United States General Accounting Office

GAO

Report to the Chairman, Committee on Interior and Insular Affairs
House of Representatives

March 1986

MINERAL REVENUES

Delays in Processing and Disbursing Onshore Oil and Gas Bid Revenues

GAO/RCED-86-69

GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-221397

March 24, 1986

The Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives

Dear Mr. Chairman:

We have reviewed the Department of the Interior's procedures for depositing and processing bid revenues from offshore and onshore competitive oil and gas lease sales and its procedures for disbursing onshore bid revenues to the states.[1] On February 20, 1986, because of your prior interest in this area, we briefed your office on the results of our review. At that time your office asked us to provide this report.

In summary, we found that Interior's procedures and guidelines for depositing and processing offshore bid revenues were adequate, but the procedures for depositing, processing, and disbursing onshore bid revenues could be more timely. More timely receipt and deposit of onshore bid revenues, in compliance with Department of the Treasury and Interior's instructions, would make these funds available to the federal government sooner, thereby decreasing the need for the Treasury to borrow money and incur interest. Interior could also save the Treasury interest costs by streamlining its procedures for notifying winning bidders of bid acceptance and for requiring final bid payment from onshore bidders. We estimate that timely deposits of these funds and streamlined procedures could have saved the Treasury about $152,000 for the 55 parcels we reviewed.[2] We also found that Interior's procedures for disbursing states' shares of onshore bid revenues could be more timely. Timely deposit and payment of onshore bid revenues to the states could take on more importance because the Congress is considering actions to increase acreage offered for competitive leasing.

Competitive Lease Sales

Interior's Minerals Management Service (MMS) leases offshore federal lands for oil and gas exploration to the highest qualified bidder in competitive lease sales. Bidders are required to submit one-fifth of their bid

[1]Onshore bid revenues are shared by the federal government with the state where the oil and gas lease is located, but offshore bid revenues are not.

[2]A parcel is an administratively designated geographical area of federal land offered for lease for oil and gas exploration containing no more than 640 acres.

at the time of the sale. As soon as the high bids for each tract of land are determined, a courier service delivers the one-fifth checks to the Federal Reserve bank serving the commercial bank on which the checks are drawn. Low bids are not deposited and are returned to the losing bidders. MMS then reviews the high bids to determine whether to accept them and award the leases. MMS' goal for accepting high bids for leases receiving adequate competition (defined by MMS as three or more bids) or in which MMS judges the lease as having little or no potential for commercial production is 3 business days. Other bids requiring more detailed analyses take longer to accept. MMS issues the bid-acceptance decisions to the winning bidders, who have 11 business days to pay the remaining four-fifths balances.

Section 17 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, et seq.), provides that oil and gas rights on federal lands within a known geological structure[3] must be leased competitively to the highest bidder.[4] According to the act, bid revenues generated by onshore lease sales must be shared by the federal government with the states. The actual distribution of these revenues depends upon the lease's location and how the land came to be owned by the federal government. However, most of these bid revenues are disbursed in accordance with the 1920 act, which provides for

- 50 percent of the revenues to the state where the lease is located,
- 40 percent to a fund set up to reclaim public lands, and
- 10 percent to remain in the general fund of the Treasury.

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701, et seq.) amended section 35 of the 1920 Mineral Leasing Act to require that the states' shares be paid by the last business day of the month in which these moneys are warranted (acknowledged) by the Treasury as being received. The Treasury has 10 days after receiving these moneys to issue these warrants to the Secretary of the Interior. Another section of the 1982 act (section 111(b)) requires Interior to pay interest to states on any payment not made by the due date. These provisions apply to bid revenues received by the Secretary of the Interior after October 1, 1983.

[3]A known geological structure is essentially land with proven oil or gas production.

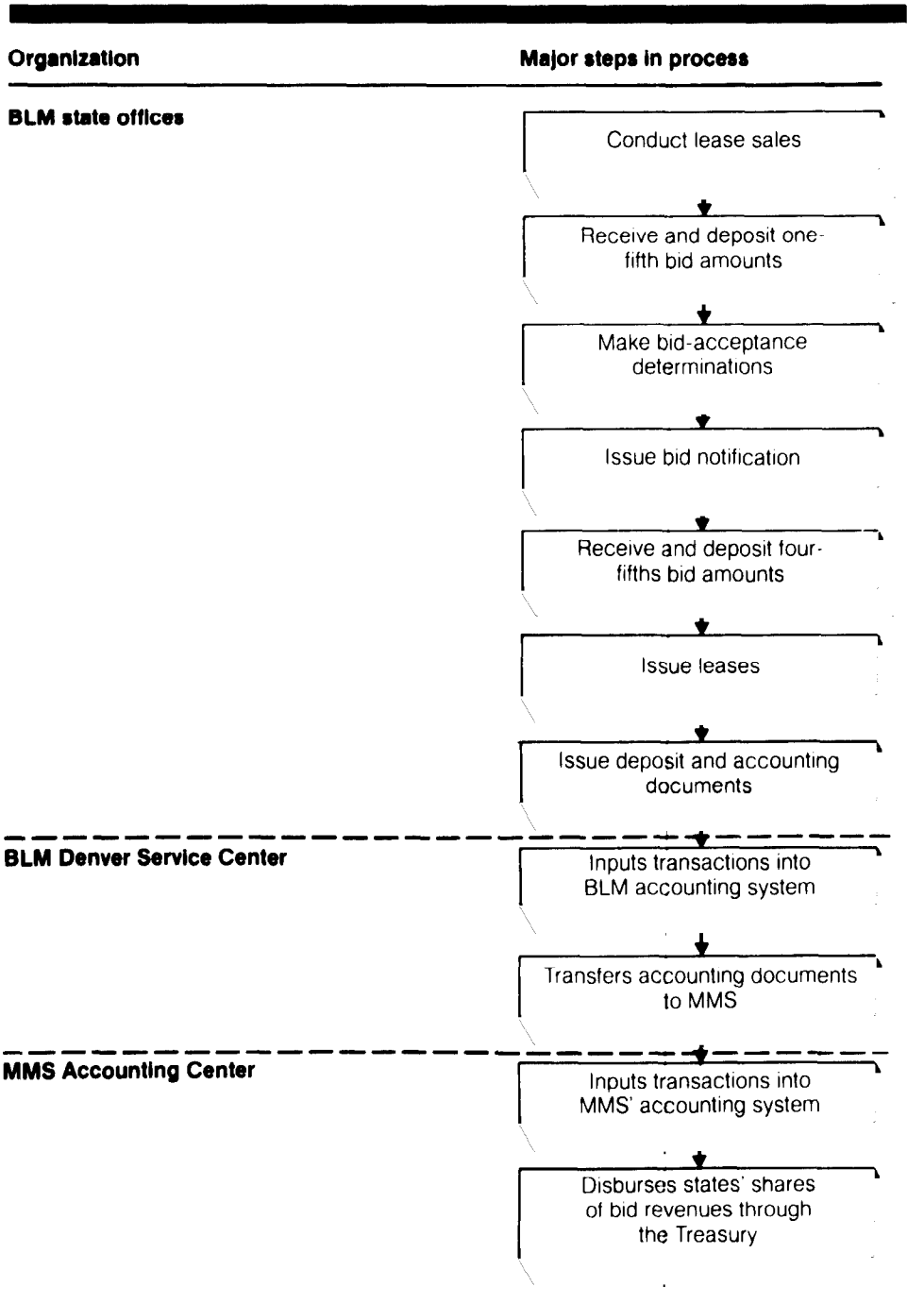
[4]Most federal lands, however, have been leased noncompetitively because they are not within a known geological structure.

Leasing of onshore federal lands for oil and gas exploration follows procedures similar to those for offshore leasing but is handled by Interior's Bureau of Land Management (BLM) state offices instead of MMS regional offices. BLM offers many different parcels of land of varying sizes for lease to the highest bidder during onshore competitive lease sales. BLM also requires bidders to submit one-fifth of their bid at the time of sale. The state offices deposit the one-fifth checks for all high bids. Low bids for parcels are not deposited and are returned to the losing bidders. BLM evaluates the high bids to determine whether to accept the bid and award the lease. However, it does not have a clearly defined time frame for this process. After receiving BLM's notification of bid acceptance, winning bidders have 30 calendar days (as compared with 11 business days for the offshore leasing program) to pay the remaining four-fifths balance to the BLM state office, which makes the final deposit to the Treasury. Delays in any of these steps postpone when the Treasury has access to these funds, thereby increasing the need for the Treasury to borrow money and incur interest. After the four-fifths balance is received, the BLM state offices issue the lease to the winning bidder and transfer deposit and accounting documents via BLM's Denver Service Center to MMS' Royalty Management Accounting Center in Lakewood, Colorado—referred to as the Accounting Center in the rest of this report. MMS' Accounting Center then notifies the Treasury to disburse states' shares of onshore bid revenues for Interior. (This process is shown in figure 1.)

Objectives, Scope, and Methodology

Our review objectives were to determine (1) whether Interior's procedures for depositing and processing offshore and onshore bid revenues are timely and (2) if Interior distributes onshore bid revenues to states in a timely manner. We conducted our review at BLM and MMS headquarters in Washington, D.C.; BLM Denver Service Center and MMS Royalty Management Accounting Center in Lakewood, Colorado; six BLM state offices; and one MMS regional office. At these locations, we interviewed officials responsible for conducting the lease sales, receiving and depositing the bid revenues, issuing accounting documents, and disbursing revenues to the states. We also interviewed U.S. Treasury officials to determine Treasury's policies for depositing government revenues. In addition, we reviewed agency case files, lease records, deposit documents, Treasury and Interior regulations, and other related agency documents.

Figure 1: Interior's Procedures For Processing and Disbursing Onshore Bid Revenues



Offshore Bid Revenues

To determine whether MMS' procedures for depositing and processing offshore bid revenues were timely, we traced the flow of bids from receipt by the MMS Gulf of Mexico regional office to deposit in the Treasury. We also determined how long the regional office took for each of the major steps in the leasing process up until receipt of the four-fifths bid balances. We concentrated on large bid amounts and reviewed all bids exceeding $1,000 or more per acre from October 1983 to March 1985, which consisted of 98 high bids representing about $1.1 billion in total revenues. During this period, MMS conducted a total of seven offshore lease sales and issued 1,408 leases for almost $4.1 billion in total revenues. Although our sample was judgmental and cannot be projected, we believe that the large dollar value of our sample provides us a reasonable basis to assess MMS' procedures for depositing and processing offshore bid revenues.

Onshore Bid Revenues

To test BLM's procedures for depositing and processing onshore bid revenues, we reviewed all onshore parcels that received acceptable bids of $1,000 or more per acre. This consisted of 55 parcels leased in 21 different sales from October 1983 to March 1985 and covered over $28 million in bid revenues. During this period, BLM conducted a total of 42 sales and leased 1,324 parcels for over $54 million in bid revenues. Our sample included parcels in six of the nine BLM state offices (Eastern States,[5] Montana, Nevada, New Mexico, Utah, and Wyoming) that held competitive lease sales during this period. The remaining three state offices did not lease any parcels for $1,000 or more per acre.

To determine whether BLM's procedures for depositing and processing onshore bid revenues were timely, we traced the flow of the bids in our sample from receipt by the BLM state office to deposit in the Treasury. We also determined the length of time for each step in the process by comparing the dates and time frames for

- conducting the lease sales,
- depositing winning bid revenues,
- accepting high bids,
- notifying winning bidders, and
- receiving payment of four-fifths bid balances.

[5]BLM Eastern States office's area of responsibility includes all states bordering on and east of the Mississippi River. The office is located in Alexandria, Virginia.

Where we found delays resulting from BLM's procedures, we computed interest incurred by the Treasury on each bid amount using actual interest rates on short-term treasury bills at the time of the sale. These interest rates were converted to daily rates by dividing by 365 days. The daily rates were then applied to the number of days late for each step in the process where there was a delay. To determine if Interior distributed bid revenues to states in a timely manner, we compared the dates that BLM deposited the four-fifths bid balances to the dates on which MMS' Accounting Center disbursed the states' shares through the Treasury.

We performed our review from May 1985 to October 1985 in accordance with generally accepted government auditing standards.

BLM Deposited and Processed Bid Revenues Slower Than MMS

We found that BLM took longer to deposit and process bid revenues than MMS. For example, while MMS complied with Treasury and Interior's requirement that bid revenues be deposited on a daily basis in the Treasury, we found that four of the six BLM state offices did not. Also, BLM's bid-acceptance and notification procedures were lengthy compared with MMS', and BLM's notification process was delayed further because of slow mailing practices. The sooner BLM's bid-acceptance decisions are made and the winning bidders are notified, the quicker the four-fifths bid balances are due and can be deposited in the Treasury. Also, if BLM shortened the 30 calendar days it allows for bidders to submit the four-fifths balances of their bids, more in line with MMS' 11 business day time frame, the Treasury would have even quicker access to onshore bid revenues.

Onshore Bid Revenues Have Not Been Deposited on Time

While BLM's Eastern States and Utah State offices deposited their bid revenues within the required time frame, the other four offices we visited did not. According to Treasury's Fiscal Requirements and Interior's Departmental manuals, agencies are required to deposit receipts of $1,000 or more on a daily basis. However, 30 of the 55 one-fifth payments in our sample were deposited an average of 4.4 days late, and 28 of the four-fifths payments were deposited an average of 3.1 days late. As a result of the delays, these revenues were not available to the Treasury within the established time frames, and it incurred almost $8,000 in interest charges that could have been avoided had the revenues been deposited on a daily basis.[6]

[6]Computed on a parcel-by-parcel basis using the following formula: (one-fifth bid amount) X (daily interest rate) X (days late after allowing 1 business day for deposit) + (four-fifths bid amount) X

For two state offices, delays in depositing both the one-fifth and the four-fifths payments stemmed in part from mailing procedures. The New Mexico and Nevada State offices used certified mail to deposit checks to the Treasury. This deposit method took an average of 2.7 days, and up to 9 days, while a more direct deposit method, such as using local commercial banks to wire-transfer receipts to the Treasury, meets the 1-day time frame.

The Montana, Nevada, New Mexico, and Wyoming State offices delayed depositing the one-fifth and four-fifths payments. While this did not happen for all bids, we found for example that the New Mexico State office held 13 out of the 19 one-fifth bid payments in our sample for an average of 4.9 days beyond 1 day after the sale. Similarly, the Wyoming State office held 8 out of 25 one-fifth payments in our sample for an average 1.5 days beyond 1 day after the sale. Although the reasons for these delays vary, most of the one-fifth payments were held until the administrative functions for processing the sale were completed. The four-fifths payments were held until the state offices thought that they had a sufficient number of checks to make the deposit. BLM officials in New Mexico and Wyoming agreed with us that the process for depositing checks should be done more timely to meet the 1-day time frame. The Chief of the Minerals Section in the Nevada State office also told us that deposits were made late because few sales are held in Nevada and staff were unfamiliar with processing lease sales.

BLM Procedures Delayed Accepting Bids and Issuing Bid-Acceptance Notices

We found that BLM procedures for accepting bids and issuing the bid-acceptance notices were lengthy compared with MMS' procedures. Similar to BLM's state offices, MMS' regional offices accept bids and issue leases for offshore lands. However, to expedite payment of the remaining four-fifths bid balances, MMS' goal (which it generally met for the tracts in our sample) for accepting bids that require no detailed evaluation is 3 business days and for issuing the notices to the winning bidders is 1 business day. Based on our sample, we believe that many of MMS' procedures and time frames could be applied to BLM's management of onshore revenues, especially since the purpose of these procedures is basically the same.

Before each lease sale, the BLM state office evaluates and assigns a value to each parcel to be offered. According to a BLM information bulletin,

(daily interest rate) X (days late after allowing 1 business day for deposit) = Treasury's interest costs.

state offices are to accept bids as soon as possible after sales (the bulletin does not define what "as soon as possible" means), and high bids that meet or exceed the parcels' estimated values can be accepted without any additional analysis. According to the Chief Economist at the Utah State office, processing of bids that exceed the parcels' estimated values could be done the day of the sale. The New Mexico and Utah State offices have begun to accept high bids that meet or exceed the presale estimates within 2 days.

We found five of the six BLM state offices were slow in accepting bids, even though they exceeded the parcels' estimated values—BLM's Nevada State office accepted bids in a timely manner. Fifty-three of the 55 bids in our sample exceeded the parcels' presale estimates (two bids were less than the estimated values and took longer to assess). Fourteen of these bids were accepted within 3 business days—the time frame used by MMS. However, we found that BLM state offices did not accept the other 39 bids within 3 business days, even though they exceeded the parcels' presale values. The offices took an average of 16.5 days to accept the 39 bids. The evaluation staff in the state offices said that, in some cases, they had delayed recommending that bids be accepted until high bids for other parcels in the sale were assessed. The staff also indicated that delays occurred in getting the bid-acceptance recommendations typed.

In addition to delays in accepting high bids that exceeded the presale estimates, the BLM state offices were slow in issuing bid-acceptance notices to the winning bidders. Although MMS generally was able to prepare the lease forms and issue the notification letters to the winning bidders within 1 day, we found that the BLM state offices in our sample took an average of 17.5 days, and up to 38 days, to perform the same type of activity. We found that BLM's notices and lease forms were in standardized formats and should not take an average of 17.5 days to complete. However, BLM has not established time frames for the adjudication staff to complete these tasks.

Had BLM adopted and met MMS' time frames for accepting bids and issuing the bid-acceptance notices in order to expedite payment of the four-fifths balances, the Treasury would have saved almost $111,000 in interest[7] for the 55 parcels in our sample, as shown in table 1.

[7]Computed on a parcel-by-parcel basis using the following formula: (four-fifths bid amount) X (daily interest rate) X (days late in accepting the bid and issuing the bid-acceptance notices after allowing 3 days for accepting the bid and 1 day for issuing the notice) = Treasury's interest costs.

Table 1: Time Required to Notify Winning Applicants of Bid Acceptance

State office	Number of parcels in sample	Number accepted		Number notified		Interest lost[a]
		Within 3 days	After 3 days	Within 1 day	After 1 day	
Eastern States	4	0	4	1	3	$ 3,490
Montana	5	1	4	0	5	5,528
Nevada	1	1	0	0	1	612
New Mexico	19	0	19	2	17	27,160
Utah	1	0	1	0	1	1,661
Wyoming	25	12	13[b]	1	24	72,227
Total	**55**	**14**	**41**	**4**	**51**	**$110,678**

[a]Interest lost was calculated based on days late using MMS practices.

[b]Two parcels were accepted after 3 days because further analysis of bids was required before final acceptance could be made.

Use of Certified Mail Delayed the Notification Process

Although BLM state offices use certified mail to assure that winning bidders have received the necessary bid-acceptance notifications, certified mail takes longer to reach the winning bidders than other delivery methods. We found that BLM's use of certified mail took an average of 5 days, and up to 17 days, for bidders to receive the notification. By contrast, to expedite the process, MMS uses an overnight delivery service to notify winning offshore bidders. Overnight service enables bidders to receive the notifications sooner, which ultimately leads to earlier payment of the four-fifths balances. If BLM had adopted MMS' practice of using an overnight delivery service for the 55 parcels in our sample, the Treasury would have saved over $19,000 of interest.[8]

We recognize that it may not be cost-effective to use overnight service for all bid-acceptance notifications. In order to be cost-effective, the interest savings on the four-fifths balance would have to be about or greater than $10.00 per day—approximately the cost of overnight courier or mail service. We estimated that a bid of about $50,000 is the break-even point ($10.00 equals the average daily interest at a 9.125 percent interest rate on $40,000, or four-fifths of a $50,000 bid). Forty-six of the 55 parcels in our sample would have met this break-even point. In addition, including more than one parcel on the notification makes overnight service cost-effective wherein a bidder wins a number of leases and the cummulative four-fifths balance due exceeds $40,000.

[8]Computed on a parcel-by-parcel basis using the following formula: (four-fifths bid amount) X (daily interest rate) X (actual days for certified mail less 1 day for overnight courier service) = Treasury's interest costs.

BLM's Time Frame to Submit Four-Fifths Payments Is Too Long

BLM allows winning bidders 30 calendar days to pay the outstanding four-fifths balances for onshore leases, while MMS allows 11 business days. In 1984 when MMS established its electronic funds transfer system to expedite Treasury's receipt of the four-fifths payments, it also adopted a requirement that bidders submit the four-fifths balance within 11 business days. (Because of weekends, this period provides bidders at least 15 calendar days to make the payments.)

Although officials in BLM's Division of Finance told us that they believed most bidders for onshore leases need at least 30 calendar days to obtain funds to pay the four-fifths balances, for our sample of 55 parcels, we found that 28 bidders submitted their four-fifths payments within 11 business days. The remaining 27 bidders took more than 11 days to submit the four-fifths payments and, in two cases, bidders took longer than 30 calendar days to make payment. These BLM officials told us that they were surprised that we found such prompt payment by bidders and acknowledged that they had not studied the need for 30 calendar days as opposed to using 11 business days. While we did not assess the impact on offshore or onshore bidders of requiring that the four-fifths balances be paid in 11 business days, we believe that a consistent agency practice would be desirable. If BLM had adopted MMS' 11-day time frame, the Treasury would have saved over $14,000 in interest for these 27 parcels.[9]

Interior Is Slow in Paying States Their Share of Onshore Bid Revenues

We found that BLM's procedures for notifying MMS of the final bid payment could be more timely and that MMS' automated system is set up to pay the states' shares of bid revenues the month after BLM notifies MMS of the final bid deposit. The process for paying states their shares begins when BLM state offices receive the four-fifths balance from a winning bidder. After the lease is issued and payment deposited, the BLM state office prepares and sends the necessary accounting documents to BLM's Denver Service Center. The Service Center records the lease transaction in its computerized system and transfers the accounting documents to MMS' Accounting Center. We found that it took an average of 54.5 days and up to 224 days from BLM's deposit of the final four-fifths bid payment to MMS' receipt of BLM's accounting documents. This delay occurred because BLM state offices held the accounting documents until they had collected what they considered was a sufficient number to send to BLM's

[9]Computed on a parcel-by-parcel basis using the following formula: (four-fifths bid amount) X (daily interest rate) X (actual number of days to pay the four-fifths balance less the number of calendar days to allow at least 11 business days) = Treasury's interest costs.

Service Center and because BLM state offices and the Service Center used regular mail to transport the documents.

Upon receiving BLM's accounting documents, MMS' Accounting Center dates the documents and inputs these dates in its automated system to initiate Treasury's disbursement of the states' shares of bid revenues on the last business day of the next month. For the parcels in our sample, after MMS received the accounting documents from BLM, MMS took an average of 43.3 days, and up to 66 days, to notify the Treasury to disburse revenues to the states. This is an average of 97.8 days after BLM deposits the four-fifths bid balance in the Treasury.

Ensuring timely payments of onshore oil and gas revenues to the states have been of concern to the states and others. For example, in January 1982 the Commission on Fiscal Accountability of the Nation's Energy Resources reported that there were delays in Interior's system of distributing onshore revenues to the states.[10] The Commission noted that Interior took 45 days to pay New Mexico its share of these revenues, which cost the state $1.6 million each year in unearned interest. Therefore, the Commission recommended that Interior pay the states' shares of onshore revenues as soon as possible. The 1982 Federal Oil and Gas Royalty Management Act was established, in part, to ensure the prompt and proper collection and disbursement of oil and gas revenues owed to the states. Also, when the Secretary of the Interior established and defined the role of MMS during 1982, one of its objectives was to ensure timely distribution of the states' shares of onshore oil and gas revenues.

Officials within the Fiscal Accounting Division, MMS Accounting Center, said that their process for paying the states complies with the prompt disbursement requirements and interest obligations under the 1920 Mineral Leasing Act, as amended, by the Federal Oil and Gas Royalty Management Act of 1982. The 1920 Mineral Leasing Act, as amended, requires that the states' shares of bid revenues be paid by the last business day of the month in which these moneys are warranted (acknowledged) by the Treasury as being received and requires interest on any payment not made by this due date. The 1920 Mineral Leasing Act, as amended, allows the Treasury 10 days to issue the warrants; however, the Treasury redesigned MMS' receipts and disbursements accounts so that MMS could automatically consider the funds warranted when they

[10]Before October 1983, onshore bids, royalties, and rents were distributed twice a year to the states. The 1982 Federal Oil and Gas Royalty Management Act changed this to monthly payments.

are credited to a specific account in the Treasury, the "available receipts" account, established for this purpose.

The warranting process does not occur at the time of the initial deposit of the four-fifths bid payment to the Treasury. At that time, according to a February 10, 1986, opinion issued by Interior's Solicitor (see app. II), the money is not identifiable to a specific lease. The funds are therefore kept in the "general suspense" account in the Treasury, used to hold unidentified collections, until MMS processes the individual reports and notifies Treasury to transfer the funds from the general suspense account to the available receipts account. At that time the funds are considered warranted. As the Solicitor pointed out, Interior has met the requirement of the Federal Oil and Gas Royalty Management Act of 1982, namely that funds be disbursed at the end of the month in which they are warranted by Treasury as having been received. We found, however, that this does not occur until months after BLM's state offices receive and deposit these funds into Treasury's general suspense account.

According to officials within the Fiscal Accounting Division, MMS' Accounting Center, MMS transfers the funds into the available receipt account and thus triggers the automatic warranting of the funds within the same month that it issues accounting documents to the Treasury which results in monthly payments to the states. As long as these payments are made by the last business day of the month, the requirement of the law is met and there should not be any late payments or interest due to the states, even though administrative delays occur between BLM depositing the funds and MMS issuing its accounting documents notifying the Treasury. However, MMS' Accounting Center has paid interest to the states on late payments in fiscal years 1984 and 1985, because it missed what it considered were the payments' due dates even though payment was made in the month the funds were deemed warranted. Officials within the Fiscal Accounting Division said that they were reassessing their prior practice of paying interest on late payments since receiving the recent Solicitor's opinion.

Conclusions

BLM's procedures for depositing bid revenues, notifying winning applicants of bid acceptance, and requiring final payment from bidders could be streamlined to improve the timeliness of the one-fifth and four-fifths bid deposits. Timely deposits of bid revenues are important so that the Treasury can have access to these funds quicker, thereby reducing the need to borrow money and incur interest. However, we found that some

BLM state offices do not deposit bid checks on a daily basis as required by Treasury and Interior's instructions. Further, BLM's process for accepting bids and issuing the bid-acceptance notices is unnecessarily lengthy. The notification process is delayed further because of slow mailing practices. In addition, we believe the 30-day period to submit the four-fifths balances could be shortened, more in line with MMS' 11 business days, to allow for quicker payments. We recognize that the overall impact of lost interest to the Treasury resulting from these delays is relatively small. However, the Congress is considering actions that would result in more acreage being offered through competitive lease sales, thus increasing onshore bid revenues in the future. As a result, the impact of these delays could increase.

We found that BLM is taking an average of 54.5 days to notify MMS of the final four-fifths bid deposits and that MMS' automated system is designed to disburse bid revenues to the states on the last day of the next month or on an average of 43.3 days after receiving BLM's accounting documents. We believe that these administrative practices unnecessarily delay payments to the states. Based on the 55 parcels in our sample, BLM and MMS took a total of 97.8 days on average to pay the states' shares of bid revenues after the final four-fifths payments were deposited to the Treasury. This is twice as long as the 45-day delay identified in 1982 by the Commission on Fiscal Accountability of the Nation's Energy Resources.

The practices within MMS with respect to the prompt payment requirements and interest obligations under the Federal Oil and Gas Royalty Management Act of 1982 have been inconsistent with the interpretation by the Solicitor in his February 10 opinion. MMS' policy from 1984-85 was to pay interest to the states on payments that MMS identified as being late. However, according to MMS officials, Interior's Solicitor indicated that MMS would never make a late payment or owe interest to the states because the funds are warranted as being received and Treasury pays the states' shares within the same month.

During our February 20, 1986, briefing to your staff, they expressed concern about how much time Interior took to disburse states' shares of onshore bid revenues. While Interior meets all statutory deadlines under the 1920 Mineral Leasing Act, as amended, there is merit in paying the states quicker than Interior's current time frames. If it is your desire, we would be happy to work with you and your office to develop alternatives for expediting payments to the states.

Recommendations to the Secretary of the Interior

To minimize interest expense to the government, we believe certain steps can be taken to deposit funds more quickly and to streamline BLM's procedures for accepting high bids, notifying the winning bidders of bid acceptance, and requiring payment of four-fifths balances. Accordingly, we recommend that the Secretary of the Interior direct the Director of BLM to:

- Ensure that high bid checks are deposited on a daily basis after receipt by adopting alternative methods for deposit, such as using local commercial banks to wire transfer bid revenues to the Treasury and by not holding the checks.
- Establish time frames (e.g., 3 business days) for the evaluation staff to accept high bids that meet or exceed the parcels' estimated values so that winning bidders can be notified more promptly.
- Establish time frames (e.g., 1 business day) for staff to perform the necessary administrative tasks to notify winning bidders of bid acceptance.
- Establish procedures for notifying winning bidders by overnight delivery service when it is cost-effective for the government.
- Establish a shorter time frame (e.g., 11 business days) for winning bidders to submit their four-fifths balances.

We also recommend that the Secretary of the Interior direct the Directors of BLM and MMS to take steps to expedite payments to the states. These steps could include (1) developing new procedures, such as quicker delivery service, and weekly or biweekly time frames for notifying MMS' Accounting Center when the final four-fifths bid balances are deposited by the BLM state offices, and (2) adjusting the automated system at the Accounting Center to notify the Treasury to pay the states' shares more quickly.

Agency's Comments

On January 3, 1986, we provided draft copies of this report to Interior. Interior, in commenting on the draft report, agreed with our recommendations directed to BLM on depositing bid revenues more quickly and streamlining procedures for requiring the final four-fifths bid payment and indicated that corrective action would be taken. Interior, however, disagreed with the statement in our draft that MMS was not complying with the prompt payment requirements and interest obligations of the Federal Oil and Gas Royalty Management Act of 1982 and cited its Solicitor's opinion as support for its disagreement. We had reached that conclusion based on our understanding that the warranting procedure was triggered by the initial receipt of funds by the Treasury. Interior had until then confirmed this understanding. However, Interior's February

10, 1986, Solicitor's opinion, in response to our formal inquiry about the proper interpretation of 30 U.S.C. 191, provided the information that the warranting procedure was triggered only after MMS identified who the payors are and the funds are transferred to the "available receipt account" of the Treasury. Because Interior's payment procedures met the requirements of the Act we have revised the report. Interior's comments are provided in appendix I and the Solicitor's opinion is provided in appendix II.

Unless this report is publicly announced by you, we plan no further distribution until 30 days from the date of issuance. At that time, copies will be sent to the Director, Office of Management and Budget; the Secretary of the Interior; other House and Senate committees and subcommittees having oversight and appropriation responsibilities for onshore leasing; and other interested parties.

Sincerely yours,

J. Dexter Peach
Director

Advance Comments From the Department of the Interior

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 12 1986

Mr. J. Dexter Peach, Director
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

We have reviewed GAO's draft report, "Management of Oil and Gas Bid Revenues." We generally concur with the recommendations presented in the report and corrective steps will be taken as indicated on the following pages.

The first five recommendations relate to the Bureau of Land Management (BLM) portion of this GAO audit and the last two recommendations relate to the Minerals Management Service (MMS) portion.

Recommendation: Ensure that high bid checks are deposited on a daily basis.

Response: We agree with this recommendation. State Offices have been directed to deposit these monies the day of the sale, or if the sale is held in a remote location, no later than the following work day. BLM will issue an instruction memorandum restating this policy and followup on our administrative procedures reviews to assure that State Offices comply.

Recommendation: Establish timeframes for the State Office minerals evaluation staff to accept high bids that meet or exceed the parcels' estimated values so that the winning bidders can be notified more promptly.

Response: We agree with this recommendation. We plan to modify State Office procedures by requiring bid acceptance without a postsale evaluation when a high bid exceeds the presale estimate. When a high bid does not exceed the presale estimate, a postsale bid evaluation must be performed. To expedite the process, we will require that the evaluation be completed within 30 calendar days after a sale in those cases where the bid is close and there is no need for a notification of probable rejection. However, when a notification of probable rejection is called for, no time limit can be put on the postsale evaluation process. The process may be quite lengthy and may include evaluation of bidder-submitted comments and other supplemental information.

Recommendation: Establish timeframes for staff to perform the necessary administrative tasks to notify winning bidders of bid acceptance.

Response: We agree with this recommendation. State Offices will be directed to send notices to the high bidders within four calendar days of the lease sale when a high bid exceeds the presale estimate. When a high bid does not exceed the presale estimate, the State Offices will mail notices one day after the completion of the postsale evaluation.

Recommendation: Establish procedures for notifying winning bidders by overnight delivery service when it is cost effective for the government.

Response: We agree with this recommendation. State Offices will be directed to explore the possibilities of using overnight courier services to deliver and return acceptance notices on a case-by-case basis.

Recommendation: Establish a shorter timeframe for winning bidders to submit their four-fifths balances.

Response: We agree with this recommendation. Regulations are in the process of being revised to reduce the 30-day period currently allowed for remittance of the four-fifths bonus bid and first year's rental to 15 calendar days. In addition, we are currently in the process of accumulating statistics for Treasury to determine if a lockbox system is feasible for the collection of the four-fifths bonus bids and the first year's rentals.

Recommendation: Make bid payments to States by the last day of the month in which Treasury receives the four-fifths deposits after allowing for a 10-day grace period or pay interest due to the States on late payments.

Response: We have been told that the Solicitor's opinion which was requested in conjunction with this report will indicate that our timeframes for disbursement of onshore bid revenues are within the requirements specified by Section 104(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982.

Recommendation: Compute and pay interest due to States on late bid payments since the act became effective in October 1983.

Response: The Solicitor's opinion mentioned above will also indicate that interest liability to the States under FOGRMA for revenues which are not disputed will not accrue unless the States' share is not disbursed by the end of the month in which it is deposited into Treasury account 14X5003, the available receipt account.

Given the expected Solicitor's opinion, we do not concur with the two recommendations directed to the Minerals Management Service.

If there are any questions on the BLM comments, please call Mr. Bruce E. McFarlane on 343-6743, and if there are any questions on the MMS comments, please call Mr. James Detlefs on FTS 326-3286.

Sincerely,

James E Cason

ACTING Assistant Secretary - Land and Minerals Management

Enclosure

The following are GAO's comments on the Department of the Interior's letter dated February 12, 1986.

GAO Comments

1. Our response to Interior's comments on the draft report appears on page 15 of this report.

Department of Interior's Solicitor's Opinion

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

FEB 10 1986

MMS.ER.0217

Gary L. Kepplinger
Assistant General Counsel
United States General Accounting Office
Washington, D.C. 20548

Re: Construction of § 35 of the Mineral Lands Leasing Act of 1920, 30 U.S.C. 191, as amended by § 104(a) of the Federal Oil and Gas Royalty Management Act of 1982

Dear Mr. Kepplinger:

In response to your letter to the Secretary of the Interior of December 17, 1985, requesting the Department's views on the above-referenced issue, we enclose a copy of an opinion prepared in response to a request by the Associate Director for Royalty Management, Minerals Management Service. That request included the issue raised in your letter of December 17.

Both your letter and the Associate Director's request arose from the General Accounting Office's ("GAO's") audit of the Department of the Interior's collection and disbursement of bid revenues from onshore competitive oil and gas lease sales. The GAO draft report was transmitted to the Department earlier this month. The Department's full comments to the draft report will be forwarded under separate cover.

If you have further questions, please do not hesitate to contact Mr. Keith E. Eastin, Associate Solicitor, Energy and Resources (343-5757), Mr. Peter J. Schaumberg, Special Assistant to the Associate Solicitor, or Mr. Geoffrey Heath, staff attorney (both 343-4803) in the Solicitor's Office.

Sincerely,

Ralph W. Tarr

Ralph W. Tarr
Solicitor

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

FEB 10 1986

MMS.ER.0217

Memorandum

To: Director, Minerals Management Service

From: Solicitor

Subject: Prompt Disbursement and Interest Issues Arising Under 30 U.S.C. § 191, as amended by § 104(a) of the Federal Oil and Gas Royalty Management Act of 1982

This opinion responds to a December 11, 1985 memorandum from the Associate Director for Royalty Management, Minerals Management Service ("MMS"), requesting our advice on several issues concerning timing of disbursements and interest obligations under the Federal Oil and Gas Royalty Management Act of 1982 ("FOGRMA"), Pub. L. 97-451, 96 Stat. 2447, 30 U.S.C. § 1701 et seq. This opinion also coincides with a request directed to the Secretary of the Interior from the Assistant General Counsel of the General Accounting Office ("GAO"), dated December 17, 1985, for the Department's views on one of the issues raised in the Associate Director's memorandum, i.e., disbursement of bonus revenues from onshore competitive oil and gas lease sales.

ISSUES

The issues addressed here arise primarily under FOGRMA § 104(a), which amends § 35 of the Mineral Lands Leasing Act of 1920, 30 U.S.C. 191, and the corresponding interest liability provision of FOGRMA § 111(b), 30 U.S.C. § 1721(b). Specifically, the Associate Director requested us to analyze the following questions:

1. The meaning of the phrase "warranted . . . as having been received" in 30 U.S.C. 191 as amended by FOGRMA § 104(a);

2. Whether MMS has properly paid interest on moneys which could not be disbursed in the usual timeframe because they had been placed in suspense pending resolution of incorrect or

inadequate reports, but which were not payments made under protest where the payor claimed that the amounts were not due;

3. The timing of distribution of bonus revenues from competitive onshore oil and gas leases--specifically, when such amounts are considered as warranted as having been received and when interest liability accrues (the issue which GAO specifically addresses); and

4. Whether annual lease rental payments received before the lease anniversary date are to be considered "earned" before that date, thus making the states' share of such payments immediately distributable.

ANALYSIS

I. THE MEANING OF "WARRANTED . . . AS HAVING BEEN RECEIVED"

30 U.S.C. 191 (hereinafter "§ 191") requires 50 percent of the revenue from an onshore mineral lease to be paid to the state in which the lease is located, 40 percent to be paid to the Reclamation Fund, and 10 percent to miscellaneous receipts at the Treasury. (In the case of Alaska, the state receives 90 percent and miscellaneous receipts 10 percent.) FOGRMA § 104(a) removed earlier language which provided for semi-annual disbursement of the state's share, and added the following language:

> Payments to states under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a state shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved. [Emphasis added.]

FOGRMA § 111(b), 30 U.S.C. 1721 (b), then provides:

> Any payment made by the Secretary to a State under section 35 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 191) and any other payment made by the Secretary to a State from any oil or gas royalty received by the Secretary which is not paid on the date required under section 35 shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954.

Finally, FOGRMA § 301(a), 30 U.S.C. 1751(a), provides:

> The Secretary shall prescribe such rules and regulations as he deems reasonably necessary to carry out this Act.

The above-quoted portion of the amended § 191 appears to be the only provision of its kind in the United States Code. At first glance, one might infer that it contemplates the Treasury issuing a warrant acknowledging the mere physical receipt of funds by the United States within 10 days of actual receipt. If so, then funds received more than 10 days before the end of the month would have to be disbursed by the end of that month; those received within the last 10 days of the month could be disbursed at the end of the following month. However, the prior practice and administrative context giving rise to this provision, the agency's involvement in and the circumstances surrounding its enactment, its purpose, and the agency's consistent interpretation reveal that such an interpretation is not correct.

When a payor makes a royalty payment to MMS, whether by check or by electronic funds transfer, the payment is received and the money is deposited with the Federal Reserve to the credit of the Treasury the same day. However, the incoming moneys are not identifiable by, and cannot be sorted according to, specific leases and production until MMS receives and processes the payors' detailed production and sales reports. The money therefore must be deposited to the "general suspense" or "budget clearing" account in the Treasury (account 14F3875(17)). This account exists to hold unidentified collections.

Both MMS and its predecessor agencies have followed that step, both before and after FOGRMA's enactment. Under the standard lease terms (now further reinforced in the regulations, see 30 C.F.R. § 218.50), royalty payments are due 30 days after the month of production, as are the required reports. Thus, in practical effect, while some royalty payments are received throughout the month, the vast bulk of royalty payments and the

specific production and sales reports were, and are, received within the last few days of the month following the month of production.

MMS' current data processing system, implemented contemporaneously with FOGRMA (known as the "Auditing and Financial System" or "AFS"), then processes the individual report lines. That process takes approximately the first three weeks of the second month following the month of production. When a report line clears, the funds thus identified are transferred from the budget clearing/general suspense account and deposited into the special fund receipt account designated for them (account 145003, also referred to as account 5003).

Under the pre-FOGRMA system, MMS or its predecessor agencies transferred identified funds from general suspense to the designated receipt account as reports were processed and payments identified. Normally, identification of funds took place within the second month following the month of production, but could take as long as six months in some instances. At that time, the states' 50 percent share was disbursed semi-annually. Between one and two months before disbursement, the agency would request a warrant from the Treasury Department. Treasury then warranted the funds in the receipt account, and moved 50 percent of those funds to the corresponding designated expenditure or appropriation account, account 14X5003, from which the funds were then disbursed.

Originally, § 103 of the House bill which became FOGRMA (H.R. 5121) would have required MMS to disburse the states' share "not later than the last business day of the month in which such payments were received by the United States . . .," i.e., by the end of the month in which the government received the payment and deposited it to general suspense. See H.R. Rep. No. 97-859, 97th Cong., 2d Sess. 4 (1982).

While the bill was pending, agency representatives realized that it would be impossible to meet such a disbursement deadline. Funds and reports received in the last two or three days of the month could not be processed, warrants could not be obtained, and funds could not be disbursed, by the last day of the same month. Interior representatives then consulted with officials in the Office of the Assistant Secretary for Fiscal Operations at the Treasury Department. The Treasury officials suggested that the payment deadline be tied to the warrant procedure because of the necessity to obtain a Treasury Department warrant before disbursing funds. During the same meeting, the Interior and Treasury officials then drafted the change in the bill's language. The Interior Department representative personally transmitted the language to counsel for the House Interior and Insular Affairs Committee. The language tying the disbursement

deadline to receipt of the warrant was then incorporated into the House Report's explanation (H.R. Rep. No. 97-859, supra, at 29) and later included in the statute as enacted.

After FOGRMA's enactment, but before it became effective, MMS operations officials met with Treasury officials concerning the warranting procedure. Because FOGRMA changed § 191 disbursements to a monthly payment schedule, it was apparent that separate monthly warrant requests from MMS to the Treasury before each disbursement would result in both administrative burdens and time delays. These discussions culminated in a letter from the Acting Director, Division of Government Accounts and Reports, at the Treasury Department to the Acting Assistant Secretary for Energy and Minerals at the Interior Department, dated July 14, 1983. This letter outlined a procedure under which the Treasury warranting process was made automatic. Because § 191 specifically earmarks the revenues derived from onshore mineral leases, the Treasury (pursuant to its authority to set the accounting structure for the executive agencies, see 31 U.S.C. § 3513, formerly 31 U.S.C. § 66b), required Mineral Lands Leasing Act revenues to be deposited to a "special fund receipt account," i.e., account 5003. The Treasury's letter of July 14, 1983, designated that account as an "available receipt account," which meant that the funds deposited to that account were automatically warranted and authorized for expenditure. Instead of preparing an individual specific warrant document, warranting was done automatically through the computer system. The Treasury then directed that only the 50 percent share payable to the states be deposited in that account. As the letter states:

> This will make the warrant action to account 14X5003 automatic and eliminate the warrant document. Payments can then be made from account 14X5003 during the same accounting month collections are made provided the payments do not exceed the total amount reported to account 5003 for the previous and current accounting months.

This procedure was made effective as of October 1, 1983, FOGRMA's effective date.

Thus, when an individual report line is verified and clears the system, the state's 50 percent share of the funds identified is transferred into account 5003 and thereby becomes warranted. Since FOGRMA's effective date, moneys cleared and transferred into that account are disbursed at the end of the month in which so transferred. Those moneys therefore have met the FOGRMA requirement that moneys be disbursed by the end of the month in which they are warranted by the Secretary of the Treasury as having been received.

Moreover, the Treasury Department never has warranted the mere receipt of unidentified funds into the general suspense or budget clearing account. The Treasury does not issue warrants for the mere physical receipt of any and all funds. It cannot warrant funds received into general suspense because at that time it is not known exactly what the funds are. Only a portion of the funds deposited in general suspense ever will be warranted.

Therefore, in light of both prior and contemporaneous administrative practice, the circumstances surrounding the drafting of FOGRMA § 104(a), the agency's involvement in that process, and the purpose of that provision, it is apparent that the "warrant" contemplated in the amended § 191 is the warrant issued when money is transferred from general suspense to the special fund available receipt account.[1/]

Therefore, the amended § 191 requires that the states' 50 percent share of onshore mineral lease revenues be disbursed by the end of the month in which the moneys are transferred to, and thus received in, the special fund available receipt account. As a general rule, this occurs at the end of the second month following the month of production (i.e., the end of the month following the month of actual receipt of unidentified funds).

The agency's consistent and uniform interpretation of the statute is further reflected in the regulations promulgated pursuant to FOGRMA in September 1984, specifically 30 C.F.R. 219.100. That regulation provides:

> A State's share of mineral leasing revenues shall be paid to the State not later than the last business day of the month in which the United States Treasury issues a warrant authorizing the disbursement, except for any portion of such revenues which is under challenge and placed in a suspense account pending resolution of a dispute.

It is a well-established principle that a statute is to be construed to effectuate its purpose, and that the court has a duty to consider the circumstances surrounding the enactment and the object to be accomplished by it. E.g., United States v. Anderson, 76 U.S. 56, 65-66 (1869); United States v. Curtis-

---

[1/]Because the Treasury issues its warrant only after funds are received in the receipt account, the requirement that the Treasury issue warrants "not later than 10 days after receipt of such moneys by the Treasury" necessarily refers to the 10-day period following the transfer of funds from general suspense to the special fund receipt account. Because the warranting process is now automatic upon transfer, that deadline is always met.

Nevada Mines, Inc., 611 F.2d 1277 (9th Cir. 1980); and Callejas v. McMahon, 750 F.2d 729 (9th Cir. 1984). Statutory language derives much of its meaning from the surrounding circumstances. Civil Aeronautics Board v. Delta Air Lines, 367 U.S. 316, 323-324 (1961). Moreover, the interpretation of a statute by an agency charged with its enforcement is entitled to great deference, particularly if it is contemporaneous with the statute, Udall v. Tallman, 380 U.S. 1 (1965); E.I. Du Pont de Nemours Co. v. Collins, 432 U.S. 46 (1977), and should be followed unless there are compelling indications that it is wrong. Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94, 121 (1973); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969). The administrative interpretation is particularly persuasive and carries the most weight when the agency participated in drafting or developing the provision. United States v. American Trucking Associations, 310 U.S. 534, 549 (1940); Adams v. United States, 319 U.S. 312, 314-315 (1943); and Miller v. Youakim, 440 U.S. 125, 144 (1979). All of these principles apply here.

Therefore, MMS' consistent administrative interpretation of the amended § 191 as requiring disbursement to the states by the end of the month in which funds are deposited into the special fund available receipt account, after the corresponding reporting lines are cleared through the system, must be upheld. The amended § 191 therefore cannot be read to require disbursement by the end of the month in which unidentified funds are first received in the event that they are received more than 10 days before the end of the month.

II. INTEREST ON MONEYS HELD IN SUSPENSE PENDING RESOLUTION OF REPORTING ERRORS.

Some funds received during a particular month are retained in suspense beyond the end of the period when they would normally be disbursed. In most instances, this results from incorrect or insufficient payor reports, which prevent MMS from determining proper disposition of the funds. The AFS cannot clear report lines where the available reported information is insufficient or incorrect. Thus, funds corresponding to those lines cannot be transferred to account 5003, the available receipt account, for disbursement.

As amended by FOGRMA § 104(a), § 191 requires that payments to the state be made by the prescribed deadline "except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute." It further provides that "moneys placed in a suspense account which are determined to be payable to a state shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved."

The above-quoted language was in the House bill as reported. MMS officials advised committee counsel that the department construed this language as covering moneys retained in suspense because of the reporting problems just described. Because questions remain as to their proper disposition, the funds so retained in suspense could not be regarded as "undisputed." Hence they must be regarded as at least potentially "disputed" until the reporting errors and uncertainties are resolved.

After FOGRMA's passage and effective date, MMS has consistently construed the quoted language in that manner, and accordingly has paid interest to the states on moneys retained in suspense. In fiscal year 1984, the first year after FOGRMA's effective date, MMS reprogrammed funds to pay the interest. For fiscal year 1985, Congress specifically enacted a provision that the 10 percent share of onshore mineral lease revenues destined for miscellaneous receipts at the Treasury would be first available to pay such interest obligations. 99 Stat. 337-338.

In addition, the FOGRMA regulations promulgated on September 21, 1984, reflect MMS' consistent interpretation. The new 30 C.F.R. 219.101 provides:

> (a) Subject to the availability of appropriations, the Minerals Management Service (MMS) shall pay the State its proportionate share of interest charge for royalty and related moneys that are placed in a suspense account pending resolution of matters which will allow distribution and disbursement. Such moneys not disbursed by the last business day of the month following receipt by MMS shall accrue interest until paid.
>
> (b) Upon resolution, the suspended moneys found due in paragraph (a) of this section, plus interest, shall be disbursed to the State under the provisions of § 219.100.
>
> (c) Paragraph (a) of this section shall apply to revenues which cannot be disbursed to the State because the payor/lessee provided incorrect, inadequate, or incomplete information to MMS which prevented MMS from properly identifying the payment to the proper recipient. [Emphasis added.]

The only reference in the House Report concerning the suspense account provision is the following note:

> Moneys held in suspense accounts under this section shall be limited to a payment or portion of a payment which has been received by the United States, but which the payor claims was not due and owing when paid. Therefore, if the United States bills a lessee for $1,000,000 and the lessee pays it under protest, claiming that only $900,00 was actually due, then only $100,000 should be placed in a suspense account. The uncontested portion of the payment, $900,000 should be distributed without delay.

H.R. Rep. No. 97-859, supra, at 30. The language "shall be limited to a payment or portion of a payment . . . which the payor claims was not due or owing when paid" could be read to limit the suspense account provision solely to payments where the payor expressly disputes liability. However, the intent of this language read as a whole seems to be to emphasize that in the case of such a disputed payment, only the specific amount actually disputed should be retained in suspense, even if it is part of a larger payment. It does not seem to contradict MMS' interpretation regarding moneys retained in suspense because of erroneous or inadequate reporting, an issue which the House Report does not specifically address.

The principles and authorities cited in the previous section sustain MMS' uniform, contemporaneous, and reasonable construction of the suspense provision. Consequently, MMS' past calculations and payments of interest on monies retained in suspense because of reporting errors were lawful.

III. DISBURSEMENT OF BONUSES PAID BY SUCCESSFUL ONSHORE LEASE BIDDERS.

The GAO has conducted an audit reviewing MMS and Bureau of Land Management ("BLM") procedures for collecting and disbursing bonuses which successful bidders for competitive onshore leases have paid.2/

2/ The bonus amounts paid pending award of the lease by bidders who are ultimately unsuccessful are refunded to the unsuccessful bidders. Those amounts never become "earned" and do not come within the coverage of the Mineral Lands Leasing Act, as explained in a memorandum to the Associate Director for Royalty Management from the Associate Solicitor, Energy and Resources, dated November 19, 1984.

Both the GAO audit and the Associate Director's memorandum raise the issue of when interest liability arises under FOGRMA for untimely distribution of the states' share of successful bidders' bonus payments. A brief review of the bid and payment process as outlined in both the GAO's draft report transmitted to the Secretary on January 7, 1986, and in the Associate Director's memorandum is therefore appropriate.

In an onshore competitive lease sale, all bidders submit with their bid a payment of 20 percent of the bonus amount bid. BLM retains these funds in an "unearned" account pending decision on bid acceptance. When a bid is accepted, the unsuccessful bidders' 20 percent deposits are returned. The successful bidder, after receiving notification, has a prescribed period of time to pay the remaining 80 percent of the bonus amount bid to the BLM. When the BLM receives that payment, it issues the lease and at that time transfers all of the successful bidder's bonus payments to the general suspense/budget clearing account. It then issues an accounting transfer advice, through its Denver Service Center, to MMS' Royalty Management Accounting Center in Lakewood, Colorado. When MMS receives the transfer document, it processes it through the Bonus and Rental Accounting and Support System ("BRASS"). This system is the accounting equivalent, for bonus and rental payments, of the Auditing and Financial System described above. When the BLM accounting transfer document is processed through BRASS, the cleared funds are then deposited into the available receipt account, no. 5003, for disbursement to the states. The clearing of the transfer advice document and the consequent transfer from general suspense to the available receipt account trigger the Treasury's automatic warrant pursuant to the procedure previously described. Disbursement of the state's share is then made in regular course together with other mineral lease revenues.

For the reasons previously set forth, the bonus revenues are not "warranted . . . as having been received" until they are cleared and transferred to the available receipt account. Hence, MMS' obligation under the amended § 191 is to disburse the state's share by the end of the month in which the money is deposited to that account.

GAO's draft audit report indicates that several BLM offices have taken more time than GAO believes is necessary to deposit bonus revenues and issue the accounting transfer advice documents through BLM's operations to MMS. It is not the purpose of this opinion to comment on the accuracy of GAO's draft findings. But even if those findings are correct, interest liability to the states nonetheless does not accrue under FOGRMA, as currently written, unless the states' share is not disbursed by the end of the month in which it is deposited into account no. 5003, the available receipt account. While the transfer document is in transit and being processed, the funds remain in general suspense

and are not "warranted... as having been received." Neither are they "disputed" funds within the meaning of the suspense account provision. Hence, while the audit may have found delays which may be a proper subject of administrative improvement, it cannot be said that those delays have the effect of triggering FOGRMA interest liability to the states.

If MMS processes the BLM's accounting transfer advice the same as other funds received, deposits the money in the available receipt account when cleared, and pays the State at the end of the month in which that occurs, it has met the § 191 requirements.

IV. RENT COLLECTIONS RECEIVED IN ADVANCE OF LEASE ANNIVERSARY DATE.

The Associate Director's memorandum states that a draft audit report from the Office of the Inspector General ("OIG") recommended that MMS modify BRASS to avoid distributing rent revenues received at least one month before the lease anniversary date. The OIG's draft report recommended depositing such revenues in an unearned account pending the lease anniversary date. The basis for the OIG's recommendation was an inference drawn from the Associate Solicitor's opinion of November 19, 1984 concerning bonus and rental payments paid in advance by applicants for onshore leases pending the award and issuance of a lease. The OIG construes subsequent lease anniversary dates to have the same effect as the lease issuance date with respect to whether moneys become "earned."

We believe that the OIG's draft report misinterprets the analysis of the November 19, 1984 opinion. Bonus and rental payments tendered in advance by all bidders do not become earned, such that the government may retain payment, until a lease is issued. Upon issuance of a lease, only the successful bidder's payment becomes earned. Only the successful bidder receives something in return for his payment. The government, having no right to retain any payments by the unsuccessful bidders, must refund them.

In the case of subsequent lease anniversary dates, however, the lessee already has the lease. Payment of the subsequent year's rental entitles him to retain the lease for that period, regardless of how far in advance of the lease anniversary date the lessee pays. By payment of the next year's rental, the lessee acquires rights against the government and thus necessarily receives something in return for his payment. In contrast, payment in advance of bonus and rental by bidders before lease issuance does not, without more, entitle any of the bidders to any rights against the government. Only the successful bidder acquires such rights, and receives rights in return for his payment, when the lease is issued.

Hence, payment of subsequent year's rentals are "earned" and are properly distributable according to normal procedures upon receipt. Consequently, MMS' current practice is proper.

Ralph W. Tarr

Ralph W. Tarr

The following are GAO's comments on the Department of the Interior's Solicitor's Opinion dated February 10, 1986.

GAO Comments

1. Our response to the Solicitor's memorandum appears on page 15 of this report.

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