AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

anyone using the workpapers will be able to readily determine their purpose, the nature and scope of the work done, and the conclusions drawn.

(4) Workpapers must be legible and as neat as practicable. They must meet standards which allow their use as evidence in judicial and administrative proceedings.

(5) The information contained in workpapers should be restricted to matters which are materially important and relevant to the objectives established for the assignment.

(6) Workpapers must be in sufficient detail to permit a subsequent independent execution of each audit procedure, assuming the target company retains its accounting documentation.

§ 229.125 Preparation and issuance of enforcement documents.

(a) Determinations of additional royalties due resulting from audit activities conducted under a delegation of authority must be formally communicated by the State, to the companies or other payors by an issue letter prior to any enforcement action. The issue letter will serve to ensure that all audit findings are accurate and complete by obtaining advance comments from officials of the companies or payors audited. Issue letters must be prepared in a format specified by the MMS, and transmitted to the company or payor. The company or payor shall be given 30 days from receipt of the letter to respond to the State on the findings contained in the letter.

(b) After evaluating the company or payor's response to the issue letter, the State shall draft a demand letter which will be submitted with supporting workpaper files to the MMS for appropriate enforcement action. Any sustantive revisions to the demand letter will be discussed with the State prior to issuance of the letter. Copies of all enforcement action documents shall be provided to the State by MMS upon their issuance to the company or payor.

§ 229.126 Appeals.

(a) Appeals made pursuant to the rules and procedures at 30 CFR parts 243 and 290 related to demand letters issued by officers of the MMS for additional royalties identified under a delegation of authority shall be filed with the MMS for processing. The State regulatory authority shall, upon the request of the MMS, provide competent and knowledgeable staff for testimony, as well as any required documentation and analyses, in support of the lessor's position during the appeal process.

(b) An affected State, upon the request of the MMS, shall provide expert witnesses from their audit staff for testimony as well as required documentation and analyses to support the Department's position during the litigation of court cases arising from denied appeals. The cost of providing expert witnesses including travel and per diem is reimbursable under the provisions of a delegation of authority, at the Federal Government's existing per diem rates.

§ 229.127 Reports from States.

The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. The report shall include:

(a) A statistical summary of the activities carried out, e.g., number of audits performed, accounts reconciled, and other actions taken;

(b) A summary of costs incurred during the previous quarter for which the State is seeking reimbursement; and

(c) A schedule of changes which the State proposes to make from its approved plan.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

PART 230—RECOUPMENTS AND REFUNDS

Subpart A—General Provisions

Sec.

230.51 Cross-lease netting in calculation of overpayments under section 10 of the OCSLA.

Subpart B—Oil, Gas, and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

Subpart J—Refunds and Recoupments of Overpayments Under Federal Leases on the Outer Continental Shelf; Impementation of Section 10 of the Outer Continental Shelf Lands Act

230.451 Scope.
230.452 Definitions.
230.453 Request for refund or credit.
230.454 Interest on excess payments.
230.455 Authorization of refund or credit and subsequent audit.
230.456 Offsets of overpayments and underpayments on the same lease (or unit) by the same person.
230.457 Offsets among different persons who reported and paid royalties on a lease for the same prior sales month.
450.458 Unauthorized credit adjustments.
230.549 Stopping or tolling of the section 10(a) 2-year period.
230.460 Lease suspension.
230.461 Transactions not subject to section 10.

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

SOURCE: 57 FR 62207, Dec. 30, 1992, unless otherwise noted.

Subpart A—General Provisions

§ 230.51 Cross-lease netting in calculation of overpayments under section 10 of the OCSLA.

(a) The amount of any refund or credit for any overpayment for any lease or leases governed by the Outer Continental Shelf Lands Act (OCSLA), as amended, for any production month shall not be reduced by offsetting against that overpayment any reported underpayment by the payor on any other lease or leases, except as provided in paragraph (b) of this section.

(b) Royalties attributed to production from a lease or leases governed by the OCSLA, which should have been attributed to production from a different lease or leases governed by the OCSLA, may be offset without regard to the provisions of OCSLA section 10, 43 U.S.C. 1339, only if the payor submits a written request to Minerals Management Service (MMS), Fiscal Accounting Division, for its approval of the correction and provides adequate documentation to show that the following conditions exist and are met:

(1) The error results from attributing and reporting an equal volume of production, produced from a lease or leases during a particular production month, to a different lease or leases from which that production was not produced for the same or another production month;

(2) The payor is the same for the lease or leases to which the production was attributed and the lease or leases to which it should have been attributed;

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information; and

(4) In the case of leases which are within the zone defined and governed by section 8(g) of the OCSLA, as amended, 43 U.S.C. 1337(g), the leases are located off the coast of the same State.

(c) If MMS approves a correction pursuant to paragraph (b) of this section, the payor is required to submit an adjusting royalty report (Form MMS–2014) pursuant to 30 CFR part 210 to correct its reporting to the Auditing and Financial System.

(d) If MMS requires a repayment of principal royalties or assesses late-payment interest as a result of the payor having improperly offset any underpayment against an overpayment and, therefore, having failed to request a refund or credit as required by section 10 of the OCSLA, 43 U.S.C. 1339, and the payor asserts pursuant to 30 CFR part 290 that some or all of the royalties or interest assessed is not owed pursuant

to the exception set forth in paragraph (b) of this section, the burden is on the payor to demonstrate that the exception applies in the specific circumstances of the case.

(e) The exception set forth in paragraph (b) of this section shall not operate to relieve any payor of any liability imposed by statute or regulation for erroneous reporting.

Subpart B—Oil, Gas, and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

Subpart J—Refunds and Recoupments of Overpayments Under Federal Leases on the Outer Continental Shelf; Implementation of Section 10 of the Outer Continental Shelf Lands Act

SOURCE: 59 FR 38363, July 28, 1994, unless otherwise noted.

§ 230.451 Scope.

This subpart establishes the procedures that lessees and other persons who make royalty and other payments on Federal oil and gas leases on the Outer Continental Shelf (OCS) must follow to recover certain excess payments made in connection with their leases in accordance with section 10 of the Outer Continental Shelf Lands Act (section 10), 43 U.S.C. 1339. The requirements of this subpart apply to both requests for refund from the Treasury of excess payments and requests to recover excess payments by recouping the amount through a credit adjustment. This subpart applies only to Federal leases on the OCS.

§ 230.452 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702. In addition, the following definitions apply to this subpart:

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

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

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

Overpayment means any payment made in excess of the amount that the lessee was lawfully required to pay.

Payment means money MMS receives in satisfaction of a lessee's royalty, rental, bonus, net profit share, or late payment interest obligation as established by statute, regulation, or the terms of a lease.

Recoup or *recoupment* means to recover a previous overpayment through a credit against a current or future royalty or other payment or liability under an OCS lease. A recoupment occurs whenever a payor reports a credit adjustment on a Form MMS–2014 or other royalty report form resulting in a net negative dollar value for the transaction and the credit is taken against the royalty or other payment or liability shown in the balance of the report.

Refund means a repayment by the United States Treasury to a person of any overpayment.

Unit means an area of 2 or more leases subject to an agreement for the consolidated development and recovery

of oil and gas contained on the leases which are part of the agreement approved by MMS.

§ 230.453 Request for refund or credit.

(a) Except as otherwise provided in this subpart, no person may recover an excess payment it has made in connection with an OCS lease unless:

(1) That person has made a request for refund or credit in accordance with the provisions of this subpart;

(2) MMS has transmitted a report on the request for refund or credit to the President of the Senate and the Speaker of the House of Representatives and 30 days have expired since the submission in accordance with section 10(b), 43 U.S.C. 1339(b); and

(3) MMS notifies the person that its request for refund or credit is authorized and that the person may receive its refund for, or may report a credit adjustment to recoup, the excess payment.

(b) A request for refund or credit must:

(1) Be in writing;

(2) Provide the person's MMS-established payor code;

(3) Identify the leases and sales months with respect to which the excess payments occurred;

(4) Identify the amount of the excess payment or, with specificity, describe a class of payments that are, or as a result of an administrative or judicial decision or other identified contingency, may become, excess payments;

(5) Provide the reasons why a refund or credit is due;

(6) Include a certification that, to the best of the person's knowledge or belief, the information provided in response to paragraphs (b)(2) through (b)(5) of this section is accurate and complete.

(c) If MMS determines that a request for refund or credit is incomplete, the person who submitted the request will have 30 days, or such time as MMS may specify, following notice from MMS, to supplement the request for refund or credit.

(d) A credit adjustment reported on a Form MMS–2014 does not constitute a request for refund or credit for purposes of this section, and does not constitute an incomplete request for refund or credit for purposes of paragraph (c) of this section.

(e) A person who has filed a request for refund or credit pursuant to this section may amend that request to add an additional amount if:

(1) The additional amount is for the same lease and sales month; and

(2) The reason for the excess payment for the additional amount is the same as for the originally requested amount.

(f) Except as otherwise provided in this subpart, no request for a refund or credit will be approved unless the request is received at MMS at the address provided below within 2 years of the date that MMS received the excess payment.

(1) The request for refund or credit must be received at the following address:

(i) By mail: Minerals Management Service, Section 10 Refund Requests, P.O. Box 173702, Denver, CO 80217–3702.

(ii) By express delivery or courier: Minerals Management Service, Section 10 Refund Requests, Building 85, Denver Federal Center, Room A–212, Denver, CO 80225.

(2) If the last day of the 2-year period from the date MMS received the excess payment falls on a Saturday, Sunday, holiday or any other day that MMS is not open for business at the address specified in paragraph (f)(1) of this section, then the last day of the 2-year period will be the next regular business day. Requests received at the specified MMS address after 4 p.m. Mountain Time are considered received the following business day.

§ 230.454 Interest on excess payments.

No person is entitled to interest on any excess payment made in connection with a lease that is refunded or recouped pursuant to this subpart.

§ 230.455 Authorization of refund or credit and subsequent audit.

MMS may grant a refund or authorize a credit based upon satisfactory evidence that the payment for which a refund or credit is requested was made, and upon a determination that the payment was excess. An approved request for refund or credit may be subject to later review or audit by MMS. If, based

upon later review or audit, MMS determines that the refund or credit should not have been granted or authorized, the person who requested the refund or credit must repay the amount refunded or recouped plus interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the refund was made or the recoupment taken until the date it is repaid.

§ 230.456 Offsets of overpayments and underpayments on the same lease (or unit) by the same person.

If a person makes an overpayment on any OCS lease or unit in a prior month, it may offset that overpayment against an underpayment that same person made in any prior month on that same lease or unit for the same or a different product without submitting a request for refund or credit. This offset is permitted only if the underpayment was not created as a result of a credit adjustment to recoup the amount of the overpayment or was not otherwise created intentionally to provide an underpayment against which to offset the overpayment. This offset also is subject to any limitations imposed by other applicable law or regulations.

§ 230.457 Offsets among different persons who reported and paid royalties on a lease for the same prior sales month.

(a) This section applies to any reallocation of production for a prior sales month among different persons who reported and paid royalty for that month on a lease or unit, except for reallocations of production that result from the approval or amendment of a unit agreement subject to § 230.461(b).

(b) In the event of a reallocation of production as described in paragraph (a) of this section, the respective persons who reported and paid royalty may reconcile any resulting differences in royalty payment obligations between themselves without submitting revised royalty reports or requests for refund or credit to MMS under this subpart, except that:

(1) Any person who paid any amount which remains as a net overpayment after such reconciliation must file a request for refund or credit in accordance with the requirements of this subpart to recover the excess payment;

(2) Any person whose royalty obligation remains underpaid after such reconciliation must report the additional royalties due for the prior sales month on a Form MMS–2014 and pay interest on the underpayment from the last day of the month following the sales month until the date the additional royalties are paid; and

(3) All persons involved in such reconciliation must retain all documents pertaining to the reallocation of production, calculation of royalties due, and the subsequent reconciliation among the persons involved together with other records pertaining to production from that lease during the prior sales month and the royalty due and paid thereon, and make such documents available for review and audit in the same manner as other records pertaining to the lease.

(c) If persons who reported and paid royalty do not reconcile between themselves any differences in royalty payment obligations arising as a result of a reallocation as provided in paragraph (b) of this section, each person who pays royalties for the lease must report and pay any additional royalties due, or file a request for refund or credit in accordance with the requirements of this subpart to recover the excess payment, as applicable. Any person who reports additional royalties due for the prior sales month must pay interest pursuant to 30 CFR 218.54 on the underpayment from the last day of the month following the sales month until the date the additional royalties are paid.

§ 230.458 Unauthorized credit adjustments.

(a) If a person reports a credit adjustment on Form MMS–2014 that results in a credit before MMS approves the recoupment pursuant to § 230.455, and if the credit adjustment does not qualify as one of the transactions not subject to section 10 as provided in § 230.461, then that person has taken an unauthorized credit adjustment.

(1) If the unauthorized credit adjustment recouped a payment that MMS received more than 2 years before the date MMS received the Form MMS–2014 which includes the unauthorized credit adjustment, the person must repay the

amount recouped plus late payment interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the unauthorized recoupment was taken until the date it is repaid. Unless the person filed a request for refund or credit pursuant to § 230.453 within 2 years of the making of the excess payment for which the unauthorized credit adjustment was reported, the excess payment is not subject to refund or recoupment.

(2) If the unauthorized credit adjustment recouped a payment that MMS received less than 2 years before the date MMS received the Form MMS–2014 with the unauthorized credit adjustment, the person must repay the amount recouped plus late payment interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the unauthorized recoupment was taken until the date it is repaid. The report of the unauthorized credit adjustment on the Form MMS–2014 does not constitute a request for refund or credit that tolls the 2-year period in section 10(a), 43 U.S.C. 1339(a). The person may file a request for refund or credit pursuant to section 230.453 for the payment for which the unauthorized credit adjustment was reported. MMS will review the request pursuant to the requirements of this subpart only if the request for refund or credit is received within 2 years of the making of the original payment for which the unauthorized credit adjustment was reported.

(b) A person who reports an unauthorized credit adjustment to MMS on a Form MMS–2014 will be assessed $500 for each unauthorized credit adjustment reported.

§ 230.459 Stopping or tolling of the section 10(a) 2-year period.

(a) The period of 2 years from the making of the excess payment, within which a request for refund or credit must be filed under section 10(a), 43 U.S.C. 1339(a), will be:

(1) Tolled by MMS's receipt of a substantially complete request for refund or credit pursuant to § 230.453; or

(2) Tolled by a general tolling notice issued by MMS and published in the FEDERAL REGISTER in circumstances where MMS believes a substantial number of requests for refund or credit could result as a consequence of a pending administrative or judicial proceeding or other action. The running of the 2-year period will be tolled for the time period specified in the notice; or

(3) Stopped by an application for unitization of OCS leases with respect to any excess payment that may result from the reallocation of production among leases after the unit or revision is approved; or

(4) Tolled by a notice filed by a person at the address stated in § 230.453(f) stating that a specifically identified action or proceeding may result in payments made on an OCS lease becoming excess payments. The notice must include:

(i) A list of affected leases and sales months;

(ii) The specific action or proceeding that could result in payments becoming excess;

(iii) An estimate of the amount that could be subject to a request for refund or credit; and

(iv) The person's MMS-established payor code.

(b) A request for refund or credit that is filed timely by a person who made an excess payment on an OCS lease does not stop or toll the running of the 2-year period with respect to any excess payment made by any other person on that lease.

§ 230.460 Lease suspension.

If MMS suspends an OCS lease pursuant to 30 CFR 250.10(b)(6), a person who has made excess rental payments for the period of suspension may request a refund or credit of any excess payments pursuant to this subpart. If the request for refund or credit is filed more than 2 years after MMS received the excess rentals, the excess payment will not be refunded, recouped, or credited against future rentals due on the same lease.

§ 230.461 Transactions not subject to section 10.

(a) A request for refund of, or any other action to recover, excess payments made by a refiner/purchaser under a royalty-in-kind contract for royalty oil produced from an OCS lease is not subject to section 10.

(b) If MMS approves a unit agreement on the OCS, or a revision to a unit, a person may file amended Forms MMS–2014 within the time period MMS prescribes, reallocating production among its affected leases. A person must file a request for refund or credit pursuant to this subpart only if, and to the extent that, there is a net reduction in the royalty that person previously paid for the leases committed to the unit as a result of the amendments.

(c) A person may amend Form MMS–2014 to adjust volume and royalty reports among OCS leases within a unit within the same sales month without filing a request for refund or credit pursuant to this subpart, except that a request for refund or credit must be filed to the extent that there is a net reduction in the royalty previously paid for the leases committed to the unit as a result of the amendments.

(d) A person who pays more money than the total royalty due as reported on the Form MMS–2014 accompanying the payment, where all amounts reported on the Form MMS–2014 are correct, may submit a request for refund of the overpaid amounts. The request for refund is not subject to section 10's requirements unless the Form MMS–2014 includes reports for only one OCS lease. Any overpayment subject to this paragraph may not be recovered by recoupment.

(e) A person may reduce an estimate balance, established for any lease product pursuant to MMS instructions, by submitting a credit adjustment on a Form MMS–2014, or a request for refund, for all or part of the established estimate balance. A credit adjustment or request for refund to recover all or part of an estimate balance authorized by this paragraph is not subject to the requirements of section 10.

(f)(1) If adjustment of an estimated oil transportation allowance or estimated gas transportation allowance pursuant to 30 CFR 206.105(e) and 206.157(e), respectively, results in an overpayment for any sales month because the estimated transportation costs were less than the actual costs, a person may submit a credit adjustment on a Form MMS–2014 to recoup, or may request a refund of, the overpayment. The credit adjustment or request for refund authorized by this paragraph is not subject to the requirements of section 10, and MMS approval is not required before reporting the credit adjustment.

(2) If adjustment of an estimated gas processing allowance pursuant to 30 CFR 206.159(e) results in an overpayment for any sales month because the estimated processing costs were less than the actual costs, a person may submit a credit adjustment on a Form MMS–2014 to recoup, or may request a refund of, the overpayment. The credit adjustment or request for refund authorized by this paragraph is not subject to the requirements of section 10, and MMS approval is not required before reporting the credit adjustment.

(3) If a person makes an error in the report of actual transportation or processing costs pursuant to paragraphs (f)(1) or (f)(2) of this section, any subsequent adjustment to the report that results in a credit is subject to section 10 and the requirements of this subpart.

(g) If a person pays pursuant to an MMS order and challenges the obligation to pay in an administrative appeal or judicial action, and if the person is successful in a challenge to all or part of the MMS order to pay, section 10 does not apply to the refund or recoupment of the disputed payment or portion thereof.

(h) MMS approval is not required for an adjustment by any person to the amount reported for a report month that results in a credit of not more than an amount established periodically by MMS and published in the FEDERAL REGISTER. However, no adjustment may be reported more than 2 years after the date MMS received the Form MMS–2014 including the excess payment.

PART 232—INTEREST PAYMENTS [RESERVED]

PART 233—ESCROW AND INVESTMENTS [RESERVED]

PART 234—BONDING—PAYMENT LIABILITY [RESERVED]