

repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the inability to extend the main landing gear because of the main landing gear door actuation roller contacting the lower edge of the tang and causing the linkage to lock over-center, accomplish the following:

(a) Replace the main landing gear door actuator tangs and associated hardware, part numbers 27-55001-249 and 27-55001-250, with new tangs and hardware of improved design, part numbers 27-55001-299 and 27-55001-301. Accomplish this replacement in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin 226-32-059, Issued: February 14, 1991.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(d) All persons affected by this directive may obtain copies of the service bulletin referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490; or may examine this service bulletin at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 25, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-18713 Filed 8-4-95; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AC00

Revision of Valuation Regulations Governing Coal Washing and Transportation Allowances

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

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

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

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado, 80225-0165.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Harry Corley, Valuation and Standards Division, MMS, RMP.

I. Background

On January 13, 1989, MMS published a final rule in the **Federal Register** governing the valuation of coal for royalty computation purposes (54 FR 1492). The rulemaking provided comprehensive procedures for valuation of minerals produced from Federal and Indian lands, including regulations governing certain allowances considered in calculating and reporting royalties. The regulations provided for certain washing allowances (30 CFR §§ 206.258 and 206.259) and transportation allowances (30 CFR §§ 206.261 and 206.262) for coal.

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

The allowance forms filing requirements of the current coal valuation regulations provide for an annual cycle for providing information to the MMS. Before the beginning of each calendar year, or during the year but before the taking of an allowance on the Form MMS-2014, payors must submit the required form for any coal

washing and coal transportation allowances that they expect to take during the year. The forms ask for information sufficient to identify the payor, the lease/revenue source/product code/selling arrangement, and an estimate of the allowance rate per unit that is anticipated for the year.

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

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

The consequences of a payor's noncompliance with the forms filing requirements of the regulations are monetarily significant. Simply stated, if a payor takes an allowance deduction against royalty value on the Form MMS-2014 without a required form on file, the payor is subject to loss of allowance and to late-payment interest charges. The concept of the regulations is that a required form must be on file before the taking of an allowance; if a payor does not meet this requirement MMS considers the allowance to be lost by the payor. Consequently, the payor is directed to pay back the allowance and, after payback, is charged a late payment interest amount associated with the lost allowance. The current regulations provide for a "grace period" of three months that gives payors a window of time to comply with the forms filing requirements of the regulations without losing an allowance. The grace period permits lessees to retain allowances reported on a Form MMS-2014 for up to three months prior to the month that a required allowance form is filed with MMS. Although a payor will not experience a loss of allowance for the grace period, MMS will assess the payor a late payment interest charge from the date of the taking of the allowance on Form MMS-2014 to the receipt date of the filing of the required allowance form. By regulation, MMS may approve a grace period longer than three months upon a showing of good cause by the lessee.

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

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

II. Allowance Study Group

Based on public comments and the over four years of experience MMS gained in administering the allowance requirement of the valuation regulations, MMS formed a study group in April 1993 to evaluate the existing regulatory requirements for oil and gas allowances and formulate recommendations for improvement. The study group was comprised of participants from the Council of Petroleum Accounting Societies, the State and Tribal Royalty Audit Committee, and MMS. The study group's findings, conclusions, recommendations, and alternative approach for allowances are presented in the preamble to the proposed rule titled, "Revision of Valuation Regulations Governing Oil and Gas Transportation and Processing Allowances." This proposed rule is published separately in the **Federal Register**.

III. Additional Changes by MMS

The majority of the changes reflected in this proposed rulemaking are contained in the study group report.

Additionally, MMS included several clarifications and additional changes based on MMS' experiences in administering allowances.

a. Failure To File Assessment

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

b. Improper Netting Assessment

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

c. Erroneous Reporting Assessment

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

d. Technical Corrections

MMS proposes several technical corrections and clarifications.

IV. Proposed Amendments

Although the study group recommendations addressed oil and gas allowances, MMS has determined that they also apply to coal because the regulatory approach to forms filing requirements and sanctions applies to both categories of minerals.

Therefore, MMS is proposing to amend its valuation regulations to change the allowance forms filing requirements for coal. Furthermore, MMS is amending its valuation regulations to change the existing sanctions for not timely filing required allowance forms. MMS is also introducing new assessments and sanctions for (1) failure to properly report allowances as separate lines on Form MMS-2014, a practice commonly referred by MMS as "netting"; and (2) reporting erroneous information on required allowance forms. Lastly, MMS is proposing several minor technical corrections and clarifications.

a. Coal Washing Allowances

MMS proposes to amend § 206.259 by deleting the third and fourth sentences of paragraph (a)(1) that state:

However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

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

Before any washing allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS-4402 reporting period, the lessee must file a Form MMS-4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section.

By implementing these changes, MMS would be adopting the recommendations of the study group's report. These changes allow MMS to: (1) Focus its allowance administration efforts on actual data reported annually to MMS rather than on estimated allowance rates reported at the beginning of the allowance year; (2) eliminate the retroactive three-month

filing limitation; and (3) simplify allowance reporting procedures by incorporating the new reporting form for coal washing allowances.

MMS proposes to amend § 206.259(b)(1) by deleting the fourth and fifth sentences that state:

However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4292 in accordance with paragraph (c)(2) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

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

Before any washing allowance deduction may be taken on Form MMS-2014, the lessee must file a Form MMS-4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS-4402 reporting period, the lessee must file a Form MMS-4292 in accordance with (c)(2) of this section.

MMS is proposing these changes to keep in line with the recommendations of the study group. These changes allow MMS to: (1) Focus its allowance administrative efforts on actual cost data rather than on estimated cost data; (2) eliminate the three-month filing limitation for coal washing allowances; and (3) simplify allowance reporting requirements.

MMS proposes to further amend § 206.259(b)(1) by deleting from the seventh sentence the phrase “* * * estimated or * * *” The seventh sentence would read:

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

MMS is proposing this change to simplify its coal washing allowance reporting requirements and to comply with the study group's report.

MMS proposes to amend § 206.259 (c)(1) by deleting existing paragraphs (i), (ii), and (iii) and add new paragraphs (i), (ii), and (iii) that read:

(i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS-4402 for washing allowances for each calendar year. The lessee must file the Form MMS-4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS-2014. A Form MMS-4402 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4402 reporting period, the lessee must file page one of Form MMS-4292 for washing allowances within 3 months after the end of the reporting period, unless MMS approves a longer period.

MMS proposes these changes to implement the study group's recommendations. These changes would: (1) Simplify coal washing allowance reporting procedures; (2) implement a new allowance form to show the payor's intent to take washing allowances for the current year; and (3) provide greater administrative focus on actual data rather than on estimated data submitted by the payor.

MMS proposes to amend § 206.259(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and replacing them with new paragraphs (i), (ii), and (iii), to read as follows:

(i) With the exception of those washing allowances specified in paragraph (c)(2)(iv) and (vi) of this section, the lessee must file a Form MMS-4402 for washing allowances for each calendar year. The lessee must file the Form MMS-4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS-2014. A Form MMS-4402 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4402 reporting period, the lessee must file page one and all supporting schedules of Form MMS-4292 for the actual washing allowance calculated for the reporting period. Form MMS-4292 is due within 3 months after the end of the

reporting period, unless MMS approves a longer period.

These changes would address the study group's recommendations concerning MMS' administration of allowances and the need to focus on actual data reported annually rather than focus on estimated allowance rates reported at the beginning of each allowance year. Accordingly, MMS would continue to require the submission on an annual form which notifies MMS of the payor's intent to take allowance deductions from the royalty value.

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

MMS is proposing technical corrections to this section as a result of adopting changes recommended by the study group.

MMS proposes to amend § 206.259(c) by adding paragraph (5) to read:

A lessee is required to file a new Form MMS-4292 if adjustments are made to actual non-arm's-length washing allowances on Form MMS-2014.

MMS is proposing this change to comply with the study group's report. This change emphasizes MMS' focus on collecting actual data as opposed to estimated data and allows adjustments to allowance data previously submitted to MMS.

MMS proposes to amend § 206.259(d) by changing the title to read:

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

This change would better define and clarify the purpose of this section.

MMS proposes to amend § 206.259(d) by deleting paragraphs (1), (2), and (3) and replacing them with the following schedule:

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

| If a lessee * * * | The assessment is * * * | Plus interest calculated * * * |
|--|---|---|
| Files an inaccurate or Late Form MMS-4402 | \$10 per allowance line required on Form MMS-4402. | |
| Deducts a washing allowance on Form MMS-2014 without complying with requirements for actual cost reporting on Form MMS-4292. | An amount equal to 10 percent of the total allowance amount deducted on Forms MMS-2014 during the year. | From the date that Form MMS-4292 was due until the date that the form was received. |

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

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

b. Coal Transportation Allowances

MMS proposes to amend § 206.262 by deleting the third and fourth sentences of paragraph (a)(1) that state:

However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

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

Before any transportation allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS-4402 reporting period, the lessee must file a Form MMS-4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

By implementing these changes, MMS would adopt the recommendations of the study group's report. These changes allow MMS to: (1) Focus its allowance administration efforts on actual data reported annually to MMS rather than on estimated allowance rates reported at the beginning of the allowance year; (2) eliminate the retroactive three-month

filing limitation, and (3) simplify allowance reporting procedures by incorporating the new reporting form for coal transportation allowances.

MMS proposes to amend § 206.262(b)(1) by deleting the fourth and fifth sentences that state:

However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4293 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than three months prior to the first day of the month that Form MMS-4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

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

Before any transportation allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS-4402 reporting period, the lessee must file a Form MMS-4293 in accordance with paragraph (c)(2) of this section.

MMS is proposing these changes to keep in line with the recommendations of the study group. These changes would allow MMS to: (1) Focus its allowance administrative efforts on actual cost data rather than on estimated cost data; (2) eliminate the three-month filing limitation for coal transportation allowance; and (3) simplify allowance reporting requirements.

MMS proposes to further amend § 206.262(b)(1) by deleting from the seventh sentence the phrase " * * * estimated or * * * " The seventh sentence would read:

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

This change would simplify MMS' coal transportation allowance reporting requirements in accordance with the study group's report.

MMS proposes to amend § 206.262(c)(1) by deleting existing paragraphs (i), (ii), (iii), and (iv) and replacing them with new paragraphs (i), (ii), (iii), and (iv) that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS-4402 for transportation allowances each calendar year. The lessee must file the Form MMS-4402 by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4402 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

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

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

MMS proposes these changes to implement the study group's recommendations. These changes would: (1) simplify coal transportation allowance reporting procedures; (2) implement a new allowance form to show the payor's intent to take transportation allowances for the current year; and (3) provide greater administrative focus on actual data rather than on estimated data submitted by the payor.

MMS proposes to amend § 206.262(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and replacing them with new paragraphs (i), (ii), and (iii) that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(2)(iv) and (vi), of this section, the lessee must file a Form MMS-4402 for transportation allowance estimates for each calendar year. The lessee must file the Form MMS-4402 by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4402 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct

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

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

These changes would address the study group's recommendations concerning MMS' administration of allowances and the need to focus on actual data reported annually rather than the current focus on estimated allowance rates reported at the beginning of each allowance year. Accordingly, MMS would continue to require the submission of an annual form which notifies MMS of the payor's intent to take allowance deductions from the royalty value.

Consistent with this amendment, paragraph (iv) of § 206.262(c)(2) would be removed and existing paragraphs (v), (vi), (vii), and (viii) would be redesignated (c)(2)(iv), (v), (vi), and (vii).

MMS would also make technical corrections to this section as a result of adopting changes recommended by the study group.

MMS proposes to amend § 206.262(c) by adding paragraph (5) that reads:

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

MMS is proposing this change to comply with the study group's report. This change emphasizes MMS' focus on collecting actual data as opposed to estimated data and allows adjustments to allowance data previously submitted to MMS.

MMS proposes to amend § 206.262(d) and revise the title that would read:

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

MMS is making corrections to the regulations by adding language that would further define and clarify the purpose of this section.

MMS proposes to amend § 206.262(d) by deleting paragraphs (1), (2) and (3) replacing them with the following schedule:

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

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

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

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 4:00 p.m. of the day specified in the DATE Section and at the location in the ADDRESSES section of this preamble.

V. Other Matters

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

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

The amendments to the coal valuation regulations related to allowances being proposed today mirror changes being

proposed by separate rulemaking to the oil and gas valuation regulations related to allowances. The changes being proposed to the coal and the oil and gas allowance rules may ultimately be reconsidered depending on the outcome of the future gas valuation rulemaking developed from the recommendations of the Federal negotiated rulemaking committee.

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

VI. Procedural Matters

The Regulatory Flexibility Act

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

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

Executive Order 12630

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

Executive Order 12778

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

Executive Order 12866

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

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned Clearance Numbers 1010-0022, 1010-0074, and 1010-0099.

National Environmental Policy Act of 1969

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

List of Subjects in 30 CFR Part 206

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

Dated: May 19, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

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

PART 206—PRODUCT VALUATION

Subpart F—Coal

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

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

2. Section 206.259 is amended by revising paragraphs (a)(1), (b)(1), (c)(1)(i) through (iii), (c)(2)(i) through (iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v) through (vii) as paragraphs (c)(2)(iv) through (vi), revising newly designated paragraphs (c)(2)(iv) through (vi), adding paragraph (c)(5) and revising paragraph (d) to read as follows:

§ 206.259 Determination of washing allowances.

(a) * * *

(1) For washing costs incurred by a lessee pursuant to an arm's-length contract, the washing allowance will be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. Before any washing allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS-4402 reporting period, the lessee must file a Form MMS-4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of washing allowances is not required for non-arm's-length or no contract situations. Before any washing allowance deduction may be taken on Form MMS-2014, the lessee must file a Form MMS-4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with

paragraph (c)(2) of this section. After the Form MMS-4402 reporting period, the lessee must file a Form MMS-4292 in accordance with (c)(2) of this section. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual washing allowance.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS-4402 for washing allowances each calendar year. The lessee must file the Form MMS-4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS-2014. A Form MMS-4402 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4402 reporting period, the lessee must file page one of Form MMS-4292 for washing allowances within 3 months after the end of the reporting period, unless MMS approves a longer period.

* * * * *

(2) * * *

(i) With the exception of those washing allowances specified in paragraph (c)(2)(iv) and (vi) of this section, the lessee must file a Form MMS-4402 for washing allowances each calendar year. The lessee must file the Form MMS-4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS-2014. A Form MMS-4402 received by the end of the month that Form MMS-2014 is due will be considered timely received.

(ii) The Form MMS-4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS-4402 reporting period, the lessee must file page one and all supporting schedules of Form MMS-4292 for actual washing allowances calculated for the reporting period. Form MMS-4292 is due within three months after the end of the reporting period, unless MMS approves a longer period.

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

(v) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Forms MMS-4292. The data shall be provided within a reasonable period of time, as determined by MMS.

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

- (3) * * *
- (4) * * *

(5) A lessee is required to file a new Form MMS-4292 if adjustments are made to actual non-arm's-length washing allowances on Form MMS-2014.

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

| If a lessee * * * | The assessment is * * * | Plus interest calculated * * * |
|---|---|---|
| Files an inaccurate or Late Form MMS-4402 | \$10 per allowance line required on Form MMS-4402. | |
| Deducts a washing allowance on Form MMS-2014 without complying with requirements for actual cost reporting on Form MMS-4292. | An amount equal to 10 percent of the total allowance amount deducted on Forms MMS-2014 during the year. | From the date that Form MMS-4292 was due until the date that the form was received. |
| Takes a washing allowance on Form MMS-2014 by improperly netting the allowance against the sales value of the coal instead of reporting the allowance as a separate line item on Form MMS-2014 as required by paragraph (c)(4) of this section. | An amount equal to 20 percent of the total allowance amount netted on Form MMS-2014. | From the end of the month in which Form MMS-2014 containing the netted allowance was submitted to the date MMS discovers the netted amount. |
| Erroneously reports a washing allowance that results in an underpayment of royalties. | | On the amount of the underpayment. |

* * * * *

3. Section 206.262 is amended by revising paragraphs (a)(1), (b)(1), (c)(1)(i) through (iv), (c)(2)(i) through (iii), removing paragraph (iv), redesignating paragraphs (c)(2)(v) through (viii) to paragraphs (c)(2)(iv) through (vii), revising newly designated paragraphs (c)(2)(iv) through (vii), adding paragraph (c)(5) and revising paragraph (d) to read as follows:

§ 206.262 Determination of transportation allowances.

(a) * * *

(1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. Before any transportation allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS-4402 reporting period, the lessee must file a Form MMS-4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance shall be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of transportation allowances is not required for non-arm's-length or no-contract situations. Before any transportation allowance deduction may be taken on Form MMS-2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS-4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS-4402 reporting period, the lessee must file a Form MMS-4293 in accordance with paragraph (c)(2) of this section. MMS shall monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS-4402 for transportation

allowances each calendar year. The lessee must file the Form MMS-4402 by the due date of the first sales month in which a transportation allowance is reported on Form MMS-2014. A Form MMS-4402 received by the end of the month that Form MMS-2014 is due shall be considered timely received.

(ii) The Form MMS-4402 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year.

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

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

* * * * *

(2) * * *

(i) With the exception of those transportation allowances specified in paragraph (c)(2)(iv) and (vi) of this section, the lessee must file a Form MMS-4402 for transportation allowances each calendar year. The lessee must file the Form MMS-4402 by the due date of the first sales month in

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

(ii) The Form MMS-4402 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year.

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

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

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

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

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

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

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

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

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30 CFR Part 206

RIN 1010-AB94

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

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: David Guzy, Chief, Rules and Procedures Staff, Telephone (303) 231-3432, Fax (303) 231-3194.

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

I. Background

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

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

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