§ 1206.56 Transportation allowances—
general.

(a) Where the value of oil has been
determined under §1206.52 or §1206.53 of
this subpart at a point (e.g., sales point
or point of value determination) off the
lease, ONRR shall allow a deduction for
the reasonable, actual costs incurred
by the lessee to transport oil to a point
off the lease; provided, however, that
no transportation allowance will be
granted for transporting oil taken as
Royalty-In-Kind (RIK); or

(b) (1) Except as provided in para-
graph (b)(2) of this section, the trans-
portation allowance deduction on the
basis of a sales type code may not ex-
ceed 50 percent of the value of the oil
at the point of sale as determined
under §1206.52 of this subpart. Trans-
portation costs cannot be transferred
between sales type codes or to other
products.

(2) Upon request of a lessee, ONRR
may approve a transportation allow-
ance deduction in excess of the limita-
tion prescribed by paragraph (b)(1) of
this section. The lessee must dem-
onstrate that the transportation costs
incurred in excess of the limitation
prescribed in paragraph (b)(1) of this
section were reasonable, actual, and
necessary. An application for exception
(using Form MMS–4393, Request to Ex-
ceed Regulatory Allowance Limita-
tion) must contain all relevant and
supporting documentation necessary
for ONRR to make a determination.
Under no circumstances may the value,
for royalty purposes, under any sales
type code, be reduced to zero.

(c) Transportation costs must be al-
located among all products produced
and transported as provided in §1206.57.
Transportation allowances for oil shall
be expressed as dollars per barrel.

(d) If, after a review or audit, ONRR
determines that a lessee has improp-
erly determined a transportation al-
lowance authorized by this subpart,
then the lessee will pay any additional
royalties, plus interest determined in
accordance with §1218.54 of this chap-
ter, or will be entitled to a credit with-
out interest.

[61 FR 5455, Feb. 12, 1996. Redesignated and
amended at 72 FR 71241, Dec. 17, 2007; 73 FR
15890, Mar. 26, 2008]
(2)(i) If an arm’s-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then the total transportation costs shall be allocated in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value). Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty-bearing without ONRR approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported. ONRR shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(3) If an arm’s-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to ONRR. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until ONRR issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless ONRR approves a longer period). ONRR shall then determine the oil transportation allowance based upon the lessee’s proposal and any additional information ONRR deems necessary.

(4) Where the lessee’s payments for transportation under an arm’s-length contract are not on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm’s-length sales contract price, or a posted price, includes a provision whereby the listed price is reduced by a transportation factor, ONRR will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee’s gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without ONRR approval.

(b) Non-arm’s-length or no contract. (1) If a lessee has a non-arm’s-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee’s reasonable, actual costs as provided in this paragraph. All transportation allowances deducted under a non-arms-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with ONRR, unless ONRR approves a longer period upon a showing of good cause by the lessee. ONRR will monitor the allowance deductions to determine whether lessees are taking deductions that are reasonable and allowable. When necessary or appropriate, ONRR may direct a lessee to modify its actual transportation allowance deduction.

(2) The transportation allowance for non-arms-length or no-contract situations shall be based upon the lessee’s actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial capital investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets.
(including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of ONRR.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services or on a unit-of-production method. After an election is made, the lessee may not change methods without ONRR approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) ONRR shall allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return shall be the industrial rate associated with Standard and Poor’s BBB rating. The rate of return shall be the monthly average rate as published in Standard and Poor’s Bond Guide for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined under paragraph (c) of this section).

(3)(i) The deduction for transportation costs shall be determined on the basis of the lessee’s cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocation of costs to each of the liquid products transported shall be in the same proportion as the ratio of the volume of each liquid product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value) and such allocation shall be made in a consistent and equitable manner. Except as provided in this paragraph, the lessee may not take an allowance for transporting lease production which is not royalty-bearing without ONRR approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported. ONRR shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to ONRR. The lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported. ONRR shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(b) The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month.
Surface Mining Reclamation and Enforcement, Interior § 1206.57

for which the lessee requests a transportation allowance, whichever is later (unless ONRR approves a longer period). ONRR shall then determine the oil transportation allowance on the basis of the lessee’s proposal and any additional information ONRR deems necessary.

(5) A lessee may apply to ONRR for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. ONRR will grant the exception only if the lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission (FERC) for Indian leases. ONRR shall deny the exception request if it determines that the tariff is excessive as compared to arm’s-length transportation charges by pipelines, owned by the lessee or others, providing similar transportation services in that area. If there are no arm’s-length transportation charges, ONRR shall deny the exception request if:

(i) No FERC cost analysis exists and the FERC has declined to investigate timely objections upon filing; and

(ii) the tariff significantly exceeds the lessee’s actual costs for transportation as determined under this section.

(c) Reporting requirements—(1) Arm’s-length contracts. (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, under an arm’s-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) ONRR may require that a lessee submit arm’s-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by ONRR.

(v) Transportation allowances which are based on arm’s-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by ONRR in writing shall qualify as being in effect at the time these regulations become effective.

(vi) ONRR may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) Non-arm’s-length or no contract. (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vi) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm’s-length contract or no-contract situation is reported on Form MMS–2014. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until transportation under the non-
(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. The estimated oil transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases that will affect the allowance. ONRR must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no-contract transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by ONRR in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by ONRR, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by ONRR.

(vii) ONRR may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(viii) If the lessee is authorized to use its FERC-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) may establish reporting dates for individual lessees different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Transportation allowances must be reported as a separate entry on Form MMS–2014, unless ONRR approves a different reporting procedure.

(d) Interest assessments for incorrect or late reports and for failure to report. (1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with §1218.54 of this chapter.

(e) Adjustments. (1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee must pay additional royalties due plus interest computed under §1218.54 of this chapter, retroactive to the first day of the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee will be entitled to a credit without interest.

(2) For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by ONRR.
Surface Mining Reclamation and Enforcement, Interior § 1206.62

(f) Actual or theoretical losses. Notwithstanding any other provisions of this subpart, for other than arm’s-length contracts, no cost shall be allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or State regulatory agency approved tariff.

(g) Other transportation cost determinations. The provisions of this section shall apply to determine transportation costs when establishing value using a netback valuation procedure or any other procedure that requires deduction of transportation costs.

§ 1206.58 What must I do if ONRR finds that I have not properly determined value?

(a) If ONRR finds that you have not properly determined value, you must:

(1) Pay the difference, if any, between the royalty payments you made and those that are due, based upon the value ONRR establishes; and

(2) Pay interest on the difference computed under §1218.54 of this chapter.

(b) If you are entitled to a credit due to overpayment on Indian leases, see §1218.53 of this chapter. The credit will be without interest.

§ 1206.59 May I ask ONRR for valuation guidance?

You may ask ONRR for guidance in determining value. You may propose a value method to ONRR. Submit all available data related to your proposal and any additional information ONRR deems necessary. We will promptly review your proposal and provide you with non-binding guidance.

§ 1206.60 What are the quantity and quality bases for royalty settlement?

(a) You must compute royalties on the quantity and quality of oil as measured at the point of settlement approved by BLM for the lease.

(b) If you determine the value of oil under §1206.52, §1206.53, or §1206.54 of this subpart based on a quantity or quality different from the quantity or quality at the point of royalty settlement approved by BLM for the lease, you must adjust the value for those quantity or quality differences.

(c) You may not deduct from the royalty volume or royalty value actual or theoretical losses incurred before the royalty settlement point unless BLM determines that any actual loss was unavoidable.

§ 1206.61 What records must I keep and produce?

(a) On request, you must make available sales, volume, and transportation data for production you sold, purchased, or obtained from the field or area. You must make this data available to ONRR, Indian representatives, or other authorized persons.

(b) You must retain all data relevant to the determination of royalty value. Document retention and recordkeeping requirements are found at §§1207.5, 1212.50, and 1212.51 of this chapter. The ONRR, Indian representatives, or other authorized persons may review and audit such data you possess, and ONRR will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart or the lease.

§ 1206.62 Does ONRR protect information I provide?

The ONRR will keep confidential, to the extent allowed under applicable laws and regulations, any data or other information you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior, 43 CFR part 2.