associated sanctions. Therefore, MMS proposes to change its current regulatory requirements consistent with the substance of the alternative approach the study group presented.

V. Additional Changes by MMS

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

One of several changes involves the introduction of an assessment for the "improper netting" of allowances against royalty value when reporting royalties on the Form MMS-2014. "Improper netting" is a circumstance where two arm's-length transactions, one representing a sale and the other representing transportation and/or processing, 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 believes 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 percent rate proposed and whether an upper limit or cap should be established and how it should be constructed.

c. Unauthorized Allowance Assessment and Interest Requirement

Another change involves the introduction of an assessment and an interest requirement for certain circumstances where an oil or gas transportation or processing allowance in excess of regulatory thresholds is taken on Form MMS-2014 without the

required prior MMS approval. Specifically, the current oil and gas regulations require prior MMS approval before a transportation or processing allowance that is in excess of 50 percent or 662/3 percent, respectively, of the value of production may be taken on Form MMS–2014. An assessment of \$10 per line is proposed for each reported allowance line taken in excess of the regulatory thresholds without obtaining the required prior approval from MMS.

Furthermore, an interest-based additional assessment is proposed for the period of time that the royalty payor has had the monetary benefit of the allowance in excess of the administrative threshold without having received MMS approval. MMS considered requiring the royalty payor to pay back an allowance taken in excess of the threshold but determined that an interest charge approach based on the amount in excess of the threshold would be a reasonable deterrent. MMS requests specific comment on the construction of this proposal and alternative approaches that should be considered.

d. 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.

e. Transportation Factors

MMS is considering the elimination of the current treatment of transportation factors in arm's-length contracts as reductions in value. Instead, MMS would treat such costs as transportation allowances. In the March 1988 valuation rulemaking, the concept of the transportation factor was adopted to reduce administrative burden for MMS and the industry. MMS has found through experience that transportation factors have created some confusion between MMS and the industry. Numerous instances have been encountered where disagreement existed between MMS and industry as to whether a transportation element of a sales arrangement was an allowance or a transportation factor under the regulations. In many of these cases, it was determined that the transportation

cost should be treated as an allowance rather than a factor. In these cases, the payor had not filed required allowance forms and, consequently, was subject to substantial sanctions. Rather than proposing the elimination of transportation factors in the rulemaking, MMS is seeking specific comments on the extent to which royalty payors are now using transportation factors and what impacts would be caused if transportation factors were eliminated from the current regulations.

f. Technical Corrections

MMS proposes several technical corrections and clarifications including a lessee's option to use a depreciation or a return on depreciable capital investment basis in calculating actual allowance costs.

VI. Proposed Amendments

For the reasons discussed above, MMS proposes to amend its valuation regulations to change the allowance forms filing requirements for oil and gas. 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 for (1) failure to properly report allowances as separate lines on the Form MMS-2014, a practice commonly referred to as "netting"; (2) noncompliance with regulatory requirements to obtain prior approval from MMS before taking oil and gas transportation allowances that exceed 50 percent of the value of the production, or gas processing allowances that exceed 662/3 percent of the value of gas plant products; and (3) reporting erroneous information on required allowance forms. MMS also proposes several minor technical corrections and clarifications.

MMS is also proposing similar amendments to coal allowance regulations at 30 CFR 206 which are being published separately.

a. Oil Transportation Allowances

MMS proposes to amend § 206.105 by deleting the fourth and fifth sentences of paragraph (a)(1)(i) that state:

Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil 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–4110 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 sentences: