

Chenault Industrial Airpark (latitude 30°12'37"N., longitude 93°08'36"W.), and within 5.0 miles each side of the 336° radial of the Lake Charles VOR (latitude 30°08'29"N., longitude 93°08'20"W.), extending from the 8.5-mile radius area of the Chenault Industrial Airpark to 15 miles northwest of the Chenault Industrial Airpark.

Issued in Fort Worth, TX, on December 2, 1988.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Revision of Valuation Regulations Governing Gas Sales Under Percentage-of-Proceeds Contracts

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its gas product valuation regulations to change the method of determining the value of gas sold under percentage-of-proceeds contracts. Since adoption of the final regulations, MMS has determined that little or no additional royalties are collected as a result of this provision. Also, MMS has experienced a significant increase in workload that is unnecessary for the valuation of gas sold under these contracts.

Consequently, MMS is soliciting comments on a proposed alternative method which reduces lessee reporting requirements, produces the same revenue payments, and eliminates the unnecessary workload burden on MMS.

DATE: Comments should be submitted by January 17, 1989.

ADDRESS: written comments, suggestions, or objections regarding the proposed amendment should be mailed to: Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25185, Mail Stop 862, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432 or FTS 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule amendment are Susan Lupinski and Scott Ellis of the Royalty Valuation and

Standards Division of the Royalty Management Program, MMS.

I. Background.

The subject of this proposed rulemaking is the manner in which gas production from Federal leases (including leases on the Outer Continental Shelf) and Indian Tribal and allotted leases will be valued for royalty purposes where the lessee's contract for the sale of gas prior to processing provides for the sales value to be determined based upon a percentage of the purchaser's proceeds from selling the residue gas, liquids, and other gas plant products resulting from processing. The existence of these so called "percentage-of-proceeds" contracts is typically a direct result of oil well production where associated casinghead gas production occurs in sufficient volumes that venting or flaring of the gas is considered wasteful, or the volumes cannot be flared or vented due to environmental reasons. The volume of gas produced from any one lease is usually insufficient to justify the expense for each lessee to build a processing plant to handle its own lease production. Thus, a plant is built in a centralized location to handle the production from the various leases producing casinghead gas in the field or area.

The issue of whether to classify percentage-of-proceeds contracts as sales of unprocessed gas versus processed gas generated much controversy during the comment period prior to MMS's recent modifications to the product value regulations in 30 CFR Part 206 (53 FR 1230, January 15, 1988). Comments from industry generally recommended that MMS classify percentage-of-proceeds contracts under the unprocessed gas section. Industry commenters stated that classifying percentage-of-proceeds contracts as processed gas was unreasonable and unfair to the lessee and that the percentage-of-proceeds contracts were only the mechanism for arriving at wellhead value.

The MMS evaluated all the comments received but decided to retain percentage-of-proceeds contract valuation under the processed gas section. The MMS's main concern was that if the percentage-of-proceeds contracts were treated as unprocessed gas, limitations on processing allowances contained in the valuation regulations would be exceeded without review and approval by MMS. However, to address those instances where a lessee believed that its situation merited an exception to the limitations and requirements of the regulations, MMS

adopted a provision at § 206.158(c)(3) allowing a lessee to apply for an exception to the processing allowance limitation.

Since the issuance of the revised gas valuation regulations, MMS has received many requests to (1) waive the valuation requirements under the processed gas section for percentage-of-proceeds contracts, (2) exceed the two-thirds processing allowance limitation, and (3) report royalties and allowances under alternate methods. The enormous burden placed on both payors and MMS to file new Payor Information Forms (Form MMS-4025) and Processing Allowance Forms (Form MMS-4109), and to convert from the previously used one-line entry on the Report of Sales and Royalty Remittance Form (Form MMS-2014) to multiple-line entries, was underestimated by MMS when considering whether or not to require valuation under the processed gas section. For example, the MMS received 2,000 Payor Information Forms from one company alone. Other companies have requested, and received approval of, the continued use of the one-line entry until their automated systems could be modified. Further, the burden on both payors to develop the supporting information and on MMS to process requests for allowances in excess of the two-thirds limit was also underestimated. In order to support a request for an allowance greater than two-thirds, payors had to demonstrate that the higher costs were actual, reasonable and necessary.

Based upon the experiences under the new regulations, MMS is now proposing to reconsider the valuation procedure for gas sold under percentage-of-proceeds contracts. Many percentage-of-proceeds contracts result in processing costs that exceed the two-thirds processing limitation. Due to the limited volumes from any given lease, and the fact that the costs of placing the gas in marketable condition are beyond what a lessee is ordinarily obligated to incur, MMS believes that most requests to exceed the two-thirds limit would be approved as the costs could be demonstrated by the lessee to have been actual, reasonable, and necessary. Given the prospect of approving the majority of the requests for exceptions, the proposal to allow gas sold under percentage-of-proceeds contracts to be valued as unprocessed gas should result in approximately the same revenues upon which royalty would be paid under the processed gas rules, but would eliminate a large amount of burdensome and unnecessary reporting, reviewing, and approval.

The proposed rule would only include arm's-length percent-of-proceeds contracts. As with other non-arm's-length contracts where the purchaser processes the gas, gas sold pursuant to a non-arm's-length percent-of-proceeds contract would be valued in accordance with § 206.153 of the regulations.

The MMS also believes that provisions already in place in the regulations that are applicable to the valuation of gas sold under arm's-length contracts will be a sufficient deterrent to lessees whose only objective was to circumvent the requirements and limitations of the regulations. The regulations generally provide that gas sold pursuant to an arm's-length contract will be valued for royalty purposes based on the lessee's gross proceeds. See 30 CFR 206.152(b). However, if MMS has reason to believe that revenues received under any percentage-of-proceeds contracts were unreasonably low owing to misconduct or breach of duty by the lessee to market production for the mutual benefit of the lessee and the lessor, or if gross proceeds received included a reduction in value for costs to place production in marketable condition (which are normally required to be performed at no cost to the lessor), MMS would not accept those gross proceeds for valuation purposes. See 30 CFR 206.152(b)(1)(iii) and 206.152(i) (53 FR 1274, 1275, January 15, 1988). Although MMS believes that these provisions will generally provide the necessary assurances that the valuation of this gas, as unprocessed gas, will not have results on royalties significantly different from the expected valuation under the processed gas section, including exceptions to allowance limitations, MMS is also proposing to modify § 206.152(h) to ensure that result. The MMS is proposing to modify § 206.152(h) by adding the requirement that the value for royalty purposes of the wet gas which is processed into liquids and residue gas and is disposed of under percentage-of-proceeds contracts shall never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of that gas.

It should be noted also for gas production from those Indian leases which require dual accounting for gas which is processed, this rule change would not affect the application of those lease provisions. See 30 CFR 206.155, 53 FR 1276 (January 15, 1988).

II. Proposed Amendments

For the reasons discussed in the above *Background* section, MMS is proposing to amend its regulations to

clarify its intent and to provide for the valuation of gas under percentage-of-proceeds contracts to be under the provisions of § 206.152 rather than § 206.153.

The MMS proposes to amend § 206.152 by deleting the phrase " * * * or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, * * * " from the second sentence of paragraph (a)(1) and placing that phrase at the end of the first sentence of that paragraph. The MMS proposes to further amend § 206.152 by adding the following sentence to paragraph (h):

Also, notwithstanding any other provision of this section, where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, the value of production for royalty purposes shall never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of the lessee's gas.

The MMS proposes to amend § 206.153 by deleting the following phrases from the second sentence of paragraph (a)(1):

* * * or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas (in which event these regulations will apply to determine value as if the person actually selling or disposing of the residue gas or gas plant products were the lessee of the Federal or Indian lease).

The public is invited to participate in this rulemaking action by submitting data, views, or arguments with respect to this notice. All comments must be received by 4 p.m. of the day specified in the **DATE** section at the address indicated in the **ADDRESS** section of this preamble.

III. Procedural Matters

Executive Order 12291

The Department of the Interior (Department) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This proposed rulemaking is to clarify the Department's intent concerning the valuation of gas sold under percentage-of-proceeds contracts under the Federal and Indian gas royalty valuation regulations that were issued on January 15, 1988 (53 FR 1230).

Regulatory Flexibility Act

Because this rule clarifies existing regulations, there are no significant

additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1980

The proposed amendment 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 determined that this rulemaking does not constitute a major Federal Action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subject in 30 CFR Part 206

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

Date: November 14, 1988.

James E. Cason,
Deputy Assistant Secretary, Land and Minerals Management.

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

TITLE 30—MINERAL RESOURCES

PART 206—PRODUCT VALUATION

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

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

2. Section 206.152 under Subpart D is amended by revising paragraph (a)(1) and paragraph (h) to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing (including all gas where the lessee's arm's-length contract

for the sale of that gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas). This section also applies to processed gas which must be valued prior to processing in accordance with § 206.155. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, § 206.153 shall apply instead of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart. Also, notwithstanding any other provision of this section, where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, the value of production for royalty purposes shall never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of the lessee's gas.

3. Paragraph (a)(1) of § 206.153 under Subpart D is revised to read as follows:

**§ 206.153 Valuation standards—
processed gas.**

(a)(1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 206.152 of this subpart. This section applies where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right.

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**Office of Surface Mining Reclamation
and Enforcement**

30 CFR Part 936

**Pennsylvania Abandoned Mine Land
Reclamation Plan; Opening of Public
Comment Period and Opportunity for
Public Hearing on Proposed Plan
Amendment**

AGENCY: Office of Surface Mining
Reclamation and Enforcement (OSMRE),
Interior.

ACTION: Proposed rule.

SUMMARY: On September 7, 1988, the Commonwealth of Pennsylvania submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Pennsylvania Plan). The amendment pertains to changes in the procedures for reclamation project ranking and selection. This notice sets forth the times and locations that the Pennsylvania Plan and the proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on January 17, 1989, to ensure consideration in the rulemaking process. If requested, a public hearing on the proposed amendment will be held at 9:00 a.m. on January 9, 1989. Requests to present testimony at the hearing must be received on or before 4:00 p.m. on December 30, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed to or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office, at the address listed below. Copies of the Pennsylvania Plan, the proposed amendment and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343-5492.

Pennsylvania Department of Environmental Resources (DER), Office of Environmental Energy Management, 10th Floor, Fulton Building, 3rd and Locust Streets, P.O. Box 2063, Harrisburg, Pennsylvania 17120, Telephone: (717) 787-4686.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention

Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:
Robert J. Biggi, Director, Harrisburg
Field Office, (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Pennsylvania Plan as submitted on November 3, 1980. Information regarding the general background on the Pennsylvania Plan, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 Federal Register (47 FR 33061-33063).

II. Discussion of Amendment

By letter dated September 7, 1988, (OSMRE Administrative Record No. PA 717), the Pennsylvania DER submitted to OSMRE a proposed amendment to revise the AMLR plan. The proposal would change the procedures for ranking and selecting construction sites. In the current Pennsylvania Plan, potential project sites are to be ranked according to a Ranking Point System which takes into consideration criteria such as priority, real estate status, reclamation benefits, and coordination with other governmental agencies. Proposed construction sites are selected based on the numerical score of the Ranking Point System plus other criteria such as technical feasibility, effect on remaining coal reserves, program objectives, and priority. The proposal would change the current ranking and selection program by eliminating the Ranking Point System and relying on the professional judgement of DER personnel. DER personnel will evaluate proposed construction sites within projects based upon program objectives, priority, technical feasibility, and any potential remaining efforts. Proposed construction sites will be placed into one of five categories which are based on priority and status in the National Abandoned Mine Lands Inventory System. Within each category, the sites will be ranked by severity. Severity will be determined through DER personnel experience and expertise.

III. Public Comment Procedures

In accordance with 30 CFR 884.14 and 30 CFR 884.15, OSMRE is now seeking comments on whether the proposed amendment to the Pennsylvania Plan satisfies the applicable State reclamation plan approval criteria under 30 CFR Part 884. If approved, the amendment would become part of the Pennsylvania Plan.