

which a transportation allowance is reported on Form MMS-2014. A Form MMS-4402 received by the end of the month that Form MMS-2014 is due shall be considered timely received.

(ii) The Form MMS-4402 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.

(iii) After the Form MMS-4402 reporting period, the lessee must file a page one and all supporting schedules of Form MMS-4293 for the actual transportation allowance calculated for the reporting period. The Form MMS-4293 is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

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

(v) Upon request by MMS, the lessee must submit all data used to prepare its Form MMS-4293. The lessee must provide requested data within a reasonable period of time, as determined by MMS.

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

(vii) If the lessee is authorized to use its Federal or State agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(5) A lessee is required to file a new Form MMS-4293 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS-2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS-4402 .....	\$10 per allowance line required on Form MMS-4402.	
Deducts a transportation allowance on Form MMS-2014 without complying with requirements for actual cost reporting on Form MMS-4293.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS-2014 during the year.	From the date that Form MMS-4293 was due until the date that the form was received.
Takes a transportation allowance on Form MMS-2014 by improperly netting the allowance against the sales value of the coal instead of reporting the allowance as a separate line item on Form MMS-2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS-2014.	From the end of the month in which Form MMS-2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.	.....	On the amount of the underpayment.

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BILLING CODE 4310-MR-P

## 30 CFR Part 206

### RIN 1010-AB94

### Revision of Valuation Regulations Governing Oil and Gas Transportation and Processing Allowances

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Minerals Management Service (MMS) proposes to amend its Royalty Management Program (RMP) valuation regulations governing oil and gas transportation and processing allowances regarding the timely filing of required forms.

**DATES:** Comments must be submitted on or before October 6, 1995.

**ADDRESSES:** Written comments regarding the proposed rule should be mailed or delivered to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center,

Building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado, 80225-0165.

#### FOR FURTHER INFORMATION CONTACT:

David Guzy, Chief, Rules and Procedures Staff, Telephone (303) 231-3432, Fax (303) 231-3194.

**SUPPLEMENTARY INFORMATION:** The principal author of this proposed rulemaking is Janet Chichester, Compliance Verification Division, MMS, RMP.

#### I. Background

On January 15, 1988, MMS published a final rule in the **Federal Register** amending and clarifying regulations governing the valuation of oil and gas for royalty computation purposes (53 FR 1184). The rulemaking provided comprehensive procedures for valuation of minerals produced from Federal and Indian lands including regulations governing certain allowances considered in calculating and reporting royalties. The regulations provided for transportation allowances for oil (30 CFR §§ 206.104 and 206.105); transportation allowances for gas (30 CFR §§ 206.156 and 206.157); and processing allowances for gas (30 CFR §§ 206.158 and 206.159).

The rulemaking distinctly changed the historical administrative practice of MMS and its predecessor agency, the U.S. Geological Survey, regarding allowances. Prior to the 1988 rule, MMS required royalty payors to obtain the agency's written approval before taking an allowance deduction in reporting and paying royalties. With the new rule, MMS adopted a self-implementing concept for allowances. Instead of requiring agency preapproval, the regulations provided for the royalty payor to file timely certain required forms as a condition for the taking of an allowance on the Report of Sales and Royalty Remittance (Form MMS-2014).

The allowance forms filing requirements of the current oil and gas valuation regulations provide for an annual cycle for providing information to MMS. Before the beginning of each calendar year, or during the year but before the taking of an allowance on the Form MMS-2014, payors must submit the required form for any oil transportation, gas transportation, or gas processing allowances that they expect to take during the year. The forms ask for information sufficient to identify the payor, the lease/revenue source/product

code/selling arrangement, and an estimate of the allowance rate per unit that is anticipated for the year.

By the end of March following the allowance year, the payor must submit the same forms as before but with additional data fields completed to indicate the actual costs experienced and the allowances actually taken on Forms MMS-2014 during the year. Also, several supplementary schedules representing details of actual costs must be submitted for non-arm's-length allowances.

The filing of the actual cost forms serves several purposes for MMS and the payor. The forms provide the actual costs incurred in transporting and/or processing production for the allowance year, together with the actual allowance deductions taken on the Form MMS-2014. The forms also satisfy the regulatory requirement to have an estimated cost allowance form on file for the succeeding allowance year.

The consequences of a payor's noncompliance with the forms filing requirements of the regulations are monetarily significant. Simply stated, if a payor takes an allowance deduction against royalty value on the Form MMS-2014 without a required allowance form on file, the payor is subject to loss of allowance and to late payment interest charges. The concept of the regulations is that a required form must be on file before the taking of an allowance; if a payor does not meet this requirement MMS considers the allowance to be lost by the payor. Consequently, the payor is directed to pay back the allowance and, after payback, is charged late payment interest associated with the lost allowance.

The current regulations provide for a grace period of three months that gives payors a window of time to comply with the forms filing requirements of the regulations without losing an allowance. The grace period permits lessees to retain allowances reported on a Form MMS-2014 for up to three months prior to the month that a required allowance form is filed with MMS. Though a payor will not experience a loss of allowance for the grace period, MMS will assess the payor a late payment interest charge from the Form MMS-2014 receipt date or due date (whichever is later) to the allowance form receipt date. By regulation, MMS may approve a grace period longer than three months upon a showing of good cause by the lessee.

In evaluating the effectiveness of its rules, particularly as they related to product valuation, MMS published in the June 17, 1992, **Federal Register**, a "Request for Information for

Improvements to Regulation" (57 FR 27008). MMS' request stated that the rules for product valuation were substantially modified in 1988 based on an effort started in January 1985 with the creation of the Royalty Management Advisory Committee. The request further stated that it had been several years since most of the regulations in 30 CFR Parts 201 through 243 were published, and public comments were requested to help MMS assess where improvements to rules could be made. The comment period closed August 17, 1992.

Many commenters felt that the allowance form filing requirements of the valuation regulations needed significant commentary as being in need of improvement. They expressed concerns about both the allowance form filing requirements and the regulatory sanctions for failure to comply with the allowance reporting requirements. Suggested recommendations ranged from refinements of existing forms to a wholesale elimination of allowance form filings because they serve no useful purpose. Regarding penalties for failure to timely file required allowance forms, commenters stated that the existing penalties were unduly harsh and that the "punishment" is not reflective of the "crime."

## II. Findings and Conclusions of Allowance Study Group

Based on public comments and the over four years of experience MMS gained in administering the allowance requirement of the oil and gas valuation regulations, MMS formed a study group in April 1993, to evaluate the existing regulatory requirements for oil and gas allowances and formulate recommendations for improvement. The study group was comprised of participants from the Council of Petroleum Accounting Societies, the State and Tribal Royalty Audit Committee, and MMS. Consistent with its charter, the study group addressed the current regulatory requirements and practices of MMS related to oil and gas transportation and processing allowances. More specifically, the study group addressed the following topics as key aspects of the review:

- The need for and usefulness of the current regulatory requirements for allowance forms submission, including the information required on each form.
- The need for and equity of allowance payback and late payment interest charges for untimely filed forms.
- The need for regulatory approval thresholds; e.g., 50 percent

(transportation) and 66 2/3 percent (processing).

- Alternative approaches to administering allowances. The study group report was issued December 3, 1993. The report was subsequently endorsed by the Royalty Management Advisory Committee at its December 14, 1993, public meeting in Lakewood, Colorado. A copy of the study group report may be obtained by contacting the person identified in the "For Further Information Contact" section of this Notice.

The principal "Findings and Conclusions" of the study group are, by topic, as follows:

### a. The Need for and Usefulness of the Current Regulatory Requirement for Allowance Forms Submission, Including the Information on Each Form

The study group found that the concept of requiring the filing of forms that contain information supplementary to that presented on the Form MMS-2014 was reasonable. However, the study group also found that the current approach to information filings is flawed in terms of the information on which the regulatory requirements focus. Although the current approach places substantial focus on "estimated" allowance filings that payors are required to submit to MMS prior to taking an allowance deduction on the Form MMS-2014, the most useful and accurate information is the actual cost information payors provide on required forms after the end of the allowance year. The study group concluded that MMS should maintain allowance information filing requirements to the extent that MMS, States, and Tribes use the information.

Furthermore, the study group concluded that MMS' administration of allowances should focus on actual data reported annually to MMS rather than the current focus on estimated allowance rates reported at the beginning of the allowance year. The study group concluded that it was necessary for MMS to continue its practice under current regulations of requiring the submission of an annual form notifying the agency of the payor's intent to take an allowance deduction from royalty value but that estimated allowance rates should not be required as a part of the information filing.

### b. The Need for and Equity of Allowance Payback and Late Payment Interest Charges for Failure To File Forms

The study group found that while substantial compliance with forms filing requirements does exist, the penalty of

a complete loss of allowance due to the untimely filing of required forms "was not consistent with the crime." The study group addressed several alternatives to a payback penalty under the current concept of requiring a form to be on file prior to the taking of an allowance. The group observed that the payback penalty was rooted in the concept that qualification for an allowance deduction was subject to the filing of a form. While the study group did not reject this concept, it concluded that the penalty of a loss of allowance was not necessarily consistent with the agency's objectives.

The group observed that the agency's primary interest is effectively administering allowances through a regulatory information gathering and notice process. The objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions as opposed to generating a revenue stream by focusing sanctions on the filing dates of forms containing estimated cost information. The group was able to reach agreement that the current payback sanction was excessive after considering a number of alternatives. The study group reached an agreement on the option of "Federal Oil and Gas Royalty Management Act (FOGRMA) Late Payment Interest plus a Fixed Percentage of the Amount of the Allowance" as the preferred alternative to the payback. However, the group was not able to reach agreement on the specific fixed percentage of the allowance amount.

#### *c. The Need for Regulatory Approval Thresholds*

The study group concluded that the current thresholds should remain in place. Their conclusion was based on the relatively low activity level of requests to exceed the current thresholds of 50 percent for transportation allowances and 66 $\frac{2}{3}$  percent for processing allowances. It also was based on the reasonableness of providing increased agency scrutiny to those instances involving allowance costs that consume an unusually large amount of the royalty value.

#### *d. Alternative Approaches to Administer Allowances*

The study group formulated a proposed alternative approach to information gathering for allowance administration. This approach is further discussed later in the preamble.

### **III. Recommendations of the Study Group**

The study group recommended that MMS:

a. On a prospective basis, pursue changing its current regulatory reporting requirements in several respects. These changes should reduce the focus on the submittal of estimated allowance information that has little value to the agency and increase the focus on the actual information that has substantive value to the agency. Complete implementation of this recommendation could involve changes in regulations, forms, and systems software over a period of several years. In the near term, MMS should expedite those changes that do not require regulatory action; e.g., changes to the current allowance forms.

b. On a prospective basis, pursue changing, consistent with the first recommendation, the current regulatory sanctions for failure to timely file required allowance forms. Sanctions should be changed to create meaningful incentives for payors to file actual cost allowance forms. Existing sanctions in the form of allowance payback and late payment interest for the "estimated" cost information should be changed consistent with the proposed alternative approach to administering allowances.

c. Retain the existing regulatory requirements that payors receive annual agency approval prior to taking transportation and processing allowances that exceed 50 percent and 66 $\frac{2}{3}$  percent, respectively, of the royalty value of the product subject to the allowance deduction.

d. Publish the results of the public commentary received in response to the **Federal Register** Notice dated November 28, 1988, regarding extraordinary cost allowances. Further comment should also be solicited to identify circumstances that may have developed in the interim that MMS should consider.

e. Pursue establishing automated data bases to capture the detailed actual allowance cost information payors submit and develop and implement edits and exception processing routines to monitor actual allowance costs reported on allowance forms and the Form MMS-2014.

### **IV. Alternative Approach Suggested by Study Group**

The study group's report provided an alternative approach to administering allowances based on its conclusions that:

- MMS should continue to focus on the administration of allowances through information gathering methods that supplement the Form MMS-2014.
- MMS should focus its allowance administration efforts on actual costs instead of estimated costs.

- The current penalty structure for failing to file required forms not only places undue focus on estimated allowance information but also results in penalties "inappropriate for the crime."

The study group believed that the alternative approach would provide MMS with the necessary notice and information that it needs to properly administer allowances, reduce current information reporting requirements, and possess sufficient incentives for payors to comply with the reporting requirements of the regulations. Prototype forms were also developed that could be used in the process of implementing the alternative approach.

The framework of the alternative approach the study group developed is described below:

a. Royalty payors would continue to be required to submit a Notice of Intent to Take Transportation and Processing Allowances prior to the beginning of each allowance year or within the allowance year. One form, instead of three, would be used for all allowance types and would be filed at the payor code/lease level rather than the payor code/lease number/revenue source/product code/selling arrangement level. The report would not include an estimated rate. Failure to file this notice would constitute a missing report with the payor being assessed \$10 per allowance line required on the Notice of Intent To Take Transportation and Processing Allowances.

b. Three months following the end of each allowance year, the payor would continue to file an actual cost allowance report. For arm's-length allowances, the report would show the payor code/lease number/revenue source/product code/selling arrangement on which allowances were taken. MMS would gather actual cost data from the AFS as needed. For non-arm's-length allowances, the detailed cost breakouts currently required would continue to be provided. MMS would continue to grant, upon request, extensions of up to three months to file actual cost reports.

Payors failing to timely file required forms would be assessed an amount equal to a fixed percent, to be determined through rulemaking, of the total allowance amount deducted on Forms MMS-2014 during the year plus an amount calculated as equal to late payment interest from the date the actual cost form was due until the date the form is actually received.

MMS concludes that the recommendations of the study group will serve to improve its administration of oil and gas allowances, particularly as related to forms filing requirements and

associated sanctions. Therefore, MMS proposes to change its current regulatory requirements consistent with the substance of the alternative approach the study group presented.

#### V. Additional Changes by MMS

The majority of the changes reflected in this proposed rulemaking are contained in the study group report. Additionally, MMS included several clarifications and additional changes based on MMS' experiences in administering allowances.

##### a. Failure To File Assessment

The study group did not specify in its alternative approach a fixed percentage assessment for payors' failure to timely file actual cost forms. For purposes of this rulemaking, MMS included a percentage rate of 10 percent. MMS specifically requests comments on this rate or an alternative rate. MMS also requests specific comments on whether or not an upper limit, or cap, should be established for such assessments, and how the upper limit should be constructed; e.g., absolute dollar amount per occurrence, etc.

##### b. Improper Netting Assessment

One of several changes involves the introduction of an assessment for the "improper netting" of allowances against royalty value when reporting royalties on the Form MMS-2014. "Improper netting" is a circumstance where two arm's-length transactions, one representing a sale and the other representing transportation and/or processing, supported by two separate invoices, are improperly reported on the payor's Form MMS-2014 as a one-line transaction. The proposed assessment is 20 percent, or twice the assessment (10 percent) that is proposed for failure to timely file required allowance forms. MMS believes that improper netting should carry an increased assessment because the practice represents, in effect, concealment of information with adverse impacts on MMS' efforts to monitor the accuracy of royalty payments. MMS specifically requests comments on the 20 percent rate proposed and whether an upper limit or cap should be established and how it should be constructed.

##### c. Unauthorized Allowance Assessment and Interest Requirement

Another change involves the introduction of an assessment and an interest requirement for certain circumstances where an oil or gas transportation or processing allowance in excess of regulatory thresholds is taken on Form MMS-2014 without the

required prior MMS approval. Specifically, the current oil and gas regulations require prior MMS approval before a transportation or processing allowance that is in excess of 50 percent or 66 $\frac{2}{3}$  percent, respectively, of the value of production may be taken on Form MMS-2014. An assessment of \$10 per line is proposed for each reported allowance line taken in excess of the regulatory thresholds without obtaining the required prior approval from MMS.

Furthermore, an interest-based additional assessment is proposed for the period of time that the royalty payor has had the monetary benefit of the allowance in excess of the administrative threshold without having received MMS approval. MMS considered requiring the royalty payor to pay back an allowance taken in excess of the threshold but determined that an interest charge approach based on the amount in excess of the threshold would be a reasonable deterrent. MMS requests specific comment on the construction of this proposal and alternative approaches that should be considered.

##### d. Erroneous Reporting Assessment

MMS also proposes an assessment for reporting erroneous information on required allowance forms. MMS continues to experience significant additional workload caused by erroneously reported information on allowance forms. MMS seeks to establish an erroneous reporting assessment to encourage more accurate reporting. This proposed assessment authority currently exists for monthly production and royalty reports. An assessment has proven to be an effective tool to improve the accuracy of reported information.

##### e. Transportation Factors

MMS is considering the elimination of the current treatment of transportation factors in arm's-length contracts as reductions in value. Instead, MMS would treat such costs as transportation allowances. In the March 1988 valuation rulemaking, the concept of the transportation factor was adopted to reduce administrative burden for MMS and the industry. MMS has found through experience that transportation factors have created some confusion between MMS and the industry. Numerous instances have been encountered where disagreement existed between MMS and industry as to whether a transportation element of a sales arrangement was an allowance or a transportation factor under the regulations. In many of these cases, it was determined that the transportation

cost should be treated as an allowance rather than a factor. In these cases, the payor had not filed required allowance forms and, consequently, was subject to substantial sanctions. Rather than proposing the elimination of transportation factors in the rulemaking, MMS is seeking specific comments on the extent to which royalty payors are now using transportation factors and what impacts would be caused if transportation factors were eliminated from the current regulations.

##### f. Technical Corrections

MMS proposes several technical corrections and clarifications including a lessee's option to use a depreciation or a return on depreciable capital investment basis in calculating actual allowance costs.

#### VI. Proposed Amendments

For the reasons discussed above, MMS proposes to amend its valuation regulations to change the allowance forms filing requirements for oil and gas. Furthermore, MMS is amending its valuation regulations to change the existing sanctions for not timely filing required allowance forms. MMS is also introducing new assessments for (1) failure to properly report allowances as separate lines on the Form MMS-2014, a practice commonly referred to as "netting"; (2) noncompliance with regulatory requirements to obtain prior approval from MMS before taking oil and gas transportation allowances that exceed 50 percent of the value of the production, or gas processing allowances that exceed 66 $\frac{2}{3}$  percent of the value of gas plant products; and (3) reporting erroneous information on required allowance forms. MMS also proposes several minor technical corrections and clarifications.

MMS is also proposing similar amendments to coal allowance regulations at 30 CFR 206 which are being published separately.

##### a. Oil Transportation Allowances

MMS proposes to amend § 206.105 by deleting the fourth and fifth sentences of paragraph (a)(1)(i) that state:

Before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4110 (and Schedule 1), Oil Transportation Allowance Report, in accordance with paragraph (c)(1) 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 MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the deleted sentences with the following sentences:

Before any transportation allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4398, Notice of Intent To Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. For the actual transportation allowance calculated for the reporting period, the lessee must file a Form MMS-4110, Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

MMS proposes to amend § 206.105(b)(1) by deleting the third and fourth sentences of paragraph (b)(1) that state:

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 three months prior to the first day of the month that Form MMS-4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the deleted sentences with the two following sentences:

Before any transportation allowance deduction may be taken on Form MMS-2014, the lessee must file a Form MMS-4398, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS-4398 reporting period, the lessee must file a Form MMS-4110 in accordance with paragraph (c)(2) of this section.

These changes remove the retroactive three-month limit for oil transportation allowances and incorporate the new reporting form. The Form MMS-4398 would be a new form that implements the recommendations of the study team report. A Notice of Proposed Information Collection will be published separately in the **Federal Register** for this form.

MMS proposes to further amend § 206.105(b)(1) by deleting from the sixth sentence the phrase “\* \* \* estimated or \* \* \*”. The sixth sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

These changes would be technical corrections that improve the clarity of the language.

MMS proposes to amend § 206.105(c)(1) by deleting existing paragraphs (i), (ii), (iii), and (iv) and replacing them with new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS-4398 for transportation allowances for each calendar year. The lessee must file the Form MMS-4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4398 reporting period, the lessee must file page one of Form MMS-4110 for the actual transportation allowance calculated. This form is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents must be submitted within a reasonable period of time, as determined by MMS.

These changes would incorporate the new reporting form for oil transportation allowances, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, Form MMS-4398.

MMS proposes to amend § 206.105(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and replacing them with new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(2)(iv), (vi) and (vii) of this section, the lessee must file a Form MMS-4398 for transportation allowances for each

calendar year. The lessee must file the Form MMS-4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4398 reporting period, the lessee must file a page one and all supporting schedules of Form MMS-4110 which show actual transportation costs within three months after the end of the reporting period, unless MMS approves a longer period.

Consistent with this amendment, paragraphs (c)(2)(v), (vi), (vii), and (viii) would be redesignated (c)(2)(iv), (v), (vi), and (vii).

These changes would incorporate the new reporting form for oil transportation allowances, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, Form MMS-4398.

MMS proposes to amend § 206.105(c) by adding paragraph (5) stating:

A lessee is required to file a new Form MMS-4110 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS-2014.

MMS proposes to amend § 206.105(d) and revise the title to read:

*b. Interest Charges and Assessments for Incorrect or Late Reports and Failure To Report*

This change to the title would be necessary to reflect the changes in the content of the section.

MMS proposes to further amend § 206.105(d) by deleting paragraphs (1), (2), and (3) and replacing them with the following schedule:

(d) *Interest charges and assessments for incorrect or late reports and failure to report* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or late Form MMS-4398 .....	\$10 per allowance line required on Form MMS-4398.	
Deducts a transportation allowance on Form MMS-2014 without complying with requirements for actual cost reporting on Form MMS-4295.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS-2014 during the year.	From the date that Form MMS-4398 was due until the date that the form was received.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Takes a transportation allowance on Form MMS-2014 by improperly netting the allowance against the sales value of the coal oil instead of reporting the allowance as a separate line item on Form MMS-2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS-2014. .....	From the end of the month in which Form MMS-2014 containing the netted allowance was submitted to the date MMS discovers the netted amount. Payment of interest on the amount of the underpayment.
Erroneously reports a transportation allowance that results in an underpayment of royalties.		

These changes would adopt the study group's recommendations concerning the need for and equity for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommend that payors failing to timely file required forms would be assessed an amount equal to a fixed percentage of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

These changes would add specific language for assessments for incorrect or late reports and for failure to report. These changes implement the recommendation of the study group report on sanctions.

#### c. Gas Transportation Allowances

MMS proposes to amend § 206.157 by deleting the fourth and fifth sentences of paragraph (a)(1)(i) that state:

Before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4295 (and Schedule 1), Gas Transportation Allowance Report, in accordance with paragraph (c)(1) 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-4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes adding in place of the deleted sentences the following sentences:

Before any transportation allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS-4398 reporting period, the lessee must file a Form MMS-4295, Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

These changes would remove the retroactive three-month limit for gas transportation and incorporate the new

reporting form, Notice of Intent to Take Oil and Gas Transportation and Processing Allowance, Form MMS-4398. MMS further proposes to remove § 206.157(a)(5) as follows:

(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, MMS 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 MMS approval.

MMS proposes to amend § 206.157(b)(1) by deleting the third and fourth sentences that state:

Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4295 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-4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the following sentences:

Before any transportation deduction may be taken on Form MMS-2014, the lessee must file a Form MMS-4398, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. For the actual transportation allowance incurred after the Form MMS-4398 reporting period, the lessee must file a Form MMS-4295 in accordance with paragraph (c)(2) of this section.

These changes would remove the retroactive 3-month limit for gas transportation and incorporate the new reporting form, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, Form MMS-4398.

MMS proposes to further amend § 206.157(b)(1) by deleting from the sixth sentence the phrase " \* \* \* estimated or \* \* \* "

The sixth sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

These changes would be technical corrections that improve the clarity of the language.

MMS proposes to amend § 206.157(c)(1) by deleting existing paragraphs (i), (ii), (iii), and (iv) and replacing them with new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(1) (v) and (vi) of this section, the lessee must file a Form MMS-4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4398 reporting period, the lessee must file page one of Form MMS-4295 for transportation allowance actuals within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents will be submitted within a reasonable period of time, as determined by MMS.

These changes incorporate the new reporting form for gas transportation allowances, Form MMS-4398.

MMS proposes to amend § 206.157(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and adding new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraphs (c)(2) (iv), (vi) and (vii) of this section, the lessee must file a Form MMS-4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4398 reporting period, the lessee must file a page one and all supporting schedules of Form MMS-4295

which show actual transportation costs within three months after the end of the reporting period, unless MMS approves a longer period.

Consistent with this amendment, paragraphs (c)(2) (v), (vi), (vii), and (viii) of § 206.157 are redesignated (c)(2) (iv), (v), and (vi), and (vii).

These changes would incorporate the new reporting form for gas transportation allowances, Form MMS-4398.

MMS proposes to amend § 206.157(c) by adding paragraph (5) stating:

A lessee is required to file a new Form MMS-4295 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS-2014.

MMS proposes to amend § 206.157(d) and add the words “\* \* \* charges and \* \* \*” to the title that will read:

*d. Interest charges and assessments for incorrect or late reports and failure to report.*

This change to the title would be necessary to reflect the changes in the content of the section.

MMS proposes to amend § 206.157(d) by deleting paragraphs (1), (2) and (3) and replacing them with the following schedule:

*(d) Interest charges and assessments for incorrect or late reports and failure to report.* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or late Form MMS-4398 .....	\$10 per allowance line required on Form MMS-4402.	
Deducts a transportation allowance on Form MMS-2014 without complying with requirements for actual cost reporting on Form MMS-4295.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS-2014 during the year.	From the date that Form MMS-4295 was due until the date that the form was received.
Takes a transportation allowance on Form MMS-2014 by improperly netting the allowance against the sales value of the gas instead of reporting the allowance as a separate line item on Form MMS-2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS-2014.	From the end of the month in which Form MMS-2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.	.....	Payment of interest on the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity of allowance payback and late-payment interest charges for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommended that payors failing to timely file required forms would be assessed an amount equal to a fixed percent of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

These changes would add specific language for interest and assessments for incorrect or late reports and for failure to report. These changes would implement recommendations of the study group report on sanctions.”

#### e. Gas Processing Allowances

MMS proposes to amend § 206.159 by deleting the third and fourth sentences of paragraph (a)(1)(i) that state:

Before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section. A processing allowance may be claimed retroactively for a period of not more than three months prior

to the first day of the month that Form MMS-4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the two following sentences:

Before any processing allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS-4398 reporting period, the lessee must file a Form MMS-4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section.

MMS proposes amending § 206.159(b)(1) by deleting the third and fourth sentences that state:

Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4109 in accordance with paragraph (c)(2) of this section. A processing 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-4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the two following sentences:

Before any processing allowance deduction may be taken on Form MMS-2014, the lessee must file a Form MMS-4398, Notice of Intent To Take Transportation and Processing Allowances, in accordance with paragraph

(c)(2) of this section. After the Form MMS-4398 reporting period, the lessee must file a Form MMS-4109 in accordance with paragraph (c)(2) of this section.

These changes would remove the retroactive three-month limit for gas processing and incorporate the new reporting form, Form MMS-4398.

MMS proposes to further amend § 206.159(b)(1) by deleting from the seventh sentence the phrase “\* \* \* estimated or \* \* \*”. The revised seventh sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual processing allowance.

These changes would be technical corrections and language clarification.

MMS proposes to amend § 206.159(c)(1) by deleting existing paragraphs (i), (ii), and (iii) and replacing them with new paragraphs that read:

(i) With the exception of those processing allowances specified in paragraph (c)(1)(v) of this section, the lessee must file a Form MMS-4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4398 reporting period, the lessee must file page one of Form MMS-4109 for processing allowances within three months after the end of the reporting period, unless MMS approves a longer period.

MMS proposes to amend § 206.159(c)(2) by deleting existing paragraphs (i), (ii), (iii), (iv), and (vi) and replacing them with new paragraphs that read:

(i) With the exception of those processing allowances specified in paragraph (c)(2)(v) and (vi) of this section, the lessee must file a Form MMS-4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct

a processing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4398 reporting period, the lessee must file page one and all supporting schedules of Form MMS-4109 which show actual processing costs within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit all data used by the lessee to prepare the actual costs submitted on its Form MMS-4109. The data must be provided within a reasonable period of time, as determined by MMS.

Consistent with this change, paragraphs (vii) and (viii) would be redesignated paragraphs (vi) and (vii).

These changes would incorporate the new reporting form for gas processing allowances, Form MMS-4398.

MMS proposes to amend § 206.159(c) by adding paragraph (5) to state:

A lessee is required to file a new Form MMS-4109 if adjustments are made to actual

non-arm's-length processing allowances on Form MMS-2014.

MMS proposes to amend § 206.159(d) and add the words “\* \* \* charges and \* \* \*” to the title so it reads:

*f. Interest charges and assessments for incorrect or late reports and failure to report*

This change to the title would be necessary to reflect the changes in the content of the section.

MMS proposes to further amend § 206.159(d) by deleting paragraph (1), (2) and (3) and replacing them with the following schedule:

*(d) Interest charges and assessments for incorrect or late reports and failure to report* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS-4398 .....	\$10 per allowance line required on Form MMS-4398.	
Deducts a processing allowance on Form MMS-2014 without complying with requirements for actual cost reporting on Form MMS-4109.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS-2014 during the year.	From the date that Form MMS-4109 was due until the date that the form was received.
Takes a processing allowance on Form MMS-2014 by improperly netting the allowance against the sales value of the gas instead of reporting the allowance as a separate line item on Form MMS-2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS-2014.	From the end of the month in which Form MMS-2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a processing allowance that results in an underpayment of royalties.	.....	On the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity of allowance payback and late-payment interest charges for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommended that payors failing to timely file required forms would be assessed an amount equal to a fixed percent of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

These changes would add specific language for interest charges and assessments for incorrect or late reports and for failure to report. These changes would implement the recommendations in the study group report for sanctions.

## VII. Other Matters

Separate regulations concerning valuation of natural gas for royalty purposes are currently being developed for Federal leases and for Indian leases through two separate negotiated rulemaking committees. These committees are addressing both natural gas valuation and transportation and processing allowance issues.

The committee addressing natural gas valuation for Federal leases recommended in its March 1995 report that transportation and processing allowance forms no longer be required. This recommendation is one of numerous recommendations for broad changes to existing regulations governing the valuation of natural gas produced from Federal leases. The future rulemaking to be prepared considering the recommendations of the Federal negotiated rulemaking committee will include the proposal for eliminating the requirement for allowance forms. Thus the amendments being proposed today to change the oil and gas valuation regulations governing

transportation and processing allowances may be impacted by the results of the future rulemaking. Similar impacts may occur for natural gas produced from Indian leases depending on the outcome of the negotiated rulemaking committee addressing the valuation of natural gas production from Indian lands.

MMS also would like comment on the effective date for the final rule. One option is to make any final rule effective as of January 1, 1995, the beginning of the current allowance year. Another option is to make the rule effective as of the date of publication of this proposed rule since royalty payors are on notice of the possible rule change on that date. Commenters should address this issue in their comments.

## VIII. Procedural Matters

### *The Regulatory Flexibility Act*

The Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). The proposed rule will streamline and improve existing regulatory reporting requirements related to allowances that are used to calculate royalty payments on oil and gas produced from Federal and Indian lands.

#### *Executive Order 12630*

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

#### *Executive Order 12778*

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

#### *Executive Order 12866*

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

#### *Paperwork Reduction Act of 1980*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned Clearance Numbers 1010-0022, 1010-0061, and 1010-0075. Form MMS-4398 has been submitted to OMB for approval.

#### *National Environmental Policy Act of 1969*

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

#### **List of Subjects in 30 CFR Part 206**

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: May 19, 1995.

**Bob Armstrong,**

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is proposed to be amended as set forth below:

## **PART 206—PRODUCT VALUATION**

1. The authority citation for Part 206 is revised to read as follows:

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

### **Subpart C—Federal and Indian Oil**

2. Section 206.105 is proposed to be amended by revising paragraphs (a)(1)(i), (b)(1), (c)(1)(i) through (iv), (c)(2)(i) through (iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v), (vi), (vii), and (viii) as paragraphs (c)(2)(iv), (v), (vi), and (vii), revising newly redesignated paragraphs (c)(2)(iv) through (vii) adding new paragraph (c)(5) and revising paragraph (d) to read as follows:

#### **§ 206.105 Determination of transportation allowances.**

(a) \* \* \*

(1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting oil under that contract, except as provided in paragraphs (a)(1) (ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any transportation allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. For the actual transportation allowance calculated for the reporting period, the lessee must file a Form MMS-4110, Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

\* \* \* \* \*

(b) \* \* \*

(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 transportation allowance deduction may be taken on Form MMS-2014, the lessee must file a Form MMS-4398, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS-4398 reporting period, the lessee must file a Form MMS-4110 in accordance with paragraph (c)(2) of this section. MMS will monitor the allowance deductions to determine whether lessees are taking deductions that are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS-4398 for transportation allowances for each calendar year. The lessee must file the Form MMS-4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that the Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4398 reporting period, the lessee must file page one of Form MMS-4110 for the actual transportation allowance calculated. This Form is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents must be submitted within a reasonable period of time, as determined by MMS.

\* \* \* \* \*

(2) \* \* \*

(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(iv), (vi) and (vii) of this section, the lessee must file a Form MMS-4398 for transportation allowances for each calendar year. The lessee must file the Form MMS-4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4398 reporting period, the lessee must file a page one and all supporting schedules of Form MMS-4110 which show actual transportation costs within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) 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 MMS in writing shall qualify as being in effect at the time these regulations become effective.

(v) Upon request by MMS, 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 MMS.

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

(vii) If the lessee is authorized to use its FERC-approved or State regulatory

agency-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.

\* \* \* \* \*

(5) A lessee is required to file a new Form MMS-4110 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS-2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or late Form MMS-4398 .....	\$10 per allowance line required on Form MMS-4398.	
Deducts a transportation allowance on Form MMS-2014 without complying with requirements for actual cost reporting on Form MMS-4292.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS-2014 during the year.	From the date that Form MMS-4398 was due until the date that the form was received.
Takes a transportation allowance on Form MMS-2014 by improperly netting the allowance against the sales value of the product instead of reporting the allowance as a separate line item on Form MMS-2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS-2014.	From the end of the month in which Form MMS-2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.	.....	On the amount of the underpayment.

\* \* \* \* \*

#### Subpart D—Federal and Indian Gas

3. Section 206.157 is proposed to be amended by revising paragraphs (a)(1)(i), removing paragraph (a)(5), revising paragraphs (b)(1), (c)(1)(i) through (iv), (c)(2)(i), (ii), and (iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v) through (viii) as paragraphs (c)(2)(iv) through (vii), revising newly designated paragraphs (c)(2)(iv) through (vii), adding paragraph (c)(5) and revising paragraph (d) to read as follows:

#### § 206.157 Determination of transportation allowances.

(a) \* \* \*

(1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant products under that contract, except as provided in paragraphs (a)(1)(ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee will have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the

provisions of paragraph (f) of this section. Before any transportation allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4398, Notice of Intent To Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS-4398 reporting period, the lessee must file a Form MMS-4295, Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

\* \* \* \* \*

(b) \* \* \*

(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-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any transportation deduction may be taken on Form MMS-2014, the lessee must file a Form MMS-4398, Notice of Intent To Take Oil and Gas Transportation and Processing

allowances, in accordance with paragraph (c)(2) of this section. For the actual transportation allowance incurred after the Form MMS-4398 reporting period, the lessee must file a Form MMS-4295 in accordance with paragraph (c)(2) of this section. MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS-4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will

continue until the end of the calendar year.

(iii) After the Form MMS-4398 reporting period, the lessee must file page one of Form MMS-4295 for transportation allowance actuals within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents will be submitted within a reasonable period of time, as determined by MMS.

\* \* \* \*

(2) \*

(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(iv), (vi) and (vii) of this section, the lessee must file a Form MMS-4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After Form MMS-4398 reporting period, lessees must file a page one and all supporting schedules of Form MMS-4295 which show actual transportation costs within three months after the end of the reporting period, unless MMS approves a longer period.

(iv) Non-arm's-length contract or no-contract based 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 MMS in writing shall qualify as being in effect at the time these regulations become effective.

(v) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS-4295. The data shall be provided within a reasonable period of time, as determined by MMS.

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

(vii) If the lessee is authorized to use its FERC-approved or State regulatory agency-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.

\* \* \* \*

(5) A lessee is required to file a new Form MMS-4295 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS-2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.*

(5) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

\* \* \* \*

4. Section 206.159 is proposed to be amended by revising paragraphs (a)(1)(i), (b)(1), (b)(2)(iv), (c)(1)(i), (ii), (iii), (c)(2)(i), (ii), (iii) and (iv), removing paragraph (c)(2)(vi), redesignating paragraphs (c)(2)(vii) and (viii) as paragraphs (c)(2)(vi) and (vii), revising newly redesignated paragraphs (c)(2)(vi) and (c)(2)(vii) adding paragraph (c)(5), and revising paragraphs (d) to read as follows:

#### **§ 206.159 Determination of processing allowances.**

(a) \*

(1)(i) For processing costs incurred by a lessee pursuant to an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, except as provided in paragraphs (a)(1)(ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Before any processing allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS-4398 reporting period, the lessee must file a Form MMS-4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section.

\* \* \* \*

(b) \*

(1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any processing allowance deduction

may be taken on Form MMS-2014, the lessee must file a Form MMS-4398, Notice of Intent to take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS-4398 reporting period, the lessee must file a Form MMS-4109 in accordance with paragraph (c)(2) of this section. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual processing allowance.

(2) \*

(iv) A lessee may use 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 processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the other alternative without approval of MMS.

\* \* \* \*

(c) \*

(1) \*

(i) With the exception of those processing allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS-4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After Form MMS-4398 reporting period, the lessee must file page one of Form MMS-4109 for processing allowances within 3 months after the end of the reporting period, unless MMS approves a longer period.

\* \* \* \*

(2) \*

(i) With the exception of those processing allowances specified in paragraphs (c)(2)(v) and (vi) of this section, the lessee must file a Form MMS-4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS-2014. A Form MMS-4398 received by the end of the month that

Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4398 reporting period, the lessee must file page one and all supporting schedules of Form MMS-4109 which show actual processing costs within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit all data used by the lessee to prepare the actual costs submitted on its Form MMS-4109. The data must be provided within a reasonable period of time, as determined by MMS.

(v) \* \* \*

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

(vii) If the lessee is authorized to use the volume weighted average prices charged other persons as its processing allowance in accordance with paragraph (b)(4) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

\* \* \* \* \*

(5) A lessee is required to file a new Form MMS-4109 if adjustments are made to actual non-arm's-length processing allowances on Form MMS-2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.*

(1) If a lessee fails to timely or accurately file a Form MMS-4398 for processing allowances, the lessee may be assessed \$10 per allowance line required on Form MMS-4398.

(2) If a lessee deducts a processing allowance on its Form MMS-2014 without complying with the requirements of this section for Form MMS-4109 actual cost reporting, the lessee may be assessed an amount equal to 10 percent of the total allowance amount deducted on Forms MMS-2014 during the year plus interest calculated from the date the actual cost Form MMS-4109 was due until the date the form was received.

(3) If a lessee takes a processing allowance on its Form MMS-2014 by improperly netting the allowance against the value of the gas instead of reporting the allowance as a separate line item on Form MMS-2014 as required by paragraph (c)(4) of this section, the lessee may be assessed an amount equal to 20 percent of the total

allowance amount netted on Form MMS-2014 plus interest calculated from the end of the month in which Form MMS-2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.

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

(5) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

\* \* \* \* \*

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BILLING CODE 4310-MR-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD08-95-011]

RIN 2115-AE47

### Drawbridge Operation Regulation; Gulf Intracoastal Waterway, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the vertical lift span drawbridge across the Gulf Intracoastal Waterway, mile 35.6, at Larose, Lafourche Parish, Louisiana. The proposed regulation would require that from 7 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw of the bridge would remain closed to navigation for passage of vehicular traffic during peak traffic periods. At all other times the draw would open on signal for passage of vessels. Presently, the draw is required to open on signal at all times. This action would relieve traffic congestion on the bridge during these periods, and still provide for the reasonable needs of navigation.

**DATES:** Comments must be received on or before October 6, 1995.

**ADDRESSES:** Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or may be delivered to Room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

### SUPPLEMENTARY INFORMATION:

#### Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

#### Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

#### Background and Purpose

The Louisiana Department of Transportation and Development has requested the new regulation because vehicular traffic crossing the bridge during the proposed closure periods has increased dramatically during recent years and severe congestion occurs during peak traffic hours. The proposed regulation would allow for the uninterrupted flow of vehicular traffic, while still providing for the reasonable needs of navigation.

#### Discussion of Proposed Rules

The Louisiana State Route 1 vertical lift span bridge across the Guild Intracoastal Waterway, mile 35.6, at Larose, Lafourche Parish, Louisiana, has 35 feet vertical clearance above mean high water in the closed to navigation position and 73 feet vertical clearance above mean high water in the open to navigation position. The horizontal clearance is 125 feet. Navigation on the