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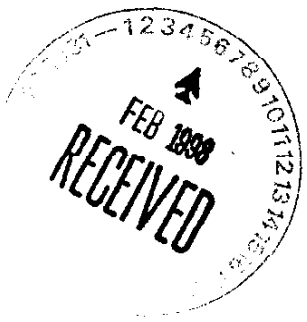

February 4, 1998

via facsimile (202-395-7285)

Mr. David Rostker
Executive Office of the President
Desk Officer for the Department
of the Interior
Office of Information and
Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Re: Designation of Royalty Payment Responsibility, 63 F.R. 253 (January 5, 1998)

Dear Mr. Rostker:

The undersigned companies and trade associations are pleased to have the opportunity to comment on the MMS Designation of Royalty Payment Responsibility (63 F.R. 253) published January 5, 1998.

These companies are lessees and payors who report and pay federal royalties. As such, they are impacted by the proposed Designation of Royalty Payment Responsibilities. Having participated in the congressional dialogue surrounding the passage of the Federal Oil and Gas Royalty Simplification and Fairness Act (FOGRSFA) these companies are keenly aware of section 116(g) of FOGRSFA on lessee designations. These companies have and continue to take issue with MMS' overall approach to implementing this provision of FOGRSFA. Specifically, as to information sought from lessees, they object to, among other things; (1) the need for MMS to collect some of the information sought,; (2) the level of detailed information required by this rule; (3) the burdensomeness of the information collection; and (4) the purported inability of the MMS and the BLM to utilize

information that these bureaus already have in their possession and maintain. Further, they take exception with MMS' attempt to collect the information sought under this rule from royalty payors.

The FOGRSFA provision applicable to lessees and designees states:

> *[a] lessee may designate a person to make all or part of the payments due under a lease on the lessee's behalf and shall notify the Secretary or the applicable delegated State in writing of such designation, in which even said designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lessee.*

30 U.S.C. § 1712(a).

With respect to this provision, MMS has stated that based upon its outreach meetings, there was "general agreement to the specifics of this information collection." While there have been productive, informative discussions during outreach meetings between MMS, the States and industry, it cannot be said that there was agreement as to the provisions and requirements published in the Designation of Payor Recordkeeping, 62 F.R. 42063, dated August 5, 1997 (Interim Final Rule) or in the Dear Payor letters dated January 9, 1997 and August 14,1997. See comments filed November 6, 1997.

With respect to the costs and burdens imposed on lessees and payors generally, and the provisions of FOGRSFA specifically, Congress included language in FOGRSFA that was meant to reduce and eliminate the very burdens that the MMS now seeks to impose. FOGRSFA states:

> *In connection with any hearing, administrative proceeding inquiry, investigation or audit by the Secretary or a delegated State under this Act, the Secretary or delegated State shall minimize the submission of multiple or redundant information and make a good faith effort to locate records previously submitted by a lessee or a designee to the Secretary or the delegated State, prior to requiring the lessee or the designee to provide such records.*

30 U.S.C. 1724(f).

Further, FOGRSFA provides:

> *The Secretary should not perform or require accounting, reporting, or audit activities if the Secretary and the State concerned determine that the cost of conducting or requiring the activity exceeds the expected amount to be collected by the activity, based upon the most current 12 months of activity....To the maximum extent possible, the Secretary and delegated State shall reduce costs to the United States Treasury and the States by discontinuing requirements for unnecessary or duplicative data and other information....*

Section 30 U.S.C. § 1724(g).

The information collection proposed by the MMS does not meet the above stated requirements to minimize the submission of multiple or redundant information and alleviate requirements for unnecessary or duplicative data. Additionally, the proposed information collection does not conform to the requirements of the Paperwork Reduction Act (PRA).

In discussions with MMS regarding implementation of these provisions, industry has continued to emphasize the following points:

(1) The lessee/designee provisions of FOGRSFA will be triggered and the information becomes necessary upon the issuance of an order by MMS. FOGRSFA provides that orders may be issued to a designee and with notice (of the order) to be given to the lessee who designated the designee. If MMS has a designation on file for the lease which is the subject of the order, MMS may simply look on the designation form to ascertain which lessee designated the designee to give required notice under FOGRSFA.

(2) If there is no designation on file with MMS for the lease which is the subject of the alleged underpayment, MMS should issue the order to its lessee. The name of the lessee should be ascertainable from the records of the BLM or the OMM, those being the jurisdictional entities who issued the leases and have requisite obligations to maintain lease records.

Further, in discussions with MMS industry has repeatedly requested that the following

fundamental questions be answered before any regime, which requires extensive data collection and reporting of information, be implemented. The following questions asked of MMS remain unanswered:

(1) Because the lessee/designee provisions of FOGRSFA are triggered on the issuance of an order, how many orders are issued annually by the MMS?

(2) What kinds of orders are issued by the MMS (computer-generated orders or orders issued as a result of an audit)?

(3) When in the seven year statutory limitations period of FOGRSFA is it anticipated that such orders will be issued.

In one of the initial outreach meetings on FOGRSFA, James Shaw, then Associate Director of the Royalty Management Program, advised the group that less than 500 orders are issued by MMS annually. Considering that over 250,000 royalty reports and payments are filed monthly, summing to a total of over 3 million reports and payments annually, the small number of orders issued annually does not justify an extensive information collection requirement.

With respect to orders issued under FOGRSFA, MMS has indicated that it is implementing a new procedure on alleged underpayments identified through computer programs. In contrast to the past, once an underpayment has been detected MMS is now issuing a "bill" rather than an "order". Because there are efforts to collect underpayments through this billing mechanism, there is reason to believe that fewer computer-generated orders will be issued.

With respect to MMS orders that result from audit activities, industry has suggested that the auditor and audited company resolve any lessee/payor issue during the course of the audit. This would ensure that any lessee/payor issues would be pursued only if an underpayment has been identified that has not been reconciled and will be pursued by the agency. By utilizing this procedure there will be no need for MMS to collect or rely on lessee/payor data for any order issued as a result of an audit.

In addition, to the above stated reasons for objection to MMS' information collection request, the undersigned companies and trade associations submit the accompanying report prepared by Barents Group in support of these comments. These entities strongly believe

that any data collection should be permitted only after the questions and issues raised above and by the Barents Group report have been answered. These answers must thoroughly analyze the most efficient, cost effective and least burdensome means of implementing FOGRSFA. To that end, the undersigned companies and trade associations put forward a proposed alternative to the MMS approach.

The undersigned companies and trade associations appreciate the opportunity to comment on this important provision of FOGRSFA and look forward to continuing to work with MMS and the States on its implementation. Please call if you have any questions or if we can be of assistance.

Sincerely,

Patricia Dunmire Bragg

Patricia Dunmire Bragg
on behalf of:

AMERICAN PETROLEUM INSTITUTE
DOMESTIC PETROLEUM COUNCIL
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA
INDEPENDENT PETROLEUM ASSOCIATION OF MOUNTAIN STATES
MID-CONTINENT OIL AND GAS ASSOCIATION
NATURAL GAS SUPPLY ASSOCIATION
ROCKY MOUNTAIN OIL AND GAS ASSOCIATION
AMOCO PRODUCTION COMPANY
BURLINGTON RESOURCES
CHEVRON U.S.A. PRODUCTION COMPANY
CONOCO INC.
DEVON ENERGY CORPORATION
MARATHON OIL COMPANY
OXY U.S.A. INC.
TEXACO, INC.
VASTAR RESOURCES
ORYX ENERGY COMPANY

cc: David Guzy

ANALYSIS OF THE DEPARTMENT OF INTERIOR, MINERALS MANAGEMENT SERVICE INFORMATION COLLECTION, FORM MMS-4425

Prepared by

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February 4, 1998

PREFACE

Barents Group LLC, a wholly owned subsidiary of KPMG Peat Marwick LLP, was retained by Gardere & Wynne, L.L.P., on behalf of a group of companies that are lessees and/or designees who pay and report Federal oil and gas royalties. Barents has been asked to analyze the Department of Interior, Minerals Management Service (MMS) information collection, Designation of Royalty Payment Responsibility (63 F.R. 253, published January 5, 1998), submitted to the Office of Management and Budget for review. These companies are interested in and affected by the MMS information collection.

We generally refer to the Federal Oil and Gas Royalty Fairness and Simplification Act as "FOGRSFA"; however, MMS documents quoted in this report refer to the Act as "RSFA."

For purposes of this report, the term "lessee", as defined in FOGRSFA, refers to "any person to whom a lease has been issued or any person to whom operating rights have been assigned." (30 U.S.C. 1702) The term "designee", also as defined in FOGRSFA, means "the person designated by a lessee pursuant to section 102(a) of this Act, with such written designation effective on the date such designation is received by the Secretary and remaining in effect until the Secretary receives notice in writing that the designation is modified or terminated."

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EXECUTIVE SUMMARY

Barents Group LLC, has been asked to analyze the Department of Interior, Minerals Management Service (MMS) information collection, Form MMS-4425 Designation of Royalty Payment Responsibility (63 F.R. 253, published January 5, 1998), submitted to the Office of Management and Budget (OMB) for review. These companies are interested in and affected by the MMS information collection.

The Federal Oil and Gas Royalty Fairness and Simplification Act (FOGRSFA) provides that a lessee owning operating rights in a lease is primarily liable for a pro rata share of payment obligations and the lessee owning the legal record title (if other than the operating rights owner) is secondarily liable. FOGRSFA permits lessees to designate a payor to make payments on their behalf, and it requires that these designations be in writing. These FOGRSFA requirements were effective for production after September 1, 1996. The interim final rule published on August 5, 1997 and proposed Form MMS-4425 are intended to allow MMS to implement these statutory requirements and enable MMS to match payors with lessees.

FOGRSFA also requires that the Secretary or delegated State minimize the submission of multiple or redundant information and make a good faith effort to locate previously submitted records before requiring a new submission. Similarly, the Paperwork Reduction Act of 1995 requires that Federal agencies work to reduce the paperwork burden that information collections impose on respondents, as well as on Federal agencies.

MMS met with industry and State representatives on several occasions to discuss implementation of these provisions. During these meetings industry members volunteered to assist MMS in identifying its lessees. On January 9, 1997, MMS sent out "Dear Payor" letters requesting payor and lessee information. The January 9 letter did not comply with the Paperwork Reduction Act requirement that OMB approve all information collections before they are initiated. An August 5, 1997 interim final rule made compliance with the Dear Payor letter mandatory, and MMS sent out a second "Dear Payor" letter later that month. The interim final rule requested more information than the "Dear Payor" letter and also gave MMS the authority to request this information on an "as needed" basis. Though industry had volunteered to assist MMS, industry did not, on numerous issues, regard the interim final rule and resulting August "Dear Payor" letter as being consistent with the discussions held between industry, the States and the MMS. Payors specifically, did not agree that they should or under the statute could be required to provide this information on an ongoing basis. On January 5, 1998, MMS requested OMB approval for Form MMS-4425 on which such information is to be submitted.

MMS estimates that the burden of this new form will be 24,000 annual burden hours for an annual cost to payors and lessees of $840,000. For reasons discussed in this report, we believe that MMS has substantially underestimated the burden of complying with this information collection. Indeed, our analysis indicates that there are numerous problems with the proposed information collection and with Form MMS-4425.

- Form MMS-4425 is unclear and poorly designed. There are inconsistencies between the form, the instructions to the form, and MMS' justification of the need for this information collection.

- Much of the data requested on the form is currently unavailable to payors or may be costly or impractical to obtain. Other data in the possession of the payor may not be current because there has never been a business purpose to update the information or verify the accuracy of these data on a contemporaneous basis. As a result, the form requests information that would require an extensive effort to collect.

- Many accounting systems do not maintain data at the tract level; they retain it at the unit level. As a result, Form MMS-4425 would require a substantial, costly manual effort to complete.

- In the majority of cases, the data collected will have no practical utility. MMS issues fewer than 500 orders per year. If the information collection is intended solely to support the issuance of orders, the majority of data will go unused and thus have no practical utility.

- MMS and BLM already have much of these data. Data already available within the Department of Interior provide a good starting point for compiling the information necessary to implement these FOGRSFA requirements. While it may require some significant expenditure for the government to assemble and automate these data, it would be far less expensive than requiring this effort of 2,500 payors and 20,000 lessees. But, even more importantly, the effort required to maintain the requested data is not the most effective and least costly method available to the government.

- Form MMS-4425 requests more data than are necessary to implement statutory requirements. MMS has not provided justification for all the data being required.

- This information collection imposes the burden on the wrong party. While FOGRSFA permits lessees to designate someone to pay on their behalf, this information collection imposes the reporting burden on payors, rather than on lessees.

In this submission, we propose that MMS pilot test three approaches to implement the FOGRSFA lessee designation provisions. The first two approaches address information collection for existing leases, and build on previous voluntary efforts of payors to supply MMS with data identifying lessees. The collection of information on new leases and where an existing lessee designation is changed or terminated is potentially less burdensome, and the third approach addresses this requirement. Under the first approach, MMS and payors will jointly develop and collect information to identify lessees when orders to pay are issued. Under the second approach, MMS and payors will identify lessees when exceptions result in computer-generated billings. Under the third, prospective approach, lessees will contemporaneously file designation forms for new, changed, and terminated leases.

Before new administrative systems are built and staff are deployed to implement an information collection that is inherently flawed, MMS should withdraw this information collection request

and reestablish a process of working with industry and the States to undertake the one-year pilot studies described above. Companies participating in this filing agree to participate in such a voluntary program to design a workable system that minimizes the burden and costs on all parties. These pilot studies will further develop and test the proposed alternatives within a reasonable fixed time period. With industry, the States, and MMS working together to develop the necessary details to implement each approach, problems will be identified and corrected before an industry-wide implementation of the information collection is required. Through this cooperative effort, costs to industry, the States and MMS will be reduced.

OMB should reject MMS' current information request, and MMS should submit a new request for OMB approval that is consistent with the more limited and focused objectives of the proposed pilot tests. Following completion of these pilot tests, MMS should submit a new information collection request that (a) is consistent with the pilot test results; (b) fully complies with OMB administrative requirements; and (c) includes a more rigorous and accurate assessment of its true burden and costs on lessees, on payors, and on the nation as a whole.

1. INTRODUCTION

The information collection, Designation of Royalty Payment Responsibility, submitted to the Office of Management and Budget (OMB) by the Department of Interior, Minerals Management Service (MMS), is intended to allow MMS to fully implement the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996[1] (FOGRSFA) provisions relating to designation of payor responsibilities.[2] FOGRSFA establishes that lessees are liable for royalty payments: owners of operating rights are primarily liable, and owners of record title are secondarily liable. FOGRSFA also requires that lessees designate in writing those persons authorized to make royalty and other payments on their behalf.

The purpose of the information collection is to enable MMS to collect data that would allow them to match payors with lessees. Payors volunteered to assist MMS in their initial efforts to identify lessees. As the interim final rule mandating information reporting is written, it may require some payors to provide MMS information regarding the lessees on whose behalf they are paying. Lessees must certify to MMS in writing their respective payors as their designees.[3] This information collection places a substantial and inappropriate burden on payors to provide MMS with information on the lessee. The FOGRSFA requirement that lessees designate a payor is clear, but the filing burden should not be placed on payors rather than on lessees. Further, the rule is unduly burdensome because it requires more information than is necessary to implement the statute.

In this report, we first discuss the legislative history and chronology of the designation of royalty payment responsibility and the various costs imposed by the information collection. Section 3 discusses industry comments on this issue and considers ambiguities and inconsistencies between Form MMS-4425 and the interim final rule. Section 4 considers the burden imposed by this information collection. Section 5 discusses the characteristics of a well-designed lessee designation system, and Section 6 proposes an alternative to MMS' proposed information collection. Finally, Section 7 presents our conclusions.

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[1] 30 U.S.C. 1701 *et seq.*

[2] 63 *Federal Register* 253. Published January 5, 1998.

[3] "Supporting Statement for the Paperwork Reduction Act Federal Interim Final Rule for Providing Information under the Federal Oil and Gas Royalty Simplification Act of 1996." Justification. Page 1.

2. LEGISLATIVE HISTORY AND CHRONOLOGY

The interim final rule and Form MMS-4425 are intended to allow MMS to implement statutory requirements under FOGRSFA by providing a mechanism to match lessees with their designees. FOGRSFA amended the Federal Oil and Gas Royalty Management Act of 1982 to make the person owning operating rights in a lease primarily liable for a pro rata share of royalty payment obligations and the person owning the legal record title in a lease secondarily liable. It also authorizes lessees to delegate in writing a person (designee) to make payments on the lessee's behalf and provides that designees are not liable for any payments under such leases.[4]

FOGRSFA requires that "the Secretary or delegated State shall minimize the submission of multiple or redundant information and make a good faith effort to locate records previously submitted by a lessee or a designee to the Secretary or the delegated State, prior to requiring the lessee or the designee to provide such records."[5] These FOGRSFA provisions are effective on September 1, 1996 for all Federal oil and gas leases and represent a significant departure from MMS' previous practice.

Historically, MMS has taken the position that the person who filed a Payor Information Form (PIF) was liable for underpaid royalties,[6] and as such, MMS did not maintain information on the lessee for whom a payor was paying royalties. Although BLM is responsible for maintaining record title and operating rights ownership records for Federal oil and gas leases onshore, and MMS has the same responsibility for OCS leases, neither BLM nor MMS Offshore have information that matches lessees with their payors.[7]

INDUSTRY'S VOLUNTARY EFFORTS TO ASSIST MMS

In an attempt to identify how best to implement FOGRSFA, MMS met on several occasions with industry and several States. At these meetings, industry attendees generally agreed that payors were a logical starting point for collecting this information, and payors agreed to assist MMS in identifying lessees. In agreeing to cooperate with MMS in identifying lessees, however, payors did not agree that they should or under the statute could be required to provide this information on an ongoing basis. FOGRSFA places the responsibility of filing designations squarely on the lessee.

JANUARY 9, 1997: "DEAR PAYOR" LETTER

Following the enactment of FOGRSFA, MMS designed a process allowing it to match lessees with their designees. To gather the initial information necessary to match payors and lessees, MMS sent the January 9, 1997 "Dear Payor" letter to approximately 2,500 payors. A copy of this letter can be found in Appendix 1. A lease/revenue source/product code listing for which

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[4] 30 U.S.C. 1712(a)
[5] 30 U.S.C. 1724(f)
[6] 62 *Federal Register* 42063
[7] *Ibid.*

MMS showed the recipient was making payments accompanied the letter. MMS requested that payors supply the missing information.

The January 9 letter requested that payors provide both payor and lessee data, and MMS indicated a preference that payors respond electronically and provided a file format for so doing. Payors were asked the following:

- ◊ To provide their own Taxpayer Identification Number (TIN);
- ◊ To verify a computer lease/revenue source/product code listing and make corrections as appropriate; and
- ◊ To indicate whether they are the operating rights owner or lease record titleholder, the designee, or both payor and owner.

For each lessee, payors were requested to provide the following:

- ◊ Lessee name;
- ◊ Lessee TIN, if known;
- ◊ Lessee contact name;
- ◊ Complete lessee mailing address and telephone number and extension; and
- ◊ Start date for each lessee.

Because of MMS' "unintentional oversight," this letter failed to comply with Paperwork Reduction Act (PRA) requirements.[8] Under the PRA, Federal agencies must "reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government." Agencies proposing to collect information must submit a proposal to OMB for approval. MMS failed to follow this procedure with the January 9 letter.

AUGUST 5, 1997: INTERIM FINAL RULE

On August 5, 1997, MMS published an interim final rule on the designation of payor recordkeeping.[9] The rule amends MMS regulations to authorize the collection of information from lessees and payors concerning payor designation. The stated purpose of the rule is "to make MMS' requests to payors for missing information in its database mandatory because, as stated above, neither MMS, BLM, nor most lessees have the information necessary to make the match between lessees and their payors."[10] That is, MMS' purpose was to make the information requested in the January 9, 1997 Dear Payor letter mandatory, and MMS stated that the interim final rule substantially restates the January Dear Payor letter. The interim final rule requires the following information from payors upon request for each PIF:

[8] *Ibid.* 42064
[9] *Ibid.* 42062
[10] *Ibid.* 42064

- ◊ The AID number for the lease;
- ◊ Lessee TIN;
- ◊ Name, address, and phone number of the lessee;
- ◊ Whether the person for whom the payor is making payments is the lessee of record, operating rights owner, or operator;
- ◊ Name, address, and phone number of the individual to contact for the lessee;
- ◊ Payor TIN;
- ◊ Whether the payor is the designee of the lessee named;
- ◊ If so, the effective date of the designation;
- ◊ Termination date of the designation; and
- ◊ A copy of the written designation.[11]

The rule does not state with any certainty how often this information will be requested, and it allows MMS to request clarification of information submitted in response to the January Dear Payor letter.

MMS' stated intent is to use the information collected from payors to send reports to lessees for confirmation of payor designation. Lessees must then provide MMS with confirmation that they are the person identified by the payor; confirmation that the person who identified them is, in fact, their designee; and a written designation if the person is not their designee. If the lessee must submit a written designation, the interim final rule specifies how that designation must be accomplished. A lessee must notify MMS or the delegated State in writing of any designations, and the notification must include the following:

- ◊ The AID number for the lease;
- ◊ The type of products for which payments are made;
- ◊ The type of payments for which the lessee is responsible;
- ◊ Whether the lessee is the lessee of record or an operating rights owner;
- ◊ Their percentage of operating rights ownership;
- ◊ The name, address, and phone number of their designee;
- ◊ The designee TIN;
- ◊ The name, address, and phone number of a designee contact;
- ◊ The effective date of the designation;
- ◊ The termination date of the designation; and
- ◊ A copy of the written designation.[12]

The substantial burden implications of the lessee and designee requirements are discussed in Sections 3 and 4.

MMS determined that the usual notice and comment period requirements under the Administrative Procedures Act (APA) were not required in this case. MMS found "for good cause...that notice and comment procedures for this rulemaking [were] impracticable and

[11] *Ibid.* 42066 (Section 210.55(b))
[12] *Ibid.* 42066-7 (Section 218.52(a))

contrary to the public interest because they would delay implementation of RSFA's liability scheme which became effective for production after September 1, 1996."[13] MMS also claimed that advance public notice and comment were unnecessary and contrary to the public interest because the interim rule substantially restates the information collection in the January 9, 1997 Dear Payor letter and "implements the request from lessees at the meetings that MMS assist them to comply with RSFA's mandate that they designate a designee."[14] We disagree and discuss below why neither the interim final rule nor Form MMS-4425 substantially restates the Dear Payor letter.

MMS also determined that the 30-day delay of effectiveness provisions of the APA could be waived; like other APA requirements, this may be waived for good cause. MMS found good cause for so doing for the reasons previously described. As a result, the interim rule became effective upon publication.

MMS submitted the information collection, entitled "Designation of Royalty Payment Responsibility," contained in the interim final rule to the Office of Management and Budget (OMB) for emergency processing. MMS requested emergency processing because MMS regards the information as critical to implementation of FOGRSFA and because relevant FOGRSFA provisions were effective September 1, 1996. The resulting OMB control number permitted MMS to undertake an information collection.

MMS estimated a 60,000-hour burden on payors and a 30,000-hour burden on lessees for a total annual burden of 90,000 hours. There are approximately 2,500 payors, and MMS estimated that responding to the request will require one half hour per data line and that the average payor will have 48 data lines. MMS' 30,000-hour estimated burden on lessees to confirm information in MMS-provided reports and/or amend or modify the reports is based on 20,000 lessees and an assumed average of 2 confirmation requests per lessee, each requiring three-quarters of an hour.

AUGUST 14, 1997: "DEAR PAYOR" LETTER

On August 14, 1997, MMS sent out another "Dear Payor" letter under the OMB control number contained in the interim final rule.[15] The August letter requires that payors who did not respond to the January 9, 1997 letter submit the requested data within 60 days. Payors who already complied with the January data collection request have satisfied the new rule's initial requirement. The letter states that the information collection is mandatory and that responses are considered proprietary. MMS reports about 60 percent compliance with the August Dear Payor letter.

In the August letter, MMS estimates that the payor burden is one half hour per original data line and that an average payor will have 48 original data lines. This is consistent with the estimated burden on payors presented in the *Federal Register* publication of the interim final rule.

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[13] *Ibid.* 42064
[14] *Ibid.*
[15] The OMB control number is valid through January 31, 1998.

SEPTEMBER 1997: "DEAR LESSEE" LETTER

In September, MMS sent letters to a very small number of lessees (reportedly 100 lessees out of 20,000 total lessees) containing the information submitted by payors. These letters request that the lessee confirm that it is an owner of operating rights or working interest for the lease, that the listed payor is its designee, certain other identifying information, and that it provide corrections to that information as appropriate. Additionally, if leases were not listed for which it is a lessee, the lessee must identify those leases and the payor. The lessee/designee confirmation provided the following information: designee name, designee number, lessee AID, agency assigned number, product code, and responsibility type code. Once completed, the signed listing serves as the written designation required by law. The lessee was also asked to provide a telephone number and contact person should MMS require clarification.

SEPTEMBER 25, 1997: SUBCOMMITTEE ON LESSEE DESIGNATION

At a September 25, 1997 meeting of the Royalty Policy Committee, in response to industry comments, a Subcommittee on Lessee Designation was created to review lessee and designee requirements under FOGRSFA. The subcommittee consists of industry, State, and MMS representatives. Some industry commenters have recommended that MMS not proceed with this rule before the subcommittee has had an opportunity to review and make recommendations on this issue.

JANUARY 5, 1998: FORM MMS-4425

On January 5, 1998, MMS published a notice in the *Federal Register* on the information request associated with the designation of royalty payment responsibility.[16] The notice announced that MMS had submitted the information collection, Form MMS-4425, to OMB for approval and requests comments on the information collection and presents estimates of the associated compliance burden. This information collection appears to be in addition to the information requested in the January and August Dear Payor letters and the September Dear Lessee letters. If both information collections were enforced, this would represent pure duplication.

MMS estimates that there will be 24,000 annual responses and that the recordkeeping burden is one hour per response. MMS does not provide a clear indication of how often this information will be collected, but rather states that the frequency of response is "as necessary." The proposed form, Form MMS-4425 Designation Form, can be found in Appendix 2. The PRA justification and certification for Form MMS-4425 are unclear regarding who should complete and file the form, and the form would impose a larger burden than MMS estimates. These issues are discussed in later sections of this report.

[16] 63 *Federal Register* 253

3. PROBLEMS WITH THE INTERIM FINAL RULE AND FORM MMS-4425

As evidenced in formal industry comments on the interim final rule, there is strong opposition to placing the burden of this information collection on payors, and there is great concern with the serious design flaws in the proposed information collection.

THE RULE AND FORM MMS-4425 ARE UNCLEAR AND POORLY DESIGNED

The PRA requires that each collection of information "is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond."[17] Form MMS-4425 fails to meet this requirement. The purpose of the interim final rule is to make the information collection in the January Dear Payor letter mandatory and to impose information collection requirements on the payor and the lessee. This form and the interim final rule are, however, unclear, inconsistent, and poorly designed. This section briefly discusses requirements under the rule and then discusses inconsistencies between the form, the rule, and the Paperwork Reduction Act justification for the proposed form.

Section 210.55 of the interim final rule requires payors (those filing Payor Information Forms (PIF)) to provide MMS with certain information relating to persons for whom they are making royalty and other payments. Once collected, MMS' intent is to send this information to the lessees identified by the payors for confirmation. If the payor who has identified the lessee is not a designee, then the lessee is required to file a designation. Section 218.52 enumerates lessee requirements for designating a payor. The information required of the lessee in making a designation is almost identical to the information the payor is required to provide. Form MMS-4425, Designation Form, is intended to implement the interim final rule, presumably on an ongoing basis.

One would expect Form MMS-4425 to request the same information as the rule, but this is not the case. The following table illustrates inconsistencies between Form MMS-4425, the rule, and the Dear Payor letters. Because the form's instructions are unclear on who should file Form MMS-4425, the "interim final rule" column includes both payor and lessee requirements. This is discussed in further detail below.

[17] PRA Section 3506(c)(3)(D)

Table 1
Requirements of Dear Payor Letter, Interim Final Rule, and Form MMS-4425

Requirements	Dear Payor Letter	Interim Final Rule	Form MMS-4425
Lease AID number		X	X
OMM/BLM agency assigned lease number			X
Product code		X	X
Responsibility type	X	X	X
Payor code			X
Lessee TIN	X	X	X
Lessee Name	X	X	X
Lessee Address	X	X	X
Lessee e-mail address			X
Lessee phone	X	X	X
Lessee fax			X
Effective date of designation		X	X
Termination date of designation		X	X
Designee TIN	X	X	X
Designee name		X	X
Designee address		X	X
Designee e-mail address			X
Designee phone		X	X
Designee fax			X
Whether lessee is lessee of record or operating rights owner		X	X
Percentage of lessee operating rights in the lease		X	
Whether payor is the designee of named lessee		X	
Whether payor is operating rights owner or lease record title holder, the designee, or both payor and owner	X		
Name, address, phone number of lessee contact		X	
Lessee contact name	X	X	
Address and phone number of designee contact		X	
Copy of written designation		X	

Note: In the case of the Dear Payor letter, the lessee TIN was required to be provided *if known*. OMM is Offshore Minerals Management.

Table 1 clearly shows that there are inconsistencies between Form MMS-4425 and the interim final rule. The form asks for information not specifically enumerated in the rule, including:

- ◊ OMM/BLM agency assigned lease number;
- ◊ Payor code;
- ◊ Lessee e-mail address;

- ◊ Lessee fax number;
- ◊ Designee e-mail address; and
- ◊ Designee fax number.

It also fails to collect all of the information required under the interim final rule. Missing items include:

- ◊ Percentage of lessee operating rights;
- ◊ Whether payor is designee of named lessee;
- ◊ Name, address, and phone number of lessee contact person;
- ◊ Name, address, and phone number of designee contact person; and
- ◊ A copy of the written designation.

Additionally, Table 1 supports industry comments regarding the interim final rule itself and refutes one of the arguments MMS used to bypass standard APA and PRA procedures. The rule does not substantially restate the information requested in the Dear Payor letters.

Form MMS-4425 and the accompanying instructions are equally unclear. The form appears to contain sections that must be completed by the lessee and sections that must be completed by the payor, even though the justification indicates that payors must file this form. For example, item 7 of the instructions states, "Tax identification number — a nine-digit number that is ***your*** social security number or employer identification number (EIN)" [emphasis added]. The line on the form to which this refers is in the section for which information is to be provided "as lessee." Identical text appears in item 12 that refers to the portion of the form to be completed "as designee." Additionally, items 14 and 15 of the instructions indicate that this form must be completed and signed by the lessee. Form MMS-4425 and the instructions can be found in Appendix 2.

If, indeed, this form is to be completed by both payor and lessee, a mechanism is needed to accomplish this requirement. As the interim final rule and the PRA justification currently read, the payor will be the one to complete this form. The justification indicates that upon receipt of this information from the payor, MMS will notify the lessee, and the lessee must then complete and sign a designation form. If this is what MMS intends, then it will be requiring the lessee and the payor to file duplicate information which is in clear violation of the PRA and FOGRSFA. Indeed, FOGRSFA requires that lessees designate payors in writing, not that payors notify MMS on whose behalf they are paying royalties. This is discussed further below. This information collection fails to satisfy the requirements of the PRA and FOGRSFA.

MMS PRA SUPPORTING STATEMENT NOT CONSISTENT WITH REQUIREMENTS

It is not clear from Form MMS-4425, the instructions, the PRA justification, and the certification statement who is required to file this form. In its information collection justification, MMS states that, "[w]e may require some payors to provide us with information (see Attachment 2, Designation Form, Form MMS-4425) regarding the lessees on whose behalf they are paying if we need to inform those lessees that they must certify to MMS in writing their respective payors

as their designees."[18] Once MMS receives information from each payor, according to the justification, it will notify each lessee identified by a payor and request the lessee to complete and sign a designation form to meet FOGRSFA requirements.[19]

The information collection appears to intend that payors complete a designation form, that a letter be sent to lessees notifying them that they have been identified by a payor, and that lessees then complete a designation form. If this is MMS' intent, then this information collection will represent a pure duplication of information, with both payors and lessees completing an identical designation form. This would be in violation of the Paperwork Reduction Act and FOGRSFA.

That payors are intended to file these forms is reiterated later in the justification when MMS states that they are developing a method to allow payors to submit designation forms electronically.[20]

In direct contrast, when MMS presents the estimated burden imposed by this information collection, the agency indicates that the lessee is to have primary responsibility for filing the designation form. The justification states:

> *We estimate that 24,000 lessee/designee designation forms will be completed annually, and that each respondent will take ¾ hour to complete one form. This estimate includes time for learning requirements, research, payor contact, preparation and transmission of the information to MMS. The estimated burden to* ***lessees/designees*** *is 18,000 hours; the estimated cost burden is $640,000 per year (24,000 designation forms x ¾ hour x $35).*
>
> ***Lessees*** *are expected to file designations, however, we estimate that* ***payors*** *(designees) also will be required to spend ¼ hour on each form processed. The estimated annual burden to payors is 6,000 hours; the estimated cost burden is $210,000 per year (24,000 designation forms x ¼ hour x $35). This estimate includes time for payor coordination in completing this form.* [emphasis added][21]

Further confusing the requirement, the certification statement for Form MMS-4425 explicitly states that "[w]e are requiring all ***payors*** to provide us information regarding the lessees on whose behalf they are paying because we need to inform those lessees that they must certify to MMS in writing their respective payors as designees." [emphasis added]

Item 13 the Paperwork Reduction Act Submission (OMB 83-1) of this form (see Appendix 3) summarizes the annual reporting and recordkeeping burden, and one required entry is number of respondents. For number of respondents, the form shows 2,500: the number of payors MMS reports in their August *Federal Register* publication, reiterating that MMS intends that payors

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[18] "Supporting Statement for the Paperwork Reduction Act Federal Interim Final Rule for Providing Information under the Federal Oil and Gas Royalty Simplification Act of 1996." Justification. Page 1. Item 1.
[19] *Ibid.* Item 2.
[20] *Ibid.* Page 2. Item 3.
[21] *Ibid.* Page 4. Item 12.

file this form.[22] This is also inconsistent with MMS' characterization of respondents in the January 5, 1998 *Federal Register* publication. That notice describes respondents as "Federal lessees and payors."[23]

Additionally, in the Terms of Clearance of the initial Notice of Office of Management and Budget Action, OMB specifically states that, "[t]he agency is discouraged from requiring the information collections described in 30 CFR 210.55(b) [collection of information from payors] on a routine basis." Yet, MMS is requiring payors to file this form on a routine basis.

MMS' burden estimate in the PRA justification is inconsistent with MMS' apparent plans. MMS should be required to submit a well-reasoned justification before this information collection is considered for OMB approval.

DATA ARE NOT AVAILABLE OR ARE INACCURATE

Beyond the clarifications needed in the form and its instructions, MMS needs to reconsider the data it is requesting with this information collection. Much of the data requested on the form is currently unavailable to payors or may be costly or impractical to obtain. Other data in the possession of the payor may not be current because there has never been a business purpose to update the information or verify the accuracy of these data on a contemporaneous basis.

Some of these problems arise from the lack of clarity on who is required to file Form-MMS 4425. It is common practice for an oil purchaser to pay taxes and royalties on the purchased production, remitting the net revenue to the seller may be the lessee or may be making subsequent distributions to working interest owners. If the payor is filing this form, it will know the MMS lease number and revenue source code, but may not know the OMM/BLM agency assigned lease number. The payor may or may not know the requested lessee information. If the payor is purchasing directly from the lessee, then it will likely be able to complete all lessee information. If, on the other hand, the payor purchases from an operator, who may or may not be a lessee, and that operator makes distributions to the working-interest owners, the payor may not know who the lessees are and would almost certainly not know such information as the lessee TIN.

If a working-interest owner is completing this form, the working-interest owner may not know the revenue source code, as this is a number the payor designates upon filing a PIF. The working-interest owner may also not know the designee TIN or payor code. In its November 3, 1997 comments, the Council of Petroleum Accountants Societies (COPAS) presents several reasons why the requested data would be at best only 50 to 60 percent accurate or would be unavailable. If a purchaser pays all working-interest owners, it will have most of the information that MMS is requesting. If, however, the purchaser pays only the person it purchases from and that person makes a further distribution to other working-interest owners, then the purchaser does not have the required information.

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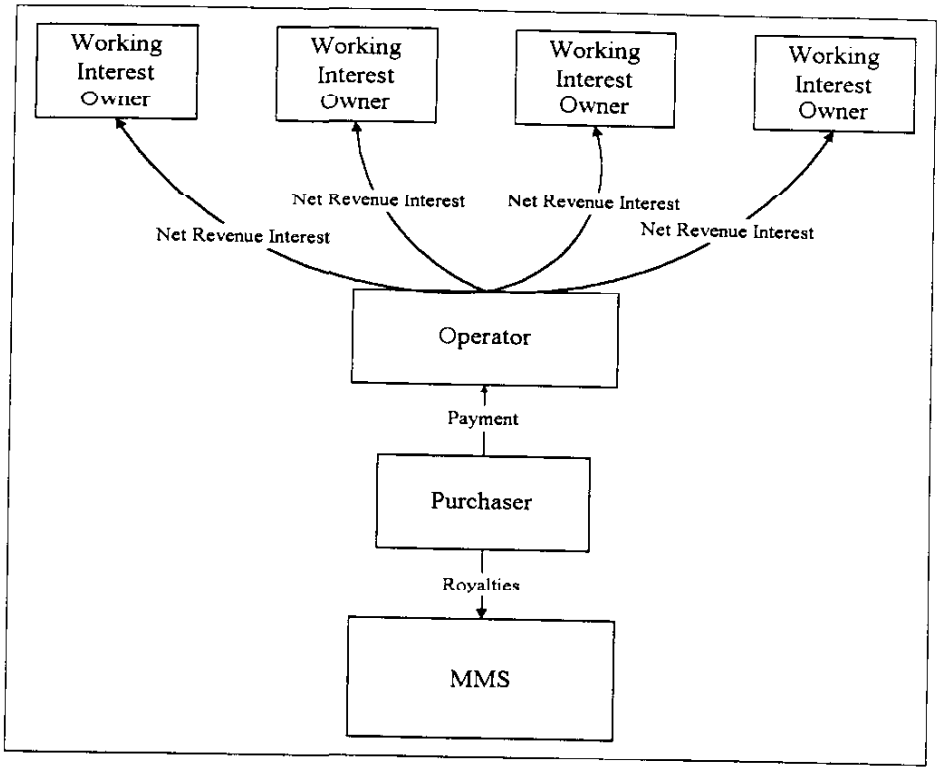
[22] 62 *Federal Register* 42066
[23] 63 *Federal Register* 253

The following figure illustrates a case where the payor could not reasonably provide all the required information. In this quite common fact pattern, the lease is operated by an operator who may or may not be a working-interest owner. The operator sells the production to a purchaser, and that purchaser pays royalties on the operator's behalf.

Figure 1
Example of a Working Interest Owner/Payor Relationship



In this situation, the purchaser knows only that it is paying royalties on the operator's behalf. The purchaser may not know that other working-interest owners exist or even whether the seller is a working-interest owner. As payor, the purchaser is required to notify MMS that it is remitting royalties on behalf of the operator. MMS will then send a confirmation to the named operator asking it to confirm that the payor is its designee.

Now, assume the operator is a working-interest owner. The operator could confirm that this person is its designee and may also be able to tell MMS that companies W, X, Y, and Z are working-interest owners. Presumably, MMS would then seek confirmation from companies W, X, Y, and Z. All W, X, Y, and Z know is that they receive a net revenue interest from the operator; they do not know that the purchaser is paying on their behalf. As a result, they could not confirm this information.

However, suppose that the operator receives a confirmation notice from MMS and simply responds that the purchaser is indeed paying on its behalf. In this case, MMS will have only

partial information on a single working-interest owner. MMS could not know there are other working-interest owners. Therefore, MMS will likely erroneously assume the confirmed information it received and used is complete and correct. MMS' proposed reporting requirement is therefore inadequate for accomplishing its objectives.

DATA ARE COSTLY TO OBTAIN

Imposing this information collection on payors will be costly. COPAS' comments filed on November 3, 1997, indicate that three payors who responded to the January 9, 1997 Dear Payor letter estimated that they spent 2,500 hours in total responding to that information request, an average of 833 hours per respondent. MMS' interim final rule estimate was only 3 percent of this amount, or 24 hours per payor. Using MMS labor cost estimate of $35 per hour, the average cost for these three respondents was $29,155. While we do not know from COPAS' comments how many data lines these companies have, MMS' estimates of the required level of effort are clearly suspect.

The burden on small business is also excessive. Beartooth Oil & Gas Company, a small payor with only 13 employees, was asked to submit information on more than twice the 48 data lines that MMS estimates is the average. Beartooth is a payor on several leases that had two partnerships as working-interest owners. These partnerships have been dissolved, and the working interest of each partnership was assigned to the individual partners. As a result, there are now 56 individual working-interest owners in the leases rather than the original two, and we understand that some of these lessees never respond to Beartooth's inquiries.

Industry comments further indicate that much of the requested information changes as often as monthly as a result of property acquisitions, dispositions, and changes in marketing arrangements. A monthly reporting requirement to keep the information current would be an excessive burden, yet without such a frequent filing requirement the MMS information collection may have limited value.

COPAS' comments also indicate that one payor said that it would cost from $50,000 to $100,000 to respond to the rule because instead of maintaining ownership data electronically at a tract level, they maintain it at the unit level. Some new accounting systems function best at the highest level of common ownership; that is, at the unit level. When required to gather tract level data, companies with these new accounting systems will be forced to gather these data manually requiring a large, labor intensive, and costly effort.

DATA WILL HAVE NO PRACTICAL UTILITY IN MAJORITY OF CASES

In one of the initial outreach meetings on this subject, James Shaw, then Associate Director of the Royalty Management Program, advised participants that MMS issues fewer than 500 orders annually. MMS has reported that in 1996 there were 21,607 producing and producible Federal onshore and offshore leases,[24] thus these orders issued merely represent slightly in excess of 2

[24] *Mineral Revenues 1996: Report On Receipts From Federal And Indian Leases.* Royalty Management Program. Minerals Management Service. 1997.

percent of total leases. If the information collection is intended solely to support the issuance of orders, data for 98 percent of leases will go unused and thus have no practical utility.

The percentage of usable information could actually be far less. A more appropriate base for measuring the usefulness of the data may be the number of Form MMS-2014's filed during a year because it is these forms that will typically generate an order to pay. According to information filed by MMS with OMB's Office of Information and Regulatory Affairs, there were 3,036,000 responses in 1996 associated with Form MMS-2014. Because these 500 orders directly relate to these 3 million annual responses, the data would be used to support only 0.02 percent of all filings. That is, 99.98 percent of the information would be unnecessary.

MMS AND BLM ALREADY HAVE THE NECESSARY DATA

The Bureau of Land Management (BLM) is responsible for maintaining record title and operating rights ownership records for Federal oil and gas leases onshore, and MMS has the same responsibility for leases on the OCS. MMS and BLM currently do not link this information with payor information in the PIF database. The BLM, MMS Offshore, and PIF data contain lease numbers that should allow these data to be merged. Combining these data would allow MMS to associate payors with leases. A lease, however, may have four or five payors, and MMS would not know on whose behalf the payor is paying; they would not be able to directly link a lessee to a payor. Despite its limitations, such a linked data set would provide MMS with a useful and more economically efficient starting point for compiling this information. This approach would relieve payors of a substantial portion of the burden of complying with this rule. While it may require some significant expenditure for the government to assemble and automate these data, it would be far less expensive than requiring this effort of 2,500 payors and 20,000 lessees. But, even more importantly, the effort required to maintain the requested data is not the most effective and least costly method available to the government.

As noted in comments filed November 6, 1997, the new information collection is at odds with FOGRSFA which states that "the Secretary or delegated State shall minimize the submission of multiple or redundant information and make a good faith effort to locate records previously submitted by a lessee or a designee to the Secretary or the delegated State prior to requiring the lessee or designee to provide such records." The PRA also requires that an information collection not represent an unnecessary duplication of information.

MORE DATA ARE REQUESTED THAN ARE NECESSARY TO IMPLEMENT THE STATUTE

FOGRSFA permits a lessee to designate a designee in writing to the Secretary or delegated State. It does not describe the designation's appearance or content other than to state that the designation must be in writing and contain the name of the designee. To implement this requirement, MMS needs certain information including the name of the lessee, the name of the designee, the lease number, and potentially the area or unit on the lease for which the lessee is liable for royalty payments. The interim final rule and Form MMS-4425 go far beyond that, and MMS is taking advantage of the statute to request more information than is necessary to implement this FOGRSFA requirement.

MMS has notified representatives of various industry trade associations that it is preparing to send notices of noncompliance to payors who have not responded to the August Dear Payor letters. As a result of these enforcement efforts, and assuming that payors are required to comply with both the August Dear Payor letter and Form MMS-4425, there is a clear duplication of reporting requirements.

RULE IMPOSES BURDEN ON WRONG PARTIES

As Chevron notes in its November 6, 1997 comments, FOGRSFA "specifically requires reports (as "designations") linking payors and lessees to be submitted by lessees, not payors." The interim final rule and accompanying information collection, however, is placing the burden on payors the wrong party. Lessees must comply with the FOGRSFA requirement that they designate payors, and FOGRSFA does not state or imply that this burden should be transferred to payors.

4. ANALYSIS OF BURDEN

MMS has calculated that the burden imposed by Form MMS-4425 would be 24,000 burden hours annually for 24,000 lessee designation forms. The total cost to lessees and payors is estimated to be $850,000 annually based on an average hourly salary of $35. The estimate is separated into two pieces: three-quarters of an hour to complete one form and one-quarter hour for review. MMS' three-quarters of an hour burden estimate includes time for the lessees/designees to learn the requirements, perform research, contact the payor, and to prepare and transmit the form. The estimated annual burden for this portion is 18,000 hours or $640,000. The remaining one-quarter hour is for payors to review and correct or complete as necessary each form, for an annual burden of 6,000 hours or $210,000. MMS' submission assumes that lessees will complete this form, which is inconsistent with what MMS has stated in several other places in its PRA justification.

The PRA analysis is inconsistent with MMS' statements on filing requirements and is therefore flawed. The key issue here is not that MMS has merely failed to adequately comply with PRA requirements, but that the Agency does not exhibit in its various documents an understanding of how the information collection will operate or that the information collected will be of significant value.

MMS has not attempted to estimate all the burdens identified in the Paperwork Reduction Act. The PRA defines burden as follows:

> *[T]he term 'burden' means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—*
>
> *"(A) reviewing instructions;*
>
> *"(B) acquiring, installing, and utilizing technology and systems;*
>
> *"(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;*
>
> *"(D) searching data sources;*
>
> *"(E) completing and reviewing the collection of information; and*
>
> *"(F) transmitting, or otherwise disclosing information;*[25]

The Agency appears neither to consider nor attempt to estimate the costs associated with definitions (B) acquiring, utilizing and installing new technology and systems, and (C) to adjusting the existing ways to comply with any previously applicable instructions and requirements. Under the proposed information collection, these burdens would be considerable.

MMS provides no support for its estimate that 24,000 lessee/designee designation forms will be completed annually. The Royalty Management Program's *Report of Royalty Management and Delinquent Account Collection Activities Fiscal Year 1996* indicates that in fiscal year 1996,

[25] PRA of 1995 Section 3502(2)(B)

there were 3,219 average payor and lease changes each month;[26] this would result in an annual total of 38,628. It states further than the Royalty Management Program (RMP) must adjust payor records each time there is a change in responsibility, and that due to recent modifications in procedures, RMP now makes one adjustment for multiple changes to revenue sources and selling arrangements affecting a single payor. Based on these RMP data, it appears that at least 38,628 designation forms would be filed each year, and indeed, this number could be significantly higher as a result of leases with multiple working interest owners.

In the PRA justification, MMS states that respondents may be required to report information more often than quarterly and provides the example of a lessee being required to submit a new designation when a lessee designates a new or different payor for a given lease.[27] MMS does not, however, specify how many times per year they anticipate new payors being designated or how many leases they expect to be affected. MMS annual reporting burden estimate cannot begin to be accurately evaluated or analytically challenged until it makes some determination of the frequency with which forms must be filed.

MMS states that new information should be provided if, for example, a lessee designates a new or different payor for a given lease, but does not provide more specific guidance on the situations in which a new form must be filed. Form MMS 4425 requests such information as lessee and designee names, telephone numbers, and e-mail address. What happens if an e-mail address or phone number changes? Must a new form be filed every time such a change occurs? If MMS is to keep these data current, then the answer to this question must be yes. Given the frequency of normal staff reassignment and turnover, changes in locations, and changes in Internet Service Providers this would increase the reporting burden dramatically. Yet if this information is not kept current, there is no justification for requiring its collection in the first place.

MMS is required to include time for "acquiring, installing, and utilizing technology and systems" in its burden estimate, and while it estimates such costs for itself, it fails to consider the costs for respondents. If this information is to be provided on an ongoing basis, companies will need to develop database similar to the one that MMS is building. The effort required to create these systems will be substantial, and the companies will need to keep these data updated so that they can provide MMS with new designation forms as information changes. MMS provides no estimate of the burden on the companies of creating these databases. Indeed, in order to minimize its own burden, MMS is effectively requiring the creation of 2,500 mirror systems.

MMS provides no support for its assertion that completing the form will require one hour of work. MMS does not take into account the practical difficulties in obtaining required information that is not readily available. As industry comments indicate, many companies have accounting systems that maintain information electronically at the unit level rather than at the tract level. COPAS' comments indicate that the three companies who complied with the January 9 letter were able to gather at least some information electronically, yet the aggregate burden exceeded 2,500 hours. The Form MMS-4425 burden would likely be significantly higher because the January letter requested less information than is required by either the interim final

[26] Table 6. "Factors associated with multiple lease ownership, FY 1995-96." Page 34.
[27] "Supporting Statement for the Paperwork Reduction Act Federal Interim Final Rule for Providing Information under the Federal Oil and Gas Royalty Simplification Act of 1996." Justification. Page 3. Item 7a.

rule or Form MMS-4425. Indeed, many companies will be forced to manually locate the requested data from paper files. MMS' 24,000-hour estimate for completing Form MMS-4425 cannot have taken costs of this nature into account.

If the information required by Form MMS-4425 is readily available to some companies, then MMS' one-hour estimate might not be unreasonable. Where the data are not readily available, this estimate significantly underestimates the burden.

A substantial burden could be imposed on lessees under the rule. Consider the following example. Assume a working-interest owner is completing a designation form that reports a new marketing arrangement similar to that portrayed in Figure 1. In order for the working-interest owner to accurately complete the form, it would need to complete a number of steps. First, the working-interest owner would have to request from the operator the identity of the payor. If the operator is also a lessee, it may be able to provide most required payor information. If the operator is not a lessee, the operator would likely be able to provide the payor name, contact, address, and phone number, but not necessarily the payor TIN or the AID number.

The lessee would then need to contact the payor to confirm the information it had received from the operator and request any missing information. If the payor is aware of the operator's relationship with other working-interest owners, this may be a relatively easy process. If, on the other hand, the payor is not aware that this lessee is a working-interest owner, the payor may be hesitant to provide such information as its TIN and the AID number for the lease without further proof that the lessee has a right to such information. The lessee may need to provide proof that it is a working-interest owner and has a relationship with the operator before the payor would provide the requested information. Finally, with all information in hand, the lessee would complete the form and submit it to MMS after having spent considerable time collecting the necessary data.

Given this complex and burdensome undertaking, we believe that MMS has not carefully considered the consequences of the information collection and has seriously underestimated the burden of completing Form MMS-4425. For the FOGRSFA designation requirement to be successfully implemented, a more workable and less burdensome methodology needs to be created.

5. CHARACTERISTICS OF A WELL-DESIGNED LESSEE DESIGNATION SYSTEM

A well designed lessee designation system should have a number of characteristics that MMS' proposed system lacks. A well-designed system will have the following characteristics:

- Achieves statutory compliance
- Ensures that the proposed information collection consideration and approval process fully complies with the Administrative Procedures Act and all other procedural requirements
- Ensures that the information collected will be of significant value to the Agency
- Limits the information collection to that authorized and necessary
- Ensures that information is collected no more frequently than necessary
- Minimizes aggregate national costs, and the burden on lessees, payors, and the Federal Government
- Minimizes burden on small business
- Provides a system all parties believe is fair and appropriate
- Provides a system that can be implemented in a timely manner
- Provides a standardized form that will allow respondents to provide the necessary information with clear instructions on:

◊ Information requirements
◊ Definitions
◊ Identity of party responsible for filing the form
◊ Applicable *de minimis* exceptions
◊ Location where form should be filed
◊ Schedule and frequency of filing
◊ Applicable penalties for noncompliance

A system that does not possess each of these characteristics may frustrate MMS, lessees, and payors, and impose unnecessary burdens.

6. PROPOSED ALTERNATIVE APPROACH

We propose that MMS pilot test three approaches as an alternative to the proposed information collection. We would also recommend that these pilots become a part of the efforts of the MMS reengineering team and that this issue be analyzed and reviewed by the team as a part of the comprehensive reengineering effort so as to make uniform and consistent the agency's approach for royalty management in the future. These methodologies will allow MMS to identify lessees when necessary for the implementation of the FOGRSFA lessee designation requirement. We propose that each be pilot tested for one year with a group of volunteer companies; companies participating in this filing agree to participate in this voluntary program. Such an approach is fully consistent with the Paperwork Reduction Act, which requires that each information collection be reviewed including as an option "a test of the collection of information through a pilot program if appropriate."[28] This approach will allow MMS, industry, and the States to work cooperatively to refine the process, solve unanticipated problems as they arise, and to address a multitude of fact patterns. Following the completion of this one-year test period, the best methodologies can be selected and further refined or combined as necessary for final implementation.

The most burdensome aspects of MMS' proposed information collection result from the requirement for information on all existing leases where much of the information is not currently available to payors or the accuracy of the information cannot be verified on a contemporaneous basis. The first two approaches address information collection for existing leases, and build on the previous voluntary efforts of payors to supply MMS with needed data. The collection of information on new leases and where an existing lessee designation is changed or terminated is potentially less burdensome, and the third approach addresses this requirement. Under the first approach MMS and payors will jointly develop and collect information to identify lessees when orders to pay are issued as a result of audit. Under the second approach, MMS and payors will identify lessees when exceptions result in computer-generated billings. Under the third, prospective approach, lessees will contemporaneously file designation forms for new, changed, and terminated leases. Each approach is discussed in turn.

IDENTIFY LESSEES WHEN ISSUING ORDERS TO PAY

Under this first approach, MMS (or if applicable, a delegated State performing an audit) and payors will identify lessees when orders to pay are required as the result of an audit and there is no statutory obligation on a payor to pay. Demands can be issued to appropriate lessees based on data obtained during audit. At this time, MMS auditors have full access to payor records and by working with payors will be able to collect information necessary to identify lessees. MMS need only collect lessee information where the payor has no obligation to pay.

[28] PRA Section 3506(c)(1)(A)(v)

IDENTIFY LESSEES WHEN EXCEPTIONS RESULT IN COMPUTER-GENERATED BILLINGS

Under this second alternative, MMS will follow up to three steps to identify operating rights owners and lessees of record where royalty bills are not paid in full by the payor. Once the necessary information has been identified, MMS will issue a demand to the responsible party.

- MMS will first attempt to identify the lessee using its existing designee data. This will be successful in the majority of cases because MMS has indicated that they already have achieved 60 percent compliance as a result of Dear Payor letters. One more large, integrated oil company has provided this information, further increasing this percentage.

- If MMS does not have the necessary information, the second step will be to request that BLM or MMS Offshore research existing lease records to identify the lessee. Most lessee information not already automated by MMS should be available within the Department and a substantial burden should not be imposed on the private sector before the Agency researches available information, as is statutorily required by FOGRSFA.

- Only if information is not already within the Department should the agency undertake a third step of requesting that the payor provide information on the lessee or operator for whom a payment was made. If the payor is only able to identify the operator, MMS will then request that the operator identify the lessee.

Following the completion of the second or third step, MMS will use the information collected to issue a demand to respective lessees to designate.

REQUIRE LESSEES TO FILE DESIGNATION FORMS CONTEMPORANEOUSLY

The third approach applies prospectively and is consistent with FOGRSFA's statutory requirement to place the obligation on lessees to designate payors, rather than on payors to identify lessees. This requirement will allow MMS to obtain data on new designations. We propose this process be implemented as a pilot program with companies participating on a volunteer basis.

Lessees must designate a payor whenever there is a change in relationship or a new or terminated relationship with a payor. Drivers in this process that would trigger a designation from a lessee could include:

- The lessee acquires an interest in a lease (either through the bidding process or acquisition from another lessee) which requires a new designation to be filed, effective with the first payment.

- The lessee's designated payor changes to another payor. The previous designation must be terminated and a new designation filed.

- The lease is terminated (sold or abandoned) which requires the lessee to terminate the existing designation.

ANALYZE RESULTS OF PILOT TEST

At the conclusion of the one-year pilot tests, MMS should report on its analysis of the effectiveness of these three approaches for implementing the FOGRSFA requirement that MMS collect all royalties due to it from the lessee. This analysis should also include estimates of the cost of administering the program on the Agency, States, lessees, and payors. The costs and benefits of each approach can then be assessed to determine the best method for collecting the necessary information for implementing the FOGRSFA requirement on an industry-wide basis.

7. CONCLUSION

The inconsistencies between the information collection required by Dear Payor letters, the interim final rule, and the form make serious administrative burden analysis impossible, however, our more qualitative analysis indicates that under any reasonable interpretation of the requirement MMS has significantly understated the information collection burden on both payors and lessees. Although MMS' estimate could be accurate for some lessees or payors depending on their relationships and how their data are stored, we believe the estimate substantially underestimates the burden of complying with this information collection in many other cases.

The information collection places a substantial burden squarely on payors to provide MMS with information on designations. FOGRSFA, on the other hand, explicitly requires that lessees designate their payors. This information collection places the burden directly on the wrong party.

Before new administrative systems are built and staff are deployed to implement an information collection that is inherently flawed, MMS should withdraw this information collection request and reestablish a process of working with industry and the States to undertake the one-year pilot studies described above. Companies participating in this filing agree to participate in such a voluntary program to design a workable system that minimizes the burden and costs on all parties. These pilot studies will further develop and test the proposed alternatives within a reasonable fixed time period. With industry, the States, and MMS working together to develop the necessary details to implement each approach, problems will be identified and corrected before an industry-wide implementation of the information collection is required. Through this cooperative effort, costs to industry, the States and MMS will be reduced.

OMB should reject MMS' current information request, and MMS should submit a new request for OMB approval that is consistent with the more limited and focused objectives of the proposed pilot tests. Following completion of these pilot tests, MMS should submit a new information collection request that (a) is consistent with the pilot test results; (b) fully complies with OMB administrative requirements; and (c) includes a more rigorous and accurate assessment of its true burden and costs on lessees, on payors, and on the nation as a whole.

APPENDIX 1
JANUARY 9,1997 DEAR PAYOR LETTER

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Royalty Management Program
P.O. Box 5760
Denver, Colorado 80217-5760

IN REPLY REFER TO:

JAN -9 1997

Dear Payor:

On August 13, 1996, President Clinton signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), amending the Federal Oil and Gas Royalty Management Act of 1982 in several important ways. One of the most notable changes concerns who is responsible for making royalty and related payments on Federal leases. We are asking you to help implement RSFA by providing important required data by March 15, 1997.

RSFA clearly establishes the owners of operating rights and/or lease record title (who are jointly defined as "lessees" under RSFA) as responsible for making royalty and related payments on a Federal lease. Currently, it is common for the payor, as agent for the lessee, rather than the lessee, to make these reports and payments. When you, as payor, pay royalties on behalf of that lessee, RSFA requires that the lessee designate you as their designee for each lease. We need to know who those lessees are to inform them of their obligation to designate you to be their lawful designee.

What information is being requested? Tell us which lessees, as defined under RSFA, for whom you pay royalty, rent, and minimum royalty. Lessees, under RSFA, are defined as:

- owners of lease record title, and/or
- owners of operating rights (person to whom operating rights have been transferred).

RSFA made this payor designation requirement effective for lease production beginning September 1, 1996.

What data must be provided? We are asking you to provide some payor data and lessee(s) data. The details of each are listed in the next two questions and their responses.

What payor data must be provided? First, using the enclosed computer lease/revenue source/product code listing, you must provide your Taxpayer Identification Number (TIN) as required by the Debt Collection Improvement Act of 1996. **Enter your TIN only on the first listed lease/revenue source/product code.** Use an "E" for employer identification number, or "S" for a social

security number, whichever is applicable to you. Follow this 1-character alpha field with your 9-digit TIN.

Second, verify the enclosed computer lease/revenue source/product code listing. Be sure that it is accurate and complete. If not, add additional lease/revenue sources/product codes at the end of the listing or use additional sheets, including information in the requested data fields. Correct errors by lining through them and writing in the correct information. For example, if the responsibility type code (advanced royalty, minimum royalty, royalty, rent, etc.) is not correct, please put in the correct type.

What lessee data is being requested? Under RSFA, the operating rights owners (lessees) on whose behalf you pay are primarily liable for payments to MMS. The owners of lease record title are secondarily liable.

Because the operating rights owners are primarily liable, the following information we are requesting from you is for operating rights owners (an operating rights owner can also be an owner of lease record title):

-- lessee/designee indicator: notate your role(s) in each lease/revenue source/product code--check L and/or D, as follows:

- owner of operating rights and/or lease record title--check L
- payor (designee) only with no ownership in the lease/revenue source/product code--check D
- both payor (designee) and owner--check both D and L

-- for each lessee for whom you pay on behalf of, provide the following:

- company or individual name
- if you know it, the Taxpayer Identification Number (TIN) which is either an Employer Identification Number (E) or a Social Security Number (S), followed by the 9-digit number
- contact name
- complete mailing address

- telephone number and applicable extension

- the start date for each lessee is 09/01/96. If any lessees have changed since 09/01/96, please include the requested information, including each applicable start and end date the person was/is a lessee. You do this by adding additional pages, numbered for tracking, or additional records if responding via a paperless means.

Should we differentiate products? Providing information at the product code level is optional, and should be done only if the lessees/designees are different for each product. For example, if the lessees/designees are different for oil and gas, then add the additional lessee information unique to each product. Different lessees/designees will be the only reason for MMS to need product code detail. Therefore, if you prefer, simply use ditto marks or write "copy" when the lessee is the same for all the products on the lease/revenue source.

How must we provide the data? You may respond either paperless, electronically, or in writing. We prefer that you submit your information an electronic or paperless means.

If you use an electronic, paperless response, you must use the Comma Separated Value (CSV) file structure, which is available as an output type in most spreadsheet applications. We have enclosed the required record layout. If you want MMS to send you your lease listing in computer readable form (electronically) or if you need assistance, please contact either Ms. Barbara Peterson at (303) 275-7018 or Ms. Paulette Palmer at (303) 275-7049. You may reply by using:

- E-Mail: Working_Interest@SMTP.MMS.GOV, or

- a floppy diskette mailed to one of the addresses listed below.

If you choose to submit the data in writing you must complete the enclosed lease listing by notating the information described above. If you need more space to notate the list, please use extra pages and number them for ease of tracking. Then mail the completed lease listing no later than March 15, 1997, to:

Minerals Management Service
Royalty Management Program
Data Management Division
P.O. Box 5760, MS 3110
Denver, Colorado 80225-5760

If you use a courier or overnight delivery service, send to:

Minerals Management Service
Royalty Management Program
Data Management Division
Building 85, Room A-212
Denver Federal Center
6th Avenue and Kipling
Denver, Colorado 80225-0165

How will MMS use the data? When we receive your information, either by your return of the enclosed lease listing or electronically, we will notify each lessee (operating rights owners and/or lease record title owners) directing them to complete a written designation to meet the RSFA requirement. It is codified as 30 U.S.C. § 1712 (a):

> In order to increase receipts and achieve effective collections of royalty and other payments, a lessee who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary. . . A lessee may designate a person to make all or part of the payments due under a lease on the lessee's behalf and shall notify the Secretary. . . in writing of such designation, in which event the designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lease. . . .

Of what benefit is this information? Your information will accomplish two things:

1. You and your lessees (as defined in RSFA) will be in compliance with RSFA. Then as a designated person, you will continue to have the right to pay, adjust, recoup, etc., in accordance with existing laws, regulations and procedures, and your lessees will be assured that when

you pay they will get credit for those payments made on their behalf.

2. You will enable MMS to notify the lessees promptly when the lease has an amount owing to MMS.

We thank you for your cooperation. If you have any questions, please call either Mr. Boh Walker or Mr. Larry Gratz, Data Management Division, at 1-800-525-9167 or (303) 231-3758.

Sincerely,

James W. Shaw

James W. Shaw
Associate Director for
Royalty Management

2 Enclosures

Lessee/Designee
Comma Separated Value (CSV)
Record Layout

File Name:

Name the incoming file as: LEASDESG.CSV; also indicate the name on the floppy diskette or email file.

Format:

All fields must be separated by commas.

Fields which are blank still require a comma to delimit their position.

A comma is not required after the last field of a record.

All fields are required unless indicated as optional.

Key:

Text is represented by an X with the maximum number of characters in the field, for example, X(5).

Numerics are represented by a 9 with the maximum number of characters in the field, for example, 9(10)

CYMDD Date is a year/month date in the following format: CCYYMM, where CCYY is the century and year, MM is the numeric month, and DD is the numeric day. Use a leading zero for the months January through September, 01 through 09. Use a leading zero for the days 01 through 09.

Record Layout:

Payor Number	X(5)	5 digit RMP payor number
Payor Name	X(30)	Payor's name - up to 30 characters in length
Payor TIN Number	X(10)	Payor's TIN number; indicate either E or S in the first position, followed by the 9-digit number
Lease Number	X(n)	11 digit lease number
Responsibility Type Code	X(2)	Use the following codes: 'AD' - Advance Royalty 'MR' - Minimum Royalty 'RO' - Royalty 'RN' - Rental 'OT' - Well Fees Injection Fee Storage Fee Withdrawal
Revenue Source Code	X(3)	3 digit revenue source code, required for responsibility type "RO".
Product Code	X(2)	2 digit product code, optional if lease-level obligation
Lessee Designee Indicator	X(1)	'L', 'D' or 'B' for Lessee, Designee or Both
Lessee Payor Number	X(5)	5 digit lessee's payor number

Lessee Name	X(30)	Lessee's name - up to 30 characters in length
Lessee TIN Number	X(10)	Lessee's TIN number; indicate E or S in first space, followed by the 9 digit number
Lessee Contact Name	X(30)	Lessee's contact name--up to 30 characters in length
Lessee Address Line 1	X(25)	Lessee's address--up to 25 characters in length
Lessee Address Line 2	X(25)	Lessee's address - continuation (optional)--up to 25 characters in length
Lessee City	X(15)	Lessee's city--up to 15 characters in length
Lessee State Code	X(2)	Lessee's 2 character state postal code
Lessee ZIP Code	X(9)	Lessee's 5+4 digit ZIP code & suffix - do not include dash between code and suffix - suffix is optional
Lessee Area Code	9(3)	Lessee's phone area code
Lessee Phone Number	9(7)	Lessee's phone number - do not include dash between prefix and line number
Lessee Phone Extension	X(5)	Lessee's phone extension (optional)
Start Date	CYMD Date	Start date of the lessee designee relationship. Field is optional. However, if left blank MMS will assume September 1, 1996.
End Date	CYMD Date	End date of the lessee designee relationship. Field is optional. However, if left blank, MMS will assume relationship is still active.

Version Dated 1/2/97

APPENDIX 2
FORM MMS-4425, DESIGNATION FORM, AND INSTRUCTIONS

Attachment 2

Certification Statement

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected to aid the Minerals Management Service (MMS) in identifying who is responsible for making royalty and related payments on Federal leases. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104-185, clearly establishes the owners of operating rights and/or lease record title as responsible for making royalty and related payments on a Federal lease. We are requiring all payors to provide us information regarding the lessees on whose behalf they are paying because we need to inform those lessees that they must certify to MMS in writing their respective payors as their designees. We estimate the burden for filing this information is 1 hour for lessees/designees. Proprietary information submitted to the U.S. Department of the Interior is protected in accordance with standards established by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552 (b) (4), and the Departmental Regulations (43 CFR 2). Comments on the accuracy of this burden estimate or suggestions on reducing this burden should be directed to the Information Collection Clearance Officer, MS 4230, MMS, 1849 C Street, N.W., Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U. S. Department of the Interior, Washington, DC 20503. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

U.S. DEPARTMENT OF THE INTERIOR
Minerals Management Service
Royalty Management Program

DESIGNATION FORM

OMB 1010-0107
(Expires JANUARY 31, 1997
The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires us to inform you that this information is being collected to set up an automated accounting data base for Federal and Indian oil and gas lease production and sales. MMS will use the information to monitor and collect rents and royalties due the Government and Indians.

Public reporting burden for this form is estimated to average one-half hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimates or any other aspect of this form including suggestions for reducing this burden to the Information Collection Clearance Officer, Mail Stop 2053, Minerals Management Service, 381 Elden Street, Herndon, Va 22070; and the Office of Management and Budget, Paperwork Reduction Project (1010-0033), Washington, DC 20503

SUBMIT ONE FORM PER REVENUE SOURCE CODE - INSTRUCTIONS ON REVERSE SIDE

MMS LEASE NUMBER ___ - _____ - ___ REVENUE SOURCE CODE ___

OMM/BLM AGENCY ASSIGNED LEASE NUMBER _____

NOTE: IF THE FOLLOWING TWO ITEMS ARE NOT COMPLETED, MMS WILL ASSUME THE DESIGNATION COVERS ALL

PRODUCT CODE ___ ___ ___ ___ ___ ___

RESPONSIBILITY TYPE ☐ RENT ☐ MINIMUM ROYALTY ☐ ROYALTY

PLEASE PROVIDE THE FOLLOWING INFORMATION AS LESSEE:

PAYOR CODE _____ TAX IDENTIFICATION NUMBER _____

LESSEE NAME: _____

LESSEE ADDRESS: _____

_____

CITY, STATE, ZIP _____

LESSEE EMAIL ADDRESS: _____

TELEPHONE ___ - ___ - _____ FAX ___ - ___ - _____

PLEASE PROVIDE THE FOLLOWING INFORMATION AS DESIGNEE:

EFFECTIVE DATE (MMDDYY) _____ TERMINATION DATE (MMDDYY) _____

PAYOR CODE _____ TAX IDENTIFICATION NUMBER _____

DESIGNEE NAME: _____

DESIGNEE ADDRESS: _____

_____

CITY, STATE, ZIP _____

DESIGNEE EMAIL ADDRESS: _____

TELEPHONE ___ - ___ - _____ FAX ___ - ___ - _____

PLEASE SIGN THE APPROPRIATE SIGNATURE LINE BELOW:

☑ Check Box LESSEE OF RECORD ☐ OPERATING RIGHTS OWNER ☐

SIGNATURE _____ DATE _____

PREPARER'S NAME: _____ PREPARER'S TELEPHONE NUMBER ___ - ___ - _____

PREPARER'S EMAIL ADDRESS: _____

FORM MMS-XXXX (REV.9/97)

1. MMS Lease Number - is a 10-digit number that MMS converts from the BLM or OMM assigned lease number, i.e., BLM lease number NM-12345 converts to MMS lease number 030-012345-0.

2. Revenue Source Code - is a 3-digit number that MMS assigns. It represents the source of production from which MMS expects to receive royalties. For example, a lease basis well.

3. OMM/BLM Agency Assigned Lease Number - an alph- numeric number assigned to any contract or agreement issued or approved by the US under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil and gas.

4. Product Code - is a two-digit code assigned to a product description. For example, oil.

5. Responsibility Type - check box if you are authorizing payment for rent, minimum royalty, royalty or all of the above.

Information under *lessee block*:

6. Payor Code - a five-digit code assigned to the lessee who assumes an obligation to report and remit rental or royalty due on the lease.

7. Tax Identification Number - a nine-digit number that is your social security number(SSN) or employer identification number (EIN).

8. Name, Address, Email address, Telephone, and Fax Number - please print or type.

Information under *designee block*:

9. Effective Date - The effective date of the designation.

10. Termination Date - The termination date of the designation.

11. Payor Code - a five-digit code assigned to the designee who assumes an obligation to report and remit rental or royalty due on the lease.

12. Tax identification number - a nine-digit number that is your social security number (SSN) or employer identification number (EIN)

13 Name, address, email address, telephone number and fax number - please print or type

14. Under signature block, check the box(es) if you are lessee of record and/ or operating rights owner on this lease.

15. Signature - as lessee of record or operating rights owner, and date of signing .

16. Preparers name, telephone number , and email address other than lessee of record or operating rights owner.

APPENDIX 3
PAPERWORK REDUCTION ACT SUBMISSION (OMB 83-1)

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request

U.S. Department of the Interior/Minerals Management Service

2. OMB control number b. __ None

a. 1 0 1 0 - 0 1 0 7

3. Type of information collection *(check one)*
   a. __ New collection
   b. __ Revision of a currently approved collection
   c. X Extension of a currently approved collection
   d. __ Reinstatement, without change, of a previously approved collection for which approval has expired
   e. __ Reinstatement, with change, of a previously approved collection for which approval has expired
   f. __ Existing collection in use without an OMB control number

   For b-f, note item A2 of Supporting Statement instructions

4. Type of review requested *(check one)*
   a. X Regular
   b. __ Emergency - Approval requested by: __/__/__
   c. __ Delegated

5. Small entities
   Will this information collection have a significant economic impact on a substantial number of small entities? __ Yes X No

6. Requested expiration date
   a. X Three years from approval date b. __ Other Specify: __/__

7. Title
   Designation of Royalty Payment Responsibility

8. Agency form number(s) *(if applicable)*
   MMS-4425

9. Keywords
   Lessee, royalty payment, RSFA, payor, operating rights owner, lease record title owner, designee, designation form

10. When a payor pays royalties on a Federal lease on behalf of a lessee, RSFA requires that the lessee certify to MMS in writing that a particular payor has been designated by the lessee to make such royalty and related payments to MMS on behalf of the lessee. RSFA made this payor designation requirement effective for lease production beginning September 1, 1996.

11. Affected public *(Mark primary with "P" and all others that apply with "X")*
   a. __ Individuals or households
   b. P Business or other for-profit
   c. __ Not-for-profit institutions
   d. __ Farms
   e. X Federal Government
   f. __ State, Local or Tribal Government

12. Obligation to respond *(Mark primary with "P" and all others that apply with "X")*
   a. __ Voluntary
   b. __ Required to obtain or retain benefits
   c. P Mandatory

13. Annual reporting and recordkeeping hour burden
   a. Number of respondents 2,500
   b. Total annual responses 24,000
   1. Percentage of these responses collected electronically 0 %
   c. Total annual hours requested 24,000
   d. Current OMB inventory 90,000
   e. Difference (66,000)
   f. Explanation of difference
      1. Program change
      2. Adjustment (66,000)

14. Annual reporting and recordkeeping cost burden *(in thousands of dollars)*
   a. Total annualized capital/startup costs 0
   b. Total annual costs (O&M) 0
   c. Total annualized cost requested 0
   d. Current OMB inventory 0
   e. Difference
   f. Explanation of difference
      1. Program change
      2. Adjustment

15. Purpose of information collection *(Mark primary with "P" and all others that apply with "X")*
   a. __ Application for benefits
   b. __ Program evaluation
   c. __ General purpose statistics
   d. X Audit
   e. __ Program planning or management
   f. __ Research
   g. X Regulatory or compliance

16. Frequency of recordkeeping or reporting *(check all that apply)*
   a. X Recordkeeping b. __ Third party disclosure
   c. X Reporting
      1. __ On occasion 2. __ Weekly 3. Monthly
      4. __ Quarterly 5. __ Semi-annually 6. x Annually
      7. __ Biennially 8. X Other (describe) As necessary

17. Statistical methods
   Does this information collection employ statistical methods?
   __ Yes X No

18. Agency contact *(person who can best answer questions regarding the content of this submission)*
   Name: Dennis C. Jones
   Phone: (303) 231-3046

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

Note: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

(a) It is necessary for the proper performance of agency functions;

(b) It avoids unnecessary duplication;

(c) It reduces burden on small entities;

(d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;

(e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;

(f) It indicates the retention period for recordkeeping requirements;

(g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):

- (i) Why the information is being collected;
- (ii) Use of information;
- (iii) Burden estimate;
- (iv) Nature of response (voluntary, required for a benefit, or mandatory);
- (v) Nature and extent of confidentiality; and
- (vi) Need to display currently valid OMB control number;

(h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);

(i) It uses effective and efficient statistical survey methodology; and

(j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

JoAnn Lauterbach, MMS ICCO, 12/9/97

Signature of Senior Official or designee H. Theodore Heintz	Date DEC 09 1997