2. Nokota Company, Lake Sakakawea, P-SMBP, North Dakota: Industrial water service contract; up to 10,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

5. Oahe Unit, P-SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97-273 with South Dakota Board of Water and Natural Resources and Spink County and West Brown Irrigation Districts.

6. Owl Creek ID, Owl Creek Unit, P-SMBP, Wyoming: Amendatory water service contract to reflect water supply benefits being received from Anchor Reservoir.

7. Almena ID No. 5, Almena Unit, P-SMBP, Kansas: Deferment of repayment obligation for 1986.

8. Purgatoire River Water Conservancy District, Trinidad Project, Colorado: Amendatory repayment contract for extension of the development period and revision of the repayment determination methodology.

9. Corn Creek ID and Earl Michael, Glendo Unit, P-SMBP, Wyoming, and Nebraska: Irrigation contracts.

10. Webster ID No. 4, Webster Unit, P-SMBP, Kansas: Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, $970,018 outstanding.

11. Green Mountain Reservoir, Colorado-Big Thompson Project: Proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River drainage of western Colorado.

12. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

13. Lower South Platte Water Conservancy District, Central Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority, Narrows Unit, P-SMBP, Colorado: Water service contracts for repayment of costs and cost sharing agreement.

14. Kirwin ID No. 1, Kirwin Unit, P-SMBP, Kansas: Deferment of repayment obligation for 1986.

15. Kirwin ID No. 1, Kirwin Unit, P-SMBP, Kansas: Irrigation water service and repayment contract and Emergency Drought Act loan contract amendment to adjust payments due to reduced water supply, $866,331 outstanding.

16. Cedar Bluff ID No. 6, Cedar Bluff Unit, P-SMBP, Kansas: Deferment of repayment obligation for 1985 and 1986.

17. Webster ID No. 4, Webster Unit, P-SMBP, Kansas: Deferment of repayment obligation for 1986.

18. Fryingpan-Arkansas Project, Colorado: East Slope Storage system consisting of Pueblo, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

19. Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Cost sharing of modification of Horsetooth Reservoir Dams.

20. Farwell Irrigation District, Nebraska: D&MC contract for the correction of drainage and seep area on the project.

21. Almena Irrigation District No. 5, Almena Unit, P-SMBP, Kansas: Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, $576,090 outstanding.

22. Cedar Bluff Irrigation District No. 6, Cedar Bluff Unit, P-SMBP, Kansas: Irrigation water service and repayment contract amendment to adjust payments due to reduced water supply, $621,078 outstanding.

23. Twin Loups Irrigation District, Pick-Sloan Missouri Basin Program: Amend repayment contract to include increased project construction cost and adjust payments to full current payment capacity.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contract as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) the significance of the impacts(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Dated: July 21, 1986.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 86-16730 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Procedures for Determining Natural Gas Value for Royalty Purposes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Modification to Notice to Lessees-5.

SUMMARY: The Minerals Management Service (MMS) is modifying Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL-5) which prescribes the procedures to be used to determine the value of natural gas production for royalty purposes.

EFFECTIVE DATE: August 1, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, telephone: (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this Notice are John Price and Scott Ellis.

I. Background

On January 3, 1986, MMS published for comment in the Federal Register a "Notice of Proposed Modification to Notice to Lessees-5" (NTL-5) (51 FR 280). The MMS proposed to modify NTL-5 "to provide more flexibility in valuing for royalty purposes natural gas produced from onshore Federal and Indian leases." The proposed changes to NTL-5 were to permit MMS to value most natural gas by using the full range of its authority under the royalty valuation regulations in 30 CFR rather than under the more restrictive provisions of NTL-5. Comments were to be postmarked no later than February 3, 1986; however, MMS granted an extension of time for filing comments to March 3, 1986 (51 FR 4542).

MMS's principal proposed modifications affected two substantive provisions of NTL-5: the "Redetermination of Royalty Values" and "Effective Dates" parts of Sections I and II. Section I.B. was proposed to be modified to allow MMS to redetermine a base value determined pursuant to NTL-5 by using any method permitted by the regulations governing gas valuation (e.g., 30 CFR 206.103 and 25 CFR 211.13). Discretion would be used in redetermining the value as circumstances warranted. However, most of the existing provisions of NTL-5 would remain in effect. The purpose of this proposed modification was to allow MMS the flexibility to ensure that the value for royalty purposes reflected current market conditions. MMS stated it was considering as an alternative making the modification to Section I.B. effective as of March 1, 1984, and comments were specifically requested as to whether the modification should be retroactive and to what date.

MMS proposed that the adjustments to base values authorized by the modification to NTL-5 would not be automatic. Under the principal proposed modification of NTL-5, lessees would continue to be governed by the provisions of NTL-5 until MMS approved an adjusted base value to reflect current market conditions. Modifications to "Effective Dates" in Section I.C. were proposed in a manner so as to make any modified base values effective on the date market conditions warranted a redetermination.

MMS also requested comments on whether, as an alternative, NTL-5 should be rescinded in part, or in its entirety. If NTL-5 were rescinded, valuation would be based solely upon the regulations in 25 CFR and 30 CFR. Like the modification proposal, rescinding NTL-5 would give MMS flexibility in dealing with changing market conditions.

II. Summary of Provisions Adopted

MMS is amending NTL-5 prospectively so that valuation of most gas production from onshore Federal and Indian lands will be determined in accordance with the valuation regulations in 30 CFR Part 206. The existing provisions of NTL-5 will be retained for sales from wells which were producing prior to June 1, 1977, and which are subject to an arm's-length entered into prior to that date. These provisions are in sections I.A.1. and II.A.1. of NTL-5. The provisions of NTL-5 in sections I.A.2. and II.A.2., which apply to all other gas sales, are amended to provide that such production will be valued in accordance with the gas valuation regulations in 30 CFR Part 206. Also, section VI of NTL-5, which applies to gas disposed of without sale, (such as vented or flared gas) is amended to provide for valuation pursuant to 30 CFR Part 206. The provisions of NTL-5 which pertain to such matters as quality adjustment, measurement standards and point of royalty computation also are retained. Gross proceeds will continue to be the basis for determining a minimum royalty value. Also, to the extent any specific provisions of a lease prescribed gas valuation standards and are inconsistent with regulations in 30 CFR, the lease provisions would govern.

MMS is amending NTL-5 to refer only to the regulations in 30 CFR, and not the regulations in 25 CFR, when Indian lands are involved. This is consistent with MMS's practice and the Indian leases which specifically incorporate the regulations in 30 CFR. Also, the regulations in 25 CFR and 30 CFR are not inconsistent. The regulatory provisions of 25 CFR also are included in most Indian oil and gas leases, hence the provisions will be considered by MMS in any value determination. Moreover, the Bureau of Indian Affairs has proposed to remove gas valuation regulations from 25 CFR and rely exclusively upon regulations in 30 CFR (48 FR 31978, July 12, 1983). Final rules are expected to be issued soon.

The practical effect of the change to NTL-5 is to rescind prospectively the basic valuation provisions of that Notice for all gas production on onshore Federal and Indian lands with the limited exception of production from wells with arm's-length contracts prior to June 1, 1977. Thus, the vast majority of production will be valued in accordance with the provisions of 30 CFR 206.103, which gives MMS flexibility in responding to market changes, rather than the provisions of NTL-5 which are applied inflexibly regardless of market changes. As explained in the preamble to the Notice of Proposed Modification to NTL-5, NTL-5 was adopted because of the increasing value of natural gas. Market conditions no longer are predictable; therefore, more flexibility in valuation is necessary.

NTL-5 was issued, by its terms, "pursuant to the authority prescribed in the Oil and Gas Operating Regulations, 30 CFR 221 [now, in part, 30 CFR 206.103] (42 FR 22610, May 4, 1977). Any valuation method required by NTL-5 consequently is authorized by 30 CFR 206.103. Hence, with the change to NTL-5 adopted today, MMS may use the same valuation criteria which were in NTL-5, but also may consider other reasonable valuation criteria as permitted by 30 CFR 206.103 or other applicable sections in 30 CFR Part 206, Subpart C. The change to NTL-5 does not limit MMS's authority, it broadens MMS's discretion to consider alternative valuation criteria. MMS is not adopting any specific valuation method, such as arm's-length contract prices, to replace the removed provisions. The particular valuation method to be applied will depend upon the circumstances, although arm's-length contract prices, in many instances, will be the value. To further assist all parties, either interested in or affected by this amendment to NTL-5, MMS will conduct an informational outreach program which will include letters to payors advising them of the changes to NTL-5 and the transition to valuation under the regulations at 30 CFR 206. States, tribes, and industry will also be notified as part of the informational program.

MMS is retaining the provisions of NTL-5 which apply to sales from wells which were producing prior to June 1, 1977, and which are subject to an arm's-length contract entered into prior to that date. Under NTL-5 section I.A.1. and II.A.1., the base value for such sales is generally the higher of the contract price or a minimum of 18 per mcf. The redetermination provisions of sections I.B. and II.B. will remain in effect and could result in a higher base value.

MMS is retaining the above two provisions of NTL-5 for several reasons. When NTL-5 was originally adopted in 1977, it was the Department's intent to recognize contract price as value for the particular class of sales. MMS believes that it would be inequitable to rescind these provisions and possibly subject such sales to significantly increased royalty values. Moreover, many of the sales under these contracts remain under price controls pursuant to the Natural Gas Policy Act of 1978 (NGPA). These regulated prices are often fixed by the terms of the contracts. Therefore, the contract price in most instances will be the royalty value for this class of sales even in the absence of the NTL–5 provisions.

MMS is making the change to NTL–5 effective prospectively. MMS specifically requested comment on whether changes to NTL–5 should be retroactive and most comments addressed this issue, some recommending retroactive change and others only prospective change. Responses to specific comments are discussed below, but MMS concluded that there are several reasons not to make changes to NTL–5 retroactive. First, MMS has been enforcing NTL–5 through its audit activities and some payors voluntarily have been paying royalties in accordance with its provisions. However, other payors have not paid royalty in accordance with the requirements of NTL–5. If MMS were to rescind or modify NTL–5 retroactively, inconsistent royalty enforcement could occur. Because the change is prospective, MMS will enforce the provisions of NTL–5 as originally adopted until the effective date of this Notice of Modification. Second, MMS's royalty value regulations affect millions of dollars of royalties each month. Lessees and other payors must be able to rely on the application of existing regulations without concern about a retroactive change months later which could have significant economic consequences. Because lessees and other payors must comply strictly with MMS's royalty valuation rules, it is concomitant upon MMS to ensure that its rules credible and can be relied upon until changed prospectively.

NTL–5 as amended by this Notice refers to all of 30 CFR Part 206, not just 206.103. Thus, wet gas will be valued in accordance with the provisions of 206.105 and 206.106 and other provisions in Part 206, as applicable.

The product value regulations in 30 CFR are currently being revised and MMS will propose specific valuation criteria to be applied in different circumstances. When adopted, those rules will replace NTL–5 as amended by this Notice. See 51 FR 4507 (February 5, 1986).

III. Response to Comments Received on the Notice of Proposed Modification

The notice of proposed modification to NTL–5 was published in the Federal Register on January 3, 1986 (51 FR 260). It provided for a public comment period which ended on February 3, 1986. The comment period was subsequently extended to March 3, 1986 (51 FR 4542). Eighty-five comments were received and were considered in preparing this final modification.

Of the 85 individual comments on the proposal to modify NTL–5, six either requested additional time to comment on the proposal or requested a copy of MMS's response to specific comments and did not address the isue of NTL–5 modification. The remainder of the comments were divided into the three major-issue groups.

(a) *Should Sections I.B. and II.B. "Redetermination of Royalty Values," be modified to give MMS added flexibility in the determination of royalty value?*

(1) A total of 28 responses were received regarding the advisability of modifying these sections of NTL–5. Fifteen commenters felt strongly that NTL–5 should be modified. However, the modification language proposed by MMS did not necessarily reflect their position. The commenters suggested that NTL–5 be modified "to not exceed fair-market value," or "to reflect market conditions," or "to accept proceeds received under arm's-length contracts." These three phrases were used interchangeably by the commenters and reflect their view that MMS should not retain a discretionary authority to establish value. The commenters thought MMS should provide a degree of certainty in establishing royalty value so lessees could enter into long-term contracts certain of thier royalty obligation.

MMS agrees with the respondents that flexibility in regard to royalty valuation imposes some uncertainty of royalty obligations for the lessee. Although a predetermined method of royalty valuation is preferred by both lessees and MMS, MMS has determined that reference the to existing rules in 30 CFR 206.103 is preferable until new, comprehensive product valuation rules are adopted. Proceeds under a contract are one of the valuation criteria which MMS may consider under 30 CFR 206.103.

(2) One of the 15 commenters suggested that the best way to achieve the NTL–5 modification and to alleviate lessee concerns was to issue the new gas valuation regulations as soon as possible. The regulations this commenter preferred would reflect the acceptance of gross proceeds accruing under arm's-length contracts as determinative of value.

MMS recognizes that the issuance of new gas valuation regulations would alleviate the disparity of valuation under NTL–5. However, until such rules are adopted, this final modification to the NTL–5 valuation method provides for valuation under current regulations that are more responsive to market conditions.

(3) Eight commenters preferred that NTL–5 be rescinded and that, if not rescinded, MMS should amend NTL–5 to accept gross proceeds under arm's-length contracts or fair-market value as indicative of value for royalty purposes. These commenters suggested that Sections I.B. and II.B. be clarified or modified to reflect the intent that value determined by MMS will not exceed fair-market value. One of the three commenters suggested that if amending Sections I.B. and II.B. should prove contrary to the laws and regulations, then MMS should rely solely on 25 CFR and 30 CFR to determine value.

The adopted final modification effectively rescinds most of NTL–5's specific valuation requirement and bases value in sections I.B. and II.B. in accordance with existing regulations in 30 CFR.

(4) A total of 15 comments were received concerning the workload requirements of MMS's proposed NTL–5 modification. Nine commenters believe that any modification to NTL–5 would be too burdensome for the lessee and for MMS. One of the nine commenters stated that the data collection requirements would be prohibitive for a modified NTL–5 to work properly. Another of the nine commenters explained that a value in some instances, such as for deregulated gas, was impossible to determine because there are no published price, volume information is not readily accessible, and companies are prohibited from exchanging price data. It was stated that all of these deficiencies add up to late payments by lessees and the assessment of late charges on royalties due to MMS. One commenter suggested that the Royalty Valuation and Standards Division (RVSD) of MMS should act to reduce workload with or without a modification to NTL–5. It was suggested that any new change to NTL–5 would cause an extreme hardship on RVSD that would ultimately result in MMS's acceptance of whatever royalty is reported.

Replacing the mechanical requirements of the existing NTL–5 with the more flexible valuation criteria in 30 CFR 206.103 will result in an increased workload for MMS. The effect of initiating the changes to NTL–5 on a prospective basis only alleviates a great deal of this concern. MMS continues to seek a method of gas valuation that is less manpower intensive and will address this issue in the forthcoming changes to the product value regulations.

(5) Six commenters believe that, in addition to the overly burdensome requirements of a change to NTL–5, the current Federal Energy Regulatory Commission (FER) regulatory proposals would cause even more confusion and burden to the valuation process. FERC continues to deregulate certain gas and continues to modify Orders 436 and 436–A to accommodate current gas price trends. FERC also is preparing to propose new rates for NGPA Sections 104 and 106 gas. All six of these commenters agree that using an NGPA ceiling price to determine gas royalty value does not establish fair-market value of the gas. The commenters added that the original intent of NTL–5 was that gas prices were "controlled" by the Federal Power Commission (FPC) at established area rates. It was stated that the old controlled rates under FPC are not synonymous with the ceiling rates established by FERC under the NGPA.

Three of the respondents commented on the apparent contradiction between MMS gas valuation policies and FERC pricing policies. One commenter thought that because producers of natural gas from Federal and Indian leases must make sales into a regulated market, MMS should coordinate its valuation proposals and directives with the FERC/DOE. Another commenter pointed out that FERC ceiling prices under the NGPA should not be substituted for FPC rates when NTL–5 calls for royalties to be paid on values which he cannot obtain.

The FERC/DOE pricing policies and MMS's valuation policies are not controlled by the same statutes and have different goals and legislative mandates to satisfy. At a time of rapidly rising gas prices, when FERC-establishing ceiling prices were being received by lessees, it was reasonable for MMS to tie its valuation methodology to these prices. MMS is not and has never been required to follow FERC policies when determining royalty values. MMS must maintain its mandated responsibilities to the public and to the Indian tribes and allottees.

(6) There were a total of 16 comments related to the payment of royalty on values considered in excess of fair-market value. The commenters agreed, in general, that such a demand was confiscatory and in violation of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 181, *et seq.*), the lease terms, and the Fifth Amendment to the U.S. Constitution. One commenter stressed that royalties demanded under NTL–5 may be invalid because of the decisions in *Gulf Oil Company* v. *Andrus*, 460 F. Supp. 15 (C.D. Calif. 1978), and *Marathon Oil Company* v. *Andrus*, 452 F. Supp. 548 (D. Wyo. 1978). One commenter stressed that the Mineral Leasing Act only requires royalty to be based on a reasonable market value and that any royalty demand in excess of what the commenter considered reasonable market value ignored arm's-length contract value and, therefore, was confiscatory. Also, it was stated that the Federal Government has violated the due process rights of the lessee. Two commenters stated that demanding royalties on values in excess of a reasonable fair-market value was a flagrant abuse of the Director's discretion to determine value for royalty purposes. As such, the demand is an arbitrary and capricious standard which results in the arbitrary confiscation of monies belonging to the lessee. One commenter stated that a demand for excessive royalties is unlawful and unsatisfactory because it is a departure from prior agency practice. One commenter also believes that, in addition to the foregoing, a demand based on modified NTL–5 standards would be unlawful because the demand is based on *ex post facto* (U.S. Const., Art. 1, 9, Cl. 3) rules.

The legality of NTL–5 and the establishment of royalty value is well documented. The Secretary of the Interior has considerable discretion to establish royalty value. Value determinations under 30 CFR will reflect changing market forces in the exercise of the Secretary's authority. The prospective nature of the final notice will avoid legal concerns associated with retroactive changes in rules.

(7) At least 14 commenters point out that MMS has advised industry since 1983 that new gas valuation regulations and guidelines would establish "gross proceeds" received under a negotiated arm's-length contract as the proper valuation standard for calculating royalties. Believing that the new valuation procedures would soon be published and that MMS had already adopted those procedures, industry began calculating and paying royalties accordingly. Part of this belief resulted from meetings held by MMS in 1983 and from a letter dated August 4, 1983, from the Associate Director for Royalty Management to Phillips Petroleum Company, indicating that gross proceeds received under an arm's-length contract was the proper basis for computing royalties. One commenter pointed to an apparent MMS commitment to the gross proceeds valuation concept from the publication of a notice in the January 18, 1984, **Federal Register** which stated that MMS will accept arm's-length prices as the value basis for royalty purposes. Commenters argue that NTL–5 is inconsistent with the implied valuation policy of MMS to base royalties on gross proceeds received under arm's-length contracts. They point out that because MMS has given conflicting valuation instructions and statements over the past few years, largely because no formal guidelines were issued, a considerable amount of confusion exists in the industry regarding valuation procedures. In general, these commenters argue that revenue received under an arm's-length contract is the only fair and equitable method of computing royalties.

Three commenters pointed out that the original valuation provisions of NTL–5, as well as the proposed revision, are inconsistent with valuation instructions given in MMS's *Payor Handbook*, particularly with respect to the so-called "three method calculation." Noting this, the commenters concluded that valuation practices were not uniform within MMS and that this created confusion for the payors. One of the commenters also noted that basing royalties on the maximum NGPA price was never provided for in the *Payor Handbook*.

The adoption of this final Notice will help to alleviate the concerns expressed in regard to confusing and conflicting valuation guidance. MMS hopes to completely alleviate these problems with the publication of new valuation regulation, which, in turn, will be used to create new instructions for the *Payor Handbook*. If any lessees have paid royalties at values less than required by NTL–5, MMS will take action to obtain the additional royalties due plus applicable interest, penalties, and (or) assessments.

(8) Nine commenters responded to the equal treatment of Federal onshore, offshore, and Indian tribal and allotted leases for royalty valuation purposes. All nine commenters stated that, for valuation purposes, all leases should be treated equally by basing royalties on proceeds received by the lessees when they represent fair-market value. One commenter advised that this type of equal treatment follows the recommendations of the Linowes Commission in its Report on Fiscal Accountability of the Nation's Energy Resources (1982). Two commenters believe that royalty valuation should distinguish between Federal and Indian leases because many Indian leases contain special language in the royalty provisions. Also, the recent decision in *Jicarilla Apache Tribe* v. *Supron*, — F.2d— (10th Cir. 1986), is an indication

of the need for differing valuation on Federal and Indian onshore leases. One commenter stated that the Federal lease requires fair royalty based upon a reasonable value but that MMS must maximize royalties on Indian lands rather than merely accept proceeds based on spot sales, Special Marketing Programs (SMP), or trade negotiations. Several parts of NTL–1 and NTL–5 were addressed by one commenter as needing change. The commenter stated that standards should be developed under NTL–1 to address both non-arm's-length contract situations and nonregulated gas situations. For NTL–5, MMS should further define arm's-length transactions, clarify part II.B.2., and address intrastate sales to a greater degree.

MMS's new valuation regulations will address the issue of a single standard or dual standard for royalty valuation for Federal and Indian lands. This issue will receive considerable attention by the Royalty Management Advisory Committee, comprised of industry, State, and Indian representatives, in its review of royalty valuation regulations. In the meantime, MMS will make value determinations under NTL–5 as amended in this Notice with due regard to its responsibilities to the Indians.

(9) Three commenters recommended that any proposed change to NTL–5 and/or any subsequent revisions in valuation policy should be considered by the Royalty Management Advisory Committee (RMAC). A fourth commenter suggested that any present action with respect to modification of present valuation policy is premature owing to the function of the RMAC (termed in the letter as the "National Advisory Committee") to review and guide Federal royalty valuation. A fifth comment echoed this objection in view of DOI's present effort to revise the valuation regulations.

MMS agrees that RMAC review would be helpful, but the time constraints imposed by the immediacy of the NTL–5 valuation problem require that changes to NTL–5 must progess as rapidly as possible.

(b) *As an alternative to the modification of Sections I.B., I.C., II.B., and II.C., should MMS rescind NTL–5 in its entirety or in part?*

(1) A total of 41 commenters suggested that NTL–5 be rescinded either entirely or in part. These were 22 comments that indicated the MMS's NTL–5 proposal is unnecessary. The opinion of 10 commenters is that the proposal is unnecessary because there is adequate authority to merely overrule NTL–5 and use proceeds received from arm's-length negotiated gas contracts as acceptable for royalty valuation purposes. Two of the 10 commenters believe that 25 CFR and 30 CFR currently contain sufficient authority to use prices in arm's-length negotiated gas contracts as acceptable value for royalty purposes. One of the 10 commenters suggested that 25 CFR and 30 CFR need revision to cap royalty valuation at the price received under arm's-length negotiated gas contracts. One commenter of the 10 advised that MMS did not have to adhere to NTL–5. Another commenter of the ten proposed that value should be the price determined by both arm's-length and non-arm's-length contracts. One of the 10 commenters suggested that if MMS was not satisfied with the price received under arm's-length contracts, it should take its gas in-kind.

Eight respondents thought that any revision or rescission of NTL–5 was unnecessary if NTL–5 is to be superseded by the issuance of new product valuation regulations. These respondents assumed that the gas valuation regulations would call for the acceptance of proceeds under arm's-length contracts. Four of the eight respondents believed that, as a stopgap measure, MMS should accept proceeds received under arm's-length gas contracts until the proposed gas valuation regulations are issued. One of these four commenters believes that generic regulations will not suffice and MMS should not wait on the new proposed gas valuation regulations. Another of the four commenters proposed, in addition to the acceptance of proceeds received by the lessee as valuation for royalty purposes, that in situations where gas is used without sale MMS must value the gas. No indication was given as to what valuation guidelines MMS should use. One of the four commenters believes that MMS, through its history of valuation action, has created a "rule of property" by accepting proceeds from arm's-length gas contracts for royalty purposes.

NTL–5 was originally promulgated after notice and opportunity for comment. MMS is required to comply with its terms until it is changed through another rulemaking. Because MMS has determined not to make the change retroactive, NTL–5 as originally adopted will be enforced until the change adopted in this Notice becomes effective. The change to NTL–5 is necessary because the new product value regulations, which will completely replace NTL–5, will not be promulgated in final form until 1987.

The reissue of valuation regulations at 30 CFR 200 (August 1983) did not supersede valuation requirements under NTL–5. The regulations were placed at part 200 as a matter of instituting Secretarial Order 3087 which directed that the authority for product valuation matters be placed under MMS. The various product valuation regulations were simply recodified in this part of the Code of Federal Regulations.

(2) Nine commenters suggested that NTL–5 be rescinded but offered no further guidance to MMS as to how, or under what authority, gas valuation would take place. One of the nine commenters who suggested that NTL–5 be rescinded said that a modification of NTL–5 would adversely affect valuation under the NTL. Further, the commenter believes that MMS will abdicate its authority and responsibility to obtain fair-market value if NTL–5 is changed in any way. Eight commenters preferred that NTL–5 be rescinded, but in lieu of that action, that NTL–5 should be modified in various ways.

Six commenters suggested that NTL–5 be rescinded and the new gas valuation regulations be issued as promptly as possible. Most of these commenters assumed the new gas valuation regulations would adopt arm's-length negotiated gas contract prices as the standard for valuation.

Six other commenters preferred that NTL–5 be rescinded, and in lieu thereof, that MMS adopt the arm's-length negotiated gas contract price as the acceptable standard for royalty valuation. One commenter thought that no royalties should be due on take-or-pay monies received by the lessee.

As explained in the Summary of Provisions Adopted section of this notice, MMS is in effect rescinding NTL–5 for most onshore gas production and returning to the basic valuation provision in 30 CFR 206.103. Any valuation required by NTL–5 as originally adopted likewise is authorized by 30 CFR 206.103. Hence, the change adopted by this Notice does not diminsh MMS's authority. The principal change is that prospectively MMS will be able to consider more than one option to determine value based on market conditions. Thus, onshore valuation will be accomplished similarly to offshore gas valuation pursuant to 30 CFR 206.150.

(3) One respondent thinks that MMS's NTL–5 proposal is unnecessary because the Secretary has (and always had) the board discretion to take into account various parameters in determining gas valuation on a case-by-case basis. In this regard, any one particular law or regulation (e.g., NTL–5) may be of secondary importance to the value issue at hand.

NTL–5 was adopted after notice in the Federal Register and opportunity for comment. It is binding upon the agency. MMS does not have the discretion to ignore its provisions in any particular situation unless it can be determined that NTL–5 does not apply.

(4) Fifteen commenters responded to the outdated philosophy of NTL–5 and its application to a gas market that no longer exists. The gas market for which NTL–5 was developed was controlled by FPC by requiring interstate gas suppliers to adhere to an area rate maximum pricing philosophy. The unequal treatment of interstate sales versus intrastate sales created a serious product value diffferential. Congress balanced the intrastate and interstate markets and the problem created by the rapidly changing gas market by passing the Natural Gas Policy Act (NGPA) of 1978. Two commenters feel that, by this action, Congress effectively made NTL–5 inoperative because it was tied to the old FPC pricing philosophy that was superseded by the NGPA. Six commenters stated that because of the rapidly changing gas market:

- FERC prices are not relevant to fair-market value;
- MMS should recognize reduced market-out prices and the prices in Special Marketing Programs (SMPs) which are reflections of the 1980's gas market;
- FERC continues to deregulate and restructure NGPA pricing categories and create new regulations in response to the 1980's gas market;
- MMS should accept the price realized by producers or take its share in-kind and experience the market realities; and
- The current gas market is a producer's dilemma.

MMS agrees that NTL–5 as originally adopted is not sufficiently flexible to be an effective calculation method in today's gas market. That is why MMS proposed to amend or rescind it. This modification provides the flexibility necessary to alleviate concerns regarding valuation under NTL–5, but the market is the only fix for demand of a product at a price sufficient to justify its extraction and use.

(5) Because NTL–5 was issued when gas pricing was under FPC regulation (and during a time when gas prices were escalating), ten commenters pointed out that NTL–5 was inconsistent with the provisions of the NGPA and, therefore, was obsolete with passage of the NGPA. Three problem areas were primarily addressed:

(i) NTL–5 does not recognize the economic reality of establishing gas values under NGPA. NTL–5 was adopted under FPC (pre-NGPA) regulatory control of interstate gas; FPC rates were generally established to provide adequate returns (profits) for the sale of interstate gas and to diminish the discrepancies between interstate and intrastate markets. Under FERC (post NGPA), the concept was to permit gas prices to escalate to encourage more exploration and development. The NGPA also brought intrastate gas under regulatory control. Thus, the FPC pricing and FERC pricing are to cross purposes and one cannot be substituted for the other as proposed in NTL–5.

(ii) Establishing royalty values on the basis of maximum lawful prices is at odds with some of the basic objectives of NGPA. One commenter stated his feelings as follows:

> The concept of maximum lawful pricing set forth by NGPA gives validity to the ceiling prices only to the extent that they are exceeded by the prices allowed under the contract: NGPA Section 1-1(b)(9) mandates that no maximum price will supersede or nullify as lesser price established by the contract. Further evidence of this respect for contract sanctity is demonstrated by FERC Order 23–A, which interprets the operation of indefinite price escalator or 'area rate' clauses under NGPA. Based on FERC's study of Congressional intent, the Order clarified that these contractual provisions authorize collection of the applicable NGPA ceiling rates only to the extent the parties intended that they do so.

Because ceiling prices are not market prices, the commenters argued that it is basically unfair to base royalties on maximum lawful prices when the producers cannot obtain these prices under contract.

(iii) NTL–5 is even more at odds with economic reality when valuing unregulated/deregulated gas, because the value of this gas in a field is based on the majority "base floor price" of gas produced from the field. Again, the commenters think that basing royalties on such prices is not fair to those producers who can only receive prices, under contract, that are less than the computer "base" price.

MMS agrees that a more flexible valuation rule is desirable because of changes to the gas market. Thus, in this notice, MMS is significantly amending NTL–5 to provide more flexibility in valuation.

(6) Four commenters expressed concern that the valuation provisions of NTL–5 are unfair to small producers who cannot negotiate sales contracts under the same conditions that a large company can, expecially because that NTL–5 is expecially onerous on them because the royalty values will not necessarily reflect market value (i.e., actual sale proceeds) and because they have no leverage to negotiate higher prices or adjustments to reflect changing market conditions. One commenter even indicated that his company was threatened with shut-ins or permanent disconnects if it did not agree to reduce prices, and that the reduced prices were accepted only as a last resort to maintain production.

There is nothing in the gas market to suggest the unequal treatment of large versus small producers. It is a fact that many large producers will not venture into remote and/or small production fields for fiscal reasons. Many independent and/or small producers choose to operate in these areas that have competitive disadvantages inherent with the small/remote characteristics. The Federal Government does not force these situations on lessees, but rather they are conditions that, for the most part, are known up front. The adopted final modification will take into account the expressed relevant concers of small and large producers alike.

(c) *If Sections I.B. and II.B are modified or rescinded, should Section I.C. and II.C. amended to make changes in Section I.B. an II.B effective retroactivity?*

(1) There were 59 comments on whether any change to NTL–5 should be retroactive. Nineteen commenters stated that NTL–5 should be rescinded and that a policy of accepting arm's-length contract proceeds as the value for royalty purposes be adopted. Ten of the 19 respondents thought that NTL–5 should be rescinded to some date in 1982, the year identified by a majority of commenters as the time when the gas market and gas sales contracts shifted from price increases to price decreases ("marketing-out"). A specific date remains questionable. However, it appears that the first market-out contract clause to be invoked occurred on or about May 1, 1982. Five of the 19 commenters though that 1978 was the proper date for retoactive rescission of NTL–5. The commenters were in agreement that the NTL should have terminated with the effective date of the Natural Gas Policy Act (NGPA) on December 1, 1978. One of the 19 commenters though that NTL–5 should be rescinded entirely or back to May 1, 1977, because NTL–5 never addressed the valuation of gas properly and should not have overshadowed the regulation at Titles 25 and 30 of the Code of Federal Regulations (CFR). Four respondents of the 19 did not specify a date to which NTL–5 should be retroactively rescinded but suggested

that NTL-5 in any particular case be retroactive to:

- The date the producer negotiated lower prices in any arm's-length situation;
- Any open audit periods;
- Achieve a fair result; or
- To cover extreme hardship cases but not later than March 1, 1984.

Eighteen commenters thought that NTL-5 should be modified retroactive to various dates. Seven of the 18 commenters felt that modifications to NTL-5 should be retroactive to some date in 1983. Most of these commenters believe the date established should coincide with the lessee's lowered gas prices under negotiated arm's-length contracts. Six of the 18 respondents suggested that NTL-5 should be modified retroactive to the individual dates that gas contracts were either marketed-out or renegotiated to a lower price. Three of the 18 respondents though that NTL-5 modifications should be retroactive to some date in 1982. Three other respondents of the 18 commenters though the earliest possible date for retroactive changes to NTL-5 is the proper date. One respondent each, of the 18 commenters, chose effective dates of 1977, 1978, and 1984 as the preferred date that changes to NTL-5 should become retroactive. Again, the 1977 date coincides with the issuance of NTL-5 (May 1, 1977), the 1978 date coincides with the effective date of the NGPA (December 1, 1978), and the 1984 date is the date suggested by MMS (March 1, 1984) in the Federal Register notice of January 3, 1986.

Fourteen respondents do not want any modification of NTL-5 to become retroactive. Nine of the 14 commenters do not want the modifications to NTL-5 to be retroactive because they receive allocated revenues based on oil and gas production. The commenters believe that any retroactive change would seriously diminish their present and future revenue budgeting.

Two of the 14 commenters argued that any change to NTL-5 cannot be retractive because it would be illegal to do so. The commenters referred to *Continental Oil Company* v. *U.S.*, 184 F. 2d 802 (9th Cir. 1950), as supporting their position. Two other commenters of the 14 merely stressed that retroactivity was absurd or could not be done because it would affect the credibility of all NTL's and value determinations made by MMS. One of the 14 commenters advised that any changes to NTL-5 must be prospective only. The commenters warned that any retroactive effective date of NTL-5 modifications may be unconstitutional and a breach of MMS's Indian trust responsibility.

MMS has decided not to make the change to NTL-5 retroactive. NTL-5 as originally adopted will be effective and enforced until the effective date of the change in this Notice. MMS's reasons for not making the change retroactive are discussed above in the Summary of Provisions Adopted section of this notice. In additional to those reasons, it is evident from the comments that there was not a single, widespread occurrence which is definable and would clearly establish a date for retroactive change. Changes in the gas market were gradual and MMS took action to modify the rule when it became evident that more flexibility in valuation was necessary for the long term. Although certain inequities may result from enforcement of NTL-5, this is a necessary consequence of any valuation rule which applies to over 20,000 producing oil and gas leases, most with multiple selling arrangements.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The net effect of this rule will result in some reduction in royalty revenues but is not expected to be significant. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

It is hereby determind that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

Administrative Procedure Act

MMS has concluded from the comments received that the application of NTL-5 is causing certain inequities. Therefore, MMS has determined that pursuant to 5 U.S.C. 553(d), there is good cause to make this rule effective as soon as possible. This modification to NTL-5 will be effective the first day of the month following the date of publication of this Notice in the Federal Register so as not to create problems by splitting a production month.

Under the authority of the Secretary of the Interior contained in 30 U.S.C. 1751, the mineral leasing laws (as defined in 30 U.S.C. 1702) including 30 U.S.C. 189, 301-306 and 351-359, and 25 U.S.C. 396 and 396d, NTL-5 is modified as follows:

J. Steven Griles,
Assistant Secretary—Land and Minerals Management.

Dated: June 25, 1986.

Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL-5) is amended as follows:

* * * * *

I. Interstate Sales Subject to the Price Jurisdiction of the Federal Power Commission (FPC)—Replaced by the Federal Energy Regulatory Commission (FERC)

A. Establishment of Royalty Values

* * * * *

2. For sales from wells commenced on or after June 1, 1977, and which are subject to an arm's-length contract executed prior to, on, or after that date: for sales made pursuant to an arm's-length contract renegotiated on or after June 1, 1977; and for all sales not involving an arm's-length contract, the value for royalty purposes shall be established pursuant to 30 CFR Part 206.

* * * * *

II. Intrastate and Other Sales or Dispositions Not Subject to Price Jurisdiction of the FPC—Replaced by the Federal Energy Regulatory Commission (FERC)

A. Establishment of Royalty Values

* * * * *

2. For sales from wells commenced on or after June 1, 1977, and which are subject to an arm's-length contract entered into prior to, on or after that date; for sales made pursuant to an arm's-length contract renegotiated on or after that date; and for all sales or other dispositions not involving an arm's-length contract, the value for royalty purposes shall be established pursuant to 30 CFR Part 206.

* * * * *

VI. Production Disposed of Without Sale

The value for royalty purposes of gas disposed of without sale and for which royalty or other compensation is due will be calculated pursuant to 30 CFR Part 206.

[FR Doc. 86-16705 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan National Heritage Corridor Commission will be held July 29, 1986, beginning at 10 a.m. at Starved Rock State Park, Ottawa, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michign Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. 461 to implement and support the conceptual plan.

Matters to be discussed at the meeting will include committee reports, development of thematic structure for interpretation of the corridor, and discussion of the FY 86 and FY 87 budget.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-3481 (FTS 864-3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: July 18, 1986.

Charles H. Odegaard,

Regional Director, Midwest Region.

[FR Doc. 86-16793 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principle office: Domtar Inc., 395 de Maisonneuve Blvd. West Montreal, Quebec, Canada H3A 1L6—*Jurisdiction:* Canada (Federal)

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation:

(i) Domtar Fiber Products, Inc., c/o The Corporation Trust Company, 1209 Orange St., Wilmington, Delaware 19801 U.S.A.—Delaware

(ii) Domtar Industries Inc., c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware U.S.A.—Delaware

B. 1. Parent corporation and address of principle office: Hyponex Corporation, P.O. Box 510, Fort Wayne, IN 46801.

2. Wholly-owned Subsidiary or Division and state of incorporation:

a. Hyponex Corporation, R.R. #3 Garden Plains Road, Morrison, IL 61270—State Inc., Delaware

b. Hyponex Corporation, 332 Graham *Road, Imlay City, MI 48444—State* Inc., Delaware

c. Hyponex Corporation, Third & Mill Streets, P.O. Box 288, Grand Rapids, OH 43522—State Inc., Delaware

d. Hyponex Corporation, 2695 Cicero Road, Nobelsville, IN 46060—State Inc., Delaware

e. Hyponex Corporation, 9990 Colby Lake Road, P.O. Box 575, Perry, MI 48872—State Inc., Delaware

f. Hyponex Corporation, County Farm Road, P.O. Box 397, Adel, GA 31620—State Inc., Delaware

g. Hyponex Corporation, Baltimore Pike, P.O. Box 70, Oxford, PA 19363—State Inc., Delaware

h. Hyponex Corporation, 9899 Wausaukee Road, P.O. Box 217, Germantown, WI 53022—State Inc., Delaware

i. Hyponex Corporation, Locust Ridge Road, P.O. Box AD, Pocono Lake, PA 18347—State Inc., Delaware

3. Hyponex Corporation—Florida—State Inc., Florida.

a. Hyponex Corporation, R.R. #2, Box 138, Winter Garden, FL 32787State Inc., Florida

b. Hyponex Corporation, State Road 27, P.O. Box 61, Lamont, FL 32336—State Inc., Florida

4. Hyponex Corporation—Texas—State Inc., Texas.

a. Hyponex Corporation, P.O. Box 231, Hereford, TX 79045—State Inc., Texas.

b. Hyponex Corporation, Highway 171 North, P.O. Box 247, Cresson, TX 76035—State Inc., Texas.

c. Hyponex Corporation, Route One, P.O. Box 245, Huntsville, TX 77340—State Inc., Texas.

5. Hyponex Corporation—California—State Inc., California.

a. Hyponex Corporation, 495 Harkins Slough Road, P.O. Box 70, Watsonville, CA 95076—State Inc., California

b. Hyponex Corporation, 15978 El Prado, Chino, CA 91710—State Inc., California.

6. F.F. Smith & Company, Inc.—State Inc., California.

a. F.F. Smith & Co., Inc., 3120 Coke Street, P.O. Box 190, West Sacramento, CA 95691—*State Inc.*, California

7. The Hyponex Company, Inc.—State Inc., Georgia.

a. Swiss Farms, Roxbury Road, P.O. Box F, Philmont, NY 12565—*State Inc.*, Georgia

b. The Hyponex Company, Inc., 3489 Sawmill Road, Copley, OH 44321—State Inc., Georgia.

8. Hyper-Humaus Company——State Inc., New Jersey.

a. *Hyper-Humas Company, Road One,* Route 94, P.O. Box 131, Lafayette, NJ 07848—State Inc., New Jersey.

9. Bunyon Enterprises, Inc.——State Inc., Georgia.

a. Bunyon Enterprises, Inc., P.O. Box 4190, Jackson, GA 30233—State Inc., Georgia.

10. Bunyon Trucking Company—State Inc., Georgia.

a. Bunyon Trucking Company, P.O. Box 4190, Jackson, GA 30233—State Inc., Georgia.

11. Hyponex Corporation—Colorado—State Inc., Georgia.

a. Hyponex Corporation, 3 Assembly Court, P.O. Box 586, Fountain, CO 80817—State Inc., Georgia.

12. Hyponex Corporation—Missouri—State Inc., Missouri.

a. Hyponex Corporation, Route 2, P.O. Box 70A, Oran, MO 63771—State Inc., Missouri.

C. 1. Parent corporation and address of principal office: K mart Corporation, 3100 West Big Beaver Road, Troy, Michigan 48084.

2. Wholly-owned subsidiaries which will participate in the operations and their states of incorporation:

Bargain Harold's (U.S.A.), Inc.—Michigan
Bishop Buffets, Inc.—Iowa
Builders Square, Inc.—Delaware
Furr's Cafeterias, Inc.—Texas
Huck Fixture Company—Illinois
K mart Apparel Corp.—New York
Pay Less Drug Stores Northwest, Inc.—Maryland
Walden Book Co., Inc.—New York.

D. 1. Parent corporation and address of principal office: Kohler Co., 444