

NEWFOUNDLAND AND LABRADOR
REGULATION 71/03

Royalty Regulations, 2003

under the

Petroleum and Natural Gas Act
(O.C. 2003-344)

Amended by:

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(Filed July 11, 2003)

Under the authority of section 39 of the Petroleum and Natural Gas Act the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, July 8, 2003.

Deborah E. Fry

Clerk of the Executive Council

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Short title

- 1. These regulations may be cited as the Royalty Regulations, 2003.

71/03 s1

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Application

- 2. These regulations shall apply to leases issued after April 1, 1990.

71/03 s2

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Interpretation

3. (1) In these regulations

- (a) "Act" means the Petroleum and Natural Gas Act ;
- (b) "affiliate" has the same meaning as the words "affiliated persons" in section 251.1 of the Income Tax Act (Canada) ;
- (c) "barrel" means 0.1589873 cubic metres or 42 US gallons or 34.9723 Canadian gallons measured at 101.325 kPa and a temperature of 15 ° Celsius;
- (d) "basic royalty" means the royalty share required to be paid in accordance with section 6;
- (e) "board" means the Canada-Newfoundland and Labrador Offshore Petroleum Board established under the Canada-Newfoundland Atlantic Accord Implementation Act (Canada) and the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act ;
- (f) "cash payment" includes payments in cash, by cheque, bank draft, bank transfer, or other instrument that transfers money;
- (g) "commencement date" means a commencement date established under section 14;
- (h) "consumer price index" means the Consumer Price Index for Canada (All Items) published from time to time by Statistics Canada;
- (i) "incremental royalty" means the royalty share required to be paid under sections 10 and 11;
- (j) "independent auditor" means a public accountant with a substantial presence in Newfoundland and Labrador who is not an employee of the interest holder or its affiliates and who is licensed to practise as a public accountant under the Chartered Professional Accountants and Public Accountants Act ;
- (k) "interest holder", with respect to a lease or a share in a lease, means the holder of that lease or share as recorded in the appropriate registry for that lease or share, or, where a lease has not been issued, the proponents of a project where the development plan has been approved by the board and the proponents will be applying for a lease;
- (l) "loading point" means the final point of measurement of the production facilities of a lease prior to the loading of oil for transportation;
- (m) "overhead" means the general corporate and administrative costs incurred for an organization, employees and facilities including those relating to the functions of finance, administration, employee relations, information systems, legal and accounting services, government relations, public affairs and planning;
- (n) "period" means a calendar year except
 - (i) for the purpose of calculating Tier I incremental royalty with respect to a year in which Tier I payout occurs, the time from the beginning of the calendar year to and including the last day of the month preceding the month in which Tier I payout occurs, and from the first day of the month in which Tier I payout occurs to the end of that calendar year shall be considered to be a separate period, and
 - (ii) for the purpose of calculating Tier II incremental royalty with respect to a year in which Tier II payout occurs, the time from the beginning of the calendar year to and including the last day of the month preceding the month in which Tier II payout occurs, and from the first day of the month in which Tier II payout occurs to the end of that calendar year shall be considered to be a separate period;
- (o) "prime rate" means the monthly prime business rate of interest published by the Bank of Canada;
- (p) "production start-up" means the date upon which the cumulative amount of oil transferred at the loading point under the lease exceeds 3 million barrels;
- (q) "project lands" means the geographic area described in and covered by a lease;
- (r) "project operator" means a person designated by the interest holders in a lease to act as the operator for the development and production activities carried out under that lease;
- (s) "records" includes an account, agreement, book, report, chart, table, diagram, form, image, invoice, letter, map, memorandum, plan, return, voucher, working paper, modelling document, analysis, projection, estimate and other thing containing information that is written or recorded including those items or data in machine readable or electronic format;
- (t) "required form" means the form required by the minister and includes the information and records that the minister requires with that form;
- (u) "reservoir risk amount" means an amount that an interest holder under a lease is required to pay another person to the extent that the amount
 - (i) is computed based on the amount or value of production under the lease, and
 - (ii) subject to subsection 68(1), qualifies as an eligible predevelopment cost, eligible operating cost, eligible capital cost or a decommissioning cost of the interest holder under that lease;

(v) "royalty cost" means a cost that is an eligible operating cost, eligible capital cost, eligible predevelopment cost or a net decommissioning cost;

(w) "tanker administrator" means, for an owned tanker, capital lease tanker, operating lease tanker or replacement tanker, a person designated to act as the administrator for the transportation activities of that tanker;

(w.1) "tanker cost aggregator" means a third party selected by the interest holders who aggregates eligible tanker costs and tanker incidental revenue based on reports provided by the tanker administrators and interest holders;

(x) "transshipment facility administrator" means,

(i) for the transshipment facility at Whiffen Head, Newfoundland Transshipment Limited, and

(ii) for another transshipment facility in Newfoundland and Labrador, a person who acts as the administrator of the transshipment facility;

(y) "transaction" includes an arrangement or event and a series of transactions includes related transactions completed in contemplation of the series; and

(z) "working interest share" means an interest holder's pro rata share of the costs, revenues and production under a lease based upon that interest holder's undivided interest in the lease.

(2) In these regulations a reference to the "Crown" shall be considered to be a reference to "Her Majesty in Right of Newfoundland and Labrador".

(3) In these regulations, a reference to dollars, money or an amount of money shall be considered to be a reference to those dollars, that money or amount of money in Canadian currency.

(4) In these regulations, unless otherwise expressed, all accounting terms and practices shall have the meaning assigned to them that is in accordance with Canadian generally accepted accounting principles and good petroleum industry practices.

(5) In these regulations, a reference to a volume of oil shall be considered to be a volume measured in barrels.

(6) In these regulations, a reference to "force majeure" shall mean the initial occurrence and the period of duration of one or more of the following events

(a) an act of God or action of a natural element;

(b) war, revolution, insurrection, riot, disturbance, blockade and other similar unlawful acts against public order or authority;

(c) a strike, lockout or other labour disturbance;

(d) a direction, order, injunction or law made by a court or government having or purporting to have jurisdiction excepting directions, orders or injunctions of a court or government authority resulting from an unlawful act of the interest holder or project operator; and

(e) another event in the nature of those events referred to in paragraphs (a) to (d), and a lack of finances or a change in the economic circumstances of the interest holder or project operator shall not be considered to be a force majeure event or to extend a force majeure event but shall not prevent a force majeure from being found where a circumstance referred to in paragraphs (a) to (e) exists.

71/03 s3; 35/13 s1; 2014 cC-10.1 s73

PART I

ROYALTY

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Liability for royalty

4. (1) An interest holder is liable to the Crown for royalty share calculated in accordance with these regulations and that royalty share may be taken in kind or paid in money at the option of the minister.

(2) The royalty portion of royalty share shall include, when required to be paid under these regulations, basic royalty and incremental royalty.

(3) An interest holder shall assess royalty share, gross revenue, royalty costs, net revenue, simple payout, Tier I payout and Tier II payout for a lease separate from

(a) other interest holders in the same lease; and

(b) other leases in which that interest holder may have a share,

and that assessment is subject to audit and reassessment by the minister.

(4) Where 2 or more leases have been issued the minister may designate those leases as one lease for the purpose of these regulations or a provision of these regulations.

(5) The liability of an interest holder for royalty share shall not be affected by a defect, irregularity, omission or error in a lease or an error in identification of an interest holder in a lease.

(6) An interest holder in a lease shall, subject to another section of the regulations, separately calculate and separately be liable for that interest holder's royalty share under that lease.

(7) Where, under these regulations, an amount is owed by an interest holder to the Crown, the minister may recover that amount by way of set-off against an amount that the Crown owes to that interest holder.

71/03 s4

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Payment of royalty

5. (1) Basic royalty and incremental royalty are due on the last day of the month following the month to which the royalty relates.

(2) Royalty share paid by an interest holder with respect to a lease shall be applied

(a) first, on account of fees and expenses due to the Crown;

(b) second, on account of penalties due to the Crown but not paid;

(c) third, on account of interest due to the Crown but not paid; and

(d) fourth, on account of basic royalty and incremental royalty due to the Crown and not paid.

(3) The minister may refund an overpayment of royalty share where

(a) the minister determines that an overpayment has been made;

(b) royalty share is remitted in error; or

(c) that refund has been ordered by a court or by arbitration under these regulations.

71/03 s5

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Basic Royalty

6. Basic royalty payable by an interest holder for a month with respect to a lease is the sum of

(a) gross revenue of an interest holder under the lease for the month calculated in accordance with section 7; plus

(b) the value of oil taken in kind by the Crown from that interest holder for that month, multiplied by the applicable basic royalty rate in effect under Part XIII or XIV.

71/03 s6

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Gross revenue

7. (1) The gross revenue for an interest holder in a lease for a month shall be the gross sales revenue of the interest holder in a lease less the eligible transportation costs under Part XI or Part XI.1, as applicable, for that interest holder for that lease for that month.

(2) The gross sales revenue of an interest holder in a lease for a month shall be the sum of

(a) revenue from sales of oil produced under the lease by that interest holder in that month; plus

(b) deemed sales of oil under the lease by that interest holder in that month; less

(c) revenue in that month from sales of oil that was included in the calculation of gross sales revenue under the lease in a previous month.

(3) Revenue under paragraph (2)(a) shall be calculated by multiplying the quantities of oil sold by

(a) the sale price for that oil if the transaction occurs at arm's length;

(b) for a lease not under Part XIII, the price determined under subsection (9) where the transaction is not at arm's length; or

(c) for a lease under Part XIII, the price determined under section 81 where the transaction is not at arm's length.

(4) For the purpose of paragraph (2)(b), oil transferred to the interest holder at the loading point to the end of a month that has not been sold shall be deemed sold at the end of that month, with the exception of

(a) oil in inventory that was transferred to the interest holder at the loading point within 91 days before the end of the month for which the royalty is calculated; and

(b) all allowed shrinkage as described in section 8.

(5) For the purposes of subsection (4), oil taken under a lease that is transferred at the loading point shall be considered to be sold by that interest holder on a first in, first out basis.

(6) Deemed sales for a month shall be the quantity of oil deemed to be sold multiplied by the price for that month determined to be applicable under subsection (9) or, for a lease under Part XIII, subsection 81(1).

(7) In a month in which oil previously deemed sold under subsection (4) is actually sold, gross revenue for that month shall be adjusted to reflect the difference between the actual sale value of the oil and the value previously determined under those subsections.

(8) For the purpose of calculating royalty share, oil shall be considered to have been sold the earlier of

- (a) when title to that oil passes to an arm's length purchaser;
- (b) when the oil enters the entry valve of a refinery or consuming facility; or
- (c) when the interest holder or an affiliate of that interest holder has received payment for the sale of that oil.

(9) For the purposes of subsection (6), paragraphs 17(b) and 23(3)(g) and subsections 24(1) and (2) the minister shall determine a monthly price for oil in the month and that price shall be based upon the fair market value for oil during that month.

71/03 s7; 35/13 s2

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Allowed shrinkage

8. (1) Allowed shrinkage is the reduction in the volume of oil that is incidental to the transportation of that oil from the loading point under a lease directly to an entry valve at a transshipment facility in the province or other initial discharge point for that oil and is the lesser of

- (a) actual shrinkage incurred; and
- (b) 0.2% of the bill of lading net standard volume quantity of oil loaded at the loading point.

(2) Where the measurement facilities and practices at the loading point and discharge point are not in compliance with section 18, there shall not be any allowed shrinkage.

71/03 s8

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Simple payout

9. (1) Simple payout occurs under a lease for an interest holder when, for the first time, the sum of the cumulative

- (a) gross revenue; and
- (b) incidental revenue

exceeds the sum of the cumulative

- (c) eligible pre-development costs;
- (d) eligible capital costs;
- (e) eligible operating costs; and
- (f) basic royalty paid, excluding basic royalty paid in kind,

for that interest holder.

(2) In subsection (1) "cumulative" means the sum of all revenue, costs and basic royalty referred to in subsection (1) for the current month and all prior months.

71/03 s9

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Tier I incremental royalty

10. (1) An interest holder shall calculate and pay Tier I incremental royalty to the Crown every month, starting with the month in which Tier I payout for that interest holder occurs.

(2) Tier I incremental royalty payable by an interest holder under a lease for a month shall be

(a) the interest holder's net revenue under the lease determined in accordance with section 12, cumulative from the start of the period to the end of that month, multiplied by the applicable Tier I royalty rate in Part XIII or Part XIV; less

(b) the cumulative basic royalty paid by the interest holder under the lease for the period to the end of the previous month, to the extent that the cumulative basic royalty paid is less than or equal to the amount calculated under paragraph (a); less

(c) the cumulative Tier I incremental royalty paid under the lease for the period to the end of the previous month.

(3) Tier I payout for an interest holder occurs when, for the first time, the sum of the cumulative

(a) gross revenue; and

(b) incidental revenue,

equals the sum of cumulative

(c) eligible pre-development costs;

(d) eligible capital costs;

(e) eligible operating costs;

(f) Tier I return allowance; and

(g) basic royalty paid, excluding basic royalty paid in kind.

(4) Tier I return allowance for an interest holder for each month after the commencement date, until the month in which Tier I payout occurs, shall be calculated as the product of the Tier I return allowance factor multiplied by the amount by which the sum of an interest holder's cumulative

(a) eligible pre-development costs;

(b) eligible capital costs;

(c) eligible operating costs;

(d) basic royalty, excluding basic royalty paid in kind; and

(e) Tier I return allowance to the end of the previous month,

exceeds the sum of cumulative

(f) gross revenue; and

(g) incidental revenue.

(5) In this section, the applicable Tier I return allowance factor for a month is the amount determined in accordance with Part XIII or Part XIV.

(6) In subsections (3) and (4), "cumulative" means the sum of all revenues, costs and basic royalty referred to in the applicable subsection (3) or (4) for the current month and all prior months.

71/03 s10

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Tier II incremental royalty

11. (1) An interest holder in a lease shall calculate and pay a Tier II incremental royalty to the Crown every month, starting with the month in which Tier II payout for that interest holder occurs.

(2) Tier II incremental royalty payable by an interest holder under a lease for a month shall be

(a) the interest holder's net revenue under the lease determined in accordance with section 12, cumulative from the start of the period to the end of that month, multiplied by the applicable Tier II royalty rate in Part XIII or Part XIV; less

(b) the cumulative Tier II royalty paid for the period to the end of the previous month.

(3) Tier II payout for an interest holder occurs when, for the first time, the sum of the cumulative

(a) gross revenue; and

(b) incidental revenue,

equals the sum of the cumulative

(c) eligible pre-development costs;

(d) eligible capital costs;

(e) eligible operating costs;

(f) Tier II return allowance;

(g) basic royalty paid, excluding basic royalty paid in kind; and

(h) incremental royalty paid, excluding incremental royalty paid in kind.

(4) Tier II return allowance for an interest holder for each month after the commencement date, until the month in which Tier II payout occurs, shall be calculated as the product of the Tier II return allowance factor multiplied by the amount by which the sum of an interest holder's cumulative

(a) eligible pre-development costs;

(b) eligible capital costs;

(c) eligible operating costs;

(d) basic royalty paid, excluding basic royalty paid in kind;

(e) incremental royalty paid, excluding incremental royalty paid in kind; and

(f) Tier II return allowance to the end of the previous month,

exceeds the sum of the interest holder's cumulative

(g) gross revenue; and

(h) incidental revenue.

(5) In this section the Tier II return allowance factor for a month under a lease is the applicable amount determined under Part XIII or Part XIV.

(6) In subsections (3) and (4) "cumulative" means the sum of all revenues, costs, basic royalty and incremental royalty referred to in the applicable subsection (3) or (4) for the current month and all prior months.

71/03 s11

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Net revenue

12. (1) Net revenue for an interest holder in a lease for a month is the amount by which the sum of

(a) gross revenue; and

(b) incidental revenue; and

(c) the value of oil taken in kind,

of the interest holder for the month, exceeds the sum of

(d) eligible capital costs; and

(e) eligible operating costs,

for that interest holder for the month.

(2) If, in a period after Tier I payout, the sum of the interest holder's

(a) gross revenue;

(b) incidental revenue;

(c) with respect to a lease under Part XIV, value of oil taken in kind by the minister for the period, determined to be the volume of oil taken in kind multiplied by the price determined by the minister under subsection 7(9); and

(d) with respect to a lease under Part XIII, value of oil taken in kind by the minister for the period, determined to be the volume of oil taken in kind multiplied by the price determined under subsection 81(1) for the month the oil was taken in kind,

is exceeded by the sum of the interest holder's

(e) eligible capital costs; and

(f) eligible operating costs,

the amount of that excess shall be carried forward as a deduction against net revenue in the next period.

71/03 s12

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Return allowance suspension

13. (1) Notwithstanding sections 10 and 11, the minister may suspend the calculation of Tier I and Tier II return allowance

(a) before production start-up, if all or substantially all of the design, construction and drilling work being carried out under the lease has ceased or, the interest holders have ceased to make the necessary expenditures and effort required to reach production start-up;

(b) after production start-up where there has been no activity under the lease or no production of oil for a period of 60 days; or

(c) when a force majeure event causing or resulting in the cessation of production occurs.

(2) The maximum period of time that the minister may suspend the calculation of Tier I and Tier II return allowance under subsection (1) is the time during which an event referred to in subsection (1) has occurred and is continuing.

(3) If the return allowance is suspended for a part of a month, Tier I and II return allowance shall be calculated for the number of days or partial days in the month that production of oil took place.

(4) The return allowance shall not be suspended under subsection (1) if the event causing the suspension does not exceed 2 days with respect to a single event or does not exceed 10 days in a period.

71/03 s13

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Commencement date

14. The minister, after consulting with the interest holders in a lease, shall determine the commencement date of development activities under a lease or, where a lease has not been issued, a project where the development plan has been approved by the board and the interest holders will be applying for a lease.

71/03 s14

PART II

GENERAL ACCOUNTING

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Double counting

15. (1) A cost or a part of a cost that has been claimed, deducted or included by an interest holder in a lease in the calculation of royalty share cannot be claimed, deducted or included by that interest holder or another interest holder in a calculation of royalty share under that lease or another lease.

(2) In the event of a conflict between the provisions of this section and another section of these regulations, this section shall prevail.

71/03 s15

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Arm's length transactions and fair market value

16. (1) Where a cost or revenue relates to a transaction, or a series of transactions that are not at arm's length, for the purposes of calculating royalty share payable,

(a) a cost shall be valued at the lesser of the payment made for that transaction, in cash or in kind, or the fair market value; and

(b) revenue shall be valued at the greater of the payment received by or on behalf of the interest holder for that transaction, in cash or in kind, or the fair market value.

(2) In these regulations,

(a) "arm's length" shall have the same meaning as in section 251 of the Income Tax Act (Canada), as amended from time to time; and

(b) a reference to "fair market value", except with respect to the value on the sale of oil, shall be the value based on transactions occurring in comparable open markets among persons who are not affiliated.

(3) Notwithstanding subsection (2), the following shall not be considered to be arm's length transactions under these regulations:

(a) an acquisition, sale or transaction involving only

(i) 2 or more interest holders in a lease, or

(ii) an interest holder and an affiliate of an interest holder, or

(iii) two or more affiliates of an interest holder;

(b) where the amount of consideration is payable other than by a cash payment;

(c) where the contract price is not the only consideration for the sale or transaction;

(d) where the terms of a transaction are materially affected by a commercial relationship, other than that created by the transaction, among any of the parties to the transaction or anyone not otherwise at arm's length with those parties;

(e) an acquisition, sale, sharing of costs or a transaction involving 2 or more leases where each lease is controlled by the same interest holder, or by a group of common interest holders in each lease, including affiliates of those interest holders;

(f) transactions between an interest holder in a lease and a corporation if one or more interest holders in that lease, alone or jointly, have a controlling interest in that corporation; and

(g) those other circumstances that the minister may determine not to be at arm's length.

(4) For the purpose of paragraph (3)(e), control means control in fact, including the ability, directly or indirectly and whether or not exercised, to direct the management or policies with respect to a lease whether through ownership of securities, by contract, trust or otherwise.

71/03 s16

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Transaction not at arm's length

17. Notwithstanding section 16, where a sale of oil relates to a transaction or a series of transactions that are not at arm's length, for the purpose of calculating royalty share payable, the sale price shall be valued at the higher of

- (a) the actual price received for the oil; and
- (b) the price that the minister determines in accordance with subsection 7(9).

71/03 s17

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Measurement standards

18. (1) Measurements of oil and petroleum substances and devices that are used to measure them shall be in accordance with the legislation, regulations and rules administered by the board.

(2) Notwithstanding subsection (1), the minister may establish measurement and device standards after consultation with the interest holders for the purposes of these regulations and where the minister establishes measurement and device standards, he or she shall notify interest holders of those standards.

71/03 s18

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Commingling

19. (1) Where oil obtained under a lease is commingled with oil obtained under another lease at any time before the final sale of that commingled oil, adjustments to the quantity or valuation of the commingled oil, for the purposes of calculating royalty share payable, must be approved by the minister and where the minister is not satisfied with that calculation, he or she shall determine the adjustments to quantity or valuation for the purposes of these regulations.

(2) An approval by the minister under subsection (1) shall be based upon industry practice with respect to the adjustments to the quantity or valuation of oil that is commingled so that commingled oil is appropriately valued for the purpose of calculating royalty share payable.

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Lien property

20. (1) The assets of an interest holder that are subject to a lien established under the Act shall be:

- (a) that interest holder's undivided share of all oil produced from the lease;
- (b) that interest holder's undivided interest in the lease, all rights derived under the lease or resulting from the issue of the lease, and in all agreements between the interest holders in the lease respecting the development, production and transportation of oil under the lease;

- (c) all money and proceeds that may at any time be due, owing or payable to that interest holder with respect to

- (i) that interest holder's divided or undivided share in all oil and in all agreements in effect or entered into by that interest holder that relates to the sale, use or disposition of that interest holder's divided or undivided share of oil produced from that lease, and

- (ii) the sale, assignment other than by way of security, transfer or disposition, in whole or in part of the share of that interest holder in the lease, including all book debts, accounts receivable, negotiable and non-negotiable instruments, judgements, securities and choses in action arising from the sale or disposition of that oil or that interest holder's share in the lease; and

- (d) records with respect to the assets referred to in paragraphs (a) to (c) including those pertaining to the sale of oil under the interest holder's lease.

(2) The assets of an interest holder other than those specified in subsection (1) shall be considered to be released from the lien established under the Act.

(3) Where an interest holder is in violation of its royalty share payment obligation under the Act or these regulations, the minister shall give notice of that violation, including the amount payable by the interest holder secured by the lien to the interest holder and the other interest holders in that lease, and the minister shall not exercise his or her rights under the lien until at least 5 days after that notice has been given.

(4) Notwithstanding subsection (3), the minister shall not exercise his or her rights with respect to lien property described in paragraph (1)(b), subparagraph (1)(c)(ii) or the records under paragraph (1)(d) until at least 60 days after the notice referred to in subsection (3) has been given.

(5) Subsection (4) shall not apply and any outstanding notice period under that subsection shall cease where an interest holder in the lease breaches an obligation to assist the minister in taking in kind under Part III.

(6) Upon payment of royalty share, the lien with respect to that royalty share shall be considered to be released.

(7) Part V of the Personal Property Security Act shall apply to a lien established under the Act, with the necessary changes, as if

- (a) an interest holder under these regulations was a debtor;
- (b) the Crown was a secured creditor;
- (c) the assets of an interest holder that are subject to a lien under the Act were collateral; and
- (d) these regulations were a security agreement,

under the Personal Property Security Act.

71/03 s20

PART III

ROYALTY SHARE IN KIND

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Taking in kind

21. (1) Where the minister intends to take oil in kind under section 34 of the Act, the minister shall give an interest holder at least 6 months written notice stating the month in which royalty share shall

- (a) commence being payable in kind; and
- (b) cease being payable in kind.

(2) Royalty share shall commence being payable in kind on the first day of a month and shall cease being payable in kind on the last day of a month.

(3) Where the minister has given notice under subsection (1), he or she shall, after consultation with the interest holder, give reasonable notice to the interest holder of the time, manner, location and volume of the delivery of oil taken in kind.

(4) The minister may amend information provided in a notice under subsection (1) without affecting the 6-month time period required under that subsection.

71/03 s21

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Taking in kind for default in royalty share payment

22. (1) Notwithstanding subsections 21(1), (2) and (3), where the minister intends to take in kind from an interest holder in default of its royalty share payment obligations under the Act, the notice periods under subsections 21 (1) and (3) shall be at least 5 days.

(2) The minister may amend information provided in a notice under subsection (1) without affecting the 5-day time period required under that subsection.

(3) Notwithstanding the payment to the minister of a defaulting interest holder's royalty share payable, in cash or in kind, subsequent to a notice under subsection (1), the minister may continue to take royalty share payable in kind from that interest holder.

(4) Subsections 28(5), (6) and (7) apply, with the necessary changes, where a notice has been given to an interest holder under subsection (1).

(5) Section 25 and subsection 28(3) do not apply where oil is taken in kind under this section.

(6) Where a notice has been given to a defaulting interest holder under subsection (1) the minister may give notice to another interest holder in the lease or, with respect to paragraph (a) or (b), another person requiring that other interest holder or person

(a) to store on behalf of and make available to the Crown, oil stored by that interest holder or person on behalf of the defaulting interest holder;

(b) when storage space is available and the Crown is not otherwise in a position to take delivery of oil scheduled to be delivered to the defaulting interest holder, to store that oil on behalf of the Crown;

(c) not to allow the delivery of oil to the defaulting interest holder or another person claiming through that defaulting interest holder;

(d) not to interfere with scheduled rights of the defaulting interest holder to take delivery of oil where the Crown requires those rights in order to take in kind notwithstanding that these rights may have been directly or indirectly affected by the default of the defaulting interest holder; and

(e) to generally co-operate in the provision of lifting scheduling, transportation scheduling and delivery plans of the defaulting interest holder.

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Calculation of volume

23. (1) Before an interest holder attains Tier I payout, the volume of oil that the Crown is entitled to take in kind with respect to royalty share that is payable to the Crown under a lease by that interest holder for a month shall be in accordance with the following formula:

$$\text{Volume} = B [C + (A/R) - P] + [(U - T)/ R]$$

(2) After an interest holder has attained Tier I payout, the volume of oil to be taken in kind by the Crown with respect to royalty share payable to the Crown under a lease by that interest holder for a month shall be in accordance with the following formula:

$$\text{Volume} = (Bp + I + U) / R$$

(3) In subsections (1) and (2)

(a) "volume" means the oil that the Crown is entitled to take in kind for the month;

(b) "B" means the applicable basic royalty rate in effect under Part XIII or Part XIV;

(c) "Bp" means the basic royalty payable for the month;

(d) "I" means the incremental royalty payable for the month;

(e) "C" means the volume of oil taken by the interest holder at the loading point during the month and includes oil taken in kind by the Crown with respect to that interest holder during that month;

(f) "A" means the amount of payment received in advance by the interest holder for oil to be delivered after that month where that payment has not been accounted for in the calculation of royalty share in a previous month;

(g) "R" means the price determined under subsection 7(9) for the month in which oil is taken in kind or, for oil to which Part XIII applies, the price determined under subsection 81(1) for the month in which oil is taken in kind;

(h) "U" means a royalty share due in money and unpaid by an interest holder to the Crown when the Crown starts taking royalty share in kind;

(i) "T" means the transportation and storage costs paid by the minister under subsection 29(3) for the transport of oil from the loading point to the place where the oil is transferred to the minister; and

(j) "P" means the volume of oil transferred at the loading point under a lease to the interest holder for the month for which the interest holder received payment in a previous month and that payment was taken into account for calculation of the interest holder's royalty share in that previous month.

(4) Where the Crown takes in kind, all calculations made under this section shall be made as if there has been no shrinkage in transit incurred by the interest holder whose royalty share is being taken in kind.

71/03 s23

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Adjustment to volume

24. (1) In a month in which the Crown is taking in kind from an interest holder in a lease, if an amount is determined to be owing to or payable by the Crown with respect to that lease as a result of:

(a) an assessment or reassessment made by the minister with respect to the royalty share payable in a month by the interest holder to the Crown;

(b) an arbitration under the Act and these regulations; or

(c) an annual reconciliation,

then the volume calculated under section 23 shall be adjusted to reflect the amounts owed or payable as follows

$$A = B/R$$

where

A is the adjustment in volume;

B is the amount owed or payable to the Crown; and

R is the price determined under subsection 7(9) for that month or, for oil to which Part XIII applies, the price determined under subsection 81(1) for that month.

(2) Where, on the date that the Crown discontinues taking in kind, more than its royalty share has been taken in kind, the Crown shall return to the interest holder the excess volume of oil taken in kind, or, at the option of the minister, an amount in money equal to the volume of oil taken in kind multiplied by the most recent price determined under subsection 7(9) or for oil to which Part XIII applies, subsection 81(1), for that month.

71/03 s24

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Estimates

25. (1) Where the Crown has given notice under subsection 34(2) of the Act or is taking in kind from an interest holder, not fewer than 10 business days before the beginning of the month that interest holder shall provide to the minister, in writing, an estimate of the total volume of oil under a lease that the Crown is entitled to take in kind for that month.

(2) Where an interest holder does not comply with subsection (1) or the minister does not agree with the estimate provided to him or her under that subsection, the minister shall make an estimate of the total volume of oil that may be taken in kind for royalty share owed for the month.

(3) The minister shall notify an interest holder of his or her estimate not more than 5 business days after the

(a) last date upon which the estimate was due under subsection (1); or

(b) date upon which the estimate was received by him or her under subsection (1),

whichever is earlier.

(4) An estimate submitted under subsection (1) shall take into account discrepancies between estimates for previous months and actual production, prices and costs.

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Oil that may be taken

26. (1) Where notice has been given under section 21 or section 22 the Crown may take in kind

(a) oil produced under the lease from which the Crown is taking in kind owned by, owing or deliverable to the interest holder; and

(b) oil produced under the lease from which the Crown is taking in kind for which the interest holder has receipt or possession of bills of lading or other evidence of entitlement, wherever that oil is located including oil located in tankers or in a transshipment facility.

(2) The minister shall give reasonable notice to the interest holder of the time, manner and volume of the delivery of oil taken in kind.

(3) A third party from whom the interest holder is entitled to receive oil under a lease from which the Crown is taking in kind shall deliver to the Crown the volumes requested by the minister upon presentation to the third party of a copy of the notice under section 21 or section 22.

(4) Where, under subsection (1) or (3), the Crown takes in kind from an interest holder and is required to compensate another person for a payment owed by that interest holder to that other person, the Crown may make that payment to that other person and the amount of that payment shall be added to and considered to be royalty share payable to the Crown by that interest holder.

(5) A third party from whom the minister takes delivery of oil taken in kind under this section is not liable to the interest holder from whom the minister is taking that oil in kind as a result of that delivery.

71/03 s26

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Reporting and calculation of payment

27. (1) An interest holder from whom royalty share is being taken in kind shall continue to report royalty share payable each month.

(2) Where the notice period required under section 21 or 22 has expired, the minister may take the royalty share payable in kind.

(3) Where the minister ceases taking royalty share in kind from an interest holder, that interest holder shall recommence paying royalty share in money.

(4) Where royalty share is paid in kind, for the purpose of calculating the royalty share payable by the interest holder, the requested oil shall be considered to have been received by the Crown unless not delivered to the Crown by the date established for that delivery.

(5) Where the production of oil under a lease does not occur for 60 days while the Crown is taking in kind from an interest holder, that interest holder shall

(a) at the minister's request, deliver to the Crown an amount of oil produced under the lease that is then available to the interest holder and not exceeding an amount of oil equal to the royalty share payable; and

(b) pay to the Crown the royalty share payable, less the value, in dollars, of an amount delivered under paragraph (a), not more than 30 days after the minister has made his or her request to the interest holder.

71/03 s27

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Delivery

28. (1) After the notice period required under section 21 or 22 has expired, the minister may require delivery of oil with respect to royalty share taken in kind at

(a) the loading point;

(b) a point referred to in paragraph 7(8)(a) or (b); or

(c) a transshipment facility.

(2) Delivery of oil to the minister shall be considered to be completed where

(a) that oil is delivered to a storage, transshipment or transportation facility as directed by the minister under subsection (1); or

(b) the Crown takes possession of that oil.

(3) The minister shall consult with all affected interest holders with respect to the delivery of oil with respect to royalty share taken in kind in order to facilitate an orderly transfer of that oil to the minister without significant disruption to the activities of the interest holders under the lease.

(4) Subsection (1) applies notwithstanding that the Crown may no longer be taking in kind from an interest holder where the Crown has previously been taking in kind from that interest holder and amounts payable in kind have yet to be delivered to Crown.

(5) An interest holder must deliver royalty share in kind when given notice to do so under section 21 or 22 notwithstanding another obligation that that interest holder may have under a contract with respect to the oil being taken in kind.

(6) Notwithstanding that the minister is taking in kind from fewer than all of the interest holders in a lease, all interest holders in that lease must facilitate and assist the minister in that taking in kind.

(7) Where the Crown gives notice of taking in kind from an interest holder under section 21 or 22 that interest holder shall take, transport, transship and store the oil that is being taken in kind for the Crown as required by the minister.

71/03 s28

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Obligations

29. (1) Oil remains at the risk of the interest holders from whom that oil is taken until that oil is delivered as requested by the minister under subsection 28(1).

(2) Where the minister requires access to a transshipment facility or tanker for the storage or transport of oil taken in kind with respect to royalty share, that access shall be supplied to the minister on the terms that are customary for access either by the interest holder from whom royalty share is being taken in kind or by the transshipment facility or tanker upon notice by the minister under paragraph 34(3)(b) of the Act.

(3) Notwithstanding subsection (2), where an interest holder provides storage and transportation to the minister for oil taken in kind, the minister shall pay that interest holder for that storage and transportation in accordance with the rates determined under Part XI or Part XI.1, as appropriate.

71/03 s29; 35/13 s3

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Lifting agreement

30. (1) An interest holder may, in writing, request that the minister commence negotiations with respect to a lifting agreement for royalty share taken in kind.

(2) Within 3 months of the date of receipt of a request under subsection (1), the minister and the interest holders in that lease shall commence negotiations with respect to the requested agreement.

(3) A royalty lifting agreement entered into as a result of a request under this section shall include the terms and conditions of the delivery to the Crown of oil, including

(a) the calculation of the volume of oil to be taken in kind at any one time;

(b) the delivery options of the Crown;

(c) the scheduling methodology to ensure that the minister has at least the same frequency of delivery that the interest holder from whom he or she is taking in kind would normally have;

(d) details respecting the satisfaction of the obligations under this Part of

(i) the interest holder from whom the minister is taking in kind to lift, transport and store and deliver oil taken in kind by the Crown,

(ii) the provision by other interest holders of access to lift, transport, store and deliver oil taken in kind to locations required by the minister, and

(iii) the provision by other interest holders to provide access to and capacity to store oil taken in kind by the Crown at transshipment facilities.

(4) Where a royalty lifting agreement cannot be concluded within 12 months after a request received by the minister under subsection (1), the minister or an interest holder who is a party to the negotiations toward the agreement may refer the matter to arbitration and a decision of an arbitrator on the agreement is final and binding.

(5) Where the minister has received a request under subsection (1) and

(a) a royalty lifting agreement is not in place; and

(b) the negotiation of an agreement has commenced; and

(c) a resolution of some terms in the agreement has not occurred,

the minister or the interest holder may refer those terms to arbitration at any time before the taking of royalty share in kind.

(6) Where a matter has been referred to arbitration under subsection (4) or (5), the arbitrator is limited to a determination that is a specific offer of settlement of the

(a) minister before the matter was referred to arbitration; or

(b) interest holder before the matter was referred to arbitration.

71/03 s30

PART IV

REPORTING

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Monthly report

31. (1) An interest holder in a lease, commencing with production under that lease, shall file with the minister a monthly report in the required form.

(2) For a lease to which Part XI.1 applies, an interest holder shall include in the monthly report under subsection (1) a monthly estimate of eligible tanker costs and other transportation costs based on the annual forecast of estimated eligible tanker costs per barrel and other transportation costs per barrel submitted under subsection 36(3) multiplied by the actual number of barrels sold in that month.

(3) The minister may require a tanker administrator, transshipment facility administrator or tanker cost aggregator to file monthly reports.

71/03 s31; 35/13 s4

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Annual reconciliation

32. (1) An interest holder shall, not more than 120 days after the end of each period, file an annual reconciliation in the required form with other information that is sufficient for the minister to determine royalty share under the Act and these regulations.

(2) An officer, director or other person employed by the interest holder who has the necessary authority shall, in writing, certify that he or she has examined the annual reconciliation provided under subsection (1) and that information provided with the reconciliation is to the best of his or her knowledge, correct and complete.

(3) Where, as a result of the annual reconciliation, it is determined that an interest holder has underpaid royalty share, then the amount of underpayment shall be remitted to the Crown with the annual reconciliation.

(4) Where, as a result of the annual reconciliation, it is determined that an interest holder has overpaid royalty share, the amount of overpayment shall be repaid by the Crown to the interest holder within 30 days of the filing of that reconciliation or, upon the written request of the interest holder, may be credited to the account of the interest holder for royalty share payable.

(5) Subsection (1) shall apply on the later of

(a) 60 days after the publication of these regulations in the Gazette ; or

(b) 120 days after the end of the period in which the commencement date occurs.

71/03 s32

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Operator reports

33. (1) The interest holders in a lease shall cause the project operator to provide to the minister, not more than 120 days after the end of each period, a report in the required form of the royalty costs paid by the project operator on behalf of the interest holders for the period.

(2) If interest holders in a lease, or leases, share in the use of transportation assets, each tanker administrator and transshipment facility administrator shall provide to the minister, not later than 120 days after the end of each period, reports, in the required form,

(a) eligible tanker and eligible transshipment costs paid by the tanker administrator or transshipment facility administrator on behalf of the interest holders for the period;

(b) the details of the use of the assets during the period; and

(c) any other information required by the minister.

(3) The reports required under subsections (1) and (2) shall be accompanied by a report of an independent auditor who shall state that they have been prepared and the costs reported in compliance with the Act, these regulations and any agreements made under the Act.

71/03 s33; 35/13 s5

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Tanker cost aggregator report

33.1 Where a tanker cost aggregator has been designated, it shall provide the following information in the required form to the minister, not later than 120 days after the end of each period:

(a) aggregated eligible transportation costs and tanker incidental revenue reported by interest holders and tanker administrators for the period;

(b) costs allocated to interest holders for the period; and

(c) any other information required by the minister.

35/13 s6

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Advance rulings

34. (1) An interest holder in a lease or the holder of an interest in an instrument related to the exploration for or the development of oil that is a precursor of or preliminary to a lease may apply, in the required form, to the minister with respect to a matter related to the calculation and payment of royalty share.

(2) The minister may, in writing, make a ruling with respect to an application under subsection (1) or shall, in writing, notify the applicants that a ruling will not be made.

(3) The minister may establish policies with respect to the submission, content, timing and response to requests under subsection (1) and the criteria for the exercise of his or her discretion under subsection (2) and upon request, shall make those policies available to all potential applicants.

(4) A ruling by the minister under this section is final and binding subject to terms and conditions that the minister includes in that ruling.

(5) An interest holder in a lease or holder of an interest who applies under subsection (1) may withdraw that application at any time before the minister makes a ruling on the matter for which the application was made.

71/03 s34

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Assessment and reassessment

35. (1) Upon receipt of an annual reconciliation under section 32, the minister shall assess the royalty share payable for each month in the period.

(2) An assessment made under subsection (1) shall be delivered by the minister to the interest holder who submitted the annual reconciliation and shall include an assessment of basic royalty, incremental royalty, gross revenue, net revenue, simple payout, Tier I payout, Tier II payout and cumulative production of that interest holder as well as interest or penalties payable with respect to each month of the period.

(3) The minister may issue a reassessment after an assessment has been delivered under subsection (2) but shall not deliver a reassessment more than 120 days after the expiration of the audit period.

(4) Where, as a result of an assessment or reassessment by the minister under this section, it is determined that an interest holder has underpaid royalty share, then the amount of underpayment shall be remitted to the Crown upon notice to the interest holder of the amount of the underpayment.

(5) The minister may revoke, amend or revise an assessment or reassessment at any time before 120 days after the expiration of the audit period.

(6) Where, as a result of an assessment or reassessment by the minister under this section, it is determined that an interest holder has overpaid royalty share, the amount of overpayment shall be repaid by the Crown to the interest holder within 30 days after the assessment is issued by the minister or, upon the written request of the interest holder, may be credited to the account of the interest holder for royalty share payable.

(7) An interest holder may object to an assessment or a reassessment issued by the minister within 90 days of receiving the assessment or reassessment by delivering a written notice to the minister objecting to part or all of the assessment or reassessment.

(8) A notice of objection shall clearly identify the matter objected to, setting out the reasons for the objection, all of the relevant facts and the desired remedy.

(9) The minister shall review a notice of objection and

(a) may request that further particulars be provided to him or her; and

(b) shall give a reply, in writing, to the objecting person confirming, amending or rescinding part or all of the matter objected to in the same manner as for giving a notice of assessment or of reassessment.

71/03 s35; 31/11 s1

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Annual forecast

36. (1) Not fewer than 30 days before the beginning of a period, an interest holder shall submit to the minister in the required form,

(a) an annual forecast of estimated royalty costs, eligible transportation costs and production for the subsequent period; and

(b) an estimate of when simple payout, Tier I payout and Tier II payout is expected to occur.

(2) An interest holder shall provide to the minister the annual forecast referred to in subsection (1) commencing with the first period after the commencement date.

(3) For a lease to which Part XI.1 applies, at least 30 days before the beginning of a period, an interest holder shall submit to the minister in the required form the following:

(a) an annual forecast of estimated eligible tanker costs and other transportation costs for the subsequent period;

(b) an annual forecast of the estimated number of barrels expected to be sold in the subsequent period; and

(c) an estimate of eligible tanker costs per barrel and other transportation costs per barrel based on the ratio of (a) to (b).

(4) Where subsection (3) applies to an interest holder, that interest holder is not required to submit an estimate of transportation costs under paragraph (1)(a).

(5) The minister may approve an estimate submitted under subsection (3) or, where the estimate is not satisfactory to the minister, the minister may impose an amount.

71/03 s36; 35/13 s7

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Non-filing

37. (1) Where an interest holder does not file with the minister a monthly report as required under section 31 within the time provided by these regulations, the minister may assess the royalty share payable by the interest holder under the Act and shall, in writing, notify the interest holder of the royalty share payable.

(2) When an interest holder subsequently files the required monthly report, an assessment of royalty share payable made by the minister under subsection (1) will be amended to reflect the information contained in the report.

71/03 s37

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Notice

38. (1) A notice required to be given or served under the Act or these regulations shall be in writing and shall be considered to have been sufficiently given where

(a) delivered personally to the person;

(b) sent by registered mail addressed to the person, at the address given to the minister for that purpose, to whom delivery is to be given or made; or

(c) transmitted by facsimile or other electronic telecommunication to the person to whom delivery is to be given or made.

(2) Where a person to whom a notice is to be delivered or served is a corporate body, it shall be considered to be sufficiently given or served where

(a) delivered personally to a director or chief executive officer of that corporate body at the address provided to the minister for that purpose;

(b) delivered personally or by registered mail to the registered office of that corporate body in Newfoundland and Labrador ; or

(c) delivered personally to that corporate body's attorney provided that that attorney is able to accept service of that notice in Newfoundland and Labrador .

(3) Where notice is to be served on the minister, that notice shall be delivered to the minister by registered mail addressed as follows:

Minister of Mines and Energy,

Government of Newfoundland and Labrador ,

P.O. Box 8700 , St. John's , NL , A1B 4J6 .

71/03 s38

PART V

ADMINISTRATION AND AUDIT

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Location and retention of records

39. (1) An interest holder or project operator shall maintain in the province records detailing eligible pre-development costs, eligible operating costs, eligible capital costs, decommissioning costs, incidental revenue, production and inventory.

(1.1) An interest holder or tanker administrator shall maintain in the province records detailing eligible transportation costs, tanker incidental revenue and separate accounts recording all costs and charges relating to the transportation of oil produced under a lease.

(1.2) An interest holder or transshipment facility administrator shall maintain in the province separate accounts recording all costs and charges relating to the transshipment and allocation of oil produced under a lease.

(1.3) An interest holder or a tanker cost aggregator shall maintain in the province separate accounts recording all costs, charges and allocations relating to the transportation of oil produced under a lease.

(2) An interest holder shall maintain in Canada records required to determine the calculation of basic royalty, incremental royalty, simple payout, Tier I payout and Tier II payout.

(3) An interest holder, a project operator, a tanker administrator, a transshipment facility administrator and a tanker cost aggregator, where one has been designated, shall maintain accounting, financial and other reporting systems necessary for the purpose of these regulations.

(4) A person required to maintain records under this section shall commence maintaining those records not more than 3 months after a lease has been issued to an interest holder.

(5) A record required to be maintained under these regulations shall not be destroyed before the expiration of the audit period referred to in subsection 45(1) without the prior written approval of the minister.

(6) Notwithstanding subsection (5), where the minister or another person referred to in this section is aware that an allegation of fraud, gross negligence or wilful and deliberate misconduct has been made, records required to be maintained under these regulations shall not be destroyed.

71/03 s39; 35/13 s8

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Successor requirements

40. (1) A transferor shall, before an intended transfer of that transferor's interest in a lease, give notice to the minister of the intended transfer.

(2) A notice under subsection (1) shall

(a) be in writing;

(b) state the effective date of the proposed transfer;

(c) state the identity of the transferee; and

(d) state the exact portion of the transferor's interest that is to be retained by the transferor and the interest that is being transferred to the transferee.

(3) Where the minister receives a notice under subsection (1), he or she shall, within 30 days of that receipt, notify the transferor and the transferee of the royalty share payable by the transferor to the effective date of transfer contained in the notice and where payment has been made the minister shall notify the transferor and the transferee, in writing, of that payment.

(4) A transferor is liable for and shall pay all royalty on an interest in a lease that is to be transferred until and including the effective date of the transfer that is the subject of a notification under subsection (3).

(5) The transferor and the transferee of an interest in a lease are jointly and severally liable for royalty share payable identified under subsection (3) as of the effective date of the transfer of an interest in a lease until that royalty share is paid.

(6) The transferee is liable for and shall pay all royalty on an interest in a lease that is transferred after the effective date of the transfer that is the subject of a notification under subsection (3).

(7) Where the minister gives a confirmation under subsection (5),

(a) the transferor is not liable for royalty share accrued with respect to the transferred interest after the effective date of the transfer given in the notice required under subsection (1); and

(b) the transferee is not liable for royalty share accrued with respect to the transferred interest before and including the effective date of the transfer given in the notice required under subsection (1).

(8) The accounts and accumulated balances of a transferor that are necessary to calculate royalty share shall, upon the transfer of that transferor's interest in a lease, become the accounts and accumulated balances of the transferee of that interest.

(9) The consideration paid for the transfer of an interest in a lease shall not be considered to be a royalty cost of the transferee or incidental revenue to the transferor.

(10) Where only a portion of an interest holder's share in a lease is transferred, only the portion of the balances related to the transferred or disposed share become the property of the purchaser.

(11) This section shall apply to a transfer notwithstanding that the interest of the transferor may be transferred by a receiver, liquidator, administrator, executor or other like person, other than a trustee in bankruptcy.

(12) A notice under subsection (3) shall be a confirmation for the purposes of subsection 36(3) of the Act.

(13) In this section

(a) "transfer" includes a transfer by way of sale, assignment, conveyance or other disposition by a transferor, including a transfer that is a part of a consolidation, merger, dissolution or reorganization involving the transferor but does not include the granting of a security interest;

(b) "transferee" means an interest holder in a lease to whom all or a part of that interest has been transferred; and

(c) "transferor" means an interest holder in a lease who transfers all or a part of that interest to another interest holder or intended interest holder.

(14) An interest holder shall provide reasonable notice to the minister of a change of name, amalgamation or other change that involves the interest holder's position in a lease but does not otherwise qualify as a transfer under paragraph (13)(a).

71/03 s40

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Audit and inspection

41. (1) The minister or another person authorised by the minister may at reasonable times enter upon the property and premises, that is not a dwelling house, of an interest holder, project operator, tanker administrator, a transshipment facility administrator or a tanker cost aggregator in order to inspect or audit records, inventories and assets or verify information that may affect the calculation of royalty share.

(2) A person in charge of a place entered under subsection (1) shall produce for inspection by the minister or other person all records and documents required for the purposes of these regulations and shall give all reasonable assistance to enable the minister or other person to carry out audits, inspections or other duties and functions under the Act and these regulations and shall provide the information that may reasonably be required.

(3) The production of instructions in writing signed by the minister or his or her delegate is sufficient evidence of the authority of the person inspecting under this section.

71/03 s41; 35/13 s9

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Search and seizure

42. (1) Where the minister believes on reasonable grounds that an interest holder, project operator, tanker administrator, transshipment facility administrator or tanker cost aggregator is not providing information or access in accordance with the requirements of the Act and these regulations, the minister or a person designated by the minister may, with a warrant issued under subsection (2) enter premises or property of an interest holder, project operator, tanker administrator, transshipment facility administrator or tanker cost aggregator where a record is required to be maintained and to which the minister is entitled to have access and

(a) examine, seize and take away any record of the interest holder or project operator required to be made or maintained under the Act or the regulations;

(b) examine or seize and take away a record that will assist in determining the accuracy of the calculations to be made and the records that are to kept; and

(c) require the interest holder, project operator or another person in charge of the required records give those records and other information to the minister or other person issued with the warrant under subsection (2).

(2) A provincial court judge who is satisfied upon oath or affirmation that there are reasonable grounds for believing that there is in premises or property of an interest holder, project operator, tanker administrator, a transshipment facility administrator or tanker cost aggregator anything that will give evidence with respect to a contravention of the Act or regulations or of a failure to provide information or access in accordance with the requirements of the Act and these regulations, may issue a warrant authorising the minister or another person named in the warrant to enter the premises or property of an interest holder, project operator, tanker administrator, a transshipment facility administrator or tanker cost aggregator, search and inspect that property and premises and those records and documents found there and to seize anything that will provide evidence with respect to a contravention of this Act or the regulations or of a failure to provide or accurately provide records and information as required under the Act and the regulations.

(3) The owner or person in charge of the property or premises referred to in subsection (2) shall give the person named in the warrant or persons assisting him or her reasonable help to enable that person to carry out his or her duties and functions under this section and shall provide the information that may reasonably be required.

71/03 s42; 35/13 s10

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Electronic records

43. (1) An interest holder shall ensure that records required under the Act or these regulations that are stored electronically are provided to the minister in a format that is readable and useable for the purposes of an audit.

(2) An interest holder shall co-operate with an employee of the department in the translation of those records referred to in subsection (1) into a readable format.

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Cost of audit

44. (1) Where a person is required to maintain records under subsection 39(1) and those records are maintained outside Newfoundland and Labrador the interest holder to whom those records relate shall, in addition to a penalty payable under the Act or these regulations, for the purpose of an audit under these regulations

(a) reimburse the minister for all reasonable expenditures necessary for or incidental to the examination of those records, including travel of persons authorized by the minister to examine the records at the location where they are maintained; or

(b) provide access to those records in Newfoundland and Labrador within the time specified by the minister.

(2) Where costs incurred by the minister under this section relate to more than one interest holder or more than one lease, those costs shall be shared by the interest holders in accordance with their shares in the lease or leases.

71/03 s44

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Audit period

45. (1) An audit or inspection undertaken by the minister shall be conducted with respect to royalty share payable or an eligible cost under the Act and regulations, within the 5 years following the period in which that royalty share or cost was reported.

(2) Notwithstanding subsection (1), if the minister requests that a person provide records to the minister and that person has access to or can reasonably obtain access to the requested records, until those records are provided in satisfaction of the minister's request, time within which the audit must be undertaken under subsection (1) shall not be considered to pass, the audit period shall not expire and there shall not be prejudice to the minister and the audit due to the passage of time.

(3) Notwithstanding subsections (1) and (2) there is no limitation for an audit period where there has been fraud, gross negligence or wilful and deliberate misconduct with respect to the reporting or calculation of royalty share.

71/03 s45

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Indemnity

46. (1) The minister or other person authorized under this Act or these regulations is not personally liable for anything done or omitted to be done in the performance of his or her duties under the Act or these regulations.

(2) Notwithstanding subsection 5(4) of the Proceedings Against the Crown Act, the liability of the Crown with respect to anything done or omitted to be done by the minister or other person authorized under the Act or these regulations is the same as if subsection (1) were not in force.

71/03 s46

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Confidential information

47. (1) A person who, while employed in the administration of the Act and these regulations,

(a) knowingly communicates or knowingly allows to be communicated to a person not legally entitled to information, information obtained by or on behalf of the minister for the purpose of the Act and regulations;

(b) knowingly allows a person not legally entitled to do so, to inspect or to have access to a book, record, writing, return or other document obtained by or on behalf of the minister for the purpose of the Act and these regulations; or

(c) knowingly uses, other than in the course of his or her duties in connection with the administration or enforcement of the Act or these regulations, information obtained by or on behalf of the minister for the purpose of the Act or these regulations,
is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both a fine and imprisonment.

(2) Subsection (1) does not apply to the communication of information between the minister and the

(a) Minister of Finance and Treasury Board;

(b) Minister of Natural Resources for Canada ; and

(c) board.

71/03 s47

PART VI

ARBITRATION

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Interpretation and application of arbitration code

48. (1) In this Part a reference to the "arbitration code" means the commercial arbitration code as set out in the Commercial Arbitration Act (Canada) except as varied under subsection (2).

(2) An arbitration under these regulations shall be conducted in accordance with the arbitration code subject to the following:

(a) for the purposes of the arbitration, these regulations shall be considered to be an arbitration agreement under the arbitration code; and

(b) where there is a conflict between this Part and the arbitration code, this Part shall prevail.

(3) The following shall apply to an arbitration conducted under these regulations:

(a) notices given for the purpose of an arbitration shall be given in accordance with these regulations;

(b) a reference in the arbitration code to a court, the federal court, a superior, county or district court or to a competent court of Canada shall be considered to be a reference to the Trial Division;

(c) there shall be 3 arbitrators or, with the agreement of the minister and the interest holders, fewer than 3, for the purpose of article 10 of the arbitration code;

(d) an arbitration under this Part shall be carried out in St. John's or at another place in Newfoundland and Labrador that is agreeable to the parties to the arbitration;

(e) an arbitration shall be conducted in English;

(f) the rules of law applicable to a dispute arbitrated under this Part shall be the laws of Newfoundland and Labrador ;

(g) where an arbitration is with respect to

(i) one or more disputed issues common to all interest holders in a lease, and

(ii) the resolution of one or more issues that will not involve facts or circumstances specific to one interest holder only, where that interest holder wishes to keep the matter confidential from other interest holders,

the issues shall be considered in a single arbitration proceeding to which all interest holders and the minister are parties;

(h) two or more interest holders who are parties to a single arbitration shall be considered to be one party for the purposes of this Part; and

(i) the minister shall give the interest holders notice that an arbitrator is to be appointed and where the interest holders cannot agree upon an arbitrator within 30 days of that notice, the minister may appoint an arbitrator.

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Matters that may be arbitrated

49. (1) The following matters may be submitted to arbitration under this Part:

(a) a dispute with respect to the assessment or reassessment of royalty share;

(a.1) a reply by the minister to a notice of objection under paragraph 76.2(6)(b);

- (b) a dispute with respect to the calculation or eligibility of a royalty cost, costs included in certified predevelopment costs, eligible transportation cost or incidental revenue;
- (c) a dispute with respect to the calculation or inclusion of incidental revenue or tanker incidental revenue;
- (d) a dispute with respect to the allocation of costs;
- (d.1) a dispute with respect to the allocation of eligible transportation costs;
- (d.2) a dispute with respect to the classification of a tanker;
- (e) a dispute with respect to the fair market value of a cost, expense, price, proceed of disposition or other amount receivable or payable;
- (f) a dispute with respect to the application of section 13;
- (g) disputes under section 37 of the Act;
- (h) a dispute with respect to the provision of records and the extension of an audit period under subsection 45(2);
- (i) a dispute as to whether or not persons are in fact dealing at arm's length;
- (j) a dispute with respect to
 - (i) ministerial approval of a decommissioning plan under section 54,
 - (ii) compliance with a decommissioning plan, and
 - (iii) confirmation by the minister of substantial completion under section 55;
- (k) a dispute with respect to the assessment of fair market value of insurance under subsection 63(2);
- (l) a dispute with respect to the approval of reservoir risk amounts as contemplated under paragraph 68(1)(s);
- (m) a dispute with respect to a determination of a "designated area" under paragraph 81(6)(b); and
- (n) a dispute with respect to a determination by the minister under section 19 of adjustments with respect to commingled oil.

(2) Notwithstanding paragraph (1)(a.1), a matter may only be submitted to arbitration under that paragraph for 30 days from the date that the interest holder received the reply by the minister under paragraph 76.2(6)(b), and after that time, the ability to submit a matter to arbitration under that paragraph shall expire.

71/03 s49; 32/11 s1; 35/13 s11

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Reference to arbitration

50. (1) Where these regulations provide for the arbitration of a matter that arbitration may be commenced by the party seeking arbitration by giving a written notice of the intent to seek arbitration to the minister and to all interest holders who may be affected by the arbitration.

(2) Where a dispute arises as a result of an assessment or reassessment under section 35, arbitration shall only occur if

- (a) interest holders who are party to the arbitration are in compliance with their payment obligations under these regulations with respect to amounts owing as a result of the assessment or reassessment; and
- (b) the minister has received the notice of arbitration under subsection (1) before the end of the second period after the period in which the minister issues the assessment or reassessment.

(3) Where a dispute arises that is not a dispute referred to in subsection (2), an arbitration with respect to that dispute shall not occur unless the notice required under subsection (1) is received by the minister within 2 years after the decision giving rise to the dispute.

71/03 s50

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Sale price arbitration

51. (1) The arbitration of issues related to the sales price for oil for royalty purposes shall be arbitrated in accordance with subsection (2).

(2) An arbitrator of an issue referred to in subsection (1) shall be limited to awarding as the award

(a) the position of the minister made in a specific offer of settlement before the matter is referred to arbitration; or

(b) the position of the interest holder made in a specific offer of settlement before the matter is referred to arbitration,

as presented to the arbitrators before the hearing.

71/03 s51

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Confidentiality

52. An arbitrator shall keep confidential all information received from an interest holder or the minister in the course of the arbitration unless otherwise ordered by a court to make that information available.

71/03 s52

PART VII

DECOMMISSIONING

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Definition

53. In this Part "decommissioning" includes activities associated with the termination of the production of oil under a lease and the reversion of project lands related to that lease to their state before the commencement date including

- (a) well abandonment;
- (b) the removal of project assets of the production facility from the sea floor or sea bed or the securing of those assets upon or below the sea floor or sea bed;
- (c) the permanent removal of a project asset of the production facility from the project lands;
- (d) the destruction, scrapping, disassembling or permanent decommissioning of a project asset without intermediate use and making it suitable for salvage; and
- (e) the cleanup of damage to the environment of the project lands to the extent that the damage was necessarily incidental to the activities referred to in paragraphs (a) to (d) and was consistent in scope and magnitude with incidental damage to the environment that would reasonably be expected where activities referred to in paragraphs (a) to (d) are conducted using good oilfield practices.

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Decommissioning plan

54. (1) An interest holder or a project operator on behalf of all interest holders, shall submit to the minister, not less than one year before the decommissioning of the production activities under a lease, a decommissioning proposal that sets out the

- (a) proposed method of carrying out the decommissioning;
- (b) estimated costs to be incurred by the interest holders with respect to the decommissioning proposal;
- (c) estimated revenues to be generated by the interest holders with respect to the decommissioning proposal;
- (d) responsibilities of each interest holder with respect to the methods described in the decommissioning proposal;
- (e) estimated time frame for commencing and completing the activities including the cessation of the production of oil; and
- (f) proposed event that will constitute substantial completion of the decommissioning.

(2) The minister shall approve or reject the decommissioning proposal submitted under subsection (1) not more than 60 days after receiving that proposal and where approved, that decommissioning proposal shall be the decommissioning plan for the lease.

(3) The minister shall approve a decommissioning proposal submitted under subsection (1) where the proposal meets all requirements with respect to abandoning the activities under the lease imposed as a result of law, rule, regulation, permit, licence, order or other directive of the province or of Canada or an agency of them.

(4) Where there is a material change in the nature or amount of an estimate contained in the decommissioning plan or a material change in the date of substantial completion given under that plan, the interest holder or project operator who submitted the plan shall immediately submit an amendment to that plan to the minister.

(5) For the purpose of subsection (4) a material change in an estimate will be considered to have occurred where the estimated cost of decommissioning has increased by 10% or more or if the estimated date of substantial completion under the plan has changed by 6 months or more.

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Carry-back

55. (1) An interest holder or a project operator acting for all interest holders shall give notice to the minister of the occurrence of the event which was defined in the decommissioning plan that constituted substantial completion of the decommissioning.

(2) Where the minister confirms that the event referred to in subsection (1) has occurred, an interest holder or project operator shall submit to the minister a decommissioning carry back statement.

(3) A decommissioning carry back statement shall contain the interest holder's working interest share of the

(a) total decommissioning costs and decommissioning revenues; and

(b) result of subtracting decommissioning costs from decommissioning revenue.

(4) Where decommissioning revenues exceed decommissioning costs, the excess shall be the incidental revenue for the period in which the initial carry back statement is prepared.

(5) Where decommissioning costs exceed decommissioning revenues, the resulting net decommissioning costs shall be used to reduce net revenue to zero for the period in which the initial carry back statement is prepared.

(6) The excess of net decommissioning costs over that required to reduce net revenue to zero for the period in which the initial carry back statement is prepared shall be carried back to the previous period in accordance with the required form to reduce net revenue for that period to zero.

(7) The application of subsection (6) shall continue for each preceding period to reduce net revenue to zero until all net decommissioning costs have been applied.

(8) The decommissioning carry back statement referred to in this section shall be accompanied by the report of an independent auditor that verifies that the decommissioning costs and decommissioning revenues comply with these regulations.

(9) Notwithstanding subsection (1), where decommissioning revenue is received more than one year before the beginning of the period in which substantial completion of the decommissioning is expected to occur under the decommissioning plan, that decommissioning revenue shall be included as incidental revenue when received by the interest holder.

(10) Where an adjustment is made to net revenue for a period referred to in subsections (6) and (7), incremental royalty for that period shall be recalculated to take into account the deduction of net decommissioning costs.

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Amounts owing to interest holder

56. Where, under section 55, the application of net decommissioning costs results in an amount owed by the Crown to the interest holder with respect to the recalculation of royalty share

(a) an amount owed to the interest holder by the Crown is due and payable 30 days after the minister has received the interest holder's decommissioning carry-back statement under section 55 provided that the minister is satisfied that activities under the decommissioning plan have been substantially completed; and

(b) interest shall be paid by the Crown with respect to an amount determined to be owed to the interest holder under this section from the date that the amount is payable by the Crown under paragraph (a) until it is paid.

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Subsequent costs

57. Where an interest holder incurs additional decommissioning costs after the period in which substantial completion of that decommissioning has occurred, that interest holder may submit to the minister a supplemental decommissioning carry-back statement for each period in which those additional costs were incurred and this Part shall apply to that statement.

71/03 s57

PART VIII

GENERAL COSTS

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Cost pre-payment

58. (1) Where a cost claimed by an interest holder for a month includes pre-payment with respect to goods and services, the eligible amount of that cost allocated within the month shall be that portion of the cost relating to goods and services that is consumed within a year of that pre-payment; and remaining costs shall be allocated to the months in which the goods or services are actually consumed or used.

(2) Subsection (1) does not apply to a progress payment, deposit or prepayment on a capital asset or materials to construct a capital asset if that progress payment, deposit or prepayment is paid under an agreement between a person dealing at arm's length with the interest holder and the interest holder or the project operator.

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Cost allocation

59. (1) With the exception of marketing and insurance costs referred to in paragraph 63(1)(e), where a cost is incurred by or on behalf of an interest holder, the maximum portion of that cost that may be a royalty cost for the interest holder is the amount allocated to the interest holder according to the working interest share of that interest holder in the lease at the time that cost was incurred.

(2) Where a cost is not entirely applicable to one lease, the maximum portion of that cost that may be allocated to a lease shall be calculated as follows:

(a) where the capacity and usage of that service or asset is customarily measured by the volume of oil that passes through or is carried by those assets or dealt with by those services, the fraction having as its numerator the total volume of substances relating to the lease which passes through or is carried by the service or asset and as its denominator the total volume of oil which passes through or is carried by that service or asset, calculated on a monthly basis in a period;

(b) where the capacity and usage of that service or asset is customarily measured by days, the fraction having as its numerator the number of days or partial days during which the service or asset is employed or engaged for activities directly attributable to the lease, and as its denominator the sum of the numerator and the number of days or partial days that the service or asset is not employed or engaged for activities directly attributable to the lease, calculated monthly in a period; or

(c) where the nature of the service or asset does not qualify under paragraph (a) or (b), the use of that service or asset shall be measured according to industry practice for the measurement for that service.

(3) Where the cost under subsection (2) is with respect to a capital asset as defined by Canadian generally accepted accounting principles and good petroleum industry practices, the cost that may be an eligible capital cost with respect to a lease shall be determined as the cost of that asset multiplied by the percentage of expected use of that asset over the expected life of the lease.

(4) Where a cost is allocated to a lease under subsection (2) or (3), that cost shall be allocated to the interest holders in the lease based upon their working interest share of that lease at the time that the cost was incurred.

(5) Where, after a capital asset has been acquired, the percentage of expected use of that asset over the expected life of the lease changes from the amount previously established and the expected use of that asset is

(a) less than the previously determined use of that asset, incidental revenue shall accrue in the period of the change in use and will equal the original cost of the asset, multiplied by the change in the expected use of the asset for the purpose of the lease; or

(b) greater than the previously determined use of that asset, an amount for eligible capital cost shall accrue in the period of the change of use and will equal the original cost of the asset, multiplied by the change in the expected use of that asset for the purpose of the lease.

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Dispositions

60. (1) The cost of an asset that is disposed of within one year of its acquisition shall not be a royalty cost, and the proceeds of disposition shall not be incidental revenue or reduce a royalty cost unless the asset disposed of has served its useful life or purpose within the lease at the time of its disposition.

(2) An asset shall be deemed disposed of where

- (a) that asset is no longer available for use under the lease; or
- (b) there no longer is a use for that asset under the lease.

(3) Notwithstanding subsection (2), an asset shall not be considered to be disposed of if the asset is temporarily unavailable for use under the lease.

(4) The proceeds of disposition under subsection (2) of a project asset shall be incidental revenue and shall be the fair market value of that asset at the time of disposition.

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Reserves

61. (1) A payment paid into a reserve fund shall qualify as a royalty cost or as a component of the eligible transportation cost where all of the following apply

(a) that payment qualifies as a royalty cost or as a component of eligible transportation cost under the regulations notwithstanding disallowed costs referred to in paragraph 68(1)(n);

(b) the reserve fund is required as a result of a law, rule, regulation, permit, licence, order or other directive of the Crown or the Crown in right of Canada or the board;

(c) the obligation for the reserve fund is imposed upon an interest holder with respect to its interest in a lease, or upon the resource project operator as operator with respect to a lease;

(d) the reserve is a funded reserve with respect to a lease;

(e) access to the reserve fund is not controlled by an interest holder, the project operator or a tanker or transshipment facility administrator; and

(f) funds cannot be withdrawn from the reserve fund except as allowed by law, rule, regulation, permit, licence or other directive or by the terms and conditions establishing the reserve.

(2) Where an interest holder makes a payment into a reserve fund that qualifies as an eligible cost under subsection (1) and that payment is with respect to more than one lease, the allocation provisions of section 59 shall apply to that payment.

(3) Payment to a reserve fund for costs resulting from damage to the environment shall not qualify as an eligible cost under this section unless payment out of that reserve fund may, at a later date, exceed the amount of that interest holder's payment made into that reserve fund plus interest on that amount paid in.

(4) Notwithstanding subsections (1) to (3) the minister may consent to payments to a reserve fund being a royalty cost or a component of eligible transportation costs.

(5) Where a payment into a reserve fund qualifies under subsection (1) to (4), payments made out of or amounts returned from the reserve fund to one or more of the interest holders, the project operator, the transshipment facility administrator or a tanker administrator that are not applied for the purpose for which the reserve fund is established with respect to a lease, tanker or transshipment facility shall be incidental revenue or tanker incidental revenue.

71/03 s61

PART IX

INTEREST

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Interest

62. (1) Interest shall be paid in respect of all amounts payable under these regulations, from the date payment of that amount was due until the date of receipt of that payment by the person to whom it is owed, at an annual rate equal to the prime rate plus 2%, compounded and payable monthly.

(2) Where, as a result of an annual reconciliation, assessment or reassessment, an interest holder is determined to have underpaid royalty share, interest shall be payable from the last day of the month following the month to which the royalty share relates until the royalty share is paid.

(3) Notwithstanding subsections (1) and (2), interest shall not be payable where an interest holder has underpaid royalty share provided that the minister is satisfied that the discrepancy resulted from the use of transportation costs, that in the opinion of the minister are reasonably estimated eligible transportation costs of the interest holder in a lease.

(4) Where the interest holder has overpaid royalty share payable, the overpayment amount is payable by the Crown 30 days after the annual reconciliation has been filed, or, if the overpayment was first identified by an assessment or reassessment, 30 days from the issue of the assessment or reassessment.

(5) Interest on an unpaid amount payable by the Crown under subsection (4) shall accrue from the time it becomes payable until it is paid.

(6) Notwithstanding subsections (1) and (2), the minister may waive interest on outstanding royalty share upon application by the interest holder.

(7) Notwithstanding subsections (4) and (5), interest shall not be payable where an interest holder has overpaid royalty share provided that the discrepancy resulted from the use of estimated transportation costs of the interest holder in the lease.

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PART X

COSTS AND INCIDENTAL REVENUE

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General cost criteria

63. (1) A cost shall qualify as an eligible pre-development cost, an eligible capital cost, an eligible operating cost or a decommissioning cost under a lease only to the extent that:

(a) it is a cash payment;

(b) it is directly attributable to exploration, development, production or decommissioning activities under the lease or was incurred to market oil produced under a lease provided that the marketing cost complies with paragraph 68(1)(f);

(c) it is reasonable in relation to the circumstances under which it is incurred;

(d) it is not a cost under another lease within Newfoundland and Labrador ;

(e) with the exception of marketing costs, and insurance costs approved by the minister under this section, it is a cost that was incurred by the project operator and shared by all interest holders in the lease in proportion to their working interest share in the lease; and

(f) it meets all other requirements of these regulations.

(2) The approval of an insurance cost by the minister under paragraph (1)(e) shall be based upon the minister's assessment of the fair market value of those costs.

(3) Costs incurred on behalf of an interest holder shall qualify under paragraph (1)(e) where those costs are, with respect to the lease, incurred in whole or in part by a partner of the interest holder where the partnership has been established for the purposes of exploration, development and production of oil under the lease and all partners in the partnership are affiliates of each other.

(4) Notwithstanding paragraph (1)(e), the minister may approve as an eligible pre-development cost, a cost that meets all of the criteria of paragraphs (1)(a) to (d) if he or she is satisfied that the sharing of the costs other than on a working interest basis is appropriate in the circumstances.

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Certificate of pre-development costs

64. (1) Pre-development costs include

(a) costs incurred before the commencement date; and

(b) costs that were incurred after the commencement date for the purpose of exploration on project lands.

(2) An interest holder may, in the required form, apply to the minister for the certification of costs as certified pre-development costs and the minister shall, where he or she determines that the costs are pre-development costs, certify those costs as certified pre-development costs.

(3) Eligible pre-development costs shall be obtained by the following formula

$$E = [(105\%) (A - B - C)] + [(CPI) (A - B - C)] + B + C$$

where

E is the eligible pre-development cost;

CPI is the ratio that the consumer price index for the month in which the costs are to be included in the return allowance calculation bears to the consumer price index for the month in which the cost occurred;

A are the costs certified by the minister under subsection (2);

B are the costs certified by the minister under subsection (2) that are overhead costs; and

C are the costs certified by the minister under subsection (2) that are eligible payments into a funded reserve as provided under section 61.

(4) Notwithstanding subsection (3), the consumer price index adjustment is limited to a maximum of the 5 years occurring immediately before the commencement date.

(5) Notwithstanding another provision of these regulations, costs referred to in paragraph (1)(b) shall not be eligible predevelopment costs, regardless of when the costs were incurred, unless the minister is satisfied that the exploration activities will result in production under the lease within a time acceptable to the minister.

(6) Notwithstanding another section of these regulations, the minister may approve an amount as a pre-development cost in addition to amounts calculated under this section.

(7) Notwithstanding section 58, the minister shall determine the allocation among interest holders of certified eligible pre-development costs.

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Eligible operating costs

65. (1) Eligible operating costs are

(a) costs that qualify under subsection (2); plus

(b) 10% of the costs referred to in paragraph (a) that are not overhead, marketing costs or costs for a funded reserve eligible under section 61.

(2) A cost shall qualify for the purpose of paragraph (1)(a) where it

(a) is not a pre-development cost, a cost incurred in compliance with a decommissioning plan or an eligible capital cost; and

(b) is incurred after production start-up; and

(c) meets all other criteria of the regulations and would be classified as an operating cost in accordance with Canadian generally accepted accounting principles.

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Eligible capital costs

66. (1) Eligible capital costs are, subject to these regulations

(a) costs or expenses that qualify under subsection (2); plus

(b) 1% of the costs referred to in paragraph (a) that are not overhead, marketing costs or costs for a funded reserve eligible under section 61.

(2) A cost shall qualify for the purpose of paragraph (1)(a) where it

(a) is not a pre-development cost, an eligible operating cost or a cost incurred in compliance with a decommissioning plan; and

(b) is incurred after the commencement date; or

(c) notwithstanding paragraphs (a) and (b), is a cost that qualifies as an eligible operating cost but was incurred before production start-up.

(3) Notwithstanding subsection (2) or 65(2), a cost incurred to abandon a well that is not incurred with respect to a decommissioning plan, provided that the cost meets all other capital cost criteria under these regulations shall qualify as an eligible capital cost.

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Decommissioning costs

67. (1) Decommissioning costs are

(a) costs that satisfy all other requirements of these regulations and were made, incurred or required under the decommissioning plan required under section 54; plus

(b) 1% of the costs referred to in paragraph (a).

(2) Decommissioning revenue is revenue received or deemed to be received by the interest holder or the project operator on behalf of the interest holders in the lease in accordance with the decommissioning plan.

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Disallowed costs

68. (1) Notwithstanding another provision of these regulations, a cost under a lease will not qualify as an eligible pre-development cost, eligible operating cost, eligible capital cost, a decommissioning cost or a component of eligible transportation costs if it is one of the following:

(a) a penalty, interest or other financing charge, underwriters' commission, investment banking fee, redemption premium or other similar cost;

(b) an amount for the overhead of an interest holder, the project operator, tanker administrator, transshipment facility administrator or tanker cost aggregator or an affiliate of any one of them unless that cost was incurred

(i) before the commencement date and is approved by the minister,

(ii) for an office located in Newfoundland and Labrador , or

(iii) for a person working in Newfoundland and Labrador ;

(c) basic royalty, incremental royalty, taxes based upon revenue, income or profit and payments made under Part IX of the Excise Tax Act (Canada);

(d) a payment on account of an overriding royalty, a net profits interest, a carried interest or other similar interest;

(e) a payment made to purchase an interest in a transportation or transshipment asset that has previously been used to transport or transship oil produced in the offshore area;

(f) marketing costs, excepting those incurred within Newfoundland and Labrador that are directly attributable to the office or employees of the interest holder for the purpose of marketing that interest holder's share of oil obtained under the lease;

(g) a mark-up by the interest holder, project operator, a tanker administrator, transshipment facility administrator or tanker cost aggregator of the charges of a third party;

(h) a cost that results from a conviction for an act or omission that is a breach of an applicable law, rule or regulation of a government or government agency;

(i) a cost that arises from a contractual dispute between interest holders in a lease;

(j) costs resulting from wilful and deliberate misconduct or gross negligence of management or supervisory personnel of an interest holder, project operator, tanker administrator, transshipment facility administrator, tanker cost aggregator, a third party contractor or a combination of them;

(k) a fee or expense of dispute resolution, including arbitration or litigation of a dispute with the Crown in connection with a matter related to royalty share payable or paid to the Crown in relation to the lease;

(l) costs incurred as a result of damage to the environment except those costs directly attributable to the decommissioning of the project that are included in the decommissioning plan;

(m) depletion, depreciation or a similar or notional allowance except as specifically permitted under these regulations;

(n) on account of a funded or non-funded reserve except as specifically permitted under these regulations;

(o) direct costs of purchasing, leasing or renting land or a building not located in Newfoundland and Labrador or the offshore area;

(p) premiums for insurance that provides coverage for costs that would not qualify as an eligible operating cost, an eligible capital cost, an eligible pre-development cost, a decommissioning cost or an eligible transportation cost, except premiums paid for insurance

(i) providing coverage against costs incurred in respect of matters described in paragraphs (j) and (l), or

(ii) that is considered to provide coverage in excess of the coverage available in a reserve permitted under these regulations;

- (q) a cost incurred by the interest holder relative to the use of transshipment facilities other than a facility located within Newfoundland and Labrador unless approved by the minister;
 - (r) costs in respect of research and development, except those costs that are all of the following
 - (i) costs that are necessary for the purpose of exploration, development, production or decommissioning in respect of the lease,
 - (ii) costs that have not been charged to or credited against another royalty regime, and
 - (iii) costs that are for activities substantially performed within Newfoundland and Labrador or the offshore area;
 - (s) a cost that is in the nature of reservoir risk amounts, unless approved by the minister;
 - (t) a cost to the extent that there is
 - (i) a credit or discount that is intended to reduce or offset that cost, and
 - (ii) economic assistance, other than economic assistance in the form of an investment tax credit under the Income Tax Act (Canada) to the interest holder, project operator or affiliate of either of them intended to reduce or offset their costs;
 - (u) a cost or payment arising in relation to a transaction that is entered into to hedge price risk with respect to a commodity or money; and
 - (v) an amount on account of, in lieu of, in satisfaction of or in substitution for a cost in paragraphs (a) to (u).
- (2) Unless otherwise approved by the minister, a cost shall not qualify as a royalty cost for an interest holder in a lease to the extent that
- (a) the cost was a charge from another lease in Newfoundland and Labrador and that lease does not come under these regulations; and
 - (b) all of that charge is not directly related to a third party charge; and
 - (c) the interest holder holds an ownership interest in that other lease.
- (3) In order to obtain approval from the minister under subsection (2), the project operator shall file with the minister a request for the approval of a cost that would normally be disallowed before the end of the period in which that cost was incurred, or within 90 days of the publication of these regulations in the Gazette, whichever is later.

71/03 s68; 35/13 s12

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Incidental revenue

69. (1) Incidental revenue is consideration received or deemed to be received or declared by the interest holder or the project operator on behalf of the interest holder from the following:

- (a) sale, lease, license or other disposal or use of lease assets or technology under the lease where the costs were royalty costs under the lease;
- (b) proceeds received under insurance policies whose premiums were included as a royalty cost;
- (c) amounts required to be included as incidental revenue under section 59;
- (d) amounts required to be included as incidental revenue under Part VII; and
- (e) other revenue received on account of the lease that the minister may reasonably declare to be incidental revenue.

(2) Notwithstanding subsection (1) and subject to Part VII, revenue that is decommissioning revenue is not incidental revenue.

(3) Revenue that arises in relation to a transaction that is entered into to hedge price risk with respect to a commodity or money shall not be considered to be incidental revenue.

(4) Where the royalty cost in relation to a service or asset is an allocation of the total cost of the service or asset as a result of the allocation provisions of these regulations, the same relative allocation shall be applied to an incidental revenue received or deemed as received or declared in respect of that service or asset.

71/03 s69

PART XI

TRANSPORTATION COSTS

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Transportation costs

70. (1) An estimate of the eligible transportation costs for an interest holder for a period shall, after consultation with the interest holder, be determined by the minister and the minister shall notify that interest holder of his or her determination, in writing, before the beginning of the period.

(2) The estimated eligible transportation costs for a month for an interest holder in a lease are the estimated eligible transportation costs for that interest holder for the period determined under subsection (1) multiplied by the ratio of barrels of oil produced under the lease in the month to the expected amount of oil to be produced under the lease in the period by that interest holder from oil produced under that lease.

(3) The minister shall, before the interest holder is required to file an annual reconciliation under section 32, provide the interest holder with his or her determination of the eligible transportation costs for the period.

(4) The minister may extend the filing date required under subsection 32(1).

(5) Eligible transportation costs for a month for an interest holder in a lease are the eligible transportation costs for that interest holder determined under subsection (3) for a period multiplied by the ratio of barrels of oil produced under the lease in the month to the actual amount of oil produced in the period by that interest holder from that lease.

(6) Interest holders, project operators, tanker administrators and transshipment facility administrators shall provide the minister with the information and access to records necessary to calculate eligible transportation costs under subsections (1) and (3).

(7) Where an amount used in the calculation of eligible transportation costs under subsection (3) changes due to assessments, reassessments or for another reason, the change shall be incorporated into the eligible transportation cost calculation in the period in which the change became known and the change shall not require the recalculation of eligible transportation costs calculated in prior periods.

(8) This section does not apply to leases issued after April 1, 1990 and before November 30, 2001.

71/03 s70; 35/13 s13

PART XI.1

TRANSPORTATION COSTS RE: APRIL 1, 1990 TO NOVEMBER 30, 2001 LEASES

5/13 s14

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Definitions

70.1 In this Part and the Schedule

(a) "capital lease tanker" means a tanker that is normally used to transport oil produced under a lease to which this Part applies from a loading point to a transshipment facility or point of sale, which is leased under a capital lease in which one or more interest holders is a lessee;

(b) "competitive tender process" means an open and competitive tender process that either

(i) includes exclusively bidders who are at arm's length to all the interest holders and their affiliates, or

(ii) where one or more bidders are not at arm's length to interest holders, includes bids from at least 2 parties at arm's length to the interest holders;

(c) "offshore area" means offshore area as defined in the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act;

(d) "operating lease tanker" means a tanker that is normally used to transport oil produced under a lease to which this Part applies from a loading point to a transshipment facility or point of sale, which is being leased under an operating lease to which one or more of the interest holders is a lessee;

(e) "owned tanker" means a tanker that is normally used to transport oil produced under a lease to which this Part applies from a loading point to a transshipment facility or point of sale, in which one or more of the interest holders has an ownership interest;

(f) "point of sale" means the point at which oil is considered to have been sold under subsection 7 (8) or, where the sales price includes transportation costs beyond where oil is considered to have been sold under subsection 7(8), the point of delivery;

(g) "replacement tanker" means a tanker that

(i) is used to transport oil produced under a lease to which this Part applies from a loading point to a transshipment facility or a point of sale, in substitution of a tanker normally used for that purpose,

(ii) is not normally used to transport oil produced under a lease to which this Part applies, and

(iii) is used for the purpose described in subparagraph (i) for less than 12 months, during which time the tanker normally used for that purpose is unavailable;

(h) "second leg tanker" means a tanker that transports oil produced under a lease to which this Part applies from a transshipment facility to a point of sale; and

(i) "transshipment facility owners" means the interest holders who are owners, or who have affiliates who are owners of an interest in a transshipment facility.

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Application

70.2 (1) This Part applies to leases issued after April 1, 1990 and before November 30, 2001.

(2) Sections 59, 60, 63, 64, 65, 66, 67 and 69 do not apply for the purpose of this Part.

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General cost criteria

70.3 (1) A cost qualifies as an eligible transportation cost only to the extent that

- (a) it is a cash payment;
- (b) it is directly attributable to the transportation of oil;
- (c) it is reasonable in relation to the circumstances under which it is incurred;
- (d) it is not a disallowed cost under section 68; and
- (e) it meets all of the other requirements of the regulations, except those referred to in subsection

70.2(2).

(2) Eligible transportation costs shall not include

- (a) amounts paid from one interest holder to another interest holder; or
- (b) amounts received by one interest holder from another interest holder

where the amounts under paragraphs (a) and (b) are contemporaneous and corresponding, and adjust for the use of transportation assets for the transportation of oil produced under a lease to which this Part applies.

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Eligible transportation costs

70.4 (1) Eligible transportation costs for an interest holder for a month shall be the interest holder's share of

- (a) eligible tanker costs;
- (b) eligible transshipment costs;
- (c) eligible other transportation costs; and
- (d) eligible transportation costs brought forward from a previous month under section 70.10;

less that interest holder's share of

- (e) tanker incidental revenue.
- (2) Except as otherwise provided in paragraph 70.3(1)(d),
 - (a) paragraph 68(1)(m) does not apply to the calculation of eligible tanker costs; and
 - (b) section 68 does not apply to the calculation of eligible transshipment costs.

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Tanker classification

70.5 (1) A tanker used to transport oil produced under a lease shall be classified as only one of the following 5 types and that classification shall apply to all interest holders:

- (a) owned tanker;
- (b) capital lease tanker;
- (c) operating lease tanker;
- (d) second leg tanker; or
- (e) replacement tanker.

(2) The interest holders shall inform the minister of their classification of a tanker within 30 days of the latter of the purchase of the tanker or the execution of the lease and where the minister does not agree with the classification, the minister shall determine the classification of the tanker.

(3) An election or determination under subsection (2) applies for the life of the tanker.

(4) Notwithstanding another provision of this section, within 6 months of the first use of a tanker classified as a capital lease tanker to transport oil produced under a lease to which this Part applies, the minister may elect to classify that tanker as an operating lease tanker.

(5) Notwithstanding subsection (3), a tanker which is used as a replacement tanker for more than 12 consecutive months shall, for the purpose of calculating eligible transportation costs, be classified as

- (a) an owned tanker;
- (b) a capital lease tanker; or
- (c) an operating lease tanker.

(6) Subsections (2) to (4) apply to tankers referred to in subsection (5).

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Eligible tanker costs

70.6 Eligible tanker costs are the interest holder's share of the following:

- (a) eligible owned tanker costs;
- (b) eligible capital lease tanker costs;
- (c) eligible operating lease tanker costs;
- (d) eligible second leg tanker costs; and
- (e) eligible replacement tanker costs.

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Eligible owned tanker costs and eligible capital lease tanker costs

70.7 (1) Eligible owned tanker costs for a tanker and eligible capital lease tanker costs for a tanker each equal the sum of that tanker's annual

- (a) eligible tanker operating costs;
- (b) eligible return on capital costs; and
- (c) eligible tanker capital depreciation.

(2) Eligible tanker operating costs under paragraph (1)(a) are

(a) costs that would be classified as an operating cost for that tanker in accordance with Canadian generally accepted accounting principles for public accountable entities and good petroleum industry practices; and

(b) 10% of the costs described in paragraph (a).

(3) Eligible return on capital costs under paragraph (1)(b) are 8% of the undepreciated capital cost balance at mid-year, excluding any gross up to that cost in excess of the actual cash payment for that cost, for that tanker.

(4) Eligible tanker capital depreciation under paragraph (1)(c) is

- (a) the eligible initial capital cost of the tanker, plus
- (b) any eligible additional capital costs for that tanker,

depreciated on a straight line basis over the remaining useful life of that tanker.

(5) The eligible initial capital cost under paragraph (4)(a) for owned tankers that are less than 12 months old is

- (a) the cost of the tanker as constructed;

plus

- (b) 1% of the amount described in paragraph (a).

(6) The eligible initial capital cost under paragraph (4)(a) for owned tankers that are 12 or more months old is

- (a) the fair market value of the tanker as determined by an approved appraiser,

plus

- (b) 1% of the amount described in paragraph (a).

(7) Notwithstanding subsection (6), where an owned tanker's capital cost has been included in the calculation of transportation costs under a lease to which this Part does not apply, the eligible initial capital cost for that tanker under paragraph (4)(a) is

(a) the undepreciated capital cost of the tanker, excluding any gross up to that cost in excess of the actual cash payment for that cost as reported under the other lease; and

- (b) 1% of the amount described in paragraph (a).

(8) Notwithstanding subsections (6) and (7), where an owned tanker was subject to a deemed disposition under a lease to which this Part does not apply and the value of that deemed disposition is included in the calculation of incidental revenue under that lease, the eligible initial capital cost for that tanker under paragraph (4)(a) is

(a) the value of the deemed disposition, excluding any gross up to that cost in excess of the actual cash payment for that cost as reported under the other lease; and

(b) 1% of the amount described in paragraph (a).

(9) The eligible initial capital cost under paragraph (4)(a) of a capital lease tanker is

(a) the fair market value of the tanker at the time of lease commencement as determined by an approved appraiser or the minister,
plus

(b) 1% of the amount described in paragraph (a).

(10) Eligible additional capital costs under paragraph (4)(b) are

(a) costs that would be classified as capital additions in accordance with Canadian generally accepted accounting principles for public accountable entities and good petroleum industry practices, plus

(b) 1% of the costs described in paragraph (a).

(11) Where capital additions are made to an owned tanker or a capital lease tanker, the remaining useful life of that tanker shall be adjusted in accordance with Canadian generally accepted accounting principles for public accountable entities.

(12) The remaining useful life of an owned tanker or a capital lease tanker shall be determined by an approved appraiser unless otherwise determined by the minister.

(13) For the purpose of this section, “approved appraiser” means an independent appraiser of tankers approved by the minister.

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Eligible operating lease tanker costs

70.8 (1) Notwithstanding section 16, where an award for a contract for an operating lease tanker results from a competitive tender process, the eligible operating lease tanker costs for that tanker shall be

(a) the amount paid under the terms of the lease for that tanker;

(b) operating costs directly related to operating that tanker; and

(c) costs incurred by a tanker administrator that are directly related to administering that tanker.

(2) Where an award of a contract results from a competitive tender process and the successful bidder is not at arm's length to the interest holders, the minister may determine that the contract was not awarded under the competitive tender process.

(3) Where the award of a contract for an operating lease tanker was not made under a competitive tender process, the eligible operating lease tanker costs for that tanker shall be determined as though the tanker were a capital lease tanker unless the minister approves the calculation of eligible operating lease tanker costs in accordance with subsection (1).

(4) Except as otherwise provided in paragraph 70.3(1)(d), paragraph 68(1)(a) shall not apply to the calculation of operating lease tanker costs in paragraph (1)(a).

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Eligible replacement tankers and eligible second leg tankers

70.9 (1) Eligible second leg tanker costs shall be the actual costs incurred by an interest holder for the transportation of oil produced under a lease to which this Part applies.

(2) Eligible replacement tanker costs shall be the actual costs incurred by an interest holder.

(3) Except as otherwise provided in paragraph 70.3(1)(d), paragraph 68(1)(a) shall not apply to the calculation of second leg tanker costs and replacement tanker costs.

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Transportation costs carry forward

70.10 Where, in a month, an interest holder's gross sales revenue is exceeded by the interest holder's eligible transportation costs, the amount of that excess shall be added to eligible transportation costs in the next month.

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Tanker incidental revenue

70.11 (1) Tanker incidental revenue is the sum of

(a) the amount eligible for inclusion as a component of transportation costs under a lease to which this Part does not apply for the use of one or more tankers as a profitable outcharter; less

(b) the amount that would have been included in eligible tanker costs under this Part had the tanker not been used as a profitable outcharter, plus

(i) proceeds received from the sale, lease, licence or other disposal or use of lease assets or technology, but not the disposal of a tanker, where the costs were royalty costs under a lease,

(ii) proceeds received under insurance policies where the applicable premium was included in the calculation of transportation costs, to the lesser amount of the actual benefit received or the cumulative costs claimed, and

(iii) other revenue received on account of the lease that the minister may reasonably declare to be tanker incidental revenue.

(2) A tanker is used as a profitable outcharter where that tanker

(a) is normally used to transport oil produced under a lease to which this Part applies from a loading point to a transshipment facility or point of sale;

(b) is used to transport oil produced under a lease to which this Part does not apply, in substitution of a tanker normally used for that purpose; and

(c) is used for the purpose described in paragraph (b) for less than 12 months, during which time the tanker normally used for that purpose is unavailable.

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Allocation of eligible tanker costs and incidental revenue

70.12 (1) The maximum portion of eligible owned tanker costs, eligible capital lease tanker costs, and eligible operating lease tanker costs that may be allocated to a lease shall be calculated on an annual basis in accordance with the formula

$(A/B) \times C$

where

A = days on which the tanker is carrying oil produced under that lease;

B = days on which a tanker is carrying oil; and

C = eligible owned tanker costs, eligible capital lease tanker costs, or eligible operating lease tanker costs for that tanker.

(2) Where a tanker is out of service for repairs or maintenance for 12 months or less, that tanker's costs shall be allocated in accordance with subsection (1) taking into account the use of that tanker in the 12 months immediately preceding the start of the month in which the tanker went out of service.

(3) There shall be no allocation of tanker costs where that tanker is out of service for more than 12 months.

(4) Notwithstanding subsections (1) and (2), there shall be no allocation of costs of a tanker while it is out of service for the purpose of modifying the tanker for the transportation of oil not produced in the offshore area.

(5) The maximum portion of eligible replacement tanker costs that may be allocated to a lease shall be calculated on an annual basis according to the formula

$(A/B) \times C$

where

A = days on which the tanker is carrying oil produced under that lease;

B = days on which a tanker is carrying oil; and

C = replacement tanker costs.

(6) At the end of a period, an interest holder shall determine its monthly eligible owned tanker costs, eligible capital lease tanker costs, eligible operating lease tanker costs and eligible replacement tanker costs

according to the formula

$(A/B) \times C$

where

A = annual eligible owned tanker costs, eligible capital lease tanker costs, eligible operating lease tanker costs or eligible replacement tanker costs ;

B = number of barrels sold in that year; and

C = number of barrels sold in that month.

(7) The maximum portion of tanker incidental revenue that may be allocated to a lease shall be calculated on a monthly basis according to the following formula

$(A/B) \times \text{TIR}$

where

A = days on which the tanker is carrying oil produced under that lease;

B = days on which the tanker is carrying oil produced in the offshore area minus days in which the tanker is used as a profitable outcharter; and

TIR = tanker incidental revenue.

(8) For the purpose of this section, “days on which a tanker is carrying oil” means days on which a tanker is traveling from a loading point to a point of sale, together with days on which

(a) that tanker is traveling from the point of sale to return to its point of origin; or

(b) that tanker is traveling in the manner described in subsection (9).

(9) Where the oil sold at the point of sale referred to in subsection (8) is produced in the offshore area, the following days shall be considered, in addition to subsection (8), to be “days on which a tanker is carrying oil” under paragraph (8)(b):

(a) days on which that tanker is traveling from the point of sale to another location in the offshore area; or

(b) where that tanker is traveling from the point of sale to a location outside the offshore area, the number of days equivalent to the number of days it would have taken that tanker to return from the point of sale to the Jeanne D’Arc Basin .

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Tanker cost administrators and tanker cost aggregator

70.13 (1) The interest holders shall designate a tanker administrator for each owned tanker, capital lease tanker, operating lease tanker and replacement tanker on or before the date the tanker becomes available for the transportation of oil produced under a lease to which this Part applies, or the date that this section comes into force, whichever is later.

(2) The interest holders and the tanker administrators shall provide reports of all eligible owned tanker costs, eligible capital lease tanker costs, eligible second leg tanker costs, eligible replacement tanker costs and tanker incidental revenue to the tanker cost aggregator.

(3) The interest holders shall designate a tanker cost aggregator within 60 days of the coming into force of this section.

(4) The tanker cost aggregator shall allocate eligible tanker costs and tanker incidental revenue to each interest holder according to the allocation formula or formulas set out in the transportation allocation agreement or prescribed by the minister under subsection 70.14(5).

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Transportation allocation agreement

70.14 (1) Within 60 days of the coming into force of this section, the interest holders shall provide the minister with an executed transportation allocation agreement.

(2) The transportation allocation agreement and any amendment to it shall not take effect until approved by the minister.

(3) The transportation allocation agreement shall include

(a) an allocation formula for costs that is aligned with interest holders' costs, tanker ownership, contract ownership, usage and capacity in the asset; and

(b) an allocation formula for tanker incidental revenue that is aligned with the interest holders' costs, tanker ownership, usage and capacity in the asset, which may vary from the allocation formula in paragraph (a).

(4) Within 30 days of an amendment to an agreement described in subsection (1), the interest holders shall provide the minister with an executed amending document.

(5) Where an executed transportation allocation agreement is not provided to the minister as required under subsection (1), the minister may impose an allocation formula or formulas.

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Eligible transshipment costs

70.15 (1) Eligible transshipment costs for the use of the Whiffen Head transshipment facility shall be calculated in accordance with this section.

(2) An eligible transshipment cost shall be for the transshipment of oil produced under a lease to which this Part applies.

(3) In each month, eligible transshipment costs for an interest holder who is not a transshipment facility owner shall be the actual amount paid by that interest holder to the transshipment facility for the transshipment of oil in the month.

(4) In each month, eligible transshipment costs for a transshipment facility owner shall be the actual amount paid by that transshipment facility owner for the transshipment of oil in the month, less that transshipment facility owner's individual ROCC reduction for the month.

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ROCC reduction

70.16 (1) At the beginning of a period, the transshipment facility administrator shall provide each transshipment facility owner with an estimate of its individual ROCC reductions in a manner prescribed by the minister.

(2) At the end of each period, the transshipment facility administrator shall calculate the total ROCC reduction in the period according to the formula

$A - (CC \times 0.06)$

where

A = the after-tax profit on the audited financial statements for the transshipment facility; and

CC = the value of the share capital issued and outstanding as reported on the annual audited financial statements for the transshipment facility.

(3) The transshipment facility administrator shall calculate the portion of the total ROCC reduction that may be allocated to a lease according to the formula

$A \times (B/C)$

where

A = the total ROCC reduction under subsection (2);

B = storage and berth costs allocated to oil produced under that lease; and

C = total storage and berth costs.

(4) The transshipment facility administrator shall calculate the portion of the ROCC reduction allocated to a lease under subsection (3) relating to the transshipment facility owners that are interest holders in that lease in the aggregate according to the formula

$A \times y\%$

where

A = ROCC reduction allocated to a lease under subsection (3); and

y% = the aggregate percentage shareholder interest in the transshipment facility held by all the transshipment facility owners that are interest holders in that lease in the period.

(5) The transshipment facility administrator shall allocate the ROCC reduction relating to the transshipment facility owners in the aggregate under subsection (4) to each individual transshipment facility owner according to the allocation formula in the transshipment allocation agreement or as imposed by the minister under subsection 70.17(5).

(6) At the end of each period, each transshipment facility owner shall recalculate its individual ROCC reduction for each month based on the actual individual ROCC reduction for the period under subsection (5) divided by 12.

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Transshipment agreements

70.17 (1) Within 60 days of the coming into force of this section, the transshipment facility owners shall provide the minister with an executed transshipment allocation agreement.

(2) The transshipment allocation agreement and any amendments to it shall not take effect until approved by the minister.

(3) The transshipment allocation agreement shall include a formula for the allocation of the aggregate ROCC reduction among the transshipment facility owners that is aligned with the transshipment facility owner's costs, contract ownership, usage or capacity in the transshipment facility.

(4) Within 30 days of an amendment to an agreement described in subsection (1), the transshipment facility owners shall provide the minister with an executed amending document.

(5) Where a transshipment allocation agreement is not provided to the minister within the time period prescribed in subsection (1), the minister may impose an allocation formula or formulas.

(6) Where an interest holder is a party to one of the following agreements, that interest holder shall notify the minister of an amendment or addition to that agreement which occurs after July 25, 2008:

(a) the Reserved Capacity Services Agreement;

(b) the Newfoundland Transshipment Facility Second Amended and Restated General Terms and Conditions of Service;

(c) the Unanimous Shareholder Agreement; or

(d) another arrangement to determine customer costs for a transshipment facility.

(7) Notwithstanding a proposed amendment to an agreement referred to in subsection (6), unless otherwise approved by the minister,

(a) eligible transshipment costs shall be calculated according to that agreement before the amendment; and

(b) a transshipment facility shall not deduct costs related to the transportation of oil.

(8) Transshipment facility owners shall provide the following information to the minister with respect to the transshipment facility on an annual basis:

(a) a certification by the transshipment facility administrator stating that there have been no amendments to the agreements referred to in subsection (6);

(b) a certification by the transshipment facility administrator stating that all services and billings in that year have been provided in accordance with the agreements referred to in paragraph (a);

(c) a copy of the transshipment facility administrator's audited financial statement and auditor's report;

(d) a copy of the audited final adjustment calculations and auditor's report; and

(e) a statement reconciling the transshipment facility administrator's total revenue to the amounts paid by each interest holder.

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Eligible other transportation costs

70.18 (1) A cost shall qualify as an eligible other transportation cost where

(a) it is an operating cost according to Canadian generally accepted accounting principles for public accountable entities;

(b) it is not a component of eligible tanker costs or a component of eligible transshipment costs;

(c) it is a cost incurred by an interest holder; and

(d) it is a cost that is directly attributable to the transportation of oil produced under a lease to which this Part applies.

(2) At the end of a period, an interest holder shall determine its monthly eligible other transportation costs according to the following formula:

$(A/B) \times C$

where

- A = annual eligible other transportation costs;
- B = number of barrels sold in that year; and
- C = number of barrels sold in that month.

5/13 s14

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Costs incurred before July 1, 2009

70.19 (1) Where eligible transportation costs were incurred before July 1, 2009, the minister shall prescribe eligible transportation costs.

(2) Notwithstanding the expiration of the reassessment period, the minister shall issue a reassessment for royalty share payable resulting from changes to eligible transportation costs under subsection (1).

(3) Notwithstanding section 62, there shall be no interest payable as a result of the reassessment until 30 days after the interest holder receives the reassessment.

(4) Subsections 35(6) to (9) apply for the purpose of objecting to a calculation made as a result of a change in eligible transportation costs.

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Costs incurred between July 1, 2009 and the coming into force of this section

70.20 (1) Where eligible transportation costs were incurred between July 1, 2009 and the coming into force of this section, interest holder shall resubmit eligible transportation costs within 60 days of the coming into force of this section, and those eligible transportation costs shall be calculated and submitted in accordance with this Part.

(2) The minister shall recalculate the royalty share payable further to subsection (1) in accordance with section 35.

(3) Notwithstanding section 62, there shall be no interest payable as a result of the reassessment until 60 days after the filing of eligible transportation costs.

5/13 s14

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Costs incurred after the coming into force of this section

70.21 Eligible transportation costs incurred after the coming into force of this section shall be calculated and reported in accordance with this Part and Part IV.

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Transitional tanker classification provisions

70.22 (1) Notwithstanding subsection 70.5(2), where, on the coming into force of this section, a tanker is in use for the transportation of oil produced in the offshore area, an interest holder shall inform the minister of the classification of that tanker within 60 days of the coming into force of this section.

(2) Notwithstanding subsection (1), the tankers referred to in the Schedule shall be, at the coming into force of this section, classified in accordance with that Schedule.

35/13 s14

PART XII

ADMINISTRATIVE PENALTY

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Penalty

71. (1) Where a person fails to file with the minister a statement or report under the Act or these regulations, including information requested through the audit process, the minister may order that person to pay to the Crown a penalty of not more than \$2000 per month that the statement, report, notice, auditor = s report, or another document has not been filed or produced.

(2) Where a person violates section 39, with the exception of records related to marketing costs and insurance costs incurred by the interest holder, the minister may order that person to pay to the Crown a

penalty of not more than \$5000 for each month in which the records are not maintained in a place required under that section.

(3) Where the minister orders a person to pay a penalty under subsection (1), he or she shall give notice to that person of the amount of the penalty and stating the grounds on which the penalty was ordered by sending the notice as provided in these regulations, in which case the person shall pay to the Crown the amount of the penalty within 30 days from the date of the service of the notice on him or her.

71/03 s71

PART XIII

CALCULATIONS AND RATES RE: APRIL 1, 1990 TO NOVEMBER 30, 2001 LEASES

35/13 s15

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Application

72. (1) This Part shall only apply to leases issued after April 1, 1990 and before November 30, 2001.

(2) For the purposes of the application of these regulations to leases to which this Part applies, the phrase "at least 60 days" in subsection 20(4) shall be considered to read as "at least 180 days".

71/03 s72

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Basic royalty rates

73. (1) The basic royalty rate for an interest holder in a lease

(a) before the month in which simple payout for that interest holder occurs, is

(i) until the interest holder's share of the first 50 million barrels of oil is transferred to the interest holder at the loading point under the lease, 1%, and

(ii) after the transfer to the interest holder at the loading point of the interest holder's share of the first 50 million barrels of oil until simple payout occurs, 2.5%; and

(b) commencing at the beginning of the month in which simple payout for that interest holder occurs, is

(i) until the interest holder's share of the first 100 million barrels of oil is transferred to the interest holder at the loading point after simple payout, 5%, and

(ii) for the interest holder's share of the next 100 million barrels of oil transferred to the interest holder at the loading point under the lease, 7.5%; and

(c) after completion of the application of paragraph (b)(ii), is 10%.

(2) Notwithstanding paragraph (1)(a), once simple payout occurs, basic royalty shall be paid in accordance with paragraph (1)(b).

(3) A volume of oil referred to in subsection (1) shall be the gross volume of oil measured at the loading point.

71/03 s73

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Incremental royalty rates

74. (1) The Tier I incremental royalty rate is 30%.

(2) The Tier II incremental royalty rate is 12.5%.

71/03 s74

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Return allowance factor

75. (1) The Tier I return allowance factor for a month, is the amount determined by the formula

$$(1.1 + X)^{1/12} - 1$$

(2) The Tier II return allowance factor for a month, is the amount determined by the formula

$$(1.18 + X)^{1/12} - 1$$

(3) In subsections (1) and (2) X equals the percentage increase, expressed as a decimal, in the consumer price index for the month which is 2 months prior to the month for which the calculations are being made from the consumer price index for the same month in the preceding calendar year.

Deduction of basic royalty

76. Where, with respect to a period after Tier II payout, a Tier I royalty is not payable, the basic royalty paid by an interest holder with respect to that period shall be deducted from the net revenue of the interest holder for that period for the purposes of calculating the Tier II royalty payable by the interest holder with respect to that period.

End of period deduction

76.1 (1) For the purpose of this Part, the calculation referred to in subsection 10(2) shall be reduced by the basic royalty payable by the interest holder under the lease for the month.

(2) Notwithstanding subsection (1), where the result of the calculation in that subsection is less than zero, the Tier I royalty payable by an interest holder under a lease for a month shall be zero.

(3) This section is considered to have come into force on December 31, 2001.

Calculation and determination by minister

76.2 (1) The minister shall calculate and determine the amounts of royalty share for the periods from December 31, 2001 to December 31, 2010 which may be payable to or from the interest holder as a result of the coming into force of section 76.1.

(2) The minister shall calculate the amounts referred to in subsection (1) and notify the interest holder of the minister's determination under that subsection no later than March 31, 2011.

(3) Where, as a result of a calculation and determination by the minister under subsection (1) it is determined that an interest holder has underpaid or overpaid royalty share, the amount owing shall be repaid to or by the Crown within 30 days after the notice is issued under subsection (2), or upon the written request of the interest holder, the amount of an overpayment may be credited to the account of the interest holder for royalty share payable.

(4) An interest holder may object to a calculation or determination issued by the minister within 30 days of receiving the notice referred to in subsection (2) by delivering a written notice to the minister objecting to part or all of the calculation or determination.

(5) A notice of objection shall clearly identify the matter objected to, setting out the reasons for the objection, all of the relevant facts and the desired remedy.

(6) The minister shall review a notice of objection and

(a) may request that further particulars be provided to him or her; and

(b) shall give a reply, in writing, to the objecting person confirming, amending or rescinding part or all of the matter objected to in the same manner as for giving a notice of the calculation or determination.

(7) Notwithstanding another provision of these regulations

(a) a calculation and determination under subsection (1) shall not be considered to be an assessment or reassessment for the purpose of these regulations or the Act; and

(b) where a notice of objection is filed with the minister under subsection (4), the subject matter of that notice shall be separate from and shall not be included in or be in addition to a notice of objection under section 35.

No interest to be paid or payable

76.3 (1) Notwithstanding section 62, section 84 or another provision of these regulations, interest shall not be paid or be payable upon a calculation and determination under section 76.2.

(2) Notwithstanding subsection (1), interest is payable on a calculation and determination under subsection 76.2(1) from the date of the expiry of the 30 day period referred to in subsection 76.2(3) and that interest shall be paid in accordance with these regulations.

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Effect of provisions

76.4 The coming into force of sections 76.1 to 76.3 shall not affect the powers of the minister or the rights of an interest holder under these regulations with respect to the calculation of royalty payable or any other matter prescribed by these regulations.

32/11 s2

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Arm's length threshold

77. (1) Notwithstanding subsection 16(2), a transaction shall be considered to be at arm's length where

(a) for a transaction other than a transaction for insurance or marketing purposes, the transaction results in a cost that does not exceed \$135,000 and the cumulative cost of all transactions with the same person or that person's affiliates during the period does not exceed \$2,700,000;

(b) for a transaction for insurance or marketing purposes, the cost of a single transaction does not exceed \$17,000 and the cumulative cost of all transactions with the same person or that person's affiliates during the period does not exceed \$170,000; or

(c) for a cost in paragraph (a) or (b), the lowest bid in a competitive bid held in good faith shall be accepted where there are one or more bids made in good faith by persons who are at arm's length with all interest holders and affiliates of interest holders.

(2) Commencing with the calendar year that starts after the publication of these regulations in the Gazette, the values in paragraphs (1)(a) and (b) shall be annually adjusted by the minister on the first day of the calendar year to reflect the change in the consumer price index for the month of July of the immediately preceding calendar year.

(3) This section does not apply to the calculation of eligible transportation costs.

71/03 s77; 35/13 s16

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Capital leases

78. (1) Notwithstanding Canadian generally accepted accounting principles, payments for the lease of an asset, where the fair market value of that asset is less than \$135,000 at the time the lease is entered into shall be classified as an operating lease.

(2) The value of \$135,000 referred to in subsection (1) shall be adjusted annually on January 1 by the minister to reflect the consumer price index from July 1 of the second preceding year to June 30 of the year immediately preceding that January 1 date, starting with January of the calendar year immediately after the date of publication of these regulations in the Gazette.

(3) This section does not apply to the calculation of eligible transportation costs.

71/03 s78; 35/13 s17

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Pre-development costs

79. (1) Notwithstanding section 64, for an interest holder in a lease, the amount of eligible pre-development cost is the interest holder's working interest share of the sum of

(a) \$301,316,455; plus

(b) costs incurred after December 31, 1994 and before August 1, 1997 that are certified by the minister under subsection (2) to be certified pre-development costs; multiplied by the following formula:

$$\frac{108.2}{\text{CPIM}} \times 105\%$$

where CPIM is the consumer price index for the month in which the cost was incurred; plus

(c) costs incurred after July 31, 1997 and before February 1, 1998, that are certified by the minister under subsection (2) to be certified pre-development costs; multiplied by 101%.

(2) An interest holder may, in the required form, apply to the minister for the certification of costs as certified pre-development costs and the minister shall, where he or she determines that the costs are pre-development costs, certify those costs as certified pre-development costs.

Additional return allowance

80. (1) In addition to the Tier I return allowance calculated under subsection 10(4), for the purpose of this Part, Tier I return allowance for an interest holder for each month from August 1997 to January, 1998 shall be calculated as the product of the Tier I return allowance factor for the month multiplied by the sum of

(a) the interest holder's working interest share of eligible pre-development costs under paragraph 79(1)(c) to the end of that month; plus

(b) the cumulative Tier I return allowance to the end of the previous month.

(2) In addition to the Tier II return allowance calculated under subsection 11(4), for the purpose of this Part, Tier II return allowance for an interest holder including each month from August 1997 to January 1998 shall be calculated as the product of the Tier II return allowance factor for the month, multiplied by

(a) the interest holder's working interest share of eligible pre-development costs under paragraph 79(1)(c) to the end of that month; plus

(b) the Tier II return allowance to the end of the previous month.

Pricing and reference price

81. (1) Notwithstanding section 17, where a sale of oil relates to a transaction or a series of transactions that are not at arm's length, for the purpose of calculating royalty share payable, the sale price shall be valued at the reference price applicable to that oil.

(2) Not later than 60 days after the publication of these regulations in the Gazette, the interest holders in the lease under this Part and the minister shall appoint a reference price committee.

(3) The reference price committee shall determine the reference price of oil for the lease under this Part on a monthly basis.

(4) The reference price determined under subsection (4) shall be based upon daily published quoted prices for a basket of actively traded oils, with necessary adjustments for differences in oil characteristics and this basket of actively traded oils shall

(a) be not more than 7 and not fewer than 5 in number unless otherwise is agreed to by all members of the reference price committee;

(b) be widely and actively traded and delivered for refining within the designated area as defined in paragraph (6)(b) and is likely to be displaced in part in the designated market place by oil produced under the lease;

(c) be qualitatively similar to the oil produced from the project in o API, sulphur content, pour point, product yield characteristics when refined in cracking refineries and those other physical and market characteristics that are determined to be relevant by the reference price committee;

(d) be produced in a reasonable number of dispersed geographic locations so that in total, the trading prices for oils included in the basket of oils are less likely to be greatly affected by regional political instability, weather, shipment difficulties or other factors likely to reduce the reliability of the basket of oils;

(e) have active daily port of export spot price quotes reported in a source of market-based spot prices for the basket agreed upon by the reference price committee; and

(f) be chosen, in the aggregate, as the most commercially comparable to the oil produced under the lease.

(5) In subsection (4),

(a) a basket of oils shall be considered to be reference oils;

(b) the designated area in paragraph (4)(b) means the Petroleum Administration for Defence District number 1 of the United States of America as defined in the United States Code of Federal Regulations unless another designated area can be agreed upon by all reference price committee members; and

(c) the oils making up the basket of oils may be replaced annually with alternate oils upon the agreement of the reference price committee.

(6) The reference price committee shall consist of 3 members

(a) one of whom shall be appointed by the interest holders;

(b) one of whom shall be appointed by the minister; and

(c) one of whom shall be the chairperson appointed by the members referred to in paragraphs (a) and (b).

(7) The chairperson appointed under paragraph (6)(c) shall not be an interest holder or a representative of the Crown and shall be an expert in oil valuation.

(8) The term of appointment of each member of the committee who is appointed under this section shall be 2 years.

(9) A member of the committee is eligible for reappointment.

(10) The interest holders may, after giving notice to the minister of the intent, remove and replace the member appointed under paragraph (6)(a).

(11) The minister may, after giving notice to the interest holders of the intent, remove and replace the member appointed under paragraph (6)(b).

(12) The chairperson may be removed by the unanimous vote of the members referred to in paragraphs (6)(a) and (b).

(13) Where after the interest holders do not appoint a committee member within 60 days after the time frame referred to in subsection (2), or within 60 days after a vacancy occurs on that committee, the minister may appoint that member.

(14) Where the 2 appointed committee members, within 30 days after their appointment or within 30 days of the vacancy of the office of the chairperson, do not appoint a chairperson, the matter may be referred to the Trial Division and a judge of the Trial Division shall make that appointment.

(15) The reasonable fees and expenses of the members of the reference price committee shall be paid by the interest holders in proportion to their respective working interest shares in the lease and are considered to be eligible operating costs.

(16) Not more than 6 months after the publication of these regulations in the Gazette, the reference price committee shall develop a crude oil valuation method using a linear program that simulates a single refinery producing the average of the product yields of the major typical sweet crude oil cracking refineries situated in the designated area defined in paragraph (5)(b).

(17) The refineries selected under subsection (16) may be reviewed and replaced annually by the committee.

(18) Not more than 20 days after the end of a month, a reference price committee shall report to the minister and the interest holders the reference price for that month for each lease.

(19) The reference price for a month shall be determined by

(a) applying the linear program referred to in subsection (16) to each of the reference oils and oil produced from the lease in the month to determine the product slate for each of the reference oils in the basket and the oil produced from the lease;

(b) determining the monthly average product price for each individual product contained in the product slates of reference oils and of the oil produced under the lease for the month previous to the month for which the reference price is being determined by calculating the monthly arithmetic average of the daily prices at the valuation point, as determined by the committee, of that individual product for the month;

(c) applying the monthly average product price for each product in the product slate of each of the reference oils and the oil produced from the project for the month to determine a gross product worth for each of the reference oils and the oil produced under the lease;

(d) comparing the gross product worth of each of the reference oils to the gross product worth of the oil produced from the project for the month to establish a relative refining worth of each of the reference oils to the oil produced from the project for the month;

(e) determining the average landed cost of each of the reference oils at the valuation point by adding the transportation costs that reflect the average spot market tanker rates for the month to the arithmetic average of the daily port of export prices for that reference oil during the month;

(f) subtracting the relative refining worth of each reference oil to or from the landed cost for that reference oil, as the case may be, as determined under paragraph (e) to determine the quality adjusted landed cost of that reference oil for the reference month;

(g) where there are

(i) 3 or 4 reference oils, using all of those reference oils, or

(ii) more than 4 reference oils, selecting the reference oils having neither the lowest nor the highest quality adjusted landed cost in the month, and

calculating the import volume percentage of each of those reference oils for the month being the percentage that the volume of that reference oil imported into the designated area in the month is of the volume of all of those reference oils imported in the month;

(h) calculating the import volume weighted average landed cost for the month of the reference oils selected under paragraph (g), being the sum of the products obtained when the quality adjusted landed cost of each of those reference oils is multiplied by the import volume percentage for that reference oil determined under paragraph (g) which shall be the reference price for that month at the valuation point;

(i) where import data for the purpose of the import volume weighting required under paragraphs (g) and (h) are not available or if the reference price committee is not satisfied with the timeliness or accuracy of that data, the averaging required may be left unadjusted or the committee may use some other measure of import volume unanimously agreed upon by the reference price committee as a proxy for the actual import volume; and

(j) the reference price applicable to a sale of oil from the project shall be net of the transportation costs as calculated in a manner consistent with Part XI or Part XI.1, as applicable, to deliver oil to the sales point.

(20) In this section and section 82, "valuation point" means the point of valuation determined by the reference price committee.

(21) A decision of the committee shall be made by majority of votes of the members of the committee.

71/03 s81; 35/13 s18

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Valuation of arm's length sales

82. (1) Where a sale of oil relates to a transaction that is at arm's length, for the purpose of calculating royalty share payable, the sale price shall be the actual sale price agreed upon between the interest holder and the purchaser of that oil except where the sales price as reported by the interest holder is

(a) below the reference price for that month by more than 1.25% of that reference price, in which case the sale price for royalty purposes shall be 98.75% of the reference price; and

(b) above the reference price for that month by more than 1.25% of that reference price, in which case the sale price for royalty purposes shall be 101.25% of the reference price.

(2) Where oil produced under the lease is sold at a point that differs from the valuation point, the reference price committee shall provide a reference price adjustment for the month to reflect the reasonable transportation difference from the actual sales point to the valuation point before the comparison under subsection (1) is made.

(3) Where, at the end of a calendar year, the reference price committee is of the opinion that the percentages referred to in subsection (1) result in an unsuitable valuation of arm's length sales of oil from the project, the committee may change those percentages as it considers necessary.

(4) Notwithstanding subsection (1), for the first 12 months of production under a lease, where a sale of oil relates to a transaction that is at arm's length, for the purpose of calculating royalty share payable, the sale price shall be the actual sale price agreed upon between the interest holder and the purchaser of that oil.

71/03 s82

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Election to apply reference price

83. (1) An interest holder may elect that the reference price applies to all arm's length sales of oil from the project.

(2) An election under subsection (1) or an election to discontinue that election must be provided to the minister not fewer than 3 months before the month to which the election applies or not fewer than 3 months before the month in which the election is to be discontinued.

(3) Where an interest holder makes an election under subsection (1), the interest holder must report monthly the actual sales price of all oil sold by that interest holder during the month.

71/03 s83

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Overpayment time payable

84. Notwithstanding section 2 and subsection 62(4), where an interest holder has overpaid royalty share payable, the overpayment amount is payable by the Crown from the last day of the month following the month to which the royalty share relates until the royalty share is paid.

71/03 s84

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Disallowed overhead and other costs

85. (1) Notwithstanding paragraph 68(1)(b), the following overhead costs incurred by an alliance member do not qualify as an eligible pre-development cost, eligible operating cost, eligible capital cost, decommissioning cost or component of an eligible transportation cost if that cost was incurred

(a) before production start-up outside Newfoundland and Labrador or the offshore area and it would not have been incurred by a contractor in the course of performing its services as a contractor to a project operator under a typical offshore joint operating agreement; and

(b) after production start-up outside Newfoundland and Labrador or the offshore area.

(2) Paragraph 68(1)(s) does not apply to a cost that was

(a) incurred with a person who is at arm's length to the interest holder or project operator;

(b) incurred with a person who is not at arm's length to the interest holder or the project operator; or

(c) paid to an alliance member.

(3) Subsection 58(1) shall not apply to a cost where

(a) that cost is incurred to purchase commercially justifiable inventory; and

(b) at the time the cost is incurred, it is justifiable solely on the basis of the business purpose of the arrangement for the provision of the goods or services, without regard to the impact on royalty share.

(4) In this section "alliance member" means a group of persons consisting of the project operator, suppliers and other contractors bound together by contract for the sole purpose of providing goods and services or both during the construction phase under a lease where that contract value is significant in relation to the development costs for the lease.

71/03 s85; 35/13 s19

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Disputes

86. (1) A dispute between the minister and an interest holder with respect to whether or not an eligible cost should be an eligible operating cost under section 65 or an eligible capital cost under section 66 may, before the minister and interest holder submit to arbitration under Part VI, be sent to an independent expert for resolution.

(2) A party intending to refer a matter to an expert for resolution under subsection (1) must first notify the other party, in writing, of that intent.

(3) A reference to an independent expert under this section shall not proceed unless both parties to the matter agree on the selection of that expert.

(4) An independent expert referred to in this section shall be a public accountant associated with a national accountancy firm having a substantial presence in Newfoundland and Labrador .

(5) Where there is no independent public accountant associated with a national accounting firm with a substantial presence in Newfoundland and Labrador , the independent expert may be a public accountant associated with a national accountancy firm.

(6) Where the minister and interest holder submitting a matter to an independent expert under this section cannot within 3 months agree upon that expert, the matter may be referred to arbitration under Part VI.

71/03 s86

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Costs

87. The interest holder shall pay the costs related to engaging an independent expert and those costs shall be eligible operating costs for the purposes of section 65.

71/03 s87

PART XIV

CALCULATIONS AND RATES RE: POST NOVEMBER 30, 2001 LEASES

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Application

88. This Part only applies to a lease issued after November 30, 2001.

71/03 s88

Interpretation

89. (1) In this Part

(a) "initial established reserves" means reserves established prior to the start of the production of oil in accordance with the development plan approved by the board; and

(b) "long term bond rate" means in respect of a month, the simple average of the Selected Government of Canada 10 year benchmark yields, specified for the Wednesdays of the preceding month in the Weekly Financial Statistics published by the Bank of Canada.

(2) Where the 10 year benchmark yields referred to in paragraph (1)(b) cease to be published by the Bank of Canada, the minister may designate a substitute.

71/03 s89

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Basic royalty rates

90. (1) The basic royalty rate for an interest holder in a lease is

(a) commencing with the first month in which oil was produced under the lease until the cumulative oil transferred at the loading point for that interest holder reaches either the interest holder's share of 50 million barrels or the interest holder's share of 20% of the initially established reserves of oil under that lease, 1%;

(b) commencing when the cumulative oil transferred at the loading point for an interest holder under the lease exceeds the level of oil referred to in paragraph (a) and ending when the cumulative oil transferred at the loading point for an interest holder reaches the interest holder's share of 100 million barrels, 2.5%;

(c) commencing when the cumulative oil transferred at the loading point for an interest holder under the lease exceeds the interest holder's share of 100 million barrels and ending when the cumulative oil transferred at the loading point for that interest holder reaches the interest holder's share of 200 million barrels, 5%; and

(d) after the cumulative amount of oil transferred at the loading point for an interest holder under a lease exceeds the interest holder's working interest share of 200 million barrels, 7.5%.

(2) Notwithstanding Paragraphs (1)(a) and (b), if simple payout occurs before the transfer of oil under the lease to the interest holder at the loading point reaches the interest holder's share of 100 million barrels, the basic royalty rate for the month, starting at the beginning of the month in which simple payout occurs and ending when the interest holder's share of the next 100 million barrels of oil has been transferred to the interest holder, the basic royalty rate shall be 5%, after which time the basic royalty rate shall be 7.5%.

(3) Volumes of oil referred to in subsections (1) and (2) shall be the gross volume of oil measured at the loading point.

71/03 s90

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Incremental royalty rates

91. (1) The Tier I incremental royalty rate is 20%.

(2) The Tier II incremental royalty rate is 10%.

71/03 s91

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Return allowance factor

92. (1) The Tier I return allowance factor for a month is the amount determined by the following formula:

$$(1.05 + \text{LTBR})^{1/12} - 1$$

where LTBR is the long term government bond rate.

(2) The Tier II return allowance factor for a month is the amount determined by the following formula:

$$(1.15 + \text{LTBR})^{1/12} - 1$$

where LTBR is the long-term government bond rate.

71/03 s92

PART XV

REPEAL

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NLR 84/01 Rep.

93. The Royalty Regulations , Newfoundland and Labrador Regulation 84/01, are repealed.

71/03 s93

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Commencement

94. These regulations shall be considered to have come into force on December 31, 2001.

71/03 s94

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Schedule

Definitions

1. In this Schedule

- (a) "Kometik " means the tanker Kometik with Transportation Canada Official Number 819109;
- (b) "Mattea" means the tanker Mattea with Transportation Canada Official Number 819115; and
- (c) "Vinland" means the tanker Vinland with Transportation Canada Official Number 820794.

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Classification

2. Notwithstanding another provision of these regulations, as of July 1, 2009, the classification of the Kometik, Mattea and Vinland shall be as follows:

- (a) the Kometik is classified as an owned tanker;
- (b) the Mattea is classified as a capital lease tanker; and
- (c) the Vinland is classified as an operating lease tanker.

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Cost calculations

3. (1) Notwithstanding another provision of these regulations, as of July 1, 2009

- (a) the eligible initial capital cost of the Kometik under paragraph 70.7(4)(a) is \$32, 673, 267.00;

and

- (b) the remaining useful life of the Kometik is 12 years.

(2) Notwithstanding another provision of these regulations, as of July 1, 2009

- (a) the eligible initial capital cost of the Mattea under paragraph 70.7(4)(a) is \$32, 673, 267.00; and
- (b) the remaining useful life of the Mattea is 12 years.

35/13 s20

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