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