

between 9 a.m. and 4 p.m., Monday through Friday.

1. Soffritti, M., C. Maltoni, F. Maffei, and R. Biagi, "Formaldehyde: An Experimental Multipotential Carcinogen," *Toxicology and Industrial Health*, vol. 5, No. 5, pp. 699-730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, "Two-Year Drinking Water Study of Formaldehyde in Rats," *Food Chemical Toxicology*, vol. 27, No. 2, pp. 77-87, 1989.

3. Memorandum of conference concerning "Formaldehyde;" meeting of the Cancer Assessment Committee, FDA; April 24, 1991, and March 4, 1993.

4. Bushy Run Research Center, "Ethylenediamine Dihydrochloride Two-Year Feeding Study in the Rat; Report 46-27," Mellon Institute-Union Carbide Corp., Export, PA.

5. Memorandum of conference concerning "Ethylenediamine Dihydrochloride (EDA•2HCl);" meeting of the Cancer Assessment Committee, FDA; June 7, 1996.

#### List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

#### PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

**Authority:** Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.300 is amended in paragraph (b)(3)(viii)(b) by alphabetically adding a new entry to read as follows:

#### § 175.300 Resinous and polymeric coatings.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(viii) \* \* \*

(b) \* \* \*

\* \* \* \* \*

3-Pentadecenyl phenol mixture (obtained from cashew nutshell liquid) reacted with formaldehyde and ethylenediamine in a ratio of 1:2:2 (CAS Reg. No. 68413-28-5).

\* \* \* \* \*

Dated: August 5, 1997.

**William K. Hubbard,**  
Associate Commissioner for Policy  
Coordination.

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Parts 227, 228, and 229

RIN 1010-AC25

#### Delegation of Royalty Management Functions to States

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** The Minerals Management Service (MMS) is adding new rules authorizing the delegation of several Federal royalty management functions to States. These rules implement recently-enacted legislation.

**EFFECTIVE DATE:** September 11, 1997.

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**SUPPLEMENTARY INFORMATION:** The principal authors of this final rulemaking are Larry Cobb, Harry Corley, Jim Detlefs, Clare Onstad, Robert Prael, Todd McCutcheon, Dave Steiber, Cecelia Williams, and Sam Wilson, MMS; and Peter Schaumberg and Sarah Inderbitzin of the Office of the Solicitor.

#### I. General

On August 13, 1996, Congress enacted the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. 104-185, as corrected by Pub. L. 104-200 (RSFA). The RSFA amends portions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.* Prior to the RSFA enactment, section 205 of FOGRMA, 30 U.S.C. 1735, provided for the delegation of only audits, inspections, and investigations to the States. The RSFA amendments to section 205 now provide that the Minerals Management Service (MMS) may delegate other Federal royalty management functions to requesting States for Federal oil and gas leases onshore.

The royalty management functions MMS may delegate under the RSFA amendments are:

- (1) Conducting audits and investigations;
- (2) Receiving and processing production and royalty reports;
- (3) Correcting erroneous report data;
- (4) Performing automated verification; and
- (5) Issuing demands, subpoenas, orders to perform restructured

accounting, and related tolling agreements and notices to lessees or their designees.

The RSFA amendments to section 205(d) also provide that within 12 months after the date of enactment, after consultation with the States, the Secretary must issue standards and regulations pertaining to delegable functions and other relevant responsibilities, including:

- (1) Audits to be performed;
- (2) Records and accounts to be maintained;
- (3) Reporting procedures to be required by the States under this section;
- (4) Receipt and processing of production and royalty reports;
- (5) Correction of erroneous report data;
- (6) Performance of automated verification;
- (7) Issuance of standards and guidelines in order to avoid duplication of effort;
- (8) Transmission of report data to the Secretary; and
- (9) Issuance of demands, subpoenas, and orders to perform restructured accounting, for royalty accounting purposes.

In response to the section 205 RSFA amendments, MMS formed the 205 Consultation Team, comprised of MMS, interested States, representatives from State associations, and a representative of the Bureau of Land Management to discuss how to implement the delegation provisions of the RSFA.

MMS proposed rules implementing the section 205 RSFA amendments (62 FR 19967 April 24, 1997). As part of that proposed rulemaking, MMS explained that it would develop *MMS Standards for Delegation (Standards)* which would contain further information States would need to perform delegated functions. MMS held several outreach meetings in June of 1997 at various locations to discuss the *MMS Standards for Delegation (Standards)* document with States and industry attendees.

#### II. Indian Lands

In the proposed rule, MMS proposed to amend 30 CFR parts 228 and 229 to remove references to cooperative agreements and delegations for Federal lands under those parts since delegation for Federal lands are now covered under new part 227. MMS also proposed to amend those parts to conform to the principles of "Plain English." Because MMS is not under a statutory deadline to publish parts 228 and 229 like it is for part 227, MMS is not removing the references to Federal lands in, or making the "Plain English" changes to

those parts at this time. However, MMS is making an interim change to parts 228 and 229 by adding a sentence to those parts that will state that, "As of the effective date of this rule, this part does not apply to Federal lands." This sentence will make clear that from this time forward, those parts only apply to Indian cooperative agreements and delegation agreements for audits, inspections, and investigations with States for Indian lands within the State. We will amend the language in parts 228 and 229 to "Plain English," and make any other changes to those parts at a future date.

### III. Comments on Proposed Rule

The proposed rulemaking provided a 30-day public comment period, which ended May 27, 1997. MMS received comments from thirteen commenters during the comment period. One additional commenter submitted late comments that MMS received on June 2, 1997. Thus, we accepted a total of fourteen comments for review. Four of the comments were from States, two were from mining associations, two were from oil and gas trade associations, and six were from industry.

We reviewed and analyzed all of the comments, and in some instances revised the language of the final rule based on these comments. The following is a discussion of the comments received and our response. First, we address five general concerns the comments raised. Second, we respond to the specific comments referred to by regulation paragraph number. Third, we address the questions and issues where we asked the public for specific comment.

#### I. General Concerns

##### *Delegation of Functions for Solid Mineral, Geothermal, and OCSLA 8(g) Leases*

One State, two mining associations, and two mining companies commented on delegating royalty management functions to States for solid mineral leases. The State supported the concept, but believed we should not issue regulations until the Department provides a legal opinion on this issue. The mining industry objected to the delegation of functions for solid mineral leases because they believed we lack the statutory authority. One company agreed that we should obtain a legal opinion before issuing the final regulation. One trade association stated that it did not oppose delegation for Outer Continental Shelf Lands Act (OCSLA), section 8(g) leases, but that MMS should not split the reporting for

leases or units that contain both section 8(g) and non-section 8(g) properties.

**MMS Response**—MMS has obtained a legal opinion from the Office of the Solicitor, which concludes that Pub. L. 102-154 does not provide authority to apply the section 205 RSFA amendments to solid mineral, geothermal, and offshore leases subject to section 8(g) of OCSLA. Based on that opinion and the comments, we omitted from the final rule delegations of additional functions for solid mineral leases, geothermal leases, and oil and gas leases subject to section 8(g) of OCSLA, 43 U.S.C. 1337(g). However, States may continue to perform audit functions for solid mineral, geothermal, and OCSLA section 8(g) leases under the existing and successive delegation agreements. Because MMS is not delegating the additional royalty management functions for OCSLA section 8(g) leases, there is no issue regarding split reporting for such leases.

Furthermore, we combined proposed § 227.100 with proposed § 227.101 to conform with comments received from the mining industry and the Departmental legal opinion. Thus, although MMS will not delegate RSFA's additional royalty management functions for solid, geothermal, or section 8(g) leases, when requesting the function of audits and investigations, a State must still follow the procedures under this part.

In addition, we added language to clarify that a State performing delegated functions must perform those functions for all applicable Federal leases within the State's boundaries.

For example, assume that there are 100 Federal oil and gas leases within a State's boundaries. If that State requests delegation of the royalty management functions of audit and receiving and processing production and royalty reports, it cannot choose to perform audits and receive and process production and royalty reports for only 25 of those Federal oil and gas leases. Rather, it must accept delegation of audit and receiving and processing production and royalty reports responsibility for all 100 of those Federal leases.

**Regulatory Flexibility**—We received three comments from States expressing concern that the regulations did not provide enough flexibility. One of these commenters stated, "An organization should be allowed to adjust to a changing environment and apply a better approach or technique without having the fear of the audit contract being withdrawn or the audit findings negotiated." In particular, they were opposed to the extensive use of the

word "must," because they believe it would require their programs to operate in only one way. One commenter indicated that the delegation proposal contained too many detailed requirements. Conversely, one State commented that the regulations "\* \* \* appear to be a reasonable interpretation \* \* \*" of RSFA.

Industry commented that they would like to see the specific standards that provided the details of how the States would perform the delegated functions. One industry oil and gas trade association maintained that "\* \* \* the standards should have been published along with the proposed rule and included in the regulations." This industry oil and gas trade association, another oil and gas association, plus two industry representatives protested that they were forced to comment on the proposed rule without the benefit of reviewing the standards. Two of these commenters requested that MMS extend the comment period until after it issues the standards.

**MMS Response**—On the issue of flexibility, RSFA section 3(a), FOGFMA section 205(d) mandated that the Government and delegated States maintain a consistent royalty management program. Moreover, RSFA specifically stated that States must agree to adopt "standardized reporting procedures" unless all affected parties agree otherwise, RSFA section 3(a), FOGFMA section 205(b)(4), and that the delegations "will not create an unreasonable burden on any lessee," RSFA section 3(a), FOGFMA section 205(b)(3). We believe that the rule allows for as much flexibility as possible within the constraints that RSFA mandates, while maintaining a consistent royalty management program and minimizing any burden on lessees. Like RSFA section 3(a), FOGFMA section 205(b)(4), the rule provides that States may use alternative reporting procedures if all affected parties agree. See 30 CFR 227.106(d). In addition, we anticipate that States may achieve further flexibility in performing delegated functions when they work with us to develop their delegation agreements, as provided in 30 CFR 227.108.

Our intent in developing the rule and *Standards* was to provide the basic framework necessary to maintain uniform royalty management standards, not to inhibit any flexibility in complying with those *Standards*. Thus, in describing the royalty management functions, we used the word "must" for both MMS and the States for required performance. Although we did not eliminate the word "must," we

modified § 227.300 to provide for flexibility in this function. Section 227.300(a) shows the activities that must be performed under an audit, while § 227.300(b) lists additional activities that would be appropriate to perform only in certain situations.

In our attempt to try to achieve further flexibility, we also reviewed our use of the word "all." Upon review, we believe that it was correctly used in describing the activities performed in the various functions. We, therefore, did not make any changes to the word "all." However, we acknowledge that additional flexibility can be attained in certain areas, such as the delegation proposal in § 227.103(e). Therefore, we modified the final rule by deleting the requirements of §§ 227.103(e)(2)(ii) and (iv) from the proposed rule.

With respect to the comment that we extend the comment period until MMS issues the *Standards*, RSFA's requirement that MMS issue a final rule within 12 months of enactment makes it extremely difficult for us to extend the comment period. Accordingly, we will not extend the comment period. We believe that we are complying with the statutory mandates of RSFA. We also believe we made a sufficient effort to share the *Standards* with industry as soon as they were developed. While we did not consult with industry during the initial phase of development, we did conduct outreach meetings with industry in June 1997 to share a first draft of the *Standards* and receive their input.

Further, while we published the proposed regulation for notice and comment, we do not intend to formally publish the *Standards* document in the **Federal Register** for notice and comment because it merely offers additional clarification on the basic standards contained in the rule detailing, for example, day-to-day operational information States need to perform delegated functions. We will publish a notice in the **Federal Register** advising when the *Standards* are available and will post the *Standards* on the MMS Website. Moreover, while we understand industry's concerns, we believe the proposed rule provides sufficient standards information for commenters to be knowledgeable of the process and requirements. Finally, we consider the *Standards* to be a living document that will change, as we reengineer and as States, in coordination with MMS, develop their procedures with industry involvement.

**Industry Participation**—One oil and gas trade association and two industry representatives requested more industry participation in the entire delegation

process, including the proposed regulation, the *Standards*, and the delegation proposal. One industry commenter believed that because industry is vitally affected by the process, they must be allowed an opportunity to provide input. This commenter also stated that the Federal Advisory Committee Act (FACA) requires that industry be included in the development of the standards and procedures for delegation. Another industry commenter pointed out that industry participation would " \* \* \* minimize the lessee's burden, ensure uniformity, eliminate duplication and protect confidential data." Two commenters suggested making the delegation agreement a public document.

**MMS Response**—We believe we have included industry in the process to the maximum extent possible given the limited time available. RSFA only requires that MMS consult with States in developing these rules and *Standards*. Nonetheless, MMS included industry through outreach meetings and consideration of their comments to the proposed rule. In addition, MMS has incorporated industry's feedback in both the rule and *Standards*.

With respect to the comments on the applicability of FACA, in the preamble to the proposed rule, 62 FR 19967, April 24, 1997, MMS suggested formation of an advisory committee consisting of States receiving delegations and MMS to help develop the standards and procedures for performing delegable functions. Such meetings are specifically exempted from FACA, 5 U.S.C. App., under section 204(b) of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (UMRA). Section 204(b) of the UMRA provides that:

(b) Meetings Between State \* \* \* and Federal Officers: [FACA] shall not apply to actions in support of intergovernmental communications where—

(1) Meetings are held exclusively between Federal officials and elected officers of State \* \* \* governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) Such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental activities or administration.

Clearly, meetings MMS officials, or their delegates, have with delegated State officials, or their delegates, to develop the standards and procedures necessary for States to assume delegated functions "are solely for the purposes of exchanging views, information, or

advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental activities or administration." Thus, any State-MMS advisory committee meetings regarding delegations would be exempt from FACA under section 204(b) of UMRA.

Finally, the delegation agreements are public documents evidencing an agreement between MMS and the State. Because industry is not a party to the agreement, we believe that only the States and MMS should be involved in the negotiating process. However, MMS and States will consult with industry when it is specifically impacted by the agreement. For example, if a State wants to initiate an innovative reporting procedure, we would seek industry concurrence with the procedure before its implementation.

**Plain English**—One industry commenter expressed concern that rewriting regulations for parts 228 and 229 in "Plain English" would change their meaning and interpretation.

**MMS Response**—The Federal Government endorses the use of "Plain English" writing for all Government documents. E.O. 12866, 58 FR 51735, October 4, 1993. As stated above, we will amend parts 228 and 229 at a future date to remove references to cooperative agreements and delegations for Federal lands under those parts and to conform to "Plain English" principles.

**Simplify and Streamline Royalty Management Practices and the Relationship to Costs**—Two industry commenters stated that the regulations at part 227 should simplify and streamline royalty management requirements and practices. These commenters were concerned about the additional costs that industry would incur under the new regulations such as the increase in information collection requirements.

**MMS Response**—RSFA mandates promulgation of these regulations. However, the decentralization of functions authorized under RSFA and these implementing regulations does not necessarily guarantee streamlining, nor a reduction in costs. Although we have minimized the burden to lessees in this rulemaking, the impact of RSFA's mandates may result in some additional cost to industry. We identified the potential additional costs as stemming primarily from an increase in coordination between industry and multiple royalty management entities. But, the cost figure was an estimate and may not actually be realized by industry.

## II. Specific Comments

**Section 227.102**—One State commented that impacted States must be allowed to participate in settlement negotiations, even though they do not have a delegation agreement. In particular, the commenter stated “(MMS) \* \* \* must depart from its current settlement procedures in order to comply with RSFA. RSFA expands the authority of all States concerned, not just those with delegations of authority, granting them the ability to veto compromises of royalty obligations. Under RSFA, each State will need to represent itself.”

**MMS Response**—MMS agrees that under RSFA section 4(a), FOGCMA section 115(i), the “State concerned” (defined as a State which statutorily receives royalties and other payments under mineral leasing laws, RSFA section 2(2), FOGCMA section 3(31)) may participate in the negotiation process. RSFA section 4(a), FOGCMA section 115(i), provides that for royalties due on production after September 1, 1996, “the parties shall hold not less than one settlement consultation and the Secretary and the State concerned may take such action as is appropriate to compromise and settle a disputed obligation. \* \* \*”

However, this language does not expressly grant States authority to settle a dispute or prevent the Secretary from settling a dispute over a State objection or “veto.” Rather, the Secretary must determine what is the appropriate action and has done so in this rulemaking through the retention of ultimate settlement authority. This is consistent with the entire structure of RSFA because: (1) Under RSFA section 4(a), FOGCMA section 115(h), the Secretary retains authority to decide appeals, even appeals of orders that a delegated State issues; (2) RSFA section 12 provides that “(n)othing in this Act shall be construed to give a state a property right or interest in any Federal lease or land,” and the power to settle a dispute is at least an inchoate property right which Congress has specifically stated it did not grant to any State; and (3) as a practical matter, many settlements involve more than one State, and we do not believe it was Congress’ intent to allow one State to frustrate the settlement process in such instances when it enacted RSFA section 4(a), FOGCMA section 115(i). Thus, we believe, as we always have, that the appropriate action involves consultation with the States. Accordingly, while all concerned States may participate in negotiations or other alternative dispute

resolution, MMS must retain settlement authority over Federal royalties.

**Section 227.102(d)**—Two industry commenters expressed concern about possible duplication that might result from the splitting of enforcement procedures between the States and MMS.

One oil and gas trade association supported MMS retaining enforcement actions. This commenter recommended that MMS continue to apply its current tolerances for error rates, compliance, and other applications at the payor code level for all Federal leases instead of by State.

**MMS Response**—We do not believe that there will be any duplication regarding enforcement procedures. RSFA does not allow for the splitting of enforcement procedures. Rather, the only enforcement procedures that RSFA allows the States are issuing demands, subpoenas, and orders to perform restructured accounting. MMS will retain all other enforcement activities. See 30 CFR 227.102(c).

Importantly, as stated in the proposed rule, MMS will continue to process and decide all appeals, including appeals from demands or orders a delegated State issues, 30 CFR 227.102(d), and will continue to decide all valuation policies. 30 CFR 227.102(f). Accordingly, although a State may issue a demand, MMS will retain ultimate authority for its enforcement. This process will prevent “duplicative” or “split” enforcement procedures.

We agree that we must retain enforcement actions not specifically delegated by RSFA. We will address how we will apply tolerances to payors in various States in the regulations relevant to the particular type of application, such as error rates.

**Section 227.103(i)**—One State commenter and one oil and gas trade association pointed out that § 227.103(i) was incomplete. Another commenter “urge(d) that MMS strictly enforce confidentiality obligations \* \* \* where the same state auditors are conducting federal and state royalty audits simultaneously, along with state tax audits.”

**MMS Response**—We agree that there is a typographical error in the last sentence of § 227.103(i). Thus, we have deleted the semicolon and the word “and.” In addition, to clarify what we mean by the phrase in § 227.103(i) that “persons who have access to information received under delegated functions are subject to the same provisions of law regarding confidentiality and disclosure as that of Federal employees” we are adding the following language to that paragraph:

Therefore, persons who have access to information received under delegation agreements may not use such information or provide such information to any other person, including State personnel, for purposes other than performing delegated functions. However, this limitation does not apply if the person submitting the information consents in writing to its use for other State purposes.

We are adding the additional language because under existing laws, Federal employees are prohibited from disseminating confidential commercial information to a State, except for delegation situations where certain restrictions exist. For example, MMS cannot provide information it obtains in a royalty audit to a State for the State to use in a tax audit. Likewise, a State employee acting as the Federal Government’s delegatee is prohibited from disseminating information to other State personnel for purposes other than delegated functions, unless the person providing the information agrees to the further dissemination. Moreover, some State employees will perform delegated functions and also other State functions such as State severance tax audits. If that person receives information from a company under an MMS delegation, the person cannot use the information gathered under the delegation for State enforcement purposes without obtaining written consent from the company.

**Section 227.103(c)(1)**—Two State commenters recommended making the word “entity” plural because more than one State agency may perform delegated functions.

**MMS Response**—We agree and have made this change in this rule. We also added language to clarify that if more than one entity is delegated responsibility for performing delegated functions, the State must include in its proposal the position of the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State.

**Section 227.105**—Two State commenters questioned whether MMS would require a hearing in all cases, even if a State requested only to make minor changes to an existing delegation. These commenters suggested holding a hearing only if necessary or appropriate and using language to that effect.

**MMS Response**—We agree that we will hold a hearing only if necessary and have changed the final rule to state that we will require a hearing when MMS determines it is appropriate.

**Section 227.106(d)**—One oil and gas trade association supported maintaining uniformity in the delegation program.

**MMS Response**—We agree.

*Section 227.107*—One oil and gas industry commenter expressed concern about industry having enough time to modify their systems to comply with any new reporting requirements. This commenter suggested allowing a 6-month grace period before the effective date of the delegation.

*MMS Response*—This section does not address the effective date of delegation agreements or “grace periods.” Rather, it informs States that submit a delegation proposal that the MMS Director will decide whether to approve the proposal within 90 days after the proposal is complete. The 90-day period is mandated under RSFA section 3(a), FOGRMA section 205(c) and cannot be changed. However, we agree that a transition time is necessary between the date a delegation agreement becomes effective and the date industry must comply with any new requirements under such agreements. Although not raised by this comment, during its review of this comment MMS realized that it had not included an effective date for delegation agreements in its proposed rule. Therefore, we will modify § 227.110(a) as follows:

(a) Delegation agreements are effective for 3 years from the first day of the month following the date the MMS Director signs the delegation agreement. However, during the development of the State’s delegation proposal under § 227.108 of this part, MMS, the delegated State and any other affected person will determine an appropriate transition period for industry to modify their systems to comply with any new requirements under a delegation agreement. Thus, the MMS Director will not sign any delegation agreement until after the agreed to transition period. MMS will publish notice of the effective date of a State’s delegation agreement in the **Federal Register** and that notice will inform industry of any transition period.

Thus, MMS, the delegated State, and affected industry will determine the amount of transition time necessary on a case-by-case basis depending on the type and number of functions that we agree to delegate to a given State. We will ensure that sufficient time is provided to all affected parties to allow for a successful transition.

*Section 227.108*—One State commenter suggested cross-referencing the standards in this section to the standards in §§ 227.200 and 227.201.

*MMS Response*—We disagree. We do not see any benefit in cross-referencing to only those sections in the rule. Although this rule and the *Standards* provide the basic framework for uniform performance of the delegated functions,

we believe further flexibility can be achieved through development of the delegation agreement under this section.

*Section 227.109*—One State commenter pointed out that this section does not address a State’s ability to appeal if it is denied a delegation. This commenter indicated that a review of the decision at the administrative level is a logical first step.

*MMS Response*—We disagree. RSFA section 3(a), FOGRMA section 205(g) expressly provides that disapproval of a delegation proposal is reviewable in Federal district court. Thus, consistent with RSFA section 3(a), FOGRMA section 205(g), the MMS Director’s decision to deny a delegation with the concurrence of the Secretary is final agency action that a State may appeal in Federal district court.

*Section 227.110*—Two oil and gas trade associations recommended, at a minimum, that we publish notice of a State’s request for delegation in addition to its request to renew a delegation. Further, they recommended that upon such notice, any affected or interested party, including industry, could request a hearing. One of these commenters requested that a hearing be held in all renewal cases.

*MMS Response*—We agree that we should publish notice of a State’s proposal for delegation, renewal of an existing delegation, and any successive delegation agreement. Therefore, we will publish such notices and notice of the effective date of a State’s delegation agreement in the **Federal Register**. We will post the proposals on the MMS Website and also will send a copy of delegation proposals to trade associations or anyone else upon request. The trade associations may make further distribution to their members, as necessary. MMS has added a new paragraph at § 227.105(d) in response to this comment. See also § 227.110(g).

In addition, MMS agrees that affected parties should be able to request a hearing when States request a renewal or a successive delegation agreement under this section. Accordingly, we are modifying the final rulemaking by adding a new paragraph (e) to this section as follows:

(e) If a State does not request a hearing under paragraphs (b)(1) or (d) of this section, any other affected person may submit a written request for a hearing under those paragraphs to the MMS Associate Director for Royalty Management.

*Section 227.112*—We received several comments on costs from three States. One State commenter was concerned about the adequacy of our cost

accounting system and how States would be compensated under it. The other two State commenters protested the requirement to submit vouchers with a level of detail above current delegation agreements. They did support, however, making cost and voucher information available for review. One State commenter was concerned that we would determine costs on a micro-level of activity. This commenter believed that costs related to the audit function should be consistent with current funding for delegated audit work. Another State commenter believed that we must make any cost comparisons by looking at the whole picture rather than a single part.

*MMS Response*—Through the net receipt sharing process, MMS has refined the costs regarding the program’s royalty management functions. Although the process is not based on a detailed cost accounting system, the Office of the Inspector General concurred in our methodology for allocating costs to States. However, we appreciate the State’s concerns and will contract with an independent accounting firm to review MMS costs related to all delegable functions and recommend a methodology for determining what funds should be made available to States requesting a delegation agreement for one or more functions. This issue is important because of RSFA’s requirement that compensation to a State may not exceed the Secretary’s reasonably anticipated expenditure for performance of such delegated activities by the Secretary.

The vouchers referred to in the proposed rule need only show the level of cost categories that are presently required under existing delegated audit agreements, not each individual expenditure. The States will not need to provide the detailed supporting documentation with the vouchers, for example, an employee’s travel voucher. States will need only to make the detailed supporting documentation available, if we request it. We confirm that we will focus on the overall costs under the agreement.

*Section 227.200*—Two State commenters objected to the requirement that States obtain MMS guidance on any applicable Federal requirement, such as valuation interpretation or policy. One State commenter was concerned about repercussions for not following our interpretation or guidance. This State commenter stated that, “A delegation may decide not to follow the guidance due to discovery of new pertinent facts and may elect, for purposes of effective use of resources, to not have MMS issue new guidance.” This State also

suggested that MMS can convey guidance orally, without a formal written procedure. Therefore, this commenter recommended that we delete the requirement for a written request. Conversely, one oil and gas trade association strongly supported the requirement for a State to submit a written request for interpretation of applicable Federal requirements and for MMS to respond in writing. This commenter believed that, "Besides ensuring uniform and consistent application of Federal requirements, it will also provide lessees with greater certainty that they are properly reporting and paying their royalties." One State commenter requested that the States be held to no higher standard than MMS in performing delegated functions.

**MMS Response**—The Department of the Interior (DOI) has the final responsibility for deciding appeals and must maintain a uniform valuation policy. In particular, for unique questions and complex situations, such as valuation issues, we believe it is more efficient for us to provide written guidance to all impacted parties early in a developing situation than to provide it late in the process. Further, this encourages consistency in the application of laws and regulations because it eliminates confusion during the administrative process. We concur that for routine or procedural matters States could obtain guidance orally. We have clarified our position in the final regulation.

We will not hold States to standards higher than those we perform. However, we encourage States to improve the efficiency and effectiveness of the Federal royalty management program they are delegated.

**Section 227.300**—Two States commented that the list of delegable audit functions was too detailed and restrictive. These commenters pointed out that not all functions would apply in every audit situation, such as site visits, close-out conferences, and records releases. One of these commenters further contended that MMS should compensate the States for the costs of conducting any special audit initiatives. Another State commenter recommended deleting the reference in this section to MMS deciding all appeals because it may adopt the recommendation of the Royalty Policy Committee.

**MMS Response**—We agree with the idea of increased flexibility. We have modified the rule to only require performance of the specific audit functions as appropriate.

Compensation for special audit initiatives is subject to Congressional funding. Thus, when audit initiatives arise and additional funds are not available, the audit work plans of affected States and MMS would have to be modified in response to the higher priority work. This could result in lower priority work not being accomplished with existing resources, unless Congress provides additional funding.

We are retaining the language in the final rules that the Department will decide all appeals as provided in RSFA. We are reviewing the recommendations by the Royalty Policy Committee on appeals and will issue an amended rule on this matter if necessary.

**Section 227.301**—Three State commenters stated that the responsibilities for performing audits were too restrictive, and that MMS should allow them to develop their own audit strategies. They pointed out that, for example, the annual work plan is subject to frequent change and that the regulations need to allow for that kind of flexibility.

**MMS Response**—Although, we understand the need for flexibility in developing audit strategies, we stress the need for a coordinated audit program. Thus, we agree that the annual audit work plans can be changed to reprioritize work with our approval and have modified § 227.301(e) accordingly.

**Section 227.400**—One State commenter advocated State collection of royalty payments, similar to Indian lockboxes, to minimize the complications resulting from erroneous reports. A second State commenter raised the issue that RSFA's term "State concerned" (in the context of granting exceptions from reporting and payment requirements under 30 U.S.C. 1726(c)) applies to a broader universe than the term "delegated State" used in this rule, and requested that its meaning not be changed. An oil and gas industry representative questioned whether a lessee could appeal a State's denial of an exception request.

**MMS Response**—As we stated in the preamble to the proposed rule, RSFA does not authorize MMS to delegate collection functions. Thus, MMS has reserved this function because it is necessary for uniform administration of the royalty management system among the States. Further, we believe that no complication results from a centralized collection function.

The commenter has misinterpreted the application of §§ 227.400(b)(1) and (2) in this rulemaking. With respect to § 227.400(b)(1), RSFA provides, in the section applicable to allocation of production to leases within a unit or

communitization agreement, that "[t]he Secretary or the *delegated State* shall grant an exception from the reporting and payment requirements for marginal properties." 30 U.S.C. 1721(k)(4) (emphasis added). That is the applicable section of RSFA that was addressed in § 227.400(b)(1) of this rulemaking and does not require consent of the "state concerned." However, RSFA also provides in the section applicable to marginal properties in general that the State concerned must consent to alternative accounting and auditing procedures for marginal properties. 30 U.S.C. 1726(c). We are in the process of separately promulgating rules implementing section 1726(c) of RSFA that do require consent of the State concerned before it will grant alternative accounting and auditing procedures for marginal properties.

With respect to § 227.400(b)(2), RSFA also provides, in the section applicable to allocation of production to leases within a unit or communitization agreement, that "(f)or any unit or communitization agreement if all lessees contractually agree to an alternative method of royalty reporting and payment, the lessees may submit such alternative method to the Secretary or the *delegated State* for approval. \* \* \*" 30 U.S.C. 1721(k)(3) (emphasis added). That is the applicable section of RSFA that was addressed in § 227.400(b)(2) of this rulemaking and does not require consent of the "state concerned."

**Section 227.401**—One oil and gas industry commenter suggested that States accept *all* forms of electronic media as currently done by MMS.

**MMS Response**—We agree. We intend to continue this policy in our delegation program.

**Section 227.500**—One oil and gas trade association and one oil and gas industry commenter recommended that we assess interest and erroneous reporting at the payor code level for all Federal leases and not at the individual State level.

**MMS Response**—We will address how we will assess for interest and erroneous reporting in other appropriate rulemakings.

**Section 227.600**—A State commenter opposed the requirement to verify "unit prices for reasonable product valuation," because MMS does not perform that function. Two other State commenters suggested that cost effectiveness be taken into account to optimize the return on the resources spent when performing automated verification. An oil and gas industry trade association stated that it " \* \* \* does not object to a State calculating

interest, but we have concerns on how the excessive overpayment provision of FOGRSFA will be interpreted. (It) believes that this provision must be viewed on a Payor Code level for all federal leases. We do not believe that this provision should be made on a state-by-state basis. What if a reporter had only one lease within a delegated state, but hundreds of federal leases in other states?"

*MMS Response*—We do perform a limited product value verification within certain broad parameters and have left the provision unchanged in the final rule. We would not require the States to perform under a more stringent standard than we do. Further, we support flexibility and will work with States to develop customized approaches to automated verification that are cost effective and meet their needs. We will address the issue of calculating interest on excessive overpayments in another separate rulemaking.

*Section 227.601*—One oil and gas industry representative was concerned about States' abilities to verify the proper volume of gas plant products as currently done by MMS. This commenter suggested that States have the same capability to avoid extraneous reporting by industry. Two State commenters objected to their having to perform verification under a higher standard than MMS. One oil and gas trade association commented that the word "update" in § 227.601(d) should be "updated."

*MMS Response*—If States request this function, we will assure that they have the capability to verify plant production volumes. We will not require a State to perform verification at a higher standard than we do; however, we will work with States to develop verification tolerances that best suit each State's needs. We agree that the word in § 227.601(d) should be "updated" and corrected this section.

*Section 227.800*—Two oil and gas industry trade associations supported establishment of a MMS monitoring team. They further suggested that the team consult industry on a regular basis.

*MMS Response*—We agree that the monitoring team should serve as a point of contact with industry to address their concerns. Upon review of this section, we modified it to clarify the annual and periodic reviews performed by the monitoring team.

*Section 227.801*—Two State commenters believed that States should have the ability to appeal a finding by MMS that it is not performing a delegated function adequately. Two oil and gas trade associations asserted that

we must take corrective actions if a State has not performed its delegated function satisfactorily, so the word "may" must be changed to "will." One of these commenters also recommended that we put any notices of a State's noncompliance in writing.

*MMS Response*—The process we proposed provides appropriate administrative due process for the delegated State. If a State's performance problem is not corrected through informal discussion, we may then begin to terminate the delegation. Any termination of a delegated function will be decided by the MMS Director, with concurrence by the Secretary. This decision would be appealable to Federal district court.

In situations involving corrective actions, we wish to retain the latitude to work with States in improving their performance of the delegated functions. Some situations may not require us to take a formal corrective action, for example, where problems can be resolved verbally. Further, MMS wishes to assure that before it terminates an agreement, a State will have ample opportunity to correct any harmful or significant deficiencies. Therefore, MMS is retaining the word "may" in the sections involving corrective actions.

Although the rule provides that MMS will notify a State in writing of the State's failure to adequately perform delegated functions, MMS will not inform industry of a State's noncompliance. Industry may request information on a State's performance under its delegation agreement under the Freedom of Information Act. If industry has concerns regarding a State's performance of delegated functions, industry may contact the monitoring team described under § 227.800 of this part.

*Section 227.804*—Two oil and gas trade associations requested that we provide industry with 180 days for systems changes, if a State elects to terminate its delegation. One of these commenters also asked that industry be notified of such terminations.

*MMS Response*—This section does not explicitly address the effective date of terminations of delegation agreements or time periods for industry to make systems changes once a termination becomes effective. Rather, it informs States that they must provide MMS with a 90-day written notice of their intent to terminate a delegation agreement. However, MMS agrees that a transition time is warranted and is modifying § 227.804 to address this concern. Although not raised by this comment, during its review of this comment, MMS realized that it had not included an

effective date for termination of delegation agreements in its proposed rule. Accordingly, we have modified § 227.804 to provide that MMS will determine a termination date based on the number and type of delegation function(s) and the number of affected parties. Therefore, in attempting to provide flexibility, we will work with each State and industry, as appropriate, to determine the appropriate amount of time for termination of their particular delegated function(s).

### *III. Comments That MMS Specifically Requested*

We specifically asked for comment on the following issues:

*Removal of Part 229* "As an alternative proposal, MMS would like comment on whether it should remove part 229 completely and incorporate delegations to States for audits, inspections, and investigations on Indian lands into new Part 227."

*Comment*—One industry commenter recommended that MMS retain separate delegation regulations for audits, inspections and investigations for Indian leases in part 229. Another industry commenter pointed out that FOGRSFA did not affect leases on Indian lands.

*MMS Response*—We agree and we are retaining this authority in part 229.

### *Delegation Proposal*

"MMS specifically requested comments on additional information that you believe would be important to include in a State's delegation proposal."

*Comment*—We did not receive any specific comments on this issue. However, one oil and gas trade association requested timely access to delegation proposals.

*MMS Response*—We addressed this issue under § 227.110.

### *Formation of an Advisory Committee*

"MMS would suggest formation of an advisory committee comprised of States receiving delegations and MMS representatives. The committee would be responsible for providing advice and recommendations about the standards and procedures required for the performance of delegable functions. MMS would like comments on this suggestion."

*Comment*—One oil and gas industry trade association advocated that industry also be included in the advisory committee.

*MMS Response*—RSFA requires that MMS and the States consult in the development of procedures and standards for States to perform royalty



management functions. We believe that it may be helpful for States with delegations and MMS to work informally together through a State-initiated advisory group on the continuing development and coordination of the delegation program. The discussions would involve mostly the day-to-day coordination of activities between MMS and States and would have little, if any, effect on industry's activities. Once standards, procedures, and coordination techniques are developed, industry will have the opportunity for review.

**Monitoring Team**—"Please provide comment to MMS if you have suggestions on how MMS should form the monitoring team."

**Comment**—One oil and gas trade association stated that the monitoring team should consist of MMS subject matter experts. Further, this commenter suggested that the team consult with affected payors on a regular basis.

**MMS Response**—We agree that the monitoring team members should be subject matter experts and that the team will consult with affected payors on a regular basis.

**Reporting Burden**—"As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden."

**Comment**—One oil and gas trade association emphasized that reporting burdens could exist when payors report in more than one State. Further, this commenter stated that industry participation is essential to eliminate duplication and provide a uniform reporting format.

**MMS Response**—While we agree that under RSFA there may be an additional reporting burden for those payors reporting to multiple States, we are committed to coordinating with States and industry to minimize this burden.

**Paperwork Reduction Act Requirements**—"In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, MMS is providing notice and otherwise consulting with members of the public and affected agencies concerning collection of information in order to solicit comment to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the

burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology."

**Comment**—We did not receive any comments on this issue.

### Section-by-Section Analysis

#### *Section 227.100 What States may request delegation?*

We removed this section and combined the information with § 227.101 to conform with comments received from the mining industry and the Departmental legal opinion.

#### *Section 227.101 What royalty management functions may MMS delegate to a State?*

We combined the proposed § 227.100 with this section for clarity purposes.

At § 227.101(a), we added language to clarify that a State performing delegated royalty management functions must perform those functions for all Federal oil and gas leases within the State boundaries.

At § 227.101(b), we added language to clarify that a State performing delegated audits and investigations must perform those functions for all federal leases subject to OCSLA section 8(g) and solid mineral leases and geothermal leases on Federal lands within the State boundaries.

#### *Section 227.103 What must a State's delegation proposal contain?*

We modified § 227.103(c)(1) to include the word "entities" in response to comments and added language to clarify that if more than one entity is delegated responsibility for performing delegated functions, the State must provide in its proposal the position of the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State.

At § 227.103(e)(2), we deleted paragraphs (ii) and (iv) in response to comments.

At § 227.103(i), we added language to clarify the responsibilities of handling confidential information.

#### *Section 227.105 What are the hearing procedures?*

At § 227.105, we added the words "if appropriate" in response to comments. We inserted a new paragraph at § 227.105(d) also in response to comments.

#### *Section 227.110 When and for how long are delegation agreements effective?*

We changed the section title to add clarity. We added information at § 227.110(a) to clarify our language regarding the effective date for delegation agreements. We added new language at § 227.110(d) to clarify our original proposal.

In response to comments, we added § 227.110(e) to further explain the hearing process.

#### *Section 227.111 Do existing delegation agreements remain in effect?*

We added language at § 227.111(a) to further explain our requirements in this section.

#### *Section 227.112 What compensation will a State receive to perform delegated functions?*

We added language at § 227.112(d) to provide an option to the States for voucher submittal.

#### *Section 227.200 What are a State's general responsibilities if it accepts a delegation?*

We modified § 227.200(a) to provide flexibility to States in response to their comments.

We deleted the phrase "and the MMS Standards for Delegation (Standards)" from § 227.200(e) for clarity purposes.

We added the phrase "and the delegation agreement;" to 227.200(f) for clarity purposes.

#### *Section 227.300 What audit functions may a State perform?*

We modified § 227.300 to provide greater flexibility to the States in response to their comments.

#### *Section 227.301 What are a State's responsibilities if it performs audits?*

We modified the language at § 227.301(e) of the proposed rule to provide flexibility to States regarding their audit plans, as expressed in their comments.

We also modified the language at § 227.301(f) of the proposed rule to clarify our requirements regarding the appeals process.

#### *Section 227.400 What functions may a State perform in processing production reports or royalty reports?*

We modified § 227.400(a)(7) to clarify our requirements regarding the appeals process.

#### *Section 227.401 What are a State's responsibilities if it processes production reports or royalty reports?*

We modified § 227.401(b) to clarify our requirements for processing fatal



errors. At § 227.401(h), we modified the language to clarify our requirements regarding the appeals process.

**Section 227.500** *What functions may a State perform to ensure that reporters correct erroneous report data?*

We modified § 227.500(b) for further clarity.

**Section 227.501** *What are a State's responsibilities to ensure that reporters correct erroneous data?*

We changed § 227.501(b) for simplicity. We modified § 227.501(d) to clarify our requirements regarding the appeals process.

**Section 227.600** *What automated verification functions may a State perform?*

We modified § 227.600(b)(4) as a result of mining industry comments regarding the delegation of additional royalty management functions for solid, geothermal, and § 8(g) leases.

We deleted § 227.600(b)(7) to correct this final rulemaking because this item is not a separate, identifiable automated verification function. We modified § 227.600(d) to clarify our requirements regarding the appeals process.

**Section 227.601** *What are a State's responsibilities if it performs automated verification?*

We changed § 227.601(d) to correct a typographical error. We modified § 227.601(e) to provide further clarity regarding the appeals requirements.

**Section 227.700** *What enforcement documents may a State issue in support of its delegated function?*

We deleted language from § 227.700(a) as a result of mining industry comments regarding the delegation of additional royalty management functions for solid, geothermal, and § 8(g) leases.

**Section 227.800** *How will MMS monitor a State's performance of delegated functions?*

We modified § 227.800 in response to comments and to further specify our review process.

**Section 227.802** *How will MMS terminate a State's delegation agreement?*

We added further information about the termination of delegation agreement process at § 227.802 for clarity purposes.

**Section 227.804** *How else may a State's delegation agreement terminate?*

We modified § 227.804 as a result of industry comments.

## V. Procedural Matters

### *The Regulatory Flexibility Act*

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule provides guidance to States about the delegation of royalty management functions.

Approximately 4,500 reporters provide royalty and production reports on mineral production from Federal and Indian lands to MMS. However, many of these companies report both royalty and production information to MMS. The total number of companies reporting to MMS is about 2,500. The majority of these are considered small businesses under the criteria of the Small Business Administration.

Some small entities might have activities in more than one State. While these companies could be required to report to several States instead of only the Federal Government under this rulemaking, they would file the same reports that they do now, but to a greater number of regulatory agencies. For the small entity, this will require further communication and coordination between the States and MMS. If the entity has several leases in more than one State, we estimate an additional burden of 50 hours for coordination between the several States and MMS. Under this scenario, the annual cost burden estimate to a small entity is \$1,750.

If a payor reports for Federal mineral leases located in only one State, we estimate no additional burden hours or costs imposed by this rule because the payor is already required to send in the same production reports and royalty payments but to a different address. A \$1,750 annual cost for a small business to comply with this rule is not considered a significant impact on a typical small entity in the oil and gas extraction industry.

This rulemaking will not have a significant economic impact on a substantial number of small entities.

### *Executive Order 12630*

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, there is no need to prepare a Takings Implication Assessment under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights."

### *Executive Order 12866*

This rule was determined to be significant by the Office of Management and Budget (OMB). Although this rule will result in an increased reporting burden, there will be an offsetting benefit of incentives to States to participate in Federal activities. MMS estimates the economic impact of this rule to be about \$7 million.

### *Executive Order 12988*

The Department has certified to OMB that this proposed regulation meets the applicable standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

### *Paperwork Reduction Act*

The Office of Management and Budget approved the information collection requirements contained in this rule under 44 U.S.C. 3501 *et seq.*, and assigned OMB Control Number 1010-0088, titled: Delegation of Authority to States. This OMB approval has an expiration date of June 30, 2000.

### *National Environmental Policy Act of 1969*

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

### *Unfunded Mandates Reform Act of 1995*

The Department has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of \$100 million or more in any given year on local, tribal, State governments or the private sector.

### **List of Subjects in 30 CFR Parts 227, 228 and 229**

Coal, Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: July 26, 1997.

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

For the reasons set out in the preamble, Title 30, Chapter II of the Code of Federal Regulations is amended as follows:

1. Part 227 is added to read as follows:

### **PART 227—DELEGATION TO STATES**

Sec.

**Delegation of MMS Royalty Functions**

- 227.1 What is the purpose of this part?
- 227.10 What is the authority for information collection?
- 227.101 What royalty management functions may MMS delegate to a State?
- 227.102 What royalty management functions will MMS not delegate?

**Delegation Proposals**

- 227.103 What must a State's delegation proposal contain?
- 227.104 What will MMS do when it receives a State's delegation proposal?

**Hearing Process**

- 227.105 What are the hearing procedures?

**Delegation Process**

- 227.106 What statutory requirements must a State meet to receive a delegation?
- 227.107 When will the MMS Director decide whether to approve a State's delegation proposal?
- 227.108 How will MMS notify a State of its decision?
- 227.109 What if the MMS Director denies a State's delegation proposal?
- 227.110 When and for how long are delegation agreements effective?

**Existing Delegations**

- 227.111 Do existing delegation agreements remain in effect?

**Compensation**

- 227.112 What compensation will a State receive to perform delegated functions?

**States' Responsibilities to Perform Delegated Functions**

- 227.200 What are a State's general responsibilities if it accepts a delegation?
- 227.201 What standards must a State comply with for performing delegated functions?
- 227.300 What audit functions may a State perform?
- 227.301 What are a State's responsibilities if it performs audits?
- 227.400 What functions may a State perform in processing production reports and royalty reports?
- 227.401 What are a State's responsibilities if it processes production reports or royalty reports?
- 227.500 What functions may a State perform to ensure that reporters correct erroneous report data?
- 227.501 What are a State's responsibilities to ensure that reporters correct erroneous data?
- 227.600 What automated verification functions may a State perform?
- 227.601 What are a State's responsibilities if it performs automated verification?
- 227.700 What enforcement documents may a State issue in support of its delegated function?

**Performance Review**

- 227.800 How will MMS monitor a State's performance of delegated functions?
- 227.801 What if a State does not adequately perform a delegated function?
- 227.802 How will MMS terminate a State's delegation agreement?

- 227.803 What are the hearing procedures for terminating a State's delegation agreement?
- 227.804 How else may a State's delegation agreement terminate?
- 227.805 How may a State obtain a new delegation agreement after termination?
- Authority:** 30 U.S.C. 1735; 30 U.S.C. 196; Pub L. 102-154.

**Delegation of MMS Royalty Functions****§ 227.1 What is the purpose of this part?**

This part provides procedures to delegate Federal royalty management functions to States under section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (the Act), 30 U.S.C. 1735, as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. 104-185, August 13, 1996, as corrected by Pub. L. 104-200. This part also provides procedures to delegate only audit and investigation functions to States under Pub. L. 102-154 for solid mineral leases, geothermal leases and leases subject to section 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337(g). This part does not apply to any inspection or enforcement responsibilities of the Bureau of Land Management for onshore leases or the MMS Offshore Minerals Management program for leases on the Outer Continental Shelf.

**§ 227.10 What is the authority for information collection?**

(a) The information collection requirements contained in this part have been approved by Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. and assigned OMB Control Number 1010-0088. We will use the information collected to review and approve delegation proposals from States wishing to perform royalty management functions.

(b) Public reporting burden is estimated as follows. MMS estimates 400 annual burden hours per function for each State performing the delegated functions. The Federal Government will reimburse some of these costs as provided by statute. However, States could incur additional start-up costs, such as purchasing equipment necessary to perform a delegated function, that may not be reimbursable. MMS estimates that, if applicable, each payor or reporter would spend 50 burden hours annually coordinating their interactions and communications among the several States and with MMS. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to the Information Collection Clearance Officer, Minerals Management Service,

1849 C Street, NW, Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Interior Department, OMB Control Number 1010-0088, 725 17th Street, NW, Washington, DC 20503.

**§ 227.101 What royalty management functions may MMS delegate to a State?**

(a) If there are oil and gas leases subject to the Act on Federal lands within your State, MMS may delegate the following royalty management functions for all such Federal oil and gas leases to you under this part:

- (1) Conducting audits and investigations;
- (2) Receiving and processing production or royalty reports;
- (3) Correcting erroneous report data;
- (4) Performing automated verification; and
- (5) Issuing demands, subpoenas, and orders to perform restructured accounting, including related notices to lessees or their designees, and entering into tolling agreements under section 115(d)(1) of the Act, 30 U.S.C. 1725(d)(1).

(b) If there are oil and gas leases offshore of your State subject to section 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337(g), or solid mineral leases or geothermal leases on Federal lands within your State, MMS only may delegate authority to conduct audits and investigations for all such Federal leases to you under this part. MMS will not delegate other functions that may be delegated for oil and gas leases on Federal lands.

**§ 227.102 What royalty management functions will MMS not delegate?**

This section lists the principal royalty management functions that MMS will not delegate to a State. MMS will not delegate to a State the following functions:

(a) MMS must collect all moneys received from sales, bonuses, rentals, royalties, civil penalties, assessments and interest. MMS also must collect any moneys a lessee or its designee pays because of audits or other actions of a delegated State;

(b) MMS must compare all cash and other payments it receives with payments shown on royalty reports or other documents, such as bills, to reconcile payor accounts. MMS also must disburse all appropriate moneys to States and other revenue recipients, including refunds and interest owed to lessees and their designees;

(c) The Department of the Interior will receive, process, and decide all administrative appeals from demands or

other orders issued to lessees, their designees, or any other person, including demands or orders a delegated State issues;

(d) Only MMS may take enforcement actions other than issuing demands, subpoenas and orders to perform restructured accounting. MMS or the appropriate Federal agency will issue notices of non-compliance and civil penalties, collect debts, write off delinquent debts, pursue litigation, enforce subpoenas, and manage any alternative dispute resolution. MMS will conduct, coordinate and approve any settlement or other compromise of an obligation that a lessee or its designee owes;

(e) MMS will decide all valuation policies, including issuing valuation regulations, determinations, and guidelines, and interpreting valuation regulations; and

(f) MMS may reserve additional authorities and responsibilities not included in paragraphs (a) through (f) of this section.

### Delegation Proposals

#### § 227.103 What must a State's delegation proposal contain?

If you want MMS to delegate royalty management functions to you, then you must submit a delegation proposal to the MMS Associate Director for Royalty Management. MMS will provide you with technical assistance and information to help you prepare your delegation proposal. Your proposal must contain the following minimum information:

(a) The name and title of the State official authorized to submit the delegation proposal and execute the delegation agreement;

(b) The name, address, and telephone number of the State contact for the proposal;

(c) A copy of the legislation, State Attorney General opinion or other document that:

(1) States which State entity or entities are responsible for performing delegated functions, and if more than one entity is delegated such responsibility, the position of the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State;

(2) Demonstrates the State's authority to:

(i) Accept a delegation from MMS; and

(ii) Receive State or Federal appropriations to perform delegated functions;

(d) The date you propose to begin performing delegated functions;

(e) A detailed statement of the delegable functions that you propose to perform. For each function, describe the resources available in your State to perform each function, the procedures you will use to perform each function, and how you will assure that you will meet all Federal laws, lease terms, regulations and relevant performance standards. As evidence that you have or will have the resources to perform each delegable function, provide the following information:

(1) A description of the personnel you have available to perform delegated functions, including:

(i) How many persons you will assign full-time and part-time to each delegated function;

(ii) The technical qualifications of the key personnel you will assign to each function, including academic field and degree, professional credentials, and quality and amount of experience with similar functions; and

(iii) Whether these persons are currently State employees. If not, explain how you propose to hire these persons or obtain their services, and when you expect to have those persons available to perform delegated functions;

(2) A description of the facilities you will use to perform delegated functions, including:

(i) Whether you currently have the facilities in which you will physically locate the personnel and equipment you will need to perform the functions you propose to assume. If not, how you propose to acquire such facilities, and when you expect to have such facilities available; and

(ii) How much office space is available;

(3) Describe the equipment you will use to perform delegated functions, including:

(i) Hardware and software you will use to perform each delegated function, including equipment for:

(A) Document processing, including compatibility with MMS automated systems, electronic commerce capabilities, and data storage capabilities;

(B) Accessing reference data;

(C) Contacting production or royalty reporters;

(D) Issuing demands;

(E) Maintaining accounting records;

(F) Performing automated verification;

(G) Maintaining security of confidential and proprietary information; and

(H) Providing data to other Federal agencies;

(ii) Whether you currently have the equipment you will need to perform the

functions you propose to assume. If not, how you propose to acquire such equipment and when you expect to have such equipment available;

(f) Your estimates of the costs to fund the following resources necessary to perform the delegation:

(1) Personnel, including hiring, employee salaries and benefits, travel and training;

(2) Facilities, including acquisition, upgrades, operation, and maintenance; and

(3) Equipment, including acquisition, operation, and maintenance;

(g) Your plans to fund the resources under paragraph (f) of this section, including any items you will ask MMS to fund under the delegation agreement;

(h) A statement identifying any areas where State law, including State appropriation law, may limit your ability to perform delegated functions, and an explanation of how you propose to remove any such limitation;

(i) A statement that in accordance with section 203 of the Act (30 U.S.C. 1733) persons who have access to information received under delegated functions are subject to the same provisions of law regarding confidentiality and disclosure of that information as Federal employees. Applicable laws include the Freedom of Information Act (FOIA), the Trade Secrets Act, and relevant Executive Orders. In addition, your statement must acknowledge that all documents produced, received, and maintained as part of any delegation functions are agency records for purposes of FOIA. Therefore, persons who have access to information received under delegated functions may not use such information or provide such information to any other person, including State personnel, for purposes other than performing delegated functions. However, this limitation does not apply if the person submitting the information consents in writing to its use for other State purposes.

#### § 227.104 What will MMS do when it receives a State's delegation proposal?

When MMS receives your delegation proposal, it will record the receipt date. MMS will notify you in writing within 15 business days whether your proposal is complete. If it is not complete, MMS will identify any missing items § 227.103 requires. Once you submit all required information, MMS will notify you of the date your application is complete.

## Hearing Process

### § 227.105 What are the hearing procedures?

After MMS notifies you that your delegation proposal is complete, MMS will schedule a hearing on your proposal, if MMS determines a hearing is appropriate, as follows:

(a) The MMS Director will appoint a hearing official to conduct one or more public hearings for fact finding regarding your ability to assume the delegated functions requested. The hearing official will not decide whether to approve your delegation request;

(b) The hearing official will contact you about scheduling a hearing date and location;

(c) The MMS will publish notice of the hearing in the **Federal Register** and other appropriate media within your State;

(d) MMS will publish notice of the proposal in the **Federal Register**. MMS will also post the proposal on the MMS Website, and upon request, MMS will send a copy of the delegation proposal to the trade associations to distribute to their members, as necessary;

(e) At the hearing, you will have an opportunity to present testimony and written information in support of your proposal;

(f) Other persons may attend the hearing and may present testimony and written information for the record;

(g) MMS will record the hearing;

(h) MMS will maintain a record of all documents related to the proposal process;

(i) After the hearing, MMS may require you to submit additional information in support of your delegation proposal.

## Delegation Process

### § 227.106 What statutory requirements must a State meet to receive a delegation?

The MMS Director will decide whether to approve your delegation request and will ask the Secretary of the Interior to concur in the decision. That decision is solely within the MMS Director's and the Secretary's discretion. The MMS Director's decision, which the Secretary concurs in, is the final decision for the Department of the Interior. The MMS Director may approve a State's request for delegation only if, based upon the State's delegation proposal and the hearing record, the MMS Director finds that:

(a) It is likely that the State will provide adequate resources to achieve the purposes of the Act;

(b) The State has demonstrated that it will effectively and faithfully administer the MMS regulations under the Act in

accordance with subsections (c) and (d) of section 205 of the Act;

(c) Such delegation will not create an unreasonable burden on any lessee;

(d) The State agrees to adopt standardized reporting procedures MMS prescribes for royalty and production accounting purposes, unless the State and all affected parties (including MMS) otherwise agree;

(e) The State agrees to follow and adhere to regulations and guidelines MMS issues under the mineral leasing laws regarding valuation of production; and

(f) Where necessary for a State to carry out and enforce a delegated activity, the State agrees to enact such laws and promulgate such regulations as are consistent with relevant Federal laws and regulations.

### § 227.107 When will the MMS Director decide whether to approve a State's delegation proposal?

The MMS Director will decide whether to approve your delegation proposal within 90 days after your delegation proposal is considered complete under § 227.104. MMS may extend the 90-day period with your written consent.

### § 227.108 How will MMS notify a State of its decision?

MMS will notify you in writing of its decision on your delegation proposal. If MMS approves your delegation proposal, then MMS will hold discussions with you to develop a delegation agreement detailing the functions that you will perform, the standards and requirements you must comply with to perform those functions, and any required transition period.

### § 227.109 What if the MMS Director denies a State's delegation proposal?

If the MMS Director denies your delegation proposal, MMS will state the reasons for denial. MMS also will inform you in writing of the conditions you must meet to receive approval. You may submit a new delegation proposal at any time following a denial.

### § 227.110 When and for how long are delegation agreements effective?

(a) Delegation agreements are effective for 3 years from the date the MMS Director signs the delegation agreement. However, during the development of the State's delegation proposal under § 227.108 of this part, MMS, the delegated State, and any other affected person will determine an appropriate transition period for lessees and their designees to modify their systems to comply with any new requirements under a delegation agreement. MMS

will publish notice of the effective date of a State's delegation agreement in the **Federal Register** and that notice will inform lessees and their designees of any transition period. MMS also will post the proposals on the MMS Website at [www.mms.gov](http://www.mms.gov), and upon request, will send a copy of the delegation proposals to trade associations to distribute to their members.

(b) You may ask MMS to renew the delegation for an additional 3 years no less than 6 months before your 3-year delegation agreement expires. You must submit your renewal request to the MMS Associate Director for Royalty Management as follows:

(1) If you do not want to change the terms of your delegation agreement for the renewal period, you need only ask to extend your existing agreement for the 3-year renewal period. MMS will not schedule a hearing unless you request one;

(2) If you want to change the terms of your delegation agreement for the renewal period, you must submit a new delegation proposal under this part.

(c) The MMS Director may approve your renewal request only if MMS determines that you are meeting the requirements of the applicable standards and regulations. If the MMS Director denies your renewal request, MMS will state the reasons for denial. MMS also will inform you in writing of the conditions you must meet to receive approval. You may submit a new renewal request any time after denial.

(d) After the 3-year renewal period for your delegation agreement ends, if you wish to continue performing one or more delegated functions, you must request a new delegation agreement from MMS under this part. MMS will schedule a hearing on your request, if MMS determines a hearing is appropriate. As part of the decision whether to approve your request for a new delegation, the MMS Director will consider whether you are meeting the requirements of the applicable standards and regulations under your existing delegation agreement.

(e) If you do not request a hearing under paragraphs (b)(1) or (d) of this section, any other affected person may submit a written request for a hearing under those paragraphs to the MMS Associate Director for Royalty Management.

## Existing Delegations

### § 227.111 Do existing delegation agreements remain in effect?

This section explains your options if you have a delegation agreement in effect on the effective date of this regulation.

(a) If you do not want to perform any royalty management functions in addition to those authorized under your existing agreement, you may continue your existing agreement until its expiration date. Before the agreement expires, if you wish to continue to perform one or more of the delegated functions you performed under the expired agreement, you must request a new delegation agreement meeting the requirements of this part and the applicable standards.

(b) If you want to perform royalty management functions in addition to those authorized under your existing agreement, you must request a new delegation agreement under this part.

(c) MMS may extend any delegation agreement in effect on the effective date of this regulation for up to 3 years beyond the date it is due to expire.

### Compensation

#### § 227.112 What compensation will a State receive to perform delegated functions?

You will receive compensation for your costs to perform each delegated function subject to the following conditions:

(a) Compensation for costs is subject to Congressional appropriations;

(b) Compensation may not exceed the reasonably anticipated expenditures that MMS would incur to perform the same function;

(c) The cost for which you request compensation must be directly related to your performance of a delegated function and necessary for your performance of that delegated function;

(d) At a minimum, you must provide vouchers detailing your expenditures quarterly during the fiscal year. However, you may agree to provide vouchers on a monthly basis in your delegation agreement;

(e) You must maintain adequate books and records to support your vouchers;

(f) MMS will pay you quarterly or monthly during the fiscal year as stated in your delegation agreement; and

(g) MMS may withhold compensation to you for your failure to properly perform any delegated function as provided in section 227.801 of this part.

### States' Responsibilities To Perform Delegated Functions

#### § 227.200 What are a State's general responsibilities if it accepts a delegation?

For each delegated function you perform, you must:

(a) Operate in compliance with all Federal laws, regulations, and Secretarial and MMS determinations and orders relating to calculating, reporting, and paying mineral royalties

and other revenues. You must seek information or guidance from MMS regarding new, complex, or unique issues. If MMS determines that written guidance or interpretation is appropriate, MMS will provide the guidance or interpretation in writing to you and you must follow the interpretation or guidance given;

(b) Comply with Generally Accepted Accounting Principles (GAAP). You must:

(1) Provide complete disclosure of financial results of activities;

(2) Maintain correct and accurate records of all mineral-related transactions and accounts;

(3) Maintain effective controls and accountability;

(4) Maintain a system of accounts that includes a comprehensive audit trail so that all entries may be traced to one or more source documents; and

(5) Maintain adequate royalty and production information for royalty management purposes;

(c) Assist MMS in meeting the requirements of the Government Performance and Results Act (GPRA) as well as assisting in developing and endeavoring to comply with the MMS Strategic Plan and Performance Measurements;

(d) Maintain all records you obtain or create under your delegated function, such as royalty reports, production reports, and other related information. You must maintain such records in a safe, secure manner, including taking appropriate measures for protecting confidential and proprietary information and assisting MMS in responding to Freedom of Information Act requests when necessary. You must maintain such records for at least 7 years;

(e) Provide reports to MMS about your activities under your delegated functions. MMS will specify in your delegation agreement what reports you must submit and how often you must submit them. At a minimum, you must provide periodic statistical reports to MMS summarizing the activities you carried out, such as:

(1) Production and royalty reports processed;

(2) Erroneous reports corrected;

(3) Results of automated verification findings;

(4) Number of audits performed; and

(5) Enforcement documents issued.

(f) Assist MMS in maintaining adequate reference, royalty, and production databases as provided in the *Standards* issued under § 227.201 of this part and the delegation agreement;

(g) Develop annual work plans that:

(1) Specify the work you will perform for each delegated function; and

(2) Identify the resources you will commit to perform each delegated function;

(h) Help MMS respond to requests for information from other Federal agencies, Congress, and the public;

(i) Cooperate with MMS's monitoring of your delegated functions; and

(j) Comply with the *Standards* as required under § 227.201 of this part.

#### § 227.201 What standards must a State comply with for performing delegated functions?

(a) If MMS delegates royalty management functions to you, you must comply with the *Standards*. The *Standards* explain how you must carry out the activities under each of the delegable functions.

(b) Your delegation agreement may include additional standards specifically applicable to the functions delegated to you.

(c) Failure to comply with your delegation agreement, the *Standards*, or any of the specific standards and requirements in the delegation agreement, is grounds for termination of all or part of your delegation agreement, or other actions as provided under §§ 227.801 and 227.802.

(d) MMS may revise the *Standards* and will provide notice of those changes in the **Federal Register**. You must comply with any changes to the *Standards*.

#### § 227.300 What audit functions may a State perform?

An audit consists of an examination of records to verify that royalty reports and payments accurately reflect actual production, sales, revenues and costs, and compliance with Federal statutes, regulations, lease terms, and MMS policy determinations.

(a) If you request delegation of audit functions, you must perform at least the following:

(1) Submitting requests for records;

(2) Examining royalty and production reports;

(3) Examining lessee production and sales records, including contracts, payments, invoices, and transportation and processing costs to substantiate production and royalty reporting;

(4) Providing assistance to MMS for appealed demands or orders, including preparing field reports, performing remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

(b) If necessary for a particular audit, you may also perform any of the following:

(1) Issuing engagement letters;

(2) Arranging for entrance conferences;

- (3) Scheduling site visits; and
- (4) Issuing record releases and audit closure letters; and
- (5) Holding closeout conferences.

**§ 227.301 What are a State's responsibilities if it performs audits?**

If you perform audits you must:

- (a) Comply with the *MMS Audit Procedures Manual* and the *Government Auditing Standards* issued by the Comptroller General of the United States;
- (b) Follow the MMS Annual Audit Work Plan and 5-year Audit Strategy, which MMS will develop in consultation with States having delegated audit authority;
- (c) Agree to undertake special audit initiatives MMS identifies targeting specific royalty issues, such as valuation or volume determinations;
- (d) Prepare, construct, or compile audit work papers under the appropriate procedures, manuals, and guidelines;
- (e) Prepare and submit MMS Audit Work Plans. You may modify your Audit Work Plans with MMS approval; and
- (f) Comply with procedures for appealed demands or orders, including meeting timeframes, supplying information, and using the appropriate format.

**§ 227.400 What functions may a State perform in processing production reports or royalty reports?**

Production reporters or royalty reporters provide production, sales, and royalty information on mineral production from leases that must be collected, analyzed, and corrected.

(a) If you request delegation of either production report or royalty report processing functions, you must perform at least the following:

- (1) Receiving, identifying, and date stamping production reports or royalty reports;
- (2) Processing production or royalty data to allow entry into a data base;
- (3) Creating copies of reports by means such as electronic imaging;
- (4) Timely transmitting production report or royalty report data to MMS and other affected Federal agencies as provided in your delegation agreement and the *Standards*;
- (5) Providing training and assistance to production reporters or royalty reporters;
- (6) Providing production data or royalty data to MMS and other affected Federal agencies; and
- (7) Providing assistance to MMS for appealed demands or orders, including meeting timeframes, supplying information, using the appropriate

format, performing remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

(b) If you request delegation of either production report or royalty report processing functions, or both, you may perform the following functions:

- (1) Granting exceptions from reporting and payment requirements for marginal properties; and
- (2) Approving alternative royalty and payment requirements for unit agreements and communitization agreements.
- (c) You must provide MMS with a copy of any exceptions from reporting and payment requirements for marginal properties and any alternative royalty and payment requirements for unit agreements and communitization agreements you approve.

**§ 227.401 What are a State's responsibilities if it processes production reports or royalty reports?**

In processing production reports or royalty reports you must:

- (a) Process reports accurately and timely as provided in the *Standards* and your delegation agreement;
- (b) Identify and resolve fatal errors to use in subsequent error correction that the State or MMS performs;
- (c) Accept multiple forms of electronic media from reporters, as MMS specifies;
- (d) Timely transmit required production or royalty data to MMS and other affected Federal agencies;
- (e) Access well, lease, agreement, and reporter reference data from MMS and provide updated information to MMS;
- (f) For production reports, maintain adequate system software edits to ensure compliance with the provisions of 30 CFR part 216, the *PAAS Onshore Oil and Gas Reporter Handbook*, the *PAAS Reporter Handbook-Lease, Facility/Measurement Point, and Gas Plant Operators*, any interagency memorandums of understanding to which MMS is a party, and the *Standards*;
- (g) For royalty reports, maintain adequate system software edits to ensure compliance with the provisions of 30 CFR part 218, the *Oil and Gas Payor Handbook, Volume II, "Dear Payor"* letters, and the *Standards*; and
- (h) Comply with the procedures for appealed demands or orders, including meeting timeframes, supplying information, and using the appropriate format.

**§ 227.500 What functions may a State perform to ensure that reporters correct erroneous report data?**

Production data and royalty data must be edited to ensure that what is reported is correct, that disbursement is made to the proper recipient, and that correct data are used for other functions, such as automated verification and audits. If you request delegation of error correction functions for production reports or royalty reports, or both, you must perform at least the following:

- (a) Correcting all fatal errors and assigning appropriate confirmation indicators;
- (b) Verifying whether production reports are missing;
- (c) Contacting production reporters or royalty reporters about missing reports and resolving exceptions;
- (d) Documenting all corrections made, including providing production reporters or royalty reporters with confirmation reports of any changes;
- (e) Providing training and assistance to production reporters or royalty reporters;
- (f) Issuing notices, orders to report, and bills as needed, including, but not limited to, imposing assessments on a person who chronically submits erroneous reports; and
- (g) Providing assistance to MMS for appealed demands or orders, including preparing field reports, performing remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

**§ 227.501 What are a State's responsibilities to ensure that reporters correct erroneous data?**

To ensure the correction of erroneous data, you must:

- (a) Ensure compliance with the provisions of 30 CFR parts 216 and 218, any applicable handbook specified under 30 CFR 227.401 (f) and (g), interagency memorandums of understanding to which MMS is a party, and the *Standards*;
- (b) Ensure that reporters accurately and timely correct all fatal errors as designated in the *Standards*. These errors include, for example, invalid or incorrect reporter/payor codes, incorrect lease/agreement numbers, and missing data fields;
- (c) Submit accepted and corrected lines to MMS to allow processing into the Auditing and Financial System (AFS) and the Production Accounting and Auditing System (PAAS) in a timely manner as provided in the *Standards* and 30 CFR part 219; and
- (d) Comply with the procedures for appealed demands or orders, including meeting timeframes, supplying

information, and using the appropriate format.

**§ 227.600 What automated verification functions may a State perform?**

Automated verification involves systematic monitoring of production and royalty reports to identify and resolve reporting or payment discrepancies. States may perform the following:

(a) Automated comparison of sales volumes reported by royalty reporters to sales and transfer volumes reported by production reporters. If you request delegation of automated comparison of sales and production volumes, you must perform at least the following functions:

(1) Performing an initial sales volume comparison between royalty and production reports;

(2) Performing subsequent comparisons when reporters adjust royalty or production reports;

(3) Checking unit prices for reasonable product valuation based on reference price ranges MMS provides;

(4) Resolving volume variances using written correspondence, telephone inquiries, or other media;

(5) Maintaining appropriate file documentation to support case resolution; and

(6) Issuing orders to correct reports or payments;

(b) Any one or more of the following additional automated verification functions:

(1) Verifying compliance with lease financial terms, such as payment of rent, minimum royalty, and advance royalty;

(2) Identifying and resolving improper adjustments;

(3) Identifying late payments and insufficient estimates, including calculating interest owed to MMS and verifying payor-calculated interest owed to MMS;

(4) Calculating interest due to a lessee or its designee for an adjustment or refund, including identifying overpayments and excessive estimates;

(5) Verifying royalty rates; and

(6) Verifying compliance with transportation and processing allowance limitations;

(c) Issuing notices and bills associated with any of the functions under paragraphs (a) and (b) of this section; and

(d) Providing assistance to MMS for any of these delegated functions on appealed demands or orders, including meeting timeframes, supplying information, using the appropriate format, taking remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

**§ 227.601 What are a State's responsibilities if it performs automated verification?**

To perform automated verification of production reports or royalty reports, you must:

(a) Verify through research and analysis all identified exceptions and prepare the appropriate billings, assessment letters, warning letters, notification letters, Lease Problem Reports, other internal forms required, and correspondence required to perform any required follow-up action for each function, as specified in the *Standards* or your delegation agreement;

(b) Resolve and respond to all production reporter or royalty reporter inquiries;

(c) Maintain all documentation and logging procedures as specified in the *Standards* or your delegation agreement;

(d) Access well, lease, agreement, and production reporter or royalty reporter reference data from MMS and provide updated information to MMS; and

(e) Comply with procedures for appealed demands and orders, including meeting time frames, supplying information, and using the appropriate format.

**§ 227.700 What enforcement documents may a State issue in support of its delegated function?**

This section explains what enforcement actions you may take as part of your delegated functions.

(a) You may issue demands, subpoenas, and orders to perform restructured accounting, including related notices to lessees and their designees. You also may enter into tolling agreements under section 15(d)(1) of the Act, 30 U.S.C. 1725(d)(1).

(b) When you issue any enforcement document you must comply with the requirements of section 115 of the Act, 30 U.S.C. 1725.

(c) When you issue a demand or enter into a tolling agreement under section 15(d)(1) of the Act, 30 U.S.C. 1725(d)(1), the highest State official having ultimate authority over the collection of royalties or the State official to whom that authority has been delegated must sign the demand or tolling agreement.

(d) When you issue a subpoena or order to perform a restructured accounting you must:

(1) Coordinate with MMS to ensure identification of issues that may concern more than one State before you issue subpoenas and orders to perform restructured accounting; and

(2) Ensure that the highest State official having ultimate authority over the collection of royalties signs any subpoenas and orders to perform

restructured accounting, as required under section 115 of the Act, 30 U.S.C. 1725. This official may not delegate signature authority to any other person.

**Performance Review**

**§ 227.800 How will MMS monitor a State's performance of delegated functions?**

This section explains MMS's procedures for monitoring your performance of any of your delegated functions.

(a) A monitoring team of MMS officials will annually review your performance of the delegated functions and compliance with your delegation agreement, the *Standards*, and 30 U.S.C. 1735, including conducting fiscal examination to verify your costs for reimbursement.

(b) The monitoring team also will:

(1) Periodically review your statistical reports required under § 227.200(e) to verify your accuracy, timeliness, and efficiency;

(2) Check for timely transmittal of production report or royalty report information to MMS and other affected agencies, as applicable, to allow for proper disbursement of funds and processing of information;

(3) Coordinate on-site visits and Office of the Inspector General, General Accounting Office, and MMS audits of your performance of your delegated functions; and

(4) Maintain reports of its monitoring activities.

**§ 227.801 What if a State does not adequately perform a delegated function?**

If your performance of the delegated function does not comply with your delegation agreement, or the *Standards*, or if MMS finds that you can no longer meet the statutory requirements under § 227.106, then MMS may:

(a) Notify you in writing of your noncompliance or inability to comply. The notice will prescribe corrective actions you must take, and how long you have to comply. You may ask MMS for an extension of time to comply with the notice. In your extension request you must explain why you need more time; and

(b) If you do not take the prescribed corrective actions within the time that MMS allows in a notice issued under paragraph (a) of this section, then MMS may:

(1) Initiate proceedings under § 227.802 to terminate all or a part of your delegation agreement;

(2) Withhold compensation provided to you under § 227.112; and

(3) Perform the delegated function, before terminating or without terminating your delegation agreement,



including, but not limited to, issuing a demand or order to a Federal lessee, or its designee, or any other person when:

- (i) Your failure to issue the demand or order would result in an underpayment of an obligation due MMS; and
- (ii) The underpayment would go uncollected without MMS intervention.

#### **§ 227.802 How will MMS terminate a State's delegation agreement?**

This section explains the procedures MMS will use to terminate all or a part of your delegation agreement:

- (a) MMS will notify you in writing that it is initiating procedures to terminate your delegation agreement;
- (b) MMS will provide you notice and opportunity for a hearing under § 227.803 of this part;
- (c) The MMS Director, with concurrence from the Secretary, will decide whether to terminate your delegation agreement.
- (d) After the hearing, MMS may:
  - (1) Terminate your delegation agreement; or
  - (2) Allow you 30 days to correct any remaining deficiencies. If you do not correct the deficiency within 30 days, MMS will terminate all or a part of your delegation agreement.
- (e) MMS will determine the date your agreement is terminated and will notify you of that date in writing. MMS will determine the termination date based on the number of delegated functions and the impact of the termination on all affected parties.

#### **§ 227.803 What are the hearing procedures for terminating a State's delegation agreement?**

(a) The MMS Director will appoint a hearing official to conduct one or more public hearings for fact finding and to determine any actions you must take to correct the noncompliance. The hearing official will not decide whether to terminate your delegation agreement;

(b) The hearing official will contact you about scheduling a hearing date and location;

(c) The hearing official will publish notice of the hearing in the **Federal Register** and other appropriate media within your State;

(d) At the hearing, you will have an opportunity to present testimony and written information on your ability to perform your delegated functions as required under this part, your delegation agreement, and the *Standards*;

(e) Other persons may attend the hearing and may present testimony and written information for the record;

(f) MMS will record the hearing;

(g) After the hearing, MMS may require you to submit additional information; and

(h) Information presented at each public hearing will help MMS to determine whether:

- (1) You have complied with the terms and conditions of your delegation agreement; or
- (2) You have the capability to comply with the requirements under § 227.106 of this part.

#### **§ 227.804 How else may a State's delegation agreement terminate?**

You may request MMS to terminate your delegation at any time by submitting your written notice of intent 6 months prior to the date on which you want to terminate. MMS will determine the date your agreement is terminated and will notify you of that date in writing. MMS will determine the termination date based on the number of delegated functions and the impact of the termination on all affected parties.

#### **§ 227.805 How may a State obtain a new delegation agreement after termination?**

After your delegation agreement is terminated, you may apply again for delegation by beginning with the proposal process under this part.

### **PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES**

2. The authority citation for part 228 is revised to read as follows:

**Authority:** Sec. 202, Pub. L. 97-451, 96 Stat. 2457 (30 U.S.C. 1732).

3. A new § 228.3 is added to read as follows:

#### **§ 228.3 Limitation on applicability.**

As of the effective date of this rule, September 11, 1997, this part does not apply to Federal lands.

### **PART 229—DELEGATION TO STATES**

4. The authority citation for part 229 is revised to read as follows:

**Authority:** 30 U.S.C. 1735.

5. A new § 229.3 is added to read as follows:

#### **§ 229.3 Limitation on applicability.**

As of the effective date of this rule, September 11, 1997, this part does not apply to Federal lands.

[FR Doc. 97-21162 Filed 8-11-97; 8:45 am]

BILLING CODE 4310-MR-P

## **DEPARTMENT OF THE TREASURY**

### **Fiscal Service**

#### **31 CFR Part 356**

#### **Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1-93)**

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury ("Treasury" or "Department") is publishing in final form an amendment to 31 CFR part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This amendment makes the necessary changes to accommodate three decimal competitive bidding, in .005 percent increments, for regular Treasury bills—13-, 26-, and 52-week bills—and a reduction in the net long position reporting threshold amount for all Treasury bill auctions (including cash management bills). The final rule also makes certain technical clarifications and conforming changes.

**DATES:** The effective date is September 11, 1997, except for the change to § 356.13 (Net long position) which is effective November 10, 1997.

**ADDRESSES:** This final rule has also been made available for downloading from the Bureau of the Public Debt's Internet site at the following address: [www.publicdebt.treas.gov](http://www.publicdebt.treas.gov).

**FOR FURTHER INFORMATION CONTACT:** Ken Papaj (Director), Lee Grandy or Kurt Eidemiller (Government Securities Specialists), Department of the Treasury, Bureau of the Public Debt, Government Securities Regulations Staff, (202) 219-3632.

**SUPPLEMENTARY INFORMATION:** 31 CFR part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The uniform offering circular, in conjunction with offering announcements, represents a comprehensive statement of those terms and conditions.<sup>1</sup> The Department

<sup>1</sup> The uniform offering circular was published as a final rule on January 5, 1993 (58 FR 412). Amendments to the circular were published on June 3, 1994 (59 FR 28773), March 15, 1995 (60 FR 13906), July 16, 1996 (61 FR 37007), August 23, 1996 (61 FR 43626), October 22, 1996 (61 FR 54908), January 6, 1997 (62 FR 846), and May 8, 1997 (62 FR 25113).