

SUBCHAPTER C—APPEALS

PART 290—APPEAL PROCEDURES

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Subpart A—Offshore Minerals Management Appeal Procedures

§ 290.1 What is the purpose of this subpart?

The purpose of this subpart is to explain the procedures for appeals of Minerals Management Service (MMS) Offshore Minerals Management (OMM)

decisions and orders issued under subchapter B.

§ 290.2 Who may appeal?

If you are adversely affected by an OMM official's final decision or order issued under 30 CFR chapter II, subchapter B, you may appeal that decision or order to the Interior Board of Land Appeals (IBLA). Your appeal must conform with the procedures found in this subpart and 43 CFR part 4, subpart E. A request for reconsideration of an MMS decision concerning a lease bid, authorized in 30 CFR 256.47(e)(3) and 281.21(a)(1), or a deep water field determination, authorized in 30 CFR 203.79(a) and 30 CFR 260.110(d)(2), is not subject to the procedures found in this part.

§ 290.3 What is the time limit for filing an appeal?

You must file your appeal within 60 days after you receive OMM's final decision or order. The 60-day time period applies rather than the time period provided in 43 CFR 4.411(a). A decision or order is received on the date you sign a receipt confirming delivery or, if there is no receipt, the date otherwise documented.

§ 290.4 How do I file an appeal?

For your appeal to be filed, MMS must receive all of the following within 60 days after you receive the decision or order:

(a) A written Notice of Appeal together with a copy of the decision or order you are appealing in the office of the OMM officer that issued the decision or order. You cannot extend the 60-day period for that office to receive your Notice of Appeal; and

(b) A nonrefundable processing fee of \$150 paid with the Notice of Appeal.

(1) Identify the order you are appealing on the check or other form of payment you use to pay the processing fee.

(2) You cannot extend the 60-day period for payment of the processing fee.

(3) You must pay the processing fee to MMS following the requirements for making payments found in 30 CFR 218.51. You are not required to use

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Electronic Funds Transfer (EFT) for these payments.

§ 290.5 Can I obtain an extension for filing my Notice of Appeal?

You cannot obtain an extension of time to file the Notice of Appeal. See 43 CFR 4.411(c).

§ 290.6 Are informal resolutions permitted?

(a) You may seek informal resolution with the issuing officer's next level supervisor during the 60-day period established in § 290.3.

(b) Nothing in this subpart precludes resolution by settlement of any appeal or matter pending in the administrative process after the 60-day period established in § 290.3.

§ 290.7 Do I have to comply with the decision or order while my appeal is pending?

(a) The decision or order is effective during the 60-day period for filing an appeal under § 290.3 unless:

(1) OMM notifies you that the decision or order, or some portion of it, is suspended during this period because there is no likelihood of immediate and irreparable harm to human life, the environment, any mineral deposit, or property; or

(2) You post a surety bond under 30 CFR 250.1409 pending the appeal challenging an order to pay a civil penalty.

(b) This section applies rather than 43 CFR 4.21(a) for appeals of OMM orders.

(c) After you file your appeal, IBLA may grant a stay of a decision or order under 43 CFR 4.21(b); however, a decision or order remains in effect until IBLA grants your request for a stay of the decision or order under appeal.

§ 290.8 How do I exhaust my administrative remedies?

(a) If you receive a decision or order issued under chapter II, subchapter B, you must appeal that decision or order to IBLA under 43 CFR part 4, subpart E to exhaust administrative remedies.

(b) This section does not apply if the Assistant Secretary for Land and Minerals Management or the IBLA makes a decision or order immediately effective notwithstanding an appeal.

Subpart B—Appeals of Royalty Management Program and Delegated States Orders

§ 290.100 What is the purpose of this subpart?

This subpart tells you how to appeal Minerals Management Service (MMS) or delegated State orders concerning reporting to the MMS Royalty Management Program (RMP) and the payment of royalties and other payments due under leases subject to this subpart.

§ 290.101 What leases are subject to this subpart?

This subpart applies to:

(a) All Federal mineral leases onshore and on the Outer Continental Shelf (OCS); and

(b) All federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands, regardless of the statutory authority under which the lease was issued or maintained.

§ 290.102 What definitions apply to this subpart?

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

Delegated State means a State to which MMS has delegated authority to perform royalty management functions under an agreement or agreements under regulations at 30 CFR part 227.

Designee means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

IBLA means the Interior Board of Land Appeals.

Indian lessor means an Indian tribe or individual Indian mineral owner with a beneficial or restricted interest in a property that is subject to a lease issued or administered by the Secretary on behalf of the tribe or individual Indian mineral owner.

Lease means any agreement authorizing exploration for or extraction of any mineral, regardless of whether the

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instrument is expressly denominated as a "lease," including any:

- (1) Contract;
- (2) Net profit share arrangement;
- (3) Joint venture; or
- (4) Agreement the Secretary approves under the Indian Mineral Development Act, 25 U.S.C. 2101 *et seq.*

Lessee means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease subject to this subpart, or any person to whom all or part of the lessee's interest or operating rights in a lease subject to this subpart has been assigned.

Notice of Order means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

Obligation means:

- (1) A lessee's, designee's or payor's duty to:
 - (i) Deliver oil or gas royalty in kind; or
 - (ii) Make a lease-related payment, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, civil penalty, or assessment; and
- (2) The Secretary's duty to:
 - (i) Take oil or gas royalty-in-kind; or
 - (ii) Make a lease-related payment, refund, offset, or credit, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, or interest.
- (3) The obligations identified in paragraphs (1)(i) and (2)(i) of this definition are nonmonetary obligations. The obligations identified in paragraphs (1)(ii) and (2)(ii), including the requirement to compute the amount of such obligations, are monetary obligations.

Order for purposes of this subpart only, means any document issued by the MMS Director, MMS RMP, or a delegated State that contains mandatory or ordering language that requires the recipient to do any of the following for any lease subject to this subpart: report, compute, or pay royalties or other obligations, report production, or provide other information.

(1) Order includes:

- (i) An order to pay or to compute and pay; and

(ii) An MMS or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee or payor.

(2) Order does not include:

- (i) A non-binding request, information, or guidance, such as:
 - (A) Advice or guidance on how to report or pay, including a valuation determination, unless it contains mandatory or ordering language; and
 - (B) A policy determination;
- (ii) A subpoena;
- (iii) An order to pay that MMS issues to a refiner or other person involved in disposition of royalty taken in kind; or
- (iv) A Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 241, or a decision of an administrative law judge or of the IBLA following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty.

Party means MMS, any person who files a Notice of Appeal, and any person who files a Notice of Joinder in an appeal under this subpart.

§ 290.103 Who may file an appeal?

- (a) If you receive an order that adversely affects you or your lessee, you may appeal that order except as provided under § 290.104.
- (b) If you are a lessee and you receive a Notice of Order, and if you contest the order, you may either appeal the order or join in your designee's appeal under § 290.106.

§ 290.104 What may I not appeal under this subpart?

You may not appeal:

- (a) An action that is not an order, as defined in this subpart; or
- (b) A determination of the surety amount or financial solvency under 30 CFR part 243, subparts B or C.

§ 290.105 How do I appeal an order?

- (a) You may appeal an order to the Director, Minerals Management Service (MMS Director), by filing a Notice of Appeal in the office of the official issuing the order within 30 days from service of the order.
 - (1) Within the same 30-day period, you must file in the office of the official issuing the order a statement of

reasons or written arguments or briefs that include the arguments on the facts or laws that you believe justify reversal or modification of the order.

(2) If you are a designee, when you file your Notice of Appeal you must serve your Notice of Appeal on the lessees for the leases in the order you appealed.

(b) You may not request and will not receive an extension of time for filing the Notice of Appeal.

(c) If the office of the official issuing the order does not receive the Notice of Appeal within the time provided in paragraph (a) of this section, the Notice of Appeal will be considered timely if the office of the official issuing the order receives:

(1) The Notice of Appeal not later than 10 days after the required filing date; and

(2) The officer with whom the Notice of Appeal must be filed determines that the Notice of Appeal was transmitted to the proper office before the filing deadline in paragraph (a) of this section.

(d) If the Notice of Appeal is filed after the grace period provided in paragraph (c) of this section and was not transmitted to the proper office before the filing deadline in paragraph (a) of this section, the MMS Director will not consider the Notice of Appeal and the case will be closed.

(e) The officer with whom the Notice of Appeal is filed will send the appeal and accompanying papers to the MMS Director.

(f) The MMS Director will review the record and render a decision in the case.

(g) If an order involves Indian leases, the Deputy Commissioner of Indian Affairs will exercise the functions vested in the MMS Director.

§ 290.106 How do lessees join a designee's appeal and how does joinder affect the appeal?

(a) If you are a lessee, and your designee files an appeal under § 290.103, you may join in that appeal within 30 days after you receive your designee's Notice of Appeal under § 290.105(a)(2) by filing a Notice of Joinder with the office or official that issued the order.

(b) If you join in an appeal under paragraph (a) of this section, you are deemed to appeal the order jointly with the designee, but the designee must fulfill all requirements imposed on appellants under this subpart and 43 CFR part 4, subparts E and J. You may not file submissions or pleadings separately from the designee.

(c) If you are a lessee and you neither appeal nor join in your designee's appeal under this section, your designee's actions with respect to the appeal and any decisions in the appeal bind you.

(d) If you are a designee and you decide to discontinue participation in the appeal, you must serve written notice within 30 days before the next submission or pleading is due on:

(1) All lessees who have joined in the appeal under paragraph (a) of this section;

(2) The office or officer with whom any subsequent submissions or pleadings must be filed, including the IBLA; and

(3) All other parties to the appeal.

(e) If you have joined in the appeal under paragraph (a) of this section, and if the designee notifies you under paragraph (d) of this section that it declines to further pursue the appeal, you become an appellant and must then meet all requirements of this subpart and 43 CFR part 4, subparts E and J, as the appellant.

§ 290.107 Where are the rules concerning the effect of the Department not issuing a decision in my appeal within the statutory time frame?

If your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, the rules concerning the effect of the Department not issuing a final decision in your appeal within the 33-month period prescribed under 30 U.S.C. 1724(h) are located in 43 CFR part 4, subpart J.

§ 290.108 How do I appeal to the IBLA?

Any party to a case adversely affected by a final decision of the MMS Director or the Deputy Commissioner of Indian Affairs under this subpart shall have a right of appeal to the IBLA under the procedures provided in 43 CFR part 4, subpart E.

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§ 290.109 How do I request an extension of time?

(a) If you are a party to an appeal under this subpart, and you need additional time after the appeal commences under 43 CFR 4.904 for any purpose:

(1) You may obtain an extension of time under this section; and

(2) You must submit a written request for an extension of time to:

(i) The office or official with whom you must file a document before the required filing date; or

(ii) If you are not seeking an extension of time to file a document, to the office or official before whom the appeal is pending.

(b) If you are an appellant, and if your appeal involves monetary or non-monetary obligations under Federal oil and gas leases, you must agree in writing in your request to extend the period in which the Department must issue a final decision in your appeal under 30 U.S.C. 1724(h) and 43 CFR 4.906, by the amount of time for which you are requesting an extension.

(c) If you are any other party to an appeal involving monetary or non-monetary obligations under Federal oil and gas leases, the office or official with whom you must file the request may require you to submit a written agreement signed by the appellant to extend the period in which the Department must issue a final decision in the appeal under 43 CFR 4.906, by the amount of time for which you are requesting an extension.

(d) The office or official with whom you must file your request may decline any request for an extension of time.

(e) You must serve your request on all parties to the appeal.

§ 290.110 How do I exhaust administrative remedies?

(a) To exhaust administrative remedies, you must appeal an MMS Royalty Management Program (RMP) or delegated State order:

(1) To the MMS Director (or the Deputy Commissioner of Indian Affairs when Indian lands are involved); and

(2) Subsequently to the Interior Board of Land Appeals under 30 CFR part 290, subpart B, and 43 CFR part 4.

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(b) This section does not apply if an order was made effective by:

(1) The Director;

(2) The Assistant Secretary for Land and Minerals Management;

(3) The Assistant Secretary for Indian Affairs; or

(4) The Interior Board of Land Appeals under 43 CFR part 4.

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§ 290.111 How will MMS and delegated States serve official correspondence?

(a) *Method of service.* The Royalty Management Program (RMP) or a delegated State will serve official correspondence by sending the document by certified or registered mail, return receipt requested, to the addressee of record established in paragraph (b) of this section. Instead of certified or registered mail, RMP or a delegated State may deliver the document personally to the addressee of record and obtain a signature acknowledging the addressee's receipt of the document. Official correspondence includes all orders that are appealable under this subpart.

(b) *Addressee of record.* (1) The addressee of record for administrative correspondence for refiners participating in the Government's Royalty-in-Kind (RIK) Program is the position title, department name and address, or individual name and address identified in the executed royalty oil sale contract. The refiner/purchaser may identify, in writing, a different position title, department name and address, or individual name and address for billing purposes. The refiner must notify MMS, in writing, of all addressee changes.

(2) The addressee of record for serving official correspondence on anyone required to report energy and mineral resources removed from Federal and Indian leases to the RMP Production Accounting and Auditing System is the most recent position title, department name and address, or individual name and address that RMP has in its records for the reporter/payor. The reporter/payor is responsible for notifying RMP, in writing, of any addressee changes.

(3) The addressee of record for serving official correspondence concerning

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onshore Federal leases is the current lessee of record with the Bureau of Land Management. For Indian leases, the addressee of record is the current lessee of record with the Bureau of Indian Affairs. For offshore leases, the addressee of record is the current lessee of record with the MMS Offshore Minerals Management Program. The lessee is responsible for notifying the appropriate Government office of any addressee changes.

(4) The addressee of record for serving official correspondence in connection with reviews and audits of payor records is the position title, department name and address, or individual name and address designated, in writing, by the company at the initiation of the audit, or the most recent addressee that was specified, in writing, by the payor.

(5) The addressee of record for serving official correspondence relating to reporting on the "Report of Sales and Royalty Remittance" (Form MMS-2014) is the most recent position title, department name and address, or individual name and address specified, in writing, by the payor. The payor is responsible for notifying RMP, in writing, of any addressee changes.

(6) The addressee of record for serving official correspondence in connection with remittances pertaining to rental and bonuses from nonproducing Federal leases is the most recent position title, department name and address, or individual name and address maintained in RMP records. The payor is responsible for notifying RMP, in writing, of any addressee changes.

(7) The addressee of record for serving official correspondence including orders, demands, invoices, or decisions, and other actions identified with payors reporting to the RMP Auditing

and Financial System not identified above is the position title, department name and address or individual name and address for the payor identified on the most recent Payor Confirmation Report (Report No. RPI140R1) of a Payor Information Form (PIF) (Form MMS-4025 or Form MMS-4030) returned by RMP to the payor for the Federal or Indian lease (see 30 CFR 210.51 and 210.201).

(8) If correspondence applies to more than one category identified in paragraphs (b)(1) through (7) of this section, MMS may serve the official correspondence in accordance with the requirements of any one paragraph.

(c) *Dates of service.* Except as provided in paragraph (d) of this section, MMS considers official correspondence as served on the date that it is received at the address of record established under paragraph (b) of this section. A receipt signed by any person at that address is evidence of service. If official correspondence is served both personally and by registered or certified mail, the date of service is the earlier of the two dates, if they are different.

(d) *Constructive service.* (1) If delivery cannot be made after reasonable effort at the address of record established under paragraph (b) of this section, MMS deems official correspondence as constructively served 7 days after the date that the document is mailed.

(2) This provision covers such situations as nondelivery because the addressee has moved without filing a forwarding address, the forwarding order had expired, delivery was expressly refused, or the document was unclaimed where the attempt to deliver is substantiated by U.S. Postal Service authorities.

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