

§ 290.5

Electronic Funds Transfer (EFT) for these payments.

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

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

§ 290.6 Are informal resolutions permitted?

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

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

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

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

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

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

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

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

§ 290.8 How do I exhaust my administrative remedies?

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

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

30 CFR Ch. II (7-1-03 Edition)

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

§ 290.100 What is the purpose of this subpart?

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

§ 290.101 What leases are subject to this subpart?

This subpart applies to:

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

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

§ 290.102 What definitions apply to this subpart?

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

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

(2) Any interest; or

(3) Any civil or criminal penalty.

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

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

IBLA means the Interior Board of Land Appeals.

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

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

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

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

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

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

Obligation means:

(1) A lessee's, designee's or payor's duty to:

(i) Deliver oil or gas royalty in kind; or

(ii) Make a lease-related payment, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, civil penalty, or assessment; and

(2) The Secretary's duty to:

(i) Take oil or gas royalty-in-kind; or

(ii) Make a lease-related payment, refund, offset, or credit, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, or interest.

(3) The obligations identified in paragraphs (1)(i) and (2)(i) of this definition are nonmonetary obligations. The obligations identified in paragraphs (1)(ii) and (2)(ii), including the requirement to compute the amount of such obligations, are monetary obligations.

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

(1) Order includes:

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

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

(2) Order does not include:

(i) A non-binding request, information, or guidance, such as:

(A) Advice or guidance on how to report or pay, including a valuation determination, unless it contains mandatory or ordering language; and

(B) A policy determination;

(ii) A subpoena;

(iii) An order to pay that MMS issues to a refiner or other person involved in disposition of royalty taken in kind; or

(iv) A Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 241, or a decision of an administrative law judge or of the IBLA following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty.

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

§ 290.103 Who may file an appeal?

(a) If you receive an order that adversely affects you or your lessee, you may appeal that order except as provided under § 290.104.

(b) If you are a lessee and you receive a Notice of Order, and if you contest the order, you may either appeal the order or join in your designee's appeal under § 290.106.

§ 290.104 What may I not appeal under this subpart?

You may not appeal:

(a) An action that is not an order, as defined in this subpart; or

(b) A determination of the surety amount or financial solvency under 30 CFR part 243, subparts B or C.

§ 290.105 How do I appeal an order?

(a) You may appeal an order to the Director, Minerals Management Service (MMS Director), by filing a Notice of Appeal in the office of the official issuing the order within 30 days from service of the order.

(1) Within the same 30-day period, you must file in the office of the official issuing the order a statement of