

Commenters are encouraged to submit comments on a computer disk along with a hard copy.

FOR FURTHER INFORMATION CONTACT:
Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 703-235-1910.

SUPPLEMENTARY INFORMATION: On October 31, 1995, MSHA published a document in the Federal Register (60 FR 55353) announcing the reopening of the rulemaking record on its proposed standard for flame-resistant conveyor belts used in underground mines. Comment period was scheduled to close on December 15, 1995. By this document, the Agency is extending the comment period to February 5, 1996. All interested parties are encouraged to submit comments prior to that date.

Dated: December 15, 1995.

J. Davitt McAtee,
Assistant Secretary for Mine Safety and Health.
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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AC09

Valuation of Oil From Federal and Indian Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In response to changes in the oil and gas industry and the marketplace, the Minerals Management Service (MMS) is considering amending its regulations regarding the valuation of crude oil produced from or allocated to Federal and Indian leases.

Most Federal and Indian leases provide that the value of production for royalty purposes be determined by the Secretary. This notice is intended to solicit comments on new methodologies to establish the royalty value of oil produced from Federal and Indian leases. MMS specifically seeks comments on the use of crude oil posted prices as a means to value oil not sold under arm's-length conditions, and the meaning and application of the term "significant quantities".

DATES: Comments must be received on or before March 19, 1996.

ADDRESSES: Written comments, suggestions, or objections regarding valuation issues should be mailed to the

Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado 80225-0165, Attention: David S. Guzy, telephone (303) 231-3432, fax (303) 231-3194.

FOR FURTHER INFORMATION CONTACT:
David S. Guzy, Chief, Rules and Procedures Staff, MMS Royalty Management Program, at telephone (303) 231-3432, fax (303) 231-3491, e-mail David_Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION:

I. Background

All Federal and Indian oil and gas leases contain provisions for the determination of royalty obligations.

Most of these Federal and Indian leases reserve to the Secretary considerable discretion in determining value for royalty purposes. This Advance Notice of Proposed Rulemaking is intended to solicit comments on new methodologies to establish value for crude oil production from Federal and Indian leases. Comments received in response to this Advance Notice will be considered in the development of a proposed rulemaking that MMS will publish in the Federal Register.

In conjunction with the lease terms, the valuation of oil production from Federal and Indian leases is subject to the regulations at 30 CFR Part 206, Subpart C—Federal and Indian Oil. The present regulations govern the valuation of production from both Federal and Indian (Tribal and allotted) leases (except leases on the Osage Indian Reservation, Oklahoma). MMS believes it could provide an improved regulatory framework in which lease terms could be strictly enforced while requiring little or no extra information from lessees.

MMS may issue separate regulations to value oil from Indian leases because of the Secretary's trust obligation in the administration of Indian oil and gas leases. In view of this obligation, the Secretary must ensure that Indians receive the maximum benefits from mineral resources on their lands. Thus, the value of production for royalty purposes from an Indian lease should be determined considering the higher reasonable values provided by the terms of the standard lease. MMS believes this goal is consistent with: the terms of these Indian oil and gas leases, the statutes governing Indian oil and gas leases, and court decisions providing judicial guidance in the interpretation and administration of Indian oil and gas leases. Specific comments are requested

on issuing separate regulations for valuing oil from Indian leases.

II. Discussion of Alternatives

The Secretary's responsibility to determine the royalty value of oil produced from Federal and Indian lands has not changed, although the industry and marketplace have changed dramatically over the years.

Specifically, oil posted prices may no longer represent the price a purchaser is willing to pay for a particular crude oil. MMS plans to develop a set of regulations to permit the Secretary to discharge the Department's royalty valuation responsibility in an environment of continuing and accelerating change in the industry and the marketplace. Given the ever-changing marketplace, the Secretary's responsibilities regarding oil production from Federal and Indian leases require development of flexible valuation methodologies that lessees can comply with accurately and timely. MMS specifically seeks to improve oil valuation regarding the use of oil posted prices, including methods of determining "significant quantities." A discussion of these areas follows:

(a) Oil Posted Prices, Including Effects on Existing Valuation Benchmarks for Oil Not Sold Under Arm's-Length Contract

MMS is considering modifying or replacing the current benchmark system at 30 CFR 206.102(c) used to value oil not sold under arm's-length contracts. MMS believes that the current regulations may place too much emphasis on posted prices—the lessee's and others'. The first two of the five benchmarks rely on postings if a significant quantity of like-quality crude is purchased or sold at such postings in a field or area. Likewise, the third benchmark relies at least partly on postings because it applies the average of arm's-length contract prices, which often are tied to postings, for purchases or sales of significant quantities of oil in the area. (The fourth benchmark relies on spot sales and other relevant matters, and the fifth relies on a net-back or any other reasonable method to determine value.)

MMS recently has received information indicating that oil posted prices don't always reflect market value and in fact may often be no more than a beginning point for negotiation.

MMS has found numerous examples where crude oil purchasers pay premiums over the posted price. Further, consultation with private consultants, various State government personnel, and other non-Federal

royalty-owners indicates a consistent belief that oil posted prices may not represent market value. And, while posted prices historically were presumed to represent actual prices offered for a particular crude oil, postings no longer necessarily represent an offer to buy at that price.

Revising the benchmark system in the regulations could remove some of the current heavy reliance on posted oil prices and provide MMS more flexibility in determining proper royalty value.

MMS is soliciting comments on the continued applicability of oil posted prices as a fair and reasonable indicator of royalty value. Specifically, MMS seeks input on how oil marketing takes place today and whether and how oil posted prices typically factor into oil sales/purchases/exchanges.

MMS invites specific comments on various aspects of posted prices as applied to crude oil sales and royalty value for Federal and Indian leases, including the option of separate oil valuation regulations for Indian leases. MMS would like examples demonstrating whether crude oil price postings form the true basis for oil values in given fields or areas—and, to the extent possible, nationwide. And, if the commenter feels postings don't reflect market value for the field or area, MMS would like specific suggested alternative royalty valuation methodologies for oil not sold under arm's-length conditions. That is, if postings don't reflect market value and because the existing benchmarks for oil not sold under arm's-length conditions rely heavily on posted prices, what are some suggested alternative valuation benchmarks? For example:

- Are there indices or other published prices that better reflect actual market value than oil postings?
- Where prices posted by individual companies differ considerably within the same field or area, how are these differences best reconciled?
- Are there fixed "reference" prices against which quality, transportation, and other adjustments can be made to develop reasonable royalty values (e.g., West Texas Intermediate)?
- Are spot prices of sufficient reliability and do they cover wide enough geographic areas to use as value bases?
- Do oil "futures" prices provide meaningful bases for royalty valuation?
- What alternative valuation method(s) best balance the needs to (a) reflect the market value of the oil as sold, exchanged, or otherwise disposed of; and (b) maximize administrative efficiency for all concerned? (Please

consider the amount of information needed by the lessee and MMS, and the overall administrative costs of all parties.)

For royalty valuation involving arm's-length transactions, MMS generally accepts the contractual terms, which may include postings. MMS further requests comments on whether the use of alternative methods for valuing oil not sold under arm's-length conditions would impact the acceptability of posted prices for valuing oil sold at arm's-length.

(b) Quantifying "Significant Quantities" of Oil

The current MMS royalty valuation benchmarks for oil not sold under arm's-length contract rely on "significant quantity" determinations. Under the benchmarks, the lessee's or others' posted or contract prices used in arm's-length purchases or sales of "significant quantities" of like-quality oil from the same field or area establish royalty value. The first applicable of the five benchmarks is to be used, and the first four rely on "significant quantity" determinations. For example, if the lessee sells "significant quantities" of its field production at arm's-length, the arm's-length contract sales price may apply to the lessee's other, internally-transferred crude oil from the same field. But the existing regulations contain no fixed definition of "significant quantities," either on an absolute or relative basis. Thus, MMS would like comments on the best ways to determine what constitutes "significant quantities." For example:

- Is there an absolute volume measure (barrels per day/month/year, etc.) that would allow MMS to determine whether specific arm's-length sales involve "significant quantities"? If so, should this volume vary by field or area?
- Is there a fixed percentage of field or area production that MMS can use as a comparison basis to determine whether specific arm's-length sales represent "significant quantities"?
- What should be the comparative basis for "significant quantity" determinations? Should individual arm's-length transactions be related to *all* field production, or should some volumes such as internal company transfers of production or exchanges or buy/sell exchanges with other oil companies first be excluded from field production?
- Are there measures other than "significant quantities" that may better apply given alternative valuation scenarios?

In providing comments on (a) and (b) above, please consider not only current oil marketing practices, but also any changes that may be foreseen. MMS intends for any oil valuation rule changes to be flexible enough to accommodate future oil marketing changes as much as possible to avoid ongoing rule modification.

In addition to comments on (a) and (b) above, MMS would like comments on the process to use and make potential changes to the oil valuation rules. Specifically, MMS would like comments on whether any oil valuation regulatory changes should be subject to negotiated rulemaking procedures or other consensual mechanisms for developing regulations.

Dated: December 8, 1995.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

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Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN-110, Amendment Number 93-7, Part II]

Indiana Permanent Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is announcing receipt of additional changes to an amendment previously submitted by Indiana as a modification to the State's permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The changes add new language concerning minor field revisions to the second of three subparts of the original amendment. The changes are intended to incorporate language desired by the State.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on