

tion under this chapter, or any person acting pursuant to a contract authorized by this chapter.

(Pub. L. 97-451, title I, § 113, Jan. 12, 1983, 96 Stat. 2456.)

§ 1724. Secretarial and delegated States' actions and limitation periods

(a) In general

The respective duties, responsibilities, and activities with respect to a lease shall be performed by the Secretary, delegated States, and lessees or their designees in a timely manner.

(b) Limitation period

(1) In general

A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within seven years from the date on which the obligation becomes due and if not so commenced shall be barred. If commencement of a judicial proceeding or demand for an obligation is barred by this section, the Secretary, a delegated State, or a lessee or its designee (A) shall not take any other or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with respect to that obligation; and (B) shall not pursue any other equitable or legal remedy, whether under statute or common law, with respect to an action on or an enforcement of said obligation.

(2) Rule of construction

A judicial proceeding or demand that is timely commenced under paragraph (1) against a designee shall be considered timely commenced as to any lessee who is liable pursuant to section 1712(a) of this title for the obligation that is the subject of the judicial proceeding or demand.

(3) Application of certain limitations

The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28 and section 226-2 of this title shall not apply to any obligation to which this chapter applies. Section 3716 of title 31 may be applied to an obligation the enforcement of which is not barred by this chapter, but may not be applied to any obligation the enforcement of which is barred by this chapter.

(c) Obligation becomes due

(1) In general

For purposes of this chapter, an obligation becomes due when the right to enforce the obligation is fixed.

(2) Royalty obligations

The right to enforce any royalty obligation for any given production month for a lease is fixed for purposes of this chapter on the last day of the calendar month following the month in which oil or gas is produced.

(d) Tolling of limitation period

The running of the limitation period under subsection (b) of this section shall not be sus-

pending, tolled, extended, or enlarged for any obligation for any reason by any action, including an action by the Secretary or a delegated State, other than the following:

(1) Tolling agreement

A written agreement executed during the limitation period between the Secretary or a delegated State and a lessee or its designee (with notice to the lessee who designated the designee) shall toll the limitation period for the amount of time during which the agreement is in effect.

(2) Subpoena

(A) The issuance of a subpoena to a lessee or its designee (with notice to the lessee who designated the designee, which notice shall not constitute a subpoena to the lessee) in accordance with the provisions of subparagraph (B)(i) shall toll the limitation period with respect to the obligation which is the subject of a subpoena only for the period beginning on the date the lessee or its designee receives the subpoena and ending on the date on which (i) the lessee or its designee has produced such subpoenaed records for the subject obligation, (ii) the Secretary or a delegated State receives written notice that the subpoenaed records for the subject obligation are not in existence or are not in the lessee's or its designee's possession or control, or (iii) a court has determined in a final decision that such records are not required to be produced, whichever occurs first.

(B)(i) A subpoena for the purposes of this section which requires a lessee or its designee to produce records necessary to determine the proper reporting and payment of an obligation due the Secretary may be issued only by an Assistant Secretary of the Interior or an Acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations), or the Director or Acting Director of the respective bureau or agency, and may not be delegated to any other person. If a State has been delegated authority pursuant to section 1735 of this title, the State, acting through the highest State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such subpoena, but may not delegate such authority to any other person.

(ii) A subpoena described in clause (i) may only be issued against a lessee or its designee during the limitation period provided in this section and only after the Secretary or a delegated State has in writing requested the records from the lessee or its designee related to the obligation which is the subject of the subpoena and has determined that—

(I) the lessee or its designee has failed to respond within a reasonable period of time to the Secretary's or the applicable delegated State's written request for such records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this chapter; or

(II) the lessee or its designee has in writing denied the Secretary's or the applicable

delegated State's written request to produce such records in the lessee's or its designee's possession or control necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this chapter; or

(III) the lessee or its designee has unreasonably delayed in producing records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or the applicable delegated State's responsibilities under this chapter after the Secretary's or delegated State's written request.

(C) In seeking records, the Secretary or the applicable delegated State shall afford the lessee or its designee a reasonable period of time after a written request by the Secretary or such delegated State in which to provide such records prior to the issuance of any subpoena.

(3) Misrepresentation or concealment

The intentional misrepresentation or concealment of a material fact for the purpose of evading the payment of an obligation in which case the limitation period shall be tolled for the period of such misrepresentation or such concealment.

(4) Order to perform restructured accounting

(A)(i) The issuance of a notice under subparagraph (D) that the lessee or its designee has not substantially complied with the requirement to perform a restructured accounting shall toll the limitation period with respect to the obligation which is the subject of the notice only for the period beginning on the date the lessee or its designee receives the notice and ending 120 days after the date on which (I) the Secretary or the applicable delegated State receives written notice that the accounting or other requirement has been performed, or (II) a court has determined in a final decision that the lessee is not required to perform the accounting, whichever occurs first.

(ii) If the lessee or its designee initiates an administrative appeal or judicial proceeding to contest an order to perform a restructured accounting issued under subparagraph (B)(i), the limitation period in subsection (b) of this section shall be tolled from the date the lessee or its designee received the order until a final, nonappealable decision is issued in any such proceeding.

(B)(i) The Secretary or the applicable delegated State may issue an order to perform a restructured accounting to a lessee or its designee when the Secretary or such delegated State determines during an audit of a lessee or its designee that the lessee or its designee should recalculate royalty due on an obligation based upon the Secretary's or the delegated State's finding that the lessee or its designee has made identified underpayments or overpayments which are demonstrated by the Secretary or the delegated State to be based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months

with the same type of error which constitutes a pattern of violations and which are likely to result in either significant underpayments or overpayments.

(ii) The power of the Secretary to issue an order to perform a restructured accounting may not be delegated below the most senior career professional position having responsibility for the royalty management program, which position is currently designated as the "Associate Director for Royalty Management", and may not be delegated to any other person. If a State has been delegated authority pursuant to section 1735 of this title, the State, acting through the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such order to perform, which may not be delegated to any other person. An order to perform a restructured accounting shall—

(I) be issued within a reasonable period of time from when the audit identifies the systemic, reporting errors;

(II) specify the reasons and factual bases for such order;

(III) be specifically identified as an "order to perform a restructured accounting";

(IV) provide the lessee or its designee a reasonable period of time (but not less than 60 days) within which to perform the restructured accounting; and

(V) provide the lessee or its designee 60 days within which to file an administrative appeal of the order to perform a restructured accounting.

(C) An order to perform a restructured accounting shall not mean or be construed to include any other action by or on behalf of the Secretary or a delegated State.

(D) If a lessee or its designee fails to substantially comply with the requirement to perform a restructured accounting pursuant to this subsection, a notice shall be issued to the lessee or its designee that the lessee or its designee has not substantially complied with the requirements to perform a restructured accounting. A lessee or its designee shall be given a reasonable time within which to perform the restructured accounting. Such notice may be issued under this section only by an Assistant Secretary of the Interior or an acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated to any other person. If a State has been delegated authority pursuant to section 1735 of this title, the State, acting through the highest State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such notice, which may not be delegated to any other person.

(e) Termination of limitations period

An action or an enforcement of an obligation by the Secretary or delegated State or a lessee or its designee shall be barred under this section prior to the running of the seven-year period provided in subsection (b) of this section in the event—

- (1) the Secretary or a delegated State has notified the lessee or its designee in writing that a time period is closed to further audit; or
- (2) the Secretary or a delegated State and a lessee or its designee have so agreed in writing.

For purposes of this subsection, notice to, or an agreement by, the designee shall be binding on any lessee who is liable pursuant to section 1712(a) of this title for obligations that are the subject of the notice or agreement.

(f) Records required for determining collections

Records required pursuant to section 1713 of this title by the Secretary or any delegated State for the purpose of determining obligations due and compliance with any applicable mineral leasing law, lease provision, regulation or order with respect to oil and gas leases from Federal lands or the Outer Continental Shelf shall be maintained for the same period of time during which a judicial proceeding or demand may be commenced under subsection (b) of this section. If a judicial proceeding or demand is timely commenced, the record holder shall maintain such records until the final nonappealable decision in such judicial proceeding is made, or with respect to that demand is rendered, unless the Secretary or the applicable delegated State authorizes in writing an earlier release of the requirement to maintain such records. Notwithstanding anything herein to the contrary, under no circumstance shall a record holder be required to maintain or produce any record relating to an obligation for any time period which is barred by the applicable limitation in this section. In connection with any hearing, administrative proceeding, inquiry, investigation, or audit by the Secretary or a delegated State under this chapter, the Secretary or the 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.

(g) Timely collections

In order to most effectively utilize resources available to the Secretary to maximize the collection of oil and gas receipts from lease obligations to the Treasury within the seven-year period of limitations, and consequently to maximize the State share of such receipts, 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 on the most current 12 months of activity. This subsection shall not provide a defense to a demand or an order to perform a restructured accounting. To the maximum extent possible, the Secretary and delegated States shall reduce costs to the United States Treasury and the States by discontinuing requirements for unnecessary or duplicative data and other information, such as separate allowances and payor information, relating to ob-

ligations due. If the Secretary and the State concerned determine that collection will result sooner, the Secretary or the applicable delegated State may waive or forego interest in whole or in part.

(h) Appeals and final agency action

(1) 33-month period

Demands or orders issued by the Secretary or a delegated State are subject to administrative appeal in accordance with the regulations of the Secretary. No State shall impose any conditions which would hinder a lessee's or its designee's immediate appeal of an order to the Secretary or the Secretary's designee. The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings pending on August 13, 1996, within 33 months from the date such proceeding was commenced or 33 months from August 13, 1996, whichever is later. The 33-month period may be extended by any period of time agreed upon in writing by the Secretary and the appellant.

(2) Effect of failure to issue decision

If no such decision has been issued by the Secretary within the 33-month period referred to in paragraph (1)—

(A) the Secretary shall be deemed to have issued and granted a decision in favor of the appellant as to any nonmonetary obligation and any monetary obligation the principal amount of which is less than \$10,000; and

(B) the Secretary shall be deemed to have issued a final decision in favor of the Secretary, which decision shall be deemed to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is \$10,000 or more, and the appellant shall have a right to judicial review of such deemed final decision in accordance with title 5.

(i) Collections of disputed amounts due

To expedite collections relating to disputed obligations due within the seven-year period beginning on the date the obligation became due, the parties shall hold not less than one settlement consultation and the Secretary and the State concerned may take such action as is appropriate to compromise and settle a disputed obligation, including waiving or reducing interest and allowing offsetting of obligations among leases.

(j) Enforcement of claim for judicial review

In the event a demand subject to this section is properly and timely commenced, the obligation which is the subject of the demand may be enforced beyond the seven-year limitations period without being barred by this statute of limitations. In the event a demand subject to this section is properly and timely commenced, a judicial proceeding challenging the final agency action with respect to such demand shall be deemed timely so long as such judicial proceeding is commenced within 180 days from receipt of notice by the lessee or its designee of the final agency action.

(k) Implementation of final decision

In the event a judicial proceeding or demand subject to this section is timely commenced and thereafter the limitation period in this section lapses during the pendency of such proceeding, any party to such proceeding shall not be barred from taking such action as is required or necessary to implement a final unappealable judicial or administrative decision, including any action required or necessary to implement such decision by the recovery or recoupment of an underpayment or overpayment by means of refund or credit.

(l) Stay of payment obligation pending review

Any person ordered by the Secretary or a delegated State to pay any obligation (other than an assessment) shall be entitled to a stay of such payment without bond or other surety instrument pending an administrative or judicial proceeding if the person periodically demonstrates to the satisfaction of the Secretary that such person is financially solvent or otherwise able to pay the obligation. In the event the person is not able to so demonstrate, the Secretary may require a bond or other surety instrument satisfactory to cover the obligation. Any person ordered by the Secretary or a delegated State to pay an assessment shall be entitled to a stay without bond or other surety instrument.

(Pub. L. 97-451, title I, §115, as added Pub. L. 104-185, §4(a), Aug. 13, 1996, 110 Stat. 1704; amended Pub. L. 104-200, §1(2), Sept. 22, 1996, 110 Stat. 2421.)

CODIFICATION

Pub. L. 104-185, §4(a), which directed the addition of this section after section 114 of the Federal Oil and Gas Royalty Management Act of 1982, Pub. L. 97-451, was executed by adding this section after section 113 to reflect the probable intent of Congress because Pub. L. 97-451 did not contain a section 114.

AMENDMENTS

1996—Subsec. (l). Pub. L. 104-200 inserted “so” after “the person is not able to”.

EFFECTIVE DATE

Section applicable with respect to production of oil and gas after the first day of the month following Aug. 13, 1996, except as provided by subsec. (h) of this section, see section 11 of Pub. L. 104-185, set out as an Effective Date of 1996 Amendment note under section 1701 of this title.

APPLICABILITY

Section not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104-185, set out as an Applicability of 1996 Amendment note under section 1701 of this title.

§ 1725. Assessments

Beginning eighteen months after August 13, 1996, to encourage proper royalty payment the Secretary or the delegated State shall impose assessments on a person who chronically submits erroneous reports under this chapter. Assessments under this chapter may only be issued as provided for in this section.

(Pub. L. 97-451, title I, §116, as added Pub. L. 104-185, §6(f)(1), Aug. 13, 1996, 110 Stat. 1714.)

CODIFICATION

Pub. L. 104-185, §4(a), which directed the addition of this section at the end of the Federal Oil and Gas Royalty Management Act of 1982, was executed by adding this section at the end of title I of that Act to reflect the probable intent of Congress.

EFFECTIVE DATE

Section applicable with respect to production of oil and gas after the first day of the month following Aug. 13, 1996, see section 11 of Pub. L. 104-185, set out as an Effective Date of 1996 Amendment note under section 1701 of this title.

APPLICABILITY

Section not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104-185, set out as an Applicability of 1996 Amendment note under section 1701 of this title.

§ 1726. Alternatives for marginal properties**(a) Determination of best interests of State concerned and United States**

The Secretary and the State concerned, acting in the best interests of the United States and the State concerned to promote production, reduce administrative costs, and increase net receipts to the United States and the States, shall jointly determine, on a case by case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof, shall be subject to a prepayment under subsection (b) of this section or regulatory relief under subsection (c) of this section. If the State concerned does not consent, such prepayments or regulatory relief shall not be made available under this section for such marginal production: *Provided*, That if royalty payments from a lease or leases, or well or wells are not shared with any State, such determination shall be made solely by the Secretary.

(b) Prepayment of royalty**(1) In general**

Notwithstanding the provisions of any lease to the contrary, for any lease or leases or well or wells identified by the Secretary and the State concerned pursuant to subsection (a) of this section, the Secretary is authorized to accept a prepayment for royalties in lieu of monthly royalty payments under the lease for the remainder of the lease term if the affected lessee so agrees. Any prepayment agreed to by the Secretary, State concerned and lessee which is less than an average \$500 per month in total royalties shall be effectuated under this section not earlier than two years after August 13, 1996, and, any prepayment which is greater than an average \$500 per month in total royalties shall be effectuated under this section not earlier than three years after August 13, 1996. The Secretary and the State concerned may condition their acceptance of the prepayment authorized under this section on the lessee's agreeing to such terms and conditions as the Secretary and the State concerned deem appropriate and consistent with the purposes of this chapter. Such terms may—

(A) provide for prepayment that does not result in a loss of revenue to the United States in present value terms;