DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

RIN 1010–AC76

Interest Rate Applicable to Late Payment or Underpayment of Monies Due on Solid Minerals and Geothermal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is revoking its rulemaking published on March 29, 1994, regarding interest rates used to assess interest on late payment or underpayment of monies due on solid minerals and geothermal leases. A decision of the United States Court of Appeals for the District of Columbia Circuit invalidated the amendments promulgated in 1994. This rule reinstates the pre-1994 rule.

EFFECTIVE DATE: This rule is effective September 13, 2000.

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

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Janet Lin and Geoffrey Heath of the Office of the Solicitor, Department of the Interior.

I. Background

1982 Rule. On May 25, 1982, MMS promulgated a rule (47 FR 22524) that imposed interest charges for late payment and underpayment of royalties under Federal and Indian coal and geothermal leases (the 1982 rule). The 1982 rule specified that MMS would charge an interest rate at the Treasury Current Value of Funds Rate (CVF rate) for late payment and underpayment of royalties both for coal[1] and for geothermal resources.[2] The Treasury Department published the CVF rate on a quarterly basis. As a matter of practice, MMS applied the new CVF rate for each quarter to existing indebtedness (hereinafter, this method is referred to as ''shifting rates'').

On April 28, 1986, MMS promulgated a rule (51 FR 15763) changing a subpart heading so that the provisions under it, including the late payment and underpayment rate provisions, applied to all solid minerals instead of only coal.

1994 Rule. On March 29, 1994, MMS promulgated a rule (59 FR 14559) (the 1994 rule) that revised the interest rate for late payment and underpayment of royalties for solid minerals[3] and for geothermal resources[4] from the CVF rate to the higher Internal Revenue Service underpayment rate prescribed at 26 U.S.C. 6621(a)(2) (IRS rate). The IRS rate is a ''prime plus three percent'' rate that shifts quarterly with changes in the prime rate. Under the associated provisions at 26 U.S.C. 6622, the rate is a daily compounded rate. The MMS rule imposing the higher rate became effective on April 1, 1994.

In promulgating the 1994 rule, MMS sought to more appropriately compensate the lessor for the lost time value of underpaid royalties and to make interest rates for solid minerals and geothermal resources consistent with those imposed on oil and gas under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), section 111(a).[5] FOGRMA provides MMS with express statutory authority to assess interest at the IRS rate on underpaid oil and gas royalties. Since no such statutory provision exists for solid minerals or geothermal resources, the 1994 rule 19 relied on the Secretary's rulemaking authority under the Mineral Leasing Act of 1920 (MLA),[6] the Mineral Leasing Act for Acquired Lands,[7] the Indian mineral leasing laws,[8] and the Geothermal Steam Act of 1970.[9]

The 1994 rule amended 30 CFR 218.202(c) and (d) and 30 CFR 218.302(c) and (d) with identical provisions that read as follows:

> (c) The interest charge on late payments shall be at the underpayment rate established by section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2).
>
> (d) Interest will be charged only on the amount of the payment not received by the designated due date. Interest will be charged only for the number of days the payment is late.

The Amax Decision. Amax Land Company (Amax) is a Federal coal lessee. The MMS assessed late payment interest on Amax for failure to timely pay royalties for the period January 1989 to July 1993. The MMS applied the IRS rate under the 1994 rule to Amax's late payment for those periods in which the indebtedness continued after the effective date of that rule. Amax administratively appealed the interest assessment. The MMS Director and the Assistant Secretary for Land and Minerals Management denied the appeal. Amax then sought judicial review in the United States District Court for the District of Columbia challenging the legality of the 1994 rule. The District Court held that MMS's application of the IRS rate to solid minerals was not a permissible exercise of MMS's rulemaking authority at 30 U.S.C. 189. *Amax Land Company* v. *Quarterman,* 1998 WL 306582, 6 (D.D.C. 1998).

The Government appealed. The Court of Appeals for the District of Columbia Circuit reversed the District Court's decision in part and affirmed it in part. *Amax Land Company* v. *Quarterman,* 181 F. 3d 1356 (D.C. Cir. 1999) (*Amax* decision). The D.C. Circuit concluded that MMS's adoption of the IRS interest rate under the MLA's rulemaking authority was reasonable only if MMS could show that the particular regulations were ''necessary and proper'' under 30 U.S.C. 189.[10] The D.C. Circuit remanded the question of whether MMS action was ''necessary and proper'' in this case to the District Court.[11]

The D.C. Circuit agreed with the District Court's conclusion that the Debt Collection Act (DCA) [12] and the Federal Claims Collection Standards [13] prevent MMS from using shifting or compounding interest rates in situations in which the DCA applies.[14] However, the D.C. Circuit further held that these DCA prohibitions do not apply to contracts executed before October 25, 1982.[15] Therefore, for leases issued before October 25, 1982, the DCA does not bar shifting or compound rates.

Under the *Amax* decision, MMS would first have to show that use of the higher rate is ''necessary and proper'' under the MLA[16] before it could assess interest at the IRS rate on underpayments under any solid mineral leases. However, under the D.C. Circuit's opinion, even if MMS makes

[1] 30 CFR 211.67(c), later redesignated as 30 CFR 218.202(c).

[2] 30 CFR 270.91(c), later redesignated as 30 CFR 218.302(c).

[3] 30 CFR 218.202(c) and (d).

[4] 30 CFR 218.302(c) and (d).

[5] 30 U.S.C. 1721(a).

[6] 30 U.S.C. 189.

[7] 30 U.S.C. 359.

[8] 30 U.S.C.396 and 396(d).

[9] 30 U.S.C. 1023.

[10] 181 F. 3d at 1366.

[11] *Id.* at 1367.

[12] 31 U.S.C. 3717(c)(2).

[13] 4 CFR 102.13.

[14] *Id.* at 1367.

[15] 31 U.S.C. 3717(g)(2); *Id.* at 1369.

[16] 30 U.S.C. 189.

the necessary showing to impose the IRS rate, it could only use an IRS rate that neither shifts nor compounds for leases issued after October 25, 1982. For pre-October 25, 1982, leases, MMS could impose a shifting and compounding IRS rate unless the lessee shows that use of shifting or compound rates is not ''necessary and proper'' in the particular case.[17] This holding created an issue of fact that would have to be adjudicated in every case, which effectively nullified the uniform applicability of the rule even as to pre-October 25, 1982, leases, and made its provisions at best contingent.

Although Amax challenged the interest provision only with regard to coal leases, the *Amax* decision affects the validity of the same provision as it applies to other solid mineral leases and of an identical provision that applies to leases of geothermal resources.

The practical effect of the *Amax* decision is that MMS is left to defend an interest rate provision that is very different from the rule it promulgated in 1994. As explained above, MMS promulgated the 1994 rule to make interest rates for late payment and underpayment consistent with those imposed under FOGRMA, among other reasons.[18] The preamble to the 1994 rule summarized the effect of the rule as moving from a simple interest rate under the old rule (CVF rate) to a compounding rate under the new rule (IRS rate).[19] Instead of making rates for solid minerals and geothermal resources consistent with fluid minerals, the *Amax* decision would result in a patchwork of possible rates. Under the *Amax* decision, MMS simply cannot assess interest for solid minerals and geothermal resources under the IRS rate prescribed in the 1994 rule. Instead, MMS would have to assess different interest rates in each case, depending on the type of lease at issue and the outcome of the further proceedings that the Court identified were lacking during the rulemaking process. For these reasons, the *Amax* decision has the substantive effect of invalidating the 1994 rule as promulgated.

II. Reinstatement of the 1982 Rule

In the event that a court finds a regulatory change invalid, the prior regulations are reinstated. The D.C. Circuit, in *Bowen* v. *Georgetown Univ. Hosp.*, 821 F. 2d 750 (D.C. Cir. 1987), *aff'd*, 488 U.S. 204 (1988), stated that ''[t]his circuit has previously held that the effect of invalidating an agency rule is to 'reinstat[e] the rules previously in force.'" In that case, the D.C. Circuit held that when the District Court vacated a rule, it reinstated the prior regulations. The D.C. Circuit came to a similar conclusion when it vacated a regulation in *Action on Smoking & Health* v. *CAB*, 713 F.2d 795, 797 (D.C. Cir. 1983).[20]

As discussed above, the *Amax* decision effectively invalidates the 1994 rule. It follows that the 1982 rule is reinstated for the periods beginning April 1, 1994. By this notice in the **Federal Register**, the text of the rule as it read before the 1994 amendment is reinstated.

Although the *Amax* decision did not address the 1982 rule, the D.C. Circuit held that the DCA and 4 CFR 102.13(c) prohibit MMS from assessing interest on the basis of shifting interest rates for leases issued after October 25, 1982.[21] The 1982 rule does not specify whether a shifting rate applies. In past practice, before the 1994 rule was adopted, MMS applied a shifting CVF interest rate under the 1982 rule to all solid minerals and geothermal royalty underpayments, regardless of when the lease was issued. Consistent with the D.C. Circuit's ruling, MMS will now apply the restored pre-1994 rule language to use a constant CVF interest rate for all post-October 25, 1982, leases in accordance with the *Amax* decision, but will continue to calculate interest on the basis of shifting CVF interest rates for pre-October 25, 1982, leases. Since the text of the 1982 rule that is reinstated does not specify whether the CVF rate shifts, the earlier rule language is reinstated without change, and constant rates will be used for underpayments for post-October 25, 1982, leases, as a matter of interpretation compelled by the *Amax* decision. In other words, for underpayments for leases issued after October 25, 1982, the CVF rate in effect at the time the underpayment occurs will remain the rate at which interest continues to accrue until the unpaid royalties are paid.

The Department of the Interior finds good cause to issue this final rule without notice and opportunity for public comment under 5 U.S.C. 553(b)(3)(B). This final rule is a direct result of a judicial decision invalidating the 1994 rule, and public comment therefore is unnecessary. For the same reasons, a 30-day period is not required between publication of a final rule and its effective date under 5 U.S.C. 553(d).

III. Procedural Matters

1. Summary Cost and Benefit Data

This rule reinstates the lower interest rates contained in the 1982 rule beginning April 1, 1994. Consequently, this rule imposes the following costs or benefits to the four affected groups: industry, the Federal Government, State and local governments, and Indian tribes and allottees.

A. Industry

We estimate that the solid minerals and geothermal industries will pay approximately 40 percent less late-payment interest on Federal leases under the reinstated 1982 interest rates. Under the 1994 rates, MMS would have billed solid mineral and geothermal payors approximately $2 million per year in late payment interest. Under the reinstated 1982 rates, billed interest will decrease to approximately $1.2 million, for a $800,000 net benefit to industry.

B. Federal Government

The Federal Government will collect approximately $800,000 less late-payment interest annually (see discussion in section A. Industry). Approximately 50 percent or $400,000 would have been retained by the U.S. Treasury.

C. State and Local Governments

The Federal Government will collect approximately $800,000 less late-payment interest annually (see discussion in section A. Industry). Approximately 50 percent or $400,000 would have been paid to States. Those States are primarily the largest solid mineral producing States of Wyoming, Colorado, Utah, Montana, and New Mexico.

D. Indian Tribes

Most solid mineral revenues are paid directly to the Indian recipients, so MMS does not know the exact receipt dates. Consequently, MMS must estimate the revenue loss to Indian tribes and allottees by extrapolation from Federal payments. Indian solid mineral revenues are 15 percent of Federal solid mineral revenues so we estimate that the revenue loss to Indian tribes and allottees will be 15 percent of $800,000 or $120,000 annually.

The cost and benefit information in this Item 1 of Procedural Matters is used as the basis for the departmental certifications in Items 2–10.

[17] 181 F. 3d at 1369.

[18] 60 FR 14557.

[19] 60 FR 14558.

[20] *See also Mason General Hospital* v. *Secretary of the Department of Health and Human Services*, 809 F.2d 1220 (6th Cir. 1987); *Abington Memorial Hospital* v. *Heckler*, 750 F.2d 242, 244 (3d Cir. 1985); *Menorah Medical Center* v. *Heckler*, 768 F.2d 297 (8th Cir. 1985); *Cumberland Medical Center* v. *Secretary of Health and Human Services*, 781 F.2d 536, 538 (6th Cir. 1986).

[21] 181 F.3d at 1367.

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

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

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

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

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

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

3. Regulatory Flexibility Act

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

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

4. Small Business Regulatory Enforcement Act (SBREFA)

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

a. Does not have an annual effect on the economy of $100 million or more.

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

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

5. Unfunded Mandates Reform Act

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

6. Takings (E.O. 12630)

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

7. Federalism (E.O. 13132)

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

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

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

9. Paperwork Reduction Act of 1995

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

10. National Environmental Policy Act

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

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—Mineral resources, Reporting and recordkeeping requirements.

Dated: September 5, 2000.

Sylvia V. Baca,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is amended as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 continues to read as follows:

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

Subpart E—Solid Minerals—General

2. In § 218.202, paragraphs (c) and (d) are revised and republished to read as follows:

§ 218.202 Late payment or underpayment charges.

* * * * *

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the ''Treasury Current Value of Funds Rate.''

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the **Federal Register** and indexed under ''Fiscal Service/Notices/Funds Rate; Treasury Current Value.''

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Subpart F—Geothermal Resources

3. In § 218.302, paragraphs (c) and (d) are revised and republished to read as follows:

§ 218.302 Late payment or underpayment charges.

* * * * *

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the ''Treasury Current Value of Funds Rate.''

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or

underpayments in the new calendar quarter. The rate is also published in the Notices section of the **Federal Register** and indexed under ''Fiscal Service/ Notices/Funds Rate; Treasury Current Value.''

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[FR Doc. 00–23402 Filed 9–12–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Closures—Yukon River Closures and Adjustments

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Emergency closures and adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's emergency closures to protect fall chum salmon escapement in the Yukon River drainage and adjustments to allow the taking of coho salmon. These closures and adjustments provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on January 8, 1999. Those regulations redefined the area subject to the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980, and also established regulations for seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2000 regulatory year.

DATES: The first Yukon River drainage restrictions were effective August 11, 2000, through October 10, 2000. The second Yukon River drainage restrictions (total closure) superceded the first restrictions and are effective August 23, 2000, through October 22, 2000. The third Yukon River adjustment (allowing the taking of salmon in the lower Yukon River with rod and reel and beach seine) is effective August 27, 2000, through October 26, 2000. The fourth Yukon River adjustment (allowing the taking of coho salmon in the upper Yukon River with live chute-equipped fishwheels) is effective September 2, 2000, through November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

Subpart D regulations for the 2000 fishing seasons and harvest limits, and methods and means were published on January 8, 1999 (64 FR 1276).

These emergency closures and adjustments are necessary because of extremely weak returns of fall-run chum salmon in the Yukon River drainage. These emergency actions are authorized and in accordance with 50 CFR 100.19(c) and 36 CFR 242.19(c).

Yukon River Drainage—First Restriction

As of August 1, 2000, the fall chum salmon run status was less than half the average and projections continued to drop with each passing day. The expectation for the 2000 fall chum salmon return was projected to be well below 600,000, the number required by the ADF&G Yukon River Drainage Fall Chum Salmon Management Plan to meet escapement and subsistence needs. Based on the Yukon River Drainage Fall Chum Salmon Management Plan, this projection was at the level that recommends subsistence fishing closures. Federal and State Managers and many subsistence users in the region had strong concerns that not enough fall chum salmon would reach their spawning grounds or meet minimum escapement needs. There was also strong concern that the Yukon River fall chum salmon run will be too low to support unrestricted subsistence fishing.

The Alaska Department of Fish and Game issued Emergency Orders closing sport and personal use fishing for chum salmon in the Yukon drainage and restricting subsistence fishing to certain times each week in the various fishing districts along the river. The commercial fishery for fall chum salmon in the Yukon River was never opened.

On August 11, 2000, the Federal Subsistence Board instituted the following adjustments for the Yukon River drainage:

During any commercial salmon fishing season closure of greater than five days in duration, you may take salmon only during the following periods in the following districts:

(A) In Districts 1, 2, and 3, salmon may be taken from 3:00 p.m. until 9:00 p.m. each Saturday;

(B) In District 4, salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Saturday;

(C) In Subdistrict 5C, salmon may be taken from 8:00 p.m. Saturday until 8:00 a.m. Sunday and from 8:00 p.m. Thursday until 8:00 a.m. Friday;

(D) In District 5D, salmon may be taken from 6:00 p.m. Saturday until 6:00 p.m. Sunday;

(E) In District 6, salmon may be taken from 6:00 p.m. Monday until 6:00 a.m. Wednesday.