federal register

Friday
October 30, 1987

Part IV

Department of the Interior

Minerals Management Service

30 CFR Parts 208 and 209
Sale of Federal Royalty Oil; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 208 and 209

Sale of Federal Royalty Oil

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is issuing this final rulemaking to consolidate and revise regulations governing the sale of onshore and offshore Federal royalty oil. This final rule will establish uniformity within the regulatory text, provide industry with a more efficient and responsive Royalty-in-Kind (RIK) Program, and improve the Federal Government's administration of the RIK Program. The prior regulations, which are being replaced by this rulemaking, were developed from different statutory bases and consequently contained conflicting and overlapping requirements. This final rule, in combination with selective administrative changes, will ease the burden on all participants and improve the Federal Government's administration of the RIK Program.

EFFECTIVE DATE: December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch at (303) 231-3432, or James A. McNamee, Chief, Royalty-in-Kind Section at (303) 231-3605 in Lakewood, Colorado.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are James H. Mikelson, John W. Vidrik, and James A. McNamee of the Minerals Management Service, Lakewood, Colorado.

I. Background

Section 36 of the Mineral Lands Leasing Act of 1920 (common reference for the Act of February 25, 1920), as amended (30 U.S.C. 192), and sections 5 and 27 of the Outer Continental Shelf Lands Act (OCSLA) of August 7, 1953, as amended (43 U.S.C. 1334, 1353), authorize the Secretary of the Interior (Secretary) to sell royalty oil accruing to the United States from oil and gas leases issued pursuant to those Acts.

The MMS was established by Secretarial Order No. 3071 on January 19, 1982. Under that order and its subsequent amendments on May 10 and May 26, 1982, MMS was assigned responsibility for the RIK Program.

The MMS has completed a detailed review of the RIK Program. The review highlighted areas where changes should be considered and improvements could be made. One area identified as in need of revision was the regulations governing the sale of royalty oil in 30 CFR Parts 225, 225a, and 262 (subsequently recodified as 30 CFR Parts 208 and 209; see below).

In developing new RIK regulations, the principal objective was to establish one set of regulations for all royalty oil offered for sale under the RIK Program. The prior RIK regulations consisted of one set of regulations governing the sale of onshore royalty oil at 30 CFR Part 208 (formerly 30 CFR Part 225, which was recodified on August 5, 1983 (48 FR 35639)), issued pursuant to the authority in the Act of February 25, 1920, and a second set of regulations governing the sale of offshore royalty oil. The offshore regulations originally were issued by the Department of the Interior (DOI) at 30 CFR Part 225a, pursuant to the authority of the OCSLA. However, section 302(b) of the Department of Energy Organization Act, 42 U.S.C. 7152(b), transferred certain regulatory authorities over the sale of royalty oil to the Department of Energy (DOE), which issued regulations at 10 CFR Part 391.

Congressional repeal of section 302(b) of the DOE Organization Act in Pub. L. 97-100 and in Pub. L. 97-257 transferred the regulatory authority back to DOI from DOE. The DOE's 10 CFR Part 391 regulations were redesignated as DOI's 30 CFR Part 262 (48 FR 1181, January 11, 1983) and then redesignated as 30 CFR Part 209 (48 FR 35639, August 5, 1983).

The evolution of the prior regulations from different statutory bases, and from the different RIK Program objectives of two Federal agencies, adversely affected the wording of the text and the application of the regulations. Those inconsistencies, if left to continue, would have eventually led to further confusion and disruption in MMS's management of, and industry's participation in, the RIK Program.

In addition to the regulatory revisions, there were a number of administrative procedures reviewed by MMS. Improvements have been made to these procedures in order to streamline and simplify administrative functions within the RIK Program and make them more manageable for the Federal Government and less burdensome for industry. Regulatory and administrative changes are discussed below.

Notice of MMS's intent to revise the RIK regulations and make administrative improvements was first published in the **Federal Register** on November 10, 1982 (47 FR 50924), and comments were invited for a 60-day period ending January 10, 1983. Thirty-three responses were received by MMS from producers, refiners, and others interested in the RIK Program. The responses covered many topics, but the majority of the comments dealt with either (1) refiner eligibility requirements, (2) transportation or delivery issues, or (3) administrative fees.

On January 14, 1983, MMS also announced in the **Federal Register** (48 FR 1833) its intent to change the time periods for the sales of royalty oil. Some comments were also received from industry on this topic, although MMS had not solicited any at the time.

II. Summary of Rule Adopted

This final rule being adopted is substantially the same as the proposed rule. Therefore, discussion in the preamble to the proposed rule applies to the final rule. Based on comments received from the public to the proposed rule, certain changes were made. These changes are discussed below in sections III and IV, Comments Received on Proposed Rule—General and Specific by Section.

The final rule removes regulations at 30 CFR Parts 208 and 209 and consolidates and revises those regulations with a unified set of rules in 30 CFR Part 208 governing the sale of Federal royalty oil. This one set of regulations applies to sales of both onshore royalty oil and Outer Continental Shelf (OCS) royalty oil. The new regulations include regulatory changes to clarify definitions and administrative changes to improve the operational efficiency of the RIK Program.

III. Comments Received on Proposed Rule—General

The proposed rulemaking published January 20, 1987 (52 FR 2202), provided for a 30-day public comment period which ended February 19, 1987. General comments received during that time period are addressed in this section. Specific comments by section of the proposed rule are discussed below in section IV. The text of the adopted regulation has been changed to reflect comments, as appropriate.

Two commenters stated that the RIK Program is unnecessary because most areas have adequate supplies of crude oil at equitable prices available to small/independent refiners. One of these commenters stated that the Secretary must make a determination that small refiners lack access to equitably priced crude oil as a condition precedent to the implementation of the RIK Program. The commenters also stated that the methodology for, and subsequent findings of, the

determination should be published for comment.

This rule is a codification of the statutes and policies pertaining to the taking of oil royalties in kind for sale to eligible refiners. It is neither an election nor notice of intent to take Federal royalties in kind. Such elections to take royalties in kind will be made on a regional basis following individual determinations by the Secretary that eligible refiners in that region do not have access to adequate supplies of crude oil at equitable prices. The determinations will be published in the **Federal Register** concurrent with, or included in, the "Notice of Availability of Royalty Oil", as provided in § 208.4(a). There is no requirement that MMS undergo a formal process for such determinations, and MMS does not plan to institute one.

One commenter was concerned that the rule will have a significant negative economic impact on the Nation's small refiners and that MMS would, therefore, be required to perform a regulatory analysis with published conclusions under the Regulatory Flexibility Act. Specific reasons for this comment were not given, although the commenter expressed concern about surety and administrative fee requirements in its other comments.

The MMS disagrees. The MMS believes, and several commenters concur, that the rule is an improvement over the current rules, especially as it concerns surety requirements. These and administrative fee requirements are discussed in more detail in section IV.

There were several administrative comments, one of which stated, in essence, that not all interested parties were familiar with the Auditing and Financial System (AFS) and that they would appreciate a description of its operation.

The AFS and its requirements are discussed in detail in MMS's "AFS Oil and Gas Payor Handbook." In addition, MMS conducts payor training classes at various times and locations. Payors interested in further information should contact their MMS Lessee Contact Branch representative. Refiners interested in further information should contact the MMS RIK Section Chief at (303) 231-3605.

One commenter stated that offshore royalty oil not purchased in a sale by offshore eligible refiners should be made available to onshore eligible refiners.

Generally, most of the offshore oil offered in a sale is taken. If it were not, the OCSLA at 43 U.S.C. 1353(b) would allow MMS to sell any excess by competitive bid. However, at this time, MMS has elected not to use the competitive bid procedures. Therefore, unless a refiner meets the OCSLA eligibility criteria, it will not be eligible to purchase offshore royalty oil.

One commenter called for 3-year contracts and suggested sanctions for early terminations.

The MMS plans to have 3-year terms for most contracts in the future, but does not support the idea of sanctions for early terminations because the conditions under which refiners operate are too variable. It should be noted that the administrative fees are nonrefundable and, therefore, the refiners have an investment in the form of the initial contract fee, which should serve as an incentive to maintain their contracts.

One commenter was concerned that the States' shares of the initial estimated billings for a month's supply of royalty oil would not be distributed to the States in accordance with 30 U.S.C. 191. The same commenter was concerned that there is no "date certain" for payments in the rule and that there is a 45-day delay in billings.

The MMS distributes the revenue from the estimated billings to the States in the same manner and within the same amount of time as it distributes revenue from the actual billings. One of the reasons for the initial estimated billing is to negate the effect of the 45-day delay in billing by effectively making revenues available at the same time whether royalties are paid in value or in kind. The 45-day delay cannot be shortened because of current AFS reporting and report processing requirements. The "date certain" for payments fluctuates depending on the nature of the bill and, therefore, cannot be specified in the rule. Normally, payments from the purchasers for the monthly billings are due at MMS on the last day of the month billed.

Finally, one commenter suggested that MMS add a provision to specifically provide for collections from a lessee for undervaluation of royalty oil taken in kind when such undervaluation is a result of a reporting error and the correct amount cannot be recouped from the purchaser. Alternatively, the commenter stated that MMS should be liable for the States' shares of undervalued royalty oil.

The MMS does not believe that such provisions are necessary because there are sufficient protections already in place in existing rules and regulations.

IV. Comments Received on Proposed Rule—Specific by Section

Section 208.2 Definitions

Five commenters responded to the specific request for comments as to whether or not onshore eligibility requirements should be modified to limit the class of eligible refiners to "small refiners" as that term was defined in section 3(4) of the Emergency Petroleum Allocation Act (EPAA) of 1973. All five stated that size criteria should be added to the independence criteria for onshore eligibility. There were no negative responses to this proposal, although one refiner commented that both onshore and offshore eligibility should be tied to the Small Business Administration (SBA) definition.

The MMS agrees that revising the onshore eligibility criteria to include the size determination contained in the EPAA would be beneficial in that it would limit the eligible class to those refiners that have the most need for the RIK Program. The necessary revisions have been made to subparagraph 208.2. The MMS was precluded from limiting the size for onshore eligibility to the SBA criteria by the *Plateu* decision (*Plateau, Inc.* v. *DOI*, 603 F.2d 161 (10th Cir. 1979)), but the EPAA limitation is considerably less restrictive than the SBA limitation. The SBA limit currently refers to refiners with no more than 45,000 barrels per day capacity, whereas the EPAA limit is 175,000 barrels per day. Therefore, more refiners would be eligible for royalty oil.

In the *Plateau* decision, the Court of Appeals held that, for sales of onshore royalty oil pursuant to the Act of February 25, 1920, DOI could not limit eligible refiners to those that meet the SBA criteria. The Court of Appeals, in reviewing the legislative history of 30 U.S.C. 192, indicated what the proper scope of the limitation should be:

> In explaining the purpose of the bill, the Senator (O'Mahoney) identified "small refiners" as those "who do not own and operate their own producing leases." (91 Cong. Rec. 1760 (1945)) . . . . The Secretary of the Interior, in expressing his views on the bill to the committee, had objected to the word "smaller" as being too *indefinite . . . . The basic distinction drawn* by the Secretary echoed the one recognized by Senator O'Mahoney: The Secretary differentiated between "integrated companies" and refiners "not having their own source of supply for oil . . . ." The version of the bill ultimately enacted defined the targeted refineries as those "not having their own source of supply for crude oil." (603 F.2d at 163.)

The MMS believes that the revised definition at § 208.2 for onshore

eligiblity is consistent with the intent of the statute and the *Plateau* decision.

One commenter recommended the addition of a definition for "preference eligible" refiner and another proposed that the definition of "independent refiner" be clarified. The latter commenter also recommended that "refinery capacity" be more clearly defined.

The MMS agrees with the first two comments, and has incorporated these suggestions within § 208.2. The MMS will, however, defer the question of refinery capacity. Because there are currently no capacity certification procedures in place, there is no certain method for determining capacity. The MMS does not wish to establish an arbitrary method, and will, therefore, continue to accept the capacity data submitted by refiners, subject to review, until further notice.

One commenter requested clarification of the definition of "oil" as it pertains to condensate; specifically, whether or not liquids derived from a processing facility would be exempt from the RIK Program.

The MMS does not intend to include in the RIK Program liquids that are recovered by means of a manufacturing process. The liquids intended to be excluded from the RIK Program are those that would meet the definition of natural gas liquids (those liquefiable hydrorcarbons that are recovered through the processing of natural gas). Any liquid hydrocarbons which meet the definition of oil, and thus are to be treated as oil under the applicable statutes, may be included regardless of whether they are recovered at the lease or at a point remote from the lease (such as reseparation facility at the inlet of a gas plant).

One commenter stated without elaboration that the definition of lessee could result in undue burdens on an operator, particularly in OCS operations. The same commenter stated that it must be made clear in the definition that "royalty oil" does not include "working interest" oil (commenter's term) as described under section 8(b)(7) of the OCSLA. This commenter also stated that oil taken in kind should be prorated among the various working interests if only a portion of the available royalty oil is taken in kind from a large jointly owned property.

The definition of lessee contained in this rule is consistent with that in the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701, and is used for that reason. The definition of royalty oil is not meant to encompass oil set aside for small refiners under section 8(b)(7) of the OCSLA. Section 8(b)(7) oil, commonly referred to as "20 percent set-aside" oil, is not royalty oil and has no bearing on this rule. If the Federal Government's royalty oil is taken in kind, that does not relieve the lessee of its obligation also to make oil available in accordance with section 8(b)(7). Likewise, if a lessee is selling production in accordance with section 8(b)(7), that does not limit the Secretary's discretion also to take royalty oil in kind. Finally, any requirement that all working interest owners have a pro rata share of royalty oil provided under this rule is an administrative matter among the owners and should be a function of the applicable agreement(s) among them.

Section 208.4 Royalty Oil Sales to Eligible Refiners

One of the commenters stated that the proposal is premature and should be withdrawn pending completion of the 30 CFR Part 206 rulemaking, and another stated that it was inappropriate to refer to 30 CFR Part 206 when it is being revised and is open for public comment. In related comments, several commenters proposed various methods of valuation for royalty oil taken in kind, ranging from using the same methods currently in 30 CFR Part 208 and 30 CFR Part 209 to using competitive bidding. The options included using the highest posted price, using an average of posted prices, and using averages of values reported by the operators. One commenter specifically recommended that MMS retain the definitions of "market value" and "fair market value" because of statutory restraints. This commenter states that the value of royalty oil taken in kind could not be tied directly to the value of royalties paid in value.

The MMS agrees that the method for determining the value of offshore royalty oil taken in kind is limited by the provisions of the OCSLA. Therefore, MMS has added the definition of fair market value at § 208.2 and provided for its use in the valuation of offshore royalties taken in kind in § 208.4(b)(2). The only restriction in the statutes for onshore RIK valuation, however, is that the royalties be sold at not less than "market value," a term which is not defined in the statutes. The MMS is of the opinion that it will be operating within the intent of the pertinent legislation if onshore royalties taken in kind are valued the same as royalties paid in value and, therefore, MMS will value it in accordance with the provisions of 30 CFR Part 206. This practice should not affect, or be affected by, the rulemaking procedure for 30 CFR Part 206. It is important to note that the value for onshore royalty oil will be the same whether royalties are taken in kind or paid in value and, therefore, the refiners will not be able to negotiate their own prices with the lessees for the royalty oil, which was a concern of some of the commenters.

One commenter stated that lessees have no obligation or right to value royalties taken in kind and that it is the responsibility of MMS to determine value.

The MMS agees that it has the responsibility to make final determinations of value, but this is also true when royalties are paid in value. The lessees or payors will have no more value-reporting responsibilities placed on them as a result of this rule than they would have if they reported in value. The lessees or payors will report the same values for royalty oil taken in kind that they would report if they were paying the royalties in value.

The MMS specifically requested comments on whether the use of an auction technique for the disposal of royalty oil would be desirable. One commenter supported auctions with established floor prices and another stated that it would be an effective means of determining true market value. Eight commenters opposed auctions, however, with most voicing strong oppostion. The consensus was that auctions would be counter to the underlying purpose of the RIK Program because the resultant prices received for the royalty oil would not be equitable.

The MMS agrees with the opposition comments at this time. Therefore, MMS does not anticipate conducting auctions in the foreseeable future.

Several commenters addressed the issue of administrative fees, but none voiced outright opposition. Two stated that the fees should be determined on the basis of volume rather than number of leases, one stated that they should be the same for all refiners, and one stated that the initial contract fees should be enough to cover 50 percent of the costs of the RIK Program. In a related comment, one commenter pointed out that the administrative fee will result in an increase in the price charged for the RIK oil. This comment was made as a statement of fact and not a protest.

The proposed methodology for the recoupment of RIK Program administration costs is intended to reflect MMS's actual administrative efforts. Although certain costs are incurred in fairly equal amounts for all contracts, contracts that involve a greater number of leases entail greater administrative effort. The costs are not

related to volume, nor are the efforts for all contracts the same. The initial contract fee is the same for all contracts because of the similarity of certain administrative costs, but the variable fees cannot be equal because of the reasons mentioned above. Finally, the fees are not additional royalties or bonuses and are not accounted for as such. They are necessary to recover the administrative costs of the RIK Program. Such fees are not shareable with the States pursuant to 30 U.S.C. 191.

One commenter stated that interim sale decisions should be made on a case-by-case basis and that the documentation required by interested refiners should not be more extensive than that required for normal secretarial determinations of need.

The MMS is not precluding interim sales altogether and will consider each case separately. However, such sales would only be held in the event substantial amounts of royalty oil become available between sales. This would not include oil previously offered and not taken in a sale or taken and then turned back after a sale. The documentation requirements would not be excessive, but the refiners would have to convince MMS that there is an immediate need.

Section 208.5 Notice of Royalty Oil Sale

One commenter stated that participation in reallocations of oil should be voluntary. The MMS concurs and has clarified this requirement in the adopted rule.

The MMS asked for comments as to whether or not geographic preferences should be granted in sales of offshore royalty oil as well as sales of onshore royalty oil. Six commenters specifically favored the proposal, and one did not. One other commenter stated that any refiner that qualified under the SBA size-determination criteria should be allowed to participate in sales involving Gulf of Mexico OCS leases regardless of location.

The MMS believes that geographic preference for both onshore and offshore sales is desirable and has changed the rule where applicable. The determination as to which applicants for a given sale will be considered for preference eligibility will be made prior to, and published in, the applicable "Notice of Availability of Royalty Oil." The specific criteria for preference eligibility may not be the same for each sale, but MMS anticipates that eligible applicants directly and substantially involved in the crude oil market for the given area will generally be included in the class.

Section 208.7 Determination of Eligibility

One commenter recommended a change in the lottery procedures used during royalty oil sales and proposed a new section giving such procedures for inclusion in the rule. Other commenters also mentioned that the current lottery procedure results in inequitable allocations, the effects of which are compounded by the procedure used for determining administrative fee distribution.

The MMS is exploring ways to improve the sale procedures. However, MMS believes that it should maintain flexibility in this regard and, therefore, not address specifics in the rule. The MMS will publish specific procedures for each sale in the applicable "Notice of Availability of Royalty Oil." The MMS will also attempt to provide more information concerning leases offered in sales, as requested by one commenter.

Three commenters mentioned that MMS should retain flexibility concerning contract suspensions and exclusions of nonoperating refineries from sales because of the possibility of "force majeure" occurrences.

Contract suspensions and exceptions to the policy of excluding nonoperating refineries pursuant to the provisions of paragraph 208.7(g) are administratively burdensome to MMS, operators, and payors. Contract suspensions will not be allowed except as provided in § 208.17

One commenter recommended that MMS add a section specifically excluding refiners that owe under previous contracts.

The MMS concurs and has added § 208.7(h) to the final rule. The restriction has been expanded to encompass all delinquent balances by affiliated entities. However, if a purchaser or affiliated entity has appealed a billing and posted a surety in accordance with the contract terms and applicable MMS regulations and orders, the balance will not be considered delinquent.

One commenter stated that the total capacities of all affiliated refineries should be used in determining eligibility. This is MMS policy.

Section 208.8 Transportation and Delivery

Six commenters voiced serious concern over the provisions of proposed § 208.8(e). Most were concerned that MMS could establish inaccessible delivery points and then require the operators to designate alternate delivery points at operator or lessee expense. One of the commenters stated that MMS should bear the cost of transportation if the delivery point is not on or adjacent to the lease and another stated that operators are not legally obligated to incur any delivery costs for RIK oil.

The concern created by the proposed rule is apparently the result of unclear provisions, and MMS has rewritten § 208.8 in an attempt to clarify this and other matters discussed below. Onshore leases typically contain the provision that royalty oil taken in kind must be delivered by the lessee on or adjacent to the lease at no cost to the lessor in tanks provided by the lessee. If this can be accomplished, there should be no problem providing the royalty oil to the purchaser. However, in instances where onshore oil flows directly from the wellhead into a closed pipeline system or is otherwise inaccessible on or adjacent to the lease, the operator must designate an alternate delivery point and deliver the royalty oil to that point at the operator's or lessee's own expense. This provision merely implements onshore lease provisions.

The offshore leases which allow MMS to designate onshore delivery points also provide for payment of certain transportation costs to such points, and this is provided for in § 208.8(b). The MMS designated onshore delivery point will generally be the first onshore point at which the price of the royalty oil, including transportation costs, may be established and at which the purchaser will be able to exchange or take delivery of the oil. An onshore delivery point for offshore royalty oil will not necessarily be a location where there is physical access to the oil. This has been clarified in the definition at § 208.2. The costs of transportation occurring prior to the designated delivery point will be included in the price of the royalty oil billed to the purchaser. The MMS will reimburse the lessee for the reasonable costs of transportation to the designated delivery point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR Part 206. Beyond the designated delivery point, transportation costs or exchanges of oil and related transportation costs will be the sole responsibility of the purchaser.

In related comments, five commenters stated that the provisions of 30 CFR Part 206 do not require MMS approval of transportation costs and that operators should be reimbursed for 100 percent of the costs associated with transporting the royalty oil to the designated delivery point. One commenter objected to referring to 30 CFR Part 206 while it is in the rulemaking process. Three commenters stated that the method and timing of transportation reimbursements should be addressed in this rule.

The use of the phrase "approved by MMS" in the proposed § 208.8(c) was inappropriate and it has been changed to "determined pursuant to 30 CFR Part 206" in the final rule at § 208.8(b). The question of whether or not 100 percent of the costs should be reimbursed is outside of the context of this rule and should be addressed in the rulemaking process for 30 CFR Part 206. Likewise, discussions of the method and timing of transportation reimbursements are beyond the scope of this rulemaking. These procedures are addressed in proposed 30 CFR Part 206 and the "AFS Oil and Gas Payor Handbook." The MMS does not consider it inappropriate to refer to 30 CFR Part 206 in this rule because references pertain to whatever version of that rule is in effect. In addition, nothing contained in this rule should prejudice the rulemaking process for 30 CFR Part 206.

One commenter stated that refunds of transportation costs for OCS RIK are outside the purview of sections 10(a) and 10(b) of the OCSLA. The same commenter stated that refunds stemming from adjustments for OCS RIK should not trigger OCSLA restraints.

The MMS is planning to propose regulations in the near future relating to a variety of section 10 issues, including those identified by the commenter.

Section 208.9 Agreements

Two commenters stated that purchasers should not have to pay bonuses other than quality differentials for oil exchanged for royalty oil in closed delivery systems. Another commenter suggested that it is unfair for MMS to pass the risk and responsibility for quality differentials to the lessee and that MMS should bill on the basis of quality delivered and then settle with the lessee on any difference. Another stated that MMS should require that quality differential agreements be in place prior to deliveries.

If a determination is made by the Secretary to take royalties in kind, with delivery of royalty oil to participating RIK refiners, affected lessees are required to provide the same quality of royalty oil to the purchasers that was produced from the leases. If a lessee is unable to provide the royalty portion of actual production from the lease, the lessee must provide crude oil to the purchaser which is equivalent in volume or value to the royalty oil to which the purchaser is entitled. This situation may arise, for example, on offshore royalties when the lease is the royalty measurement point but MMS has designated an onshore delivery point. In instances where a quality differential exists between the royalty oil to which a purchaser is entitled (and for which it is billed) and the oil which actually is delivered, the difference must be resolved between the purchaser and the operator. Historically, lessees and RIK purchasers have been able to resolve any quality differential issues between themselves. The MMS policy is to not be involved in third-party agreements unless requested or in cases where they conflict with terms of royalty oil contracts or regulations governing the RIK Program. Section 208.9(a) provides for the submittal of agreements to MMS relating to the method and costs of delivery of royalty oil, or oil exchanged for it, to the refinery. This requirement pertains to quality differential agreements as well, and the paragraph has been changed accordingly.

Two commenters offered definitions of what constitutes "processing" of crude oil. One was a variation of the "Mandatory Oil Import" definition previously codified at 10 CFR 213.27. The other recommended that MMS state in § 208.9(c) that oil must be processed "into refined petroleum products" and that MMS use the definition of that term which is at section 3(5) of the Emergency Petroleum Allocation Act. The MMS has adopted this latter suggestion and has made the revision in § 208.9(c) and added a modified definition in 208.2.

Section 208.10 Notices

One commenter stated that the notification of termination in § 208.10(c) should be required in all cases. Two others requested 60-day and 45-day notices of termination, respectively.

The MMS policy is to give notices of termination as far in advance as possible, preferably at least 30 days. To require a 30-day notice in all cases would unduly restrict MMS's flexibility in those rare instances where immediate termination is required for unforeseen reasons. Future contracts will contain provisions requiring the refiner to provide 45-day notices of termination in most cases. The MMS will notify operators as soon as possible upon such notice, thereby giving notice more than 30 days prior to the effective termination date.

One commenter stated that the notice required at § 208.10(a) should be in writing and should specify delivery points. Another stated that there should be a prohibition in regard to changing delivery points.

It is MMS's policy to give all notices concerning the election to take or terminate royalty oil in kind both by telephone and in writing. It is also MMS's policy to specify delivery points for offshore oil in the letters notifying operators of elections to take royalty oil in kind. The rule has been clarified to reflect this policy. The MMS does not generally change delivery points without the concurrence of the operator, but it must maintain the ability to do so in cases where the lease provisions allow MMS to designate a delivery point.

One commenter recommended that the word "lessee" in the first sentence of § 208.10(d) be changed to "operator."

The MMS concurs and has changed "lessee" to "operator" wherever it appeared in § 208.10.

Section 208.11 Surety Requirements

Three commenters stated that the surety costs are excessive and that the letter of credit term should be reduced. Three others stated that the requirements are a real improvement but hoped that the requirements could be reduced even further by streamlining the reporting and billing process.

The MMS has studied the surety requirements extensively and believes that the proposed requirements are as low as they can be and still provide the necessary protection. There was some confusion as to how long a letter of credit must be in effect following contract termination. The MMS has therefore added a sentence to § 208.11(b) allowing a clause in each letter of credit specifically limiting such time period to 6 months. The requirements cannot be reduced further unless the reporting and billing period is reduced, which is not possible within the framework of AFS unless MMS increases the amount of the initial estimated payment. This would be counter-productive.

Section 208.13 Reporting requirements

One commenter requested a provision that would require purchasers to provide sureties to operators because the operators are responsible for overdeliveries. In related comments, four commenters stated that the liabilities, including interest, that may be incurred by the payors for underbillings as a result of reporting errors are unfair and punitive. Generally, these commenters feel that the operator's only obligation is to transfer royalty oil taken in kind to the purchaser and that the operator has no duty to be a guarantor of the value or receipt of such royalty oil.

The MMS cannot agree that purchasers should be made to provide sureties to cover the possibilities of overdeliveries. It also does not consider holding the payors responsible for their reporting errors to be unfair or punitive. The payors are responsible for correct reporting of royalties whether taken in

kind or paid in value. It follows that they should also be responsible to ensure that deliveries of RIK oil are correct. It is interesting that most of these same commenters oppose the requirement in § 208.13(a) for reporting royalty oil entitlements and deliveries on Form MMS-4071. This requirement was added to protect the operators and payors as well as the purchasers and MMS. The MMS's experience in reconciliations of royalty oil contracts over the past 3 years has shown that payor reporting on Form MMS-2014 often has not matched entitlements and/or deliveries. The requirement is an attempt to provide a means to catch these errors, as much as is possible without a full audit, before the payors become liable for the resultant losses of revenue. In summary, MMS believes that the provisions for reporting and for liability in cases of reporting or delivery errors are necessary to protect all parties whenever possible, and they will be retained in the final rule.

Three commenters stated that purchasers should be paid interest by MMS when overbilled. Another comment on interest was that working interest owners should be paid interest on "underpayments from eligible refiners for late payments on any excess oil delivered."

The MMS currently does not have legal authority to pay interest on overbillings. However, this issue is being reviewed outside of the context of this rule. If there is a change in MMS's interest payment authority, it will be implemented in the RIK Program to the extent it is applicable. Regarding the latter comment, it is the working interest owner's responsibility to ensure that the correct volumes of royalty oil are made available to the purchaser, and any problems related to overdeliveries are matters to be handled between the owner and the purchaser.

Operators and other interested parties should note that § 208.8(c) of the final rule provides for deliveries to be made not later than the last day of the calendar month immediately following the month in which the oil was produced. This provision should provide time to review production and other records sufficiently to allow for the determination of proper deliveries in a timely manner.

One commenter stated that the provisions of §§ 208.12(b) and 208.13(b) appear to allow MMS to charge double interest.

These paragraphs address separate issues. Section 208.12(b)(i) of the final rule provides for interest payments by RIK purchasers for late payments of invoices. Subparagraph (ii) of this paragraph provides for interest payments by RIK payors for underreported royalty oil. These latter charges may be assessed as a result of late or underreporting, or after an adjustment to a previously reported line is reported by the payor and billed or is billed by MMS as a result of reconciliation, audit, or other procedures. For example, if an operator underreports RIK delivered volumes to MMS, and as a result MMS does not bill the RIK purchaser for the underreported volume, then MMS will bill the RIK purchaser for the value of the underreported volumes, but will bill the operator for interest. The interest will be calculated on the net adjustment from the time the original amount would normally have been due to the time the adjusted amount was paid. Section 208.13(b) interest assessments are related to the amounts which are unrecoverable from a purchaser or surety due to payor error and are, therefore, the responsibility of the payor. Interest will be assessed from the time payment originally would have been due from the purchaser to the time the debt is satisfied by the payor.

Section 208.14 Civil Criminal Penalties

One commenter stated in regard to § 208.14 that civil penalties must be in respect to the source of the oil involved and to the proper statute. The MMS agrees.

Section 208.17 Suspensions for National Emergencies

One commenter stated that operators should receive 60-day notices in suspensions.

Any suspension under this section would be made in the event of a national emergency and would probably be made without any prior notice.

V. Procedural Matters

Executive Order 12291 and Regulatory Flexibility Act

The impact of the final rule is primarily limited to a small portion of the oil industry. In addition, the final rule primarily consolidates and clarifies existing regulations. Although some changes were adopted, they have a minor economic effect. Therefore, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document 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.).

Paperwork Reduction Act of 1980

The information collection requirements contained in 30 CFR 208.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and have been assigned clearance number 1010-0042.

National Environmental Policy Act of 1969

The Department of the Interior has determined that this final rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The exclusion is found in the Department's Manual at 516 DM6, Appendix 2, Part 2.4B(1) (a), (b), and (k).

List of Subjects

30 CFR Part 208

Government contracts, Mineral royalties, Petroleum, Public lands-mineral resources, Small businesses.

30 CFR Part 209

Continental shelf, Government contracts, Mineral royalties, Petroleum allocation, Public lands—mineral resources, Small businesses.

Date: October 2, 1987.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, Title 30, Subchapter A of the Code of Federal Regulations is amended as set forth below.

Subchapter A—Royalty Management

30 CFR Part 208 is revised to read as follows:

PART 208—SALE OF FEDERAL ROYALTY OIL

Subpart A—General Provisons

Sec.
208.1 General.
208.2 Definitions.
208.3 Information collection.
208.4 Royalty oil sales to eligible refiners.
208.5 Notice of royalty oil sale.
208.6 General application procedures.
208.7 Determination of eligibility.
208.8 Transportation and delivery.
208.9 Agreements.
208.10 Notices.
208.11 Surety requirements.
208.12 Payment requirements.
208.13 Reporting requirements.
208.14 Civil and criminal penalties.
208.15 Audits.
208.16 Appeals.
208.17 Suspensions for national emergencies.

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C.

1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; 43 U.S.C. 1801 *et seq.*; and 31 U.S.C. 9701.

§ 208.1 General

The regulations in this part govern the sale of royalty oil by the United States to eligible refiners. The regulations apply to royalty oil from leases on Federal lands onshore and on the Outer Continental Shelf (OCS).

§ 208.2 Definitions.

"Allotment" means the quantity of royalty oil that DOI determines is available to each eligible refiner that has applied for a portion of the total volume of royalty oil offered in a given royalty oil sale.

"Application" means the formal written request to DOI on Form MMS-4070 by an eligible refiner interested in purchasing a quantity of royalty oil from the approximate volume announced by DOI in a given "Notice of Availability of Royalty Oil."

"Area" or "Region" means the geographic territory having Federal oil and gas leases over which MMS has jurisdiction, unless the context in which those words are used indicates that a different meaning is intended.

"Delivery point" means the point where the lessor, in accordance with lease terms, directs the lessee to deliver royalty oil to a purchaser. Title to the royalty oil, or to the quantity thereof in a commingled stream, passes from the Federal Government to the purchaser at this designated point, which is specified in the royalty oil contract. For onshore leases, the delivery point will be on or adjacent to the lease, except as provided in § 208.8(a) of this part. In instances where an onshore delivery point is designated for offshore royalty oil, such point generally will be the first onshore point where the price of the oil, including transportation costs, can be determined and where the purchaser can either exchange or take delivery of the oil. The Government does not guarantee physical access to the oil at such point.

"Director" means the Director of MMS, who is responsible for its overall direction, or his or her delegate(s).

"DOI" means the Department of the Interior, including the Secretary or his or her delegate(s).

"Eligible refiner" means a refiner of crude oil that meets the following criteria for eligibility to purchase royalty oil:

(1) For the purchase of royalty oil from onshore leases, it means a refiner that qualifies as a small and independent refiner as those terms are defined in sections 3(3) and 3(4) of the Emergency Petroleum Allocation Act, 15 U.S.C. 751 et seq., except that the time period for determination contained in section 3(3)(A) would be the calendar quarter immediately preceding the date of the applicable "Notice of Availability of Royalty Oil." A refiner that, together with all persons controlled by, in control of, under common control with, or otherwise affiliated with the refiner, inputs a volume of domestic crude oil from its own production exceeding 30 percent of its total refinery input of crude oil is eligible to participate in royalty oil sales under this Part. Crude oil received in exchange for such refiner's own production is considered to be that refiner's own production for purposes of this section.

(2) For the purchase of royalty oil from leases on the OCS, it means a refiner that qualifies as a small business enterprise under the rules of the Small Business Administration (13 CFR 121.3-9(a)(1)).

"Entitlement" means the volume of royalty oil from the Federal Government's share of production from a Federal lease which a purchaser is entitled to receive under a royalty oil contract.

"Exchange agreement" means a written agreement between the purchaser and another person for the exchange of royalty oil purchased under this Part for other oil on a volume or equivalent value basis.

"Fair market value" means the value of oil—(1) Computed at a unit price equivalent to the average unit price at which oil was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or

(2) If there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which oil was sold pursuant to other leases in the same region of the OCS during such period, or

(3) If there were no sales of oil from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary.

"Federal lease" means a contractual agreement with the Federal Government which authorizes the exploration, development, and production of oil and gas on Federal lands onshore or on the OCS.

"Interim sale" means a sale conducted as a result of substantial additional royalty oil becoming available in a specific area prior to the scheduled expiration date of royalty oil contracts in effect for that area.

"Lessee" means any person to whom the United States issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease.

"MMS" means the Minerals Management Service of the Department of the Interior.

"Notice of Availability of Royalty Oil" means a notice published by DOI in the **Federal Register** (and in other printed media when appropriate, such as a newspaper or magazine of general or specialized circulation) to advise interested parties of the availability of royalty oil for purchase by eligible refiners and the approximate volume of royalty oil available to the applicants.

"OCS" means the Outer Continental Shelf, as defined in 43 U.S.C. 1331(a).

"OCSLA" means the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq., as amended by 43 U.S.C. 1801 et seq.).

"Oil" means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil.

"Operator" means any person, including a lessee, who has control of or who manages operations on an oil and gas lease site on Federal onshore lands or on the OCS.

"Payor" means any person responsible for reporting royalties from a Federal lease or leases on Form MMS-2014.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture.

"Preference eligible refiner" means an eligible refiner with at least one operating refinery which is located within the area designated as the preference eligible area in the "Notice of Availability of Royalty Oil." A refiner may be deemed to be a preference eligible refiner if it owns a refinery located in the preference eligible area which is not operational if the refiner meets the requirements of § 208.7(g) of this part.

"Purchaser" means anyone who acquires royalty oil sold by DOI under the Federal Government's Royalty-in-Kind (RIK) Program and who has a contractual obligation under an agreement to purchase royalty oil.

"Reallocation" means an offering of royalty oil previously allocated in a specific sale but subsequently turned

back to MMS. A reallocation would only be made if substantial amounts of royalty oil are turned back.

"Refined petroleum product" means gasoline, kerosene, distillates (including Number 2 fuel oil), refined lubricating oils, or diesel fuel.

"Royalty oil" means that amount of oil that DOI takes in kind in partial or full satisfaction of a lessee's royalty or net profit share obligations as determined by whatever lease interest the lessee holds under an applicable mineral leasing law.

"Secretary" means the Secretary of the Department of the Interior or his/her delegate(s).

"Section 6 lease" means an oil and gas lease originally issued by any State and currently maintained in effect pursuant to section 6 of the OCSLA.

"Section 8 lease" means an oil and gas lease originally issued by the United States pursuant to section 8 of the OCSLA.

§ 208.3 Information collection.

The information collection requirements contained in this Part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The forms and approved OMB clearance numbers are as follows:

Form No.	Name and filing date	OMB No.
MMS-4070	Application for the Purchase of Royalty Oil (due prior to the date of sale in accordance with the instructions in the "Notice of Availability of Royalty Oil")..	1010-0042
MMS-4071	Semiannual Report of Royalty-in-Kind Oil Entitlements and Deliveries (due from the lease operator 7 months after the first month of sale and semiannually thereafter)..	1010-0042

The information is being collected by MMS to meet congressionally mandated accounting and auditing responsibilities relating to Federal mineral royalty management. The information will be used to determine a refiner's eligibility to purchase royalty oil and to timely and accurately account for such purchases. Form MMS-4070 is required to obtain a benefit and Form MMS-4071 is mandatory.

§ 208.4 Royalty oil sales to eligible refiners.

(a) *Determination to take royalty oil in kind.* The Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. Such determinations may be made on a regional basis. The determination by the Secretary shall be published in the **Federal Register** concurrent with or included in the "Notice of Availability of Royalty Oil" required by 30 CFR 208.5.

(b) *Sale to eligible refiners.* (1) Upon a determination by the Secretary under paragraph (a) of this section that eligible refiners do not have access to adequate supplies of crude oil at equitable prices, the Secretary, at his or her discretion, may elect to take in kind some or all of the royalty oil accruing to the United States from oil and gas leases on Federal lands onshore and on the OCS. The Secretary may authorize MMS to offer royalty oil for sale to eligible refiners only for use in their refineries and not for resale (other than under an exchange agreement).

(2) All sales of royalty oil from onshore leases will be priced at the royalty value that would have been determined for that oil pursuant to 30 CFR Part 206 had the royalties been paid in value rather than taken in kind. All sales of royalty oil from OCS leases will be priced at the fair market value of the oil including associated transportation costs to the designated delivery point, if applicable.

(3) An eligible refiner must have a representative at a sale in order to participate. The Secretary may, at his or her discretion, establish purchase limitations and withhold any royalty oil from any offering.

(4) The MMS will recover the administrative costs of the RIK Program through the collection of administrative fees. The fees will consist of an initial nonrefundable contract fee for each executed contract and a monthly variable charge applied to each lease under contract. The amount of the initial contract fee shall be determined prior to a sale and published in the "Notice of Availability of Royalty Oil." The initial contract fee will be payable in equal installments due at the end of the first and second months of the contract. These contract fees will be applied against the RIK Program's administrative costs, and the remainder of the administrative costs will be recovered through the monthly variable charges per lease, which will be billed and payable concurrently with the monthly actual billings for royalty oil. The rate per lease will be determined by dividing the remaining recoverable administrative costs by the total number of leases under contract. The rate may change depending upon whether total administrative costs change and/or whether the number of leases taken in kind changes from one month to another. In instances where production from a lease is sold on a percentage basis to two or more purchasers, each percentage portion of the lease will be considered a separate lease for purposes of administrative fee determination.

(c) Upon a determination by the Secretary under paragraph (a) of this section that eligible refiners do have access to adequate supplies of crude oil at equitable prices, MMS will not take royalties in kind from oil and gas leases for exclusive sale to such refiners. Such determinations may be made on a regional basis.

(d) *Interim sales.* The MMS generally will not conduct interim sales. However, interim sales may be held at the discretion of the Secretary if substantial addition royalty oil becomes available. The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. Although sufficient documentation must be submitted, it is not mandatory for each potentially eligible refiner to participate in a submission of such documentation to be determined eligible. The documentation must be submitted to MMS for a determination as to whether an interim sale is needed.

§ 208.5 Notice of royalty oil sale.

If the Secretary decides to take royalty oil in kind for sale to eligible refiners, MMS will issue a "Notice of Availability of Royalty Oil" specifying the manner in which the sale is to be effected, the approximate quantity of royalty oil to be offered, information required in applications, the closing date for the receipt of applications for royalty oil, and other general administrative details concerning the application, allocation, and contract award process for the royalty oil. The Notice will describe generally the terms under which the royalty oil contracts will be awarded and will specify which applicants will be deemed preference eligible refiners in the sale proceedings. The Notice will also contain guidelines for reallocation procedures in the event substantial quantities of royalty oil sold in that specific sale are subsequently turned back to MMS. Only those purchasers that hold ongoing contracts from that specific sale will be allowed to participate in any reallocation, which

would be voluntary, and then only if they continue to meet eligibility requirements as set forth in 30 CFR 208.2 and 208.7. If a reallocation is held prior to the effective date of the contracts as specified in the "Notice of Availability of Royalty Oil", all eligible refiners that selected a lease or leases in that specific sale would be allowed to participate, pursuant to the procedures in the Notice.

§ 208.6 General application procedures.

(a) To apply for the purchase of royalty oil, an applicant must file a Form MMS–4070 with MMS in accordance with the instructions in the "Notice of Availability of Royalty Oil" and in accordance with any instructions issued by MMS for the completion of Form MMS–4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying. The letter of intent must be submitted with Form MMS–4070.

(b) In addition to any other application requirements specified in the Notice, the following information is required on Form MMS–4070 at the time of application:

(1) Name and address of the applicant, the location of the applicant's refinery or refineries, and disclosure of the applicant's affiliation with any other persons.

(2) The capacity of the applicant's refineries in barrels of crude oil throughput per calendar day and a tabulation for the past 12 months of oil processed for each refinery, identified as to source (from own production or from other sources).

(3) Identification of any Government royalty oil contracts under which the applicant is currently receiving royalty oil.

(4) Identification of the locations (area/region and State) where the applicant proposes to purchase royalty oil, the volume of oil requested, and the specific refineries in which the oil will be refined.

(5) A certification from the applicant that it is an eligible refiner for the purchase of Government royalty oil, as defined in § 208.2 of this Part.

§ 208.7 Determination of eligibility.

(a) The MMS will examine each application and may request additional information if the information in the application is inadequate. An application received after the close of the application period will be rejected. If additional information is requested by MMS, it must be received by the time specified or the application will be rejected.

(b) After the close of the application period and the receipt of any additional requested information, MMS will determine which applicants may participate in the royalty oil sale and the quantity of royalty oil which each applicant is authorized to purchase.

(c) When applications are filed by two or more eligible refiners for the same royalty oil, the oil will be allocated among such applicants on an equitable basis as determined by MMS. Preference eligible refiners will be given priority in the allocation procedures in sales and subsequent reallocations of royalty oil.

(d) No eligible refiner shall be awarded contracts for volumes of royalty oil that, when added to volumes of other Federal royalty oil being received, are in excess of 60 percent of the combined refinery capacity of that refiner.

(e) The MMS may exclude any section 6 lease from a royalty oil sale.

(f) If two or more eligible refiners are related through common ownership or control or otherwise affiliated, only one of them shall be entitled to an allotment of royalty oil from a specific sale.

(g) Any applicant whose refinery is not in operation during the 60-day period prior to the date of the royalty oil sale shall not be entitled to participate in the sale unless such applicant self-certifies and demonstrates to the satisfaction of MMS that it will begin operations by the first month in which oil becomes available under a royalty oil contract. If operations do not begin by that month, MMS will terminate the contract.

(h) Applicants or purchasers that have delinquent balances with MMS as of the date of a royalty oil sale or subsequent reallocation will not be allowed to participate in that sale or reallocation. If a person which is controlled by, in control of, under common control with, or otherwise affiliated with an applicant or purchaser has such delinquent balances, the applicant or purchaser will not be allowed to participate in a royalty oil sale or reallocation. To the extent a purchaser or affiliated person has appealed a billing and posted a surety in accordance with the contract terms and applicable MMS regulations or other law, the balance shall not be considered delinquent.

(i) A purchaser must meet the eligibility criteria on the date of contract issuance. However, a change in a purchaser's eligibility status during the term of the contract will not affect the purchaser's right to continue that contract until its term expires, including any extensions thereof.

§ 208.8 Transportation and delivery.

(a) The lessee shall deliver royalty oil from onshore leases to the purchaser at a point on or adjacent to the lease pursuant to the terms of the lease. If the purchaser does not have access to its onshore royalty oil entitlement at facilities on or adjacent to the lease, the operator of the lease must designate an alternate delivery point at no additional cost to the purchaser or the Government. The purchaser must have physical access to the oil at the alternate delivery point and such point must be approved by MMS.

(b) The lessee shall deliver royalty oil from section 8 offshore leases issued after September 1969 at a delivery point to be designated by MMS. The lessee shall deliver royalty oil from section 8 offshore leases issued before October 1969 or from section 6 leases at a delivery point to be designated by the lessee. If the delivery point is on or immediately adjacent to the lease, the royalty oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by MMS. If the delivery point is not on or immediately adjacent to the lease, MMS will reimburse the lessee for the reasonable cost of transportation to such point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR Part 206. The MMS will include such transportation costs in the price charged for the oil taken in kind to reflect the value of the oil at the delivery point. Arrangements for delivery of the royalty oil from, or exchange of the oil at, the delivery point, and related transportation costs, are the responsibility of the purchaser of the royalty oil. In addition, quality differentials between the royalty oil to which a purchaser is entitled and the oil which is made available at the delivery point are matters to be resolved between the purchaser and the operator.

(c) When the purchaser has physical access to the royalty oil at the delivery point, the lessee shall deliver such oil in marketable condition at pipeline connections or other facilities designated by MMS. If the lessee is unable to provide the royalty portion of actual production from the lease, the lessee must provide crude oil to the purchaser which is equivalent in volume or value to the royalty oil to which the purchaser is entitled. The lessee will deliver the royalty oil to the purchaser during normal operating hours and in reasonable quantities and intervals. The

lessee will make available and the purchaser will accept delivery of the royalty oil entitlement no later than the last day of the calendar month immediately following the calendar month in which the oil was produced. Failure to accept deliveries shall constitute grounds for the termination of the contract.

(d) Upon termination of deliveries under a royalty oil contract, the transportation allowance and delivery point designation authorized by this section no longer will remain in effect.

§ 208.9 Agreements.

(a) A purchaser must submit to MMS two copies of any written third-party agreements, or two copies of a full written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. In addition, the purchaser must submit copies of agreements pertaining to quality differentials which may occur between leases and delivery points.

(b) A purchaser may not sell royalty oil which it purchases pursuant to this Part except for purposes of an exchange for other crude oil on a volume or equivalent value basis.

(c) Royalty oil purchased under this part, or crude oil received in exchange for such royalty oil, must be processed into refined petroleum products in the purchaser's refinery.

§ 208.10 Notices.

(a) The MMS shall notify each operator, by certified mail, of the Secretary's decision to take royalty oil in kind. This notice shall be mailed at least 45 days in advance of the effective date of delivery and will specify delivery points for offshore oil for OCS leases issued after September 1969.

(b) Deliveries of royalty oil may be partially terminated only with the written approval of the Director, MMS.

(c) Before terminating the delivery of royalty oil taken in kind, MMS, if possible, will notify each operator by certified mail of the change in requirements at least 30 days in advance of the effective date.

(d) After MMS notification that royalty oil will be taken in kind, the operator shall be responsible for notifying each working interest on the Federal lease. As soon as practicable after the date of each royalty oil sale, MMS will publish in the Federal Register a notice of the leases from which royalty oil will be taken, the purchasers of the royalty oil, and the leases from which royalty oil deliveries will be discontinued on terminated contracts.

(e) A purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, MMS. If the purchaser changes ownership or its assets are sold or liquidated for any reason, it cannot transfer, assign, or sell its rights or interest in the royalty oil contract without written approval of the Director, MMS. Without express written consent from MMS for a change in ownership, the royalty oil contract shall be terminated. The successor company must meet the definition of an eligible refiner in § 208.2 of this part for MMS to consider assignment of the royalty oil contract.

§ 208.11 Surety requirements.

(a) The eligible purchaser, prior to execution of the contract, shall furnish MMS a surety, acceptable to MMS, in an amount equal to the estimated value of royalty oil which could be taken by the purchaser in a 99-day period, plus related administrative charges. The MMS may increase the amount of the surety when necessary to protect the Government's interest or may decrease the amount of the surety where necessary or appropriate to further the purposes of the RIK Program.

(b) If a letter of credit is furnished as surety, it must be effective for a 9-month period beginning the first day the royalty oil contract is effective, with a clause providing for automatic renewal monthly for a new 9-month period. The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date. The MMS may grant the purchaser 45 days to obtain a new surety. If no replacement surety is provided, MMS will terminate the contract effective at least 6 months prior to the expiration date of the letter of credit. Notwithstanding the above provisions, the letter of credit also may contain a clause providing for automatic termination 6 months after the royalty oil contract terminates.

(c) All sureties must be in a form acceptable to MMS and must include such other specific requirements as MMS may require to adequately protect the Government's interests.

(d) Sureties under this section must be either surety bonds or irrevocable letters of credit from financial institutions acceptable to MMS.

§ 208.12 Payment requirements.

(a) All payments to MMS by a purchaser of royalty oil will be due on the date and at the location specified in the contract, or, if there is no contractual provision, as specified by MMS. The purchaser shall tender all payments to MMS in accordance with 30 CFR 218.51. Payments made by a payor pursuant to the requirements of paragraph (b) of this section and § 208.13(b) also shall be tendered in accordance with 30 CFR 218.51.

(b)(1) Payments from a purchaser of royalty oil not received by MMS when due, or that portion of the payment less than the full amount due, will be subject to a late payment charge equivalent to an interest assessment on the amount past due for the number of days that the payment is late at the underpayment rate applicable under section 6621 of the Internal Revenue Code of 1954.

(2) The MMS may assess interest to a payor for any underpayments which are the result of the payor's late or underreporting, or for adjustments reported by the payor, or made as a result of audit, reconciliation, or other procedures. The interest for late payment and underpayment will be assessed pursuant to 30 CFR 218.54.

(c) If payment for royalty oil is not received by the due date specified in the contract, a notice of nonreceipt will be sent to the purchaser by certified mail. If payment is not received by MMS within 15 days from the date of such notice, MMS may cancel the contract and collect under the surety.

(d) If the purchaser disagrees with the amount of payment due, it must pay the amount due as computed by MMS, unless the purchaser appeals the amount and posts acceptable surety pursuant to the provisions of 30 CFR Part 243. The MMS may, at its discretion, waive the appeal surety requirements if it determines that the contract surety is sufficient protection for an amount under appeal.

§ 208.13 Reporting requirements.

(a) In addition to any other applicable royalty reporting requirements, the lessee/operator shall provide to MMS a semiannual report, by lease, of the monthly entitlements and actual deliveries of royalty oil to purchasers on Form MMS-4071, "Semiannual Report of RIK Oil Entitlements and Deliveries."

(b) If MMS underbills a purchaser under a royalty oil contract because of a payor's underreporting or failure to report on Forms MMS-2014 pursuant to 30 CFR 210.52, the payor will be liable for payment of such underbilled amounts, plus interest, if they are unrecoverable from the purchaser or the surety related to the contract.

§ 208.14 Civil and criminal penalties.

Failure to abide by the regulations in this part may result in civil and criminal penalties being levied on that person as specified in sections 109 and 110 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1719–20, and regulations at 30 CFR Part 241. Civil penalties applicable under the OCSLA and the Mineral Leasing Act of 1920 may also be imposed.

§ 208.15 Audits.

Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at such other times as may be directed by MMS. Such audits will be for the purpose of determining compliance with applicable statutes, regulations, and royalty oil contracts.

§ 208.16 Appeals.

Except as provided in § 208.12(d) of this part, orders or decisions issued under the regulations in this part may be appealed as provided in 30 CFR Parts 243 and 290.

§ 208.17 Suspensions for national emergencies.

The Secretary of the Department of the Interior, upon a recommendation by the Secretary of Defense or the Secretary of Energy and with the approval of the President, may suspend operations under these regulations and suspend royalty oil contracts during a national emergency declared by the Congress or the President.

PART 209—[REMOVED]

30 CFR Part 209 is removed.

[FR Doc. 87-25103 Filed 10-29-87; 8:45 am]
BILLING CODE 4310-MR-M