

than the original owner, you must assume the depreciation schedule of the person who owned the system on June 1, 2000." But if A were the original owner and still owned the system on June 1, 2000, and subsequently sold the system to B after June 1, 2000, who in turn sold it to C, the rule as written says that C would have to assume original owner A's depreciation schedule. This was not MMS' intent. To be consistent with the intended result, C should assume B's depreciation schedule in this situation.

Therefore, to reflect the original intent, MMS proposes to modify § 206.111(h)(5) to delete the words "who owned the system on June 1, 2000" and replace them with the words "from whom you bought the system." This change would enable C in the example above to assume the depreciation schedule of B based on B's purchase price of the transportation system and subsequent reinvestment.

E. Treatment of Joint Operating Agreements—§ 206.102

In the preamble to the 2000 rule, MMS explained:

If a lessee sells to a co-lessee/designee under a joint operating agreement, MMS ordinarily will regard that arrangement as the designee disposing of production on the lessee's behalf and not as an actual sale to the designee.

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Based upon further consideration of these situations, MMS does not believe there should be a presumption that all of these sorts of transactions are non-arm's-length and are not sales. When a party to a joint operating agreement, who is not the operator, allows the operator to dispose of its share of oil production in exchange for the consideration provided under that agreement, MMS recognizes that some of these arrangements may be sales of the production. The royalty value of the oil so transferred depends on whether the sale is an arm's-length sale. MMS expects that in most of the situations where the lessee is not the operator, the transaction may be at arm's-length. If the sale is at arm's-length, the question then becomes (as in any arm's-length situation) whether any of the exceptions in section 206.102(c) apply. In some circumstances, the sale also may be a marketing agreement, and the operator may be performing the marketing function for the lessee. In such a case, the MMS may determine that the lessee has improperly deducted marketing costs, and MMS may increase the royalty value accordingly. MMS will examine each case on its facts just as it

does any other disposition of production.

MMS also proposes to change the reporting instructions in 30 CFR 210.53 with respect to sales under joint operating agreements to facilitate review and audit of these transactions. MMS proposes to add a new paragraph (c) to section 210.53 that would require an operator under a joint operating agreement who is also a designee and who reports and pays royalty on behalf of one or more working interest owners from whom the operator buys production, to report the share of the production it purchased from the working interest owners and the associated royalty payment on a separate line on the Form MMS-2014 from the line on which the operator reports its own share of production and the associated royalty payment.

F. Limit on Grace Period for Reporting Changes—§ 206.121

The MMS is proposing a technical correction to the regulation at section 206.121 that permitted a grace period for reporting and paying royalties after the June 2000 rule became effective to give royalty payors adequate time to change their systems. We are proposing to end-date the grace period for such adjustments, because we consider three years to be sufficient time to have reported and paid royalties under the regulations published in 2000.

G. Other Technical Changes

Section 206.103(b) applies to production from leases in the Rocky Mountain Region, a defined term. The current rule prescribes a series of four benchmarks described in paragraphs (b)(2) through (b)(5) for valuing production in the Rocky Mountain Region that is not sold at arm's-length. To provide clarity in this section of the rule, MMS is proposing to renumber paragraphs (b)(2) through (b)(5) to make them (b)(1) through (b)(4) so that the four benchmarks correspond with the four paragraph numbers. Other than this renumbering, the only change MMS is proposing to make to the valuation criteria for the Rocky Mountain Region is the change to the third benchmark from spot prices to NYMEX valuation, described above in I. A.

In addition, MMS proposes a technical change to the definition of "affiliate" in section 206.101. MMS would change paragraph (2) of the definition of "affiliate" by striking the words "of between 10 and 50 percent" and substituting therefor the words "10 through 50 percent" because the current definition does not specify the treatment

of a situation in which one person owns exactly 50 percent of another.

H. Other Possible Changes That May Be Considered

In addition to issues already identified above on which MMS seeks comments, MMS specifically requests comments on the following issue: Should MMS allow using the NYMEX price to value oil sold at arm's-length in multiple sales downstream of the lease where the lessee does not first transfer to an affiliate and where "tracing" the production from the lease or unit to the specific sale is burdensome?

Under the 2000 rule, most lessees who are relatively large producers have the option of using a spot market index-based value even when the oil is sold at arm's length, because the lessee is working through an affiliate who is the seller in an arm's-length resale. Thus, if a lessee wants to avoid the burden of "tracing" the production to each particular sale out of a large number of sales to different purchasers, it may opt to use index-based value under the current 30 CFR § 206.102(d)(2). Lessees who do not first transfer to an affiliate and who sell directly to a large number of different purchasers do not have this option. MMS seeks comment on whether the option of using NYMEX prices should be extended to these situations in the event that MMS adopts NYMEX-based valuation.

II. Procedural Matters

1. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet site at www.mrm.mms.gov. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.