h) for the Director to waive collection of accrued interest, penalty charges, or

administrative costs. Consistent with 31 CFR 901.9(g), subsection (g) would provide that MMS may decide to waive collection of all or portions of these costs as part of a compromise, or if we determine that collection would be against equity and good conscience, or not in “the Government’s best interest.” In determining what constitutes “the Government’s best interest,” we will consider the interests of the Federal Government, Indian tribes, states, and the United States as a whole, consistent with our mission to collect, account for, and disburse revenues. This approach is consistent with 31 CFR 901.9(g), which qualifies “best interest” as being the best interest of the United States. “Equity,” “good conscience,” and “best interests” are all inherently subjective.

In keeping with the discretionary nature of our authority to collect and waive collection of charges, subsection (h) would specify that our decision to collect or waive is final for the Department and not subject to administrative review.

F. 30 CFR 218.705 What is MMS’s policy on revoking the ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?

Section 218.705 would explain MMS’s discretion, consistent with 31 CFR 901.6(b), to recommend suspension or revocation of a debtor’s ability to engage in Federal or Indian leasing activities when a debtor inexcusably or willfully fails to pay a debt. This section is intended to give debtors an incentive to take diligent and prompt action to pay their debts. For offshore leases that MMS issues, MMS may directly use the authority provided in 31 CFR 901.6(b) to revoke a debtor’s ability to engage in leasing activities. The MMS may not itself revoke a debtor’s ability to engage in leasing activities conducted by BLM and the Bureau of Indian Affairs (BIA); we are constrained to making recommendations to these bureaus. This section would ensure debtors are aware that certain failures to pay may have significant consequences that are not directly related to the specific debt.

G. 30 CFR 218.706 What debts can MMS refer to Treasury for collection by administrative and tax refund offset?

Subsection (a) would incorporate the pertinent requirements of regulations governing the referral to Treasury of debt for collection through administrative and tax refund offset in 31 CFR 901.3, 285.2, and 285.5. Thus, this subsection would limit the claims that MMS may refer for offset to claims that are (1) Past due, (2) legally

enforceable, and (3) at least \$25.00 or another amount established by Treasury, provided that the debtor has had notice for at least 60 days and that the debt or claim has not been delinquent for more than 10 years. Subsection (a) also would exclude from referral any claims for offset of any Federal oil and gas lease obligations for which offset is precluded under 30 U.S.C. 1724(b)(3).

Subsection (b) clarifies that the time restrictions noted in subsection (a) would not limit our authority to refer to Treasury, for tax refund offset, those debts that have been included in court-ordered judgments.

III. Procedural Matters

1. Summary Cost and Royalty Impact Data

This is a technical rule formalizing and enhancing current MMS debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. The proposed changes explained above would have no royalty impacts on industry, state and local governments, Indian tribes and individual Indian mineral owners, and the Federal Government. Industry would incur additional administrative costs and penalties under this proposed rulemaking.

A. Industry

(1) Royalty Impacts. None.

(2) Administrative Costs. The MMS would assess \$436 for recovery of administrative costs for each referral of debt to Treasury. We calculated the \$436 administrative costs proposed in this rule based on our estimate of the average actual costs we incur to refer debts to Treasury.

(3) Penalties. The MMS would assess a penalty of 6 percent on the principal, interest, and administrative costs on any delinquent debt that is more than 90 days from the date of delinquency consistent with the DCIA (31 U.S.C. 3717(e)(2)), and FCCS (31 CFR 901.9(d)). (See Section II Explanation of Proposed Amendments.)

B. State and Local Governments

(1) Royalty Impacts. None.

(2) Administrative Costs—State and Local Governments. The MMS determined that this proposed rule would have no administrative costs for state and local governments.

(3) Penalties. None.

C. Indian Tribes and Individual Indian Mineral Owners

(1) Royalty Impacts. None.

(2) Administrative Costs. The MMS determined that this proposed rule

would have no administrative costs to Indian tribes and individual Indian mineral owners.

(3) Penalties. None.

D. Federal Government

(1) Royalty Impacts. None.

(2) Administrative Costs. The proposed rule would have no net administrative costs to the Federal Government. All administrative costs to the Government incurred as a result of collection activities would be recovered from industry.

(3) Penalties. Based on historical data, we estimate that approximately \$79,380 in penalties would be referred annually to Treasury. We estimate the annual penalties as follows:

- The average number of delinquent debts referred annually = 300.
- The average amount referred (principal and interest) annually = \$2,569,214.
- Administrative costs recovered of \$436 × 300 debts = \$130,800.
- Amount on which to base 6 percent penalty = \$2,700,014 (\$2,569,214 (royalties plus interest) + \$130,800 (administrative costs)).
- Assuming all debts were 179 days past due at the time of referral (because MMS has 180 days to refer the debt), penalties referred annually = \$79,380 (179/365 × 6 percent = 0.0294 × \$2,700,014 = \$79,380).

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

This document is not a significant rule, and the Office of Management and Budget (OMB) has not reviewed this proposed rule under Executive Order 12866. We have made the assessments required by E.O. 12866, and the results are given below.

a. This proposed rule would not have an effect of \$100 million or more on the economy. It would 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. This is a technical rule formalizing and enhancing current MMS debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. The impact to industry would be additional administrative costs, including penalties. We estimate administrative costs, including penalties, to be less than \$500,000 per year.

b. This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This proposed rule would not alter the budgetary effects of entitlements,

grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This proposed rule would not raise novel legal or policy issues.

3. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would 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.*). This proposed rule would affect large and small entities but would not have a significant economic effect on either. Based on historical data, we estimate that the proposed rule would affect approximately 85 small entities per year.

4. Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

a. Would not have an annual effect on the economy of \$100 million or more. This is a technical rule formalizing and enhancing current MMS debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. Industry would incur fees for administrative costs and penalties for failure to pay a delinquent debt to the Federal Government. These administrative costs and penalties would be avoided by paying delinquent debts owed to the Federal Government accurately and timely.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

c. Would 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.

5. Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on state, local, or tribal governments, or the private sector of more than \$100 million per year. This proposed rule would 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.

This is a technical rule formalizing and enhancing current MMS debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. This proposed rule would allow MMS to assess a 6-percent penalty on delinquent

debts and impose fees to cover the administrative costs of recovering a delinquent debt. These penalties and recovery of administrative costs are mandated by the DCA and DCIA.

6. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this proposed rule would not have any significant takings implications. This proposed rule would apply to Federal and Indian leases only. It would not apply to private property. A takings implication assessment is not required.

7. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This is a technical rule formalizing and enhancing current MMS debt collection practices and procedures. A Federalism Assessment is not required.

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

This proposed rule would comply with the requirements of Executive Order 12988. Specifically, this rule:

a. Would meet the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Would meet the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

9. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this proposed rule and determined that it would have no potential effects on federally recognized Indian tribes.

10. Paperwork Reduction Act

This proposed rule does not contain information collection requirements, and a submission to OMB is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

11. National Environmental Policy Act

This proposed rule would 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.

12. Data Quality Act

In developing this proposed rule, we did not conduct or use a study,

experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

13. Effects on the Energy Supply (E.O. 13211)

This proposed rule would not be a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects would not be required.

14. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) Use the active voice to address readers directly; (c) Use clear language rather than jargon; (d) Be divided into short sections and sentences; and (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

15. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

List of Subjects in 30 CFR part 218

Administrative offset, Debt Collection Act of 1982 and Debt Collection Improvement Act of 1996, royalties, rentals, bonuses, Federal and Indian mineral leases, Administrative Procedure Act, collections.

Dated: May 24, 2010.

Ned Farquhar,

Deputy Assistant Secretary for Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service proposes to amend 30 CFR part 218 as set forth below:

PART 218—COLLECTION OF MONIES AND PROVISION FOR GEOTHERMAL CREDITS AND INCENTIVES

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.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3335, 3711, 3716–18, 3720A, 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Add subpart J to read as follows:

Subpart J—Debt Collection and Administrative Offset

Sec.

- 218.700 What definitions apply to the regulations in this subpart?
- 218.701 What is MMS's authority to issue these regulations?
- 218.702 What happens to delinquent debts a debtor owes MMS?
- 218.703 What notice will MMS give to a debtor of our intent to collect a debt?
- 218.704 What is MMS's policy on interest, penalty charges, and administrative costs?
- 218.705 What is MMS's policy on revoking the ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?
- 218.706 What debts can MMS refer to Treasury for collection by administrative and tax refund offset?

Subpart J—Debt Collection and Administrative Offset

§ 218.700 What definitions apply to the regulations in this subpart?

As used in this subpart:

(a) *Administrative offset* means the withholding of funds payable by the United States (including funds payable by the United States on behalf of a state government) to any person, or the withholding of funds held by the United States for any person, in order to satisfy a debt owed to the United States.

(b) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

(c) *BIA* means the Bureau of Indian Affairs.

(d) *BLM* means the Bureau of Land Management.

(e) *Day* means calendar day. To count days, include the last day of the period unless it is a Saturday, Sunday, or Federal legal holiday.

(f) *Debt and claim* are synonymous and interchangeable. They refer to, among other things, royalties, rentals, and any other monies due to the United States or MMS, as well as fines, fees, and penalties that a Federal Agency has determined are due to the United States

from any person, organization, or entity, except another Federal Agency. For the purposes of administrative offset under 31 U.S.C. 3716 and this subpart, the terms "debt" and "claims" include money, funds, or property owed to the United States, a state, the District of Columbia, American Samoa, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(g) *Debtor* means a lessee, payor, person, contractor, or other entity that owes a debt to the United States, MMS, or from whom MMS collects debts on behalf of the United States, the Department, or an Indian lessor.

(h) *Delinquent debt* means a debt that has not been paid within the time limit prescribed by the applicable Act, law, regulation, lease, order, demand, notice of noncompliance, and/or assessment of civil penalties, contract, or any other agreement to pay the Department money, funds, or property.

(i) *Department* means the Department of the Interior, and any of its bureaus.

(j) *Director* means the Director of Minerals Management Service, or his or her designee.

(k) *DOJ* means the U.S. Department of Justice.

(l) *FCCS* means the Federal Claims Collection Standards, which are published at 31 CFR parts 900–904.

(m) *FMS* means the Financial Management Service, a bureau of the U.S. Department of the Treasury.

(n) *Legally enforceable* means that there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset.

(o) *Lessee* means any person to whom the United States or an Indian tribe or individual Indian mineral owner issues a Federal or Indian mineral or other resource lease, easement, right-of-way, or other agreement, regardless of form, an assignee of all or a part of the record title interest, or any person to whom operating rights have been assigned.

(p) *MMS* means the Minerals Management Service, a bureau of the Department.

(q) *OCS* means Outer Continental Shelf.

(r) *Payor* means any person who reports and pays royalties on Indian mineral leases, or Federal oil and gas, solid, or geothermal leases, regardless of whether they are also a lessee.

(s) *Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity that owes a debt to the United States, excluding the United States.

(t) *Tax refund offset* means the reduction of a tax refund by the amount of a past-due legally enforceable debt.

§ 218.701 What is MMS's authority to issue these regulations?

(a) The MMS is issuing the regulations in this subpart under the authority of the FCCS; the Debt Collection Act of 1982, and the Debt Collection Improvement Act of 1996, 31 U.S.C. 3711, 3716–3718, and 3720A.

(b) The MMS hereby adopts the provisions of the FCCS (31 CFR parts 900–904). The MMS regulations supplement the FCCS as necessary.

§ 218.702 What happens to delinquent debts a debtor owes MMS?

(a) The MMS will collect debts from debtors in accordance with the regulations in this subpart.

(b) The MMS will transfer to the U.S. Department of the Treasury any past due, legally enforceable nontax debt that is delinquent within 180 days from the date the debt becomes delinquent so that Treasury may take appropriate action to collect the debt or terminate the collection action in accordance with 5 U.S.C. 5514, 26 U.S.C. 6402, 31 U.S.C. 3711 and 3716, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

§ 218.703 What notice will MMS give to a debtor of our intent to collect a debt?

(a) When the Director determines that a debt is owed to MMS, the Director will send a written notice (Notice), also known as a Demand Letter. The Notice will be sent by facsimile or mail to the most current address known to us. The Notice will inform the debtor of the following:

(1) The amount, nature, and basis of the debt;

(2) The methods of offset that may be employed;

(3) The debtor's opportunity to inspect and copy agency records related to the debt;

(4) The debtor's opportunity to enter into a written agreement with us to repay the debt;

(5) Our policy concerning interest, penalty charges, and administrative costs, as set out in § 218.704, including a statement that such assessments must be made against the debtor unless excused in accordance with the FCCS and this part;

(6) The date by which payment should be made to avoid additional late charges and enforced collection;

(7) The name, address, and telephone number of a contact person (or office) at MMS who is available to discuss the debt; and

(8) The debtor's opportunity for review under 30 CFR part 290 or part

241, if any. See paragraph (b) of this section.

(b) A debtor, whose delinquent debt:

(1) Has not been paid within the time limit prescribed by the applicable Act, law, regulation, lease, order, demand, notice of noncompliance, and/or assessment of civil penalties, contract, or any other agreement to pay the Department money, funds, or property; and

(2) Was the subject of an order, demand, notice of noncompliance, and/or assessment of civil penalties that was appealable under 30 CFR part 290 or part 241, may not re-litigate matters that were the subject of the final order or appeal decision. This subsection applies whether or not the debtor appealed the order, demand, notice of noncompliance, and/or assessment of civil penalties under 30 CFR part 290 or part 241.

§ 218.704 What is MMS's policy on interest, penalty charges, and administrative costs?

(a) Interest.

(1) The MMS will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent unless otherwise specified by law or lease terms.

(3) The MMS will assess interest on debts involving Federal and Indian oil and gas leases under 30 CFR 218.54 and 218.102 unless otherwise specified by lease terms.

(4) The MMS will assess interest on debts involving Federal and Indian solid mineral and geothermal leases under 30 CFR 218.202 and 218.302 unless otherwise specified by lease terms.

(b) Penalties. We will assess a penalty charge of 6 percent a year on any delinquent debt, interest, and administrative costs assessed under paragraph (c) of this section on any debt we refer to Treasury at the time we refer the debt to Treasury:

(1) After the debt has been delinquent for more than 90 days; and

(2) The penalty will accrue from the date of delinquency.

(c) Administrative costs. We will assess \$436.00 for administrative costs incurred as a result of the debtor's failure to pay a delinquent debt. We will publish a notice of any increase in administrative costs assessed under this section in the **Federal Register**.

(d) Interest, penalties, and administrative costs will continue to accrue throughout any appeal process.

(e) Allocation of payments. The MMS will apply a partial or installment payment by a debtor on a delinquent

debt sent to Treasury first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(f) Additional authority. The MMS may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory or regulatory authority.

(g) Waiver. Regardless of the amount of the debt, the Director may decide to waive collection of all or part of the accrued penalty charges or administrative costs either in compromise of the delinquent debt or if the Director determines collection of these charges would be against equity and good conscience or not in the Government's best interest.

(h) Our decision whether to collect or waive collection of penalties and administrative costs is the final decision for the Department and is not subject to administrative review.

§ 218.705 What is MMS' policy on revoking the ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?

For OCS leases, the Director may decide to revoke a debtor's ability to engage in Federal OCS leasing, licensing, or granting of easements, permits, or rights-of-way if the debtor inexcusably or willfully fails to pay a debt. The Director may also recommend that BLM or BIA revoke a debtor's ability to engage in Federal onshore and Indian leasing, licensing, or granting of easements, permits, or rights-of-way if the debtor inexcusably or willfully fails to pay a debt. The Director will recommend that revocation of a debtor's ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way should last only as long as the debtor's indebtedness.

§ 218.706 What debts can MMS refer to Treasury for collection by administrative and tax refund offset?

(a) The MMS may refer any past due, legally enforceable debt of a debtor to Treasury for administrative and tax refund offset at least 60 days after we give notice to the debtor under section 218.703 if the debt:

(1) Will not have been delinquent more than 10 years at the time the offset is made;

(2) Is at least \$25.00 or another amount established by Treasury; and

(3) Does not involve Federal oil and gas lease obligations for which offset is precluded under 30 U.S.C. 1724(b)(3).

(b) Debts reduced to judgment may be referred to Treasury for tax refund offset at any time.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2009-0308]

RIN 1625-AA09

Drawbridge Operation Regulation; Old River, Between Victoria Island and Byron Tract, CA

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is seeking comments and information on how best to address a proposal to change the operating regulation for the State Highway 4 Drawbridge, mile 14.8, over Old River. The bridge owner has asked to change from the existing requirement by eliminating the "on signal" openings and replacing them with an "open on signal if at least 4 hours notice is given" at all times. The 4 hour notice would be provided to the drawtender at the Rio Vista drawbridge across the Sacramento River, mile 12.8. This proposed change may reduce unnecessary staffing of the drawbridge during observed periods of reduced navigational activity.

DATES: Comments and related material must reach the Coast Guard on or before July 23, 2010.

ADDRESSES: You may submit comments identified by docket number USCG-2009-0308 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.