

Supporting Statement for Paperwork Reduction Act Submissions
30 CFR 218, Subpart A—General Provisions,
§ 218.42 Cross-lease netting in calculation of late-payment interest;
Subpart B—Oil and Gas, General, §§ 218.52 How does a lessee designate a Designee?
(Form MMS-4425, Designation Form for Royalty Payment Responsibility) and
218.53 Recoupment of overpayments on Indian mineral leases; and
Subpart E—Solid Minerals—General,
§ 218.203 Recoupment of overpayments on Indian mineral leases
OMB Control Number 1010-0107
Current Expiration Date: June 30, 2005

General Instructions

The Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the *Federal Register*, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked “Yes,” Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

We changed the title of this information collection request (ICR) to clarify the regulatory language we are covering under 30 CFR part 218. The previous title of this ICR was “30 CFR Part 218, Subpart B—Oil and Gas, General.” The new title of this ICR is “30 CFR 218, Subpart A—General Provisions, § 218.42 Cross-lease netting in calculation of late-payment interest; Subpart B—Oil and Gas, General, §§ 218.52 How does a lessee designate a Designee? (Form MMS-4425, Designation Form for Royalty Payment Responsibility) and 218.53 Recoupment of overpayments on Indian mineral leases; and Subpart E—Solid Minerals—General, § 218.203 Recoupment of overpayments on Indian mineral leases. (See Attachment 1 for CFR citations covered by this ICR.) The previous renewal of ICR 1010-0107 included 30 CFR 218.57 Providing information and claiming rewards. These requirements were relocated to ICR 1010-0120 (expires October 31, 2007) during the previous renewal. A title change has been requested to include Form MMS-4280, Application for Reward for Original Information, which was inadvertently omitted from the title of ICR 1010-0120.

The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The Minerals Management Service (MMS) performs the royalty management functions and assists the Secretary in carrying out the Department's trust responsibility.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to assure that the royalties are paid appropriately.

This ICR includes unique reporting circumstances including designation of designee, cross-lease netting in calculation of late-payment interest, and tribal permission for recoupment on Indian leases. Applicable citations of the laws pertaining to mineral leases include Public Law 97-451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]); Public Law 104-185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 [RSFA]), as corrected by Public Law 104-200—Sept. 22, 1996); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*) (Attachment 2). Public laws pertaining to mineral royalties are located on our website at http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. [Be specific. If this collection is a form or a questionnaire, every question needs to be justified.]

Designation of Designee: The RSFA established that owners of, primarily, operating rights or, secondarily, lease record title (both referred to as “lessees”) are responsible for making royalty and related payments on Federal oil and gas leases. These RSFA requirements were promulgated in regulations at 30 CFR 218.52. It is common, however, for a payor rather than a lessee to make these payments. When a payor makes payments on behalf of a lessee, RSFA section 6(g) requires that the lessee designate the payor as its designee and notify MMS of this arrangement in writing. The MMS designed Form MMS-4425, Designation Form for Royalty Payment Responsibility (Attachment 3), to request all the information necessary for lessees to comply with these RSFA requirements when they choose to designate an agent to pay for them. The MMS requires this information to ensure proper mineral revenue collection.

Cross-Lease Netting in Calculation of Late-Payment Interest: Regulations at 30 CFR 218.54 require MMS to assess interest on unpaid or underpaid amounts. The MMS distributes these

interest revenues to states, Indians, and the U.S. Treasury, based on financial lease distribution information. Current regulations at 30 CFR 218.42 provide that an overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine the net payment subject to interest, when certain conditions are met. This is called cross-lease netting. However, RSFA sections 6(a), (b), and (c) require MMS to pay interest on lessees' Federal oil and gas overpayments made on or after February 13, 1997 (6 months after the August 13, 1996, enactment of RSFA). The MMS implemented this RSFA provision in 1997 and began calculating interest on both underpayments and overpayments for Federal oil and gas leases, making the cross-lease netting provisions at 30 CFR 218.42 no longer applicable for these leases. The MMS is currently developing regulations to amend 30 CFR 218.42 to limit its applicability to payments made under Indian tribal leases and Federal leases for minerals other than oil and gas. The MMS estimates that in about seven cases per year, lessees must comply with the provisions of 30 CFR 218.42(b) and (c) for Indian tribal leases or Federal leases other than oil and gas, demonstrating that cross-lease netting is correct by submitting production reports, pipeline allocation reports, or other similar documentary evidence. This information is necessary for MMS to determine the correct amount of interest owed by the lessee and to ensure proper value is collected.

Tribal Permission for Recoupment on Indian Leases: In order to report cross-lease netting on Indian leases, lessees must also comply with regulations at 30 CFR 218.53(b) and 218.203(b), allowing only lessees with written permission from the tribe to recoup overpayments on one lease against a different lease for which the tribe is the lessor. The payor must furnish MMS with a copy of the tribe's written permission. Generally, a payor may recoup an overpayment against the current month's royalties or other revenues owed on the same tribal lease. For any month, a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month, under an individual allotted lease, or more than 100 percent of the royalties or other revenues owed in that month, under a tribal lease. Lessees use Form MMS-2014, Report of Sales and Royalty Remittance, for oil and gas lease recoupments (burden hours covered under ICR 1010-0140, expires October 31, 2006) and Form MMS-4430, Solid Mineral Production and Royalty Report, for solid mineral lease recoupments (burden hours covered under ICR 1010-0120, expires October 31, 2007). The MMS requires tribal permission to ensure tribes and individual Indian mineral owners receive correct revenues from production on their leases.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements].

Designation of Designee: The MMS Minerals Revenue Management (MRM) program continues to strive for full implementation of the Government Paperwork Elimination Act. We offer electronic copies of Form MMS-4425 on our Internet website for respondents to print and complete. They may also submit the form electronically as an e-mail attachment. During the current renewal period, no companies have used the e-mail attachment option to request to

designate a designee; however, we have a reasonable expectation that 5 percent may use the e-mail option in the future.

Cross-Lease Netting in Calculation of Late-Payment Interest: Documentation required to support allowance of cross-lease netting can be submitted by e-mail. We have a reasonable expectation that 5 percent may use the e-mail option in the future.

Tribal Permission for Recoupment on Indian Leases: Submission of written tribal permission to recoup overpayments varies in format according to each tribe. However, a copy can be sent electronically as an attachment via e-mail. During the current renewal period, no companies have used the e-mail attachment option to recoup overpayments; however, we have a reasonable expectation that 5 percent may use the e-mail option in the future.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

Designation of Designee: The Bureau of Land Management (BLM) and the MMS Offshore Minerals Management (OMM), for Federal onshore and offshore leases respectively, maintain information on operating rights owners and lease record title owners. However, the information maintained by BLM and OMM does not provide the specific information required by RSFA—designation of payment responsibility. Therefore, the information submitted on Form MMS-4425 is unique.

Cross-Lease Netting in Calculation of Late-Payment Interest: Documentation required to support MMS allowance of cross-lease netting is unique to each situation and is not available through other sources.

Tribal Permission for Recoupment on Indian Leases: Tribal written permission allowing payors to recoup overpayments on a lease is a situation unique to MMS. Each submission requires a letter from the tribe related to the specific lease and production month.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

Small businesses are among potential respondents, and as such, MMS carefully analyzed its requirements to ensure the information requested is the minimum necessary to accomplish our mission and to place the least burden on industry. Training is offered on a regular basis, and toll-free telephone assistance is available during business hours. Additionally, the Secretary established the Royalty Policy Committee (RPC), made up of state, Indian, and industry representatives, to advise MMS on ways to decrease the burden on industry.

Situations requiring written permission from the tribes to allow payors to recoup overpayments on a different lease rarely, if ever, impact small businesses.

The MMS provides ongoing formal reporter training and will provide individual training when

requested. In addition, MMS provides telephone assistance as requested.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Designation of Designee: The information requested on Form MMS-4425 is necessary for MMS and the oil and gas industry to comply with RSFA, which clearly establishes the lessee as responsible for making royalty and related payments on Federal leases. Under RSFA, the operating rights owners are primarily liable for payments to MMS, and the owners of lease record title are secondarily liable. Without this information, it would be difficult to identify the payors for whom lessees make payments.

Cross-Lease Netting in Calculation of Late-Payment Interest: By delegation of the Secretary's trust responsibilities under Indian lease terms, MMS is responsible for assuring the proper valuation of production from Indian leases. Not collecting the information would limit the Secretary's ability to discharge fiduciary duties and may also result in loss of royalty payments to Indian lessors if royalties are not collected on prices received under higher priced, long-term sales contracts.

Tribal Permission for Recoupment on Indian Leases: Situations requiring written permission from the tribes to allow payors to recoup overpayments against a different lease are infrequent. Payors could not always recoup overpayments if this exception were not allowed.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

(a) requiring respondents to report information to the agency more often than quarterly.

Form MMS-4425 respondents may be required to report information to us more often than quarterly. For example, if a lessee designates a new/different payor for a given lease, then the lessee must immediately complete and submit a designation form.

(b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it.

Not applicable in this collection.

(c) requiring respondents to submit more than an original and two copies of any document.

Not applicable in this collection.

(d) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than 3 years.

Indian Oil and Gas Records—In accordance with 30 U.S.C. 1713(b), Indian oil and gas records must be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that such records must be maintained for a longer period due to an ongoing audit or investigation.

Federal Records—RSFA section 4(f) requires that Federal lessees maintain records for 7 years after the obligation becomes due.

(e) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study.

Not applicable in this collection.

(f) requiring the use of statistical data classification that has been reviewed and approved by OMB.

There are no special circumstances with respect to 5 CFR 1320.5(d)(2)(v) through (viii) because the collection is not a statistical survey and does not use statistical data classification.

(g) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.

This collection does not include a pledge of confidentiality not supported by statute or regulation.

(h) requiring respondents to submit proprietary trade secrets or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This collection does not require proprietary, trade secret, or other confidential information not protected by agency procedures.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past 3 years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping,

disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.] Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

As required in 5 CFR 1320.8(d), MMS provided a 60-day notice in the *Federal Register* on October 19, 2004 (69 FR 61519) (Attachment 4). In addition, the Paperwork Reduction Act (PRA) statement on Form MMS-4425 explains that MMS will accept comments at any time on the information collected and the burden estimate. We display the OMB control number and provide the address for sending comments to MMS.

We received no comments relevant to the *Federal Register* notice. We did not receive any unsolicited comments from potential respondents covered under these regulations or any unsolicited comments from anyone who submits Form MMS-4425. We did contact three companies, which are listed below, and solicited their opinion on the burden hour estimates, availability of data, frequency of collection, and clarity of instructions. Based on these discussions, no changes were required. The companies we contacted are listed below.

Eaglewing Trading (James Henry)
3405 Edloe Street, Suite 200
Houston, TX 77027
(713) 961-4192, extension 17

BP (Tim Thomas)
509 S. Boston, MS S912
Tulsa, OK 74103
(918) 925-7002

Samson Resources Co. (Paula Marshall)
Two West Second Street
Tulsa, OK 74103
(918) 591-1317

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We will not provide any payment or gift to respondents in this collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Commercial or financial information provided to MMS, relative to minerals removed from Federal and Indian leases, may be proprietary. Trade secrets and proprietary and other information are protected in accordance with standards established by the Federal Oil and Gas

Royalty Management Act of 1982, as amended (30 U.S.C. 1733), and the Freedom of Information Act (5 U.S.C. 552(b)(4)) and its implementing regulations (43 CFR 2).

In addition, the Indian Mineral Development Act of 1982 (25 U.S.C. 2103) provides that all information related to any Indian minerals agreement covered by the Act, in the possession of the Department, shall be held as privileged proprietary information. Storage of proprietary information and access to it are controlled by strict security measures.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The collection does not include sensitive or private questions.

12. Provide estimates of the hour burden of the collection of information. The statement should:

(a) Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

(b) If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

(c) Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

There are approximately 1,613 respondents (Federal and Indian lessees). We estimate the total annual burden is 1,220 reporting hours and no recordkeeping hours, for a total burden of 1,220 hours. Based on a cost factor of \$50 per hour, we estimate the total annual cost to industry is \$61,000 ($\$50 \times 1,220 \text{ hours} = \$61,000$). Responses are generally on occasion. The following chart shows the estimated burden hours by CFR section and paragraph:

SECTION A.12 BURDEN BREAKDOWN

Citation 30 CFR 218	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
Subpart A—General Provisions—Cross-lease netting in calculation of late-payment interest.				
218.42(b) and (c)	<p>Cross-lease netting in calculation of late-payment interest. (b) Royalties attributed to production from a lease or leases which should have been attributed to production from a different lease or leases may be offset * * * if * * * the payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information * * *.</p> <p>(c) If MMS assesses late-payment interest and the payor asserts that some or all of the interest is not owed * * * the burden is on the payor to demonstrate that the exception applies * * *.</p>	2	7	14
Subpart B—Oil and Gas, General—How does a lessee designate a Designee?				
218.52(a), (c), and (d)	<p>How does a lessee designate a Designee? (a) If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf * * * you must notify MMS * * * in writing of such designation. * * *</p> <p>(c) If you want to terminate a designation * * * you must provide [the following] to MMS in writing * * *.</p> <p>(d) MMS may require you to provide notice when there is a change in the percentage of your record title or operating rights ownership.</p> <p>The MMS currently uses Form MMS-4425, Designation Form for Royalty Payment Responsibility to collect this information.</p>	0.75	1,600	1,200
Subpart B—Oil and Gas, General—Recoupment of overpayments on Indian mineral leases.				
218.53(b)	<p>Recoupment of overpayments on Indian mineral leases. (b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed * * * under other leases * * *. A copy of the tribe's written permission must be furnished to MMS * * *.</p>	1	5	5

Citation 30 CFR 218	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
Subpart E—Solid Minerals—General—Recoupment of overpayments on Indian mineral leases.				
218.203(b)	Recoupment of overpayments on Indian mineral leases. (b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe’s written permission must be furnished to MMS * * * [following] instructions. * * *	1	1	1
TOTAL BURDEN			1,613	1,220

13. Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

(a) The cost estimate should be split into two components: (1) a total capital and start-up cost component (annualized over its expected useful life) and (2) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

(b) If cost estimates are expected to vary widely, agencies should present ranges of cost burden and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

(c) Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

We have identified no “non-hour” cost burdens for this collection of information.

14. Provide estimates of annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

Based on more accurate estimates of the amount of time required, the Government will spend approximately 5 hours per year to analyze and review the information. Using a cost factor of \$50 per hour, the total annual estimated burden on the Government is \$250 (5 hours x \$50 = \$250). The previous renewal stated Government costs at \$24, 075; however, we determined that the majority of responses require only filing.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

Item 13, OMB Form 83-I

The current OMB inventory is 1,207 hours. We are increasing the burden hours to 1,220 hours, a total increase of 13 hours.

Program Change Burden Hours—The program change burden hour total is an increase of 15 burden hours. The increase in burden hours due to program change includes hours for regulations at § 218.42 Cross-lease netting in calculation of late-payment interest, paragraphs (b) and (c) [increase of 14 burden hours], and § 218.203 Recoupment of overpayments on Indian mineral leases, paragraph (b) [increase of 1 burden hour], which were not included in the previous renewal.

Adjustment Burden Hours—The adjustment burden hour total is a decrease of 2 burden hours. The requirements and respective burden hour for 30 CFR 218.57 Providing information and claiming rewards (and Form MMS-4280, Application for Reward for Original Information) have been relocated to ICR 1010-0120 (expires October 31, 2007), reducing the burden in this ICR by 1 burden hour. We also have an adjustment decrease of 1 burden hour, resulting from more accurate estimates of the number of responses for § 218.53(b).

Item 14, OMB Form 83-I

There is no cost burden reported in OMB Form 83-I Item 14.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The MMS will not publish the data.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The MMS will display the OMB approval expiration date on Form MMS-4425. The remainder of this collection concerns regulatory requirements.

18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submissions,” of OMB Form 83-I.

To the extent that the topics apply to this collection of information, we are not making any exceptions to the “Certification for Paperwork Reduction Act Submissions.”

B. Collection of Information Employing Statistical Methods

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the OMB Form 83-I is checked “Yes,” the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed.

This section is not applicable for this collection. We will not employ statistical methods in this information collection.