



**THE NEWFOUNDLAND
AND LABRADOR GAZETTE
EXTRAORDINARY**

PART II

PUBLISHED BY AUTHORITY

ST. JOHN'S, WEDNESDAY, NOVEMBER 1, 2017

**NEWFOUNDLAND AND LABRADOR
REGULATION**

NLR 37/17



NEWFOUNDLAND AND LABRADOR REGULATION 37/17

Offshore Oil Royalty Regulations
under the
Petroleum and Natural Gas Act
(O.C. 2017-138)

(Filed May 3, 2017)

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, May 1, 2017.

Elizabeth Day
Clerk of the Executive Council (Acting)

REGULATIONS

Analysis

- | | |
|--------------------------|-------------------------------------|
| 1. Short title | 12. Net revenue |
| 2. Application | 13. Net royalty rate |
| 3. Interpretation | 14. Commencement date |
| PART I | |
| ROYALTY | |
| 4. Liability for royalty | 15. Double counting |
| 5. Payment of royalty | 16. Arm's length transaction |
| 6. Basic royalty | 17. Transaction not at arm's length |
| 7. Gross revenue | 18. Measurement standards |
| 8. Allowed shrinkage | 19. Commingling |
| 9. Basic royalty rate | 20. Lien property |
| 10. Payout | |
| 11. Net royalty | |

<p>PART III ROYALTY SHARE IN KIND</p> <p>21. Taking in kind</p> <p>22. Taking in kind for default in royalty share payment</p> <p>23. Calculation of volume</p> <p>24. Adjustment to volume</p> <p>25. Estimates</p> <p>26. Oil that may be taken</p> <p>27. Reporting and calculation of payment</p> <p>28. Delivery</p> <p>29. Obligations</p> <p>30. Lifting agreement</p> <p>PART IV REPORTING</p> <p>31. Monthly report</p> <p>32. Annual reconciliation</p> <p>33. Operator reports</p> <p>34. Tanker cost aggregator report</p> <p>35. Advance rulings</p> <p>36. Assessment and reassessment</p> <p>37. Annual forecast</p> <p>38. Non-filing</p> <p>39. Notice</p> <p>PART V ADMINISTRATION AND AUDIT</p> <p>40. Location and retention of records</p> <p>41. Successor requirements</p> <p>42. Audit and inspection</p> <p>43. Search and seizure</p> <p>44. Electronic records</p> <p>45. Cost of audit</p> <p>46. Audit period</p> <p>47. Indemnity</p> <p>48. Confidential information</p> <p>PART VI DECOMMISSIONING</p> <p>49. Definition</p> <p>50. Decommissioning plan</p> <p>51. Carry-back</p> <p>52. Amounts owing to interest holder</p> <p>53. Subsequent costs</p>	<p>PART VII GENERAL COSTS</p> <p>54. Cost pre-payment</p> <p>55. Cost allocation</p> <p>56. Dispositions</p> <p>57. Reserves</p> <p>PART VIII INTEREST</p> <p>58. Interest</p> <p>PART IX COSTS AND INCIDENTAL REVENUE</p> <p>59. General cost criteria</p> <p>60. Certificate of pre- development costs</p> <p>61. Eligible operating costs and eligible capital costs</p> <p>62. Decommissioning costs</p> <p>63. Disallowed costs</p> <p>64. Incidental revenue</p> <p>PART X TRANSPORTATION COSTS</p> <p>65. Definitions</p> <p>66. Application</p> <p>67. General cost criteria</p> <p>68. Eligible transportation costs</p> <p>69. Tanker classification</p> <p>70. Eligible tanker costs</p> <p>71. Eligible owned tanker costs and eligible capital lease tanker costs</p> <p>72. Eligible operating lease tanker costs</p> <p>73. Eligible replacement tankers and eligible second leg tankers</p> <p>74. Transportation costs carry forward</p> <p>75. Tanker incidental revenue</p> <p>76. Allocation of eligible tanker costs and incidental revenue</p> <p>77. Tanker cost administrators and tanker cost aggregator</p> <p>78. Transportation allocation agreement</p> <p>79. Eligible transshipment costs</p> <p>80. Eligible transshipment costs- - Newfoundland and Labrador</p>
--	---

81. Return on capital cost reduction	84. Penalty
82. Transshipment agreements	PART XII
83. Eligible other transportation costs	GENERAL
PART XI	85. Appeal
ADMINISTRATIVE	86. Review
PENALTY	87. NLR 71/03 Amdt.

Short title **1.** These regulations may be cited as the *Offshore Oil Royalty Regulations*.

Application **2.** These regulations apply to leases issued after the coming into force of these regulations.

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 and Labrador 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) "independent auditor" means a public accountant with a substantial presence in Newfoundland and Labrador who is not an employee of an interest holder or its affiliates and who is licensed to practise as a public accountant under the *Chartered Professional Accountants and Public Accountants Act*;
- (i) "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;
- (j) "lease" means a lease issued by the board;
- (k) "loading point" means the final point of measurement of the production facilities of a lease prior to the loading of oil for transportation;
- (l) "net royalty" means the royalty share required to be paid under section 11;
- (m) "offshore area" means offshore area as defined in the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*;
- (n) "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;
- (o) "period" means a calendar year;
- (p) "prime rate" means the monthly prime business rate of interest published by the Bank of Canada;
- (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) 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;
- (x) "tanker cost aggregator" means a third party selected by the interest holders that aggregates eligible tanker costs and tanker incidental revenue based on reports provided by tanker administrators and interest holders;

- (y) "transshipment facility administrator" means a person that acts as the administrator of a transshipment facility;
- (z) "transaction" includes an arrangement or event and a "series of transactions" includes related transactions completed in contemplation of the series; and
- (aa) "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) Calculations under these regulations shall be calculated to four or more decimal points.

(3) 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.

(4) In these regulations, a reference to

- (a) the "Crown" shall be considered to be a reference to "Her Majesty in Right of Newfoundland and Labrador";
- (b) 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;
- (c) a volume of oil shall be considered to be a volume measured in barrels; and
- (d) "fair market value" shall be considered to be the value based on transactions occurring in comparable open markets among persons that are not affiliated.

PART I ROYALTY

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 net royalty.

(3) An interest holder shall assess royalty share, gross revenue, royalty costs, net revenue, recovery factor, royalty rate and 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 these 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.

Payment of royalty

5. (1) Basic royalty and net 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 net 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.

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.

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 less eligible transportation costs 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 or for that interest holder in that month; plus
- (b) sales value for the oil that is deemed to be sold 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; or
- (b) the price determined under subsection (9) 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 to be 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) 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 deemed to be sold by that interest holder on a first in, first out basis.

(6) Deemed sales value 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).

(7) In a month in which oil previously deemed to be 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 deemed sales value calculated under subsection (6).

(8) For the purpose of calculating royalty share, oil shall be deemed 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 subsections (3) and (6), paragraphs 17(b) and 23(3)(e) 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.

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 Newfoundland and Labrador 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.

Basic royalty rate

9. (1) The basic royalty rate for a month is

- (a) 1% when the recovery factor is less than 0.25;
- (b) 2.5% when the recovery factor is equal to or greater than 0.25 and less than 1;
- (c) 5% when the recovery factor is equal to or greater than 1 and less than 1.25; and
- (d) 7.5% when the recovery factor is equal to or greater than 1.25.

(2) The recovery factor for an interest holder in a lease in a month is calculated in accordance with the following formula:

$$\frac{(A+B+C-D-E)}{(F + G)}$$

where, in relation to that interest holder in a lease in that month

A = cumulative gross revenue;

B = cumulative value of oil taken in kind;

C = cumulative incidental revenue;

D = cumulative basic royalty payable;

E = cumulative net royalty payable;

F = cumulative eligible predevelopment costs; and

G = cumulative eligible capital costs plus cumulative eligible operating costs.

(3) In subsection (2), cumulative with respect to

(a) revenue means the sum of all revenue for the current month and all prior months;

(b) value of oil taken in kind means the sum of the value of all oil taken in kind for the current month and all prior months;

(c) costs means the sum of all costs for the current month and all prior months; and

(d) royalty payable means the sum of all royalty payable for prior months but does not include the royalty payable for the current month.

Payout

10. Payout occurs under a lease for an interest holder when, for the first time, the recovery factor is equal to or larger than 1.

Net royalty

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

(2) Net 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, multiplied by the applicable net royalty rate; less

- (b) the basic royalty payable by the interest holder under the lease for the month, to the extent that the basic royalty payable is less than or equal to the amount calculated under paragraph (a).

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;
- (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 month after payout, the sum of the interest holder's

- (a) gross revenue;
- (b) incidental revenue; and
- (c) value of oil taken in kind by the minister for the month, determined to be the volume of oil taken in kind multiplied by the price determined by the minister under subsection 7(9),

is exceeded by the sum of the interest holder's

- (d) eligible capital costs; and
- (e) eligible operating costs,

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

Net royalty rate **13.** (1) Where the recovery factor is less than 1 the net royalty rate is 0.

(2) Where the recovery factor is equal to or greater than 1 and less than or equal to 3 the net royalty rate is calculated as follows:

$$A + \left[\left(\frac{R-C}{D-C} \right) \times (B - A) \right]$$

where

A = the minimum net royalty rate of 10%

B = the maximum net royalty rate of 50%

C = the minimum recovery factor of 1

D = the maximum recovery factor of 3

R = the recovery factor calculated in accordance with subsection 9(2).

(3) When the recovery factor is greater than 3 the net royalty rate is 50%.

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.

PART II GENERAL ACCOUNTING

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.

Arm's length
transaction

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

(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,
 - (ii) an interest holder and an affiliate of an interest holder, or
 - (iii) 2 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.

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).

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.

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, shall 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.

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*.

**PART III
ROYALTY SHARE IN KIND**

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.

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.

Calculation of
volume

23. (1) Before an interest holder attains 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:

$$\text{Volume} = A [B + (C/D) - E] + [(F - G) / D]$$

(2) After an interest holder has attained 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:

$$\text{Volume} = (H + I + F) / D$$

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

- (a) "volume" means the oil that the Crown is entitled to take in kind for the month;
- (b) "A" means the applicable basic royalty rate;
- (c) "B" 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;
- (d) "C" 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;
- (e) "D" means the price determined under subsection 7(9) for the month in which oil is taken in kind;
- (f) "E" 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.
- (g) "F" 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;
- (h) "G" 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;
- (i) "H" means the basic royalty payable for the month; and
- (j) "I" means the net royalty payable for the 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.

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; or
- (b) an annual reconciliation,

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

$$A = B/C$$

where

A = the adjustment in volume;

B = the amount owing to or payable by the Crown; and

C = the price determined under subsection 7(9) 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).

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.

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 which 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 which the minister takes delivery of oil taken in kind under this section is not liable to the interest holder from which the minister is taking that oil in kind as a result of that delivery.

Reporting and
calculation of
payment

27. (1) An interest holder from which 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.

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 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 under this section 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 shall 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 shall 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.

Obligations

29. (1) Oil remains at the risk of the interest holders from which that oil is taken until that oil is delivered as required 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 same terms as access is generally supplied by the interest holder from which 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 X.

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 which he or she is taking in kind would normally have; and
- (d) details respecting the satisfaction of the obligations under this Part of

- (i) the interest holder from which 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 may impose an agreement.

PART IV REPORTING

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 before the last day of the month following the month to which the report relates.

(2) The monthly report shall be completed in full and shall contain either actual amounts or true estimates of the required amounts.

(3) An interest holder shall state in the monthly report which amounts are actual amounts and which amounts are true estimates and provide reasons why estimates were provided rather than actual amounts.

(4) 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 37(1) multiplied by the actual number of barrels sold in that month.

(5) 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 monthly report provided under subsection (1)

and that information provided with the monthly report is to the best of his or her knowledge, correct and complete.

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

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, including the recovery factor, basic royalty, net royalty, gross revenue, payout and cumulative production of that interest holder.

(2) An annual reconciliation filed under subsection (1) shall not be amended or revised more than 120 days after the end of the period.

(3) 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.

(4) 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.

(5) 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.

(6) Subsection (1) shall apply 120 days after the end of the period in which the commencement date occurs.

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, a report, in the required form, containing

- (a) eligible tanker costs and eligible transshipment costs paid by the tanker administrator or transshipment facility administrator on behalf of the interest holders for the period;
- (b) 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 which shall state that the reports have been prepared and the costs reported in compliance with the Act and these regulations.

Tanker cost
aggregator report

34. 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.

Advance rulings

35. (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 applications 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 that 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.

Assessment and
reassessment

36. (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 that submitted the annual reconciliation and shall include an assessment of the recovery factor, basic royalty, net royalty, gross revenue, net revenue, 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 or

reassessment 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.

Annual forecast

37. (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 for the subsequent period;

(b) an estimate of when payout is expected to occur, if payout has not yet occurred;

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

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

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

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

(3) The minister may approve an estimate submitted under subsection (1) or, where the estimate is not satisfactory to the minister, the minister may impose an amount.

Non-filing

38. (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) shall be amended to reflect the information contained in the report.

Notice

39. (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 which delivery is to be given or made; or
- (c) transmitted by facsimile or other electronic telecommunication to the person to which delivery is to be given or made.

(2) Where a person to which 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.

**PART V
ADMINISTRATION AND AUDIT**

Location and
retention of records

40. (1) An interest holder or project operator shall maintain in Newfoundland and Labrador records detailing eligible predevelopment costs, eligible operating costs, eligible capital costs, decommissioning costs, incidental revenue, production and inventory.

(2) An interest holder or tanker administrator shall maintain in Newfoundland and Labrador 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.

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

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

(5) An interest holder shall maintain in Canada records required to determine the calculation of basic royalty, net royalty and payout.

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

(7) 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.

(8) A record required to be maintained under these regulations shall not be destroyed before the expiration of the audit period referred to in subsection 46(1) without the prior written approval of the minister.

(9) Notwithstanding subsection (8), 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.

Successor
requirements

41. (1) A transferor shall, before an intended transfer of that transferor's interest in a lease or portion of an 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 share 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 notice under subsection (1).

(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 share on an interest in a lease that is transferred after the effective date of the transfer that is the subject of a notice under subsection (1).

(7) Where the minister gives a notice of royalty share payable under subsection (3),

(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 transferee.

(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) confirming that all royalty share payable by the transferor has been paid 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 which all or a part of that interest has been transferred; and
- (c) "transferor" means an interest holder in a lease that 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).

Audit and
inspection

42. (1) The minister or another person authorized 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.

Search and seizure

43. (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 these 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 be 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 these 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 authorizing 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 the Act or these regulations or of a failure to provide or accurately provide records and information as required under the Act and these regulations.

(3) The owner or person in charge of the premises or property 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.

Electronic records **44.** (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 of Natural Resources in the translation of those records referred to in subsection (1) into a readable format.

Cost of audit **45.** (1) Where a person is required to maintain records under section 40 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.

Audit period **46.** (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 these 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, the time within which the audit shall 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.

Indemnity

47. (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.

Confidential information

48. (1) A person who, while employed in the administration of the Act and these regulations shall not

- (a) knowingly communicate or knowingly allow 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 these regulations;
- (b) knowingly allow 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 use, 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.

(2) A person who contravenes subsection (1) 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.

(3) This section does not apply to

- (a) information required by law to be disclosed;

- (b) information that is available from sources accessible to the public or that could be obtained by observation or independent study by a member of the public acting on his or her own;
- (c) information that was communicated with a reasonable expectation that it would be disclosed;
- (d) information relating to an administrative penalty imposed under section 84; and
- (e) communication of information between the minister and the
 - (i) Minister of Finance and President of Treasury Board,
 - (ii) Minister of Natural Resources of Canada, and
 - (iii) board.

**PART VI
DECOMMISSIONING**

Definition

49. 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.

Decommissioning
plan

50. (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 Newfoundland and Labrador or of Canada or an agency of Newfoundland and Labrador or of Canada.

(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 that 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 is 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.

Carry-back

51. (1) An interest holder or a project operator acting for all interest holders in a lease 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), net royalty for that period shall be recalculated to take into account the deduction of net decommissioning costs.

Amounts owing to interest holder

52. Where, under section 51, 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 51 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.

Subsequent costs

53. 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.

**PART VII
GENERAL COSTS**

Cost pre-payment

54. (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 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 pre-payment 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.

Cost allocation

55. (1) With the exception of marketing and insurance costs referred to in paragraph 59(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, 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 shall 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 shall equal the original cost of the asset, multiplied by the change in the expected use of that asset for the purpose of the lease.

Dispositions

56. (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.

Reserves

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

- (a) that payment qualifies as a royalty cost or as a component of an eligible transportation cost under these regulations notwithstanding disallowed costs referred to in paragraph 63(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 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, a tanker administrator 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 55 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.

PART VIII INTEREST

Interest

58. (1) Interest shall be paid in respect of all amounts payable under these regulations, from the date payment of that amount is due until the date of receipt of that payment by the person to which 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) 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.

(4) Interest on an unpaid amount payable by the Crown under subsection (3) shall accrue from the time it becomes payable until it is paid.

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

**PART IX
COSTS AND INCIDENTAL REVENUE**

General cost criteria

59. (1) A cost shall qualify as an eligible predevelopment 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 63(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 predevelopment 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.

Certificate of predevelopment costs

60. (1) Predevelopment 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 predevelopment costs and the minister shall, where he or she determines that the costs are predevelopment costs, certify those costs as certified predevelopment costs.

(3) 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.

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

(5) Notwithstanding section 55, the minister shall determine the allocation among interest holders of certified eligible predevelopment costs.

Eligible operating costs and eligible capital costs

61. (1) A cost shall qualify as an eligible operating cost or an eligible capital cost where it

- (a) is not a predevelopment cost, is not a cost incurred in compliance with a decommissioning plan and is a cost incurred after the commencement date; or

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

(2) Notwithstanding subsection (1), 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.

Decommissioning costs

62. (1) Decommissioning costs are costs that were made, incurred or required under the decommissioning plan required under section 50.

(2) Decommissioning revenue is revenue received or considered 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.

Disallowed costs

63. (1) Notwithstanding another provision of these regulations, a cost under a lease shall not qualify as an eligible predevelopment 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 or tanker cost aggregator or an affiliate of any one of them unless that cost was incurred in Newfoundland and Labrador
 - (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, net 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 asset that has previously been used to transport 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 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, tanker cost aggregator, a third party contractor or a combination of them;
- (k) a fee or expense of dispute resolution, including 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 associated with mitigating environmental damage after it has occurred 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 predevelopment 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) 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;
- (r) a cost that is in the nature of reservoir risk amounts, unless approved by the minister;
- (s) a cost to the extent that there is
 - (i) a credit or discount that is intended to reduce or offset that cost, or
 - (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;

(t) 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

(u) an amount on account of, in lieu of, in satisfaction of or in substitution for a cost in paragraphs (a) to (t).

(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 and that lease does not come under these regulations;

(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.

Incidental revenue

64. (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 55;

(d) amounts required to be included as incidental revenue under Part VI; 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 VI, 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 incidental revenue received or deemed to be received or declared in respect of that service or asset.

PART X TRANSPORTATION COSTS

Definitions

65. In this Part

- (a) "capital lease tanker" means a tanker that is normally used to transport oil produced under a lease 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 that are at arm's length to all the interest holders that are parties to the operating lease and their affiliates, or
 - (ii) where one or more bidders are not at arm's length to interest holders that are parties to the operating lease, includes bids from at least 2 parties at arm's length to the interest holders that are parties to the operating lease;

- (c) "operating lease tanker" means a tanker that is normally used to transport oil produced under a lease 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;
- (d) "owned tanker" means a tanker that is normally used to transport oil produced under a lease 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;
- (e) "point of sale" means the point at which oil is deemed to have been sold under subsection 7(8) or, where the sale price includes transportation costs beyond where oil is considered to have been sold under subsection 7(8), the point of delivery;
- (f) "replacement tanker" means a tanker that
 - (i) is used to transport oil produced under a lease 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, 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;
- (g) "second leg tanker" means a tanker that transports oil produced under a lease from a transshipment facility to a point of sale; and
- (h) "transshipment facility owners" means the interest holders that are owners, or that have affiliates that are owners of an interest in a transshipment facility.

Application

66. Sections 55, 56, 59, 60, 61, 62 and 64 do not apply for the purpose of the calculation of eligible transportation costs.

General cost criteria

67. (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 63; and
- (e) it meets all of the other requirements of these regulations, except those referred to in section 66.

(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.

(3) Notwithstanding paragraph 67(1)(d),

- (a) section 63 shall not apply to the calculation of eligible transshipment costs;
- (b) paragraph 63(1)(a) shall not apply to the calculation of
 - (i) second leg tanker costs, and
 - (ii) replacement tanker costs; and

(c) paragraph 63(1)(m) shall not apply to the calculation of eligible tanker costs.

Eligible transportation costs

68. Eligible transportation costs for an interest holder for a month shall be the interest holder's monthly 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 74;

less that interest holder's share of

- (e) tanker incidental revenue.

Tanker
classification

69. (1) A tanker used to transport oil produced under a lease shall be classified as only one of the following 5 types:

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

(2) The interest holders in a lease shall inform the minister of their classification of a tanker within 30 days of the interest holders' 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) Where a tanker was previously classified in the offshore, the classification shall not be amended for the purposes of these regulations.

(4) An election or determination under subsection (2) applies for the life of the tanker and to all interest holders in relation to a lease to which these regulations apply.

(5) 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, the minister may elect to classify that tanker as an operating lease tanker.

(6) Notwithstanding subsections (3) and (4), 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.

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

Eligible tanker costs

70. 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.

Eligible owned tanker costs and eligible capital lease tanker costs

71. (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 costs that would be classified as an operating cost for that tanker in

accordance with Canadian generally accepted accounting principles for public accountable entities.

(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 the cost of the tanker as constructed.

(6) The eligible initial capital cost under paragraph (4)(a) for owned tankers that are 12 or more months old is the fair market value of the tanker as determined by an approved appraiser.

(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 these regulations do not apply, the eligible initial capital cost for that tanker under paragraph (4)(a) is 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.

(8) Notwithstanding subsections (6) and (7), where an owned tanker was subject to a deemed disposition under a lease to which these regulations do 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 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.

(9) The eligible initial capital cost under paragraph (4)(a) of a capital lease tanker is the fair market value of the tanker on the date that the tanker lease came into effect as determined by an approved appraiser or the minister.

(10) Eligible additional capital costs under paragraph (3)(b) are costs that would be classified as capital additions in accordance with Canadian generally accepted accounting principles for public accountable entities.

(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.

Eligible operating
lease tanker costs

72. (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) Notwithstanding paragraph 67(1)(d), paragraph 63(1)(a) shall not apply to the calculation of operating lease tanker costs referred to in paragraph (1)(a).

Eligible replacement tankers and eligible second leg tankers

73. (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.

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

Transportation costs carry forward

74. 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.

Tanker incidental revenue

75. Tanker incidental revenue is the sum of

- (a) proceeds received from the sale, lease, licence or other disposal or use of transportation assets or technology, but not the disposal of a tanker, where the costs of the lease assets or technology were royalty costs under a lease;
- (b) 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
- (c) other revenue that the minister may reasonably declare to be tanker incidental revenue.

Allocation of eligible tanker costs and incidental revenue

76. (1) The maximum portion of eligible owned tanker costs, eligible capital lease tanker costs, eligible operating lease tanker costs and eligible replacement tanker costs that may be allocated to a lease shall be calculated on an annual basis in accordance with the following 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 not out of service; and

C = eligible owned tanker costs, eligible capital lease tanker costs, eligible operating lease tanker costs or eligible replacement 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) 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 in accordance with the following 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 period from that lease; and

C = number of barrels sold in that month from that lease.

(6) The maximum portion of tanker incidental revenue that may be allocated to a lease shall be calculated on a monthly basis in accordance with 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; and

TIR = tanker incidental revenue.

(7) 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 that tanker is travelling from the point of sale to

- (a) return to its point of origin; or
- (b) another location in the offshore area.

(8) Where a tanker is traveling from a point of sale to a location outside the offshore area, "days on which a tanker is carrying oil" includes 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 offshore area.

Tanker cost
administrators and
tanker cost
aggregator

77. (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.

(2) The interest holders in a lease 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 in a lease shall designate a tanker cost aggregator on or before the date a tanker becomes available for the transportation of oil produced under that lease.

(4) The tanker cost aggregator shall allocate eligible tanker costs and tanker incidental revenue to each interest holder in a lease according to the allocation formula or formulas set out in the transportation allocation agreement or prescribed by the minister under subsection 78(5).

Transportation
allocation
agreement

78. (1) On or before the date a tanker becomes available for the transportation of oil produced under a lease, 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 prescribe an allocation formula or formulas.

Eligible
transshipment costs

79. (1) Eligible transshipment costs shall be costs incurred by an interest holder

(a) for the transshipment of oil produced under a lease; and

(b) relative to the use of transshipment facilities located in Newfoundland and Labrador unless otherwise approved by the minister.

(2) A cost shall not qualify as an eligible transshipment cost if it is

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

(b) a cost resulting from wilful and deliberate misconduct or gross negligence of management or supervisory personnel of a transshipment facility administrator, a third party contractor or a combination of them.

Eligible transshipment costs - Newfoundland and Labrador

80. (1) Eligible transshipment costs for the use of a transshipment facility located in Newfoundland and Labrador shall be calculated in accordance with this section.

(2) 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.

(3) 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 return on capital cost reduction for the month.

Return on capital cost reduction

81. (1) At the beginning of a period, the transshipment facility administrator shall provide each transshipment facility owner with an estimate of its individual return on capital cost reduction in a manner prescribed by the minister.

(2) At the end of each period, the transshipment facility administrator shall calculate the total return on capital cost 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 return on capital cost reduction that may be allocated to a lease according to the formula

$$A \times (B/C)$$

where

A = the total return on capital cost 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 return on capital cost 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 = return on capital cost 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 return on capital cost 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 82(5).

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

Transshipment
agreements

82. (1) A transshipment facility owner shall provide the minister with a copy of an executed transshipment allocation agreement within 30 days of a commencement date.

(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 return on capital cost reduction among the transshipment facility owners that is aligned with the transshipment facility owners' 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 an arrangement to determine customer costs for a transshipment facility, that interest holder shall notify the minister of an amendment to that arrangement, including an amendment to

- (a) a capacity services agreement;
- (b) transshipment facility terms and conditions of service; and
- (c) a shareholder agreement.

(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 subsection (6);

(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.

Eligible other
transportation costs

83. (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.

(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.

PART XI ADMINISTRATIVE PENALTY

Penalty

84. (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 40, 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.

**PART XII
GENERAL**

- Appeal **85.** A decision of the minister under these regulations is final and binding and no appeal lies to the Trial Division.
- Review **86.** A person aggrieved by a decision of the minister may, within 2 years of the decision, apply to a judge of the Trial Division for a review of the decision on a question of law or jurisdiction.
- NLR 71/03 Amdt. **87. Section 2 of the *Royalty Regulations, 2003* published under the *Petroleum and Natural Gas Act* is repealed and the following substituted:**
- Application **2.** These regulations shall apply to leases issued between April 1, 1990 and the coming into force of the *Offshore Oil Royalty Regulations*.

©Queen's Printer

Extraordinary Gazette Index

Title of Act and Subordinate Legislation made thereunder	CNLR or NL Reg.	Amendment	NL Gazette Date & Page No.
Petroleum and Natural Gas Act Offshore Oil Royalty Regulations	NLR 37/17	New	November 1 1/17 p. 3