

Dated: June 27, 2013.

Mark Hague,

Acting Regional Administrator, Region 7.

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DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

Office of Hearings and Appeals

30 CFR Part 1290

43 CFR Part 4

[Docket No. ONRR-2011-0017; DS63610300 DR2PS0000.CH7000 134D0102R2]

RIN 1012-AA08

Clarification of Appeal Procedures

AGENCY: Office of Natural Resources Revenue and Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Natural Resources Revenue (ONRR) and Office of Hearing and Appeals (OHA) are proposing to amend and clarify regulations concerning certain aspects of appeals of ONRR correspondence and to clarify the final administrative nature of ONRR orders that are not paid or appealed.

DATES: Comments must be submitted on or before September 20, 2013.

ADDRESSES: You may submit comments to ONRR by any of the following methods (please reference "1012-AA08" in your comments):

- Electronically go to

www.regulations.gov. In the entry titled "Enter Keyword or ID," enter "ONRR-2011-0017," and then click "Search." Follow the instructions to submit public comments. ONRR will post all comments.

- Mail comments to Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 64000A, Denver, Colorado 80225-0165.

- Hand-carry comments, or use an overnight courier service, to the Office of Natural Resources Revenue, Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Sarah Inderbitzin, Office of Enforcement (OE), ONRR, telephone (303) 231-3748, or email sarah.inderbitzin@onrr.gov. For other questions, contact Armand Southall, Regulatory Specialist, ONRR, telephone (303) 231-3221, or email armand.southall@onrr.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The ONRR is proposing to amend its appeal regulations. On May 13, 1999, the Department of the Interior (Department) published in the **Federal Register** (64 FR 26240) a final rule governing the appeal of the former Minerals Management Service's (MMS) Minerals Revenue Management (MRM) orders. In this proposed rule, ONRR is clarifying the appeal regulations by removing ambiguity regarding the ONRR definition of an *Order*, the timing of appeals of orders to perform restructured accounting, and the finality of orders that have not been paid or appealed.

II. Reorganization of Title 30 CFR

On May 19, 2010, the Secretary of the Department of the Interior (Secretary) separated the responsibilities previously performed by the former MMS and reassigned those responsibilities to three separate organizations. As part of this reorganization, the Secretary renamed MMS's MRM the Office of Natural Resources Revenue and directed that ONRR transition from the Office of the Assistant Secretary for Land and Minerals Management to the Office of the Assistant Secretary for Policy, Management and Budget (PMB). This change required the reorganization of title 30, *Code of Federal Regulations* (30 CFR). In response, ONRR published a direct final rule on October 4, 2010 (75 FR 61051), to establish a new chapter XII in 30 CFR; to remove certain regulations from chapter II; and to recodify these regulations in the new chapter XII. Therefore, all references to ONRR in this proposed rule include its predecessor MRM, and all references to 30 CFR part 1290 in this proposed rule include former 30 CFR part 290, subpart B.

III. Explanation of Proposed Amendments

This rule would make technical clarifications to 30 CFR part 1290 and 43 CFR part 4, subpart J. Title 30 CFR part 1290 pertains to appeals of ONRR orders to report or pay royalties and other payments due under leases subject to part 1290. Title 43 CFR part 4, subpart J, contains OHA's special rules applicable to appeals concerning Federal oil and gas royalties and other related matters. This rule also would make technical corrections to position titles, agency names, acronyms, and cross references within the regulations and would delete regulatory provisions no longer needed.

Specifically, the rule proposes to amend existing appeal regulations in titles 30 and 43 to clarify which ONRR correspondence are appealable orders. This proposed amendment would apply to orders involving all Federal and Indian mineral leases. The ONRR has received appeals filed in response to "Dear Payor," "Dear Operator," and "Dear Reporter" letters. These letters contain policy and guidance that do not contain mandatory or ordering language, and, thus, are not ONRR orders. Therefore, those letters are not appealable. The Interior Board of Land Appeals (IBLA) addressed this issue in *Devon Energy*, 171 IBLA 43 (2007). In *Devon*, the IBLA held that, under ONRR's appeal regulations, "Dear Payor/Operator/Reporter" letters sent to all lessees are not appealable orders under 30 CFR part 1290. Therefore, the proposed amendment to the regulations in titles 30 and 43 would specify that "Dear Payor/Operator/Reporter" letters and any ONRR instructions or guidance do not constitute appealable orders. This proposed rule would eliminate confusion for the recipients of the ONRR letters and reduce the number of ineligible appeals.

Likewise, the IBLA has held that correspondence from ONRR that does not contain a notice of the right to appeal is not an appealable order under 30 CFR part 1290. *Xanadu Exploration Company*, 157 IBLA 183, 186 (2002). Therefore, the proposed amendments to the regulations also would specify that any ONRR correspondence that does not contain the right to appeal in writing does not constitute an appealable order consistent with the *Xanadu* decision. This amendment also would eliminate confusion for the recipients of "Dear Payor/Operator/Reporter" letters that do not contain an explicit right to appeal.

In addition, the rule proposes to update 30 CFR part 1290 to reflect the 60-day period within which a party may appeal an order to perform a restructured accounting involving only Federal oil and gas leases under the Royalty Simplification and Fairness Act of 1996 (RSFA), codified at 30 U.S.C. 1724(d)(4)(B)(ii)(V).

Generally, under the proposed rule, you would appeal an Order to Perform a Restructured Accounting to the ONRR Director. This would include requiring you to appeal an Order to Perform a Restructured Accounting that a delegated State issues to the ONRR Director under proposed § 1290.105(a)(1)(ii). This would give the ONRR Director an opportunity to review such orders and issue a decision before it proceeds to the IBLA.

RSFA, 30 U.S.C. 1724(d)(4)(B)(ii), states that, for Federal oil and gas leases, the Secretary may not delegate his/her authority to issue an Order to Perform a Restructured Accounting below the most senior career professional position responsible for the royalty management program. This person currently is the Director of ONRR. As a result, an Order to Perform a Restructured Accounting that the ONRR Director signs would be the final decision of the ONRR Director. Therefore, under § 1290.105(a)(2) of the proposed rule, you would appeal such Orders to Perform a Restructured Accounting to the Interior Board of Land Appeals under § 1290.108, not to the ONRR Director.

ONRR also proposes to amend § 1290.108 to add a new paragraph (b) that would state: “Notwithstanding 43 CFR 4.414(a), a party shall file an answer or appropriate motion within 60 days after service of the statement of reasons for appeal unless an extension of time is requested and granted.” Currently, 43 CFR 4.414(a) requires ONRR to file an answer within 30 days of receiving a statement of reasons. ONRR may request and obtain an automatic 30-day extension of time under 30 CFR 4.405(f). Experience has proven that the 60 days currently provided is usually inadequate to allow ONRR to assemble the administrative record in royalty appeals. Therefore, ONRR proposes to allow ONRR 60 days within which to file an answer, coupled with retaining its right to an automatic 30-day extension if necessary, to give it adequate time to prepare the record and answer. Under this proposal, ONRR would make the language in existing § 1290.108 a new paragraph (a) of this section and the proposed new language would be paragraph (b).

Finally, the rule proposes to add a new § 1290.111 that would apply to orders involving any Federal and Indian mineral leases. This amendment would supersede the IBLA decision in *Merit Energy Co. v. Minerals Management Service*, 172 IBLA 137 (2007), *aff'd*, *Jicarilla Apache Nation v. Dept. of the Interior*, No. 10–2052 (JDB), 2012 U.S. Dist. LEXIS 137421 (D.D.C. Sept. 26, 2012). In *Merit*, when Merit did not pay or appeal an ONRR order to pay royalty, ONRR issued a notice of noncompliance under section 109(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1719, to enforce the order. Merit then requested a hearing on the record on the notice of noncompliance under FOGRMA section 109(e), 30 U.S.C. 1719(e), and the former 30 CFR part 241 (now part 1241) before the Hearings Division of the Office of Hearings and Appeals (OHA). However,

Merit challenged not only the amount of the potential penalty, but also the merits of the underlying order that it failed to appeal under then 30 CFR part 290, subpart B (now part 1290). The Hearings Division administrative law judge (ALJ) held that Merit could not challenge the merits of the order in a former part 241 hearing because it had failed to appeal the order under former 30 CFR part 290, subpart B.

Merit then appealed the ALJ's decision to the IBLA. The IBLA disagreed with the ALJ and held that the hearing on the notice of noncompliance could address the merits of the order because Merit was entitled to challenge its “underlying liability” for penalties under former part 241. 172 IBLA at 149–51. We believe that giving appellants who do not appeal orders under current 30 CFR part 1290 another avenue of appeal when the agency seeks to enforce an order that was not appealed nullifies the intent of part 1290. It also undermines the requirement to exhaust administrative remedies by relieving a party of the consequences of failing to do so with respect to the initial order. Therefore, this proposed rule would make clear that, if you receive an ONRR order and you neither pay nor appeal that order under 30 CFR part 1290, the order is the final decision of the Department and you may not contest the merits of that order in any subsequent proceeding seeking to enforce the order under 30 CFR part 1241.

IV. Procedural Matters

1. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open

exchange of ideas. We have developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

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

This rule would affect lessees under Federal and Indian mineral leases and other recipients of ONRR orders or other official correspondence. Lessees of Federal and Indian mineral leases are generally companies classified under the North American Industry Classification System (NAICS) Code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Because this rule applies to all mineral leases, even though the NAICS classification only applies to oil and gas leases, we are using the same classification system for all mineral leases. The Department believes that a meaningful number of businesses affected by this rule would be small businesses.

This rule would have no economic effect on small businesses. Businesses would not lose any opportunity to appeal any orders which may have an economic effect. This rule only would serve to clarify the proper forum for certain appeals, conform with other regulations, and codify previously enacted Federal law. A Regulatory Flexibility Analysis would not be required. Accordingly, a Small Entity Compliance Guide would not be required.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and ten Regional Fairness Boards receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates the enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the actions of ONRR, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration would be investigated for appropriate action.

3. Small Business Regulatory Enforcement Fairness Act

This rule would not be a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This rule:

(a) Would not have an annual effect on the economy of \$100 million or more.

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

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

4. *Unfunded Mandates Reform Act*

This rule would not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) would not be required.

5. *Takings (E.O. 12630)*

Under the criteria in section 2 of E.O. 12630, this rule would not have any significant takings implications. This rule would not be a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment would not be required.

6. *Federalism (E.O. 13132)*

Under the criteria in section 1 of E.O. 13132, this rule would not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in Outer Continental Shelf (OCS) activities, this rule would not affect that role. A Federalism summary impact statement would not be required.

7. *Civil Justice Reform (E.O. 12988)*

This rule would comply with the requirements of E.O. 12988.

Specifically, this rule:

a. Would meet the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Would meet the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. *Consultation With Indian Tribes (E.O. 13175)*

The Department of the Interior strives to strengthen its government-to-

government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty.

Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it would have no substantial direct effects on federally recognized Indian Tribes. Indian Tribes would be unaffected by clarifications to this appeals rule because the changes would affect the procedures for appeal by lessees, but not the rights of lessors, such as individual Indian mineral owners and Tribes.

9. *Paperwork Reduction Act*

This rule would not contain information collection requirements, and a submission to OMB would not be required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

10. *National Environmental Policy Act*

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) would not be required because this rule is categorically excluded under: "(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature." See 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D. We have also determined that this rule would not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments have no consequences with respect to the physical environment. No activity bearing on natural resource exploration, production, or transportation would be altered in any material way.

11. *Effects on the Energy Supply (E.O. 13211)*

This rule would not be a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects would not be required.

12. *Clarity of This Regulation*

We are required by E.O. 12866 (section 1(b)(12)), E.O. 12988 (section 3(b)(1)(B)), E.O. 13563 (section 1(a)), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) use the active voice to address

readers directly; (c) use common, everyday words, and clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To help revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, and the sections where you feel lists or tables would be useful, etc.

13. *Public Availability of Comments*

We will post all comments, including names and addresses of respondents, at www.regulations.gov. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

List of Subjects

30 CFR Part 1290

Administrative practice and procedure.

43 CFR Part 4

Administrative practice and procedure, Civil rights, Claim, Equal access to justice, Estates, Government contracts, Grazing lands, Indians, Lawyers, Mines, Penalties, Public lands, Surface mining, Whistleblowing.

Dated: June 11, 2013.

Amy Holley,

Acting Assistant Secretary for Policy, Management and Budget.

For the reasons discussed in the preamble, the Assistant Secretary for Policy, Management and Budget proposes to amend 30 CFR part 1290 and 43 CFR part 4, subpart J as follows:

TITLE 30—MINERAL RESOURCES

CHAPTER XII—OFFICE OF NATURAL RESOURCES REVENUE, DEPARTMENT OF THE INTERIOR

Subchapter B—Appeals

PART 1290—APPEAL PROCEDURES

■ 1. The authority citation for part 1290 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 43 U.S.C. 1331.

■ 2. Amend the definition of *Order* in § 1290.102 by revising the introductory paragraph and paragraphs (1)(i), (1)(ii), 2(iii), and 2(iv) and adding paragraphs (2)(v) and 2(vi) to read as follows:

§ 1290.102 What definitions apply to this part?

* * * * *

Order, for purposes of this part only, means any document issued by the ONRR Director 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 part: Report, compute, or pay royalties or other obligations, report production, or provide other information.

(1) * * *

(i) An order to pay (Order to Pay) or to compute and pay (Order to Perform a Restructured Accounting); and

(ii) An ONRR 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 (Denial).

(2) * * *

* * * * *

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

(iv) A Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 1241, 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;

(v) A "Dear Payor," "Dear Operator," or "Dear Reporter" letter unless it explicitly includes the right to appeal in writing; or

(vi) Any correspondence that does not include the right to appeal in writing.

* * * * *

■ 3. Amend § 1290.105 by revising paragraph (a) to read as follows:

§ 1290.105 How do I appeal an order?

(a)(1) You may appeal to the Director, Office of Natural Resources Revenue (ONRR Director), by filing a Notice of

Appeal in the office of the official issuing the Order:

(i) Within 30 days from service of an Order to Pay or a Denial involving Federal or Indian mineral leases, or an Order to Perform a Restructured Accounting involving Federal solid mineral or geothermal leases; or

(ii) Within 60 days from service of an Order to Perform a Restructured Accounting involving Federal oil and gas leases if a delegated State issued the Order to Perform a Restructured Accounting.

(2) If the ONRR Director, or other most senior career professional responsible for the ONRR royalty management program, issued the Order to Perform a Restructured Accounting for a Federal oil and gas lease, then you may appeal that order to the IBLA within 60 days under § 1290.108.

(3) For appeals to the ONRR Director under paragraph (1), within the same 30-day or 60-day period, whichever is applicable, you must file in the office of the official issuing the Order to Pay, Order to Perform a Restructured Accounting, or Denial, a statement of reasons, or written arguments, or brief that includes the arguments on the facts or law that you believe justify reversal or modification of the Order to Pay, Order to Perform a Restructured Accounting, or Denial.

(4) If you are a designee, when you file your Notice of Appeal, you must concurrently serve your Notice of Appeal on the lessees for the leases in the Order to Pay, Order to Perform a Restructured Accounting, or Denial you appealed.

* * * * *

■ 4. Revise § 1290.108 to read as follows:

§ 1290.108 How do I appeal to the IBLA?

(a) Any party to a case adversely affected by a final decision of the ONRR Director or the Director, Bureau of Indian Affairs under this part shall have a right of appeal to the IBLA under the procedures provided in 43 CFR part 4, subpart E.

(b) Notwithstanding 43 CFR 4.414(a), a party shall file an answer or

appropriate motion within 60 days after service of the statement of reasons for appeal unless an extension of time is requested and granted.

■ 5. Amend § 1290.110 by revising paragraph (b)(2) to read as follows:

§ 1290.110 How do I exhaust administrative remedies?

* * * * *

(b) * * *

(1) * * *

(2) The Assistant Secretary for Policy, Management and Budget.

* * * * *

■ 6. Add new § 1290.111 to read as follows:

§ 1290.111 What happens if I do not pay or appeal an order?

If you neither pay nor appeal an order under this part, that order is the final decision of the Department, you have failed to exhaust administrative remedies as required under § 1290.110(a), and you may not contest the validity or merits of that order in any subsequent proceeding to enforce that order under 30 U.S.C. 1719 and part 1241 of this chapter.

**TITLE 43—PUBLIC LANDS: INTERIOR
SUBTITLE A—Office of the Secretary of the Interior**

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

■ 7. The authority citation for subpart J continues to read as follows:

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

■ 8. Amend the sections in part 4 indicated in the left column of the following table by removing the text in the center column and adding in its place the text in the right column.

§§ 4.902, 4.903, 4.906, 4.907, and 4.908 [Amended]

AMENDMENT TABLE FOR PART 4

Amend	By removing the reference to:	And adding in its place:
§ 4.902(a)	30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, 30 CFR part 290 subpart B	30 CFR part 1290.
§ 4.902(a)	Minerals Management Service (MMS)	Office of Natural Resources (ONRR).
§ 4.903, definition of <i>Delegated State</i>	MMS	ONRR.
§ 4.903, definition of <i>Delegated State</i>	30 CFR part 227	30 CFR part 1227.
§ 4.903, definition of <i>Designee</i>	30 CFR 218.52	30 CFR 1218.52.
§ 4.903, definition of <i>Monetary obligation</i>	MMS	ONRR.
§ 4.903, definition of <i>Notice of Order</i> (two times)	MMS	ONRR.
§ 4.903, definition of <i>Party</i>	MMS	ONRR.
§ 4.903, definition of <i>Party</i> (two times)	30 CFR part 290 subpart B	30 CFR part 1290.
§ 4.906(b)(1)	MMS	ONRR.
§ 4.906(b)(2)	MMS	ONRR.
§ 4.906(d) (three times)	MMS	ONRR.
§ 4.907 (table of content and section heading)	MMS	ONRR.
§ 4.907(a) (two times)	MMS	ONRR.
§ 4.907(b)	MMS	ONRR.
§ 4.907(c)	MMS	ONRR's.
§ 4.908(a)	MMS's	ONRR.
§ 4.908(b)	MMS	ONRR.
§ 4.908(c)	MMS	ONRR.

■ 9. Amend the definitions of *Order* and *Payor* in § 4.903 to read as follows:

§ 4.903 What definitions apply to this subpart?

* * * * *

Order means any document or portion of a document issued by the ONRR Director or a delegated State that contains mandatory or ordering language regarding any monetary or nonmonetary obligation under any Federal oil and gas lease or leases.

(1) Order includes:

(i) An order to pay (Order to Pay) or to compute and pay (Order to Perform a Restructured Accounting); and

(ii) An ONRR 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 valuation determination, unless it contains mandatory or ordering language; and

(B) A policy determination;

(ii) A subpoena;

(iii) An order to pay that ONRR 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 1241, 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.

(v) A "Dear Payor," "Dear Operator," or "Dear Reporter" letter unless it explicitly includes the right to appeal in writing; or

(vi) Any correspondence that does not include the right to appeal in writing.

* * * * *

Payor means any person responsible for reporting and paying royalties for Federal oil and gas leases.

■ 10. Revise § 4.904 to read as follows:

§ 4.904 When does my appeal commence and end?

For purposes of the period in which the Department must issue a final decision in your appeal under § 4.906:

(a) Your appeal commences on the date ONRR receives your Notice of Appeal.

(b) Your appeal ends on the same day of the 33rd calendar month after your appeal commenced under paragraph (a) of this section, plus the number of days of any applicable time extensions under § 4.909 or 30 CFR 1290.109. If the 33rd calendar month after your appeal commenced does not have the same day of the month as the day of the month your appeal commenced, then the initial 33-month period ends on the last day of the 33rd calendar month.

■ 11. Amend § 4.906 by revising paragraph (b)(3) to read as follows:

§ 4.906 What if the Department does not issue a decision by the date my appeal ends?

* * * * *

(b) * * *

(3) If the ONRR Director issues a decision in your appeal, and if you do not appeal the Director's decision to IBLA within the time required under 30 CFR part 1290, then the ONRR Director's decision is the final decision of the Department and 30 U.S.C. 1724(h)(2) has no application.

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